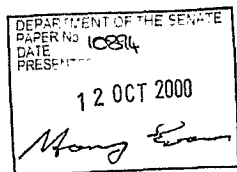




The Parliament of the Commonwealth of Australia



**Senate Standing Committee on
Regulations and Ordinances**

**109th Report
Annual Report 1999-2000**

October 2000

The Parliament of the Commonwealth of Australia

**Senate Standing Committee on
Regulations and Ordinances**

**109th Report
Annual Report 1999-2000**

October 2000

© Commonwealth of Australia 2000

ISBN 0 642 71105 4

Contents

	Page
Preface	
• Current Membership of the Committee	v
• Acknowledgments	v
Committee's Conclusions	vii
Chapter 1 - Parliamentary Scrutiny of Delegated Legislation	
• Delegated Legislation	1
• Regulations	1
• Disallowable Instruments	1
• Disallowance	2
• Re-making of regulations	2
• Unusual disallowance provisions	3
• Senate Standing Committee on Regulations and Ordinances	3
Chapter 2 - Overview and statistics	
• Overview	5
• Membership	5
• Independent Legal Adviser	5
• Statistics	5
• Ministerial Undertakings	7

Chapter 3 - Committee's scrutiny of instruments in 1999-2000	
• Committee's principles and approach	9
• Committee's Mode of Operation	10
• Scrutiny Statistics	11
• Persistent concerns raised in 1999-2000	11
• Specific concerns raised in 1999-2000	12
• Retrospectivity	13
• Delegations	13
• Merits review	15
• Strict liability offences	16
• Privacy considerations	17
• Terms and conditions of public sector employment	17
• Charges, fees, allowances and expenses	18
Chapter 4 - Notices of Motion to Disallow given in 1999-2000	21
Chapter 5 - Ministerial Undertakings	31
Appendix 1 - Miscellaneous instruments referred to in Chapter 1	47
Appendix 2 - Notices of motion to disallow 1999-2000	51
Appendix 3 - Undertakings from previous periods that were implemented in 1999-2000	55
Appendix 4 - Undertakings from previous periods that were not implemented as at 30 June 2000	59

Preface

Current Membership of the Committee

In 1999-2000, the membership of the Committee was as follows:

Senator Helen Coonan, New South Wales, Chair

Senator Andrew Bartlett, Queensland

Senator George Brandis, Queensland (from 8 June 2000)

Senator Joseph Ludwig, Queensland

Senator Jan McLucas, Queensland

Senator Brett Mason, Queensland

Former member

Senator Marise Payne, New South Wales (until 8 June 2000)

Acknowledgments

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

Senator Helen Coonan
Chair
October 2000

Committee's Conclusions

Explanatory Statements

The Committee re-iterates its view that all regulations and disallowable instruments should be accompanied by an explanatory statement that:

- provides a plain English explanation;
- states the authority for making the instrument;
- states the reasons for making the instrument;
- summarises the likely impact and effect;
- discusses any unusual aspects or matters that call for special comment;
- gives reasons for and basis upon which charges or fees have been increased or decreased;
- advises, where required, that consultation has taken place and the effect of that consultation;
- provides a detailed provision-by-provision description of the instrument; and
- is precise and informative.

(after paragraph 3.12)

Drafting defects

The Committee considers that many of the defects it finds in instruments should be detected before the instruments are tabled in the Senate. The frequency of these defects prompts the Committee to conclude that quality control procedures in some instrument-making agencies may be inadequate. Accordingly, the Committee intends to monitor the situation in order to assess whether a system of certification is appropriate.

(after paragraph 3.13)

Retrospectivity

The Committee considers that many of the concerns it raises on the retrospective application of instruments would be allayed if explanatory statements provided clear advice on the reasons for retrospectivity and an assurance that the rights of a person other than the Commonwealth, are not affected so as to disadvantage that person.

(after paragraph 3.20)

Timeliness of Ministerial Responses

The Committee encourages Ministers and Parliamentary Secretaries to reply promptly to Committee concerns. In most instances, this will then allow the Committee to finalise its scrutiny, without having to resort to the giving of a notice of motion to disallow. This will avoid disallowance action as well as confusion about the fate of a particular instrument.

(after paragraph 4.49)

CHAPTER ONE

PARLIAMENTARY SCRUTINY OF DELEGATED LEGISLATION

Delegated Legislation

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

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

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

- regulations, and
- disallowable instruments.

Regulations

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

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

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

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

Disallowable instruments

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

Disallowance

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

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

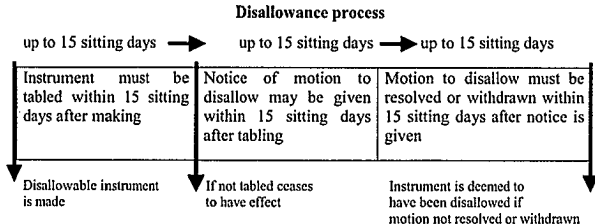
1.10 In effect, this subsection allows any member of the House of Representatives or senator, within 15 sitting days after tabling, to give notice of motion to disallow a regulation. However, in practice, it is unusual for regulations and other instruments to be disallowed in the House of Representatives.

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

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

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

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



Re-making of regulations

1.15 The same regulations cannot be remade:

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

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

Unusual disallowance provisions

1.16 Some instruments have unusual disallowance provisions that are peculiar to the Act under which they are made. Accordingly, the time for giving notice or resolving a notice may be varied in particular cases. For example, the time for giving notice and resolving the notice for amendments to the National Capital Plan, made under the *Australian Capital Territory (Planning and Land Management) Act 1988* is six sitting days.

Senate Standing Committee on Regulations and Ordinances

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

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

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

1.19 The Committee scrutinises each instrument to ensure:

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

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

CHAPTER TWO

OVERVIEW AND STATISTICS

Overview

2.1 As indicated in the previous chapter, the Regulations and Ordinances Committee scrutinises all disallowable instruments of delegated legislation to ensure their compliance with principles of personal rights and parliamentary propriety.

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

Membership

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

Senator Helen Coonan, Chair

Senator Andrew Bartlett

Senator George Brandis (39th Parliament - from 8 June 2000)

Senator Joseph Ludwig

Senator Jan McLucas

Senator Brett Mason

Senator Marise Payne (39th Parliament - 9 August 1999 to 8 June 2000).

Independent Legal Adviser

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

Statistics

2.5 During the year, the Committee scrutinised 1655 instruments, 17 less than in the previous financial year. The following table sets out the number and broad categories of these instruments:

Instruments examined by the Committee in 1999-2000	Number
Civil Aviation instruments	664
Statutory Rules	348
Public Service determinations	63
Veterans' Entitlements instruments	63
Defence determinations	60
National Health instruments	41
Customs instruments	39
Telecommunications instruments	31
Radiocommunications instruments	27
Native Title instruments	24
Higher Education instruments	20
Territory instruments	19
Health Insurance instruments	17
Life Insurance Prudential Rules	15
Miscellaneous	224
Total	1655

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

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

Proportion of Statutory Rules to other disallowable instruments

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

Ministerial Undertakings

2.8 During the year, Ministers and other officials undertook to amend or review several different instruments or parent Acts to meet the concerns of the Committee. Details of undertakings are given in Chapter 5.

CHAPTER THREE

COMMITTEE'S SCRUTINY OF INSTRUMENTS IN 1999-2000

Committee's principles and approach to delegated legislation

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

Principle (1): In accordance with the statute

Technical validity and effect

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

Possible breaches of parliamentary propriety

Drafting defects

Inadequate explanatory material

Proper numbering and citation.

Principle (2): Personal rights and liberties

Rights of individuals are protected

Unreasonable burdens are not placed on business

Fees, allowances and expenses are not unfair or unusual

Right to privacy is protected

Offence provisions include appropriate safeguards

Terms and conditions of public sector employment operate fairly.

Principle (3): Independent review of their merits

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

- commercial, livelihood and personal implications.

Express statement required that power must be exercised reasonably

Decision should be notified within 28 days

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

Principle (4): More appropriate for parliamentary enactment

Legislation that fundamentally changes the law

Legislation that is lengthy and complex

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

Legislation that is part of a uniform laws scheme.

Committee's Mode of Operation

3.2 All disallowable instruments of legislative character stand referred to the Committee. Each week, instruments lodged for tabling in the Senate are sent to the Committee's Legal Adviser who makes a formal written report on each instrument. The Secretariat also scrutinises and provides the Legal Adviser with comments on the instruments.

3.3 The Committee then considers the instruments as well as the Legal Adviser's report at meetings held each Senate sitting week. If an instrument causes the Committee concern, it agrees that the Chair should write to the responsible Minister seeking an explanation.

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

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

3.6 If the matter has not been resolved within the 15 sitting days in which a disallowance motion may be moved, the Chair, on behalf of the Committee, will give notice of motion to disallow the instrument, thereby giving the Committee and the Minister more time to resolve outstanding issues.

3.7 If a Minister fails to respond to the Committee's concerns within the 15 sitting days in which a disallowance motion may be moved, the Committee, in most instances, will give a notice of motion to disallow in order to protect its options and to give the Minister more time to respond.

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

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

Scrutiny Statistics

3.10 In 1999-2000, the Committee held 21 meetings, scrutinised 1655 instruments and raised concerns with 265 instruments. The Committee gave notice of motion to disallow 70 of the 265 instruments. During the reporting period, it withdrew notices on 68 instruments, one notice was transferred to the name of another senator and one remained to be resolved as at 30 June 2000.

3.11 The following Table provides an overview of the Committee's scrutiny of instruments over the last three reporting periods:

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

Persistent concerns raised in 1999-2000

3.12 In 1999-2000, a significant amount of the Committee's work centred on quality control concerns rather than substantive issues raised in instruments. For example, the Committee raised several concerns with Ministers about explanatory statements and, in particular:

- the failure to provide an explanatory statement with an instrument;
- inadequate explanatory statement that merely paraphrases the regulations rather than explain the effect of the regulations;
- the failure to provide an item by item explanation of each regulation; and
- the failure to explain key aspects of the regulations, for example, the reasons for an increase in fees or levies etc.

