

The Senate

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Committee on
Regulations and
Ordinances

Delegated legislation monitor

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Delegated legislation monitor

Introduction

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

The committee's terms of reference

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

- (1) A Standing Committee on Regulations and Ordinances shall be appointed at the commencement of each Parliament.
- (2) All regulations, ordinances and other instruments made under the authority of Acts of the Parliament, which are subject to disallowance or disapproval by the Senate and which are of a legislative character, shall stand referred to the committee for consideration and, if necessary, report.

The committee shall scrutinise each instrument to ensure:

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

Work of the committee

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

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

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

cases where an instrument is considered not to comply with the committee's scrutiny principles, the committee's usual approach is to correspond with the responsible minister or instrument-maker seeking further explanation or clarification of the matter at issue, or seeking an undertaking for specific action to address the committee's concern.

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

Structure of the report

The report is comprised of the following parts:

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

Acknowledgement

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

Senator Mark Furner

Chair

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

Chapter 1

New and continuing matters

This chapter lists new matters identified by the committee at its meeting on **28 February 2012**, and continuing matters in relation to which the committee has received recent correspondence. The committee will write to relevant ministers or instrument makers seeking further information or an appropriate undertaking within the disallowance period.

Carbon Credits (Carbon Farming Initiative) (Destruction of Methane Generated from Dairy Manure in Covered Anaerobic Ponds) Methodology Determination 2012 [F2012L02571]

Purpose	Sets out the rules for implementing and monitoring an agricultural emissions avoidance project under the Carbon Farming Initiative (CFI) to capture biogas generated from dairy farms.
Last day to disallow¹	15 May 2013
Authorising legislation	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>
Department	Climate Change and Energy Efficiency

ISSUE:

Insufficient explanation provided regarding consultation

Regarding consultation, the explanatory statement (ES) for this instrument states:²

The methodology proposal was developed by the Department of Climate Change and Energy Efficiency (the Department) in collaboration with a technical working group made up of representatives from the dairy industry, the Australian Government and State and Territory governments.

The methodology proposal was published on the Department's website for public consultation from 13 June 2012 to 21 July 2012. Stakeholders and members of the public who asked to be listed on the mailing list maintained by the Department were notified of the public consultation period.

Unlike the explanatory statement for a similar instrument, the Carbon Credits (Carbon Farming Initiative) (Capture and Combustion of Methane in Landfill Gas for Legacy Waste: Upgrade projects) Methodology Determination 2012 [F2012L02583], no

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

2 The committee's guideline on addressing the consultation requirements of the *Legislative Instruments Act 2003* is included at Appendix 2.

information is provided as to the outcome of the consultation, such as the number, if any, of submissions received and the extent to which any comments may have been or were required to be taken into account. **The committee will therefore seek further information from the parliamentary secretary.**

CASA EX190/12 – Exemption – from standard take-off and landing minima – Airasia X SDN. BHD [F2013L00033]

Purpose	Permits the operator to use reduced visibility minima when its aircraft are landing or taking off
Last day to disallow	15 May 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

ISSUE:

Insufficient explanation provided regarding consultation

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

Consultation under section 17 of the LIA has not been undertaken in this case. The instrument is in the same terms as many instruments issued to foreign operators for the same purpose.

It is not clear to the committee how, of itself, the stated reason for not consulting in relation to the making of the instrument necessarily relates to a conclusion by the instrument maker that consultation was 'unnecessary' or 'inappropriate' (as provided for by section 18). **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

CASA EX191/12 - Exemption - solo flight training using ultralight aeroplanes registered with Recreational Aviation Australia Incorporated at Jandakot Aerodrome [F2012L02521]

Purpose	Allows Cloud Dancer Pilot Training Pty Ltd to conduct solo flight training for student pilots using ultralight aeroplanes registered with Recreational Aviation Australia Incorporated
Last day to disallow	15 May 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

ISSUE:

Insufficient explanation provided regarding consultation

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

Consultation under section 17 of the LIA has not been undertaken in this case. A number of similar instruments have been issued to allow pilot training to take place in controlled airspace in ultralight aircraft where CASA considers it appropriate to do so.

It is not clear to the committee how, of itself, the stated reason for not consulting in relation to the making of the instrument necessarily relates to a conclusion by the instrument maker that consultation was 'unnecessary' or 'inappropriate' (as provided for by section 18). **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

Coastal Trading (Revitalising Australian Shipping) Act 2012 – Section 11 exemption for cruise vessels [F2012L02585]

Purpose	Provides an exemption from the <i>Coastal Trading (Revitalising Australian Shipping) Act 2012</i> for certain cruise vessels
Last day to disallow	15 May 2013
Authorising legislation	<i>Coastal Trading (Revitalising Australian Shipping) Act 2012</i>
Department	Infrastructure and Transport

ISSUES:

(a) No explanation provided regarding consultation

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

(b) Whether exemption more appropriate for parliamentary enactment

The instrument allows a certain class of vessel to engage in carriage of passengers between Australian ports (except Victoria and Tasmania) without a licence, continuing for a further four years an exemption in effect since 1998. The committee considers that the exemption could be characterised as a de facto amendment to the Act, and as such it may be that the exemption would be more appropriately effected through an amendment to the principal Act. **The committee will therefore seek further information from the minister.**

Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Amendment Notice 2012 [F2012L02505]

Purpose	Amends the Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2007 to reflect changes to certain taxing laws
Last day to disallow	15 May 2013
Authorising legislation	<i>Commonwealth Places (Mirror Taxes) Act 1998</i>
Department	Treasury

ISSUES:

(a) Retrospectivity

Section 12(2) the *Legislative Instruments Act 2003* provides that an instrument that commences retrospectively is of no effect if it would disadvantage the rights of a person (other than the Commonwealth) or impose a liability on a person (other than the Commonwealth) for an act or omission before the instrument's date of registration. While this instrument commenced on the day after its registration, its effect is to amend the principal instrument to give various provisions of the principal instrument effect from either 1 July 2008 or 25 June 2010. The committee will generally make inquiries to ensure that retrospective effects do not act to a person's disadvantage or detriment. **The committee will therefore seek further information from the minister.**

(b) Drafting

The footer to the instrument contains the words 'Draft 7'. In such cases, the committee generally inquires as to whether the version of the instrument it has received is in fact the final approved version. **The committee will therefore draw the issue to the minister's attention.**

Customs (Malaysian Rules of Origin) Regulation 2012 [Select Legislative Instrument 2012 No. 318] [F2012L02435]

Purpose	Prescribes matters relating to the rules of origin that are required to be prescribed under Division 1H of the <i>Customs Act 1901</i> and which are required to fulfil, in part, Australia's obligations under Chapter 3 of the Malaysia-Australia Free Trade Agreement
Last day to disallow	15 May 2013
Authorising legislation	<i>Customs Act 1901</i>
Department	Attorney-General's

ISSUE:

Insufficient explanation regarding consultation

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

No particular consultation was undertaken with regard to this regulation; however, consultation regarding the Malaysia-Australia Free Trade Agreement was undertaken as part of the Joint Standing Committee on Treaty's [sic] consideration of the Agreement.

It is not clear to the committee how, of itself, the stated reason for not consulting in relation to the making of the instrument necessarily relates to a conclusion by the instrument maker that consultation was 'unnecessary' or 'inappropriate' (as provided for by section 18). **The committee will therefore seek further information from the minister.**

Financial Sector (Collection of Data) (reporting standard) determination No. 11 of 2012 - ARS 117.0 - Repricing Analysis [F2012L02490]; and

Financial Sector (Collection of Data) (reporting standard) determination No. 12 of 2012 - ARS 120.0 - Standardised Approach – Securitisation [F2012L02489]

Purpose	The determinations specify certain prudential standards
Last day to disallow	15 May 2013
Authorising legislation	<i>Financial Sector (Collection of Data) Act 2001</i>
Department	Treasury

ISSUE:

Drafting

Paragraph 16 of the schedule to both instruments sets out various definitions, including the following definition:

branch of a foreign bank means a 'foreign ADI' as defined in the *Banking Act 1959*, but does not include an SCCI that is a foreign ADI.

