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Ordinances

Delegated legislation monitor

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Delegated legislation monitor

Introduction

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

The committee's terms of reference

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

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

The committee shall scrutinise each instrument to ensure:

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

Work of the committee

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

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

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

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

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

Structure of the report

The report is comprised of the following parts:

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

Acknowledgement

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

Senator Mark Furner

Chair

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

Chapter 1

New and continuing matters

This chapter lists new matters identified by the committee at its meeting on **16 May 2013**, and continuing matters in relation to which the committee has received recent correspondence. The committee will write to relevant ministers or instrument makers in relation to substantive matters seeking further information or an appropriate undertaking within the disallowance period.

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

Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Zimbabwe) Amendment List 2013 [F2013L00477]

Purpose	Lists the Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Zimbabwe) List 2012 (the list) to give effect to the decision of the Minister for Foreign Affairs to revoke designations and declarations in relation to persons on the list
Last day to disallow¹	20 August 2013 ²
Authorising legislation	Autonomous Sanctions Regulations 2011
Department	Foreign Affairs and Trade

ISSUE:

Insufficient description regarding consultation undertaken

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

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 In the event that the disallowance period is interrupted for the election of the 43rd Parliament, as is expected to occur over August-September 2013, the counting of the 15-day disallowance period will continue from the first day of sitting of the new Parliament.

the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it considers that an overly bare or general description, such as in this case, is not sufficient to satisfy the requirements of the *Legislative Instruments Act 2003*. **The committee 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*.**

Export Control (Poultry Meat and Poultry Meat Products) Amendment Order 2013 (No. 1) [F2013L00502]; and Export Control (Wild Game Meat and Wild Game Meat Products) Amendment Order 2013 (No. 1) [F2013L00501]

Purpose	Amends the Export Control (Poultry Meat and Poultry Meat Products) Orders 2010 to regulate the export of poultry meat and poultry meat products and, in particular, the conditions and restrictions on their export; and amends the Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010 to regulate the export of wild game meat and wild game meat products and, in particular, the conditions and restrictions on their export
Last day to disallow	26 August 2013
Authorising legislation	Export Control (Orders) Regulations 1982
Department	Agriculture, Fisheries and Forestry

ISSUE:

Implementation of undertaking to committee

These amendments include:

- the introduction of a requirement that an auditor specify the scope of an audit prior to the audit commencing and to produce an identity card if requested by an audited person; and
- removal of a requirement that exporters 'destroy' certain electronic material.

These amendments fulfil an undertaking provided by the minister to address concerns raised by the committee. **The committee thanks the minister.**

Location Offset Rules 2008 (Amendment No. 1 of 2012) [F2013L00510]; and PDV Offset Rules 2008 (Amendment No. 1 of 2012) [F2013L00516]

Purpose	The instruments amend the PDV Offset Rules 2008 to change audit requirements for PDV Offset applications and to update the references to the administering department
Last day to disallow	26 August 2013
Authorising legislation	<i>Income Tax Assessment Act 1997</i>
Department	Treasury

ISSUE:

Drafting

The instruments amend the Location Offset Rules 2008 and PDV Offset Rules 2008. In both instruments, section 4.5 seeks to 'insert' into Schedule 3 of the relevant rules a series of new paragraphs, headed 'Auditor's Responsibility'. However, there is no apparent indication as to where in Schedule 3 the new paragraphs are to be inserted. In addition, there is an opening quotation mark at the start, but not at the end, of the proposed insertion (inconsistent with other amendments made by the instrument). **The committee therefore draws this issue to the attention of the minister.**

Migration Legislation Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 33, 2013] [F2013L00490]

Purpose	Amends the Migration Regulations 1994 and the Migration Agents Regulations 1998 to strengthen and improve immigration policy, particularly in relation to Tribunal fees, post-study work arrangements, cancellation of student visas and migration agents
Last day to disallow	26 August 2013
Authorising legislation	<i>Migration Act 1958</i>
Department	Immigration and Citizenship

ISSUE:

Whether any person disadvantaged by administrative error

Items 6 and 7 of Schedule 2 to the instrument effect amendments relating to post-study work arrangements and other matters, including the correction of an incorrect reference in existing subclause 202.222(2), which refers to 'persecution' rather than 'discrimination'. The subclause relates to factors to which the minister is required to have regard in being satisfied that there are compelling reasons for giving special consideration to granting an applicant a permanent visa. The committee's usual approach where an instrument corrects an administrative error, such as in this case, is that the ES for the instrument address the question of whether any person was disadvantaged by the error and, if so, whether and what steps have been taken to address that disadvantage. **The committee will therefore seek further information from the minister.**

Intellectual Property Legislation Amendment (Raising the Bar) Regulation 2013 (No. 1) [Select Legislative Instrument No. 31, 2013] [F2013L00479]

Purpose	Amends the Patents Regulations 1991, Trade Marks Regulations 1995, Designs Regulations 1995 and the Copyright Regulations 1969 in relation to intellectual property, and for related purposes
Last day to disallow	21 August 2013
Authorising legislation	<i>Copyright Act 1968; Patents Act 1990; Trade Marks Act 1995; and Designs Act 2003</i>
Department	Industry, Innovation, Science, Research and Tertiary Education

ISSUE:

Insufficient information regarding offence provisions

The instrument gives effect to a number of changes to the intellectual property system (essentially flowing from the *Intellectual Property Laws Amendment (Raising the Bar) Act 2012*), including the introduction of a number of offence provisions (see new regulations 20A.13, 20A.16 and 20A.21). Regulation 20A.16, for example, establishes certain offences relating to persons appearing before a Disciplinary Tribunal, including strict liability offences for a refusal by certain persons to be sworn or make an affirmation, and an offence in relation to which a defendant bears the evidential burden in respect of certain matters. In general, the committee expects that, where an instrument makes provision for offences, the ES provide a full justification for the need, scope and framing of those offences. This is particularly so in cases of strict liability or where the evidential burden is placed on a defendant. The ES in this case provides very little information in these respects. **The committee will therefore seek further information from the minister.**

Social Security (Deeming Threshold Rates) (DEEWR) Determination 2013 (No. 1) [F2013L00462]; and Social Security (Deeming Threshold Rates) (DIISRTE) Determination 2013 [F2013L00487]

Purpose	The instruments prescribe the below and above threshold rates used when applying the deeming rules under the <i>Social Security Act 1991</i>
Last day to disallow	20 August 2013
Authorising legislation	<i>Social Security Act 1991</i>
Departments	Education, Employment and Workplace Relations; and Industry, Innovation, Science, Research and Tertiary Education

ISSUE:

Unclear basis for determining rates

The instruments determine the deeming rates for the above- and below-threshold rates, which are relevant for the purposes of calculating a person's income from financial

investments under the *Social Security Act 1991*. However, the ESs for the instruments do not indicate the basis on which the new deeming rates have been calculated or set. The committee's usual expectation where an instrument of delegation legislation introduces or adjusts a charge or rate, such as in this case, is that the relevant ES makes clear the basis on which that charge or rate has been calculated (in addition to the quantum of the relative change in those cases where there is an adjustment to an existing charge or rate). The committee has previously raised this issue with the Minister for Families, Community Services and Indigenous Affairs in relation to the Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2013 [F2013L00216], and has received further information from the minister (see Chapter 2). **The committee therefore draws the issue to the attention of the relevant ministers.**

ASIC Market Integrity Rules (ASX Market) Amendment 2013 (No. 1) [F2013L00561]

Purpose	Amends the ASIC Market Integrity Rules (ASX Market) 2010 to extend the scope of the rules to apply to trading in Commonwealth Government Securities (CGS) depository interests on the Australian Securities Exchange (ASX)
Last day to disallow	27 August 2013
Authorising legislation	<i>Corporations Act 2001</i>
Department	Treasury

ISSUE:

Insufficient description regarding consultation undertaken

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states only that 'wrote to stakeholders seeking feedback on the amendments'. While the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it considers that an overly bare or general description, such as in this case, is not sufficient to satisfy the requirements of the *Legislative Instruments Act 2003*. **The committee 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*.**

AASB 2013-2 - Amendments to AASB 1038 – Regulatory Capital - March 2013 [F2013L00579]

Purpose	Amends the AASB 1038 - Life Insurance Contracts - July 2004 as a consequence of changes to the Australian Prudential Regulation Authority's reporting requirements relating to life insurers
Last day to disallow	27 August 2013
Authorising legislation	<i>Corporations Act 2001</i>
Department	Treasury

ISSUE:

Insufficient description regarding consultation undertaken

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states only that the AASB conducted 'targeted outreach with industry participants' in relation to the amendments. While the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it considers that an overly bare or general description, such as in this case, is not sufficient to satisfy the requirements of the *Legislative Instruments Act 2003*. **The committee 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*.**

National Consumer Credit Protection Amendment Regulation 2013 (No. 1)
[Select Legislative Instrument No. 43, 2013] [F2013L00608]

Purpose	Amends the National Consumer Credit Protection Regulations 2010 to provide for hardship variations in consumer credit contracts
Last day to disallow	27 August 2013
Authorising legislation	<i>National Consumer Credit Protection Act 2009</i>
Department	Treasury

ISSUE:

Drafting

This instrument amends the National Consumer Credit Protection Regulations 2010. However, on pages i and 2 (in the heading to Schedule 1) the instrument refers to the National Consumer Credit Regulations 2010 (ie 'Protection' is omitted). This is presumably a drafting error. **The committee therefore draws this issue to the attention of the minister.**

Primary Industries Levies and Charges Collection Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 39, 2013] [F2013L00594]; and Primary Industries (Customs) Charges Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 37, 2013] [F2013L00595]

Purpose	(1) Amends the Primary Industries Levies and Charges Collection Regulations 1991 by adding a new Part 29 and sets out details for the payment, by olive producers, of three new statutory levies on fresh olives for processing; and (2) amends the Primary Industries (Customs) Charges Regulations 2000 by adding a new part (Part 29) in Schedule 10 to deal with olives
Last day to disallow	27 August 2013
Authorising legislation	<i>Primary Industries Levies and Charges Collection Act 1991</i> ; and <i>Primary Industries (Customs) Charges Act 1999</i>
Department	Agriculture, Fisheries and Forestry

ISSUE:

No information provided regarding consultation

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

(section 26). With reference to these requirements, the ESs accompanying the instruments contain no reference to consultation. **The committee will therefore seek further information from the minister and request that the ESs be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

Customs Legislation Amendment Regulation 2013 (No. 2) [Select Legislative Instrument No. 42, 2013] [F2013L00598]

Purpose	Amends the Customs (Prohibited Exports) Regulations 1958 and the Customs (Prohibited Imports) Regulations 1956 to extend the export controls on goods that are the subject of the Autonomous Sanctions Regulations 2011 and to introduce new import controls on goods that are also the subject of new controls under the Sanctions Regulations
Last day to disallow	27 August 2013
Authorising legislation	<i>Customs Act 1901</i>
Department	Attorney-General's

ISSUE:

Insufficient description regarding consultation undertaken

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

No consultation was undertaken in relation to the amending Regulation. However, industry consultation was undertaken in relation to the Sanctions Regulations.

While the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it considers that an overly bare or general description of consultation undertaken (or explanation as to why it has not occurred), such as in this case, is not sufficient to satisfy the requirements 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*.**

Financial Management and Accountability Amendment Regulation 2013 (No. 2) [Select Legislative Instrument No. 50, 2013] [F2013L00600]

Purpose	Amends the Financial Management and Accountability Regulations 1997 to rename Fair Work Australia as the Fair Work Commission in the Schedule 1 list of prescribed agencies, and amends certain programs and activities of the Department of Families, Housing, Community Services and Indigenous Affairs listed in Schedule 1AA
Last day to disallow	27 August 2013
Authorising legislation	<i>Financial Management and Accountability Act 1997</i>
Department	Finance and Deregulation

ISSUE:

Addition of new program to Schedule 1AA of Financial Management and Accountability Regulations 1997

The amendment relies on section 32B of the *Financial Management and Accountability Act 1997*, which provides legislative authority for the Government to spend monies on programs listed in Schedule 1AA to Financial Management and Accountability Regulations 1997. Section 32B was introduced in response to the decision of the High Court in *Williams v Commonwealth* ([2012] HCA 23) in June 2012. The new program is described as providing legislative authority for FaHCSIA to make payments from the Community Development Fund (CDF) that has been established under the existing Remote Jobs and Communities Program. The CDF provides funding of \$237.5 million over five years to fund activities or services that would provide benefits to Indigenous people and support the creation of jobs and employment related participation opportunities for all jobseekers participating in the Remote Jobs and Communities Program. The ES to the instrument provides a significant description of the selection criteria governing the allocation of grants and the (non) availability of judicial merits review (ADJR), which are issues about which the committee has previously made inquiries. **The committee notes the concerns of the Senate Standing Committee for the Scrutiny of Bills regarding the justification for excluding from the *Administrative Decisions (Judicial Review) Act 1997* decisions under items listed in proposed Schedule 1B of the Financial Management and Accountability Regulations 1997, and draws the attention of senators to the comments of that committee on the Financial Framework Legislation Amendment Bill (No. 2) 2013 in its Alert Digest No. 5 of 2013 (15 May 2013).**

Attorney-General's (Spent and Redundant Instruments) Repeal Regulation 2013 [Select Legislative Instrument No. 49, 2013] [F2013L00604]

Purpose	Repeals 1005 spent and redundant instruments administered by the Attorney-General's Department
Last day to disallow	27 August 2013
Authorising legislation	<i>Legislative Instruments Act 2003</i>
Department	Attorney-General's

ISSUE:

Repeal of redundant instruments of delegated legislation

This regulation is made under section 48E of the *Legislative Instruments Act 2003* and repeals 1005 existing instruments administered by the Attorney-General's Department. The ES for the instrument explains that the repealed instruments are 'unnecessary', generally because they are spent (in most cases the instruments were solely commencing, amending or repealing). Section 48E of the *Legislative Instruments Act 2003* was inserted into that Act at the end of 2012, and supports the maintenance of the Federal Register of Legislative Instruments (FRLI) by allowing unnecessary instruments to be repealed en masse by regulation. **The committee notes the use of the power to effect mass repeal of redundant instruments of delegated legislation and commends such measures to improve the maintenance of FRLI.**

Vehicle Standard (Australian Design Rule 13/00 – Installation of Lighting and Light Signalling Devices on other than L-Group Vehicles) 2005 Amendment 4 [F2013L00618]; and Vehicle Standard (Australian Design Rule 42/04 – General Safety Requirements) 2005 Amendment 3 [F2013L00616]

Purpose	(1) Amends the Vehicle Standard (Australian Design Rule 13/00 – Installation of Lighting and Light Signalling Devices on other than L-Group Vehicles) 2005 to allow certain concessions for heavy goods motor vehicles and trailers regarding required lamps and positioning of lamps; and (2) amends the Vehicle Standard (Australian Design Rule 42/04 – General Safety Requirements) 2005 to delete the exhaust outlet requirements for light and medium goods vehicles (ADR categories NA and NB) and alter the concession for semi-trailer rear bumper requirements by allowing that only one of two conditions need be met
Last day to disallow	27 August 2013
Authorising legislation	<i>Motor Vehicle Standards Act 1989</i>
Department	Infrastructure and Transport

ISSUE:***Drafting***

The instruments amend existing vehicle standards made under the *Motor Vehicle Standards Act 1989* and are incorrectly identified as made under subsection 7 of that Act. The instruments are, in fact, made under section 7 of that Act. **The committee will therefore draw this issue to the attention of the minister.**

Lodgment of Private Health Insurance Information in Accordance with the *Private Health Insurance Act 2007* [F2013L00627]

Purpose	Determines the private health insurance statement information which is to be reported and states the period by which the information is required to be lodged
Last day to disallow	27 August 2013
Authorising legislation	<i>Private Health Insurance Act 2007</i>
Department	Health and Ageing

ISSUES:***(a) Insufficient description regarding consultation undertaken***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states 'there has been significant consultation in relation to this instrument with both Medicare and the health industry'. While the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it considers that an overly bare or general description of consultation undertaken, such as in this case, is not sufficient to satisfy the requirements 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*.**

(b) Drafting

Section 2 of this instrument states that it is 'taken to commence' on 1 June 2013. The formulation 'taken to commence' or 'taken to have commenced' is used for retrospective commencement of instruments and appears to be incorrectly used in this case. **The committee therefore draws this issue to the attention of the minister.**

Federal Magistrates Court Legislation Amendment Rules 2013 (No. 1)
[Select Legislative Instrument No. 56, 2013] [F2013L00641]

Purpose	Amends the Federal Magistrates Court Rules 2001 and the Federal Magistrates Court (Bankruptcy) Rules 2006
Last day to disallow	27 August 2013
Authorising legislation	<i>Federal Magistrates Act 1999</i>
Department	Attorney-General's

ISSUE:

Unclear basis for calculation of scale of costs

The ES which accompanies the instrument states that one of the major changes it introduces is a 2.7 per cent increase to the scale of costs, in conformity with an increase approved nationally by all superior courts. However, the ES does not indicate the basis on which the increase has been set or calculated. The committee's usual expectation in cases where an instrument of delegation legislation carries financial implications via the imposition or adjustment of a charge, fee, levy or scale of costs (as the case may be) is that the relevant ES makes clear the basis on which the imposition or change has been calculated (in addition to the quantum of the relative change in those cases where there is an adjustment to an existing charge et cetera). The committee has previously raised this issue with the Chief Justice of the Family Court in relation to the Family Law Amendment Rules 2012 (No. 2) [Select Legislative Instrument 2012 No. 331] [F2012L02577];³ and the Principal Registrar of the High Court in relation to the High Court Rules 2004 (Amendment) (November 2012) [F2012L02165],⁴ and concluded its interest in those matters. **The committee therefore draws this issue to the attention of the Chief Federal Magistrate.**

National Health (Pharmaceutical Benefits) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 53, 2013] [F2013L00650]

