

The Senate

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Standing  
Committee on  
Regulations and  
Ordinances

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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.<sup>1</sup>

### The committee's terms of reference

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

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

The committee shall scrutinise each instrument to ensure:

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

### Work of the committee

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

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

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

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*.<sup>2</sup>

## **Structure of the report**

The report is comprised of the following parts:

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

## **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**

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

# Chapter 1

## New and continuing matters

This chapter lists new matters identified by the committee at its meeting on **14 March 2013**, 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.

### **A New Tax System (Goods and Services Tax) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 6] [F2013L00200]**

<b>Purpose</b>	Amends the A New Tax System (Goods and Services Tax) Regulations 1999 to make minor changes to the Tourist Refund Scheme and the Sealed Bag Scheme
<b>Last day to disallow<sup>1</sup></b>	18 June 2013
<b>Authorising legislation</b>	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
<b>Department</b>	Treasury

#### **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 explanatory statement (ES) which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26).<sup>2</sup> With reference to these requirements, the committee notes that the ES for this instrument states only that 'Consultation was undertaken on the proposed amendments and no changes were made as a result of consultation'. The committee generally considers that very bare or overly general descriptions of consultation, such as this, do not in describe the nature of the consultation undertaken, as required by section 26 of the *Legislative Instruments Act 2003*. **The committee will therefore seek further information from the minister**

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

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

and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.

### **Banking Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 8] [F2013L00206]**

<b>Purpose</b>	Amends the Banking Regulations 1966 to set out the conditions under which security, set-off and escrow accounts become unclaimed under s 69 of the <i>Banking Act 1959</i>
<b>Last day to disallow</b>	18 June 2013
<b>Authorising legislation</b>	<i>Banking Act 1959</i>
<b>Department</b>	Treasury

#### **ISSUE:**

##### *Whether instrument is in accordance with statute*

The committee notes that the instrument has commenced before its authorising provision (section 69(1B) of the *Banking Act 1959*), which will commence on 1 July 2013. The commencement of instruments in this way is provided for by section 4 of the *Acts Interpretation Act 1901* (AIA). However, in light of the potential for the unclaimed moneys scheme to impact on personal property, **the committee will seek advice from the minister regarding how the conditions under section 4 of the AIA apply, if at all, in this case.**

### **CASA EX12/13 - Exemption - operations by sport and recreational aircraft in restricted area R979A [F2013L00193]**

<b>Purpose</b>	Permits the operation of certain sport and recreational aircraft in a restricted area during the Australian International Air Show 2013 at Avalon, Victoria between 21 February 2013 and 5 March 2013
<b>Last day to disallow</b>	18 June 2013
<b>Authorising legislation</b>	Civil Aviation Safety Regulations 1998
<b>Department</b>	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 this instrument states only that 'CASA has consulted with the organiser of the Air Show and internally with sports aviation subject matter experts'. The committee has routinely considered that very bare or overly general descriptions of consultation, such as this, do not in fact describe the nature of the consultation undertaken, as is required by section 26 of the *Legislative Instruments Act 2003*. **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*.**

### **Civil Aviation Legislation Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 5] [F2013L00218]**

<b>Purpose</b>	Amends the Civil Aviation Safety Regulations 1998 (CASR) and the Civil Aviation Regulations 1988 (CAR). New Parts 61, 64, 141 and 142, pertaining to flight crew licensing and training and authorisations for non-licensed personnel, are added to the CASR. Various consequential, transitional and savings amendments are made to the CASR and to the CAR
<b>Last day to disallow</b>	18 June 2013
<b>Authorising legislation</b>	<i>Civil Aviation Act 1988</i>
<b>Department</b>	Infrastructure and Transport

#### **ISSUES:**

##### ***(a) Insufficiently defined discretion***

This instrument makes a number of amendments to the air safety regulations aimed mainly at improving safety standards for aviation licensing and training. New regulation 61.225 deals with aeronautical knowledge examinations, and provides:

If on 4 occasions a person attempts, but fails to pass, an aeronautical knowledge examination, or a part of an examination, the person is not permitted to attempt the examination or part again until CASA is satisfied that the person has completed appropriate training.

The committee regards the discretion provided to CASA as potentially uncertain, particularly in relation to what will or may constitute 'appropriate training'. **The committee will therefore seek further information from the minister.**

##### ***(b) Insufficiently defined offence provisions***

New regulation 61.360 sets out obligations in relation to the keeping of personal logbooks by the holder of a flight crew licence or certificate of validation. Paragraph 61.360(1)(b) creates a strict liability offence (with a penalty of up to 50 penalty units) for a holder to make an entry that is 'false or misleading'. However, the offence will not apply if the entry is 'not false or misleading in a material particular' (the same concept is also used in new regulation 264). While the concept of

'false or misleading in a material particular' is used, for example, in the *Crimes Act 1914* and the Criminal Code, given the strict liability nature of the offence, the committee considers that further guidance might be provided as to how the phrase will be interpreted and applied in this context. **The committee will therefore seek further information from the minister.**

*(c) Vague or uncertain concepts*

New regulations 141.070, 142.100 and 142.120 provide that the same person may occupy two specified positions within an operator organisation 'only in an unforeseen circumstance'. The committee considers that this concept could be vague or uncertain in its operation without some guidance as to what circumstances it may exclude or include. **The committee will therefore seek further information from the minister.**

*(d) Strict liability offences*

This instrument contains a number of strict liability offences. The ES notes that these offences:

...generally relate to situations in which an individual or organisation has performed an aviation-related activity without holding a necessary approval, certification or licence, or without doing something that is required to be done in relation to that activity.

The ES for the instrument provides a substantial justification for the framing of the offences as offences of strict liability, noting that:

- any impact on a person's right to a presumption of innocence is justified by the regulatory imperatives of maintaining the safe operation of the aviation sector;
- individuals participate in the sector with full knowledge of the regulatory approach; and
- the penalties for the strict liability offences are proportionate (50 penalty units).

**In light of the justification provided, the committee draws the attention of the Senate to the inclusion of strict liability offences in this instrument, and makes no further comment.**

## Competition and Consumer Act 2010 - Consumer Protection Notice No. 1 of 2013 - Safety Standard: Baby Walkers [F2013L00190]

<b>Purpose</b>	Establishes a mandatory safety standard for baby walkers
<b>Last day to disallow</b>	18 June 2013
<b>Authorising legislation</b>	<i>Competition and Consumer Act 2010</i>
<b>Department</b>	Treasury

### ISSUE:

#### *Drafting*

The ES to the instrument states that it is made under subsection 104(1) of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010*. As section 104 contains no express power to amend, vary or revoke a safety standard, 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 committee will therefore draw this issue to the attention of the minister.**

## Customs Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 1] [F2013L00204]

<b>Purpose</b>	Amends the Customs Regulations 1926 to extend the period during which travellers can acquire goods free of customs duty through the scheme from 30 days to 60 days
<b>Last day to disallow</b>	18 June 2013
<b>Authorising legislation</b>	<i>Customs Act 1901</i>
<b>Department</b>	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 this instrument states only that 'Consultation was undertaken on the change and no changes were made as a result of consultation'. The committee has routinely considered that very bare or overly general descriptions of consultation, such as this, do not in fact describe the nature of the consultation undertaken, as required by

section 26 of the *Legislative Instruments Act 2003*. **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 (Drug and Alcohol Testing) Regulation 2013 [Select Legislative Instrument No. 2, 2013] [F2013L00191]**

<b>Purpose</b>	Prescribes matters required to implement drug and alcohol testing within Customs and Border Protection
<b>Last day to disallow</b>	18 June 2013
<b>Authorising legislation</b>	<i>Customs Administration Act 1985</i>
<b>Department</b>	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 this instrument for this instrument states:

No consultation was undertaken specifically in relation to the amendments; however, extensive consultation and communication has been undertaken with representatives from the Agency business lines as well as with their union representatives in the design of drug and alcohol testing.

