

The Senate

Regulations and Ordinances
Committee

40th Parliament Report

112th Report

June 2005

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Current Membership of the Committee

Senator Tsebin Tchen, Victoria, Chairman

Senator Andrew Bartlett, Queensland

Senator Gavin Marshall, Victoria

Senator Brett Mason, Queensland

Senator Claire Moore, Queensland

Senator Santo Santoro, Queensland

Secretariat

Secretary

Mr James Warmenhoven

Research Officer

Ms Janice Paull

Administrative Officer

Ms Sarah Bannerman/Ms Indu Jeyanathan

Acknowledgment

The Committee acknowledges the able assistance provided during the reporting period by the Committee's Legal Adviser, Professor Stephen Bottomley.

Senator Tsebin Tchen

Chairman

June 2005

Membership of the Committee 40th Parliament

During the 40th Parliament, the membership of the Committee was as follows:

Senator Tsebin Tchen, Victoria, Chairman (appointed 14.2.2002; elected Chairman 11.3.2002)

Senator Guy Barnett (appointed 27.6.2002; discharged 18.11.2002)

Senator Andrew Bartlett, Queensland (appointed 13.2.2002)

Senator George Brandis, Queensland (appointed 14.2.2002; discharged 2.6.2002)

Senator Geoffrey Buckland, South Australia (appointed 13.2.2002; discharged 27.6.2002)

Senator Joseph Ludwig, Queensland (appointed 13.2.2002; discharged 27.6.2002)

Senator Gavin Marshall, Victoria (appointed 27.6.2002)

Senator Brett Mason, Queensland (appointed 14.2.2002)

Senator Claire Moore, Queensland (appointed 27.6.2002)

Senator Santo Santoro, Queensland (appointed 18.11.2002)

*Members of the Regulations and Ordinances Committee
on the 70th Anniversary of the Committee on 11 March 2002*



*Back row (left to right): Senators George Brandis, Brett Mason and Geoffrey Buckland
Front row (left to right): Senators Andrew Bartlett, Tsebin Tchen (Chairman)
and Joseph Ludwig*

CHAPTER ONE

PARLIAMENTARY SCRUTINY OF DELEGATED LEGISLATION

Delegated legislation

1.1 Many Acts of Parliament delegate to the executive government the power to make detailed regulations, rules and other instruments (such as determinations, notices, orders and guidelines) that supplement the parent Act and have the same force in law. These legislative instruments are known as delegated or subordinate legislation. More than half of the law of the Commonwealth of Australia by volume consists of delegated legislation rather than Acts of Parliament.

1.2 Unlike primary legislation, delegated legislation is not passed by the Parliament. However, it is usually required to be tabled in the Parliament, and either House may disallow it. If this occurs, the delegated legislation thereupon ceases to have effect.

1.3 During the 40th Parliament, the Committee's scrutiny of delegated legislation was governed by the *Acts Interpretation Act 1901*. Under the auspices of this Act, regulations and other disallowable instruments were required to be tabled within 15 sitting days of being made and were subject to a disallowance regime that allowed a Senator or Member of the House of Representatives to give a notice of motion to disallow an instrument within 15 sitting days after it had been tabled in that House. A notice of disallowance was required to be resolved within 15 sitting days after it was given or an instrument was deemed to have been disallowed.

1.4 On 1 January 2005, the *Acts Interpretation Act 1901* was repealed in conjunction with the commencement of the *Legislative Instruments Act 2003*. The Legislative Instruments Act effectively adopts the parliamentary scrutiny provisions of the Acts Interpretation Act. However, the manner in which an instrument is made subject to parliamentary scrutiny has changed. An instrument will only be caught by the new regime if it is of a legislative character and is or has been made in the exercise of a power delegated by the Parliament (Section 5). A number of instruments have been exempted from the regime (section 7) and other instruments, though required to be tabled, have been exempted from disallowance (section 44). This new regime is expected to capture more instruments than the regime under the Acts Interpretation Act and subject them to parliamentary scrutiny.

Legislative Instruments

1.5 Legislative instruments may take many forms such as regulations, determinations, notices, orders, plans, airworthiness directives, guidelines and approvals. From 1 January 2005, all legislative instruments are required to be registered on the Federal Register of Legislative Instruments to be enforceable. The Register is administered by the Attorney-General's Department and may be found at www.frli.gov.au.

1.6 Many Acts authorise the Governor-General to make regulations, not inconsistent with the Act concerned, that carry out or give effect to that Act. These regulations are drafted by the Office of Legislative Drafting in the Attorney-General's Department and, following approval by the Governor-General in Council, are registered. The *Statutory Rules Publication Act 1903* was repealed from 1 January 2005 and, as a consequence, the Statutory Rules series has ceased. Regulations are now numbered as part of a new Select Legislative Instruments series and appear on the Register.

1.7 The other types of legislative instruments are primarily drafted within government agencies and approved by Ministers or delegates. These instruments also appear on the Register.

1.8 Subsection 38(1) of the *Legislative Instruments Act 2003* provides that, where an instrument is legislative in character, it "shall be delivered to each House of the Parliament to be laid before each House within 6 sitting days of that House after the registration of the instrument". Under subsection 38(3), if any legislative instruments are not laid before each House within that time, they cease to have effect.

Disallowable instruments

1.9 Disallowable instruments fall into two broad categories of delegated legislation — legislative and non-legislative.

1.10 Under section 42 of the *Legislative Instruments Act 2003*, all legislative instruments are subject to disallowance unless they are exempted by section 44 of that Act.

1.11 Subsection 46B(1) of the *Acts Interpretation Act 1901* provides that, where a law confers a power to make an instrument that is neither a legislative instrument under the *Legislative Instruments Act 2003* nor rules of court (such as a determination, notice, rule, order, guideline or other such instrument) and the law provides that the instrument is a disallowable instrument, then it is subject to the same procedures for parliamentary scrutiny as a legislative instrument.

Disallowance

1.12 Subsection 42(1) of the *Legislative Instruments Act 2003* provides:

- (1) If:
- (a) notice of a motion to disallow a legislative instrument or a provision of a legislative instrument is given in a House of the Parliament within 15 sitting days of that House after a copy of the instrument was laid before that House; and
 - (b) within 15 sitting days of that House after the giving of that notice, the House passes a resolution, in pursuance of the motion, disallowing the instrument or provision;

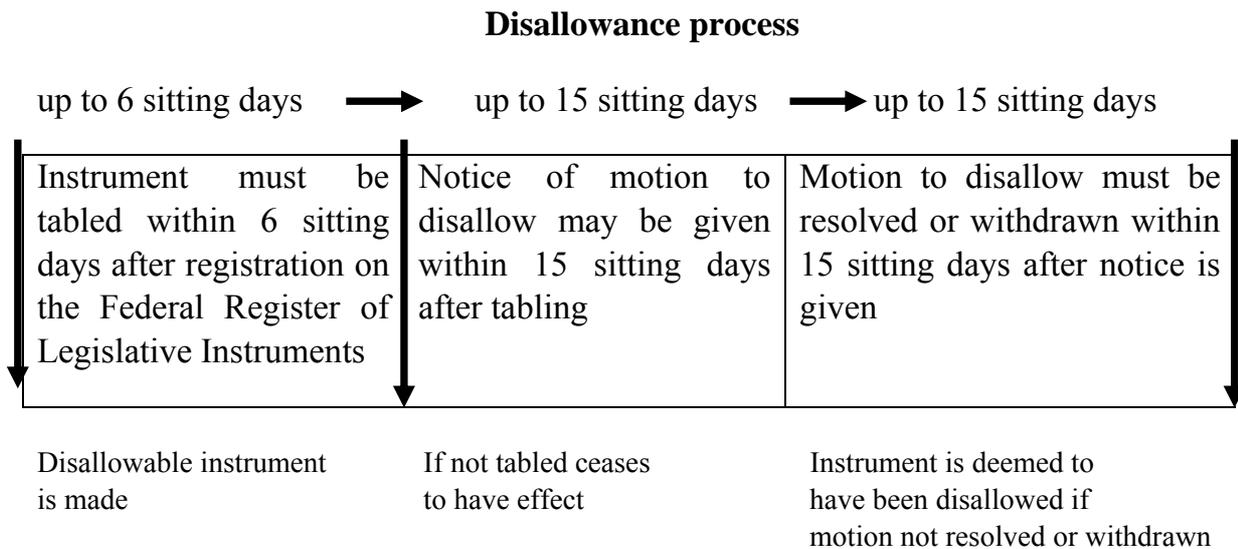
the instrument or provision so disallowed then ceases to have effect.

1.13 In effect, this subsection allows any member of the House of Representatives, or any Senator, within 15 sitting days after a legislative or a disallowable non-legislative instrument is tabled, to give notice of motion to disallow that instrument or a provision of that instrument. In practice, it is unusual for disallowance motions to be moved and dealt with in the House of Representatives. If a motion to disallow an instrument or a provision of that instrument is agreed to by either House, the instrument or provision of that instrument “then ceases to have effect” (emphasis added).

1.14 If a notice of motion to disallow a legislative instrument or provision of a legislative instrument has not been resolved or withdrawn within 15 sitting days after having been given, the instrument or provision of that instrument is deemed to have been disallowed and it ceases to have effect.

1.15 Disallowance has the effect of repealing the instrument or provision of the instrument and if the instrument or provision repealed all or part of an earlier instrument or provision of an instrument, then disallowance has the effect of reviving that part of the earlier instrument.

1.16 The disallowance process is reflected in the following diagram:



Re-making of disallowable instruments

1.17 The same legislative or disallowable non-legislative instrument cannot be remade:

- within 7 calendar days after tabling; or
- if the instrument has not been tabled, within 7 calendar days after the last day on which it could have been tabled (unless both Houses approve this by resolution); or
- while it is subject to an unresolved notice of motion to disallow; or
- within 6 months after being disallowed (unless the House that disallowed the instrument approves).

Unusual disallowance provisions

1.18 Some instruments have unusual disallowance provisions that are peculiar to the Act under which they are made. Accordingly, the time for giving or resolving a notice may vary in particular cases.

1.19 For example, the time for giving a notice of motion to disallow and to resolve that notice in relation to a determination made under section 20(2) of the *Financial Management and Accountability Act 1997* is only five sitting days.

1.20 The disallowance provisions in the *Legislative Instruments Act 2003* (LIA) take precedence over any other prescribed disallowance regime unless the LIA specifically exempts the other Act by regulation and so permits the unusual disallowance provisions to continue. Schedule 4 of the *Legislative Instruments*

Regulations 2004 preserves the operation of special statutory disallowance regimes which operate in a different way to those in the Legislative Instruments Act.

1.21 The *Legislative Instruments Act 2003* enables the Parliament to disallow a legislative instrument, but not to amend it. However, some particular Acts enable the Parliament to amend instruments made under them.

1.22 For example, section 5 of the *Disability Services Act 1986* requires the relevant Minister to formulate and table guidelines for the administration of that Act. Section 31 of the Act categorises these guidelines as disallowable instruments. However, subsection 5(3) of the Act provides, in addition, that if a notice of motion to amend the guidelines is tabled in either House within 15 sitting days of the tabling of the guidelines then the guidelines do not take effect until both Houses approve the guidelines in the same form (whether amended or not). Where no notice of motion to amend is tabled, the guidelines do not take effect until after the 15th sitting day following their tabling.

CHAPTER TWO

THE COMMITTEE: OVERVIEW AND STATISTICS

The Senate Standing Committee on Regulations and Ordinances

2.1 The Senate Standing Committee on Regulations and Ordinances was established in 1932 and, apart from certain Committees dealing with internal parliamentary matters, is the oldest Senate Committee. The Committee's functions, which are set out in Standing Order 23, are to scrutinise 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, to ensure that they comply with broad principles of personal rights and parliamentary propriety.

Membership

2.2 The Committee is appointed at the commencement of each Parliament under Standing Order 23(1). The Committee has six members – three of whom are members of the government parties and three of whom are members of non-government parties. In accordance with the Standing Orders, the Committee is chaired by a government senator.

2.3 During the reporting period (which covers the end of the 39th Parliament and the 40th Parliament) the membership of the Committee was as follows:

Senator Helen Coonan, Chair (appointed 31.3.1999 to 11.2.2002; elected Chair 12.8.1999; resigned as Chair 26.11.2001 on appointment to ministry)

Senator Tsebin Tchen, Chairman (appointed 14.2.2002; elected Chairman 11.3.2002)

Senator Guy Barnett (appointed 27.6.2002; discharged 18.11.2002)

Senator Andrew Bartlett (appointed 13.2.2002)

Senator Geoffrey Buckland (appointed 13.2.2002; discharged 27.6.2002)

Senator George Brandis (appointed 14.2.2002; discharged 2.6.2002)

Senator Joseph Ludwig (appointed 13.2.2002; discharged 27.6.2002)

Senator Gavin Marshall (appointed 27.6.2002)

Senator Brett Mason (appointed 14.2.2002)

Senator Claire Moore (appointed 27.6.2002)

Senator Santo Santoro (appointed 18.11.2002)

Seventieth Anniversary

2.4 On 11 March 2002, the Committee celebrated its Seventieth Anniversary. The occasion was marked by the Chairman making a statement to the Senate and by the

taking of a formal Committee photo. In the statement, the Chairman noted that the Australian Senate, in establishing the Committee, “led the world in this area of parliamentary control of executive acts under delegated authority,” and recognised that “parliamentary scrutiny of the acts of the executive – well intentioned though they might be – was imperative”.¹

Independent legal adviser

2.5 The Committee is advised by an independent legal adviser, who examines and reports on every instrument of delegated legislation before the Committee, comments on all correspondence received from Ministers, prepares special reports and attends Committee meetings. During the reporting period, the Committee’s legal adviser was Professor Stephen Bottomley from the Faculty of Law at the Australian National University.

The Committee’s principles

2.6 Standing Order 23(3) specifically requires the Committee to scrutinise each instrument to ensure that it:

- is in accordance with the statute;
- does not trespass unduly on personal rights and liberties;
- 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
- does not contain matter more appropriate for parliamentary enactment.

2.7 In keeping with an approach adopted in 1933, the Committee considers that questions involving the government policy which underlies delegated legislation fall outside the scope of its scrutiny. Accordingly, the Committee does not consider policy issues which arise in delegated legislation, but does not refrain from finding provisions contrary to its principles and recommending their disallowance simply on the basis that they reflect government policy.

Interpretation of these principles

2.8 The Committee’s approach to the scrutiny of delegated legislation is reflected in the following summary of concerns that it consistently raises with Ministers and Parliamentary Secretaries:

1 Senate Hansard, 11 March 2002, p 436.

Principle 1: In accordance with the statute

Technical validity and effect

- compliance with enabling Act and any other legislation such as the *Acts Interpretation Act 1901* and in other respects, be validly made.
- generally void if instrument purports to sub-delegate legislative power without express authority.
- legislative instruments that take effect before gazettal and that affect adversely any person other than the Commonwealth, are void under subsection 48(2) of the Acts Interpretation Act.
- legislative instruments may incorporate or adopt the provisions of an Act or other legislative instrument in force from time to time. However, it may only incorporate other material as in force or existing when the incorporating instrument takes effect, in accordance with section 49A of the Acts Interpretation Act.
- certainty of meaning and operation.

Possible breaches of parliamentary propriety

Drafting defects

Inadequate explanatory material

Proper numbering and citation.

Principle 2: Personal rights and liberties

Rights of individuals are protected

Unreasonable burdens are not placed on business

Fees, allowances and expenses are not unfair or unusual

Right to privacy is protected

Offence provisions include appropriate safeguards

Terms and conditions of public sector employment operate fairly.

Principle 3: Independent review of their merits

Discretions should be as narrow as possible, include objective criteria to limit and guide their exercise, and include review of the merits of decisions by an external, independent tribunal, which would normally be the Administrative Appeals Tribunal

- commercial, livelihood and personal implications.

Express statement required that power must be exercised reasonably

Decision should be notified within 28 days

Notice of appeal rights and availability of statement of reasons for decision should be given to the person affected.

Principle 4: More appropriate for parliamentary enactment

Legislation that fundamentally changes the law

Legislation that is lengthy and complex

Legislation intended to bring about radical changes in relationships or community attitudes

Legislation that is part of a uniform laws scheme.

Committee's mode of operation

2.9 Each week, instruments lodged for tabling in the Senate are sent to the Committee's legal adviser who prepares a formal written report on each instrument. The Secretariat also scrutinises the instruments and provides the legal adviser with comments on them. The Committee then considers the instruments, as well as the legal adviser's report, at meetings held on Thursday morning of each Senate sitting week. If an instrument raises an issue within the Committee's terms of reference, the Committee agrees that the Chair should write to the responsible Minister seeking an explanation.

2.10 The *Scrutiny of Disallowable Instruments* Alert appears on the Committee's Internet site and is updated each sitting Thursday, following the Committee's meeting. It lists those instruments in relation to which the Committee has agreed to seek further advice from Ministers. In doing so, the Alert provides immediate notice to ministerial staff and departmental officers that further action is necessary in relation to a specific instrument.

2.11 The Minister's response is considered by the Committee and, in most instances, the Committee is satisfied by the explanation provided or by a ministerial undertaking to amend an instrument to meet the Committee's concerns.

2.12 If the Minister does not provide a satisfactory response, the Committee may write to the Minister again, reiterating its concerns in the light of the advice provided. In recent years the Committee has also exercised its power to call officials or witnesses before it where there are continuing difficulties with an instrument.

2.13 If the matter has not been resolved within 15 sitting days after the tabling of an instrument, the Chair, on behalf of the Committee, will give notice of motion to disallow the instrument, thereby giving the Committee and the Minister more time (a further 15 sitting days) to attempt to resolve outstanding issues.

2.14 Once the Committee's concerns have been satisfactorily addressed, or a Minister gives an undertaking to amend an instrument at the earliest opportunity, the Committee will give notice of its intention to withdraw its notice of motion to disallow.

2.15 The Committee adopts a non-partisan approach to its work and this is complemented by the co-operative and helpful approach of Ministers. The success of these arrangements is reflected in the fact that the Senate, at the instigation of the Committee, last disallowed an instrument in 1988.

Transparency

2.16 In recent years, the Committee has introduced a number of new procedures in order to make its work more open and transparent, and to streamline that work.

2.17 First, the Committee agreed that it would table in the Senate correspondence with Ministers relating to its scrutiny of delegated legislation. Most ministerial responses to concerns raised by the Committee are informative and instructive, and provide detailed advice on particular instruments. The Committee is of the view that these responses should be placed on the public record, unless a request is made and the Committee agrees that a response should be treated confidentially. The first volume of correspondence was tabled in the Senate on 28 June 2001 and further volumes were tabled on 21 March 2002, 26 June 2002, 6 March 2003, 20 August 2003 and 25 March 2004. Correspondence relating to instruments on which the Committee gives a notice of motion to disallow continues to be incorporated in *Hansard* on the day that notice of intention to withdraw the notice of motion is given by the Chair.

2.18 Secondly, (as noted in paragraph 2.10) the Committee publishes a *Scrutiny of Disallowable Instruments Alert* on its Internet site.² There is encouraging evidence that this initiative has resulted in the receipt of Ministerial responses within a timeframe that avoids the need for the Committee to commence disallowance procedures.

2.19 Thirdly, the Committee also publishes a *Disallowance Alert* on its Internet site. This provides current information on instruments that are subject to a notice of motion to disallow. This Alert records notices of motion given by the Committee as well as individual senators or members. The Alert also records action taken on these notices, including withdrawal, debate or disallowance. The Alert is updated each sitting day and may be found at the Committee's home page.

2.20 Fourthly, the Procedure Office has introduced half-day seminars on the scrutiny of primary and secondary legislation. Specifically, the seminars address the work of the Senate Standing Committee on the Scrutiny of Bills and the Senate Standing Committee on Regulations and Ordinances. The seminars are aimed at parliamentary staff with an interest in legislative scrutiny and also public servants responsible for preparing legislation, regulations and other disallowable instruments. There was considerable interest in these seminars during the reporting period.

2.21 It should also be noted that the Committee continues to place on the Internet its *Delegated Legislation Monitors*. These contain details of regulations and

2 www.aph.gov.au/senate/committee/regord_ctte/

disallowable instruments tabled in each sitting week. The *Monitors* provide information on the authority for the instrument, the date it is made, the date it is tabled in the Parliament and a short summary of its subject matter. The *Monitors* may be found at the Committee's home page.

2.22 Each year, the Committee tables a consolidated *Delegated Legislation Monitor*, containing details of every regulation and disallowable instrument tabled in the Parliament, and this may also be accessed through the Internet.

Statistics

2.23 During the 40th Parliament, the Committee scrutinised 1546 instruments in 2001-2002, 1661 instruments in 2002-2003 and 1561 instruments in 2003-2004. The following tables set out the number and broad categories of these instruments:

Instruments examined by the Committee in 2001-2002	Number
Civil Aviation instruments	633
Statutory Rules	310
Veterans' Entitlements instruments	91
National Health instruments	52
Telecommunications instruments	47
Higher Education instruments	38
Radiocommunications instruments	33
Defence determinations	33
Miscellaneous	309
Total	1546

Instruments examined by the Committee in 2002-2003	Number
Civil Aviation instruments	739
Statutory Rules	351
Veterans' Entitlements instruments	55
Customs instruments	50
National Health instruments	45
Higher Education Funding instruments	36
Defence Determinations	34
Remuneration Tribunal determinations	32
Environment Protection and Biodiversity Conservation instruments	30
Telecommunications instruments	30
Radiocommunications instruments	24
Miscellaneous	235
Total	1661

Instruments examined by the Committee in 2003-2004	Number
Civil Aviation Instruments	598
Statutory Rules	380
Veterans' Entitlements instruments	60
Defence instruments	55
National Health instruments	53
Telecommunications instruments	36
Remuneration Tribunal determinations	28
Environment Protection and Biodiversity Conservation instruments	25
Higher Education instruments	23
Customs instruments	21
Miscellaneous	282
Total	1561

2.24 A breakdown of instruments included in the category of miscellaneous appears at Appendix 1.

2.25 The Committee notes that the number of instruments made in the reporting period continues to be significantly greater than a decade ago. Also, the proportion of

Statutory Rules when compared to other instruments continues to be relatively small. These longer-term trends are illustrated in the table below.

Proportion of Statutory Rules to other disallowable instruments

Year	Statutory Rules	Other Instruments
1985-1986	429	426
1986-1987	322	510
1987-1988	345	690
1988-1989	398	954
1989-1990	411	847
1990-1991	484	1161
1991-1992	531	1031
1992-1993	408	1244
1993-1994	490	1313
1994-1995	419	1668
1995-1996	398	1502
1996-1997	395	1396
1997-1998	454	1434
1998-1999	330	1342
1999-2000	348	1307
2000-2001	425	1434
2001-2002	310	1236
2002-2003	351	1310
2003-2004	380	1181

2.26 The Committee held 10 meetings in 2001-2002, 17 in 2002-2003 and 23 in 2003-2004. The table on the following page provides an overview of the Committee's scrutiny of instruments since 1997-1998.

Financial Year	Number of Instruments	Instruments of concern	Number of Notices of Motion to Disallow
1997-1998	1888	175	25
1998-1999	1672	107	12
1999-2000	1655	265	70
2000-2001	1859	208	47
2001-2002	1536	219	5
2002-2003	1661	174	6
2003-2004	1561	121	18

2.27 The Committee was pleased to note that there was a reduction in the number of concerns during the Parliament in comparison to the 39th Parliament. Although the reasons for this reduction are not clear, the Committee believes that its initiatives introduced in 2000 have resulted in a general improvement in the quality of instruments tabled in the Parliament during the reporting period.

2.28 The Committee notes that there was also a marked reduction in disallowance notices when compared to 1999-2000, when it gave 70 notices. This reduction is welcome and indicates that the Committee's initiatives to ensure that it receives timely responses to its concerns, thereby avoiding the need to initiate disallowance procedures in order to protect its options, have generally been effective. However, the Committee was disappointed to see an upward trend in the number of notices towards the end of the Parliament primarily as a result of untimely responses to the Committee's concerns and it intends to monitor this trend to ensure that the number of notices does not return to the high levels of the 39th Parliament.

2.29 At the end of the 40th Parliament, two notices remained unresolved when the Parliament was prorogued on 31 August 2004. The Committee withdrew its notices on the other instruments following the receipt of satisfactory responses or the giving of ministerial undertakings. A list of instruments that were the subject of a notice of motion to disallow during the 40th Parliament is at Appendix 5.

Ministerial undertakings

2.30 During the reporting period, Ministers and other officials undertook to amend or review several instruments or parent Acts to meet the concerns of the Committee. Details of undertakings are given in Chapter 8.

CHAPTER THREE

IS THE INSTRUMENT IN ACCORDANCE WITH STATUTE

Introduction

3.1 As noted in paragraph 2.6, Senate Standing Order 23(3) establishes the four principles against which the Committee scrutinises disallowable instruments. The Committee interprets these principles in an expansive manner to cover any possible defect which might affect personal rights or parliamentary propriety. The following Chapters illustrate issues which the Committee raised with Ministers and other law makers during the 40th Parliament. This Chapter examines issues that arose under the first principle, which requires that the Committee ensure that each disallowable instrument is in accordance with statute.

3.2 Legislative instruments must be validly made – both under their parent Act and under other relevant legislation such as the *Acts Interpretation Act 1901* (the AIA) and (since 1 January 2005) its successor – the *Legislative Instruments Act 2003* (the LIA). Specific requirements imposed by the AIA and the LIA include the prohibition on prejudicial retrospectivity, and limitations on the incorporation in an instrument of other documents.

3.3 The Committee applies principle (a) in a number of areas: technical validity and effect; drafting deficiencies; prejudicial retrospectivity; the incorporation of extrinsic material; inadequate explanatory material; indeterminate commencement; proper numbering and citation; and the provision of legal advice to the Committee.

Technical validity and effect

3.4 During the reporting period, the Committee had to consider the validity of a number of instruments.

3.5 For example, in June 2002, the Committee queried the effect of regulation 14 of the **Explosives Transport Regulations 2002, Statutory Rules 2002 No 92**. This regulation gave the Minister the power to make orders in relation to the handling of Commonwealth explosives and other related matters. Subregulation 14(3) stated that, if there were an inconsistency between such an order and a provision of the Regulations, then the order should prevail to the extent of the inconsistency. These orders were said to be authorised by section 15 of the parent Act, which provided that “The regulations may empower a person to provide, by order, for any matter that may be provided for by the regulations.” It was not clear that section 15 could authorise the

making of an inconsistent order as this would not appear to be for a matter “provided for by the regulations”.

3.6 The Minister responded in the following terms:

The view that orders are capable of being inconsistent with regulations is based on the construction of sections 10 and 15 of the Act that, when construed together, those sections do not expressly address the relationship between orders and regulations and, to that extent, do not expressly prevent the making of an order that is inconsistent with the regulations. The power conferred by section 15 for making orders ‘for any matter that may be provided for by the regulations’ is not expressed in a way that clearly prevents inconsistency with the regulations. There is further support for this view in that the Act appears to contemplate orders having the same status as regulations, particularly having regard to the grant of power enabling orders to be made in relation to the same subject matter as the regulations. Orders are also disallowable instruments and therefore subject to Parliamentary scrutiny in the same way as regulations.

