The Parliament of the Commonwealth of Australia

Senate Standing Committee on Regulations and Ordinances

110th Report

Annual Report 2000-2001

March 2002

© Commonwealth of Australia 2002

ISBN 0 642 71146 1

Contents

	Page
Preface	
• Current Membership of the Committee	**v**
• Membership of the Committee 2000-2001	**v**
• Chair of the Committee	**v**
• Acknowledgment	**vi**
Chapter 1 - Parliamentary Scrutiny of Delegated Legislation	
• Delegated Legislation	**1**
• Regulations	**1**
• Disallowable Instruments	**1**
• Disallowance	**2**
• Re-making of regulations	**2**
• Unusual disallowance provisions	**3**
• Senate Standing Committee on Regulations and Ordinances	**3**
Chapter 2 – Committee Scrutiny and Statistics	
• Overview	**5**
• Membership	**5**
• Independent legal adviser	**5**
• Committee's principles and approach to delegated legislation	**5**
• Committee's mode of operation	**7**
• Recent initiatives	**7**
• Statistics	**9**

- Ministerial undertakings **11**

Chapter 3 - Committee's scrutiny of instruments

- Specific concerns raised in 2000-2001 **13**
  - Privacy considerations **13**
  - Retrospectivity **14**
  - Subjective discretions **15**
  - Merits review **18**
  - Strict liability offences **19**
  - Delegation of powers **20**
- Persistent concerns raised in 2000-2001 **22**

Chapter 4 - Ministerial Undertakings **23**

Appendix 1 – Breakdown of Miscellaneous instruments **33**

Appendix 2 - Instruments on which the Committee raised concerns during 2000-2001 **39**

Appendix 3 - Notices of motion to disallow given by the Committee in 2000-2001 **49**

Appendix 4 - Ministerial undertakings implemented during 2000-2001 **53**

Preface

Current Membership of the Committee

Senator Tsebin Tchen, Victoria, Chairman

Senator Andrew Bartlett, Queensland

Senator George Brandis, Queensland

Senator Geoffrey Buckland, South Australia

Senator Joseph Ludwig, Queensland

Senator Brett Mason, Queensland

Membership of the Committee 2000-2001

In 2000-2001, the membership of the Committee was as follows:

Senator Helen Coonan, New South Wales, Chair

Senator Andrew Bartlett, Queensland

Senator George Brandis, Queensland

Senator Geoffrey Buckland, South Australia (from 4 October 2000)

Senator Joseph Ludwig, Queensland

Senator Brett Mason, Queensland

Former member

Senator Jan McLucas, Queensland (until 4 October 2000)

Chair of the Committee

On 26 November 2001, following the general election, Senator Coonan was sworn in as Minister for Revenue and Assistant Treasurer. Accordingly, Senator Coonan resigned as Chair of the Committee.

The members of the Committee record their appreciation of the valuable work Senator Coonan performed as Chair, particularly in relation to initiatives designed to streamline the work of the Committee.

Acknowledgment

The Committee acknowledges the able assistance provided during the reporting period by the Committee's Legal Adviser, Professor Stephen Bottomley.

Senator Tsebin Tchen
Chairman
March 2002

CHAPTER ONE

PARLIAMENTARY SCRUTINY OF DELEGATED LEGISLATION

Delegated Legislation

1.1 Many Acts of Parliament delegate to the executive government the power to make detailed regulations and rules (known as delegated legislation) that supplement the parent Act and have the same legal force.

1.2 These regulations and rules are not passed by both Houses of the Parliament, as is primary legislation, but either House may disallow them. If this occurs, the regulations and rules thereupon cease to have effect.

1.3 The *Acts Interpretation Act 1901* establishes two categories of delegated legislation that are subject to parliamentary scrutiny. These are:

- regulations; and
- disallowable instruments.

Regulations

1.4 A wide range of legislation provides that the Governor-General may make regulations, not inconsistent with the legislation concerned, that carry out or give effect to the legislation.

1.5 These regulations are drafted by the Office of Legislative Drafting in the Attorney-General's Department and following approval by the Governor-General in Council are numbered and published in the Statutory Rules series.

1.6 Subsection 48(1) of the *Acts Interpretation Act 1901* provides that, where an Act confers power to make regulations, then, unless the contrary intention appears, all regulations so made "shall be laid before each House of the Parliament within 15 sitting days of that House after the making of the regulations".

1.7 Under subsection 48(3), if any regulations are not laid before each House within 15 sitting days, they cease to have effect.

Disallowable instruments

1.8 Subsection 46A(1) of the *Acts Interpretation Act 1901* provides that where a law confers power to make an instrument, such as a determination, notice, rule, order, guideline or other such instrument, and the law provides that the instrument is a disallowable instrument, then it is subject to the same procedures for parliamentary scrutiny as regulations.

Disallowance

1.9 Subsection 48(4) of the *Acts Interpretation Act 1901* provides:

> If either House of the Parliament, in pursuance of a motion of which notice has been given within 15 sitting days after any regulations have been laid before that House, passes a resolution disallowing any of those regulations, any regulation so disallowed thereupon ceases to have effect.

1.10 In effect, this subsection allows any member of the House of Representatives or senator, within 15 sitting days after tabling, to give notice of motion to disallow a regulation. However, in practice, it is unusual for regulations and other instruments to be disallowed in the House of Representatives.

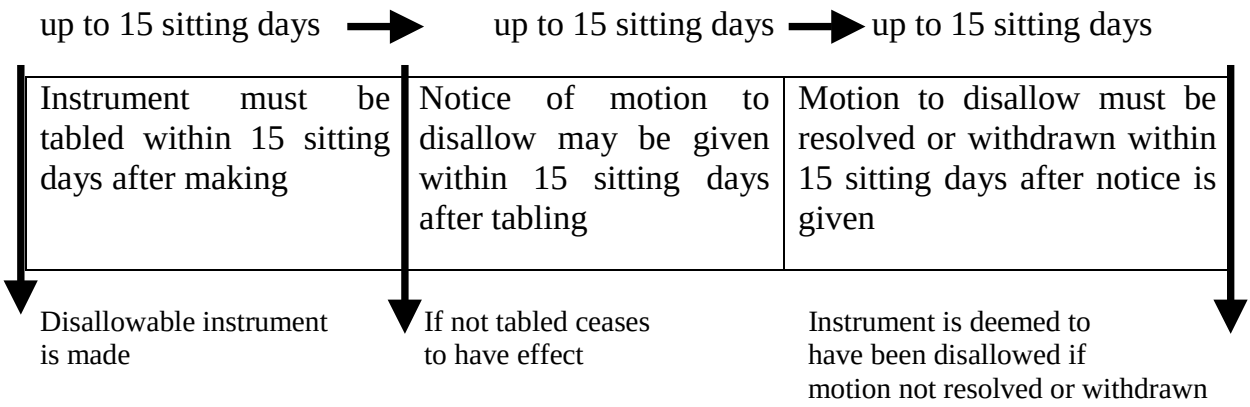
1.11 If a motion to disallow a regulation is agreed to by either House, the regulation "thereupon ceases to have effect".

1.12 If a notice of motion to disallow regulations has not been resolved or withdrawn within 15 sitting days after having been given, the regulations are deemed to have been disallowed and they cease to have effect.

1.13 Disallowance has the effect of repealing the regulations and if those regulations repealed all or part of an earlier regulation, then disallowance has the effect of reviving that part of the earlier regulation.

1.14 The usual disallowance process is reflected in the following diagram:

Disallowance process



Re-making of regulations

1.15 The same regulations cannot be remade:

- within 7 calendar days after tabling;
- if the regulations have not been tabled, within 7 calendar days after the last day on which they could have been tabled (unless both Houses approve by resolution);
- while they are subject to an unresolved notice of motion to disallow;

- within 6 months after being disallowed (unless the House that disallowed the regulations approves).

Unusual disallowance provisions

1.16 Some instruments have unusual disallowance provisions that are peculiar to the Act under which they are made. Accordingly, the time for giving notice or resolving a notice may be varied in particular cases. For example, the time for giving a notice of motion to disallow and to resolve that notice in relation to amendments to the National Capital Plan, made under the *Australian Capital Territory (Planning and Land Management) Act 1988*, is six sitting days. Also, the time for giving notice and resolving the notice for a determination made under section 20(2) of the *Financial Management and Accountability Act 1997* is five sitting days.

Senate Standing Committee on Regulations and Ordinances

1.17 Each year, hundreds of instruments of delegated legislation are made and these can have a significant effect on the lives of many Australians. They have as great an impact as primary legislation and have the same force in law. Generally speaking, about half of the law of the Commonwealth of Australia by volume consists of delegated legislation rather than Acts of Parliament.

1.18 The Senate Standing Committee on Regulations and Ordinances scrutinises Commonwealth delegated legislation to ensure that they comply with principles of personal rights and parliamentary propriety.

1.19 The Regulations and Ordinances Committee was established in 1932 and, apart from certain Committees dealing with internal parliamentary matters, is the oldest Senate Committee.

1.20 Regulations and disallowable instruments, once tabled in the Senate, stand referred to the Committee for scrutiny and recommendation as to any further parliamentary action including disallowance. In this regard, Senate Standing Order 23(2) provides:

> All regulations, ordinances and other instruments made under the authority of Acts of the Parliament, which are subject to disallowance or disapproval by the Senate and which are of a legislative character, shall stand referred to the Committee for consideration and, if necessary, report.

1.21 The Committee scrutinises each instrument to ensure:

- that it is in accordance with the statute;
- that it does not trespass unduly on personal rights and liberties;
- that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- that it does not contain matter more appropriate for parliamentary enactment.

1.22 In keeping with an approach adopted in 1933, the Committee considers that questions involving government policy in regulations and ordinances fall outside its scope. Accordingly, the Committee does not consider policy issues arising in delegated legislation, but does not refrain from finding provisions contrary to its principles and recommending their disallowance simply on the basis that they reflect government policy.

CHAPTER TWO

COMMITTEE SCRUTINY AND STATISTICS

Overview

2.1 The Committee engages in technical legislative scrutiny. It does not examine the policy merits of delegated legislation. Rather, it applies parliamentary standards to ensure the highest possible quality of delegated legislation, supported by its power to recommend to the Senate that a particular instrument, or a discrete provision in an instrument, be disallowed. This power, however, is rarely used, as Ministers almost invariably agree to amend delegated legislation or take other action to meet the Committee's concerns.

