

The Senate

Standing
Committee on
Regulations and
Ordinances

Delegated legislation monitor

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Contents

Membership of the committee	<i>iii</i>
Introduction	<i>vii</i>
Chapter 1 – New and continuing matters	
New matters	
National Land Transport (Exemption from Public Tenders for State Projects) Determination 2014 [F2014L01342].....	1
Continuing matters	
Multiple instruments that appear to rely on subsection 33(3) of the <i>Acts Interpretation Act 1901</i>	2
Chapter 2 – Concluded matters	
Financial Management and Accountability Amendment (2014 Measures No. 6) Regulation 2014 [F2014L00841]	3
Appendix 1 – Correspondence	7
Appendix 2 - Guideline on consultation	43

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

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.

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

The committee's longstanding practice is to interpret its scrutiny principles broadly, but as relating primarily to technical legislative scrutiny. The committee therefore does not generally examine or consider the policy merits of delegated legislation. In cases where an instrument is considered not to comply with the committee's scrutiny principles, the committee's usual approach is to correspond with the responsible minister or instrument-maker seeking further explanation or clarification of the matter 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;
- Appendix 1 contains correspondence relating to concluded matters.
- 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 John Williams

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 **19 November 2014**, and continuing matters in relation to which the committee has received recent correspondence. The committee will write to relevant ministers or instrument makers in relation to substantive matters seeking further information or an appropriate undertaking within the disallowance period.

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

This report considers all disallowable instruments tabled between 10 October 2014 and 23 October 2014. All instruments tabled in this period are listed on the Senate Disallowable Instruments List.¹

New matters

National Land Transport (Exemption from Public Tenders for State Projects) Determination 2014 [F2014L01342]

Purpose	Allows for States and Territories to be exempt from calling for public tenders if the work is below \$100,000
Last day to disallow²	10 February 2015
Authorising legislation	<i>National Land Transport Act 2014</i>
Department	Infrastructure and Regional Development

Issue:

No description regarding consultation

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

1 Senate Disallowable Instruments List, available at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/Senate_Disallowable_Instruments_List

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

consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument provides no description of the nature of the consultation undertaken. **The committee therefore requests further information from the minister; and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*.**

Continuing matters

Multiple instruments that appear to rely on subsection 33(3) of the *Acts Interpretation Act 1901*

The committee has identified a number of instruments that appear to rely on subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that the power to make an instrument includes the power to vary or revoke the instrument. If that is the case, the committee considers it would be preferable for the ES for any such instrument to identify the relevance of subsection 33(3), in the interests of promoting the clarity and intelligibility of the instrument to anticipated users. **The committee provides the following example of a form of words which may be included in an ES where subsection 33(3) of the *Acts Interpretation Act 1901* is relevant:**

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.³

The committee therefore draws this issue to the attention of ministers and instrument-makers responsible for the following instruments:

ASIC Class Order [CO 14/829] [F2014L01347]

Part 145 Manual of Standards Amendment Instrument 2014 (No. 1) [F2014L01316]

PCEHR (Participation Agreements) Amendment (specified kind of agreement) Rule 2014 [F2014L01334]

Remuneration Tribunal Determination 2014/19 - Remuneration and Allowances for Holders of Public Office [F2014L01339]

3 For more extensive comment on this issue, see *Delegated legislation monitor* No. 8 of 2013, p. 511.

Chapter 2

Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on **19 November 2014**. The committee has concluded its interest in these matters on the basis of responses received from ministers or relevant instrument-makers.

Correspondence relating to these matters is included at Appendix 1.

Financial Management and Accountability Amendment (2014 Measures No. 6) Regulation 2014 [F2014L00841]

Purpose	Amends the Financial Framework (Supplementary Powers) Regulations 1997 to establish legislative authority for government spending on certain activities across eleven portfolios
Last day to disallow	19 November 2014
Authorising legislation	<i>Financial Framework (Supplementary Powers) Act 1997</i> ¹
Department	Finance

[The committee first reported on this instrument in *Delegated legislation monitor No. 10 of 2014*. The committee drew the Senate's attention to various items added to Schedule 1AB of the Financial Framework (Supplementary Powers) Regulations 1997 (FFSP Regulations); and sought further information regarding the authority for the expenditure specified in the regulation]

Issue:

Addition of matters to Schedule 1AB of the FFSP Regulations—authority for expenditure

Scrutiny principle (a) of the committee's terms of reference requires the committee to ensure that an instrument is made in accordance with statute. This principle is interpreted broadly as a requirement to ensure that instruments are made in accordance

1 With effect from 1 July 2014, the *Financial Management and Accountability Act 1997* was amended and renamed the *Financial Framework (Supplementary Powers) Act 1997*. The Financial Management and Accountability Regulations 1997 were renamed the Financial Framework (Supplementary Powers) Regulations 1997.

with their authorising Act as well as any constitutional or other applicable legal requirements.

This instrument was made after the High Court's decision in *Williams (No. 2)* ([2014] HCA 23 (19 June 2014)) (*Williams No. 2*). The committee notes that, as a result of that decision, a question arises as to whether all the items of expenditure provided for by this instrument are supported by a head of power under section 51 of the Constitution. The committee considers that, in light of *Williams No.2*, the explanatory statement (ES) for all instruments specifying programs for the purposes of section 32B of the *Financial Framework (Supplementary Powers) Act 1997* should explicitly state, for each new program, the constitutional head of power that supports the expenditure **[the committee therefore requested further information from the minister in relation to the constitutional head of power for each program, grant, and arrangement specified in the instrument]**.

MINISTER'S RESPONSE:

The Minister for Finance and Acting Assistant Treasurer advised:

The Government acknowledges that, following the High Court's decisions in *Williams v Commonwealth* (2012) 288 ALR 410 (*Williams No. 1*) and *Williams No. 2*, it will often be the case that spending activities require legislative authority in addition to an appropriation. The Regulation represents one kind of legislative authority that can be provided. The Government does not agree, however, that this means explanatory statements must in effect set out the constitutional and other legal reasoning taken into account in formulating legislation and expenditure programmes. The validity of any legislation generally turns on judicial consideration of its text rather than on what is said in explanatory material.

It is of course true that the formulation of legislation and programmes often involves many complex issues; and the drafting of legislation, including subordinate legislation, is routinely undertaken having regard to a range of constitutional and other legal considerations. In some cases, basic constitutional underpinnings will be evident in provisions that describe the objective or scope of legislation. In others they will not be so obvious. Such variation in approach—in primary and subordinate legislation—is commonplace.

The Regulation here is a case in point. In some instances, the constitutional basis for a particular item will be clear from the text in the 'Purpose' or 'Objective(s)' column for that item in the table in the Regulation. For example, item 37 prescribes programmes for the advancement of Indigenous people and, as such, is clearly supported by the races power in section 51(xxvi). In other cases, the constitutional reach for a particular item is delineated by text in the 'Purpose' or 'Objective(s)' column which refers to the principal heads of power relied on to support the item. Item 15 is an example of this approach to drafting.

In order to meet the Committee's request in this case, and without being exhaustive, the attached table lists constitutional heads of power referenced by each of the items in the Regulation. In doing so, however, the

Government is not purporting to provide any comprehensive statement of relevant constitutional considerations. Further, for the reasons outlined above, it is not the intention of the Government generally to provide information such as that set out in the attached table. That said, the Government will continue to draft legislation in the clearest possible terms, including in relation to constitutional application where appropriate.

COMMITTEE RESPONSE:

The committee thanks the minister for his response.

The committee would like to acknowledge the minister and the department for the substantial effort in providing a comprehensive and informative response to the committee's inquiry in relation to this regulation.

