

The Senate

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Standing  
Committee on  
Regulations and  
Ordinances

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Delegated legislation monitor

Monitor No. 9 of 2013

11 December 2013

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Senator Gavin Marshall (Deputy Chair)	Victoria, ALP
Senator the Hon Ron Boswell	Queensland, NAT
Senator Sam Dastyari	New South Wales, ALP
Senator Nova Peris OAM	Northern Territory, ALP
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# Delegated legislation monitor

## Introduction

The *Delegated legislation monitor* (the monitor) is the regular report of the Senate Standing Committee on Regulations and Ordinances (the committee). The monitor is published at the conclusion of each sitting week of the Parliament, and provides an overview of the committee's scrutiny of instruments of delegated legislation for the preceding period.<sup>1</sup>

### The committee's terms of reference

Senate Standing Order 23 contains a general statement of the committee's terms of reference:

- (1) A Standing Committee on Regulations and Ordinances shall be appointed at the commencement of each Parliament.
- (2) 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.

The committee shall scrutinise each instrument to ensure:

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) 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
- (d) that it does not contain matter more appropriate for parliamentary enactment.

### Work of the committee

The committee scrutinises all disallowable instruments of delegated legislation, such as regulations and ordinances, to ensure their compliance with non-partisan principles of personal rights and parliamentary propriety.

The committee's longstanding practice is to interpret its scrutiny principles broadly, but as relating primarily to technical legislative scrutiny. The committee therefore does not generally examine or consider the policy merits of delegated legislation. In cases where an instrument is considered not to comply with the committee's scrutiny

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1 Prior to 2013, the monitor provided only statistical and technical information on instruments scrutinised by the committee in a given period or year. This information is now most easily accessed via the authoritative Federal Register of Legislative Instruments (FRLI), at [www.comlaw.gov.au](http://www.comlaw.gov.au).

principles, the committee's usual approach is to correspond with the responsible minister or instrument-maker seeking further explanation or clarification of the matter at issue, or seeking an undertaking for specific action to address the committee's concern.

The committee's work is supported by processes for the registration, tabling and disallowance of legislative instruments, which are established by the *Legislative Instruments Act 2003*.<sup>2</sup>

## **Structure of the report**

The report is comprised of the following parts:

- Chapter 1, 'New and continuing matters', sets out new and continuing matters about which the committee has agreed to write to the relevant minister or instrument-maker seeking further information or appropriate undertakings;
- Chapter 2, 'Concluded matters', sets out any previous matters which have been concluded to the satisfaction of the committee, including by the giving of an undertaking to review, amend or remake a given instrument at a future date; related (non-confidential) correspondence is included at Appendix 3;
- Appendix 1 provides an index listing all instruments scrutinised in the period covered by the report;
- Appendix 2 contains the committee's guideline on addressing the consultation requirements of the *Legislative Instruments Act 2003*.
- Appendix 3 contains correspondence relating to concluded matters.

## **Acknowledgement**

The committee wishes to acknowledge the cooperation of the ministers, instrument-makers and departments who assisted the committee with its consideration of the issues raised in this report.

**Senator Sean Edwards**

**Chair**

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2 For further information on the disallowance process and the work of the committee see *Odger's Australian Senate Practice*, 13<sup>th</sup> Edition (2012), Chapter 15.

# Chapter 1

## New and continuing matters

This chapter lists new matters identified by the committee at its meeting on **11 December 2013**, and continuing matters in relation to which the committee has received recent correspondence. The committee will write to relevant ministers or instrument makers in relation to substantive matters seeking further information or an appropriate undertaking within the disallowance period.

Matters which the committee draws to the attention of the relevant minister or instrument maker are raised on an advice-only basis and do not require a response.