The regulations and the AE Code are highly prescriptive in nature. Regulation 14 was included so as to deal with the situation where a person transporting Commonwealth explosives could not achieve compliance with the regulations in a particular circumstance that could not have been envisaged prior to making the regulations. Such a circumstance could arise where, for example, the size or shape of an unusual explosive item was such as to be impossible to transport in accordance with the regulations. Although such a circumstance is likely to be rare, since care was taken to ensure the AE Code and regulations can be complied with, regulation 14 is necessary to facilitate transport in such a circumstance. Such orders would only be required for a unique situation, temporary in nature, where there was not sufficient time to amend the regulations.

3.7 As noted in paragraph 1.17, one of the consequences of a failure to table an instrument within the required period is that an instrument the same in substance cannot be remade for a period of seven days without the approval of both Houses. This period starts on the day the instrument was made and, if the instrument is not tabled in both Houses, ends seven days after “the last day” on which the instrument could have been tabled under paragraph 48(1)(c).

3.8 The Committee sought advice on the operation of this time period in relation to the **Dairy Structural Adjustment Program Scheme Amendment 2000 (No 8)**. This instrument was made on 9 August 2001 and tabled in both Houses on 20 August 2001. In effect, the instrument (among other things) remade DSAP Scheme Amendment No 7 which, as a result of an “administrative oversight”, was not tabled within the requisite period. DSAP Scheme Amendment No 7 had been made on 16 May 2001. The last sitting day on which it could have been tabled in the House of Representatives was 28 June 2001, and in the Senate was 9 August 2001. Given that a period of seven calendar days from 9 August 2001 was 16 August 2001, the Committee queried whether DSAP No 8 (which was made on 9 August 2001) had been validly remade under paragraph 48(1)(c).

3.9 The Minister provided written advice from the Australian Government Solicitor in the following terms:

11. The Committee has interpreted ‘the last day on which paragraph 48(1)(c) could have been complied with’ as referring to the 15th day of the later of the sitting periods of a House of Parliament, where there is a difference in those periods. In our view, it should be interpreted to refer to the 15th sitting day of the earlier of those periods. Once the period has expired in respect of one House of Parliament, it is not possible thereafter to comply with the requirement that the ‘regulation’ be laid before each House of the Parliament within 15 sitting days of that House.

12. The last day on which paragraph 48(1)(c) could have been complied with was 28 June 2001, being the 15th sitting day of the House of Representatives after the making of Amendment No. 7. Amendment No. 8 was made on 9 August 2001, well beyond the period of 7 days after 28 June 2001. As such, it validly remade Amendment No. 7.

3.10 The Committee also sought advice on the meaning of the phrase ‘the same in substance’ in relation to the **Superannuation Industry (Supervision) Amendment Regulations 2003 (No 5), Statutory Rules 2003 No 251**. The Explanatory Statement accompanying these regulations observed that regulations for the same purpose had previously been made on 30 July 2003, but were disallowed in the Senate on 18 September 2003. The Explanatory Statement then stated that the present regulations were “substantially the same” as the regulations made on 30 July 2003 but, as a consequence of the inclusion of an additional subregulation, were not ‘the same in substance’ as the previously disallowed regulations, and therefore did not contravene section 49 of the Acts Interpretation Act 1901.

3.11 That regulations could be ‘substantially the same’ but not ‘the same in substance’ as previously disallowed regulations appeared somewhat confusing, and the Committee asked whether any legal advice on this issue had been obtained from the Attorney-General’s Department and, if so, whether that advice might be made available to the Committee.

3.12 The Minister confirmed that legal advice had been obtained and provided the Committee with a copy. The advice simply read:

We confirm our advice that the Superannuation Industry (Supervision) Amendment Regulations 2003 (No.) (the No. is not inserted in the copy you have provided to us) proposed to be submitted to the Governor-General in Council are not the ‘same in substance’ as the Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 4) (which we understand have been disallowed) within the meaning of s.49 of the Acts Interpretation Act.

Drafting issues

3.13 The Committee takes the view that the drafting and presentation of, and access to, delegated legislation should be of a standard equivalent to that which

applies to Acts of the Parliament. The Committee regularly draws the attention of Ministers to defective drafting and to poor drafting.

3.14 Specific drafting problems raised by the Committee during the period included:

- simple drafting errors (for example, the use of the word “inwards” rather than “outwards” (**Declaration of Designated Outwards Secondary Shipper Body Pursuant to subsection 10.03(2) of the *Trade Practices Act 1974***);
- discrepancies between an instrument and its accompanying Explanatory Statement (for example, a discrepancy between the item said to be inserted in an instrument (“New Item 46AA”) and the item actually inserted (“Item 46B”), or a discrepancy between a relevant time period in the instrument “between 1 September and 30 November 2002” and the time period discussed in the Explanatory Statement “between 3 August to 8 November” (**Direction No NPF 57 made under subsection 17(5A) of the *Fisheries Management Act 1991***);
- an incorrect date of effect – an instrument which had originally become effective on 25 April 1995 was said to have become effective on 25 April 2995; another instrument declared that the relevant date of eligibility for taxation purposes was, variously, 20 May 2003 and 20 May 2002 (**Income Tax Amendment Regulations 2003 (No 1), Statutory Rules 2003 No 204**);
- an instrument with a compliance date prior to its date of effect (**Airworthiness Directive AD/F100/59**);
- an instrument which misdescribed its responsible Department;
- an instrument with unnecessary words in its title: **Inclusion of Key Threatening Processes in the List of Threatened Key Threatening Processes under section 183 of the *Environment Protection and Biodiversity Conservation Act 1999*** and
- instruments that referred to obsolete legislation (**Health Insurance (Approval of Billing Agents) Guidelines 2003 made under subsection 20AB(3) of the *Health Insurance Act 1973***) or approved application form that referred applicants to no longer existing State and Territory Corporate Affairs Offices rather than the Australian Securities and Investments Commission.

3.15 In considering the **Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2003**, the Committee queried whether a reference in a clause to the term “accredited testing authority” was the same as a reference to the defined term “accredited testing body”. The Minister agreed to amend the clause.

3.16 In considering the **Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No 1 of 2001)** the Committee queried the inclusion of a number of handwritten annotations to the numbering of paragraphs in a particular clause of the declaration. The Minister responded that “the official copy signed by me does not have these annotations, nor do they appear on the copy that was gazetted ... the annotations are not correct and [the Department] has been unable to ascertain how they came to have been made or why they were on the copy provided to the Committee”.

3.17 A particular item in the **Telecommunications (Customer Service Guarantee) Amendment Standard 2001 (No 1)** referred to a carriage service provider making a “reasonable offer” to a customer, or supplying “sufficient information” to enable the customer to make an “informed judgement”. The Note to this item stated that the Australian Communications Authority (the ACA) had power to make a written determination about what was “reasonable” and what was “sufficient information”. The Committee was of the view that the meaning of terms such as these should be determined by the ACA and that such determination should be included in the Standard itself. The Minister provided a copy of the ACA Determination, which had since been made, and undertook to incorporate the Definitions in the Standard.

3.18 In relation to the **Explosives Transport Regulations 2002, Statutory Rules 2002 No 92**, the Committee suggested that it might promote the easier interpretation and application of the regulations if definitions currently found in the *Australian Code for the Transport of Explosives by Road and Rail* (the Code) were actually transposed to the regulations themselves.

3.19 The Minister explained that the policy intent of the regulations was to give legal force to the Code, which was a nationally agreed code of practice and the source document commonly carried in explosives transport vehicles or located in transport depots. During the drafting of the regulations it had been decided that they should differ as little as possible from the Code, and should be confined to matters peculiar to the implementation of the Code. Given this, the Minister suggested that the definitions were more usefully left in the Code, and the Committee agreed.

3.20 In relation to the **Student Assistance Regulations 2003, Statutory Rules 2003 No 101**, the Committee queried differences in the definitions of ‘partner’ within

the same instrument: regulation 5 defined this term to exclude same-sex partners; regulation 7 did not contain this exclusion.

3.21 The Minister stated that the differences in the definitions of the term had occurred because the guidelines and policy manuals for the ABSTUDY and AIC schemes had “evolved independently”:

For consistency, and in line with the 1999 Cabinet decision, which adopted the general principle that marriage like relationship (de facto) must be between two people of the opposite sex, I undertake that the AIC policy manual will be aligned with the ABSTUDY policy manual and the Regulations will be amended accordingly.

Industry specific terms

3.22 In March 2002 the Committee queried the meaning of a provision which required licensees to keep and maintain financial accounts “in a recognised business or commercial form” (**Broadcasting Services (Datacasting Charge) Regulations 2001**).

3.23 The Minister noted that this term was used in the parent Act and was generally understood by the industry. The Australian Broadcasting Authority had developed procedures and information requirements based around it.

3.24 To similar effect, the Committee was told that the term “gift pack” was well recognised in the meat export industry (as meaning a consignment of less than 50kg used for personal consumption by an individual consignee or as a sample for the purpose of promoting a particular product type) and so required no further definition in the instrument (**Australian Meat and Livestock Industry (High Quality Beef Exports to the European Union) Order 2003**).

3.25 The **Product Stewardship (Oil) Amendment Regulations 2003 (No 1), Statutory Rules 2003 No 47** specified criteria for the quality of re-refined oil product in order for it to be eligible for a product stewardship (oil) benefit. The Committee noted that one of these criteria required that re-refined oil must have “a clear and bright appearance”. The Committee noted that this had previously been a requirement. Nevertheless, as a criterion it appeared to be imprecise and the Committee sought advice as to whether it was a term that was sufficiently understood within the industry.

3.26 The Minister responded that the term ‘clear and bright’ was a common screening and ‘fit for purpose’ criterion used in many specifications and petroleum products literature in reference to both virgin and re-refined oils. While acknowledging that such a definition of quality “may be open to a degree of subjectivity”, a ‘clear and bright’ appearance, in conjunction with the other quantitative tests in the Regulations, remained a good indicator of end-product quality.

‘Substantial’ compliance

3.27 In September 2001 the Committee considered the **Airports (Control of On-Airport Activities) Amendment Regulations 2001 (No 2), Statutory Rules 2001 No 170**. Regulation 106C permitted an airport-operator company to install a traffic control device only if the device ‘complies substantially’ with the Australian Road Rules. The Committee suggested that the words ‘complies substantially’ might be seen as vague and ambiguous (did they mean ‘complies with most of the Rules’, or ‘complies with the substance of the rules’?). The Minister responded that regulation 106C had to be read in conjunction with rule 316 which outlined the situations when a traffic control device ‘complied substantially’ with the Rules.

3.28 A similar issue arose during consideration of the **Marine Orders, Part 54, Issue 3, Order No 6 of 2001**. A particular provision empowered the manager to withdraw a pilotage provider’s Document of Compliance if, in the manager’s opinion, the systems and procedures failed to conform “in a major respect” with the Great Barrier Reef Pilotage Safety Management Code. The Committee sought clarification of the meaning of “in a major respect”.

3.29 The Minister responded that, in order to help pilot providers implement the Safety Management Code, the Australian Maritime Safety Authority had produced some Implementation Guidelines, a copy of which had been given to all three pilotage providers. These Guidelines defined “major non-conformance” as a situation where “objective evidence shows a major failure in compliance with the requirements of the Code exists which requires immediate rectification”. The Safety Management Code was based on the International Safety Management Code and the Implementation Guidelines were based on similar Guidelines applicable to the International Safety Code.

Offences involving ‘terrorism’ or ‘violence’

3.30 Section 15H of the *Crimes Act 1914* authorises the conduct of ‘controlled operations’ to obtain evidence of the commission of a serious Commonwealth offence. Section 15HB of that Act defines serious Commonwealth offences. In March 2002, the Committee sought advice in relation to the **Crimes Amendment Regulations 2001 (No 4)**. In particular, the Committee noted that regulation 4A prescribed an offence against the Commonwealth involving “terrorism” or “violence” as a serious Commonwealth offence for the purposes of paragraph 15HB(a) of the *Crimes Act 1914*. Neither of these terms was defined in the Regulations or the Act. The term “violence”, in particular, seemed capable of a wide interpretation and the Committee sought advice on whether those terms should be more precisely defined.

3.31 The Minister responded that precise definitions were not appropriate for a number of reasons:

- the terms were intended to provide a general description of types of offences in relation to which a controlled operation might be conducted – prescribing an offence involving ‘terrorism’ or ‘violence’ as a serious Commonwealth offence only allowed a controlled operation to be conducted in relation to a specific offence within one of these categories – it did not permit controlled operations in relation to these activities more generally;
- secondly, it was difficult to formulate a precise definition of these terms that could encompass the full range of serious Commonwealth offences dealing with violence or terrorism; and
- finally, the approach of using the terms to describe types of offences without defining those terms followed the approach taken in other Commonwealth legislation (including elsewhere in section 15HB of the Crimes Act).

3.32 The Committee then drew the Minister’s attention to the proposed Security Legislation Amendment (Terrorism) Bill 2002 which contained a definition of ‘terrorism’. It was not clear whether it was intended that there be some uniformity between the definition of ‘terrorism’ in the Bill and that contained in the Regulations. The Committee also noted that the Senate Standing Committee on Legal and Constitutional Affairs had expressed concern with the definition of ‘terrorism’ in a recent report on that Bill. Given these concerns, the Committee asked whether consideration had been given as to the appropriateness of defining or confining the term for the purposes of the Regulations.

3.33 The Minister responded that the types of offences that may come within the term ‘terrorism’ in the Regulations would not be determined by definition of ‘terrorist act’ in the proposed Bill:

For example, the proposed offences relating to the freezing of terrorist assets ... do not rely on the definition of “terrorist act” in the Security Bill but would be encompassed by the term “terrorism” in the Crimes Regulations. Furthermore, many of the proposed terrorism offences do not depend on the actual commission of a “terrorist act”, but apply to training, funding, preparation and planning etc that is connected to a “terrorist act”. The use of the term “terrorism” to describe types of offences, without defining that term, will enable regulation 4A to cover the full range of Commonwealth offences dealing with terrorism.

3.34 The Committee received a briefing on the Bill but wrote again to the Minister reiterating its concern with leaving a term such as ‘terrorism’ undefined. One

suggestion, which was favourably received by the officers who provided the briefing, was the possibility that the offences covered by the general word ‘terrorism’ might be defined by a note or by a reference to Part 5.3 of the Criminal Code, which contained those offences.

3.35 The Minister undertook to implement this suggestion and limit the reference to Commonwealth offences involving ‘terrorism’ to offences against Part 5.3 of the Criminal Code. He also gave an assurance that no controlled operations had been authorised during the disallowance period on the basis of the new categories of offence added by the amending regulations.

Multiplicity of instruments

3.36 The Committee is also concerned about the continuing proliferation of instruments and often seeks clarification where multiple instruments are made at the same time on the same matter, rather than a single instrument.

3.37 For example, noting that the **Migration Amendment Regulations 2001 Nos 9, 10 and 11 (Statutory Rules 2001 Nos 283, 284 and 285)** were all made on the same day, the Committee sought advice as to why they had not been consolidated. The Minister agreed that the normal practice, wherever possible, was to consolidate. However:

The importance of the proposed amendments and the need for them to be in place before the peak student visa application period lead to a decision being made that the proposed regulations should be put before the Executive Council as soon as possible. However, due to a shortage of drafting resources it was not possible to consolidate these amendments into a single instrument within the time frame available.

3.38 In the case of the **Health Insurance Amendment Regulations 2001 (Nos 1-4), Statutory Rules 2001 Nos 272-275**, the amendments were made for what was thought to have been the last Executive Council Meeting before an election – as a result “it was not feasible to amalgamate these Regulations in the available time frame”.

3.39 In the case of the **Great Barrier Reef Marine Park Amendment Regulations 2002 (No 1), Statutory Rules 2002 No 72**, and the **Great Barrier Reef Marine Park Amendment Regulations 2002 (No 2), Statutory Rules 2002 No 73**, the former had already been delivered to the Executive Council Secretariat independently and, given the Executive Council timeframes, it was not considered practical to withdraw them and replace them with a package containing consolidated Rules.

3.40 In May 2002, the Committee queried why five distinct motor vehicle standards determinations had been made rather than a single consolidated determination. The Minister responded that:

The Department considered that separate Determinations were more user friendly and would make future amendments more manageable. In addition, the view of the Office of Legislative Drafting was that, where an Act has separate sections providing that an instrument may be made on a particular matter specified in that section, and that such an instrument is a disallowable instrument for section 46A of the *Acts Interpretation Act 1901*, then each instrument should be made separately under the relevant empowering provision.

The Legislative Instruments Act

3.41 The issue of the quality of drafting of legislative instruments has now been specifically addressed in the *Legislative Instruments Act 2003*. To encourage high drafting standards, section 16 of that Act provides that the Secretary of the Attorney-General's Department must cause steps to be taken to promote "the legal effectiveness, clarity, and intelligibility to anticipated users, of legislative instruments". These steps may include, but are not limited to:

- undertaking or supervising the drafting of instruments;
- scrutinising preliminary drafts of instruments;
- providing advice concerning the drafting of instruments and training in drafting and matters related to drafting to officers and employees of other Departments or agencies;
- arranging the temporary secondment to other Departments or agencies of Departmental drafters; and
- providing drafting precedents to other Departments or agencies.

3.42 The Secretary must also cause steps to be taken to prevent the inappropriate use of gender-specific language in instruments; to advise rule-makers of existing legislative instruments if those instruments make inappropriate use of such language; and to notify the Parliament of any occasion when a rule-maker is so advised

3.43 The Committee intends to monitor the effect of this section on the quality of instruments.

Prejudicial retrospectivity

3.44 Each year, a number of instruments tabled in the Parliament are retrospective in application and are therefore subject to subsection 48(2) of the *Acts Interpretation Act 1901* (now subsection 12(2) of the *Legislative Instruments Act 2003*). Subsection

48(2) provides that delegated legislation which takes effect before gazettal, and which prejudicially affects the rights of anyone (other than the Commonwealth), is void.

3.45 In its *Annual Report 1999-2000* the Committee encouraged departments and agencies to include in the Explanatory Statements which accompany instruments an explanation for any retrospectivity, and an assurance that no person has been adversely affected. Where an Explanatory Statement fails to give this explanation and assurance, the Committee will seek advice from the Minister.

3.46 During the period, an assurance of compliance with subsection 48(2) was sought in relation to a number of instruments including **Determination No PHS 1/2003 made under subsection 5D(1) of the *National Health 1953*; Determination No 1 of 2002 made under section 52 of the *Defence Act 1903*; Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determination 2001 (No 1); and Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determination 2001 (No 1).**

3.47 Where the period of beneficial retrospectivity is extensive (for example, a period of years) the Committee may seek an explanation for the delay in making the amendments and an assurance that procedures have been adopted to prevent the recurrence of such delays (see, for example, correspondence in relation to **Customs Amendment Regulations 2003 (No 3), Statutory Rules 2003 No 65**, where the amendments dated back 8 years.)

3.48 In June 2001, the Committee became aware of the passage through the Parliament of two Dried Vine Fruits Validation Bills. These Bills validated regulations that retrospectively reduced a levy from \$10.00 to \$7.00 per tonne on processed dried vine fruits. The Explanatory Memorandum to the Bills stated that, when the regulations were made, the Attorney-General's Department had advised that the retrospective reduction in the levy did not contravene section 48(2) of the *Acts Interpretation Act 1901* as there would be 'no detrimental effect on any individual levy payer'. However, contrary to the original advice received from the Attorney-General's Department, the regulations imposing the levy or charge had subsequently been 'deemed to possibly contravene section 48(2)'.

3.49 The Committee sought a copy of the legal advice on this matter in order to assist it with its scrutiny of the application of section 48(2).

3.50 The legal advice from the Office of Legislative Drafting indicated that:

- an excise levy and a customs charge at a rate of \$10 per tonne had for some time been imposed on dried vine fruits by regulation;
- the parent Acts that authorised the regulations were repealed, but the regulations were continued in force under two new Acts;

- a decision was taken to reduce the rate of levy and charge to \$7 per tonne with effect from 1 January 2000;
- the method chosen was to repeal the continued regulations and amend two other different sets of regulations to impose a levy and a charge of \$7 per tonne;
- the necessary amendments and repeals were carried out some time after 1 January 2000 and so were retrospective.

3.51 The legal advice then continued:

On one view, the regulations imposing a new levy or charge would be invalid because of subsection 48(2) of the *Acts Interpretation Act 1901*. That subsection invalidates any regulation that is expressed to take effect at a time before it is gazetted and operates to the disadvantage of any person other than the Commonwealth. Clearly, a retrospective regulation imposing a levy or charge would be such a regulation.

At the time it was apparently considered that the provisions in the *Primary Industries (Excise) Levies Act 1999* continuing in force, inter alia, the Primary Industries Levies and Charges Collection (Dried Vine Fruits) Regulations had the effect that the levy mentioned in those regulations was in some sense the same levy as that imposed on dried vine fruits under the *Primary Industries (Excise) Levies Act 1999*, and similarly with the customs charge. However, it is by no means certain that this is the case. It is arguable that what was done had the effect of completely removing the levy or charge (when the Primary Industries Levies and Charges Collection (Dried Vine Fruits) Regulations were repealed) and then purporting to impose, retrospectively a new levy or charge at a lower rate. If the latter view were accepted, the regulations purporting to impose the new levy would necessarily be invalid.

It is relevant that the regulations concern a revenue measure. According to standard rules of statutory interpretation, revenue measures are construed strictly against the Crown. This consideration tends to support the view that the retrospective imposition of the levy and charge is invalid.

3.52 A further example of the operation of section 48(2) was seen in the Committee's consideration of three instruments made under subsection 303DC(1) of the *Environment Protection and Biodiversity Conservation Act 1999*. Each instrument amended the List of Exempt Native Species. Each instrument was dated 5 February 2002. Two of the instruments were gazetted on 7 March 2002 and the third on 15 March 2002. None of the instruments specified a commencement date. Therefore, by virtue of subparagraph 48(1)(b)(iv) of the *Acts Interpretation Act 1901*, each instrument was deemed to have commenced on the date it was gazetted.

3.53 Each of the instruments was expressed to expire "five years after the date of this instrument". However, it was not clear whether this referred to the date on which the instrument was signed, or the date on which it was gazetted. If the former, then it

suggested that the instrument had commenced before it was gazetted, thereby raising concerns under section 48(2) of the Acts Interpretation Act.

3.54 The Minister advised that it had been intended that the instruments should take effect from the date of gazettal, and he had instructed his Department “to ensure that any future instruments make it clear when an instrument shall take effect”.

3.55 The **GST-free Supply (In Home) Care Amendment Determination 2002 (No 1)** and the **GST-free Supply (Long Day Care) Determination 2002** each retrospectively removed liability for GST from relevant suppliers of child care services. The Committee noted the beneficial effect of these instruments, but asked whether any supplier had already paid GST during the retrospective period and, if so, asked what steps would be taken to make those people aware of their eligibility for a refund.

3.56 The Minister pointed out that these determinations were not expected to bring about any practical change to the way that suppliers charged for their services:

This is because those suppliers, acting on the GST information available to them (that Government-funded child care services are GST-free) did not, and do not, include GST in the price of these services. Therefore, it is unlikely that they would have paid GST in respect of these services. Consequently, the effect of these Determinations is not expected to flow on to the GST refunds.

Nevertheless once the Status of the Determinations is clear, the Department will inform suppliers about the Determinations and advise them to contact the Australian Taxation Office if they paid GST in respect of the services covered by the Determinations.

Incorporation of extrinsic material by reference

Section 49A of the Acts Interpretation Act

3.57 Legislative instruments often incorporate other material, making it part of the law. This is particularly necessary in technical areas, and the Committee has no objection to the practice. However, it is important that the law be clear and easily ascertainable at all times. When extrinsic material is incorporated in an instrument, it must be readily identifiable, and where it is non-statutory material, it is vital that the law not be open to change that is indirect and undisclosed.

3.58 This issue is dealt with in section 49A of the *Acts Interpretation Act 1901* (now section 14 of the *Legislative Instruments Act 2003*). This provides that delegated legislation may incorporate or adopt the provisions of a statutory instrument as in force at a particular time, or as in force from time to time, but may only incorporate non-statutory material as in force or existing when the incorporating instrument takes effect.

3.59 The incorporation of extrinsic material arose on a number of occasions during the period covered by this report.

3.60 For example, in scrutinising the **Renewable Energy (Electricity) Regulations 2001, Statutory Rules 2001 No 2**, the Committee queried a provision which defined the terms ‘native forest’ and ‘plantation’ by reference to definitions found in another document – the *Native Forest Policy Statement*. The regulations provided an ISBN for this Policy Statement.

3.61 The Committee sought advice on whether these definitions should have been included in the regulation itself, rather than by cross reference. To illustrate the dangers, the Committee noted that the National Library had no holdings of the Policy Statement referred to, and drew the Minister’s attention to an apparent error in the quoted ISBN.

3.62 The Minister acknowledged that the reference in the regulations required revision – the correct reference should have been to the *National Forest Policy Statement*. The Minister provided the correct ISBN for this Statement and undertook to amend the definition when the regulations were next amended.

3.63 However, the issue for the Committee was whether it was more appropriate to include these definitions in the regulations themselves. The Committee expressed the view that “cross-referencing a policy statement for a definition is wrong in principle as a policy statement is not meant to be normative”. The Minister then advised that he had instructed the Office of Legislative Drafting to include the definitions in the instrument itself.

3.64 In March 2002 the Committee examined the **Christmas Island Space Centre (APSC Proposal) Ordinance 2001**. This concerned a proposal for the establishment of a Space Facility on Christmas Island, and specified the requirements for such a proposal. Regulation 3 defined “Building Code” to mean “the Building Code of Australia, as in force, or existing, from time to time, in the Territory.” As the Explanatory Statement provided no information on this Code, it was unclear whether this provision complied with section 49A.

3.65 The Minister responded that the Building Code of Australia 1996 had been adopted in all Australian jurisdictions – in Western Australia by regulation 5 of the *Building Regulations 1989*. The Code was defined in those regulations as “the latest edition of the Building Code of Australia ... as amended from time to time, but not including explanatory information published with that Code”. Section 8A of the *Christmas Island Act 1958* applied Western Australian law on Christmas Island.

3.66 The Committee then drew the Minister’s attention to subsection 8A(4) of the Christmas Island Act. This provided that, to the extent that a law was in force in the

Territory under subsection (1), it had no effect insofar as it was inconsistent with an Act or Ordinance. The definition of Building Code appeared to be inconsistent with section 49A of the *Acts Interpretation Act 1901*. However the Minister stated that his Department had obtained legal advice from the Australian Government Solicitor which asserted that “Western Australian regulations in force in the Territory of Christmas Island by virtue of section 8A of the *Christmas Island Act 1958 (Cth)* are not regulations of the kind to which section 49A of the AIA refers”.

Accessibility

3.67 It is also important that incorporated extrinsic material be accessible. In March 2003 the Committee examined the **Farm Help Re-establishment Grant Scheme Amendment 2003 (No 1) made under subsection 52A of the *Farm Household Support Act 1992***. This instrument provided that recipients of Sugar Industry Reform Assistance exit grants were not also eligible to receive a Farm Help Re-establishment grant. An item in the Schedule introduced into the Scheme a reference to an instrument called the ‘Program Protocol for the delivery of Sugar Industry Reform Assistance’. While the scheme referred to a postal address where copies of the Protocol could be obtained, it did not appear to be available on the Internet. This comparative inaccessibility was a matter of concern for the Committee, particularly as the content of the Protocol was unclear.