The Committee re-iterates its view that all regulations and disallowable instruments should be accompanied by an explanatory statement that:

- provides a plain English explanation;
- states the authority for making the instrument;
- states the reasons for making the instrument;
- summarises the likely impact and effect;
- discusses any unusual aspects or matters that call for special comment;
- gives reasons for and the basis upon which charges or fees have been increased or decreased;
- advises, where required, that consultation has taken place and the effect of that consultation;
- provides a detailed provision-by-provision description of the instrument; and
- is precise and informative.

3.13 On a number of occasions, the Committee also had to raise other fundamental drafting defects with Ministers, including:

- no numbering of an instrument;
- no clear authority on the face of the instrument for its making; and
- cross-referencing errors.

The Committee considers that many of the defects it finds in instruments should be detected before the instruments are tabled in the Senate. The frequency of these defects prompts the Committee to conclude that quality control procedures in some instrument-making agencies may be inadequate. Accordingly, the Committee intends to monitor the situation in order to assess whether a system of certification is appropriate.

Specific concerns raised by the Committee in 1999-2000

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

- retrospectivity;
- delegations;
- merits review;
- strict liability offences;
- privacy considerations;

- terms and conditions of public sector employment; and
- charges, fees, allowances and expenses.

Retrospectivity

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

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

3.17 For example, the Committee scrutinised **Determination No.1/1999 – Determination of Education and Courses** made under subsections 3(1) and 5D(1) of the *Student Assistance Act 1973*. This Determination specifies those education institutions and the courses offered that are approved for the purposes of the Act.

3.18 The Committee noted that despite having been made on 22 June 1999, the Determination was deemed to have commenced on 1 July 1998. Unfortunately, the Explanatory Statement did not provide any indication of whether this retrospectivity adversely affected any person other than the Commonwealth.

3.19 In response to the Committee's concern, the Minister assured the Committee that the retrospective application of the Determination is beneficial and there will be "no losers" under the new Determination.

3.20 The Committee raised concerns relating to retrospectivity with other instruments, including **Foreign Affairs and Trade Determination 1999/8, Superannuation (PSS) Membership Exclusion Declaration 1999, Statutory Rules 1999 No.168** and the **Fishing Levy Regulations 1999, Statutory Rules 1999 No.323**.

The Committee considers that many of the concerns it raises on the retrospective application of instruments would be allayed if explanatory statements provided clear advice on the reasons for retrospectivity and an assurance that the rights of a person, other than the Commonwealth, are not affected so as to disadvantage that person.

Delegations

3.21 Legislative instruments are generally void if they purport to subdelegate legislative power without the express authority of the Act.

3.22 The Committee noted that the **Commonwealth Authorities and Companies Amendment Orders 1999 (No.1)** and the **Financial Management and Accountability Amendment Orders 1999 (No.1)**, specify the requirements for the

financial statements to be prepared in relation to the financial years ending on or after 30 June 2000.

3.23 Item 3.1 of the Schedules to both these Orders not only permit the Finance Minister to grant an exemption from compliance with specified requirements of the Schedule, but also allow "a person authorised by the Finance Minister" to grant such exemptions.

3.24 The Committee was concerned that there was no indication of the source of the Finance Minister's power to authorise persons to undertake this responsibility in the Explanatory Statements, nor did there appear to be any provision in the enabling Act or in the Regulations made under that Act, which grants the Finance Minister this power.

3.25 Furthermore, the Committee inquired if there was such a power, did it allow the authorisation of a person to grant exemptions without, apparently, any restriction as to the qualifications or attributes of the authorised person.

3.26 The Minister for Finance and Administration provided a precise and thorough response to the Committee's concerns, identifying the source of authority for the delegation and the background to the exemptions. The Minister also advised the Committee that the delegation did not ordinarily specify the qualifications or attributes of authorised persons. Nevertheless, the practice adopted is to require an authorised person to be a member of either the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants in Australia.

3.27 The Committee is also interested in instruments that contain a wide delegation of powers. For example, the Committee noted that the **Patents Amendment Regulations 1999 (No.2)**, **Statutory Rules 1999 No.184** give the Commissioner of Patents a wide power of delegation to "an employee of the Patents Office, (a) holding or performing the position of Examiner of Patents; or (b) employed at any of the following levels; (i) Executive level 1 or 2; (ii) APS level 2, 3, 4, 5, or 6".

3.28 The Committee considered that this delegation would in effect allow the Commissioner to delegate his or her powers to every person employed in the Patents Office. Although the Explanatory Statement stated that the removal of local designations will not have any substantive effect on the way in which the power of delegation is exercised by the Commissioner, it did not advise why such a wide delegation of power was necessary.

3.29 The Committee was concerned that this wide power of delegation in the Regulations removes from the oversight of the Parliament the way in which that power is actually exercised. If there were administrative guidelines in place for determining the persons or classes of persons to whom delegations should be made, it may be appropriate to include those guidelines in legislation, and thereby give the Parliament the necessary oversight of those provisions.

3.30 In response, the Parliamentary Secretary to the Minister for Industry, Science and Resources advised that the power to delegate across a wide variety of classification levels is necessary, since there is considerable variance in the complexity of the tasks and functions that are delegated: some are of a less complex nature while others require the exercise of significant judgement and discretion.

3.31 The Parliamentary Secretary further advised that there are no written guidelines for delegations to APS levels 2 to 6 but the Commissioner will continue to exercise due care in delegating any powers or functions under the Act. In so doing, the Commissioner would carefully consider the nature of the power or function to be delegated, and the nature of the duties attached to the position.

Merits review

3.32 Delegated legislation often provides for discretions that may affect business operations or individuals. In such cases, the Committee considers that discretions should be limited and guided by objective criteria and subject to external review of their merits by an independent body, usually, the Administrative Appeals Tribunal (AAT).

3.33 The **Export Meat Amendment Orders 1999 (No.2)** provide the legislative support for a scheme to ensure that exports of meat and offal to the European Union are free of hormonal growth promotants. New Order 141F grants to the Secretary to the Department of Agriculture, Fisheries and Forestry a discretion in determining whether to accredit a property.

3.34 The Committee noted that the Amendment Order did not provide for any external merits review of the exercise of that discretion nor did the Explanatory Statement indicate whether the exercise of that discretion is subject to review under other provisions of the Order, the enabling Regulations or the parent Act.

3.35 In response to these concerns, the Minister for Agriculture, Fisheries and Forestry advised the Committee that the Prescribed Goods (General) Orders 1985 provide the right of review by the AAT of the Secretary's decision.

3.36 The Committee raised similar concerns with the Minister for Employment, Workplace Relations and Small Business following its scrutiny of the **Industrial Chemicals (Notification and Assessment) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.224**. These regulations make various changes to the level of fees to be charged for secondary notification assessments, and permit the waiver of some fees. In particular, the regulations give the Director of Chemicals Notification and Assessment a discretion in the remission or waiver of fees paid or payable under the Principal Regulations.

3.37 The Committee inquired of the Minister whether the exercise of that discretion was subject to external merits review by the Administrative Appeals Tribunal.

3.38 The Minister confirmed that these decisions were not reviewable by the AAT but gave the Committee an undertaking to amend the regulations to allow review of these decisions.

Strict liability offences

3.39 The Committee ensures that legislative instruments that include offence provisions provide for appropriate safeguards. In particular, the Committee monitors strict liability offences that do not require proof of intention but to which the common law defence of honest and reasonable mistake of fact applies, in order to ensure that instruments do not trespass unduly on personal rights and liberties.

3.40 The **Quarantine (General) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.308** seek to clarify and improve the provisions in the Principal Regulations relating to Quarantine Infringement Notices.

3.41 The Committee noted that the regulations provide that the offence created by subregulation 84(1) is one of strict liability, that is, it may be committed even in the absence of intention, recklessness or carelessness on the part of the alleged offender. In this instance, subregulation 84(1) creates the offence of giving a false or misleading answer to quarantine questions on an Incoming Passenger Card not only in respect of an answer given by an arriving passenger about him or herself, but also in respect of an answer given in relation to other persons. This appeared to place an unfair burden on a passenger who may unknowingly give false information about another person and the Committee sought advice as to whether strict liability should be imposed in these circumstances.

3.42 The Minister for Agriculture, Fisheries and Forestry explained that the strict liability offence was introduced to address specific concerns when tour leaders in an attempt to assist members of a group through the barriers quickly, will complete Incoming Passenger Cards (IPC) on behalf of members of the group. AQIS was prepared to allow this practice to continue as it can assist the smooth processing of large groups of passengers at the barrier, provided there is some guarantee about the integrity of the completed IPC. According to the Minister, the introduction of strict liability for providing false information on behalf of another person goes some way to provide this guarantee.

3.43 The Minister also advised the Committee that in most other situations, where a person signs on behalf of another person, there is usually a close relationship between the parties and in these cases the risk of false information being provided about the other person's luggage is minimal.

3.44 The Committee made similar inquiries of the Minister for Industry, Science and Resources following its examination of the **Petroleum (Submerged Lands)(Management of Environment) Regulations 1999, Statutory Rules 1999 No.228**. These regulations provide the regulatory framework for the management of environmental performance for Australian offshore petroleum exploration and production in areas subject to Commonwealth jurisdiction.

3.45 The Committee noted that regulation 38 provides that offences against the regulations are strict liability offences. However, the Explanatory Statement did not give any justification for this departure from the normal practice of liability for criminal offences being dependent on proof of intention or recklessness on the part of the accused.

3.46 The Minister responded, indicating that the offences have potentially serious safety, environmental and economic consequences and that carelessness or accidental environmental damage should not be a defence.

Privacy considerations

3.47 The Committee ensures that legislative instruments do not breach the basic right to privacy.

3.48 Among other things, the **National Health Amendment Regulations 1999 (No.8)**, **Statutory Rules 1999 No.289** allow certain information to be provided to the Private Health Insurance Administration Council. The Committee noted that the Explanatory Statement indicated that this provision is "an exception to the general obligation, contained in subsection 135A(1) of the parent Act, to observe secrecy in respect of any information concerning the affairs of a third person" The Committee thought it appropriate to make inquiries of the Minister whether the Privacy Commissioner was consulted before the regulation was made.