'SCCI' is (in effect) defined in the table in paragraph 3 of the instruments (Specialist Credit Card Institution). The committee considers that a reader of the instrument would be assisted if the acronym 'SCCI' was included in the definitions paragraph (as is 'ADI', for example). The committee generally raises such matters on an advice-only basis in the interests of ensuring the highest quality of standards of drafting in legislative instruments in accordance with subsection 3(c) of the *Legislative Instruments Act 2003*, which states that one of its objects is 'encouraging high standards in the drafting of legislative instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users'. **The committee will therefore draw this issue to the minister's attention.**

Nuclear Non-Proliferation (Safeguards) Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 292] [F2012L02423]

Purpose	Amends the Nuclear Non-Proliferation (Safeguards) Regulations 1987 to update the list of prescribed international agreements in accordance with which powers under the <i>Nuclear Non-Proliferation (Safeguards) Act 1987</i> are to be exercised
Last day to disallow	15 May 2013
Authorising legislation	<i>Nuclear Non-Proliferation (Safeguards) Act 1987</i>
Department	Foreign Affairs and Trade

ISSUE:

No explanation provided regarding consultation

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

Work Health and Safety Act 2011 (application to Defence activities and Defence members) Declaration 2012 [F2012L02503]

Purpose	Declares that specified provisions of the <i>Work Health and Safety Act 2011</i> do not apply, or apply subject to such modifications and adaptations as are set out in the declaration, in relation to specified Defence activities and Australian Defence Force members
Last day to disallow	15 May 2013
Authorising legislation	<i>Work Health and Safety Act 2011</i>
Department	Education, Employment and Workplace Relations

ISSUE:

Trespass on personal rights

The instrument is made under subsection 12D(2) of the *Work Health and Safety Act 2011*, which allows the Chief of the Defence Force to disapply, or to apply with modifications, provisions of the *Work Health and Safety Act 2011* to the Defence Forces. The purpose of the provision is to ensure that the requirements of the *Work*

Health and Safety Act 2011 are not prejudicial to Australia's defence, and the Chief of the Defence Force is required to take into account the need to promote the objects of that Act to the greatest extent consistent with the maintenance of Australia's defence. The ES to the instrument provides a justification for this limitation of rights, noting that this is a necessary and proportionate means to achieve the operational and organisational objectives of the military service and the Government's defence policy. Further, the ES notes that Defence maintains a Defence Safety Management System, which seeks to provide all Defence workers with the highest level of (reasonably practicable) protection against harm to their health, safety and welfare from hazards and risks arising at work. **In light of the justification provided, the committee draws the attention of the Senate to the effect of the instrument on personal rights, and makes no further comment.**

CASA EX193/12 - Exemption - operations by paragliders in the Corryong Open and hang-gliders in the Corryong Cup [F2012L02520]; and

CASA EX194/12 - Exemption - operations by hang-gliders in the Forbes Flatlands Hang Gliding Championships 2012-2013 [F2012L02527]

Purpose	Allows activities associated with the Corryong Paragliding Open and the Corryong Hang Gliding Cup to take place; and enables participants in the Forbes Flatlands Hang Gliding Championships 2012-13 to fly a hang-glider without the aircraft carrying a serviceable aircraft VHF radio and without the pilot having a radiotelephone qualification
Last day to disallow	15 May 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

ISSUE:

Insufficient explanation provided regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ESs for the instruments state only that 'CASA has consulted with The Hang Gliding Federation of Australia Incorporated and the organisers of the events [or 'Championship organisers' in the latter instrument]. The terms of the exemption have been agreed'. In the committee's view, these descriptions of consultation could be more properly characterised as descriptions of a process of application for and

approval of the exemptions. If this view were accepted, it could not be said that consultation had taken place in the sense prescribed or envisaged by the *Legislative Instruments Act 2003*, and the ES to these instruments should contain instead an explanation as to why consultation was considered unnecessary or inappropriate in the two cases. **The committee will therefore seek further information from the minister and request that, if appropriate, the ESs be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

**Civil Aviation Order 20.18 Amendment Instrument 2012 (No. 2)
[F2012L02556]**

Purpose	Amends the Civil Aviation Order 20.18 - Aircraft equipment - Basic operational requirements (02/12/2004)
Last day to disallow	15 May 2013
Authorising legislation	Civil Aviation Regulations 1988
Department	Infrastructure and Transport

ISSUE:

Insufficient explanation provided regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states only that consultation was undertaken through discussions with the 'relevant industry sectors'. The committee generally takes the view that overly bare or general descriptions, such as this, are not adequate to satisfy the requirement that an ES describe the nature of the consultation undertaken. **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

Fair Entitlements Guarantee Regulation 2012 [Select Legislative Instrument 2012 No. 326] [F2012L02474]

Purpose	Builds upon the scheme created by the <i>Fair Entitlements Guarantee Act 2012</i> to create a scheme to allow for financial assistance to be advanced to contract outworkers in the textile, clothing and footwear industry in certain circumstances
Last day to disallow	15 May 2013
Authorising legislation	<i>Fair Entitlements Guarantee Act 2012</i>
Department	Education, Employment and Workplace Relations

ISSUE:

Insufficient explanation provided in relation to consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states only that representatives from 'employer and employee groups were consulted in relation to this regulation'. The committee generally takes the view that overly bare or general descriptions, such as this, are not adequate to satisfy the requirement that an ES describe the nature of the consultation undertaken. **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

Family Law Amendment Rules 2012 (No. 2) [Select Legislative Instrument 2012 No. 331] [F2012L02577]

Purpose	Amends the Family Law Rules 2004
Last day to disallow	15 May 2013
Authorising legislation	<i>Family Law Act 1975</i>
Department	Attorney-General's

ISSUE:

Unclear basis for calculation of fee increase

The instrument introduces a uniform increase of 2.7 per cent to all items in the Itemised Scale of Costs. While the ES states that the increase is 'in conformity with the increase approved nationally by all superior courts', it does not explain the basis on

which the increase has been set or calculated. **The committee will therefore seek further information from the Chief Justice.**

Health Insurance (Diagnostic Imaging Capital Sensitivity) Amendment Determination 2012 (No. 3) [F2012L02510]

Purpose	Amends the Health Insurance (Diagnostic Imaging Capital Sensitivity) Determination 2011 to correct a drafting error in the description of item 63514 to clarify that the use of anaesthetic and contrast is permissible where a General Practitioner requests an MRI knee scan for a child under the age of 16 years
Last day to disallow	15 May 2013
Authorising legislation	<i>Health Insurance Act 1973</i>
Department	Health and Ageing

ISSUE:

Whether any person disadvantaged by previous error

The instrument corrects an omission in the description of an item in the principal determination, which meant that the item did not, as intended, authorise the claiming of Medicare benefits for anaesthetic and contrast compounds used in diagnostic imaging. In such cases, the committee usually expects an assurance that no person has been disadvantaged or, if they have, an explanation of what steps have been taken to address that disadvantage (for example, a person may have been out of pocket by not being able to claim the benefit for the anaesthetic and contrast compounds). **The committee will therefore seek further information from the minister.**

Native Title (Assistance from Attorney-General) Guideline 2012 [F2012L02564]

Purpose	To be applied in authorising the provision of assistance under section 213A of the <i>Native Title Act 1993</i>
Last day to disallow	15 May 2013
Authorising legislation	<i>Native Title Act 1993</i>
Department	Attorney-General's

