The Senate

Standing

Committee on Regulations and Ordinances

Delegated legislation monitor

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# Delegated legislation monitor

## Introduction

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

### The committee's terms of reference

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

(1) A Standing Committee on Regulations and Ordinances shall be appointed at the commencement of each Parliament.

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

The committee shall scrutinise each instrument to ensure:

(a) that it is in accordance with the statute;

(b) that it does not trespass unduly on personal rights and liberties;

(c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and

(d) that it does not contain matter more appropriate for parliamentary enactment.

### Work of the committee

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

The committee's longstanding practice is to interpret its scrutiny principles broadly, but as relating primarily to technical legislative scrutiny. The committee therefore does not generally examine or consider the policy merits of delegated legislation. In 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]](#footnote-2)

### Structure of the report

The report is comprised of the following parts:

Chapter 1, 'New and continuing matters', sets out new and continuing matters about which the committee has agreed to write to the relevant minister or instrument-maker seeking further information or appropriate undertakings;

Chapter 2, 'Concluded matters', sets out any previous matters which have been concluded to the satisfaction of the committee, including by the giving of an undertaking to review, amend or remake a given instrument at a future date; related (non-confidential) correspondence is included at Appendix 3;

Appendix 1 provides an index listing all instruments scrutinised in the period covered by the report;

Appendix 2 contains the committee's guideline on addressing the consultation requirements of the *Legislative Instruments Act 2003*.

### Acknowledgement

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

**Senator Mark Furner**

**Chair**

# Chapter 1

## New and continuing matters

This chapter lists new matters identified by the committee at its meeting on **7 February 2013**, and continuing matters in relation to which the committee has received recent correspondence. The committee will write to relevant ministers or instrument makers seeking further information or an appropriate undertaking within the disallowance period.

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

|  |  |
| --- | --- |
| **Purpose** | Increases the permit application fees specified in the principal regulations from 1 January 2013 |
| **Last day to disallow[[3]](#footnote-3)** | 21 March 2013 |
| **Authorising legislation** | *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* |
| **Department** | Sustainability, Environment, Water, Population and Communities |

**ISSUE:**

#### Insufficient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The explanatory statement (ES) which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26).[[4]](#footnote-4) With reference to these requirements, the committee notes that, while the ES for the instrument refers to a 'short period' of unspecified duration during which advice on the fee increases will be provided to industry members, there is no indication that there has been any consultation prior to the making of the instrument. **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the LIA**.

### Superannuation (prudential standard) determination No. 1 of 2012 - Prudential Standard SPS 114 - Operational Risk Financial Requirement [F2012L02221] and seven related instruments[[5]](#footnote-5)

|  |  |
| --- | --- |
| **Purpose** | These instruments determine a number of prudential standards |
| **Last day to disallow** | 19 March 2013 |
| **Authorising legislation** | *Superannuation Industry (Supervision) Act 1993* |
| **Department** | Treasury |

**ISSUE:**

#### Regulation Impact Statement not provided

Each of the ESs which accompanies the instruments notes that a Regulation Impact Statement (RIS) is required for the relevant standard. However, no RISs have been provided with the instruments. Where a RIS has been prepared in relation to an instrument, the committee's longstanding practice is to require that it be provided as an attachment to the ES. **The committee will therefore draw this issue to the attention of the minister**.

### Transport Safety Investigation Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 263] [F2012L02278] and two related instruments[[6]](#footnote-6)

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

**ISSUE:**

#### No information regarding consultation

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

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

|  |  |
| --- | --- |
| **Purpose** | Specifies a Basin Plan for the Murray-Darling Basin |
| **Last day to disallow** | 19 March 2013 |
| **Authorising legislation** | *Water Act 2007* |
| **Department** | Sustainability, Environment, Water, Population and Communities |

**ISSUE:**

#### Availability of merits review for certain decisions

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

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

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

**ISSUE:**

#### Insufficient information regarding consultation

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

The committee considers that it is unclear as to why consultation was considered unnecessary or inappropriate in this case. **The committee will therefore seek further information from the minister and request that, if necessary, the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

### National Environment Protection (Movement of Controlled Waste between States and Territories) Measure Minor Variation 2012 (No. 1) [F2012L02300]

|  |  |
| --- | --- |
| **Purpose** | Makes minor editorial changes and corrects typographical errors in the principal instrument |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *National Environment Protection Council Act 1994* |
| **Department** | Sustainability, Environment, Water, Population and Communities |

**ISSUES:**

#### (a) No information regarding consultation

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

#### (b) No statement of compatibility with human rights

(2) Section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a rule-maker to prepare a statement of compatibility with specified human rights for each disallowable legislative instrument. Subsection 9(2) requires the statement of compatibility to include an assessment of whether the legislative instrument is compatible with human rights. No statement of compatibility accompanies this instrument. **The committee notes that the Parliamentary Joint Committee on Human Rights has identified this issue (First Report of 2013),[[7]](#footnote-7) and will defer to that committee's carriage of the matter.**

### ASQA Authorised Officer Requirements [F2012L02326]

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

**ISSUE:**

#### Unclear term/criteria

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

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

|  |  |
| --- | --- |
| **Purpose** | Makes a number of amendments to the principal regulations |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Aviation Transport Security Act 2004* |
| **Department** | Infrastructure and Transport |

**ISSUE:**

#### No information provided regarding consultation

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

### Banking, Insurance and Life Insurance (prudential standard) determination No. 2 of 2012 [F2012L02440] and three related instruments[[8]](#footnote-8)

|  |  |
| --- | --- |
| **Purpose** | The instruments determine a number of prudential standards |
| **Last day to disallow** | 15/5 |
| **Authorising legislation** | *Banking Act 1959*; *Insurance Act 1973*; and *Life Insurance Act 1995* |
| **Department** | Treasury |

**ISSUE:**

#### Drafting

The instruments contain drafting deficiencies, including an unclear expression in the definition of ***registered life NOHC*** and a typographical error in determination No. 1. **The committee will draw these issues to the attention of the Treasurer**.

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

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

**ISSUES:**

#### (a) Commencement

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

#### (b) No information regarding consultation

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

### SSAT Child Support Review General Directions 2012 [F2012L02459]

|  |  |
| --- | --- |
| **Purpose** | Provides for the procedures to be followed in relation to child support review hearings before the Social Security Appeals Tribunal (SSAT) |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Child Support (Registration and Collection) Act 1988* |
| **Department** | Families, Housing, Community Services and Indigenous Affairs |

**ISSUE:**

#### Insufficient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states that consultation was not required in this case due to both its urgency and the fact that its effect is 'largely machinery in nature' and 'will not substantially affect or alter reviews by the SSAT'. First, the committee considers that the ES does not adequately explain the circumstances leading to the urgency of the instrument, particularly as to whether there was a reasonable opportunity to anticipate the need for the changes effected by the instrument (arising from the development and passage of the *Social Security and Other Legislation Amendment (Further 2012 Budget and Other Measures) Act 2012*). Second, the committee considers that the statement that the instrument is 'largely machinery' implies that it may also have more substantial effects that could have a bearing on the conclusion that consultation was unnecessary or inappropriate in this case. **The committee will therefore seek further information from the minister and request that, if necessary, the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

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

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

**ISSUE:**

#### Insufficient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states that consultation was not undertaken, because the instrument is 'consistent with previous instruments issued to Virgin Australia International Airlines Pty Ltd and other Australian airlines [and will]…allow Virgin Australia International Airlines Pty Ltd to reduce dependence on ground based systems'. While the committee does not usually interpret section 26 as requiring a highly detailed explanation as to why consultation was not undertaken, it considers that an overly bare or general explanation is not sufficient to satisfy the requirement that an ES explain why consultation was not undertaken. **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

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

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

**ISSUE:**

#### Insufficient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states that consultation was not undertaken, because the instrument is 'required by the operator to enable low visibility take-offs inside and outside Australian territory consistent with the standards and requirements specified in the instrument which are not considered prejudicial to the interests of safety'. While the committee does not usually interpret section 26 as requiring a highly detailed explanation as to why consultation was not undertaken, it considers that an overly bare or general explanation is not sufficient to satisfy the requirement that an ES explain why consultation was not undertaken. **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

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

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

**ISSUE:**

#### Drafting

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

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

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

### Corporations Amendment Regulation 2012 (No. 6) Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 308] [F2012L02414]

|  |  |
| --- | --- |
| **Purpose** | Amends the Corporations Amendment Regulation 2012 (No. 6) to correct a number of deficiencies |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Corporations Act 2001* |
| **Department** | Treasury |

**ISSUE:**

#### No information provided regarding consultation

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

### Family Law Amendment Regulation 2012 (No. 4) [Select Legislative Instrument 2012 No. 278] [F2012L02391]; and

### Federal Court and Federal Magistrates Court Regulation 2012 [Select Legislative Instrument 2012 No. 280] [F2012L02411]

|  |  |
| --- | --- |
| **Purpose** | Repeals and replaces the Federal Court of Australia Regulations 2004 and the Federal Magistrates Regulations 2000 with a consolidated regulation for proceedings in the Federal Court of Australia and the Federal Magistrates Court of Australia |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Federal Court of Australia Act 1976*; and *Federal Magistrates Act 1999* |
| **Department** | Attorney-General's |

**ISSUE:**

#### Drafting

Item [4] of Schedule 1 to the first instrument mentioned inserts a new regulation 83 into the Family Law Regulations 1984, and provides:

(1) Despite the amendments made by the Family Law Amendment Regulation 2012 (No. 4), these Regulations, as in force immediately before 1 January 2013, (the old Regulations) continue to apply to a fee for a service requested under the old Regulations before 1 January 2013, unless another transitional provision says otherwise.