3.49 The Minister for Health advised that, in response to the Committee's concerns the Department sought the Privacy Commissioner's advice on the matter. This advice, a copy of which was provided to the Committee, confirmed that the information to be provided to the Private Health Insurance Administration Council did not involve disclosure of personal information.

Terms and conditions of public sector employment

3.50 The Committee ensures that the many legislative instruments that provide for public sector employment operate fairly and so will closely scrutinise instruments such as **Foreign Affairs and Trade Determinations**, **Locally Engaged Staff Determinations** and **Defence Determinations**.

3.51 Following major reforms in the Australian Public Service (APS) with the introduction of the *Public Service Act 1999*, the Committee scrutinised the **Public Service Regulations 1999**, **Statutory Rules 1999 No.300** and the **Public Employment (Consequential and Transitional) Regulations 1999**, **Statutory Rules 1999 No.301**. These regulations make necessary or appropriate provision in a range of matters to give effect to the *Public Service Act 1999*. Specifically, the regulations address matters such as the Code of Conduct, whistleblowers, terms and conditions of APS employment, review of APS promotion decisions and the role and functions of the Merit Protection Commissioner and the Public Service Commissioner.

3.52 The Committee raised several concerns with the Minister Assisting the Prime Minister for the Public Service and these included the following:

- the basis for an amount of 2 per cent as the maximum deduction that can be made from the salary of an APS employee as a sanction for the employee's breach of the Code of Conduct
- the suspension of an APS employee from duty by an Agency Head if the Agency Head not only believes, on reasonable grounds, that the employee has breached the Code of Conduct, but also if the Agency Head believes, on reasonable grounds, that the employee may have breached the Code of Conduct.
- the requirement that an Agency Head have regard to procedural fairness when exercising the powers of suspension from duty, but that such procedural fairness may be dispensed with if the Agency Head is satisfied on reasonable grounds that, in the particular circumstances, it would not be appropriate.
- the requirement that a Promotions Review Committee tell the relevant Agency Head of the decision arrived at after a review but this information does not have to be given in writing.
- a fee of \$35 is payable in connection with the making of deductions from salary in order to satisfy a judgment debt but there is no stipulation the person or body to whom the fee is payable.
- the disclosure of certain information about APS employees but no indication whether the Privacy Commissioner was consulted in the formulation of the subregulation.

3.53 The Minister provided the Committee with a comprehensive response addressing most of its concerns. However, the Committee had continuing concerns with four issues and sought further advice from the Minister. In a helpful reply, the Minister provided satisfactory responses to the Committee's queries and in relation to the transmission of Promotion Review Committee decisions to Agency Heads, agreed to amend the regulations to require decisions in writing.

3.54 The Committee also sought and received advice from the Public Service Commissioner on specific aspects of the **Public Service Commissioner's Directions 1999**.

3.55 Following the introduction of the *Parliamentary Service Act 1999*, the Presiding Officers made **Parliamentary Service Determination 1999/1** and **Parliamentary Service Determination 1999/2** in relation to Parliamentary Service employees and other matters. The Committee sought and received advice from the Presiding Officers on specific aspects of the Determinations.

Charges, fees, allowances and expenses

3.56 Several instruments provide for charges, fees, allowances and expenses. The Committee questions any aspects of these that appear unfair or unusual.

3.57 **The Superannuation (Excluded Funds) Supervisory Levy Imposition Amendment Regulations 1999 (No.2), Statutory Rules 1999 No.240** specifies the amount of the supervisory levy for the purposes of the enabling Act. The regulation also specifies a late lodgement amount, that is, the additional amount of levy payable for each month or part of a month by which the return is late. This amount is \$10. The Committee noted that if that amount is calculated as a percentage of the levy itself, which is \$45, the late payment penalty is 22.2% per month, or 266% per year. The Committee was therefore concerned that this may be an excessive penalty to impose. A supervisory levy has been imposed on all superannuation funds (including these self managed funds) since 1991. The levy aims to recover the costs of supervision of these funds.

3.58 In response, the Assistant Treasurer advised that the changes in the regulations, in fact, represent a significant reduction over the previous levy and late lodgment/payment penalties. Prior to the amendments the levy payable by the relevant funds was \$200, the late lodgment amount was \$25 per month and the late payment penalty was \$25 per month.

3.59 The Assistant Treasurer advised that while the amount of \$10 bears a higher proportion to the levy itself than was the case under the previous arrangements, this was not considered significant in the broader context of the overall reductions in the levy and associated penalties. The Assistant Treasurer added that, as was the case under the previous arrangements, it is necessary that the amount of the late lodgment amount and late payment penalty continues to be a significant incentive for funds to pay their levy on time.

3.60 The Committee applied similar principles of scrutiny when examining the **Family Law Amendment Rules 1999 (No.3), Statutory Rules 1999 No.279**. These Rules amend the Principal Rules in relation to the notification by a party's legal representative of the costs incurred, the scale of fees chargeable by solicitors and counsel and other minor matters.

3.61 The Committee noted that the Explanatory Statement to the instrument indicated that the "Scale of Costs has been increased by 4% as recommended by the Federal Costs Advisory Board". However, it did not advise when the Scale of Costs was last increased, thereby making an assessment of the appropriateness of the increase impossible.

3.62 In response to the Committee's query, the Chief Justice of the Family Court of Australia advised that the scale of costs is reviewed annually. The Committee concluded that this advice met its concerns.

CHAPTER FOUR

NOTICES OF MOTION TO DISALLOW GIVEN IN 1999-2000

Introduction

4.1 Section 48(4) of the *Acts Interpretation Act 1901* provides:

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

4.2 These provisions also apply to disallowable instruments under section 46A of the same Act.

4.3 Senate Standing Order 78 provides for the withdrawal of a notice of motion to disallow in the following terms:

A senator who wishes to withdraw a notice of motion standing in the senator's name to disallow, disapprove, or declare void and of no effect any instrument made under the authority of any Act which provides for the instrument to be subject to disallowance or disapproval by either House of the Parliament, or subject to a resolution of either House of the Parliament declaring the instrument to be void and of no effect, shall give notice to the Senate of the intention to withdraw the notice of motion.

4.4 As noted in the previous Chapter, the Committee raised concerns on 265 instruments. Of these, the Committee proceeded to give notice of motion to disallow 70 instruments. This compares with 12 in 1998-99 and 25 in 1997-98.

4.5 A list of the instruments that were the subject of a notice of motion to disallow appears at Appendix 2. In the following section of the report the Committee reviews its scrutiny of the following instruments:

- Australian Sports Drug Agency Drug Testing (Scheme A) Orders 1999 and the Australian Sports Drug Agency Regulations 1999, Statutory Rules 1999 No.159
- Customs (Prohibited Imports) Amendment Regulations 1999 (No.3), Statutory Rules 1999 No.202
- Northern Prawn Fishery Amendment Management Plan 1999 (No. NPF 02) made under the *Fisheries Management Act 1991*
- Notice of Amendment No.27 to the National Capital Plan made under the *Australian Capital Territory (Planning and Land Management) Act 1988*
- Great Barrier Reef Marine Park (Aquaculture) Regulations 2000, Statutory Rules 2000 No.6.

4.6 These instruments are of particular interest as they involved exchanges of correspondence between the Committee and Ministers as well as briefings by officers from relevant agencies before concerns were satisfied and notices withdrawn.

Australian Sports Drug Agency Drug Testing (Scheme A) Orders 1999 and the Australian Sports Drug Agency Regulations 1999, Statutory Rules 1999 No.159

4.7 These orders and regulations establish a single drug testing scheme and the administrative framework for the collection and sampling of drug tests performed on competitors in sport.

4.8 The aim of the legislation is to ensure that the Australian Sports Drug Agency has the ability to deliver a high quality and accessible anti-doping program to enable Australian sport to deter athletes from banned doping practices. In addition, the legislation also provides surety that important athlete rights are maintained throughout the drug testing process. This aspect was of particular interest to the Committee, namely ensuring natural justice is available to athletes subject to the requirements of anti-doping programs provided by the Agency.

4.9 The Committee had several concerns with these instruments, including:

- the distinction between drug control officials and chaperones;
- the reporting of personal interest;
- conditions of service of persons appointed by a sporting administrative body;
- discretion to use an interpreter;
- convening of meetings of the Australian Sports Drug Medical Advisory Committee;
- delegation of powers;
- substantial rather than strict compliance with Orders;
- collection of samples and compliance with any instructions given by a chaperone during the sample collection process;
- discretion to record information;
- discretion as to the instructions that may be given to the competitor;
- definition of a courier in the normal course of business as a secure means of transporting a sample to an accredited laboratory;
- definition of a secure place;
- testing of samples; and
- recording of information on a register and associated privacy considerations.

4.10 The Committee received a comprehensive response to these concerns from the Minister for Sport and Tourism, the Hon. Jackie Kelly MP. However, the Committee sought further advice on a number of issues with which it had continuing concerns.

4.11 The Minister made officers from the Australian Sports Drug Agency (ASDA) available to brief the Committee on the orders and regulations. The briefing proved to be informative and useful. The information provided by ASDA answered specific Committee concerns on the delegation of powers and functions to drug control officials and chaperones, the safe arrival of samples and the standards and procedures adopted by other countries and organisations.

4.12 In particular, the Committee discussed the possibility of amending the contract document to include a definition of gross negligence and a clause concerning indemnity protection under warranties. ASDA agreed that such amendments would be considered.

4.13 The Committee also suggested and ASDA agreed to consider amending the orders to replace the term "secure place" with "held securely".

4.14 The correspondence concerning these regulations and orders was incorporated into *Hansard* on 23 November 1999.

Customs (Prohibited Imports) Amendment Regulations 1999 (No.3), Statutory Rules 1999 No.202

4.15 In keeping with the government's commitment to deter the use of banned drugs in sport, the Minister for Justice and Customs, Senator the Hon Amanda Vanstone, introduced strategies to control the import of banned substances. The substance Erythropoietin, known as EPO, is one substance banned in sport that was identified as not being subject to import control under the current regulatory regime.