ISSUE:

Unclear term

The guideline sets out how the Attorney-General is to make decisions about providing financial assistance to native title claimants. Section 4.2 of the guideline provides that a decision maker must not authorise the provision of financial assistance for costs incurred before a complete application for assistance has been received unless there are 'exceptional circumstances'. However, there is no guidance or examples as to what

might constitute exceptional circumstances, and the committee considers that this could be a potentially uncertain criteria. **The committee will therefore seek further information from the Attorney-General.**

CASA ADCX 001/13 - Revocation of Airworthiness Directives [F2013L00063] and three other instruments³

Purpose	The instruments (1) revoke airworthiness directives; (2) allow Network Aviation Pty Ltd to use an approved flight simulator to satisfy recency requirements instead of relying on flights in F100 and Embraer aeroplanes; and (3) amend Civil Aviation Order 20.18 such that paragraph 10.1 applies only to instruments or equipment that an aircraft carries or is fitted with under subregulation 207(2)
Last day to disallow	15 May 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

ISSUE:

Drafting

The first of the instruments mentioned is made under subregulation 39.001(1) of the Civil Aviation Safety Regulations 1998, which allows CASA to issue airworthiness directives. As that subregulation contains no express power to revoke airworthiness directives, the instrument presumably relies on subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that the power to make an instrument includes the power to vary or revoke the instrument. If that is the case, it would be preferable for the making words of the instrument and the ES to clearly identify the authority for the exercise of the power. The same issue arises in relation to the other three instruments identified. **The committee will therefore draw this issue to the attention of the minister.**

3 CASA EX03/13 - Exemption — recency requirements for night flying for F100 aircraft (Network Aviation Pty Ltd) [F2013L00068]; CASA EX04/13 - Exemption — recency requirements for night flying for Embraer 120 aircraft (Network Aviation Pty Ltd) [F2013L00069]; and Civil Aviation Order 20.18 Amendment Instrument 2013 (No. 1) [F2013L00070].

Defence Determination 2012/68, Reserve employer support payments

Purpose	Repeals and replaces the Defence (Employer Support) Determination 2005, which provides for payments to be made to the employers of certain members of the Australian Defence Force who serve as reservists
Last day to disallow	15 May 2013
Authorising legislation	<i>Defence Act 1903</i>
Department	Defence

ISSUES:

(a) Trespass on personal rights

Subsections 3.5(a) and (b) of the determination provide that nothing in section 3 (relating to repeal, saving and transition matters) is taken to preserve the monetary amount or value of a person's entitlements under the former determination. While the committee appreciates that the section facilitates the transition between the two determinations by, for example, ensuring that a person who has qualified for an entitlement under the previous determination will be taken to have qualified for the corresponding requirement under the new determination, the committee notes that the ES provides only a general description of the purpose and operation of the section and, particularly, subsections 3.5(a) and (b). **The committee will therefore seek further information from the parliamentary secretary's as to the intended purpose of subsections 3.5(a) and (b), and particularly as to whether there is potential for a person to be disadvantaged due to their operation.**

(b) Review of decisions on their merits

Part 5 of the instrument deals with the question of review of decisions. It is apparent from the transitional provisions that the new instrument removes the right of review by the Administrative Appeals Tribunal (AAT) for certain decisions relating to employer support payments; however, the ES notes that a review of a decision may be conducted by the Commonwealth Ombudsman. In the committee's view, it is unclear why AAT review has been excluded, and what will be the nature and potential outcomes of a review by the Ombudsman. **The committee will therefore seek further information from the parliamentary secretary.**

Water Efficiency Labelling and Standards Determination 2013 [F2013L00067]

Purpose	Repeals the Water Efficiency Labelling and Standards Determination (WELS) 2011 and sets the registration requirements and rules for products that are covered by the WELS Scheme and also sets the fee amount for those registrations
Last day to disallow	15 May 2013
Authorising legislation	<i>Water Efficiency Labelling and Standards Act 2005</i>
Department	Sustainability, Environment, Water, Population and Communities

ISSUE:

Unclear basis for calculation of fees

The determination repeals the previous determination, sets the registration requirements and rules for products that are covered by the WELS Scheme and also sets the fee amount for those registrations. Contrary to the committee's usual expectation, the ES does not indicate whether the registration fees have decreased or increased or describe the basis for the calculation of the registration fees. **The committee will therefore seek further information from the minister.**

Carbon Credits (Carbon Farming Initiative) (Destruction of Methane Generated from Dairy Manure in Covered Anaerobic Ponds) Methodology Determination 2012 [F2012L02571]; and

Carbon Credits (Carbon Farming Initiative) (Destruction of Methane from Piggeries using Engineered Biodigesters) Methodology Determination 2013 [F2013L00124]

Purpose	Sets out the detailed rules for implementing and monitoring an agricultural emissions avoidance project under the Carbon Farming Initiative (CFI) to capture biogas generated from dairy farms and to reduce the methane generated from manure in conventional piggeries
Last day to disallow	16 May 2013
Authorising legislation	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>
Department	Climate Change and Energy Efficiency

ISSUE:

Vague or uncertain terminology

The instruments, respectively, set out the rules for implementing and monitoring an agricultural emissions avoidance project under the CFI to capture biogas generated

from dairy farms; and to reduce the methane generated from manure in conventional piggeries. Subsection 3.5(4) of the first determination (F2012L02571) setting out one of the methods for measuring solids removal efficiency of the dairy production system; and the table in section 5.2 of the second determination (F2013L00124), setting out matters which must be measured for the purposes of calculating baseline emissions, require that certain parameters must be 'sampled on enough occasions to produce an unbiased, representative sample'. While the committee recognises that there may be a legitimate reason for drafting the requirement in such broad terms, it considers that this could be a potentially uncertain requirement. **The committee will therefore seek further information from the parliamentary secretary.**

CASA EX180/12 - Exemption - maintenance on limited category and experimental aircraft [F2013L00096]

Purpose	Exempts persons carrying out maintenance on limited category or experimental aircraft from compliance with the requirements of regulation 42U and paragraphs 42W(2)(b), (4)(a) and (4)(c) of the Civil Aviation Regulations 1988, subject to conditions and limitations
Last day to disallow	15 May 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

ISSUE:

Insufficient explanation provided regarding consultation

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

Consultation under section 17 of the LIA has not been undertaken in this case. The exemption is a re-issue of CASA EX11/11 with changes made to reflect changes to the Regulations since that exemption was granted.

It is not clear to the committee how, of itself, the stated reason for not consulting in relation to the making of the instrument necessarily relates to a conclusion by the instrument maker that consultation was 'unnecessary' or 'inappropriate' (as provided for by section 18). **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

CASA EX01/13 - Exemption - recency requirements for night flying (Alliance Airlines Pty Limited) [F2013L00114]; and

CASA EX08/13 - Exemption - from standard take-off and landing minima - DHL Air Limited [F2013L00145]

Purpose	(1) Exempts the pilot in command flying for Alliance Airlines Pty Ltd from compliance with paragraphs 5.109 (1) (b) and 5.170 (1) (b) of the Civil Aviation Regulations 1988 to update their night recency requirements by using flight simulators; and (2) Allows DHL Air Ltd to continue to conduct take-offs and landings in meteorological conditions below the standard take-off and landing minima
Last day to disallow	15 May 2013 and 16 May 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

ISSUE:

Insufficient explanation provided regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states only that consultation was not undertaken, that the operators had requested the exemption to replace previous exemptions and that the instruments are in the same terms as 'many instruments issued to foreign operators'. It is not clear to the committee how, of itself, the stated reason for not consulting in relation to the making of the instrument necessarily relates to a conclusion by the rule maker that consultation was 'unnecessary' or 'inappropriate' (as provided for by section 18). **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

Customs Act 1901 - Amendment of Approved Statement Instrument No. 6 of 2013 - Amendment of "Self-Assessed Clearance Declaration (Sea) (To Be Communicated With a Cargo Report)" [F2013L00142]

Purpose	Amends the Customs Act 1901 - CEO Instrument of Approval No. 4 of 2006 to update references and the specified low value goods threshold
Last day to disallow	16 May 2013
Authorising legislation	<i>Customs Act 1901</i>
Department	Attorney-General's

ISSUE:

Insufficient explanation provided regarding consultation

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

No consultation was undertaken under section 17 of the Legislative Instruments Act 2003 before this instrument was made as it is of a minor or machinery nature and does not substantially alter existing arrangements.