The committee notes that the bracketed phrase '(the old Regulations)' should presubaly appear before the comma, to make it quite clear that that phrase refers to the 'Regulations, as in force immediately before 1 January 2013'. The same issue arises in relation to subregulations 5.01(2) and 5.02(2) of the second instrument mentioned. The committee generally raises such matters on an advice-only basis in the interests of ensuring the highest quality of standards of drafting in legislative instruments in accordance with subsection 3(c) of the *Legislative Instruments Act 2003*, which states that one of its objects is 'encouraging high standards in the drafting of legislative instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users'. **The committee will therefore draw the issue to the Attorney-General's attention**.

### Foreign Acquisitions and Takeovers Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 309] [F2012L02410]

|  |  |
| --- | --- |
| **Purpose** | Amends the Foreign Acquisitions and Takeovers Regulations 1989 to give effect to Australia's commitments under the Protocol on Investment to the Australia-New Zealand Closer Economic Relations Trade Agreement |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Foreign Acquisitions and Takeovers Act 1975* |
| **Department** | Treasury |

**ISSUE:**

#### (a) Drafting

The committee notes that section 2 of the instrument provides:

(1) This regulation commences on the day notified by the Minister in an instrument.

(2) An instrument made under subsection (1) is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the Legislative Instruments Act 2003 applies to the instrument.

In the committee's experience, declarations as to whether or not a particular instrument is a legislative instrument, and as to the application of section 4 (disallowance) and part 6 of the *Legislative Instruments Act 2003* (the Act), are commonly situated in primary rather than subordinate legislation. The basis for this approach is not apparent or otherwise addressed in the ES for the instrument. **The committee will therefore seek further information from the Assistant Treasurer**.

#### (b) Insufficient information regarding consultation

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

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

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

**ISSUE:**

#### Insufficient information regarding consultation

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

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

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

**ISSUES:**

#### (a) Insufficient information regarding consultation

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

#### (b) drafting

The committee notes that in item [14] of schedule 1 the reference to 'Clause 2.11.1 table, item 389. should presumably be a reference to 'clause 2.11.1, table, item 389'. The committee generally raises such matters on an advice-only basis in the interests of ensuring the highest quality of standards of drafting in legislative instruments in accordance with subsection 3(c) of the *Legislative Instruments Act 2003*, which states that one of its objects is 'encouraging high standards in the drafting of legislative instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users'. **The committee will therefore draw the issue to the minister's attention**.

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

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

**ISSUE:**

#### No information regarding consultation

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

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

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

**ISSUE:**

#### Insufficient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES that accompanies the instrument states only that 'the National Interest Analysis provided to the Joint Standing Committee outlines the extensive consultation process undertaken as part of the negotiations consultation'. In the committee's view, this statement is not sufficient to satisfy the requirement that an ES describe the nature of consultation undertaken or, alternatively, provide an explanation of why consultation was not undertaken. **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

### Motor Vehicle Standards Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 305] [F2012L02377]

|  |  |
| --- | --- |
| **Purpose** | Amends the Motor Vehicle Standards Regulations 1989 |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Motor Vehicle Standards Act 1989* |
| **Department** | Infrastructure and Transport |

**ISSUE:**

#### Drafting

The committee notes that paragraph 6 of the ES for this instrument refers to the 'Principle regulations'. The committee generally raises such matters on an advice-only basis in the interests of ensuring the highest quality of standards of drafting in legislative instruments in accordance with subsection 3(c) of the *Legislative Instruments Act 2003*, which states that one of its objects is 'encouraging high standards in the drafting of legislative instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users'. **The committee will therefore draw the issue to the minister's attention**.

### Retirement Savings Accounts Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 315] [F2012L02403]; and

### Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 4) [Select Legislative Instrument 2012 No. 316] [F2012L02386]

|  |  |
| --- | --- |
| **Purpose** | These instruments amend the Retirement Savings Accounts Regulations 1997 and the Superannuation Industry (Supervision) Regulations 1994 to introduce a 12-month inactivity test for uncontactable members of a super fund |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Retirement Savings Accounts Act 1997*; and *Superannuation Industry (Supervision) Act 1993* |
| **Department** | Treasury |

**ISSUE:**

#### Insufficient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the instrument addresses the issue of consultation only indirectly (and apparently seeks to rely on an inquiry into the Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012 conducted by the Senate Standing Committee on Economics). In the committee's view, the information provided in the ES is not sufficient to satisfy the requirement that an ES describe the nature of consultation undertaken in relation to the making of an instrument. **The committee will therefore seek further information from the minister and request that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

### Fair Work Legislation Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 321] [F2012L02417]

|  |  |
| --- | --- |
| **Purpose** | Amends the Fair Work Regulations 2009, the Fair Work (Registered Organisations) Regulations 2009, the Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009 and the Occupational Health and Safety (Maritime Industry) Regulations 1995 |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Fair Work (Registered Organisations) Act 2009*; *Occupational Health and Safety (Maritime Industry) Act 1993*; *Fair Work Act 2009*; and *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* |
| **Department** | Education, Employment and Workplace Relations |

**ISSUE:**

#### Drafting

Regulation 3.16A requires, inter alia, that a protected ballot agent must ensure that in the conduct of an electronic ballot 'there is no way of identifying how any employee has voted'. The committee notes, however, that the ability to identify ballot papers is necessary to ensure that ballots are conducted fairly. Given also that the regulation later provides that an agent must remove any identifiers from an electronic (and postal) ballot before the scrutineer can examine them (see, for example, new paragraph 3.20(6)(a)), it would appear that the intent of regulation 3.16A is rather that electronic (and other identifiable) ballots are able to have identifiers removed (that is, are capable of being rendered unidentifiable). **The committee will therefore seek further information from the minister**.

### Fair Work Legislation Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 322] [F2012L02409]

|  |  |
| --- | --- |
| **Purpose** | Amends the Fair Work Regulations 2009 and the Fair Work (Registered Organisations) Regulations 2009 |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Fair Work (Registered Organisations) Act 2009*; and *Fair Work Act 2009* |
| **Department** | Education, Employment and Workplace Relations |

**ISSUE:**

#### Drafting

Clause (6)(b)(iii) of Schedule 6.1A to the regulation states, inter alia, that an employee must comply with a direction unless it is 'not appropriate for the employee to perform'. In the committee's view this criterion, depending as it does on the notion of appropriateness, appears to involve a subjective judgement that could give rise to uncertainty about its application in a given case. **The committee will therefore seek further information from the minsister**.

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

|  |  |
| --- | --- |
| **Purpose** | Amends the Migration Regulations 1994 to strengthen and improve immigration policy |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Migration Act 1958* |
| **Department** | Immigration and Citizenship |

**ISSUE:**

#### Unclear basis for increase in fees

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

### Customs Amendment Regulation 2012 (No. 9) [Select Legislative Instrument 2012 No. 276] [F2012L02382]

|  |  |
| --- | --- |
| **Purpose** | Amends the Customs Regulations 1926 to prescribe the methods by which a notice prohibiting the exportation of goods under new section 112BA of the *Customs Act 1901* is to be given, and the time at which such a notice is taken to have been received |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Customs Act 1901* |
| **Department** | Attorney-General's  |

**ISSUE:**

#### Protection of rights

This instrument prescribes the methods by which a notice prohibiting the exportation of goods from Australia may be given, and the time at which such a notice is taken to have been received. It is an offence to export a good in contravention of any such notice. Paragraph 2(c)(iii) provides for a form of 'constructive notice', whereby a notice given to a 'person who appears to work in a management or executive position' (at a previously notified address for service) will be taken to have been served at the time it was given to that person. In the committee's view, it is not clear why there is not a more stringent requirement to ascertain whether a person to whom a notice is given in such cases is in fact in a management or executive position, particularly given that it is an offence to export a good in contravention of any such notice. **The committee will therefore seek further information from the mininster**.

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

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

**ISSUE:**

#### Unclear basis for increase in fees

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

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

|  |  |
| --- | --- |
| **Purpose** | Amends the Work Health and Safety Regulations 2011 |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Work Health and Safety Act 2011* |
| **Department** | Education, Employment and Workplace Relations |

**ISSUE:**

#### Unclear basis for calculating a fee

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

### Determination to Reduce Appropriations Upon Request (No. 11 of 2011-2012) [F2012L01927]

|  |  |
| --- | --- |
| **Purpose** | Reduces departmental appropriation items for the Department of Foreign Affairs and Trade by specified amounts |
| **Last day to disallow** | 5 February 2013 |
| **Authorising legislation** | *Appropriation Act (No. 1) 2009-2010*;and *Appropriation Act (No. 1) 2010-2011* |
| **Department** | Finance and Deregulation |

**ISSUE:**

#### Drafting

The committee raises the following matters in the interests of ensuring the highest quality of standards of drafting in legislative instruments in accordance with subsection 3(c) of the *Legislative Instruments Act 2003*, which states that one of its objects is 'encouraging high standards in the drafting of legislative instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users'. First, the committee notes that amending instruments generally contain an amendment instruction in the place of the heading in Schedule 1 of this instrument, which reads: [1] DEFENCE PORTFOLIO. While section 7 of the instrument provides for the effect of Schedule 1, it is not clear to the committee how the amendment in Schedule 1 is actually effected via the drafting construction of the instrument. Second, the committee notes that section 8 of the instrument also refers to Schedule 1 of the instrument. It is not clear to the committee whether this should in fact be a reference to Schedule 2 (and, if so, whether this would lead to any undermining of the legal effect of the instrument). Last, and what may be a related question, the committee has not been able to identify what the reference in Schedule 2 to 'the other departmental item' in fact relates. **The committee will therefore seek further information from the minister**.

