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Ordinances

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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.¹

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 principles, the committee's usual approach is to correspond with the responsible minister or instrument-maker seeking further explanation or clarification of the matter

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.

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*.²

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

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

Chapter 1

New and continuing matters

This chapter lists new matters identified by the committee at its meeting on **12 February 2014**, 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.

Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (No. R54/2013) [F2013L02031]

Purpose	Modifies the Treatment Principles (No. R52/2013) under the <i>Veterans' Entitlements Act 1986</i> (VEA TPs) in the application of the VEA TPs to persons eligible for treatment under the <i>Australian Participants in British Nuclear Tests (Treatment) Act 2006</i>
Last day to disallow¹	19 March 2014
Authorising legislation	<i>Australian Participants in British Nuclear Tests (Treatment) Act 2006</i>
Department	Veterans' Affairs

ISSUE:

Drafting

Item 12 of the schedule to this instrument provides:

12. ...

Unlike the other numbered items in the schedule, there is no amendment specified in the item. The same occurs in relation to items 7 and 23, and within item 59 of the schedule. It is not clear whether this formulation is intentional. **The committee therefore requests further information from the minister.**

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

MRCA Treatment Principles (No. MRCC 53/2013) [F2013L02016]

Purpose	Determines the places at which, the circumstances in which, and the conditions subject to which, a particular kind or class of treatment may be provided under Part 3 of Chapter 6 of the <i>Military Rehabilitation and Compensation Act 2004</i> ; and determines the matters in paragraphs 286(1)(d), (e) (f) and (g) of that Act
Last day to disallow	19 March 2014
Authorising legislation	<i>Military Rehabilitation and Compensation Act 2004</i>
Department	Veterans' Affairs

ISSUE:

Drafting

Item 7 of Schedule 1 to this instrument provides:

7. ...

Unlike the other numbered items in Schedule 1, there is no amendment specified in the item. It is not clear whether this formulation is intentional. **The committee therefore requests further information from the minister.**

Disability Services Act (Administration of Part II of the Act) Guidelines 2013 [F2013L02002]

Purpose	Formulates guidelines on matters relevant to the administration of Part II of the <i>Disability Services Act 1986</i>
Last day to disallow	17 March 2014
Authorising legislation	<i>Disability Services Act 1986</i>
Department	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 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 accompanying this instrument contains no reference to consultation. **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*.

Declaration of 'corresponding State laws' [F2013L02043]

Purpose	Declares the South Australian <i>Prohibition of Human Cloning for Reproduction Act 2003</i> to be a corresponding state law
Last day to disallow	20 March 2014
Authorising legislation	<i>Research Involving Human Embryos Act 2002</i>
Department	Health

ISSUE:

Delay in registering instrument

This instrument was registered on 4 December 2013. It is dated 3 November 2009. The ES for the instrument states that it 'is to take effect from the day after it is registered on the Federal Register of Legislative Instruments (FRLI)' (consistent with subsection 12(1) of the *Legislative Instruments Act 2003*).

However, the committee notes that subsection 25(1) of the *Legislative Instruments Act 2003* requires a rule-maker to lodge a legislative instrument for registration 'as soon as practicable' after the instrument is made. In the case of this instrument, the accompanying ES provides no explanation as to why it was not practicable to lodge the instrument for registration until approximately four years after it was made. **The committee therefore requests further information from the minister.**

Commonwealth Places (Mirror Taxes) (Modification of Applied Law - Victoria) Notice 2013 [F2013L02055]

Purpose	Provides for applied Victorian taxing laws to be modified to the extent necessary or convenient to enable their effective operation as a Commonwealth law, and for the combined liability of a tax payer under the applied law and the corresponding Victorian state taxing law to be as nearly as possible the same as it would be under a Victorian state taxing law if the Commonwealth place in Victoria were not a Commonwealth place
Last day to disallow	24 March 2014
Authorising legislation	<i>Commonwealth Places (Mirror Taxes) Act 1998</i>
Department	Treasury

ISSUE:

Drafting

This instrument provides for applied Victorian taxing laws to be modified to the extent necessary or convenient to enable their effective operation as a Commonwealth

law. While the making date of the instrument is recorded on FRLI, the instrument does not itself reference the making date. The committee's usual expectation is that instruments are dated. **The committee therefore draws this issue to the attention of the minister.**

Commonwealth Scholarships Guidelines (Education) 2013 [F2013L02070]

Purpose	Revokes and remakes the Commonwealth Scholarships Guidelines (Education) to ensure that the efficiency dividend to university funding included in the 2013-14 budget can be implemented; and separates Indigenous Commonwealth Scholarships from other Commonwealth Scholarships
Last day to disallow	27 March 2014
Authorising legislation	<i>Higher Education Support Act 2003</i>
Department	Education

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 ES for the instrument does not explicitly address the issue of consultation (although the ES contains the heading, 'Consultation'). **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*.**

Financial Management and Accountability Amendment (2013 Measures No. 1) Regulation 2013 SLI 2013 No. 281 [F2013L02089]

Purpose	Amends the Financial Management and Accountability Regulations 1997 to add the Australian Aged Care Quality Agency as a prescribed agency in Schedule 1, inserts a new Schedule 1AB to establish legislative authority for new or significantly changed spending activities for the purposes of section 32B, and establishes legislative authority for certain spending activities in the departments of Agriculture, Communications and Prime Minister and Cabinet
Last day to disallow	15 May 2014
Authorising legislation	<i>Financial Management and Accountability Act 1997</i>
Department	Finance

ISSUE:

Addition of new schedule and programs to Financial Management and Accountability Regulations 1997

Section 32B of the *Financial Management and Accountability Act 1997* (FMA Act) provides legislative authority for the government to spend monies on programs specified in the FMA regulations. Section 32B was introduced in response to the decision of the High Court in *Williams v Commonwealth* ([2012] HCA 23) in June 2012. Previously, such programs were listed under Schedule 1AA. This instrument creates a new Schedule 1AB, under which programs will henceforth be listed. Unlike Schedule 1AA, the new schedule does not list programs under departmental headings, and this change is designed to avoid future confusion following machinery of government changes (a change in the name or responsibility of an administering department does not otherwise affect the specification of a program in Schedule 1AA).

The instrument also adds six new programs to Schedule 1AB. While the ES is generally helpful in providing information about the background, objectives and proposed administration of the new programs, only limited or no information is provided as to whether the individual programs possess the relevant characteristics that would justify the exclusion of decisions under each program from merits review.

The committee notes previous correspondence with the minister regarding this issue, and acknowledges the minister's advice that certain types of programs and decisions are unsuitable for merits review; and that decisions under programs listed in Schedule 1AA (now Schedule 1AB) are excluded from ADJR Act review. However, in order to assess whether a program listed in Schedule 1AB possesses the characteristics justifying the exclusion of the ADJR Act, the committee's expectation is that ESs specifically address this question in relation to each new and/or amended program added to Schedule 1AA (now Schedule 1AB), including a description of the policy considerations and program characteristics that are relevant to the question of whether or not decisions should be subject to merits review. **The committee**

therefore requests further information from the minister in respect of each listed program (where not already provided).

Further, the committee notes the concerns of the Senate Standing Committee for the Scrutiny of Bills regarding the limited justification for excluding such decisions from the *Administrative Decisions (Judicial Review) Act 1997* (ADJR), and questions as to whether the exclusion of ADJR would be appropriate in relation to all decisions pursuant to programs authorised by Schedule 1AA (now Schedule 1AB). **The committee therefore draws to the attention of senators the comments of that committee on the Financial Framework Legislation Amendment Bill (No. 3) 2012 in the Scrutiny of Bills Eleventh Report of 2012 (19 September 2012).**

Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 SLI 2013 No. 280 [F2013L02104]

Purpose	Amends the Migration Regulations 1994 to implement the government's intention to ensure that persons who arrive in Australia without visas are not granted permanent protection via a Subclass 866 (Protection) visa
Last day to disallow	15 May 2014
Authorising legislation	<i>Migration Act 1958</i>
Department	Immigration and Border Protection

ISSUE:

(a) Whether instrument is the same in substance as disallowed instrument

This instrument introduces a new visa criterion, such that a Subclass 866 (Protection) visa can only be granted to a person who:

- held a visa that was in effect on their last entry to Australia; and
- is not an unauthorised maritime arrival (UMA); and
- was immigration cleared on the applicant's last entry into Australia.

The ES states that the instrument is made in response to the Senate's disallowance of the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 (on 2 December 2013), which had reintroduced Temporary Protection Visas (TPVs). Whereas the previous instrument introduced TPVs as the visa to be granted to all UMAs, with a condition that they could not access the Subclass 866 (Protection) visas, the new instrument instead places that condition on the Subclass 866 (Protection) visas.

Section 48 of the *Legislative Instruments Act 2003* places limitations on the remaking of instruments after disallowance, including that an instrument that is 'the same in substance' as a disallowed instrument may not be remade within six months after that

disallowance (unless the House that disallowed the instrument rescinds the disallowance resolution or otherwise approved the making of the second instrument).

The concept of 'the same in substance' was considered by the High Court in *Victorian Chamber of Manufactures v Commonwealth (Women's Employment Regulations)* [1943] HCA 21; (1943) 67 CLR 347. In that decision, Chief Justice Latham stated that the question of whether an instrument is the same in substance as a disallowed instrument 'must be applied by the court without any knowledge of the reasons which prompted a House [to disallow it]. The Chief Justice noted that the court should therefore determine whether a new regulation is the same in substance by applying such tests as the court may think proper, and by seeking 'to determine in each case whether such differences as exist between the disallowed regulation and the new regulation are differences in substance'.

Chief Justice Latham concluded that (an equivalent provision to) section 48 of the LIA prevented 'the re-enactment, within six months of disallowance, of any regulation which is substantially the same as the disallowed regulation in the sense that it produces substantially, that is, in large measure, though not in all details, the same effect as the disallowed regulation'.

As to whether the current instrument 'produces substantially, though not in all details, the same effect as the disallowed [instrument]', it may be said that the effect of both instruments is/was to prevent unauthorised maritime arrivals from being eligible for Subclass 866 (Protection) visas. The committee's usual practice where a question of law arises is to seek further information from the relevant instrument maker, and to inquire specifically as to whether legal advice on the legal question was sought. **The committee therefore requests further information from the minister.**

ISSUE:

(b) Retrospective effect of instrument

As noted above, this instrument adds a new criterion to the Subclass 866 (Protection) visa, making UMAs ineligible to apply for that visa type. The amendment made by the instrument applies to applications for protection visas made, but not finally determined, before the commencement of the instrument (14 December 2013), as well as applications made on or after that day. This means that otherwise valid applications not determined at 14 December 2013 are, by virtue of the new criterion, now invalid, giving the instrument an element of retrospectivity in its effect. The ES provides no justification for this apparent removal of the entitlement in relation to current applications for a protection visa. **The committee therefore requests further information from the minister.**

ISSUE:

(c) Insufficient information regarding consultation

The ES for the instrument states that consultation was not undertaken in this case because the regulation was required as a 'matter of urgency'. While it goes on to state

that the urgency is due to the instrument being a 'priority of the Government', there is no information provided as to the facts or circumstances from which the condition of urgency arises. The committee generally seeks further justification in response to effectively unsupported claims of urgency. **The committee therefore requests further information from the minister.**

Amendment No. 1 to the Commonwealth Grant Scheme Guidelines 2012 [F2013L02078]

Purpose	Amends the Commonwealth Grant Scheme Guidelines 2012 to implement the efficiency dividend to university funding included in the 2013-14 budget
Last day to disallow	15 May 2014
Authorising legislation	<i>Higher Education Support Act 2003</i>
Department	Education

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 ES for the instrument does not explicitly address the issue of consultation (although the ES contains the heading, 'Consultation'). **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*.**

Amendment to the list of migratory species under section 209 of the Environment Protection and Biodiversity Conservation Act 1999 (26/11/2013) [F2013L02109]

Purpose	Amends the List of Migratory Species (13/07/2000) by deleting 82 species from the migratory list
Last day to disallow	15 May 2014
Authorising legislation	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
Department	Environment

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 ES for the instrument makes no reference to consultation. **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*.**

Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013 [F2013L02102] (with reference to Code of Behaviour for Public Interest Criterion 4022 - IMMI 13/155 [F2013L02105])

Purpose	Amends the Migration Regulations 1994 to establish an enforceable code of behaviour for certain Bridging E (Class WE) visa holders (instrument F2013L02105 specifies the code of behaviour for applicants seeking to satisfy the criteria for the grant of a Subclass 050 Bridging (General) visa)
Last day to disallow	15 May 2014
Authorising legislation	Migration Regulations 1994
Department	Immigration and Border Protection

Background

Together, these two instruments establish and specify an enforceable code of behaviour as a visa condition for certain Bridging E (Class WE) visa (BVE) holders.

The first instrument (the regulation) provides that the minister must approve a code of behaviour (the code), compliance with which is made a condition of the BVE. The failure of a relevant visa holder to comply with the code enables the minister to cancel the visa. The consequence of cancellation is that the person 'will be returned to immigration detention and may be transferred to an offshore processing centre'. A person whose visa is cancelled in such circumstances is unable to apply for a further BVE.

The code of behaviour (the code) subsequently made under the authority of the regulation requires BVE holders to comply with the laws of Australia and prescribes certain behaviour, including that a BVE holder must not 'harass, intimidate or bully any other person or group of people or engage in anti-social or disruptive activities that are inconsiderate, disrespectful or threaten the peaceful enjoyment of other

members of the community [sic]. The committee notes that the code is itself not disallowable. However, the committee notes that the content of the code has informed its assessment of the regulation for compliance with the committee's scrutiny principles.

ISSUE:

(a) Matters more appropriate for parliamentary enactment

Scrutiny principle (d) of the committee's terms of reference require the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via principal rather than delegated legislation). This may include instruments which are intended or would have the effect of bringing about 'radical changes in relationships or community attitudes'.²

It is noted that, while visa BVE holders do not enjoy the full rights of Australian citizens, such persons are equally subject to Australian law. However, the regulation appears to create potential for such persons to be subject to behavioural standards not applicable to Australian citizens. To this extent, there would appear to be a reasonable possibility that the application of such a code could have the effect of bringing about significant changes in the relationship of Australian citizens to BVE holders. Further, the application of the code to BVE holders could conceivably influence community attitudes if, for example, the community were to regard BVE holders as being subject to standards of behaviour other than might be countenanced or expected of fellow citizens. In light of these considerations, the committee considers there is a question as to whether the changes effected by this instrument are appropriate for inclusion in delegated legislation, and should instead be contained in primary legislation. **The committee therefore requests further information from the minister.**

ISSUE:

(b) Insufficiently defined power

As noted above, the regulation provides that the minister must approve a code of behaviour. However, the regulation provides no criteria for any such code, effectively establishing a broad power for executive regulation of the behaviour of relevant visa holders. This concern is informed by scrutiny of the code, which prescribes a number of potentially vague and subjective behaviours, such as behaviour which is 'anti-social', 'disruptive', 'inconsiderate' or 'disrespectful', or which 'threatens the peaceful enjoyment of other members of the community [sic]'. Given the serious consequences which may flow from a breach of the code, a question arises as to whether the regulation should provide specific criteria in relation to the content of any code

2 Senate Standing Committee on Regulations and Ordinances website, 'Application of the committee's scrutiny principles', http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/guidelines/principles, accessed 10 February 2013.

approved by the minister. **The committee therefore requests further information from the minister.**

ISSUE:

(c) Exemption of instrument from disallowance

As noted above, the regulation provides that the minister must approve a code of behaviour for BVE holders. The code is to be made by instrument in writing. The authority for the making of such an instrument has been provided for by the addition of Part 4.1 to Schedule 4 of the migration regulations. Instruments made under this schedule are exempt from disallowance. Despite the apparently legislative character of such an instrument, and the potentially significant consequences for individuals affected by the code, the committee notes that the ES contains no information on the exemption of the code from disallowance, including:

- the broader justification for the exemption of instruments made under Schedule 4;
- the extent to which any such justification applies to the code; and
- whether, taking into account the nature of the code, it is appropriate to exempt such an instrument from disallowance (and therefore remove it from the effective oversight of the Parliament).

The committee therefore requests further information from the minister.

ISSUE:

(d) Retrospective effect of instrument

The application of the new visa criterion relating to the code of behaviour applies to applications for BVEs made, but not finally determined, before the commencement of the instrument (14 December 2013), as well as applications made on or after that day. This means that otherwise valid applications not determined at 14 December 2013 may, by virtue of the new criterion, now be invalid, giving the instrument an element of retrospectivity in its effect. The ES provides no justification for this apparent removal of the entitlement in relation to current applications for BVEs. **The committee therefore requests further information from the minister.**

ISSUE:

(e) Consultation

The ES for the regulation states that consultation was not undertaken because the changes were considered to be 'of a machinery nature as they add to the existing cancellation framework under the migration legislation'. Given the substantive effect and consequences which may arise from the application of a code of behaviour on BVE holders, the characterisation of the instrument as machinery in nature on this basis is open to question. This gives rise to a concern that the minister's determination

that consultation was unnecessary or inappropriate in this case may not have taken account of, or provided appropriate opportunity for comment by, persons likely to be affected by the instrument. The committee notes that, while the ES states that 'continuing consultation on the draft code' was being undertaken, the ES for the code indicates that consultation was only undertaken internally and with other government departments and agencies, and did not involve consultation with persons likely to be affected by the instrument or with stakeholders more generally. **The committee therefore requests further information from the minister.**

Native Title (Assistance from Attorney-General) Amendment Guideline 2013 [F2013L02084]

Purpose	Amends the Native Title (Assistance from Attorney-General) Guideline 2012 eligibility requirements for legal financial assistance for native title respondents' legal representation costs, under section 213A of the <i>Native Title Act 1993</i>
Last day to disallow	15 May 2014
Authorising legislation	<i>Native Title Act 1993</i>
Department	Attorney-General's

ISSUE:

Insufficient 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 ES for the instrument does not explicitly address the issue of consultation. The discussion under the heading, 'Consultation', does not expressly state whether or not consultation occurred in relation to the making of the instrument. **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*.**

Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013 [F2013L02135]

Purpose	Amends the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 to require licence records relating to the import, export or manufacture of ozone depleting substances or synthetic greenhouse gas to be kept at the licensee's principal place of residence, align the fit and proper person test in the principal regulations with the <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> , establish a framework for issuing and administering infringement notices under the principal regulations, and insert a reference to the Exemption List for Non-Quarantine and Pre-Shipment Applications of Methyl Bromide for 2014
Last day to disallow	15 May 2014
Authorising legislation	<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>
Department	Environment

ISSUE:

Insufficient information regarding infringement notice regime

This instrument makes a number of amendments to the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995, including to establish a framework for issuing and administering infringement notices under the regulations. The ES states that new regulation 911 provides that payment of an infringement notice discharges all liability for an alleged contravention. However, it goes on to state that 'payment does not discharge liability if the notice is subsequently withdrawn and the penalty amount refunded'. Regulation 911 states that in such cases the person may be prosecuted in a court in relation to the alleged contravention. The committee considers that the ability for a notice to be withdrawn and for prosecution to proceed following payment of a penalty amount raises a question of double jeopardy, to the extent that the payment of a fine would normally finalise matters. While there may be a regulatory justification for this element of the infringement notice scheme, the ES does not provide any information as to the need for this provision. **The committee therefore requests further information from the minister.**

Amendment to the list of threatened species, ecological communities and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (153) (11/11/2013) [F2013L02177]

Purpose	Amends the list referred to in section 178, 181 and 183 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>
Last day to disallow	15 May 2014
Authorising legislation	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
Department	Environment

ISSUE:

Drafting

In relation to consultation, the ES for this instrument states that '[i]n accordance with section 184(1)(d) [of the *Environment Protection and Biodiversity Conservation Act 1999*] consultation is not required to be undertaken before the instrument was made'. This section gives the minister the power to correct an inaccuracy in a threatened species list or to update the name of a listed threatened species or listed threatened ecological community in such a list; however, it does not, as suggested, specify any requirements going to consultation. The ES, however, otherwise adequately addresses the question of consultation. **The committee therefore draws this issue to the attention of the minister.**

Amendment to the list of threatened species, ecological communities and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (131) (20/12/2013) [F2014L00062]

Purpose	Amends the Declaration under s178, s181, and s183 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> - List of threatened species, List of threatened ecological communities and List of threatening processes by deleting from the list in the endangered category <i>Bertya tasmanica</i> (Tasmanian Bertya) including in the list in the endangered category <i>Bertya tasmanica</i> subsp. <i>tasmanica</i>
Last day to disallow	15 May 2014
Authorising legislation	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
Department	Environment

ISSUE:

Drafting

In relation to consultation, the ES for this instrument states that '[i]n accordance with section 184(1)(d) [of the *Environment Protection and Biodiversity Conservation Act 1999*] consultation is not required to be undertaken before the instrument was made'. This section gives the minister the power to correct an inaccuracy in a threatened species list or to update the name of a listed threatened species or listed threatened ecological community in such a list; however, it does not, as suggested, specify any requirements going to consultation. The ES, however, otherwise adequately addresses the question of consultation. **The committee therefore draws this issue to the attention of the minister.**

Customs Act 1901 - Specified Percentage of Total Factory Costs Determination No. 1 of 2013 [F2013L02198]

Purpose	Determines that the specified percentage of the total factory cost of wiring harnesses claimed to be the manufacture of Samoa is 40% where the wiring harnesses: (a) are classified to subheading 8544.30.00 of Schedule 3 to the <i>Customs Tariff Act 1995</i> ; and (b) are of a kind used in, and are for use in, passenger motor vehicles, as defined in Chapter 87 of the <i>Customs Tariff Act 1995</i>
Last day to disallow	15 May 2014
Authorising legislation	<i>Customs Act 1901</i>
Department	Immigration and Border Protection

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 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 ES for the instrument states:

A reduction in the specified percentage of 10% in respect of the goods included in the Determination granted to Samoa may affect elements of the Australian automotive industry. However, consultation with industry has established that the majority of the Australian automotive industry indicated their support to the continuation of the derogation.