However, the instrument appears to make very similar changes to those made by Customs Act 1901 - Amendment of Approved Statement Instrument No. 2 of 2013 - Amendment of "Self-Assessed Clearance Declaration (Air) (To be Communicated with a Cargo Report)" [F2013L00134], for which the ES identified consultation as having taken place with the Conference of Asia Pacific Air. Given the similarity between the instruments, the committee considers that is unclear as to why consultation was not considered necessary or appropriate in the case of the current instrument. **The committee will therefore seek further information from the minister.**

Amendment of List of Exempt Native Specimens - *Pandanus spiralis* (18/12/2012) [F2013L00107]

Purpose	Amends the List of Exempt Native Specimens (29/11/2001) by adding <i>Pandanus spiralis</i> to the list
Last day to disallow	15 May 2013
Authorising legislation	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
Department	Sustainability, Environment, Water, Population and Communities

ISSUE:

Insufficient explanation provided regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument provides a substantial description of nature of consultation undertaken into the making of the instrument. However, a reference to the 'relevant state department' is unclear, as the committee is not able to determine which department is referred to on the face of the instrument and more generally. **The committee will therefore seek further information from the minister.**

Amendment - List of Specimens Taken to be suitable for Live Import (03/01/2013) [F2013L00105]

Purpose	Amends the List of Specimens Taken to be Suitable for Live Import (29/11/2001) to update the scientific name for the sucker catfish
Last day to disallow	15 May 2013
Authorising legislation	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
Department	Sustainability, Environment, Water, Population and Communities

ISSUE:

No information provided regarding consultation

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

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

Levy Amount Formula Modification Determination 2013 [F2013L00158]

Purpose	Modifies the formula by which a levy amount is calculated for a participating persons in the first or second eligible revenue period to provide for the calculations to be adjusted in the event that a participating person goes into receivership, liquidation, general administration or ceases to exist.
Last day to disallow	17 June 2013
Authorising legislation	<i>Telecommunications Universal Service Management Agency Act 2012</i>
Department	Broadband, Communications and the Digital Economy

ISSUE:

Whether instrument is validly made

Section 99 of the *Telecommunications Universal Service Management Agency Act 2012* sets out a number of formulas for the setting of a levy amount applicable to a participating person for an eligible revenue period, and the instrument is made under subsection 99(8), which provides that the minister may, by legislative instrument, 'modify' the formula in subsection 99(3). However, noting that the effect of this instrument is to wholly replace subsection 99(3) with four new subsections, the committee is unsure as to whether, on a strict interpretation, the power to 'modify the formula in subsection 99(3)' provides sufficient authority to wholly replace subsection 99(3), as this instrument does or purports to do. **The committee will therefore seek further information from the minister.**

Therapeutic Goods Information (Stakeholder Consultation on the System for Australian Recall Actions) Specification 2013 [F2013L00117]

Purpose	Permits the secretary to release certain therapeutic goods information to the persons and bodies mentioned in the specification, for specified purposes
Last day to disallow	15 May 2013
Authorising legislation	<i>Therapeutic Goods Act 1989</i>
Department	Health and Ageing

ISSUE:

Insufficient explanation provided regarding consultation

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

The release of therapeutic goods information in relation to recall actions for the purpose of testing a prototype of the SARA database is the proposed mechanism for consulting stakeholders on the database. It is considered to be minor and machinery in nature.

The committee considers that the ES addresses the issue of consultation only indirectly, and it is not clear whether consultation was considered unnecessary or inappropriate due to the nature of the instrument or because of plans for future consultation. **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

Chapter 2

Concluded matters

There was no correspondence from ministers or instrument-makers for consideration and hence no matters concluded at the committee's meeting of **28 February 2013**.

Appendix 1

Index of instruments scrutinised

The following instruments were considered by the committee at its meeting on **28 February 2013**.

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

Instruments received week ending 11 January 2013

A New Tax System (Family Assistance) Act 1999

Schoolkids Bonus Determination 2012 [F2012L02562]

Annual Appropriation Acts

Determination to Reduce Appropriations Upon Request (No. 2 of 2012-2013) [F2013L00035]

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2012 (No. 5) [F2012L02563]

Australian Capital Territory (Planning and Land Management) Act 1988

National Capital Plan – Amendment 75 – Australian Defence Force Academy and Royal Military College Duntroon Master Plan [F2013L00036]

Australian Prudential Regulation Authority Act 1998

Australian Prudential Regulation Authority (confidentiality) determination No. 26 of 2012 [F2012L02526]

Australian Prudential Regulation Authority (confidentiality) determination No. 27 of 2012 [F2012L02528]

Australian Prudential Regulation Authority (confidentiality) determination No. 28 of 2012 [F2012L02536]

Australian Prudential Regulation Authority (confidentiality) determination No. 29 of 2012 [F2012L02538]

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 15 of 2012) [F2013L00002]

Television Licence Area Plan (Brisbane) 2012 [F2012L02495]

Television Licence Area Plan (Northern New South Wales) 2012 [F2012L02537]

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

Television Licence Area Plan (Regional Queensland) 2012 [F2012L02530]

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) (Capture and Combustion of Methane in Landfill Gas for Legacy Waste: Upgrade projects) Methodology Determination 2012 [F2012L02583]

Carbon Credits (Carbon Farming Initiative) (Destruction of Methane Generated from Dairy Manure in Covered Anaerobic Ponds) Methodology Determination 2012 [F2012L02571]

Civil Aviation Act 1988

CASA ADCX 025/12 – Revocation of Airworthiness Directives [F2013L00005]

CASA EX 190/12 – Exemption – from standard take-off and landing minima – Airasia X SDN. BHD [F2013L00033]

CASA EX191/12 - Exemption - solo flight training using ultralight aeroplanes registered with Recreational Aviation Australia Incorporated at Jandakot Aerodrome [F2012L02521]

CASA EX193/12 - Exemption - operations by paragliders in the Corryong Open and hang-gliders in the Corryong Cup [F2012L02520]

CASA EX194/12 - Exemption - operations by hang-gliders in the Forbes Flatlands Hang Gliding Championships 2012-2013 [F2012L02527]

Civil Aviation Order 20.18 Amendment Instrument 2012 (No. 2) [F2012L02556]

Coastal Trading (Revitalising Australian Shipping) Act 2012

Coastal Trading (Revitalising Australian Shipping) Act 2012 – Section 11 exemption for cruise vessels [F2012L02585]

Commonwealth Places (Mirror Taxes) Act 1998

Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Amendment Notice 2012 [F2012L02505]

Corporations Act 2001

ASIC Class Order [CO 12/1712] [F2012L02579]

ASIC Class Rule Waiver [CW 12/1710] [F2012L02499]

Corporations Act 2001 - Determination of Financial Stability Standards [F2012L02540]

Corporations Act 2001 - Revocation of Financial Stability Standards 2012 [F2012L02539]

Customs Act 1901

Customs (Malaysian Rules of Origin) Regulation 2012 [Select Legislative Instrument 2012 No. 318] [F2012L02435]

Education Services for Overseas Students (TPS Levies) Act 2012

Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Determination 2012 [F2012L02575]