However, while recognising that its inquiries impact on the resources of ministers' offices and departments, the committee notes that in *Williams No. 1* the High Court confirmed that executive authority to spend appropriated monies is not unlimited and therefore generally requires legislative authority. The parliament's response to that finding was to provide the current mechanism for authorising expenditure via the making of regulations that add programs to certain schedules of the FFSP Regulations.²

An inescapable consequence of basing this response around the making of (disallowable) delegated legislation is that such instruments are subject to scrutiny by the committee in accordance with Senate Standing Order 23, which requires the committee to ensure that instruments do not breach a number of scrutiny principles.³ The committee does this through seeking information or undertakings from rule-makers, and this approach is underpinned by the disallowance process.

In this respect, the committee is concerned at the minister's advice that 'it is not the intention of the government generally to provide information such as that set out in the attached table [indicating the constitutional basis for spending]', on the basis that:

...the government does not agree...that...explanatory statements must in effect set out the constitutional and other legal reasoning taken into account in formulating legislation and expenditure programmes.

-
- 2 The committee notes that the regulations in this case are the means by which programs are added to certain schedules of the principal regulations; and that the provision authorising the spending of monies is section 32B of the *Financial Framework (Supplementary Powers) Act 1997*. The regulations do not of themselves provide the authority for spending in relation to programs.
 - 3 The committee notes that it has previously raised other matters in relation to similar regulations. For example, in relation to scrutiny principle (c) (which effectively requires the committee to consider whether instruments of delegated legislation accord with principles of natural justice), the committee has on a number of occasions requested information regarding the exclusion of merits review under programs added to the relevant FFSP schedules. Such information is now generally provided as a matter of course in ESs.

The committee emphasises its expectation that ESs identify a constitutional head of power for expenditure on programs added by regulation to schedules in the FFSP Regulations, derives not from any legislative prescription but from the Senate Standing Orders. As noted above, scrutiny principle (a) of the committee's terms of reference requires the committee to ensure that an instrument is made in accordance with statute. This principle is interpreted broadly as a requirement to ensure that instruments are made in accordance with their authorising Act as well as any constitutional or other applicable legal requirements.⁴

In light of these remarks, the committee notes that, in *Williams No. 2*, the High Court stated:

...[section] 32B should be read as providing power to the Commonwealth to make, vary or administer arrangements or grants *only where it is within the power of the Parliament* to authorise the making, variation or administration of those arrangements or grants [emphasis added].⁵

The committee therefore restates its expectation that, in light of *Williams No. 2*, the ES for all instruments specifying programs for the purposes of section 32B of the *Financial Framework (Supplementary Powers) Act 1997* explicitly state, for each new program, the constitutional head of power that supports the authorisation of expenditure.

In relation to the information provided by the minister setting out the constitutional authority for the 54 programs added to Schedule 1AB by the regulation, the committee notes that a case has been made that each of the programs is supported by a relevant constitutional head or heads of power. **The committee has therefore concluded its examination of the instrument.**

4 As noted in *Odgers' Australian Senate Practice*, the committee interprets its scrutiny principles 'broadly to include every possible deficiency in delegated legislation affecting parliamentary propriety and personal rights' (*Odgers' Australian Senate Practice*, 13th ed. (2012) 438).

5 *Williams v Commonwealth* [2014] HCA 23 (19 June 2014) [36].

Appendix 1

Correspondence



SENATOR THE HON MATHIAS CORMANN
Minister for Finance

REF: C14/2911

Senator John Williams
Chair
Senate Standing Committee on Regulations
and Ordinances
Parliament House
CANBERRA ACT 2600


Dear Senator Williams

I refer to the Committee Secretary's letter dated 28 August 2014 sent to my office seeking further information in relation to items in the *Financial Management and Accountability Amendment (2014 Measures No. 6) Regulation 2014* (the Regulation).

In the *Delegated legislation monitor* No. 10 of 2014, 27 August 2014, the Committee requested further information in relation to the constitutional heads of power for each of the 54 items added to Schedule 1AB to the *Financial Management and Accountability Regulations 1997* (renamed the *Financial Framework (Supplementary Powers) Regulations 1997* from 1 July 2014) through the Regulation. I note the Committee's view that, following the High Court's decision in *Williams v Commonwealth* (2014) 309 ALR 41 (*Williams No. 2*), explanatory statements for instruments specifying programmes for the purposes of section 32B of the *Financial Management and Accountability Act 1997* (FMA Act) "should explicitly state, for each new program, the Constitutional head of power that supports the expenditure". It should also be observed that the FMA Act was amended and renamed the *Financial Framework (Supplementary Powers) Act 1997*, with effect from 1 July 2014.

The Government acknowledges that, following the High Court's decisions in *Williams v Commonwealth* (2012) 288 ALR 410 (*Williams No. 1*) and *Williams No. 2*, it will often be the case that spending activities require legislative authority in addition to an appropriation. The Regulation represents one kind of legislative authority that can be provided. The Government does not agree, however, that this means explanatory statements must in effect set out the constitutional and other legal reasoning taken into account in formulating legislation and expenditure programmes. The validity of any legislation generally turns on judicial consideration of its text rather than on what is said in explanatory material.

It is of course true that the formulation of legislation and programmes often involves many complex issues; and the drafting of legislation, including subordinate legislation, is routinely undertaken having regard to a range of constitutional and other legal considerations. In some cases, basic constitutional underpinnings will be evident in provisions that describe the objective or scope of legislation. In others they will not be so

obvious. Such variation in approach – in primary and subordinate legislation – is commonplace.

The Regulation here is a case in point. In some instances, the constitutional basis for a particular item will be clear from the text in the ‘Purpose’ or ‘Objective(s)’ column for that item in the table in the Regulation. For example, item 37 prescribes programmes for the advancement of Indigenous people and, as such, is clearly supported by the races power in section 51(xxvi). In other cases, the constitutional reach for a particular item is delineated by text in the ‘Purpose’ or ‘Objective(s)’ column which refers to the principal heads of power relied on to support the item. Item 15 is an example of this approach to drafting.

In order to meet the Committee’s request in this case, and without being exhaustive, the attached table lists constitutional heads of power referenced by each of the items in the Regulation. In doing so, however, the Government is not purporting to provide any comprehensive statement of relevant constitutional considerations. Further, for the reasons outlined above, it is not the intention of the Government generally to provide information such as that set out in the attached table. That said, the Government will continue to draft legislation in the clearest possible terms, including in relation to constitutional application where appropriate.

I also note the Committee’s view about items which have not previously been authorised by legislation in addition to an appropriation. The suggestion appears to be that, prior to the enactment of the *Financial Framework Legislation Amendment Act (No. 3) 2012*, these would not have been contained within an appropriation bill for the ordinary annual services of government. In this regard, the *Financial Framework Legislation Amendment Act (No. 3) 2012* has had no impact on appropriation arrangements.

I trust this information addresses the Committee’s concerns.

Thank you for bringing the Committee’s views to the attention of the Government.

Kind regards


Mathias Cormann
Minister for Finance

 November 2014

**Financial Management and Accountability Amendment (2014 Measures No. 6)
Regulation 2014**

Amendments to Schedule 1AB

PART 2 - ITEM	PURPOSE	CONSTITUTIONAL REFERENCE IN THE ITEM
2 - Mersey Community Hospital	To provide funding to Tasmania for the continued operation of the Mersey Community Hospital.	<ul style="list-style-type: none"> grants to States/Territories (s 96).