The committee considers that the ES is apparently contradictory on the issue of consultation. While it states that no consultation was undertaken, it also suggests that there was consultation in relation to the testing regime that the instrument introduces. **The committee will therefore seek further information from the minister.**

### Excise Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 10] [F2013L00199]

<b>Purpose</b>	Amends the Excise Regulations 1925 to make a minor change to the sealed bag scheme
<b>Last day to disallow</b>	18 June 2013
<b>Authorising legislation</b>	<i>Excise Act 1901</i>
<b>Department</b>	Treasury

#### 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 this instrument states only that 'Consultation was undertaken on the change and no changes were made as a result of consultation'. The committee has routinely considered that very bare or overly general descriptions of consultation, such as this, do not in fact describe the nature of the consultation undertaken, as required by section 26 of the *Legislative Instruments Act 2003*. **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*.**

### Higher Education Support Act 2003 - Amendment No. 1 to the Administration Guidelines 2012 [F2013L00180]

<b>Purpose</b>	Sets out the requirements for determining a census date under section 169-25(2) of the <i>Higher Education Support Act 2003</i>
<b>Last day to disallow</b>	18 June 2013
<b>Authorising legislation</b>	<i>Higher Education Support Act 2003</i>
<b>Department</b>	Industry, Innovation, Science, Research and Tertiary Education

#### ISSUE:

##### *Drafting*

This instrument revokes and replaces a previous guideline. The ES to the instrument states that it is made under section 238-10 of the *Higher Education Support Act 2003*. As section 238-10 contains no express power to amend, vary or revoke guidelines, the instrument presumably also 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 committee will therefore draw this issue to the attention of the minister.**

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

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

#### **ISSUE:**

##### ***Unclear basis for calculation or setting of deeming rates***

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

## Export Market Development Grants (Extended Lodgement and Consultant Quality Incentive) Determination 2012 [F2013L00258]

<b>Purpose</b>	Contains the circumstances and number of months, as required by subsection 70(4) of the <i>Export Market Development Grants Act 1997</i> (the Act), to be complied with by Austrade in assessing whether an application for grant meets the requirements of subparagraph 70(2)(b)(ii) of the Act
<b>Last day to disallow</b>	18 June 2013
<b>Authorising legislation</b>	<i>Export Market Development Grants Act 1997</i>
<b>Department</b>	Foreign Affairs and Trade

### ISSUE:

#### *Availability of merits review*

Regarding review rights, the ES for this instrument states:

'Review rights exist in relation to decisions made by Austrade to refuse to approve an applicant as a participating EMDG consultant or to cancel the approval of a participating EMDG consultant.

However, while the instrument clearly provides for these decisions to be reconsidered by the CEO of Austrade, it does not appear, on its face, to make provision for merits review as the ES may be taken to suggest. The committee notes that the decisions in question also do not appear to be (Administrative Appeals Tribunal) reviewable decisions for the purposes of section 97 of the *Export Market Development Act 1997*. **The committee will therefore seek further information from the minister.**

## Financial Sector (Collection of Data) (reporting standard) determination No. 38 of 2013 - GRS 300.0\_G Statement of Financial Position (Level 2 Insurance Group) [F2013L00359]

<b>Purpose</b>	Makes Reporting Standard GRS 300.0_G Statement of Financial Position (Level 2 Insurance Group).
<b>Last day to disallow</b>	25 June 2013
<b>Authorising legislation</b>	<i>Financial Sector (Collection of Data) Act 2001</i>
<b>Department</b>	Treasury

### ISSUE:

#### *Drafting*

This instrument includes 19 pages of 'instructions, which define a number of terms or concepts. The entries for the terms define at sections 3.5.1 and 3.5.2 contain an apparent typographical error: 'The is' is used for 'This is'. 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 attention of the minister.**

### **Schools Assistance (Guidelines for Determining Socio-Economic Status (SES) Scores) Amendment 2013 (No. 1) [F2013L00349]**

<b>Purpose</b>	Amends the Guidelines for Determining Socio-Economic Status (SES) Scores 2008 to reflect the extension of funding for recurrent expenditure under the <i>Schools Assistance Act 2008</i> .
<b>Last day to disallow</b>	24 June 2013
<b>Authorising legislation</b>	<i>Schools Assistance Act 2008</i>
<b>Department</b>	Education, Employment and Workplace Relations

#### **ISSUE:**

##### ***Drafting***

The instrument states that it is made under subsection 72(3) of the *Schools Assistance Act 2008*. As subsection 72(3) contains no express power to amend, vary or revoke such guidelines, the instrument presumably relies also on the power contained in 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 committee will therefore draw this issue to the attention of the minister.**

## Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 [F2013L00290]

<b>Purpose</b>	Prescribes requirements applying to alcohol management plans.
<b>Last day to disallow</b>	20 June 2013
<b>Authorising legislation</b>	<i>Stronger Futures in the Northern Territory Act 2012</i>
<b>Department</b>	Families, Housing, Community Services and Indigenous Affairs

### ISSUE:

#### *Drafting*

This instrument states that it is made under subsection 17(3) of the *Stronger Futures in the Northern Territory Act 2012*, which deals with alcohol management plans and provides:

The Minister must not approve [an alcohol management plan] under subsection (1) unless the Minister is satisfied that the plan meets the requirements (if any) applying to alcohol management plans that are prescribed by the rules.

The committee notes that the general power to make rules appears to be authorised by section 119 of the *Stronger Futures in the Northern Territory Act 2012*. If that is the case, it would be preferable for the making words of the instrument to refer to that section rather than subsection 17(3). **The committee will therefore draw this issue to the attention of the minister.**

## Income Tax Assessment Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 24] [F2013L00394]

<b>Purpose</b>	Amends the Income Tax Assessment Regulations 1997 to insert the 'cents per kilometre' rates for calculating tax deductions for car expenses for the 2012-13 income year
<b>Last day to disallow</b>	25 June 2013
<b>Authorising legislation</b>	<i>Income Tax Assessment Act 1997</i>
<b>Department</b>	Treasury

### ISSUE:

#### *No 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 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*.**

## Chapter 2

### Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on **14 March 2013**. The committee has concluded its interest in these matters on the basis of responses received from ministers or relevant instrument-makers.

Correspondence relating to these matters is included at Appendix 3.

#### **Water Act 2007 – Basin Plan 2012 [F2012L02240]**

<b>Purpose</b>	Specifies a Basin Plan for the Murray-Darling Basin.
<b>Last day to disallow<sup>1</sup></b>	19 March 2013
<b>Authorising legislation</b>	<i>Water Act 2007</i>
<b>Department</b>	Sustainability, Environment, Water, Population and Communities

#### **ISSUE:**

##### *Availability of merits review for certain decisions*

Part 3 of the plan requires an irrigation infrastructure operator (IIO) to specify a person's water delivery rights, changes to those rights, and irrigation rights and changes to those rights. The committee considers that it is not clear from the plan what rights of review a person has in relation to decisions made by an irrigation infrastructure operator [**the committee sought further information from the minister**].

#### **MINISTER'S RESPONSE:**

The minister advised that an IIO's decisions are governed by the framework established by the laws of the relevant states, the relevant Water Resource Plan and the governance structure and rules of the operator itself. Review of these decisions is therefore governed by the relevant state laws and operating rules of the IIOs. The water market rules also specify a dispute resolution process which includes the ability of the holder of an irrigation right to enter into formal negotiations with an IIO.