# Chapter 2

## Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on **7 February 2013**. The committee has concluded its interest in these matters on the basis of responses received from ministers or relevant instrument-makers.

Correspondence relating to these matters is included at Appendix 3.

### Interim (Small Pelagic Fishery) Declaration 2012 [F2012L01901]

|  |  |
| --- | --- |
| **Purpose** | Declares a specified type of commercial fishing activity and thus prohibits fishing by large mid-water trawl freezer vessels in the Small Pelagic Fishery for a period of 60 days |
| **Last day to disallow[[9]](#footnote-9)** | 5 February 2013 |
| **Authorising legislation** | *Environment Protection and Biodiversity Conservation Act 1999* |
| **Department** | Sustainability, Environment, Water, Population and Communities |

**ISSUE:**

#### Insufficient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The explanatory statement (ES) which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26).[[10]](#footnote-10) With reference to these requirements, the committee notes that ES for the instrument does not indicate whether there was consultation with any operators of large mid-water trawl freezer vessels whose interests would be affected by the interim prohibition or, if there was no such consultation, explain why none was undertaken **[the committee sought further information from the minister].**

**MINISTER'S RESPONSE:**

The minister advised that consultation with parties other than the Minister for Agriculture, Fisheries and Forestry was considered to be innapropriate as the interim instrument was required as a matter of urgency. However, wider consultation had since taken place in the development of a final instrument.

**COMMITTEE RESPONSE:**

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

### Financial Management and Accountability Amendment Regulation 2012 (No. 7) [Select Legislative Instrument 2012 No. 229] [F2012L01988]

|  |  |
| --- | --- |
| **Purpose** | Adds one new Government program to Part 4 of Schedule 1AA to the Financial Management and Accountability Regulations 1997 |
| **Last day to disallow** | 5 February 2013 |
| **Authorising legislation** | *Financial Management and Accountability Act 1997* |
| **Department** | Finance and Deregulation |

**ISSUE:**

#### Insufficent information regarding program

The amendment relies on section 32B of the *Financial Management and Accountability Act 1997*, which provides legislative authority for the Government to spend monies on programs listed in Schedule 1AA to Financial Management and Accountability Regulations 1997. Section 32B was introduced in response to the decision of the High Court in *Williams v Commonwealth* ([2012] HCA 23) in June 2012. The new program has the objective of providing financial assistance to persons acquiring Commonwealth real property. However, no further information is supplied about the nature of the program, such as how decisions are to be made about the provision of financial assistance, the criteria for decisions regarding the provision of assistance and whether independent review is available in respect of those decisions **[the committee sought further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister advised that the amendment was necessary to allow the Government to provide financial assistance to persons acquiring Commonwealth real property, including in relation to the acquisition of, and maintenance and compliance with legal requirements associated with, a property (for example, to undertake capital maintenance to maintain the heritage status of the property). The factors to be taken into account in any decision to provide such financial assistance would be: whether and for how long a property was surplus to requirements; the cost to the Commonwealth of managing a property and the potential for cost recovery; and the fact that the market value of a property could not be obtained through its sale on the open market due to social or community considerations.

In relation to the availability of independent merits review of decisions to provide assistance under the program, the minister advised that such decisions involved the allocation of finite resources and were therefore not suitable for merits review (such as by the Administrative Appeals Tribunal (AAT)). Decisions under items listed in Schedule 1AA of the Financial Management and Accountability Regulations 1997 had been specifically excluded from judicial review under the *Adminstrative Decisions (Judicial Review) Act 1997* (ADJR Act). However, review may be available under section 39B of the *Judiciary Act 1903* and section 75(v) of the Constitution, in addition to recourse to the Ombudsman.

**COMMITTEE RESPONSE:**

**The committee thanks the minister for her response and has concluded its interest in the matter**. **However,** **the** **committee notes the concerns of the Senate Scrutiny of Bills Committee regarding the justification for excluding from the ADJR Act decisions under items listed in Schedule 1AA to the Financial Management and Accountability Regulations 1997, and draws the attention of senators to the comments of that committee on the Financial Framework Legislation Amendment Bill 2012 in its Eleventh Report of 2012 (19 September 2012).**

### Greenhouse and Energy Minimum Standards Regulation 2012 [Select Legislative Instrument 2012 No. 239] [F2012L02037]

|  |  |
| --- | --- |
| **Purpose** | Specifies the circumstances in which the Greenhouse and Energy Minimum Standards Regulator may exempt product models from compliance with obligations under the *Greenhouse and Energy Minimum Standards Act 2012* and prescribes matters which a person must provide when applying to register a product model under that Act |
| **Last day to disallow** | 25 February 2013 |
| **Authorising legislation** | *Greenhouse and Energy Minimum Standards Act 2012* |
| **Department** | Climate Change and Energy Efficiency |

**ISSUE:**

#### Availability of merits review

Part 4 of the regulation specifies the circumstances in which the Greenhouse and Energy Minimum Standards Regulator may exempt product models from compliance with obligations under the *Greenhouse and Energy Minimum Standards Act 2012*. However, it is not clear on the face of the instrument and its ES whether a decision by the Greenhouse and Energy Minimum Standards (GEMS) Regulator under Part 4 is reviewable **[the committee sought further information from the parliamentary secretary]**.

**PARLIAMENTARY SECRETARY'S RESPONSE:**

The parliamentary secretary advised that a decision to exempt a model from a GEMS determination is not subject to review. This arises from section 164 of the *Greenhouse and Energy Minimum Standards Act 2012*, which sets out those decisions of the GEMS Regulator that are subject to review by the AAT. A decision to exempt a model from a GEMS determination is made under subsection 37(1) and is not a reviewable decision under section 164.

**COMMITTEE RESPONSE:**

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

### ASIC Class Order [CO 12/1266] [F2012L01918]; and

### ASIC Class Order [CO 12/1267] [F2012L01919]

|  |  |
| --- | --- |
| **Purpose** | Amends several class orders (to correct an unintended consequence of a previous amendment) to exempt foreign financial services providers from the requirement to notify ASIC of significant investigations where this is prohibited by foreign law |
| **Last day to disallow** | 5 February 2013 |
| **Authorising legislation** | *Corporations Act 2001* |
| **Department** | Treasury |

**ISSUE:**

#### Whether any person has been disadvantaged by previous operation of the order

The amendments made by the two class orders were considered necessary to to correct the unintended consequence of a previous amendment which required exempt foreign financial services providers and exempt foreign collective investment scheme operators to notify ASIC of significant investigations. The unintended consequence was that such notifications could be in breach of foreign law. In such cases, in which an instrument is corrective in nature, it is the committee's usual expectation that the accompanying ES address the question of whether any person or entity was disadvantaged by any unintended consequence of the previous amendment and, if so, whether and what steps have been taken to address any such disadvantage **[the committee sought further information from the parliamentary secretary]**.

**PARLIAMENTARY SECRETARY'S RESPONSE:**

The parliamentary secretary advised that persons or entities that could have been disadvantaged were any that became obliged to notify ASIC that the person or entity was the subject of a significant investigation by an overseas regulator relating to the provision of financial services in a foreign jurisdiction, and who was prohibited by foreign law from giving that notification. ASIC had advised that it was aware of only one entity to which these circumstances applied, and in that case the entity obtained the permission of the relevant foreign authority to publicly disclose the investigation. The entity was therefore able to comply with both foreign law and the requirement to notify ASIC.

**COMMITTEE RESPONSE:**

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

### Professional Standards Scheme Legislation Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 247] [F2012L02102]

|  |  |
| --- | --- |
| **Purpose** | Prescribes two professional standards schemes |
| **Last day to disallow** | 27 February 2013 |
| **Authorising legislation** | *Competition and Consumer Act 2010*; *Australian Securities and Investments Commission Act 2001*; and *Corporations Act 2001* |
| **Department** | Treasury |

**ISSUE:**

#### No information regarding consultation

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

**PARLIAMENTARY SECRETARY'S RESPONSE:**

The parliamentary secretary advised that, prior to prescribing a scheme, the Professional Standards Council seeks the opinion of independent actuarial consultants and calls for public comment via public notification in major newspapers in the relevant jurisdiction. Given this, further consultation in relation to the making of the insrument was considered unecessary (as per section 18(2)(e) of the *Legislative Instruments Act 2003*). The parliamentary secretary provided an assurance that future ESs would provide information regarding consultation in accordance with the requirements of the *Legislative Instruments Act 2003*.

**COMMITTEE RESPONSE:**

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

### Residential Care Subsidy Amendment Principles 2012 (No. 3) [F2012L02057]

|  |  |
| --- | --- |
| **Purpose** | Specifies matters to which the Secretary must have regard in determining that the daily income reduction for a care recipient is taken to be zero |
| **Last day to disallow** | 25 February 2013 |
| **Authorising legislation** | *Aged Care Act 1997* |
| **Department** | Health and Ageing |

**ISSUE:**

#### Insuffucient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18 of the Act, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states only that consultation was not undertaken regarding the amendments because they 'do not impose any disadvantage on any person other than the Commonwealth'. The committee considers that, without further information, it is difficult to ascertain what impact, advantageous or otherwise, the amendments might have **[the committee sought further information from the minister and requested that, if necessary, the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

**MINISTER'S RESPONSE:**

The minister advised that the criteria specified in the instrument are the same criteria as are applied for other hardship determinations in relation to the waiver of income tested fees, and had been inserted into the principles simply for the avoidance of doubt. The criteria would be applied in individual cases to adjusting a person's requirement to pay the basic daily fee or an income tested fee for residential aged care. Given that the instrument was effectively clarifying the prior application of the criteria to decisions to waive the income tested fee, the minister had considered that no person would be subject to any disadvantage, and therefore concluded that consultation was unecessary.

