

The Senate

Standing
Committee on
Regulations and
Ordinances

Report on the work of the committee
in the 42nd Parliament

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Committee information

Current members (March 2013)

Senator Mark Furner (Chair)	Queensland, ALP
Senator the Hon Richard Colbeck (Deputy Chair)	Tasmania, LP
Senator Claire Moore	Queensland, ALP
Senator Louise Pratt	Western Australia, ALP
Senator Scott Ryan	Victoria, LP
Senator Arthur Sinodinos AO	New South Wales, LP

Former members 42nd Parliament (12.02.08 to 19.07.10)

Senator Chris Back (12.03.09 – 02.02.10)	Western Australia, LP
Senator Andrew Bartlett (25.11.98 – 30.06.08)	Queensland, AD
Senator Carol Brown (13.09.05 – 01.07.11)	Tasmania, ALP
Senator Michaelia Cash (02.02.10 – 07.02.13)	Western Australia, LP
Senator the Hon Jacinta Collins (12.05.10 – 27.09.10) (Chair from 13.05.10 – 27.09.10)	Victoria, ALP
Senator Mathias Cormann (13.02.08 – 27.09.10)	Western Australia, LP
Senator Concetta Fierravanti-Wells (09.02.06 – 11.02.08)	New South Wales, LP
Senator the Hon Kay Patterson (23.03.07 – 11.02.08)	Victoria, LP
Senator the Hon Michael Ronaldson (13.02.08 – 16.03.12)	Victoria, LP
Senator John Watson (01.07.05 – 11.02.08) (Chair from 11.08.05 – 11.02.08)	Tasmania, LP
Senator Dana Wortley (01.07.05 – 12.05.10) (Chair from 19.02.08 – 12.05.10)	South Australia, ALP

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Table of Contents

Committee information	iii
Acronyms and abbreviations	vii
Chapter 1	1
Introduction	1
Work of the committee	1
Committee membership	1
The committee's mode of operation.....	3
Committee publications and resources	4
Structure of the report	5
Acknowledgements	5
Chapter 2	7
Delegated legislation and the disallowance process	7
Introduction.....	7
What is delegated legislation?	7
<i>Legislative Instruments Act 2003</i>	8
Senate procedures relating to the disallowance process	11
Chapter 3	13
Work of the committee in the 42nd Parliament	13
Number of instruments considered	13
Instruments of concern and notices	13
Undertakings	14
Review of the <i>Legislative Instruments Act 2003</i>	14
Australia-New Zealand Scrutiny of Legislation Conference.....	17
Examples of instruments considered	17
Appendix 1.....	25
Breakdown of instruments 42nd Parliament.....	25
Appendix 2.....	47
Undertakings	47

Appendix 3.....	59
Guideline on consultation.....	59

Acronyms and abbreviations

AD	airworthiness directive
AFMA	Australian Fisheries Management Authority
AGS	Australian Government Solicitor
AIA	<i>Acts Interpretation Act 1901</i>
(the) alert	Disallowance alert (webpage)
ANZSLC	Australia-New Zealand Scrutiny of Legislation Conference
AQIS	Australian Quarantine and Inspection Service
AWI	Australian Wool Innovation Ltd
CASA	Civil Aviation Safety Authority
ES	explanatory statement
FRLI	Federal Register of Legislative Instruments
LIA	<i>Legislative Instruments Act 2003</i>
LIARC	Legislative Instruments Act Review Committee
(the) monitor	<i>Delegated legislation monitor</i>
MRCA	<i>Military Rehabilitation and Compensation Act 2004</i>
RSA	reserve service allowance
SDIL	Senate disallowable instruments list
SMSF	self managed superannuation fund

Chapter 1

Introduction

Work of the committee

1.1 The Senate Standing Committee on Regulations and Ordinances (the committee) scrutinises all disallowable instruments of delegated legislation, such as regulations and ordinances, to ensure their compliance with non-partisan principles of personal rights and parliamentary propriety.

1.2 In most years, thousands of instruments of delegated legislation are made, relating to many aspects of the lives of Australians. Instruments of delegated legislation have the same force in law as primary legislation, and may form as much as half of the law of the Commonwealth of Australia.¹

1.3 The committee's work may be broadly described as technical legislative scrutiny, as it does not generally extend to the examination or consideration of the policy merits of delegated legislation. The scope of the committee's scrutiny function is formally defined by Senate Standing Order 23, which requires the committee to scrutinise each instrument to ensure:

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

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

1.5 This report on the work of the committee covers the period of the 42nd Parliament.³

Committee membership

1.6 Senate Standing Order 23(1) provides that committee is appointed at the commencement of each Parliament. The committee has six members: three senators drawn from the government party and three senators drawn from non-government parties. The committee is chaired by a government senator.

1 *Odger's Australian Senate Practice*, 13th Edition (2012), p. 416.