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Western Australian Marine Aquarium Fish Managed Fishery (21/12/2012) (deletion) [F2013L00008]

Amendment of List of Exempt Native Specimens – Western Australian Marine Aquarium Fish Managed Fishery (21/12/2012) (inclusion) [F2013L00007]

Fair Entitlements Guarantee Act 2012

Fair Entitlements Guarantee Regulation 2012 [Select Legislative Instrument 2012 No. 326]
[F2012L02474]

Family Law Act 1975

Family Law Amendment Rules 2012 (No. 2) [Select Legislative Instrument 2012 No. 331]
[F2012L02577]

Financial Sector (Collection of Data) Act 2001

Financial Sector (Collection of Data) (reporting standard) determination No. 8 of 2012 - ARS 112.2 - Standardised Credit Risk - Off-balance Sheet Exposures [F2012L02498]

Financial Sector (Collection of Data) (reporting standard) determination No. 9 of 2012 - ARS 113.4 - Internal Ratings-based (IRB) Approach to Credit Risk - Other Assets, Claims and Exposures [F2012L02487]

Financial Sector (Collection of Data) (reporting standard) determination No. 10 of 2012 - ARS 116.0 - Market Risk [F2012L02488]

Financial Sector (Collection of Data) (reporting standard) determination No. 11 of 2012 - ARS 117.0 - Repricing Analysis [F2012L02490]

Financial Sector (Collection of Data) (reporting standard) determination No. 12 of 2012 - ARS 120.0 - Standardised Approach – Securitisation [F2012L02489]

Financial Sector (Collection of Data) (reporting standard) determination No. 13 of 2012 - ARS 120.1 - Internal Ratings-based (IRB) Approach – Securitisation [F2012L02491]

Fisheries Management Act 1991

Southern Bluefin Tuna Fishery Verified Count Determination 2012 [F2012L02590]

Health Insurance Act 1973

Health Insurance (Allied Health Services) Amendment Determination 2012 (No. 5) [F2012L02493]

Health Insurance (Diabetes Testing in Aboriginal and Torres Strait Islander Primary Health Care Sites) Amendment Determination 2012 (No. 1) [F2012L02513]

Health Insurance (Diagnostic Imaging Capital Sensitivity) Amendment Determination 2012 (No. 3) [F2012L02510]

Health Insurance (Midwife and Nurse Practitioner) Amendment Determination 2012 (No. 2) [F2012L02507]

Health Insurance (Pathologist-determinable Services) Amendment Determination 2012 [F2012L02532]

Health Insurance (Professional Services Review - Allied Health and Others) Determination 2012 [F2012L02519]

Higher Education Support 2003

Commonwealth Scholarships Guidelines (Research) 2012 [F2012L02535]

Higher Education (Maximum Amount for Special Purpose Advances) Specification 2012 [F2012L02476]

Higher Education Provider Approval No. 14 of 2012 [F2012L02517]

Higher Education Support Act 2003 - List prepared pursuant to Division 41 [F2012L02514]

Higher Education Support Act 2003 – Other Grants Guidelines (Education) 2012 (DIISRTE) – Amendment No. 1 [F2012L02587]

Higher Education Support Act 2003 - VET Guidelines [F2012L02569]

Higher Education Support Act 2003 - VET Provider Approval (No. 27 of 2012) [F2012L02516]

Higher Education Support Act 2003 - VET Provider Approval (No. 28 of 2012) [F2012L02557]

Higher Education Support Act 2003 - VET Provider Approval (No. 1 of 2013) [F2013L00032]

Horticultural Marketing and Research and Development Services Act 2000

Horticulture Marketing and Research and Development Services Export Orders Revocation Order 2013 [F2013L00028]

Life Insurance Act 1995

Life Insurance (prudential standard) determination No. 11 of 2012 - Prudential Standard LPS 320 - Actuarial and Related Matters [F2012L02496]

Life Insurance (prudential standard) determination No. 15 of 2012 - Prudential Standard LPS 600 - Statutory Funds [F2012L02481]

Motor Vehicle Standards Act 1989

Vehicle Standard (Australian Design Rule 80/03 – Emission Control for Heavy Vehicles) 2006 Amendment 2 [F2013L00034]

National Health Act 1953

National Health (Concession or entitlement card fee Amendment Determination 2012 (No. 1) (No. PB 112 of 2012) [F2012L02500]

National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2012 (No. 11) (No. PB 110 of 2012) [F2012L02508]

National Health (Immunisation Program – Designated Vaccines) Variation Determination 2012 (No. 3) [F2013L00031]

National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2012 (No. 9) (No. PB 108 of 2012) [F2012L02512]

National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No.1) (No. PB 1 of 2013) [F2013L00039]

National Health (Price and Special Patient Contribution) Amendment Determination 2012 (No. 8) (No. PB 109 of 2012) [F2012L02511]

National Health (Price and Special Patient Contribution) Amendment Determination 2013 (No.1) (No. PB 2 of 2013) [F2013L00040]

National Health (Supplies of out-patient medication) Determination 2012 (No. PB 105 of 2012) [F2012L02504]

National Health (Weighted average disclosure price - main disclosure cycle) Determination 2012 (No. PB 107 of 2012) [F2012L02554]

National Vocational Education and Training Regulator (Charges) Act 2012

National Vocational Education and Training Regulator (Charges) Determination 2012 (No. 1) [F2012L02582]

Native Title Act 1993

Native Title (Assistance from Attorney-General) Guideline 2012 [F2012L02564]

Navigation Act 1912

Marine Order 2 (Australian International Shipping Register) 2012 [F2012L02584]

Marine Order 25, Issue 7 Amendment 2012 (No. 1) [F2012L02572]

Nuclear Non-Proliferation (Safeguards) Act 1987

Nuclear Non-Proliferation (Safeguards) Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 292] [F2012L02423]

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 306] [F2012L02494]

Paid Parental Leave Act 2010

Paid Parental Leave Amendment Rules 2012 (No. 2) [F2012L02576]

Parliamentary Entitlements Act 1990

Parliamentary Entitlements (Supplement of Capped Entitlements) Determination 2012 (No. 1) [F2012L02479]

Payment Systems (Regulations) Act 1998

Payment Systems (Regulations) Act 1998 – Revocation of the Standard on Interchange Fees for the EFTPOS System Designated in Designation No. 2 of 2004 (November 2012) [F2013L00037]

Private Health Insurance Act 2007

Private Health Insurance (Accreditation) Amendment Rules 2012 (No. 2) [F2013L00004]

Private Health Insurance (Benefit Requirements) Amendment Rules 2012 (No. 9) [F2012L02502]

Private Health Insurance (Benefit Requirements) Amendment Rules 2012 (No. 10) [F2013L00003]

Radiocommunications (Receiver Licence Tax) Act 1983

Radiocommunications (Receiver Licence Tax) Amendment Determination 2012 (No. 3) [F2013L00012]

Radiocommunications (Transmitter Licence Tax) Act 1983

Radiocommunications (Transmitter Licence Tax) Amendment Determination 2012 (No. 5) [F2013L00013]

Radiocommunications Act 1992

Australian Radiofrequency Spectrum Plan 2013 [F2012L02523]

Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 2.5 GHz Band) 2012 [F2012L02550]

Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 2.5 GHz Mid-band Gap) 2012 [F2012L02555]

Radiocommunications Advisory Guidelines (Managing Interference from Transmitters – 700 MHz Band) 2012 [F2012L02546]

Radiocommunications Advisory Guidelines (Managing Interference to Receivers – 2.5 GHz Band) 2012 [F2012L02549]

Radiocommunications Advisory Guidelines (Managing Interference to Receivers – 2.5 GHz Mid-band Gap) 2012 [F2012L02558]