3.68 The Minister acknowledged this concern, referring to the protocol as “an evolving document” detailing the contractual arrangement between his Department and Centrelink for the supply of assistance under the Sugar Industry Reform Program. Upon reflection, he agreed that the Protocol was not the most appropriate instrument for the purpose of identifying the sugar assistance measures and he undertook to further amend the Grant Scheme to provide a more suitable identifying reference to the sugar assistance measures.

Non-application of section 49A

3.69 Section 49A does not apply where the parent Act specifically authorises the incorporation of non-statutory material as in force from time to time. However, even here, the Committee prefers to see some effort made to keep those affected aware of changes in the law.

3.70 For example, in August 2001 the Committee considered the **Gene Technology Regulations 2001, Statutory Rules 2001 No 106**. The Regulations referred to Guidelines for the Transport of Genetically Modified Organisms. A provision in the *Gene Technology Act 2000* specifically provided that regulations made might require a person to comply with codes of practice or guidelines as in force from time to time, so section 49A did not apply in this instance. However, the

Minister confirmed that the Office of the Gene Technology Regulator (OGTR) had nevertheless taken steps to ensure that stakeholders would be made aware of any changes in the Guidelines as they occurred. Any changes would be available immediately on the relevant website and would be distributed to people on the OGTR mailing list.

3.71 The Committee accepted that section 49A also did not apply where an incorporated document was merely advisory in nature. For example, rule 15.07 of the **Federal Magistrates Court Rules** provided that expert witnesses should be guided by the Federal Court's Practice Direction guidelines for expert witnesses. The Chief Federal Magistrate pointed out that these guidelines were "no more than a guide for expert witnesses and have no mandatory or obligatory impact on either the Court or the witness". In these circumstances, the Committee agreed that section 49A had no application.

Inadequate explanatory material

3.72 The Committee often expresses concern at the quality of Explanatory Statements. In its *1999-2000 Annual Report* the Committee set out a number of requirements which Explanatory Statements should satisfy. In general terms, an Explanatory Statement should:

- provide a plain English explanation;
- state the authority for making the instrument;
- state the reasons for making the instrument;
- summarise the likely impact and effect;
- discuss any unusual aspects or matters that call for special comment;
- give reasons for and the basis upon which charges or fees have been increased or decreased;
- advise, where required, that consultation has taken place and the effect of that consultation;
- provide a detailed provision-by-provision description of the instrument; and
- be precise and informative.

Failure to provide an ES

3.73 Rule-makers occasionally fail to provide an Explanatory Statement at all (see, for example, correspondence in relation to the **Currency (Perth Mint) Determination 2003 (No 1); Currency (Royal Australian Mint) Amendment**

Determination 2004 (No 1); Amendment to Schedule 6 of the Wildlife Protection (Regulation of Exports and Imports) Act 1982 to include *Drosophila melanogaster* and A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges Determination 2001 (No 2)).

3.74 The Committee queried the failure to provide an Explanatory Statement in relation to the **Determination of Listed Professional Occupations and Relevant Assessing Bodies (Determination 2002-001) for the Bridging for Overseas-Trained Professionals Loan Scheme**. The Minister responded that his Department had sought clarification of the requirements for an Explanatory Statement from the House and Senate Table Offices. Verbal advice had been received indicating that “an Explanatory Statement, tabled with disallowable instruments, is not necessary unless required by relevant legislation”.

3.75 The provision of an Explanatory Statement is now a statutory requirement under section 26 of the *Legislative Instruments Act 2003*.

Failure to provide an item-by-item description

3.76 Explanatory Statements may be provided but may be unhelpful: for example they may contain a general description of the effect of an instrument but fail to include an item-by-item explanation of each of its provisions (see, for example, correspondence in relation to the **Health Insurance (Eligible Collection Centres) Approvals Principles (Amendment No 1) 2001; Marine Orders, Part 54, Issue 3, Order No 6 of 2001; Aboriginal and Torres Strait Islander Commission (Regional Council Election) Amendment Rules 2002 (No 1); and Australian Radiation Protection and Nuclear Safety Amendment Regulations 2003 (No 1), Statutory Rules 2003, No 90**).

3.77 The Committee queried the absence of an item-by-item description in the Explanatory Statement that accompanied the **Great Barrier Marine Reef Park Amendment Regulations 2002 (No 1) and (No 2), Statutory Rules 2002 No 72 and 73** and was told:

It has been the practice of the Great Barrier Reef Marine Park Authority to include a detailed explanation of proposed regulations in the explanatory memorandum rather than the Explanatory Statement; such documents being prepared in accordance with the Federal Executive Council Handbook (May 2000). That Handbook does not require that the Explanatory Statement provide a detailed provision-by-provision description of the instrument.

3.78 As noted above, the Legislative Instruments Act now includes a specific requirement for the provision of Explanatory Statements. That Act defines an Explanatory Statement as a statement that:

- is prepared by the rule-maker;

- explains the purpose and operation of the instrument;
- if any documents are incorporated in the instrument by reference – contains a description of the documents so incorporated and indicates how they may be obtained;
- if consultation was undertaken under section 17 before the instrument was made – contains a description of the nature of that consultation;
- if no such consultation was undertaken – explains why no such consultation was undertaken; and
- contains such other information as is prescribed.

3.79 The Committee expresses its disappointment that this definition makes no reference to the need for an Explanatory Statement to contain an item-by-item explanation of the clauses in an instrument.

3.80 The Committee accepts that an item-by-item description may be unnecessary where an instrument has been drafted with an explanation embedded within it that is readily intelligible to those to whom it is intended to apply (see, for example, *Health Insurance Act 1973 section 19AB Guidelines*.)

Deficiencies in the Explanatory Statement

3.81 There may be discrepancies between an instrument and an accompanying Explanatory Statement. For example, in March 2002 the Committee considered the **Patents Amendment Regulations 2001 (No 3), Statutory Rules 2001 No 345**. An attachment to the Explanatory Statement gave an item-by-item description of the amendments, however it included a description of an item which purported to insert a new subregulation 20.25(5). There was no such subregulation in the Regulations themselves.

3.82 The Minister advised that the inconsistency was because of a late change to the draft Regulations. This combined two previously distinct items into a single item.

Unfortunately the corresponding entries in the Attachment to the Explanatory Statement for items 3 and 4 of Schedule 1 were not amalgamated into a single entry. It will therefore be necessary to consider both of those entries in the Attachment, when considering item 3 ... Also all subsequent references to items in Schedule 1 set out in the Attachment to the Explanatory Statement are to the previous item in the Schedule 1 to the Regulations.

3.83 Explanatory Statements may also fail to explain significant provisions in an instrument. For example, in the **Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2003 (No 1)** a supplier was

required to declare that they would supply no more than 50 items of equipment in a calendar year. No reason was given for this restriction.

3.84 The Minister advised that this instrument was intended to provide a simple and inexpensive way for low volume disability customer equipment – which was often designed to meet specific disability needs not met by other equipment – to conform with reduced technical regulatory compliance requirements. More than 50 such items might be supplied, but then normal regulatory compliance requirements would apply.

Regulatory Impact Statements

3.85 Included in the issue of appropriate explanatory material is the provision of Regulatory Impact Statements (RIS). Introduced by a Cabinet directive in 1997, the RIS process requires rule-makers to produce a Regulatory Impact Statement where an instrument directly affects, or substantially indirectly affects, business. A RIS is usually not required where amendments are of a minor and machinery nature, and do not substantially alter existing law or arrangements. The Office of Regulation Review monitors and provides advice on the process to rule-makers and a RIS is included with an instrument when it is tabled in the Parliament.

3.86 If the matter is not referred to in the ES, the Committee may seek advice about whether a RIS has been prepared for a particular instrument. For example, the **Telecommunications Numbering Plan Variation 2003 (No 1)** specified certain rules for the management of International Signalling Point Codes. The Committee asked whether the Australian Communications Authority had sought any advice about the necessity for a RIS. The Minister responded that the Office of Regulation Review had requested that a RIS be submitted and he forwarded a copy to the Committee.

3.87 The Attorney-General has advised that if a regulatory proposal fulfils the RIS requirements – including community consultation and engagement – it is likely to fulfil the requirements for consultation under the Legislative Instruments Act.

Proper numbering and citation

3.88 Every legislative instrument should be clearly identifiable and distinguishable by means of a convenient system of numbering and citation. Without such a system, users may become confused and it may be unclear which instrument is proposed to be amended.

3.89 During the period, instruments were issued:

- which were incorrectly numbered: two instruments both numbered **Currency (Perth Mint) Determination 2001 (No 2)**; and **Health Insurance (Eligible Collection Centres – Approvals) Principles**

(Amendment No 2) 2001 which was incorrectly numbered as (Amendment No 1);

- with no year of making specified in the title (**Superannuation (CSS) Deferred Transfer Value Payment (AvSuper) Determination No 2; Variation (No 4) to Life Insurance Prudential Rules No 47**);
- with the wrong year specified in the title (**Civil Aviation Amendment Order (No 5) 2001; Health Insurance (Eligible Collection Centres – Approvals) Principles 2000; Health Insurance Determinations HS/6/01 and HS/7/01**);
- with no formal issuing instrument (**Special Capital Projects Guidelines 2001 made under section 27 of the Higher Education Funding Act 1988 and Actuarial Standards made under s 101 of the Life Insurance Act 1995 and Health Insurance (Approval of Billing Agents) Guidelines 2003 made under subsection 20AB(3) of the Health Insurance Act 1973**);
- by way of signing and dating a departmental recommendation rather than through a formal instrument of approval (**Approval of Management Plans made under the Environment Protection and Biodiversity Conservation Act 1999 for Ashmore Reef National Nature Reserve**);
- with no indication of the legislative authority under which they were made, or that the relevant Minister had approved the instrument (**Private Patients' Hospital Charter; Health Insurance Act 1973 section 19AB Guidelines; Livestock Export (Merino) Orders (Amendment) No 1 of 2003**);
- which apparently failed to revoke a previous instrument (**Health Insurance (Approval of Billing Agents) Guidelines 2003 made under subsection 20AB(3) of the Health Insurance Act 1973**).

Indeterminate commencement

3.90 Where the commencement of an instrument is contingent on another event – often the commencement of related primary legislation – the Committee prefers to see some indication in the Explanatory Statement of a likely or anticipated commencement date, or of a reason why such an indication cannot be given.

3.91 For example, in April 2002 the Committee considered the commencement of Schedule 3 of the **Superannuation (CSS) Continuing Contributions for Benefits (Amendment) Regulations 2001**. These regulations enabled certain employees of the corporatised Snowy Hydro Ltd to continue their membership of the Commonwealth

Superannuation Scheme. The Committee sought advice as to why no anticipated commencement date had been put forward for these Regulations.

3.92 The Minister responded that the corporatisation of Snowy Hydro Ltd depended on the completion of various agreements and documents between the Commonwealth Government and the governments of NSW and Victoria. As yet, there was no precise date for the completion of these arrangements. While the Regulations could have been made after corporatisation was complete, their early introduction was intended to give certainty of CSS membership to those employees who would be transferred to the new corporation. The Committee accepted this explanation.

3.93 In seeking advice on the **Australian Industrial Relations Commission (Allowances) Amendment Regulations 2003, Statutory Rules 2003 No 102**, the Committee was informed that the ultimate commencement provision had been included in primary legislation rather than in the Regulations as “a drafting decision”.

3.94 In March 2004, the Committee sought advice from the Minister for Communications on the inclusion of likely commencement dates in Explanatory Statements to accompany future disallowable instruments produced within his portfolio. The Minister responded:

Explanatory Statements produced by the Department generally include an explanation of the reasons for a delayed commencement, but often do not provide a likely date for commencement due to the difficulties in predicting the required time to complete certain tasks ... [T]he commencement of an instrument may be delayed to allow a portfolio agency, such as the Australian Broadcasting Authority, to make an amendment to a related instrument or to take some other action. In some cases it is difficult to predict the amount of time required for related tasks to be completed, and thus a date of commencement cannot be estimated with any certainty. Further, circumstances may change between the making of the instrument and the date of commencement, rendering the estimate in the Explanatory Statement inaccurate.

Nevertheless, I agree that it is appropriate to include an estimated date of commencement, or period before commencement, wherever practicable. I will endeavour to include an anticipated date of commencement in future Explanatory Statements wherever a reasonable estimate can be made. If this is not possible, the factors affecting the commencement date will be outlined in the Statement.

3.95 During the period, the Committee queried a number of instances of instruments expressed to commence on the commencement of a related Act or where commencement was expressed in a way that was not specified but rather required that it be derived. These included: **Dairy Structural Adjustment Program Scheme Amendment 2000 (No 8)**; **Family Law (Superannuation) Regulations 2001, Statutory Rules 2001 No 303** and **Commercial Television Conversion Scheme Variation 2003 (No 2)**.

3.96 The **Naval Forces Amendment Regulations 2002 (No 1), Statutory Rules 2002 No 52** were intended to commence coincidentally with the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*. In fact, the Act commenced on 19 April 2001 and the Regulations commenced on 21 April 2001. The Minister advised that no-one had been disadvantaged by the discrepancy in commencement dates.

The provision of legal advice

3.97 The Committee frequently seeks copies of legal advice to assist it in determining matters of validity or rights. Most Ministers readily provide such advice, which greatly assists the scrutiny process (see correspondence in relation to the **Dried Vine Fruits Validation Bills 2001; Explosives Transport Regulations 2002; Quarantine Services Fees Determination 2001 (No 1); and Dairy Structural Adjustment Program Scheme Amendment 2000**).

3.98 Occasionally, Committee requests for the provision of legal advice have produced difficulties. For example, in June 2002, the Committee considered the **Public Employment (Consequential and Transitional Amendment Regulations 2002 (No 1), Statutory Rules 2002 No 87**. These regulations corrected a drafting error which affected the eligibility of certain former public service officers to seek re-engagement in the APS. The Committee noted that these Regulations commenced retrospectively on 5 December 1999. The Explanatory Statement gave the usual assurance that no person was disadvantaged by the retrospective operation of these amendments. Nevertheless, the Committee sought advice from the Minister as to whether any person had been disadvantaged by omission, which the retrospective amendments had sought to remedy, and also whether any person had been re-engaged without proper legislative authority, prior to the making of the amendments.

3.99 The Minister responded that:

- the legislation concerning the transitional mobility arrangements was very complex;
- the re-engagement of former APS officers in the prescribed circumstances had been devolved to individual agencies; consequently there was no specific information on the number of persons who may have been re-engaged before the commencement of the Regulations;
- anecdotal evidence suggested that “a small number of persons” may have been so re-engaged between 5 December 1999 and May 2002;
- the Australian Public Service Commission had no reason to believe that any person had been disadvantaged by the omission of these provisions

between 1999 and 2002 because it was generally thought that persons compulsorily transferred in the prescribed circumstances were eligible to apply for re-engagement in the APS and agencies processed applications on that basis;

- it was only when advice was received from the Australian Government Solicitor that the Commission became aware that these persons were not covered by the transitional regulations and action was taken to rectify the situation; and
- advice was also received that the making of the regulations with a retrospective commencement date of 5 December 1999 would be sufficient to validate any re-engagements that had been made.

3.100 The Committee acknowledged that no-one seemed to have been disadvantaged by the retrospective operation of these amendments. However, noting the reliance on advice from the Australian Government Solicitor, the Committee pointed out that its practice was to request a copy of the relevant legal advice:

This assists the Committee in confirming that the aim of the instrument has been achieved in an appropriate manner. Departments regularly make advice available in these circumstances. You may recall that earlier this month, the Committee sought from your Department a copy of the relevant legal advice in relation to the Workplace Relations Amendment Regulations 2001 (No 2), Statutory Rules 2001 No 323 – this matter is still awaiting resolution.

3.101 The Minister responded that he was “reluctant to provide legal advice unless special circumstances apply ... I would be prepared to have my officials provide the Committee with material on a strictly confidential basis, subject to the consent of the relevant legal advisers.”

3.102 The Committee wrote again in the following terms:

The Regulations and Ordinances Committee is not a policy Committee – it does not question the policy underlying particular regulations. The Committee operates in a strictly non-partisan fashion, and has been charged by the Senate, since 1932, with scrutinising subordinate legislation to ensure that it is in accord with statute; that it does not trespass unduly on personal rights and liberties; that it provides adequate review procedures; and that it does not contain matter more appropriate for primary legislation.

In my letter to you of 29 August I referred to your observation that legal advice had been received by your Department to the effect that the making of Regulations with a retrospective commencement date “was sufficient to validate any re-engagements involving persons compulsorily transferred” during the period covered by the retrospective amendments.

This is the background against which the Committee requested a copy of the legal advice – it simply wishes to confirm that the advice was received, and that it

confirms that the approach taken, of retrospective commencement, will achieve the desired outcome.

In the Committee's experience, circumstances have previously arisen in which actions have been taken on the basis of legal advice which, when re-examined, was considered to be arguable, with remedial action then having to be taken through the passing of further primary legislation.

I reiterate that the Committee is interested in examining legal advice only to ensure that these regulations do not contravene the Committee's terms of reference. This has been accepted by all other Ministers with whom the Committee has corresponded. As I mentioned in a previous letter to you, the Committee regularly receives legal advice from Ministers on a non-confidential basis, and has received legal advice on a confidential basis on only one occasion, and that involved considerations of commercial-in-confidence.

3.103 The Minister then provided a copy of the legal advice on a private and confidential basis. The Committee thanked the Minister, but stated that:

as a matter of principle, it is undesirable that public policy should be established in reliance on advice that cannot be made public, or disclosed to the Parliament in some appropriate form.

Having examined the advice provided by your Department, there would seem to be no obvious reason for maintaining its confidentiality. The advice simply confirms that no-one is likely to be adversely affected by the retrospective operation of the regulations. Given this, I am writing to ask why the advice should remain confidential. Alternatively, it might be made available to the Parliament in some other form (eg a summary). Either approach would enable the Committee to continue its commitment to transparency without unduly complicating the exercise of Government administration.

3.104 The Minister re-asserted that "advice provided confidentially should continue to be treated confidentially". In its published correspondence for the period, the Committee confirmed that, given the nature of the correspondence concerning this particular instrument, it had agreed, on this occasion, to adhere to the Minister's request for confidentiality in respect of the legal advice provided. However the Committee reiterated that it did not necessarily accept the legitimacy of the request.

CHAPTER FOUR

TRESPASS ON PERSONAL RIGHTS AND LIBERTIES

Introduction

4.1 Under its second principle, the Committee is required to determine whether delegated legislation trespasses unduly on personal rights and liberties. The Committee interprets this principle in a broad and expansive manner to ensure that delegated legislation does not operate adversely on any aspect of personal rights or liberties.

4.2 A legislative instrument may trespass unduly on personal rights and liberties in a number of ways. In addition to the protection of rights generally, during the period covered by this report, the Committee also considered provisions which appeared to impose unreasonable burdens placed on business, inconsistent penalty provisions, strict liability offences, ensuring that levels of fees and charges could be justified and protecting the right to privacy.

Protection of rights

4.3 In relation to the **Sydney Harbour Federation Trust Regulations 2001, Statutory Rules 2001 No 296**, the Committee noted that regulation 31 gave a ranger or warden power to remove a person from Trust land, in certain circumstances. Subregulation 31(6) stated that “reasonable force may be used to effect the person’s removal”. The Committee considered that a better formulation of this power of removal might be to state that a relevant person should use “no more force than is reasonably necessary” (as found in other instruments) and the Minister agreed to make this amendment.

4.4 In relation to the **Defence Force Amendment Regulations 2002 (No 1)**, the Committee queried a provision which declared a person guilty of an offence if they were the driver, owner, or hirer of a vehicle. This provision had previously included a specific defence that an offender was not liable to be punished more than once in respect of the same offence (eg as both the owner and the driver). This defence had been removed when the offence had been redrafted and the Committee queried its omission. The Minister sought advice from the Attorney-General’s Department and “for the purposes of clarity” agreed to re-insert the defence.

4.5 In relation to the **Defence (Public Areas) Amendment By Laws 2001 (No 1)** the Committee considered a provision which made it an offence to take an animal into

a public area. There was an express exception for a “blind person” to be accompanied by a guide dog. The Committee noted that guide dogs were used by both vision and hearing impaired persons and the Minister agreed to amend the instrument to ensure that these people were not disadvantaged.

4.6 A similar situation arose in relation to regulation 41A of the **Great Barrier Reef Marine Park Regulations 1983**, which prohibited the taking of live terrestrial animals onto Commonwealth islands in the Great Barrier Reef Marine Park. There was a specific exemption available to a blind person where the animal concerned was a guide dog. The Minister agreed to amend the regulations to extend this defence to hearing-impaired persons with guide dogs.

4.7 In relation to the **Telecommunications (Interception) Amendment Regulations 2001 (No 1), Statutory Rules 2001 No 85**, the Committee received an assurance that no rights had been adversely affected as a result of discrepancies and errors in the form of interception warrants.

4.8 In relation to **Telecommunications Labelling (Customer Equipment and Customer Labelling) Amendment Notice 2001 (No 1)** the Committee received an assurance that no rights had been adversely affected by an error in an identified compliance level.

4.9 In relation to the **Renewable Energy (Electricity) Amendment Regulations 2001 (No 1), Statutory Rules 2001, No 219**, the Committee received an assurance that no person had been disadvantaged by an error in the formula used to calculate the number of renewable energy certificates for which a company was eligible (no transmission-connected generator had yet created any renewable energy certificates). In similar terms, no person was disadvantaged by an incorrectly drafted formula used to calculate quota entitlement under the **Australian Meat and Live-stock Industry (Beef Export to the United States of America – Quota Year 2004) Amendment Order 2003 (No 1)** (use of the original formula would have produced lower quota entitlements for qualifying exporters).

4.10 In relation to **Migration Amendment Regulations 2001 (No 10), Statutory Rules 2001 No 284**, the Committee queried a subregulation which provided that the purpose for which an individual, or his or her clothing or property, might be searched was to find out whether the individual was carrying or hiding a weapon. The Committee sought advice on two issues: why there was no threshold requirement for the officer to have a reasonable suspicion or apprehension that the person was carrying or concealing a weapon; and why such a broad definition of ‘weapon’ – “anything capable of being used to inflict bodily injury” – was required.

4.11 The Minister responded that these powers were virtually word-for-word equivalents of corresponding powers in the parent Act, and it was important to

understand the background to them and the context in which they were intended to operate.

The underlying premise of these powers is that they will be exercised at sea, perhaps in hazardous circumstances, but always in situations where the officers or personnel do not know the identity or intentions of the individuals on board.

The powers are therefore broad because they are essential to ensuring the security and safety of both Royal Australian Navy or Customs personnel, and any individuals already on board the vessel.

It is also significant that these powers may only be exercised where the vessel is entitled to fly the flag of a foreign country, and Australia has an agreement or arrangement with that foreign country which enables the exercise of Australian jurisdiction over the vessel ...

I note that no such agreements or arrangements are currently in place. These powers were made in anticipation of agreements being made with other countries, but are otherwise latent in the operational sense.

4.12 In March 2002, the Committee queried an amendment to regulation 44 of the *Taxation Administration Regulations 1976* made by the **Taxation Administration Amendment Regulations 2001 (No 2), Statutory Rules 2001 No 354**. This amendment dealt with the application of the Pay As You Go withholding system to “performing artists”. However the definition of “performing artist” specifically excluded “an individual who is engaged primarily because he or she is a sportsperson”. The Explanatory Statement provided no reason for excluding sportspeople who undertook promotional engagements.

4.13 The Minister responded that these amendments were made in response to representations from the Media Entertainment and Arts Alliance. The standard forms of contractual arrangements for promotional work were unclear as to the status of performers as employees or independent contractors. This amendment clarified that status.

4.14 Payments to sportspeople were excluded because there was no corresponding uncertainty or inconsistency of treatment when sportspeople were engaged to perform promotional activities. They were relatively few in number, were usually engaged because of their high public profile, and tended to exploit their profile in a businesslike way (often through an interposed entity). Hence sportspeople were not disadvantaged by the amendment.

4.15 An important aspect of rights protection involves knowledge of the law and legal obligations. The **Quarantine Amendment Regulations 2001 (No 1)** imposed new requirements on the master of an overseas vessel to manage the vessel’s ballast water. The Committee queried how the master of an overseas vessel, which may only infrequently visit Australian waters, would be made aware of these new requirements.

4.16 The Minister acknowledged this difficulty and said that, in addition to making the information available over the Internet, he proposed to use shipping agents as the most effective conduit for providing this information to the masters affected.

4.17 Regulation 4CE of the **Airports (Control of On-Airport Activities) Amendment Regulations 2001 (No 3) Statutory Rules 2001 No 287** required an authorised officer exercising powers in relation to a person to produce his or her identity card when requested by that person. The Committee asked why authorised officers should not produce their identity card as a matter of course.

4.18 The Minister stated that these provisions mirrored those in the parent Act, and in other Commonwealth legislation dealing with powers of control over persons on premises. A mandatory requirement to produce an identity card on any occasion when the powers were exercised would be difficult to comply with and could lead to many prosecutions failing on this technicality (for example, where the premises were unoccupied when entered by the authorised officer).

Unreasonable burdens placed on business

4.19 In September 2001 the Committee received correspondence from North Shore Radiology and Nuclear Medicine (NSR) concerning the effect on their business of the **Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2001 (No 4), Statutory Rules 2001 No 157**. The effect of these regulations was to restrict, from a specified date, Medicare eligibility to only those MRI units which were explicitly named in the regulations. Units omitted from the regulations would be denied eligibility.

4.20 The Minister advised that the amendment reflected a deliberate policy decision, following a review of geographical access to MRI services, to ensure that “the right number of MRI machines was in place and the government was not prepared to extend eligibility to others”. The Committee accepted that this was ultimately a policy matter.

4.21 Under this criterion the Committee also considered the effect of a change contained in the **Therapeutic Goods Amendment Regulations 2001 (No 1), Statutory Rules 2001 No 159**. This change corrected an error – introduced in a previous amendment – to the wording of a mandatory warning statement to be included on labels for vitamin products. The Committee sought advice on when the error had been detected, whether it had caused any adverse impact, and whether any action had been taken against any producer for a technical breach in connection with the previous amendment.

4.22 The Minister responded that the Therapeutic Goods Regulations had required producers of vitamin products to include the warning ‘Vitamins can only be of assistance if the dietary vitamin intake is inadequate’. In December 1999 this warning was amended to include an alternative warning ‘Vitamin supplements should not replace a balanced diet’. However, in the process, additional words were added to the earlier warning statement, which now read “‘Vitamins can only be of assistance **to a person** if the **person’s** dietary vitamin intake is inadequate’.

4.23 This inadvertent addition was drawn to the attention of the Therapeutic Goods Administration (TGA) some five months later. Participants in the industry expressed concern that the use of the originally approved wording would not now comply with the regulations as amended. The TGA Listing Unit agreed to accept all three versions of the warning until the regulations could be amended. This approach “avoided any adverse impact on industry”.