Purpose	Amends the National Health (Pharmaceutical Benefits) Regulations 1960 to reflect changes to the provisions in Part 6A reflecting the reasons in the December 2012 <i>Sanofi-Aventis Australia Pty Limited v Minister for Health</i> Federal Court judgment.
Last day to disallow	27 August 2013
Authorising legislation	<i>National Health Act 1953</i>
Department	Health and Ageing

3 See Monitor 3 of 2013.

4 See Monitor 1 of 2013.

ISSUE:***Insufficient description regarding consultation undertaken***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states, in part, that 'representatives of the medicines industry, consumer, pharmacy and wholesaler organisations were briefed' in relation to the making of the instrument. While the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it considers that an overly bare or general description of consultation undertaken, such as in this case, is not sufficient to satisfy the requirements 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*.**

Royal Commissions Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 54, 2013] [F2013L00647]

Purpose	Amends the Royal Commissions Regulations 2001 to make the Attorney-General's Department responsible for handling applications for payment of expenses and allowances for all witnesses appearing before Royal Commissions in future and make the process much easier for witnesses
Last day to disallow	27 August 2013
Authorising legislation	<i>Royal Commissions Act 1902</i>
Department	Prime Minister and Cabinet

ISSUE:***No information provided regarding consultation***

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

Taxation Administration Act 1953 – Tax table for back payments, commissions, bonuses and similar payments [F2013L00654]

Purpose	Specifies a table to assist employers and other payers calculate withholding on back payments, commissions, bonuses and similar payments
Last day to disallow	27 August 2013
Authorising legislation	<i>Taxation Administration Act 1953</i>
Department	Treasury

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 reasonable practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business or to restrict competition. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the ES for the instrument does not clearly address the question of whether consultation was undertaken or else considered to be unnecessary or inconvenient in this case. **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

CASA EX51/13 - Exemption - from standard take-off and landing minima - Express Freighters Australia Pty Ltd [F2013L00712]

Purpose	Revokes and remakes instrument CASA EX53/11 and permits the operator to use minima lower than the standard take off and landing minima determined by CASA
Last day to disallow	27 August 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

ISSUE:***Drafting***

On page 8 of the instrument, under the heading 'Take-off exercises', the abbreviation 'kts' is used, presumably referring to 'knots' of wind speed. The abbreviation 'kts' is not listed in the definitions section of the instrument and the term 'knots' is used elsewhere throughout the instrument. As a matter of good drafting practice, the committee considers that abbreviated terms should be included in the definitions section of an instrument. Further, it is noted that the National Measurement Regulations 1999 set out the standard measurement terms and abbreviations that should be used in Commonwealth legislation, and these regulations provide that the abbreviation 'kn' should be used to refer to measurement of velocity known as the knot. **The committee therefore draws this issue to the attention of the minister.**

Crimes Amendment Regulation 2013 (No. 2) [Select Legislative Instrument No. 57, 2013] [F2013L00702]

Purpose	Amends the Crimes Regulations 1990 to prescribe the <i>Criminal Investigation (Covert Powers) Act 2012</i> (WA) as a corresponding law on controlled operations, assumed identities and witness identity protection for the purposes of the <i>Crimes Act 1914</i>
Last day to disallow	27 August 2013
Authorising legislation	<i>Crimes Act 1914</i>
Department	Attorney-General's

ISSUE:***Insufficient description regarding consultation undertaken***

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

Southern Bluefin Tuna Fishery Management Plan Amendment 2012 (No. 1) [F2013L00686]

Purpose	Makes a number of amendments to the Southern Bluefin Tuna Fishery Management Plan 1995
Last day to disallow	27 August 2013
Authorising legislation	<i>Fisheries Management Act 1991</i>
Department	Agriculture, Fisheries and Forestry

ISSUE:

Uncertain requirement

The instrument makes a number of amendments to the Southern Bluefin Tuna Fishery Management Plan 1995. Proposed new subclauses 18.5 and 18.6 specify circumstances in which the Australian Fisheries Management Authority is required to determine the actual live weight value of a statutory fishing right for the season 'without delay'. However, the ES for the instrument provides no guidance as to how the term 'without delay' will be applied or interpreted, and the committee considers that it is unclear why a more certain time period could not be specified. **The committee will therefore seek further information from the minister.**

Public Lending Right Scheme 1997 (Modification No. 1 of 2013) [F2013L00682]

Purpose	Approves the rates of Public Lending Right payment for 2012-13
Last day to disallow	27 August 2013
Authorising legislation	<i>Public Lending Right Act 1985</i>
Department	Regional Australia, Local Government, Arts and Sport

ISSUE:

Unclear basis for determining rate

The instrument increases the rates of Public Lending Right payments to eligible creators and publishers for 2012-13 from \$1.86 to \$1.96 and from 46.5 to 49 cents respectively. The ES for the instrument notes that the Minister for the Arts has taken into account the advice of the Public Lending Right Committee (PLRC); however, the ES does not set out the substance of that advice and therefore does not explain the basis on which the payment rates have been adjusted. In the interests of promoting the intelligibility and usability of delegated legislation, the committee considers that it would be preferable for this to be set out in the ES. **The committee will therefore request further information from the minister and request that the ES be amended with such further information as is provided.**

Veterans' Entitlements (Actuarial Certificate – Life Expectancy Income Stream Guidelines) Determination 2013 [F2013L00671]; and Veterans' Entitlements (Actuarial Certificate – Lifetime Income Stream Guidelines) Determination 2013 [F2013L00670]

Purpose	The instruments set out the means by which a life expectancy income stream (superannuation) and a lifetime income stream (superannuation) can be determined to be asset-test exempt for the purposes of the <i>Veterans' Entitlements Act 1986</i>
Last day to disallow	27 August 2013
Authorising legislation	<i>Veterans' Entitlements Act 1986</i>
Department	Veterans' Affairs

ISSUE:

Incorporation of extrinsic material

The instruments set out the means by which a life expectancy income stream (superannuation) and a lifetime income stream (superannuation) can be determined to be asset-test exempt. Both of the instruments incorporate by reference the Institute of Actuaries of Australia Guidance Note 465 and require that actuarial certificates be prepared in accordance with that guidance note. The *Legislative Instruments Act 2003* provides that extrinsic material may be incorporated into instruments of delegated legislation; however, non-legislative material can generally only be incorporated as in force or existing at a particular date (as opposed to being incorporated as in force or existing 'from time to time').⁵ However, neither the instruments nor their ESs provide sufficient detail to determine the basis on which the guidance note is incorporated into the instruments. **The committee will therefore seek further information from the minister.**

Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No. 1) [F2013L00568]

Purpose	Amends the Broadcasting Services (Primary Commercial Television Broadcasting Service) Declaration 2010 in order to declare particular 'SDTV multi-channelled commercial television broadcasting services' (SDTV multi-channels) to be the 'primary commercial television broadcasting services' for commercial television broadcasting licensees in particular licence areas
Last day to disallow	27 August 2013
Authorising legislation	<i>Broadcasting Services Act 1992</i>
Department	Broadband, Communications and the Digital Economy

5 See Section 14, *Legislative Instruments Act 2003*.

AASB 2013-2 - Amendments to AASB 1038 – Regulatory Capital - March 2013 [F2013L00579]

Purpose	Amends the AASB 1038 - Life Insurance Contracts - July 2004 as a consequence of changes to the Australian Prudential Regulation Authority's reporting requirements relating to life insurers
Last day to disallow	27 August 2013
Authorising legislation	<i>Corporations Act 2001</i>
Department	Treasury

ASIC Market Integrity Rules (ASX Market) Amendment 2013 (No. 1) [F2013L00561]

Purpose	Amends the ASIC Market Integrity Rules (ASX Market) 2010 to extend the scope of the rules to apply to trading in Commonwealth Government Securities (CGS) depository interests on the Australian Securities Exchange (ASX)
Last day to disallow	27 August 2013
Authorising legislation	<i>Corporations Act 2001</i>
Department	Treasury

AD/P68/28 Amdt 4 – Engine Mount Fittings [F2013L00523]

Purpose	Amends AD/P68/28 to reference amended Partenavia Service Bulletin 70 Revision 2
Last day to disallow	27 August 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

CASA EX51/13 - Exemption - from standard take-off and landing minima - Express Freighters Australia Pty Ltd [F2013L00712]

Purpose	Revokes and remakes instrument CASA EX53/11 and permits the operator to use minima lower than the standard take off and landing minima determined by CASA
Last day to disallow	27 August 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2013 (No. 1) [F2013L00567]

Purpose	Amends the ASIC Market Integrity Rules (Competition) to extend the scope of and adapt selective provisions to apply to trading in Commonwealth Government Securities (CGS) depository interests on the public exchanges.
Last day to disallow	27 August 2013
Authorising legislation	<i>Corporations Act 2001</i>
Department	Treasury

Migration Regulations 1994 - Specification under regulation 3.10A - Access to Movement Records - March 2013 [F2013L00544]

Purpose	Operates to allow the use of movement records information by external agencies in order to administer a variety of legislation. The instrument will allow prescribed employees of prescribed Commonwealth, State or Territory agencies to read, examine, reproduce, use or disclose movement records for prescribed purposes
Last day to disallow	27 August 2013
Authorising legislation	Migration Regulations 1994
Department	Immigration and Citizenship

Taxation Administration Act 1953 – PAYG Withholding – PAYG Withholding Variation: Allowances [F2013L00521]

Purpose	Enables a variation to the amount of withholding required by a payer under the pay as you go withholding system for allowance payments in a certain class of cases
Last day to disallow	27 August 2013
Authorising legislation	<i>Taxation Administration Act 1953</i>
Department	Treasury

Civil Aviation Order 40.1.0 Amendment Instrument 2013 (No. 1) [F2013L00590]; and Civil Aviation Order 40.3.0 Amendment Instrument 2013 (No. 1) [F2013L00589]

Purpose	(1) Amends the Civil Aviation Order 40.1.0 - Aircraft endorsements - Aeroplanes (02/12/2004) to repeal a time-limited direction to those approved to give the relevant aeroplane conversion training (that such training may only be conducted in a qualified synthetic training device) and replaces it with an opened-ended condition to the same effect on the trainers' approvals and (2) amends the Civil Aviation Order 40.3.0 - Aircraft endorsements - Helicopters (02/12/2004) to repeal a time-limited direction to those approved to give the relevant helicopter conversion training (that such training may only be conducted in a qualified synthetic training device) and replaces it with an opened-ended condition to the same effect on the trainers' approvals
Last day to disallow	27 August 2013
Authorising legislation	Civil Aviation Regulations 1988; and Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

Vehicle Standard (Australian Design Rule 13/00 – Installation of Lighting and Light Signalling Devices on other than L-Group Vehicles) 2005 Amendment 4 [F2013L00618]; and Vehicle Standard (Australian Design Rule 42/04 – General Safety Requirements) 2005 Amendment 3 [F2013L00616]

Purpose	(1) Amends the Vehicle Standard (Australian Design Rule 13/00 – Installation of Lighting and Light Signalling Devices on other than L-Group Vehicles) 2005 to allow certain concessions for heavy goods motor vehicles and trailers regarding required lamps and positioning of lamps; and (2) amends the Vehicle Standard (Australian Design Rule 42/04 – General Safety Requirements) 2005 to delete the exhaust outlet requirements for light and medium goods vehicles (ADR categories NA and NB) and alter the concession for semi-trailer rear bumper requirements by allowing that only one of two conditions need be met
Last day to disallow	27 August 2013
Authorising legislation	<i>Motor Vehicle Standards Act 1989</i>
Department	Infrastructure and Transport

ASA 2013-1 Amending Standard to ASRE 2415 Review of a Financial Report - Company Limited by Guarantee - March 2013 [F2013L00587]

Purpose	Amends the ASRE 2415 - Review of a Financial Report - Company Limited by Guarantee - June 2010
Last day to disallow	27 August 2013
Authorising legislation	<i>Corporations Act 2001</i>
Department	Treasury

National Health (Listed drugs on F1 or F2) Amendment Determination 2013 (No. 2) (No. PB 19 of 2013) [F2013L00575]; National Health (Pharmaceutical Benefits - Therapeutic Groups) Amendment Determination 2013 (No. 1) (No. PB 6 of 2013) [F2013L00573]; and National Health (Pharmaceutical Benefits - Therapeutic Groups) Amendment Determination 2013 (No. 2) (No. PB 7 of 2013) [F2013L00576]

Purpose	(1) Amends the National Health (Listed drugs on F1 or F2) Determination 2010 (No. PB 93 of 2010) to add three new listed drugs and to move other drugs between the F1, F2 and combination drug lists; (2) Amends the National Health (Pharmaceutical Benefits - Therapeutic Groups) Determination 2010 (No. PB 1 of 2010) to determine the Venlafaxine group and removes redundant definitions and other words; and (3) amends the National Health (Pharmaceutical Benefits - Therapeutic Groups) Determination 2010 (No. PB 1 of 2010) to remove certain drugs from the H2 receptor antagonist group
Last day to disallow	27 August 2013
Authorising legislation	<i>National Health Act 1953</i>
Department	Health and Ageing

Private Health Insurance (Prostheses) Amendment Rules 2013 (No. 3) [F2013L00614]

Purpose	Amends the Private Health Insurance (Prostheses) Rules 2012 (No. 2) to remove the listing of the VAIOS System
Last day to disallow	27 August 2013
Authorising legislation	<i>Private Health Insurance Act 2007</i>
Department	Health and Ageing

Logbook Determination (Northern Prawn Fishery) 2013 [F2013L00624]; and Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 6 2013 [F2013L00632]

Purpose	Determines the form and content of the logbook to be kept and maintained for concession holders in the Northern Prawn Fishery, and closes the western deepwater shark areas of the fishery to trawling should a 25 tonne aggregate amount of Orange Roughy be taken in the area in a fishing season
Last day to disallow	27 August 2013
Authorising legislation	<i>Fisheries Management Act 1991</i>
Department	Agriculture, Fisheries and Forestry

CASA ADCX 005/13 – Revocation of Airworthiness Directives [F2013L00660]

Purpose	Revokes two airworthiness directives
Last day to disallow	27 August 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

Macquarie Island Toothfish Fishery Total Allowable Catch Determination 2013 [F2013L00663]

Purpose	Determines the total allowable catch for Patagonian toothfish and catch limits for other species in the Macquarie Island Toothfish Fishery for the 2013/2014 fishing year
Last day to disallow	27 August 2013
Authorising legislation	<i>Fisheries Management Act 1991</i> ; and Macquarie Island Toothfish Fishery Management Plan 2006
Department	Agriculture, Fisheries and Forestry

ASIC Class Order [CO 13/274] [F2013L00664]

Purpose	Varies ASIC Class Order [CO 11/926]
Last day to disallow	27 August 2013
Authorising legislation	<i>National Consumer Credit Protection Act 2009</i>
Department	Treasury

CASA ADCX 006/13 – Revocation of Airworthiness Directives [F2013L00676]

Purpose	Revokes two airworthiness directives
Last day to disallow	27 August 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

CASA EX44/13 - Exemption - use of ADS-B in aircraft operated by PT Garuda Indonesia [F2013L00717]; and CASA EX47/13 - Exemption - Surveillance Australia Pty Ltd operations into Lord Howe Island [F2013L00697]

Purpose	Each of these instruments replaces and revokes a previous exemption
Last day to disallow	27 August 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

Logbook Determination (Small Pelagic Fishery) 2013 [F2013L00713]

Purpose	Determines the form and content of the logbook to be kept and maintained for concession holders in the Small Pelagic Fishery for all authorised methods
Last day to disallow	27 August 2013
Authorising legislation	<i>Fisheries Management Act 1991</i>
Department	Agriculture, Fisheries and Forestry

Health Insurance (Allied Health Services) Amendment Determination 2013 (No. 1) [F2013L00674]

Purpose	Amends the Health Insurance (Allied Health Services) Determination 2011 by including an impairment threshold for microcephaly in the definition of an 'eligible disability', and varies the qualification requirements for speech pathologists seeking to provide Medicare eligible speech pathology services in Queensland as a result of the ceasing of speech pathology regulation in Queensland
Last day to disallow	27 August 2013
Authorising legislation	<i>Health Insurance Act 1973</i>
Department	Health and Ageing

National Health Act (Pharmaceutical Benefits - Early Supply) Amendment May 2013 - specification under subsection 84AAA(2) (No. PB 28 of 2013) [F2013L00705] and five other instruments⁶

Purpose	Amends the National Health Act (Pharmaceutical Benefits - Early Supply) Instrument 2009 - specification under subsection 84AAA(2) (No. PB 30 of 2009) to delete an existing pharmaceutical item, and inserts a new pharmaceutical item
Last day to disallow	27 August 2013
Authorising legislation	<i>National Health Act 1953</i>
Department	Health and Ageing

Veterans' Entitlements (Actuarial Certificate – Life Expectancy Income Stream Guidelines) Determination 2013 [F2013L00671]; and Veterans' Entitlements (Actuarial Certificate – Lifetime Income Stream Guidelines) Determination 2013 [F2013L00670]

Purpose	The instruments set out the means by which a life expectancy income stream (superannuation) and a lifetime income stream (superannuation) can be determined to be asset-test exempt for the purposes of the <i>Veterans' Entitlements Act 1986</i>
Last day to disallow	27 August 2013
Authorising legislation	<i>Veterans' Entitlements Act 1986</i>
Department	Veterans' Affairs

ISSUE:

Drafting

Each of the instruments listed above appears to rely on subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that the power to make an instrument includes the power to vary or revoke the instrument. If that is the case, 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 therefore draws this issue to the attention of relevant ministers and instrument-makers.**

6 National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 4) (No. PB 25 of 2013) [F2013L00691]; National Health (Growth Hormone Program) Special Arrangement Amendment Instrument 2013 (No. 1) (No. PB 27 of 2013) [F2013L00709]; National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No. 5) (No. PB 21 of 2013) [F2013L00685]; National Health (Prescriber bag supplies) Amendment Determination 2013 (No. 1) (No. PB 23 of 2013) [F2013L00681]; and National Health (Price and Special Patient Contribution) Amendment Determination 2013 (No. 3) (No. PB 22 of 2013) [F2013L00678].