2 The *Legislative Instruments Act 2003* and the disallowance process are discussed in Chapter 2.

3 The 42nd Parliament was opened on 12 February 2008 and dissolved on 19 July 2010.

1.7 Current members at March 2013 were as follows:

- Senator Mark Furner (Chair);⁴
- Senator the Hon Richard Colbeck (Deputy Chair);⁵
- Senator Claire Moore;⁶
- Senator Louise Pratt;⁷
- Senator Scott Ryan;⁸ and
- Senator Arthur Sinodinos AO.⁹

1.8 The following senators were also members of the committee during the 42nd Parliament:

- Senator Chris Back;¹⁰
- Senator Andrew Bartlett;¹¹
- Senator Carol Brown;¹²
- Senator Michaelia Cash;¹³
- Senator the Hon Jacinta Collins (Chair);¹⁴
- Senator Mathias Cormann;¹⁵
- Senator Concetta Fierravanti-Wells;¹⁶
- Senator the Hon Kay Patterson;¹⁷
- Senator the Hon Michael Ronaldson (Deputy Chair);¹⁸
- Senator Claire Moore;¹⁹

4 Appointed 01.07.11 (elected Chair on 07.07.11).

5 Appointed 16.03.12 (appointed Deputy Chair on 22.03.12).

6 Committee member from 01.07.02 to 01.07.05; and appointed on 14.02.08.

7 Appointed 21.06.12.

8 Appointed 18.11.10.

9 Appointed 07.02.13.

10 Member from 12.03.09 to 02.02.10.

11 Member from 25.11.98 to 30.06.08.

12 Member from 13.09.05 to 01.07.11.

13 Member from 02.02.10 to 07.02.13.

14 Member from 12.05.10 to 27.09.10 (Chair from 13.05.10 to 27.09.10).

15 Member from 13.02.08 to 27.09.10.

16 Member from 09.02.06 to 11.02.08.

17 Member from 23.03.07 to 11.02.08.

18 Member from 13.02.08 to 16.03.12 (Deputy Chair from 19.02.08 to 16.03.12).

- Senator John Watson (Chair);²⁰ and
- Senator Dana Wortley (Chair).²¹

Independent legal adviser

1.9 The committee is assisted by an independent legal adviser, who examines and reports on each instrument that comes before the committee, and provides other advice relevant to the committee's scrutiny work. The committee's legal adviser during the reporting period was Professor Stephen Bottomley.

The committee's mode of operation

Delivery of instruments

1.10 Legislative instruments must be registered and, within six sitting days of registration, tabled in both Houses of Parliament.²² Once registered, the instruments are delivered to the two Houses for tabling, and to the committee secretariat.

1.11 In relation to non-legislative disallowable instruments, the individual department administering the authorising Act under which any such instrument is made is responsible for delivering copies to both Houses for tabling, as well as to the committee secretariat.

Scrutiny of instruments

1.12 Instruments received by the committee secretariat are recorded and copies sent to the committee's legal adviser, who provides a report to the committee on the instruments' compliance with the committee's scrutiny principles. The committee meets regularly, during sittings of Parliament, to consider whether any instruments received may breach its scrutiny principles.

1.13 Where an instrument raises a concern referable to the committee's scrutiny principles, the committee's usual approach is to write to the responsible minister seeking further explanation or information, or seeking an undertaking for specific action to address the issue of concern.

Committee's use of the disallowance process

1.14 The committee's scrutiny of instruments is generally conducted within the timeframes that apply to the disallowance process, as set out in Chapter 2. Working within these timeframes ensures that the committee is able, if necessary, to seek disallowance of an instrument about which it has concerns. Disallowance motions based on the recommendation of the committee have, without exception, been adopted by the Senate.²³

19 Member from 01.07.02 to 01.07.05; and appointed 14.02.08.

20 Member from 01.07.05 to 11.02.08 (Chair from 11.08.05 to 11.02.08).

21 Member from 01.07.05 to 12.05.10 (Chair from 19.02.08 to 12.05.10).

22 *Legislative Instruments Act 2003*, sections 30, 38 and 39.

23 *Odgers' Australian Senate Practice*, 13th Edition (2012), p. 424.

1.15 In cases where the 15 sitting days available for giving a notice of motion for disallowance is likely to expire before a matter is resolved, the committee may give a notice of motion for disallowance in order to protect the Senate's ability to subsequently disallow the instrument in question. Such notices are referred to as 'protective notices'.²⁴

Undertakings

1.16 In many cases, ministers and other instrument makers provide an undertaking to address the committee's concern through the taking of steps at some point in the future. Typically, an undertaking will relate to the making of amendments to primary or delegated legislation. The acceptance of such undertakings has the benefit of securing an outcome agreeable to the committee, without interrupting the administration and implementation of policy by disallowance of the instrument in question.

Committee publications and resources

1.17 The following committee publications and resources may be accessed at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments.

Disallowable instruments list

1.18 The 'Senate disallowable instruments list' (SDIL) is a list of all disallowable instruments tabled in the Senate.²⁵ This online resource may be used to ascertain whether and when an instrument has been tabled in the Senate, and how many sitting days remain in which a notice of motion for disallowance may be given.

1.19 The SDIL is updated after each sitting day.

'Disallowance alert' webpage

1.20 The 'Disallowance alert' webpage (alert) is a list of all instruments subject to a notice of motion for disallowance (whether at the instigation of the committee or an individual senator or member). The progress and outcome of any such notice is also recorded.

Delegated Legislation Monitor

1.21 The *Delegated Legislation Monitor* (the monitor) is an online publication which records all disallowable instruments tabled in the Senate for a given period of sittings or for a consolidated year. The monitor provides a range of information for

24 *Odgers' Australian Senate Practice*, 13th Edition (2012), p. 432.