PART 3 - ITEM	PURPOSE	CONSTITUTIONAL REFERENCE IN THE ITEM
1 - Grant to Hobart International Airport Pty Limited	To contribute towards meeting the costs of a runway extension and associated capital works at Hobart International Airport.	<ul style="list-style-type: none"> Commonwealth places power (s 52(i)); trade and commerce power (s 51(i)); corporations power (s 51(xx)).
2 - Rural and Regional General Practice Teaching Infrastructure Grant	To establish and fund a scheme for the provision, to general practices in rural and regional Australia, of additional consultation space for teaching and training to provide: <ol style="list-style-type: none"> benefits to students; and support incidental to the Commonwealth's provision of sickness and hospital benefits and medical services. 	<ul style="list-style-type: none"> social welfare power (s 51(xxiiiA)).
3 - National Centre of Excellence in Youth Mental Health	To establish and fund a National Centre of Excellence in Youth Mental Health to undertake nationally significant research and collaboration with research partnership nodes as activities that are peculiarly adapted to the government of a nation and cannot otherwise be carried out for the benefit of the nation.	<ul style="list-style-type: none"> Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
13 – Manufacturing Industry Support	<p>To provide support to manufacturing. This objective also has the effect it would have if it were limited to providing support to:</p> <ul style="list-style-type: none"> (a) corporations to which paragraph 51(xx) of the Constitution applies; or (b) manufacturing in connection with interstate or overseas trade and commerce; or (c) manufacturing in connection with the Territories. 	<ul style="list-style-type: none"> • trade and commerce power (s 51(i)); • corporations power (s 51(xx)); • territories power (s 122).
14 - Fund for Industry Skills	<p>To support industry diversification and competitiveness by providing, or funding, training and training support services. This objective also has the effect it would have if it were limited to providing support for:</p> <ul style="list-style-type: none"> (a) the formal or accredited training of workers; or (b) corporations to which paragraph 51(xx) of the Constitution applies; or (c) the fostering or promotion of interstate or overseas trade and commerce; or (d) business enterprises or workers in the Territories; or (e) online training and support services. 	<ul style="list-style-type: none"> • trade and commerce power (s 51(i)); • corporations power (s 51(xx)); • territories power (s 122).
15 – Entrepreneurs’ Infrastructure Programme	<p>To drive business competitiveness by providing, or funding, support for business improvement and the commercialisation of new ideas. This objective also has the effect it would have if it were limited to providing, or funding, support for:</p> <ul style="list-style-type: none"> (a) the fostering or promotion of interstate or overseas trade and commerce; or (b) businesses involved in interstate or overseas trade and commerce; or (c) corporations to which paragraph 51(xx) of the Constitution applies; or (d) business enterprises or workers in the Territories; or (e) online support services, advice and information. 	<ul style="list-style-type: none"> • trade and commerce power (s 51(i)); • corporations power (s 51(xx)); • communications power (s 51(v)); • territories power (s 122).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
16 - Growth Fund— Skills and Training Programme	<p>To address the impact of the decline of the automotive manufacturing sector by providing, or arranging for:</p> <p>(a) formal or accredited education and training for automotive workers to facilitate their transition to other work; and</p> <p>(b) services to assist unemployed former automotive workers to continue with their training to gain employment.</p>	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)).
17 – Automotive Diversification Programme	<p>To assist Australian automotive supply chain companies to diversify their businesses out of the domestic automotive manufacturing sector by providing funding to:</p> <p>(a) corporations to which paragraph 51(xx) of the Constitution applies; and</p> <p>(b) entities involved in interstate or overseas trade and commerce.</p>	<ul style="list-style-type: none"> • trade and commerce power (s 51(i)); • corporations power (s 51(xx)).
18 - Growth Fund— Next Generation Manufacturing Investment Programme	<p>To provide financial assistance to Australian trading corporations to which paragraph 51(xx) of the Constitution applies involved in manufacturing to promote the growth of the non-automotive manufacturing sector.</p>	<ul style="list-style-type: none"> • corporations power (s 51(xx)).
19 - Regional Infrastructure Programme	<p>To fund suitable applicants in undertaking projects or activities to support and develop infrastructure, stimulate new business activity and enhance economic development. This objective also has the effect it would have if it were limited to providing funding or support for:</p> <p>(a) the fostering or promotion of interstate or overseas trade and commerce; or</p> <p>(b) businesses involved in interstate or overseas trade and commerce; or</p> <p>(c) corporations to which paragraph 51(xx) of the Constitution applies.</p>	<ul style="list-style-type: none"> • trade and commerce power (s 51(i)); • corporations power (s 51(xx)).
20 – Matthew Flinders’ Chart	<p>To do the following for the benefit of the nation:</p> <p>(a) borrow, from the Government of the United Kingdom, the original chart of Australia completed by Captain Matthew Flinders in 1804 following his</p>	<ul style="list-style-type: none"> • Commonwealth executive power (s 61); • territories power (s 122).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	1801-03 circumnavigation of the continent; (b) exhibit the chart in the Australian Capital Territory.	
21 – National Insurance Affordability Initiative	To establish and maintain a website which would compare features of, and premiums for, certain strata and home building and contents insurance products.	<ul style="list-style-type: none"> • communications power (s 51(v)); • insurance power (s 51(xiv)).
22 - Green Army Programme	To provide support for activities for the protection and conservation of heritage and the environment. This objective also has the effect it would have if it were limited to providing support for activities: (a) to give effect to Australia’s international obligations under one or more of the following: (i) the United Nations Framework Convention on Climate Change; (ii) the Convention on Biological Diversity; (iii) the Convention on Wetlands of International Importance especially as Waterfowl Habitat; (iv) the Convention on the Conservation of Migratory Species of Wild Animals; (v) the Convention Concerning the Protection of the World Cultural and Natural Heritage; or (b) to provide training and other benefits to students or the unemployed; or (c) to benefit Indigenous Australians; or (d) that are carried out in a Territory.	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • territories power (s 122); • external affairs power (s 51(xxix)); • races power (s 51(xxvi)).
23 - Community Heritage and Icons Grants	To provide support for activities to conserve, develop and interpret cultural heritage. This objective also has the effect it would have if it were limited to providing support for activities: (a) to give effect to Australia’s international obligations under the Convention Concerning the Protection of the World Cultural and Natural	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)); • Commonwealth executive power (s 61); • territories power (s 122); • corporations power (s 51(xx)).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	Heritage; or (b) that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or (c) that are carried out in a Territory, in a Commonwealth place, or outside Australia; or (d) that are carried out by a trading corporation to which paragraph 51(xx) of the Constitution applies.	
24 – Orangutan Reintroduction Project	To support the protection and rehabilitation of orangutans in Indonesia.	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)).
25 - National Climate Change Adaptation Research Facility	To support the development of climate change adaptation policy and risk analysis for the purpose of giving effect to Australia’s international obligations under the United Nations Framework Convention on Climate Change, including by: <ul style="list-style-type: none"> (a) assisting local governments to develop a climate change risk management framework; and (b) synthesising and communicating climate change research across key sectors; and (c) coordinating research networks that link researchers with decision-makers managing climate change risk. 	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)).
26 - Solar Towns Programme	To provide support for community groups to install solar photovoltaic and solar hot water equipment at their facilities to reduce greenhouse gas emissions in order to give effect to Australia’s international obligations under the United Nations Framework Convention on Climate Change.	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)).
27 - Rural Research and Development for Profit	To provide support for research and development activities for Australian rural industries: <ul style="list-style-type: none"> (a) to increase productivity and enhance profitability in order to meet national and global needs; and (b) to the extent that the activities are 	<ul style="list-style-type: none"> • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	peculiarly adapted to the government of a nation and cannot otherwise be carried out for the benefit of the nation.	
28 - Financial Rebate for Small Exporters	To provide support for small exporters engaging in overseas trade and commerce by: (a) assisting with their regulatory costs by refunding or remitting export registration charges; and (b) funding projects aimed at improving market access for small exporters.	<ul style="list-style-type: none"> • trade and commerce power (s 51(i)).
29 – Review of Invasive Marine Pests	To fund the implementation of improved national maritime biosecurity arrangements, including marine biosecurity measures with respect to: (a) international or interstate trade and commerce; and (b) quarantine.	<ul style="list-style-type: none"> • trade and commerce power (s 51(i)); • quarantine power (s 51(ix)).
30 - A Competitive and Sustainable Fisheries Sector	To provide support for national recreational and commercial fishing peak bodies for the development and promotion of sustainable fishing practices by giving effect to Australia's international obligations for the conservation and sustainable use of biological diversity.	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)).
31 - Early Language Learning Australia Trial	To deliver, through the use of online communication services, foreign language education to preschool students.	<ul style="list-style-type: none"> • communications power (s 51(v)).
32 - Student Prizes Programme	To benefit students by providing prizes to students for excellence in academic and vocational education.	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)).
33 - Relocation Assistance to Take Up a Job Programme	To provide benefits to certain Newstart Allowance, Youth Allowance and Parenting Payment recipients, in the form of payments of financial assistance to enable them to relocate to other areas of Australia to take up employment.	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)).
34 - Work for the Dole	To support the Job Services Australia program through: (a) providing benefits to unemployed	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>persons by giving them the skills and attributes to meet the needs of prospective employers (including in circumstances where training in, or acquisition of, such skills and attributes is a condition of their receipt of payments under the <i>Social Security Act 1991</i>); and</p> <p>(b) providing technical and vocational guidance and training programs to enable persons to realise the right to work; and</p> <p>(c) promoting full productive and freely chosen employment; and</p> <p>(d) providing a free public employment service.</p>	
35 - Indigenous Advancement—Jobs, Land and Economy	<p>1. The funding and provision of activities, assistance, infrastructure, research and services that promote jobs and economic opportunities for Indigenous persons, families, entities and communities or assist them to gain rights and interests in, or derive economic or social benefits from the use of land and sea, including by:</p> <p>(a) promoting economic and social participation, fostering entrepreneurship and supporting economic, community and business development and opportunities; or</p> <p>(b) providing training, employment and employment-related opportunities and support; or</p> <p>(c) promoting the development of workforce skills and career pathways; or</p> <p>(d) promoting access to vocational and higher education and training; or</p> <p>(e) supporting entities which engage or assist jobseekers and people preparing to enter the labour market; or</p> <p>(f) promoting and supporting land and sea use, development, protection and management; or</p> <p>(g) supporting the pursuit and exercise of native title rights; or</p>	<ul style="list-style-type: none"> • races power (s 51(xxvi)). • territories power (s 122); • external affairs power (s 51(xxix)); • social welfare power (s 51(xxiiiA)); • corporations power (s 51(xx)); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>(h) supporting access for Indigenous persons, families, entities and communities to affordable, safe and sustainable accommodation, housing and housing amenity.</p> <p>2. The funding and provision of activities, assistance, infrastructure, research and services for remote Australia to do one or more of the following:</p> <p>(a) create and sustain jobs and employment;</p> <p>(b) support employer engagement and community and economic development;</p> <p>(c) create sustainable communities and support sustainable social and economic participation;</p> <p>(d) facilitate transition to work and provide work experience and participation opportunities;</p> <p>(e) assist with the development of skills and improve work readiness, employability and the capacity of persons to participate in the economy;</p> <p>where the activities, assistance, infrastructure, research and services:</p> <p>(f) are the provision of, or incidental to the provision of, unemployment benefits (within the meaning of paragraph 51(xxiiiA) of the Constitution); or</p> <p>(g) are the provision of, or incidental to the provision of, benefits to students (within the meaning of paragraph 51(xxiiiA) of the Constitution); or</p> <p>(h) are the provision of such activities, assistance, infrastructure, research or services in a Territory; or</p> <p>(i) are provided by way of grants of financial assistance to States and Territories; or</p> <p>(j) are provided to a trading, financial or foreign corporation to which paragraph 51(xx) of the Constitution applies in relation to the existing</p>	