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

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

ISSUE:

Unclear basis for increase in fees

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

ATTORNEY-GENERAL'S RESPONSE:

The Attorney-General advised that the regulation retained (that is, made no change) to the \$95 fee for the registration of a New Zealand judgment in the Family Court of Australia, Federal Court of Australia and Federal Magistrates Court of Australia on commencement of the *Trans-Tasman Proceedings Act 2010* (TTP Act); and updated amendments to refer to the Family Law (Fees) Regulation 2012 and the Federal Court and Federal Magistrates Court Regulation 2012 where the relevant fee provisions are located. The Attorney-General further advised that the regulation clarifies that, where proceedings are commenced in Australia under the TTP Act, the fee payable is the lower fee for commencing interim matters, rather than the fee for initiating an application in federal law matters or the fee for an application seeking final orders in family law.

COMMITTEE RESPONSE:

The committee thanks the Attorney-General for his response. However, the committee will write to the Attorney-General to request that the ES for the instrument be updated with the information provided.

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

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

ISSUE:

Unclear basis for determining rates

The 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, charge or rate has been set or calculated **[the committee sought further information from the minister]**.

MINISTER'S RESPONSE:

The minister advised that deeming rates are subject to continuing review by the department to ensure they are set to reflect the returns available in the market to pensioners for their financial investments. The department considers a range of investment indicators including those commonly held by pensioners (such as term deposit rates) and data and analysis from the Reserve Bank of Australia and Treasury. Following consideration of these factors, the deeming rate was reduced by 0.5 per cent.

COMMITTEE RESPONSE:

The committee thanks the minister for her response. However, the committee will write to the minister to request that the ES for the instrument be updated with the instrument provided.

Chapter 2

Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on **16 May 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.

Life Insurance Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 311] [F2012L02401]

Purpose	A mends the Life Insurance Regulations 1995 to implement a commitment by Australia to allow New Zealand life insurance companies to seek approval to operate in Australia as a branch
Last day to disallow¹	15 May 2013
Authorising legislation	<i>Life Insurance Act 1995</i>
Department	Treasury

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).² With reference to these requirements, the committee notes that the ES that accompanies the instrument states only that 'the National Interest Analysis provided to the Joint Standing Committee outlines the extensive consultation process undertaken as part of the negotiations consultation'. In the committee's view, this statement is not sufficient to satisfy the requirement that an ES describe the nature of consultation undertaken or, alternatively, provide an explanation of why consultation was not undertaken **[the committee sought further information from the Treasurer and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

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.

ASSISTANT TREASURER'S RESPONSE:

The Assistant Treasurer responded, advising that, as the regulation merely replicated existing provisions (to extend their operation to New Zealand), the instrument was considered to be minor in its effect and consultation was therefore considered unnecessary.

COMMITTEE RESPONSE:

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

Legislative Instruments Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 283] [F2012L02376]

Purpose	Amends the Legislative Instruments Regulations 2004 to make technical amendments which relate to amendments made to the <i>Intelligence Services Act 2001</i> in July 2011
Last day to disallow	15 May 2013
Authorising legislation	<i>Legislative Instruments Act 2003</i>
Department	Attorney-General's

ISSUE:***No information regarding consultation***

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

ATTORNEY-GENERAL'S RESPONSE:

The Attorney-General advised that the Minister for Foreign Affairs and the Minister for Defence, together with the relevant *Intelligence Services Act 2011* agencies, were consulted about the amendments. The amendments were considered to be technical and broader consultation was therefore considered unnecessary. The Attorney-General provided an amended ES in accordance with the committee's request.

COMMITTEE RESPONSE:

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

Migration Amendment Regulation 2012 (No. 8) [Select Legislative Instrument 2012 No. 301] [F2012L02381]

Purpose	Amends the Migration Regulations 1994 to strengthen and improve immigration policy
Last day to disallow	15 May 2013
Authorising legislation	<i>Migration Act 1958</i>
Department	Immigration and Citizenship

ISSUE:***Unclear basis for increase in fees***

The ES which accompanies the instrument states that Schedule 2 of the regulation introduces increases to certain visa application charges (VACs), in one case being an increase of 300 per cent. While these changes are subsequently described as being 'minor or machinery in nature' and as not substantially altering existing arrangements, the ES does not indicate the basis on which the VAC increases were determined. The committee's usual expectation in cases where an instrument of delegation legislation introduces or adjusts a charge, fee or levy is that the relevant ES makes clear on its face the basis on which that charge, fee or levy has been calculated (in addition to the quantum of the relative change in those cases where there is an adjustment to an existing charge, fee or levy) **[the committee sought further information from the minister]**.

MINISTER'S RESPONSE:

The minister advised that, rather than applying a fee increase across the board, the increase in fees for certain visa subclasses recognised the large levels of demand in those visa areas, making for a fairer 'user-pays' approach to visa pricing. The increases therefore recognised the real value of each visa and were not expected to significantly affect individuals applying for the visas. In particular, the significant increase to the VAC for the Subclass 485 (Skilled Graduate) visa recognised the benefit to students who, upon completion of their studies in Australia, are able to apply to work in Australia for a specified period.

COMMITTEE RESPONSE:

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

Work Health and Safety Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No 291] [F2012L02438]

Purpose	Amends the Work Health and Safety Regulations 2011
Last day to disallow	15 May 2013
Authorising legislation	<i>Work Health and Safety Act 2011</i>
Department	Education, Employment and Workplace Relations

ISSUE:

Unclear basis for determining fee

The regulation, inter alia, introduces a new fee for the issue of a general construction induction card. However, the ES for the instrument does not appear to indicate the basis on which the new fee has been set or calculated. The committee's usual expectation in cases where an instrument of delegation legislation introduces or adjusts a charge, fee or levy is that the relevant ES makes clear on its face the basis on which that charge, fee or levy has been calculated (in addition to the quantum of the relative change in those cases where there is an adjustment to an existing charge, fee or levy) **[the committee sought further information from the minister]**.

MINISTER'S RESPONSE:

The minister advised that Comcare did not issue its own general construction induction card (training card) prior to January 2013, relying instead on training cards issued by work health and safety regulators in the states and territories. However, since 1 January 2013, workers in the Commonwealth jurisdiction have been able to apply to Comcare for a training card. The fee for the training card was set to allow Comcare to substantially recoup its costs of administering the scheme, while remaining comparable with the other jurisdictions to prevent forum shopping.

COMMITTEE RESPONSE:

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

CASA 390/12 - Instructions - GNSS primary means navigation (B737 NG aircraft) [F2012L02428]

Purpose	Allows Virgin Australia International Airlines B737 NG aircraft that are capable of meeting the applicable Required Navigation Performance to carry out RNAV (GNSS) approach procedures
Last day to disallow	15 May 2013
Authorising legislation	Civil Aviation Regulations 1988
Department	Infrastructure and Transport

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 the ES for the instrument states that consultation was not undertaken, because the instrument is 'consistent with previous instruments issued to Virgin Australia International Airlines Pty Ltd and other Australian airlines [and will]...allow Virgin Australia International Airlines Pty Ltd to reduce dependence on ground based systems'. While the committee does not usually interpret section 26 as requiring a highly detailed explanation as to why consultation was not undertaken, it considers that an overly bare or general explanation is not sufficient to satisfy the requirement that an ES explain 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*].**

MINISTER'S RESPONSE:

The minister advised that consultation was not undertaken as the exemption was required as a matter of urgency due to a sudden change in Indonesian law, whereby services to Denpasar Airport previously operated by Virgin Australia Airlines Pty Ltd were required to be operated instead by Virgin Australia International Airlines Pty Ltd. The minister further advised that the ES would be in accordance with the committee's request.

COMMITTEE'S RESPONSE:

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

CASA EX184/12 - Exemption - from standard take-off minima - Virgin Australia International Airlines [F2012L02425]

Purpose	Allows Virgin Australia International Airlines Pty Ltd to operate B737 NG aircraft in low visibility conditions on the same terms as Virgin Australia Airlines Pty Limited, subject to conditions.
Last day to disallow	15 May 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

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 the ES for the instrument states that consultation was not undertaken, because the instrument is 'required by the operator to enable low visibility take-offs inside and outside Australian territory consistent with the standards and requirements specified in the instrument which are not considered prejudicial to the interests of safety'. While the committee does not usually interpret section 26 as requiring a highly detailed explanation as to why consultation was not undertaken, it considers that an overly bare or general explanation is not sufficient to satisfy the requirement that an ES explain 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*]**.

MINISTER'S RESPONSE:

The minister advised that consultation was not undertaken as the exemption was required as a matter of urgency due to a sudden change in Indonesian law, whereby services to Denpasar Airport previously operated by Virgin Australia Airlines Pty Ltd were required to be operated instead by Virgin Australia International Airlines Pty Ltd. The minister further advised that the ES would be amended to provide an explanation for the need to progress the instrument without consultation.

COMMITTEE'S RESPONSE:

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

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

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

ISSUE:***Insufficient explanation provided regarding consultation***

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

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

It is not clear to the committee how, of itself, the stated reason for not consulting in relation to the making of the instrument necessarily relates to a conclusion by the instrument maker that consultation was 'unnecessary' or 'inappropriate' (as provided for by section 18) **[the committee 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 within the aviation industry as a whole did not take place as the exemption concerned only a single operator who had been determined as suitable to conduct the relevant procedures. Any operator whose organisation and procedures were considered by CASA to make satisfactory provision for these operations would be granted an equivalent exemption, and similar exemptions had been issued to both Australian and foreign operators. The minister further advised that the ES would be amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

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

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

ISSUE:

Insufficient explanation provided regarding consultation

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

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

It is not clear to the committee how, of itself, the stated reason for not consulting in relation to the making of the instrument necessarily relates to a conclusion by the instrument maker that consultation was 'unnecessary' or 'inappropriate' (as provided for by section 18) **[the committee 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 considered unnecessary as the instrument merely re-issued a previous exemption. Where appropriate, CASA had issued similar exemptions to allow pilot training in ultralight aircraft in controlled airspace. The minister further advised that the ES would be amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

CASA EX193/12 - Exemption - operations by paragliders in the Corryong Open and hang-gliders in the Corryong Cup [F2012L02520]; and CASA EX194/12 - Exemption - operations by hang-gliders in the Forbes Flatlands Hang Gliding Championships 2012-2013 [F2012L02527]

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

ISSUE:

Insufficient explanation provided regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ESs for the instruments state only that 'CASA has consulted with The Hang Gliding Federation of Australia Incorporated and the organisers of the events [or 'Championship organisers' in the latter instrument]. The terms of the exemption have been agreed'. In the committee's view, these descriptions of consultation could be more properly characterised as descriptions of a process of application for and approval of the exemptions. If this view were accepted, it could not be said that consultation had taken place in the sense prescribed or envisaged by the *Legislative Instruments Act 2003*, and the ES to these instruments should contain instead an explanation as to why consultation was considered unnecessary or inappropriate in the two cases [**the committee sought further information from the minister and requested that the ESs be updated in accordance with the requirements of the *Legislative Instruments Act 2003***].

MINISTER'S RESPONSE:

The minister advised that CASA was satisfied that relevant consultation had taken place prior to the issue of the instruments through its discussions with the applicants and the relevant industry sectors or parties likely to be affected. The minister advised that the ESs would be amended in accordance with the committee's request.

COMMITTEE'S RESPONSE:

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

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

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

ISSUE:***Insufficient explanation provided regarding consultation***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states only that consultation was undertaken through discussions with the 'relevant industry sectors'. The committee generally takes the view that overly bare or general descriptions, such as this, are not adequate to satisfy the requirement that an ES describe the nature of the consultation undertaken **[the committee 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 CASA consulted with the Sport Aircraft Association of Australia about new elements of the instrument but that broader consultation was not considered necessary because of the similarity of the instrument to the expiring instrument (CASA EX74/12). The minister advised that the ES would be amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

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

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

ISSUE:

Insufficient explanation provided regarding consultation

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

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

It is not clear to the committee how, of itself, the stated reason for not consulting in relation to the making of the instrument necessarily relates to a conclusion by the instrument maker that consultation was 'unnecessary' or 'inappropriate' (as provided for by section 18) **[the committee 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 considered unnecessary as the instrument merely re-issued a previous exemption. The minister further advised that the ES would be amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

CASA EX01/13 - Exemption - recency requirements for night flying (Alliance Airlines Pty Limited) [F2013L00114]; and CASA EX08/13 - Exemption - from standard take-off and landing minima - DHL Air Limited [F2013L00145]

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

ISSUE:

Insufficient explanation provided regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states only that consultation was not undertaken, that the operators had requested the exemption to replace previous exemptions and that the instruments are in the same terms as 'many instruments issued to foreign operators'. It is not clear to the committee how, of itself, the stated reason for not consulting in relation to the making of the instrument necessarily relates to a conclusion by the rule maker that consultation was 'unnecessary' or 'inappropriate' (as provided for by section 18) [**the committee 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 within the aviation industry as a whole did not take place as the exemption concerned only a single operator who had been determined as suitable to conduct the relevant procedures. Any operator whose organisation and procedures were considered by CASA to make satisfactory provision for these operations would be granted an equivalent exemption, and similar exemptions had been issued to both Australian and foreign operators. The minister further advised that the ES would be amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

Banking Sector Legislation Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 319] [F2012L02397]

Purpose	Amends the principal regulations and the First Home Saver Accounts Regulations 2008 to specify conditions for a number of bank accounts or deposits and First Home Saver Accounts to become unclaimed moneys
Last day to disallow	15 May 2013
Authorising legislation	<i>Banking Act 1959</i> ; and <i>First Home Saver Accounts Act 2008</i>
Department	Treasury

ISSUES:**(a) Commencement**

The instrument inserts into the banking regulations new regulation 20, which specifies accounts and conditions relating to those accounts for the purposes of subsection 69(1B) of the *Banking Act 1959*. Subsection 69(1B) is scheduled to commence on 1 July 2013. While the committee understands that the making of instruments prior to the commencement of the relevant empowering provision, as in this case, is authorised by section 4 of the *Acts Interpretation Act 1901* (the AIA), that section also sets out a number of conditions that must be met. The ES that accompanies the instrument does not address whether these conditions are relevant and, if so, have been met in this case **[the committee sought further information from the Treasurer]**.

(b) No information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES accompanying the instrument contains no reference to consultation **[the committee sought further information from the Treasurer 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 to the Treasurer responded, advising that, in relation to issue (a), regulations 20 and 21 did not rely on section 4 of the AIA. The regulations were made for the purposes of subsections 69(1B) and 69(1E) of the *Banking Act 1959*, which were introduced by Item 4 of Schedule 1 to the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* (the TLA Act) and would commence on 1 July 2013. However, item 8 of Schedule 1 of the TLA Act (which commenced on 5 December 2012) had put in place transitional provisions that effectively imposed a supplementary reporting and payment obligation on authorised deposit-taking institutions (ADIs) by reference to the obligations that would have applied had the amendments in items 1 to 4 and 4B of Schedule 1 to the TLA Act commenced on 31 December 2012. Furthermore, any regulations made in accordance with section 4 of the AIA for the purposes of the regulation-making powers conferred by those items (including subsections 69(1B) and (1E)) had taken effect from the date on which the regulations were registered (11 December 2012). Item 8 had therefore given effect to regulations 20 and 21 from 11 December 2012, regardless of the date on which these regulations were expressed to commence. Accordingly, it was not the making of the regulation in itself that conferred or imposed any rights or obligations within the meaning of subsection 4(4) of the AIA.

In relation to issue (b), the parliamentary secretary advised that the Australian Bankers' Association (ABA) and its members were consulted in relation to the proposed regulation. The ABA raised concerns relating to the effect of the proposed amendments on certain bank accounts, including linked accounts, frozen accounts, children's accounts and first home saver accounts, and these were taken into account in the drafting of the regulation. The parliamentary secretary advised that the ES had been amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

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

Purpose	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
Last day to disallow	18 June 2013
Authorising legislation	Civil Aviation Safety Regulations 1998
Department	Infrastructure and Transport

ISSUE:***Insufficient explanation provided regarding consultation***

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for 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 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 CASA consulted with the organisers of the Australian International Air Show, the Operations Manager of Recreational Aviation Australia, the Operations Manager of the Hang Gliding Federation of Australia, Airservices Australia and the operators of the Lethbridge Aerodrome to ensure the safe operation of sports and recreational aircraft within the restricted area. CASA received no adverse comments on the content and nature of the instrument. The minister advised that the ES would be amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

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

Purpose	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
Last day to disallow	18 June 2013
Authorising legislation	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
Department	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). 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 sought further information from the Assistant Treasurer and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*].

ASSISTANT TREASURER'S RESPONSE:

The Assistant Treasurer advised that Treasury conducted a four-week public consultation on the draft instrument through its website during April 2011. Three submissions and one supplementary submission were received. While the submissions were generally supportive of the regulation, it was suggested that the Tourist Refund Scheme threshold be reduced and that a cash refund option be introduced. No changes were made in response to these suggestions, as it was considered that the amendments maintained an appropriate balance between providing flexibility for tourist shopping, avoiding adverse impacts on retailers and minimising the cost of administering the scheme. The Assistant Treasurer further advised that the ES would be amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

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

Purpose	Amends the Excise Regulations 1925 to make a minor change to the sealed bag scheme
Last day to disallow	18 June 2013
Authorising legislation	<i>Excise Act 1901</i>
Department	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 sought further information from the Assistant Treasurer and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*].**

ASSISTANT TREASURER'S RESPONSE:

The Assistant Treasurer advised that Treasury conducted a four-week public consultation on the draft instrument through its website during April 2011. Three submissions and one supplementary submission were received. While the submissions were generally supportive of the regulation, it was suggested that the Tourist Refund Scheme threshold be reduced and that a cash refund option be introduced. No changes were made in response to these suggestions, as it was considered that the amendments maintained an appropriate balance between providing flexibility for tourist shopping, avoiding adverse impacts on retailers and minimising the cost of administering the scheme. The Assistant Treasurer further advised that the ES would be amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

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

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

ISSUES:**(a) Retrospectivity**

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

(b) Drafting

The footer to the instrument contains the words 'Draft 7'. In such cases, the committee generally inquires as to whether the version of the instrument it has received is in fact the final approved version **[the committee drew the issue to the attention of the Treasurer]**.