4.16 These regulations provide that the importation of EPO be prohibited unless the user has a genuine medical need substantiated by appropriate documentation from a medical practitioner. The Explanatory Statement indicated that EPO is a drug used in the treatment of serious medical conditions such as acute renal failure and HIV. A person who is a competitor or is travelling with a competitor and has a genuine medical requirement for EPO must have a permission to import EPO. There is a limited exception from the import controls where a passenger requires the substance for medical treatment and the import is supported by medical prescription.

4.17 This exception from the import control for personal importations by passengers is necessary given that EPO is a drug used in the treatment of serious medical conditions and there is no desire to adversely affect legitimate users of this drug. This exception will not apply where a competitor or person travelling with a competitor imports the substance. In such a circumstance, permission is still required.

4.18 The Committee's initial concerns related to the application of the regulations to anyone who comes to Australia as part of a competitor's entourage, even though the

person is bringing in no more than has been prescribed for him or her by a medical practitioner.

4.19 In reply, the Minister advised that the intent of the regulations was twofold.

Firstly, it is to enable legitimate users of EPO to retain their medication on arrival to Australia. The role of Customs staff in enforcing the restriction involves satisfying themselves that any arriving international traveller with EPO has a legitimate authority to possess it. This concession is designed as a "last minute" safeguard for those in need of the medication but who might not reasonably be expected to know of Australian requirements for the importation of EPO. The simple act of showing a routine prescription from a registered medical practitioner satisfies that test, for all travellers except the group mentioned below.

Secondly, the Regulation quite deliberately ensures that a competitor or those very closely associated with them may only import EPO on their arrival to Australia with the express permission of the Australian Therapeutic Goods Administration (TGA). That is, any athlete or their associates who have a genuine requirement for EPO is not denied access to and can readily obtain a Permit from TGA.

This latter mechanism was designed specifically to maintain the integrity of the Regulation, and only after exhaustive consultation with TGA, the Australian Sports Drug Agency (ASDA) and the Australian Sports Commission (ASC). Besides ensuring bona fide cases can import EPO, the Regulation will ensure that in Australia the appropriate sports agencies know that any competing athlete or someone associated with them, has access to EPO. It would then be up to the sports agencies to address any concerns they have in terms of doping risk or contraventions of doping policies.

4.20 The Minister advised that the regulations cover persons other than the competitor because it is expected that persons such as the athlete's coach, or manager or doctor are as knowledgeable about doping in sport as the athlete. The Minister also advised that any athlete or those associated with them who do seek permission from TGA should have informed their own national sports administration of their legitimate medical need for EPO, thus adding a further level of accountability and transparency to the process. The Minister concluded that the regulations therefore cover more than just the athlete to avoid a loophole that would allow the coach or manager to carry the EPO instead.

4.21 The Committee had continuing concerns with aspects of the instrument, including the following;

- the appropriateness of drawing a distinction between legitimate users and competitors or those very closely associated with them; and
- the meaning of "a person who has come to Australia for purposes relating to the performance of a competitor or the management of a competitor or a competitor's interests";

4.22 The Committee accepted the Minister's invitation for officers of Customs and the Therapeutic Goods Authority (TGA) to brief the Committee on its concerns.

4.23 At this briefing, the officers advised that the essence of this control is to minimise inconvenience or concern for those with a legitimate need to use EPO while meeting other policy imperatives in relation to drugs in sport.

4.24 The officers advised that the regulations effectively prohibit the importation of EPO and, as in the case of all Schedule 4 drugs and antibiotics, this prohibition does not apply if the importer, including a competitor, has a permit from TGA and shows it at an entry point to Australia. The officers indicated that the prohibition does not apply if an international passenger imports EPO and can produce evidence that the EPO was prescribed by a doctor, and the quantity is not commercial. This concession, however, does not apply to a competitor or someone closely associated with a competitor. Restricting the rules to athletes alone would ignore the reality of professional sport where coaches, managers and others are a significant part of an athlete's performance.

4.25 The officers emphasised that the rules have two aims. First, they establish a mechanism where those with a legitimate need to use EPO can satisfy Customs. Secondly, the Rules meet government and community expectations about drug free sport and a clean Olympic Games.

4.26 The Committee noted that Customs and sports agencies have initiated extensive campaigns to educate passengers and particularly visitors to the Olympics about Australia's requirements in terms of importing drugs. These campaigns have extended to all national Olympics committees.

4.27 The briefing was useful and on the basis of additional advice and information, the Committee withdrew its notice of motion to disallow. Correspondence on this matter was incorporated into *Hansard* on 6 December 1999.

Northern Prawn Fishery Amendment Management Plan 1999 (No. NPF 02) made under the *Fisheries Management Act 1991*

4.28 The Northern Prawn Fishery Amendment Management Plan 1999 (No. NPF 02) was made under subsection 20(1) of the *Fisheries Management Act 1991*. This amendment to the Plan changes the method of controlling fishing in the Fishery from one based on boat dimensions to one based on catching capacity.

4.29 Following its scrutiny of this plan the Committee sought advice on the following four matters.

4.30 First, the Committee queried whether it would be more appropriate for this matter to be dealt with by parliamentary enactment rather than regulation. In response, the Minister for Agriculture, Fisheries and Forestry, the Hon Warren Truss MP, provided a comprehensive review of the functions of the Australian Fisheries Management Authority (AFMA), its legislative base, and the processes associated with the development of management plans and, in particular, the Northern Prawn Fishery. He concluded:

In summary, Parliament has put in place legislation establishing a statutory authority, AFMA, to manage Commonwealth fisheries. The legislation includes comprehensive review rights and provides for Executive and Parliamentary scrutiny. It is appropriate therefore to use regulation rather than parliamentary enactment.

4.31 Secondly, the Committee sought advice on the extent to which, as indicated in the Regulation Impact Statement, "some fishers would be more proportionally disadvantaged than others" and the impact on the viability of their fishing operations. In response, the Minister provided the committee with detailed information on this matter and added:

It is recognised that under the amendment very small operators (less than 300 Class A SFRs) will have their headrope length reduced by, on average, about 29 percent. To provide some opportunity for these operators to adjust their business operations over a period of time these very small operators will be provided with "top up" SFRs free of all charges for two years. These small operators will be issued with sufficient top up SFRs to enable them to tow 30 metres of headrope which is in line with their current fishing practises.

4.32 Thirdly, the Committee sought advice on the extent of the consultation process, including the participation of individual fishers. The Minister provided advice on the development of the Plan since 1991, the work of the Northern Prawn Fishery Management Advisory Committee (NORMAC), consultations with the industry, independent experts and individual operators.

4.33 Fourthly, the Committee inquired whether the Plan might trespass unduly on personal rights and liberties and, in particular, whether the instrument that affects a person's livelihood and ability to carry on a business is fair. The Minister again responded in detail, concluding:

All fisheries management decisions restrict in some way a person's rights and liberties. AFMA, in pursuing its statutory objectives and acting in accordance with the consultative procedures in its legislation, is ensuring that any such restriction is no more than was intended by Parliament in enacting the Administration and Management Acts.

4.34 The Committee received correspondence on this instrument from interested parties and sought a briefing with officers of the Australian Fisheries Management Authority.

4.35 The Committee withdrew its notice of motion to disallow on 16 March 2000. Correspondence between the Minister and the committee was incorporated in *Hansard* on the same day.

Notice of Amendment No.27 to the National Capital Plan made under the Australian Capital Territory (Planning and Land Management) Act 1988

4.36 Under the *Australian Capital Territory (Planning and Land Management) Act 1988* amendments to the National Capital Plan are disallowable instruments and either

House may give notice to disallow them within 6 sitting days of tabling Amendment No. 27 to the National Capital Plan was tabled on 6 March 2000.

4.37 As it did not have an opportunity to scrutinise the instrument and in order to protect its options in relation to this instrument, the Committee gave notice of motion to disallow the instrument. This would give it sufficient time to properly consider the instrument.

4.38 It did this promptly, seeking advice from officers of the National Capital Authority and in particular, the legislative authority to close areas of Commonwealth land for specified periods and to charge entrance fees. It concerns were addressed by *the officers and the notice was withdrawn at the earliest opportunity.*

Great Barrier Reef Marine Park (Aquaculture) Regulations 2000, Statutory Rules 2000 No.6

4.39 The Explanatory Statement to the Regulations indicates that waste water and other materials from aquaculture operations bordering the Great Barrier Reef Marine Park may flow into the Marine Park either directly or indirectly. This in turn may alter the water quality of the Marine Park or introduce organisms into the Marine Park or both. Even increases in the temperature of receiving waters can affect changes in the ecology of the receiving waters, promoting growth of organisms which might not normally survive in that environment. These cumulative and immediate changes can, if not adequately regulated, have direct and indirect effects on the animals and plants in the Marine Park, where the discharge enters the waters of the Marine Park or mixes with waters which are coextensive with the Marine Park.

4.40 Sub-section 66(1) of the *Great Barrier Reef Marine Park Act 1975* provides for the making of regulations “regulating or prohibiting acts (whether in the Marine Park or elsewhere) that may pollute water in a manner harmful to animals and plants in the Marine Park”. These regulations apply to acts which, if not properly regulated, will pollute water in a manner harmful to animals and plants in the Marine Park.

4.41 The Committee raised several concerns with the regulations including;

- the publication of the reasons for the Minister’s decision to accredit a Queensland law;
- revocation of the accreditation of a Queensland law not to take effect for up to a year after notice of the revocation has been given;
- possible retrospectivity;
- no definition of what constitutes “significant” in order to determine whether “the volume of aquaculture waste discharged is significantly increased” and, “the nature or composition of the aquaculture waste discharged alters in a significant way”;

- possible ousting of the judicial function of deciding whether a criminal offence has been committed.

4.42 In a comprehensive response, the Minister for the Environment and Heritage, Senator the Hon. Robert Hill answered many of the Committee's concerns. However, the Committee had continuing concerns particularly with the issue relating to the definition of "significant".