**COMMITTEE RESPONSE:**

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

### Greenhouse and Energy Minimum Standards (Air Conditioners and Heat Pumps) Determination 2012 [F2012L02129] and four related instruments[[11]](#footnote-11)

|  |  |
| --- | --- |
| **Purpose** | These instruments specify minimum energy efficiency, energy labelling and product performance requirements, and associated requirements for conducting tests, for various appliances |
| **Last day to disallow** | 28 February 2013 |
| **Authorising legislation** | *Greenhouse and Energy Minimum Standards Act 2012* |
| **Department** | Climate Change and Energy Efficiency |

**ISSUE:**

#### Drafting

The front page of the first determination has the words 'DRAFT ONLY' in the footer; and the final page of the remaining remaining determinations has the words 'DRAFT ONLY' in the footer. In such cases, the committee generally inquires as to whether the version of the instrument it has received is in fact the final approved version. **[the committee sought further information from the parliamentary secretary]**.

**PARLIAMENTARY SECRETARY'S RESPONSE:**

The parliamentary secretary confirmed that the instruments received by the committee were the final approved versions. The words 'DRAFT ONLY' had been inadvertently missed in the final proof-reading of the documents, and had since been removed from the versions of the instruments published on the Federal rRegister of Legislative Instruments (FRLI).

**COMMITTEE RESPONSE:**

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

### High Court Rules 2004 (Amendment) (November 2012) [F2012L02165]

|  |  |
| --- | --- |
| **Purpose** | Specifies a revised schedule of fees for work done or service performed in respect of proceedings in the High Court of Australia |
| **Last day to disallow** | 12 March 2013 |
| **Authorising legislation** | *Judiciary Act 1903* |
| **Department** | Attorney-General's |

**ISSUES:**

#### (a) Unclear basis for calculation of fees

The ES notes that the new schedule of fees implements 2.7 per cent increase as recommended by the Joint Costs Advisory Committee. However, the ES does not indicate the basis for this increase. The committee's usual expectation in cases where an instrument introduces or adjusts a fee or levy is that the relevant ES makes clear on its face the basis on which the new fee or levy has been calculated **[the committee sought further information from the Principal Registrar]**.

#### (b) Drafting

The making statement for the instrument states only that the instrument is made under the *Judiciary Act 1903*, and does not contain a specific reference to the provision under which it is made (section 86). The committee considers that an instrument and its ES should identify clearly the legislative authority for the making of the insreument, and generally raises such matters in the interests of ensuring the highest quality of standards of drafting in legislative instruments in accordance with subsection 3(c) of the *Legislative Instruments Act 2003*, which states that an object of the Act is 'encouraging high standards in the drafting of legislative instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users' **[the committee drew this issue to the attention of the Principal Registrar]**.

#### (c) No information regarding consultation

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

#### (d) No statement of compatibility with human rights

Section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires a rule-maker to prepare a statement of compatibility with specified human rights for each disallowable legislative instrument. No statement of compatibility has been supplied with these amendment rules **[the committee sought further information from the Principal Registrar]**.

**PRINCIPAL REGISTRAR'S RESPONSE:**

In relation to issue (a), the Principal Registrar advised that increase to the schedule of fees was a 'mechanistic' amendment adopting the recommendations of the Joint Costs Advisory Committee (JCAC), and provided a copy of the JCAC report containing the formula applied to the annual review of the schedule of fees. The Principal Registrar indicated that the Court would be willing to include this information in future ESs, noting that this may increase their length and complexity.

In relation to issue (b), the Principal Registrar advised that the Court would be willing in future to include specific reference to the authorising provision(s) under which a rule was made.

In relation to issue (c), the Principal Registrar advised that in conducting its annual review the longstanding practice of the JCAC was to invite the Attorney-General's Department, the Law Council of Australia, the National Association of Community Legal Aid Centres and the National legal Aid to make submissions to the review. The Principal Registrar indicated that the Court would be willing to provide information on consultation in ESs in future.

In relation to issue (d), the Principal Registrar advised that, in the course of drafting the instrument, the Office of Legislative Drafting and Publishing (OLDP) had advised that the requirement to provide a statement of compatibility did not apply to rules of court made by a federal court (including the High Court). This was because a precondition of the requirement was that the instrument in question be a 'legislative instrument' to which section 42 of the *Legislative Instruments Act 2003* applies (that is, the instrument is subject to disallowance under that Act). As section 9 of the *Legislative Instruments Act 2003* provides that rules of court are not legislative instruments for the purposes of that Act, a statement of compatibility was not required in respect of the current instrument.

**COMMITTEE RESPONSE:**

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

### Carbon Credits (Carbon Farming Initiative) (Conservative Estimates, Projections or Assumptions: Greenhouse Friendly Initiative Transitional Crediting Calculation (Alternative Waste Treatment) Determination 2012 [F2012L02191]

|  |  |
| --- | --- |
| **Purpose** | Determines that a specified estimate for alternative waste treatment projects transitioning from the Greenhouse Friendly initiative is conservative |
| **Last day to disallow** | 18 March 2013 |
| **Authorising legislation** | *Carbon Credits (Carbon Farming Initiative) Act 2011* |
| **Department** | Climate Change and Energy Efficiency |

**ISSUE:**

#### No information regarding consultation

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

**PARLIAMENTARY SECRETARY'S RESPONSE:**

The parliamentary secretary advised that the department sought public submissions on the instrument's approach to crediting, which was published on the department's website for two separate 40-day periods as componenets of the methodology proposals for legacy alternative waste treatment. The submissions received were a contributing factor to the instrument's creation. The parliamentary secretary further advised that the ES had been amended to include information regarding consultation in accordance with the requirements of the *Legislative Instruments Act 2003*.

**COMMITTEE RESPONSE:**

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

### Defence Determination 2012/65, Cadet forces allowance – amendment

|  |  |
| --- | --- |
| **Purpose** | Specifies adjustments to the rates of cadet forces allowance |
| **Last day to disallow** | 14 March 2013 |
| **Authorising legislation** | *Defence Act 1903* |
| **Department** | Defence |

**ISSUE:**

#### Unclear basis for calculation of

The ES for the instrument notes that the determination specifies a 2.5 per cent increase in the rates of cadet forces allowance, following an annual review of the allowance. However, the ES does not indicate the basis on which this increase was determined. The committee's usual expectation in cases where an instrument introduces or adjusts an allowance or entitlement is that the relevant ES makes clear on its face the basis on which the new rate has been calculated **[the committee sought further information from the parliamentary secretary]**.

**PARLIAMENTARY SECRETARY'S RESPONSE:**

The parliamentary secretary advised that the allowance was adjusted by the same percentage as the general salary increase provided to the Australian Defence Force, in keeping with the method that has been used to calculate the allowance since 2010. The parliamentary secretary further advised that ESs for future changes to this allowance would detail the methodology used to calculate the amount of allowance.

**COMMITTEE RESPONSE:**

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

### Customs Amendment Regulation 2012 (No. 8) [Select Legislative Instrument 2012 No. 249] [F2012L02159]

|  |  |
| --- | --- |
| **Purpose** | Amends the drawback provisions in the principal regulations as they apply to tobacco and tobacco products, and makes related amendments |
| **Last day to disallow** | 12 March 2013 |
| **Authorising legislation** | *Customs Act 1901* |
| **Department** | Attorney-General's |

**ISSUE:**

#### Adequacy of consultation

The ES to this instrument states that no consultation was undertaken because the amendments are of 'a minor or machinery nature'. While the committee recognises that this is a common and recognised reson for not undertaking consultation (as per section 18(2)(a) of the *Legislative Instruments Act 2003*), the ES elsewhere states that the amendments impose 'more stringent requirements' regarding the payment of a drawback for tobacco and tobacco products. For example, the time period within which a person may make a claim for drawback is reduced from four years to 12 months. In the committee's view, it is not clear how the imposition of more stringent requirements such as this can be described as 'minor or machinery', and it follows that there is a question as to whether consultation would have been appropriate in relation to these amendments **[the committee sought further information from the Attorney-General]**.

**MINISTER'S RESPONSE:**

The Minister for Home Affairs responded, and advised that the impact of the reduced time period in which a person may claim for drawback was considered to be minor and would have affected less than only 0.5 per cent of all claims made since October 2005. The minister further noted that industry had been consulted and supported the proposed changes to the drawback and refund provisions.

**COMMITTEE RESPONSE:**

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

### Financial Management and Accountability Amendment Regulation 2012 (No. 8) [Select Legislative Instrument 2012 No. 248] [F2012L02091]

|  |  |
| --- | --- |
| **Purpose** | Adds one new Government program to Part 4 of Schedule 1AA to the principal regulations, and amends an existing program description |
| **Last day to disallow** | 27 February 2013 |
| **Authorising legislation** | *Financial Management and Accountability Act 1997* |
| **Department** | Finance and Deregulation |

**ISSUE:**

#### Lack of information regarding administration of program

The amendment relies on section 32B of the *Financial Management and Accountability Act 1997*, which provides legislative authority for the Government to spend monies on programs listed in Schedule 1AA to Financial Management and Accountability Regulations 1997. Section 32B was introduced in response to the decision of the High Court in *Williams v Commonwealth* ([2012] HCA 23) in June 2012. The program that is amended by this amendment regulation involves a number of payment arrangements for the Mature-Age Participation–Assistance Program. However, no further information is supplied about the nature of the program, such as how decisions are to be made made about the provision of financial assistance under the various sub-programs, the criteria for decisions regarding the provision of assistance and whether independent review is available in respect of those decisions **[the committee sought further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister advised that the instrument effectively broadened the description of the Mature-Age Participation–Assistance Program to ensure that the description adequately covered the range of subprograms under the program. The subprograms were Experience+Jobs Bonus, Corporate Champions, Mature Age Participation—Job Seeker Assistance Program and Mature Age Communications Strategy, and each of these had a specific allocation and guidelines or processes (such as tender) to guide the allocation of assistance (described in detail in the minister's letter).