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>activities of the corporation; or</p> <p>(k) would assist Australia to meet its international obligations, including its obligations under the Convention on the Rights of the Child (particularly paragraph 1 of article 28 of the Convention); or</p> <p>(l) are done in the exercise of the executive power of the Commonwealth; or</p> <p>(m) are otherwise for the benefit of the nation.</p>	
<p>36 - Indigenous Advancement— Children and Schooling</p>	<p>1. The funding and provision of activities, assistance, infrastructure, research and services that assist in one or more of the following:</p> <p>(a) giving Indigenous persons a good start in life;</p> <p>(b) improving schooling and school attendance for Indigenous persons;</p> <p>(c) providing better access to developmental and educational opportunities for Indigenous persons;</p> <p>including by:</p> <p>(d) assisting with pre and post natal education and support, access to childcare and educational resources and other support for Indigenous children and their families, carers and communities; or</p> <p>(e) promoting positive development, school attendance, engagement, literacy and numeracy and educational attainment for Indigenous persons; or</p> <p>(f) assisting with the transition to work or vocational or higher education for Indigenous persons; or</p> <p>(g) supporting access to education, including vocational or higher education and to improved quality of education, educational opportunities and resources for Indigenous persons.</p> <p>2. The funding and provision of activities, assistance, infrastructure, research and services in remote Australia to do one or</p>	<ul style="list-style-type: none"> • races power (s 51(xxvi)); • territories power (s 122); • external affairs power (s 51(xxix)); • grants to States/Territories (s 96); • social welfare power (s 51(xxiiiA)); • corporations power (s 51(xx)); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>more of the following:</p> <ul style="list-style-type: none"> (a) promote positive development; (b) improve schooling and school attendance, engagement, literacy and numeracy and educational attainment for children and youth; (c) assist children and youth with their transition to work or vocational or higher education; <p>where the activities, assistance, infrastructure, research and services:</p> <ul style="list-style-type: none"> (d) are the provision of, or incidental to the provision of, unemployment benefits (within the meaning of paragraph 51(xxiiiA) of the Constitution); or (e) are the provision of, or incidental to the provision of, benefits to students (within the meaning of paragraph 51(xxiiiA) of the Constitution); or (f) are the provision of such activities, assistance, infrastructure, research or services in a Territory; or (g) are provided by way of grants of financial assistance to States and Territories; or (h) are provided to a trading, financial or foreign corporation to which paragraph 51(xx) of the Constitution applies in relation to the existing activities of the corporation; or (i) would assist Australia to meet its international obligations, including its obligations under the Convention on the Rights of the Child (particularly paragraph 1 of article 28 of the Convention); or (j) are done in the exercise of the executive power of the Commonwealth; or (k) are otherwise for the benefit of the nation. 	