#### **COMMITTEE RESPONSE:**

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

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

## Defence and Strategic Goods List Amendment 2012 (No. 1) [F2012L02318]

<b>Purpose</b>	Amends the list of defence and dual-use goods which are prohibited from being exported from Australia without a licence or permission granted by the minister or an authorised person
<b>Last day to disallow</b>	15 May 2013
<b>Authorising legislation</b>	<i>Customs Act 1901</i>
<b>Department</b>	Defence

### ISSUE:

#### *Insufficient information regarding consultation*

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The explanatory statement (ES) which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26).<sup>2</sup> With reference to these requirements, the committee notes that, while the ES for the instrument refers to issues raised in the review of the Defence Trade Control Bill, it goes on to state that these issues (and more general stakeholder engagement) will be addressed through the provision of training and materials through the Defence Export Control Office, in consultation with the Strengthened Export Controls Steering Group (the composition of which is not described). The committee considers it is unclear as to why consultation was considered unnecessary or inappropriate in this case [**the committee sought further information from the minister and requested that, if necessary, the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***].

### MINISTER'S RESPONSE:

The minister advised that no consultation was undertaken on the amendment as it had minimal or no effect on Australian industry. The Strengthened Export Controls Steering Group, which has four industry representatives, would be consulted on further Defence and Strategic Goods List training and materials. The minister further advised that the ES had been amended to clarify why consultation was considered unnecessary for this amendment.

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

**COMMITTEE RESPONSE:**

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

**Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 260] [F2012L02267]**

<b>Purpose</b>	Increases the permit application fees specified in the principal regulations from 1 January 2013
<b>Last day to disallow</b>	21 March 2013
<b>Authorising legislation</b>	<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>
<b>Department</b>	Sustainability, Environment, Water, Population and Communities

**ISSUE:*****Insufficient information regarding consultation***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that, while the ES for the instrument refers to a 'short period' of unspecified duration during which advice on the fee increases will be provided to industry members, there is no indication that there has been any consultation prior to the making of the instrument **[the committee sought further information from the parliamentary secretary and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*].**

**PARLIAMENTARY SECRETARY'S RESPONSE:**

The parliamentary secretary advised that extensive consultation was undertaken between 2009 and 2012 with member organisations of the Australian Refrigeration Council and the Fire Protection Association of Australia, and that these organisations supported an increase in fees. The parliamentary secretary further advised that the ES will be amended to provide the requisite information on the consultation.

**COMMITTEE RESPONSE:**

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

**Health Insurance (General Medical Services Table) Amendment Regulation 2012 (No. 5) [Select Legislative Instrument 2012 No. 296] [F2012L02406]**

<b>Purpose</b>	Amends the Health Insurance (General Medical Services Table) Regulation 2012 to include a number of minor changes to implement Government policies in relation to Medicare
<b>Last day to disallow</b>	15 May 2013
<b>Authorising legislation</b>	<i>Health Insurance Act 1973</i>
<b>Department</b>	Health and Ageing

**ISSUES:**

***(a) Insufficient information regarding consultation***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES that accompanies the instrument states only that the 'change is a minor amendment to correct an omission in the Principal Regulation'. In the committee's view, this statement is not sufficient to satisfy the requirement that an ES describe the nature of consultation undertaken, or provide an explanation of why consultation was not undertaken **[the committee sought further information from the minister and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

***(b) drafting***

The committee notes that in item [14] of schedule 1 the reference to 'Clause 2.11.1 table, item 389. should presumably be a reference to 'clause 2.11.1, table, item 389'. 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 drew the issue to the minister's attention]**.

**MINISTER'S RESPONSE:**

The minister advised that the amendment corrected a drafting error to include two words that had been omitted from the principal 2012 regulation. The inclusion of those words was included in the consultation for the original regulation. The minister further advised that the ES would be amended to provide further information on consultation.

The minister also noted the committee's advice in relation to the minor drafting matter and advised that it would be taken into consideration when drafting future instruments.

**COMMITTEE RESPONSE:**

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

**Clean Energy Amendment Regulation 2012 (No. 7) [Select Legislative Instrument 2012 No. 289] [F2012L02384]**

<b>Purpose</b>	Amends the Clean Energy Regulations 2011 to establish the liquid fuels Opt-in Scheme and make other amendments
<b>Last day to disallow</b>	15 May 2013
<b>Authorising legislation</b>	<i>Clean Energy Act 2011</i>
<b>Department</b>	Climate Change and Energy Efficiency

**ISSUE:**

*Drafting*

This instrument inserts a new Division 7 into the Clean Energy Regulations 2011, and contains a number of definitions. One of these is as follows:

joint venture operator, of a GST joint venture, has the same meaning as in the *Fuel Tax Act 2006*

The relevant definition in the *Fuel Tax Act 2006* is that 'joint venture operator' has the meaning given by section 195-1 of the GST Act. In contrast, the instrument in other cases provides a more direct definition to the GST Act, such as for 'representative member, of a GST group', which has the meaning given by section 195-1 of the GST Act. The committee considers that it is unclear why divergent approaches have been taken in relation to these definitions [**the committee sought further information from the parliamentary secretary**].

**PARLIAMENTARY SECRETARY'S RESPONSE:**

The parliamentary secretary advised that a definition of 'joint venture operator' was not included when *Clean Energy Act 2011* was made. As such, the term is defined by reference to the *Fuel Tax Act 2006*. This definition had since been added to the *Clean Energy Act 2011* and a future amendment to the regulation could be used to refer directly to that Act. The definition of 'representative member' is referenced to the *A New Tax System (Goods and Services Tax) Act 1999* as it is not contained in either the *Clean Energy Act 2011* or the *Fuel Tax Act 2006*.

**COMMITTEE RESPONSE:**

**The committee thanks the parliamentary secretary for her response and has concluded its interest in the matter.**

**Aviation Transport Security Amendment Regulation 2012 (No. 6) [Select Legislative Instrument 2012 No. 304] [F2012L02424]**

<b>Purpose</b>	Makes a number of amendments to the principal regulations
<b>Last day to disallow</b>	15 May 2013
<b>Authorising legislation</b>	<i>Aviation Transport Security Act 2004</i>
<b>Department</b>	Infrastructure and Transport

**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 sought further information from the minister and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

**MINISTER'S RESPONSE:**

The minister advised that consultation was undertaken through the department's Regional Industry Consultative Meeting, Aviation Security Training Advisory Group and the Employee Consultative Forum on matters relating to the operational period of regional and remote airports, and the removal of the requirement for screening officers to hold state/territory security guard licences. Meetings were held with representatives of aviation industry bodies and employment associations between December 2010 and August 2012. Consultation was not undertaken for the remaining parts of the amendments as they were considered to be minor or machinery in nature. The minister further advised that the ES had been amended to include information on the consultation undertaken on this regulation.

**COMMITTEE RESPONSE:**

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

## ASQA Authorised Officer Requirements [F2012L02326]

<b>Purpose</b>	Specifies the experience, training and qualification requirements for persons to be appointed as authorised officers under the <i>National Vocational Education and Training Regulator Act 2011</i>
<b>Last day to disallow</b>	15 May 2013
<b>Authorising legislation</b>	<i>National Vocational Education and Training Regulator Act 2011</i>
<b>Department</b>	Industry, Innovation, Science, Research and Tertiary Education

### ISSUE:

#### *Unclear term/criteria*

The instrument specifies the experience, training and qualification requirements for persons to be appointed as authorised officers under the *National Vocational Education and Training Regulator Act 2011*. Item 6(1) states that a person will satisfy the experience requirements if they are able to demonstrate previous experience in specified roles 'for a length of time deemed acceptable by the Chief Commissioner', and the ES states that the relevant length of time is to be determined by the Chief Commissioner. It is thus not clear to the committee in what manner and form the Chief Commissioner will deem or determine the relevant length of time, or how prospective authorised officers will be made aware of this criterion. The committee's usual expectation with regard to instruments that establish criteria guiding administrative decision making is that such criteria are clear and objectively ascertainable on the face of an instrument and its supporting ES [**the committee sought further information from the minister**].