In relation to the availability of independent merits review of decisions to provide assistance under the program or subprograms, the minister advised that such decisions involved the allocation of finite resources and were therefore not suitable for merits review (such as by the AAT). Decisions under items listed in Schedule 1AA of the Financial Management and Accountability Regulations 1997 had been specifically excluded from judicial review under the *Adminstrative Decisions (Judicial Review) Act 1997* (ADJR Act). However, review may be available under section 39B of the *Judiciary Act 1903* and section 75(v) of the Constitution, in addition to recourse to the Ombudsman.

**COMMITTEE RESPONSE:**

**The committee thanks the minister for her response and has concluded its interest in the matter**. **However,** **the** **committee notes the concerns of the Senate Scrutiny of Bills Committee regarding the justification for excluding from the ADJR Act decisions under items listed in Schedule 1AA to the Financial Management and Accountability Regulations 1997, and draws the attention of senators to the comments of that committee on the Financial Framework Legislation Amendment Bill 2012 in its Eleventh Report of 2012 (19 September 2012).**

### Migration Amendment Regulation 2012 (No. 5) [Select Legislative Instrument 2012 No. 230] [F2012L01961]

|  |  |
| --- | --- |
| **Purpose** | Amends the principal regulations to define the term 'irregular maritime arrival' and to provide for consequential matters |
| **Last day to disallow** | 5 February 2013 |
| **Authorising legislation** | *Migration Act 1958* |
| **Department** | Immigration and Citizenship |

**ISSUE:**

#### Insufficient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the instrument states that it was made in response to the Report of the Expert Panel on Asylum Seekers and, due to the urgency of giving effect to that report's recommendations, no consultation was undertaken in relation to the instrument (beyond that undertaken by the Expert Panel). However, no indication is given as to the reason for the need to give urgent effect to the report's recommendations and, to the extent that the consultation conducted by the Expert Panel is being relied on, the nature of that consultation is not described **[the committee sought further information from the minister].**

**MINISTER'S RESPONSE:**

The minister advised that the instrument was made following the government's decision on 13 August 2012 to immediately implement certain recommendations of the Expert Panel in order to deter people from attempting dangerous maritime voyages to Australia. In preparing its report, the Expert Panel held meetings with key stakeholders and representatives with some refugee communities in Australia and called for and received more than 550 written submissions on asylum issues.

**COMMITTEE RESPONSE:**

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

### CASA 364/12 - Direction - number of cabin attendants (National Jet Systems) [F2012L02169]

|  |  |
| --- | --- |
| **Purpose** | Permits a named operator to operate a certain type of aircraft with less than three cabin attendants |
| **Last day to disallow** | 12 March 2013 |
| **Authorising legislation** | Civil Aviation Regulations 1988 |
| **Department** | Infrastructure and Transport |

**ISSUE:**

#### Timetable for making of substantive amendments to orders

The instrument specifies the minimum number of cabin attendants required on specified aircraft operated by a particular operator, and revokes and replaces a previous instrument of similar effect. In doing so, the instrument grants an exemption from Civil Aviation Order 20.16.3. The ES for this instrument states that CASA is investigating amendments to that Civil Aviation Order so as to avoid the need for individual exemptions. The committee generally prefers that exemptions are not used or do not operate as de facto amendments to principal legislation, and has previously written to the minister as to the continued need for exemptions with a similar purpose to the present instrument, and seeking advice as to the progress on the amendments to Civil Aviation Order 20.16.3 [**the committee sought** **further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister advised that progress on this issue is dependent on the progress of developing the proposed Civil Aviation Safety Regulations Part 121 'Air Transport Operations – Large Aeroplanes'. Development of this part would be progressed in 2013.

**COMMITTEE RESPONSE:**

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

# Appendix 1

## Index of instruments scrutinised

The following instruments were considered by the committee at its meeting on **7 February 2013**.

The Federal Register of Legislative Instruments (FRLI) website should be consulted for the text of instruments and explanatory statements, as well as associated information.[[12]](#footnote-12) Instruments may be located on FRLI by entering the relevant FRLI number into the FRLI search field (the FRLI number is shown in square brackets after the name of each instrument listed below).

### Instruments received week ending 30 November 2012

***Australian Crime Commission Act 2002***

Australian Crime Commission Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 269] [F2012L02242]

***Australian Meat and Live-stock Industry Act 1997***

Australian Meat and Live-stock Industry (Sheepmeat and Goatmeat Export to the European Union – Quota Year 2013) Order 2012 [F2012L02274]

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

Australian Prudential Regulation Authority (confidentiality) determination No. 25 of 2012 [F2012L02264]

***Aviation Transport Security Act 2004***

Aviation Transport Security Amendment Regulation 2012 (No. 5) [Select Legislative Instrument 2012 No. 257] [F2012L02247]

***Broadcasting Services Act 1992***

Television Licence Area Plan (Broken Hill) Variation 2012 [F2012L02259]

Television Licence Area Plan (Riverland) Variation 2012 [F2012L02252]

Television Licence Area Plan (Spencer Gulf) Variation 2012 [F2012L02255]

***Civil Aviation Act 1988***

CASA EX168/12 – Exemption – from standard take-off and landing minima – AirBridgeCargo Airlines Ltd [F2012L02265]

CASA EX170/12 – Exemption – of authorised flying instructors employed by Singapore Flying College Pte Ltd [F2012L02268]

***Climate Change Authority Act 2011***

Climate Change Authority Act 2011 – specification under section 62(1)(c) – National Wildlife Corridors [F2012L02262]

***Corporations Act 2001***

ASIC Market Integrity Rules (ASX Market) Amendment 2012 (No. 3) [F2012L02248]

ASIC Market Integrity Rules (Chi-X Australian Market) Amendment 2012 (No. 3) [F2012L02251]

ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2012 (No. 1) [F2012L02250]

Corporations Amendment Regulations 2010 (No. 3) Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 266] [F2012L02245]

Corporations Amendment Regulation 2012 (No. 9) [Select Legislative Instrument 2012 No. 267] [F2012L02235]

Corporations Amendment Regulation 2012 (No. 10) [Select Legislative Instrument 2012 No. 268] [F2012L02261]

***Defence Act 1903***

Defence Determination 2012/66, Senior officer transitional bonus – amendment

Defence Determination 2012/67, Carer's leave – amendment

***Fair Work (Transitional Provisions and Consequential Amendments) Act 2009***

Fair Work (Transitional Provisions and Consequential Amendments) Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 270] [F2012L02260]

***Fisheries Management Act 1991***

Heard Island and McDonald Islands Fishery Total Allowable Catch Determination 2012 [F2012L02257]

***Fuel Quality Standards Act 2000***

Fuel Quality Standards Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 259] [F2012L02266]

***Fuel Tax Act 2006***

Fuel Tax Act 2006 – Correcting Fuel Tax Errors Determination (No. 1) 2012 [F2012L02279]

***Health Insurance Act 1973***

Health Insurance (Pathology Services Table) Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 254] [F2012L02242]

***Higher Education Support Act 2003***

Higher Education Support Act 2003 – Higher Education (Disclosure of Information to Other Bodies) Determination 2012 [F2012L02256]

***Maritime Transport and Offshore Facilities Security Act 2003***

Maritime Transport and Offshore Facilities Security Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 258] [F2012L02263]

***Migration Act 1958***

Migration Amendment Regulation 2012 (No. 7) [Select Legislative Instrument 2012 No. 255] [F2012L02233]

Migration Legislation Amendment Regulation 2012 (No. 5) [Select Legislative Instrument 2012 No. 256] [F2012L02236]

***National Transmission Network Sale Act 1998***

National Transmission Network (Declared Successor) Declaration No. 1 of 2012 [F2012L02234]

***Ozone Protection and Synthetic Greenhouse Gas Management Act 1989***

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

Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulation 2012 (No. 4) [Select Legislative Instrument 2012 No. 261] [F2012L02270]

***Private Health Insurance Act 2007***

Private Health Insurance (Complying Product) Amendment Rules 2012 (No. 9) [F2012L02269]

***Product Stewardship Act 2011***

Product Stewardship Regulation 2012 [Select Legislative Instrument 2012 No. 262] [F2012L02244]

Product Stewardship (Voluntary Arrangements) Instrument 2012 [F2012L02258]

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

Superannuation (prudential standard) determination No. 1 of 2012 – Prudential Standard SPS 114 Operational Risk Financial Requirement [F2012L02221]

Superannuation (prudential standard) determination No. 2 of 2012 – Prudential Standard SPS 220 Risk Management [F2012L02222]

Superannuation (prudential standard) determination No. 3 of 2012 – Prudential Standard SPS 231 Outsourcing [F2012L02223]

Superannuation (prudential standard) determination No. 4 of 2012 – Prudential Standard SPS 232 Business Continuity Management [F2012L02224]

Superannuation (prudential standard) determination No. 5 of 2012 – Prudential Standard SPS 250 Insurance in Superannuation [F2012L02225]