Consistency in penalty provisions

4.24 During the period, the Committee took particular interest in the consistency of penalty provisions in Commonwealth legislation.

4.25 For example, in the looking at the **Civil Aviation Legislation Amendment (Application of Criminal Code) Regulations 2002** the Committee contrasted an offence which prescribed a penalty of 10 penalty units (\$1100) for constructing an unapproved building, and an offence which prescribed a penalty of 2 penalty units (\$220) for a failing to comply with a notice requiring the removal of a building, structure or object constituting a hazard to aircraft, with a penalty of 50 penalty units (\$5500) for a failure to retain records, or to send copies of records to the Civil Aviation Safety Authority.

4.26 The Committee received advice from the Minister which indicated that:

- the resources of the Civil Aviation Safety Authority had been targeted at an extensive review and rewrite of safety regulations – to include a review of penalty provisions would mean delays in completing the safety review; and
- the Australian Law Reform Commission had provided its final report on civil and administrative penalties in Commonwealth legislation and it would be more appropriate to consider aviation legislation in the context of responding to that report: “particular attention will be given to the inconsistencies in the ‘Building Control’ regulations identified by the Committee”.

4.27 Similar inconsistencies seemed to arise in relation to penalty levels in the **Defence Force Amendment Regulations 2002 (No 1)**. It was difficult to identify the

policy behind the penalty levels in these regulations. For example, a penalty of 1 penalty unit or 3 months imprisonment was specified for making a false statement or affidavit or declaration. A similar penalty was specified for smoking in a public place. The specification of 3 months imprisonment as an alternative to 1 penalty unit (\$110) appeared to be severe, especially when compared to penalties under other regulations (where 3 months imprisonment was an alternative for 5 penalty units, or where 1 penalty unit had no alternative period of imprisonment). The Committee sought an explanation for how these penalties compared with penalties for similar offences in other legislation. It also sought confirmation that these penalty levels accorded with general Commonwealth criminal law policy.

4.28 The Minister responded that the regulations had been drafted as part of the Criminal Code harmonisation process and that the actual level of penalties had not been reviewed as part of this process – the regulations were simply restructured so that they reflected the style of the *Code*; no change had been made to their substance.

4.29 In any event, the Minister contended that more severe penalties were appropriate in relation to making a false statement because of the “higher command and discipline that is expected of members of the ADF and the over-arching importance of personal integrity that lies at the heart of the command and discipline system”. And more severe penalties were appropriate for smoking in a protected place “because of the clear risk to safety of smoking in the proximity of explosive substances that are ordinarily present” in such places.

4.30 The Committee accepted that the consistency of penalties was beyond the scope of the harmonisation process but sought further advice on whether the Minister now proposed to review the actual level of penalties in legislation administered by her Department to ensure that those penalties were consistent across the legislation.

4.31 The Committee also wrote to the Attorney-General who responded:

Penalty setting involves consideration of a range of matters including the seriousness of the undesired behaviour, the regularity at which it occurs, the characteristics of the target community (potential offenders) and the effectiveness, or lack thereof, of existing penalties in curbing the undesired behaviour. Commonwealth criminal law policy will usually require that like offences attract like penalties. Consistency is required in relation to similar offences within legislation or as between different legislation. Of course, anomalies exist, often due to a failure to keep penalties up to date. In other cases, apparent anomalies reflect the need to maintain flexibility. Two apparently similar offences may have substantially different penalties if it can be justified in all the circumstances. Greater flexibility may be available in relation to subordinate legislation than it is in primary legislation.

Generally speaking, Commonwealth criminal law policy has required that offences created in subordinate legislation may only apply a penalty of 50 penalty units (\$5500) or less. Imprisonment will not usually be available for offences set out in subordinate legislation. The rationale behind this policy is that serious criminal

offences should be subject to full Parliamentary scrutiny. Where imprisonment or substantial pecuniary penalties are provided for in subordinate legislation there will usually be an express power to do so in the primary legislation. For example, section 124 of the *Defence Act 1903* allows the regulations to provide for imprisonment of up to 12 months.

4.32 Noting that section 4B of the *Crimes Act 1914* set out a relationship of a term of imprisonment (set out in months) multiplied by 5, the Attorney said that this provision only applied where no pecuniary penalty was provided for in an offence provision. There was no requirement that a provision which set out both a term of imprisonment and a pecuniary penalty had to comply with this section “though Commonwealth criminal law policy encourages adherence with the ratio”.

4.33 In the case of primary legislation, the Attorney-General’s Department “would usually require that a penalty accord with section 4B unless there were strong grounds to provide otherwise”.

Subordinate legislation fulfils a different function to that of primary legislation. Subordinate legislation will often be used where there is a need for a high degree of flexibility and where the matters in question are of a less substantive nature. As such, while consistency in penalty setting is desirable, it may be appropriate to allow more room for variation than would otherwise be desirable in primary legislation.

4.34 The Committee accepts that flexibility in penalty setting may be more appropriate in subordinate legislation. However it seems that many anomalies exist simply because of a “failure to keep penalties up to date.” The Committee notes that the Scrutiny of Bills Committee inquired into penalty levels in primary legislation, and that the Australian Law Reform Commission has examined civil penalties. Given the tendency to place more and more offences in subordinate legislation, the Committee considers that greater attention should be paid to removing unnecessary anomalies in penalty levels.

Strict liability offences

4.35 The Committee usually asks Ministers for an explanation where an instrument creates a strict liability offence or contains a provision which reverses the onus of proof.

4.36 For example, in September 2001 the Committee considered the **Airports (Control of On-Airport Activities) Amendment Regulations 2001 (No 2), Statutory Rules 2001 No 170**. Among other things, these regulations created a series of strict liability offences for taxi drivers at airport passenger terminals (eg, leaving a taxi unattended in a taxi zone contrary to a traffic control device; failing to show an

authority card to an authorised person). The Committee sought advice as to why these had been designated strict liability offences.

4.37 The Minister responded that the new offences were ‘infringement notice offences’ with offenders having the opportunity to pay one fifth of the prescribed penalty unit amount. He noted advice from the Attorney-General’s Department that it was Commonwealth Criminal Law Policy to make Infringement Notice Offences strict or absolute liability offences, and there was no justification for seeking to depart from this policy in this case.

4.38 Strict liability offences also arose under the **Air Navigation (Essendon Airport) Regulations 2001, Statutory Rules 2001 No 125**. These regulations sought to minimise the effect of aircraft noise on the community surrounding Essendon Airport.

4.39 Subregulation 16(1) enabled the Secretary to issue a notice to an operator requesting that certain information be provided. Subregulation 16(3) specified an offence if an operator failed to comply with such a notice (paragraph 16(3)(a)), and the notice was issued under subregulation (1) (paragraph 16(3)(b)). Subregulation 16(4) stated that strict liability applied “to the element of an offence under subregulation (3) mentioned in paragraph (3)(b)”. However the Explanatory Statement stated that regulation 16 provides that “An operator must not knowingly or recklessly fail to comply with such a notice”. The Committee queried the effect of regulation 16.

4.40 The Minister acknowledged that there was confusion as to whether ignorance of the law was available as a defence to a prosecution and concluded that “strict liability, as outlined in subregulation 16(4) is not required to achieve the intent of the liability provisions in the Regulations. Strict liability will therefore be removed when the Regulations are amended”.

4.41 Correspondence from the Minister in relation to the **Civil Aviation Amendment Regulations 2003 (No 1), Statutory Rules 2003 No 58** set out a number of principles relevant to the imposition of strict liability in relation to offences. It was argued that strict liability is appropriate where offences:

- are ‘regulatory’ in nature (ie they regulate a particular type of activity in the public interest rather than penalise behaviour traditionally regarded as criminal);
- regulate matters of particular public interest where physical injury to a person or damage to something of special value may result (eg, the law relates to a matter such as health, safety, environmental protection or business practice); and

- do not impose terms of imprisonment, and monetary penalties do not exceed 50 penalty units.

4.42 In February 2004 the Committee considered the **Explosives Areas Regulations 2003, Statutory Rules 2003 No 312**, which provided a regime for managing and controlling certain Commonwealth explosives areas for safety reasons. The Committee queried regulation 13, which created an offence of parking, stopping or mooring a vehicle or vessel in a Commonwealth explosives area, and particularly sought advice in relation to the need for a defence such as reasonable excuse. Such a defence might be useful in situations where a vehicle may stop because of mechanical failure.

4.43 The Minister responded that it was only necessary to provide such a defence where an offence was one of strict liability because, in such a case, the prosecution need not prove any fault element.

A defence of reasonable excuse creates an equitable public interest balance between two conflicting requirements. The first requirement is the need for efficient prosecution of offences. The second requirement is the need to provide a defence to persons who are caught by an offence provision in circumstances where the apparent contravention is excusable.

Appropriate basis for fees and charges

4.44 One important area of personal rights is protection from penalties which are unreasonable because of their severity or the circumstances in which they may have been imposed. Similarly, fees and charges imposed by delegated legislation should not be set at 'unusual' levels, or be increased abruptly without full explanation and justification. The Committee often seeks advice where an instrument increases fees or charges with no explanation of the basis for the increase. It is important that fees set by regulation must not amount to taxation.

4.45 Appropriate fee levels may be set by reference to:

- actual cost recovery (**Export Control (Fees) Amendment Orders 2004 (No. 1; Industrial Chemicals (Notification and Assessment) Amendment Regulations 2003 (No 3), Statutory Rules 2003 No 192**);
- a minimum estimate of likely costs (**Education Services for Overseas Students Regulations 2001, Statutory Rules 2001 No 96**);
- movements in the CPI or other relevant indices (**Corporations (Review Fees) Regulations 2003, Statutory Rules 2003 No 160; Great Barrier Reef Marine Park Amendment Regulations 2004 (No 1), Statutory Rules 2004 No 15**); or

- comparable fees applicable for similar services or in similar situations (**Trade Marks Amendment Regulations 2001 (No 3), Statutory Rules 2001 No 247; Ozone Protection Amendment Regulations 2004 (No 1), Statutory Rules 2004 No 16**);

4.46 For example, the **Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2002 (No 1), Statutory Rules 2002 No 75**, made a number of adjustments to the Table of Fees for vascular and ultrasound services. However, the Explanatory Statement did not detail the reason for these fee adjustments.

4.47 The Minister advised that fees had been altered following consultation with members of the professions and had been varied to ensure that the provision of multiple services was treated in a more equitable way. In other cases, the Schedule fees did not accurately reflect the complexity of the services provided.

4.48 In June 2003, the Committee examined the **Tradespersons' Rights (Cost Recovery) Amendment Regulations 2003 (No 1), Statutory Rules 2003, No 104** which reduced, from \$390 to \$300, the application fee for a trades assessment made to the Trades Recognition Authority (TRA). The Explanatory Statement that accompanied the instrument noted that it had been made in response to a Productivity Commission report which recommended that cost recovery fees should not result in a profit as such fees may be open to challenge as a form of taxation. The Explanatory Statement stated that "the fee now generates an annual profit of \$1.5 million". It was not clear how long the Department had been making this profit, and, if the profit were susceptible to challenge as a form of taxation, it was not clear what steps, if any, would be taken to reimburse persons who had paid fees above what was necessary for cost recovery.

4.49 The Minister advised that:

- the \$1.5 million figure referred to the overall profit generated by the TRA from all of its fees, not only the previous \$390 application fee;
- he did not consider the previous fee to be a tax; accordingly there was no overpayment to be reimbursed; and
- the previous fee reflected the cost of processing applications when it was introduced; subsequent efficiencies had reduced those costs.

4.50 Given the discrepancy between the Minister's advice and the Explanatory Statement, the Committee asked whether the latter should be corrected. The Minister agreed and arranged for a revised Explanatory Statement to be tabled.

4.51 Where the parent Act provided for a late payment fee of a stated amount, or a stated amount for each day late, the Committee queried a late payment fee expressed

as an annual percentage of the unpaid amount. Legal advice obtained by AQIS supported the view that this was not consistent with the parent Act and the formula was redrafted (**Quarantine Services Determination 2001 (No 1)**).

4.52 This echoed a difficulty identified by the Department itself which led the Committee to query the **Petroleum (Submerged Lands) Fees Amendment Regulations 2001 (No 1), Statutory Rules 2001 No 207**. The Committee sought advice as to the delay in amending the regulations to prescribe an annual fee of \$18,000 for an infrastructure licence under the parent Act. The Act had been amended in March 2000. The regulations were not prepared until July 2001.

4.53 The Minister advised that this delay arose because, in the course of drafting the amending regulations in March 2000, the Office of Legislative Drafting had identified a possible flaw in the parent Act, which specified that the fee must be “calculated” in accordance with the regulations. This raised concerns about the legal validity of prescribing a set fee (\$x) rather than a fee derived by calculation (\$x per block or \$x per square kilometre). To rectify the flaw, the Act was again amended in April 2001 and these regulations produced shortly thereafter.

4.54 The Minister concluded:

Although the elapse of time between the initial amendment of the parent legislation and the preparation of the consequential regulation is less than ideal, no member of the offshore petroleum industry has been disadvantaged by the delay. Infrastructure licences ... were introduced in anticipation of future industry needs. I expect that it will be at least another one or two years before an infrastructure licence is granted and a fee becomes payable.

4.55 Where fees are increased following a cost recovery impact statement, the Committee appreciates receiving a copy of that statement. (See, for example, **Ozone Protection Amendment Regulations 2004 (No 1), Statutory Rules 2004 No 16**).

Protecting the right to privacy

4.56 The Committee closely scrutinises any instrument which may affect the right to privacy and routinely asks whether the Privacy Commissioner was consulted about instruments which appear to affect that right.

4.57 For example, the **Motor Vehicle Standards (Registered Automotive Workshops – Fit and Proper Persons) Determination 2002** listed criteria which the Minister might consider in determining whether an applicant for approval as a registered automotive workshop was a fit and proper person. These criteria included the reputation of the applicant in the motor vehicle industry, and the reputation of key personnel engaged by a corporate applicant. The Minister was also empowered to request information from a corporate applicant, or from a person in a position to

influence the management of the corporation. This information included records from the Australian Securities and Investments Commission (ASIC), and the results of a criminal history character check from the Australian Federal Police (AFP). The Committee queried whether the Privacy Commissioner had been consulted about this clause, and why the information was sought from the applicant, rather than from ASIC or the AFP.

4.58 The Minister responded that, as the processes involved the payment of a fee and the collection of additional personal information, it had been decided that the requests would be made through the applicant, with the results then provided to the Department. This approach was in line with the practice of other organisations. The Privacy Commissioner had not been consulted as information would be obtained with the full consent of the person concerned. This was covered by Information Privacy Principle 11 (1)(b) of the Privacy Act 1988.

4.59 In August 2001 the Committee looked at the **Space Activities Regulations 2001, Statutory Rules 2001 No 186**. One particular provision required the holder of a licence to notify the Minister in writing of certain details about employees and deemed employees. The details included the name, qualifications, usual place of residence, and employment history for the past 10 years of employees and deemed employees (which included persons who performed a service for the licence holder). This provision was said to be necessary for the provision of sufficient information to satisfy the Minister that the granting of a space licence would not compromise Australia's national security, foreign policy or international obligations. The Committee asked whether the Privacy Commissioner had been consulted about these requirements and, if so, what the views of the Commissioner were.

4.60 The Minister responded that "applicants should be notified of their obligations under the Regulations and that advice be provided on how the Government planned to use the information provided. These matters are addressed in the 'Guidelines for Industry on the Space Licence', which are currently being finalised and will become a public document". The Guidelines made explicit reference to applicants' awareness of their obligations under the National Privacy Principles and that they should inform employees, at the time of their engagement, of the requirement to provide relevant personal particulars.

CHAPTER FIVE

APPROPRIATE PROVISION FOR MERITS REVIEW

Introduction

5.1 As a matter of principle, discretions should be as narrow as possible, should include objective criteria to limit and guide their exercise, should provide for decisions to be notified within a fixed or reasonable period, and should include provision for review of the merits of decisions by an external, independent tribunal (which would normally be the Administrative Appeals Tribunal). During the period, the Committee scrutinised a number of instruments against these criteria.

Wide delegation of power

5.2 In relation to **Marine Orders Part 54, Issue 3, Order No 6 of 2001** the Committee queried a power which authorised the General Manager to delegate certain powers to “a person authorised by the General Manager”. The Minister responded that this provision had been based on a similar power included elsewhere in the Marine Orders:

However, in the light of the Committee’s comment, further consideration has been given to whether such a power is needed in Part 54, which deals with a very small number of licences (around 50) used only on the Australian coast. In light of AMSA’s experience with the limited utilisation of this provision, the power of authorisation will be deleted the next time an opportunity arises.

Valid sub-delegation of power

5.3 In relation to the **Explosives Transport Regulations 2002**, the Committee queried a particular provision – regulation 18 – which allowed for the delegation of certain powers by the Minister to a ‘Competent Authority’. The Committee sought advice about the source of authority for this provision.

5.4 The Minister responded that this provision substantially restated Ministerial powers under a similar provision in the previous regulations:

Regulation 18 provides for the delegation of a function (appointment of a competent authority under regulation 10) rather than for the subdelegation of ‘rule-making power’. The power that the Minister may delegate relates to the appointment of particular officials and in that context is simply a matter of administrative detail which merely fills the gaps in the legislation. The delegation is designed to support the making of administrative decisions in particular cases. It

is acknowledged that the Act does not expressly provide for delegation in this way and, in fact the Act is silent. However, provision is not usually required in an Act in relation to the delegation of powers arising under certain administrative provisions of regulations made within the ambit of the primary legislation.

Wide discretions

5.5 Delegated legislation often provides officials with discretions which may affect the operations of a business or the right of a person to take action or practise a trade or profession. In such cases the Committee believes that the width of the discretions should be as limited as possible, and guided by objective criteria wherever possible.

5.6 In July 2001, the Committee examined **Direction No NPDF 54, made under subsection 17(5A) of the Fisheries Management Act 1991**. This instrument, which was dated 16 May 2001 and which commenced on 17 May 2001, amended the description of the area known as Joseph Bonaparte Gulf. This closed area had been misdescribed in an earlier Direction. The Explanatory Statement advised that the lack of any notice period was because “immediate action” was necessary to prevent operators taking advantage of the usual 7 day notice period. The Direction was issued under section 25(4) of the *Northern Prawn Fishery Management Plan* which permitted the notice period to be waived if there was an “emergency”. The Committee sought advice on the guidelines used by the Authority in determining when there was an “emergency”.

5.7 The Minister advised that the emergency provision had been used because the error had been detected during the fishing season. The usual notice provision would have drawn operators’ attention to a potential loophole in the closure regime. Hence the emergency provision had been invoked:

Emergency provisions are only invoked where an error has occurred or a late change is deemed necessary to protect juveniles or brood stock, and this does not occur very frequently. AFMA does not have any formal guidelines as to what constitutes an emergency, and relies on pursuit of its statutory objectives in guiding when to invoke that exemption to the notice period requirement.

Time limits for decisions or the provision of information

5.8 In August 2001 the Committee examined the **Marine Orders Part 54, Issue 3, Order No 6 of 2001**, which dealt with coastal pilotage. The Orders authorised review of decisions of the Manager by the General Manager, but did not specify any time limits, either for the application for review or for the conduct of the review.

5.9 The Minister agreed to introduce a time limit of 28 days for the conduct of internal reviews, but considered that no time limit should be imposed on the making of an application for review.

5.10 In July 2001, the Committee looked at the **Education Services for Overseas Students Regulations 2001, Statutory Rules 2001 No 96**. Various regulations required the Minister to make a decision “as soon as practicable” after receiving an application, and to give notice to the applicant “as soon as practicable” after making a decision. Similarly, information was required to be provided “within a reasonable time”. The Committee sought advice as whether it would be preferable to specify more precise time limits within which these decisions must be made or information provided.

5.11 The Minister responded that the imposition of inflexible time limits in this case would simply lead to automatic refusals. Using a criterion of “reasonableness” would allow the time period to be informed both by the nature of the task or request (for example, whether a small or large amount of information were being requested) and the context of, and purpose for, the decision or request.

5.12 Similarly, the **Marriage Amendment Regulations 2003 (No 2), Statutory Rules 2003 No 198** required the Registrar of Marriage Celebrants to give a marriage celebrant a notice stating the outcome of a review of the celebrant’s performance ‘as soon as practicable’ after the review had been completed. The Committee queried why a specific time limit was not imposed.

5.13 The Minister advised that imposing a specific time limit would be impractical in the circumstances – conducting a review of all current celebrants over a twelve month period would involve completing 73 reviews each week. Requiring notification “as soon as practicable” was intended to provide flexibility for the Registrar to manage this aspect of the new system in conjunction with other responsibilities.

5.14 Under the **Supplementary Dairy Assistance Scheme**, the Dairy Adjustment Authority (DAA) was also required to make a decision with regard to an entity’s eligibility for certain payments “as soon as practicable” after the commencement of the Scheme.

5.15 The Minister pointed out that notices of decision were virtually automatically generated and dispatched – as at 14 August 2001, 95% of notices had already been dispatched. Having said this, the Minister recognised that:

The absence of a timeframe leaves open the possibility of an unacceptable delay between a decision being made to grant a payment right under the SDA scheme and a notice to that effect being forwarded to a farmer. Accordingly, I have instructed my Department to draft a variation to the SDA Scheme to require DAA to issue these notices as soon as practicable following a decision to grant.

Review rights

5.16 The Committee frequently seeks confirmation of the availability of review rights where this is not clear from an instrument itself or its Explanatory Statement (for example, the **Farm Help Re-establishment Grant Scheme Amendment 2003 (No 3)**) and suggests that review rights may be appropriate in circumstances where an instrument fails to provide for them.

5.17 In September 2001 the Committee considered the **Primary Industries Levies and Charges Collection Amendment Regulations 2001 (No 5)** and sought advice about the possibility of including provisions for review by the Administrative Appeals Tribunal (AAT) of decisions relating to exemptions for levy returns for farmed prawns. The Committee pointed out that similar provisions for review existed for returns relating to wool and other leviable products.

5.18 The Department agreed that it would be appropriate to maintain consistency and so provide for review of decisions to refuse to grant or continue exemptions to lodge quarterly levy returns for farmed prawns.

5.19 Similarly, in scrutinising the **Fuel Quality Standards Regulations 2001**, the Committee suggested that decisions concerning financial hardship should be determined by criteria specified in the Regulations themselves rather than in the *Procedures Manual for Approvals*, and that a particular aspect of the Regulations and the *Manual* should be amended to clarify the operation of a provision for refunds and to include a review mechanism.

5.20 The Minister undertook to make these amendments:

The proposed amendments will insert the criteria specified in the Manual into the Regulations, and clarify the operation of what will become a reviewable decision regarding refunds of application fees. My Department will issue drafting instructions for the necessary amendments as soon as practicable.

5.21 In May 2003, the Committee considered the **Customs (Prohibited Exports) Amendment Regulations 2003 (No 2)**, **Statutory Rules 2003 No 44**. These amendments introduced a scheme whereby human embryos might be exported in certain cases where the Minister granted permission to export. However, this scheme did not indicate what right of appeal an applicant had where the Minister refused permission, or later revoked an earlier grant of permission.

5.22 The Minister responded that a decision to refuse or revoke permission to export was reviewable under the *Administrative Decisions (Judicial Review) Act 1977*. This enabled the process behind the decision to be examined (for example, whether the Minister had taken into account relevant considerations). However, merits review had not been made available because there was a general prohibition on the export of

embryos from Australia and the concessional arrangement provided for in this instrument would apply only for a limited time (12 months).

5.23 In its analysis of the **Marine Orders Part 54, Issue 3, Order No 6 of 2001** (noted above), the Committee acknowledged the existence of both internal and external review – all decisions by the Manager were reviewable by the General Manager; decisions by the General Manager were reviewable by the AAT. However, the Committee queried the effect of an application for review on the original decision.

5.24 Specifically, paragraph 6.5.8 of the Orders stated that, where a licence had been cancelled or suspended, it had to be surrendered to the Manager within 14 days. This was a penal provision. While the person affected had a right to apply to the AAT for a review of the decision to suspend or cancel a licence, it was not clear whether this suspended the operation of the penal provision pending the completion of the review.

5.25 The Minister advised that the penal provision continued to apply. The application for review, which could take a considerable time, did not affect the operation of the original decision. The Minister concluded that “it would not be desirable for a person to be able to continue to use a licence which had been suspended for safety reasons, hence the requirement to return the licence to the Manager”.

5.26 The **Wool Services Privatisation (Wool Levy Poll) Regulations 2003, Statutory Rules 2003 No 50**, prescribed requirements for the conduct of a poll of wool levy payers. While the regulations prescribed procedures for determining the eligibility to vote, and for the counting of votes, they appeared not to provide procedures for the determination of disputes that might arise in those areas.

5.27 The Minister provided advice on the appointment of an independent returning officer to ensure that the counting of votes would be conducted fairly, and on the manner in which voting entitlements would be confirmed. Given this, the Minister considered that adequate provision had been made should any disputes arise among levy payers. Notwithstanding this, he undertook to include in the forthcoming renegotiation of the Statutory Funding Agreement “procedures to deal with disputes levy payers may have in relation to future wool levy polls”.

5.28 In relation to a number of Statements of Principles (SoP) under the *Veterans' Entitlements Act 1986 (Instruments 5 to 33 of 2002)* the Committee queried the effect on claims still under review of a change to the definition of ‘diabetes mellitus’. The Minister advised that the courts had decided that:

- if a decision has been made under an SoP then a veteran has an accrued right to have that SoP as it stood applied during the course of a review of the initial decision, notwithstanding its amendment or revocation by a later SoP; and
- if an SoP were amended or replaced during the course of an appeal process then the SoP to be applied during the review is that which is the more beneficial.

5.29 The Minister concluded that:

The findings of the courts mean that veterans are not disadvantaged by changes to SoP occurring during the review process. Outside of this, changes to SoP do not trigger reconsideration of claims decided with the former version of the SoP. Therefore changes to SoP have no effect on actions taken before that date, and thus no retrospective application applies.

5.30 The Committee also queried rights of review for various decisions made under the **Aboriginal and Torres Strait Islander Commission (Regional Council Election) Amendment Rules 2002 (No 3)**. The Minister confirmed that:

- certain decisions (including a decision to accept that a person is not an indigenous person and therefore not entitled to vote in the Tasmanian Regional Council elections, or a decision of a District Returning Officer to enter, or to refuse a request that a person's address not be entered, on the Indigenous Elector's Roll) were subject to review; and
- a decision by the Independent Indigenous Advisory Committee to refuse to consider an objection which it views as frivolous or vexatious was not reviewable (as it would be unproductive to require reconsideration of such a decision by a Committee which consisted of nine indigenous persons with a strong background in community leadership and which was therefore in an ideal position to decide whether a particular objection was frivolous or vexatious).

CHAPTER SIX

MORE APPROPRIATE FOR PARLIAMENTARY ENACTMENT

Introduction

6.1 It is a breach of parliamentary propriety for delegated legislation to deal with matters more appropriately included in a Bill. These are matters which, by their nature, should be subject to debate and the other procedural safeguards provided by the parliamentary passage of a Bill.