### MINISTER'S RESPONSE:

The minister advised that, in a fluctuating job market, the Chief Commissioner needs a degree of flexibility to determine the length of experience required for specified roles. Based on the recent experience of the regulator, a minimum of two years full time experience in an investigative or statutory compliance role is required. The Chief Commissioner intended to publish the acceptable length of time in the relevant operational and recruitment material.

### COMMITTEE RESPONSE:

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

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

<b>Purpose</b>	Amends the Family Law Rules 2004
<b>Last day to disallow</b>	15 May 2013
<b>Authorising legislation</b>	<i>Family Law Act 1975</i>
<b>Department</b>	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 sought further information from the Chief Justice]**.

**CHIEF JUSTICE'S RESPONSE:**

The Chief Justice advised that, consistent with the practice adopted in previous years, the Itemised Scale of Costs increases were in accordance with the recommendation of the Joint Costs Advisory Committee (JCAC), consistent with the practice adopted by the High Court, Federal Court and Family Court. The Chief Justice noted that it was difficult to include information regarding the basis for the increase to the Itemised Scale of Costs as this was a relatively complex equation, and also that the Itemised Scale of Costs did not equate to a fee, levy or charge such as would generally attract the interest of the committee.

**COMMITTEE RESPONSE:**

**The committee thanks the Chief Justice for her response and has concluded its interest in the matter.**

**However, the committee notes that the inclusion of information in an ES regarding the basis of changes (particularly increases) to a fee, levy or charge (or, indeed, any administrative, regulatory or other scale or schedule which would ultimately act as the basis for imposing or calculating a cost) allows stakeholders to easily ascertain the basis for assumed costs, and generally improves the accessibility and intelligibility of explanatory material accompanying delegated legislation. As in most respects, the committee does not generally expect a high level of detail in ESs, but requires only a relatively brief description that effectively explains the purpose and operation of the instrument.**

# Appendix 1

## Index of instruments scrutinised

The following instruments were considered by the committee at its meeting on **14 March 2013**.

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

### Instruments received week ending 22 February 2013

#### *A New Tax System (Goods and Services Tax) Act 1999*

A New Tax System (Goods and Services Tax) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 6] [F2013L00200]

A New Tax System (Goods and Services Tax) Amendment Regulation 2013 (No. 2) [Select Legislative Instrument 2013 No. 7] [F2013L00202]

#### *Appropriation Act (No. 1) 2010-2011*

Determination to Reduce Appropriations (No. 5 of 2012-2013) [F2013L00207]

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

Australian Prudential Regulation Authority (confidentiality) determination No. 2 of 2013 [F2013L00219]

#### *Banking Act 1959*

Banking Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 8, 2013] [F2013L00206]

#### *Civil Aviation Act 1988*

AD/A320/96 Amdt 2 - Alternate Braking System Check [F2013L00182]

CASA 24/13 - Permission - flying over a public gathering at the Australian International Air Show, Avalon - Permission - flying below minimum height at the Australian International Air Show, Avalon [F2013L00211]

CASA EX12/13 - Exemption - operations by sport and recreational aircraft in restricted area R979A [F2013L00193]

CASA EX13/13 - Exemption - turns after take-off at Australian International Air Show [F2013L00196]

CASA EX16/13 - Exemption - power-assisted glider at the Australian International Air Show, Avalon [F2013L00198]

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

Civil Aviation Legislation Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 5] [F2013L00218]

### ***Competition and Consumer Act 2010***

Competition and Consumer Act 2010 - Consumer Protection Notice No. 1 of 2013 - Safety Standard: Baby Walkers [F2013L00190]

Competition and Consumer Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 9] [F2013L00187]

### ***Customs Act 1901***

Customs Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 1] [F2013L00204]

### ***Customs Administration Act 1985***

Customs (Drug and Alcohol Testing) Regulation 2013 [Select Legislative Instrument No. 2, 2013] [F2013L00191]

### ***Environment Protection and Biodiversity Conservation Act 1999***

Inclusion of ecological communities in the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 - Lowland Grassy Woodland in the South East Corner Bioregion (117) (30/01/2013) [F2013L00192]

### ***Excise Act 1901***

Excise Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 10] [F2013L00199]

### ***Extradition Act 1988***

Extradition (Cybercrime) Regulation 2013 [Select Legislative Instrument No. 3, 2013] [F2013L00214]

### ***Fisheries Management Act 1991***

Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 5 2013 [F2013L00222]

### ***Health Insurance Act 1973***

Health Insurance (General Medical Services Table) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 12] [F2013L00201]

### ***Higher Education Support Act 2003***

Higher Education Support Act 2003 - Amendment No. 1 to the Administration Guidelines 2012 [F2013L00180]

### ***Mutual Assistance in Criminal Matters Act 1987***

Mutual Assistance in Criminal Matters (Cybercrime) Regulation 2013 [Select Legislative Instrument No. 4, 2013] [F2013L00205]

### ***National Health Act 1953***

National Health Act 1953 - Amendment determination under paragraph 98C(1)(b) (No. PB 9 of 2013) [F2013L00186]

National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No. 3) (No. PB 8 of 2013) [F2013L00185]

***Private Health Insurance Act 2007***

Private Health Insurance (Prostheses) Amendment Rules 2013 (No. 1) [F2013L00203]

***Retirement Savings Accounts Act 1997***

Retirement Savings Accounts Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 13] [F2013L00208]

***Social Security Act 1991***

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

***Superannuation Industry (Supervision) Act 1993***

Superannuation Industry (Supervision) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 14] [F2013L00212]

***Sydney Airport Demand Management Act 1997***

Sydney Airport Slot Management Scheme 2013 [F2013L00183]

***Tertiary Education Quality and Standards Agency Act 2011***

Tertiary Education Quality and Standards Agency Act 2011 - Amendment No. 1 to the Higher Education Standards Framework (Threshold Standards) 2011 [F2013L00194]

**Instruments received week ending 1 March 2013*****Australian Prudential Regulation Authority Act 1998***

Australian Prudential Regulation Authority (confidentiality) determination No. 3 of 2013 [F2013L00316]

***Broadcasting Services Act 1992***

Licence Area Plan - Colac Radio - Variation No. 1 of 2013 [F2013L00266]

Licence Area Plan - Mount Isa Radio - Variation No. 1 of 2013 [F2013L00259]

Licence Area Plan - Nhulunbuy Radio - Variation No. 1 of 2013 [F2013L00261]

Licence Area Plan - Wangaratta Radio - Variation No. 1 of 2013 [F2013L00263]

***Civil Aviation Act 1988***

CASA ADCX 003/13 - Revocation of Airworthiness Directives [F2013L00246]

CASA EX11/13 - Exemption - from recent experience requirements for air transport pilots [F2013L00260]

CASA EX18/13 - Exemption - recency flying at night by holders of night V.F.R. agricultural ratings [F2013L00276]

***Defence Act 1903***

Defence Determination 2013/7, Parental Leave – amendment

Defence Determination 2013/8, Carer's leave, benchmark schools and approved clubs – amendment

Defence Determination 2013/9, Tertiary education assistance – amendment

Defence Determination 2013/10, Contribution for living-in accommodation – amendment

Defence Determination 2013/11, Hardship post conditions of service – amendment

Defence Determination 2013/12, Overseas education assistance - amendment

***Environment Protection and Biodiversity Conservation Act 1999***

Amendment of List of Exempt Native Specimens - Southern and Eastern Scalefish and Shark Fishery (25/02/2013) (deletion) [F2013L00346]

Amendment of List of Exempt Native Specimens - Southern and Eastern Scalefish and Shark Fishery (25/02/2013) (inclusion) [F2013L00345]

Amendment of List of Exempt Native Specimens - Tasmanian Giant Crab Fishery (22/02/2013) (deletion) [F2013L00291]