Membership

2.2 The Committee is appointed at the commencement of each Parliament under Standing Order 23(1). The Committee has six members and, in accordance with the Standing Orders, is chaired by a government senator. During the reporting period, the membership of the Committee was as follows:

Senator Helen Coonan, Chair

Senator Andrew Bartlett

Senator Geoffrey Buckland (from 4 October 2000)

Senator George Brandis

Senator Joseph Ludwig

Senator Jan McLucas (to 4 October 2000)

Senator Brett Mason

Independent legal adviser

2.3 The Committee is advised by an independent legal adviser, who examines and reports on every instrument of delegated legislation, comments on all correspondence received from Ministers, writes special reports and attends meetings of the Committee. During the reporting period, the Committee's independent legal adviser was Professor Stephen Bottomley, Faculty of Law, Australian National University.

Committee's principles and approach to delegated legislation

2.4 The Committee's approach to the scrutiny of delegated legislation is reflected in the following summary of concerns that it consistently raises with Ministers and Parliamentary Secretaries:

Principle 1: In accordance with the statute

Technical validity and effect

- compliance with enabling Act and any other legislation such as the *Acts Interpretation Act 1901* and in other respects, be validly made.
- generally void if instrument purports to subdelegate legislative power without express authority.
- legislative instruments that take effect before gazettal and that affect adversely any person other than the Commonwealth, are void under subsection 48(2) of the Acts Interpretation Act.
- legislative instruments may incorporate or adopt the provisions of an Act or other legislative instrument in force from time to time. However, it may only incorporate other material as in force or existing when the incorporating instrument takes effect, in accordance with section 49A of the Acts Interpretation Act.
- certainty of meaning and operation.

Possible breaches of parliamentary propriety

Drafting defects

Inadequate explanatory material

Proper numbering and citation.

Principle 2: Personal rights and liberties

Rights of individuals are protected

Unreasonable burdens are not placed on business

Fees, allowances and expenses are not unfair or unusual

Right to privacy is protected

Offence provisions include appropriate safeguards

Terms and conditions of public sector employment operate fairly.

Principle 3: Independent review of their merits

Discretions should be as narrow as possible, include objective criteria to limit and guide their exercise, and include review of the merits of decisions by an external, independent tribunal, which would normally be the Administrative Appeals Tribunal

- commercial, livelihood and personal implications.

Express statement required that power must be exercised reasonably

Decision should be notified within 28 days

Notice of appeal rights and availability of statement of reasons for decision should be given to the person affected.

Principle 4: More appropriate for parliamentary enactment

Legislation that fundamentally changes the law

Legislation that is lengthy and complex

Legislation intended to bring about radical changes in relationships or community attitudes

Legislation that is part of a uniform laws scheme.

Committee's mode of operation

2.5 Each week, instruments lodged for tabling in the Senate are sent to the Committee's legal adviser who makes a formal written report on each instrument. The Secretariat also scrutinises and provides the legal adviser with comments on the instruments. The Committee then considers the instruments as well as the legal adviser's report at meetings held on Thursday morning of each Senate sitting week. If an instrument causes the Committee concern, it agrees that the Chair should write to the responsible Minister seeking an explanation.

2.6 The Scrutiny of Regulations Alert appears on the Committee's Internet site and is updated each sitting Thursday, following the Committee's meeting. It lists those instruments that the Committee has agreed to seek further advice from Ministers. In doing so, the Alert provides immediate notice to ministerial staff and departmental officers that further action is necessary.

2.7 The Minister's response is considered by the Committee and in most instances the Committee will be satisfied by the explanation provided or a ministerial undertaking to amend the instrument to meet the Committee's concerns. If the Minister does not provide a satisfactory response, the Committee may write to the Minister again, reiterating its concerns in the light of the advice provided.

2.8 In recent years the Committee has exercised its power to call officials or witnesses before it where there are continuing difficulties with an instrument.

2.9 If the matter has not been resolved within 15 sitting days after tabling, the Chair, on behalf of the Committee, will give notice of motion to disallow the instrument, thereby giving the Committee and the Minister more time (a further 15 sitting days) to resolve outstanding issues.

2.10 Once the Committee's concerns have been satisfactorily addressed or a Minister gives an undertaking to amend an instrument at the earliest opportunity, the Committee will give notice of its intention to withdraw its notice of motion to disallow.

2.11 The Committee adopts a non-partisan approach to its work and this is complemented by the co-operative and helpful approach of Ministers. The success of these arrangements is reflected in the fact that the Senate, at the instigation of the Committee, last disallowed an instrument in 1988.

Recent initiatives

2.12 During the reporting period, the Committee introduced four new procedures in order to make its work more open and transparent and to streamline its work.

2.13 First, the Committee agreed that it will table in the Senate correspondence with Ministers relating to its scrutiny of delegated legislation. Most ministerial responses to concerns raised by the Committee are informative and instructive, providing detailed advice on Committee concerns. The Committee is of the view that

these responses should be placed on the public record, unless a request is made and the Committee agrees that a response should be treated confidentially. The first volume of correspondence was tabled in the Senate on 28 June 2001. Correspondence relating to instruments on which the Committee gives a notice of motion to disallow continues to be incorporated in *Hansard* on the day that notice of intention to withdraw the notice of motion is given by the Chair.

2.14 Secondly, the Committee agreed to establish a Scrutiny of Regulations Alert on its Internet site at www.aph.gov.au/senate/committee/regord_ctte/. There is early but encouraging evidence that this initiative has resulted in responses being received in a timeframe that avoids the need for the Committee to instigate disallowance procedures.

2.15 Thirdly, the Committee has placed on the Internet a Disallowance Alert that provides current information on instruments that are subject to a notice of motion to disallow. This Alert records notices of motion given by the Committee as well as individual senators or members. The Alert also records action taken on these notices, including withdrawal, debate or disallowance. The Alert is updated each sitting day and may be found at the Committee's home page.

2.16 Fourthly, the Procedure Office has introduced half-day seminars on the scrutiny of primary and secondary legislation. Specifically, the seminars address the work of the Senate Standing Committee on the Scrutiny of Bills and the Senate Standing Committee on Regulations and Ordinances. The seminars are aimed at parliamentary staff with an interest in legislative scrutiny and also public servants responsible for preparing legislation, regulations and other disallowable instruments. There has been considerable interest in these seminars during the reporting period.

2.17 It should also be noted that the Committee continues to place on the Internet its Delegated Legislation Monitors. These contain details of regulations and disallowable instruments tabled in each sitting week. The Monitors provide information on the authority for the instrument, the date it is made, the date it is tabled in the Parliament and a short summary of its subject matter. The Monitors may be found at the Committee's home page.

2.18 Each year, the Committee tables a consolidated Delegated Legislation Monitor, containing details of every regulation and disallowable instrument tabled in the Parliament, and this may also be accessed through the Internet.

Statistics

2.19 During the year, the Committee scrutinised 1859 instruments, 204 more than in the previous financial year. The following table sets out the number and broad categories of these instruments:

Instruments examined by the Committee in 2000-2001	**Number**
Civil Aviation instruments	735
Statutory Rules	425
Veterans' Entitlements instruments	75
National Health instruments	59
Customs instruments	58
Radiocommunications instruments	48
Telecommunications instruments	43
Defence determinations	40
Higher Education instruments	33
Fisheries Management instruments	25
Remuneration Tribunal determinations	24
Aged Care instruments	22
Miscellaneous	272
Total	**1859**

2.20 A breakdown of instruments included in the category of miscellaneous appears at Appendix 1.

2.21 The Committee notes that the number of instruments made in the reporting period continues to be significantly greater than a decade ago. Also, the proportion of Statutory Rules to other instruments continues to be small. These longer-term trends are illustrated in the table on the following page.

Proportion of Statutory Rules to other disallowable instruments

Year	Statutory Rules	Other Instruments
1985-86	429	426
1986-87	322	510
1987-88	345	690
1988-89	398	954
1989-90	411	847
1990-91	484	1161
1991-92	531	1031
1992-93	408	1244
1993-94	490	1313
1994-95	419	1668
1995-96	398	1502
1996-97	395	1396
1997-98	454	1434
1998-99	330	1342
1999-2000	348	1307
2000-2001	425	1434

2.22 In 2000-2001, the Committee held 20 meetings and raised concerns with 208 of the 1859 instruments it scrutinised. A list of these instruments appears at Appendix 2.

2.23 The Committee gave notice of motion to disallow 47 of the 208 instruments, all of which were subsequently withdrawn following the receipt of satisfactory responses or the giving of ministerial undertakings. A list of instruments that were the subject of a notice of motion to disallow is at Appendix 3.

2.24 The table on the following page provides an overview of the Committee's scrutiny of instruments over the last four reporting periods. The Committee notes that the number of concerns raised in recent years has increased significantly. The reasons for this increase are not readily apparent, but the Committee intends to monitor this trend.

2.25 The Committee also notes that the number of notices has decreased from 70 in 1999-2000 to 47 in 2000-2001. This decrease is welcome and may be a result of the Committee's initiatives to ensure that it receives timely responses to its concerns, thereby avoiding the need to initiate disallowance procedures in order to protect its options.

Financial Year	Number of Instruments	Instruments of concern	Number of Notices of Motion to Disallow
1997-1998	1888	175	25
1998-1999	1672	107	12
1999-2000	1655	265	70
2000-2001	1859	208	47

Ministerial undertakings

2.26 During the year, Ministers and other officials undertook to amend or review several instruments or parent Acts to meet the concerns of the Committee. Details of undertakings are given in Chapter 4.

CHAPTER THREE

COMMITTEE'S SCRUTINY OF INSTRUMENTS

Specific concerns raised in 2000-2001

3.1 During the reporting period, the Committee raised a number of concerns with Ministers that provide good examples of how it applies its scrutiny principles. These examples fall broadly into five areas, namely:

- Privacy considerations;
- Retrospectivity;
- Subjective discretions;
- Merits review;
- Strict liability offences; and
- Delegation of powers.

Privacy considerations

3.2 The Committee ensures that delegated legislation does not breach the basic right of privacy. The **Allocation Amendment Principles 2001 (No. 1)** made under subsection 96-1(1) of the *Aged Care Act 1997* specifies the records to be given by the transferor to the transferee if a transfer of aged care places is completed. The **Records Amendment Principles 2001 (No. 1)** define the term "representative" used in the Principles, and require an approved provider to keep up-to-date records of representatives of care recipients. The Committee sought advice on whether the Privacy Commissioner was consulted during the drafting of these amendments and, if so, whether the Commissioner expressed any views on the amendments.

3.3 The then Minister for Aged Care, the Hon. Bronwyn Bishop, MP replied that the Privacy Commissioner was not consulted during the drafting of the amendments but undertook to forward a copy of her letter to the Committee to the Commissioner for his information. The Minister's letter provided detailed information on the reasons for the amendments and safeguards to protect privacy. The Minister concluded that there are "powerful and effective provisions to protect personal information, whether that information is in the hands of Commonwealth officers or approved aged care providers". The Committee agreed that this response answered its concerns on the matter.