4.43 In his response, the Minister provided the following advice on this matter.

In respect of sub-regulation 11(1)(b), the phrase "significant way" is qualified by the words "that is, a way that makes the waste significantly more likely to pollute water in a way harmful to animals and plants in the Marine Park, or that makes the waste significantly more harmful to such animals or plants". In the case of both subregulations 11(1)(a) and (b), the Authority has developed administrative arrangements for the determination of "significance". Details of these administrative arrangements are available to operators. Operators are able to gain increased operational certainty through contacting the Authority for advice under subregulation 11(4) and seeking copies of the administrative arrangements. Criminal liability for discharging aquaculture waste into the Marine Park without a permission or satisfying one of the other exemptions provided for in the Aquaculture Regulations, is contained in regulation 9. Reference is specifically made to regulation 9 in subregulation 11(1), and sub-regulation 9(2) expressly provides that the prohibition contained in that provision is subject to Part 3. The Aquaculture Regulations already provide operators with sufficient notice of the criminal liability provisions.

4.44 The Committee had continuing concerns that these administrative arrangements would appear to have the same authority as the Regulations. The Committee considered that it would be more appropriate for such a definition to be contained in the Regulations and not in administrative arrangements.

4.45 In response, Minister Hill provided the following advice on the administrative arrangements:

The criteria contained in the administrative arrangements for determining the significance of environmental impacts on the receiving zone must be broad. This is to give decision-makers the capacity to have regard to all the varying characteristics of the specific receiving zone being considered. For example, the environmental sensitivity of the receiving zone may change over time, particularly with regard to assimilative capacity and dilution criteria, and these changes need to be considered on a case by case basis.

4.46 The Minister made officers from the Great Barrier Reef Marine Park Authority available to brief the Committee by teleconference call on the regulations. The briefing proved to be informative and useful.

4.47 At the briefing, the Committee sought copies of the criteria referred to in the Minister's correspondence and, having considered them, remained convinced that the regulations should include a definition of what is a significant increase or change. This definition could be based on the criteria currently contained in the administrative arrangements, which the Committee found to be clear and comprehensive.

4.48 On 29 June 2000, Minister Hill informed the Committee that he was prepared to give an undertaking to address the Committee's concerns in relation to this matter. On the same day, the Committee withdrew its notice of motion to disallow. The correspondence concerning these regulations was incorporated into *Hansard* on 29 June 2000.

Timeliness of Ministerial Responses

4.49 An analysis of the 70 instruments on which the Committee gave notice of motion in 1999-2000 indicates that:

- replies from Ministers on 56 instruments were not received within the 15 sitting days in which notice of motion to disallow must be given, and so the Committee gave notice to protect its options;
- if replies on 45 of the 56 instruments had been received during the 15 sitting days, the Committee would not have proceeded with its notices of motion to disallow.

The Committee encourages Ministers and Parliamentary Secretaries to reply promptly to Committee concerns. In most instances, this will then allow the Committee to finalise its scrutiny, without having to resort to the giving of a notice of motion to disallow. This will avoid disallowance action as well as confusion about the fate of a particular instrument.

CHAPTER 5

MINISTERIAL UNDERTAKINGS

Introduction

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

Ministerial undertakings given in 1999-2000

5.2 In 1999-2000, Ministers gave undertakings on the following 17 instruments.

*Australian Sports Drug Agency Drug Testing (Scheme A) Orders 1999 made under regulation 7 of the Australian Sports Drug Agency Regulations 1999

*Australian Sports Drug Agency Regulations 1999, Statutory Rules 1999 No.159

*Foreign Affairs and Trade Determination 1999/8

*Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.66

*Territory of Cocos (Keeling) Islands Electricity Fees/Tariffs Determination and Water Consumption Fees Determination

Air Navigation (Fuel Spillage) Regulations 1999, Statutory Rules 1999 No.91

Great Barrier Reef Marine Park (Aquaculture) Regulations 2000, Statutory Rules 2000 No.6

Hazardous Waste (Regulations of Exports and Imports) (Decision IV/9) Regulations 1999, Statutory Rules 1999 No.102

Health Insurance Amendment Regulations 1999 (No.5), Statutory Rules 1999 No.176

Industrial Chemicals (Notification and Assessment) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.224

Lists of Acts of the Western Australian Parliament in force in the Territories of Christmas Island and Cocos (Keeling) Islands

Marine Orders Part 9 - Health - Medical Fitness - Issue 5, Marine Order No.22 of 1999

Marine Orders Part 47 - Mobile Offshore Drilling Units - Issue 2, Marine Order No.1 of 2000

Marine Orders Part 60 - Floating Offshore Facilities - Issue 1, Marine Order No.2 of 2000

Patents Amendment Regulations 1999 (No.4), Statutory Rules 1999 No.349

Public Service Regulations 1999, Statutory Rules 1999 No.300

Veterans' Entitlements (Special Assistance) Regulations 1999, Statutory Rules
1999 No.319

[* The undertakings on these instruments were implemented in 1999-2000]

Previous undertakings

5.3 Twenty-six previous undertakings were implemented in 1999-2000. These appear at Appendix 3.

5.4 There were 16 undertakings that remain outstanding as at 30 June 2000. These are listed in Appendix 4.

Detailed summary of all undertakings

5.5 The following table provides detailed information on all undertakings.

Table: Ministerial undertakings to amend legislation

Instrument	Date Undertaking Given	Undertaking	Implemented by
Agriculture, Fisheries and Forestry			
Australian Dried Fruits Board (AGM) Regulations, Statutory Rules 1993 No.144	4 July 1996	To repeal inoperative Regulations	Agriculture, Fishery and Forestry Redundant Regulations (Repeal), Statutory Rules 1999 No.158 of 21 July 1999.
Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998, Statutory Rules 1998 No.202	18 September 1998	To amend the Regulations to limit intrusive provisions to more serious cases (6(1)(d), 6(1)(c), para 8(a) and (b), 10(2)(b), 13(c) to offences for which the maximum penalty is a period of imprisonment or a \$1000 fine); and to remove the discretion to delegate powers of the Secretary (r.14).	Australian Meat and Live-stock Industry (Export Licensing) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.177 of 25 August 1999.
Direction No.NPFD 25 made under subsection 17(5A) of the <i>Fisheries Management Act 1991</i>	10 June 1999	To amend the Determination to correct cross-referencing errors (para 7(a) should refer to Schedule 3 and not Schedule 2; and para 7(b) should refer to Schedule 4 and not Schedule 3)	Direction No.NPFD 29 made under subsection 17(5A) of the <i>Fisheries Management Act 1991</i> , of 28 September 1999.
Export Inspection and Meat Charges Collection Regulations (Amendment), Statutory Rules 1995 No.257	30 November 1995	To amend the Regulations to provide for merits review.	Export Inspection and Meat Charges Collection Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.178 of 25 August 1999.
Northern Prawn Fishery Management Plan 1995, Direction No. NPFD 17	25 June 1998	Amend Direction 17 to remove a strict liability provision (subclauses 4.2 and 4.3)	Outstanding at 30 June 2000. (It should be noted that the undertaking was implemented on 6 July 2000.

Order No.LC2/98 made under s.17 of the <i>Australian Meat and Live-stock Industry Act 1997</i>	12 January 1999	To take Committee's concerns into account when Order is rewritten - paragraphs 4(a), 4(e) and (f) and subparagraph 4(c)(iii).	Australian Meat and Live-stock Industry (Export of Cattle) Amendment Order 1999 (No.LC1/99) of 24 November 1999.
Primary Industries Levies and Charges Collection (Oilseed) Regulations (Amendment), Statutory Rules 1998 No.153 and Primary Industries Levies and Charges Collection (Grain Legumes) Regulations (Amendment), Statutory Rules 1998 No.154	8 October 1998	To amend the Regulations to correct a technical error (rr.3A and 3B)	Repealed by Primary Industries Levies, Charges and Collection Regulations (Repeal) 1999, Statutory Rules 1999 No.304 of 8 December 1999.
Quarantine (General) Regulations (Amendment), Statutory Rules 1997 No.85	25 August 1997	To amend the Regulations to provide safeguards for administrative penalties.	Quarantine (General) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.308 of 8 December 1999.
Attorney-General's Department			
Customs Regulations (Amendment), Statutory Rules 1998 No.38	7 July 1998	To amend the Regulations to provide that public officials must make a decision within 21 days (r.72) and take into account objectively rather than subjectively relevant information (r.74A(5)(b)).	Outstanding as at 30 June 2000. Minister advised on 15/3/2000 that the regulations would be amended after the passage of the Customs (Warehouse) and Import Process Charges (Warehouse) amendment Bills 1999. These Bills were still before the Parliament at 30 June 2000.

Family Law Regulations (Amendment), Statutory Rules 1996 No.71	10 September 1996	To amend the Regulations to provide for Administrative Appeals Tribunal review of discretions concerning the authorisation of a person to offer family and child counselling under r.57.	The Attorney-General advised on 19 May 1999 that the approval/authorisation regime was being reviewed. If the outcome of the review requires regulations to continue to make provision for authorisation of counsellors, mediators and organisations, new regulations will be made to make those decisions reviewable by the AAT.
National Crime Authority Regulations (Amendment), Statutory Rules 1996 No.286	24 July 1997	To amend the Act to include an appropriate safeguard (s.31)	Outstanding as at 30 June 2000. The Minister advised on 31 May 2000 that the amendment would be included in a Bill scheduled for introduction later in 2000.
National Native Title Tribunal Regulations 1998 (No.3), Statutory Rules 1998 No.281.	16 February 1999	To amend the Regulations to provide for review by the Administrative Appeals Tribunal of a decision to refuse to waive fees.	Native Title (Tribunal) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.309, of 8 December 1999.
Communications, Information Technology and the Arts			
Radiocommunications (Compliance Labelling - Incidental Emissions) Notice 1998	20 April 1999	To amend the Labelling Notice to include a note advising suppliers that they can apply for a permit if a competent body determines their device to be non-standard.	Outstanding as at 30 June 2000. (It should be noted that the undertaking was implemented on 11 August 2000.)