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
37 – Indigenous Advancement – Safety and Wellbeing	<p>The funding and provision of activities, assistance, infrastructure, research and services that promote the safety and wellbeing of Indigenous persons, families and communities, including by:</p> <ul style="list-style-type: none"> (a) promoting physical, mental, social or emotional wellbeing, good nutrition, food security and health and safety; or (b) reducing crime and providing support and access to legal services and justice; or (c) addressing violence and substance abuse; or (d) promoting social inclusion and engagement, including through sporting, recreational and community opportunities; or (e) developing and providing access to information and support and community services. 	<ul style="list-style-type: none"> • races power (s 51(xxvi)).
38 - Indigenous Advancement— Culture and Capability	<p>The funding and provision of activities, assistance, infrastructure, research and services to do one or more of the following:</p> <ul style="list-style-type: none"> (a) assist Indigenous persons to develop and promote their culture and raise cultural awareness; (b) assist in developing the capabilities of Indigenous persons, families, entities and communities; <p>including by:</p> <ul style="list-style-type: none"> (c) promoting Indigenous leadership, governance, mentoring, engagement, representation, reconciliation and resilience; or (d) assisting Indigenous persons to gain recognition as first Australians and to develop, communicate, protect and promote awareness of their heritage, culture, language, expression and knowledge; or (e) providing access to, and supporting and enhancing, broadcasting and communication services for Indigenous persons, communities and entities; or (f) promoting respect and recognition for 	<ul style="list-style-type: none"> • races power (s 51(xxvi)).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	(g) Indigenous persons; or building the capabilities of Indigenous persons, families, communities and entities to participate in the economy and engage and communicate with broader society.	
39 - Indigenous Advancement— Remote Australia Strategies	<p>1. The funding and provision of activities, assistance, infrastructure, research and services that address social and economic disadvantage for Indigenous persons, families and communities, particularly in remote Australia, including:</p> <p>(a) investment and improvements in housing and infrastructure and municipal and community services; or</p> <p>(b) place based service delivery initiatives.</p> <p>2. The funding and provision of activities, assistance, infrastructure, research and services that address social and economic disadvantage in remote Australia, including by:</p> <p>(a) creating and sustaining jobs and employment; or</p> <p>(b) supporting employer engagement and community and economic development; or</p> <p>(c) creating sustainable communities and supporting social and economic participation; or</p> <p>(d) facilitating transition to work and providing work experience and participation opportunities; or</p> <p>(e) assisting with the development of skills and improving work readiness, employability and the capacity of persons to participate in the economy; or</p> <p>(f) encouraging and improving school enrolment and regular school attendance; or</p> <p>(g) addressing the need for investment in housing and infrastructure and the provision of municipal and community services; or</p> <p>(h) delivering place based service delivery</p>	<ul style="list-style-type: none"> • races power (s 51(xxvi)); • territories power (s 122); • external affairs power (s 51(xxix)); • social welfare power (s 51(xxiiiA)); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>initiatives; where the activities, assistance, infrastructure, research and services:</p> <p>(i) are the provision of, or incidental to the provision of, unemployment benefits (within the meaning of paragraph 51(xxiiiA) of the Constitution); or</p> <p>(j) are the provision of, or incidental to the provision of, benefits to students (within the meaning of paragraph 51(xxiiiA) of the Constitution); or</p> <p>(k) are the provision of such activities, assistance, infrastructure, research or services in a Territory; or</p> <p>(l) are provided by way of grants of financial assistance to States and Territories; or</p> <p>(m) are provided to a trading, financial or foreign corporation to which paragraph 51(xx) of the Constitution applies in relation to the existing activities of the corporation; or</p> <p>(n) would assist Australia to meet its international obligations, including its obligations under the Convention on the Rights of the Child (particularly paragraph 1 of article 28 of the Convention); or</p> <p>(o) are done in the exercise of the executive power of the Commonwealth; or</p> <p>(p) are otherwise for the benefit of the nation.</p>	
40 - Families and Children	<p>To do the following:</p> <p>(a) support families to improve the wellbeing of children and young people;</p> <p>(b) enhance family and community functioning;</p> <p>(c) increase the participation of vulnerable people in community life;</p> <p>including by providing funding as follows:</p> <p>(d) to family law services that provide alternatives to formal legal processes</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • territories power (s 122); • external affairs power (s 51(xxix)); • aliens power (s 51(xix)); • marriage power

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>for families who are separated, separating or in dispute to improve their relationships and make arrangements in the best interests of their children;</p> <p>(e) to family and relationship services to strengthen family relationships, prevent family breakdown and ensure the wellbeing and safety of children through the provision of broad-based counselling and education to families of different forms and sizes;</p> <p>(f) to develop and facilitate whole-of-community approaches to support and enhance early childhood development and wellbeing for children from birth to 12 years;</p> <p>(g) to provide early intervention and prevention services and resources that are aimed at improving the development and wellbeing of children aged from birth to 12 years and to support the capacity of those in parenting roles;</p> <p>(h) for community-based interventions for vulnerable young people who are at risk of disengaging with family and community, including those at risk of homelessness;</p> <p>(i) for specialist adult support services to improve outcomes and enhance wellbeing for people adversely affected by past institutional and child-welfare practices and policies.</p> <p>This objective also has the effect it would have if it were limited to providing funding or support:</p> <p>(a) by providing medical services, family and maternity allowances, child endowment, unemployment and sickness benefits and benefits to students; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations in relation to children, in particular those under the Convention on the Rights of</p>	<p>(s 51(xxi));</p> <ul style="list-style-type: none"> • divorce and matrimonial causes power (s 51(xxii)); • grants to States/Territories (s 96); • Commonwealth executive power (s 61); • bankruptcy and insolvency (s 51(xvii)).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>the Child; or</p> <p>(c) by engaging in measures to meet Australia's international obligations in relation to persons with disabilities, in particular obligations under the Convention on the Rights of Persons with Disabilities; or</p> <p>(d) in a Territory; or</p> <p>(e) by providing assistance to trading, financial and foreign corporations to which paragraph 51(xx) of the Constitution applies where the assistance relates to the existing activities of the corporations; or</p> <p>(f) in relation to aliens or immigrants; or</p> <p>(g) in relation to marriage; or</p> <p>(h) in relation to divorce; or</p> <p>(i) in connection with divorce—in relation to parental rights or the custody or guardianship of infants; or</p> <p>(j) to assist persons who are insolvent or bankrupt to manage their insolvency or bankruptcy; or</p> <p>(k) by providing grants of financial assistance to a State or Territory; or</p> <p>(l) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(m) in the exercise of the executive power of the Commonwealth.</p>	

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
41 - Transition to Independent Living Allowance	<p>To support eligible young people exiting out-of-home care to meet some of the costs of moving from care to independent living and promote long-term economic and social stability by providing one or more of the following:</p> <p>(a) funding for goods and services:</p> <p>(i) necessary to support the transition to independence in line with the goals outlined in a transition to independence plan (under which the exact use of payments is agreed upon by the young person concerned and his or her case worker); and</p> <p>(ii) which may include funding for costs associated with securing stable accommodation or the purchase of essential household items;</p> <p>(b) support to access education, training or transport.</p> <p>This objective also has the effect it would have if it were limited to providing support:</p> <p>(a) by providing family allowances, child endowment, unemployment benefits and benefits to students; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations in relation to children, in particular those under the Convention on the Rights of the Child; or</p> <p>(c) in a Territory; or</p> <p>(d) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation.</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • territories power (s 122); • external affairs power (s 51(xxix)); • Commonwealth executive power (s 61).
42 - Settlement Services	<p>To provide settlement support for humanitarian entrants and other eligible migrants in their first 5 years of life in Australia to become self-reliant and participate equitably in Australian society and to minimise longer-term reliance on Commonwealth provided social services by providing funding for the following:</p>	<ul style="list-style-type: none"> • aliens power (s 51(xix)); • social welfare power (s 51(xxiiiA)); • immigration and emigration power (s 51(xxvii));