Superannuation (prudential standard) determination No. 6 of 2012 – Prudential Standard SPS 510 Governance [F2012L02229]

Superannuation (prudential standard) determination No. 7 of 2012 – Prudential Standard SPS 521 Conflicts of Interest [F2012L02230]

Superannuation (prudential standard) determination No. 8 of 2012 – Prudential Standard SPS 530 Investment Governance [F2012L02231]

***Telecommunications Act 1997***

Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 1 of 2012) [F2012L02218]

***Therapeutic Goods Act 1989***

Therapeutic Goods Information (Joint Adverse Event Notifications System) Specification 2012 [F2012L02272]

***Transport Safety Investigation Act 2003***

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

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

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

***Water Act 2007***

Water Act 2007 – Basin Plan 2012 [F2012L02240]

### Instruments received week ending 14 December 2012

***Aged Care Act 1997***

Classification Amendment Principles 2012 [F2012L02298]

**Annual Appropriation Acts**

Determination to Reduce Appropriations (No. 3 of 2012-2013) [F2012L02320]

***Auditor-General Act 1997***

Australian National Audit Office (ANAO) Auditing Standards (30/11/2012) [F2012L02316]

***Australian Capital Territory (Planning and Land Management) Act 1988***

National Capital Plan – Amendment 74 – Section 5 Campbell [F2012L02324]

National Capital Plan – Amendment 76 – Policy 4.4(d) for Urban Areas [F2012L02325]

***Australian Communications and Media Authority Act 2005***

Radiocommunications (Interpretation) Amendment Determination 2012 (No. 1) [F2012L02304]

***Australian Participants in British Nuclear Tests (Treatment) Act 2006***

Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Removal of Prior Approval/New Dental Providers) Instrument 2012 (No. R29/2012) [F2012L02321]

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

Australian Prudential Regulation Authority (confidentiality) determination No. 22 of 2012 [F2012L02336]

***Banking Act 1959***

Banking (prudential standard) determination No. 2 of 2012 – Prudential Standard APS 001 – Definitions [F2012L02328]

Banking (prudential standard) determination No. 3 of 2012 – Prudential Standard APS 110 – Capital Adequacy [F2012L02327]

Banking (prudential standard) determination No. 4 of 2012 – Prudential Standard APS 111 – Capital Adequacy: Measurement of Capital [F2012L02335]

Banking (prudential standard) determination No. 5 of 2012 – Prudential Standard APS 112 – Capital Adequacy: Standardised Approach to Credit Risk [F2012L02330]

Banking (prudential standard) determination No. 6 of 2012 – Prudential Standard APS 113 – Capital Adequacy: Internal Ratings-based Approach to Credit Risk [F2012L02329]

Banking (prudential standard) determination No. 7 of 2012 – Prudential Standard APS 114 – Capital Adequacy: Standardised Approach to Operational Risk [F2012L02332]

Banking (prudential standard) determination No. 8 of 2012 – Prudential Standard APS 115 – Capital Adequacy: Advanced Measurement Approaches to Operational Risk [F2012L02331]

Banking (prudential standard) determination No. 9 of 2012 – Prudential Standard APS 116 – Capital Adequacy: Market Risk [F2012L02338]

Banking (prudential standard) determination No. 10 of 2012 – Prudential Standard APS 117 – Capital Adequacy: Interest Rate Risk in the Banking Book (Advanced ADIs) [F2012L02334]

Banking (prudential standard) determination No. 11 of 2012 – Prudential Standard APS 120 – Securitisation [F2012L02339]

Banking (prudential standard) determination No. 12 of 2012 – Prudential Standard APS 220 – Credit Quality [F2012L02345]

Banking (prudential standard) determination No. 13 of 2012 – Prudential Standard APS 221 – Large Exposures [F2012L02340]

Banking (prudential standard) determination No. 14 of 2012 – Prudential Standard APS 222 – Associations with Related Entities [F2012L02342]

Banking (prudential standard) determination No. 16 of 2012 – Prudential Standard APS 330 – Public Disclosure of Prudential Information [F2012L02344]

***Broadcasting Services Act 1992***

Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 14 of 2012) [F2012L02322]

***Carbon Credits (Carbon Farming Initiative) Act 2011***

Carbon Credits (Carbon Farming Initiative) (Avoided Emissions from Diverting Legacy Waste from Landfill for Process Engineered Fuel Manufacture) Methodology Determination 2012 [F2012L02341]

***Civil Aviation Act 1988***

AD/EC 135/10 Amdt 1 – Main Rotor – Sliding Sleeve [F2012L02319]

AD/TPE 331/63 Amdt 2 – Fuel Control Unit Drive Spline [F2012L02317]

CASA ADCX 024/12 – Revocation of Airworthiness Directives [F2012L02293]

CASA EX167/12 – Exemption – from CASR Subpart 99.B for micro-businesses [F2012L02283]

CASA EX172/12 – Exemption – minimum height and lateral separation for operations [F2012L02294]

CASA EX175/12 – Exemption – side-facing seats on aircraft not occupied for take-off or landing [F2012L02288]

CASA EX176/12 – Exemption – recency requirements for night flying (National Jet Express Pty Ltd) [F2012L02296]

CASA EX177/12 – Exemption – from flight simulator user approval [F2012L02323]

CASA EX179/12 – Exemption – minimum height and lateral separation for operations [F2012L02297]

CASA EX181/12 – Exemption – CASR Part 99 DAMP requirements for CAR 30 or Part 145 organisations overseas [F2012L02302]

***Corporations Act 2001***

ASIC Class Order [CO 12/1592] [F2012L02299]

***Customs Act 1901***

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

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

Amendment – List of Specimens taken to be Suitable for Live Import (13/11/2012) [F2012L02312]

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

Financial Management and Accountability (Abolition of 27 Special Account Determinations) Determination 2012/17 [F2012L02308]

***Fisheries Management Act 1992***

Southern Squid Jig Fishery Total Allowable Effort Determination 2012 [F2012L02337]

***Health Insurance Act 1973***

Health Insurance (Professional Services Review) Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 298] [F2012L02370]

***Higher Education Support Act 2003***

Higher Education Provider Approval No. 13 of 2012 [F2012L02310]

Higher Education Support Act 2003 – Revocation of Approval as a Higher Education Provider (Minister for Employment, Higher Education and Skills (SA)) [F2012L02314]

Higher Education Support Act 2003 – VET Provider Approval (No. 25 of 2012) [F2012L02305]

Higher Education Support Act 2003 – VET Provider Approval (No. 26 of 2012) [F2012L02306]

***Insurance Act 1973***

Insurance (prudential standard) determination No. 12 of 2012 – Prudential Standard GPS 310 – Audit and Related Matters [F2012L02369]

***Military Rehabilitation and Compensation Act 2004***

Military Rehabilitation and Compensation Act Education and Training Scheme (Portability Adjustments) Determination 2012 (No. MRCC 57/2012) [F2012L02315]

MRCA Treatment Principles (Removal of Prior Approval/New Dental Providers/Coordinated Care Adjustment) Instrument 2012 (No. MRCC 28/2012) [F2012L02307]

***National Environment Protection Council Act 1994***

National Environment Protection (Movement of Controlled Waste between States and Territories) Measure Minor Variation 2012 (No. 1) [F2012L02300]

***National Greenhouse and Energy Reporting Act 2007***

National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2012 [F2012L02295]

***National Health Act 1953***

National Health Act 1953 – Amendment Determination under paragraph 98C(1)(b) (No. PB 95 of 2012) [F2012L02287]

National Health Act 1953 – Amendment Determination under section 84AH (2012) (No. 3)
(No. PB 103 of 2012) [F2012L02285]

National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2012 (No. 9) (No. PB 97 of 2012) [F2012L02290]

National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2012 (No. 1) (No. PB 106 of 2012) [F2012L02286]

National Health (Listed drugs on F1 or F2) Amendment Determination 2012 (No. 8) (No. PB 99 of 2012) [F2012L02282]

National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2012 (No. 8) (No. PB 93 of 2012) [F2012L02291]

National Health Act (Pharmaceutical Benefits – Early Supply) Amendment December 2012 – specification under subsection 84AAA(2) (No. PB 104 of 2012) [F2012L02292]

National Health (Prescriber bag supplies) Amendment Determination 2012 (No. 1) (No. PB 100 of 2012) [F2012L02289]

National Health (Price and Special Patient Contribution) Amendment Determination 2012 (No. 7) (No. PB 94 of 2012) [F2012L02284]

***National Vocational Education and Training Regulator Act 2011***

ASQA Authorised Officer Requirements [F2012L02326]

***Taxation Administration Act 1953***

Taxation Administration Act 1953 – Notice of exemption from providing payment summaries to passbook account holders [F2012L02333]

***Veterans' Entitlements Act 1986***

Veterans' Entitlements (Treatment Principles – Removal of Prior Approval/New Dental Providers/Coordinated Care Adjustment) 2012 (No. R27/2012) [F2012L02309]

Veterans' Entitlements (Veterans' Children Education Scheme – Portability Adjustments) Instrument 2012 (No. R56/2012) [F2012L02313]

### Instruments received week ending 4 January 2013

***Australian Broadcasting Corporation Act 1983***

Australian Broadcasting Corporation (Election of Staff-elected Director) Regulation 2012 [Select Legislative Instrument 2012 No. 285] [F2012L02400]

***Australian Meat and Live-stock Industry Act 1997***

Australian Meat and Live-stock Industry (Beef Export to the USA-Quota Year 2013) Order 2012 [F2012L02418]

***Australian National Registry of Emissions Units Act 2011***

Australian National Registry of Emissions Units Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 288] [F2012L02443]