Retrospectivity

3.4 Each year, several instruments tabled in the Senate are retrospective in application and are therefore subject to subsection 48(2) of the *Acts Interpretation Act 1901*. This subsection provides that instruments that take effect before gazettal and affect any person other than the Commonwealth are void.

3.5 Most of these instruments will include in their explanatory statements an explanation for the retrospectivity and an assurance that no person other than the Commonwealth is adversely affected. The Committee welcomes these assurances. However, sometimes assurances are not given and the Committee is bound to pursue the matter with the Minister.

3.6 For example, the **Declaration to amend Schedules 1, 2 and 2A of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*** inserts into Schedule 1 an automatic cross-reference to the list of threatened species referred to in section 178 of the *Environment Protection and Biodiversity Conservation Act 1999* and other amendments to ensure compliance with the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the "Agreement between the Government of Australia and the Government of Japan for the protection of migratory birds and birds in danger of extinction and their habitats".

3.7 The Committee noted that the Declaration was signed by the Minister and commenced operation on 30 July 2000, but was not gazetted until 8 September 2000. The Committee sought advice on the reason for the delay in gazetting the Declaration and an assurance that no person other than the Commonwealth was disadvantaged by this delay.

3.8 Senator, the Hon. Robert Hill, the then Minister for the Environment and Heritage, advised the Committee that under s.9(1) of the Act, amendments to the Schedules are in fact made only on publication of the signed instrument in the *Gazette*. While the declaration was made on 30 July 2000, the changes declared did not take legal effect until gazettal, on 8 September 2000. The Minister stated that on this basis no disadvantage could be caused to any person by the timing of the gazettal. In its reply, the Committee welcomed this assurance but also indicated that the instrument on its face was misleading as it incorrectly provided for commencement on 30 July 2000. In order to avoid confusion, the Committee suggested that the declarations include a commencement provision consistent with the provisions of the principal Act.

3.9 A less complicated but nevertheless persistent concern concerning retrospectivity arose in the **Health Insurance (Accredited Pathology Laboratories – Approval) Amendment Principles 2000 (No.1)**. By virtue of section 2, the Principles commenced retrospectively on 1 July 2000, having come into existence on 11 July 2001. The Committee noted that the Explanatory Statement did not refer to the retrospective effect of the Principles, nor to the operation of section 48(2) of the *Acts Interpretation Act 1901* in this regard. The Committee inquired whether this retrospectivity disadvantaged any person other than the Commonwealth. The then

Minister for Health and Aged Care, the Hon. Dr Michael Wooldridge, assured the Committee that the retrospectivity did not disadvantage any party and provided the Committee with detailed reasons to support his assurance. The Committee welcomed this advice.

3.10 In its report for 1999-2000, the Committee encouraged departments and agencies to include in explanatory statements an assurance that retrospectivity is not prejudicial. The Committee is pleased to report that its scrutiny in 2000-2001 indicates that this matter has received significant attention.

Subjective discretions

3.11 Discretions are often included in regulations in order for decisions to be made on a range of matters. Discretions may be objective (or fettered) and these include a set of criteria that are to be applied when making the decision. Discretions may also be subjective (or unfettered) and these are usually characterised by terminology such as "in the opinion of the Secretary" or "where the Director is satisfied" etc.

3.12 It is clear that the inclusion in delegated legislation of a provision vesting a discretion in a person or body does not necessarily invalidate that legislation. As the court is able to review the exercise of the discretion, it cannot be used for purposes wider than those permitted by the delegated legislation or the empowering Act and accordingly does not, in itself, constitute an excess of power.[1]

3.13 While the inclusion of a discretionary power in regulations does not, of itself, lead to invalidity of those regulations, the legal effect that flows from the discretion may indicate that there has been an improper exercise of the empowering provision, and the regulations will be invalid on that ground.

3.14 In the past, the Committee has addressed the issue of the exercise of discretions under Principle (c) contained in Senate Standing Order 23, namely

> that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal.

3.15 In several reports, including its 32nd (1970), 43rd (1972) and 83rd (1988) reports, the Committee has made clear statements on its position on subjective discretions. In summary, the Committee has expressed the view that where executive bodies are given power to make administrative decisions affecting the rights and livelihood of individuals:

- the decision-making power should be objectively and not subjectively formulated;

---

1 Pearce and Argument, *Delegated Legislation in Australia*, Butterworths, 2nd Edition, p. 194.

- criteria should be expressly set out to inform the decision-maker and the citizen of the nature and scope of their respective responsibilities; and
- there should be a right of appeal to the Administrative Appeals Tribunal to review, in full, the merits of the decision, and if necessary, substitute for it the correct and preferable decision. (83rd Report)

3.16 The Committee has expressed the view that objective criteria provide a safeguard against arbitrary or unjustly discriminatory decisions. Reliance on a Minister or other official acting "reasonably" or "fairly" is not a sufficient safeguard. (32nd Report)

3.17 The Committee has also expressed the view that the inclusion of a phrase like "where in his opinion such-and-such circumstances apply" is generally objectionable because it reintroduces an unchallengeable discretion in another form. (43rd Report)

3.18 It should be noted that since 1979, an aggrieved person is able to challenge a decision under the provisions of s.5 of the *Administrative Decisions (Judicial Review) Act 1977*. The Committee has considered instruments containing subjective discretions but has not pursued amendments as Ministers have justified their use.

3.19 In the reporting period, the Committee considered a number of instruments containing subjective discretions.

3.20 For example, the **Migrant Agents Amendment Regulations 2000 (No. 2), Statutory Rules 2000 No. 309** contains a clause that provides for certain matters which must be taken into account by the Minister before deciding to specify an approved continuing professional development (CPD) activity in the *Gazette*. Specifically, under clause 3A, the Minister "may take into account the character and reputation, or a doubt about the character and reputation, of a person connected with the activity". In broad terms, "a person connected with the activity" is a person involved in conducting the activity, or producing, writing, or presenting material for that activity including consultants appointed for such purposes.

3.21 The Committee was concerned that clause 3A confers a wide and subjective discretion on the Minister. In particular, the Committee was concerned about how information about a person's character and reputation would come to the Minister's attention, whether the person concerned would be advised of and given the opportunity to rebut any such information where it is adverse to their interests and whose doubt about the person's character and reputation is relevant.

3.22 The Committee noted that the Explanatory Statement indicated that the purpose of the regulations is to ensure that such persons "may be seen as exemplars to the migration advice profession". Nevertheless, there was no indication in clause 3A as to the range of matters, which the Minister might take into account when assessing a person's character and reputation. Specifically, the Committee sought advice on the following matters:

- the decision making criteria ("character and reputation") were not objectively formulated;
- there was no express statement that the Minister must exercise this power reasonably; and
- there was no reference to appeal rights nor to the affected person receiving notification of the reasons for the Minister's decision.

3.23 In his response, the Minister for Immigration and Multicultural Affairs, the Hon. Philip Ruddock MP, advised that powers relating to continuing professional development are exercised personally by him or his parliamentary secretary.

3.24 The Minister identified five areas that will be considered when assessing the character and reputation of a person connected with these activities. The Minister observed that these considerations reflect the overall framework for the regulation of the migration advice industry and are similar to those found in the primary legislation.

3.25 The Minister assured the Committee that these powers would be exercised reasonably and responsibly and would be based on the strength and probity of evidence. He also advised that any decision is also subject to review under the *Administrative Decisions (Judicial Review) Act 1997* and that failure to exercise a power reasonably provides grounds for judicial review under the ADJR Act, thereby providing a further layer of accountability. The Minister advised:

> By their very nature all regulatory schemes restrict in some way an individual's rights and liberties, and to some extent may affect the right to carry on a business. The key issue is whether restrictions found in regulations such as these are no more than was intended by the Parliament in enacting the overall legislative scheme. In this case I believe the restrictions in the regulations will help achieve an outcome which was clearly envisaged by the Parliament - that is improved competence and ethical practice at all levels of the industry.

3.26 The Minister concluded:

> When taken with the procedural safeguards and judicial review rights mentioned above I believe the regulations provide a sound basis for ensuring that character and reputation matters may be taken into account by a Minister without unreasonably affecting the rights of CPD providers and potential providers. I believe the changes are positive for the industry and both fair and transparent for the small number of people whose interests may be adversely affected.

The Committee accepted the Minister's advice.

3.27 An interesting development occurred when the Committee raised concerns with the **Dairy Exit Program Scheme Amendment 2000 (No. 3)** and the **Restart Re-establishment Grant Scheme Amendment 2000 (No. 3)** made under the *Farm Household Support Act 1992*. These instruments provided for farm help retraining grants to be made available to dairy exit payment and re-establishment grant recipients. In particular, subsection 16F(2) of the Dairy Amendment and subsection 3A(6) of the Restart Amendment state that the Secretary must not authorise a person

to use a farm help retraining grant to undertake a relevant course unless the person agrees that if they fail to complete the course the amount may be recovered by the Commonwealth.

3.28 The Committee noted that the grant "may" be recovered by the Commonwealth and considered that there seemed to be some discretion whether the Commonwealth would seek to recover the grant. The Committee sought advice on who would exercise this discretion and on what grounds.

3.29 In his response, the Minister for Agriculture, Fisheries and Forestry, the Hon. Warren Truss MP, advised the Committee that its concerns about the discretion had highlighted other problems with the instruments. The Minister advised:

> The Committee has questioned who will exercise the discretion in the recovery of retraining grants and on what grounds. This issue has highlighted an oversight in the schemes that my department is currently seeking to address. The office of legislative drafting has been instructed to amend the instruments to remove the discretion and include a note explaining that section 47 of the Financial Management and Accountability Act 1997 deals with pursuing the recovery of the debt. Section 47 requires the Chief Executive to pursue recovery of a debt for which the Chief Executive is responsible, unless circumstances exist. The circumstances include when the Chief Executive considers that it is not economical to pursue recovery of the debt.

The Committee accepted the Minister's advice.

Merits review

3.30 As indicated above, delegated legislation may make rights unduly dependent upon administrative decisions that are not subject to independent review of their merits. The Committee considers that discretions should be limited and guided by objective criteria and subject to external review of their merits by an independent body, usually the Administrative Appeals Tribunal.

3.31 For example, the **Air Navigation Amendment Regulations 2000 (No. 3), Statutory Rules 2000 No. 360**, prescribe new provisions for the approval by the Secretary of tariffs charged by the holder of an international airline licence. In particular, the amended regulations "provide for voluntary submission of tariffs" by international airline licence holders. The regulations also provide that the Secretary may, in certain instances, direct the licence holder to submit its tariff for approval. Subregulation 19C(1) states that if the Secretary refuses to approve a tariff then the tariff must not be applied, but this only applies where a tariff has been submitted under regulation 19, either voluntarily or after direction from the Secretary. Regulation 19A provides that the Secretary may refuse to approve a tariff that has been submitted under regulation 19.