### **Aged Care (Residential Care Subsidy - Homeless Supplement Amount) Determination 2013 [F2013L01984**

### **Residential Care Subsidy Amendment (Homeless Supplement) Principle 2013 [F2013L01981]**

<b>Purpose</b>	Sets the level of funding provided through the homeless supplement; and creates a new homeless supplement as an additional other supplement
<b>Last day to disallow<sup>1</sup></b>	17 March 2014
<b>Authorising legislation</b>	<i>Aged Care Act 1997</i>
<b>Department</b>	Social Services

#### **ISSUE:**

#### ***No information provided regarding consultation***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES accompanying each of the instruments mentioned above contains no reference to consultation. **The committee therefore requests further information from the minister; and requests that the ES be amended in accordance with the requirements of the *Legislative Instruments Act 2003*.**

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1 'Last day to disallow' refers to the last day on which notice may be given of a motion for disallowance in the Senate.

**Australian Meat and Live-stock Industry (Beef Export to the USA-Quota Year 2014) Order 2013 [F2013L01966]**

**Australian Meat and Live-stock Industry (Sheepmeat and Goatmeat Export to the European Union—Quota Year 2014) Order 2013 [F2013L01965]**

<b>Purpose</b>	Set the conditions and amount under which beef, sheepmeat and goatmeat can be exported for the period 1 January 2014 to 31 December 2014.
<b>Last day to disallow</b>	17 March 2014
<b>Authorising legislation</b>	<i>Australian Meat and Live-stock Industry Act 1997</i>
<b>Department</b>	Agriculture

**ISSUE:**

***Drafting/Availability of review of decisions by AAT***

The first instrument mentioned above expressly provides that an exporter may apply to the Administrative Appeals Tribunal for a review of ‘a decision of the Secretary relating to amendment of an approval issued under this order’. The second instrument, which appears to be setting similar quotas to the first instrument, but relating to a different market and to different meat products, contains no such provision. However, note 4 to section 8 of the second instrument states that ‘[c]ertain decisions by the Secretary about a quota are reviewable by the Administrative Appeals Tribunal: see section 30 of the Act’. There is no equivalent note in the first instrument. The reason for the absence of an equivalent note in the first instrument is not apparent. **The committee therefore requests further information from the minister.**

**Migration Amendment (Visa Application Charge and Related Matters No. 2) Regulation 2013 [Select Legislative Instrument 2013 No. 253] [F2013L01963]**

<b>Purpose</b>	Omits references in the Principal Regulations to 'concessional competent English' and corrects typographical errors
<b>Last day to disallow</b>	17 March 2014
<b>Authorising legislation</b>	<i>Migration Act 1958</i>
<b>Department</b>	Immigration and Border Protection

**ISSUE:**

***No information regarding consultation***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an

instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES accompanying this instrument contains no reference to consultation. **The committee therefore requests further information from the minister; and requests that the ES be amended in accordance with the requirements of the *Legislative Instruments Act 2003*.**

### **Social Security (Disaster Recovery Allowance) (Rate calculator) Determination 2013 [F2013L01971]**

<b>Purpose</b>	Specifies the method in which the fortnightly rate of Disaster Recovery Allowance will be calculated
<b>Last day to disallow</b>	17 March 2014
<b>Authorising legislation</b>	<i>Social Security Act 1991</i>
<b>Department</b>	Social Services

#### **ISSUE:**

##### ***No information regarding consultation***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES accompanying this instrument contains no reference to consultation. **The committee therefore requests further information from the minister; and requests that the ES be amended in accordance with the requirements of the *Legislative Instruments Act 2003*.**

### **Multiple instruments identified in Appendix 1**

The committee notes that six instruments, identified by an asterisk (\*) in Appendix 1, appear to rely on subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that the power to make an instrument includes the power to vary or revoke the instrument. If that is the case, the committee considers that it would be preferable for the ES for any such instrument to identify the relevance of subsection 33(3), in the interests of promoting the clarity and intelligibility of the instrument to anticipated users. **The committee therefore draws this issue to the attention of ministers and instrument-makers responsible for the instruments identified in Appendix 1. The committee provides the following example of a form of words which may be**

**included in an ES where subsection 33(3) of the *Acts Interpretation Act 1901* is relevant:**

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.<sup>2</sup>

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2 For more extensive comment on this issue see Monitor No. 8 of 2013, p. 511.