TREASURER'S RESPONSE:

In response to issue (a), the Treasurer advised that paragraph 8(5)(a) of the *Commonwealth Places (Mirror Taxes) Act 1998* expressly authorises a modification to take effect from an earlier date and, as such, subsection 12(2) of the *Legislative Instruments Act 2003* has no effect in relation to such instruments. The notice did not impose any new obligations or liabilities other than those that existed in tax laws that had application under the *Commonwealth Places (Mirror Taxes) Act 1998*. Consequently, there did not appear to be any circumstances where a person (other than the Commonwealth) would be disadvantaged for an act or omission before the instrument's date of registration.

In relation to issue (b), the Treasurer advised that it is the standard procedure in Western Australia for an instrument with 'Draft' in the footer to be presented to the Western Australian Governor for making. The reference to 'Draft' is then removed when the regulations are published in the Western Australian Gazette. However, Western Australian officials were advised that an instrument registered on the Federal Register of Legislative Instruments (FRLI) must be identical in all aspects to that made by the minister or delegate; the word 'Draft' was therefore left in the footer of the instrument registered on FRLI.

COMMITTEE'S RESPONSE:

The committee thanks the Treasurer for his advice and has concluded its interest in the matter. However, the committee notes that, in the interests of clarity, administrative processes supporting the preparation and approval of a registered instrument should ensure that the registered instrument is unambiguously a copy of the final instrument as approved by the relevant instrument maker.

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

Purpose	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
Last day to disallow	18 June 2013
Authorising legislation	<i>Customs Act 1901</i>
Department	Attorney-General's

ISSUE:

Insufficient explanation provided regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for 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 sought further information from the Minister for Home Affairs 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 Treasury conducted a four-week public consultation on the draft instrument through its website during April 2011. Three submissions and one supplementary submission were received. While the submissions were generally supportive of the regulation, it was suggested that the Tourist Refund Scheme threshold be reduced and that a cash refund option be introduced. No changes were made in response to these suggestions, as it was considered that the amendments maintained an appropriate balance between providing flexibility for tourist shopping, avoiding adverse impacts on retailers and minimising the cost of administering the scheme. The minister further advised that the ES would be amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

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

Purpose	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
Last day to disallow	18 June 2013
Authorising legislation	<i>Civil Aviation Act 1988</i>
Department	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 sought 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 sought 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 sought further information from the minister]**.

MINISTER'S RESPONSE:

In relation to issue (a), the minister advised that the term 'appropriate training' in regulation 61.225 would apply to cases where a body authorised to conduct an aeronautical knowledge examination was required to provide a failed candidate for a licence, rating or endorsement with a report outlining the training syllabus standards in which the candidate was deficient. 'Appropriate training' would therefore be training that covered the identified deficiencies.

In relation to issue (b), the minister advised that the concept of 'false or misleading in a material particular' in relation to the keeping of a personal logbook (regulation 61.360) would allow evidence to be tendered showing that an incorrect entry was of no consequence to aviation safety or was not used to gain a licence qualification. For example, an incorrect entry that had no bearing on safety or the issue of a licence, such as an incorrect date or registration number, would not be taken to be material and would therefore not be an offence of strict liability.

In relation to issue (c) (regulations 141.070, 142.100 and 142.120), the minister advised that it was intended that the specified positions should be held by the same person only temporarily in 'unforeseen circumstances' arising from, for example, injury, sickness, unexpected resignation or termination.

The minister further advised that CASA intended to publish guidance material before the commencement of the regulations on 4 December 2013, which would explain the application of the terms 'appropriate training' in regulation 61.225 and 'unforeseen circumstances' in regulations 141.070, 142.100 and 142.120.

COMMITTEE'S RESPONSE:

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

Transport Safety Investigation Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 263] [F2012L02278] and two related instruments³

Purpose	Substitutes a new Part 4 in the principal regulations dealing with the reporting of immediately reportable and routinely reportable matters; amends the principal regulations as a consequence of the Transport Safety Investigation (Confidential Reporting Scheme) Regulation 2012; and establishes a scheme for confidential reporting that applies to aviation, marine and rail transport
Last day to disallow	14 May 2013
Authorising legislation	<i>Air Navigation Act 1920; Navigation Act 1912; and Transport Safety Investigation Act 2003</i>
Department	Infrastructure and Transport

ISSUE:

No information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES accompanying 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 in relation to two of the instruments. In relation to F201202278, this had comprised the release of a discussion paper on enhanced mandatory reporting requirements for rail accidents and occurrences, with an invitation for public submissions. Submissions had been generally supportive of the proposals in the discussion paper. An exposure draft of the proposed amendments was subsequently also the subject of public consultation, with comments being received from such bodies as the Australian Rail Association and the Rail, Tram and Bus Union. In relation to F2012L02281, the Australian Transport Safety Bureau (ATSB) undertook extensive consultation, based on release of a public

3 Transport Safety Investigation Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 264] [F2012L02280]; and Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012 [Select Legislative Instrument 2012 No. 265] [F2012L02281].

consultation paper and subsequent drafts of the instrument and ES for public comment. In relation to F2012L02280, this instrument made amendments to the principal regulation to correct an out-dated reference and make minor clarifications and corrections. Consultation was therefore considered unnecessary as the instrument was considered to be 'minor or machinery' in nature **[the committee thanked the minister for his response but sought clarification that the relevant ESs would be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

The minister subsequently advised that the ESs had been amended in accordance with the committee's request.

COMMITTEE RESPONSE:

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

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

Purpose	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
Last day to disallow	25 June 2013
Authorising legislation	<i>Income Tax Assessment Act 1997</i>
Department	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 sought further information from the Assistant Treasurer and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

ASSISTANT TREASURER'S RESPONSE:

The Assistant Treasurer advised that change to the 'cents per kilometres' rates effected by the instrument were updated annually by regulation, generally where there had been an upward movement of the Private Motoring Subgroup (series ID A2326656J) within the Consumer Price Index. As the amendments were considered minor and

machinery in nature consultation was considered unnecessary. The Assistant Treasurer further advised that the ES had been amended in accordance with the committee's request.

COMMITTEE'S RESPONSE:

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

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

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

ISSUE:

Whether any person disadvantaged by previous error

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

MINISTER'S RESPONSE:

The minister advised that the consequence of the omission in the description of MBS item 63491 (used when a contrast agent is administered to perform Medicare Benefits Schedule (MBS) item 63512 – MRI knee for under 16 years) was that a patient would not have access to MBS item 63491 when billed in conjunction with MBS item 63512. The minister's department had reviewed the relevant period and identified nine services undertaken against MBS item 63512. However, the department was not able to determine how many of these were performed with contrast **[the committee thanked the minister for her response. However, while the committee recognised that it was not possible in every case to identify if a person or persons had been disadvantaged by administrative error, it was not clear from the minister's response why the department was unable to ascertain whether any person was disadvantaged in this case. The committee therefore sought further information from the minister]**.

The minister subsequently advised that the Department of Human Services (DHS), which administers the MBS, had advised that no claims were rejected for item 63491 between 1 November and 31 December 2012. Therefore, no patients had been disadvantaged during that period by the omission of the description of the item from the principal determination.

COMMITTEE RESPONSE:

The committee thanks the minister for her advice and has concluded its interest in the matter.

Health Insurance (Diagnostic Imaging Services Table) Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 295] [F2012L02399]

Purpose	Amends the Health Insurance (Diagnostic Imaging Services Table) Regulation 2012 to correct an error in the description of item 63513
Last day to disallow	15 May 2013
Authorising legislation	<i>Health Insurance Act 1973</i>
Department	Health and Ageing

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 on the issue of consultation the ES for 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 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*.**

MINISTER'S RESPONSE:

The minister advised that the amendment corrected a drafting error where two words were omitted from the Health Insurance (Diagnostic Imaging Services Table) Regulation 2012. As those words were included in the consultation in relation to the

original regulation, consultation was not undertaken in this case. The minister advised that the ES had been amended in accordance with the committee's request.

COMMITTEE RESPONSE:

The committee thanks the minister for her advice and has concluded its interest in the matter.

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

Purpose	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>
Last day to disallow	18 June 2013
Authorising legislation	<i>Banking Act 1959</i>
Department	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 sought further information from the Treasurer]**.

MINISTER'S RESPONSE:

The Parliamentary Secretary to the Treasurer responded, advising that the commencement of the regulation did not rely on section 4 of the AIA. Rather, the regulation, which was made for the purposes of subsection 69(1B) of the *Banking Act 1959*, had been inserted into the Banking Act by item 4 of Schedule 1 of the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* (the TLA Act). The regulation was in fact given effect by a transitional provision under item 8 of Schedule 1 of the TLA Act, which commenced on 5 December 2012.

COMMITTEE RESPONSE:

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

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

Purpose	Prescribes matters required to implement drug and alcohol testing within Customs and Border Protection
Last day to disallow	18 June 2013
Authorising legislation	<i>Customs Administration Act 1985</i>
Department	Attorney-General's

ISSUE:

Insufficient explanation provided regarding consultation

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

No consultation was undertaken 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 sought further information from the minister]**.

MINISTER'S RESPONSE:

The minister advised that, as the instrument in question was effectively related to the internal operations of Australian Customs and Border Protection Service (ACBPS) and would not affect business or competition, consultation was considered unnecessary (beyond the extensive consultation that had been undertaken within the ACBPS and with union representatives in relation to the governance framework and delivery methodologies for the drug and alcohol testing program). The minister further advised that the ES would be updated in accordance with the committee's request.

COMMITTEE RESPONSE:

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

Appendix 1

Index of instruments scrutinised

The following instruments were considered by the committee at its meeting on **16 May 2013**.

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

Instruments received week ending 22 March 2013

Aged Care Act 1997

Aged Care (Residential Care Subsidy - Amount of Accommodation Supplement) Determination 2013 (No. 1) [F2013L00468]

Aged Care (Residential Care Subsidy - Amount of Concessional Resident Supplement) Determination 2013 (No. 1) [F2013L00465]

Aged Care (Residential Care Subsidy - Amount of Pensioner Supplement) Determination 2013 (No. 1) [F2013L00469]

Aged Care (Residential Care Subsidy - Amount of Respite Supplement) Determination 2013 (No. 1) [F2013L00470]

Aged Care (Residential Care Subsidy - Amount of Transitional Accommodation Supplement) Determination 2013 (No. 1) [F2013L00466]

Aged Care (Residential Care Subsidy - Amount of Transitional Supplement) Determination 2013 (No. 1) [F2013L00471]

User Rights Amendment Principles 2013 (No. 1) [F2013L00467]

Autonomous Sanctions Act 2011

Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Zimbabwe) Amendment List 2013 [F2013L00477]

Broadcasting Services Act 1992

Broadcasting Services (Commercial Radio Advertising) Standard Revocation 2013 [F2013L00478]

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 2 of 2013) [F2013L00459]

Licence Area Plan - Adelaide Radio - Variation No. 1 of 2013 [F2013L00498]

Licence Area Plan – Broken Hill Radio – Variation No. 1 of 2013 [F2013L00489]

Licence Area Plan - Ipswich Radio - Variation No. 1 of 2013 [F2013L00509]

Licence Area Plan - Wagga Wagga Radio - Variation No. 1 of 2013 [F2013L00506]

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

Carbon Credits (Carbon Farming Initiative) Act 2011

Carbon Credits (Carbon Farming Initiative) (Avoided Emissions from Diverting Legacy Waste through a Composting Alternative Waste Technology) Methodology Determination 2013 [F2013L00482]

Christmas Island Act 1958

Lists of Acts of the Western Australian Parliament wholly or partly in force in Christmas Island (7 September 2012 to 8 March 2013 and not in previous lists)

Civil Aviation Act 1988

CASA 31/13 - Instructions - RNP as primary means of navigation for NDB, VOR or DME overlay approaches (Skytraders A319 aircraft) [F2013L00518]

CASA 33/13 - Authorisation - of persons to carry out maintenance on certain amateur-built, kit-built and light sport aircraft with a special certificate of airworthiness - Appointment - of authorised persons to issue maintenance releases for certain amateur-built, kit-built and light sport aircraft with a special certificate of airworthiness [F2013L00495]

Cocos (Keeling) Islands Act 1955

Lists of Acts of the Western Australian Parliament wholly or partly in force in Cocos (Keeling) Islands (7 September 2012 to 8 March 2013 and not in previous lists)

Corporations Act 2001

ASIC Class Order [CO 13/184] [F2013L00480]

ASIC Class Order [CO 13/284] [F2013L00461]

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens - Torres Strait Prawn Fishery (13/03/2013) (deletion) [F2013L00491]

Amendment of List of Exempt Native Specimens - Torres Strait Prawn Fishery (13/03/2013) (inclusion) [F2013L00492]

Amendment of List of Exempt Native Specimens - West Coast Deep Sea Crustacean Interim Managed Fishery (13/03/2013) [F2013L00493]

Amendment of List of Exempt Native Specimens - Western Australian West Coast Deep Sea Crustacean Managed Fishery (13/03/2013) [F2013L00494]

Export Control Act 1982

Export Control (Poultry Meat and Poultry Meat Products) Amendment Order 2013 (No. 1) [F2013L00502]

Export Control (Wild Game Meat and Wild Game Meat Products) Amendment Order 2013 (No. 1) [F2013L00501]

Fisheries Management Act 1991

Small Pelagic Fishery Fishing Method Determination 2013 [F2013L00483]

Governor-General Act 1974

Governor-General Allowance Order 2013 [F2013L00456]

Higher Education Support Act 2003

Higher Education Support Act 2003 - VET Provider Approval (No. 10 of 2013) [F2013L00515]

Income Tax Assessment Act 1997

Location Offset Rules 2008 (Amendment No. 1 of 2012) [F2013L00510]

PDV Offset Rules 2008 (Amendment No. 1 of 2012) [F2013L00516]

Jervis Bay Territory Acceptance Act 1915

Electricity Supply Fees Determination 2013 [F2013L00472]

Water and Wastewater Services Fees Determination 2013 [F2013L00473]

Judges and Governors-General Legislation Amendment (Family Law) Act 2012

Judges' Pensions (Item 48) Order 2013 [F2013L00458]

Judges' Pensions Act 1968

Judges' Pensions Order 2013 [F2013L00458]

Maternity Leave (Commonwealth Employees) Act 1973

Maternity Leave (Commonwealth Employees) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 34, 2013] [F2013L00500]

Migration Act 1958

Migration Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 32, 2013] [F2013L00486]

Migration Legislation Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 33, 2013] [F2013L00490]

National Health Security Act 2007

National Health Security Amendment Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 30] [F2013L00476]

Patents Act 1990

Intellectual Property Legislation Amendment (Raising the Bar) Regulation 2013 (No. 1) [Select Legislative Instrument No. 31, 2013] [F2013L00479]

Private Health Insurance Act 2007

Private Health Insurance (Benefit Requirements) Amendment Rules 2013 (No. 1) [F2013L00497]

Private Health Insurance (Complying Product) Amendment Rules 2013 (No. 1) [F2013L00496]

Remuneration Tribunal Act 1973

Remuneration Tribunal Determination 2013/03 - Remuneration and Allowances for Holders of Public Office [F2013L00464]

Renewable Energy (Electricity) Act 2000

Renewable Energy (Electricity) Amendment Regulation 2013 (No. 2) [Select Legislative Instrument No. 36, 2013] [F2013L00475]

Road Safety Remuneration Act 2012

Road Safety Remuneration Tribunal Rules 2013 [F2013L00455]

Social Security Act 1991

Social Security (Deeming Threshold Rates) (DEEWR) Determination 2013 (No. 1) [F2013L00462]

Social Security (Deeming Threshold Rates) (DIISRTE) Determination 2013 [F2013L00487]

Superannuation (Financial Assistance Funding) Levy Act 1993

Superannuation (Financial Assistance Funding) Levy and Collection Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 29, 2013] [F2013L00488]

Telecommunications (Carrier Licence Charges) Act 1997

Telecommunications (Carrier Licence Charges) Act 1997 - Determination under paragraph 15(1)d No. 1 of 2013 [F2013L00517]

Instruments received week ending 29 March 2013***A New Tax System (Goods and Services Tax) Act 1999***

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisition of a Motor Vehicle Under a Full or Split Full Novated Lease Arrangement) Legislative Instrument 2013 [F2013L00537]

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions by Recipients Using Electronic Purchasing Systems) Legislative Instrument 2013 [F2013L00540]

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Beneficiary of a Bare Trust) Legislative Instrument 2013 [F2013L00530]

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from or Acquisitions by a Partnership) Legislative Instrument 2013 [F2013L00543]

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions from Property Managers) Legislative Instrument 2013 [F2013L00539]

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Under an Agency Relationship) Legislative Instrument 2013 [F2013L00538]

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Acquisitions Where Total Consideration Not Known) Legislative Instrument 2013 [F2013L00534]

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Creditable Acquisition by a Lessee or Sub-Lessee Following a Sale of a Reversion in Commercial Premises) Legislative Instrument 2013 [F2013L00531]

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Creditable Acquisition of Taxi Travel) Legislative Instrument 2013 [F2013L00536]

A New Tax System (Goods and Services Tax) Waiver of Tax Invoice Requirement (Offer Documents and Renewal Notices) Legislative Instrument 2013 [F2013L00535]

Australian Prudential Regulation Authority Act 1998

Australian Prudential Regulation Authority (confidentiality) determination No. 5 of 2013 [F2013L00555]

Australian Prudential Regulation Authority (confidentiality) determination No. 6 of 2013 [F2013L00557]