25 As instruments may be tabled on different dates in the Senate and the House of Representatives respectively (and hence have different disallowance timeframes), there is also a House of Representatives disallowable instruments list. This list is also available at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments.

each instrument (authorising Act, administering department, FRLI number et cetera) as well as some statistical information.²⁶

Ministerial correspondence

1.22 Approximately twice a year, the committee tables in the Senate volumes of ministerial correspondence relating to its scrutiny of delegated legislation.²⁷

Senate Procedure Office seminar on delegated legislation and the Senate

1.23 The Senate Procedure Office conducts half-day seminars on the Senate's scrutiny of delegated legislation. These are tailored to parliamentary staff, government officers and other stakeholders whose work or interests intersect with the work of the committee.

1.24 Information on seminar dates and booking inquiries may be accessed through the Senate website.²⁸

Structure of the report

1.25 Chapter 2 provides an overview of delegated legislation, the disallowance process and the *Legislative Instruments Act 2003*.

1.26 Chapter 3 reports on the work of the committee during the 42nd Parliament.

Acknowledgements

1.27 The committee wishes to acknowledge the work and assistance of its legal adviser, Professor Stephen Bottomley.

1.28 The committee also wishes to acknowledge the assistance of ministers and associated departments and agencies during the reporting period. The responsiveness of ministers, departments and agencies to the committee's inquiries is critical to ensuring that the committee can perform its scrutiny function effectively.

26 Since 2013 the monitor includes reporting on the work of the committee and details matters raised in relation to instruments tabled in the Senate and subsequently scrutinised by the committee.

27 Ministerial correspondence is incorporated into the monitor when the committee concludes its interest in the relevant matter. Prior to 2013, the committee tabled separate volumes of ministerial correspondence.

28 See Parliament of Australia website, 'Seminars for public servants' http://www.aph.gov.au/About_Parliament/Senate/Public_Information_and_Events/Seminars_for_public_servants.

Chapter 2

Delegated legislation and the disallowance process

Introduction

2.1 This chapter provides an overview of delegated legislation, the disallowance process and the *Legislative Instruments Act 2003* (LIA).

What is delegated legislation?

2.2 Many Acts of Parliament delegate to executive government the power to make regulations, ordinances, rules and other instruments (such as determinations, notices, orders and guidelines). Such instruments supplement their authorising Act, and have the same force in law. 'Delegated legislation' is a collective term referring to such instruments.

2.3 Because they are made under a delegated power, instruments of delegated legislation are not directly enacted by the Parliament, as must happen for a bill to become an Act with the force of law. Therefore, to ensure that Parliament retains effective oversight, any such instrument is usually: (a) required to be registered on the Federal Register of Legislative Instruments (FRLI);¹ (b) required to be tabled in the Parliament; and (c) subject to a disallowance process prescribed by the LIA, which may be initiated by any member of either the Senate or the House of Representatives.

What is a disallowable instrument?

2.4 A 'disallowable instrument' is an instrument of delegated legislation that is subject to the disallowance process prescribed by the LIA (see below for a description of the disallowance process).

Legislative instruments

2.5 The LIA generally requires that disallowable instruments will be those instruments that are 'legislative' in character, meaning those instruments which define the law as opposed to those which apply the law in a specific case (and are therefore 'non-legislative' in character);² and which affect a privilege, interest or right. Specifically, section 5 of the LIA states that a legislative instrument is:

...an instrument in writing:

(a) that is of a legislative character; and

(b) that is or was made in the exercise of a power delegated by the Parliament.

1 FRLI may be accessed at <http://www.comlaw.gov.au/>.

2 An example of this distinction is that an instrument which grants a licence applies the law whereas an instrument that sets out the criteria for the grant of a licence defines or establishes the content of the law (and hence would be a legislative instrument subject to disallowance under the LIA).

(2) Without limiting the generality of subsection (1), an instrument is taken to be of a legislative character if:

(a) it determines the law or alters the content of the law, rather than applying the law in a particular case; and

(b) it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

2.6 The LIA also declares certain instruments to be legislative instruments, thereby making all such instruments subject to its general scheme. Specifically, subsection 5(3) provides that an instrument registered on FRLI is taken, by virtue of that registration, to be a legislative instrument; and section 6 provides that particular types of instrument, such as regulations and ordinances, are to be classed as legislative instruments. Subsection 5(4) provides that an instrument of mixed character (that is, one that has both a legislative and non-legislative character) is deemed to be a legislative instrument.

Disallowable non-legislative instruments

2.7 An instrument that is non-legislative in character may nevertheless be subject to the scheme of the LIA by virtue of the operation of the *Acts Interpretation Act 1901* (the AIA).

2.8 Subsection 46B of the AIA provides, inter alia, that where an Act confers a power to make a non-legislative instrument, and that Act provides that the instrument is a disallowable instrument, then it is subject to the same procedures for parliamentary scrutiny as a legislative instrument.

Exemptions from disallowance

2.9 The LIA provides that certain instruments are exempt from disallowance by providing either that a type of instrument is not a legislative instrument for the purposes of the LIA or is otherwise not subject to disallowance.

2.10 Section 7 declares certain instruments not to be legislative instruments for the purposes of the LIA. This includes legislative instruments listed in the table set out in the provision, and legislative instruments that are declared not to be legislative instruments by the Act or instrument under which they were made.

2.11 Section 44 of the LIA provides that the disallowance process contained in section 42 does not apply to certain legislative instruments, including those instruments listed in the table set out in that provision.

Legislative Instruments Act 2003

2.12 Prior to 2005, the committee's scrutiny of delegated legislation was wholly governed by the AIA, which contained the scheme requiring regulations and other disallowable instruments to be tabled in Parliament and subject to the disallowance regime.