## Chapter 2

### Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on **11 December 2013**. The committee has concluded its interest in these matters on the basis of responses received from ministers or relevant instrument-makers.

Correspondence relating to these matters is included at Appendix 3.

#### **Guidelines for the use of the word 'university' in company names (Revocation) Instrument 2013 [F2013L00757]**

<b>Purpose</b>	Revokes the guidelines for the use of the word 'university' in company names
<b>Last day to disallow<sup>1</sup></b>	2 December 2013
<b>Authorising legislation</b>	Corporations Regulations 2001
<b>Department</b>	Treasury

#### **ISSUE:**

##### ***Insufficient description regarding consultation***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The explanatory statement (ES) which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states only that the 'Department of Industry, Innovation, Science, Research and Tertiary Education has consulted with the Department of Treasury on the development of this instrument.' While the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it considers that an overly bare or general description, such as in this case, is not sufficient to satisfy the requirements of the *Legislative Instruments Act 2003*. **The committee therefore requests further information from the minister and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

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<sup>1</sup> 'Last day to disallow' refers to the last day on which notice may be given of a motion for disallowance in the Senate.

**MINISTER'S RESPONSE:**

The Minister for Education advised that the guidelines were not substantially altered and the revocation instrument would not have an effect on business. The only stakeholder affected by the revocation instrument was the Department of the Treasury (Treasury), as having responsibility for the Australian Securities and Investment Commission (the agency that registers company names). Given this, it was considered that consultation beyond Treasury was not required and was unnecessary in relation to the revocation instrument.

The minister further advised that the ES would be amended to include the information provided.

**COMMITTEE RESPONSE:**

**The committee thanks the minister for his response and has concluded its interest in the matter.**

# Appendix 1

## Index of instruments scrutinised

The following instruments were considered by the committee at its meeting on **11 December 2013**.

The Federal Register of Legislative Instruments (FRLI) website should be consulted for the text of instruments and explanatory statements, as well as associated information.<sup>1</sup> Instruments may be located on FRLI by entering the relevant FRLI number into the FRLI search field (the FRLI number is shown in square brackets after the name of each instrument listed below).

Instruments marked with an asterisk (\*) are the subject of the comment in Chapter 1 relating to subsection 33(3) of the *Legislative Instruments Act 2003* (under the heading 'Multiple instruments identified in Appendix 1').

### Instruments received week ending 29 November 2013

#### *Aged Care Act 1997*

- \* Aged Care (Residential Care Subsidy - Homeless Supplement Amount) Determination 2013 [F2013L01984]
- \* Residential Care Subsidy Amendment (Homeless Supplement) Principle 2013 [F2013L01981]

#### *Australian Meat and Live-stock Industry Act 1997*

- Australian Meat and Live-stock Industry (Beef Export to the USA-Quota Year 2014) Order 2013 [F2013L01966]
- Australian Meat and Live-stock Industry (Sheepmeat and Goatmeat Export to the European Union—Quota Year 2014) Order 2013 [F2013L01965]

#### *Australian Prudential Regulation Authority Act 1998*

- Australian Prudential Regulation Authority (confidentiality) determination No. 22 of 2013 [F2013L01983]

#### *Charter of the United Nations Act 1945*

- Charter of the United Nations (Sanctions—Somalia) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 246] [F2013L01974]

#### *Civil Aviation Act 1988*

- AD/CESSNA 400/86 Amdt 2 - Powerplant Fire Detection System – Installation [F2013L01958]
- AD/PZL/5 Amdt 2 - Centre Wing to Outboard Wing Attachment Joints [F2013L01967]
- CASA ADCX 024/13 - Revocation of Airworthiness Directive [F2013L01957]
- Civil Aviation Legislation Amendment (Flight Crew Licensing Suite) Regulation 2013 [Select Legislative Instrument 2013 No. 254] [F2013L01976]

#### *Clean Energy Act 2011*

- Clean Energy Legislation Amendment (Jobs and Competitiveness Program) Regulation 2013 [Select Legislative Instrument 2013 No. 243] [F2013L01975]

#### *Corporations Act 2001*

- ASIC Class Order [CO 13/1406] [F2013L01986]
- ASIC Class Order [CO 13/1409] [F2013L01987]

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1 FRLI is found online at <http://www.comlaw.gov.au/>.