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

Australian Prudential Regulation Authority (confidentiality) determination No. 23 of 2012 [F2012L02373]

Australian Prudential Regulation Authority (confidentiality) determination No. 24 of 2012 [F2012L02351]

***Australian Sports Anti-Doping Authority Act 2006***

Australian Sports Anti-Doping Authority Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 307] [F2012L02385]

***Aviation Transport Security Act 2004***

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

***Banking Act 1959***

Banking, Insurance and Life Insurance (prudential standard) determination No. 1 of 2012 - Prudential Standard CPS 231 – Outsourcing [F2012L02439]

Banking, Insurance and Life Insurance (prudential standard) determination No. 2 of 2012 - Prudential Standard CPS 232 - Business Continuity Management [F2012L02440]

Banking, Insurance and Life Insurance (prudential standard) determination No. 3 of 2012 - Prudential Standard CPS 510 – Governance [F2012L02441]

Banking, Insurance and Life Insurance (prudential standard) determination No. 4 of 2012 - Prudential Standard CPS 520 - Fit and Proper [F2012L02445]

Banking (prudential standard) determination No. 15 of 2012 - Prudential Standard APS 310 - Audit and Related Matters [F2012L02343]

Banking (prudential standard) determination No. 17 of 2012 - Prudential Standard APS 610 - Prudential Requirements for Providers of Purchased Payment Facilities [F2012L02346]

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

***Broadcasting Services Act 1992***

Broadcasting Services (Regional Commercial Radio - Specification of Periods for Subsections 43C(1A) and 61CD(2)) Instrument 2012 [F2012L02471]

Television Licence Area Plan (Adelaide) 2012 [F2012L02437]

Television Licence Area Plan (Melbourne) 2012 [F2012L02431]

Television Licence Area Plan (Mildura/Sunraysia) 2012 [F2012L02447]

Television Licence Area Plan (Perth) 2012 [F2012L02394]

Television Licence Area Plan (Regional Victoria) 2012 [F2012L02454]

Television Licence Area Plan (Southern New South Wales) 2012 [F2012L02457]

Television Licence Area Plan (Sydney) 2012 [F2012L02396]

Television Licence Area Plan (Tasmania) 2012 [F2012L02455]

***Child Support (Registration and Collection) Act 1988***

SSAT Child Support Review General Directions 2012 [F2012L02459]

***Civil Aviation Act 1988***

CASA 388/12 - Permission - radiocommunication systems - Lloyd Helicopters Pty Ltd [F2012L02352]

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

CASA 398/12 - Direction - number of cabin attendants (Virgin Australia International Airlines) [F2012L02449]

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

CASA EX185/12 - Exemption - carriage of children suffering from a serious medical condition [F2012L02426]

CASA EX186/12 - Exemption - Virgin Australia International Airlines from subregulation 217 (2) of CAR 1988 and paragraph 3.3 of CAO 82.5 [F2012L02427]

***Clean Energy Act 2011***

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

***Corporations Act 2001***

Corporations Amendment Regulation 2012 (No. 6) Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 308] [F2012L02414]

***Crimes Act 1914***

Crimes Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 274] [F2012L02379]

***Crimes (Overseas) Act 1964***

Crimes (Overseas) (Declared Foreign Countries) Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 275] [F2012L02357]

***Customs Act 1901***

Customs Amendment Regulation 2012 (No. 9) [Select Legislative Instrument 2012 No. 276] [F2012L02382]

Customs Amendment Regulation 2012 (No.10) [Select Legislative Instrument 2012 No. 327] [F2012L02416]

Customs Legislation Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 320] [F2012L02371]

***Dental Benefits Act 2008***

Dental Benefits Amendment Rules 2012 [F2012L02347]

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

Amendment of List of Exempt Native Specimens - Northern Territory Aquarium Fishery (12/12/2012) (deletion) [F2012L02433]

Amendment of List of Exempt Native Specimens - Northern Territory Aquarium Fishery (12/12/2012) (inclusion) [F2012L02436]

Amendment of List of Exempt Native Specimens - Queensland Gulf of Carpentaria Inshore Fin Fish Fishery [F2012L02389]

Amendment of List of Exempt Native Specimens - Western Deepwater Trawl Fishery and North West Slope Trawl Fishery (28/11/2012) [F2012L02392]

Threat Abatement Plan to reduce the impacts on northern Australia’s biodiversity by the five listed grasses [F2012L02359]

***Excise Act 1901***

Excise (Volume - residual oil) Determination 2012 (No. 1) [F2012L02350]

***Extradition Act 1988***

Extradition (Convention for Suppression of Acts of Nuclear Terrorism) Regulation 2012 [Select Legislative Instrument 2012 No. 277] [F2012L02434]

***Fair Work Act 2009***

Fair Work Legislation Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 321] [F2012L02417

Fair Work Legislation Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 322] [F2012L02409

Fair Work Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 323] [F2012L02402]

***Family Law Act 1975***

Family Law Amendment Regulation 2012 (No. 4) [Select Legislative Instrument 2012 No. 278] [F2012L02391]

Family Law (Fees) Regulation 2012 [Select Legislative Instrument 2012 No. 279] [F2012L02395]

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

***Federal Court of Australia Act 1976***

Federal Court and Federal Magistrates Court Regulation 2012 [Select Legislative Instrument 2012 No. 280] [F2012L02411]

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

Financial Management and Accountability Amendment Regulation 2012 (No. 9) [Select Legislative Instrument 2012 No. 328] [F2012L02387]

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

Financial Sector (Collection of Data) (reporting standard) determination No. 5 of 2012 - ARS 110.0 - Capital Adequacy [F2012L02483]

Financial Sector (Collection of Data) (reporting standard) determination No. 6 of 2012 - ARS 111.0 - Fair Values [F2012L02485]

Financial Sector (Collection of Data) (reporting standard) determination No. 7 of 2012 - ARS 112.1 - Standardised Credit Risk - On-balance Sheet Assets [F2012L02486]

***Fisheries Levy Act 1984***

Fisheries Levy (Torres Strait Prawn Fishery) Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 273] [F2012L02355]

***Fishing Levy Act 1991***

Fishing Levy Regulation 2012 [Select Legislative Instrument 2012 No. 272] [06/12/12]

***Foreign Acquisitions and Takeovers Act 1975***

Foreign Acquisitions and Takeovers Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 309] [F2012L02410]

***Foreign Evidence Amendment Act 2010***

Foreign Evidence (Application of Amendments) Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 281] [F2012L02390]

***Health Insurance Act 1973***

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

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

Health Insurance (Pathology Services Table) Amendment Regulation 2012 (No. 4) [Select Legislative Instrument 2012 No. 297] [F2012L02413]

Health Insurance Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 293] [F2012L02368]

Health Insurance Amendment Regulation 2012 (No. 4) [Select Legislative Instrument 2012 No. 294] [F2012L02372]

***Higher Education Support Act 2003***

Commonwealth Grant Scheme Guidelines 2012 [F2012L02442]

***Illegal Logging Prohibition Act 2012***

Illegal Logging Prohibition Regulation 2012 [Select Legislative Instrument 2012 No. 271] [F2012L02404]

***Income Tax Assessment Act 1997***

Income Tax Assessment Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 310] [F2012L02398]

***Insurance Act 1973***

Insurance (prudential standard) determination No. 1 of 2012 - Prudential Standard GPS 001 – Definitions [F2012L02349]

Insurance (prudential standard) determination No. 2 of 2012 - Prudential Standard GPS 110 - Capital Adequacy [F2012L02358]

Insurance (prudential standard) determination No. 3 of 2012 - Prudential Standard GPS 113 - Capital Adequacy: Internal Model-based Method [F2012L02356]

Insurance (prudential standard) determination No. 4 of 2012 - Prudential Standard GPS 114 - Capital Adequacy: Asset Risk Charge [F2012L02360]

Insurance (prudential standard) determination No. 5 of 2012 - Prudential Standard GPS 115 - Capital Adequacy: Insurance Risk Charge [F2012L02380]

Insurance (prudential standard) determination No. 6 of 2012 - Prudential Standard GPS 116 - Capital Adequacy: Insurance Concentration Risk Charge [F2012L02362]

Insurance (prudential standard) determination No. 7 of 2012 - Prudential Standard GPS 117 - Capital Adequacy: Asset Concentration Risk Charge [F2012L02363]

Insurance (prudential standard) determination No. 8 of 2012 - Prudential Standard GPS 118 - Capital Adequacy: Operational Risk Change [F2012L02364]

Insurance (prudential standard) determination No. 9 of 2012 - Prudential Standard GPS 120 - Assets in Australia [F2012L02366]

Insurance (prudential standard) determination No. 10 of 2012 - Prudential Standard GPS 220 - Risk Management [F2012L02361]

Insurance (prudential standard) determination No. 11 of 2012 - Prudential standard GPS 230 - Reinsurance Management [F2012L02365]

Insurance (prudential standard) determination No. 13 of 2012 - Prudential Standard GPS 320 - Actuarial and Related Matters [F2012L02446]

Insurance (prudential standard) determination No. 14 of 2012 - Prudential Standard GPS 111 - Capital Adequacy: Level 2 Insurance Groups; Prudential Standard GPS 221 - Risk Management: Level 2 Insurance Groups; Prudential Standard GPS 311 - Audit and Acturial Reporting and Valuation: Level 2 Insurance Groups [F2012L02448]

Insurance (prudential standard) determination No. 15 of 2012 - Prudential Standard GPS 112 - Capital Adequacy: [Measurement of Capital [F2012L02451]

***Judiciary Act 1903***

High Court of Australia (Fees) Regulation 2012 [Select Legislative Instrument 2012 No. 282] [F2012L02393]