Education, Training and Youth Affairs			
Guidelines T6-98 made under the <i>Higher Education Funding Act 1988</i> (Merit-Based Equity Scholarships Scheme)	19 May 1998	To amend the Guidelines to ensure that institutions are required to comply with provisions of the <i>Privacy Act 1988</i> .	Minister advised on 28 April 1999 that the undertaking would be fulfilled when the Guidelines were reissued following a policy change or when other circumstances created a need for change. No Guidelines have been reissued as at 30 June 2000
Employment, Workplace Relations and Small Business			
Industrial Chemicals (Notification and Assessment) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.224	22 November 1999	To amend regulation 17 of the Principal Regulations to provide for review by the AAT of decisions made under subregulation 15(6) and regulation 16A	Outstanding as at 30 June 2000.
Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.66	6 July 1999	To amend the Regulations to provide for merits review of a decision (r.6.16D) of the Safety, Rehabilitation and Compensation Commission under subregulation 6.16B(1) and to include a requirement in paragraph 6.16B(2)(a) for the Commission to give notice of reasons for its decisions under that paragraph.	Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 1999 (No.3), Statutory Rules 1999 No.189 of 25 August 1999.
Environment and Heritage			
Great Barrier Reef Marine Park (Aquaculture) Regulations 2000, Statutory Rules 2000 No.6	29 June 2000	To amend the Regulations to include criteria for determining the environmental significance of the impact of a discharge; and to include a broad time limit under paragraph 26(2)(a).	Outstanding as at 30 June 2000.

Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999, Statutory Rules 1999 No.102	23 September 1999	Amend the enabling Act to reflect changes made by the regulations.	Proposal to introduce legislation in spring sittings 2000.
Family and Community Services			
Childcare Assistance Immunisation Requirements IMCA/12G/98/3 made under s.12H of the <i>Child Care Act 1972</i>	19 January 1999	To include review rights for parents in relation to the link between the proposed Child Care Benefit and immunisation in the proposed Family Assistance Act.	<i>A New Tax System (Family Assistance Administration) Act 1999</i> of 8 July 1999.
Finance and Administration			
Financial Management and Accountability Orders (Amendment) 1998 made under paragraph 63(1)(b) of the <i>Financial Management and Accountability Act 1997</i>	11 March 1999	To amend the Orders to clarify that they do not place any express obligation on Commonwealth Authorities and Companies (CAC) bodies to insure with Comcover.	Repealed by Financial Management and Accountability Orders (Amendment) (No.2) made under paragraph 63(1)(b) of the <i>Financial Management and Accountability Act 1997</i> , of 9 August 1999.
Tenth Amending Deed to Establish an Occupational Superannuation Scheme for Commonwealth Employees and Certain Other Persons	7 August 1996	To amend the <i>Superannuation Act 1990</i> to validate administrative actions.	The Minister advised on 17 April 2000 that the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1998 had been introduced and passed by the House of Representatives and was still to be considered by the Senate. The Bill was still before the Senate at 30 June 2000.

Foreign Affairs			
Foreign Affairs and Trade Determination 1999/8	28 September 1999	To amend Determination to overcome possible retrospective transitional provisions.	Foreign Affairs and Trade Determination 1999/17 of 27 September 1999.
Health and Aged Care			
Accountability Principles and Accreditation Grant Principles made under the <i>Aged Care Act 1997</i>	13 April 1999	To provide for the following matters in the full version of the Principles. Accountability Principles To require oral notice and a letter giving notice of intended access to refer to the fact that failure to consent could lead to sanctions action (s.1.7 and s.1.7(2)). To require a letter of authority identifying a representative also to state that a consequence of failure to consent to access could, in some circumstances, lead to sanctions action (s.1.9) Accreditation Grant Principles To specify qualifications of assessors.	Accountability Amendment Principles 1999 (No.1) made under the <i>Aged Care Act 1997</i> , of 2 September 1999. Accreditation Grant Principles 1999 made under the <i>Aged Care Act 1997</i> , of 2 September 1999.
Australian Radiation Protection and Nuclear Safeguards Regulations 1999, Statutory Rules 1999 No.37	14 May 1999	To amend the Regulations to affirm the declaratory power of the Chief Executive Officer to determine which radiation facilities are prescribed (subregulation 6(5)).	Outstanding as at 30 June 2000.

Health Insurance Amendment Regulations 1999 (No.5), Statutory Rules 1999 No.176	15 February 2000	To back date the commencement date of amendments made to paragraphs 10(1)(a) and (b) (from 1 September 1999 to 1 March 1999) to validate any payments made for claims for services in respect of particular Computed Tomography (CT) scans requested by dental practitioners in the period 1 March to 31 August 1999 and performed on machines over 10 years of age.	Outstanding as at 30 June 2000.
Health Insurance (1998-99 Diagnostic Imaging Services Table) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.20	2 June 1999	To amend the Regulations to make it clear that the regulations were not intended to provide a discretion (subrule 9A).	Health Insurance (1999-2000 Diagnostic Imaging Services Table) Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.59, of 27 April 2000.
Therapeutic Goods (Charges) Amendment Regulations 1998 (No.2), Statutory Rules 1998 No.260	11 March 1999	To amend the Regulations to prescribe a time limit (40 days) in which a decision must be made (subregulation 4C(3)).	Outstanding as at 30 June 2000.
Industry, Science and Resources			
Australian Sports Drug Agency Regulations (Amendment), Statutory Rules 1996 No.72	12 December 1996	To amend the Regulations to protect the rights of intellectually disabled competitors, to provide for companies to apply to because a prescribed courier service and to provide for Administrative Appeals Tribunal review of decisions.	Australian Sports Drug Agency Regulations 1999, Statutory Rules 1999 No.159 of 21 July 1999.

<p>Australian Sports Drug Agency Regulations 1999, Statutory Rules 1999 No.159</p>	<p>30 September 1999</p>	<p>Amend subregulations 18(2) and (3) to ensure the Agency is required to make all reasonable efforts to ensure that its request is understood when a competitor is unable to receive or understand a request or unable to understand English. Include in the regulations the laboratory practices for the handling of sample B after the test of sample A.</p>	<p>Australian Sports Drug Agency Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.87 of 25 May 2000.</p>
<p>Australian Sports Drug Agency Drug Testing (Scheme A) Orders 1999 made under regulation 7 of the Australian Sports Drug Agency Regulations 1999</p>	<p>30 September 1999 and 22 November 1999</p>	<p>Amend subsection 10(2) of the Orders to provide that the instruction by a chaperone during the sample collection process must be relevant to the process. Amend subsections 28(7) and (8) to make it clear that the outcome must be a valid sample in a secure bottle. Amend subsection 49(2) to link a deemed courier with the prescribed courier services referred to in regulation 86 of the Principal Regulations. Amend subsection 51(2) to read 'held securely' instead of a 'secure place'.</p>	<p>Australian Sports Drug Agency Drug Testing (Scheme A) Amendment Orders 2000 (No. 1) under regulation 7 of the Australian Sports Drug Agency Regulations 1999, of 11 May 2000.</p>
<p>Patents Amendment Regulations 1999 (No.4), Statutory Rules 1999 No.349</p>	<p>14 March 2000</p>	<p>To amend regulation 20.9 of the Trade Marks Regulations to make it consistent with regulation 20.19A following a further amendment of that regulations in the Patents Regulations.</p>	<p>Outstanding as at 30 June 2000.</p>

Trade Marks Amendment Regulations 1998 (No.4), Statutory Rules 1998 No.346	23 March 1999	To redraft r.20.9 to make it consistent with r.20.19A of the Patents Regulations to provide a protective safeguard for patent and trade mark attorneys.	Trade Marks Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.153 of 7 July 1999.
Prime Minister and Cabinet			
Public Service Regulations 1999, Statutory Rules 1999 No.300	16 March 2000	To amend subregulation 5.18(2) to require a Promotion Review Committee to advise the Agency Head of the decision in writing.	Outstanding as at 30 June 2000.
Transport and Regional Services			
Air Navigation Amendment Regulations 1998 (No.1), Statutory Rules 1998 No.321	9 March 1999	To clarify the safeguards for identity cards (to be included in a note to r.297PB - since renumbered to r.35)	Outstanding as at 30 June 2000. Minister advised on 14 August 2000 that safeguards will be clarified in new aviation security regulations currently being developed which should be finalised by the end of January 2001.
Air Navigation (Fuel Spillage) Regulations 1999, Statutory Rules 1999 No.91	4 August 1999	Amend paragraph 16(2)(b) of the Principal Regulations to provide for AAT review of a Secretary's decision to withdraw or not withdraw a grounding notice.	Outstanding as at 30 June 2000.
Airports (Environment Protection) Amendment Regulations 1998 (No.3), Statutory Rules 1998 No.349	16 March 1999	To amend the Regulations to provide for a reasonable period for reporting (r.6.03(1)).	Outstanding as at 30 June 2000.
Civil Aviation Regulations (Amendment), Statutory Rules 1997 No.111	30 September 1997	To amend the Regulations to provide that certain directions must be given in writing.	Civil Aviation Amendment Regulations 1999 (No.3), Statutory Rules 1999 No.210 of 9 September 1999.

Civil Aviation Regulations (Amendment), Statutory Rules 1998 Nos.235 and 237	1 December 1998	To amend the Regulations as follows: provide table of contents; include a definition of a type certificate; include a definition of incidental provisions; r.262AN to provide for Administrative Appeals Tribunal review; r.21.2B(2) remove latter part as it is unnecessary; r.21.3(1) reference to (4) should be to (5) and (3) to (4); r.21.3(2) reference to (3) should be to (4); and r.201.4 amend to reflect that the decision to refuse to consider an application under r.21.43 should be reviewable.	Civil Aviation Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.166 of 9 August 1999.
Imprisonment and Custody of Offenders Ordinances 1998, Territory of Christmas Island Ordinance No.4 of 1998 and Territory of Cocos (Keeling) Islands Ordinance No.4 of 1998	29 March 1999	To amend s.33 of the <i>Prisons Act 1981 (WA)(CK)(CKI)</i> to make it clear that a prisoner is entitled to be returned to the Territory at Commonwealth expense within a certain period of being released.	Prisons Act 1981 (WA) (CI) Amendment Ordinance 2000 (No.1) Territory of Christmas Island Ordinance No.1 of 2000 of 12 April 2000 Prisons Act 1981 (WA) (CKI) Amendment Ordinance 2000 (No.1) Territory of Cocos (Keeling) Islands Ordinance No.1 of 2000 of 12 April 2000.
Lists of Acts of the Western Australian Parliament in force in the Territories of Christmas Island and Cocos (Keeling) Islands	21 August 1999	To amend the relevant enabling Acts to clarify the tabling requirement for the lists.	Outstanding as at 30 June 2000.