While the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it usually regards an overly general description, 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*.**

Multiple instruments identified in Appendix 1

The committee has identified several instruments, marked by an asterisk (*) in Appendix 1, that 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.³

3 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 **12 February 2014**. 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.

Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 284] [F2012L02412]

Purpose	Amends three principal regulations to provide for fees for the filing of applications under the <i>Trans-Tasman Proceedings Act 2010</i>
Last day to disallow	15 May 2013
Authorising legislation	<i>Family Law Act 1975; Federal Court of Australia Act 1976; Federal Magistrates Act 1999</i>
Department	Attorney-General's

ISSUE:

Unclear basis for increase in fees

The ES which accompanies the instrument does not appear to indicate the basis on which the fees being introduced have been set or calculated, or to describe the new fees relative to those which have been replaced. The committee's usual expectation in cases where an instrument of delegation legislation introduces or adjusts a charge, fee or levy is that the relevant ES makes clear on its face the basis on which that charge, fee or levy has been calculated (in addition to the quantum of the relative change in those cases where there is an adjustment to an existing charge, fee or levy) **[the committee requested further information from the Attorney-General]**.

ATTORNEY-GENERAL'S RESPONSE:

The Attorney-General advised that the Regulation does not make any changes to the fee for the registration of a New Zealand judgment in the Family Court of Australia, the Federal Court of Australia or the Federal Circuit Court of Australia, but rather clarifies the quantum of fees that apply to Trans-Tasman proceedings commenced in Australia.

The Attorney-General further advised that the explanatory statement (ES) had been amended to include the information provided.

COMMITTEE RESPONSE:

The committee thanks the Attorney-General for his response and has concluded its interest in the matter.

Australian Public Service Commissioner's Amendment Direction 2013 (No. 1) [F2013L01212]

Purpose	Makes various amendments to the Australian Public Service Commissioner's Directions 2013, including in relation to the RecruitAbility Scheme
Last day to disallow	4 March 2014
Authorising legislation	<i>Public Service Act 1999</i>
Department	Australian Public Service Commission

ISSUE:

Whether any person disadvantaged by previous error

The ES for this instrument states that one of its purposes is to correct a drafting error in the Australian Public Service Commissioner's Directions 2013, relating to the subsequent employment of persons who have resigned to contest an election. The instrument removes a reference to any such person being entitled to being engaged 'at a lower classification' as this does not reflect the longstanding policy and practice. However, no information is provided in relation to how (if at all) the error corrected by the instrument may have affected any person. The committee's usual approach where an instrument makes corrections, as in this case, is that the ES for the instrument address the question of whether any person was disadvantaged by the omission and, if so, whether and what steps have been taken to address that disadvantage [the committee requested further information from the Commissioner].

COMMISSIONER'S RESPONSE:

The Acting Commissioner responded, advising that no person was disadvantaged by the inadvertent inclusion of the words 'or a lower classification' in the instrument, as the error was identified, and subsequently corrected, prior to its commencement.

COMMITTEE RESPONSE:

The committee thanks the Acting Commissioner for her response and has concluded its interest in the matter.

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

Purpose	Omits references in the Principal Regulations to 'concessional competent English' and corrects typographical errors
Last day to disallow	17 March 2014
Authorising legislation	<i>Migration Act 1958</i>
Department	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 requested further information from the minister; and requested that the ES be amended in accordance with the requirements of the *Legislative Instruments Act 2003***].

MINISTER'S RESPONSE:

The minister advised that no consultation was undertaken in relation to the making of the regulation, as the amendments it effected were minor or machinery in nature and did not substantially alter existing arrangements. The minister noted that the amendments were consequential and technical in nature, arising from substantive amendments effected by the Migration Amendment (Visa Application Charge and Related Matters) Regulation 2013 and the Migration Legislation Amendment Regulation 2013 (No. 3). Since consultation was undertaken in relation to the substantive measures contained in those instruments, the minister considered that consultation was unnecessary in relation to the Migration Amendment (Visa Application Charge and Related Matters No. 2) Regulation 2013 [Select Legislative Instrument 2013 No. 253] [F2013L01963].

The minister further advised that the ES had been amended to include the information provided.

COMMITTEE RESPONSE:

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

Carbon Credits (Carbon Farming Initiative) (Reforestation and Afforestation—1.2) Methodology Determination 2013 [F2013L01210]

Purpose	Determines a method for implementing and monitoring an offsets project under the Carbon Farming Initiative
Last day to disallow¹	4 March 2014
Authorising legislation	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>
Department	Environment

ISSUE:

Interaction of instrument with instruments still in force

This instrument determines a method for implementing and monitoring an offsets project under the Carbon Farming Initiative. However, the instrument does not expressly revoke two previous determinations, and those determinations do not contain a ceasing mechanism. That being so, all three determinations appear to be in force and are listed on the Federal Register of Legislative Instruments (FRLI) as 'current'. It is therefore unclear whether and how the three instruments are intended to operate together **[the committee requested further information from the minister]**.

MINISTER'S RESPONSE:

The minister advised that the three determinations provide methodologies for conducting reforestation and afforestation offsets projects under the *Carbon Credits (Carbon Farming Initiative) Act 2011*, and that all three instruments currently remain in force. The minister noted the following in relation to the concurrent operation of the determinations:

- proponents of projects can, at the time of seeking project approval, elect to have any one of the three determinations apply to their project;
- a proponent for an existing project approved under one of the methodologies may apply to have a different determination apply to their project; and
- a revoked methodology will continue to apply to a project approved under that methodology for the remainder of the project.

The minister's response identified the substantive differences between the three determinations, generally arising from refinements to aspects of the methodologies and feedback from stakeholders.

The minister advised that he would instruct the department to make an assessment of whether any superseded methodologies should be revoked; and that ESs would henceforth take account of the need to provide information on the concurrent operation of determinations in cases where more than one determination was on force.

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

COMMITTEE RESPONSE:

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

Amendment of Statement of Principles concerning lumbar spondylosis No. 69 of 2013 [F2013L01657]; and

Amendment of Statement of Principles concerning lumbar spondylosis No. 70 of 2013 [F2013L01658]

Purpose	(1) Amends each statement to insert new factors and a definition for 'extreme forward flexion of the lumbar spine'; and (2) specifies the date of effect of each amendment
Last day to disallow	4 March 2014
Authorising legislation	<i>Veterans' Entitlements Act 1988</i> and <i>Military Rehabilitation and Compensation Act 2004</i>
Department	Veterans' Affairs

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 ESs for the instruments contain no reference to consultation [the committee requested further information from the minister; and requested that the ESs be updated in accordance with the requirements of the *Legislative Instruments Act 2003*].

MINISTER'S RESPONSE:

The minister advised that no consultation was undertaken in relation to the making of the instruments. The instruments had been determined by the Repatriation Medical Authority (RMA), acting on the direction of the Specialist Medical Review Council (SMRC) as required by subsection 196B(10) of the *Veterans' Entitlements Act 1986*. Given this legislative requirement, consultation in relation to the making of the instruments was not considered appropriate. The minister noted, however, that the SMRC's practice was to undertake public consultation in performing any review of a decision of the RMA which could lead to such a direction

The minister further advised that the ES had been amended to include the information provided.

COMMITTEE RESPONSE:

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

Fisheries Management Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 132, 2013] [F2013L01291]

Purpose	Repeals and updates fees that apply to dealings with permits, statutory fishing rights, logbooks and other miscellaneous services
Last day to disallow	4 March 2014
Authorising legislation	<i>Fisheries Management Act 1991</i>
Department	Agriculture

ISSUE:***Whether any person disadvantaged by previous error***

The ES for this instrument states that (among other things) it corrects two typographical errors in the Fisheries Management Regulations 1992, where the term 'Fishing Permit' was incorrectly referenced as 'statutory fishing rights'. However, no information is provided as to whether these typographical errors have affected any person. The committee's usual expectation in such cases is that the ES for the instrument address the question of whether any person was disadvantaged by the error and, if so, whether and what steps have been taken to address that disadvantage [**the committee requested further information from the minister**].

MINISTER'S RESPONSE:

The minister advised that no person had been disadvantaged by the typographical error corrected by the instrument the subject of the committee's comment. The part of the regulation containing the incorrect term identifies information requirements for two fishing permit registers, being the High Seas Register and the Fishing Permits Register. These registers only contain information on fishing permit holders, and the error would not have led to information on statutory fishing right holders being stored in those registers.

COMMITTEE RESPONSE:

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

Complaints Amendment (Living Longer Living Better) Principle 2013 [F2013L01348]

Purpose	Amends the Complaints Principles 2011 to strengthen the power of the Aged Care Commissioner in examining the decisions and processes of the Secretary in relation to a complaint
Last day to disallow	4 March 2014
Authorising legislation	<i>Aged Care Act 1997</i>
Department	Social Services

ISSUE:

Broadly defined discretion

The instrument makes amendments to the Complaints Principles 2011, which are made under section 96-1 of the *Aged Care Act 1997*. The ES notes that the intent of the relevant amendments is to 'improve the quality and regulation of aged care...[including] strengthening the independence of the [Aged Care Commissioner (ACC)] to improve consumer and industry confidence in Commonwealth aged care complaints handling mechanisms'. In two cases, the instrument effectively preserves the broad discretion of the ACC as to the manner in which it may undertake examination of decisions of the Secretary of the Department of Health. While it may be that the flexibility provided by such a broad discretion as to the manner of investigation of a complaint is desirable, it may be argued that a complainant's knowledge of how a matter was examined by the ACC could be relevant to their confidence in its outcome. It may be desirable, for example, to include a requirement in the relevant notification provisions (13A.25(4) and 13A.31) that the ACC also provide advice to the prescribed persons and bodies on the manner in which an investigation was conducted [**the committee requested further information from the Minister for Social Services**].

MINISTER'S RESPONSE:

The Assistant Minister for Social Services responded, advising that he did not regard it as necessary to include explicit requirements to notify prescribed persons as to the manner in which an investigation was conducted. The assistant minister pointed to a number of aspects of the existing regulatory and administrative framework in support of this view, particularly as the effect of the existing arrangements was that the ACC already provides advice to prescribed persons and bodies on the manner in which an investigation was conducted. The assistant minister noted that the ACC's broad discretion to examine decisions or complaints was established in 2007, and was consistent with the intent of the Complaints Principles to focus on the efficient resolution of complaints based on flexible inquiry processes. The assistant minister drew attention to the fact that the ACC's power was in fact confined by requirements imposed by the Complaints Principles and the *Aged Care Act 1997*, and was required to be exercised in accordance with the rules of natural justice and the ordinary requirements of administrative decision making. The assistant minister's response went on to outline the broader accountability measures under which the ACC

operates, including publication of Complaints Management Guidelines, annual reports and the ACC's Statement of Intent.

COMMITTEE RESPONSE:

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

Migration Regulations 1994 - Specification under paragraphs 2.61(3A)(b), 2.61(3A)(c), 2.61(3B), subregulations 2.66(3), 2.66(4), 2.66(5), 2.73(3), 2.73(5) and 2.73(9), and paragraphs 1223A(1)(bb), 1223A(1)(b), 1223A(1)(ba) and 1223A(1)(bc) - Forms, Fees, Circumstances and Different Way of Making an Application - June 2013 [F2013L01242]

Purpose	Sets various fees that may be charged in relation to an application for approval as a standard business sponsor under the Migration Regulations 1994
Last day to disallow	4 March 2014
Authorising legislation	<i>Migration Act 1958</i>
Department	Immigration and Border Protection

ISSUE:

Unclear basis for determining fees

This instrument sets various fees that may be charged in relation to an application for approval as a standard business sponsor under the Migration Regulations 1994. However, the ES gives no indication as to the basis on which the fees have been calculated or set. The committee's usual expectation where an instrument of delegated legislation introduces or changes a fee (or charge, levy or scale of costs as the case may be) is that the relevant ES makes clear the basis on which the new or changed fee has been calculated **[the committee requested further information from the minister]**.

MINISTER'S RESPONSE:

The minister advised that the effect of the instrument was to move the fees for an application for approval as a standard business sponsor and for a variation of a term of approval as a standard sponsor from the Migration Regulations 1994 into the instrument, with the fees remaining unchanged at \$420 in both cases. In relation to the increased nomination charge (from \$85 to \$330), the minister advised that this reflected a policy decision to increase the sponsor nomination charge rather than impose a visa duration surcharge on 457 visa applicants; the increase was based on the premise that longer duration visa holders draw more heavily on community services and infrastructure.

COMMITTEE RESPONSE:

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

Migration Amendment (Visa Application Charge) Regulation 2013 [Select Legislative Instrument No. 228, 2013] [F2013L01534]

Purpose	Increases the Visa Application Charge for all visa applications except Student (Temporary) (Class TU) and Tourist (Class TR) visas
Last day to disallow	4 March 2014
Authorising legislation	<i>Migration Act 1958</i>
Department	Immigration and Border Protection

ISSUE:

Unclear basis for determining fees

This instrument increases the Visa Application Charge (VAC) for all visa applications except Student (Temporary) (Class TU) and Tourist (Class TR) visas. While the ES explains that the instrument effects increases that were outlined in the Government's Economic Statement for 2013-13, it does not itself explain the basis on which the increased fees have been calculated or set. The committee's usual expectation where an instrument of delegated legislation introduces or changes a fee (or charge, levy or scale of costs as the case may be) is that the relevant ES makes clear the basis on which the new or changed fee has been calculated **[the committee requested further information from the minister]**.

MINISTER'S RESPONSE:

The minister advised that the basis for the increase of the VAC in all cases was the government's announcement in the economic statement for 2013-14 released on 2 August 2013. This budget measure outlined increased revenue associated with VACs over the forward estimates, based on a 15 per cent increase to all VACs except Student (Temporary) (Class TU) visas and Tourist (Class TR) visas under the Migration Regulations from 1 September 2013.

COMMITTEE RESPONSE:

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

Migration Amendment (Temporary Protection Visas) Regulation 2013 [Select Legislative Instrument No. 234, 2013] [F2013L01811]

Purpose	Re-introduces Temporary Protection Visas (TPVs) for persons who arrive in Australia by unauthorised means
Last day to disallow	4 March 2014
Authorising legislation	<i>Migration Act 1958</i>
Department	Immigration and Border Protection

ISSUES:***(a) Retrospective effect of instrument***

This instrument re-introduces Temporary Protection Visas (TPVs) for persons who arrive in Australia by unauthorised means. The ES for the instrument states that people within the TPV cohort (ie holders of the newly introduced TPVs) will not be eligible to apply for or be granted a protection visa (which allows the holder to remain in Australia indefinitely). Further, the ES states that 'any existing application from the [TPV] cohort is unable to meet the requirements for grant' of a permanent protection visa. This suggests that otherwise potentially valid applications are to be invalidated, giving the instrument an element of retrospectivity in its effect. The ES provides no justification for this apparent removal of pre-existing entitlements in relation to applications for a permanent protection visa. **[the committee requested further information from the minister].**

MINISTER'S RESPONSE:

The minister advised that the reintroduction of TPVs was intended to ensure that no permanent visas would be issued to persons classified as unauthorised maritime arrivals, including those found to be genuine refugees. This was part of a suite of measures designed to support the government's border protection strategy to combat people smuggling and to discourage people from making dangerous voyages to Australia. Applying TPVs to persons having arrived prior to 13 August 2013 was important for consistency and fairness, with all relevant applications being assessed against the new criteria for the permanent protection visa.

COMMITTEE RESPONSE:

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

(b) Undue trespass on personal rights

In addition, the effect of the instrument is that a person who is granted a TPV is ineligible to apply for any other visa types including, for example, family reunion visas. While the committee does not usually consider the policy merits of delegated legislation, scrutiny principle (b) requires the committee to ensure that an instrument does not 'unduly trespass' on personal rights and liberties. In this case, it is unclear to the committee whether the existing discretion to allow a TPV holder to apply for another visa type sufficiently accommodates consideration of personal rights and liberties, such as family considerations and rights of the child **[the committee requested further information from the minister].**

MINISTER'S RESPONSE:

The minister noted that there is no right to family reunification under international law, with the protection of the family unit under articles 17 and 23 not amounting to a right to enter Australia where there is no other right to do so. The minister advised that the introduction of TPVs was part of a suite of measures intended to act as a deterrent to people making dangerous voyages by boat to Australia. In conjunction with the regional resettlement arrangements, the inability of a TPV to sponsor their family

members provided a disincentive for people who wished to remain united with their families from travelling to Australia via dangerous boat voyages. The extension of this approach to unaccompanied minors was to discourage them from undertaking such voyages to achieve resettlement for their families in Australia. It was the government's view that the need to discourage minors from undertaking dangerous voyages and to maintain the integrity of Australia's borders outweighs the best interests of the child to have the right to family reunification.

COMMITTEE RESPONSE:

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

(c) Insufficient information regarding consultation

The ES for the instrument states that consultation was not undertaken in this case because the regulation was required as a 'matter of urgency'. However, there is no information provided as to the facts or circumstances from which the condition of urgency arises. The committee generally seeks further justification in response to otherwise unsupported claims of urgency [**the committee requested further information from the minister**].

The committee noted that the instrument was disallowed on 2 December 2013,² with the effect that the instrument had ceased to have effect from the time of disallowance; and that the committee's inquiries remained relevant in respect of any TPVs granted in the period of the instrument's operation.

MINISTER'S RESPONSE:

The minister advised that consultation was not taken in this case because the regulation was required as a matter of urgency. The circumstances of urgency arose from the need to implement TPVs as a key element of the government's policies underpinning its border protection strategy to combat people smuggling and discourage people from making dangerous voyages to Australia. The regulation was therefore required as a matter of urgency to maintain the integrity of Australia's borders and to protect the national interest.

COMMITTEE RESPONSE:

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

2 For further information see the Disallowance Alert 2013 webpage at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Alerts.

Migration Regulations 1994 - Specification of Access to Movement Records - IMMI 13/107 [F2013L01896]

Purpose	Extends the minimum subscription requirement in the principal class order by a further six months pending any further regulatory developments relating to retail corporate bonds
Last day to disallow	4 March 2014
Authorising legislation	<i>Migration Act 1958</i> ; Migration Regulations 1994
Department	Immigration and Border Protection

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 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 ES for the instrument contains no reference to consultation **[the committee requested further information from the minister; and requested that the ES be amended in accordance with the requirements of the *Legislative Instruments Act 2003*].**

MINISTER'S RESPONSE:

The minister advised that consultation on the instrument was undertaken with all external stakeholder agencies listed at Column 2 of Schedule B to the instrument, as well as internal department stakeholders.

The minister further advised that the ES had been amended to include the information provided.

COMMITTEE RESPONSE:

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

However, to assist with the future preparation of ESs, the committee draws to the minister's attention the committee's guideline on addressing consultation in ESs (reproduced at Appendix 2), and particularly the committee's usual preference for the avoidance of overly general language in describing consultation (such as referring to 'stakeholders' rather than explicitly identifying parties involved in consultative processes).