3.32 The Committee sought advice on whether such a decision is subject to merits review. The Minister advised:

> Under the new regulations, this would not be the case. As each international dispute is unique, it is very difficult to codify when this power should be used. Decisions to use these powers will involve government strategy on international aviation relations. It is not considered appropriate that a Tribunal review these decisions in favour of an individual airline when there is a broader international issue to be settled between the two parties to the agreement.

The Committee considered that this advice addressed its concerns.

3.33 The Committee scrutinised several Customs Regulations, which, among other things, prohibited the importation and exportation of the Patagonian and Antarctic toothfish.

3.34 The **Customs (Prohibited Exports) Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.211** prohibits the exportation of toothfish from Australia unless written permission has been granted by the Minister or an authorised officer. Similarly, the **Customs (Prohibited Imports) Amendment Regulations 2000 (No.5) Statutory Rules 2000 No.214** prohibits the importation of toothfish into Australia unless written permission has been granted by the Minister or an authorised officer.

3.35 The Committee noted that in both instances, if the authorised officer forms the opinion that permission should not be granted the application is to be referred to the Minister who may grant or refuse to grant the permission. A permission can be revoked if the holder does not comply with a condition or requirement of the permission.

3.36 The Committee sought advice from the then Minister for Justice and Customs, Senator the Hon. Amanda Vanstone, whether decisions to refuse to grant permission or to revoke a permission are reviewable. The Minister replied that under the *Fisheries Management Act 1991*, the Minister for Agriculture, Fisheries and Forestry can grant or refuse to grant a permission but that it was not intended that the decision be reviewable.

3.37 The Minister explained that in the event of an application for permission being refused by an authorised officer, the application is sent to the Minister who will assess the application and consider the issues involved. The Minister will grant or refuse the permission after due consideration of the facts including the demonstrated ability of the applicant and good management practice. The Committee accepted this explanation.

Strict liability offences

3.38 The Committee ensures that legislative instruments that include offence provisions should provide for appropriate safeguards. In particular, the Committee has had a continuing interest in strict liability offences. Generally, in order for an offence to be proved, an accused must not only commit the physical elements of the offence

but do so with the relevant fault element or elements, namely intention, knowledge, recklessness or negligence. An offence that does not require proof of the relevant fault element or elements is an offence of strict liability.

3.39 Issues relating to strict liability arose during the Committee's scrutiny of the **Quarantine Regulations 2000, Statutory Rules 2000 No. 129**, that repeal and replace the Quarantine (General) Regulations 1956, Quarantine (Plants) Regulations 1935, and Quarantine (Animals) Regulations 1935.

3.40 Specifically, new subregulation 10(1) items 12 and 13, 10(2) items 5 and 6, and regulation 12 items 4 and 5 each require that certain information must be reported under s.27A(2) of the Act (for regulation 10) and s.27B(2) of the Act (for regulation 12). Regulation 18 items 13 and 14 prescribe the matter about which a quarantine officer may require the master, commander, medical officer, or agent of certain vessels to answer questions. These requirements and reporting obligations arise "if any live animal is on board" the vessel, installation, or aircraft, or "if any animal died" during the voyage or flight. New subregulation 21(1) states that a person must not give or report information, or cause information to be given or reported to a quarantine officer under certain other regulations if that information is false or misleading in a material detail. A penalty of 50 penalty units is specified for breach.

3.41 The Committee noted that the regulation does not state that this is a strict liability offence, as is the case with new subregulations 27, 31, 34, and 58(1) and sought advice whether subregulation 21(1) was intended to impose liability regardless of the person's knowledge of the falsity or misleading nature of the information and, if so, whether this could be specified in the regulation.

3.42 The Minister for Agriculture, Fisheries and Forestry, the Hon. Warren Truss MP, wrote back to the Committee advising that the offence in subregulation 21(1) was not intended to be a strict liability offence. He indicated that as a matter of policy the Australian Quarantine and Inspection Service would not seek to prosecute breaches of section 21(1) on a strict liability basis. He further advised that it was unlikely that a court would accept that subregulation 21(1) as a strict liability offence because it imposes a higher penalty than the other offence in regulation 21, which specifies a mental element of negligence. The Minister concluded that if regulation 21 is read as a whole, the implication is that the offence in subregulation 21(1) will require a mental element demonstrating at least recklessness or knowledge.

3.43 The Minister added that if his explanation did not allay the Committee's concerns, he would undertake to amend subregulation 21(1) to clarify its intended effect. The Committee was of the view that the provision should be amended in order to clarify its intended effect and advised the Minister accordingly.

Delegation of powers

3.44 The Committee has consistently raised concerns about instruments that include a wide delegation of powers. For example, this issue arose in the **Child Care Benefit (Allocation of Child Care Places) Determination 2000.**

3.45 The Committee noted that, under this determination, the Secretary to the Department of Family and Community Services "may, in writing, delegate to an officer all or any of the powers of the Secretary under this determination." The Committee also noted that by virtue of subsection 3(2) of the Determination, terms used in each instrument have the same meaning as either in *A New Tax System (Family Assistance) Act 1999* or in *A New Tax System (Family Assistance) (Administration) Act 1999*. The latter Act defines "officer" to mean an officer of an agency, and "agency" is defined as meaning the Department of Family and Community Services, the Commonwealth Services Delivery Agency, the Australian Tax Office or the Health Insurance Commission. As such, it appeared to the Committee that any person either employed by one or other of those agencies, or contracted to one of them to exercise powers or perform duties or functions of the agency, may be a delegate of the Secretary of the Department for the purposes of the Determinations. The Committee wrote to the Minister expressing the view that the delegation was too wide and sought advice whether it would be appropriate to restrict the delegation to specified persons such as SES officers in the Department.

3.46 The then Minister, Senator the Hon. Jocelyn Newman agreed that the delegation of these powers should be restricted to those "officers" required to make decisions in the usual course of their duties. However, the Minister advised that given the structure of both the Department of Family and Community Service and Centrelink, it is not possible to limit these powers to SES officers. Accordingly, the delegation is restricted to certain "officers" within the Department of Family and Community Services or Centrelink, as appropriate.

3.47 The Minister also agreed that the Determinations may have been better structured if a definition of "officer" was given within the Determination. It would be clear that the Secretary's powers would then only be able to be delegated to an "officer" falling within the ambit of that definition.

3.48 The Minister provided the committee with an undertaking that, when next amended, the determination will include a suitable definition of "officer". However, such a definition would not restrict "officer" to a level but rather to an agency or agencies, as the case required. The Minister assured the Committee that:

> [the] Department of Family and Community Services has issued comprehensive policy instructions to assist all decision-makers when making a decision. In addition, any individual or organisation affected by any decision is able to utilise both internal and external review powers, which should best ensure that the correct or preferable decision is made, and that sufficient scrutiny of decisions is available.

3.49 Similar issues also arose in **Child Care Benefit (Absence from Care – Permitted Circumstances) Determination 2000** and the **Child Care Benefit (Recognised Work or Work Related Commitments) Determination 2000**.

3.50 The issue of appropriate delegation of powers also arose in the **Customs (Prohibited Imports) Regulations 2001 (No.1) Statutory Rules 2001 No. 60** that made amendments to the provisions for the importation of hand guns by firearm

dealers. The Committee sought advice on whether “a person” as defined in the term a “relevant police representative” is restricted to members of the police force or whether it includes civilians. The Minister for Justice and Customs, the Hon. Chris Ellison, advised that many state and territory Police Firearms Registries have civilian clerical staff performing licensing and registration duties. The Committee noted this satisfactory response to its concern.

Persistent concerns raised in 2000-2001

3.51 As in 1999-2000, a significant amount of the Committee’s work centred on quality control concerns rather than substantive issues raised in instruments.

3.52 On numerous occasions, the Committee had to draw the attention of Ministers to fundamental defects in instruments including:

- the failure to state clearly the authority under which the instrument is being made;
- the failure to include rule making words and the name and signature of the person authorised to make the instrument;
- the failure to number instruments (particularly those that will be part of a series) in order to make access and identification easier; and
- incorrect references and cross references.

3.53 In its last report, the Committee also expressed its concern about the quality, form and content of explanatory statements. During 2000-2001, the Committee continued to raise concerns about explanatory statements with Ministers. However, during the reporting period, the Committee formed the view that the quality of explanatory statements has improved. This was the case particularly with instruments that increased or decreased fees or charges where the explanatory statements gave reasons for and the basis upon which the changes were being made.

3.54 Notwithstanding this improvement, the frequency of simple drafting defects remains high. The Committee therefore re-iterates its view that those responsible for the preparation of disallowable instruments should introduce quality control procedures to ensure that instruments are free from drafting defects.

CHAPTER 4

MINISTERIAL UNDERTAKINGS

Introduction

4.1 Each year, the Committee, in response to concerns raised with delegated legislation, receives undertakings from Ministers to amend primary and delegated legislation. Of the numerous undertakings given over the years, there have been few occasions when the responsible Minister has approached the Committee seeking to be released from undertakings that had been given. This has been the case notwithstanding changes of responsible Ministers and changes in government.