- ASIC Class Order [CO 13/1410] [F2013L01988]
- \* ASIC Class Order [CO 13/1411] [F2013L01989]
  - \* ASIC Class Order [CO 13/1412] [F2013L01990]
  - \* ASIC Class Order [CO 13/1413] [F2013L01991]
  - \* ASIC Class Order [CO 13/1473] [F2013L01992]
- ASIC Class Rule Waiver [CW 13/1448] [F2013L01961]  
ASIC Class Rule Waiver [CW 13/1479] [F2013L01959]
- Criminal Code Act 1995***  
Criminal Code (Terrorist Organisation—Al-Qa’ida in the Arabian Peninsula) Regulation 2013 [Select Legislative Instrument 2013 No. 241] [F2013L01969]
- Currency Act 1965***  
Currency (Royal Australian Mint) Determination 2013 (No. 5) [F2013L01960]
- Customs Act 1901***  
Customs Amendment (Record Keeping Requirements and Other Measures) Regulation 2013 [Select Legislative Instrument 2013 No. 251] [F2013L01968]
- Environment Protection and Biodiversity Conservation Act 1999***  
Amendment of List of Exempt Native Specimens - Torres Strait Tropical Rock Lobster Fishery 13/11/2013 [EPBC303DC/SFS/2013/57] [F2013L01956]
- Fair Work Act 2009***  
Fair Work and Other Legislation Amendment (AusAID) Regulation 2013 [Select Legislative Instrument 2013 No. 242] [F2013L01972]
- Federal Court of Australia Act 1976***  
Federal Court Amendment (Electronic Court File Measures No. 1) Rules 2013 [Select Legislative Instrument 2013 No. 256] [F2013L01970]
- Fisheries Management Act 1991***  
Heard Island and McDonald Islands Fishery Total Allowable Catch Determination 2013 [F2013L01996]
- Great Barrier Reef Marine Park Act 1975***  
Great Barrier Reef Marine Park Amendment (Public Moorings and Infrastructure) Regulation 2013 [Select Legislative Instrument 2013 No. 244] [F2013L01973]
- Health Insurance Act 1973***  
Health Insurance Legislation Amendment (Various Measures) Regulation 2013 [Select Legislative Instrument 2013 No. 250] [F2013L01982]  
Health Insurance (Diagnostic Imaging Services Table) Regulation 2013 [Select Legislative Instrument 2013 No. 247] [F2013L01979]  
Health Insurance (General Medical Services Table) Regulation 2013 [Select Legislative Instrument 2013 No. 248] [F2013L01980]  
Health Insurance (Pathology Services Table) Regulation 2013 [Select Legislative Instrument 2013 No. 249] [F2013L01978]
- Higher Education Support Act 2003***  
Higher Education Provider Approval No. 6 of 2013 [F2013L01985]  
Higher Education Support Act 2003 - VET Provider Approval (No. 70 of 2013) [F2013L01993]
- Migration Act 1958***  
Migration Amendment (Internet Applications and Related Matters) Regulation 2013 [Select Legislative Instrument 2013 No. 252] [F2013L01962]  
Migration Amendment (Visa Application Charge and Related Matters No. 2) Regulation 2013 [Select Legislative Instrument 2013 No. 253] [F2013L01963]
- National Health Act 1953***  
National Health (Concession or entitlement card fee) Amendment Determination 2013 (No. 1) (No. PB 86 of 2013) [F2013L01955]
- Radiocommunications Act 1992***  
Radiocommunications (Spectrum Access Charges - 2.3 GHz Band) Determination 2013 [F2013L01994]