Amendment of List of Exempt Native Specimens - Tasmanian Giant Crab Fishery (22/02/2013) (inclusion) [F2013L00293]

Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (121) (30/01/2013) [F2013L00281]

Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (137) (30/01/2013) [F2013L00271]

Environment Protection and Biodiversity Conservation Act 1999 - section 269A - Instrument revoking and making recovery plan (Conservation Management Plan for the Southern Right Whale) (05/02/2013) [F2013L00289]

Inclusion in the list of key threatening processes under section 183 of the Environment Protection and Biodiversity Conservation Act 1999 (15) (23/01/2013) [F2013L00285]

Inclusion of ecological communities in the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 - Monsoon vine thickets on the coastal sand dunes of Dampier Peninsula (EC 105) (14/02/2013) [F2013L00299]

Inclusion of ecological communities in the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 - Western Sydney Dry Rainforest and Moist Woodland on Shale (EC 106) (13/11/2012) [F2013L00298]

Interim (Small Pelagic Fishery) Declaration (No. 2) 2013 [F2013L00294]

***Export Control Act 1982***

Export Control (Prescribed Goods - General) Amendment Order 2013 (No. ) [F2013L00251]

***Export Market Development Grants Act 1997***

Export Market Development Grants (Extended Lodgement and Consultant Quality Incentive) Determination 2012 [F2013L00258]

***Financial Sector (Collection of Data) Act 2001***

Financial Sector (Collection of Data) (reporting standard) determination No. 4 of 2013 - GRS 112.3 - Related Party Exposures [F2013L00352]

Financial Sector (Collection of Data) (reporting standard) determination No. 6 of 2013 - GRS 114.1 - Assets by Counterparty Grade [F2013L00355]

Financial Sector (Collection of Data) (reporting standard) determination No. 8 of 2013 - GRS 114.3 - Off-balance Sheet Business [F2013L00360]

Financial Sector (Collection of Data) (reporting standard) determination No. 16 of 2013 - GRS 300.0 - Statement of Financial Position [F2013L00367]

Financial Sector (Collection of Data) (reporting standard) determination No. 22 of 2013 - GRS 410.0 - Movement in Outstanding Claims Liabilities [F2013L00361]

Financial Sector (Collection of Data) (reporting standard) determination No. 23 of 2013 - GRS 420.0 - Premium Revenue by State and Territory of Australia [F2013L00362]

Financial Sector (Collection of Data) (reporting standard) determination No. 24 of 2013 - GRS 430.0 - Claims Expense by State and Territory of Australia [F2013L00364]

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Financial Sector (Collection of Data) (reporting standard) determination No. 25 of 2013 - GRS 440.0 - Claims Development Table [F2013L00353]

Financial Sector (Collection of Data) (reporting standard) determination No. 30 of 2013 - GRS 114.0\_G Asset Risk Charge (Level 2 Insurance Group) [F2013L00354]

Financial Sector (Collection of Data) (reporting standard) determination No. 31 of 2013 - GRS 114.1\_G Assets by Counterparty Grade (Level 2 Insurance Group) [F2013L00356]

Financial Sector (Collection of Data) (reporting standard) determination No. 35 of 2013 - GRS 116.0\_G - Insurance Concentration Risk Charge (Level 2 Insurance Group) [F2013L00358]

Financial Sector (Collection of Data) (reporting standard) determination No. 38 of 2013 - GRS 300.0\_G Statement of Financial Position (Level 2 Insurance Group) [F2013L00359]

Financial Sector (Collection of Data) (reporting standard) determination No. 44 of 2013 - LRS 112.0 - Determination of Capital Base [F2013L00366]

Financial Sector (Collection of Data) (reporting standard) determination No. 45 of 2013 - LRS 112.3 - Related Party Exposures [F2013L00363]

Financial Sector (Collection of Data) (reporting standard) determination No. 46 of 2013 - LRS 114.00 - Asset Risk Charge [F2013L00365]

### ***Fisheries Management Act 1991***

2013 Eastern Tuna and Billfish Fishery Overcatch and Undercatch Determination [F2013L00357]

### ***Health Insurance Act 1973***

Health Insurance (B-Scan Ultrasonography and Holmium: YAG Laser Enucleation of the Prostate) Determination 2013 [F2013L00350]

### ***Higher Education Support Act 2003***

Higher Education Support Act 2003 - VET Provider Approval (No. 6 of 2013) [F2013L00243]

Higher Education Support Act 2003 - VET Provider Approval (No. 7 of 2013) [F2013L00244]

### ***National Health Act 1953***

National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 2) (No. PB 11 of 2013) [F2013L00254]

National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2013 (No. 1) (No. PB 10 of 2013) [F2013L00245]

National Health (Listed drugs on F1 or F2) Amendment Determination 2013 (No. 1) (No. PB 12 of 2013) [F2013L00329]

National Health Act (Pharmaceutical Benefits - Early Supply) Amendment March 2013 - specification under subsection 84AAA(2) (No. PB 13 of 2013) [F2013L00275]

### ***Private Health Insurance Act 2007***

Private Health Insurance (Prostheses) Amendment Rules 2013 (No. 2) [F2013L00265]

### ***Remuneration Tribunal Act 1973***

Remuneration Tribunal Determination 2013/02 - Remuneration and Allowances for Holders of Public Office [F2013L00242]

### ***Schools Assistance Act 2008***

Schools Assistance (Guidelines for Determining Socio-Economic Status (SES) Scores) Amendment 2013 (No. 1) [F2013L00349]

***Stronger Futures in the Northern Territory Act 2012***

Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013 [F2013L00290]

***Superannuation Act 1976***

Superannuation (CSS) (Superannuation Guarantee) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 11] [F2013L00255]

***Taxation Administration Act 1953***

Taxation Administration Act 1953 - Nil rate determination and exemption from lodging Minerals Resource Rent Tax (MRRT) Instalment Liability Notices Instrument (No. 1) 2013 [F2013L00262]

**Instruments received week ending 8 March 2013*****Australian Charities and Not-for profits Commission Act 2012***

Australian Charities and Not-for-profits Commission Regulation 2013 [Select Legislative Instrument No. 22, 2013] [F2013L00401]

Australian Charities and Not-for-profits Commission Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 23, 2013] [F2013L00402]

***Australian Securities and Investments Commission Act 2001***

Professional Standards Scheme Legislation Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 25] [F2013L00385]

***Broadcasting Services Act 1992***

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2013) [F2013L00400]

***Civil Aviation Act 1988***

CASA 39/13 – Directions under subregulation 235(2) relating to landing weight and landing distance required [F2013L00420]

CASA EX22/13 - Exemption - recency requirements for night flying (National Jet Systems Pty Ltd) [F2013L00383]

CASA EX24/13 - Exemption, permission and approval - dropping of articles [F2013L00384]

CASA EX25/13 - Exemption - drug and alcohol management plan information - Exemption - use of pre-hiring drug and alcohol tests [F2013L00382]

Civil Aviation Order 95.4.1 Amendment Instrument 2013 (No. 1) [F2013L00410]

***Clean Energy Act 2011***

Clean Energy Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 17, 2013] [F2013L00393]

***Corporations Act 2001***

Corporations Act 2001 - Determination of CCP Standards 7.3, 7.9 13.1, 13.2 and 13.3 [F2013L00392]

Corporations Act 2001 - Revocation of CCP Standards 7.3, 7.9 13.1, 13.2 and 13.3 [F2013L00388]

***Currency Act 1965***

Currency Legislation (Royal Australian Mint) Amendment Determination 2013 (No. 2) [F2013L00399]

***Defence Act 1903***

Defence (Personnel) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 19, 2013] [F2013L00389]

***Environment Protection and Biodiversity Conservation Act 1999***

Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (114) (30/01/2013) [F2013L00403]