6.2 In its *Seventy-Seventh Report*, the Committee set out criteria to assist it in applying this principle which might be invoked where delegated legislation:

- manifests itself as a fundamental change in the law, intended to alter and redefine rights, obligations and liabilities;
- is a lengthy and complex legal document;
- introduces innovation of a major kind into the pre-existing legal, social or financial concepts;
- impinges in a major way on the community;
- is calculated to bring about radical changes in relationships or attitudes of people in a particular aspect of the life of the community;
- is part of a major uniform, or partially uniform, scheme which has been the subject of debate and analysis in one or more of the State or Territory Parliaments but not in the Commonwealth Parliament; and
- takes away, reduces, circumscribes or qualifies fundamental rights and liberties traditionally enjoyed in a free and democratic society.

6.3 While this is a principle not raised as often by the Committee as its other three principles, it arose during the reporting period in a number of circumstances.

Offences

6.4 In September 2001, the Committee considered an amendment included in the **Great Barrier Reef Marine Park Amendment Regulations (No 3) 2001, Statutory Rules 2001 No 197**, which created a new offence involving the discharge of sewage in the Marine Park. Given that section 38J(1) of the Principal Act specified an offence

of discharging waste in the Marine Park in specified circumstances, the Committee asked whether it might be more appropriate for this matter to be dealt with by an amendment to the Act.

6.5 The Minister responded that the policy relating to the discharge of sewage was under review. If the review recommended a change then this would be implemented through an amendment to the Principal Act. The matter was subsequently clarified in *Great Barrier Reef Marine Park Amendment Act 2001* (No 48 of 2001).

Retrospective validation of warrants

6.6 In March 2003, the Committee considered the **Australian Crime Commission Establishment (Transitional Provisions) Regulations 2003, Statutory Rules 2003 No 4** (the ACCE Regulations). These regulations retrospectively validated a number of telephone interception warrants issued under the *Telecommunications (Interception) Act 1979*.

6.7 The retrospective commencement of these regulations was specifically authorised by the *Australian Crime Commission Establishment Act 2002*. Nevertheless, the Committee queried the appropriateness of taking retrospective measures to address a matter as important as the validation of telephone interception warrants in delegated, rather than in primary, legislation.

6.8 The Minister responded that the problem arose out of the establishment of the Australian Crime Commission (ACC) as a successor to the National Crime Authority (NCA). The ACC inherited a number of continuing investigations for which the NCA had obtained telephone interception warrants with expiry dates on or after 1 January 2003. These warrants were addressed to the NCA rather than the ACC, but it would have been impracticable to have new warrants issued to the ACC immediately on the commencement of its operations on 1 January 2003. In fact, all such warrants were revoked and reissued to the ACC by 7 January 2003. However, a retrospective validation was necessary for ACC interceptions under the NCA warrants between 1 and 7 January 2003.

Regulation 5 of the ACCE Regulations addresses this situation by deeming the NCA warrants to have been issued to the ACC on 1 January 2003. The deeming provision applies only to the period 1-7 January 2003 and no warrant is given a term beyond that originally authorised.

The validating effect of regulation 5 goes solely to the question of the agency to which the warrants were issued. It does not seek to remedy any other deficiency in the terms of a warrant or in the original decision to issue a warrant. It thus addresses technical rather than substantive issues from the perspective of the investigation for which the warrant was issued.

I will consider including a provision to the same effect as regulation 5 when legislation concerning the ACC is next introduced into Parliament. However, the date of any further legislation is uncertain and delay in curing the unlawfulness of the ACC interceptions under the NCA warrants could significantly hamper ACC investigations. I therefore consider that it was appropriate to address this matter in the ACCE Regulations, irrespective of any prospect of equivalent legislation by Parliament in the longer term.

Reduction of licence fees to zero

6.9 In September 2001 the Committee queried the **Excise Laws (Licence Fees) Amendment Regulations 2001 (No 1), Statutory Rules 2001 No 223**, which reduced licence fees under the excise law to zero. The Explanatory Statement noted that the reason for this reduction was that the fees had been set at a nominal amount only, and that “there was little gain to the government from the nominal fee, and considerable effort for the licensee”. The Committee sought advice on why, in light of these reasons, the need for a licence fee was not removed altogether (by amendment to the relevant legislation), rather than set at zero.

6.10 The Minister responded that the Australian Taxation Office (ATO) had been examining the practicality of amending the Acts to remove the reference to the licence fee requirement. However, in the meantime, the ATO proposed to install a computer system to handle licensing for excise purposes and needed to know what level of fees to incorporate in the computer program. The Minister concluded that the ATO had received legal advice that “a licence fee is not necessary for the validity of the licence. Although it is common for a fee to be charged in connection with the granting of a licence, none of the existing judicial authorities on what constitutes a licence indicates that a fee is an essential characteristic of a licence”.

CHAPTER SEVEN

INQUIRY INTO THE LEGISLATIVE INSTRUMENTS BILL 2003

Introduction

7.1 During the 40th Parliament, in addition to its legislative scrutiny work, the Committee also undertook an inquiry into the provisions of the Legislative Instruments Bill 2003 and the Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003, giving particular consideration to:

- the scope of the exemptions contained in the bills;
- the mechanisms contained in the bills to improve the quality and transparency of legislative instruments; and
- parliamentary scrutiny of legislative instruments and the impact of the bills on the work of the Committee.

7.2 The Committee had previously undertaken an inquiry into the 1994 version of the Bill. This Chapter outlines the Committee's recommendations in its report on the Bill.

The provisions of the Bill

7.3 The Legislative Instruments Bill proposed to establish a comprehensive regime for the registration, tabling, scrutiny and sunseting of Commonwealth legislative instruments. In particular, the principal Bill:

- defined a legislative instrument (as an instrument in writing that is of a legislative character and that is or was made in the exercise of a power delegated by the Parliament);
- established an authoritative on-line Federal Register of Legislative Instruments to include all newly made instruments, and, through a staged process of 'backcapturing', to include, over time, all existing legislative instruments;
- included schedules of instruments declared not to be legislative instruments; and declared to be legislative instruments, but exempt from disallowance or exempt from sunseting;
- encouraged high standards in the drafting of legislative instruments to promote their legal effectiveness, clarity and intelligibility;

- encouraged rule-makers to undertake appropriate consultation prior to making an instrument;
- improved public accessibility to instruments;
- enhanced parliamentary scrutiny of instruments; and
- established a ten-year sunseting regime, to repeal redundant instruments.

7.4 All those who provided evidence to the Committee expressed general support for the Bills. For example, Mr Stephen Argument and Professor Dennis Pearce expressed ‘wholehearted support’ for the reforms proposed and suggested that the primary Bill’s advantages “so outweigh the present situation that our position is that it should be enacted and, if it is found to be wanting, it can be finetuned in the future’.

7.5 The Committee expressed the view that rule-making in the Commonwealth would be greatly improved with the passing of the bills. It was particularly pleasing that a number of the Senate’s concerns with previous versions of the legislation had now been addressed.

Committee recommendations

7.6 The Committee noted that many of the reforms proposed in the Bill — in particular the establishment and operation of the Legislative Instruments Register — would be implemented through regulations. Those regulations had not been drafted at the date of the Report, and the Committee recommended that **the principal regulations implementing the proposed Legislative Instruments Bill 2003 should stand referred to the Committee in the same terms as the bill.**

7.7 Where there was doubt about the character of an existing or proposed instrument, clause 10 of the Bill empowered the Attorney-General to issue a certificate as to whether the instrument was or was not legislative. This certificate was itself a legislative instrument and had to be included on the Register. However it was not disallowable and was expressed to be conclusive – though it could be reviewed by the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977*, or by the Federal Court under section 39B of the *Judiciary Act 1903*, or by the High Court under paragraph 75(v) of the *Constitution*. This right of review addressed reservations about a similar clause expressed by the Committee in its Report on the 1994 bill.

7.8 Where a court ordered that the Attorney-General’s decision be quashed or set aside, the Attorney-General was required to reconsider the matter and issue a replacement certificate. A replacement certificate may either reverse or confirm the Attorney’s original decision. Neither the bill nor the Explanatory Memorandum made clear whether a replacement certificate which confirmed an original decision might

again be challenged in court, and how such a certificate, which expressed the Attorney-General's legal opinion, could be reconciled with the contrary decision of a court on the same law. To address this situation the Committee recommended that, **where a court quashes or sets aside a certificate issued by the Attorney-General under clause 10, and the Attorney-General issues a replacement certificate under subclauses 11(5) or 11(6) which confirms the Attorney's original decision, the certificate should also be reviewable by a court.**

7.9 Subclause 44(1) of the Bill provided that the disallowance provisions did not apply to any provision of a new legislative instrument if the enabling legislation for that instrument 'facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more of the States, and authorises the instrument to be made by the body or for the purposes of the body or scheme' unless the enabling legislation specifically declares that the instrument is disallowable.

7.10 The Committee had previously taken issue with the exemption of national scheme legislation from the disallowance provisions in the Bill and reiterated its concern about the potential difficulties this exemption might create. However, the Committee considered that the issue of the disallowability of such instruments was ultimately a matter for the Parliament to determine, either as a general rule or on a case-by-case basis. At the very least, Parliament should be told whether proposed national scheme instruments would or would not be disallowable and so recommended that **the Explanatory Memorandum accompanying each Bill introduced into the Parliament which establishes or amends a national scheme of legislation should include a statement noting whether any legislative instruments that may be made under the Bill will or will not be disallowable. Any Parliamentary amendments which make these instruments disallowable should be considered when the Bill is reviewed after three years.**

7.11 The Bill adopted an essentially discretionary approach to consultation. Where a proposed instrument was likely to have a significant effect on business or restrict competition, a rule-maker must be satisfied that any consultation that he or she considered appropriate, and that was reasonably practicable to undertake, had been undertaken. While it was arguable that the consultation provisions in the Bill provided for limited accountability, the Committee considered that they should be allowed to operate for a trial period, with their effectiveness monitored and evaluated when the Bill was reviewed in three years. Therefore the Committee recommended that **the operation of the consultation provisions and the regulatory impact statement process be included in the review of the Act in three years time.**

7.12 Part 4 of the Bill established a Federal Register of Legislative Instruments which was to be taken to be a complete and accurate record of all instruments

included on it. Given that the Register was invested with an authoritative status, this begged the question of the consequences where there were errors on its face.

7.13 Where the error was in the instrument as made, the legal position was unchanged — the rule-maker could only correct such an error by the issue of a new instrument. Where the error occurred in entering the instrument on the Register, clause 23 of the Bill permitted the Register to be rectified. Subclause 23(2) provided that any such alteration of the Register ‘does not affect any right or privilege that was acquired or accrued by reason of reliance on the content of the Register before that alteration was made’, and ‘does not impose or increase any obligation or liability that was incurred before that alteration was made’.

7.14 The Committee agreed that, where an error occurred in placing an instrument on the Register, and a person had acted in reliance on the erroneous instrument, that person should suffer no damage or disadvantage. The difficulty would be in providing proof of the contents of the Register as it was when the person had acted in reliance on it, before it was rectified. To overcome this difficulty, the Committee recommended that **where the Register is rectified under clause 23, the Register should make clear that rectification has taken place, the time that the rectification took place, and the nature of the matter rectified.**

7.15 Under the Bill, legislative instruments would have to be registered and so should become much more accessible. This was one of the most significant benefits of the Bill. However, moving towards an electronically accessible database presupposed that electronic access would be available to all. It might also disadvantage some people who were not computer literate.

7.16 The Committee noted that the Bill imposed a general obligation on the Secretary to ensure the quality of legislative instruments and considered that it should impose a similar general obligation on the Secretary to ensure their accessibility. The Committee recommended that **the Bill be amended to impose on the Secretary a general obligation to ensure public accessibility to the database of legislative instruments.**

7.17 Subparagraphs 42(2)(b)(ii), 42(3)(b)(ii), 43(2)(b)(ii) and 43(3)(c)(ii) of the Bill required the moving and seconding of motions that had been called on. The Senate abolished the practice of seconding motions more than twenty years ago. The proposed provisions were based on the existing disallowance provisions in subsections 48(5) and (5A) of the Acts Interpretation Act. These provisions had not been amended since the Senate changed its procedures. The Committee considered that the Bill provided an opportunity to amend these provisions to reflect the current practice of the Senate and recommended that **provisions dealing with the seconding**

of a motion in the Legislative Instruments Bill 2003 be amended to reflect the practice in both Houses of the Parliament.

7.18 Clause 43 of the Bill provided that, where a House passes a resolution deferring consideration of a disallowance motion then a further notice of motion to disallow must be given before the end of the first sitting day after the end of the deferral period if the Minister has not fulfilled an undertaking to amend, or if the House is not satisfied with the amendment proposed.

7.19 This approach seemed to transfer the onus from the Minister and placed it on the House to again move for disallowance where it was dissatisfied with a negotiated outcome. Most witnesses saw this is a complicating provision and the Committee recommended that **the deferral provision in clause 43 be deleted from the Legislative Instruments Bill 2003.**

7.20 Clause 40 of the Bill provided for regulations to specify the manner by which documents required to be laid before a House of the Parliament might be delivered, including by an electronic means. This was a new provision that seemed to anticipate a move to electronic lodgement of documents for tabling. The Clerks of both the Senate and the House of Representatives each expressed concern with this provision, and its possible effect on validating the integrity of a tabled document. Given this, the Committee recommended that **the Attorney-General's Department should not make provision for the electronic lodgement of legislative instruments for tabling in the Parliament.**

7.21 Subclause 42(1) of the Bill adopts the terminology of the *Acts Interpretation Act 1901*, and provides for the disallowance of 'a legislative instrument or a provision of a legislative instrument'. The width of this provision was raised during the inquiry. The Committee reaffirmed its belief that subclause 42(1) did not reduce the disallowance powers of the Senate. However, whether it was wide enough to define those powers given the variety of instruments currently produced — particularly those including lists or tables — was open to question. Therefore the Committee recommended that **the Government give consideration to clarifying the meaning of the term 'provision' in the disallowance provisions in the Legislative Instruments Bill 2003.**

7.22 The current provisions in the *Acts Interpretation Act 1901* result in the cessation of the operation of an instrument that commences before it is notified in the *Gazette* if it has an adverse impact on any person (other than the Commonwealth). Such instruments are required to be remade. Under subclause 12(2) of the Bill, such instruments were taken to be of no effect but only in respect of the period before they are registered. The instrument is not required to be remade.

7.23 The Committee expressed concern that, under the new provision, the community and the Parliament might not be aware that a legislative instrument had ceased to have effect for a particular period of time and that a person might have a right to seek a remedy. The Committee recommended that **where a legislative instrument ceases for a period between its commencement and registration because it was determined to adversely affect persons other than the Commonwealth the Register should include a statement with the instrument informing users that it ceased to have effect for a specified period; and the Attorney-General should inform the Parliament that the instrument had ceased for a specified period.**

7.24 Clause 29 of the Bill provided for the registration of legislative instruments made before the commencement of the Act. Instruments that were not lodged within a specified period would be taken to have been repealed. The Committee was concerned that there was no way of identifying the current status of many legislative instruments. If there were uncertainty about the existing status of instruments, then there was a possibility that instruments might inadvertently be repealed if they were not identified and backcaptured. To ensure the openness of the backcapturing process, the Committee recommended that: **departments and agencies provide a list to the Parliament of those existing instruments they will not be registering, effectively repealing them, and the Attorney-General's Department monitor the backcapturing of existing legislative instruments and provide interim reports to the Parliament on the process.**

7.25 The Bill made no provision for incorporated extrinsic material to be included on the Register or to be tabled in the Parliament, although clause 41 gave the Parliament power to request copies of any incorporated material. This situation had the potential to create a problem if incorporated material were not readily available and was relevant to the interpretation of an instrument. The Attorney-General's Department advised that, in practice, it would publish most of the incorporated material on the Register.

7.26 The Committee considered that all legislative material should be easily accessible and suggested that the Department should review the possibility of providing a link from the Register to any incorporated extrinsic material that was too voluminous to publish with an instrument. Therefore the Committee recommended that **appropriate ways in which incorporated material might be made accessible be considered when the Act was reviewed in three years time.**

7.27 Many of the Committee's suggested amendments were adopted and the Bill was passed and assented to on 17 December 2003. It commenced operation on 1 January 2005 and its operation will be the subject of further comment in the next Committee Annual Report.

CHAPTER EIGHT

MINISTERIAL UNDERTAKINGS

Introduction

8.1 Each year, the Committee, in response to concerns raised with delegated legislation, receives undertakings from Ministers to amend primary and delegated legislation. Of the numerous undertakings given over the years, there have been few occasions when the responsible Minister has approached the Committee seeking to be released from undertakings that had been given. This has been the case notwithstanding changes of responsible Ministers and changes in government.

Ministerial undertakings to amend legislation

8.2 In 2001-2002, Ministers gave undertakings to amend existing legislation with regard to the following 11 instruments:

- Air Navigation (Essendon Airport) Regulations 2001, Statutory Rules 2001 No.125
- Defence (Public Areas) Amendment By-laws 2001 (No.1), Statutory Rules 2001 No.331
- Electoral and Referendum Amendment Regulations 2001 (No.2), Statutory Rules 2001 No.248
- Environment Heritage Legislation Amendment (Application of Criminal Code) Regulations 2002 (No.1), Statutory Rules 2002 No.8
- Fuel Quality Standards Regulations 2001, Statutory Rules 2001 No.236
- Marine Orders - Part 54 - Coastal Pilotage, Issue 3, Marine Order No.6 of 2001 made under section 425(1AA) of the *Navigation Act 1912*
- Primary Industries Levies and Charges Collection Amendment Regulations 2001 (No.5), Statutory Rules 2001 No.235
- Quarantine Services Fees Determinations 2001 (No.1 of 2001) made under section 86E of the *Quarantine Act 1908*
- Supplementary Dairy Assistance Scheme 2001 made under clause 37B of Schedule 2 to the *Dairy Produce Act 1986*
- Sydney Harbour Federation Trust Regulations 2001, Statutory Rules 2001 No.296
- Telecommunications (Customer Service Guarantee) Amendment Standard 2001 (No.1) made under paragraph 125(3)(a) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

8.3 In 2002-2003, Ministers gave undertakings to amend existing legislation with regard to the following 12 instruments:

Aboriginal and Torres Strait Islander Commission (Travel) Determination 2003 made under paragraph 194(1)(c) of the *Aboriginal and Torres Strait Islander Commission Act 1989*

Civil Aviation Amendment Regulations 2002 (No. 2), Statutory Rules 2002 No. 167

Crimes Amendment Regulations 2001 (No. 4), Statutory Rules 2001 No. 334

Defence Force Amendment Regulations 2002 (No.1), Statutory Rules 2002 No. 311

Farm Help Re-establishment Grant Scheme Amendment 2003 (No.1) made under section 52A of the *Farm Household Support Act 1992*

Marine Orders Part 44, Safe Containers, Issue 5

Marine Orders Part 54, Coastal Pilotage, Issue 3

Primary Industries Levies and Charges (National Residue Survey Levies) Amendment Regulations 2002 (No. 2), Statutory Rules 2002 No. 292

Proceeds of Crime Amendment Regulations 2002 (No. 1), Statutory Rules 2002 No. 334

Public Service Amendment Regulations 2002 (No. 1), Statutory Rules 2002 No. 214

Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2003 made under the *Radiocommunications Act 1992*

Refundable Film Tax Offset Rules 2002 made under section 376-105 of the *Income Tax Assessment Act 1997*

8.4 In 2003-2004, Ministers gave undertakings to amend existing legislation with regard to the following 10 instruments:

Civil Aviation Amendment Regulations 2003 (No. 4), Statutory Rules 2003 No. 189

Defence (Inquiry) Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 311

Health Insurance (Approval of Billing Agents) Guidelines 2003 made under subsection 20AB(3) of the *Health Insurance Act 1973*

Manual of Standards made under Part 65 of the *Civil Aviation Regulations 1998*

Manual of Standards made under Part 139H of the *Civil Aviation Regulations 1998*

Migration Amendment Regulations 2003 (No. 5), Statutory Rules 2003 No. 154

Primary Industries Levies and Charges Collection Amendment Regulations 2003 (No. 8), Statutory Rules 2003 No. 222

Student Assistance Regulations 2003, Statutory Rules 2003 No. 101

Therapeutic Goods Amendment Regulations 2003 (No. 5), Statutory Rules 2003 No. 301

Workplace Relations (Registration and Accountability of Organisations) Regulations 2003, Statutory Rules 2003 No. 82

Undertakings to amend legislation implemented during the reporting period

8.5 Ten undertakings were implemented in 2001-2002, 14 in 2002-2003 and eight in 2003-2004. These appear at Table 1 below.

8.6 The Committee notes that of the 32 undertakings implemented during the reporting period, 20 were achieved within 12 months. The remaining undertakings were implemented within two years from the date they were given.

Outstanding undertakings to amend legislation

8.7 There are 25 undertakings outstanding at 30 June 2004, as shown in Table 2 below. Of these undertakings eight are awaiting the outcome of reviews, one undertaking was made redundant when the regulations were disallowed and two await the passage of legislation.

8.8 There are 14 undertakings still outstanding at the end of the 40th Parliament for which no explanation has been given for the delay in amending the relevant legislation. Of particular concern to the Committee are the following undertakings that have been outstanding for more than three years.

To amend the Primary Industries Levies and Charges Collection Amendment Regulations 2001 (No. 5), Statutory Rules 2001 No. 235 to provide for merits review of decisions to refuse to grant or continue exemptions to lodge quarterly levy returns for farmed prawns (undertaking given on 2 November 2001).

To amend the Great Barrier Reef Marine Park (Aquaculture) Regulations 2000, Statutory Rules 2000 No. 6 to include criteria for determining the environmental significance of the impact of a discharge and to include a broad time limit (undertaking given on 29 June 2000). The Minister advised on 15 August 2002 that these regulations would be amended by December 2002. This undertaking does not appear to have been implemented since that advice.

8.9 Six undertakings have been outstanding for more than two years relating to amendments to the following instruments:

Civil Aviation Amendment Regulations 2002 (No. 2), Statutory Rules 2002 No. 167

Defence (Public Areas) Amendment By-laws 2001

Marine Orders Part 44

Marine Orders Part 54

Radiocommunications (Compliance Labeling – Electromagnetic Radiation) Notice 2003

Telecommunications (Customer Service Guarantee) Amendment Standard 2001 (No. 1)

8.10 A further six undertakings have been outstanding for more than 12 months after they were given. The undertakings relate to amendments to the following instruments:

Aboriginal and Torres Strait Islander Commission (Travel) Determination 2003
Defence (Inquiry) Amendment Regulations 2003 (No. 1), Statutory Rules 2003
No. 311 (The undertaking has seen been implemented on 22 April 2005.)
Therapeutic Goods Amendment Regulations 2003 (No.5), Statutory Rules 2003
No. 301
Civil Aviation Amendment Regulations 2003 (No. 4), Statutory Rules 2003
No. 189
Manual of Standards made under Part 65 of the *Civil Aviation Regulations 1998*
Manual of Standards made under Part 139H of the *Civil Aviation Regulations*
1998

8.11 The Committee accepts ministerial undertakings in good faith and on a number of occasions has not pursued a notice of disallowance on the understanding that legislation would be amended to meet its concerns. As such, the Committee expects that undertakings should be implemented in a timely manner and at the latest within 12 months from the date they are given.

8.12 The Committee will therefore write to the relevant Ministers seeking advice on the status of the above undertakings and where they are found to still be outstanding seek an early amendment to the legislation.