2.13 On 1 January 2005, the AIA scheme was replaced by the scheme set out in the LIA. While the LIA largely replicates the previous scheme, it includes a number of

important innovations, such as the requirement for the registration of instruments on FRLI.

2.14 The main elements of the scheme contained in the LIA are:

- instruments of delegated legislation that are of a legislative character are subject to the disallowance process outlined in the Act;
- such instruments must be registered on FRLI, along with an explanatory statement;
- once registered, such instruments must be delivered within six sitting days to each House of Parliament for tabling;³ and
- any member of the Senate or the House of Representatives may initiate the process to disallow any such instrument within 15 sitting days of it being tabled. Once such a notice has been given, a further period of 15 sitting days is available to resolve the motion.

Disallowance

Purpose

2.15 The ability of the executive—usually ministers and other executive office holders—to make delegated legislation without parliamentary enactment is a 'considerable violation of the principle of the separation of powers, [and] the principle that laws should be made by the elected representatives of the people in Parliament and not by the executive government'.⁴

2.16 The ability of senators and members of the House of Representatives to seek disallowance of legislative instruments is therefore critical to ensuring that Parliament retains effective oversight of delegated legislation.

The disallowance process

2.17 The disallowance process is set out in subsection 42(1) of the LIA, which 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.

3 Under subsection 38(3), an instrument that is not tabled in each House within six sitting days of registration ceases to have effect immediately after the sixth day.

4 *Odgers' Australian Senate Practice*, 13th Edition (2012), p. 413.

2.18 In summary, subsection 42(1) provides that any member of the Senate or House of Representatives may, within 15 sitting days of a disallowable legislative instrument being tabled, give notice that they intend to move a motion to disallow the instrument or a provision of that instrument. There is then a further 15 sitting days in which the motion may be resolved.

2.19 The maximum time for the entire disallowance process to run its course is therefore 30 sitting days (assuming the maximum available period elapses for both the giving of notice and the resolution of the motion to disallow the instrument or provision).

Unusual disallowance processes

2.20 In some cases, the disallowance process may be modified by the authorising legislation under which an instrument is made, affecting the period available for giving or resolving a notice of motion for disallowance.

2.21 For example, for a determination made under section 20(1) or (2) of the *Financial Management and Accountability Act 1997*, the time available for both giving and resolving a notice of motion for disallowance is only five sitting days.⁵

Effect of disallowance

2.22 Subsections 42(1) and 45(1) of the LIA provide that, where a motion is passed to disallow a legislative instrument or a provision of an instrument, that instrument or provision ceases to have effect from the time the motion was passed.

2.23 If the disallowed instrument or provision repealed all or part of an earlier instrument, then that earlier instrument or part is revived.⁶

2.24 Subsection 42(2) of the LIA provides that, where a notice of motion to disallow a legislative instrument or a provision of an instrument remains unresolved after 15 sitting days of being given (for example, where it has not been withdrawn or put to the question), the instrument or provision is deemed to have been disallowed and therefore ceases to have effect from that time. This provision ensures that the disallowance process cannot be frustrated by allowing a motion for disallowance to be adjourned indefinitely.

Restrictions on re-making legislative instruments

2.25 In order to ensure that Parliament's power of disallowance may not be circumvented, and to preserve the Parliament's intention in any case where a House has disallowed an instrument, the LIA imposes restrictions on the re-making of legislative instruments that are the 'same in substance' as an existing or recently disallowed instrument. These are:

5 *Financial Management and Accountability Act 1997*, section 22 (this provision was preserved by Schedule 4 to the Legislative Instruments Regulations 2004).

6 LIA, subsection 45(2).

- for a period of seven days, unless approved by resolution by both Houses of Parliament, an instrument may not be made that is the same in substance as a registered instrument that has been laid before both Houses of Parliament (or, if it was tabled on different days, seven days after it was last tabled). This prevents the disallowance provisions from being circumvented by an instrument being successively repealed and remade;⁷
- an instrument may not be made that is the same in substance as an existing instrument that is subject to a notice of motion for disallowance (unless the notice is withdrawn; the instrument is deemed to have been disallowed under subsection 42(2); or the motion is withdrawn, otherwise disposed of or subject to the effect of subsection 42(3)). This prevents an instrument simply being remade in response to notice of a motion for disallowance; and
- for a period of six months, an instrument may not be made that is the same in substance as an instrument that has been disallowed under section 42 (unless the House which disallowed the instrument, or in which the instrument was deemed to have been disallowed, rescinds the resolution that disallowed the instrument or approves it being made). This prevents an instrument that has been disallowed, or deemed to have been disallowed, from simply being remade.⁸

Senate procedures relating to the disallowance process

2.26 A number of the Senate's procedures are relevant to the disallowance process in the LIA.

2.27 Standing Order 78(3) is a significant example of one such procedure, whereby any senator has the opportunity to take over a motion for disallowance if the original mover seeks to withdraw that motion. This ensures that the Senate is not denied the right to disallow an instrument where the time for giving notice has passed; and that the right of individual senators to move for disallowance is not lost by the withdrawal of the notice.⁹

2.28 Another example is Standing Order 86, which prevents the proposing of a question that is the same in substance as any question that has been determined during the same session (the same question rule). This order is qualified by the proviso that it shall not prevent a motion for the disallowance of an instrument substantially the same in effect as one previously disallowed.

2.29 For further detail on Senate procedures relevant to delegated legislation and disallowance, see *Odgers' Australian Senate Practice*, 13th Edition (2012), Chapter 15.