***Extradition Act 1988***

Extradition (Piracy against Ships in Asia) Regulation 2013 [Select Legislative Instrument No. 15, 2013] [F2013L00397]

***Family Law Act 1975***

Family Law (Superannuation) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 16, 2013] [F2013L00396]

***Financial Management and Accountability Act 1997***

Financial Management and Accountability Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 27, 2013] [F2013L00391]

***Financial Sector (Collection of Data) Act 2001***

Financial Sector (Collection of Data) (reporting standard) determination No. 5 of 2013 - GRS 114.0 - Asset Risk Charge [F2013L00386]

Financial Sector (Collection of Data) (reporting standard) determination No. 11 of 2013 - GRS 115.1 - Premiums Liabilities - Insurance Risk Charge [F2013L00381]

Financial Sector (Collection of Data) (reporting standard) determination No. 12 of 2013 - GRS 116.0 - Insurance Concentration Risk Charge [F2013L00376]

Financial Sector (Collection of Data) (reporting standard) determination No. 15 of 2013 - GRS 118.0 - Operational Risk Charge [F2013L00372]

Financial Sector (Collection of Data) (reporting standard) determination No. 18 of 2013 - GRS 310.1 - Premium Revenue and Reinsurance Expense [F2013L00368]

Financial Sector (Collection of Data) (reporting standard) determination No. 19 of 2013 - GRS 310.2 - Claims Expense and Reinsurance Recoveries [F2013L00379]

Financial Sector (Collection of Data) (reporting standard) determination No. 20 of 2013 - GRS 310.3 - Details of Income and Expenses [F2013L00370]

Financial Sector (Collection of Data) (reporting standard) determination No. 37 of 2013 - GRS 118.0\_G - Operational Risk Charge (Level 2 Insurance Group) [F2013L00380]

Financial Sector (Collection of Data) (reporting standard) determination No. 47 of 2013 - LRS 114.2 - Derivatives Activity [F2013L00369]

Financial Sector (Collection of Data) (reporting standard) determination No. 48 of 2013 - LRS 114.3 - Off-balance Sheet Business [F2013L00371]

Financial Sector (Collection of Data) (reporting standard) determination No. 49 of 2013 - LRS 115.0 - Insurance Risk Charge [F2013L00373]

Financial Sector (Collection of Data) (reporting standard) determination No. 50 of 2013 - LRS 117.0 - Asset Concentration Risk Charge [F2013L00375]

Financial Sector (Collection of Data) (reporting standard) determination No. 51 of 2013 - LRS 118.0 - Operational Risk Charge [F2013L00377]

Financial Sector (Collection of Data) (reporting standard) determination No. 52 of 2013 - LRS 200.0 - Capital Adequacy Supplementary Information [F2013L00378]

***Higher Education Support Act 2003***

Higher Education Support Act 2003 – VET Provider Approval (No. 7 of 2013) [F2013L00417]

***Income Tax Assessment Act 1997***

Income Tax Assessment Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 24] [F2013L00394]

***Radiocommunications Act 1992***

Radiocommunications (Short Range Devices) Amendment Standard 2013 (No. 1) [F2013L00415]

***Renewable Energy (Electricity) Act 2000***

Renewable Energy (Electricity) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 18, 2013] [F2013L00387]

***Superannuation Industry (Supervision) Act 1993***

Superannuation Legislation Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 26, 2013] [F2013L00395]

***Telecommunications Act 1997***

Telecommunications (Listed Infringement Notice Provisions) Amendment Declaration 2013 [F2013L00408]

***Veterans' Entitlements Act 1986***

Statement of Principles concerning essential thrombocythaemia No. 15 of 2013 [F2013L00409]

Statement of Principles concerning essential thrombocythaemia No. 16 of 2013 [F2013L00411]

Statement of Principles concerning hypopituitarism No. 19 of 2013 [F2013L00413]

Statement of Principles concerning hypopituitarism No. 20 of 2013 [F2013L00414]

Statement of Principles concerning polycythaemia vera No. 11 of 2013 [F2013L00404]

Statement of Principles concerning polycythaemia vera No. 12 of 2013 [F2013L00406]

Statement of Principles concerning primary myelofibrosis No. 17 of 2013 [F2013L00416]

Statement of Principles concerning primary myelofibrosis No. 18 of 2013 [F2013L00412]

Statement of Principles concerning seborrhoeic dermatitis No. 13 of 2013 [F2013L00405]

Statement of Principles concerning seborrhoeic dermatitis No. 14 of 2013 [F2013L00407]

***Water Efficiency Labelling and Standards Act 2005***

Water Efficiency Labelling and Standards Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 21] [F2013L00398]

**Total number of instruments scrutinised: 135**

## **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](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_ctte/index.htm) or by contacting the committee secretariat at:

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

Phone: +61 2 6277 3066  
Fax: +61 2 6277 5881  
Email: [RegOrds.Sen@aph.gov.au](mailto:RegOrds.Sen@aph.gov.au)



## **Appendix 3**

### **Correspondence relating to committee's scrutiny**





The Hon Tony Burke MP

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27 FEB 2013

Senate Standing C'ttee  
on Regulations  
and Ordinances

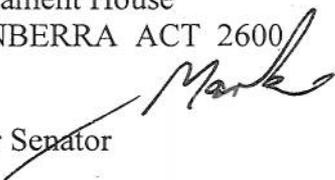
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Minister for Sustainability, Environment, Water, Population and Communities

C13/2900

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

25 FEB 2013

  
Dear Senator

I refer to your letter of 7 February 2013 concerning the operation of the water trading rules in the Murray-Darling Basin Plan (the Basin Plan). The water trading rules are contained in chapter 12 of the Basin Plan.

The Basin Plan does not enable irrigation infrastructure operators to create or grant water delivery rights or irrigation rights. The water trading rules specify that where these rights are held against an irrigation infrastructure operator, the operator must provide certain information to holders of these rights.

Once the water trading rules come into effect on 1 July 2014, irrigation infrastructure operators will be required to make a decision about the water delivery rights and irrigation rights held against them and to notify the holder in writing of the decision. Consistent with section 25D of the *Acts Interpretation Act 1901*, the holder must also be informed of the reasons for the decision. These rules are intended to provide additional transparency to the holders of water delivery and irrigation rights. This information will assist persons to make decisions in relation to trade of these rights and the transformation of irrigation rights.

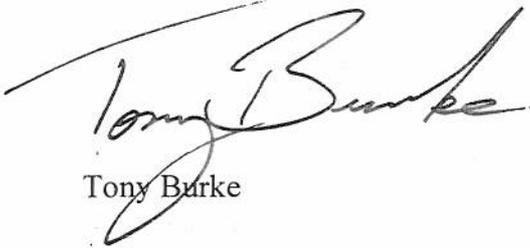
The overarching framework governing irrigation infrastructure operators' decisions are due to the laws of the relevant states, the relevant Water Resource Plan for the water resource from which the irrigation infrastructure operator takes water, and the governance structure and rules of the operator itself. Review of these decisions is therefore not appropriately placed in the Basin Plan, but rather in the relevant state laws and operating rules of the irrigation infrastructure operators.

Decisions with respect to the transformation of irrigation rights are governed by the *Water Market Rules 2009*. The water market rules specify a dispute resolution process that includes the ability for the holder of an irrigation right to enter into formal negotiations with an irrigation infrastructure operator. This is the appropriate place for a dispute resolution process as this is where a decision to change an irrigation right (through transformation) or the terms and conditions of a water delivery right (following transformation) would occur.

I am pleased that after more than 100 years of disagreement among the states, the Australian Government has delivered a Basin Plan that restores the Basin's rivers and wetlands to health while supporting strong regional communities and sustainable food production. This Basin Plan means that Australia now leads the world in ensuring our environmental assets are used sustainably, while still being used productively. I commend the Plan to the Committee.