**Corporations and Australian Securities and Investments Commission
Amendment Regulation 2013 (No. 1) [Select Legislative Instrument
No. 192, 2013] [F2013L01431]**

Purpose	Amends procedures relating to the proceedings and conferences undertaken by the Takeovers Panel, requires the Australian Securities and Investments Commission to disclose to the minister its use of specified information gathering powers, and specifies the date from which directors' reports become subject to Corporations Regulations relating to certain disclosure requirements
Last day to disallow	4 March 2014
Authorising legislation	<i>Australian Securities and Investments Commission Act 2001</i> and <i>Corporations Act 2001</i>
Department	Treasury

ISSUE:

Provision of reasons for decisions

The ES for the instrument states that one of its purposes is to remove the requirement for the Takeovers Panel to include reasons with any notice that the panel has decided not to conduct proceedings in relation to an application (under sections 656A, 657C or 657EA of the *Corporations Act 2001*, which generally relate to review of decisions). The ES states that the current requirement 'may cause undue delay to the communication of a decision', and notes that (a) 'it is not intended to alter the general practice of the panel to provide reasons for its decisions' and (b) 'the panel will continue to be subject to the requirement to provide reasons under the *Administrative Decisions (Judicial Review) Act 1977*' (ADJR Act). However, the ES does not make clear how in practice the current requirement may lead to undue delay in notifying decisions, and it is also unclear why complete removal of the requirement is necessary (as opposed to, say, providing an exemption for the requirement to provide reasons where undue delay might arise), particularly if it is not intended to alter the general practice of providing reasons. While the committee acknowledges that the right to request reasons under the ADJR Act will remain, this would presumably require a party to make application to the decision maker, and to this extent the amendment may reduce transparency by increasing the formalities for a person affected by a decision who wishes to know the reasons for that decision [**the committee requested further information from the Assistant Treasurer**].

ASSISTANT TREASURER'S RESPONSE:

The Assistant Treasurer advised that the removal of the requirement to give reasons in this case improved the timeliness with which the panel is able to provide a decision not to conduct proceedings to the parties and the market (though with a brief outline of the reasons), with detailed reasons to follow shortly thereafter. The Assistant Treasurer advised that he regarded the panel's standard practices and the general right of parties to request reasons for panel decisions as likely to be sufficient to achieve the appropriate dissemination of reasons without the need for an explicit obligation in the

regulations. However, the government would consider if further amendments were necessary if the current regulation led to any undesirable outcomes.

COMMITTEE RESPONSE:

The committee thanks the Assistant Treasurer for his response and has concluded its interest in the matter.

Income Tax Assessment (Infrastructure Project Designation) Rule 2013 [F2013L01335]

Purpose	Sets out processes and conditions relating to applications for designated infrastructure project status
Last day to disallow	4 March 2014
Authorising legislation	<i>Income Tax Assessment Act 1997</i>
Department	Treasury

ISSUE:

Unclear basis for determining fee

This instrument sets out processes and conditions relating to applications for designated infrastructure project status. Designated projects are able to access tax incentives intended to promote and support private expenditure on nationally significant infrastructure. Rule 7 of the instrument provides that an application for the designation of a project must be accompanied by an application fee of \$20 000. However, no information is provided as to the basis for, or factors considered in relation to, determining the level of this fee. The committee's usual expectation where an instrument of delegated legislation introduces or changes a fee (or charge, levy or scale of costs as the case may be) is that the relevant ES makes clear the basis on which the new or changed fee has been calculated **[the committee requested further information from the Assistant Treasurer.**

ASSISTANT TREASURER'S RESPONSE:

The Assistant Treasurer advised that the quantum of the fee was intended to contribute to the administrative costs incurred by the Office of the Infrastructure Coordinator (OIC) associated with the designation process, including determining the eligibility of applications, the setting of conditions under the rules, assessing whether conditions for designation have been met and ongoing monitoring to ensure project implementation is consistent with the designation. Other administrative costs related to the OIC's role in managing the capital expenditure cap and review processes associated with Administrative Appeal Tribunal processes.

COMMITTEE RESPONSE:

The committee thanks the Assistant Treasurer for his response and has concluded its interest in the matter.

Electronic Transactions Amendment (Exemptions) Regulation 2013 [Select Legislative Instrument No. 169, 2013] [F2013L01389]

Purpose	Repeals several exceptions to the operation of the Act
Last day to disallow	4 March 2014
Authorising legislation	<i>Electronic Transactions Act 1999</i>
Department	Attorney-General's

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 ES for this instrument contains no reference to consultation [**the committee requested further information from the Attorney-General; and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***].

ATTORNEY-GENERAL'S RESPONSE:

The Attorney-General advised that consultation in relation to the making of the instrument was undertaken with the Treasury, Australian Electoral Commission and the (former) Department of Education, Employment and Workplace Relations.

The Attorney-General further advised that the ES had been amended to include the information provided.

COMMITTEE RESPONSE:

The committee thanks the Attorney-General for his response and has concluded its interest in the matter.

Family Law Amendment (Fees) Regulation 2013 [Select Legislative Instrument No. 136, 2013] [F2013L01243]

Purpose	Exempts independent children's lawyers from paying court fees relating to subpoenas and interim orders
Last day to disallow	4 March 2014
Authorising legislation	<i>Family Law Act 1975</i> and <i>Federal Circuit Court of Australia Act 1999</i>
Department	Attorney-General's

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 ES for the instrument contains no reference to consultation **[the committee requested further information from the Attorney-General; and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*].**

ATTORNEY-GENERAL'S RESPONSE:

The Attorney-General advised that consultation in relation to the making of the instrument was undertaken with the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia.

The Attorney-General further advised that the ES had been amended to include the information provided.

COMMITTEE RESPONSE:

The committee thanks the Attorney-General for his response and has concluded its interest in the matter.

Financial Management and Accountability Amendment Regulation 2013 (No. 5) [Select Legislative Instrument No.174, 2013] [F2013L01386];

Financial Management and Accountability Amendment Regulation 2013 (No. 6) [Select Legislative Instrument No. 219, 2013] [F2013L01511]; and

Financial Management and Accountability Amendment Regulation 2013 (No. 7) [Select Legislative Instrument No. 229, 2013] [F2013L01512]

Purpose	These instruments amend the principal regulations to establish legislative authority for the Government to spend money on on a range of new or existing activities across a number of portfolios
Last day to disallow	4 March 2014
Authorising legislation	<i>Financial Management and Accountability Act 1997</i>
Department	Finance

ISSUE:***Addition of new programs to Schedule 1AA of Financial Management and Accountability Regulations 1997***

These instruments rely on section 32B of the *Financial Management and Accountability Act 1997*, which provides legislative authority for the Government to spend monies on programs listed in Schedule 1AA to the Financial Management and Accountability Regulations 1997. Section 32B was introduced in response to the decision of the High Court in *Williams v Commonwealth* ([2012] HCA 23) in June 2012 (the Williams case). The first instrument adds 28 new programs to Schedule 1AA. The second instrument adds two new programs to Schedule 1AA. The third instrument adds 14 new programs to Schedule 1AA and amends entries relating to two existing programs. While the ESs are generally helpful in providing information about the background, objectives and proposed administration of the new and amended programs, no information is provided as to whether the individual programs possess the relevant characteristics that would justify the exclusion of decisions under each program from merits review.

The committee notes previous correspondence with the minister regarding this issue, and acknowledges the minister's advice that certain types of programs and decisions are unsuitable for merits review; and that decisions under programs listed in Schedule 1AA are excluded from ADJR Act review. However, in order to assess whether a program listed in Schedule 1AA possesses the characteristics justifying the exclusion of the ADJR Act, the committee's expectation is that ESs specifically address this question in relation to each new and/or amended program added to Schedule 1AA, including a description of the policy considerations and program characteristics that are relevant to the question of whether or not decisions should be subject to merits review **[the committee requested further information from the minister in respect of each listed program (where not already provided)]**.

Further, the committee notes the concerns of the Senate Standing Committee for the Scrutiny of Bills regarding the limited justification for excluding such decisions from the *Administrative Decisions (Judicial Review) Act 1997* (ADJR), and questions as to whether the exclusion of ADJR would be appropriate in relation to all decisions pursuant to programs authorised by Schedule 1AA **[the committee drew to the attention of senators the comments of that committee on the Financial Framework Legislation Amendment Bill (No. 3) 2012 in the Scrutiny of Bills Eleventh Report of 2012 (19 September 2012)]**.

MINISTER'S RESPONSE:

The minister noted the committee's reference to the comments of the Senate Standing Committee on the Scrutiny of Bills (the scrutiny committee) in relation to the exemption of items in Schedule 1AA (and now Schedule 1AB) to ADJR review. The minister reiterated previous responses to those comments, to the effect that:

- the exemption maintained the status quo prior to the Williams case whereby government decisions about expenditure which involved the allocation of finite resources were not subject to ADJR review;

- given the method of allocation of funds in relation to programs included in the schedules, a review outcome which overturned the original decision would necessarily affect other allocations;
- rights of review under the *Judiciary Act 1903* were unaffected;
- decisions to spend public monies are subject to the rules and requirements of the *Financial Management and Accountability Act 1997* and its associated regulations, as well as the *Commonwealth procurement rules* and the *Commonwealth grant guidelines*; and
- a person unhappy with a spending decision could access other administrative mechanisms, including recourse to the Commonwealth Ombudsman.

In response to the committee's request for additional detail on the particular policy considerations and characteristics of programs added to or amended in Schedule 1AA (and now Schedule 1AB), relevant to the committee's assessment of whether decisions under such programs should indeed be exempt from merits review, the minister provided an attachment addressing in detail the relevant policy considerations and characteristics of programs added or amended by the instruments in question.

COMMITTEE RESPONSE:

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

In addition, the committee particularly thanks the minister for the information provided in the attachment to the minister's response. This provided an appropriate level of detail to enable the committee to assess the instruments for compatibility with the committee's scrutiny principles, and the committee's expectation is that future ESs for instruments amending Schedule 1AA and Schedule 1AB will contain similar levels of detail. The moving of spending decisions previously thought to be authorised by the executive power of the Commonwealth to a statutory footing via delegated legislation has brought such decisions into the purview of the committee. The committee is required to scrutinise legislative instruments subject to disallowance with reference to its scrutiny principles, and the provision of suitably detailed information in ESs will support its continuing scrutiny of instruments amending Schedules 1AA and/or Schedule 1AB.

In relation to the minister's general remarks on the exemption of the schedules from the ADJR, the scrutiny committee commented that justifying the exemption on the basis of maintaining the status quo prior to the Williams case was problematic, given that this rested on 'the assumption that the relevant powers were part of the executive power of the Commonwealth and did not require statutory authorisation'. The scrutiny committee further noted that there may be some circumstances where ADJR Act review is appropriate. Finally, given the relative advantages of ADJR Act review, the scrutiny committee noted that the availability of other sources of judicial or administrative review does not, of itself, provide a justification for excluding the ADJR Act. Given these remarks, the committee intends to continue to draw to the attention of the Senate the

addition of programs to Schedule 1AA and Schedule 1AB, to ensure that senators have the opportunity to consider the appropriateness of the significant expenditure decisions now being authorised by delegated legislation.

Court Martial and Defence Force Magistrate Amendment (Travel Expenses) Rules 2013 [F2013L01832]

Purpose	Amends the principal rules in relation to the payment of witnesses expenses to a person who has been summonsed to appear as a witness at a court martial or Defence Force magistrate tribunal
Last day to disallow	4 March 2014
Authorising legislation	<i>Defence Force Discipline Act 1982</i>
Department	Defence

ISSUE:

Insufficient information regarding consultation

This instrument makes an amendment to the Court Martial and Defence Force Magistrate Rules 2009 (the principal rules) to provide greater flexibility in relation to the payment of expenses to a person who has been summonsed to appear as a witness at a court martial or Defence Force magistrate trial.

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 for the instrument states that consultation was considered unnecessary as the rule 'relates to the service of members of the ADF'. While the committee does not usually interpret section 26 as requiring a highly detailed explanation of why consultation was not undertaken, it considers that an overly bare or general explanation, as in this case, is not sufficient to satisfy the requirements of the *Legislative Instruments Act 2003*. Further, noting that the amended subrule 6(4) applies specifically to persons 'other than a defence member', the committee questions whether this justification in fact reflects the reasoning of the rule maker regarding the necessity or otherwise of consultation in this case **[the committee requested further information from the Judge Advocate General of the Australian Defence Force]**.

MINISTER'S RESPONSE:

The minister responded, advising that consultation was not undertaken in this case as it was considered unnecessary given that the rule related to the service of members of the ADF. The minister advised that, while the subrule 6(4) did not technically relate to

the service of members of the ADF, the broader context of the provision, which provided for non-ADF persons to attend court martial and trial proceedings for ADF personnel, did in fact relate to the service of a member of the ADF.

COMMITTEE RESPONSE:

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

Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2013 [F2013L00216]

Purpose	Revokes the Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2010 (No. 1) to change the deemed rates of income upon financial assets for the purposes of the means test for the rate of social security payments administered by FaHCSIA (from 20 March 2013)
Last day to disallow	18 June 2013
Authorising legislation	<i>Social Security Act 1991</i>
Department	Families, Housing, Community Services and Indigenous Affairs

ISSUE:

Unclear basis for calculation or setting of deeming rates

This instrument revokes and replaces the Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2010 (No. 1) to change the deemed rates of income upon financial assets for the purposes of the means test for the rate of social security payments administered by FaHCSIA. Noting that the deeming rate would presumably have a financial impact on certain individuals, the committee's usual expectation is that the ES to an instrument with a financial impact sets out the basis on which any new fee, rate or charge has been set or calculated **[the committee requested further information from the minister]**.

MINISTER'S RESPONSE:

The minister advised that the instrument had been revoked and was no longer in effect. Given this, it was the minister's view that a person would be unlikely to access the revoked determination for information on how the deeming rates were set. However, the minister advised that more information regarding the setting of deeming rates would be included in future ESs in response to the committee's comments.

COMMITTEE RESPONSE:

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

Social Security (Deeming Threshold Rates) Determination 2013 (No. 2) [F2013L01854]

Purpose	Reduces the below threshold rate to 2 per cent and the above threshold rate to 3.5 per cent, from 4 November 2013
Last day to disallow	4 March 2013
Authorising legislation	<i>Social Security Act 1991</i>
Department	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 requested further information from the minister; and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

MINISTER'S RESPONSE:

The minister responded, advising that consultation was considered to be unnecessary in relation to the making of the instrument, as it was considered that the changes were machinery in nature. A change in deeming rates was considered to be a parameter change rather than a change in policy. That is, the change reflected changes in available market returns rather than a change to the deeming provisions per se.

The minister further advised that the ES had been 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 **12 February 2014**.

The Federal Register of Legislative Instruments (FRLI) website should be consulted for the text of instruments and explanatory statements, as well as associated information.¹ 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 on p. 16 of 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 6 December 2013

<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	
Agricultural and Veterinary Chemicals Code Instrument No. 4 (MRL Standard) Amendment Instrument 2013 (No. 10) [F2013L02030]	E ²
<i>Australian Participants in British Nuclear Tests (Treatment) Act 2006</i>	
Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006 (No. R45/2013) [F2013L02027]	
Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (No. R54/2013) [F2013L02031]	
<i>Australian Prudential Regulation Authority Act 1998</i>	
Australian Prudential Regulation Authority (confidentiality) determination No. 21 of 2013 [F2013L02032]	
<i>Autonomous Sanctions Act 2011</i>	
Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Libya) Amendment List 2013 [F2013L02044]	*
<i>Broadcasting Services Act 1992</i>	
Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 17 of 2013) [F2013L02042]	
Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No. 3) [F2013L01999]	*

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

2 Instruments marked E are exempt from disallowance. As Senate Standing Order 23 directs the committee to consider instruments that are subject to 'disallowance or disapproval', exempt instruments are not scrutinised by the committee.

<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>	
Carbon Credits (Carbon Farming Initiative) (Native Forest from Managed Regrowth) Methodology Determination 2013 [F2013L02036]	
<i>Civil Aviation Act 1988</i>	
CASA 254/13 - Direction — number of cabin attendants (Sunstate Airlines) [F2013L02019]	
CASA 260/13 - Direction under subregulation 235(2) relating to landing weight and landing distance required [F2013L02020]	
CASA ADCX 025/13 - Revocation of Airworthiness Directives [F2013L02035]	
CASA EX127/13 - Exemption — instrument rating flight tests in a synthetic flight training device [F2013L02034]	
<i>Disability Services Act 1986</i>	
Disability Services Act (Administration of Part II of the Act) Guidelines 2013 [F2013L02002]	
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	
Amendment of List of Exempt Native Specimens - Hippopus hippopus (horse's hoof clam) (19/11/2013) [EPBC303DC/SFS/2013/58] [F2013L01998]	
Amendment of List of Exempt Native Specimens - Pilbara Fish Trawl Interim Managed Fishery (19/11/2013) [EPBC303DC/SFS/2013/56] [F2013L01997]	
Amendment of List of Exempt Native Specimens - Queensland East Coast Otter Trawl Fishery (26/11/2013) (deletion) [EPBC303DC/SFS/2013/53] [F2013L02003]	
Amendment of List of Exempt Native Specimens - Queensland East Coast Otter Trawl Fishery (26/11/2013) (inclusion) [EPBC303DC/SFS/2013/61] [F2013L02004]	
Amendment of List of Exempt Native Specimens - Queensland Gulf of Carpentaria Line Fishery (26/11/2013) (deletion) [EPBC303DC/SFS/2013/60] [F2013L02000]	
Amendment of List of Exempt Native Specimens - Queensland Gulf of Carpentaria Line Fishery (26/11/2013) (inclusion) [EPBC303DC/SFS/2013/48] [F2013L02001]	
<i>Financial Management and Accountability Act 1997</i>	
Financial Management and Accountability Act 1997 Determination 2013/15 — Section 32 (Transfer of Functions from DRALGAS to Health and PM&C) [F2013L02021]	E
Financial Management and Accountability Act 1997 Determination 2013/16 – Section 32 (Transfer of Functions from PM&C to Social Services) [F2013L02022]	E
Financial Management and Accountability Act 1997 Determination 2013/17 — Section 32 (Transfer of Functions from Health to Social Services) [F2013L02024]	E
Financial Management and Accountability Act 1997 Determination 2013/18 — Section 32 (Transfer of Functions from Industry to Education) [F2013L02025]	E
Financial Management and Accountability Act 1997 Determination 2013/19 — Section 32 (Transfer of Functions from DEEWR to PM&C) [F2013L02026]	E
<i>Food Standards Australia New Zealand Act 1991</i>	
Australia New Zealand Food Standards Code — Standard 1.4.2 — Maximum Residue Limits Amendment Instrument No. APVMA 7, 2013 [F2013L02028]	E
Food Standards (Application A1075 – Quillaia Extract (Quillaja Extract) as a Food	E

Additive (Emulsifier) Variation [F2013L02037]	
Food Standards (Proposal P1019 – Carbon Monoxide as a Processing Aid for Fish) Variation [F2013L02039]	E
<i>Health Insurance Act 1973</i>	
Health Insurance (Accredited Pathology Laboratories - Approval) Amendment Principles 2013 (No. 1) [F2013L02017]	*
Health Insurance (Pharmacogenetic Testing) Determination 2013 (No. 1) [F2013L02018]	
<i>Higher Education Support Act 2003</i>	
Higher Education Provider Approval No. 7 of 2013 [F2013L02041]	
Higher Education Support Act 2003 - VET Provider Approval (No. 71 of 2013) [F2013L02040]	
Higher Education Support Act 2003 - VET Provider Approval (No. 72 of 2013) [F2013L02005]	
<i>Migration Act 1958</i>	
Migration Act 1958 - Determination of Granting of Protection Class XA Visas in 2013/2014 Financial Year - IMMI 13/156 [F2013L02038]	E
<i>Military Rehabilitation and Compensation Act 2004</i>	
MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012]	
MRCA Treatment Principles (No. MRCC 53/2013) [F2013L02016]	
<i>National Health Act 1953</i>	
National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 11) (No. PB 79 of 2013) [F2013L02023]	
National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2013 (No. 8) (No. PB 78 of 2013) [F2013L02011]	
National Health (Listed drugs on F1 or F2) Amendment Determination 2013 (No. 7) (No. PB 76 of 2013) [F2013L02008]	
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No. 13) (No. PB 74 of 2013) [F2013L02013]	
National Health (Pharmaceutical Benefits - Therapeutic Groups) Amendment Determination 2013 (No. 4) (No. PB 77 of 2013) [F2013L02010]	
National Health (Price and Special Patient Contribution) Amendment Determination 2013 (No. 7) (No. PB 75 of 2013) [F2013L02007]	
National Health Act (Pharmaceutical Benefits - Early Supply) Amendment December 2013 - specification under subsection 84AAA(2) (No. PB 83 of 2013) [F2013L02014]	*
National Health Act 1953 - Amendment determination under paragraph 98C(1)(b) (No. PB 80 of 2013) [F2013L02015]	
<i>Radiocommunications Act 1992</i>	
Radiocommunications (Spectrum Access Charges — 1800 MHz Band) Determination 2013 (No. 1) [F2013L02006]	
<i>Research Involving Human Embryos Act 2002</i>	
Declaration of 'corresponding State laws' [F2013L02043]	