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Radiocommunications (Spectrum Access Charges — 1800 MHz Band) Determination 2013  
(No. 2) [F2013L01995]

***Social Security Act 1991***

Social Security (Disaster Recovery Allowance) (Rate calculator) Determination 2013  
[F2013L01971]

***Water Act 2007***

Water Amendment (Interactions with State Laws and Water Information) Regulation 2013  
[Select Legislative Instrument 2013 No. 245] [F2013L01977]

**Total number of instruments scrutinised: 41**



## **Appendix 2**

### **Guideline on consultation**





AUSTRALIAN SENATE

## STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

### Guideline for preparation of explanatory statements: consultation

#### *Role of the committee*

The Standing Committee on Regulations and Ordinances (the committee) undertakes scrutiny of legislative instruments to ensure compliance with [non-partisan principles](#) of personal rights and parliamentary propriety.

#### *Purpose of guideline*

This guideline provides information on preparing an explanatory statement (ES) to accompany a legislative instrument, specifically in relation to the requirement that such statements must describe the nature of any consultation undertaken or explain why no such consultation was undertaken.

The committee scrutinises instruments to ensure, inter alia, that they meet the technical requirements of the [Legislative Instruments Act 2003](#) (the Act) regarding the description of the nature of consultation or the explanation as to why no consultation was undertaken. Where an ES does not meet these technical requirements, the committee generally corresponds with the relevant minister seeking further information and appropriate amendment of the ES.

Ensuring that the technical requirements of the Act are met in the first instance will negate the need for the committee to write to the relevant minister seeking compliance, and ensure that an instrument is not potentially subject to [disallowance](#).

It is important to note that the committee's concern in this area is to ensure only that an ES is technically compliant with the descriptive requirements of the Act regarding consultation, and that the question of whether consultation that has been undertaken is appropriate is a matter decided by the rule-maker at the time an instrument is made.

However, the nature of any consultation undertaken may be separately relevant to issues arising from the committee's scrutiny principles, and in such cases the committee may consider the character and scope of any consultation undertaken more broadly.

### **Requirements of the Legislative Instruments Act 2003**

Section 17 of the Act requires that, before making a legislative instrument, the instrument-maker must be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business.

Section 18 of the Act, however, provides that in some circumstances such consultation may be 'unnecessary or inappropriate'.

It is important to note that section 26 of the Act requires that explanatory statements describe the nature of any consultation that has been undertaken or, if no such consultation has been undertaken, to explain why none was undertaken.

It is also important to note that requirements regarding the preparation of a Regulation Impact Statement (RIS) are separate to the requirements of the Act in relation to consultation. This means that, although a RIS may not be required in relation to a certain instrument, the requirements of the Act regarding a description of the nature of consultation undertaken, or an explanation of why consultation has not occurred, must still be met. However, consultation that has been undertaken under a RIS process will generally satisfy the requirements of the Act, provided that that consultation is adequately described (see below).

If a RIS or similar assessment has been prepared, it should be provided to the committee along with the ES.

#### ***Describing the nature of consultation***

To meet the requirements of section 26 of the Act, an ES must *describe the nature of any consultation that has been undertaken*. The committee does not usually interpret this as requiring a highly detailed description of any consultation undertaken. However, a bare or very generalised statement of the fact that consultation has taken place may be considered insufficient to meet the requirements of the Act.

Where consultation has taken place, the ES to an instrument should set out the following information:

#### ***Method and purpose of consultation***

An ES should state who and/or which bodies or groups were targeted for consultation and set out the purpose and parameters of the consultation. An ES should avoid bare statements such as 'Consultation was undertaken'.

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### *Bodies/groups/individuals consulted*

An ES should specify the actual names of departments, bodies, agencies, groups et cetera that were consulted. An ES should avoid overly generalised statements such as 'Relevant stakeholders were consulted'.