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>(a) humanitarian settlement services that deliver early practical support (during the 6 to 12 months following arrival) to enable humanitarian entrants to become self-reliant and participate equitably in Australian society;</p> <p>(b) settlement services activities that deliver services to humanitarian entrants and other migrants in their first 5 years in Australia;</p> <p>(c) support services to enable persons with complex needs to become self-reliant and to participate equitably in Australian society;</p> <p>(d) peak bodies involved in the settlement of persons who arrive in Australia;</p> <p>(e) pre-arrival orientation and information services to persons who have been granted humanitarian visas;</p> <p>(f) free interpreting services for persons settling in Australia;</p> <p>(g) the translation of settlement-related documents;</p> <p>(h) to:</p> <p style="padding-left: 20px;">(i) set and maintain national standards for translating and interpreting; and</p> <p style="padding-left: 20px;">(ii) support the ongoing development of credentialed translators and interpreters;</p> <p>(i) to support Australian residents not fluent in English to access mainstream services;</p> <p>(j) research and stakeholder engagement, including funding for national peak bodies and other stakeholder organisations.</p> <p>This objective also has the effect it would have if it were limited to providing support:</p> <p>(a) by engaging in measures in relation to aliens or immigrants; or</p> <p>(b) by providing unemployment benefits and benefits to students; or</p> <p>(c) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be</p>	<ul style="list-style-type: none"> • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	carried on for the benefit of the nation.	
43 - Financial Wellbeing and Capability	<p>To:</p> <p>(a) improve the financial knowledge, skills and capabilities and financial resilience of vulnerable individuals and families; and</p> <p>(b) in relation to problem gambling:</p> <p>(i) alleviate the immediate impact of financial stress; and</p> <p>(ii) progress initiatives and assist those at risk of homelessness;</p> <p>by providing funding for the following:</p> <p>(c) crisis support, financial capability-building services, financial counselling and access to microfinance products;</p> <p>(d) research and consultation, engagement activities and expert advice to inform the Commonwealth on issues relating to problem gambling.</p> <p>This objective also has the effect it would have if it were limited to providing funding:</p> <p>(a) by providing unemployment benefits; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations in relation to children, in particular those under the Convention on the Rights of the Child; or</p> <p>(c) by engaging in measures to meet Australia’s international obligations in relation to persons with disabilities, in particular obligations under the Convention on the Rights of Persons with Disabilities; or</p> <p>(d) in a Territory; or</p> <p>(e) by providing assistance to trading, financial and foreign corporations to which paragraph 51(xx) of the Constitution applies where the assistance relates to the existing activities of the corporations; or</p> <p>(f) in relation to aliens or immigrants; or</p> <p>(g) to assist persons who are insolvent or bankrupt to manage their insolvency or</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • territories power (s 122); • external affairs power (s 51(xxix)); • corporations power (s 51(xx)); • grants to States/Territories (s 96); • bankruptcy and insolvency (s 51(xvii)); • aliens power (s 51(xix)); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	bankruptcy; or (h) by providing grants of financial assistance to a State or Territory; or (i) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or (j) in the exercise of the executive power of the Commonwealth.	
44 - Civil Society	To do the following: (a) support charities and non-government and not-for-profit organisations through education, training and fostering innovation to continue to focus on their work in the community; (b) foster a culture of philanthropic giving, cross-sector partnering, volunteering and corporate social responsibility; (c) help build a strong civil society. This objective also has the effect it would have if it were limited to providing funding or support: (a) by providing grants of financial assistance to a State or Territory; or (b) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or (c) in the exercise of the executive power of the Commonwealth.	<ul style="list-style-type: none"> • territories power (s 122); • grants to States/Territories (s 96); • Commonwealth executive power (s 61).
45 - Families and Communities Service Improvement	To support and encourage the continuous improvement of Commonwealth-funded social services, by providing funding as follows: (a) to support peak community organisations; (b) for sponsorship activities, informed research and innovation, policy development, information sharing, new pilots and trials of service models and evaluations.	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>This objective also has the effect it would have if it were limited to providing funding:</p> <p>(a) by providing medical services, family and maternity allowances, child endowment, unemployment and sickness benefits and benefits to students, and by engaging in measures incidental to their provision; or</p> <p>(b) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(c) in the exercise of the executive power of the Commonwealth.</p>	
46 - Strengthening Communities	<p>To strengthen communities and promote inclusion and participation in community life by providing funding for the following:</p> <p>(a) research and stakeholder engagement;</p> <p>(b) national peak bodies and other stakeholder organisations;</p> <p>(c) assisting seniors to increase their access to information and community resources;</p> <p>(d) multicultural affairs activities, which include grants aimed at building socially cohesive Australian communities by supporting projects that build the long-term capacities of higher need and at-risk communities, including through the promotion of stronger community relations and the development of sustainable community partnerships;</p> <p>(e) building socially inclusive communities to empower local communities to embrace the benefits of multiculturalism and maintain cohesive and socially inclusive neighbourhoods;</p> <p>(f) language translation services;</p> <p>(g) for organisations to develop solutions and deliver responsive and integrated services that meet local community needs.</p> <p>This objective also has the effect it would have if it were limited to providing funding:</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • external affairs power (s 51(xxix)); • territories power (s 122); • corporations power (s 51(xx)); • aliens power (s 51(xix)); • marriage power (s 51(xxi)); • divorce and matrimonial causes power (s 51(xxii)); • grants to States/Territories (s 96); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>(a) by providing medical services, family and maternity allowances, child endowment, unemployment and sickness benefits and benefits to students; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations in relation to children, in particular those under the Convention on the Rights of the Child; or</p> <p>(c) by engaging in measures to meet Australia’s international obligations in relation to persons with disabilities, in particular obligations under the Convention on the Rights of Persons with Disabilities; or</p> <p>(d) in a Territory; or</p> <p>(e) by providing assistance to trading, financial and foreign corporations to which paragraph 51(xx) of the Constitution applies where the assistance relates to the existing activities of the corporations; or</p> <p>(f) in relation to aliens or immigrants; or</p> <p>(g) in relation to marriage; or</p> <p>(h) in relation to divorce; or</p> <p>(i) in connection with divorce—in relation to parental rights or the custody or guardianship of infants; or</p> <p>(j) to assist persons who are insolvent or bankrupt to manage their insolvency or bankruptcy; or</p> <p>(k) by providing grants of financial assistance to a State or Territory; or</p> <p>(l) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(m) in the exercise of the executive power of the Commonwealth.</p>	
47 – National Initiatives	<p>To achieve positive outcomes for families, women and children by working across sectors to:</p> <p>(a) improve the safety and wellbeing of children; and</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • territories power (s 122);

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>(b) advance gender equality; and</p> <p>(c) reduce violence against women and children; and</p> <p>(d) support women affected by violence; and</p> <p>(e) support trafficked people; and</p> <p>(f) provide communication and information designed to change violence-supporting attitudes and effectively reduce the incidence and impact of violence in Australia; and</p> <p>(g) reducing child abuse and neglect; and</p> <p>(h) support research and stakeholder organisations to assist in making the protection of children everyone’s responsibility.</p> <p>This objective also has the effect it would have if it were limited to providing funding or support:</p> <p>(a) by providing medical services, family and maternity allowances, child endowment, unemployment and sickness benefits and benefits to students; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations in relation to women, in particular obligations under the Convention on the Elimination of All Forms of Discrimination against Women; or</p> <p>(c) by engaging in measures to meet Australia’s international obligations in relation to children, in particular obligations under the Convention on the Rights of the Child; or</p> <p>(d) by engaging in measures to meet Australia’s international obligations in relation to persons with disabilities, in particular obligations under the Convention on the Rights of Persons with Disabilities; or</p> <p>(e) by engaging in measures with respect to postal, telegraphic, telephonic, and other like services; or</p>	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)); • communications power (s 51(v)); • aliens power (s 51(xix)); • marriage power (s 51(xxi)); • divorce and matrimonial causes power (s 51(xxii)); • corporations power (s 51(xx)); • grants to States/Territories (s 96); • Commonwealth executive power (s 61).
	<p>(f) in a Territory; or</p> <p>(g) by providing assistance to trading,</p>	