Marine Orders Part 9 - Health - Medical Fitness - Issue 5, Marine Order No.22 of 1999	10 April 2000	To amend the Order to require the Medical <i>Inspector of Seamen</i> to take the recommendation of the independent panel of medical practitioners into account when making a final decision about a seaman's fitness (provisions 7.3.2 and 7.4)	Outstanding as at 30 June 2000.
Marine Orders Part 47 - Mobile Offshore Drilling Units - Issue 2, Marine Order No.1 of 2000	3 May 2000	To change provision 2.2 into a note as the provision was not intended to provide a separate, non-reviewable power of exemption. Clarify the heading to provision 4.2 to read 'Statements to accompany written notice of decisions'. Amend provision 7 to require a person-in-charge to discharge the responsibilities specified in Appendix 1.	Outstanding as at 30 June 2000.
Marine Orders Part 60 - Floating Offshore Facilities - Issue 1, Marine Order No.2 of 2000	3 May 2000	Amend provision 5 to identify provision 8 as a penal provision.	Outstanding as at 30 June 2000.
Road Transport Reform (Dangerous Goods) Regulations, Statutory Rules 1997 No.241	28 November 1997	To amend the Regulations to remove three strict liability provisions and to provide for safeguards for administrative penalties.	Road Transport Reform (Dangerous Goods) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.211 of 9 September 1999.

<p>Road Transport Reform (Heavy Vehicle Standards) Regulations, Statutory Rules 1995 No.55</p>	<p>29 August 1995</p>	<p>To amend the Regulations to provide for Administrative Appeals Tribunal review of discretions and to remove a strict liability provision.</p>	<p>The Minister advised on 10 May 1999 that the Regulations were to be replaced by a new package of Vehicle Standard Regulations and Vehicle Standard Rules. Amendments had been included in new regulations approved by the ATC in January 1999 but the commencement of these regulations was dependent upon an agreement with the Australian Capital Territory Government.</p>
<p>Road Transport Reform (Mass and Loading) Regulations (Amendment), Statutory Rules 1996 No.342</p> <p>Road Transport Reform (Oversize and Overmass Vehicles) Regulations, Statutory Rules 1995 No.123</p>	<p>2 May 1997</p> <p>29 August 1995</p>	<p>To amend the Regulations to provide for Administrative Appeals Tribunal review of discretions.</p>	<p>The Minister advised on 10 May 1999 that it was most unlikely that the regulations would be commenced as a review of the Road Transport Reform (Restricted Access Vehicles) Regulations, which will encompass the Oversize and Overmass and Mass and Loading Regulations was about to be undertaken. The National Road Transport Committee had given an undertaking that revised regulations would include independent review rights.</p>
<p>Territory of Cocos (Keeling) Islands Electricity Fees/Tariffs Determination and Water Consumption Fees Determination</p>	<p>20 November 1999</p>	<p>To make a new Determination in the same format at the Territory of Christmas Island Electricity Fees Determination No.1 of 1999 (include citation and to state as determining and not advising).</p>	<p>Determination of Fees for Electricity No.1 of 2000 made under the <i>Cocos (Keeling) Islands Act 1955</i>, of 7 February 2000</p>

Treasury			
<p>Authorised Non-operating Holding Companies Supervisory Levy Imposition Determination 1998</p> <p>General Insurance Supervisory Levy Imposition Determination 1998</p> <p>Life Insurance Supervisory Levy Imposition Determination 1998</p> <p>Retirement Savings Account Providers Supervisory Levy Imposition Determination 1998</p> <p>Superannuation Supervisory Levy Imposition Determination 1998</p>	<p>27 April 1999</p>	<p>To validate the retrospective action of the Determinations in the Financial Sector Reform (Amendments and Transitional Provisions) Bill (No.2) 1999 to prevent ambiguity.</p>	<p><i>Authorised Non-Operating Holding Companies Supervisory Levy Validation Act 2000</i> of 31 March 2000</p> <p><i>General Insurance Supervisory Levy Validation Act 2000</i> of 31 March 2000</p> <p><i>Life Insurance Supervisory Levy Validation Act 2000</i> of 31 March 2000</p> <p><i>Retirement Savings Account Providers Supervisory Levy Validation Act 2000</i> of 31 March 2000</p> <p><i>Superannuation Supervisory Levy Validation Act 2000</i> of 31 March 2000</p>
<p>Excise Regulations (Amendment), Statutory Rules 1995 No.425</p>	<p>16 May 1996</p>	<p>To amend the <i>Excise Act 1901</i> to provide for Administrative Appeals Tribunal review of decisions made under s.61C of the Act.</p>	<p>Outstanding as at 30 June 2000.</p>
<p>Excise Amendment Regulations 1998 (No.2), Statutory Rules 1998 No.275</p>	<p>3 March 1999</p>	<p>To amend the Regulations to provide for merits review of a discretion and to provide a safeguard for an official decision (subregulation 52A AAA(1) - approval of a plant and subregulation 52A AAA(9) - specify reasonable period for production of records or additional information).</p>	<p>Outstanding as at 30 June 2000.</p>

Veterans' Affairs			
Veterans' Entitlements (Special Assistance) Regulations 1999, Statutory Rules 1999 No.319	28 March 2000	To amend the Regulations to recognise contact by electronic mail for claim purposes, to require the mandatory recording by the Department of withdrawals (regulation 11) and to clarify that decisions made under regulation 12 will be reviewable under Part 6.	Outstanding as at 30 June 2000 (It should be noted that the undertaking was implemented on 5 July 2000.)

Appendix 1

Breakdown of Miscellaneous instruments

Miscellaneous Instruments

A New Tax System (Family Assistance) determinations	11
A New Tax System (Goods and Services Tax) determination	1
Aboriginal and Torres Strait Islander Rules	5
Accounting Standards	9
ACT Land Planning and Management - Amendments to National Capital Plan	9
Actuarial standards	7
Aged Care principles	10
Australian Horticulture orders	1
Australian Meat and Live-stock orders	12
Australian National Railway Commission Amendment Agreement	1
Australian Prudential Regulation Authority instruments	2
Australian Sports Drugs Agency Drug Testing orders	2
Authorised Deposit-taking Institutions Supervisory Levy Imposition determination	1
Authorised Non-Holding Companies Supervisory Levy Imposition determination	1
Banking determination of restricted expression	1
Banking guidelines	1
Broadcasting Services instruments	7
Child Care instruments	4
Commonwealth Authorities and Companies Amendment orders	1
Commonwealth Places (Mirror Taxes) notice	1
Consular Privileges and Immunities instrument	1

Currency determinations	9
Dairy Structural Adjustment Program Scheme	2
Diplomatic Privileges and Immunities instrument	1
Endangered Species Protection declarations	9
Excise notices	2
Export Control orders	6
Export Market Development Grants determinations	2
Farm Household Support Grant Scheme	3
Federal Magistrates determination	1
Financial Management and Accountability instruments	9
Financial Sector (Transfer of Business) Rules	1
Fisheries Management instruments	4
General Insurance Supervisory Levy Imposition determination	1
Great Barrier Reef Marine Park Zoning Plan	1
Horticultural Research and Development order	1
Housing Assistance determination	1
Income Tax Assessment instruments	2
Income Tax Assessment RHQ determination	1
Insurance determinations	3
Interstate Road Transport determinations	5
Life Insurance Supervisory Levy Imposition determination	1
Marine Orders	12
Military Superannuation and Benefits Trust Deeds	2
Motor Vehicle Standards determinations	2
National Environment Protection measures	2

National Measurement guidelines	1
National Parks and Wildlife Plans of Management	4
Occupational Health and Safety instruments	3
Parliamentary Service determinations	3
Primary Industries (Excise) Levies specification	1
Privacy determination	1
Private Health Insurance Incentives determinations	2
Public Service Commissioner direction	1
Quarantine determination	1
Remuneration Tribunal determinations	9
Retirement Savings Account Providers Supervisory Levy Imposition determination	1
Safety, Rehabilitation and Compensation notices	4
Social Security instruments	6
States Grants (Petroleum Products) Amendment of Scheme	1
Student Assistance determinations	2
Superannuation instruments	5
Superannuation Supervisory Levy Imposition determination	1
Supported Accommodation Assistance determination	1
Sydney Airport Demand Management determination	1
Textile, Clothing and Footwear Strategic Investment Program Scheme	2
Therapeutic Goods instruments	3
Total	224