Ministerial undertakings given in 2000-2001

4.2 In 2000-2001, Ministers gave undertakings on the following 22 instruments:

Airworthiness Directive AD/TBM 700/23
Australian Federal Police Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.138
Australian Postal Corporation Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.76
Australian Sports Drug Agency Drug Testing (Scheme A) Amendment Orders 2000 (No.3)
Australian Sports Drug Agency Drug Testing (Scheme B) Orders 2000
CEO Instrument of Approval No.46 of 2000
Child Care Benefit (Absence from Care - Permitted Circumstances) Determination 2000
Child Care Benefit (Allocation of Child Care Places) Determination 2000
Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval Determination 2000
Child Care Benefit (Recognised Work or Work Related Commitments) Determination 2000
Civil Aviation Amendment Orders (No.2) 2000
Civil Aviation Amendment Orders (No.4) 2000
Dairy Exit Program Scheme Amendment 2000 (No.3)
Environment Protection and Biodiversity Conservation Regulations 2000, Statutory Rules 2000 No.181
Marine Orders Part 6, Issue 5 - Marine Radio Qualifications, Order No.5 of 2000
Marine Orders Part 91 Marine Pollution Prevention - Oil, Issue 3, Order No.3 of 2001
Marine Orders Part 93 Marine Pollution Prevention - Noxious Liquid Substances, Issue 3, Order No.4 of 2001
National Food Authority Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.122

National Health (Pharmaceutical Benefits) Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.369
Quarantine Regulations 2000, Statutory Rules 2000 No.129
Renewable Energy (Electricity) Regulations 2001, Statutory Rules 2001 No.2
Restart Re-establishment Grant Scheme Amendment 2000 (No.3)

Undertakings implemented during the period

4.3 Nineteen undertakings were implemented in 2000-2001. These appear at Appendix 4.

Outstanding undertakings

4.4 Twenty-nine undertakings remain outstanding at 30 June 2001, as shown below.

Undertakings outstanding as at 30 June 2001

Instrument	Date Undertaking Given	Undertaking	Comment
Attorney-General's Department			
Australian Federal Police Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.138	28 September 2000	To amend the Regulations to clarify the different types of suspensions (subregulation 5(1)); to provide for a notice of suspension to be given to an AFP employee (regulation 5); and to clarify from whom salary deductions are to be made for judgment debts (regulation 13).	
Customs Regulations (Amendment), Statutory Rules 1998 No.38	7 July 1998	To amend the Regulations to provide that public officials must make a decision within 21 days (r.72) and take into account objectively rather than subjectively relevant information (r.74A(5)(b)).	The Minister advised on 15/3/2000 that the regulations would be amended after the passage of the Customs (Warehouse) and Import Process Charges (Warehouse) amendment Bills 1999. These Bills were still before the Parliament at 30 June 2001.
Family Law Regulations (Amendment), Statutory Rules 1996 No.71	10 September 1996	To amend the Regulations to provide for Administrative Appeals Tribunal review of discretions concerning the authorisation of a person to offer family and child counselling under r.57.	The Attorney-General advised on 19 May 1999 that the approval/authorisation regime was being reviewed. If the outcome of the review requires regulations to continue to make provision for authorisation of counsellors, mediators and organisations, new regulations will be made to make those decisions reviewable by the AAT.

National Crime Authority Regulations (Amendment), Statutory Rules 1996 No.286	24 July 1997	To amend the Act to include an appropriate safeguard that only reasonable force be used in executing search warrants and warrants for the apprehension of witnesses.	The Minister advised on 31 May 2000 that the amendment would be included in the National Crime Authority Legislation Amendment Bill 2000. This Bill was still before the Parliament at 30 June 2001. (It should be noted that the Act received assent on 1 October 2001)
Communications, Information Technology and the Arts			
Australian Postal Corporation Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.76	28 August 2000	To amend the Regulations to require a record of names of officers, who withdraw for inspection, transfer or receive an article from the ordinary course of the post.	
Education, Training and Youth Affairs			
Guidelines T6-98 made under the *Higher Education Funding Act 1988* (Merit-Based Equity Scholarships Scheme)	19 May 1998	To amend the Guidelines to ensure that institutions are required to comply with provisions of the *Privacy Act 1988*.	The Minister advised on 28 April 1999 that the undertaking would be fulfilled when the Guidelines were reissued following a policy change or when other circumstances created a need for change. No Guidelines have been reissued as at 30 June 2001.
Employment, Workplace Relations and Small Business			
Industrial Chemicals (Notification and Assessment) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.224	22 November 1999	To amend regulation 17 of the Principal Regulations to provide for review by the AAT of decisions made under subregulation 15(6) and regulation 16A	

Environment and Heritage			
Great Barrier Reef Marine Park (Aquaculture) Regulations 2000, Statutory Rules 2000 No.6	29 June 2000	To amend the Regulations to include criteria for determining the environmental significance of the impact of a discharge; and to include a broad time limit under paragraph 26(2)(a).	.
Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999, Statutory Rules 1999 No.102	23 September 1999	Amend the enabling Act to reflect changes made by the regulations.	Environmental Legislation Amendment Bill (No.2) 2000. The Bill was still before the Parliament at 30 June 2001.
Renewable Energy (Electricity) Regulations 2001, Statutory Rules 2001 No.2	30 April 2001	To amend the Regulations to include the actual definitions of native forests and plantations contained in the National Forest Policy Statement.	It should be noted that the undertaking was implemented on 16 August 2001.
Finance and Administration			
Tenth Amending Deed to Establish an Occupational Superannuation Scheme for Commonwealth Employees and Certain Other Persons	7 August 1996	To amend the *Superannuation Act 1990* to validate administrative actions.	The Minister advised on 17 April 2000 that the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1998 had been introduced and passed by the House of Representatives and was still to be considered by the Senate. The Bill was still before the Senate at 30 June 2001. (The Senate negatived the Bill at the second reading stage on 8 August 2001.)

Health and Aged Care			
Health Insurance Amendment Regulations 1999 (No.5), Statutory Rules 1999 No.176	15 February 2000	To back date the commencement date of amendments made to paragraphs 10(1)(a) and (b) (from 1 September 1999 to 1 March 1999) to validate any payments made for claims for services in respect of particular Computed Tomography (CT) scans requested by dental practitioners in the period 1 March to 31 August 1999 and performed on machines over 10 years of age.	
National Food Authority Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.122	9 November 2000	To amend the Regulations to remove the words 'without delay' from subregulation 8(2)	
Therapeutic Goods (Charges) Amendment Regulations 1998 (No.2), Statutory Rules 1998 No.260	11 March 1999	To amend the Regulations to prescribe a time limit (40 days) in which a decision must be made (subregulation 4C(3)).	
Industry, Science and Resources			
Australian Sports Drug Agency Drug Testing (Scheme A) Amendment Orders 2000 (No.3)	27 November 2000	Amend Schedule 1 Item 5 to clarify its operation by replacing the word 'thing' with a term that more adequately describes the objects referred to in the section and to include a note that provides an illustration of the operation of the section.	

Australian Sports Drug Agency Drug Testing (Scheme B) Orders 2000	17 November 2000	To make the same amendments to section 5 as undertaken to be done for the above Scheme A Orders	
Patents Amendment Regulations 1999 (No.4), Statutory Rules 1999 No.349	14 March 2000	To amend regulation 20.9 of the Trade Marks Regulations to make it consistent with regulation 20.19A following a further amendment of that regulations in the Patents Regulations.	
Transport and Regional Services			
Air Navigation Amendment Regulations 1998 (No.1), Statutory Rules 1998 No.321	9 March 1999	To clarify the safeguards for identity cards (to be included in a note to r.297PB - since renumbered to r.35)	The Minister advised on 14 August 2000 that safeguards will be clarified in new aviation security regulations currently being developed which should be finalised by the end of January 2001.
Airports (Environment Protection) Amendment Regulations 1998 (No.3), Statutory Rules 1998 No.349	16 March 1999	To amend the Regulations to provide for a reasonable period for reporting (r.6.03(1)).	
Airworthiness Directive AD/TBM 700/23	23 March 2001	To amend the directive to clarify the compliance period as 5 flying hours instead of 5 hours.	
Lists of Acts of the Western Australian Parliament in force in the Territories of Christmas Island and Cocos (Keeling) Islands	21 August 1999	To amend the relevant enabling Acts to clarify the tabling requirement for the lists.	
Marine Orders Part 6, Issue 5 - Marine Radio Qualifications, Order No.5 of 2000	27 October 2000	To amend the Order to clarify the intent of paragraph 8.4.1 and to remove the reference to paragraph 8.4.2 being a penal provision.	

Marine Orders Part 91 Marine Pollution Prevention - Oil, Issue 3, Order No.3 of 2001 Marine Orders Part 93 Marine Pollution Prevention - Noxious Liquid Substances, Issue 3, Order No.4 of 2001	10 May 2001 10 May 2001	Amend provision 13.2.3 in both Orders to correct an incorrect reference to provision 13.2.2 instead of 13.2.1	It should be noted that the undertaking was implemented on 15 October 2001.
Road Transport Reform (Heavy Vehicle Standards) Regulations, Statutory Rules 1995 No.55	29 August 1995	To amend the Regulations to provide for Administrative Appeals Tribunal review of discretions and to remove a strict liability provision.	The Minister advised on 10 May 1999 that the Regulations were to be replaced by a new package of Vehicle Standard Regulations and Vehicle Standard Rules. Amendments had been included in new regulations approved by the ATC in January 1999 but the commencement of these regulations was dependent upon an agreement with the Australian Capital Territory Government.
Road Transport Reform (Mass and Loading) Regulations (Amendment), Statutory Rules 1996 No.342 Road Transport Reform (Oversize and Overmass Vehicles) Regulations, Statutory Rules 1995 No.123	2 May 1997 29 August 1995	To amend the Regulations to provide for Administrative Appeals Tribunal review of discretions.	The Minister advised on 10 May 1999 that it was most unlikely that the regulations would be commenced as a review of the Road Transport Reform (Restricted Access Vehicles) Regulations, which will encompass the Oversize and Overmass and Mass and Loading Regulations was about to be undertaken. The National Road Transport Committee had given an undertaking that revised regulations would include independent review rights.

Treasury			
Excise Regulations (Amendment), Statutory Rules 1995 No.425	16 May 1996	To amend the *Excise Act 1901* to provide for Administrative Appeals Tribunal review of decisions made under s.61C of the Act.	
Excise Amendment Regulations 1998 (No.2), Statutory Rules 1998 No.275	3 March 1999	To amend the Regulations to provide for merits review of a discretion and to provide a safeguard for an official decision (subregulation 52AAAA(1) - approval of a plant and subregulation 52AAAA(9) - specify reasonable period for production of records or additional information).	