<i>Therapeutic Goods Act 1989</i>	
Therapeutic Goods (Listing) Notice 2013 (No. 7) [F2013L02033]	
<i>Veterans' Entitlements Act 1986</i>	
Repatriation Pharmaceutical Benefits Scheme (No. R43/2013) [F2013L02009]	
Treatment Principles (No. R52/2013) [F2013L02029]	

Instruments received week ending 13 December 2013

<i>Australian Prudential Regulation Authority Act 1998</i>	
Australian Prudential Regulation Authority (confidentiality) determination No. 25 of 2013 [F2013L02065]	
Australian Prudential Regulation Authority (confidentiality) determination No. 26 of 2013 [F2013L02066]	
<i>Autonomous Sanctions Act 2011</i>	
Autonomous Sanctions (Designated Persons and Entities - Democratic People's Republic of Korea) Amendment List 2013 [F2013L02049]	
<i>Civil Aviation Act 1988</i>	
Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 3) [F2013L02068]	
CASA 267/13 - Approval — means of providing surface wind information - Exemption — provision of a wind direction indicator [F2013L02069]	
CASA EX121/13 - Exemption - from standard take-off and landing minima - Japan Airlines [F2013L02072]	
CASA EX123/13 - Exemption — solo flight training at Archerfield Aerodrome using ultralight aeroplanes registered with Recreational Aviation Australia [F2013L02061]	
CASA EX124/13 - Exemption - from standard take-off and landing minima - Philippine Airlines [F2013L02071]	
<i>Commonwealth Places (Mirror Taxes) Act 1998</i>	
Commonwealth Places (Mirror Taxes) (Modification of Applied Law - Victoria) Notice 2013 [F2013L02055]	*
<i>Corporations Act 2001</i>	
ASIC Class Rule Waiver [CW 13/1543] [F2013L02062]	
<i>Customs Act 1901</i>	
Customs By-law No. 1339704 [F2013L02056]	E
Revocation of Customs By-law - Instrument of Revocation No. 3 (2013) [F2013L02057]	E
<i>Defence Act 1903</i>	
Defence Determination 2013/55, Means of travel – amendment	
Defence Determination 2013/56, Interdependent partner, recreation leave and travel costs - amendment	
Defence Determination 2013/57, Education assistance - amendment	

Defence Determination 2013/58, Higher duties allowance - amendment	*
Defence Determination 2013/59, Dependents with special needs, Maternity leave and travel - amendment	
Defence Determination 2013/60, Post indexes - price review	
Defence Honours and Awards Appeals Tribunal Amendment Procedural Rule 2013 (No. 1) [F2013L02047]	*
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	
Amendment - List of Specimens Taken to be Suitable for Live Import (17/11/2013) (1) [EPBC/s.303EC/SSLI/Amend/065] [F2013L02051]	
Amendment - List of Specimens Taken to be Suitable for Live Import (17/11/2013) (2) [EPBC/s.303EC/SSLI/Amend/066] [F2013L02052]	
Environment Protection and Biodiversity Conservation Act 1999 - Conservation Themes for Prioritising Nominations for Listing Threatened Species, Threatened Ecological Communities and Key Threatening Processes for the Assessment Period Commencing 1 October 2014 (21/11/2013) (155) [F2013L02074]	E
<i>Fair Work Act 2009</i>	
Fair Work Commission Rules 2013 [F2013L02054]	
<i>Financial Sector (Collection of Data) Act 2001</i>	
Financial Sector (Collection of Data) (reporting standard) determination No. 100 of 2013 - SRS 703.0 - Fees Disclosed [F2013L02064]	
<i>High Court of Australia Act 1979</i>	
High Court Amendment Rules 2013 (No. 2) [Select Legislative Instrument 2013 No. 257] [F2013L02048]	
<i>Higher Education Support Act 2003</i>	
Commonwealth Scholarships Guidelines (Education) 2013 [F2013L02070]	
Higher Education Support Act 2003 – Tax file number guidelines for higher education providers and Open Universities Australia Revocation 2013 [F2013L02067]	*
Higher Education Support Act 2003 - VET Provider Approval (No. 73 of 2013) [F2013L02045]	
Higher Education Support Act 2003 - VET Provider Approval (No. 74 of 2013) [F2013L02059]	
<i>Migration Act 1958</i>	
Migration Agents Regulations 1998 - Specification of Class of Persons - IMMI 13/153 [F2013L02053]	*
Migration Regulations 1994 - Specification of Post Office Box and Courier Addresses - IMMI 13/144 [F2013L02046]	E
<i>Parliamentary Service Act 1999</i>	
Parliamentary Service Amendment Determination 2013 (No. 1) [F2013L02060]	*
<i>Remuneration Tribunal Act 1973</i>	
Remuneration Tribunal Determination 2013/24 - Remuneration and Allowances for Holders of Public Office [F2013L02073]	*

<i>Social Security (Administration) Act 1999</i>	
Social Security (Administration) (Specified vulnerable and declared voluntary income management areas) Amendment Determination 2013 [F2013L02058]	*
<i>Superannuation Act 2005</i>	
Tenth Amendment of the Superannuation (PSSAP) Trust Deed [F2013L02063]	
<i>Taxation Administration Act 1953</i>	
Taxation Administration Act 1953 (Meaning of End Benefit) Instrument 2013 [F2013L02050]	

Instruments received week ending 20 December 2013

<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	
Aboriginal Land Rights (Northern Territory) Amendment (Delegation) Regulation 2013 [SLI 2013 No. 272] [F2013L02122]	
<i>Australian Broadcasting Corporation Act 1983</i>	
Australian Broadcasting Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013 [F2013L02091]	
<i>Australian Citizenship Act 2007</i>	
Australian Citizenship Amendment (Foreign Currency) Regulation 2013 [SLI 2013 No. 267] [F2013L02120]	
<i>Australian Education Act 2013</i>	
Australian Education (SES Scores) Determination 2013 [F2013L02136]	
<i>Australian Prudential Regulation Authority Act 1998</i>	
Australian Prudential Regulation Authority (confidentiality) determination No. 24 of 2013 [F2013L02086]	
Australian Prudential Regulation Authority (confidentiality) determination No. 23 of 2013 [F2013L02088]	
<i>Civil Aviation Act 1988</i>	
Civil Aviation Legislation Amendment (Flight Crew Licensing and Other Matters) Regulation 2013 [SLI 2013 No. 274] [F2013L02129]	
Civil Aviation Legislation Amendment (Maintenance and Other Matters) Regulation 2013 [SLI 2013 No. 275] [F2013L02128]	
<i>Civil Aviation Regulations 1988</i>	
CASA 239/13 - Direction under regulation 209 - conduct of parachute training operations [F2013L02111]	
CASA EX131/13 - Exemption — Jetstar Boeing 787-8 aircraft passive participation in land and hold short operations [F2013L02082]	
<i>Competition and Consumer Act 2010</i>	
Competition and Consumer Amendment Regulation 2013 (No. 4) [SLI 2013 No. 277] [F2013L02092]	

<i>Corporations Act 2001</i>	
ASIC Class Order [CO 13/1534] [F2013L02077]	
<i>Court Security Act 2013</i>	
Court Security Regulation 2013 [SLI 2013 No. 260] [F2013L02112]	
<i>Criminal Code Act 1995</i>	
Criminal Code (Terrorist Organisation—Islamic State of Iraq and the Levant) Regulation 2013 [SLI 2013 No. 261] [F2013L02097]	
<i>Customs Act 1901</i>	
Customs Amendment (Infringement Notices) Regulation 2013 [SLI 2013 No. 271] [F2013L02125]	
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	
Amendment - List of Specimens taken to be Suitable for Live Import (26/11/2013) (1) [F2013L02079]	
Amendment - List of Specimens taken to be Suitable for Live Import (26/11/2013) (2) [F2013L02080]	
Amendment of List of Exempt Native Specimens - Western Australian Pearl Oyster Fishery (12/12/2013) [F2013L02087]	
Amendment to the list of migratory species under section 209 of the Environment Protection and Biodiversity Conservation Act 1999 (26/11/2013) [F2013L02109]	
Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (145) (21/11/2013) [F2013L02075]	
Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (146) (04/11/2013) [F2013L02106]	
Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (150) (03/12/2013) [F2013L02107]	
Environment Protection and Biodiversity Conservation (Commonwealth Marine Reserves) Proclamation 2013 [F2013L02108]	E
<i>Fair Work Act 2009</i>	
Fair Work Amendment (Anti-Bullying) Regulation 2013 [SLI 2013 No. 263] [F2013L02094]	
Fair Work (State Declarations - employer not to be a national system employer) Endorsement 2013 (No. 3) [F2013L02116]	E
<i>Family Law Act 1975</i>	
Family Law Amendment (Scale of Costs) Rules 2013 [SLI 2013 No. 282] [F2013L02132]	
<i>Financial Management and Accountability Act 1997</i>	
Financial Management and Accountability Amendment (2013 Measures No. 1) Regulation 2013 [SLI 2013 No. 281] [F2013L02089]	
Financial Management and Accountability Act 1997 Determination 2013/20 – Section 32 (Transfer of Functions from DEEWR to Education and Employment) [F2013L02110]	E
<i>Fisheries Levy Act 1984</i>	
Fisheries Levy (Torres Strait Prawn Fishery) Amendment Regulation 2013 (No. 1) [SLI	

2013 No. 259] [F2013L02099]	
<i>Fisheries Management Act 1991</i>	
Logbook Determination (Particular Fisheries) 2013 No. 2 [F2013L02114]	*
<i>Fisheries Management Act 1991 and Fishing Levy Act 1991</i>	
Fishing Levy Regulation 2013 [SLI 2013 No. 258] [F2013L02127]	
<i>Food Standards Australia New Zealand Act 1991</i>	
Australia New Zealand Food Standards Code - Standard 1.4.2 - Maximum Residue Limits Amendment Instrument No. APVMA 8, 2013 [F2013L02130]	E
<i>Great Barrier Reef Marine Park Act 1975</i>	
Great Barrier Reef Marine Park Amendment (Outlook Report and Other Measures) Regulation 2013 [SLI 2013 No. 264] [F2013L02137]	
<i>Health Insurance Act 1973</i>	
Health Insurance (Allied Health Services) Determination 2014 [F2013L02134]	*
Health Insurance (Pharmacogenetic Testing - Epidermal Growth Factor Receptor) Determination 2013 [F2013L02131]	
<i>Higher Education Support Act 2003</i>	
Amendment No. 1 to the Commonwealth Grant Scheme Guidelines 2012 [F2013L02078]	
<i>Insurance Act 1973</i>	
Insurance (exemption) determination No. 2 of 2013 - Audit requirements relating to certain yearly statutory accounts [F2013L02141]	
Insurance (prudential standard) determination No. 1 of 2013 - Prudential Standard GPS 230 - Reinsurance Management [F2013L02139]	
Insurance (prudential standard) determination No. 2 of 2013 - Prudential Standard GPS 310 - Audit and Related Matters [F2013L02140]	
<i>Migration Act 1958</i>	
Migration Amendment (AusAID) Regulation 2013 [SLI 2013 No. 268] [F2013L02103]	
Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013 SLI 2013 No. 269 [F2013L02102]	
Migration Amendment (Disclosure of Information) Regulation 2013 [SLI 2013 No. 270] [F2013L02101]	
Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 [SLI 2013 No. 280] [F2013L02104]	
<i>Migration Regulations 1994</i>	
Code of Behaviour for Public Interest Criterion 4022 - IMMI 13/155 [F2013L02105]	E
Migration Regulations 1994 - Specification of Payment of Visa Application Charges and Fees in Foreign Currencies (Conversion Instrument) - IMMI 13/126 [F2013L02085]	E
Migration Regulations 1994 - Specification of Places and Currencies for Paying of Fees - Places and Currencies Instrument - IMMI 13/127 [F2013L02115]	E
<i>National Health Act 1953</i>	
National Health (Supplies of out-patient medication) Determination 2013 [F2013L02133]	*

National Health (Weighted average disclosed price - main disclosure cycle) Determination 2013 (No. 2) (PB 82 of 2013) [F2013L02124]	*
<i>Native Title Act 1993</i>	
Native Title (Assistance from Attorney-General) Amendment Guideline 2013 [F2013L02084]	*
<i>Navigation Act 2012</i>	
Marine Order 18 (Measures to enhance maritime safety) 2013 [F2013L02096]	*
Marine Order 21 (Safety of navigation and emergency procedures) Modification 2013 (No. 1) [F2013L02095]	
<i>Navigation Act 2012 and Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>	
Marine Order 96 (Marine pollution prevention — sewage) 2013 [F2013L02098]	*
<i>Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003</i>	
Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Safety Case and Environment Plan Levies) Regulation 2013 [SLI 2013 No. 273] [F2013L02117]	
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	
Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013 [SLI 2013 No. 265] [F2013L02135]	
<i>Privacy Act 1988</i>	
Privacy Regulation 2013 [SLI 2013 No. 262] [F2013L02126]	
<i>Private Health Insurance Act 2007</i>	
Private Health Insurance (Benefit Requirements) Amendment Rules 2013 (No. 7) [F2013L02113]	*
<i>Programs and Awards Statute 2013</i>	
Assessment Rules (No. 4) 2013 [F2013L02138]	E
Coursework Handbook Rules 2013 [F2013L02083]	E
<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983, Protection of the Sea (Harmful Anti-fouling Systems) Act 2006 and Navigation Act 2012</i>	
Marine Order 1 (Administration) 2013 [F2013L02093]	
<i>Public Service Act 1999</i>	
Public Service Amendment (Public Interest Disclosure and Other Matters) Regulation 2013 [SLI 2013 No. 276] [F2013L02121]	
<i>Public Works Committee Act 1969</i>	
Public Works Committee Amendment Regulation 2013 (No. 2) [SLI 2013 No. 266] [F2013L02119]	
<i>Radiocommunications Act 1992</i>	
Radiocommunications (26.5–31.3 GHz Band) Reform Instrument 2013 [F2013L02100]	
<i>Retirement Savings Accounts Regulations 1997 and Superannuation Industry (Supervision) Act 1993 and Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>	

Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013 [SLI 2013 No. 278] [F2013L02118]	
<i>Social Security Act 1991</i>	
Social Security Foreign Currency Exchange Rate Determination 2013 (No. 2) [F2013L02076]	*
<i>Special Broadcasting Service Act 1991</i>	
Special Broadcasting Service Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013 [F2013L02090]	
<i>Student Assistance Act 1973</i>	
Student Assistance (Education Institutions and Courses) Amendment Determination 2013 (No. 1) [F2013L02081]	*
<i>Taxation Administration Act 1953 and Income Tax Assessment Act 1936 and A New Tax System (Goods and Services Tax) Act 1999 and Income Tax Assessment Act 1997</i>	
Tax Laws Amendment (2013 Measures No. 1) Regulation 2013 [SLI 2013 No. 279] [F2013L02123]	

Instruments received week ending 27 December 2013

<i>Australian Prudential Regulation Authority Act 1998</i>	
Australian Prudential Regulation Authority (confidentiality) determination No. 27 of 2013 [F2013L02158]	
<i>Currency Act 1965</i>	
Currency (Perth Mint) Determination 2013 (No. 5) [F2013L02142]	
<i>Customs Act 1901</i>	
Customs (Definition of “compliance period”) Determination 2013 [F2013L02172]	
Customs (Definition of “small-medium enterprise”) Determination 2013 [F2013L02171]	
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	
Amendment of List of Exempt Native Specimens - Tasmanian Scalefish Fishery (16/12/2013) [F2013L02156]	
<i>Fair Work Act 2009</i>	
Fair Work Commission Amendment (Anti-Bullying and Other Measures) Rules 2013 [F2013L02160]	
<i>Fees Statute 2006</i>	
Tuition Fees Order (No. 2) 2013 [F2013L02154]	E
<i>Financial Sector (Collection of Data) Act 2001</i>	
Financial Sector (Collection of Data) (reporting standard) determination No. 101 of 2013 - GRS 460.0 - Reinsurance Assets by Counterparty [F2013L02147]	
Financial Sector (Collection of Data) (reporting standard) determination No. 102 of 2013 - GRS 460.1 - Exposure Analysis by Reinsurance Counterparty [F2013L02148]	
Financial Sector (Collection of Data) (reporting standard) determination No. 103 of 2013 - GRS 460.0_G - Reinsurance Assets by Counterparty (Level 2 Insurance Group)	

[F2013L02149]	
Financial Sector (Collection of Data) (reporting standard) determination No. 104 of 2013 - GRS 460.1_G - Exposure Analysis by Reinsurance Counterparty (Level 2 Insurance Group) [F2013L02151]	
Higher Education Support Act 2003	
Higher Education (Maximum Amounts for Commonwealth Scholarships) Determination 2013 [F2013L02164]	
Higher Education (Maximum Amounts for Other Grants) Determination 2013 [F2013L02165]	
Higher Education Support (Maximum Grant Amounts) List Variation 2013 [F2013L02145]	
Higher Education Support Act 2003 - List of Grants under Division 41 for 2014 [F2013L02144]	
Migration Act 1958	
Migration Act 1958 - Revocation of IMMI 13/156 'Granting of Protection Class XA Visas in 2013/2014 Financial Year' - IMMI 13/159 [F2013L02163]	E
National Health Act 1953	
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No. 14) (No. PB 88 of 2013) [F2013L02170]	
National Health (Prescriber bag supplies) Amendment Determination 2013 (No. 2) (No. PB 90 of 2013) [F2013L02168]	
National Health (Price and Special Patient Contribution) Amendment Determination 2013 (No. 8) (No. PB 89 of 2013) [F2013L02169]	
National Health Act 1953 - Amendment determination under paragraph 98C(1)(b) (No. PB 91 of 2013 [F2013L02167]	
Private Health Insurance Act 2007	
Private Health Insurance (Data Provision) Rules 2013 [F2013L02161]	*
Private Health Insurance (Health Insurance Business) Rules 2013 [F2013L02159]	*
Public Interest Disclosure Act 2013	
Public Interest Disclosure Standard 2013 [F2013L02146]	
Radiocommunications Act 1992	
Radiocommunications (Unacceptable Levels of Interference — 2.3 GHz Band) Determination 2013 [F2013L02155]	
Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters — 2.3 GHz Band) 2013 [F2013L02143]	
Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers — 2.3 GHz Band) 2013 [F2013L02150]	
Social Security (Administration) Act 1999	
Social Security (Administration) (Recognised State/Territory Authority - Qld Family Responsibilities Commission) Determination 2013 [F2013L02153]	*
Social Security Act 1991	
Social Security (Personal Care Support) (NSW Government Individual Budgets: Direct	

Payments) Determination 2013 [F2013L02152]	
<i>Tertiary Education Quality and Standards Agency Act 2011</i>	
Tertiary Education Quality and Standards Agency Act 2011 - Determination of Fees No. 3 of 2013 [F2013L02162]	*
Tertiary Education Quality and Standards Agency Act 2011 - Notice of revocation of Ministerial Direction No. 1 of 2013 [F2013L02157]	
<i>Work Health and Safety Act 2011</i>	
Work Health and Safety (Operation Sovereign Borders) Declaration 2013 [F2013L02166]	

Instruments received week ending 3 January 2014

No instruments were received.

Instruments received week ending 10 January 2014

No instruments were received.