Broadcasting Services Act 1992

Broadcasting Services (Digital-Only Local Market Areas for Remote Central and Eastern Australia TV1, Remote Central and Eastern Australia TV2, Remote and Regional WA TV1 and Western Zone TV1 Licence Areas) Determination (No. 2) 2013 [F2013L00556]

Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No. 1) [F2013L00568]

Civil Aviation Act 1988

AD/P68/28 Amdt 4 – Engine Mount Fittings [F2013L00523]

CASA EX28/13 - Exemption - use of radiocommunication systems in firefighting operations (New South Wales Rural Fire Service) [F2013L00560]

CASA EX33/13 – Exemption – CASR Subpart 99.B DAMP requirements for foreign aircraft AOC holders [F2013L00542]

CASA EX34/13 – Exemption – CASR Part 99 DAMP requirements for CAR 30 organisations overseas [F2013L00545]

Corporations Act 2001

ASIC Market Integrity Rules (ASX Market) Amendment 2013 (No. 1) [F2013L00561]

ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2013 (No. 1) [F2013L00567]

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens - New South Wales Ocean Trawl Fishery (15/03/2013) [F2013L00554]

Environment Protection and Biodiversity Conservation Act 1999 – section 269A – Instrument Adopting and Revoking Recovery Plans (NSW and WA) (21/02/2013) [F2013L00526]

Fair Entitlements Guarantee Act 2012

Fair Entitlements Guarantee (Extended operation of the Act in relation to GEON in Administration) Declaration 02/2013 [F2013L00525]

Migration Act 1958

Migration Regulations 1994 - Specification under regulation 3.10A - Access to Movement Records - March 2013 [F2013L00544]

National Health Act 1953

National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 3) (No. PB 17 of 2013) [F2013L00563]

National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2013 (No. 2) (No. PB 16 of 2013) [F2013L00562]

National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No. 4) (No. PB 14 of 2013) [F2013L00566]

National Health (Price and Special Patient Contribution) Amendment Determination 2013 (No. 2) (No. PB 15 of 2013) [F2013L00559]

Private Health Insurance Act 2007

Private Health Insurance (Registration) Amendment Rules 2013 (No. 2) [F2013L00548]

Superannuation Act 2005

Superannuation Act 2005 - Eighth Amendment of the Deed to establish the Public Sector Superannuation Accumulation Plan [F2013L00551]

Taxation Administration Act 1953

Taxation Administration Act 1953 – PAYG Withholding – PAYG Withholding Variation: Allowances [F2013L00521]

Taxation Administration Act 1953 – PAYG Withholding – Variation of withholding for personal services income [F2013L00522]

Telecommunications (Carrier Licence Charges) Act 1997

Telecommunications (Carrier Licence Charges) Act 1997 – Determination under paragraph 15(1)(b) No. 1 of 2013 [F2013L00524]

Telecommunications (Interception and Access) Act 1979

Telecommunications (Interception and Access) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 28, 2013] [F2013L00519]

Instruments received week ending 5 April 2013***Australian Prudential Regulation Authority Act 1998***

Australian Prudential Regulation Authority instrument fixing charges No. 1 of 2013 [F2013L00581]

Australian Prudential Regulation Authority instrument fixing charges No. 2 of 2013 [F2013L00582]

Australian Prudential Regulation Authority instrument fixing charges No. 3 of 2013 [F2013L00583]

Aviation Transport Security Act 2004

Aviation Transport Security Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 47, 2013] [F2013L00601]

Civil Aviation Act 1988

AD/ARRIEL/36 - Return to Service for Civil use from an Operator Not Controlled by a Civil Authority [F2013L00580]

AEB 13/1815 - Approval - means of compliance with Airworthiness Directive for Bombardier aircraft [F2013L00610]

CASA EX29/13 - Exemption - solo flight training at Rockhampton Aerodrome using ultralight aeroplanes registered with Recreational Aviation Australia [F2013L00588]

CASA EX35/13 - Exemption - operating in vicinity of non-controlled aerodrome, VHF radio broadcasts and maintaining a listening watch [F2013L00572]

CASA EX37/13 – Exemption - for seaplanes [F2013L00571]

Civil Aviation Order 40.1.0 Amendment Instrument 2013 (No. 1) [F2013L00590]

Civil Aviation Order 40.3.0 Amendment Instrument 2013 (No. 1) [F2013L00589]

Clean Energy Act 2011

Clean Energy Amendment Regulation 2013 (No. 2) [Select Legislative Instrument No. 45, 2013] [F2013L00602]

Corporations Act 2001

AASB 2013-2 - Amendments to AASB 1038 – Regulatory Capital - March 2013 [F2013L00579]

ASA 2013-1 Amending Standard to ASRE 2415 Review of a Financial Report - Company Limited by Guarantee - March 2013 [F2013L00587]

Crimes Act 1914

Crimes Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 40, 2013] [F2013L00592]

Customs Act 1901

Customs Legislation Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 41, 2013] [F2013L00597]

Customs Legislation Amendment Regulation 2013 (No. 2) [Select Legislative Instrument No. 42, 2013] [F2013L00598]

Do Not Call Register Act 2006

Do Not Call Register (Access Fees) Amendment Determination (No. 1) [F2013L00593]

Financial Management and Accountability Act 1997

Financial Management and Accountability Amendment Regulation 2013 (No. 2) [Select Legislative Instrument No. 50, 2013] [F2013L00600]

Fisheries Management Act 1991

Southern and Eastern Scalefish and Shark Fishery Overcatch and Undercatch Determination 2013 [F2013L00612]

Southern and Eastern Scalefish and Shark Fishery Total Allowable Catch (Non-Quota Species) Determination 2013 [F2013L00613]

Southern and Eastern Scalefish and Shark Fishery Total Allowable Catch (Quota Species) Determination 2013 [F2013L00611]

Greenhouse and Energy Minimum Standards Act 2012

Greenhouse and Energy Minimum Standards (Registration Fees) Instrument 2013 (No. 1) [F2013L00570]

Health Insurance Act 1973

Health Insurance (General Medical Services Table) Amendment Regulation 2013 (No. 2) [Select Legislative Instrument No. 46, 2013] [F2013L00591]

Higher Education Support Act 2003

Higher Education Provider Approval No. 1 of 2013 [F2013L00609]

Indigenous Education (Targeted Assistance) Act 2000

Indigenous Education (Targeted Assistance) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 48, 2013] [F2013L00606]

National Consumer Credit Protection Act 2009

National Consumer Credit Protection Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 43, 2013] [F2013L00608]

National Health Act 1953

National Health (Ceasing of Co-marketed Brands) Determination 2013 (No. 1) (No. PB 20 of 2013) [F2013L00577]

National Health (Listed drugs on F1 or F2) Amendment Determination 2013 (No. 2) (No. PB 19 of 2013) [F2013L00575]

National Health (Pharmaceutical Benefits - Therapeutic Groups) Amendment Determination 2013 (No. 1) (No. PB 6 of 2013) [F2013L00573]

National Health (Pharmaceutical Benefits - Therapeutic Groups) Amendment Determination 2013 (No. 2) (No. PB 7 of 2013) [F2013L00576]

Primary Industries (Customs) Charges Act 1999

Primary Industries (Customs) Charges Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 37, 2013] [F2013L00595]

Primary Industries (Excise) Levies Act 1999

Primary Industries (Excise) Levies Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 38, 2013] [F2013L00603]

Primary Industries Levies and Charges Collection Act 1991

Primary Industries Levies and Charges Collection Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 39, 2013] [F2013L00594]

Private Health Insurance Act 2007

Private Health Insurance (Prostheses) Amendment Rules 2013 (No. 3) [F2013L00614]

Renewable Energy (Electricity) Act 2000

Renewable Energy (Electricity) Amendment Regulation 2013 (No. 3) [Select Legislative Instrument No. 44, 2013] [F2013L00605]

Social Security Act 1991

Social Security (South Australian 'Individualised Funding') (DIIS RTE) Determination 2013 [F2013L00585]

Instruments received week ending 12 April 2013***Australian Prudential Regulation Authority Act 1998***

Australian Prudential Regulation Authority instrument fixing charges No. 4 of 2013 [F2013L00617]

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 3 of 2012) [F2013L00615]

Broadcasting Services (Exempt Digital Transmission Areas) Determination (No. 1) 2013 [F2013L00619]

Civil Aviation Act 1988

Civil Aviation Order 48.1 Instrument 2013 [F2013L00628]

Currency Act 1965

Currency (Royal Australian Mint) Determination 2013 (No. 1) [F2013L00631]

Do Not Call Register Act 2006

Do Not Call Register (Duration of Registration) Amendment Specification 2013 (No. 1) [F2013L00626]

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens - Western Australian West Coast Rock Lobster Managed Fishery (08/04/2013) [F2013L00634]

Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (140) (20/03/2013) [F2013L00623]

Fisheries Management Act 1991

Logbook Determination (Northern Prawn Fishery) 2013 [F2013L00624]

Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 6 2013 [F2013L00632]

Greenhouse and Energy Minimum Standards Act 2012

Greenhouse and Energy Minimum Standards (Television) Determination 2013 [F2013L00630]

Higher Education Support Act 2003

Higher Education Support Act 2003 - VET Provider Approval (No. 11 of 2013) [F2013L00620]

Higher Education Support Act 2003 - VET Provider Approval (No. 12 of 2013) [F2013L00621]

Higher Education Support Act 2003 - VET Provider Approval (No. 13 of 2013) [F2013L00622]

Legislative Instruments Act 2003

Attorney-General's (Spent and Redundant Instruments) Repeal Regulation 2013 [Select Legislative Instrument No. 49, 2013] [F2013L00604]

Motor Vehicle Standards Act 1989

Vehicle Standard (Australian Design Rule 13/00 – Installation of Lighting and Light Signalling Devices on other than L-Group Vehicles) 2005 Amendment 4 [F2013L00618]

Vehicle Standard (Australian Design Rule 42/04 – General Safety Requirements) 2005 Amendment 3 [F2013L00616]

Patents Act 1990

Intellectual Property (Standards of Practice) Instrument 2013 (No. 1) [F2013L00635]

Private Health Insurance Act 2007

Lodgment of Private Health Insurance Information in Accordance with the Private Health Insurance Act 2007 [F2013L00627]

Remuneration Tribunal Act 1973

Remuneration Tribunal Determination 2013/04 - Remuneration and Allowances for Holders of Public Office [F2013L00629]

Instruments received week ending 19 April 2013***Carbon Credits (Carbon Farming Initiative) Act 2011***

Carbon Credits (Carbon Farming Initiative) (Quantifying Carbon Sequestration by Permanent Mallee Plantings using the Reforestation Modelling Tool) Methodology Determination 2013 [F2013L00637]

Civil Aviation Act 1988

CASA EX40/13 – Exemption – from standard take-off and landing minima – Royal Brunei Airlines [F2013L00651]

CASA EX42/13 – Exemption – from standard take-off and landing minima – Jetconnect Limited [F2013L00653]

Federal Circuit Court of Australia Act 1999

Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (No. 1) [Select Legislative Instrument 2013 No. 51, 2013] [F2013L00649]

Federal Magistrates Act 1999

Federal Magistrates Court Legislation Amendment Rules 2013 (No. 1) [Select Legislative Instrument No. 56, 2013] [F2013L00641]

Fringe Benefits Tax Assessment Act 1986

Fringe Benefits Tax Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 5, 2013] [F2013L00648]

Health Insurance Act 1973

Health Insurance Act 1973 – Declaration of Quality Assurance Activity under section 124X (QAA 1/2013) [F2013L00642]

National Health Act 1953

National Health (Pharmaceutical Benefits) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 53, 2013] [F2013L00650]

Royal Commissions Act 1902

Royal Commissions Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 54, 2013] [F2013L00647]

Social Security (Administration) Act 1999

Social Security (Administration) (Declare income management areas – Ngaanyatjarra Lands and Laverton) Determination 2013 [F2013L00652]

Television Licence Fees Act 1964

Television Licence Fees Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 52, 2013] [F2013L00646]

Therapeutic Goods Act 1989

Therapeutic Goods Information (Joint Recalls Portal) Specification 2013 [F2013L00640]

Instruments received week ending 26 April 2013***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2013 (No. 1) [F2013L00655]

Australian Meat and Live-stock Industry Act 1997

Australian Meat and Live-stock Industry (Sheepmeat and Goatmeat Export to the European Union – Quota Year 2013) Amendment Order 2013 (No. 1) [F2013L00658]

Broadcasting Services Act 1992

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 4 of 2013) [F2013L00668]

Television Licence Area Plan (Remote and Regional Western Australia) 2013 [F2013L00666]

Television Licence Area Plan (Remote Central and Eastern Australia) 2013 [F2013L00665]

Civil Aviation Act 1988

CASA ADCX 005/13 – Revocation of Airworthiness Directives [F2013L00660]

CASA EX38/13 – Exemption – display of markings [F2013L00667]

Currency Act 1965

Currency (Perth Mint) Determination 2013 (No. 2) [F2013L00661]

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens – Bass Strait Central Zone Scallop Fishery (08/04/2013) [F2013L00657]

Amendment of List of Exempt Native Specimens – Western Australia Abrolhos Islands and Mid West Trawl Managed Fishery (09/04/2013) [F2013L00656]

Fisheries Management Act 1991

Macquarie Island Toothfish Fishery Total Allowable Catch Determination 2013 [F2013L00663]

National Consumer Credit Protection Act 2009

ASIC Class Order [CO 13/274] [F2013L00664]

Taxation Administration Act 1953

Taxation Administration Act 1953 – Tax table for back payments, commissions, bonuses and similar payments [F2013L00654]

Work Health and Safety Act 2011

Work Health and Safety Exemption to Regulation 217 [F2013L00659]

Instruments received week ending 3 May 2013***Australian Prudential Regulation Authority Act 1998***

Australian Prudential Regulation Authority (confidentiality) determination No. 7 of 2013 [F2013L00690]

Civil Aviation Act 1988

AD/R44/23 - R44 Bladder Fuel tank Retrofit [F2013L00698]

CASA ADCX 006/13 – Revocation of Airworthiness Directives [F2013L00676]

CASA EX14/13 – Exemption – of component installers from CAR 42W(b), (d) and (e) [F2013L00675]

CASA EX44/13 - Exemption - use of ADS-B in aircraft operated by PT Garuda Indonesia [F2013L00717]

CASA EX47/13 - Exemption - Surveillance Australia Pty Ltd operations into Lord Howe Island [F2013L00697]

CASA EX48/13 – Exemption – for round Australia flight by David Brian Jacka [F2013L00673]

CASA EX51/13 - Exemption - from standard take-off and landing minima - Express Freighters Australia Pty Ltd [F2013L00712]

CASA EX52/13 - Exemption - helicopter winching operations (Bristow Helicopters) [F2013L00716]

Clean Energy Act 2011

Clean Energy Legislation Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 58, 2013] [F2013L00706]

Corporations Act 2001

Corporations Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 59, 2013] [F2013L00696]

Crimes Act 1914

Crimes Amendment Regulation 2013 (No. 2) [Select Legislative Instrument No. 57, 2013] [F2013L00702]

Environment Protection and Biodiversity Conservation Act 1999

Amendment of List of Exempt Native Specimens - Coral Reef Fin Fish Fishery (23/04/2013) [F2013L00708]

Amendment - List of Specimens taken to be Suitable for Live Import (15/04/2013) [F2013L00710]

Final (Small Pelagic Fishery) Declaration (No. 2) 2013 [F2013L00694]

Financial Sector (Collection of Data) Act 2001

Financial Sector (Collection of Data) (reporting standard) determination No. 61 of 2013 – SRS 001.0 Profile and Structure (Baseline) [F2013L00683]

Fisheries Management Act 1991

Logbook Determination (Small Pelagic Fishery) 2013 [F2013L00713]

Small Pelagic Fishery Overcatch and Undercatch Determination 2013 [F2013L00703]

Small Pelagic Fishery Total Allowable Catch (Quota Species) Determination 2013 [F2013L00700]

Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 7 2013 [F2013L00693]

Southern Bluefin Tuna Fishery Management Plan Amendment 2012 (No. 1) [F2013L00686]

Health Insurance Act 1973

Health Insurance (Allied Health Services) Amendment Determination 2013 (No. 1) [F2013L00674]

Higher Education Support Act 2003

Higher Education Support Act 2003 - VET Provider Approval (No. 14 of 2013) [F2013L00714]

Higher Education Support Act 2003 - VET Provider Approval (No. 15 of 2013) [F2013L00715]

Industrial Chemicals (Notification and Assessment) Act 1989

Industrial Chemicals (Notification and Assessment) Amendment Regulation 2013 (No. 1) [F2013L00695]

National Health Act 1953

National Health Act (Pharmaceutical Benefits - Early Supply) Amendment May 2013 - specification under subsection 84AAA(2) (No. PB 28 of 2013) [F2013L00705]

National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 4) (No. PB 25 of 2013) [F2013L00691]

National Health (Growth Hormone Program) Special Arrangement Amendment Instrument 2013 (No. 1) (No. PB 27 of 2013) [F2013L00709]

National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No. 5) (No. PB 21 of 2013) [F2013L00685]

National Health (Prescriber bag supplies) Amendment Determination 2013 (No. 1) (No. PB 23 of 2013) [F2013L00681]

National Health (Price and Special Patient Contribution) Amendment Determination 2013 (No. 3) (No. PB 22 of 2013) [F2013L00678]

National Health (Weighted average disclosed price – main disclosure cycle) Determination 2013 (No. 1) (No. PB 26 of 2013) [F2013L00689]

National Health (Weighted average disclosed price – supplementary disclosure cycle A) Determination 2013 (No. PB 24 of 2013) [F2013L00688]

Public Lending Right Act 1985

Public Lending Right Scheme 1997 (Modification No. 1 of 2013) [F2013L00682]

Public Works Committee Act 1969

Public Works Committee Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 60, 2013] [F2013L00699]

Radiocommunications Act 1992

Radiocommunications (Low Interference Potential Devices) Class Licence Variation Notice 2013 (No. 1) [F2013L00711]

Retirement Savings Accounts Act 1997

Retirement Savings Accounts and Related Legislation Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 61, 2013] [F2013L00707]

Telecommunications Act 1997

Telecommunications (Carrier Licence Exemption - ICON, SSICT and ACTEW Networks) Determination 2013 (No. 1) [F2013L00692]

Therapeutic Goods Act 1989

Therapeutic Goods Information (Stakeholder Consultation on Database of Adverse Event Notifications – Medical Devices) Specification 2013 [F2013L00677]

Tradespersons' Rights Regulation Act 1946

Tradespersons' Rights (Cost Recovery) Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 63, 2013] [F2013L00704]

Veterans' Entitlements Act 1986

Statement of Principles concerning aortic stenosis No. 21 of 2013 [F2013L00718]

Statement of Principles concerning aortic stenosis No. 22 of 2013 [F2013L00719]

Statement of Principles concerning chronic gastritis and chronic gastropathy No. 25 of 2013 [F2013L00720]

Veterans' Entitlements (Actuarial Certificate – Life Expectancy Income Stream Guidelines) Determination 2013 [F2013L00671]

Veterans' Entitlements (Actuarial Certificate – Lifetime Income Stream Guidelines) Determination 2013 [F2013L00670]

Total number of instruments scrutinised: 212

Appendix 2

Guideline on explanatory statements: consultation



AUSTRALIAN SENATE

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

Guideline for preparation of explanatory statements: consultation

Role of the committee

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

Purpose of guideline

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

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

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

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

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

Requirements of the Legislative Instruments Act 2003

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

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

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

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

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

Describing the nature of consultation

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

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

Method and purpose of consultation

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

Bodies/groups/individuals consulted

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

Issues raised in consultations and outcomes

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

Explaining why consultation has not been undertaken

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

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

Specific examples listed in the Act

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

Timing of consultation

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

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

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

Seeking further advice or information

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

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

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

Phone: +61 2 6277 3066

Fax: +61 2 6277 5881

Email: RegOrds.Sen@aph.gov.au

Appendix 3

Correspondence relating to committee's scrutiny



Australian Government

Department of Agriculture, Fisheries and Forestry

REF: MNMC2011-09638

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

RECEIVED

13 MAY 2013
Senate Standing C'ttee
on Regulations
and Ordinances

Dear Senator Furner

Thank you for your letter dated 25 August 2011 about order 5.01 and 5.03 of the Export Control (Poultry Meat and Poultry Meat Products) Orders 2010 and the Export Control (Wild Game and Wild Game Meat Products) Orders 2010. I regret the delay in responding.