Appendix 2

Notices of motion to disallow 1999-2000

Notices of motion to disallow 1999-2000

Accreditation Grant Principles 1999 made under the *Aged Care Act 1997*
 Airports (Protection of Airspace) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No. 113
 Australian Meat and Live-stock Industry (Lamb Export to the United States of America) Amendment Order 1999 (No.3)
 Australian Radiation Protection and Nuclear Safety Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.97
 Australian Sports Drug Agency Drug Testing (Scheme A) Orders 1999
 Australian Sports Drug Agency Regulations 1999, Statutory Rules 1999 No.159
 Civil Aviation Amendment Order (No.2) 2000 made under the Civil Aviation Regulations 1988
 Civil Aviation Amendment Order (No.4) 2000 made under the Civil Aviation Regulations 1988
 Customs (Prohibited Imports) Amendment Regulations 1999 (No.3), Statutory Rules 1999 No. 202
 Dairy Structural Adjustment Program Scheme 2000 under the *Dairy Produce Act 1986*
 Declaration of Persons Taken to be Employed by the Commonwealth under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*
 Declaration PB 2 of 2000 under the *National Health Act 1953*
 Defence (Prohibited Words and Letters) Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.41
 Determination No.1 of 2000 under the *Defence Act 1903*
 Determination No.1/1999 - Determination of Education and Courses under the *Student Assistance Act 1973*
 Direction No.NPFD 30 made under *Fisheries Management Act 1991*
 Exemption No.CASA 25/1999 under the Civil Aviation Regulations 1988
 Exemption No.CASA EX26/2000 under the Civil Aviation Regulations 1988
 Exemption No.CASA EX28/2000 under the Civil Aviation Regulations 1988
 Exemption under s.8G of the *Christmas Island Act 1958* and the *Travel Agents Act 1985 (WA/CI)*
 Export Control (Fees) Amendment Orders 1999 (No.4) under the Export Control (Orders) Regulations 1982
 Federal Court of Australia Amendment Regulations 2000 (No.3), Statutory Rules 2000 No.45
 Financial Management and Accountability Amendment Regulations 1999 (No.3), Statutory Rules 1999 No.107
 Fisheries Management Amendment Regulations 1999 (No.2), Statutory Rules 1999 No.98
 Fisheries Management Amendment Regulations 1999 (No.3), Statutory Rules 1999 No.130

Great Barrier Reef Marine Park (Aquaculture) Regulations 2000, Statutory Rules 2000 No.6

Great Barrier Reef Marine Park Amendment Regulations 1999 (No.1), Statutory Rules 1999 No. 252

Great Barrier Reef Marine Park Amendment Regulations 2000, Statutory Rules 2000 No.5

Great Barrier Reef Region (Prohibition of Mining) Regulations 1999, Statutory Rules 1999 No.339

Hazardous Waste (Regulation of Exports and Imports) (Decision IV '9) Regulations 1999, Statutory Rules 1999 No.102

Health Insurance (1998-99 Diagnostic Imaging Services Table) Amendment Regulations 1999 (No.3), Statutory Rules 1999 No.219

Health Insurance (1999-2000 Diagnostic Imaging Services Table) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.345

Health Insurance (1999-2000 Diagnostic Imaging Services Table) Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.59

Health Insurance (1999-2000 General Medical Services Table) Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.60

Health Insurance Amendment Regulations 1999 (No.3), Statutory Rules 1999 No.157

Health Insurance Amendment Regulations 1999 (No.5), Statutory Rules 1999 No.176

Health Insurance Amendment Regulations 1999 (No.6), Statutory Rules 1999 No.343

Health Insurance Determination HS'6'1999 made under the *Health Insurance Act 1973*

Hearing Services Amendment Rules of Conduct 1999 (No.1) under the *Hearing Services Administration Act 1997*

High Court of Australia Regulations 2000, Statutory Rules 2000 No.46

Instrument No.CASA 04/00 under the Civil Aviation Regulations 1988

Judicial and Statutory Officers (Remuneration and Allowances) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.171

Marine Orders Part 47 - Mobile Offshore Drilling Units - Issue 2 under the *Navigation Act 1912*

Marine Orders Part 60 - Floating Offshore Facilities - Issue 1 under the *Navigation Act 1912*

Marine Orders Part 61 - Safe Working on Board Ships - Issue 1, Marine Order No.20 of 1999 under the *Navigation Act 1912*

Marine Orders Part 9 - Health - Medical Fitness - Issue 5 under the *Navigation Act 1912*

Migration Agents Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.64

Migration Amendment Regulations 1999 (No.6), Statutory Rules 1999 No.81

Migration Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.62

Military Superannuation and Benefits Amendment Trust Deed 1999 (No.1)

National Health Amendment Regulations 1999 (No.4), Statutory Rules 1999 No.174

National Measurement Regulations 1999, Statutory Rules 1999 No.110

National Television Conversion Scheme 1999 made under the *Broadcasting Services Act 1992*

Native Title (Prescribed Bodies Corporate) Regulations 1999, Statutory Rules 1999 No.151

Northern Prawn Fishery Amendment Management Plan 1999 (No.NPF 02) made under the *Fisheries Management Act 1991*

Notice No.1(2000) of Declared Rate in respect of Diesel Fuel Rebate under the *Customs Act 1901*

Notice No.1(2000) of Declared Rate in respect of Diesel Fuel Rebate under the *Excise Act 1901*

Notice of Amendment No.27 to the National Capital Plan made under the *Australian Capital Territory (Planning and Land Management) Act 1991*

Occupational Health and Safety (Maritime Industry) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.101

Public Service (Parliamentary Officers) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.112

Quarantine (General) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.308

Superannuation (PSS) Membership Exclusion Declaration 1999 (No.1), Statutory Rules 1999 No.168

Telecommunications (Charges) Determination No.1 of 1999 under the *Australian Communications Authority Act 1997*

Therapeutic Goods Amendment Regulations 1999 (No.2), Statutory Rules 1999 No. 209

Therapeutic Goods Amendment Regulations 1999 (No.3), Statutory Rules 1999 No.324

Therapeutic Goods Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.48

Trans-Tasman Mutual Recognition Amendment Regulations 2000 (No 1), Statutory Rules 2000 No.51

Variation of Instrument Fixing Charges to be Paid to APRA under the *Australian Prudential Regulation Authority Act 1998*

Workplace Relations Amendment Regulations 1999 (No.5), Statutory Rules 1999 No.205

Workplace Relations Amendment Regulations 1999 (No.9), Statutory Rules 1999 No.337

Appendix 3

Undertakings from previous periods that were
implemented in 1999-2000

Undertakings from previous periods that were implemented in 1999-2000

Ministers have given undertakings in previous years on 26 instruments that were implemented during the reporting period.

Accountability Principles made under the *Aged Care Act 1997*
 Accreditation Grant Principles made under the *Aged Care Act 1997*
 Australian Dried Fruits Board (AGM) Regulations, Statutory Rules 1993 No.144
 Australian Meat and Live-stock Industry (Export Licensing) Regulations 1998,
 Statutory Rules 1998 No.202
 Australian Sports Drug Agency Regulations (Amendment), Statutory Rules 1996
 No.72
 Authorised Non-operating Holding Companies Supervisory Levy Imposition
 Determination 1998
 Childcare Assistance Immunisation Requirements IMCA 12G 98 3 made under s.12H
 of the *Child Care Act 1972*
 Civil Aviation Regulations (Amendment), Statutory Rules 1997 No.111
 Civil Aviation Regulations (Amendment), Statutory Rules 1998 No. 235
 Civil Aviation Regulations (Amendment), Statutory Rules 1998 No. 237
 Direction No.NPFD 25 made under subsection 17(5A) of the *Fisheries Management
 Act 1991*
 Export Inspection and Meat Charges Collection Regulations (Amendment), Statutory
 Rules 1995 No.257
 Financial Management and Accountability Orders (Amendment) 1998 made under
 paragraph 63(1)(b) of the *Financial Management and Accountability Act 1997*
 General Insurance Supervisory Levy Imposition Determination 1998
 Health Insurance (1998-99 Diagnostic Imaging Services Table) Amendment
 Regulations 1999 (No.1), Statutory Rules 1999 No.20
 Imprisonment and Custody of Offenders Ordinances 1998, Territory of Christmas
 Island Ordinance No.4 of 1998 and Territory of Cocos (Keeling) Islands Ordinance
 No.4 of 1998
 Life Insurance Supervisory Levy Imposition Determination 1998
 National Native Title Tribunal Regulations 1998 (No.3), Statutory Rules 1998 No.281
 Order No.LC2/98 made under s.17 of the *Australian Meat and Live-stock Industry Act
 1997*
 Primary Industries Levies and Charges Collection (Oilseed) Regulations
 (Amendment), Statutory Rules 1998 No.153
 Primary Industries Levies and Charges Collection (Grain Legumes) Regulations
 (Amendment), Statutory Rules 1998 No.154
 Quarantine (General) Regulations (Amendment), Statutory Rules 1997 No.85
 Retirement Savings Account Providers Supervisory Levy Imposition Determination
 1998

Road Transport Reform (Dangerous Goods) Regulations, Statutory Rules 1997
No.241

Superannuation Supervisory Levy Imposition Determination 1998

Trade Marks Amendment Regulations 1998 (No.4), Statutory Rules 1998 No.346

Appendix 4

Undertakings from previous periods that were not
implemented as at 30 June 2000

Undertakings from previous periods that were not implemented as at 30 June 2000

Ministers have given undertakings in previous years on 16 instruments that had not been implemented as at 30 June 2000:

Air Navigation Amendment Regulations 1998 (No.1), Statutory Rules 1998 No.321
Airports (Environment Protection) Amendment Regulations 1998 (No.3), Statutory Rules 1998 No.349
Australian Radiation Protection and Nuclear Safeguards Regulations 1999, Statutory Rules 1999 No.37
Customs Regulations (Amendment), Statutory Rules 1998 No.38
Excise Regulations (Amendment), Statutory Rules 1995 No.425
Excise Amendment Regulations 1998 (No.2), Statutory Rules 1998 No.275
Family Law Regulations (Amendment), Statutory Rules 1996 No.71
Guidelines T6-98 made under the *Higher Education Funding Act 1988*
National Crime Authority Regulations (Amendment), Statutory Rules 1996 No.286
Northern Prawn Fishery Management Plan 1995, Direction No.NPFD17
Radiocommunications (Compliance Labelling - Incidental Emissions) Notice 1998
Road Transport Reform (Heavy Vehicle Standards) Regulations, Statutory Rules 1995 No.55
Road Transport Reform (Mass and Loading) Regulations (Amendment), Statutory Rules 1996 No.342
Road Transport Reform (Oversize and Overmass Vehicles) Regulations, Statutory Rules 1995 No.123
Tenth Amending Deed to Establish an Occupational Superannuation Scheme for Commonwealth Employees and Certain Other Persons
Therapeutic Goods (Charges) Amendment Regulations 1998 (No.2), Statutory Rules 1998 No.260