Appendix 1

Breakdown of Miscellaneous instruments

Miscellaneous Instruments

A New Tax System (Family Assistance) determinations	14
A New Tax System (Goods and Services Tax) Determinations	13
Aboriginal and Torres Strait Islander Heritage Protection (Boobera Lagoon Amendment) Declaration 2000	1
Accounting Standards	6
ACIS Administration instruments	4
ACT - National Capital Plan notice of approval	2
Air Navigation declaration	1
Australian Commonwealth Authorities determinations	3
Australian Land Transport Development determinations	6
Australian Meat and Live-stock Industry Orders	9
Australian Prudential Regulation Authority instruments	5
Australian Sports Drug Agency Drug Testing Orders	3
Authorised Deposit-taking Institution Supervisory Levy Imposition Determination	2
Authorised Non-operating Holding Companies Supervisory Levy Imposition Determination	2
Broadcasting Services determinations	8
Broadcasting Services (Events) Notices	2
Broadcasting Services Plan	1
Commonwealth Authorities and Companies Amendment Orders	4
Commonwealth Authorities and Companies Notice	1
Commonwealth Places (Mirror Taxes) Act notices	3
Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determinations 2000	2

Currency determinations	16
Dairy Structural Adjustment Program Scheme Amendment 2000 (No.2) (Dairy Produce Act)	1
Dairy Structural Adjustment Program Scheme Amendment 2000 (No.3) (Dairy Produce Act)	1
Diesel and Alternative Fuels Grants Scheme instruments	3
Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determinations 2000	2
Education Services for Overseas Students National Code	1
Environment Protection and Biodiversity Conservation instruments	6
Excise notices	6
Export Control Orders	6
Farm Household Support Schemes	7
Financial Management and Accountability Amendment Orders	5
Financial Management and Accountability Determinations	9
General Insurance Supervisory Levy Imposition Determination	2
Health Insurance (Accredited Pathology Laboratories - Approval) Amendment Principles 2000	2
Health Insurance declaration	8
Health Insurance determinations	2
Hearing Services Administration instruments	4
Hearing Services Rules of Conduct Amendment Rules	1
Instrument of Declaration of Special Event Period (Air Navigation Act)	1
Life Insurance Supervisory Levy Imposition Determination	2
Livestock Export (Merino) Orders (Amendment No.1 of 2000) (Export Control Act)	1
Marine Orders	7
Military and Superannuation Benefits Trust Deed	1

Motor Vehicle Standards determinations	4
Murray Darling Basin Agreement	1
National Environment Protection (National Pollutant Inventory) Measure	1
National Road Transport Commission declaration	1
National Transmission Network Sale exemption	1
Native Title - recognition of representative aboriginal/torres strait islander body	7
Native Title determinations	3
Occupational Health and Safety (Commonwealth Employment) Notices of Declaration	4
Parliamentary Service Determinations	5
Payment Systems and Netting Approval	1
Public Service Commissioner's Amendment Direction	1
Quarantine Determination	1
Retirement Savings Account Providers Supervisory Levy Imposition Determination	2
Revised Motor Vehicle Lighting Standards (Determination NO.2 of 2000)	1
Road Vehicle (National Standards) Determination No.1 of 2000	1
Safety, Rehabilitation and Compensation Notices of Declaration	5
Social Security Determinations	4
Social Security principles	1
States Grants (Primary and Secondary Education)(SES Guidelines)	1
Superannuation determinations	2
Superannuation Supervisory Levy Imposition Determination	2
Sydney Airport Demand Management determination	1
Territory instruments	16
Textile, Clothing and Footwear Strategic Investment Program Scheme	4

Therapeutic Goods determinations	2
Therapeutic Goods orders	3
Tradex Scheme - Approval of Application Form and Supplement	3
Trade Practices declarations of designated secondary shipper bodies	3
Trade Practices Guidelines for the Exercise of the Registrar's Power in Nominating Designated Secondary Shipper Bodies	1
Wildlife Protection (Regulation of Exports and Imports) declarations	3
Wool Services Privitisation - declaration of research body	1
Total	**272**

Appendix 2

Instruments on which the Committee raised concerns during 2000-2001

Instruments on which the Committee raised concerns during 2000-2001

A

A New Tax System (Goods and Services Tax Transition) Regulations 2000 Statutory Rules 2000 No.111
A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000 (No.3)
A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No.4) Statutory Rules 2000 No.110
A New Tax System (Goods and Services Tax) Amendment Regulations 2001 (No.2) Statutory Rules 2001 No.126
A New Tax System (Goods and Services Tax)(Exempt Taxes, Fees and Charges) Determination 2000 (No.2) made under section 81-5 of the *A New Tax System (Goods and Services Tax) Act 1999*
A New Tax System (Wine Equalisation Tax) Regulations 2000 Statutory Rules 2000 No.113
Aboriginal and Torres Strait Islander Heritage Protection (Boobera Lagoon Amendment) Declaration 2000 made under s.10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
Accreditation Grant Amendment Principles 2000 (No.1) made under subsection 96-1(1) of the *Aged Care Act 1997*
Administrative Appeals Tribunal Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.116
Air Navigation (Essendon Airport) Regulations 2001 Statutory Rules 2001 No.125
Air Navigation (Fuel Spillage) Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.73
Air Navigation Amendment Regulations (No.3) Statutory Rules 2000 No.360
Air Navigation Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.217
Airports (Control of On-Airport Activities) Amendment Regulations 2000 (No.3) Statutory Rules 2000 No.250
Airports (Control of On-Airport Activities) Amendment Regulations 2000 (No.4) Statutory Rules 2000 No.340
Airworthiness Directive AD/AB3/164
Airworthiness Directive AD/S-76/65 Amdt 2
Airworthiness Directive AD/TBM 700/23
Allocation Amendment Principles 2001 (No.1)
Australian Federal Police Amendment Regulations 2000 (No.2) Statutory Rules 2000 No.138
Australian Federal Police Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.77
Australian Fisheries Management Authority Temporary Order 2/2000
Australian Meat and Live-stock Industry (Lamb Export to the United States of America) Order 2000
Australian Sports Drug Agency Drug Testing (Scheme A) Amendment Orders 2000 (No.3)
Australian Sports Drug Agency Drug Testing (Scheme B) Orders 2000

B

Bankruptcy Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.220
Broadcasting Services (International Broadcasting Guidelines) 2000

C

CEO Instrument of Approval No.16 of 2000 made pursuant to ss.4A and 77H of the *Customs Act 1901*
CEO Instrument of Approval No.46 of 2000 made under paragraph 4A and paragraph 162AA(3)(a) of the *Customs Act 1901*
CEO Instrument of Approval No.54 of 2000
CEO Instruments of Approval No.53 of 2000
Child Care Benefit (Allocation of Child Care Places) Determination 2000 made under s.206 of the *A New Tax System (Family Assistance) (Administration) Act 1999*
Child Care Benefit (Breach of Conditions of Continued Approval) Determination 2000 made under subsection 200(5) of the *A New Tax System (Family Assistance) (Administration) Act 1999*
Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval;) Determination 2000 made under subsection 205(1) of the *A New Tax System (Family Assistance) (Administration) Act 1999*
Child Support Legislation (Transitional - Western Australia) Regulations 2000, Statutory Rules 2000 No.223
Civil Aviation Amendment Order (No.12) 2000
Civil Aviation Amendment Order (No.23) 2000
Civil Aviation Amendment Order (No.5) 2001
Civil Aviation Amendment Order (No.9) 2000
Civil Aviation Amendment Regulations 2000 (No.5), Statutory Rules 2000 No.227
Civil Aviation Amendment Regulations 2000 (No.7) Statutory Rules 2000 No.294
Civil Aviation Amendment Regulations 2000 (No.8) Statutory Rules 2000 No.295
Civil Aviation Amendment Regulations 2000 (No.9) Statutory Rules 2000 No.296
Civil Aviation Orders Part 39 -105 AD/CA21/10
Civil Aviation Orders Part 39-105 AD/CA25/10
Civil Aviation Orders Part 39-105 AD/J41/43
Commonwealth Electoral Officers (Allowances) Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.354
Commonwealth Places (Mirror Taxes) Modification of Applied Laws (Tasmania) Notice 2001 made under subsection 8(2) of the *Commonwealth (Mirror Taxes) Act 1998*
Consular Fees Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.156
Coringa-Herald and Lihou Reef National Reserves Management Plan made under the *Environment Protection and Biodiversity Conservation Act 1999*
Currency (Perth Mint) Determination 2000 (No.8)
Currency (Royal Australian Mint) Determination 2001 (No.1) made under subsection 13A(1) of the *Currency Act 1965*
Customs (Prohibited Exports) Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.211
Customs (Prohibited Exports) Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.212
Customs (Prohibited Imports) Amendment Regulations 2000 (No.4), Statutory Rules 2000 No.213

Customs (Prohibited Imports) Amendment Regulations 2000 (No.5), Statutory Rules 2000 No.214
Customs (Prohibited Imports) Amendment Regulations 2000 (No.6), Statutory Rules 2000 No.215
Customs (Prohibited Imports) Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.60
Customs Administration Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.24

D

Dairy Adjustment Levy Collection Regulations 2000 Statutory Rules 2000 No.98
Dairy Exit Program Scheme Amendment 2000 (No.3) made under subsection 52C(1) of the *Farm Household Support Act 1992*
Dairy Exit Program Scheme Amendment 2001 (No.1)
Dairy Structural Adjustment Program Scheme Amendment 2000 (No.2) made under clause 10 of Schedule 2 of the *Dairy Produce Act 1986*
Dairy Structural Adjustment Scheme Amendment 2000 (No.3) made under clause 10 of Schedule 2 of the *Dairy Produce Act 1986*
Declaration to amend Schedules 1 and 2 of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*
Declaration to amend Schedules 1, 2 and 2A of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982*
Defence Determination 2000/24
Defence Determination 2000/38
Defence Portfolio Regulations Amendment (Aid to Civilian Authorities) Regulations 2000 (No.1) Statutory Rules 2000 No.263
Determination No.1 of 2001 made under section 52 of the *Defence Act 1903*
Determination PIB24/2000 made under Schedule 1, paragraph (bj) of the *National Health Act 1953*
Determination PIB7/2000 made under Schedule 1, paragraph (bj) of the *National Health Act* 1955
Determination under subsection 51(1) of the *Telecommunications Act 1997*
Determination under subsection 95(1) of the *Telecommunications Act 1997*
Diesel and Alternative Fuels Grants Scheme (Journeys) Determination 2000
Diesel and Alternative Fuels Grants Scheme Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.160
Direction No. NPFD 46 made under subsection 17(5A) of the *Fisheries Management Act 1991*
Direction No. NPFD 54 made under subsection 17(5A) of the *Fisheries Management Act 1991*
Directions No. NPFD 38 - Permanent Closures made under subsection 17(5A) of the *Fisheries Management Act 1991*
Directions No. NPFD 39 - Gear Trials made under subsection 17(5A) of the *Fisheries Management Act 1991*
Directions No. NPFD 40 - By-catch Limits made under subsection 17(5A) of the *Fisheries Management Act 1991*
Directions No. NPFD 41 - Seasonal Closures made under subsection 17(5A) of the *Fisheries Management Act 1991*
Directions No. NPFD 42 - Prohibition on Daylight Trawling made under subsection 17(5A) of the *Fisheries Management Act 1991*

Directions No. NPFD 43 - Prohibition on Navigation made under subsection 17(5A) of the *Fisheries Management Act 1991*

E

Education Services for Overseas Students Regulations 2001 Statutory Rules 2001 No.96
Electronic Transactions Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.101
Environment Protection and Biodiversity Conservation Regulations 2000 Statutory Rules 2000 No.181
Exemption No.CASA EX43/2000
Export Control (Fees) Amendment Orders 2000 (No.2) made under regulation 3 of the *Export Control (Orders) Regulations 1982*
Export Inspection and Meat Charges Collection Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.342
Extradition (Latvia) Regulations 2000 Statutory Rules 2000 No.179
Extradition (South Africa) Regulations 2001 Statutory Rules 2001 No.52