To address the concerns of the committee orders 5.02 and 5.03 were amended in Export Control (Poultry Meat and Poultry Meat Products) Orders 2010 and the Export Control (Wild Game and Wild Game Meat Products) Orders 2010 to require exporters to return paper export permits and government certificates. The term 'destroy' was also removed from the Orders.

Export Control (Poultry Meat and Poultry Meat Products) Amendment Order 2013 (No. 1) and the *Export Control (Wild Game Meat and Wild Game Meat Products) Amendment Order 2013 (No. 1)* were registered on the Federal Register of Legislative Instruments on 20 March 2013.

Thank you for raising this matter with me.

Yours sincerely

Joe Ludwig

Minister for Agriculture, Fisheries and Forestry
Senator for Queensland

13 May 2013



RECEIVED

24 APR 2013

Senate Standing Committee
on Regulations
and Ordinances

**Attorney-General
Minister For Emergency Management**

MC13/01935

Senator Mark Furner
Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600
regords.sen@aph.gov.au


Dear Senator Furner

Thank you for your letter of 7 February 2013 to the Minister for Immigration and Citizenship, the Hon Brendan O'Connor MP, regarding the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 2)* (No. 2 Regulation). Your letter was referred to me as the No. 2 Regulation falls within my portfolio responsibilities.

Your letter indicates that the Senate Standing Committee on Regulations and Ordinances seeks advice about the setting of fees under the No. 2 Regulation. The Committee notes that the Explanatory Statement does not appear to indicate the basis on which the fees introduced by the instrument have been set or calculated, or describe the new fees relative to those which have been replaced.

I provide the following information about the fees affected by this regulation.

Fee for registration of a judgment

The No. 2 Regulation repeals and replaces the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 1)* (No. 1 Regulation) to provide for fees for the filing of applications under the *Trans-Tasman Proceedings Act 2010*. This Act provides a procedural framework for managing litigation with a trans-Tasman element. The Act will commence on Proclamation once the *Agreement Between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement* has entered into force for Australia and New Zealand (the Agreement), which will occur once both countries have settled all domestic arrangements necessary to comply with their obligations in the Agreement.

The No. 1 Regulation provided for a fee of \$95 for registration of a New Zealand judgment in the Family Court of Australia, Federal Court of Australia and Federal Magistrates Court of Australia, on commencement of the *Trans-Tasman Proceedings Act 2010*.

The No. 2 Regulation retains this fee and amount while updating amendments so that references are to the new regulations structure for fees, namely the *Family Law (Fees) Regulation 2012* and the *Federal Court and Federal Magistrates Court Regulation 2012*, where the relevant fee provisions are now located.

The Explanatory Statement to the No. 1 Regulation indicates that the \$95 fee for registration of a judgment is a low fee to reflect the simplified process under the *Trans-Tasman Proceedings Act 2010* and was aligned as closely as possible with the fee for registering an Australian judgment in New Zealand. The Explanatory Statement also explains that the Australian federal courts and the New Zealand Ministry of Justice had been consulted on that instrument.

Fees for initiating applications

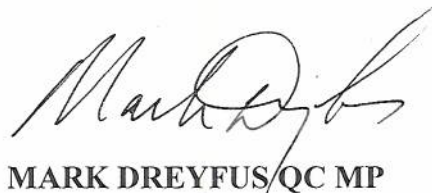
Under the No. 1 Regulation, applications under the *Trans-Tasman Proceedings Act 2010* would have attracted the fees applicable in the court in which it would have been filed. The No. 2 Regulation clarifies that, where proceedings are commenced in Australia under the *Trans-Tasman Proceedings Act 2010*, the fee payable is the lower fee for commencing interim matters, rather than the fee for initiating an application in federal law matters or the fee for an application seeking final orders in family law.

The Explanatory Statement to the No. 2 Regulation notes that an application under the *Trans-Tasman Proceedings Act 2010* would have initially been made in a court of litigation in New Zealand for which parties would have paid the relevant New Zealand court fee for filing an initiating application.

Thank you for the opportunity to clarify these matters.

The action officer for this matter is Loren Cousins, who can be contacted on (02) 6141 2918.

Yours sincerely



MARK DREYFUS/QC MP

19/4/13



RECEIVED

30 APR 2013

Senate Standing C'ttee
on Regulations
and Ordinances

The Hon Jenny Macklin MP
Minister for Families, Community Services and Indigenous Affairs
Minister for Disability Reform

Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 7560
Facsimile: (02) 6273 4122

29 APR 2013

MN13-000658

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

Dear Senator Furner

Mark

Thank you for your letter of 14 March 2013 on behalf of the Senate Standing Committee on Regulations and Ordinances (the Committee) concerning the *Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2013* (the Determination).

I understand the Committee is seeking information as to the basis upon which the new deeming rates detailed in the Determination have been calculated or set.

As the Minister for Families, Community Services and Indigenous Affairs, I have lead responsibility for deeming policy and monitoring of the deeming rates. The Minister for Employment and Workplace Relations and the Minister for Tertiary Education, Skills, Science and Research have the authority, under section 1082 of the *Social Security Act 1991*, to make a determination about the deeming rates that apply to payments that come within their portfolio responsibilities.

Deeming rates are kept under ongoing review by my Department and are set to reflect the returns available in the market to pensioners for their financial investments.

A wide range of investment indicators are analysed when reviewing the deeming rates. These include:

- term deposit rates;
- cash management account returns;
- changes in share prices;
- share dividend yields;
- managed investment returns; and
- the term of investment and access to funds are also considered where relevant.

The Treasury's analysis of money markets, as well as data from the Reserve Bank of Australia, for example five-year government bond rates, and regular statements and reports on current and expected economic conditions are also examined. My Department's analysis tends to focus on the medium to long-term trends rather than short-term market fluctuations to minimise disruptions for pensioners by making multiple small changes.

In reviewing the deeming rates and analysing this information, the types of financial investments commonly held by pensioners is also taken into account.

Following advice I received from my Department in relation to the factors stated above, I made a decision to reduce both deeming rates by 0.5 per cent.

There is also a set of principles that are considered when reviewing the deeming rates. These principles include:

- that deeming should be a simple and fair way to assess income from financial investments, so that pensioners with the same amount held in different financial assets receive a similar assessment;
- it should reduce the extent to which income support payments fluctuate; and
- it should simplify investment choice to encourage pensioners to choose investments on their merits.

I trust that these comments assist the Regulations and Ordinances Committee and I thank you again for giving me the opportunity to comment.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Jenny Macklin', written in black ink.

JENNY MACKLIN MP

RECEIVED

15 MAR 2013

Senate Standing C'ttee
on Regulations
and Ordinances



The Hon David Bradbury MP
Assistant Treasurer
Minister Assisting for Deregulation

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

14 MAR 2013

Dear Senator ^{Mark,} Furner

Thank you for your letters of 7 February 2013 on behalf of the Senate Standing Committee on Regulations and Ordinances concerning the *Foreign Acquisitions and Takeovers Amendment Regulation 2012 (No. 1)* and the *Life Insurance Amendment Regulation 2012 (No.1)*.

The Committee sought advice as to the legal basis for subsection 2(2) of the *Foreign Acquisitions and Takeovers Amendment Regulation 2012 (No. 1)* (the regulation). The Office of Parliamentary Counsel has advised that the definition of 'enabling legislation' in subsection 4(1) of the *Legislative Instruments Act 2003* contemplates that a legislative instrument may be made under another legislative instrument.

The purpose of subsection 2(2) of the regulation is to ensure that the notification of when the regulation will commence is made public. The intention was that the public notification would occur by registering the commencement instrument on the Federal Register of Legislative Instruments so that the Federal Register of Legislative Instruments retains both the regulation and the instrument that commences the regulation. Accordingly, the commencement instrument has been made and registered on the Federal Register of Legislative Instruments and is therefore taken to be a legislative instrument.

In light of the concerns of the Committee, the Office of Parliamentary Counsel has advised that in future notifications of this kind will be made by Gazette notice and not by legislative instrument. As a result of recent changes to ComLaw, Gazette notices are now published electronically on ComLaw and linked to the legislation to which they relate. This will ensure that commencement instruments for legislative instruments are publicly notified and are accessible through legislative instrument pages on the Federal Register of Legislative Instruments.

The Committee also sought further information describing the nature of consultation in relation to the *Foreign Acquisitions and Takeovers Amendment Regulation 2012 (No. 1)* and the *Life Insurance Amendment Regulation 2012 (No.1)*. Australia has worked closely with New Zealand to ensure implementation is consistent with the agreed Protocol on Investment to the Australia-New Zealand Closer Economic Relations Trade Agreement. As the changes made by the two regulations replicated existing provisions already contained in the regulations (reflecting that New Zealand investors were to receive treatment equivalent to that already provided to United States investors),

the changes were considered simple and minor, with further public consultation beyond that already undertaken on the Investment Protocol unnecessary.

The Government undertook significant consultation in relation to the Protocol. In 2006, public submissions were invited via advertisements in major Australian newspapers. Submissions were received from Australian businesses with investments in New Zealand and from Australian business representatives. Officers from the Treasury and the Department of Foreign Affairs and Trade held face-to-face consultations with stakeholders in Sydney and Melbourne on the objectives and scope of the Investment Protocol. These consultations suggested that:

- there was strong support from businesses and other stakeholders on both sides of the Tasman for reducing barriers to bilateral investment flows;
- the business communities of Australia and New Zealand considered that liberalisation of the respective foreign investment screening regimes was long overdue; and
- the objective of the Investment Protocol should be to minimise compliance costs associated with foreign investment screening.

Consultations with the states and territories regarding the Investment Protocol commenced in 2006. At this time the states and territories were advised of aspects of the Investment Protocol that may affect their jurisdictions. In 2009 and 2010, further consultation with the states and territories occurred regarding the following issues:

- the Schedule of non-conforming measures: Consistent with Australia's preferred practice with free trade agreements, states and territories were asked to agree to Australia's market access offer, which envisaged all existing non-conforming measures at the state and territory level being dealt with in a single blanket listing in Annex I of the Investment Protocol;
- most-favoured nation inconsistent measures: states and territories were asked to provide details of any measures in their jurisdiction that discriminated against New Zealand investors in favour of third country investors.

The outcome of these consultations was that the states and territories agreed to Australia's market access offer and undertook to provide details of most-favoured nation inconsistent measures. Consultation with the states and territories in relation to developing a list of non-conforming measures, required for the Parties' first meeting to review the Protocol, is ongoing.

As noted in the Explanatory Statements, the Investment Protocol was tabled with the Joint Standing Committee on Treaties and considered at a hearing of the Committee. The Joint Standing Committee on Treaties recommended that binding treaty action be taken.

As per the Committee's request, I will make arrangements to update the Explanatory Statements to incorporate the additional information regarding consultation.

I hope this information will be of assistance to you.

Yours sincerely



DAVID BRADBURY




**Attorney-General
Minister For Emergency Management**

RECEIVED

21 MAR 2013
Senate Standing C'ttee
on Regulations
and Ordinances

MC13/01734

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


Dear Senator Furner

Thank you for your letter dated 7 February 2013 regarding the *Legislative Instruments Amendment Regulation 2012 (No. 2)*.

I understand that, in preparing the regulation, my Department consulted with the relevant *Intelligence Services Act 2001* agencies, including the Australian Secret Intelligence Service, the Defence Signals Directorate, and the Defence Imagery and Geospatial Organisation. On 27 November 2012, my predecessor wrote to the Minister for Foreign Affairs and the Minister for Defence in their capacity as Ministers responsible for the IS Act regarding the proposed amendments.

Broader consultation was not necessary because these were technical amendments that would not have any impact on business or result in any substantive change to the law.

The explanatory statement that accompanied the instrument has been updated to include reference to this consultation. It is attached for your reference. My Department will make every endeavour to ensure the requirements of the *Legislative Instruments 2003* with regards to consultation are met in future explanatory statements.

I trust this information is of assistance. Should you require further information, the contact officer in my Department is Laura Munsie who can be contacted on (02) 6141 2974.

Yours sincerely


MARK DREYFUS QC MP

18/3/13

Encl: Revised Explanatory Statement



The Hon Brendan O'Connor MP
Minister for Immigration and Citizenship

RECEIVED

21 MAR 2013
Senate Standing C'ttee
on Regulations
and Ordinances

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 *Migration Amendment Regulation 2012 (No. 8)* [Select Legislative Instrument 2012 No. 301] (the Amendment Regulation).

The Explanatory Statement (ES) accompanying the Amendment Regulation states that the Amendment Regulation implements an increase to the Visa Application Charge (VAC) for a target group of visa subclasses in line with the measures proposed by the Government in the 2012-2013 Mid-Year Economic and Fiscal Outlook (MYEFO).

The *Migration (Visa Application) Charge Act 1997* provides that a VAC payable under section 45A of the *Migration Act 1958* is imposed. It is not a fee for service.

The VAC increases in the Amendment Regulation were principally designed to meet the revenue objectives of the Government, as proposed in the 2012-2013 MYEFO, while ensuring that these increases were directed to visa subclasses where there was a justifiable public policy reason for doing so, rather than applying an increase across the board which would affect all visa subclasses indiscriminately.

The VAC for the Subclass 485 (Skilled Graduate) visa ('Subclass 485 visa') was increased from \$315 to \$1250 to acknowledge that this visa provides an invaluable opportunity for students with skills in demand in Australia, and who have recently completed one or more degree, diploma or trade qualification in Australia, to work in Australia without the support of a sponsor. A Subclass 485 visa holder is allowed to spend up to 18 months in Australia to work to build on their skill set which they have developed during their degree, diploma or trade qualification. As such, the Subclass 485 visa provides a significant benefit to students to be able to work in Australia after obtaining their qualifications.

From March 2013, subject to the approval of the Governor General, it is proposed that the Subclass 485 visa will also allow a student, on completion of their studies within Australia, to apply to have full work rights in Australia for two to four years, depending on their qualification. This change will provide a further benefit for eligible students who are seeking an Australian employment experience.

Therefore, the VAC for the Subclass 485 visa was increased to recognise the significant value that this visa gives, and is proposed to give, to skilled graduates of a degree, diploma or trade qualification to be able to work in Australia. The increase to the VAC is not considered onerous in light of the potential income that a Subclass 485 visa holder would expect to earn with work rights in Australia as a result of their skill set.

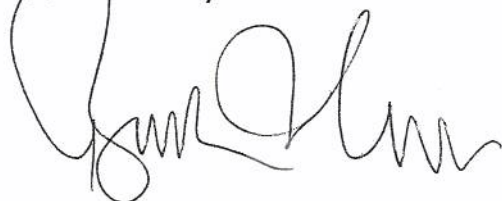
The increase of 30 per cent to the VAC for the remaining six visa subclasses has been applied to visas where there is significant demand. With regard to the Subclass 100 (Partner) visa, Subclass 300 (Prospective Marriage) visa and Subclass 801 (Partner) visa, the three visas are currently heavily subscribed and the increase to the VAC for each of the visas acknowledges the significant demand for a partner visa.

With regard to the Subclass 417 (Working Holiday) visa, Subclass 457 (Business Long Stay) visa and Subclass 462 (Work and Holiday) visa, the increase in the VAC for each of these visas also recognises the significant demand for these visas and, in line with the Subclass 485 visa, the valuable Australian work rights that are associated with these visa subclasses.

When announcing these changes the Government noted the large levels of demand in these visa areas and that the changes made for a fairer, 'user-pays' approach to visa pricing. The Government does not expect that any of the above VAC increases will significantly affect clients wishing to apply for the above visas and that the increase merely represents a more realistic assessment of the value of each visa subclass in line with Government revenue objectives.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brendan O'Connor', written in a cursive style.