Table 1: Ministerial undertakings to amend legislation implemented during the 40th Parliament

Instrument	Date Undertaking Given	Undertaking	Implemented by
Agriculture, Fisheries and Forestry			
Farm Help Re-establishment Grant Scheme Amendment 2003 (No.1) made under section 52A of the <i>Farm Household Support Act 1992</i>	14/5/2003	To amend subparagraph 3.2(1)(g)(vi) to provide more suitable identifying reference to the sugar assistance measures	Farm Help Re-establishment Grant Scheme Amendment 2003 (No.3) made under section 52A of the <i>Farm Household Support Act 1992</i> of 27 November 2003
Primary Industries Levies and Charges (National Residue Survey Levies) Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.292	7/2/2003	To amend the Regulations to clarify the rates of levy and to review with industry the application of the Australian Macadamia Society Ltd Standards	Primary Industries Levies and Charges (National Residue Survey Levies) Amendment Regulations 2003 (No.2), Statutory Rules 2003 No.99 of 28 May 2003
Quarantine Services Fees Determinations 2001 (No.1 of 2001) made under section 86E of the <i>Quarantine Act 1908</i>	5/11/2001	To amend clause 7 of the Determination to comply with subsection 86E(2C) of the Act.	Quarantine Services Fees Amendment Determinations 2002 (No.2) of 7 October 2002
Supplementary Dairy Assistance Scheme 2001 made under clause 37B of Schedule 2 to the <i>Dairy Produce Act 1986</i>	13/9/2001	To amend clause 14 to require DAA to issue notices of decisions as soon as practicable following a decision of a grant.	Supplementary Dairy Assistance Scheme 2001 Variation (No.2) made under clauses 37B and 37Y of Schedule 2 to the <i>Dairy Produce Act 1986</i> of 24 September 2001.
Attorney-General's Department			
Crimes Amendment Regulations 2001 (No.4), Statutory Rules 2001 No.334	6/8/2002	To amend the Regulations to limit the reference to Commonwealth offences involving terrorism to the offences against Part 5.3 of the <i>Criminal Code</i>	Crimes Amendment Regulations 2002 (No.3), Statutory Rules 2002 No.186 of 8 August 2002

National Crime Authority Regulations (Amendment), Statutory Rules 1996 No.286	24/7/1997	To amend the Act to include an appropriate safeguard that only reasonable force be used in executing search warrants and warrants for the apprehension of witnesses.	<i>National Crime Authority Legislation Amendment Act 2001</i> of 1 October 2001
Proceeds of Crime Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.334	18/3/2003	To amend the commencement date of the Regulations to 6 November 2002 to provide for a period when remuneration for the Official Trustee was not prescribed under the Act	Proceeds of Crime Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.55 of 7 April 2003
Communications, Information Technology and the Arts			
Australian Postal Corporation Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.76	28/8/2000	To amend the Regulations to require a record of names of officers, who withdraw for inspection, transfer or receive an article from the ordinary course of the post.	Australian Postal Corporation Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.260 of 30 October 2002
Australian Sports Drug Agency Drug Testing (Scheme A) Amendment Orders 2000 (No.3)	27/11/2000	Amend Schedule 1 Item 5 to clarify its operation by replacing the word 'thing' with a term that more adequately describes the objects referred to in the section and to include a note that provides an illustration of the operation of the section.	Australian Sports Drug Agency Drug Testing (Scheme A) Amendment Orders 2002 (No.1) of 15 August 2002
Australian Sports Drug Agency Drug Testing (Scheme B) Orders 2000	17/11/2000	To make the same amendments to section 5 as undertaken to be done for the above Scheme A Orders	Australian Sports Drug Agency Drug Testing (Scheme B) Amendment Orders 2002 (No.1) of 15 August 2002
Refundable Film Tax Offset Rules 2002 made under section 376-105 of the <i>Income Tax Assessment Act 1997</i>	18/9/2002	To amend rule 23 to provide for a time limit, specifically 'as soon as practicable, any in any event within 28 days' in which the FCAB will be required to respond to applications for a provisional certificate	Refundable Film Tax Offset Rules 2002 (Amendment 1 of 2003) made under section 376-105 of the <i>Income Tax Assessment Act 1997</i> of 6 February 2003

Defence			
Defence (Prohibited Words and Letters) Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.41	16/8/2000	Amend regulation 4 to provide for review of a decision to grant permission to use a phrase, word or letter with or without condition	Schedule 4 of Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Regulations 2002 (No.1), Statutory Rules 2002 No.278 of 14 November 2002
Defence Force Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.311	21/3/2003	To amend regulation 53 to re-insert a provision that an offender was not liable to be charged more than once in respect of the same offence	Defence Force Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.245 of 24 September 2003
Education, Science and Training			
Student Assistance Regulations 2003, Statutory Rules 2003 No.101	19/8/2003	To amend the Regulations to ensure that the same definition of 'partner' will apply with respect to the ABSTUDY and AIC Schemes	Student Assistance Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.323 of 18 December 2003
Employment, Workplace Relations and Small Business			
Industrial Chemicals (Notification and Assessment) Amendment Regulations 1999 (No.1), Statutory Rules 1999 No.224	22/11/1999	To amend regulation 17 of the Principal Regulations to provide for review by the AAT of decisions made under subregulation 15(6) and regulation 16A	Industrial Chemicals (Notification and Assessment) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.58 of 27 March 2002.
Public Service Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.214	2/12/2002	To amend the Regulations to specifically provide for the Agency Head to delegate to another person any decision in respect of his or her own judgment debt	Public Service Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.317 of 4 December 2003

Workplace Relations (Registration and Accountability of Organisations) Regulations 2003, Statutory Rules 2003 No.82	14/8/2003	To amend the Regulations to correct a cross-referencing error in subregulation 34(4) and to clarify the meaning of paragraph 69(1)(d) in the context of refining these regulations	Workplace Relations (Registration and Accountability of Organisations) Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.351 of 18 December 2003
Environment and Heritage			
Environment Heritage Legislation Amendment (Application of Criminal Code) Regulations 2002 (No.1), Statutory Rules 2002 No.8	28/5/2002	To amend subregulation 41A(2) of the Great Barrier Reef Marine Park Regulations to extend the defence against prosecution for entering Commonwealth lands with a guide dog to persons with a hearing impairment.	Great Barrier Reef Marine Park Amendment Regulations 2004 (No.2), Statutory Rules 2004 No.39 of 23 March 2004
Fuel Quality Standards Regulations 2001, Statutory Rules 2001 No.236	10/4/2002	To amend the Regulations to include criteria for financial hardship (paragraph 5(2)(b)) and to clarify the refund provisions under paragraph 5(2)(c), making it a reviewable provision.	Fuel Quality Standards Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.116 of 6 June 2002.
Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999, Statutory Rules 1999 No.102	23/9/1999	Amend the enabling Act to reflect changes made by the regulations.	Environmental Legislation Amendment Act 2001 of 18 September 2001.
Renewable Energy (Electricity) Regulations 2001, Statutory Rules 2001 No.2	30/4/2001	To amend the Regulations to include the definitions of native forests and plantations contained in the National Forest Policy Statement	Renewable Energy (Electricity) Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.219 of 16 August 2001.
Sydney Harbour Federation Trust Regulations 2001, Statutory Rules 2001 No.296	14/5/2002	To amend regulation 31 to provide that 'no more force than is reasonably necessary' may be used to effect a person's removal.	Sydney Harbour Federation Trust Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.312 of 12 December 2002

Health and Aged Care			
Health Insurance Amendment Regulations 1999 (No.5), Statutory Rules 1999 No.176	15/2/2000	To back date the commencement date of amendments made to paragraphs 10(1)(a) and (b) (from 1 September 1999 to 1 March 1999) to validate any payments made for claims for services in respect of particular Computed Tomography (CT) scans requested by dental practitioners in the period 1 March to 31 August 1999 and performed on machines over 10 years of age.	Health Insurance Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.261 of 30 October 2002
Health Insurance (Approval of Billing Agents) Guidelines 2003 made under subsection 20AB(3) of the <i>Health Insurance Act 1973</i>	3/7/2003	To amend Guidelines to correct references to obsolete legislation	Health Insurance (Approval of Billing Agents) Guidelines (No.1) 2004 made under subsection 20AB(3) of the <i>Health Insurance Act 1973</i> of 6 February 2004
National Food Authority Amendment Regulations 2000 (No.1), Statutory Rules 2000 No.122	9/9/2000	To amend subregulation 8(2) to remove the words 'without delay'.	Australia New Zealand Food Authority Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.119 of 6 June 2002.
Therapeutic Goods (Charges) Amendment Regulations 1998 (No.2), Statutory Rules 1998 No.260	11/3/1999	To amend the Regulations to prescribe a time limit (40 days) in which a decision must be made (subregulation 4C(3)).	Therapeutic Goods (Charges) Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.235 of 3 October 2002
Immigration and Multicultural and Indigenous Affairs			
Migration Amendment Regulations 2003 (No.5), Statutory Rules 2003 No.154	4/11/2003	Amend regulation 1.20DA to ensure that it is clear that form 1996 (Internet) is excluded to meet the objective that overseas business sponsors do not lodge their applications in Australia	Migration Amendment Regulations 2004 (No.3), Statutory Rules 2004 No.131 of 10 June 2004

Industry, Science and Resources			
Patents Amendment Regulations 1999 (No.4), Statutory Rules 1999 No.349	14/3/2000	To amend regulation 20.9 of the Trade Marks Regulations to make it consistent with regulation 20.19A of the Patents Regulations.	Trade Marks Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.318 of 12 December 2002
Transport and Regional Services			
Air Navigation (Essendon Airport) Regulations 2001, Statutory Rules 2001 No.125	28/9/2001	To amend the Regulations to remove the strict liability requirement from the offence provisions in subregulations 16(3) and 16(4).	Air Navigation (Essendon Airport) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.123 of 6 June 2002.
Airworthiness Directive AD/TBM 700/23	23/3/2001	Amend the directive to clarify the compliance period ('5 hours' should read '5 flying hours')	Airworthiness Directive AD/TBM Amdt 1 of 26 July 2002
Marine Orders Part 91 Marine Pollution Prevention - Oil, Issue 3, Order No.3 of 2001	10/5/2001	To amend provision 13.2.3 to correct an incorrect reference to provision 13.2.2 instead of 13.2.1.	Marine Orders Part 91 Marine Pollution Prevention - Oil, Issue 3 (Amendment), Order No.7 of 2001 of 15 October 2001.
Marine Orders Part 93 Marine Pollution Prevention - Noxious Liquid Substances, Issue 3, Order No.4 of 2001	10/5/2001	To amend provision 13.2.3 to correct an incorrect reference to provision 13.2.2 instead of 13.2.1.	Marine Orders Part 93 Marine Pollution Prevention - Oil, Issue 3 (Amendment), Order No.8 of 2001 of 15 October 2001.

Table 2: Ministerial undertakings to amend legislation outstanding as at 30 June 2004

Instrument	Date Undertaking Given	Undertaking	Comment
Agriculture, Fisheries and Forestry			
Primary Industries Levies and Charges Collection Amendment Regulations 2001 (No.5), Statutory Rules 2001 No.235	2/11/2001	To amend the Regulations to include a clause in Part 3 of Schedule 37 to provide for merits review of decisions to refuse to grant or continue exemptions to lodge quarterly levy returns for farmed prawns.	Outstanding as at 30 June 2004
Primary Industries Levies and Charges Collection Amendment Regulations 2003 (No.8), Statutory Rules 2003 No.222	13/10/2003	To amend the Regulations to include a cross reference from the export wheat charge to regulation 12 that indicates the retention periods for records.	Outstanding as at 30 June 2004
Attorney-General's Department			
Australian Federal Police Amendment Regulations 2000 (No.2), Statutory Rules 2000 No.138	28/9/2000	To amend the Regulations to clarify the different types of suspensions (subregulation 5(1)); to provide for a notice of suspension to be given to an AFP employee (regulation 5); and to clarify from whom salary deductions are to be made for judgment debts (regulation 13).	Outstanding as at 30 June 2002. On 20 August 2002 the Minister advised that a review of the AFP procedures for dealing with complaints and allegations was being undertaken and the undertaking will not be progressed until the review has been completed and any relevant matters considered.

Customs Regulations (Amendment), Statutory Rules 1998 No.38	7/7/1998	To amend the Regulations to provide that public officials must make a decision within 21 days (r.72) and take into account objectively rather than subjectively relevant information (r.74A(5)(b)).	Outstanding as at 30 June 2002. The Minister advised on 20 August 2002 that the undertaking would not be progressed unless the Customs Amendment (Warehouses) and the Import Processing Charges Amendment (Warehouses) Bills were reintroduced and passed by both Houses of the Parliament.
Family Law Regulations (Amendment), Statutory Rules 1996 No.71	10/9/1996	To amend the Regulations to provide for Administrative Appeals Tribunal review of discretions concerning the authorisation of a person to offer family and child counselling under r.57.	Outstanding as at 30 June 2002. The Attorney-General advised on 20 August 2002 that a review of the approval/authorisation regime for counsellors and mediators was being undertaken. If the review indicates that regulations are still required, the amendments are likely to occur in the latter half of 2003.
Communications, Information Technology and the Arts			
Radiocommunications (Compliance Labelling – Electromagnetic Radiation) Notice 2003 made under the <i>Radiocommunications Act 1992</i>	5/5/2003	To amend clause 15 of the Notice to correct the terminology for the body responsible for testing devices	Outstanding as at 30 June 2004
Telecommunications (Customer Service Guarantee) Amendment Standard 2001(No.1) made under para 125(3)(a) of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	23/4/2002	To amend the Standard to include definitions of what is reasonable and what is sufficient information for the purposes of item 9.	Outstanding as at 30 June 2004.

Defence			
Defence (Inquiry) Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.311	11/3/2004	To amend paragraph 102(3)(a) of the Regulations to introduce the subparagraphs with the words 'the following persons' and omitting 'or' at the end of each of the subparagraphs.	Outstanding as at 30 June 2004. (The undertaking has since been implemented on 22 April 2005.)
Defence (Public Areas) Amendment By-laws 2001 (No.1), Statutory Rules 2001 No.331	5/4/2002	To review Rule 8 to make it unequivocal that the exception extends to vision and hearing impaired persons.	Outstanding as at 30 June 2004.
Environment and Heritage			
Great Barrier Reef Marine Park (Aquaculture) Regulations 2000, Statutory Rules 2000 No.6	29/6/2000	To amend the Regulations to include criteria for determining the environmental significance of the impact of a discharge; and to include a broad time limit under paragraph 26(2)(a).	Outstanding as at 30 June 2004. On 15 August 2002 the Minister advised that the Regulations will be amended by December 2002. Assessment Guidelines developed by GRMPA will be used until that time.
Finance and Administration			
Electoral and Referendum Amendment Regulations 2001 (No.2), Statutory Rules 2001 No.248	30/4/2002	To amend the Regulations to include a definition of 'community organisation' and 'finance company' in a notice of regulation 13 and Schedule 4 to the Regulations.	The Senate disallowed the Regulations on 15 May 2002.

Tenth Amending Deed to Establish an Occupational Superannuation Scheme for Commonwealth Employees and Certain Other Persons	7/8/1996	To amend the <i>Superannuation Act 1990</i> to validate administrative actions.	On 24 July 2002 the Minister advised that the relevant amendment was contained in clause 17 of Schedule 2 of the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2000 passed by the House of Representatives on 15 May 2002 and introduced into the Senate on 19 June 2002. The Bill lapsed at the end of the 40 th Parliament.
Health and Aged Care			
Therapeutic Goods Amendment Regulations 2003 (No.5), Statutory Rules 2003 No.301	11/3/2004	To amend the Regulations to clarify the meaning of narrowcast transmission in regulation 5BA, and in particular, the terms 'special interest groups' and 'programs of limited appeal'.	Outstanding as at 30 June 2004
Immigration and Multicultural and Indigenous Affairs			
Aboriginal and Torres Strait Islander Commission (Travel) Determination 2003 made under paragraph 194(1)(c) of the <i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	5/4/2003	To amend the Determination to include a provision requiring the Regional Manager to ensure there are funds before approving travel within the zone	Outstanding as at 30 June 2004
Transport and Regional Services			
Air Navigation Amendment Regulations 1998 (No.1), Statutory Rules 1998 No.321	9/3/1999	To clarify the safeguards for identity cards (to be included in a note to r.297PB - since renumbered to r.35)	Outstanding as at 30 June 2002. On 6 August 2002 the Minister advised that the Regulations will be amended following the need to consult with Australia's civil aviation industry on changes to aviation security standards.

Airports (Environment Protection) Amendment Regulations 1998 (No.3), Statutory Rules 1998 No.349	16/3/1999	To amend the Regulations to provide for a reasonable period for reporting (r.6.03(1)).	Outstanding as at 30 June 2002. On 6 August 2002 the Minister advised that the amendments have been delayed due to complex stakeholder consultations in regard to stormwater management and the National Pollution Inventory. The amendment will be carried out once these issues are resolved.
Civil Aviation Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.167	26/9/2002	To amend the strict liability offence in regulation 65.050 of the Civil Aviation Safety Regulations 1998 to include an appropriate defence	Outstanding as at 30 June 2004.
Civil Aviation Amendment Regulations 2003 (No.4), Statutory Rules 2003 No.189	18/9/2003	To amend regulation 173.175 to include similar provisions to 173.340(4) concerning information that CASA intends to rely on when considering appointments of certified designers or the Chief Designer	Outstanding as at 30 June 2004
Lists of Acts of the Western Australian Parliament in force in the Territories of Christmas Island and Cocos (Keeling) Islands	21/8/1999	To amend the relevant enabling Acts to clarify the tabling requirement for the lists.	Outstanding as at 30 June 2002. On 6 August 2002 the Minister advised that the department was still reviewing whether it was necessary to amend the Act to clarify the tabling requirement.
Manual of Standards made under Part 65 Manual of Standards made under Part 139H of the <i>Civil Aviation Regulations 1998</i>	14/8/2003	To amend Part 65 to remove surplus words in clause 3.1.6.2(b) and to specify the level of knowledge and/or experience required by the holder of an aerodrome control rating To amend Part 139H to remove a redundant provision (1.1.2.5)	Outstanding as at 30 June 2004

Manual of Standards (continued)		CASA has also identified that regulation 139.875 of the <i>Civil Aviation Safety Regulations 1998</i> requires an amendment to require records to be kept for a maximum of seven years instead of five years to align with Airservices Australia National Operating Standard Document 001	
Marine Orders Part 6, Issue 5 - Marine Radio Qualifications, Order No.5 of 2000	27/10/2000	To amend the Order to clarify the intent of paragraph 8.4.1 and to remove the reference to paragraph 8.4.2 being a penal provision.	Outstanding as at 30 June 2002. On 6 August 2002 the Minister advised that the Australian Maritime Safety Authority had commenced a review of several Marine Orders, including Part 6, with a view to their eventual rationalisation into a single Marine Order which will obviate the need for the amendments to Part 6.
Marine Orders Part 54, Coastal Pilotage, Issue 3, Marine Order No.6 of 2001	29/8/2001	To provide for a 28 day time limit for conduct of internal review in all relevant Marine Orders as they are revised. Delete the wide delegation of powers in provision 6.5.6 of Part 54.	A 28 day time limit has been provided for in Parts 15, 17, 21, 27 44, 49 and 58 on 21 June 2002. The amendments to Part 54 are outstanding as at 30 June 2002.
Marine Orders Part 44, Safe Containers, Issue 5 and Marine Orders Part 54, Coastal Pilotage, Issue 3	24/9/2002	To amend the definition of 'Chief Marine Surveyor' in Part 44 to make it consistent with other Marine Orders and to amend Part 54 to fulfil a previous undertaking given to the Committee on 29/8/2001	Outstanding as at 30 June 2004

Treasury			
Excise Regulations (Amendment), Statutory Rules 1995 No.425	16/5/1996	To amend the <i>Excise Act 1901</i> to provide for Administrative Appeals Tribunal review of decisions made under s.61C of the Act.	Outstanding as at 30 June 2002. On 18 August 2002 the Minister advised that the responsibility for excise had been transferred to the Australian Tax Office. The tax legislation provides for a detailed process for clients to appeal decisions and as such the Committee's recommendation should now be considered within the ongoing efforts to align the Act with the tax legislation.
Excise Amendment Regulations 1998 (No.2), Statutory Rules 1998 No.275	3/3/1999	To amend the Regulations to provide for merits review of a discretion and to provide a safeguard for an official decision (subregulation 52AAAA(1) - approval of a plant and subregulation 52AAAA(9) - specify reasonable period for production of records or additional information).	Outstanding as at 30 June 2002. On 18 August 2002 the Minister advised that the responsibility for excise had been transferred to the Australian Tax Office. The amendments to the Regulations to address the Committee's concerns will be included in the Treasury portfolio's legislation program. The timing of the amendments will be determined by overall tax legislation priorities.

Breakdown of Miscellaneous Instruments

(paragraph 2.24)

Table 1: Miscellaneous instruments 2001-2002

A New Tax System (Family Assistance) determinations	6
A New Tax System (Goods and Services Tax) determinations	6
Aboriginal and Torres Strait Islander Commission (Regional Council Election) Amendment Rules	3
Accounting Standards	4
ACT Planning and Land Management) Amendment to National Capital Plan	1
Aged Care principles	4
Airports determination	1
Amendment to Schedule 6 of the <i>Wildlife Protection (Regulation of Exports and Imports) Act 1982</i> ,	1
Australian Land Transport Development determination of charge rate for the financial year 2000-01	1
Australian Meat and Live-stock Industry Orders	6
Australian Prudential Regulation Authority instruments	3
Authorised Deposit-taking Institutions Supervisory Levy Imposition Determination	1
Authorised Non-operating Holding Companies Supervisory Levy Imposition Determination	1
Broadcasting Service instruments	11
CEO Instruments of Approval	21
Commonwealth Authorities and Companies (Financial Statements 2001-2002) Amendment Orders	1
Commonwealth Places (Mirror Taxes) Modification of Applied Laws (Queensland) Notices	2
Commonwealth Services Delivery Agency Directions	1
Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determination	1
Corporations - requirements for issuers of financial products	3
Currency Determinations	8
Dairy Produce - dairy assistance scheme	6
Datacasting Charge determination	1
Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determination	1
Environment Protection and Biodiversity Conservation instruments	19
Export Control Orders	5
Farm Household Re-establishment Grant Scheme	1
Farm Household Support (dairy exit scheme amendment)	1
Financial Management and Accountability instruments	12

Fisheries Management instruments	16
Fuel Quality Standards determinations	4
General Insurance Supervisory Levy Imposition Determination	1
Health Insurance instruments	16
Imported Food Control Order	1
Industry Research and Development guidelines for research and development plans	1
Insurance - determination of prudential standards	1
Interstate Road Transport determinations	6
Lands Acquisition declaration	1
Life Insurance - Actuarial Standards	9
Life Insurance Supervisory Levy Imposition Determination	1
Life Insurance - variation of prudential rules	1
Military Superannuation and Benefits Amendment Trust Deed	1
Motor Vehicle Standards determinations	8
National Environment Protection Council Measure	1
Native Title - Recognition of Representative Aboriginal/Torres Strait Islander Bodies	2
Navigation - Marine Orders	13
Occupational Health and Safety (Commonwealth Employment) instruments	3
Privacy determinations	8
Quarantine Service Fees determinations	2
Remuneration Tribunal Determinations	17
Retirement Savings Account Providers Supervisory Levy Imposition Determination	1
Safety, Rehabilitation and Compensation instruments	7
Seafarers Rehabilitation and Compensation notices	2
Seat of Government (Administration) ordinances	2
Social Security instruments	16
Superannuation instruments	4
Territory instruments	26
Textile, Clothing and Footwear Strategic Investment Program Scheme	1
Therapeutic Goods Orders	2
Trade Practices declarations of designated secondary shipper bodies	3
Total	309

Table 2: Miscellaneous instruments 2002-2003

A New Tax System (Family Assistance) (Administration) determinations	3
A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2002	3
Accounting Standards	3
Aboriginal and Torres Strait Islander Commission instruments	9
Aged Care Determinations	2
Aged Care Principles	6
ACIS Administration (Modulation) Amendment Guidelines 2003 (No. 1)	1
Amendments to the National Capital Plan	2
Australian Land Transport Development - Determination of Charge Rate for the Financial year 2001-02	1
Australian Meat and Live-stock Industry Export Orders	15
Australian Prudential Regulation Authority instruments	6
Australian Sports Drug Agency Drug Testing Orders	2
Authorised Deposit-taking Institutions Supervisory Levy Imposition Determination	1
Authorised Non-operating Holding Companies Supervisory Levy Imposition Determination 2002	1
Broadcasting Service instruments	8
Commonwealth Authorities and Companies Orders	2
Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002	1
Conformity Assessment Standards Orders	2
Determination under subsection 1445(1) of the <i>Corporations Act 2001</i>	1
Currency determinations	10
Dairy Structural Adjustment Program Scheme 2000 Amendment (No. 10)	1
Declaration of Designated Inwards Secondary Shipper Body	1
Declaration of Designated Outwards Secondary Shipper Body	1
Defence - Declaration of Defence Practice Areas	1
Defence Force Home Loans Assistance - Determination of Warlike Service (Operation Falconer)	1
Determination of Education Institutions and Courses	1
Determinations of Reporting Standards	5
Determination that Asset may be Acquired by Superannuation Funds	1
Diesel and Alternative Fuels Grants Advances Scheme Guidelines Revocation 2002	1
Disability Services instruments	3
Export Control (Fees) Amendment Orders 2002 (No. 2), made under regulation 3 of the <i>Export Control (Orders) Regulations 1982</i>	1
Export Market Development Grants Determinations	3
Farm Help Re-establishment Grant Scheme Amendments	2
Financial Management and Accountability instruments	3
Financial Sector (Collection of Data) - Exemption	1
Fisheries management instruments	12
Fuel Quality Standards - Determinations	3
General Insurance Supervisory Levy Imposition Determination 2003	1
Grain, Plants and Plant Products Amendment Orders 2003 (No. 1)	1

Gumoo Wojobuddee Section Zoning Plan 2002	1
Health Insurance instruments	16
Hearing Services Rules of Conduct Amendment Rules 2002 (No. 1)	1
Horticulture Marketing and Research and Development Services Regulated Horticultural Products and Markets Orders	6
Instrument Issuing Guidelines, made under subsection 13(9) of the Medical Indemnity (Prudential Supervision and Professional Standards) Act 2003	1
Life Insurance Supervisory Levy Imposition Determination 2003,	1
Life Insurance - Variation (No. 2) of Prudential Rules No. 35	3
Livestock Export (Merino) Orders	2
Marine Orders	13
Methods and Factors for Valuing Particular Superannuation Interests Approval 2003,	1
Military Superannuation and Benefits Amendment Trust Deed 202 (No. 1)	1
Monitoring and Reporting on Competition in the Telecommunications Industry Determination 2003 (No. 1)	1
Motor Vehicle Standards Determinations	3
Motor Vehicle Standards - Road Vehicle (National Standards) Determinations	7
Occupational Health and Safety (Commonwealth Employees) Notices of Declaration	2
Prescribed Goods (General) Amendment Orders 2003 (No. 1)	1
Primary Industries (Excise) Levies (Rice Levy) Specification 2003,	1
Privacy - Determination 2003	1
Privacy - Public Interest Determinations	2
Privacy - Temporary Public Interest Determinations	2
Public Service Commissioner's Amendment Directions	2
Quarantine Service Fees 2003-2005 (Australia Post) Determination 2003	1
Quarantine Service Fees Amendment Determinations 2002 (No. 2)	1
Refundable Film Tax Offset Rules 2002	2
Retirement Savings Account Providers Supervisory Levy Imposition Determination 2003	1
Safety, Rehabilitation and Compensation notices	3
Seventeenth Amending Deed to the Deed to Establish an Occupational Superannuation Scheme for Commonwealth Employees and Certain Other Persons	1
Sixteenth Amending Deed to the Deed to Establish an Occupational Superannuation Scheme for Commonwealth Employees and Certain Other Persons	1
Social Security (Declaration of Visa in a class of Visas - Qualifying Residence Exemption) Determination 2003	1
Social Security (Fares Allowance for Private Transport) Determination 2002 (No. 2)	1
Superannuation (CSS) Assets Transfer (PSS Fund) Determination No. 8	1
Superannuation Supervisory Levy Imposition Determination 2003	1
Supplementary Dairy Assistance Scheme 2001 Variations	2
Territory instruments	12
Textile, Clothing and Footwear Strategic Investment Program Scheme Amendments	2

Therapeutic Goods - Exemption	1
Therapeutic Goods (Emergency) Exemptions	3
Therapeutic Goods (Manufacturing Principles) Determinations	2
Therapeutic Goods Orders	4
Trade Practices - Determinations	2
Variation to the National Environment Protection (Ambient Air Quality) Measure for Particles as PM _{2.5} ,	1
Veterans' Entitlements Treatment (Centre for Military and Veterans' Health) Determination 6/2003	1
Veterans' Entitlements Instruments	55
Withdrawal of Recognition of Representative Aboriginal/Torres Strait Islander Body 2003 (No. 1)	1
Total	235

Table 3: Miscellaneous instruments 2003-2004

A New Tax System (Exempt Taxes, Fees and Charges) Determinations	2
A New Tax System (Family Assistance) Determinations	4
A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2003 (No. 2)	1
Accounting Standards	3
ACIS Administration (Modulation) Amendment Guidelines 2003	1
Aged Care instruments	6
Aircraft Passengers - Instrument of Approval of Primary Reporting System	1
Albury-Wodonga Development Determination	1
Approval No. 1 of 2004, made under section 9 of the <i>Payment Systems and Netting Act 1998</i>	1
Approval of Management Plan for Pulu Keeling National Park	1
Australian Competition and Consumer Commission Direction	1
Australian Land Transport Development Act 1988 - charge rate determination	1
Australian Meat and Live-stock Industry Orders	9
Banking determination	1
Broadcasting determinations	2
Broadcasting Services (Events) Notices	3
Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 Amendments	2
Child Care Benefit Amendment Determinations	2
Child Disability Assessment Amendment Determination	1
Cocos (Keeling) Islands - Local Government Amendment Ordinance	1
Commercial Television Conversion Scheme Variation 2003 (No. 2)	1
Commonwealth Authorities and Companies Orders (Financial Statements for reporting periods ending on or after 30 June 2004)	1
Commonwealth Grant Scheme Guidelines	1
Commonwealth Scholarships Guidelines	1
Currency Determinations	10
Dairy Assistance Scheme 2001 Variation - Supplementary	1
Dairy Exit Program Scheme Amendment	1
Dairy Structural Adjustment Program Scheme	1
Declaration No. 2004/01, made under subsection 41(1) of the <i>Lands Acquisition Act 1989</i>	1
Declaration of Defence Practice Areas	1
Declaration of eligible authority as agency – Corruption and Crime Commission of Western Australia, made under section 34 of the <i>Telecommunications (Interception) Act 1979</i>	1
Declaration of Quality Assurance Activity, QAA No. 1/2004, made under section 124X of the <i>Health Insurance Act 1973</i>	1
Declaration under subsections 926A(2), 951B(1), 992B(1), and 1020F(1) of the <i>Corporations Act 2001</i>	1
Defence and Strategic Goods List Amendment	1
Determination under Paragraph 15(1)(b) No. 1 of 2004, made under paragraph 15(1)(b) of the <i>Telecommunications (Carrier Licence Charges) Act 1997</i>	1
Determination under section 1445(1) of the <i>Corporations Act 2001</i> (Class Order CO 03/0966)	1