Instruments received week ending 17 January 2014

<i>Aged Care Act 1997</i>	
Accountability Amendment (Quality Agency) Principle 2013 [F2013L02179]	*
Complaints Amendment (Quality Agency) Principle 2013 [F2013L02181]	*
Residential Care Subsidy Amendment (Leave from Care) Determination 2013 [F2013L02182]	*
Information Amendment (Quality Agency) Principle 2013 [F2013L02183]	*
Residential Care Subsidy Amendment (Quality Agency) Principle 2013 [F2013L02184]	*
Committee Amendment (Aged Care Financing Authority) Principle 2013 [F2013L02185]	*
User Rights Amendment (Investment of Accommodation Bonds) Principle 2013 [F2013L02186]	*
Quality Agency Reporting Principles 2013 [F2013L02189]	*
<i>Auditor-General Act 1997</i>	
Australian National Audit Office (ANAO) Auditing Standards (19/12/2013) [F2014L00027]	*
<i>Australian Aged Care Quality Agency (Transitional Provisions) Act 2013</i>	
Australian Aged Care Quality Agency (Transitional Provisions) Regulation 2013 [SLI 2013 No. 255] [F2013L02190]	
<i>Australian Aged Care Quality Agency Act 2013</i>	
Quality Agency Principles 2013 [F2013L02188]	
<i>Banking Act 1959</i>	

Banking (prudential standard) determination No. 3 of 2013 - Prudential Standard APS 210 – Liquidity [F2013L02187]	
Broadcasting Services Act 1992 Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 18 of 2013) [F2014L00029]	
Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 19 of 2013) [F2014L00030]	
Licence Area Plan - Sydney Radio - Variation No. 1 of 2013 [F2014L00057]	
Charities Act 2013	
Charities (Definition of Government Entity) Instrument 2013 [F2013L02173]	
Civil Aviation Act 1988 and Civil Aviation Safety Regulations 1998	
Manual of Standards Part 172 Amendment Instrument 2013 (No. 1) [F2013L02178]	*
Civil Aviation Act 1988, Civil Aviation Safety Regulations 1998 and Civil Aviation Regulations 1988	
Civil Aviation Order 48.1 Amendment Instrument 2013 (No. 1) [F2013L02192]	
Civil Aviation Regulations 1988	
CASA 294/13 - Direction under subregulation 235(2) relating to landing weight and landing distance required [F2014L00003]	
CASA EX135/13 - Exemption – carriage of flight data recorder – Pel-Air Aviation [F2013L02174]	
CASA EX134/13 - Exemption — operations by hang-gliders in the Corryong Cup [F2013L02197]	
CASA EX129/13 - Exemption – recency requirements for night flying – Regional Express Pty Ltd [F2014L00002]	
CASA ADCX 026/13 - Revocation of Airworthiness Directives [F2014L00041]	
CASA ADCX 001/14 - Revocation of Airworthiness Directives [F2014L00048]	
Civil Aviation Safety Regulations 1998 and Acts Interpretation Act 1901	
CASA ADCX 027/13 - Revocation of Airworthiness Directives [F2014L00042]	
Corporations Act 2001 ASIC Class Order [CO 13/1621] [F2014L00039]	
Customs Act 1901	
Customs Act 1901 - Specified Percentage of Total Factory Costs Determination No. 1 of 2013 [F2013L02198]	
Disability Services Act 1986	
Disability Services Act (National Standards for Disability Services) Determination 2013 [F2013L02180]	*
Education Services for Overseas Students (TPS Levies) Act 2012	
Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Determination 2013 [F2013L02176]	
Environment Protection and Biodiversity Conservation Act 1999	
Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (147) (04/12/2013) [F2013L02175]	

Amendment to the list of threatened species, ecological communities and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (153) (11/11/2013) [F2013L02177]	
Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (148) (12/12/2013) [F2014L00004]	
Amendment of List of Exempt Native Specimens - Northern Prawn Fishery (20/12/2013) (inclusion) [F2014L00046]	
Amendment of List of Exempt Native Specimens - Northern Prawn Fishery (20/12/2013) (deletion) [F2014L00047]	
<i>Fair Work (Building Industry) Act 2012</i>	
Amendment No. 1 to the Building Code 2013 [F2013L02196]	
<i>Federal Court of Australia Act 1976</i>	
Federal Court Amendment (Costs and Other Measures) Rules 2013 [SLI 2013 No. 283] [F2014L00001]	
<i>Financial Management and Accountability Act 1997</i>	
Financial Management and Accountability Act 1997 Determination 2013/21 – Section 32 (Transfer of Functions from Social Services to AACQA) [F2013L02194]	E
Food Standards Australia New Zealand Act 1991 Food Standards (Application A1077 – Fungal Chitosan as a Processing Aid) Variation [F2014L00033]	E
Food Standards (Application A1080 – Food derived from Herbicide-tolerant Cotton MON88701) Variation [F2014L00035]	E
Food Standards (Proposal M1009 – Maximum Residue Limits) Variation [F2014L00037]	E
<i>Higher Education Support Act 2003</i>	
Higher Education Support Act 2003 - VET Provider Approval (No. 75 of 2013) [F2014L00031]	
Higher Education Support Act 2003 - VET Provider Approval (No. 1 of 2014) [F2014L00043]	
Amendment No. 1 to the VET Guidelines 2013 [F2014L00049]	*
Higher Education Support Act 2003 - Revocation of Approval as a Higher Education Provider (Jansen Newman Institute Pty Ltd) [F2014L00053]	
<i>Motor Vehicle Standards Act 1989</i>	
Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005 Amendment 7 [F2014L00032]	*
Vehicle Standard (Australian Design Rule 38/04 – Trailer Brake Systems) 2013 [F2014L00055]	
<i>National Health Act 1953</i>	
National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2013 (No. 9) (No. PB 92 of 2013) [F2013L02191]	
National Health (Paraplegic and Quadriplegic Program) Special Arrangement Amendment Instrument 2013 (No. 4) (No. PB 94 of 2013) [F2013L02193]	
National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 12) (No. PB 93 of 2013) [F2013L02195]	

National Health Determination under paragraph 98C(1)(b) Amendment 2014 (No. 1) (PB 3 of 2014) [F2014L00050]	
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2014 (No. 1) (No. PB 1 of 2014) [F2014L00051]	
National Health (Price and Special Patient Contribution) Amendment Determination 2014 (No. 1) (No. PB 2 of 2014) [F2014L00052]	
<i>Plant Health Australia (Plant Industries) Funding Act 2002</i>	
Plant Health Australia (Plant Industries) Funding Determination 2013 [F2014L00056]	*
<i>Primary Industries (Excise) Levies Act 1999</i>	
Primary Industries (Excise) Levies (Designated Bodies) Declaration 2013 [F2014L00054]	
<i>Private Health Insurance Act 2007</i>	
Private Health Insurance (Complying Product) Amendment Rules 2013 (No. 5) [F2014L00017]	
Private Health Insurance (Incentives) Amendment Rules 2013 (No. 1) [F2014L00019]	*
<i>Radiocommunications (Receiver Licence Tax) Act 1983</i>	
Radiocommunications (Receiver Licence Tax) Amendment Determination 2013 [F2014L00036]	
Radiocommunications (Transmitter Licence Tax) Amendment Determination 2013 [F2014L00038]	
<i>Radiocommunications Act 1992</i>	
Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2013 [F2014L00034]	
Radiocommunications Licence Conditions (PTS Licence) Determination 2013 [F2014L00045]	
<i>Safety, Rehabilitation and Compensation Act 1988</i>	
Safety, Rehabilitation and Compensation (Definition of Employee) Amendment Notice 2013 [F2014L00006]	
<i>Social Security Act 1991</i>	
Social Security (Personal Care Support) (United Kingdom Government Personal Independence Payment) Determination 2013 [F2014L00021]	
<i>Taxation Administration Act 1953</i>	
Taxation Administration Act 1953 - PAYG withholding - Occasional payroll donations to deductible gift recipients No. 4 [F2014L00012]	*
<i>Telecommunications (Interception and Access) Act 1979</i>	
Notice of a declaration of a Commonwealth Royal Commission as an eligible Commonwealth authority under section 5AA of the Telecommunications (Interception and Access) Act 1979 [F2014L00040]	
<i>Therapeutic Goods Act 1989</i>	
Poisons Standard Amendment No. 1 of 2014 [F2014L00044]	E
<i>Veterans' Entitlements Act 1986</i>	

Statement of Principles concerning heart block No. 2 of 2014 [F2014L00005]	
Statement of Principles concerning heart block No. 1 of 2014 [F2014L00007]	
Statement of Principles concerning dermatomyositis No. 9 of 2014 [F2014L00008]	
Statement of Principles concerning dental pulp and apical disease No. 4 of 2014 [F2014L00009]	
Statement of Principles concerning morbid obesity No. 5 of 2014 [F2014L00010]	
Statement of Principles concerning dermatomyositis No. 10 of 2014 [F2014L00011]	
Statement of Principles concerning chronic fatigue syndrome No. 11 of 2014 [F2014L00013]	
Statement of Principles concerning dental pulp and apical disease No. 3 of 2014 [F2014L00014]	
Statement of Principles concerning chronic fatigue syndrome No. 12 of 2014 [F2014L00015]	
Statement of Principles concerning fibromyalgia No. 13 of 2014 [F2014L00016]	
Statement of Principles concerning fibromyalgia No. 14 of 2014 [F2014L00018]	
Statement of Principles concerning sick sinus syndrome No. 15 of 2014 [F2014L00020]	
Statement of Principles concerning morbid obesity No. 6 of 2014 [F2014L00022]	
Statement of Principles concerning narcolepsy No. 7 of 2014 [F2014L00023]	
Statement of Principles concerning sick sinus syndrome No. 16 of 2014 [F2014L00024]	
Statement of Principles concerning narcolepsy No. 8 of 2014 [F2014L00025]	
Amendment Statement of Principles concerning Alzheimer-type dementia No. 17 of 2014 [F2014L00026]	
Amendment Statement of Principles concerning Alzheimer-type dementia No. 18 of 2014 [F2014L00028]	

Instruments received week ending 24 January 2014

<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	
Agricultural and Veterinary Chemicals Code Instrument No. 4 (MRL Standard) Amendment Instrument 2014 (No. 1) [F2014L00065]	E
<i>Corporations Act 2001</i>	
ASIC Class order [CO 13/1644] [F2014L00058]	*
ASIC Market Integrity Rules (FEX Market) 2013 [F2014L00063]	
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	
Amendment to the list of threatened species, ecological communities and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (131) (20/12/2013) [F2014L00062]	
<i>Higher Education Support Act 2003</i>	
Higher Education Provider Approval No. 1 of 2014 [F2014L00059]	

Higher Education Support Act 2003 - VET Provider Approval (No. 2 of 2014) [F2014L00060]	
<i>National Health Act 1953</i>	
National Health Act 1953 - Amendment Determination under section 84AH (2014) (No. 1) (No. PB 7 of 2014) [F2014L00064]	
<i>Social Security Act 1991</i>	
Social Security (Australian Government Disaster Recovery Payment) Determination 2014 (No. 1) [F2014L00061]	E

Instruments received week ending 31 January 2014

No instruments were received.

Appendix 2

Guideline on consultation



AUSTRALIAN SENATE

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

Addressing consultation in explanatory statements

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'.

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

Further information is available through the committee's website at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_ctte/index.htm or by contacting the committee secretariat at:

Committee Secretary
Senate Regulations and Ordinances Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Phone: +61 2 6277 3066

Fax: +61 2 6277 5881

Email: RegOrds.Sen@aph.gov.au

Appendix 3

Correspondence



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11 DEC 2013

Senate Standing Committee
on Regulations
and Ordinances

ATTORNEY-GENERAL

CANBERRA

13/15338-03

10 DEC 2013

Senator Mark Furner
Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

regords.sen@aph.gov.au

Dear Senator Furner

Thank you for the Committee's letter of 25 October 2013 addressed to my office, regarding concerns raised by the Standing Committee on Regulations and Ordinances in relation to two instruments which fall within the Attorney-General's portfolio:

Crimes Amendment Regulation 2013 (No. 2), and

Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No.2).

As the *Crimes Amendment Regulation 2013 (No. 2)* falls within the responsibilities of the Minister for Justice, the Hon Michael Keenan MP, I understand that he will respond to you in relation to that instrument.

In respect of the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No.2)* (the Regulation), my department has amended the Explanatory Statement accompanying this instrument to include the requested information set out in the *Delegated legislation monitor* no. 5 of 2013 (16 May 2013). A copy of the amended Explanatory Statement is enclosed for your reference.

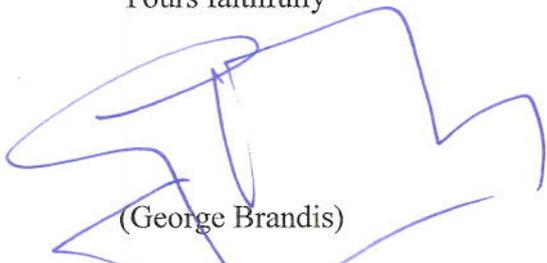
The amended Explanatory Statement clarifies that the Regulation does not make any changes to the fee for the registration of a New Zealand judgment in the Family Court of Australia, the Federal Court of Australia or the Federal Circuit Court of Australia, but rather that it clarifies the quantum of fees that apply to Trans-Tasman proceedings commenced in Australia.

Officers of my department are currently in the process of arranging for the amended Explanatory Statement to be tabled in the House of Representatives and the Senate.

The action officer for this matter in the Attorney-General's Department is Imran Church who can be contacted on (02) 6141 2728.

Thank you again for writing on this matter.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'George Brandis', is written over the typed name. The signature is stylized and somewhat abstract, with several loops and a long horizontal stroke at the end.

(George Brandis)

Encl: Amended Explanatory Statement to the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No.2)*



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07 JAN 2014
Senate Standing Committee on Regulations and Ordinances

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07 JAN 2014
Senate Standing Committee on Regulations and Ordinances

Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Edwards

Thank you for your letter of 5 December 2013 requesting further information on a matter raised in the Senate Regulations and Ordinances Committee's report, *Delegated legislation monitor* No. 8 of 2013 (4 December 2013) in relation to *Australian Public Service Commissioner's Amendment Direction 2013 (No. 1)* [F2013LO1212] (the Amendment Direction).

One of the purposes of the Amendment Direction was to correct a drafting error in the *Australian Public Service Commissioner's Directions 2013* (the Principal Directions) in relation to the provisions dealing with the subsequent employment in the Australian Public Service (APS) of persons who have resigned from the APS to contest an election. The Committee has sought advice on whether any person was disadvantaged by the error contained in the Principal Directions.

Under section 32 of the *Public Service Act 1999*, a person who resigns as an APS employee to contest a prescribed election is entitled to be re-engaged as an APS employee subject to certain conditions set out in the Australian Public Service Commissioner's Directions. Clause 2.19 and Schedule 1 of the Principal Directions set out these conditions and were intended to replicate provisions which had been in place for some time and were formerly set out in the *Public Service Regulations 1999*.

As originally drafted, schedule 1 of the Principal Directions inadvertently provided that persons in this situation were entitled to be re-engaged at their former APS classification or a lower classification. The inclusion of the words 'or a lower classification' was not intended and did not accord with longstanding APS arrangements. Rather, the intention was that, following the commencement of the Principal Directions on 1 July 2013, failed election candidates would continue to be entitled to be engaged at their former classification, subject to their satisfying the other provisions set out in the legislation.

I can confirm that no person has been disadvantaged by this drafting error. The Principal Directions were made on 12 March 2013 with a commencement date of 1 July 2013. Prior to the commencement date, the drafting error was discovered and the Amendment Direction made on 27 June 2013 to amend the Principal Directions before they took effect. As a result, at no stage was it allowable to re-engage a failed election candidate at a lower classification than the person held prior to their resignation.



I trust this information will be of assistance to the Committee.

Yours sincerely



Annwyn Godwin

Acting Australian Public Service Commissioner

20 December 2013



The Hon Scott Morrison MP
Minister for Immigration and Border Protection

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20 JAN 2014

Senate Standing C'ttee
on Regulations
and Ordinances

Senator the Hon. Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Edwards

***Migration Amendment (Visa Application Charge and Related Matters No.2)
Regulation 2013.***

Thank you for the opportunity to provide comment on the *Migration Amendment (Visa Application Charge and Related Matters No.2) Regulation 2013* (the Amendment Regulation).

The Senate Standing Committee on Regulations and Ordinances (the Committee) noted that the explanatory statement accompanying the Amendment Regulation did not contain information regarding whether consultation had occurred or an explanation as to whether consultation was unnecessary or inappropriate in this case. I regret that this occurred and I assure the Committee that my department is aware of its obligation to explain why consultation was unnecessary or inappropriate as prescribed under the *Legislative Instruments Act 2003*. I understand this omission occurred due to human error.

The Amendment Regulation required no consultation because the amendments were of a minor or machinery nature and do not substantially alter the existing arrangements, consistent with section 18 of the *Legislative Instruments Act 2003*. In addition, the amendments were consequential or technical amendments that arose from the *Migration Amendment (Visa Application Charge and Related Matters) Regulation 2013* and the *Migration Legislation Amendment Regulation 2013 (No.3)*, which were major amendments. Since appropriate consultation was undertaken by the department in relation to the substantive measures in the *Migration Amendment (Visa Application Charge and Related Matters) Regulation 2013* and the *Migration Legislation Amendment Regulation 2013 (No.3)*, no further consultation was necessary for the purpose of the Amendment Regulation.



The Hon Scott Morrison MP
Minister for Immigration and Border Protection

In order to assist the Committee's consideration of the Amendment Regulation I have attached an updated explanatory statement.

I apologise for not including the above information in the explanatory statement, and thank the Committee for bringing this matter to my attention.

Yours sincerely

A handwritten signature in black ink, appearing to read "Scott Morrison", written over a vertical line.

The Hon Scott Morrison MP
Minister for Immigration and Border Protection

13/11/2014



RECEIVED

20 JAN 2014

Senate Standing Committee
on Regulations
and Ordinances

The Hon Greg Hunt MP

Minister for the Environment

MC13-005704

15 JAN 2014

Senator Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Edwards

I refer to the letter of 5 December 2013, from Mr Ivan Powell, Secretary of the Senate Standing Committee on Regulations and Ordinances (the Committee), concerning the *Carbon Credits (Carbon Farming Initiative) (Reforestation and Afforestation—1.2) Methodology Determination 2013* (Version 1.2 of the Determination). In the letter, the Committee requests information about the concurrent operation of the Determination and two other determinations, namely the *Carbon Credits (Carbon Farming Initiative) (Reforestation and Afforestation) Methodology Determination 2013* (the Original Determination) and the *Carbon Credits (Carbon Farming Initiative) (Reforestation and Afforestation—1.1) Methodology Determination 2013* (Version 1.1 of the Determination).

All three determinations create provisions relevant to conducting reforestation and afforestation offsets projects under the *Carbon Credits (Carbon Farming Initiative Act) Act 2011* (the Act). All three determinations are currently in force. In light of this, proponents wishing to undertake reforestation and afforestation projects can, at the time of seeking project approval by the Clean Energy Regulator, elect to have any one of the three determinations apply to their project. Further, under the Act a proponent with an existing project that has been approved under one of the determinations may apply to the Clean Energy Regulator to have a different determination apply to their project.

Following the making of the Original Determination, the subsequent versions were created as follows:

- Version 1.1 of the Determination was created when the Original Determination was updated in response to a new methodology proposal for reforestation and afforestation and feedback from the Clean Energy Regulator. Version 1.1 allows project proponents more time to plant trees and provides an expanded set of options for mapping the project area, sampling trees and estimating project fuel use.

- Version 1.2 of the Determination was also based on a new methodology proposal for reforestation and afforestation activities. It differs from Version 1.1 by setting out in more detail the requirements that appeared in Version 1.1 for stratifying the project area, sampling plots, and estimating tree and root biomass.

The Act provides for revocation of determinations by the Minister. Subject to certain exceptions, under the Act a determination that has been revoked continues to apply to any project implemented under it for the remainder of the crediting period for the project. Both the Original Determination and Version 1.1 could therefore be revoked without disadvantaging proponents with existing projects under those determinations.

The Former Government choose not to undertake the process of revoking superseded methodology determinations. It is possible that the Original Determination and Version 1.1 do not need to remain in force. I have therefore directed the Department of the Environment to advise me on whether I should now revoke those determinations, and further to examine if there are any additional methodology determinations relating to other types of activities that should now be revoked .

I have also directed the Department to take the Committee's concerns into account when preparing explanatory statements for future updates to existing determinations, particularly to set out clearly how the instruments are intended to operate together and to provide guidance to potential proponents choosing between determinations covering similar subject matter

Thank you for bringing the Committee's concerns to my attention.

Yours sincerely



Greg Hunt



Senator the Hon. Michael Ronaldson

Minister for Veterans' Affairs
Minister Assisting the Prime Minister for the Centenary of ANZAC
Special Minister of State

Ref: M13/3180

Senator Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

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20 JAN 2014
Senate Standing C'ttee
on Regulations
and Ordinances


Dear Senator Edwards,

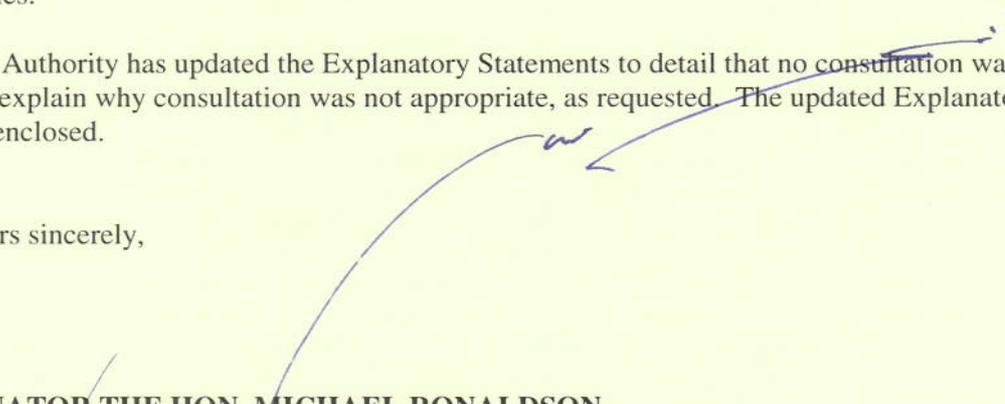
Thank you for the Committee's letter of 5 December 2013 regarding Instrument Nos. 69 and 70 of 2013, Amendment Statements of Principles concerning lumbar spondylosis (the Instruments). The Instruments were determined by the Repatriation Medical Authority, (the Authority) in accordance with the provisions of section 196B of the *Veterans' Entitlements Act 1986* (VEA).