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>financial and foreign corporations to which paragraph 51(xx) of the Constitution applies where the assistance relates to the existing activities of the corporations; or</p> <p>(h) in relation to aliens or immigrants; or</p> <p>(i) in relation to marriage; or</p> <p>(j) in relation to divorce; or</p> <p>(k) in connection with divorce – in relation to parental rights or the custody or guardianship of infants; or</p> <p>(l) by providing grants of financial assistance to a State or Territory; or</p> <p>(m) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(n) in the exercise of the executive power of the Commonwealth.</p>	
48 - Housing and Homelessness Service Improvement and Sector Support	<p>To fund:</p> <p>(a) homelessness prevention initiatives to reduce the impact of homelessness; and</p> <p>(b) activities that improve housing affordability; and</p> <p>(c) research and activities of peak bodies to do one or more of the following:</p> <p>(i) build the research base for effective policy that addresses homelessness and housing affordability over the long term;</p> <p>(ii) identify best practice models that can be promoted and replicated and that will enhance existing housing and homelessness policies and programs;</p> <p>(iii) build the capacity of the community sector to improve linkages and networks;</p> <p>(iv) raise awareness of housing, housing affordability and homelessness issues at all levels of government and across the community.</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • external affairs power (s 51(xxix)); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>This objective also has the effect it would have if it were limited to providing funding:</p> <p>(a) by providing medical services, family and maternity allowances, child endowment, unemployment and sickness benefits and benefits to students, and by engaging in measures incidental to the provision of those matters; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations under the International Covenant on Economic, Social and Cultural Rights, particularly article 11; or</p> <p>(c) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(d) in the exercise of the executive power of the Commonwealth.</p>	
49 - Disability Employment	<p>To help individuals with an injury, disability or health condition to secure and maintain sustainable open employment by:</p> <p>(a) providing medical and dental services and unemployment, pharmaceutical, hospital and sickness benefits; and</p> <p>(b) engaging in measures to meet Australia’s international obligations in relation to persons with disabilities, in particular obligations under the Convention on the Rights of Persons with Disabilities.</p>	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)); • social welfare power (s 51(xxiiiA)).
50 - Employment Assistance and Other Services	<p>To support employers to employ people with disabilities.</p> <p>This objective also has the effect it would have if it were limited to providing support:</p> <p>(a) by providing medical and dental services and unemployment, pharmaceutical, hospital and sickness benefits; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations in relation to persons with disabilities, in</p>	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)); • social welfare power (s 51(xxiiiA)).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	particular obligations under article 27 of the Convention on the Rights of Persons with Disabilities.	
51 - Disability and Carer Support	<p>To improve access, support and services for people with disabilities and their carers as follows:</p> <p>(a) by providing and improving access to services and support through stakeholder engagement and sector development;</p> <p>(b) by providing services and support for carers, including services to support carers aged 25 and under;</p> <p>(c) by providing support, services and funding to enable people with disabilities and carers to participate in forums;</p> <p>(d) by providing support to develop a robust sector to meet the needs of people with disabilities and carers;</p> <p>(e) by providing for the delivery of appropriate and timely advocacy for people with disabilities and carers that addresses instances of abuse, discrimination and neglect.</p> <p>This objective also has the effect it would have if it were limited to providing support:</p> <p>(a) by providing medical and dental services, family and maternity allowances, unemployment, pharmaceutical, hospital and sickness benefits and benefits to students; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations in relation to children, in particular obligations under the Convention on the Rights of the Child; or</p> <p>(c) by engaging in measures to meet Australia’s international obligations in relation to persons with disabilities, in particular obligations under the Convention on the Rights of Persons with Disabilities; or</p> <p>(d) in a Territory; or</p>	<ul style="list-style-type: none"> • external affairs power (s 51(xxix)); • social welfare power (s 51(xxiiiA)); • territories power (s 122); • corporations power (s 51(xx)); • grants to States/Territories (s 96); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>(e) by providing assistance to trading, financial and foreign corporations to which paragraph 51(xx) of the Constitution applies where the assistance relates to the existing activities of the corporations; or</p> <p>(f) by providing grants of financial assistance to a State or Territory; or</p> <p>(g) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(h) in the exercise of the executive power of the Commonwealth.</p>	
52 - Disability and Carer Service Improvement and Sector Support	<p>To provide funding for:</p> <p>(a) research and stakeholder engagement; and</p> <p>(b) peak bodies and other persons and entities.</p> <p>This objective also has the effect it would have if it were limited to providing funding:</p> <p>(a) by providing medical and dental services, family and maternity allowances, unemployment, pharmaceutical, hospital and sickness benefits and benefits to students, and engaging in measures incidental to the provision of those matters; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations in relation to children, in particular obligations under the Convention on the Rights of the Child; or</p> <p>(c) by engaging in measures to meet Australia’s international obligations in relation to persons with disabilities, in particular obligations under the Convention on the Rights of Persons with Disabilities; or</p> <p>(d) in a Territory; or</p> <p>(e) by providing assistance to trading, financial and foreign corporations to which paragraph 51(xx) of the Constitution applies where the</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • territories power (s 122); • external affairs power (s 51(xxix)); • corporations power (s 51(xx)); • grants to States/Territories (s 96); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>assistance relates to the existing activities of the corporations; or</p> <p>(f) by providing grants of financial assistance to a State or Territory; or</p> <p>(g) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(h) in the exercise of the executive power of the Commonwealth.</p>	
53 - Community Mental Health	<p>To provide early intervention and other support through community-based initiatives for people with mental illness and their families and carers, so that they can develop their capabilities, increase their wellbeing and actively participate in community and economic life, including by providing the following:</p> <p>(a) assistance for people severely impacted by mental illness, including services with an employment focus for those who have employment as a primary goal;</p> <p>(b) early intervention support to vulnerable families with children and young people who are showing early signs of, or are at risk of developing, mental illness;</p> <p>(c) a range of flexible support options for carers and families of people with severe mental illness;</p> <p>(d) funding and support to increase awareness and understanding of mental health issues;</p> <p>(e) education and advocacy.</p> <p>This objective also has the effect it would have if it were limited to providing support:</p> <p>(a) by providing medical and dental services, family and maternity allowances, unemployment, pharmaceutical, hospital and sickness benefits and benefits to students; or</p> <p>(b) by engaging in measures to meet Australia's international obligations in relation to children, in particular obligations under the Convention on</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • territories power (s 122); • external affairs power (s 51(xxix)); • corporations power (s 51(xx)); • grants to States/Territories (s 96); • Commonwealth executive power (s 61).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>the Rights of the Child; or</p> <p>(c) by engaging in measures to meet Australia’s international obligations in relation to persons with disabilities, in particular obligations under the Convention on the Rights of Persons with Disabilities; or</p> <p>(d) in a Territory; or</p> <p>(e) by providing assistance to trading, financial and foreign corporations to which paragraph 51(xx) of the Constitution applies where the assistance relates to the existing activities of the corporations; or</p> <p>(f) by providing grants of financial assistance to a State or Territory; or</p> <p>(g) by engaging in measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(h) in the exercise of the executive power of the Commonwealth.</p>	
54 - NDIS Transitioning	<p>To improve the wellbeing and social and economic participation of people with disabilities and their families and carers as follows:</p> <p>(a) by building a National Disability Insurance Scheme;</p> <p>(b) by providing a better start for children with disabilities and helping children with autism by providing them with early access to early intervention services;</p> <p>(c) by providing supported employment services to enable people with disabilities to participate fully in employment;</p> <p>(d) by providing outside school hours care for teenagers with disabilities;</p> <p>(e) by providing immediate and short-term respite support for carers of young people with severe or profound disabilities whose needs are not being met through existing government</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • external affairs power (s 51(xxix)).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>initiatives;</p> <p>(f) by providing young carers respite and information services to assist young carers who need support to complete their secondary education or vocational equivalent due to the demands of their caring role.</p> <p>This objective also has the effect it would have if it were limited to providing funding or support:</p> <p>(a) by providing medical and dental services and pharmaceutical, hospital and sickness benefits; or</p> <p>(b) by engaging in measures to meet Australia’s international obligations in relation to persons with disabilities, in particular obligations under the Convention on the Rights of Persons with Disabilities.</p>	
55 - Stronger Relationships Programme	<p>To provide education and counselling to couples who are:</p> <p>(a) married, or engaged or intending to be married; or</p> <p>(b) in a de facto relationship; or</p> <p>(c) in a same-sex relationship;</p> <p>relating to their relationship, including education and counselling relating to any of the following:</p> <p>(d) conflict resolution;</p> <p>(e) parenting;</p> <p>(f) financial management.</p>	<ul style="list-style-type: none"> • marriage power (s 51(xxii)); • external affairs power (s 51(xxix)).
56 - Young Carer Bursary Programme	<p>To provide benefits to students through the payment of bursaries to caregivers who are aged 25 and under, and who are currently enrolled in secondary school or in tertiary education.</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)).
57 - Primary Health Networks	<p>To provide support for the establishment of organisations (to be known as Primary Health Networks) that will work to integrate the care of patients across the health system and improve health outcomes for communities where that support is incidental to the Commonwealth’s provision of sickness and</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)).