7 LIA, section 46.

8 LIA, sections 46, 47 and 48. For more detail see *Odgers' Australian Senate Practice*, 13th Edition (2012), pp 420, 434-435.

9 *Odgers' Australian Senate Practice*, 13th Edition (2012), p. 430.

Chapter 3

Work of the committee in the 42nd Parliament

3.1 This chapter discusses the committee's work and matters of note in the reporting period.¹ Some representative examples of instruments and issues considered by the committee are also provided.

Number of instruments considered

3.2 The committee held a total of 44 private meetings during the 42nd Parliament, comprising:

- 11 meetings in 2007-08;
- 16 meetings in 2008-09; and
- 17 meetings in 2009-10.

3.3 The committee examined 8854 instruments, comprising:

- 2982 instruments in 2007-08;
- 3404 instruments in 2008-09; and
- 2468 instruments in 2009-10.

3.4 The relatively significant decline in the number of instruments examined in 2009-10 is attributable to a reduction in the number of airworthiness directives (ADs) made under the *Civil Aviation Act 1988* (708 in 2009-10 compared to 1755 in 2008-09 and 1206 in 2007-08). This followed a change (from 1 October 2009) whereby the Civil Aviation Safety Authority (CASA) is no longer required, as a matter of course, to re-issue ADs issued in a (foreign) State of Design as Australian ADs. Instead, operators must now comply with the AD as issued by the (foreign) State of Design.

3.5 Details of all instruments scrutinised by the committee were recorded in the committee publication, the *Delegated legislation monitor* (the monitor). The committee published 36 periodical monitors, as well as the consolidated monitors for 2007, 2008 and 2009.

3.6 Appendix 1 provides a breakdown of the instruments made during the 42nd Parliament by Act and instrument type. For further detail on specific instruments made in this period, the monitors for the relevant years should be consulted.

Instruments of concern and notices

3.7 Of the 8854 instruments examined by the committee, 455 were identified as raising a concern.²

1 The 42nd Parliament was opened on 12 February 2008 and dissolved on 19 July 2010.

3.8 Sixty-one notices of motion for disallowance were given by the committee, all of which were ultimately withdrawn following receipt of satisfactory responses or undertakings from relevant instrument makers.³ There were no unresolved notices (given by the committee) at the end of the 42nd Parliament.⁴

3.9 Table 1 provides a breakdown by year of the number of instruments identified by the committee as raising a concern; and the number of notices of motion for disallowance given by the committee.

Table 2: Instruments of concern and notices

Year	Instruments examined	Instruments of concern	Disallowance notices
2007-08	2982	170	29
2008-09	3404	123	27
2009-10	2468	162	5

Undertakings

3.10 During the 42nd Parliament:

- twenty-four undertakings to amend legislation were provided to address concerns raised by the committee (see tables 1 and 2 at appendix 3 for details); and
- twenty-six undertakings were implemented (see table 1 at appendix 3).

3.11 Nineteen undertakings remained outstanding at the dissolution of the 42nd Parliament (19 July 2010) (see table 2 at appendix 3). The committee continues to monitor the status of outstanding undertakings and, where necessary, to correspond with relevant ministers and instrument-makers regarding their implementation.

Review of the *Legislative Instruments Act 2003*

3.12 On 31 March 2008, the Attorney-General, the Hon Robert McClelland, established a committee to conduct a review of the LIA. The review was established

2 Details of these instruments may be found on the 'Scrutiny of disallowable instruments' webpage at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_c tte/scrutinyleginst2012.htm.

3 The 'Disallowance alert' (the alert) provides details of the notices of motion for disallowance given by the committee, as well as by individual senators and members of the House of Representatives. The alert may be accessed at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_c tte/alert2012.htm.

4 Subsection 42(3) of the LIA provides that any Instruments subject to unresolved notices at the time the House of Representatives is dissolved or expires, or the Parliament is prorogued, are taken to have been tabled on the first sitting day following the dissolution or expiry of the House of Representatives, or proroguing of Parliament (effectively making the instrument subject to the disallowance process afresh).

in accordance section 59 of the LIA, which required that a review be conducted within three years of its commencement, and that a report on all aspects of the operation of the LIA be provided to the Attorney-General within 15 months of the third anniversary of the commencement of the LIA. The final report, entitled *2008 review of the Legislative Instruments Act 2003*, was presented to the Attorney-General on 31 March 2009.⁵

3.13 The review of the LIA was conducted by the Legislative Instruments Act Review Committee (LIARC), according to the following terms of reference:⁶

- the extent to which the objectives of the LIA had been realised;
- whether any factors had limited the achievement of the LIA's objectives;
- the extent to which the LIA's objectives were still appropriate; and
- how the LIA's performance against its objectives might be improved.

3.14 The LIARC was also specifically required to consider:

- the recommendations contained in the committee's 2003 report on the Legislative Instruments Bill 2003;⁷ and
- specific recommendations of the *Rethinking regulation* report (often referred to as the 'Banks report').⁸

Committee's submission to the LIA review

3.15 In its submission to the LIA review, the committee welcomed the introduction of the LIA, observing:

...[the LIA has] brought about a noticeable improvement in the accessibility of legislative instruments made by the Commonwealth. The registration process has made instruments more available to members of the public...and made the content and commencement of those instruments easier to determine.