Thank you for writing on this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Burke'. The signature is fluid and cursive, with a large initial 'T' and 'B'.

Tony Burke



RECEIVED

- 7 MAR 2013

Senate Standing Cttee  
on Regulations  
and Ordinances

**Stephen Smith MP  
Minister for Defence**

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

- 4 MAR 2013

*Mark*

Dear ~~Senator~~ Furner

Thank you for your letter of 7 February 2012 concerning the Defence and Strategic Goods List (DSGL) Amendment 2012 (No. 1) [F2012L02318].

There was no consultation undertaken on the amendment to the DSGL because Defence assessed that the amendments had no or minimal effect on Australian industry. The Explanatory Statement (ES) noted that of the 71 amendments, 26 were assessed as having a minor positive impact on industry and the other 45 involved goods or technologies that have no known Australian manufacturer or exporter. Further, in light of questions asked in the course of consultations on the *Defence Trade Controls Act 2012*, the ES explained that the Department of Defence will augment its DSGL training and materials to further explain DSGL processes and that this work will be conducted in consultation with the Strengthened Export Controls Steering Group. The ES also noted that the Office of Best Practice Regulation had agreed the amendments have no, or low, impact on business and individuals on the economy.

The Strengthened Export Controls Steering Group has been established in accordance with section 74A of the *Defence Trade Controls Act 2012*. The Steering Group, chaired by Australia's Chief Scientist, Professor Ian Chubb AC, has four representatives from Australian Industry, two representatives from the University sector, the CEOs of the Australian Research Council and the National Health and Medical Research Council and representatives from Defence and the Department of Industry, Innovation, Science and Research and Tertiary Education.

I am satisfied that the ES appropriately explained that Australian industry would not be adversely affected by the DSGL Amendment and that the Steering Group would be consulted on further DSGL training and materials, however the DSGL Amendment's ES did not explicitly state that consultation was unnecessary due to these factors. I have enclosed an updated ES to rectify this oversight – the additional text is highlighted. My Department will lodge the amended ES with the Register of Legislative Instruments.

I have asked my Department to ensure that future ESs for DSGL Amendments and other relevant Instruments provide appropriate information about consultation as required under the *Legislative Instruments Act 2003*.

Thank you for drawing these matters to my attention.

Yours sincerely

*Best Wishes*

A handwritten signature in black ink, appearing to read 'Stephen Smith', written in a cursive style.

Stephen Smith  
Encl



Senator the Hon Don Farrell

RECEIVED

- 7 MAR 2013  
Senate Standing C'ttee  
on Regulations  
and Ordinances

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Parliamentary Secretary for Sustainability and Urban Water

C13/3167

Senator Mark Furner  
Chair  
Standing Committee on Regulations and Ordinances  
Senator for Queensland  
Parliament House  
CANBERRA ACT 2600

*Mark*  
Dear Senator

I refer to your letter of 7 February 2013 on behalf of the Standing Committee on Regulations and Ordinances to the Minister for Sustainability, Environment, Water, Population and Communities, the Hon Tony Burke MP, concerning Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulation 2012 (No. 3). Your letter was forwarded as the matter you raised falls within my portfolio responsibilities.

The Department of Sustainability, Environment, Water, Population and Communities (the department) is responsible for administering the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 (the Regulations), which were the subject of the Amendment Regulation to which you refer. The department ensured that extensive consultation was undertaken with affected industry stakeholders between 2009 and 2012 on the changes identified in the Amendment Regulation.

The Regulations establish licensing systems for the end use of ozone depleting substances and synthetic greenhouse gases in two industry sectors. The amendments to the Regulations increased the application fees payable under these licensing systems, which are administered by two industry boards appointed under the Regulations: the Australian Refrigeration Council (ARC) and the Fire Protection Association of Australia (FPAA).

In 2009 the department first met with and raised the issue of the fee increases with the ARC and FPAA and their member organisations.

The member organisations include peak industry bodies covering refrigeration and air conditioning trades in the automotive and stationery sectors, and refrigerant wholesalers, as well as major employers in the fire protection industry. They include the Air Conditioning and Refrigeration Wholesalers Association; the Automotive Air Conditioning, Electrical and Cooling Technicians of Australasia; Chubb Fire and Security; Kidde Aerospace and Defence; Lateral Fire Design; Lee Fire Management; the Motor Trades Association of Australia; the National

Electrical and Communications Association; the Refrigeration and Air Conditioning Contractors Association; and Tyco Fire and Security.

Together the member organisations represent approximately 55,000 technicians and 17,000 companies that would be directly affected by the fee increases.

From early on in the process the ARC and FPAA and their member organisations were supportive of an increase in fees, acknowledging the need for financial sustainability to continue to provide licensing services. Consultation on the fee increases continued between the department and the ARC and FPAA and their member organisations through-out 2010 and 2011. This extended period of consultation ensured that the final fee increases were set at an appropriate level to provide financial sustainability to the licensing system. During this period the department also prepared a cost recovery impact statement which was published in early 2012 and reflected the final outcomes of the consultations.

The department will review the Explanatory Statement for Amendment Regulation 2012 (No. 3) to expand the information on the consultations processes that occurred, along the lines set out above, and will undertake the necessary steps to lodge an updated Explanatory Statement.

The 'Guideline for Explanatory Statements: Consultation' and requirements of the *Legislative Instruments Act 2003* (the Act) has been brought to the attention of the relevant work areas in the Department to ensure future Explanatory Statements provide the necessary information on consultations in accordance with the Act.

Thank you for writing on this matter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Don Farrell', is written over a circular blue ink stamp.

Senator Don Farrell



RECEIVED

- 8 MAR 2013

Senate Standing C'ttee  
on Regulations  
and Ordinances

**The Hon Tanya Plibersek MP  
Minister for Health**

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

Dear Senator Furner

Thank you for your letter of 7 February 2013 regarding the Health Insurance (General Medical Services Table) Amendment Regulation 2012 (No.5) [Select Legislative Instrument 2012 No.296] [F2012L02406].

I note your concern that the accompanying Explanatory Statement (ES) to this amendment did not provide sufficient detail on the nature of consultations undertaken, or provide an explanation of why consultations were not undertaken.

This amendment was done to correct a drafting error where two words were omitted in the Health Insurance (Diagnostic Imaging Services Table) Regulation 2012. The inclusion of these words was the subject of consultation when the original regulation was developed. To correct this omission, the relevant ES will be updated according to the requirement of the *Legislative Instruments Act 2003* and re-submitted through the necessary process.

Secondly, your advice on the drafting of item 14 of Schedule 1 is noted and will be of assistance for the drafting of instruments of delegated legislation in the future.

Once again, thank you for writing.

Yours sincerely

**Tanya Plibersek**

4-3-13





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- 8 MAR 2013

Senate Standing C'ttee  
Regulations  
and Ordinances

Parliamentary Secretary for Climate Change and Energy Efficiency

C13/325

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

Mark

Dear Senator Furner

Thank you for your letter of 7 February 2013 concerning the *Clean Energy Regulation 2012 (No. 7)* (the Clean Energy Amendment Regulation).

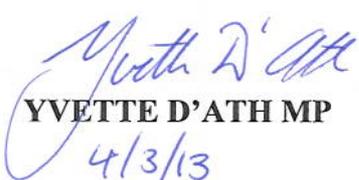
The Clean Energy Amendment Regulation has been drafted to be consistent with its enabling legislation, the *Clean Energy Act 2011* (the Clean Energy Act). This includes defining terms in the Clean Energy Amendment Regulation by reference to the equivalent terms in the Clean Energy Act, where possible.

In general, the Clean Energy Act defines terms relating to fuel taxation by reference to the *Fuel Tax Act 2006* (the Fuel Tax Act). This includes the definitions of 'entity', 'participant', 'GST group', and 'GST joint venture'. These terms are also used in the Clean Energy Amendment Regulation and have been defined by reference to their definition in the Clean Energy Act.