Radiocommunications Advisory Guidelines (Managing Interference to Receivers – 700 MHz Band) 2012 [F2012L02544]

Radiocommunications (Field Trial by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2012 [F2012L02561]

Radiocommunications Licence Conditions (Amateur Licence) Amendment Determination 2012 (No. 1) [F2012L02574]

Radiocommunications (Overseas Amateurs Visiting Australia) Class Licence Variation 2012 (No. 1) [F2012L02573]

Radiocommunications (Spectrum Access Charges – 1800 MHz Band) Determination 2012 (No. 1) [F2013L00010]

Radiocommunications (Spectrum Access Charges – 1800 MHz Band) Determination 2012 (No. 2) [F2013L00011]

Radiocommunications Spectrum Conversion Plan (2.5 GHz Mid-band Gap) 2012 [F2012L02542]

Radiocommunications (Spectrum Licence Allocation—Combinatorial Clock Auction) Determination 2012 [F2012L02548]

Radiocommunications Spectrum Marketing Plan (2.5 GHz Band) 2012 [F2012L02552]

Radiocommunications Spectrum Marketing Plan (700 MHz Band) 2012 [F2012L02547]

Radiocommunications (Unacceptable Levels of Interference – 2.5 GHz Band) Determination 2012 [F2012L02545]

Radiocommunications (Unacceptable Levels of Interference – 2.5 GHz Mid-band Gap) Determination 2012 [F2012L02553]

Radiocommunications (Unacceptable Levels of Interference - 700 MHz Band) Determination 2012 [F2012L02543]

Remuneration Tribunal Act 1973

Remuneration Tribunal Determination 2012/24 – Remuneration and Allowances for Holders of Full-Time Public Office [F2012L02570]

Remuneration Tribunal Determination 2012/25 – Remuneration and Allowances for Holders of Public Office [F2013L00006]

Social Security Act 1991

Social Security (Actuarial Certificate—Lifetime Income Stream Guidelines) Determination 2012 [F2012L02565]

Social Security (Actuarial Certificate—Life Expectancy Income Stream Guidelines) Determination 2012 [F2012L02567]

Social Security (South Australian 'Individualised Funding') (DEEWR) Determination 2012 (No. 1) [F2013L00030]

Social Security (Administration) Act 1999

Social Security (Administration) – Queensland Commission (Family Responsibilities Commission) Specification 2012 [F2012L02581]

Student Assistance Act 1973

Student Assistance (Education Institutions and Courses) Amendment Determination 2012 (No. 1) [F2012L02588]

Superannuation Act 2005

Superannuation Act 2005 – Seventh Amendment of the Deed to Establish the Public Sector Superannuation Accumulation Plan [F2013L00027]

Superannuation Industry (Supervision) Act 1993

ASIC Class Order [CO 12/1687] [F2012L02497]

Superannuation (prudential standard) determination No. 9 of 2012 - Prudential Standard SPS 410 - MySuper Transition [F2012L02509]

Superannuation (Productivity Benefit) Act 1988

Superannuation (Productivity Benefit) (Nominated Fund) Declaration 2012 [F2012L02559]

Superannuation (Qualified Employees Exclusion) Declaration 2012 [F2013L00026]

Telecommunications (Interception and Access) Act 1979

Telecommunications (Interception and Access) (Emergency Services Facilities – Australian Capital Territory) Instrument 2012 (No. 2) [F2012L02591]

Telecommunications (Interception and Access-Independent Broad-based Anti-corruption Commission of Victoria) Declaration 2012 [F2012L02551]

Telecommunications Act 1997

Telecommunications Technical Standard (Requirements for Customer Equipment for connection to a metallic local loop interface of a Telecommunications Network - Part 2: Broadband - AS/ACIF S043.2:2008) Amendment 2012 (No. 1) [F2012L02533]

Therapeutic Goods Act 1989

Therapeutic Goods (Listing) Notice 2012 (No. 4) [F2013L00014]

Therapeutic Goods (Listing) Notice 2012 (No. 5) [F2013L00015]

Veterans' Entitlements Act 1986

Statement of Principles concerning adenocarcinoma of the kidney No. 9 of 2013 [F2013L00024]

Statement of Principles concerning adenocarcinoma of the kidney No. 10 of 2013 [F2013L00025]

Statement of Principles concerning ankylosing spondylitis No. 3 of 2013 [F2013L00018]

Statement of Principles concerning ankylosing spondylitis No. 4 of 2013 [F2013L00019]

Statement of Principles concerning carpal tunnel syndrome No. 7 of 2013 [F2013L00022]

Statement of Principles concerning carpal tunnel syndrome No. 8 of 2013 [F2013L00023]

Statement of Principles concerning inguinal hernia No. 5 of 2013 [F2013L00020]

Statement of Principles concerning inguinal hernia No. 6 of 2013 [F2013L00021]

Statement of Principles concerning malignant neoplasm of the oral cavity, oropharynx and hypopharynx No. 1 of 2013 [F2013L00016]

Statement of Principles concerning malignant neoplasm of the oral cavity, oropharynx and hypopharynx No. 2 of 2013 [F2013L00017]

Work Health and Safety Act 2011

Work Health and Safety Act 2011 (application to Defence activities and Defence members) Declaration 2012 [F2012L02503]

Instrument received week ending 18 January 2013***Work Health and Safety Act 2011***

Work Health and Safety Codes of Practice 2012 [F2012L02522]

Instruments received week ending 25 January 2013***Aged Care Act 1997***

Classification Amendment Principles 2013 (No. 1) [F2013L00074]

Broadcasting Services Act 1992

Broadcasting Services (Digital-Only Local Market Areas for the Remote Central and Eastern Australia TV1, Remote Central and Eastern Australia TV2, Remote and Regional WA TV1 and Western Zone TV1 Licence Areas) Determination (No. 1) 2013 [F2013L00056]

Civil Aviation Act 1988

CASA ADCX 001/13 - Revocation of Airworthiness Directives [F2013L00063]

CASA EX02/13 - Exemption - use of ADS-B in aircraft operated by Hi Fly, Lisbon, Portugal [F2013L00066]

CASA EX03/13 - Exemption — recency requirements for night flying for F100 aircraft (Network Aviation Pty Ltd) [F2013L00068]

CASA EX04/13 - Exemption — recency requirements for night flying for Embraer 120 aircraft (Network Aviation Pty Ltd) [F2013L00069]

CASA EX05/13 - Exemption - use of ADS B for the provision of air traffic services [F2013L00061]

Civil Aviation Order 20.18 Amendment Instrument 2013 (No. 1) [F2013L00070]

Competition and Consumer Act 2010

Consumer Goods (Portable Swimming Pools) Safety Standard 2013 [F2013L00049]

Corporations Act 2001

AASB 2012-9 - Amendment to AASB 1048 arising from the Withdrawal of Australian Interpretation 1039 - January 2013 [F2013L00073]

ASIC Class Order [CO 13/19] [F2013L00044]

Currency Act 1965

Currency (Perth Mint) Determination 2013 (No. 1) [F2013L00065]

Currency (Royal Australian Mint) Determination 2012 (No. 6) [F2013L00053]

Currency Legislation (Royal Australian Mint) Amendment Determination 2012 (No. 2) [F2013L00058]

Defence Act 1903

Defence Determination 2012/68, Reserve employer support payments

Defence Determination 2012/69, Post indexes – price review

Defence Determination 2012/70, Benchmark schools and approved club – amendment

Defence Determination 2012/71, Reserve member attending for duty in special circumstances – amendment

Defence Determination 2012/72, Increment advancement – amendment

Defence Determination 2013/1, Legal officer specialist officer career structure – amendment

Defence Determination 2013/2, Salary non-reduction - amendment

Financial Sector (Collection of Data) Act 2001

Financial Sector (Collection of Data) (reporting standard) determination No. 1 of 2013 - GRS 001 - Reporting Requirements [F2013L00076]