I am advised by the Authority that the amendments are made at the direction of the Specialist Medical Review Council (SMRC) in accordance with its Declaration No. 19 dated 21 June 2013. The SMRC Declaration appeared in the Government Notices Gazette of 26 June 2013. No consultation was undertaken by the Authority prior to determining this Instrument, as the amendments are made at the direction of the SMRC in accordance with section 196W of the VEA. The Authority is required by subsection 196B(10) to make a determination in accordance with the directions of the SMRC, and any consultation would not be appropriate.

However, the Committee should note that consultation is undertaken by the SMRC when it undertakes any review of a decision of the Authority which can lead to such a direction. In undertaking the review which led to the Declaration of 21 June 2013, the SMRC published notices of its intention to carry out its review in the Government Notices Gazette of 14 June 2006 and 20 January 2010, invited eligible persons or organisations to make submissions and published notices specifying dates by which written submissions must be received in a number of issues of the Government Notices Gazette. Written and oral submissions were received from two eligible applicants and the Repatriation Commission. The SMRC decision, and directions to the Authority, were sent to these parties.

The Authority has updated the Explanatory Statements to detail that no consultation was undertaken and explain why consultation was not appropriate, as requested. The updated Explanatory Statements are enclosed.

Yours sincerely,


SENATOR THE HON. MICHAEL RONALDSON

ENCL

15 JAN 2014

Parliament House, Canberra ACT 2600

Tel: (02) 6277 7820 Fax: (02) 6273 4140



The Hon. Barnaby Joyce MP

Minister for Agriculture
Federal Member for New England

REF: MNMC2013-08617

Senator Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

RECEIVED

20 JAN 2014
Senate Standing C'ttee
on Regulations
and Ordinances

Dear Senator *Sean*

Thank you for your letter of 5 December 2013 seeking further information on a matter in the *Fisheries Management Amendment Regulation 2013 (No.1)*.

I can advise that the typographical errors referred to in the Senate Regulations and Ordinances Committee, *Delegated legislative monitor* No. 8 of 2013 (4 December), where the term 'Fishing Permit' was incorrectly referenced as 'statutory fishing rights', has not led to any person being disadvantaged.

The section of the Regulation affected identifies information requirements for two fishing permit registers; the 'High Seas Register' and the 'Fishing Permits Register'. These registers only hold information on fishing permit holders and as such the typographical errors would not have resulted in information on statutory fishing right holders being stored in these registers.

Thank you again for raising this matter with me.

Yours sincerely

Barnaby Joyce MP
17 JAN 2014



SENATOR THE HON MITCH FIFIELD

ASSISTANT MINISTER FOR SOCIAL SERVICES

MC13-011897

Senator Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
PO Box 6100
S1.111 Parliament House
CANBERRA ACT 2600

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20 JAN 2014

Senate Standing Committee
on Regulations
and Ordinances

Dear Senator Edwards

I am writing in regards to the letter from Mr Ivan Powell (Committee Secretary) of 5 December 2013 to the office of the Hon Kevin Andrews MP, Minister for Social Services, about the *Complaints Amendment (Living Longer Living Better) Principle 2013*. I am responding to your letter as this matter falls within my responsibilities.

The specific concern raised by the Senate Standing Committee on Regulations and Ordinances (the Committee) relates to the power for the Aged Care Commissioner (the Commissioner) under 13A.25(1) and 13A.30(1) of the *Complaints Principles 2011* (Complaints Principles) to examine a decision or process of the Secretary, as represented by the Aged Care Complaints Scheme (the Scheme), in a manner in which the Commissioner considers appropriate.

The Committee has suggested that it may be desirable for amendments to be made in the relevant notification provisions of the Complaints Principles (13A.25(4) and 13A.31) to require the Commissioner to provide advice to the prescribed persons and bodies on the manner in which an investigation was conducted.

In my view, such amendment is unnecessary in light of the existing regulatory and administrative framework within which the Commissioner operates. The effect of this is that the Commissioner already provides advice to prescribed persons and bodies on the manner in which examinations are conducted.

To assist the Committee, I can offer the following information.

The Commissioner has had the authority to examine decisions or complaints in the manner she (or he) 'considers appropriate' since the office was established, in its current form, in 2007. These provisions ensure that the Commissioner has the necessary flexibility to examine all aspects of a decision or process of the Scheme, in various circumstances, in which a complaint may arise. It is also consistent with the intent of the Complaints Principles to focus on the efficient resolution of complaints, and provide flexibility rather than using an investigative process for every case.

Many other administrative review authorities have a similar provision, allowing them to investigate as they consider appropriate – for example, the Commonwealth Ombudsman, the Privacy Commissioner and the Telecommunications Ombudsman.

It is also important to note that the Commissioner's power to examine is not at large. It is confined by the requirements of the *Complaints Principles* and the *Aged Care Act 1997* (Cth), including Part 6.2 (Protected Information) and Part 6.6 which set out the functions of the Commissioner (and their limits). Additionally, the Commissioner is required to adhere to the rules of natural justice and the ordinary requirements of administrative decision-making. The Commissioner's processes can be reviewed by the Commonwealth Ombudsman and the courts.

The Commissioner publishes her detailed *Complaints Management Guidelines* (updated November 2013) on her website, in accordance with Part II of the *Freedom of Information Act 1982* (Cth) (the Information Publication Scheme). This document sets out in detail the practical manner in which examinations are conducted by the Commissioner and her staff.

Pursuant to s95A-12 of the *Aged Care Act 1997* (Cth), the Commissioner also provides her annual report to the Minister, for presentation to the Parliament. The annual report includes the information required by s95A-12(2), as well as significant additional information about the Office's performance. The Commissioner has also begun publishing case studies in her annual report (see Annual Report 2012-2013) to enhance public understanding about the practices of her office.

Through the Commissioner's Statement of Intent (responding to the former Minister for Ageing's Statement of Expectation), the Commissioner commits to undertaking fair and thorough investigations, and producing high quality and transparent decisions and reports. The Statement of Intent and Letter of Expectations are also on the Commissioner's website.

The most significant way in which the Commissioner meets this commitment, and ensures the process is transparent and fair, is by always sending all parties to a complaint a copy of the preliminary findings. This includes information about the process and her reasons and it provides them with an opportunity to comment. Their responses are taken into account by the Commissioner before she makes her final decision.

From the time people first contact the office, information about the Commissioner's process is provided at various stages. This includes a copy of the Commissioner's statement of service and a process fact sheet which are sent out by complaints intake staff. For a full list of the information provided by the office, please see Appendix A to this letter.

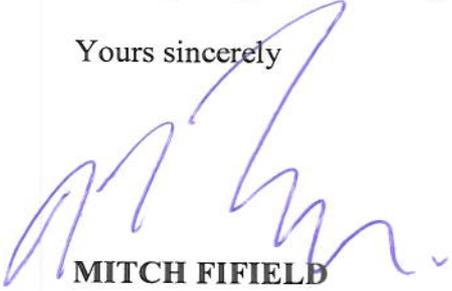
The Commissioner also undertakes an annual survey of individuals and bodies who deal with her office, the results of which are published in the Annual Report 2012-13. For 2012-13, most respondents indicated the Commissioner's processes are "excellent". The processes identified as excellent include professionalism displayed, service provided, clarity of correspondence, courtesy and respect shown, and respect shown during an interview. The report also reflects that where some improvements to the provision of information have been suggested by survey respondents, remedial action has been taken.

In summary, while it is possible to make amendments to the *Complaints Principles 2011*, requiring the Commissioner to advise parties of the investigation process undertaken, it is unnecessary because of the Commissioner's existing legislative and administrative obligations and administrative practice.

Should you require any further detail in relation to this matter, please contact Mr Iain Scott, First Assistant Secretary, Office of Aged Care Quality and Compliance on 02 6289 1005.

Thank you again for writing.

Yours sincerely



MITCH FIFIELD

Encl.

14/1/14



The Hon Scott Morrison MP
Minister for Immigration and Border Protection

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Senator the Hon. Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

03 FEB 2014
Senate Standing C'ttee
on Regulations
and Ordinances

Dear Senator Edwards

Queries raised in Delegated Legislation Monitor No. 8 of 2013

I thank the Senate Regulations and Ordinances Committee for its letter of 5 December 2013 concerning Delegated Legislation Monitor No. 8 of 2013, in which the Committee requested a response regarding the following instruments:

- *Specification of Forms, Fees, Circumstances and Different Way of Making an Application* [IMMI 13/063] [F2013L01242];
- *Migration Amendment (Visa Application Charge) Regulation 2013* [SLI No. 228, 2013] [F2013L01534];
- *Migration Amendment (Temporary Protection Visas) Regulation 2013* [SLI No. 234, 2013] [F2013L01811]; and
- *Specification of Access to Movement Records* [IMMI 13/107] [F2013L01896].

Specification of Forms, Fees, Circumstances and Different Way of Making an Application

The Committee noted that the Explanatory Statement accompanying this Instrument gives no indication as to the basis on which the fees have been calculated or set.

Prior to the creation of this Instrument, the fees applicable to standard business sponsorship applications and nomination applications for the Subclass 457 programme were contained in the *Migration Regulations 1994*.

The fees for an application for approval as a standard business sponsor and an application for a variation of a term of approval as a standard business sponsor (both \$420) did not change at the time this Instrument was created.

On 29 November 2011, the Australian Government announced a new visa fee system to expand the user pays approach to all fee-paying visas. The new charges included a number of targeted pricing measures, including a duration charge for Subclass 457 Visa applicants seeking to remain in Australia for over one year. The proposed "Visa Duration" surcharge of \$60 would have imposed an additional charge on Subclass 457 Visa applicants for each year of stay requested beyond the first year. The surcharge was based on the premise that, while longer duration visa holders contribute to the economy, they draw more heavily on community services and infrastructure.

There were concerns that this option would be difficult to administer, that this option may require numerous regulation changes, and that the behavioural change it sought to address was not desirable in the Subclass 457 Visa programme. It was decided that rather than imposing a duration charge on the visa applicant, it would be preferable that the sponsor pay an increased nomination charge. For this reason, the charge was increased from \$85 to \$330.

Migration Amendment (Visa Application Charge) Regulation 2013

The Committee noted that the Explanatory Statement accompanying this Instrument did not explain the basis on which the increased fees had been calculated or set.

On 2 August 2013, the government released an Economic Statement for the 2013-2014 financial year. In this Statement, the government announced an increase in the revenue associated with Visa Application Charges as outlined in Table B1: Revenue Measures since the 2013-14 Budget. The increases are \$114.9 million for 2013-14, \$140.5 million for 2014-15, \$142.6 million for 2015-16 and \$144.5 million for 2016-17.

In accordance with the Statement, the government increased all visa application charges by 15%, except for Student (Temporary) (Class TU) visas and Tourist (Class TR) visas, under the *Migration Regulations 1994* from 1 September 2013.

All proposed increases were rounded to a multiple of \$5.00 according to the following methodology:

- if the amount of the charge calculated is not a multiple of \$5.00, and if the amount exceeds the nearest lower multiple of \$5.00 by \$2.50 or more, the amount is rounded up to the nearest \$5.00; and
- in any other case, where the charge calculated is not a multiple of \$5.00, the amount is rounded down to the nearest lower multiple of \$5.00.

Migration Amendment (Temporary Protection Visas) Regulation 2013

The Committee raised concerns about the retrospective effect of this Instrument and the Explanatory Statement's justification for the apparent removal of pre-existing entitlements in relation to applications for a Permanent Protection Visa.

The reintroduction of Temporary Protection Visas was designed to ensure that no Permanent Visas would be issued to any of the almost 30,000 illegal boat arrivals still waiting for a decision on their claim, including those found to be genuine refugees. Applying Temporary Protection Visas to illegal maritime arrivals who had already lodged Permanent Protection Visa applications is one of a suite of measures designed to support the government's border protection strategy to combat people smuggling and to discourage people from making dangerous voyages to Australia. Applying Temporary Protection Visas to all illegal maritime arrivals, not just those who arrived after 13 August 2012 and have not yet validly made a Protection Visa application is important for consistency and fairness. Relevant applications were considered and refused against the new criteria for the Permanent Protection Visa.

Second, the Committee noted that it is unclear that the existing discretion to allow a Temporary Protection Visa holder to apply for another visa type sufficiently accommodates the consideration of personal rights and liberties, such as family considerations and rights of the child, and has requested further information in relation to this.

There is no right to family reunification under international law. The protection of the family unit under Articles 17 and 23 does not amount to a right to enter Australia where there is no other right to do so.

The Temporary Protection Visas Regulation was designed as part of a suite of measures, which includes the Regional Resettlement Arrangements, to act as a deterrent for people making dangerous voyages by boat to Australia. Temporary Protection Visas meant that if someone came by boat to Australia they would not be able to sponsor their family, and the Regional Resettlement Arrangements

means that if someone came by boat to Australia after 19 July 2013 they would not be processed or settled within Australia. These two policies work in conjunction to provide a disincentive for people who wish to remain united with their families by indicating that travelling to Australia via illegal means would result in separation from their family.

The decision to reintroduce the *Migration Amendment (Temporary Protection Visas) Regulation 2013* to ensure that unaccompanied minors who are illegal maritime arrivals or unauthorised air arrivals are not eligible for a Permanent Protection Visa was made to discourage minors from taking potentially life threatening voyages to achieve resettlement for their families in Australia. This goal is also a primary consideration, in addition to the need to maintain the integrity of Australia's migration system and protect the national interest. The government considers that on balance these and other primary considerations outweigh the best interests of the child to have the right to family reunification. If Australia were to provide the right of family reunification to some minors it would propel people smugglers to target younger and more vulnerable children which would in turn place them in greater danger and separate them from their family.

Third, the Committee noted that consultation was not undertaken in this case because the Regulation was required as a 'matter of urgency' but was concerned that the Explanatory Statement did not provide sufficient information as to the facts or circumstances from which the condition of urgency arises.

The reintroduction of Temporary Protection Visa is a key element of the government's border protection strategy to combat people smuggling and to discourage people from making dangerous voyages to Australia. The Regulation was required as a 'matter of urgency' to implement a pre-election commitment to maintain the integrity of Australia's borders and migration system and to protect the national interest. Accordingly there was no consultation external to government. Whole of Government internal consultation occurred and, during the drafting of the Regulation, the Attorney-General's Department and Australian Government Solicitor were consulted.

Specification of Access to Movement Records

The Committee noted that the Explanatory Statement to this Instrument contains no reference to consultation. The Committee requested further information on consultation undertaken, and that the Explanatory Statement be updated. I regret that this occurred and I assure the Committee that my department is aware of its obligation to explain why consultation was unnecessary or inappropriate as prescribed under the *Legislative Instruments Act 2003*. I understand this omission occurred due to human error.

The consultation for this Instrument took place before the Instrument was updated and the Explanatory Statement compiled. Consultation was undertaken with all external stakeholder agencies listed at Column 2 of Schedule B to the Instrument, as well as relevant internal department stakeholders. This consultation was mistakenly omitted from the Explanatory Statement. The Explanatory Statement has been redrafted to overcome this omission and will be tabled shortly.

In order to assist the Committee's consideration of this Instrument, I have attached an updated Explanatory Statement.

Thank you again for bringing these matters to my attention. I trust the information provided is helpful.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Scott Morrison', written in a cursive style.

The Hon Scott Morrison MP

Minister for Immigration and Border Protection

30 / 1 / 2014

29 JAN 2014



Assistant Treasurer

RECEIVED

03 FEB 2014

Senate Standing C'ttee
on Regulations
and Ordinances

Senator Sean Edwards
Chair, Senate Standing Committee on Regulations and Ordinances
Room s1.111
Parliament House, Canberra

Dear Senator Edwards

I write to you in relation to the letter of 5 December 2013, from Mr Ivan Powell, Committee Secretary, seeking further information on issues identified in the Committee's Monitor on the Corporations and Australian Securities and Investments Commission Amendment Regulation 2013 (No. 1), and the Income Tax Assessment (Infrastructure Project Designation) Rule 2013. I provide the following comments in relation to the matters raised.

Corporations and Australian Securities and Investments Commission Amendment Regulation 2013 (No. 1)

The Committee sought further clarification as to why the requirement for the Takeovers Panel to provide reasons when it notified persons of a decision to not conduct proceedings needed to be removed, and why an obligation to eventually provide reasons was not explicitly retained in the Regulations.

The amendment improves the timeliness with which the Panel is able to provide a decision to not conduct proceedings to the parties and the market (with just a brief outline of the reasons), with detailed reasons to follow shortly thereafter. The combination of the Panel's standard practices and the general right of parties to request reasons for Panel decisions is likely to be sufficient to achieve the appropriate dissemination of reasons without the need for an explicit obligation in the Regulations.

The Government will consider if further amendments are necessary if the current regulation (as amended) leads to any undesirable outcomes.

Income Tax Assessment (Infrastructure Project Designation) Rule 2013

The Committee sought an explanation as to why a fee relating to applications for designated infrastructure project status was set at \$20,000.

The fee is intended to contribute to the administrative costs incurred by the Office of the Infrastructure Coordinator associated with the designation process. The proposed level of the fee was raised during industry consultation on the exposure draft of the legislation and no objections were raised.

Administrative costs relate to staff resourcing and other costs incurred by the Office of the Infrastructure Coordinator during the designation process including:

- determining the eligibility of the application against requirements and conditions outlined in the Infrastructure Project Designation Rules (the Rules);
- the Infrastructure Coordinator's setting of conditions under the Rules;
- determining whether relevant conditions for designation have been met and issuing the instrument of designation; and
- ongoing reporting and monitoring to ensure that the project is implemented in a manner consistent with the designation.

Administrative costs also relate to the Infrastructure Coordinator's role in managing the capital expenditure cap (set at \$25 billion) including verifying the veracity of capital cost estimates, as well as review processes and potential legal costs associated with AAT appeal processes.

I trust that this information is of assistance to you. If you are seeking further details on these matters, the relevant contact officers at the Department of Treasury are Daniel McAuliffe, Daniel.Mcauliffe@treasury.gov.au, 6263 2804 (in relation to the Corporations Regulation) and Teresa Bostle, Teresa.bostle@treasury.gov.au, 6263 3005 (in relation to the Income Tax Assessment Rule).

Yours sincerely



Senator the Hon Arthur Sinodinos AO



ATTORNEY-GENERAL

CANBERRA

MC13/30798

31 JAN 2014

Senator Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

RECEIVED

05 FEB 2014
Senate Standing C'ttee
on Regulations
and Ordinances

Dear Senator

 Thank you for the Committee's letter of 5 December 2013, regarding concerns raised by the Standing Committee on Regulations and Ordinances as set out in the *Delegated legislation monitor* no. 8 of 2013 (4 December 2013). These concerns relate to two instruments which fall within my portfolio:

*Electronic Transactions Amendment (Exemptions) Regulation 2013, and
Family Law Amendment (Fees) Regulation 2013.*

In developing these instruments, my Department consulted with the following stakeholders:

- in relation to the *Electronic Transactions Amendment (Exemptions) Regulation 2013*—the Treasury, Australian Electoral Commission and the former Department of Education, Employment and Workplace Relations, and
- in relation to the *Family Law Amendment (Fees) Regulation 2013*—the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia.

Through oversight, details of the nature of these consultations were not included in the explanatory statements to either instrument.

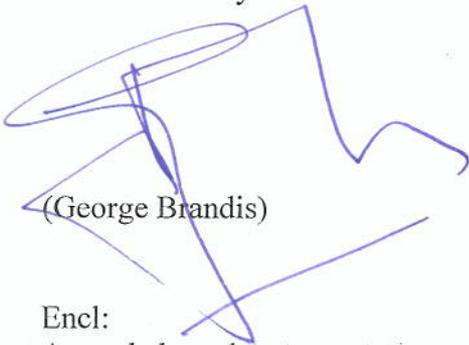
The explanatory statements accompanying each instrument are now amended to include a description of the nature of that consultation. Copies of the amended explanatory statements are enclosed for your information.

Officers of my Department will arrange for the amended explanatory statements to be tabled in the House of Representatives and the Senate.