3.16 The committee's submission went on to comment on the following issues.

5 The report may be accessed at Attorney-General's Department website, 'Legislative Instruments Act 2003,' <http://www.ag.gov.au/lia-review>.

6 The full terms of reference are set out in the LIARC's final report, which may be accessed at Attorney-General's Department website, 'Legislative Instruments Act 2003', *2008 Review of the Legislative Instruments Act 2003*, 31 March 2009, p.59.

7 Senate Standing Committee on Regulations and Ordinances, *Legislative Instruments Bill 2003; Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003* (111th Report), October 2003, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_c tte/reports.htm.

8 Taskforce on Reducing Regulatory Burdens on Business, *Rethinking regulation: report of the Taskforce on Reducing Regulatory Burdens on Business*, January 2006, available at <http://www.regulationtaskforce.gov.au/>.

General comments on disallowable instruments and exemptions

3.17 The committee noted that the LIA had effectively increased the number of sources of disallowance of instruments. This was because the *Acts Interpretation Act 1901* continued to provide for the disallowance of certain non-legislative instruments, as did a number of other Acts in which special provisions for tabling and disallowance had been preserved.

3.18 The committee noted that, in a similar way, the LIA had also led to multiple sources of exemption from disallowance.

3.19 In light of the above, the committee suggested that there may be some benefit in considering whether some rationalisation of sources of disallowance and exemption from the LIA could occur.⁹

Consultation and the content of explanatory statements

3.20 The committee referred to the findings in its interim report on consultation requirements under the LIA,¹⁰ which outlined concerns in relation to the adequacy of information regarding consultation provided in explanatory statements (ESs). The committee offered a number of suggestions to improve the quality of ESs in this area, namely:

- that the requirement to provide information on consultation be given greater prominence by moving it from its current position in the definition section to Part 3 of the LIA, where the other requirements in relation to consultation are located;
- that the *Legislation handbook* be updated to include information on the requirements of the LIA in relation to consultation; and
- that, to reduce potential confusion, the LIA specify that the consultation requirements in the LIA are separate to the consultation requirements in relation to the preparation of Regulation Impact Statements (RISs).¹¹

Commencement

3.21 The committee suggested that, to avoid the possibility that an instrument might commence prior to actual registration, the default approach should be to specify commencement on the day following registration.¹²

9 Senate Standing Committee on Regulations and Ordinances, 'Submission to LIA review', 26 June 2008, p. 2.

10 Senate Standing Committee on Regulations and Ordinances, *Consultation under the Legislative Instruments Act 2003: interim report* (113th Report), June 2007, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=regord_ctte/reports.htm.

11 Senate Standing Committee on Regulations and Ordinances, 'Submission to LIA review', 26 June 2008, pp 4-5.

12 Senate Standing Committee on Regulations and Ordinances, 'Submission to LIA review', 26 June 2008, pp 6-7.

Material incorporated by reference

3.22 The committee noted that information regarding how and/or where to access material incorporated by reference was frequently inadequate, and suggested that ESs should routinely include such information.

Classification of instruments

3.23 The committee noted the proliferation of types of legislative instruments, including, for example, regulations, ordinances, codes, declarations, determinations, directions et cetera, and suggested that consideration be given to reducing the number of types of legislative instruments to achieve greater uniformity in terms of presentation and publication on the Federal Register of Legislative Instruments (FRLI).

Australia-New Zealand Scrutiny of Legislation Conference

3.24 From 6 to 8 July 2009, the committee and the Senate Standing Committee for the Scrutiny of Bills hosted the Australia-New Zealand Scrutiny of Legislation Conference (ANZSLC). The ANZSLC is held every two years, and provides a forum for parliamentary scrutiny committees to discuss matters relevant to the work of legislative scrutiny.

3.25 The theme of the 2009 ANZSLC was 'Scrutiny and Accountability in the 21st Century'. This theme allowed for a broad range of issues to be canvassed, including:

- the role of scrutiny committees in promoting government accountability;
- the impact of a charter or bill of rights on the work of scrutiny committees;
- the impact of technology on the work of scrutiny committees; and
- the future role of scrutiny committees.

3.26 The 2009 ANZSLC was attended by 80 delegates, drawn from the Commonwealth, Australian states and territories, New Zealand and Canada. Conference papers may be obtained through the committee's website.¹³

Examples of instruments considered

Scrutiny principle (a): ensuring that delegated legislation is in accordance with statute

3.27 Scrutiny principle (a) requires that an instrument of delegated legislation be validly made, in accordance with both its authorising Act or instrument and any other relevant legislation, such as the *Legislative Instruments Act 2003* (the LIA) and the *Acts Interpretation Act 1901* (the AIA). The LIA, for example, imposes specific

13 Senate Standing Committee on Regulations and Ordinances website, 'Australia-New Zealand Scrutiny of Legislation Conference Scrutiny and Accountability in the 21st Century', http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=sl_conference/index.htm.

requirements relating to the provision and content of ESs,¹⁴ the prohibiting of prejudicial retrospectivity,¹⁵ and the incorporation of extrinsic material.¹⁶

Explanatory statements: describing consultation

3.28 In its interim report in 2007 on the consultation requirements under the LIA,¹⁷ the committee identified a number of concerns regarding compliance with the need to describe the nature of consultation undertaken in relation to the making of an instrument or, alternatively, to explain why consultation was considered unnecessary or inappropriate.¹⁸ Problems in this area persisted through the reporting period, with many ESs not addressing at all the matter of consultation, and many others being so brief and/or general that, in the committee's view, the requirements of the LIA had not been strictly met. Examples of this included the **Maritime Transport and Offshore Facilities Security Act 2003: Notice About How Incident Reports Are To Be Made (No. 3) [F2008C00578]** (October 2007), which stated only that 'key stakeholders' had been informed of the changes effected by that notice; and the **A New Tax System (Goods and Services Tax) Amendment Regulations 2009 (No. 1) [Select Legislative Instrument 2009 No. 29] [F2009L00679]** (February 2009), which noted only that 'public consultation was undertaken on the design and drafting' of the regulations. In all cases such as these, the committee wrote to the relevant minister seeking more information, and generally requested that the relevant ESs be updated with any such further information as was provided.