***Legislative Instruments Act 2003***

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

***Life Insurance Act 1995***

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

Life Insurance (prudential standard) determination No. 1 of 2012 - Prudential Standard LPS 001 – Definitions [F2012L02461]

Life Insurance (prudential standard) determination No. 2 of 2012 - Prudential Standard LPS 110 - Capital Adequacy [F2012L02460]

Life Insurance (prudential standard) determination No. 3 of 2012 - Prudential Standard LPS 112 - Capital Adequacy: Measurement of Capital [F2012L02463]

Life Insurance (prudential standard) determination No. 4 of 2012 - Prudential Standard LPS 114 - Capital Adequacy: Asset Risk Charge [F2012L02464]

Life Insurance (prudential standard) determination No. 5 of 2012 - Prudential Standard LPS 115 - Capital Adequacy: Insurance Risk Charge [F2012L02462]

Life Insurance (prudential standard) determination No. 6 of 2012 - Prudential Standard LPS 117 - Capital Adequacy: Asset Concentration Risk Charge [F2012L02465]

Life Insurance (prudential standard) determination No. 7 of 2012 - Prudential Standard LPS 118 - Capital Adequacy: Operational Risk Charge [F2012L02466]

Life Insurance (prudential standard) determination No. 8 of 2012 - Prudential Standard LPS 100 - Solvency Standard [F2012L02468]

Life Insurance (prudential standard) determination No. 9 of 2012 - Prudential Standard LPS 220 - Risk Management [F2012L02469]

Life Insurance (prudential standard) determination No. 10 of 2012 - Prudential Standard LPS 310 - Audit and Related Matters [F2012L02467]

Life Insurance (prudential standard) determination No. 12 of 2012 - Prudential Standard LPS 340 - Valuation of Policy Liabilities [F2012L02475]

Life Insurance (prudential standard) determination No. 13 of 2012 - Prudential Standard LPS 360 - Termination Values, Minimum Surrender Values and Paid-up Values [F2012L02477]

Life Insurance (prudential standard) determination No. 14 of 2012 - Prudential Standard LPS 370 - Cost of Investment Performance Guarantees [F2012L02478]

Life Insurance (prudential standard) determination No. 16 of 2012 - Prudential Standard LPS 700 - Friendly Society Benefit Funds [F2012L02482]

Life Insurance (prudential standard) determination No. 17 of 2012 [F2012L02484]

***Migration Act 1958***

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

***Motor Vehicle Standards Act 1989***

Motor Vehicle Standards Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 305] [F2012L02377]

***Mutual Assistance in Business Regulation Act 1992***

Mutual Assistance in Business Regulation Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 312] [F2012L02432]

***National Consumer Credit Protection Act 2009***

National Consumer Credit Protection Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 313] [F2012L02415]

National Consumer Credit Protection Amendment Regulation 2012 (No. 4) [Select Legislative Instrument 2012 No. 314] [F2012L02429]

***National Health Act 1953***

National Health (Pharmaceutical Benefits) Amendment Regulation 2012 (No. 5) [Select Legislative Instrument 2012 No. 299] [F2012L02388]

***National Measurement Act 1960***

National Trade Measurement Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 302] [F2012L02420]

***National Rental Affordability Scheme Act 2008***

National Rental Affordability Scheme Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 300] [F2012L02444]

***Personally Controlled Electronic Health Records Act 2012***

PCEHR (Assisted Registration) Rules 2012 [F2012L02383]

***Primary Industries (Customs) Charges Act 1999***

Primary Industries (Customs) Charges Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 324] [F2012L02353]

***Primary Industries Levies and Charges Collection Act 1991***

Primary Industries Levies and Charges Collection Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 325] [F2012L02354]

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

Renewable Energy (Electricity) Amendment Regulation 2012 (No. 8) [Select Legislative Instrument 2012 No. 290] [F2012L02419]

***Retirement Savings Accounts Act 1997***

Retirement Savings Accounts Amendment Regulation 2012 (No. 3) [Select Legislative Instrument 2012 No. 315] [F2012L02403]

***Superannuation Auditor Registration Imposition Act 2012***

Superannuation Auditor Registration Imposition Regulation 2012 [Select Legislative Instrument 2012 No. 329] [F2012L02405]

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

Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 4) [Select Legislative Instrument 2012 No. 316] [F2012L02386]

Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 5) [Select Legislative Instrument 2012 No. 317] [F2012L02407]

Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 6) [Select Legislative Instrument 2012 No. 330] [F2012L02408]

***Telecommunications (Interception and Access) Act 1979***

Telecommunications (Interception and Access) (Requirements for Authorisations, Notifications and Revocations) Amendment Determination 2012 [F2012L02348]

***Telecommunications Act 1997***

Telecommunications Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 286] [F2012L02374]

Telecommunications Service Provider (Mobile Premium Services) Amendment Determination 2012 (No. 1) [F2012L02458]

***Television Licence Fees Act 1964***

Television Licence Fees Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 287] [F2012L02375]

***Trans-Tasman Mutual Recognition Act 1997***

Trans-Tasman Mutual Recognition (Amendment of Act) Regulation 2012 [Select Legislative Instrument 2012] [F2012L02422]

***Work Health and Safety Act 2011***

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

### Total number of instruments scrutinised: 232

# Appendix 2

## Guideline on explanatory statements: consultation



AUSTRALIAN SENATE

**STANDING COMMITTEE ON REGULATIONS AND ORDINANCES**

**Guideline for preparation of explanatory statements: consultation**

***Role of the committee***

The Standing Committee on Regulations and Ordinances (the committee) undertakes scrutiny of legislative instruments to ensure compliance with [non-partisan principles](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_ctte/guidelines.htm) 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*](http://www.comlaw.gov.au/Details/C2012C00041) (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](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_ctte/alert2012.htm).

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

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

***Requirements of the* Legislative Instruments Act 2003**

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

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

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

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

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

***Describing the nature of consultation***

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

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

*Method and purpose of consultation*

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

*Bodies/groups/individuals consulted*

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

*Issues raised in consultations and outcomes*

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

***Explaining why consultation has not been undertaken***

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

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

*Specific examples listed in the Act*

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

*Timing of consultation*

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

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

***Seeking further advice or information***

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

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

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1. Prior to 2013, the monitor provided only statistical and technical information on instruments scrutinised by the committee in a given period or year. This information is now most easily accessed via the authoritative Federal Register of Legislative Instruments (FRLI), at www.comlaw.gov.au. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
3. 'Last day to disallow' refers to the last day on which notice may be given of a motion for disallowance in the Senate. [↑](#footnote-ref-3)
4. The committee's guideline on addressing the consultation requirements of the *Legislative Instruments Act 2003* is included at Appendix 2. [↑](#footnote-ref-4)
5. Superannuation (prudential standard) determination No. 2 of 2012 - Prudential Standard SPS 220 - Risk Management [F2012L02222]; Superannuation (prudential standard) determination No. 3 of 2012 - Prudential Standard SPS 231 – Outsourcing [F2012L02223]; Superannuation (prudential standard) determination No. 4 of 2012 - Prudential Standard SPS 232 - Business Continuity Management [F2012L02224]; Superannuation (prudential standard) determination No. 5 of 2012 - Prudential Standard SPS 250 - Insurance in Superannuation [F2012L02225]; Superannuation (prudential standard) determination No. 6 of 2012 - Prudential Standard SPS 510 – Governance [F2012L02229]; Superannuation (prudential standard) determination No. 7 of 2012 - Prudential Standard SPS 521 - Conflicts of Interest [2012L02230]; and Superannuation (prudential standard) determination No. 8 of 2012 - Prudential Standard SPS 530 - Investment Governance [F2012L02231]. [↑](#footnote-ref-5)
6. Transport Safety Investigation Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 264] [F2012L02280]; and Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012 [Select Legislative Instrument 2012 No. 265] [F2012L02281]. [↑](#footnote-ref-6)
7. Parliamentary Joint Committee on Human Rights, 'Examination of legislation in accordance with the Human Rights (Parliamentary Scrutiny) Act 2011: Bills introduced 19-29 November 2012 [and] Legislative Instruments registered with the Federal Register of Legislative Instruments 17 November 2012 – 4 January 2013', (First Report of 2013), February 2013, Appendix 1. [↑](#footnote-ref-7)
8. Banking, Insurance and Life Insurance (prudential standard) determination No. 3 of 2012 [F2012L02441]; Banking, Insurance and Life Insurance (prudential standard) determination No. 4 of 2012 and [F2012L02445]; and Banking Sector Legislation Amendment Regulation 2012 (No. 1) [Select Legislative Instrument 2012 No. 319] [F2012L02397]. [↑](#footnote-ref-8)
9. 'Last day to disallow' refers to the last day on which notice may be given of a motion for disallowance in the Senate. [↑](#footnote-ref-9)
10. The committee's guideline on addressing the consultation requirements of the *Legislative Instruments Act 2003* is included at Appendix 2. [↑](#footnote-ref-10)
11. Greenhouse and Energy Minimum Standards (Clothes Washing Machines) Determination 2012 [F2012L02117]; Greenhouse and Energy Minimum Standards (Refrigerated Display Cabinets) Determination 2012 [F2012L02131]; Greenhouse and Energy Minimum Standards (Three Phase Cage Induction Motors) Determination 2012 [F2012L02128]; and Greenhouse and Energy Minimum Standards (Transformers and Electronic Step-down Converters for ELV Lamps) Determination 2012 [F2012L02130]. [↑](#footnote-ref-11)
12. FRLI is found online at http://www.comlaw.gov.au/. [↑](#footnote-ref-12)