F

Family Law (Child Abduction Convention) Amendment Regulations 2000 (No.2) Statutory Rules 2000 No.275
Family Law Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.31
Farm Help Re-establishment Grant Scheme Amendment 2001 (No.1)
Federal Magistrates Regulations 2000 Statutory Rules 2000 No.102
Fisheries Management Amendment Regulations 2000 (No.4) Statutory Rules 2000 No.337
Fisheries Management Amendment Regulations 2000 (No.4) Statutory Rules 2000 No.338
Fisheries Management Amendment Regulations 2000 (No.4) Statutory Rules 2000 No.339
Fisheries Management Amendment Regulations 2001 (No.2) Statutory Rules 2001 No.22
Fisheries Research and Development Corporation Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.270
Fishing Levy Amendment Regulations 2000 (No.3) Statutory Rules 2000 No.271

G

Gene Technology Regulations 2001 Statutory Rules 2001 No.106
Great Barrier Reef Marine Park Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.12
GST-free Supply (Drugs and Medicinal Preparations) Determination 2000 (No.2) made under paragraph 177-10(4)(c) of the *A New Tax System (Goods and Services Tax) Act 1999*
Guidelines for Detention of, Dealing with, and Disposal of Drug like substances made under subsection 99ZS(1) of the *National Health Act 1953*
Guidelines No.T16-2001 made under section 27 of the *Higher Education Funding Act 1988*

H

Health Benefits Organizations - Capital Adequacy Standard 2000
Health Benefits Organizations - Interpretation Standard 2000
Health Benefits Organizations - Solvency Standard 2000
Health Insurance (Accredited Pathology Laboratories - Approval) Amendment Principles 2000 (No.2)
Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.78
Health Insurance (Diagnostic Imaging Services Table) Regulations 2000 Statutory Rules 2000 No.291
Health Insurance Commission Export of Pharmaceutical Benefits Guidelines made under subsection 99ZS(1) of the *National Health Act 1953*
Hearing Services Providers Accreditation Scheme Amendment 2000 (No.1) made under subsection 15(1) of the *Hearing Services Administration Act 1997*
Hearing Services Rules of Conduct 2000 made under subsection 17(1) of the *Hearing Services Administration Act 1997*

I

Inclusion of key threatening processes in the list of threatened key threatening processes under section 183 of the *Environment Protection and Biodiversity Conservation Act 1999*
Income Tax Amendment Regulations 2000 (No.4) Statutory Rules 2000 No.117
Income Tax Amendment Regulations 2001 (No.2)
Instrument Fixing Charges to be Paid to APRA made under paragraph 51(1)(a) of the *Australian Prudential Regulation Authority Act 1998*
Instrument No CASA 327/00 made under subregulation 207(2) of the Civil Aviation Regulations 1988
Instrument No CASA 328/00 made under subregulation 207(2) of the Civil Aviation Regulations 1988
Instrument No. CASA 288/00 made under r.235(7) the Civil Aviation Regulations 1988
Instrument No.CASA 485/00
Insurance Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.71
Interstate Road Transport Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.15

M

Marine Order part 6, Issue 5 - Marine Radio Qualifications, Marine Order No.5 of 2000
Marine Orders Part 47 (Mobile Offshore Drilling Units) Issue 2 (Amendment), Order No.1 of 2000
Marine Orders Part 60 (Floating Offshore Facilities) Issue 1 (Amendment), Order No.2 of 2000
Marine Orders Part 9 Health - Medical Fitness, Issue 5 (Amendment) Marine Order No.5 of 2001
Marine Orders Part 93 Marine Pollution Prevention - Noxious Liquid Substances, Issue 3 Marine Order No.4 of 2001
Marine Orders, Part 91 Marine Pollution Prevention - Oil, Issue 3 Marine Order No.3 of 2001
Migrant Agents Amendment Regulations 2000 (No.2) Statutory Rules 2000 No.309
Migration Agents Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.143
Migration Amendment Regulations 2000 (No.5) Statutory Rules 2000 No.259

N

National Food Authority Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.122
National Health (Pharmaceutical Benefits) Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.369
National Health Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.218
National Health Amendment Regulations 2001 (No.2) Statutory Rules 2001 No.67
National Health Amendment Regulations 2001 (No.3) Statutory Rules 2001 No.123
National Television Conversion Scheme Variation 2000 (No.1)
Northern Prawn Fishery Management Plan Direction No.NPFD44 made under subsection 17(5A) of the *Fisheries Management Act 1991*
Notice pursuant to section 45 of the *Commonwealth Authorities and Companies Act 1997*
Notification of the Establishment of the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students made under section 37 of the *Education Services for Overseas Students Act 2000*
Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2000 (No.3) Statutory Rules 2000 No.305

P

Parliamentary Service (Consequential and Transitional) Determination 2000/1 made under subsection 83(1) of the *Parliamentary Service Act 1999*
Parliamentary Service Determination 2000/2
Passports Amendment Regulations 2000 Statutory Rules 2000 No.157
Petroleum (Submerged Lands) Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.248
Primary Industries (Customs) Charges Amendment Regulations 2001 (No.4) Statutory Rules 2001 No.112
Primary Industries (Customs) Charges Regulations 2000 Statutory Rules 2000 No.131
Primary Industries (Excise) Levies Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.132
Primary Industries (Excise) Levies Amendment Regulations 2000 (No.4) Statutory Rules 2000 No.265
Primary Industries Levies and Charges Collection Amendment Regulations 2000 (No.3) Statutory Rules 2000 No.264
Primary Industries Levies and Charges Collection Amendment Regulations 2001 (No.3) Statutory Rules 2001 No.114
Public Service Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.359

Q

Quarantine Regulations 2000 Statutory Rules 2000 No.129

R

Radiocommunications (Australian Space Objects) Determination 2000 (No.2)
Radiocommunications (Compliance Labelling - Cordless and Mobile Phones) Amendment Standard 2000 (No.2)
Radiocommunications (Definitions) Determination (Revocation 2000 (No.2)

Radiocommunications (Electromagnetic Radiation - Human Exposure) Amendment Standard 2000 (No.2)
Radiocommunications (Foreign Space Objects) Determination 2000 (No.2)
Radiocommunications (Radiocommunications Receivers) Determination 2000 (No.2)
Radiocommunications (Third Party Users - Apparatus Licence) Amendment Determination 2000
Radiocommunications (Third Party Users - Apparatus Licence) Amendment Determination 2000 (No.2)
Radiocommunications Amendment Standard 2000 (No.2)
Radiocommunications Licence Conditions (Broadcasting Licence) Amendment Determination 2001 (No.1) made under paragraph 107(1)(f) of the R*adiocommunications Act 1992*
Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No.1)
Records Amendment Principles 2001 (No.1) made under subsection 96-1(1) of the *Aged Care Act 1997*
Remuneration Tribunal (Members' Fees and Allowances) Amendment Regulations 2000 (No.1) Statutory Rules 2000 No.329
Remuneration Tribunal Determination 2000/16
Remuneration Tribunal Determination 2001/04
Renewable Energy (Electricity) Regulations 2001 Statutory Rules 2001 No.2
Residential Care Subsidy Amendment Principles 2000 (No.4) made under subsection 96-1(1) of the *Aged Care Act 1997*
Restart Re-establishment Grant Scheme Amendment 2000 (No.3) made under subsection 52A(1) of the *Farm Household Support Act 1992*
Road Vehicle (National Standards) Determination No.1 of 2000

S

Sanctions Amendment Principles 2001 (No.1) made under subsection 96-1(1) of the *Aged Care Act 1997*
SBT Provisional National Catch Allocation Determination - 2000/2001 Season
Social Security International Agreements (Additional Child Amounts) Determination 2000 made under subsection 14A(2) of the *Social Security (International Agreements) Act 1999*
States Grants (Primary and Secondary Education Assistance) (SES Scores Guidelines) Approval 2000
Stevedoring Industry Finance Committee Regulations 2001 Statutory Rules 2001 No.35
Superannuation (CSS) Deferred Transfer Value Payment (AvSuper) Determination No.2 made under section 241 of the *Superannuation Act 1976*

T

Telecommunications (Amounts of Annual Charge) Determination 2000 (No.2)
Telecommunications (Carrier Licence Application Charge) Determination 2000
Telecommunications (Customer Cabling - Exemption) Declaration 2000
Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)
Telecommunications (Customer Service Guarantee) Standard 2000 (No.2)
Telecommunications (Interception) Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.85
Telecommunications (Service Provider Determinations) Amendment Regulations 2000 (No.1)Statutory Rules 2000 No.246

Telecommunications Labelling (Customer Equipment and Cabling) Amendment Notice 2000 (No.1)
Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2001 (No.1) made under section 407 of the *Telecommunications Act 1997*
Telecommunications Numbering Plan Amendment 2000 (No.3)
Telecommunications Numbering Plan Amendment 2000 (No.5)
Telecommunications Numbering Plan Amendment 2000 (No.6)
Telstra Corporation Regulations 2000 Statutory Rules 2000 No.103
Temporary Order No.4 of 2000 made under subsection 43(8) of the *Fisheries Management Act 1991*
Therapeutic Goods (Charges) Amendment Regulations 2000 (No.2) Statutory Rules 2000 No.125
Therapeutic Goods Amendment Regulations 2000 (No.4) Statutory Rules 2000 No.123
Trade Practices Amendment Regulations 2001 (No.2) Statutory Rules 2001 No.57

V

Veterans' Entitlements (Compensation - Japanese Internment) Regulations 2001 Statutory Rules 2001 No.102
Veterans' Entitlements Amendment Regulations 2001 (No.1) Statutory Rules 2001 No.72
Veterans' Entitlements Treatment (Accident and Personal Safety) Determination No.18/2000
Veterans' Entitlements Treatment (Anxiety and Depressive Disorders) Determination No.21/2000
Veterans' Entitlements Treatment (Gulf War Health Study) Determination No.22/2000
Veterans' Entitlements Treatment (Residential Care) Determination No.20/2000
Veterans' Entitlements Treatment (Unidentified Condition) Determination No.19/2000

W

Water and Sewerage Services Supply, Water Consumption, Water and Sewerage Service Fees Determination No.3 of 2000 made under s.4 of the Cocos (Keeling) Islands Utilities and Services Ordinance 1996
Workplace Relations Amendment Regulations 2000 (No.2) Statutory Rules 2000 No.258

Appendix 3

Notices of motion to disallow given by the Committee in 2000-2001

Notices of motion to disallow given by the Committee in 2000-2001

As indicated in paragraph 2.26 of this report, the Committee gave notice of motion to disallow 47 instruments in 2000-2001. These instruments are listed below.