Retrospectivity

3.29 Delegated legislation not infrequently commences retrospectively, and the committee raised concerns about the retrospective operation of a number of instruments over the reporting period.¹⁹ An example of this was the **Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 5) [Select Legislative Instrument 2007 No. 343] [F2007L03906]** (October 2008), which implemented a range of measures to streamline and simplify prudential regulation. Despite a number of the new measures commencing retrospectively, the ES did not identify whether any person would be disadvantaged by its operation, prompting the committee to make

14 LIA, section 26 (previously LIA, section 4).

15 LIA, section 12(2) (prejudicial retrospectivity).

16 LIA, section 14 (incorporation of extrinsic legal and non-legal sources) and section 26 (previously LIA, section 4).

17 Senate Standing Committee on Regulations and Ordinances, *Consultation under the Legislative Instruments Act 2003* (113th Report), June 2007, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=regord_ctte/reports.htm.

18 LIA, section 17, 18 and 26 (previously LIA, section 4).

19 Subsection 12(2) of the LIA provides that an instrument which commences retrospectively, and which would disadvantage or impose a liability on any person other than the Commonwealth, is of no effect. However, subsection 12(3) of the LIA provides that the restriction on prejudicial retrospectivity may be overturned by any contrary provision in the Act under which the instrument is made.

inquiries of the Minister for Superannuation and Corporate Law (the Superannuation Minister). The Superannuation Minister's response indicated that one of the measures did appear to impact adversely on any self managed superannuation funds (SMSFs) with an outstanding return for one or more prior years, as any such entity would be in breach of the new requirement to have appointed an auditor not less than 30 days before the date by which the auditor was required to provide reports to the trustees of the funds. Given this, the Superannuation Minister advised that the commencement date for the measure would be amended to ensure that such entities would not be affected in this way. The regulations were amended accordingly on 24 June 2008.

3.30 Retrospective commencement of instruments is quite often necessary where an instrument is made to correct a previous error, omission or ambiguity. In such cases, the operation of the instrument is frequently clearly beneficial—for example, in confirming an entitlement from the date it was originally intended to be implemented or available. The committee considered a number of such instruments in the reporting period, and in each case a key inquiry was whether steps had been taken to ensure that the full beneficial effect of the instrument was able to be realised by affected parties. An example of this arose in relation to the **Military Rehabilitation and Compensation (Pay-related Allowances) Determination 2008 [F2008L02355]** (July 2008), which amended an existing determination to allow the reserve service allowance (RSA) to be taken into account for members seeking compensation under the *Military Rehabilitation and Compensation Act 2004* (MRCA). As the instrument commenced retrospectively, the committee sought advice from the Minister for Defence Science and Personnel (the Defence Minister) as to how persons who had become retrospectively eligible for the allowance were or would be notified of their entitlement. In response to the committee's inquiry, the Defence Minister undertook to undertake an audit of claims made by reserve members and, where necessary, adjust the member's compensation entitlement accordingly.

Unclear terms and phrases

3.31 The committee frequently writes to ministers seeking clarification of terms and phrases that appear to be ambiguous or unclear, and which are not otherwise clarified or defined by the information provided in an instrument and its ES. An example of this arose in relation to the **Student Assistance (Public Interest Certificate Guidelines) Determination 2008 [F2008L01262]** (April 2008), which specified that the Secretary of the Department of Education, Employment and Workplace Relations could disclose certain information if it was in the public interest to do so. Paragraph 10(c) of the determination permitted relevant information to be disclosed to correct, inter alia, 'an incorrectly held opinion'. As the ES for the instrument provided no information about how the term was to be interpreted, the committee sought advice from the Minister for Education (the Education Minister) on the matter. The Education Minister advised that the term was intended to refer to a situation where an opinion was formed on the basis of misinformation or a lack of information. However, in considering the committee's concerns, she had formed the view that the term an 'incorrectly held opinion' was unnecessary and could be deleted, as the situation it was intended to address was sufficiently covered by the other terms

and definitions in the guidelines. The guidelines were amended to this effect on 13 January 2011.

Scrutiny principle (b): ensuring delegated legislation does not trespass on personal rights and liberties

3.32 Scrutiny principle (b) requires that instruments of delegated legislation must not trespass unduly on personal rights and liberties. The committee interprets this principle broadly such that it may encompass a range of matters, and a range of jurisdictional, technical and other factors may therefore be relevant to the framing of offences in delegated legislation. It is therefore important to ensure that ESs are drafted as stand-alone documents with sufficient context and detail to allow the committee to properly assess any offence provisions (particularly strict and vicarious liability offences), and that ESs clearly state the justification for the framing of offences, and their intended scope and operation.