Determination under section 33AA, made under subsection 33AA(2) of the Health and Other Services (Compensation) Act 1995	1
Determination under subsection 1445(1) of the <i>Corporations Act 2001</i>	1
Determination under subsection 19A(3) of the <i>Therapeutic Goods Act 1989</i>	1
Directions HIMIFD 5 under the <i>Fisheries Management Act 1991</i>	4
Directions NPFID under the <i>Fisheries Management Act 1991</i>	5
Disability Services (Eligibility – Wage Phase-in Services and Targeted Support Services) Standards 2004	1
Disability Services (Eligible Services) Approval 2004,	1
Export Control (Fees) Amendment Orders	6
Family Assistance (Household Organisational Management Expenses (HOME) Advice Program) Determination 2004	1
Family Law (Superannuation) Amendments and Determinations	15
Farm Help Advice Scheme Amendment 2003 (No. 1)	1
Farm Help Re-establishment Grant Scheme Amendment	1
Farm Help Re-establishment Grant Scheme Amendment 2003 (No. 3)	1
Farm Help Re-establishment Grant Scheme Amendment 2003 (No. 4)	1
Financial Management and Accountability (Special Accounts) determinations	12
Financial Sector (Collection of Data) exemption	1
Financial Sector (Collection of Data) Reporting Standards for ADIs	1
Fisheries Management determinations	3
Fuel Quality Standards Guidelines and Determinations	2
Fuel Quality Information Standard (Ethanol) Determination 2003	1
Fuel Standard (Autogas) Determination 2003	1
Gene Technology Principles	1
Great Barrier Reef Marine Park Zoning Plan 2003	1
Health Insurance instruments	12
Hearing Services Rules	2
Housing Assistance (Form of Agreement) Determination	1
Imported Food Control Amendment Order	1
Industry Research and Development Board (Overseas Research and Development Activities) Guidelines 2004	1
Instrument Fixing Charges to be Paid to APRA 2004	3
International Air Services Policy Statement No. 5	1
Land Administration Act 1997 (WA) (CI) Amendment Ordinance 2004 (No. 1)	1
Land Administration Act 1997 (WA) (CKI) Amendment Ordinance 2004 (No. 1)	1
Life Insurance instruments	2
List of Acts of the Western Australian Parliament, made under section 8B of the <i>Christmas Island Act 1958</i>	2
List of Acts of the Western Australian Parliament, made under section 8B of the <i>Cocos (Keeling) Islands Act 1955</i>	2
Livestock Export (Merino) Orders (Amendment) No. 1 of 2004	1
Marine Orders	10
Medical Indemnity - Revoking Guidelines instrument	1
Medical Indemnity determinations	3
Migration Act - Instruments of Approval of Fall-Back Reporting System (International Passenger Aircraft and Cruise Ships)	7

Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 1)	1
Motor Vehicle Standards (Road Vehicles) Determination	1
Motor Vehicle Standards (Approval to Place Used Import Plates) Determination 2004,	1
National Capital Plan amendments	2
Nineteenth Amending Deed to Establish an Occupational Superannuation Scheme for Commonwealth Employees and Certain Other Persons	1
Northern Prawn Fishery Management Plan Amendment	1
Notice No. 1 of 2004, made under paragraphs 28(6A)(b), 49(6B)(B) and 50(2B)(b) and subsections 66(4b) and 83A(5) of the <i>Seafarers Rehabilitation and Compensation Act 1992</i>	1
Notice of Declaration under Subsection 9(5) (Notice No. 1 of 2003), made under subsection 9(5) of the <i>Occupational Health and Safety (Commonwealth Employment) Act 1991</i>	1
Occupational Superannuation Scheme for Commonwealth Employees and Certain Other Persons amending deed	1
Parliamentary Service Determinations	2
Policy Statement made under section 11 of the <i>International Air Services Commission Act 1992</i>	1
Prescribed Goods (General) Amendment Orders	3
Primary Industries (Customs) Charges (Designated Body) Declaration	1
Privacy determination	1
Public Service Commissioner's Amendment Directions	4
Quality of Care Amendment Principles 2003	1
Quarantine Service Fees Amendment Determinations	2
Radiocommunications instruments	20
Rehabilitation Program Provider Notices	2
Residential Care Subsidy Amendment Principles of 2003	1
Residential Tenancies Regulations	2
Road Vehicle (National Standards) Determinations	2
Safety Rehabilitation and Compensation Act 1988 Notices	5
Scheme for Winding Up and Dissolution of Superannuation Entities – Uncontactable Superannuation Entities	1
Social Security Declarations	3
Social Security Determinations	4
Social Security (Class of Debts - Youth Allowance) Notice 2004	1
Social Security (Payment Pending – ARO Application for Review) Guidelines 2004	1
Social Security (Payment Pending –SSAT Application for Review) Guidelines 2004	1
Southern and Eastern Scalefish and Shark Fishery Management Plan	1
Space Activities (Approved Scientific or Educational Organisations) Guidelines 2004	1
Special Capital Projects guidelines	1
Specialist Credit Card Institutions reporting standards	1
Superannuation (CSS) Declarations	3
Superannuation (CSS) Final Deferred Transfer Value and Surplus Payments (Australia Post Superannuation Scheme) Determination 2004	1

Superannuation (CSS) Final Deferred Transfer Value and Surplus Payments (Telstra Superannuation Scheme) Determination 2004	1
Superannuation Reporting Standards determination	1
Suspension of Mr Geoff Clark as Commissioner of the Aboriginal and Torres Strait Islander Commission	1
Tax File Number Guidelines	1
Temporary Order No. 4 of 2003, made under section 43 of the <i>Fisheries Management Act 1991</i>	1
Temporary Order No.1 of 2004, made under section 43 of the <i>Fisheries Management Act 1991</i>	1
Textile, Clothing and Footwear Strategic Investment Program Scheme Amendments	2
Therapeutic Goods Orders	4
Torres Strait Regional Authority Election Amendment Rules	2
Twentieth Amending Deed to the Trust Deed to Establish an Occupational Superannuation Scheme for Australian Government Employees and Certain Other Persons	1
Twenty-First Amending Deed to the Trust Deed to Establish an Occupational Superannuation Scheme for Australian Government Employees and Certain Other Persons	1
User Rights Amendment Principles	1
Variation (No. 4) of Prudential Rules No. 47, made under subsection 252(1) of the <i>Life Insurance Act 1995</i>	1
Variation of Reporting Standard SRS 010, Annual Return, Trustee Certificate and Audit Reports for Certain Early-Balancing Entities (2003-2004 Year of Income)	1
Water and Sewerage Services determinations	2
Water Agencies (Infringements) Regulations 1994 (WA) (CI) Amendment Regulations 2004 (No. 1)	1
Water Agencies (Infringements) Regulations 1994 (WA) (CKI) Amendment Regulations 2004 (No. 1)	1
Total	282

Instruments on which the Committee raised concerns in 2001-2002

A

- A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Amendment Determination 2001 (No.1)
- A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Amendment Determination 2001 (No.2)
- A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2001 (No.2)
- A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2002 (No.1)
- Aboriginal and Torres Strait Islander Commission (Regional Council Election) Amendment Rules 2002 (No.1) made under section 113 of the *Aboriginal and Torres Strait Islander Commission Act 1989*
- Aboriginal and Torres Strait Islander Commission (Regional Council Election) Amendment Rules 2002 (No.3)
- Actuarial Standard (Friendly Society) 1.02 - Valuation of Policy Liabilities
- Actuarial Standard 1.03 - Valuation of Policy Liabilities
- Actuarial Standard 3.03 - Capital Adequacy Standard
- Actuarial Standard 4.02 - Minimum Surrender Values and Paid-Up Values
- Actuarial Standard 5.02 - Cost of Investment Performance Guarantees
- Actuarial Standard 6.02 - Management Capital Standard
- Actuarial Standard 7.01 - General Standard
- Airports (Control of On-Airport Activities) Amendment Regulations 2001 (No.2), Statutory Rules 2001 No.170
- Airports (Control of On-Airport Activities) Amendment Regulations 2001 (No.3), Statutory Rules 2001 No.287
- Airworthiness Directive AD/F28/87
- Amendment of List of Exempt Native Specimens, made under subsection 303DC(1) of the *Environment Protection and Biodiversity Conservation Act 1999*
- Amendment of List of Exempt Native Specimens, made under subsection 303DC(1) of the *Environment Protection and Biodiversity Conservation Act 1999*
- Amendment of List of Exempt Native Specimens, made under subsection 303DC(1) of the *Environment Protection and Biodiversity Conservation Act 1999*
- Amendment to Schedule 6 of the *Wildlife Protection (Regulation and Exports and Imports) Act 1982*
- Amendment to Statement of Principles made under subsection 196B(2) of the *Veterans' Entitlements Act 1986*, Instrument No 11 of 2002
- Amendments to Statements of Principles made under subsections 196B(2) and (3) of the *Veterans' Entitlements Act 1986*, Instrument Nos 5 to 33 of 2002
- Ashmore Reef National Nature Reserve and Cartier Island Marine Reserve Management Plans

Atomic Energy (A.A.E.C. Stock) Repeal Regulations 2001, Statutory Rules 2001 No.313
 Australian National Botanic Gardens Management Plan 2002-2008 made under s.366 of the
Environment Protection and Biodiversity Act 1999

Australian Radiofrequency Spectrum Plan made under ss. 30 and 34 of the
Radiocommunications Act 1992

Australian Securities and Investment Commission Regulations 2001, Statutory Rules 2001
 No.192

B

Banking (Foreign Exchange) Amendment Regulations 2002 (No.1), Statutory Rules 2002
 No.40

Bridging for Overseas-Trained Professionals Loan Scheme (BOTPLS) Guidelines made under
 subsection 98U(4) of the *Higher Education Funding Act 1988*

Broadcasting Services (Datacasting Charge) Regulations 2001, Statutory Rules 2001 No.336

C

Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment
 No. 1 of 2001) made under subsection 63(5) of the *Telecommunications Act 1997*

CEO Instrument of Approval No.5 of 2001 made under section 4A of the *Customs Act 1901*

Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval)
 Amendment Determination 2001 (No.1) made under subsection 205(1) of the *A New Tax
 System (Family Assistance) (Administration) Act 1999*

Christmas Island Space Centre (APSC Proposal) Ordinance 2001

Civil Aviation Amendment Order (No.03) 2002 made under subregulation 99AA(5) of the
Civil Aviation Regulations 1998

Civil Aviation Amendment Order (No.11) 2001

Civil Aviation Amendment Order (No.18) 2001 made under the Civil Aviation Regulations

Civil Aviation Amendment Order (No.2) 2002

Civil Aviation Amendment Regulations 2001 (No.4), Statutory Rules 2001 No.349

Civil Aviation Orders, Part 105, Airworthiness Directive AD/CESSNA 210/66 Amdt 2

Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment
 Determination 2001 (No.1) made under section 10A of the *Consular Privileges and
 Immunities Act 1972*

Corporations Amendment Regulations 2001 (No.4), Statutory Rules 2001 No.319

Corporations Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.16

Crimes Amendment Regulations 2001 (No.4), Statutory Rules 2001 No.334

Currency (Perth Mint) Determination (No.2) made under subsection 13A(1) of the *Currency
 Act 1965*

Currency (Perth Mint) Determination 2001 (No.2) made under subsection 13A(1) of the
Currency Act 1965

Customs (Interception of Vessels) Regulations 2001, Statutory Rules 2001 No.267

D

Dairy Exit Program Scheme Amendment 2001 (No.2) made under subsection 52C(1) of the
Farm Household Support Act 1992

Dairy Structural Adjustment Program Scheme Amendment 2000 (No.8) made under clauses
 10 and 35 of Schedule 2 to the *Dairy Produce Act 1986*

Dairy Structural Adjustment Program Scheme Amendment 2000 (No.9) made under clauses 10 and 35 of Schedule 2 of the *Dairy Produce Act 1986*

Declaration of Designated Outwards Secondary Shipper Body pursuant to subsection 10.02(2) of the *Trade Practices Act 1974*

Defence (Public Areas) Amendment By-laws 2001 (No.1), Statutory Rules 2001 No.331

Defence Determination 2001/33

Determination No. HSR 11/2002 made under Schedule 1, paragraph (bj) of the *National Health Act 1953*

Determination No. HSR 6/2002 made under Schedule 1, paragraph (bj) of the *National Health Act 1953*

Determination No. T12-2002 made under section 15 of the *Higher Education Funding Act 1988*

Determination No.1 of 2002 made under section 52 of the *Defence Act 1903*

Determination No.PHI 25/2001 made under schedule 1, paragraph (bj) of the *National Health Act 1953*

Determination No.T32-2001 made under section 15 of the *Higher Education Funding Act 1988*

Determination of Listed Professional Occupations and Relevant Assessing Bodies made under subsection 98S(1) of the *Higher Education Funding Act 1988*

Determination of Prudential Standards made under paragraph 32(1)(a) of the *Insurance Act 1973*, Transitional Prudential Standard GPS 900

Diesel and Alternative Fuels Grants Scheme Amendment Regulations 2001 (No.2), Statutory Rules 2001 No.200

Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment Determination 2001 (No.1) made under section 10B of the *Diplomatic Privileges and Immunities Act 1972*

Direction No.NPFD 56 made under subsection 17(5A) of the *Fisheries Management Act 1991*

Direction No.NPFD 57 - Prohibition on Daylight Trawling, made under subsection 17(5A) of the *Fisheries Management Act 1991*

E

Electoral and Referendum Amendment Regulations 2001 (No. 1), Statutory Rules 2001 No. 248

Environment and Heritage Legislation Amendment (Application of Criminal Code) Regulations 2002 (No.1), Statutory Rules 2002 No.8

Environment Protection (Sea Dumping) Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.199

Environment Protection and Biodiversity Conservation Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.179

Excise Laws (Licence Fees) Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.223

Exemption No. CASA EX04/2002 made under regulation 308 of the *Civil Aviation Regulations 1998*

Explosives Transport Regulations 2002, Statutory Rules 2002 No.92

F

Family Law (Child Abduction Convention) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.110
 Family Law (Superannuation) Regulations 2001, Statutory Rules 2001 No.303
 Family Law Amendment Regulations 2001 (No.3), Statutory Rules 2001 No.191
 Family Law Amendment Rules 2001 (No.4), Statutory Rules 2001 No.257
 Family Law Amendment Rules 2002 (No.1), Statutory Rules 2002 No.23
 Federal Magistrates Court Amendment Rules 2002 (No.1), Statutory Rules 2002 No.80
 Federal Magistrates Court Rules 2001, Statutory Rules 2001 No.195
 Fuel Quality Standards Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.255
 Fuel Quality Standards Regulations 2001, Statutory Rules 2001 No.236

G

Great Barrier Reef Marine Park Amendment Regulations 2001 (No.3), Statutory Rules 2001 No.197
 Great Barrier Reef Marine Park Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.72
 Great Barrier Reef Marine Park Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.73
 GST-free Supply (In-home Care) Amendment Determination 2002 (No.1)
 GST-free Supply (Long Day Care) Determination 2002
 Guidelines - Remission of HECS/OLDPS debt in special circumstances made under subsection 3106L(3A) of the *Higher Education Funding Act 1988*
 Guidelines for electronic communications with students made under subsections 56C(6), 56D(6) and 56E(4) of the *Higher Education Funding Act 1988*
 Guidelines for Research and Development Plans 2001 made under section 39KA of the *Industry Research and Development Act 1986*
 Guidelines on definition of supervision for work experience in industry made under subsection 36(3) of the *Higher Education Funding Act 1988*

H

Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2001, Statutory Rules 2001 No.339
 Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2001 (No.4), Statutory Rules 2001 No.157
 Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.75
 Health Insurance (Eligible Collection Centres - Approvals) Principles 2000 made under subsection 23DNBA(4) of the *Health Insurance Act 1973*
 Health Insurance (Eligible Collection Centres - Approvals) Principles (Amendment number 2) 2001 made under subsection 23DNBA(4) of the *Health Insurance Act 1973*
 Health Insurance (Eligible Collection Centres) Approval Principles 2001 made under subsection 23DNBA(4) of the *Health Insurance Act 1973*
 Health Insurance Amendment Regulations 2001 (No. 1), Statutory Rules 2001 No. 272
 Health Insurance Amendment Regulations 2001 (No. 2), Statutory Rules 2001 No. 273
 Health Insurance Amendment Regulations 2001 (No. 3), Statutory Rules 2001 No. 274
 Health Insurance Amendment Regulations 2001 (No. 4), Statutory Rules 2001 No. 275

Health Insurance Amendment Regulations 2001 (No.6), Statutory Rules 2001 No.342
 Health Insurance Determination HS/02/2002 made under section 3C of the *Health Insurance Act 1973*
 Health Insurance Determination HS/03/2002 made under section 3C of the *Health Insurance Act 1973*
 Health Insurance Determination HS/07/2001 made under section 3C of the *Health Insurance Act 1973*
 Health Insurance Determination HS/5/01 made under s.3C of the *Health Insurance Act 1973*
 Health Insurance Determination HS/6/01 made under section 3C of the *Health Insurance Act 1973*
 Heard Island and McDonald Islands Fishery Management Plan 2002

I

Immigration (Guardianship of Children) Regulations 2001, Statutory Rules 2001 No.238
 Inclusion of Key Threatening Processes in the List of Threatened Key Threatening Processes under section 183 of the *Environment Protection and Biodiversity Conservation Act 1999*
 Inclusion of species in the list of threatened species under section 178 of the *Environment Protection and Biodiversity Conservation Act 1999*
 Indian Ocean Territories Redundant Regulations (Repeal) Regulations 2002, Statutory Rules 2002 No.93

M

Marine Orders - Part 10 - Medical First Aid on Ships, Issue 4, Marine Order No.13 of 2001
 Marine Orders - Part 43 - Cargo and Cargo Handling - Livestock, Issue 5, Marine Order No.12 of 2001
 Marine Orders - Part 54 - Coastal Pilotage, Issue 3 Marine Order No.6 of 2001.
 Marine Orders - Part 60 - Floating Offshore Facilities, Issue 2, Marine Order No.11 of 2001
 Migration Amendment Regulations 2001 (No. 10), Statutory Rules 2001 No. 284
 Migration Amendment Regulations 2001 (No. 11), Statutory Rules 2001 No. 285
 Migration Amendment Regulations 2001 (No. 9), Statutory Rules 2001 No. 283
 Migration Amendment Regulations 2001 (No.12), Statutory Rules 2001 No.291
 Migration Amendment Regulations 2001 (No.5), Statutory Rules 2001 No.162
 Motor Vehicle Standards (Approval to Place Used Import Plates) Determination 2002
 Motor Vehicle Standards (Approval to Place Used Import Plates) Determination 2002
 Motor Vehicle Standards (Approval to Place Used Import Plates) Determination 2002
 Motor Vehicle Standards (Placement of Used Import Plates) Determination 2002
 Motor Vehicle Standards (Placement of Used Import Plates) Determination 2002
 Motor Vehicle Standards (Placement of Used Import Plates) Determination 2002
 Motor Vehicle Standards (Procedures for Inspecting and Testing Used Imported Vehicles) Determination 2002
 Motor Vehicle Standards (Procedures for Inspecting and Testing Used Imported Vehicles) Determination 2002
 Motor Vehicle Standards (Procedures for Inspecting and Testing Used Imported Vehicles) Determination 2002
 Motor Vehicle Standards (Registered Automotive Workshops - Fit and Proper Persons) Determination 2002

Motor Vehicle Standards (Registered Automotive Workshops - Fit and Proper Persons) Determination 2002
Motor Vehicle Standards (Registered Automotive Workshops - Fit and Proper Persons) Determination 2002
Motor Vehicle Standards (Used Imported Vehicle Report) Determination 2002
Motor Vehicle Standards (Used Imported Vehicle Report) Determination 2002
Motor Vehicle Standards (Used Imported Vehicle Report) Determination 2002
Motor Vehicle Standards Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.350

N

National Health Amendment Regulations 2001 (No.4), Statutory Rules 2001 No.282
Naval Forces Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.52
Ningaloo Marine Park (Commonwealth Waters) Management Plan made under section 380 of the *Environment Protection and Biodiversity Conservation Act 1999*
Northern Prawn Fishery Management Amendment Plan 2001 (No. NPF03) made under subsection 20(1) of the *Fisheries Management Act 1991*

O

Occupational Health and Safety (Commonwealth Employment) Amendment Regulations 2001 (No.3), Statutory Rules 2001 No.270
Ordinances Revision Ordinance 2002 (Territory of Christmas Island Ordinance No.1 of 2002)
Ordinances Revision Ordinance 2002 (Territory of Cocos (Keeling) Islands Ordinance No.1 of 2002)

P

Patents Amendment Regulations 2001 (No.3), Statutory Rules 2001 No.345
Petroleum (Submerged lands) Fees Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.207
Primary Industries (Excise) Levies Amendment Regulations 2001 (No.6), Statutory Rules 2001 No.152
Primary Industries Levies and Charges Collection Amendment Regulations 2001 (No.5), Statutory Rules 2001 No.235
Private Patients' Hospital Charter made under section 73F of the *National Health Act 1953*
Public Employment (Consequential and Transitional) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.87

Q

Quarantine Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.154
Quarantine Service Fees Determinations 2001 (No.1 of 2001) made under section 86E of the *Quarantine Act 1908*

R

Radiocommunications (27 MHz Handphone Stations) Class Licence 2002 made under subsection 132(1) and section 135 of the *Radiocommunications Act 1992*

Radiocommunications (Citizen Band Radio Stations) Class Licence 2002 made under subsection 132(1) and section 135 of the *Radiocommunications Act 1992*

Radiocommunications (Compliance Labelling - Electromagnetic Radiation) Notice 2001 made under s.182 of the *Radiocommunications Act 1992*

Radiocommunications (Compliance Labelling - Incidental Emissions) Notice 2001 made under s.182 of the *Radiocommunications Act 1992*

Radiocommunications (Compliance Labelling - Incidental Emissions) Notice 2001 made under section 182 of the *Radiocommunications Act 1992*

Remuneration Tribunal Determination 2001/15 made under subsections 7(3) and (3) of the *Remuneration Tribunal Act 1973*

Renewable Energy (Electricity) Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.219

Research and Research Training Management Reports Guidelines for Higher Education Institutions 2002 made under section 23 of the *Higher Education Funding Act 1988*

Retirement Savings Accounts Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.7

S

Section 19AB Guidelines made under section 73F of the *Health Insurance Act 1973*

Social Security (Means Test Treatment of Private Companies - Excluded Companies) Declaration 2001 made under subsection 1207N(5) of the *Social Security Act 1991*

Southern Bluefin Tuna Fishery Management Plan Amendment 2002 (No. SBT 04) made under subsection 20(1) of the *Fisheries Management Plan 1991*

Space Activities Regulations 2001, Statutory Rules 2001 No.186

Superannuation (CSS) Continuing Contributions for Benefits Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.230

Superannuation (PSS) Membership Inclusion Amendment Declaration 2001 (No.1), Statutory Rules 2001 No.231

Superannuation Guarantee (Administration) Amendment Regulations 2001 (No.3), Statutory Rules 2001 No.214

Superannuation Industry (Supervision) Amendment Regulations 2001 (No.2), Statutory Rules 2001 No.352

Supplementary Dairy Assistance Scheme 2001 Variation (No.2) made under clauses 37B and 37Y of Schedule 2 of the *Dairy Produce Act 1986*

Supplementary Dairy Assistance Scheme 2001 Variation (No.3) made under clauses 37B and 37Y of Schedule 2 of the *Dairy Produce Act 1986*

Supplementary Dairy Assistant Scheme 2001 made under clause 37B of Schedule 2 to the *Dairy Produce Act 1986*

Sydney Harbour Federation Trust Regulations 2001, Statutory Rules 2001 No.296

T

Tasmanian Seamounts Marine Reserve Management Plan

Taxation Administration Amendment Regulations 2001 (No.2), Statutory Rules 2001 No.354

Taxation Laws Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.289

Telecommunications (Carrier Licence Application Charge) Determination 2002 made under section 9 of the *Telecommunications (Carrier Licence Charges) Act 1997*

Telecommunications (Charges) Determination 2002 made under section 53 of the *Australian Communications Authority Act 1997*

Telecommunications (Customer Service Guarantee) Amendment Standard 2001 (No.1) made under paragraph 125(3)(a) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

Telecommunications Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.99

Telecommunications Disability Standard (Requirements for Customer Equipment for use with the Standard Telephone Service - Features for the special needs of persons with disabilities – AS/ACIF S040) 2002

Telecommunications Technical Standard (Requirements for Customer Equipment with hierarchical digital interfaces - AS/ACIF S106) 2002

Therapeutic Goods Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.159

Therapeutic Goods Amendment Regulations 2001 (No.4), Statutory Rules 2001 No.343

Therapeutic Goods Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.84

Therapeutic Goods Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.114

Trade Marks Amendment Regulations 2001 (No.3), Statutory Rules 2001 No. 247

Trade Practices (Industry Codes - Franchising) Amendment Regulations 2001 (No.1), Statutory Rules 2001 No.165

Trade Practices Amendment Regulations 2001 (No.5), Statutory Rules 2001 No.226

V

Variation of Actuarial Standards made under section 101 of the *Life Insurance Act 1995*

Veterans' Entitlements (Means Test Treatment of Private Companies - Excluded Companies)

Declaration 2001 made under subsection 52ZZB(4) of the *Veterans' Entitlements Act 1986*

Veterans' Entitlements Amendment Regulations 2001 (No.2), Statutory Rules 2001 No.228

W

Workplace Relations Amendment Regulations 2001 (No.2), Statutory Rules 2001 No.323

Appendix 3

Instruments on which the Committee raised concerns in 2002-2003

A

- Aboriginal and Torres Strait Islander Commission (Regional Council Election) Amendment Rules 2002 (No.4) made under subsection 113(1) of the *Aboriginal and Torres Strait Islander Commission Act 1989*
- Aboriginal and Torres Strait Islander Commission (Regional Council Election) Amendment Rules 2002 (No.5) made under subsection 113(1) of the *Aboriginal and Torres Strait Islander Commission Act 1989*
- Aboriginal and Torres Strait Islander Commission (Travel) Determination 2003 made under paragraph 194(1)(c) of the *Aboriginal and Torres Strait Islander Commission Act 1989*
- Air Force Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.276
- Air Passenger Ticket Levy (Collection) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.220
- ATSIC (Regional Councils - Election of Officeholders) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.275
- Australia Meat and Live-stock Industry (Export of Cattle) Amendment Orders 2002 (No.1) made under section 17 of the *Australian Meat and Live-stock Industry Act 1997*
- Australia New Zealand Food Authority Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.119
- Australian Crime Commission Establishment (Transitional Provisions) Regulations 2003, Statutory Rules 2003 No.4
- Australian Industrial Relations Commission (Allowances) Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.102
- Australian Meat and Live-stock Industry (Beef Export to the United States of America - Quota Year 2003) Order 2002 made under section 17 of the *Australian Meat and Live-stock Industry Act 1997*
- Australian Meat and Live-stock Industry (Export of Female Sheep and Goats for Slaughter) Order 2002 made under section 17 of the *Australian Meat and Live-stock Industry Act 1997*
- Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2003 made under section 17 of the *Australian Meat and Live-stock Industry Act 1997*
- Australian Securities and Investments Commission Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.124