### *Issues raised in consultations and outcomes*

An ES should identify the nature of any issues raised in consultations, as well the outcome of the consultation process. For example, an ES could state: 'A number of submissions raised concerns in relation to the effect of the instrument on retirees. An exemption for retirees was introduced in response to these concerns'.

### ***Explaining why consultation has not been undertaken***

To meet the requirements of section 26 of the Act, an ES must *explain why no consultation was undertaken*. The committee does not usually interpret this as requiring a highly detailed explanation of why consultation was not undertaken. However, a bare statement that consultation has not taken place may be considered insufficient to meet the requirements of the Act.

In explaining why no consultation has taken place, it is important to note the following considerations:

### *Specific examples listed in the Act*

Section 18 lists a number of examples where an instrument-maker may be satisfied that consultation is unnecessary or inappropriate in relation to a specific instrument. This list is not exhaustive of the grounds which may be advanced as to why consultation was not undertaken in a given case. The ES should state why consultation was unnecessary or inappropriate, and explain the reasoning in support of this conclusion. An ES should avoid bare assertions such as 'Consultation was not undertaken because the instrument is beneficial in nature'.

### *Timing of consultation*

The Act requires that consultation regarding an instrument must take place before the instrument is made. This means that, where consultation is planned for the implementation or post-operative phase of changes introduced by a given instrument, that consultation cannot generally be cited to satisfy the requirements of sections 17 and 26 of the Act.

In some cases, consultation is conducted in relation to the primary legislation which authorises the making of an instrument of delegated legislation, and this consultation is cited for the purposes of satisfying the requirements of the Act. The committee may regard this as acceptable provided that (a) the primary legislation

and the instrument are made at or about the same time and (b) the consultation addresses the matters dealt with in the delegated legislation.

***Seeking further advice or information***

For further advice regarding the requirements of the Act in relation to consultation or any other matters, please consult the *Legislative Instruments Handbook: a practical guide for compliance with the Legislative Instruments Act 2003 and related matters (December 2004)*, published by the Office of Legislative Drafting and Publishing.

Further information is also available through the committee's website at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances) or by contacting the committee secretariat at:

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Parliament House  
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## **Appendix 3**

### **Correspondence**





RECEIVED

- 4 DEC 2013  
Senate Standing C'ttee  
on Regulations  
and Ordinances

**THE HON CHRISTOPHER PYNE MP  
MINISTER FOR EDUCATION  
LEADER OF THE HOUSE**

Our Ref MC13-009270

Mr Ivan Powell  
Committee Secretary  
Australian Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Mr Powell

Thank you for your letter of 25 October 2013 concerning the Guidelines for the use of word 'university' in company names (Revocation) Instrument 2013 (F2013L00757) (the Revocation Instrument).

The Committee raised concerns about the description in the explanatory statement accompanying the Revocation Instrument regarding the consultation undertaken and has queried whether that consultation was sufficient to satisfy the *Legislative Instruments Act 2003*. I acknowledge the Committee's concerns and plan to table an amended explanatory statement in Parliament to address the issues you have raised.

By way of explanation, the Revocation Instrument revoked the *Guidelines for the use of the word 'university' in company names* (F2007L03885) (the Guidelines). The Guidelines, while no longer a legislative instrument, remain in effect as administrative Guidelines and are available on the Department's website (as outlined in the original explanatory statement accompanying the Revocation Instrument).

It is important to note that the Guidelines were not substantively altered and the Revocation Instrument will not have an effect on business. The only stakeholder affected by the Revocation Instrument is the Department of Treasury, which has responsibility for the Australian Securities and Investments Commission, the agency that registers company names. Given this, consultation beyond the Department of Treasury was not required and was unnecessary for the development of the Revocation Instrument.

Thank you for raising the Committee's concerns with me. I trust the information provided is helpful and addresses the Committee's concerns.

Yours sincerely

  
Christopher Pyne MP  
04 DEC 2013