The advisor for this matter in my Office is Dr Susan Cochrane, who can be contacted on (02) 6277 7300.

Thank you again for writing on this matter.

Yours faithfully



(George Brandis)

Encl:

Amended explanatory statement to the *Electronic Transactions Amendment (Exemptions) Regulation 2013*

Amended explanatory statement to the *Family Law Amendment (Fees) Regulation 2013*



SENATOR THE HON MATHIAS CORMANN
Minister for Finance

REF: C13/3611

Senator Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

RECEIVED

06 FEB 2014
Senate Standing C'ttee
on Regulations
and Ordinances


Dear Chair

I refer to the letter of 5 December 2013 sent to my office from the Committee Secretary to the Senate Standing Committee on Regulations and Ordinances (the Committee) seeking my advice on the issues raised by the Committee about amendments to the *Financial Management and Accountability Regulations 1997* (the FMA Regulations).

The amendments are in the *Financial Management and Accountability Amendment Regulations (No. 5) 2013*, the *Financial Management and Accountability Amendment Regulations (No. 6) 2013* and the *Financial Management and Accountability Amendment Regulations (No. 7) 2013*. The Committee's comments are in the *Delegated legislation monitor, Monitor No 8 of 2013*, and relate to the exclusion of spending decisions for the programmes in Schedule 1AA to the FMA Regulations from judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) and the characteristics of those programmes in determining whether they should be subject to merits review.

I note that the Committee has drawn Senators' attention to previous comments by the Senate Standing Committee on the Scrutiny of Bills (Scrutiny of Bills Committee) to the ADJR Act exemption. I also note that this issue has been raised previously by the Scrutiny of Bills Committee and your Committee and that my predecessor responded to those concerns.

The *Financial Management and Accountability Act 1997* (FMA Act) was amended in June 2012 in response to the High Court's decision in *Williams v Commonwealth* (2012) 288 ALR 410, where the majority of the High Court found that certain Government spending activities require legislative authority in addition to an appropriation Act. The *Financial Framework Legislation Amendment Act (No. 3) 2012* inserted section 32B of the FMA Act, which authorised the Commonwealth to make, vary and administer arrangements and grants specified in the FMA Regulations, and to make, vary and administer arrangements for the purposes of programmes specified in the FMA Regulations.

Schedule 1AA and new Schedule 1AB (which was added to the FMA Regulations on 12 December 2013) provide the mechanism to establish legislative authority for Government spending on the items listed in those schedules. Portfolio responsibility for the items in the Schedules is in accordance with the Administrative Arrangements Order as applying from time to time.

Judicial Review

Spending decisions made under each of the items listed in Schedule 1AA and Schedule 1AB are exempt from judicial review under Schedule 1 of the ADJR Act. This is consistent with the approach adopted for the inclusion of Schedule 1AA in the FMA Regulations which was based on maintaining the status quo that government decisions about expenditure which involves the allocation of finite resources have not previously been subject to judicial review under the ADJR Act. Prior to the High Court's decision in *Williams*, decisions by the Government to spend public money were not subject to judicial review under the ADJR Act.

Given the way in which funds are allocated, a review outcome which overturned the original decision would necessarily affect an allocation that had already been made to another party. As the Administrative Review Council noted in its 1999 publication, *What decisions should be subject to merit review?*, such decisions are not suitable for merits review.

It should be noted that the exemption from the ADJR Act does not affect rights of review under section 75(v) of the Australian Constitution or section 39B of the *Judiciary Act 1903*.

As the Committee has been advised previously, Government decisions to spend public money are subject to rules and requirements in the *Financial Management and Accountability Act 1997* and the FMA Regulations. This includes, where applicable, the requirements in the *Commonwealth Procurement Rules* and the *Commonwealth Grant Guidelines*. The review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms not only help to ensure the proper use of Commonwealth resources, but also that there is appropriate transparency around decisions relating to making, varying or administering arrangements to spend public money.

Further, a person who is unhappy with a spending decision may use other administrative mechanisms. These include the scheme for Compensation for detriment caused by defective administration, or recourse to the Commonwealth Ombudsman.

Merits review

In relation to the Committee's request for further information about merits review of the programmes, responses have been provided by the departments which administer those programmes or items. Portfolio responsibility for the items is in accordance with the Administrative Arrangements Order of 12 December 2013. The responses are at Attachment A. Should the Committee have further questions about specific programmes or items in the Schedules, I suggest that those questions be directed to the relevant minister who has responsibility for the programmes or items.

I trust this information addresses the Committee's concerns.

Kind regards

A handwritten signature in blue ink, consisting of a large, stylized 'M' followed by a 'C'.

Mathias Cormann
Minister for Finance

4 February 2014

Response to Comments by the Senate Regulations and Ordinances Committee on the *Financial Management and Accountability Amendment Regulation 2013 (No. 5)*, the *Financial Management and Accountability Amendment Regulation 2013 (No. 6)* and the *Financial Management and Accountability Amendment Regulation 2013 (No. 7)*

General Comment

The following responses to the Committee's request have been provided by the departments which administer the items in the *Financial Management and Accountability Amendment Regulation 2013 (No. 5)*, the *Financial Management and Accountability Amendment Regulation 2013 (No. 6)* and the *Financial Management and Accountability Amendment Regulation 2013 (No. 7)*. Portfolio responsibility for the items is in accordance with the Administrative Arrangements Order of 12 December 2013.

Responses from Departments

Department of Agriculture

Financial Management and Accountability Amendment Regulation 2013 (No. 5)

Item 401.024	Asian Food Markets Research Fund
Item 401.025	Leveraging Australia's Brand for Food
Item 401.026	Food in the National Curriculum
Item 401.027	Community Food Initiatives
Item 401.028	Support for the Forest Industry
Item 401.029	Farm Finance - Loans

Financial Management and Accountability Amendment Regulation 2013 (No. 6)

Item 401.030	Caring for our Country - Sustainable Agriculture stream
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The Department of Agriculture has provided the following information for these items which were previously administered by the Department of Agriculture, Fisheries and Forestry.

Financial Management and Accountability Amendment Regulation 2013 (No. 5) and *Financial Management and Accountability Amendment Regulation 2013 (No. 6)* include a variety of spending activities administered by the Department of Agriculture. These broadly cover two distinct categories: ad-hoc or targeted expenditure; and expenditure that results from a competitive process.

Decisions and processes in relation to both types of expenditure occur in accordance with obligations contained in the *Financial Management and Accountability Act 1997*, including those contained in the *Commonwealth Grant Guidelines* and *Commonwealth Procurement Rules*.

In relation to ad-hoc or targeted expenditure, internal merits review is not possible as there are no 'unsuccessful applicants'. Accordingly, no entities exist that would be able to utilise an internal merits review process.

In relation to expenditure that results from a competitive process, internal merits review is not generally offered because there is usually only a limited pool of money available for the activity. Once that initial pool has been allocated to successful applicants, there is no further money available. This means that any internal review process would be of no benefit to unsuccessful applicants.

One exception to these comments is item 401.029 – ‘Farm Finance Loans’. This item establishes legislative authority for the Australian Government to provide concessional loans to a State or the Northern Territory for the purposes of establishing and funding a scheme by which loans are provided to eligible farm businesses that are experiencing financial pressures.

Under the scheme, it is the responsibility of the delivery agencies in each state or territory to assess and make decisions about individual loan applications, including administering any internal review process for unsuccessful applicants. In developing the scheme, the previous Government’s preferred policy was for jurisdictions to make merits review available, with most jurisdictions currently offering a ‘review of decisions’ process in their loan guidelines.

Attorney-General’s Department

Financial Management and Accountability Amendment Regulation 2013 (No. 5)

Item 402.027A	Disaster recovery assistance as required
Item 402.029	Royal Commission into Institutional Responses to Child Sexual Abuse

The Attorney-General’s Department has provided the following information for these items.

Item 402.027A - Disaster recovery assistance as required

Item 402.027A enables the Government to make available ex gratia disaster recovery assistance to individuals, as required, to meet a particular community recovery need. This assistance may be made available where the unique recovery needs of the community are beyond the standard arrangements under the Natural Disaster Relief and Recovery Arrangements or normal provisions for Commonwealth-only payments such as the Australian Government Disaster Recovery Payment.

Following approval by the Prime Minister to provide specific disaster recovery assistance, decisions for the granting of claims for payments will be made in accordance with operational instructions similar to those which apply to other disaster recovery arrangements. Operational instructions use: (i) well-established eligibility criteria for payments with minimal or no discretion, (ii) fixed payment amounts, and (iii) robust processes for internal review of the original decision to make or deny a payment.

In addition to the above characteristics of the operational instructions: (i) claims may be voluminous depending on the particular disaster, (ii) a person whose claim for assistance has been denied may utilise administrative mechanisms such as the scheme for Compensation for Detriment caused by Defective Administration, or have recourse to the Ombudsman; and (iii) there is a mechanism for a person to make a claim that is outside the eligibility criteria. Given the above factors, there is an appropriate level of administrative oversight and external merits review is unnecessary.

Item 402.029 - Royal Commission into Institutional Responses to Child Sexual Abuse

Item 402.029 enables the Government to provide funding for certain legal support mechanisms relating to the Royal Commission into Institutional Responses to Child Sexual Abuse.

- a) To provide funding for legal costs and disbursements for witnesses called, or given leave to appear, at a hearing for the Royal Commission into Institutional Responses to Child Sexual Abuse

This enables the Government to make grants of legal financial assistance to witnesses called, or given leave to appear, before a hearing of the Royal Commission, and to people attending an interview with the Royal Commission. Financial assistance is available for the cost of legal representation and disbursements.

The scheme operates under the *Commonwealth Guidelines for Legal Financial Assistance for People appearing in front of the Royal Commission into Institutional Responses to Child Sexual Abuse*. The guidelines provide clear guidance on the types of costs for which financial assistance will and will not be available, and sound processes for the internal review of decisions made about grant applications and grant agreements. Financial assistance is paid in accordance with an 'Assessment of Costs' document which provides a detailed list of reasonable costs that are covered by the scheme.

In addition to these characteristics: (i) decisions to grant financial assistance involve the allocation of a limited appropriation, and (ii) a person whose claim for assistance has been denied may utilise administrative mechanisms such as the scheme for Compensation for Detriment caused by Defective Administration, or have recourse to the Ombudsman. Given the above factors, there is an appropriate level of administrative oversight and external merits review is unnecessary.

- b) To provide funding for the provision of legal advice services to people engaging with the Royal Commission

A grant has been made to fund an independent national legal advisory service for the Royal Commission, *knowmore*. No further grants will be made under this program.

For this reason, it would not be appropriate to provide for merits review.

Department of Communications

Financial Management and Accountability Amendment Regulation 2013 (No. 5)

Item 405.012	Digital Productivity - Development and Use of Industry Specific eKITS with Industry Peak Bodies
Item 405.013	Digital Productivity - Digital careers program with National ICT Australia (NICTA)
Item 405.014	Digital Productivity - NBN Demonstrators - includes projects with major national research organisations and major performing arts organisations
Item 405.015	Digital Productivity - Telehealth Trial with Townsville Mackay Medicare Local

The Department of Communications has provided the following information for these items which were previously administered by the Department of Broadband, Communications and the Digital Economy.

Item 405.012 involves a programme under which grants may be paid to grant recipients following an open and competitive selection process based on eligibility criteria and selection criteria. Grants under this programme were made in accordance with the *Commonwealth Grant Guidelines* and Programme Guidelines developed for this programme. The Programme Guidelines include provisions for review of decisions relating to applications or complaints about the programme.

Specifically, applicants wishing to seek a review of the decisions relating to their applications could contact the Department within a specified period and the Department would then review the decision internally and notify the applicant of the outcome of the review. An applicant dissatisfied with the review could contact the Commonwealth Ombudsman. In addition, the Guidelines indicated that applicants could seek judicial review of decisions.

Items 405.013, 405.014 and 405.015 involve arrangements for the making of one-off grant payments, on a targeted basis, to certain recipients. Grants under these programmes were made in accordance with the *Commonwealth Grant Guidelines* and Programme Guidelines which were developed for each of these programmes. The Programme Guidelines do not make specific provisions for review of decisions since the grants are made on a one-off basis to an individual recipient. The Guidelines for each of these programmes also indicate that the Minister will approve the spending associated with the programmes.

Department of Education

Financial Management and Accountability Amendment Regulation 2013 (No. 5)

Item 407.072	Early Childhood Development Population Measure
Item 407.074	Parliament and Civics Education Rebate
Item 407.075	Creative Young Stars
Item 407.078	Philanthropic Fund
Item 407.079	Youth Connections
Item 407.080	National Career Development Strategy
Item 407.081	School Business Community Partnership Brokers

The Department of Education has provided the following information for these items which were previously administered by the Department of Education, Employment and Workplace Relations.

Item 407.072 - Early Childhood Development Population Measure

No expenditure has occurred under this programme.

Item 407.074 - Parliament and Civics Education Rebate

The main spending decision authorised under this item was to conduct a competitive tender process that sought applications from potential service providers to administer the Parliament

and Civics Education Rebate scheme on behalf of the Commonwealth. As part of the Request for Tender documentation prepared for this procurement exercise, the Department alerted tenderers to its complaint handling process for any complaints arising from the tender process and reminded unsuccessful tenderers of their right to request the Commonwealth Ombudsman to investigate the conduct of the tender process. The Department does not consider this programme would be appropriate for external judicial merits review under the ADJR Act given the above mechanisms and the finite resources associated with this programme (which are principally made up of \$6,000 rebates to support individual school visits to Parliament House and is allocated by the service provider on a first come first served basis).

Item 407.075 - Creative Young Stars

The main spending decisions associated with this programme are determined by individual committees headed by local Members of Parliament who consider applications from individual young persons and youth groups within their electorate for support to attend a creative, cultural, academic, or community activity. Under the Creative Young Stars Guidelines, complaints around the handling of applications could be directed to the Programme Manager for consideration of the Commonwealth Ombudsman. Given this internal review mechanism and the fact that this programme involves the allocation of finite resources, with each grant valued at \$500 for individuals or \$3,000 for groups, the Department does not believe it would be appropriate for this programme to be subject to external judicial merits review.

Item 407.078 - Philanthropic Fund

The spending decision authorised under this item involves payment of a \$5 million donation to the State of NSW to enable the establishment of a separate legal entity (the Philanthropic Fund) to support investment in school education. Given this spending activity is associated with a one-off donation to assist the establishment of a charitable legal entity, the Department does not consider this spending activity suitable for external judicial merits review.

Item 407.079 - Youth Connections

The main spending decision authorised under this item was to extend existing contractual arrangements with service providers that were providing engagement services to at risk youth under the Youth Connections Programme. The Department does not consider this programme would be appropriate for external judicial merits review under the ADJR Act given this spending decision solely concerned the extension of existing contractual arrangements and given funding for this programme involves the allocation of finite resources to support the provision of services in each nominated service region across Australia to ensure national coverage.

Item 407.080 - National Career Development Strategy

The spending decision authorised under this item involves the continued participation of the State and Territory governments and two commercial providers, who have been involved in the production, development, and maintenance and hosting of the relevant career resources (the Job Guide and myfuture website) over a number of years. This spending proposal seeks to continue previous procurement arrangements governing the development, maintenance and

hosting of these resources which are heavily dependent on the infrastructure and licensing arrangements already in place. As a result, the Department does not consider this spending activity would be appropriate for external judicial merits review.

Item 407.081 - School Business Community Partnership Brokers

The main spending decision authorised under this spending proposal was to extend existing contractual arrangements with existing organisations delivering partnership broker services. The Department does not consider this programme would be appropriate for external judicial merits review under the ADJR Act, given this spending decision solely concerned the extension of existing arrangements and given funding for this programme involves the allocation of finite resources to support the provision of services in each nominated service region across Australia to ensure national coverage.

Department of Employment

Financial Management and Accountability Amendment Regulation 2013 (No. 5)

Item 407.073	Priority Employment Area Initiative
Item 407.076	Employment and compliance activities
Item 407.077	Labour Mobility and Relocation Assistance Initiative
Item 407.082	Experience + Work Ready

The Department of Employment has provided the following information for these items which were previously administered by the Department of Education, Employment and Workplace Relations.

Item 407.073 - Priority Employment Area Initiative

This programme involves the funding of Local Employment Coordinators in each State and Territory and the Local Employment Coordinator Flexible Funding Pool. The awarding of Local Employment Coordinator service contracts was conducted via a competitive tender process in accordance with the *Commonwealth Procurement Guidelines*. Successful applicants signed a funding agreement with the Commonwealth that set out the expected deliverables, payment schedules and conditions. Within the advertised range, the value of service contracts was negotiated with successful applicants and approved by the relevant delegate in the Department of Employment. In accordance with the *Commonwealth Procurement Guidelines*, unsuccessful tenderers were provided with feedback as to why they were unsuccessful against the selection criteria. The Department does not consider this programme would be appropriate for judicial review under the ADJR Act in light of these existing mechanisms.

The Local Employment Coordinator Flexible Funding Pool is not a competitive or public funding process. The Flexible Funding Pool is allocated to support the implementation of Local Employment Coordinators' Regional Employment Plans. Only Local Employment Coordinators can submit applications. Guidelines set out the parameters and operating arrangements to ensure the transparency and accountability of the expenditure of funds. Funding proposals are assessed by the Department of Employment. State Managers and the Employment Services Support Group Manager are the Delegates. The Local Employment

Coordinator Flexible Funding Pool guidelines include the following complaints handling process:

“In the first instance, any complaints regarding the Local Employment Coordinator Flexible Funding Pool application and approval processes are directed in writing to the relevant original decision maker, generally the relevant Delegate in the State Office. If the original decision maker is unable to resolve the matter to the satisfaction of the complainant, the complaint is referred in writing to the Employment Services Management Procurement Group Manager who will act as an impartial Review Officer.”

The Department does not consider this programme would be appropriate for judicial review under the ADJR Act given the non-competitive and collaborative nature of the programme and existing mechanisms for the handling of concerns.

Item 407.076 - Education and compliance activities

The spending decision associated with this programme involves payment of \$1.764 million per year from the Fair Work Ombudsman (FWO) as part of the Community Based Employment Advice Services (CBEAS) Programme. Under the CBEAS Programme, funding is provided via the FWO to five not-for-profit organisations operating in the Northern Territory, South Australia, Queensland, Western Australia and Victoria. These organisations provide free employment advisory services including practical and legal assistance to women on work related issues. Additional funding of \$0.25 million is also provided to the Queensland Working Women’s Service under the programme.

Given the spending activity is associated with funding not-for-profit organisations to provide free advisory services, and because the programme involves the allocation of finite resources to support such services across Australia, the Department does not consider this spending activity suitable for judicial review under the ADJR Act.

Item 407.077 - Labour Mobility and Relocation Assistance Initiative

The spending activity under Labour Mobility Relocation Assistance (also known as Move 2 Work) involves decisions made by employment services providers in accordance with programme guidelines. Employment services providers are selected through a competitive tender process that sought applications from potential service providers to deliver the full suite of government employment services to job seekers. These employment services providers are engaged through Funding Deeds which strictly govern their behaviour including complaints handling processes. Labour Mobility Relocation Assistance is an initiative under the broader package of government employment services and it provides financial assistance, up to \$6,500, to job seekers who relocate for permanent ongoing work or apprenticeship.

Employment services providers’ decisions under Labour Mobility Relocation Assistance initiative can be reviewed through the existing employment services formal internal and external mechanisms which can include the Department of Employment and the Department of Social Services and the Commonwealth Ombudsman. Given the existence of the above review mechanisms, that the initiative allocates finite resources and the fact that this initiative is part of the broader package of employment services, the Department does not believe it would be appropriate for this initiative to be subject to judicial review under the ADJR Act.

Item 407.082 - Experience + Work Ready

The Experience + Work Ready programme established a panel of expert providers through a competitive tender process that sought applications from potential panel members to provide intensive assistance to mature job seekers in a peer-based environment, engage effectively with employers to identify needs and place mature job seekers, and collaborate with other employment and training services to maximise outcomes. The Department alerted tenderers to its complaint handling process for purchasing under the Request for Tender, and that complaints would be referred to the Department's external probity advisor.

The Experience + Deed of Standing Offer (signed by successful tenderers) details the Service Guarantee and Code of Practice expected of providers. The providers are bound by strict rules in their deeds and associated guidelines regarding their behaviour and how they deal with job seekers, including in relation to complaints handling. Each individual participant who volunteers to participate in a project run by the providers receives information about the Service Guarantee and Code of Practice. The information allows participants who are not satisfied with the programme to provide feedback to the Department's Employment Services line or directly to the Work Ready Programme area.