Higher Education Support Act 2003

Higher Education Support Act 2003 - VET Provider Approval (No. 2 of 2013) [F2013L00055]

Higher Education Support Act 2003 - VET Provider Approval (No. 3 of 2013) [F2013L00064]

National Consumer Credit Protection Act 2009

ASIC Class Order [CO 13/18] [F2013L00043]

National Health Act 1953

National Health Act 1953 - Amendment determination under paragraph 98C(1)(b) (No. PB 5 of 2013) [F2013L00071]

National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 1) [F2013L00046]

National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No. 2) (No. PB 4 of 2013) [F2013L00072]

Protection of the Sea (Prevention of Pollution from Ships) Act 1983

Marine Order 95 (Marine pollution prevention - garbage) 2013 [F2013L00059]

Water Efficiency Labelling and Standards Act 2005

Water Efficiency Labelling and Standards Determination 2013 [F2013L00067]

Instruments received week ending 1 February 2013

Corporations Act 2001

AASB 2012-10 – Amendments to Australian Accounting Standards – Transition Guidance and Other Amendments – December 2012 [F2013L00080]

AASB 2012-11 – Amendments to Australian Accounting Standards – Reduced Disclosure Requirements and Other Amendments – December 2012 [F2013L00075]

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Western Australian West Coast Rock Lobster Managed Fishery (22/01/2013) [F2013L00089]

Amendment of List of Exempt Native Specimens – Western Australian Western Rock Lobster Fishery (22/01/2013) [F2013L00090]

Financial Sector (Collection of Data) Act 2001

Financial Sector (Collection of Data) (reporting standard) determination No. 2 of 2013 – GRS 110.1 – Prescribed Capital Amount [F2013L00077]

Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2013 – GRS 112.0 – Determination of Capital Base [F2013L00081]

Financial Sector (Collection of Data) (reporting standard) determination No. 7 of 2013 – GRS 114.4 – Details of Investment Assets [F2013L00091]

Financial Sector (Collection of Data) (reporting standard) determination No. 9 of 2013 – GRS 110.1 – Prescribed Capital Amount [F2013L00077]

Financial Sector (Collection of Data) (reporting standard) determination No. 17 of 2013 – GRS 310.0 – Income Statement [F2013L00078]

Financial Sector (Collection of Data) (reporting standard) determination No. 21 of 2013 – GRS 400.0 – Statement of Risk by Country [F2013L00079]

Financial Sector (Collection of Data) (reporting standard) determination No. 26 of 2013 – GRS 170.0 (2008) – Concentration Risk Charge; Reporting Standard GRS 900.0 – Transitional Arrangements 2010 [F2013L00083]

Financial Sector (Collection of Data) (reporting standard) determination No. 27 of 2013 – GRS 110.0_G – Prescribed Capital Amount (Level 2 Insurance Group) [F2013L00092]

Financial Sector (Collection of Data) (reporting standard) determination No. 28 of 2013 – GRS 112.0_G – Determination of Capital Base (Level 2 Insurance Group) [F2013L00093]

Financial Sector (Collection of Data) (reporting standard) determination No. 29 of 2013 – GRS 112.3_G – Related Party Exposures (Level 2 Insurance Group) [F2013L00094]

Financial Sector (Collection of Data) (reporting standard) determination No. 32 of 2013 – GRS 114.3_G – Off-balance Sheet Business (Level 2 Insurance Group) [F2013L00095]

Radiocommunications Act 1992

Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Amendment Notice 2013 (No. 1) [F2013L00086]

Radiocommunications Devices (Compliance Labelling) Amendment Notice 2013 (No. 1) [F2013L00085]

Radiocommunications Labelling (Electromagnetic Compatibility) Amendment Notice 2013 (No. 1) [F2013L00084]

Protected Symbols Determination 2013 [F2013L00087]

Telecommunications Act 1997

Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2013 (No. 1) [F2013L00088]

Instruments received week ending 8 February 2013

Australian Prudential Regulation Authority Act 1998

Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2013 [F2013L00115]

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) (Destruction of Methane from Piggeries using Engineered Biodigesters) Methodology Determination 2013 [F2013L00124]

Carbon Credits (Carbon Farming Initiative) (Diversion of Legacy Waste to an Alternative Waste Treatment Facility) Methodology Determination 2013 [F2013L00161]

Carbon Credits (Carbon Farming Initiative) (Human Induced Regeneration of a Permanent Even-Aged Native Forest) Methodology Determination 2013 [F2013L00162]

Carbon Credits (Carbon Farming Initiative) (Reforestation and Afforestation) Methodology Determination 2013 [F2013L00123]

Civil Aviation Act 1988

AD/CESSNA 400/119 - Airframe Life Limitation [F2013L00104]

CASA 14/13 – Instructions – GNSS as primary means of navigation for NDB and VOR (overlay) approach – Qantas Airways Limited [F2013L00157]

CASA ADCX 002/13 - Revocation of Airworthiness Directives [F2013L00106]

CASA EX180/12 - Exemption - maintenance on limited category and experimental aircraft [F2013L00096]

CASA EX01/13 - Exemption - recency requirements for night flying (Alliance Airlines Pty Limited) [F2013L00114]

CASA EX06/13 - Exemption - for cabin crew member to use passenger seat [F2013L00103]

CASA EX07/13 - Exemption - carriage of cockpit voice recorders and flight data recorders [F2013L00137]

CASA EX08/13 - Exemption - from standard take-off and landing minima - DHL Air Ltd [F2013L00145]

CASA EX09/13 - Exemption - use of ADS-B in aircraft operated Aerolineas Argentinas [F2013L00153]

Currency Act 1965

Currency Legislation (Royal Australian Mint) Amendment Determination 2013 (No. 1) [F2013L00132]

Customs Act 1901

Customs Act 1901 - Amendment of Approved Statement Instrument No. 1 of 2013 - Amendment of "Cargo Report (Air)" [F2013L00133]

Customs Act 1901 - Amendment of Approved Statement Instrument No. 2 of 2013 - Amendment of "Self-Assessed Clearance Declaration (Air) (To be Communicated with a Cargo Report)" [F2013L00134]

Customs Act 1901 - Amendment of Approved Statement Instrument No. 3 of 2013 - Amendment of "Import Declaration (N10)" [F2013L00135]

Customs Act 1901 - Amendment of Approved Statement Instrument No. 4 of 2013 - Amendment of "Warehouse Declaration (N20)" [F2013L00138]

Customs Act 1901 - Amendment of Approved Statement Instrument No. 5 of 2013 - Amendment of "SAC (Short Form)" [F2013L00139]

Customs Act 1901 - Amendment of Approved Statement Instrument No. 6 of 2013 - Amendment of "Self-Assessed Clearance Declaration (Sea) (To Be Communicated With a Cargo Report)" [F2013L00142]

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens - Northern Territory Spanish Mackerel Fishery (25/01/2013) [F2013L00152]

Amendment of List of Exempt Native Specimens - Pandanus spiralis (18/12/2012) [F2013L00107]

Amendment of List of Exempt Native Specimens - Western Australian Shark Bay Prawn Managed Fishery (28/01/2013) (deletion) [F2013L00129]

Amendment of List of Exempt Native Specimens - Western Australian Shark Bay Prawn Managed Fishery (28/01/2013) (inclusion) [F2013L00128]

Amendment of List of Exempt Native Specimens - Western Australian Shark Bay Scallop Managed Fishery (28/01/2013) (deletion) [F2013L00127]

Amendment of List of Exempt Native Specimens - Western Australian Shark Bay Scallop Managed Fishery (28/01/2013) (inclusion) [F2013L00126]