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	hospital benefits and medical services.	
58 - Good Sports Programme	<p>To provide support to the Australian Drug Foundation to work with sporting codes, organisations and clubs to provide activities to change behaviours and attitudes around alcohol consumption where the activities:</p> <p>(a) are incidental to the Commonwealth's provision of pharmaceutical, sickness and hospital benefits and medical services; or</p> <p>(b) are peculiarly adapted to the government of a nation and cannot otherwise be carried out for the benefit of the nation.</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)).
59 - Water Safety	<p>To provide support for activities to reduce incidences of drowning and promote water safety, including activities that:</p> <p>(a) are carried out by a trading or foreign corporation to which paragraph 51(xx) of the Constitution applies; or</p> <p>(b) are peculiarly adapted to the government of a nation and cannot otherwise be carried out for the benefit of the nation.</p>	<ul style="list-style-type: none"> • corporations power (s 51(xx)); • Commonwealth executive power (s 61).
60 - Ensuring the Supply of Antivenoms, Q fever vaccine and Pandemic Influenza vaccines	<p>To provide support for activities to ensure the regular, ongoing availability of Q fever vaccine, antivenoms and pandemic influenza vaccines where those activities are peculiarly adapted to the government of a nation and cannot otherwise be carried out for the benefit of the nation.</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • Commonwealth executive power (s 61).
61 - Community Development Grants Programme	<p>To provide grants for regional and community infrastructure projects.</p> <p>This objective also has the effect it would have if it were limited to providing grants:</p> <p>(a) in or in relation to a Territory; or</p> <p>(b) as financial assistance to a State or Territory; or</p> <p>(c) to or in relation to Indigenous Australians and particular groups of Indigenous Australians; or</p> <p>(d) to commemorate Australians killed or</p>	<ul style="list-style-type: none"> • territories power (s 122); • races power (s 51(xxvi)) • aliens power (s 51(xix)); • trade and commerce power (s 51(i)); • external affairs power (s 51(xxix));

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>injured in war, and support veterans and defence force members and their families and communities; or</p> <p>(e) in relation to aliens or immigrants; or</p> <p>(f) in connection with trade and commerce with other countries, or among the States and Territories; or</p> <p>(g) in connection with assisting Australia to meet its obligations under international agreements; or</p> <p>(h) to provide medical services, unemployment, pharmaceutical, sickness and hospital benefits, benefits to students, and measures incidental to the provision of those matters; or</p> <p>(i) in connection with electronic communications; or</p> <p>(j) to provide assistance to trading, financial and foreign corporations to which paragraph 51(xx) of the Constitution applies where the assistance relates to the existing activities of the corporations; or</p> <p>(k) to provide for measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(l) in the exercise of the executive power of the Commonwealth.</p>	<ul style="list-style-type: none"> • social welfare power (s 51(xxiiiA)); • communications power (s 51(v)). • corporations power (s 51(xx)); • grants to States/Territories (s 96); • Commonwealth executive power (s 61).
62 - National Stronger Regions Fund	<p>To provide grants to support the construction, expansion and enhancement of infrastructure across regional Australia. This objective also has the effect it would have if it were limited to providing grants:</p> <p>(a) in or in relation to a Territory; or</p> <p>(b) as financial assistance to a State or Territory; or</p> <p>(c) to or in relation to Indigenous Australians and particular groups of Indigenous Australians; or</p> <p>(d) to commemorate Australians killed or injured in war, and support veterans and defence force members and their families and communities; or</p>	<ul style="list-style-type: none"> • territories power (s 122); • grants to States/Territories (s 96); • races power (s 51(xxvi)); • aliens power (s 51(xix)); • trade and commerce power (s 51(i)); • external affairs power (s 51(xxix)); • social welfare

PART 4 – ITEM	OBJECTIVE(S)	CONSTITUTIONAL REFERENCE IN THE ITEM
	<p>(e) in relation to aliens or immigrants; or</p> <p>(f) in connection with trade and commerce with other countries, or among the States and Territories; or</p> <p>(g) in connection with assisting Australia to meet its obligations under international agreements; or</p> <p>(h) to provide medical services, unemployment, pharmaceutical, sickness and hospital benefits, benefits to students, and measures incidental to the provision of those matters; or</p> <p>(i) in connection with electronic communications; or</p> <p>(j) to provide assistance to trading, financial and foreign corporations to which paragraph 51(xx) of the Constitution applies where the assistance relates to the existing activities of the corporations; or</p> <p>(k) for the construction or extension of railways in any State with the consent of that State; or</p> <p>(l) to provide for measures that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation; or</p> <p>(m) in the exercise of the executive power of the Commonwealth.</p>	<p>power (s 51(xxiiiA));</p> <ul style="list-style-type: none"> • communications power (s 51(v)); • railway construction power (s 51(xxiv)); • Commonwealth executive power (s 61).

Appendix 2

Guideline on consultation

Standing Committee on Regulations and Ordinances

Addressing consultation in explanatory statements

Role of the committee

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

Purpose of guideline

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

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

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

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

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

Requirements of the Legislative Instruments Act 2003

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

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

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

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

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

Describing the nature of consultation

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

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

Method and purpose of consultation

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

Bodies/groups/individuals consulted

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

Issues raised in consultations and outcomes

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

Explaining why consultation has not been undertaken

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

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

Specific examples listed in the Act

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

Timing of consultation

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

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

Seeking further advice or information

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

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