BRENDAN O'CONNOR

12 MAR 2013



RECEIVED

21 MAR 2013
Senate Standing C'ttee
on Regulations
and Ordinances

**MINISTER FOR EMPLOYMENT AND WORKPLACE RELATIONS
MINISTER FOR FINANCIAL SERVICES AND SUPERANNUATION**

Our RefBR13-000485

19 MAR 2013

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

Mark
Dear Senator

I refer to your letter of 7 February 2013 regarding the *Work Health and Safety Amendment Regulation 2012 (No. 1)*. In particular, the Committee has sought advice on how the fee for the issue of general construction induction training cards (training cards) has been calculated.

I can advise that the fee has been set having regard to comparable fees currently charged by the States and Territories under their work health and safety (WHS) laws, as well as Comcare's fee for service arrangements under the Commonwealth's Cost Recovery Guidelines.

The Commonwealth's WHS Regulations operate concurrently with State and Territory WHS laws and provide for mutual recognition of cards issued by each WHS regulator. Prior to January 2013, Comcare did not issue its own training cards, and relied on training cards issued by other WHS regulators.

From 1 January 2013 workers in the Commonwealth jurisdiction have the option of applying to Comcare for a training card. The management of this process places an administrative burden on Comcare. Because of this, it was decided that it is appropriate to charge individuals a fee when they apply for a training card. In determining the amount to charge applicants, the nature of the administrative burden on Comcare and the fees charged by other jurisdictions were considered.

The fee of \$30 allows Comcare to substantially recoup the costs of the administration of the scheme while remaining comparable with other jurisdictions to prevent forum shopping.

The amount of this fee will be periodically reviewed by Comcare to ensure it continues to reflect the costs associated with the provision of training cards and maintain consistency between jurisdictions.

I trust the information provided is helpful.

Regards

A handwritten signature in black ink, appearing to read 'Bill Shorten'. The signature is written in a cursive, flowing style with a large initial 'B' and 'S'.

BILL SHORTEN



The Hon Anthony Albanese MP

Minister for Infrastructure and Transport
Leader of the House

Reference: 00484-2013, 00485-2013

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

21 MAR 2013

RECEIVED

22 MAR 2013
Senate Standing Committee
on Regulations
and Ordinances

Dear Senator Furner

Mark,

Thank you for your letters dated 7 February 2013 about two legislative instruments *CASA 390/12 Instructions – GNSS primary means navigation (B737 NG aircraft) [F2012L02428]* and *EX 184/12 Exemption from standard take-off minima – Virgin Australia International Airlines [F2012L02425]*.

The first of these instruments provides Virgin Australia International Airlines Pty Ltd (VAIA) with instructions for using Global Navigation Satellite Systems (GNSS) as the primary means of navigation, allowing the airline to conduct non-precision approaches without the use of ground-based navigation aids. The second instrument provides VAIA an exemption from the standard meteorological minima for take-off, allowing the airline to operate aircraft in low visibility conditions.

I am advised that it was not reasonably practicable to undertake consultation on these instruments. A sudden change to Indonesian law meant that services to Denpasar Airport, previously operated by Virgin Australia Airlines Pty Ltd (VAA) would need to be operated instead by VAIA. In order to support the continuation of those services, it was necessary for CASA, as a matter of urgency, to provide VAIA with the necessary exemption from take-off minima and instructions for using GNSS as the primary means of navigation.

I have forwarded the document 'Guideline for preparation of Explanatory Statements: consultation' to CASA and requested that future explanatory statements provide sufficient information on consultation in accordance with the requirements of the *Legislative Instruments Act 2003*.

I have also asked CASA to amend the explanatory statements relating to these instruments to provide an explanation on the need to progress the instruments without consultation.

Yours sincerely

ANTHONY ALBANESE



The Hon Anthony Albanese MP

Minister for Infrastructure and Transport
Leader of the House

Reference: 00853-2013

21 MAR 2013

RECEIVED

22 MAR 2013

Senate Standing C'ttee
on Regulations
and Ordinances

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

Dear Senator Furner

Mark,

Thank you for your letters dated 28 February 2013 relating to various legislative instruments prepared by the Civil Aviation Safety Authority (CASA). I have sought advice from CASA about the concerns you have raised regarding the suitability of information about consultation provided in the explanatory statement accompanying each the relevant instruments.

CASA has advised that it notes the Committee's advice that a rule-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.

In the case of instruments CASA EX193/12 and CASA EX194/12, CASA indicates that it was satisfied that the relevant consultation had taken place prior to the issue of the instrument through its discussions with the applicants and their discussions with the relevant industry sectors or parties likely to be affected.

CASA has advised that in the cases of CASA EX191/12 and CASA EX180/12, consultation was not undertaken as these were re-issues of previous instruments. However, CASA also notes that in relation to CASA EX191/12 – 'Exemption – solo flight training using ultralight aeroplanes registered with Recreational Aviation Australia Incorporated at Jandakot Aerodrome' [F2012L02521], the Explanatory Statement does refer to consultation and advises:

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

CASA further advises that in respect of CASA EX01/13, EX08/13 and EX190/12, consultation within the aviation industry as a whole did not take place because the exemptions only concerned single operators found suitable to conduct the relevant procedures. Any operator whose procedures and organisation is considered by CASA to make a satisfactory provision for these operations would be granted an equivalent exemption. Exemptions of this sort are requested by many operators, Australian and foreign, and are issued only to those who satisfy the necessary safety requirements and are considered capable of meeting the standard conditions contained in each exemption. They are considered important to the safe and expeditious operation of the relevant aircraft.

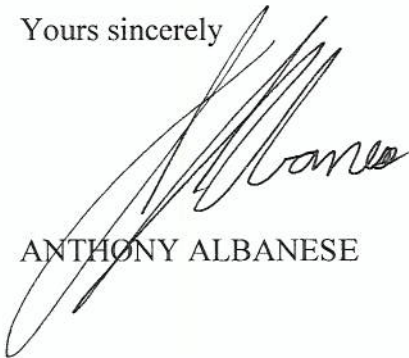
In regard to CAO20.18 CASA advises that it consulted with the Sport Aircraft Association of Australia about new elements of the instrument but that broader consultation was not required because of the similarity of the instrument to the expiring instrument which it replaced (CASAEX74/12).

CASA has been provided with the document 'Guideline for preparation of Explanatory Statements: consultation' and has been requested to provide sufficient information on consultation in future explanatory statements in accordance with the requirements of the *Legislative Instruments Act 2003*.

CASA has also been asked to amend existing explanatory statements as appropriate to include this further information.

Thank you for raising these matters.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anthony Albanese', written over a large, stylized, and somewhat abstract scribble or flourish.

ANTHONY ALBANESE



RECEIVED

- 9 APR 2013

Senate Standing Committee
on Regulations
and Ordinances

The Hon Bernie Ripoll MP
Parliamentary Secretary to the Treasurer

Senator Mark Furner
Chair
Senate Standing Committee on Regulations and Ordinances
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Furner

Thank you for your letter of 7 February 2013 to the Deputy Prime Minister and Treasurer on behalf of the Senate Standing Committee on Regulations and Ordinances (the Committee) regarding the *Banking Sector Legislation Amendment Regulation 2012 (No.1)* (the Regulation) which was made on **6 December 2012**. Your letter has been referred to me as I have responsibility for this matter.

The *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* (the Act) received Royal Assent on **4 December 2012**. It amended the *Banking Act 1959* (Banking Act) and *First Home Saver Accounts Act 2008* (FHSA Act) to reduce the period of inactivity before a bank account or FHSA is required to be transferred to ASIC from seven years to three years.

The Regulation aims to prevent a number of bank accounts and FHSAs being captured by the legislation amendments unintentionally. The regulations for bank unclaimed moneys were inserted into the *Banking Regulations 1966* as regulations 20 and 21.

Commencement dates

Your letter expresses concerns that the regulations commence before the empowering provision and rely on subsection 4(4) of the *Acts Interpretation Act 1901* (the AI Act). This is not the case.

Regulations 20 and 21 were made for the purposes of subsections 69(1B) and 69(1E) of the Banking Act respectively. These subsections were inserted into the Banking Act by item 4 of Schedule 1 to the Act, and commence on 1 July 2013.

However, item 8 of Schedule 1 of the Act commenced on **5 December 2012**. The item makes transitional provisions in relation to the 2012-13 financial year. In effect, it imposes a supplementary reporting and payment obligation on authorised deposit-taking institutions (ADIs) by reference to the obligations that the ADI would have had if the amendments in items 1, 2, 3, 4 and 4B of Schedule 1 to the Act had commenced on 31 December 2012.

In addition, any regulations made in accordance with section 4 of the AI Act for the purposes of any of the regulation-making powers conferred by those items (including subsections 69(1B) and (1E)) had taken effect from the day on which the regulations were registered (with certain modifications relating to reporting times and the amounts that must be reported).

Therefore, item 8 gives effect to regulations 20 and 21, for this transitional purpose, from the time of registration (**11 December 2012**), regardless of the date on which these regulations are expressed to commence. The making of the regulations did not in itself confer rights or impose any obligations within the meaning of subsection 4(4) of the AI Act prior to the commencement of item 4 (or, for that matter, item 5) of the Act. Rather, to the extent that rights and obligations are conferred or imposed by item 8.

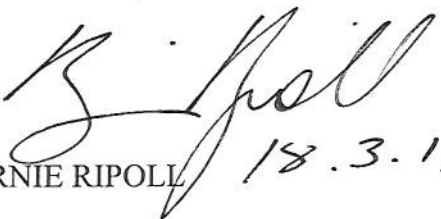
Consultation

My department consulted with the Australian Bankers' Association (ABA) and its members on the proposed regulation. On behalf of its member banks, the ABA raised some issues related to bank accounts in respect to the effect of legislation changes and proposed arrangements for those accounts. The Regulation has addressed the issues on a number of accounts, including linked accounts, sub accounts, frozen accounts, children's accounts and FHSAs.

As required by the Committee, I have directed my department to update the Explanatory Statement (ES) for the Regulation to provide information on the consultation. I enclosed a copy of the updated ES for your information.

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

Yours sincerely


BERNIE RIPOLL 18.3.13



The Hon Anthony Albanese MP

Minister for Infrastructure and Transport
Minister for Regional Development and Local Government
Leader of the House

Reference: 01013-2013

RECEIVED

18 APR 2013
Senate Standing Cttee
on Regulations
and Ordinances

15 APR 2013

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

Dear Senator Furner

Mark,

Thank you for your letter dated 14 March 2013 about the legislative instrument CASA EX12/13 permitting the operation of certain sport and recreational aircraft in a restricted area during the Australian International Air Show 2013 (the Air Show). I have sought advice from the Civil Aviation Safety Authority (CASA) about the concerns you raised regarding information on consultation in the explanatory statement for this instrument.

CASA has indicated that the relevant consultation under section 17 of the *Legislative Instruments Act 2003* had taken place prior to the issue of the instrument.

Specifically, CASA has advised that consultation occurred between CASA, the organisers of the Air Show, the Operations Manager of Recreational Aviation Australia, the Operations Manager of the Hang Gliding Federation of Australia, Airservices Australia and the operators of Lethbridge Aerodrome to ensure the safe operation of sports and recreational aircraft within the restricted area. There were no adverse comments raised by any of the consulted parties as to the content or nature of the instrument. CASA will amend the existing explanatory statement to reflect this advice.

CASA has been provided with the document 'Guideline for preparation of explanatory statements: consultation' and confirmed the guidelines will be taken into account and applied when explanatory statements are prepared in the future.

Thank you for raising this matter.

Yours sincerely

ANTHONY ALBANESE



The Hon David Bradbury MP
Assistant Treasurer
Minister Assisting for Deregulation

RECEIVED

30 APR 2013
Senate Standing C'ttee
on Regulations
and Ordinances

Senator Mark Furner
Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House, Canberra

19 APR 2013

Dear Senator *Mark,* Furner

Thank you for your letter of 14 March 2013 requesting further information regarding the nature of consultation undertaken in respect of the *Excise Amendment Regulation 2013 (No. 1)* and *A New Tax System (Goods and Services Tax) Amendment Regulation 2013 (No. 1)* (the Regulations).

The Regulations, together with *Customs Amendment Regulation 2013 (No. 1)*, make minor amendments to the sealed bag scheme (SBS) and Tourist Refund Scheme (TRS). The Regulations extend the period during which travellers can acquire goods to access the TRS or SBS from 30 days to 60 days prior to departure, and also allow travellers accessing the TRS to aggregate multiple invoices from single retailers in order to meet the \$300 threshold for TRS claims rather than the requirement to hold one invoice only.

Four weeks of public consultation on the exposure draft regulations was conducted via the Treasury website between 3 April 2011 and 29 April 2011 and three submissions and a supplementary submission were received.

Submissions were generally supportive of the regulations. Suggestions included that the TRS threshold should be reduced from \$300 to \$100, and that a cash refund option be introduced.

It is considered the proposed amendments maintain an appropriate balance between providing flexibility for tourist shopping, avoiding adverse impacts on retailers where items are not properly verified, and minimising the cost of administering and processing each TRS claim. The Government will not be reintroducing a cash refund option unless compelling evidence emerges that reintroducing cash refunds is cost effective.

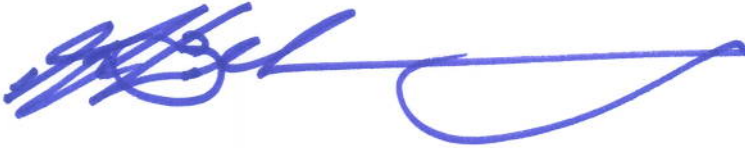
No changes were made in response to the recommendations made. A consultation summary is available on the Treasury website.

I have directed that the Explanatory Statements to the Regulations be amended to include a new description of this consultation. The amended Explanatory Statements will be published on the Federal Register of Legislative Instruments. Copies of the revised Explanatory Statements are included as an attachment to this letter. The Minister for Home Affairs will need to direct that the Explanatory Statement for the *Customs Amendment Regulation 2013 (No. 1)* to include a new description of the consultation that was undertaken.

I thank the Committee for bringing to my attention the requirement under section 26 of the *Legislative Instruments Act 2003* relating to information on consultation in explanatory statements. I have asked that officials be reminded of these requirements when preparing future explanatory statements.

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

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D. Bradbury', followed by a long, sweeping horizontal line that ends in a small loop.

DAVID BRADBURY

RECEIVED

- 7 MAY 2013

Senate Standing Office
on Regulations
and Ordinances



DEPUTY PRIME MINISTER
TREASURER

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

Telephone: 02 6277 7340
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Senator Mark Furner
Chair
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

4 MAY 2013

Dear Senator Furner

Thank you for your letter of 28 February 2013 concerning the *Commonwealth Places (Mirror Taxes)(Modification of Applied Laws (WA)) Amendment Notice 2012* (Notice). I apologise for the delay in responding to you.

The Notice was tabled by the Western Australian Treasurer, the Hon Troy Buswell MLA, under the authority of subsection 8(2) of the *Commonwealth Places (Mirror Taxes) Act 1998* (Mirror Taxes Act). My Department sought advice from the Western Australian Department of Finance to inform my response to you.

Retrospective effect

The Commonwealth places mirror tax arrangements ensure that applied State taxing laws (State taxing laws that are applied as Commonwealth laws in Commonwealth places in accordance with the Mirror Taxes Act) and State taxing laws in their ordinary application can operate together so that a taxpayer's tax liability is the same as it would be if the Commonwealth places in the State were not Commonwealth places. Subsection 8(2) of the Mirror Taxes Act confers power on the Treasurer of a State to modify the applied laws of the State, and subsection 8(4) limits this power to ensure that such modifications are only made to the extent that they are necessary or convenient to achieve this objective.

Western Australian officials have advised my Department that to maintain the status quo for a taxpayer and achieve the objective of ensuring a taxpayer's tax liability is the same as it would be if the Commonwealth places in the State were not Commonwealth places, the modifications made in the Notice must have a commencement date that either coincides with the commencement of an applied taxing law, such as the modifications relating to the applied *Duties Act 2008* (WA), which commenced on 1 July 2008, or the commencement date of amendments, such as the modifications relating to the applied *Pay-roll Tax Assessment Act 2002* (WA), which commenced on 25 June 2010.

In relation to your specific question on disadvantages to the rights or liability of a person (other than the Commonwealth) for an act or omission prior to the registration of the Notice, the Notice facilitates the administration of arrangements concerning applied taxing laws that already have

application under the Mirror Taxes Act. I am advised that the Notice does not impose any new obligations or liabilities other than those that presently exist under the applied laws. Consequently, I am not aware of any circumstances where a person (other than the Commonwealth) will be disadvantaged for an act or omission before the instrument's date of registration. In any event, paragraph 8(5)(a) of the Mirror Taxes Act expressly authorises a modification to take effect from an earlier date. By reason of subsection 12(3) of the *Legislative Instruments Act 2003*, subsection 12(2) therefore has no effect in relation to the modifications.

Drafting of the instrument

I note the Committee's concerns about the presence of the words 'Draft 7' in the footer to the Notice.

I am advised that when regulations are prepared in Western Australia, it is standard procedure for the instrument, with 'Draft' in the footer, to be presented to the Western Australian Governor for making. When the regulations are published in the Western Australian Gazette, however, the reference to 'Draft' is removed. Western Australian officials followed this procedure for the Notice.

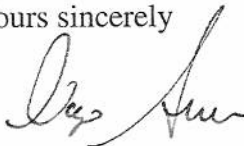
However, at the point of registering the Notice on the Federal Register of Legislative Instruments (FRLI), Western Australian officials were advised that the document to be registered must be identical in all respects to that which was made by the Western Australian Treasurer. Accordingly, 'Draft' appears in the footer of the Notice registered on FRLI.

The Western Australian Parliamentary Counsel's Office has noted the comments of the Senate Committee for future reference.