Amendment - List of Specimens Taken to be suitable for Live Import (03/01/2013) [F2013L00105]

Fair Work (Building Industry) Act 2012

Building Code 2013 [F2013L00130]

Financial Sector (Collection of Data) Act 2001

Financial Sector (Collection of Data) (reporting standard) determination No. 10 of 2013 - GRS 115.0 - Outstanding Claims Liabilities - Insurance Risk Charge [F2013L00109]

Financial Sector (Collection of Data) (reporting standard) determination No. 13 of 2013 - GRS 116.1 - Probable Maximum Loss for LMIs [F2013L00110]

Financial Sector (Collection of Data) (reporting standard) determination No. 14 of 2013 - GRS 117.0 - Asset Concentration Risk Charge [F2013L00136]

Financial Sector (Collection of Data) (reporting standard) determination No. 33 of 2013 - GRS 115.0_G - Outstanding Claims Liabilities - Insurance Risk Charge (Level 2 Insurance Group) [F2013L00097]

Financial Sector (Collection of Data) (reporting standard) determination No. 34 of 2013 - GRS 115.1_G - Premiums Liabilities - Insurance Risk Charge (Level 2 Insurance Group) [F2013L00098]

Financial Sector (Collection of Data) (reporting standard) determination No. 36 of 2013 - GRS 117.0_G - Asset Concentration Risk Charge (Level 2 Insurance Group) [F2013L00099]

Financial Sector (Collection of Data) (reporting standard) determination No. 39 of 2013 - GRS 302.0_G - Statement of Financial Position by Region (Level 2 Insurance Group) [F2013L00101]

Financial Sector (Collection of Data) (reporting standard) determination No. 40 of 2013 - GRS 310.0_G - Income Statement (Level 2 Insurance Group) [F2013L00102]

Financial Sector (Collection of Data) (reporting standard) determination No. 41 of 2013 - GRS 141.0_G (2009) - Listed Equity Holdings and Risk Charge; GRS 301.0_G (2011) - Reinsurance Assets and Risk Charge (Level 2 Insurance Group) [F2013L00119]

Financial Sector (Collection of Data) (reporting standard) determination No. 42 of 2013 - LRS 001 - Reporting Requirements [F2013L00120]

Financial Sector (Collection of Data) (reporting standard) determination No. 43 of 2013 - LRS 110.1 - Prescribed Capital Amount [F2013L00113]

Financial Sector (Collection of Data) (reporting standard) determination No. 53 of 2013 - LRS 300.0 - Statement of Financial Position [F2013L00121]

Financial Sector (Collection of Data) (reporting standard) determination No. 54 of 2013 - LRS 310.0 - Income Statement [F2013L00140]

Financial Sector (Collection of Data) (reporting standard) determination No. 55 of 2013 - LRS 330.0 - Summary of Revenue and Expenses [F2013L00141]

Financial Sector (Collection of Data) (reporting standard) determination No. 56 of 2013 - LRS 340.0 - Retained Profits [F2013L00148]

Financial Sector (Collection of Data) (reporting standard) determination No. 57 of 2013 - LRS 400.0 - Statement of Policy Liabilities [F2013L00111]

Financial Sector (Collection of Data) (reporting standard) determination No. 58 of 2013 - LRS 420.0 - Assets Backing Policy Liabilities [F2013L00122]

Financial Sector (Collection of Data) (reporting standard) determination No. 59 of 2013 - LRS 430.0 - Sources of Profit [F2013L00149]

Financial Sector (Collection of Data) (reporting standard) determination No. 60 of 2013 - LRS 100.0 - Solvency; LRS 120.0 - Management Capital; LRS 210.0 - Derivatives, Commitments and Off-Balance Sheet Items; LRS 220.0 - Large Exposures; LRS 410.0 - Capital Measurement Statistics; LRS 901 - Transitional Arrangements 2008 [F2013L00150]

Fisheries Management Act 1991

2013 Eastern Tuna and Billfish Fishery Total Allowable Commercial Catch Determination [F2013L00131]

Macquarie Island Toothfish Fishery Fishing Year Determination 2013 [F2013L00156]

Macquarie Island Toothfish Fishery Management Plan Amendment 2012 [F2013L00118]

Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 1 2013 [F2013L00168]

Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 3 2013 [F2013L00166]

Higher Education Support Act 2003

Higher Education Support Act 2003 - VET Provider Approval (No. 4 of 2013) [F2013L00143]

Higher Education Support Act 2003 - VET Provider Approval (No. 5 of 2013) [F2013L00144]

Medical Indemnity Act 2002

Medical Indemnity (Run-off Cover Claims and Administration) Amendment Protocol 2013 [F2013L00154]

Private Health Insurance Act 2007

Private Health Insurance (Registration) Amendment Rules 2013 [F2013L00151]

Quarantine Act 1908

Quarantine Service Fees Amendment Determination 2013 (No. 1) [F2013L00125]

Radiocommunications Act 1992

Radiocommunications (Unacceptable Levels of Interference – 700 MHz Band) Amendment Determination 2013 (No. 1) [F2013L00159]

Remuneration Tribunal Act 1973

Remuneration Tribunal Determination 2013/01 - Remuneration and Allowances for Holders of Public Office [F2013L00100]

Social Security Act 1991

Social Security (South Australian 'Individualised Funding') (FaHCSIA) Determination 2013 [F2013L00116]

Telecommunications Universal Service Management Agency Act 2012

Levy Amount Formula Modification Determination 2013 [F2013L00158]

Telecommunications (Participating Persons) Determination 2013 [F2013L00155]

Therapeutic Goods Act 1989

Therapeutic Goods Information (Stakeholder Consultation on the System for Australian Recall Actions) Specification 2013 [F2013L00117]

Instruments received week ending 15 February 2013***Civil Aviation Act 1988***

AD/LYC/105 Amdt 2 – Oil Filter Converter Plate Gasket [F2013L00175]

Defence Act 1903

Defence Determination 2013/3, Review of housing contributions and allowances – amendment

Defence Determination 2013/4, Living-in accommodation – amendment

Defence Determination 2013/5, Rent ceilings – amendment

Defence Determination 2013/6, Post indexes – amendment

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Western Australian Exmouth Gulf Prawn Managed Fishery (04/02/2013) [F2013L00171]

Fisheries Management Act 1991

Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 2 2013 [F2013L00169]

Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 4 2013 [F2013L00170]

Military Rehabilitation and Compensation Act 2004

Military Rehabilitation and Compensation Act Education and Training Scheme (Income Support Bonus) Determination 2013 (No. MRCC 10) [F2013L00176]

Social and Community Services Pay Equity Special Account Act 2012

Social and Community Services Pay Equity Special Account (Additional Program) Specification 2013 [F2013L00179]

Veterans' Entitlements Act 1986

Veterans' Entitlements (Veterans' Children Education Scheme – Income Support Bonus) Instrument 2013 (No. R9/2013) [F2013L00178]

Total number of instruments scrutinised: 254

Appendix 2

Guideline on explanatory statements: consultation

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

Guideline for preparation of explanatory statements: consultation

Role of the committee

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

Purpose of guideline

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

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

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

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

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

Requirements of the Legislative Instruments Act 2003

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

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

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

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

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

Describing the nature of consultation

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

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

Method and purpose of consultation

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

Bodies/groups/individuals consulted

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

Issues raised in consultations and outcomes

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

Explaining why consultation has not been undertaken

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

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

Specific examples listed in the Act

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

Timing of consultation

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

In some cases, consultation is conducted in relation to the primary legislation which authorises the making of an instrument of delegated legislation, and this consultation is cited for the purposes of satisfying the requirements of the Act. The committee may regard this as acceptable provided that (a) the primary legislation and the instrument are made at or about the same time and (b) the consultation addresses the matters dealt with in the delegated legislation.

Seeking further advice or information

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

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