At the time the Clean Energy Amendment Regulation was made, the Clean Energy Act did not contain a definition of 'joint venture operator'. As such, this term is defined by reference to the Fuel Tax Act, consistent with how terms relating to fuel taxation have been defined in the Clean Energy Act. An amendment to the Clean Energy Act that received the Royal Assent after the Clean Energy Amendment Regulation was made added a definition of 'joint venture operator' that references the Fuel Tax Act. A future amendment to the *Clean Energy Regulations 2011* could be used to refer directly to the Clean Energy Act for the definition of 'joint venture operator'.

As you have noted, the Clean Energy Amendment Regulation defines 'representative member' by reference to the *A New Tax System (Goods and Services Tax) Act 1999*. While this may appear inconsistent with how other fuel tax terms are defined, the reason for this is that there is no definition of 'representative member' in either the Clean Energy Act or the Fuel Tax Act.

Yours sincerely

  
YVETTE D'ATH MP

4/3/13





**The Hon Anthony Albanese MP**

Minister for Infrastructure and Transport  
Leader of the House

Reference: 00473-2013

12 MAR 2013

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

Dear Senator Furner

Thank you for your letter dated 7 February 2013 about the Aviation Transport Security Amendment Regulation 2012 (No.6) [Select Legislative Instrument 2012 No. 304] (the instrument) and the failure of the explanatory statement that accompanies the instrument to make reference to consultation.

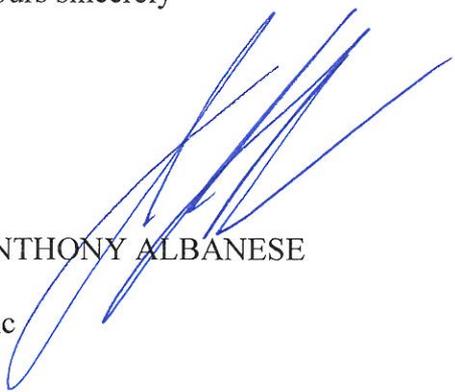
Before making the instrument appropriate consultation in accordance with sections 17 and 18 of the *Legislative Instruments Act 2003* (the Act) was undertaken by my Department with affected industry participants. The nature of the consultation is set out below and the proposed updated explanatory statement is attached for your consideration.

- Consultation about amendments to the operational period regulations occurred with regional and remote airports through the Regional Industry Consultative Meeting, most recently in August and November 2012.
- Consultation concerning removal of the requirement for screening officers to hold State/Territory security guard licences was conducted through the Department of Infrastructure and Transport's primary consultative group on aviation security training, the Aviation Security Training Advisory Group (ASTAG) February 2011 to November 2012. ASTAG is made up of airport, airline, screening authority, third party screening provider and government representatives and meets at least three times each calendar year. Relevant employee associations were consulted through the Department's Employee Consultative forum at numerous meetings held December 2011 to August 2012. The Attorney General's Department was involved in positive discussions and facilitated the presentation of this proposal to State Industry Regulators at a meeting in September 2011.
- No consultation was required for the remaining parts of the regulation as amendments were minor and machinery in nature and did not substantially alter existing arrangements.

Subject to any comment the Committee may have on the attached updated explanatory statement, my Department will provide an updated explanatory statement to the Parliament for tabling and to the Federal Register of Legislative Instruments for registration. Future explanatory statements will provide appropriate information on consultation in accordance with the requirements of the Act.

Thank you for raising this matter.

Yours sincerely



ANTHONY ALBANESE

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12 MAR 2013

Senate Standing C'ttee  
on Regulations  
and Ordinances

**The Hon Chris Bowen MP**  
Minister for Tertiary Education, Skills, Science and Research  
Minister for Small Business

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

Dear Senator

Thank you for your letter of 14 February 2013 on behalf of the Senate Standing Committee on Regulations and Ordinances concerning the legislative instrument 'ASQA Authorised Officer Requirements' [F2012L02326] (the Instrument).

The Committee has raised concern about whether the criteria guiding administrative decision making at item 6(1) of the above instrument is clear and objectively ascertainable on the face of the instrument and its supporting explanatory statement. Whilst I acknowledge the Committee's concerns, I am satisfied that there are suitable arrangements in place to ensure that prospective authorised officers will be made aware of the substance of the criteria for appointment.

Section 89 of the *National Vocational Education and Training Regulator Act 2011* provides that the Chief Commissioner may only appoint a member of the staff of the Regulator as an authorised officer for the purposes of the Act. A degree of flexibility in allowing the Chief Commissioner to determine the length of experience is required to enable the Regulator to recruit within a fluctuating job market.

I am advised by the Chief Commissioner the relevant length of time of experience for the purpose of subitem 6(1) of the Instrument is, in this current labour market, a minimum of two years full time experience in an investigative or statutory compliance role. This length of time has been determined based on recent experience of the Regulator, where some staff with less experience had difficulty in demonstrating the requisite skills and knowledge to effectively perform their functions, as specified in subitem 6(1) of the Instrument.

I have been advised that the Chief Commissioner intends on publishing the acceptable length of time for the purposes of subitem 6(1) of the Instrument in operational materials supporting the recruitment, appointment and operations of Authorised Officers, as well as in public selection criteria at the time of recruitment.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Bowen', written in a cursive style.

**CHRIS BOWEN**

- 8 MAR 2013



RECEIVED

12 MAR 2013

Senate Standing Committee  
on Regulations  
and Ordinances

FAMILY COURT OF AUSTRALIA

CHAMBERS OF THE HONOURABLE DIANA BRYANT AO  
CHIEF JUSTICE

Commonwealth Law Courts  
305 William Street  
Melbourne VIC 3000  
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Telephone: (03) 8600 4355  
Facsimile: (03) 8600 4350  
email: chief.justice.chambers@familycourt.gov.au

Our ref. CJC-G3  
Your ref: 042/2013

7 March 2013

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

Dear Senator Furner,

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

Thank you for your letter dated 28 February 2013 seeking my advice in relation to the 2.7 per cent increase in scale costs contained in the instrument.

I am aware this issue was also raised with the High Court of Australia in relation to that court's decision to increase scale costs by 2.7 per cent. I agree with the views expressed by Andrew Phelan in his letter dated 13 December 2012 that as with that court's instrument, ours does not introduce or adjust a "charge, fee or levy". The amendment contained in the instrument provides an adjusted scale of costs for fees which solicitors may charge and be allowed on assessment in the event that the Court does not fix an amount of costs in an order. It will be apparent that the actual fees charged by solicitors and counsel are generally more than will be allowed.

Consistent with the practice adopted in previous years, the Court accepted the recommendations made by the Joint Costs Advisory Committee ("JCAC") or its predecessor, the Federal Costs Advisory Committee. In its Fifth Report on Legal Practitioners' Costs dated September 2012 the JCAC recommended an increase of 2.7 per cent as determined by the application of Federal Costs Advisory Committee formula to the scale of costs specified in the Rules of the High Court, Federal Court, Family Court and Federal Magistrates Court. The JCAC Fifth Report and Federal Costs Advisory Committee formula were provided to you by the Chief Executive of the High Court in his letter dated 13 December 2012. I am sure you will agree the formula is mathematically complex which would be difficult to succinctly summarise in an Explanatory Statement. Rather than adopt that approach, is the preferable course for changes made in accordance with

recommendations by the JCAC, to identify this in the Explanatory Statement? In the event a change is made on a different basis, a more complete explanation would be given in the relevant Explanatory Statement.

In the event you require further clarification in relation to your deliberations, please do not hesitate to contact me. In the meantime, it is requested that the Committee not give notice to disallow.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Diana Bryant', written in a cursive style.

Diana Bryant AO  
Chief Justice