I have copied this letter to the Hon Troy Buswell MLA, Treasurer of Western Australia, for his information.

I trust this information will be of assistance to you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Wayne Swan', written over a horizontal line.

WAYNE SWAN

- 6 MAY 2013



THE HON JASON CLARE MP

Cabinet Secretary
Minister for Home Affairs
Minister for Justice

RECEIVED

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

Ministerial number: 107284

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 14 March concerning the adequacy of the Explanatory Statement for the Customs Amendment Regulation 2013 (No. 1).

I am advised that the Treasury conducted four weeks of public consultation on the exposure draft regulations which was advertised on the Treasury website between 3 April 2011 and 29 April 2011. The exposure draft consisted of the Customs Amendment Regulations, the Excise Amendment Regulations and the A New Tax System Amendment Regulations and covered changes to both duty free shopping and to the Tourist Refund Scheme. Three submissions and a supplementary submission were received in response to the invitation. A consultation summary is available on the Treasury website.


Submissions were generally supportive of the proposed regulations. Some submissions suggested allowing international tourists to aggregate invoices from multiple retailers to meet the threshold required to make a Tourist Refund Scheme claim, and reintroducing a cash refund option. One submission raised concerns that extending the 30 day limit or reducing the Tourist Refund Scheme threshold could adversely affect retailers who would be required to pay taxes for items not properly verified or exported by tourists.

The proposed amendments maintain an appropriate balance between providing flexibility for tourist shopping, avoiding adverse impacts on retailers where items are not properly verified, and minimising the cost of administering and processing each Tourist Refund Scheme claim. As a result, no changes were made in response to submissions received. The Government will not be reintroducing a cash refund option unless compelling evidence emerges that reintroducing cash refunds is cost effective.

A revised Explanatory Statement is being prepared for tabling in the next Sittings. I will ensure that future Explanatory Statements provide sufficient information detailing the consultation undertaken in accordance with the requirements of the Act.

I trust this information is of assistance. The officer responsible for this matter in Customs and Border Protection is Alison Neil who can be contacted on 02 6275 5999.

Yours sincerely

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

Jason Clare



The Hon Anthony Albanese MP

Minister for Infrastructure and Transport
Minister for Regional Development and Local Government
Leader of the House

RECEIVED

- 7 MAY 2013

Senate Standing C'ttee
on Regulations
and Ordinances

Reference: 01014-2013

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

6 MAY 2013

Dear Senator Furner

Mark,

Thank you for your letter dated 14 March 2013 about the Civil Aviation Legislation Amendment Regulation 2013 (No. 1) [F2013L00218].

I am advised by the Civil Aviation Safety Authority (CASA) that the use of the term 'appropriate training' in new regulation 61.225 is used in cases where the authorised body conducting the aeronautical knowledge examination for a licence, rating or endorsement, is required to provide failed candidates with a report outlining the training syllabus standards in which the candidate's knowledge is deficient. In such a case 'appropriate training' would be training that covers the identified deficiencies.

Regarding the interpretation of new regulation 61.360, CASA advises that the provision would allow evidence to be tendered showing that an incorrect entry was of no consequence to aviation safety or was not used to gain a licence qualification. For example, an incorrect entry that had no bearing on safety or the issue of a licence, such as an incorrect date or registration number, would not be material and would not be considered an offence of strict liability.

In new regulations 141.070, 142.100 and 142.120, CASA advises that the specified positions should only be held by the same person temporarily in 'unforeseen circumstances', for example due to injury, sickness, unexpected resignation or termination.

CASA advises it will publish guidance material which will explain the nature of the 'appropriate training' required under regulation 61.225(4) and how arrangements under 'unforeseen circumstances' should operate. This material will be published before the regulations commence on 4 December 2013.

Thank you for raising this matter.

Yours sincerely


ANTHONY ALBANESE



The Hon Anthony Albanese MP

Minister for Infrastructure and Transport
Minister for Regional Development and Local Government
Leader of the House

RECEIVED

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

Reference: 01145-2013

- 2 MAY 2013

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

Dear Senator Furner

Mark,

Transport Safety Investigation Amendment 2012 (No. 1)
[Select Legislative Instrument 2012 No. 263] [F201202278]

Transport Safety Investigation Amendment Regulation 2012 (No. 2)
[Select Legislative Instrument 2012 No. 264] [F2012L02280]

Transport Safety Investigation (Voluntary and Confidential Reporting Scheme)
Regulation 2012 [Select Legislative Instrument 2012 No. 265] [F2012L02281]

Thank you for your letter dated 21 March 2013.

I am advised by the Australian Transport Safety Bureau (ATSB) that descriptions of the consultation undertaken in respect of two of the above instruments have now been inserted in the Explanatory Statements (ESs). Where consultation was not undertaken an explanation has similarly been inserted.

I am further advised that the ATSB has lodged the revised ESs with the Federal Register of Legislative Instruments. The ATSB has also made arrangements for the revised ESs to be tabled in the House of Representatives and the Senate on the next available day, which I understand is 14 May 2013.

Thank you for bringing these matters to my attention.

Yours sincerely

ANTHONY ALBANESE



The Hon Anthony Albanese MP

Minister for Infrastructure and Transport
Leader of the House

RECEIVED

15 MAR 2013

Senate Standing C'ttee
on Regulations
and Ordinances

Reference: 00483-2013

14 MAR 2013

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

Dear Senator Furner

Transport Safety Investigation Amendment 2012 (No. 1)
[Select Legislative Instrument 2012 No 263] [F201202278];
Transport Safety Investigation Amendment Regulation 2012 (No.2)
[Select Legislative Instrument 2012 No.264] [F2012L02280];
Transport Safety Investigation (Voluntary and Confidential Reporting Scheme)
Regulation 2012
[Select Legislative Instrument 2012 no 265] [F2012L02281]

Thank you for your letter dated 7 February 2013.

I am advised by the Australian Transport Safety Bureau (ATSB) that consultation did take place in respect of two of the above named instruments. On one instrument no consultation took place; however that was not regarded as necessary.

The details of the consultation undertaken and the reasons for no consultation on one instrument are as follows:

1. **Transport Safety Investigation Amendment 2012 (No. 1)**
[Select Legislative Instrument 2012 No 263] [F201202278].

The ATSB conducted two rounds of consultation in relation to these amendments to Part 4 of the *Transport Safety Investigation Regulations 2003* (TSI Regulations). On 12 June 2012 the ATSB released a discussion paper on enhanced mandatory reporting requirements for rail accidents and occurrences. Submissions were invited on that discussion paper and the period for making submissions was open until 27 July 2012. I am advised that the ATSB received submissions generally supportive of the proposals in the discussion paper. Following the consultation paper the ATSB engaged with the Office of Legislative Drafting and Publishing, (as it was then known) to produce an Exposure Draft of proposed amendments to Part 4 of the TSI Regulations for a further round of public consultation. The Exposure Draft was released by the ATSB for consultation on 25 September 2012.

As the proposed amendments were intended to harmonize with regulations made for the purpose of establishing the National Rail Safety Regulator (Explanatory Statement to this

instrument refers), the proposed amendments were released for consultation concurrently with complementary regulations under the *Rail Safety National Law (South Australia) Act 2012* that were released for the same purpose by the National Transport Commission. I am advised that the ATSB received only a small number of queries on the Exposure Draft, principally from the Australasian Rail Association and the Rail, Tram and Bus Union. Again, the submissions was broadly supportive of the proposed changes;

2. **Transport Safety Investigation Amendment Regulation 2012 (No.2)**
[Select Legislative Instrument 2012 No.264] [F2012L02280].

No consultation took place in respect of this instrument. It was not considered necessary as the instrument was of a minor or machinery nature that did not substantially alter existing arrangements.

The Explanatory Statement to this instrument sets out in detail the purpose of the amendments. The amendment to regulation 5.2A was to replace an out-dated reference to regulations that were repealed by the *Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012*.

The purpose of the amendment to regulation 5.8(2) was to draw a distinction between information obtained in the course of an investigation of a transport safety matter under the *Transport Safety Investigation Act 2003* and that obtained under the *Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012*. This is because arrangements for disclosure of information obtained under that regulation are specifically dealt with by that regulation. Those arrangements did not substantially alter arrangements in place prior to the making of the *Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012*.

The amendment to regulation 5.8(2)(a)(ii) was merely to correct a technical anomaly in the regulations.

3. **Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012**
[Select Legislative Instrument 2012 no 265] [F2012L02281]

Consistent with the progression of reforms to make the ATSB the national rail safety investigator, the ATSB sought to develop a voluntary and confidential reporting scheme for the rail sector. Concurrent with the development of the scheme, the ATSB also sought to consolidate the existing voluntary and confidential reporting schemes for aviation and marine with the new rail scheme. Extensive consultation was undertaken, as follows:

- (a) In December 2010 the ATSB presented a consultation paper to rail industry stakeholders comprising representatives of the States and Territories, the Commonwealth, the Australasian Rail Association, the Association of Tourist and Heritage Rail Australia and the Rail Tram and Bus Union. The purpose of that paper was to ascertain the views of rail industry to gauge support for the development of a voluntary and confidential reporting scheme for rail. The response was generally positive.

- (b) Following the provision of the consultation paper the ATSB developed an unofficial draft of proposed regulations that established a consolidated scheme of voluntary and confidential reporting for aviation, marine and rail. The unofficial draft regulations, along with explanatory material, were released to the aviation, marine and rail industries and generally for public consultation on 12 September 2011. Stakeholders were given until 16 December 2011 to comment.

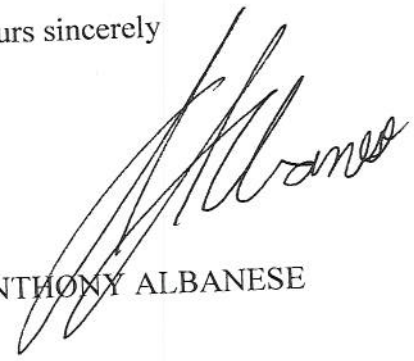
A number of submissions across the industries were received by the ATSB with a summary of the issues raised and the ATSB response to those issues was published on the ATSB website. The response was, as with the initial discussion paper, positive as to the initiative.

- (c) Following the release of the unofficial draft the ATSB instructed the Office of Legislative Drafting and Publishing to prepare an Exposure Draft of the regulation for a further round of public comment. The Exposure Draft and explanatory material were released for consultation on 12 June 2012 with stakeholders given until 27 July 2012 to make further comment. As with the previous rounds of consultation the ATSB noted the broad support for the scheme, with any concerns expressed generally relating to operational issues rather than the form of the regulation itself. Only minor changes were made to the text of the Exposure Draft prior to the regulation being finalised. The ATSB will shortly be publishing a summary of the issues raised in the consultation on the Exposure Draft along with the ATSB responses.

I also advise that the document titled 'Guidance to explanatory statements: consultation' has been brought to the attention of the relevant officers and work areas of the ATSB. I also provide my assurance that future Explanatory Statements will provide information on consultation.

Thank you for bringing these matters to my attention.

Yours sincerely



ANTHONY ALBANESE



The Hon David Bradbury MP
Assistant Treasurer
Minister Assisting for Deregulation

RECEIVED

- 6 MAY 2013
Senate Standing C'ttee
on Regulations
and Ordinances

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

Dear Senator ^{Mark,} Furner

Thank you for your letter of 14 March 2013 regarding the nature of consultation on the *Income Tax Assessment Amendment Regulation 2013 (No. 1)* (the Regulation).

The Regulation inserts the 'cents per kilometre' rates for calculating tax deductions for car expenses for the 2012-13 income year into Part 2 of Schedule 1 to the *Income Tax Assessment Regulations 1997* (the Principal Regulations). The 'cents per kilometre method' is one of four methods available to taxpayers to calculate a deduction for car expenses. It is also used in the calculation of the taxable value of a number of fringe benefits.

The 'cents per kilometre' rates are updated every year by regulation. The rates generally increase when there is an upward movement of the Private Motoring Subgroup (series ID A2326656J) within the Consumer Price Index (ABS catalogue number 6401.0).

Given that the Regulation is minor and machinery in nature, no consultation was undertaken on the Regulation as per section 18 of the *Legislative Instruments Act 2003*.

I have directed that the Explanatory Statement to the Regulation be amended to include an explanation of why consultation was not required. This amended Explanatory Statement will be provided to the Office of Parliamentary Counsel for publishing on the Federal Register of Legislative Instruments. A copy of the revised Explanatory Statement is included as an attachment to this letter.

I note that the document titled 'Guideline for preparation of explanatory statements: consultation' has been brought to the attention of relevant officers and work areas for future reference.

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

Yours sincerely

DAVID BRADBURY
enc.



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

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- 9 MAY 2013
Senate Standing C'ttee
on Regulations
and Ordinances

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 21 March 2013 regarding Health Insurance (Diagnostic Imaging Capital Sensitivity) Amendment Determination 2012 (No. 3) [Legislative Instrument F2012L02510].

The administration, payment and monitoring of claims made under the Medicare Benefits Schedule (MBS) sits outside the portfolio responsibility of my Department. The Department of Human Services (DHS), through the Medicare master program administers the MBS.

The DHS have advised that no claims that were rejected for item 63491 (modifying item - use of contrast agent) in association with item 63512 (MRI Knee - GP requested for patients under 16 years of age), between 1 November and 31 December 2012. Therefore no patients were disadvantaged as a result of the Health Insurance (Diagnostic Imaging Capital Sensitivity) Amendment Determination 2012 (No. 3).

Should you require further explanation or information, the Committee Secretariat is welcome to contact Ms Ffine Cahill in my Department, by telephone on (02) 6289 8430.

Once again, thank you for writing.

Yours sincerely

Tanya Plibersek

9.5.13

cc: regords.sen@aph.gov.au



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

RECEIVED

- 9 MAY 2013
Senate Standing C'ttee
on Regulations
and Ordinances

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

Dear Senator Furner

Thank you for your letter of 7 February 2013 regarding the Health Insurance (Diagnostic Imaging services Table) Amendment Regulation 2012 (No.1) [Select Legislative Instrument 2012 No. 295] [F2012L02399].

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 amended ES for the *Health Insurance (Diagnostic Imaging Services Table) Amendment Regulation 2012 (No.1)* has been forwarded to the Senate Table Office and to the Table Office, the Department of the House of Representatives, to be tabled on the next sitting day of the Parliament of Australia. A copy has been enclosed for your convenience.

Once again, thank you for writing.

Yours sincerely

Tanya Plibersek

9.5.13

Enc

cc: regords.senAaph.gov.au



RECEIVED

14 MAY 2013

Senate Standing Committee
on Regulations
and Ordinances

The Hon Bernie Ripoll MP
Parliamentary Secretary to the Treasurer
Parliamentary Secretary for Small Business

Senator Mark Furner
Chair
Senate Standing Committee on Regulations and Ordinances
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator

Thank you for your letter of 14 March 2013 to the Deputy Prime Minister and Treasurer on behalf of the Senate Standing Committee on Regulations and Ordinances (the Committee) regarding the *Banking Amendment Regulation 2013 (No. 1)* (the Regulation) which was made on **14 February 2013**. Your letter has been referred to me as I have responsibility for this matter.

Your letter expresses concerns that the Regulation may have commenced before the empowering provision did, while relying on subsection 4(4) of the *Acts Interpretation Act 1901* (the AI Act). This is not the case.

The Regulation aims to prevent security, set-off or escrow accounts being captured by the legislative amendments unintentionally. The Regulation was incorporated into the *Banking Regulations 1966* as regulations 20(12)&(13). The Regulation was made for the purpose of subsections 69(1B) of the *Banking Act 1959* (the Banking Act), which was inserted into the Banking Act by item 4 of Schedule 1 of the *Treasury Legislation Amendment (Unclaimed Money and Other Measures) Act 2012* (the Act).

Item 8 of Schedule 1 of the Act (which commenced on **5 December 2012**) is a transitional provision that gives effect to the Regulations. The making of the Regulations did not in itself confer rights or impose any obligations within the meaning of subsection 4(4) of the AI Act prior to the commencement of item 4 of Schedule 1 of the Act. For more details, please refer to my letter to you dated 18 March 2013.

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

Yours sincerely

BERNIE RIPOLL



13 MAY 2013

THE HON JASON CLARE MP

Cabinet Secretary
Minister for Home Affairs
Minister for Justice

RECEIVED

15 MAY 2013

Senate Standing C'ttee
on Regulations
and Ordinances

Ministerial number: 107285

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 14 March 2013 in relation to the Customs (Drug and Alcohol Testing) Regulation 2013 [Select Legislative Instrument 2013 No. 2][F2013L00191].

As you correctly highlight, section 17 of the *Legislative Instruments Act 2003* requires that a rule maker of a legislative instrument must be satisfied that appropriate and reasonably practicable consultation has been undertaken before an instrument is made, particularly where the proposed instrument is likely to have a direct, or a substantial indirect, effect on business; or restrict competition. However, section 18 of the same Act determines that despite section 17, the nature of an instrument may be such that consultation may be unnecessary or inappropriate.

As the Regulation specifically relates to the internal operations of the Australian Customs and Border Protection Service (ACBPS) and will not affect business or competition, consultation beyond what has already been undertaken during the development of ACBPS' drug and alcohol management program was therefore considered not necessary.

The intention of the Explanatory Statement was to clearly indicate that the governance framework and delivery methodologies for the drug and alcohol testing program, as set out in the Regulations, were the subject of extensive consultation within ACBPS and with union representatives. However, I support the Committee's assessment that the inclusion of the first sentence makes the Explanatory Statement ambiguous.

A revised Explanatory Statement has been prepared and will be delivered to the Committee. I will ensure that future Explanatory Statements provide sufficient information detailing the consultation undertaken in accordance with the requirements of the Act.

I trust this information is of assistance.

The contact officer for this matter in ACBPS is Acting National Manager Integrity Implementation Robert Rushby who can be contacted on (02) 6279 3441.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jason Clare', written over the words 'Yours sincerely'.

Jason Clare