B

- Bankruptcy Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.255

C

CEO Instrument of Approval No.21 of 2002 made under subsection 243XA(1) of the *Customs Act 1901*

Civil Aviation Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.167

Civil Aviation Amendment Regulations 2002 (No.4), Statutory Rules 2002 No.221

Civil Aviation Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.58

Civil Aviation Legislation Amendment (Application of Criminal Code) Regulations 2002 (No.1), Statutory Rules 2002 No.268

Commonwealth Authorities and Companies (Report of Operations) Order 2002 made under section 48 of the *Commonwealth Authorities and Companies Act 1997*

Commonwealth Places (Mirror Taxes) (Modification of Applied Laws (WA)) Notice 2002 made under section 8(2) of the *Commonwealth Places (Mirror Taxes) Act 1998* of the Commonwealth and section 6 of the *Commonwealth Places (Mirror Taxes Administration) Act 1999* of Western Australia

Corporations (Fees) Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.146

Criminal Code Amendment Regulations 2002 (No.4), Statutory Rules 2002 No.269

Criminal Code Amendment Regulations 2002 (No.5), Statutory Rules 2002 No.270

Criminal Code Amendment Regulations 2002 (No.6), Statutory Rules 2002 No.271

Criminal Code Amendment Regulations 2002 (No.7), Statutory Rules 2002 No.272

Currency (Royal Australian Mint) Determination 2003 (No.2) made under subsection 13A(1) of the *Currency Act 1965*

Customs (Prohibited Exports) Amendment Regulations 2002 (No.4), Statutory Rules 2002 No.205

Customs (Prohibited Exports) Amendment Regulations 2002 (No.5), Statutory Rules 2002 No.330

Customs (Prohibited Exports) Amendment Regulations 2003 (No.2), Statutory Rules 2003 No.44

Customs (Prohibited Imports) Amendment Regulations 2002 (No.3), Statutory Rules 2002 No.206

Customs Amendment Regulations 2002 (No.4), Statutory Rules 2002 No.195

Customs Amendment Regulations 2003 (No.3), Statutory Rules 2003 No.65

D

Defence (Personnel) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.279

Defence Determination 2002 (Employer Support Payments) made under subsection 58B(1) of the *Defence Act 1903*

Defence Determination 2002/20 made under section 58B of the *Defence Act 1903*

Defence Determination 2003/3 made under section 58B of the *Defence Act 1903*

Defence Determination 2003/9

Defence Force Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.311

Determination No PHS 1/2003 made under subsection 5D(1) of the *National Health Act 1953*

Determination of Fees for Electricity Supply (No.1 of 2002) made under section 3B of the *Administration Ordinance 1990* of the Jervis Bay Territory

Determination of Fees for Water and Sewerage Services No.1 of 2002 made under section 13 of the *Cocos (Keeling) Islands Act 1955*

Determination of Fees for Water and Sewerage Services No.2 of 2002 made under section 13 of the *Cocos (Keeling) Islands Act 1955*

Determination of Reporting Standards made under paragraph 13(1)(a) of the *Financial Sector (Collection of Data) Act 2001*

Determination of Reporting Standards made under paragraph 13(1)(a) of the *Financial Sector (Collection of Data) Act 2001*

Determination of Reporting Standards made under paragraph 13(1)(a) of the *Financial Section (Collection of Data) Act 2001* made on 19 June 2002

Determination of Reporting Standards made under paragraph 13(1)(a) of the *Financial Section (Collection of Data) Act 2001* made on 28 June 2002

Determinations T series 2003 (Nos T1 to T5 and T7) made under sections 15, 20A and 24 of the *Higher Education Funding Act 1988*

Disability Services (Administration of Part II of the Act) Guidelines 2002 made under subsection 5(1) of the *Disability Services Act 1986*

Disability Services (Disability Employment and Rehabilitation Program) Standards 2002 made under paragraphs 5A(1)(b) and (c) and subsection 5A(2) of the *Disability Services Act 1986*

F

Family Law (Superannuation) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.176

Farm Help Re-establishment Grant Scheme Amendment 2003 (No.1) made under section 52A of the *Farm Household Support Act 1992*

Federal Court Amendment Rules 2002 (No.2), Statutory Rules 2002 No.222

Fuel Standard (Diesel) Amendment Determination 2002 (No.1) made under section 21 of the *Fuel Quality Standards Act 2000*

Fuel Standard (Petrol) Amendment Determination 2002 (No.1) made under section 21 of the *Fuel Quality Standards Act 2000*

G

Great Barrier Reef Marine Park Amendment Regulations 2002 (No.6), Statutory Rules 2002 No.224

H

Health Insurance (Accredited Pathology Laboratories - Approval) Principles 2002 HS/11/2002 made under subsection 23DNA(1) of the *Health Insurance Act 1973*

Health Insurance (Approval of Billing Agents) Guidelines 2003 made under subsection 20AB(3) of the *Health Insurance Act 1973*

Health Insurance (Photodynamic Therapy) Determination HS/09/2002 made under subsection 3C(1) of the *Health Insurance Act 1973*

Health Insurance Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.246

Health Insurance Commission (Additional Functions - Prescription Shopping Project) Determination 2003 made under subsection 8AA(4) of the *Health Insurance Commission Act 1973*

Health Insurance Commission Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.253

Higher Education Funding Regulations 2002, Statutory Rules 2002 No.306

Horticulture Marketing and Research Development Services (Export Efficiency) Regulations 2002, Statutory Rules 2002 No.284

I

Immigration (Education) Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.91

Income Tax Assessment Amendment Regulations 2002 (No.4), Statutory Rules 2002 No.172

Indigenous Education (Targeted Assistance) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.231

Instrument Issuing Guidelines under subsection 13(9) of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*

Instrument No.10 of 2003, Revocation and Determination of Statement of Principles concerning Carotid Arterial Disease made under subsection 196B(3) of the *Veterans' Entitlements Act 1986*

Instrument No.9 of 2003, Revocation and Determination of Statement of Principles concerning Carotid Arterial Disease made under subsection 196B(2) of the *Veterans' Entitlements Act 1986*

Insurance Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.127

Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003, Statutory Rules 2003 No.97

M

Manual of Standards - Part 139H - Standards Applicable to the Provision of Aerodrome Rescue and Fire Fighting Services

Manual of Standards - Part 143 - Air Traffic Service Training Providers

Manual of Standards - Part 171 - Aeronautical Telecommunications and Radio Navigation Services

Manual of Standards - Part 172 - Air Traffic Services

Manual of Standards - Part 65 - Standards Applicable to Air Traffic Services Licensing and Training Requirements

Marine Orders - Part 44 - Safe Containers, Issue 5, Order No. 4 of 2002

Marine Orders - Part 54 - Coastal Pilotage, Issue 3 (Amendment), Order No. 11 of 2002

Marine Traffic and Harbour Facilities (Cargo Storage) Determination No.2 of 2002 made under s.4 of the *Utilities and Services Ordinance 1996* of the Territory of Christmas Island

Marine Traffic and Harbour Facilities Determination No.1 of 2002 made under section 10 of the *Christmas Island Act 1958*

Migration (Afghanistan - United Nations Security Council Resolution No.1390) Regulations 2002, Statutory Rules 2002 No.212

Motor Vehicle Standards (Used Imported Vehicle Report) Determination 2002 (2) made under section 13B of the *Motor Vehicle Standards Act 1989*

N

Navigation (Marine Casualty) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.199

Notice under section 142S in relation to the Torres Strait Regional Authority 2003 –
Aboriginal and Torres Strait Islander Commission Act 1989

P

Petroleum (Submerged Lands)(Diving Safety) Regulations 2002, Statutory Rules 2002 No.300
 Primary Industries (Customs) Charges Amendment Regulations 2002 (No.5), Statutory Rules 2002 No.289
 Primary Industries (Customs) Charges Amendment Regulations 2003 (No.4), Statutory Rules 2003 No.27
 Primary Industries (Excise) Levies Amendment Regulations 2002 (No.9), Statutory Rules 2002 No.290
 Primary Industries (Excise) Levies Amendment Regulations 2003 (No.4), Statutory Rules 2003 No.28
 Primary Industries Levies and Charges (National Residue Survey Levies) Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.292
 Primary Industries Levies and Charges Collection Amendment Regulations 2002 (No.6), Statutory Rules 2002 No.291
 Proceeds of Crime Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.334
 Product Stewardship (Oil) Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.47
 Public Service Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.214

Q

Quarantine Service Fees 2003-2005 (Australia Post) Determination 2003 made under section 86E of the *Quarantine Act 1908*

R

Radiocommunications (Compliance Labelling - Electromagnetic Radiation) Notice 2003 made under section 182 of the *Radiocommunications Act 1992*
 Radiocommunications Licence Conditions (Temporary Community Broadcasting Licence) Determination 2003 made under paragraph 108A(1)(e) of the *Radiocommunications Act 1992*
 Radiocommunications (Receiver Licence Tax) Amendment Determination 2003 (No.1) made under subsection 7(1) of the *Radiocommunications (Receiver Licence Tax) Act 1983*
 Radiocommunications (Transmitter Licence Tax) Amendment Determination 2003 (No.1) made under subsection 7(1) of the *Radiocommunications (Transmitter Licence Tax) Act 1983*
 Renewable Energy (Electricity) Amendment Regulations 2002 (No.2), Statutory Rules 2002 No.232
 Renewable Energy (Electricity) Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.96
 Road Vehicle (National Standards) Determination No.3 of 2003 made under section 7 of the *Motor Vehicle Standards Act 1989*

Road Vehicle (National Standards) Determination No.4 of 2003 made under section 7 of the *Motor Vehicle Standards Act 1989*

S

Student Assistance Regulations 2003, Statutory Rules 2003 No.101
Suspension and Removal from Office of a Regional Councillor made under subsection 122A(3) of the *Aboriginal and Torres Strait Islander Commission Act 1989*

T

Taipei Economic and Cultural Officer (Privileges and Immunities) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.197
Telecommunications (Emergency Call Service) Determination 2002 made under subsection 147(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*
Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2003 (No.1) made under section 407 of the *Telecommunications Act 1997*
Telecommunications Numbering Plan Variation 2003 (No.1) made under section 455 of the *Telecommunications Act 1997*
Therapeutic Goods (Charges) Amendment Regulations 2002 (No.1), Statutory Rules 2002 No.144
Therapeutic Goods (Manufacturing Principles) Determination No.1 of 2002 made under section 36 of the *Therapeutic Goods Act 1989*
Therapeutic Goods (Medical Devices) Regulations 2002, Statutory Rules 2002 No.236
Therapeutic Goods Amendment Regulations 2002 (No.4), Statutory Rules 2002 No.234
Therapeutic Goods Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.111
Therapeutic Goods Order No.70 made under section 10 of the *Therapeutic Goods Act 1989*
Tradespersons' Rights (Cost Recovery) Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.104

W

Wool Services Privatisation (Wool Levy Poll) Regulations 2003, Statutory Rules 2003 No.50
Workplace Relations (Registration and Accountability of Organisations) Regulations 2003, Statutory Rules 2003 No.82
Workplace Relations Amendment Regulations 2002 (No.3), Statutory Rules 2002 No.337

Instruments on which the Committee raised concerns in 2003-2004

A

Accounting Standard AASB 1046: Director and Executive Disclosures by Disclosing Entities

Administrative Decisions (Judicial Review) Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.115

Air Navigation Amendment Regulations 2003 (No. 3), Statutory Rules 2003 No.269

Airworthiness Directive, Part 105 - AD/AS355/65 Amdt 1

Airworthiness Directive, Part 105 - AD/CESSNA 206/5/ Amdt 1

Airworthiness Directive, Part 105 - AD/F100/59

Airworthiness Directive, Part 105 - AD/JETSTREAM/96

Approved Form for Application for Initial Approval as a Rehabilitation Program Provider (Notice 21 of 2003) made under sections 34C and 34S of the *Safety, Rehabilitation and Compensation Act 1988*

Approved Form for Application for Initial Approval as a Rehabilitation Program Provider (Notice 22 of 2003) made under sections 34K and 34S of the *Safety, Rehabilitation and Compensation Act 1988*

Australian Meat and Live-stock Industry (Beef Export to the United States of America - Quota Year 2004) Amendment Order 2003 (No. 1) made under section 17 of the *Australian Meat and Live-stock Industry Act 1997*

Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2004, made under section 17 of the *Australian Meat and Live-stock Industry Act 1997*

Australian Security Intelligence Organization Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.233

B

Broadcasting Services (Digital Television Standards) Amendment Regulations 2003 (No.15), Statutory Rules 2003 No.146

Broadcasting Services (Digital Television Standards) Amendment Regulations 2003 (No. 2), Statutory Rules 2003 No. 310

Broadcasting Services (Events) Notice (No. 1) 2004, made under subsection 115(1) of the *Broadcasting Services Act 1992*

C

Child Disability Assessment Amendment Determination 2003 made under section 38D of the *Social Security Act 1991*

Civil Aviation Amendment Regulations 2003 (No. 8), Statutory Rules 2003 No. 365

Civil Aviation Amendment Regulations 2003 (No.4), Statutory Rules 2003 No.189

Civil Aviation Amendment Regulations 2003 (No.5), Statutory Rules 2003 No.201
 Civil Aviation Amendment Regulations 2003 (No.6), Statutory Rules 2003 No.232
 Civil Aviation Safety Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No.297
 Commercial Television Conversion Scheme Variation 2003 (No. 2) made under subclause 6(1) of Schedule 4 of the *Broadcasting Services Act 1992*
 Commonwealth Authorities and Companies Orders (Financial Statements for reporting periods ending on or after 30 June 2004), made under subsection 48(1) of the *Commonwealth Authorities and Companies Act 1997*
 Commonwealth Places (Application of Laws) Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.116
 Corporations (Review Fees) Regulations 2003, Statutory Rules 2003 No.160
 Crimes Amendment Regulations 2003 (No. 3), Statutory Rules 2003 No.265
 Criminal Code Amendment Regulations 2003 (No.9), Statutory Rules 2003 No.184
 Currency (Perth Mint) Determination 2004 (No. 1), made under the *Currency Act 1965*
 Currency (Royal Australian Mint) Amendment Determination 2004 (No. 1), made under paragraph 13(2)(b) and subsection 13A(1) of the *Currency Act 1965*
 Currency (Royal Australian Mint) Determination 2003 (No.5) made under subsection 13A(1) of the *Currency Act 1965*
 Customs Prohibited Imports Amendment Regulations 2003 (No.8), Statutory Rules 2003 No.253

D

Declaration made under subsections 926A(2), 951B(1), 992B(1) and 1020F(1) of the *Corporations Act 2001*
 Declaration No. 2004/01, made under the *Lands Acquisition Act 1989*
 Defence (Inquiry) Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 311
 Defence Force Retirement and Death Benefits (Family Law Superannuation) Orders 2004, Statutory Rules 2004 No. 99
 Defence Forces Retirements Benefits (Family Law Superannuation) Orders 2004, Statutory Rules 2004 No. 100
 Designs Regulations 2004, Statutory Rules 2004 No. 117
 Determination No.4 of 2003 - Reporting Standards for Superannuation Entities made under paragraph 13(1)(a) of the *Financial Sector (Collection of Data) Act 2001*
 Determination of Fees for Water and Sewerage Services No.1 of 2003 made under the *Christmas Island Act 1958*
 Determination of Fees for Water and Sewerage Services No.1 of 2003 made under the *Cocos (Keeling) Islands Act 1955*
 Determination under section 5A(1) of the *Albury-Wodonga Development Act 1973*
 Determinations PHS 11/2003 to PHS 15/2003 made under paragraph (bj) of Schedule 1 to the *National Health Act 1953*
 Disability Discrimination Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 43

E

Electoral and Referendum Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.188
 Energy Grants (Cleaner Fuels) Scheme Regulations 2004, Statutory Rules 2004 No. 96
 Energy Grants (Credits) Scheme Regulations 2003, Statutory Rules 2003 No.179
 Excise Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 27
 Explosive Areas Regulations 2003, Statutory Rules 2003 No. 312
 Export Control (Fees) Amendment Orders 2004 (No. 1), made under regulation 3 of the *Export Control (Orders) Regulations 1982*

F

Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Approval Amendment 2004 (No. 4), made under regulations 38 and 43A of the *Family Law (Superannuation) Regulations 2001*
 Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment Approval 2004 (No. 2), made under regulations 38 and 43A of the *Family Law (Superannuation) Regulations 2001*
 Family Law (Superannuation) (Provision of Information – Commonwealth Superannuation Scheme) Amendment Determination 2004 (No. 1)
 Family Law (Superannuation) (Provision of Information - Defence Force Schemes) Determination 2004
 Family Law (Superannuation) (Provision of Information - Military Superannuation and Benefits Scheme) Determination 2004
 Family Law (Superannuation) (Provision of Information - Public Sector Superannuation Scheme) Amendment Determination 2004 (No. 1)
 Family Law Rules 2004, Statutory Rules 2003 No. 375
 Farm Help Re-establishment Grant Scheme Amendment 2003 (No. 3) under subsection 52A(1) of the *Farm Household Support Act 1992*
 Federal Court Amendment Rules 2004 (No. 1), Statutory Rules 2004 No. 38
 Financial Management and Accountability (Determination 2004/05 – Federal Magistrates Court Litigants' Fund Special Account) Establishment 2004
 Financial Management and Accountability (Determination 2004/06 - Family Court of Australia Litigants' Fund Special Account) Establishment 2004
 Financial Management and Accountability (Determination 2004/07 - Federal Court of Australia Litigants' Fund Special Account) Establishment 2004
 Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 30 June 2004), made under subsection 63(1) of the *Financial Management and Accountability Act 1997*
 Fishing Levy Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.134
 Fishing Levy Amendment Regulations 2004, Statutory Rules 2004 (No. 1), Statutory Rules 2004 No. 71
 Fishing Levy Regulations 2003, Statutory Rules 2003 No.287

G

Governor-General (Repeal of Regulations) Regulations 2003, Statutory Rules 2003 No.123

Great Barrier Reef Marine Park Amendment Regulations 2003 (No.2), Statutory Rules 2003 No.200
 Great Barrier Reef Marine Park Amendment Regulations 2004 (No. 2), Statutory Rules 2004 No. 39
 Great Barrier Reef Marine Park Amendment Regulations 2004 (No. 3), Statutory Rules 2004 No. 60
 Great Barrier Reef Marine Park Amendment Regulations 2004, Statutory Rules 2004 No. 15

H

Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2004 (No. 3), Statutory Rules 2004 No. 101

I

Inclusion of Species in the List of Threatened Species under section 178 of the *Environment Protection and Biodiversity Conservation Act 1999*
 Income Tax Amendment Regulations 2003 (No.1), Statutory Rules 2003 No.204
 Industrial Chemicals (Notification and Assessment) Amendment Regulations 2003 (No.3), Statutory Rules 2003 No.192
 Industry Research and Development Board (Overseas Research and Development Activities) Guidelines 2004, made under subsection 39EB(3A) of the *Industry Research and Development Act 1986*
 Instrument Fixing Charges to be Paid to APRA No. 1 of 2004, made under paragraph 51(1)(a) of the *Australian Prudential Regulation Authority Act 1998*
 Instrument Fixing Charges to be Paid to APRA No. 2 of 2004, made under paragraph 51(1)(a) of the *Australian Prudential Regulation Authority Act 1998*
 Inter-American Development Bank (Privileges and Immunities) Regulations 2003, Statutory Rules 2003 No.230
 International Air Services Policy Statement No. 5

L

Livestock Export (Merino) Orders (Amendment) No. 1 of 2004

M

Marine Order No. 4 of 2003 - Part 41 - Carriage of dangerous goods - Issue 6 under subsection 425(1AA) of the *Navigation Act 1912*
 Maritime Transport Security Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 34
 Maritime Transport Security Regulations 2003, Statutory Rules 2003 No. 366
 Marriage Amendment Regulations 2003 (No.2), Statutory Rules 2003 No.198
 Medical Indemnity (Prudential Supervision and Product Standards) Amendment Regulations 2004 (No. 2), Statutory Rules 2004 No. 87
 Medical Indemnity Regulations 2003, Statutory Rules 2003 No.208
 Medical Indemnity Subsidy Scheme 2003 made under subsection 43(1) of the *Medical Indemnity Act 2002*
 Migration Amendment Regulations 2003 (No.5), Statutory Rules 2003 No.154

Migration Amendment Regulations 2003 (No.6), Statutory Rules 2003 No.224
 Migration Amendment Regulations 2003 (No.7), Statutory Rules 2003 No.239
 Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 1), made
 under subsection 5(1) of the *Military Superannuation and Benefits Act 1991*

N

Navigation (Confidential Marine Reporting Scheme) Regulations 2004, Statutory
 Rules 2004 No. 95

O

Occupational Health and Safety (Maritime Industry) (National Standards) Regulations
 2003, Statutory Rules 2003 No. 324
 Ozone Protection Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 16

P

Parliamentary Service Determination 2003/2 made under section 71 of the
Parliamentary Service Act 1999
 Prescribed Goods (General) Amendment Orders 2004 (No. 1), made under regulation
 3 of the *Export Control (Orders) Regulations 1982*
 Primary Industries (Excise) Levies Amendment Regulations 2003 (No. 14), Statutory
 Rules 2003 No.288
 Primary Industries Levies and Charges Collection Amendment Regulations 2003
 (No.8), Statutory Rules 2003 No.222

Q

Quarantine Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 40

R

Remuneration Tribunal Determination 2003/21 under subsections 7(3) and 7(4) of the
Remuneration Tribunal Act 1973
 Remuneration Tribunal Determination 2003/24 made under subsections 7(3) and 7(4)
 of the *Remuneration Tribunal Act 1973*
 Remuneration Tribunal Determination 2004/01, made under subsection 7(4B) of the
Remuneration Tribunal Act 1973
 Retirement Savings Accounts Amendment Regulations 2003 (No.1), Statutory Rules
 2003 No.195

S

Social Security (Attribution of Income—Ineligible Deductions) Determination 2004,
 made under sections 1208B and 1209C of the *Social Security Act 1991*
 Space Activities Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 79
 Statistics Amendment Determination 2004 (No. 1), Statutory Rules 2004 No. 114
 Superannuation (Family Law - Parliamentary Contributory Superannuation Act 1948)
 Orders 2004, Statutory Rules 2004 No. 97

Superannuation (Family Law - Superannuation Act 1922) Orders 2004, Statutory Rules 2004 No. 85

Superannuation Industry (Supervision) Amendment Regulations 2003 (No.5), Statutory Rules 2003 No.251

Superannuation Industry (Supervision) Amendment Regulations 2003 (No.4), Statutory Rules 2003 No.196

Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2), Statutory Rules 2004 No. 84

T

Telecommunications (Charges) Determination 2004, made under section 53 of the *Australian Communications Authority Act 1997*

Telecommunications Numbering Plan Variation 2004 (No. 3), made under section 455 of the *Telecommunications Act 1997*

Temporary Order No. 4 of 2003, made under the *Fisheries Management Act 1991*

Therapeutic Goods Amendment Regulations 2003 (No. 5), Statutory Rules 2003 No. 301

Transport Safety Investigation Regulations 2003, Statutory Rules 2003 No.158

V

Variation (No. 4) of Prudential Rules No. 47 made under subsection 252(1) of the *Life Insurance Act 1995*

W

Workplace Relations Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 3

Notices of motion to disallow given by the Committee during the 40th Parliament

As indicated in paragraph 2.29 of this report, the Committee gave notices of motion to disallow the following instruments during the 40th Parliament.

2001-2002

Air Navigation (Essendon Airport) Regulations 2001, Statutory Rules 2001 No. 125

Fuel Quality Standards Regulations 2001, Statutory Rules 2001 No. 87

Quarantine Service Fees Determinations 2001 (No. 1 of 2001) made under section 86E of the *Quarantine Act 1908*

Space Activities Regulations 2001, Statutory Rules 2001 No. 186

Veterans' Entitlements (Means Test Treatment of Private Companies - Excluded Companies) Declaration 2001 made under subsection 52ZZA(5) of the *Veterans' Entitlements Act 1986*

2002-2003

Bankruptcy Amendment Regulations 2002 (No. 1), Statutory Rules 2002 No. 255

Farm Help Re-establishment Grant Scheme Amendment 2003 (No. 1) made under s.52A of the *Farm Household Support Act 1992*

Public Employment (Consequential and Transitional) Amendment Regulations 2002 (No. 1), Statutory Rules 2002 No. 87

Public Service Amendment Regulations 2002 (No. 1), Statutory Rules 2002 No. 214

Regulations 65.060 and 65.270 in item [1] of Schedule 1 of the Civil Aviation Amendment Regulations 2002 (No. 2), Statutory Rules 2002 No. 167

Workplace Relations Amendment Regulations 2002 (No. 3), Statutory Rules 2002 No. 337

2003-2004

Administrative Decisions (Judicial Review) Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 115

Child Disability Assessment Determination 2003 made under s.38D of the *Social Security Act 1991*

Civil Aviation Amendment Regulations 2003 (No. 6), Statutory Rules 2003 No. 232

Criminal Code Amendment Regulations 2003 (No. 9), Statutory Rules 2003 No. 184

Determination No. 4 of 2003 – Reporting Standards for Superannuation Entities made under paragraph 13(1)(a) of the *Financial Sector (Collection of Data) Act 2001*

Electoral and Referendum Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 134

Excise Amendment Regulations 2004 (No. 1), Statutory Rules 2004 No. 27

Fishing Levy Amendment Regulations 2003 (No. 1), Statutory Rules 2003 No. 134

Great Barrier Reef Marine Park Amendment Regulations 2003 (No. 2), Statutory Rules 2003 No. 200

Inclusion of Species in the List of Threatened Species made under s.178 of the *Environment Protection and Biodiversity Conservation Act 1999*

Iraq (Reconstruction and Repeal of Sanctions) Regulations 2003, Statutory Rules 2003 No. 97

Marriage Amendment Regulations 2003 (No. 2), Statutory Rules 2003 No. 198

Medical Indemnity Subsidy Scheme 2003 made under subsection 43(1) of the *Medical Indemnity Act 2002*

Migration Amendment Regulations 2003 (No. 5), Statutory Rules 2003 No. 154

Migration Amendment Regulations 2003 (No. 7), Statutory Rules 2003 No. 239

Retirement Savings Accounts Amendment Regulations 2003 (No. 2), Statutory Rules 2003 No. 195

Superannuation Industry (Supervision) Amendment Regulations 2003 (No. 4), Statutory Rules 2003 No. 196

Temporary Order No. 4 of 2003 made under subsection 43(8) of the *Fisheries Management Act 1991*