The Work Ready Programme can be reviewed through the existing employment services formal internal and external mechanisms which can include the Department of Employment, or the Commonwealth Ombudsman. Given the existence of the review mechanisms, and support provided to individual participants, and the fact that this initiative is part of the broader package of employment services, the Department does not believe it would be appropriate for this initiative to be subject to judicial review under the ADJR Act.

Department of the Environment*Financial Management and Accountability Amendment Regulation 2013 (No. 5)*

Item 425.019	Destruction of ozone depleting substances and synthetic greenhouse gases
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The Department of the Environment has provided the following information for this item which was previously administered by the Department of Sustainability, Environment, Water, Population and Communities.

The *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (the Ozone Act) controls the manufacture, import, export, use and destruction of ozone depleting substances (ODS) and synthetic greenhouse gases (SGGs) and implements Australia's international obligations under the *Vienna Convention for the Protocol of the Ozone Layer* (the Vienna Convention), the *Montreal Protocol on Substances that Deplete the Ozone Layer* (the Montreal Protocol) and the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (the Kyoto Protocol). Destruction of SGGs contributes towards Australia's Kyoto Protocol targets, while ODS destruction meets Australia's commitments under the Montreal Protocol.

It is a condition of all import licences that the holder be a member of the Refrigerant Reclaim Australia (RRA) destruction scheme, or another approved product stewardship scheme. RRA operates the only approved scheme, which is an industry operated and funded destruction

scheme to recover and destroy ODS and SGGs recovered from the refrigeration and air conditioning sector. It currently has more than 500 collection points across Australia.

Refrigeration and air conditioning technicians are responsible for the collection of waste gas when servicing and decommissioning equipment. Prior to the commencement of the Destruction Incentives Program, technicians received a \$3.00 per kilogram payment from RRA for waste gas recovered and provided to RRA for destruction under the scheme (the \$3.00 per kilogram payment is funded by RRA's members). Under the Destruction Incentives Program, technicians receive an additional government incentive payment of \$1.50 per kilogram for waste SGGs and ODS returned to participating RRA wholesalers on or before 30 June 2014, with the additional incentive being paid through use of the existing RRA scheme. The incentive payment recognises that these technicians are the only entity in the gas recovery chain that has any direct influence over how much gas may be recovered for destruction. The aim of the incentive is to encourage the increased abatement of ODS and SGGs.

Item 425.019 relates to a spending decision involving the allocation of finite resources. All technicians that deliver recovered gas to RRA for destruction are paid the incentive under the Destruction Incentive Program (provided the cap for the program is not exceeded). Therefore, given the way in which the incentive is paid, merits review was not considered appropriate as the Destruction Incentives Program does not provide RRA with the discretion to decide to whom the incentive payments are to be made. As such, the payment of the incentive to technicians under the Destruction Incentives Program is not an administrative decision that would fall within the scope of the *Administrative Decisions (Judicial Review) Act 1977*.

Further, the Department notes that review and audit processes undertaken by the Australian National Audit Office provide a mechanism to review Government spending decisions and report any concerns to the Parliament. Government decisions to spend public money are also subject to rules in the *Financial Management and Accountability Act 1997*, the FMA Regulations and the requirements in the *Commonwealth Procurement Rules* and the *Commonwealth Grant Guidelines*. These assist in ensuring the proper use of Commonwealth resources but also that there is appropriate transparency around decisions relating to making, varying or administering arrangements to spend public money.

Department of Health

Financial Management and Accountability Amendment Regulation 2013 (No. 5)

Item 415.028	Chronic disease - treatment
Item 415.031	International policy engagement

The Department of Health has provided the following information for these items which were previously administered by the Department of Health and Ageing.

Item 415.028 - Chronic disease - treatment

Existing item 415.028 relating to chronic disease treatment was amended to provide legislative authority for payments to assist families and carers of people with cancer in addition to sufferers of cancer. Three programmes fall within this amended item, namely, the

Prostate Cancer Nurse Initiative; the McGrath Breast Care Nurse Initiative; and the Youth Cancer Services Initiative.

Prostate Cancer Nurse Initiative

In 2013-14, \$7.0 million was committed to fund the Prostate Cancer Foundation of Australia to expand the Prostate Cancer Specialist Nursing Programme by funding 10 full-time equivalent prostate cancer nurse positions (or 13 individual prostate cancer nurses where some positions are on a part-time basis) to provide vital information, care and support for up to 4,000 men and their families.

McGrath Breast Care Nurse Initiative

In 2013-14, \$19.5 million was committed to fund the McGrath Foundation to continue and expand the Breast Care Nurses programme, increasing the number of Commonwealth funded McGrath Breast Care Nurses from 44 to 57. Breast Care Nurses are specially trained, registered nurses who provide practical and emotional support to women with breast cancer, their families and carers.

Youth Cancer Services Initiative

The 2013-14 Budget allocated \$18.2 million to build and continue the Youth Cancer Networks Program for a further four years, with \$17.8 million committed to CanTeen. This funding will ensure the continued operation of Youth Cancer Services (YCS) which cover each State and Territory. The YCS programme aims to improve services, support and care for adolescents and young adults (15-25 years of age) with cancer, and improve the coordination of services, support and care to the individual and their families.

Programmes with respect to payments to assist families and carers of people with cancer (such as the Prostate Cancer Nurse Initiative, the McGrath Breast Cancer Nurse Initiative, and the Youth Cancer Services Initiative) are unsuitable for merits review, particularly because these programmes are budget initiatives funded by the Commonwealth to support organisations that already provide services to individuals, their families and carers. The funding is not provided by the Commonwealth to individual persons but to organisations that have approached the Commonwealth and the services provided by these organisations fall within the broader outcomes of the Department. A review which overturns the original decision to fund such organisations may affect allocations of funds that have already been made by those organisations to another party, particularly in circumstances where money has been allocated by those organisations to a third party service provider. As some of those funded organisations are acting benevolently, for charitable type purposes, the impact on the organisations and any party receiving the benefit of the programme may be significant.

Item 415.031 – International policy engagement

Existing item 415.031 relating to international policy engagement was amended to provide legislative authority for spending in relation to contributions made by the Government for conferences, forums and other events that promote Australia's health policies internationally. Payments made under this item also cover contributions to the World Health Organisation ('WHO') and other international organisations (comprising assessed contributions and voluntary contributions) in relation to health issues.

Decisions about allocation of funds with respect to programmes covered under item 415.031 in relation to payments by the Government for conferences, forums and other events that promote Australia's health policies internationally are policy decisions of a political nature that may affect Australia's relationship with other countries. The programmes that fall under this item do not involve decisions in relation to individual Australians or Australian organisations and therefore programmes covered under this item are not suitable for merits review.

Further, Government spending is reviewed by the Australian National Audit Office and decisions to spend public money are subject to rules in the *Financial Management and Accountability Act 1997* ('FMA Act') and FMA Regulations. As previously articulated by the former Minister for Finance and Deregulation, Senator the Hon Penny Wong, in her response to the Senate Standing Committee on Regulations and Ordinances, dated 10 December 2012, with respect to independent review of items in Schedule 1AA of the FMA Regulations, these above mechanisms '*not only help to ensure the proper use of Commonwealth resources, but also there is appropriate transparency around decisions relating to making, varying or administering arrangements to spend public money*'.

Department of Immigration and Border Protection

Financial Management and Accountability Amendment Regulation 2013 (No. 7)

Item 417.012	Asylum Seeker Assistance Scheme
Item 417.023	Bali Process Engagement and Regional Support Office
Item 417.029	Memoranda of Understanding with Foreign Nations
Item 417.030	Assisted Voluntary Return (AVR) Program
Item 417.031	Assisted Voluntary Return (AVR) Irregular Maritime Arrivals (IMAs) Program
Item 417.033	Legal Advice Scheme
Item 417.037	2011-2013 Irregular Migration Research Program
Item 417.038	Contract between the Commonwealth and Australian Red Cross Society in relation to Services for Restoring Family Links
Item 417.039	Memoranda of Understanding with State and Territory governments for the provision of policing services in, or in relation to, immigration detention facilities
Item 417.041	Citizenship program - promoting the value of Australian citizenship
Item 417.042	Regional Processing and Resettlement Arrangements

The Department of Immigration and Border Protection has provided the following information for these items which were previously administered by the Department of Immigration and Citizenship.

As the former Minister for Finance and Deregulation noted in her response to the Senate Standing Committee on Regulations and Ordinances, as a general proposition, spending decisions made under the *Financial Management and Accountability Act 1997* are not subject to review under the *Administrative Decisions (Judicial Review) Act 1977*.

The Department of Immigration and Border Protection confirms this view. None of the Department's expenditure items listed in Schedule 1AA of the *Financial Management and*

Accountability Regulations 1997 is subject to review under the *Administrative Decisions (Judicial Review) Act 1977*.

The Administrative Review Council has developed principles which it applies to each class of administrative decision to decide whether it should be subject to merits review. The Principles are outlined in the Council's publication *What decisions should be subject to merit review?* (1999).

According to that document, decisions relating to the allocation of a finite resource, where overturning the decision would impact another party to whom the resources have been allocated are not appropriate for merits review. This is because, amongst other things, no effective remedy could be provided, as a successful application for review by one entity would require a reduction in funding to other entities. Further, giving effect to a decision following a review would result in delays in channelling funds into service provision.

The Department's items listed in Schedule 1AA of the *Financial Management and Accountability Regulations 1997* are covered by this exemption. Accordingly, merits review is not appropriate for these expenditures.

Where merits review is not appropriate, enhanced administrative accountability in relation to the relevant decisions help to ensure that the process of allocating funds is fair, the criteria for funding are made clear; and decisions are made objectively. The requirements of the *Commonwealth Procurement Rules* and the *Commonwealth Grant Guidelines* are examples of enhanced administrative accountability for situations where merits review is not appropriate.

Outside of merits review, judicial review is available for all contracts arising from procurements, including where a process contract has been created by an approach to the market. Further, and more broadly, Commonwealth procurement and grant activities are also subject to review by the Auditor-General (ANAO) or the Commonwealth Ombudsman. These bodies have extensive powers to investigate a range of administrative matters including procurement and grant related complaints. In particular, the Commonwealth Ombudsman has the authority to make recommendations regarding process and related decisions but cannot overturn an agency's decision or specifically direct an agency.

Further information regarding the items is provided below.

Item 417.012 - Asylum Seeker Assistance Scheme

This programme's objective is to provide services to asylum seekers who are in financial hardship and who satisfy specific eligibility criteria. If an applicant meets all the eligibility criteria as stated in the programme guidelines, they receive the programme benefits. Departmental officers decide whether an applicant meets the eligibility criteria.

Item 417.023 - Bali Process Engagement and Regional Support Office

The Bali Process is a cooperative regional forum designed to raise awareness of the consequences of people smuggling, trafficking in persons and related transnational crime, and develop and implement strategies and practical cooperation in response. Bali Process and Regional Support Office activities are funded as part of Australia's regional cooperation

and capacity building engagement with the member countries and organisations of the Bali Process. This includes funding for the establishment and ongoing costs of a Regional Support Office (RSO) and related regional cooperation and capacity building activities coordinated by the RSO. Departmental officers make decisions in relation to funding.

Item 417.029 - Memoranda of Understanding with Foreign Nations

These memoranda relate to arrangements for mutual cooperation with foreign countries. Departmental officers make decisions in relation to funding.

Item 417.030 - Assisted Voluntary Return Program

Item 417.031 - Assisted Voluntary Return Irregular Maritime Arrivals Program

The Assisted Voluntary Return (AVR) service provides assistance to eligible clients who wish to depart to their country, but who are unable to do so without some level of support. The amount of AVR provided is determined on a needs basis in consultation with the client who can disengage at any time during the process.

Item 417.033 - Legal Advice Scheme

The Legal Advice Scheme was closed on 30 November 2013.

Item 417.037 - 2011-2013 Irregular Migration Research Program

The Irregular Migration Research Program seeks to identify and address the knowledge gaps in irregular migration research, with particular attention given to placing Australia's experience in the broader global and migration context. The program is designed to provide research and analysis that is responsive to government priorities and can inform policy development.

All procurement relating to this expenditure is subject to, and conducted in accordance with, the *Commonwealth Procurement Rules*. The appropriate Departmental officer makes the procurement decision.

Item 417.038 - Contract Between the Commonwealth and Australian Red Cross Society in relation to Services for Restoring Family Links

This is a voluntary service provided to any detainees who wish to avail themselves of it.

Item 417.039 - Memoranda of Understanding with State and Territory governments for the provision of policing services in, or in relation to, immigration detention facilities

All procurement relating to this expenditure is subject to, and conducted in accordance with, the *Commonwealth Procurement Rules*. The appropriate Departmental officer makes the procurement decision.

Item 417.041 - Citizenship program – promoting the value of Australian Citizenship

This programme provides for the purchase of goods and services which promote Australian Citizenship and which are conducted as procurement. It also includes two sponsorship agreements with the National Australia Day Council.

All procurement relating to this expenditure is subject to, and conducted in accordance with, the *Commonwealth Procurement Rules*. The appropriate Departmental officer makes the procurement decision.

Item 417.042 - Regional Processing and Resettlement Arrangements

The inclusion of item 417.042 in Schedule 1AA supports legislative amendments passed by Parliament in August 2012 and May 2013, respectively, in the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and the *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013* to support government offshore processing policy. Persons subject to transfer have access to Australian courts to challenge the legitimacy and lawfulness of their transfer. Processing of asylum claims in Nauru and Papua New Guinea is conducted under domestic law.

Department of Industry*Financial Management and Accountability Amendment Regulation 2013 (No. 5)*

Item 418.043	Square Kilometre Array Radio Telescope
Item 418.078	Latrobe Valley Economic Diversification Program

The Department of Industry has provided the following information for these items which were previously administered by the Department of Industry, Innovation, Science, Research and Tertiary Education.

Item 418.043 - Square Kilometre Array Radio Telescope

The amendment to item 418.043 ensures that future spending relating to Australia's responsibilities as a Host Country for the Square Kilometre Array (SKA) project has a legislative basis. The types of spending include membership fees for, and contributions to support, the international SKA organisation; grant funding to support the involvement of Australian organisations in the SKA project; establishing and maintaining the Australian SKA site; and promotional activities. The spending related to this item is not of a type that lends itself to merits review or ADJR Act consideration. If there are complaints about any expenditure under the program, the complainant is able to seek internal review by the Department at any time, or can make a complaint and seek review by the Commonwealth Ombudsman.

Item 418.078 - Latrobe Valley Economic Diversification Program

The departmental program under item 418.078 was known as the Briquette Replacement Program (BRP). The BRP has been discontinued, as announced in the 2013-14 Mid-Year Economic Fiscal Outlook. No funding has been paid under the program. All funds included

in the Budget for the BRP have been returned to Consolidated Revenue. Accordingly, there will be no expenditure decisions under this item.

Department of Social Services

Financial Management and Accountability Amendment Regulation 2013 (No. 5)

Item 410.027	External Merits Review - support component
Item 410.028	Royal Commission into Institutional Responses to Child Sexual Abuse - community-based support services

Financial Management and Accountability Amendment Regulation 2013 (No. 6)

Item 417.028	Building Multicultural Communities Program
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Financial Management and Accountability Amendment Regulation 2013 (No. 7)

Item 417.032	Australian Cultural Orientation Program
Item 417.034	Free Translating and Interpreting Services
Item 417.035	Ethnic Business Awards - sponsorship
Item 417.036	Harmony Day celebrations
Item 417.040	Human Rights Awards - sponsorship of the Young People's medal

The Department of Social Services has provided the following information for these items which were previously administered by the Department of Families, Housing, Community Services and Indigenous Affairs and the Department of Immigration and Citizenship.

Each of the items listed involves contractual arrangements as either grant funding programmes or procurements. Spending decisions in respect of each of these items are made in accordance with relevant obligations contained in the *Financial Management and Accountability Act 1997* and the FMA Regulations. This includes, where applicable, the requirements in the *Commonwealth Procurement Rules* or the *Commonwealth Grant Guidelines*.

Merits review has not been offered for decisions relating to making, varying or administering arrangements for these spending programmes as they involve a limited allocation of money. Once that allocation has been exhausted through contractual arrangements with successful applications, there is no further money available. This means that any merits review process would be of no benefit to unsuccessful applicants.

Advice previously provided by the then Minister for Finance and Deregulation to the Senate Standing Committee for the Scrutiny of Bills (dated 13 September 2012 and published in that Committee's *Eleventh Report of 2012* on 19 September 2012) and to the Senate Standing Committee on Regulations and Ordinances (dated 23 January 2013) applies to each of the listed items.



**Senator the Hon David Johnston
Minister for Defence**

MA13-004192

Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

RECEIVED
06 FEB 2014
Senate Standing C'ttee
on Regulations
and Ordinances

Dear Chair

Thank you for your letter of 5 December 2013 drawing the Judge Advocate General's attention to the Committee's Delegated Legislation Monitor No. 8 of 2013 (4 December 2013) and seeking clarification regarding the consultation requirements of the *Legislative Instruments Act 2003* (the Act).

I understand the Committee considered there was insufficient information in the explanatory statement for the *Court Martial and Defence Force Magistrate Amendment (Travel Expenses) Rules 2013* (the Rules) with respect to the reason why Defence considered consultation was unnecessary. The explanatory statement accompanying the Rules provided that 'consultation was considered unnecessary pursuant to section 18 of the [Act] because the Rule relates to the service of members of the ADF'.

The Committee, in noting that subrule 6(4) applies specifically to persons other than a defence member, queried whether the justification stated in the explanatory statement reflected the 'reasoning of the rule maker regarding the necessity or otherwise of consultation'. The Committee's query appears to be premised on the view that the subrule does not relate to the service of members of the ADF. While this may be technically correct, consultation was nevertheless considered unnecessary, as the Rules (and related amendments) in general relate to the service of members of the ADF. The purpose of the amendment to subrule 6(4) is to continue to provide for any persons (other than defence members) who are required to attend a court martial or Defence Force magistrate trial, a requirement that does in fact relate to the service of a member of the Defence Force.

Importantly (although not identified by the Committee), the Rules do not negatively affect a witness's rights – on the contrary, subrule 6(4) has a beneficial effect by clarifying and addressing the administrative procedure by which witnesses are funded or recompensed for the cost of their attendance at a court martial or Defence Force magistrate trial, which is consistent with the arrangements in the civil courts.

Nevertheless, I acknowledge that a more detailed explanation could have been provided in the explanatory statement. The explanation would have also noted that public consultation would not have been reasonably practicable, given that the subrule applies to any person (other than a defence member), and that, in any event, the amendment is of a machinery nature and does not substantially alter existing arrangements (as per paragraph 18(2)(a) of the Act).

I assure the Committee that in the future a more descriptive explanation of why consultation may have been considered unnecessary or inappropriate will be provided in explanatory statements accompanying those legislative instruments for which I have portfolio responsibility.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'David Johnston', with a stylized flourish at the end.

David Johnston

- 5 FEB 2014



**The Hon Kevin Andrews MP
Minister for Social Services**

Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 7560
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MN13-002249

Senator Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

RECEIVED

07 FEB 2014

Senate Standing C'ttee
on Regulations
and Ordinances

Dear Senator Edwards *Sean,*

Thank you for the letters of 25 October and 5 December 2013 drawing my attention to comments in the Committee's Monitor of 16 May and 4 December 2013.

I would like to thank the Committee for the comments that it provided. The Committee's views have resulted in improvements being incorporated in the current determination, which set deeming rates, and will be included in future determinations.

The Committee has requested that the explanatory statement for the Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2013 be updated with information outlining the basis for determining the deeming rates. However, the instrument has been revoked by the Social Security (Deeming Threshold Rates) Determination 2013 (No. 2) and consequently no longer has effect. It is unlikely that income support recipients would be accessing a revoked determination for information about how the deeming rates are set.

The Committee has also asked that the explanatory statement for the Social Security (Deeming Threshold Rates) Determination 2013 (No. 2) be updated with information outlining consultation, as set out in the *Legislative Instruments Act 2003*.

Information about financial returns that helps to inform the level of the deeming rates is publicly available. Changes to the deeming rates are promulgated when an instrument is published on the Federal Register of Legislative Instruments. Given the determination is machinery in nature, consultation about the rates is not necessary, under paragraph 18(2)(a) of the *Legislative Instruments Act*.

A change in deeming rates is a parameter change rather than a change in policy; that is, there is no change to the deeming provisions, rather, the change ensures the deeming rates reflect returns available in the market to people for their financial investments. To explain this, and so as to comply with the requirements of paragraph 26(1A)(e) of the *Legislative Instruments Act*, I have approved an amended the explanatory statement which will be registered on the Federal Register of Legislative Instruments.

Yours sincerely

Kevin Andrews
KEVIN ANDREWS MP