A New Tax System (Goods and Services Tax Transition) Regulations 2000, Statutory Rules 2000 No.111

A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000 (No.2) made under section 81-5 of the *A New Tax System (Goods and Services Tax) Act 1999*

A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No.4), Statutory Rules 2000 No.110

A New Tax System (Goods and Services Tax) Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.77

A New Tax System (Wine Equalisation Tax) Regulations 2000, Statutory Rules 2000 No.113

Australian Federal Police Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.138

Australian Postal Corporation Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.76

Bankruptcy Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.220

Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000, Statutory Rules 2000 No.79

Child Support (Registration and Collection) (Overseas-related Maintenance Obligations) Regulations 2000, Statutory Rules 2000 No.80

Civil Aviation Amendment Order (No.12) 2000 made under subregulation 84A(2) of the Civil Aviation Regulations 1988

Civil Aviation Amendment Order (No.9) made under the Civil Aviation Regulations 1988

Civil Aviation Amendment Regulations 2000 (No.8), Statutory Rules 2000 No.295

Dairy Adjustment Levy Collection Regulations 2000, Statutory Rules 2000 No.98

Defence Portfolio Regulations Amendment (Aid to Civil Authorities) Regulations 2000 (No.1), Statutory Rules 2000 No.263

Determination No.PB9 of 2000 made under subsection 99AAC(2) of the *National Health Act 1953*

Determination PIB7/2000 made under Schedule 1, paragraph (bj) of the *National Health Act 1953*

Electronic Transaction Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.101

Environment Protection and Biodiversity Conservation Regulations 2000, Statutory Rules 2000 No.181

Exemption No.CASA EX43/2000 made under regulation 308 of the Civil Aviation Regulations 1988

Export Inspection and Meat Charges Collection Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.342

Family Law Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.81

Federal Magistrates Regulations 2000, Statutory Rules 2000 No.102

Fisheries Management Amendment Regulations 2001 (No.2), Statutory Rules 2001 No.22

Fisheries Research and Development Corporation Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.270

Fishing Levy Amendment Regulations 2000 (No.3), Statutory Rules 2000 No.271

GST-free Supply (Drugs and Medicinal Preparations) Determination 2000 (No.2) made under paragraph 177-10(4)(c) of the *A New Tax System (Goods and Services Tax) Act 1999*

Guidelines for Detention of, Dealing with, and Disposal of Drug like substances, made under subsection 99ZS(1) of the *National Health Act 1953*

Health Insurance Commission Export of Pharmaceutical Benefits Guidelines, made under subsection 99ZS(2) of the *National Health Act 1953*

Hearing Service Providers Accreditation Scheme Amendment 2000 (No.1) made under subsection 15(1) of the *Hearing Services Administration Act 1997*

Hearing Services Rules of Conduct 2000 made under subsection 17(1) of the *Hearing Services Administration Act 1997*

Income Tax Amendment Regulations 2000 (No.4), Statutory Rules 2000 No.117

Instrument fixing charges to be paid to APRA, made under paragraph 51(1)(a) of the *Australian Prudential Regulation Authority Act 1985*

Instrument No.CASA 06/00 made under regulation 152 of the Civil Aviation Regulations 1988

Interstate Road Transport Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.15

National Food Authority Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.122

National Health (Pharmaceutical Benefits) Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.369

Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2000 (No.3), Statutory Rules 2000 No.305

Quarantine Regulations 2000, Statutory Rules 2000 No.129

Radiocommunications (Third Party users - Apparatus Licence) Amendment Determination 2000 made under the *Radiocommunications Act 1992*

Radiocommunications (Third Party users - Apparatus Licence) Amendment Determination 2000 (No.2) made under the *Radiocommunications Act 1992*

Radiocommunications Licence Conditions (Broadcasting Licence) Amendment Determination 2001 (No.1), made under paragraph 107(1)(f) of the *Radiocommunications Act 1992*

Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No.1), made under subsection 203AD(1) of the *Native Title Act 1993*

Renewable Energy (Electricity) Regulations 2001, Statutory Rules 2001 No.2

States Grants (Primary and Secondary Education Assistance) (SES Scores Guidelines) Approval 2000, made under section 7 of the *States Grants (Primary and Secondary Education Assistance) Act 2000*

Telstra Corporation Regulations 2000, Statutory Rules 2000 No.103

Temporary order No.4 of 2000 made under subsection 43(8) of the *Fisheries Management Act 1991*

Appendix 4

Ministerial undertakings implemented during 2000-2001

Ministerial undertakings implemented during 2000-2001

Instrument	Date Undertaking Given	Undertaking	Implemented by
Agriculture, Fisheries and Forestry			
Dairy Exit Program Scheme Amendment 2000 (No.3) made under the *Farm Household Support Act 1992*	16 March 2001	To amend the instrument to remove the discretion in the recovery of retraining grants (subsection 16G(2))	Dairy Exit Program Scheme Amendment 2001 (No.1) of 5 April 2001.
Northern Prawn Fishery Management Plan 1995, Direction No. NPFD 17	25 June 1998	Amend Direction 17 to remove a strict liability provision (subclauses 4.2 and 4.3)	Northern Prawn Fishery Management Plan 1995, Direction No. NPFD 40 of 6 July 2000.
Quarantine Regulations 2000, Statutory Rules 2000 No.129	4 October 2000	To amend the Regulations to clarify that subregulation 21(1) concerning false or misleading information is not intended to be a strict liability offence.	Quarantine Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.154 of 28 June 2001.
Restart Re-establishment Grant Scheme Amendment 2000 (No.3) made under the *Farm Household Support Act 1992*	16 March 2001	To amend the instrument to remove the discretion in the recovery of retraining grants (subsection 3A.6)	Farm Help Re-establishment Grant Scheme Amendment 2001 (No.1) of 5 April 2001.
Attorney-General's Department			
CEO Instrument of Approval No.46 of 2000 made under section 4A and paragraph 162AA(3)(a) of the *Customs Act 1901*	11 October 2000	To amend the Instrument to correct a reference to read 'Form B46AA (May 2000)'	CEO Instrument of Approval No.4 of 2001 of 24 May 2001.

Communications, Information Technology and the Arts			
Radiocommunicat-ions (Compliance Labelling - Incidental Emissions) Notice 1998	20 April 1999	To amend the Labelling Notice to include a note advising suppliers that they can apply for a permit if a competent body determines their device to be non-standard.	Radiocommunications (Compliance Labelling - Incidental Emissions) Amendment Notice 2000 (No.1) of 11 August 2000.
Environment and Heritage			
Environment Protection and Biodiversity Conservation Regulations 2000, Statutory Rules 2000 No.181	9 November 2000	To amend the Regulations to clarify the operation of regulation 12.24 by including 'recording sound' in the body of the regulation.	Environment Protection and Biodiversity Conservation Amendment Regulations 2001, Statutory Rules 2001 No.179 of 28 June 2001.
Family and Community Services			
Child Care Benefit (Absence from Care - Permitted Circumstances) Determination 2000	17 August 2000	Amend the determination to include a suitable definition of 'officer'	Child Care Benefit (Absence from Care - Permitted Circumstances) Amendment Determination (No.1) 2000 of 21 December 2000.
Child Care Benefit (Recognised Work or Work Related Commitments) Determination 2000	17 August 2000	Amend the determination to include a suitable definition of 'officer'	Child Care Benefit (Recognised Work or Work Related Commitments) Amendment Determination (No.1) 2000 of 21 December 2000.
Child Care Benefit (Allocation of Child Care Places) Determination 2000 made under *A New Tax System (Family Assistance) (Administration) Act 1999*	2 November 2000	To amend the definition of 'officer' in all child care benefit related determinations to restrict the delegation power to officers of the Department of Family and Community Services and Centrelink.	Child Care Benefit (Allocation of Child Care Places) Amendment Determination (No.1) 2000 of 21 December 2000.

Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Determination 2000 made under *A New Tax System (Family Assistance) (Administration) Act 1999*	2 November 2000	To amend subsection 7(3) (matters that the Secretary may consider when determining the suitability of an applicant) to make the provision mandatory instead of discretionary.	Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination (No.1) 2000 of 21 December 2000.
Health and Aged Care			
Australian Radiation Protection and Nuclear Safeguards Regulations 1999, Statutory Rules 1999 No.37	14 May 1999	To amend the Regulations to affirm the declaratory power of the Chief Executive Officer to determine which radiation facilities are prescribed (subregulation 6(5)).	Object achieved by new subregulation 6(3) of the Australian Radiation Protection and Nuclear Safeguards Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.306 of 9 November 2000.
National Health (Pharmaceutical Benefits) Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.369	16 March 2001	To amend subsection 38A(2) of the Regulations to provide for persons to be appointed from nominations made by professional associations of health economists.	National Health (Pharmaceutical Benefits) Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.68 of 5 April 2001.
Prime Minister and Cabinet			
Public Service Regulations 1999, Statutory Rules 1999 No.300	16 March 2000	To amend subregulation 5.18(2) to require a Promotion Review Committee to advise the Agency Head of the decision in writing.	Public Service Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.359 of 13 December 2000.
Transport and Regional Services			
Air Navigation (Fuel Spillage) Regulations 1999, Statutory Rules 1999 No.91	4 August 1999	Amend paragraph 16(2)(b) of the Principal Regulations to provide for AAT review of a Secretary's decision to withdraw or not withdraw a grounding notice.	Air Navigation (Fuel Spillage) Amendment Regulations 2000 (No.1), Statutory Rules 2001 No.73 of 5 April 2001.

Civil Aviation Amendment Orders (No.2) 2000 Civil Aviation Amendment Orders (No.4) 2000	30 August 2000	To include the legislative authority for making the instruments in future Orders.	Implemented from Civil Aviation Amendment Order (No.15) 2000 of 19 October 2000.
Marine Orders Part 9 - Health - Medical Fitness - Issue 5, Marine Order No.22 of 1999	10 April 2000	To amend the Order to require the Medical Inspector of Seamen to take the recommendation of the independent panel of medical practitioners into account when making a final decision about a seaman's fitness (provisions 7.3.2 and 7.4)	Marine Orders Part 9 - Health - Medical Fitness - Issue 5 (Amendment), Marine Order No. 5 of 2001 of 22 February 2001.
Marine Orders Part 47 - Mobile Offshore Drilling Units - Issue 2, Marine Order No.1 of 2000	3 May 2000	To change provision 2.2 into a note as the provision was not intended to provide a separate, non-reviewable power of exemption. Clarify the heading to provision 4.2 to read 'Statements to accompany written notice of decisions'. Amend provision 7 to require a person-in-charge to discharge the responsibilities specified in Appendix 1.	Marine Orders Part 47 - Mobile Offshore Drilling Units - Issue 2 (Amendment), Marine Order No.1 of 2001 of 17 January 2001.
Marine Orders Part 60 - Floating Offshore Facilities - Issue 1, Marine Order No.2 of 2000	3 May 2000	Amend provision 5 to identify provision 8 as a penal provision.	Marine Orders Part 60 - Floating Offshore Facilities - Issue 1 (Amendment), Marine Order No.2 of 2001 of 17 January 2001.