*Offences of strict and vicarious liability*²⁰

3.33 Given the limiting nature and potential consequences for individuals of strict and vicarious liability offence provisions, the committee generally requires a detailed justification for the inclusion of any such offences in delegated legislation. In a number of cases in the reporting period, the committee identified concerns in the framing of such offences.

3.34 An example of this was the **Offshore Petroleum (Safety) Regulations 2009 [Select Legislative Instrument 2009 No. 382] [F2009L04578]** (December 2009), which consolidated and updated a number of safety related regulations into one instrument. Subregulation 4.22(2) created a strict liability offence of appointing a diving supervisor who was not qualified as a supervisor and who was not competent to supervise a diving operation. The committee considered that the concept of competence was inherently vague and could lead to uncertainty in the scope and application of the offence, and accordingly wrote to the Minister for Resources and Energy (the Resources Minister) seeking advice on the matter. Acknowledging the committee's concerns, the Resources Minister undertook to amend the subregulation by separating the two elements into distinct offences: an offence relating to the lack of qualification, to which strict liability would be applied; and an offence relating to the lack of competency, which would not be a strict liability offence. The regulations were amended accordingly on 3 June 2010.

3.35 A second example arose in relation to the **National Trade Measurement Regulations 2009 [Select Legislative Instrument 2009 No. 233] [F2009L03479]** (September 2009), which specified arrangements for a national system of trade measurements. New regulations 3.25 and 3.27 specified certain strict liability offences

20 'Strict liability' is a standard for liability in relation to both civil penalties and criminal offences, in which a person may be found legally responsible for or guilty of an act or omission regardless of culpability or fault. 'Vicarious liability' is a form of strict secondary liability in which a person may be found liable for an act or omission done by another person, such as in cases where an employer may be liable for the conduct of an employee.

relating to specified conduct of a weighbridge operator which, in each case, attached liability vicariously to the weighbridge licensee, rather than the operator. The committee put the view to the Minister for Innovation, Industry, Science and Research (the Industry Minister) that the specific nature of the offences—for example, requiring that an operator exercise an 'appropriate degree of care' when making measurements or completing a measurement ticket—would render it difficult for an owner to ensure compliance unless physically present to supervise the conduct of operators. The committee suggested that the offences would be more appropriately framed if directed at, for example, requiring a licensee to take 'all reasonable steps' to ensure compliance by operators. In acknowledgment of the committee's concern, the Industry Minister caused the regulations to be amended to this effect on 27 November 2009.

Personal right to privacy

3.36 Delegated legislation frequently provides for the collection and/or use of personal information, and the committee regularly makes inquiries to clarify that sufficient justification and/or protections underpin any permitted use of personal information.

3.37 An example of this was the **Defence Force (Homes Loans Assistance) Amendment Regulations 2008 (No. 1)** [Select Legislative Instrument 2008 No. 138] [F2008L02220] (June 2008), which permitted the use and disclosure of personal information in connection with the administration of the Defence Force Home Ownership Assistance Scheme (the scheme). Given the relatively broad permitted disclosure, the committee wrote to the Minister for Defence Science and Personnel (the Defence Minister) to inquire as to whether the Privacy Commissioner had or should have been consulted in relation to the instrument. In response, the Defence Minister provided an assurance that the regulations did not go beyond the scope of the use and disclosure provisions of the *Privacy Act 1988*. Further, the Australian Government Solicitor (AGS) had prepared a report on privacy matters and compliance relevant to the scheme, which concluded that the scheme required the sharing of personal information only to the extent necessary for its proper operation. In response to the committee's inquiry, a copy of that report had been forwarded to the Privacy Commissioner, who had not identified any privacy concerns as such but had made some general recommendations on the development and implementation of good privacy practice in the handling of personal information (which would be reviewed and acted on accordingly).

Scrutiny principle (c): ensuring delegated legislation does not make rights unduly dependent on administrative decisions not subject to independent merits review

3.38 Scrutiny principle (c) relates broadly to the natural justice considerations which underpin the field of administrative law. Accordingly, where delegated legislation authorises the making of administrative decisions, the committee will seek to ensure that the relevant powers and discretions are appropriately framed with respect to such matters as providing objective criteria in relation to decision making, the availability of independent merits review of decisions and appropriate notification of decisions.

Objective criteria for decision making

3.39 An example of this arose in relation to the **Quarantine Service Fees Amendment Determination 2009 (No. 2) [F2009L02996]** (August 2009), which, inter alia, implemented a new fee structure to allow the Australian Quarantine Inspection Service (AQIS) to fully recover costs associated with the provision of post-entry animal quarantine services. Subsection 7C(5) of the determination provided the Secretary of the Department of Agriculture, Fisheries and Forestry with a discretion to return part of a deposit paid against fees for the management and maintenance of an animal at a quarantine station (which would otherwise have been forfeited). However, there were no criteria specified as to how the discretion should be exercised. In response to the committee's inquiry, the Minister for Agriculture, Fisheries and Forestry (the Agriculture Minister) advised that at the time the determination was drafted it was considered too difficult to objectively list the circumstances in which any such decision would be required to be made. However, in light of the committee's correspondence, the Agriculture Minister acknowledged the need for the discretion to be constrained by objective criteria, and undertook to amend the determination accordingly. The determination was subsequently amended on 8 December 2010.

Provision of reasons for decisions

3.40 A second example of the types of matters which may arise in connection with this scrutiny principle was the **Air Navigation Amendment Regulations 2009 (No. 1) [Select Legislative Instrument 2009 No. 23] [F2009L00564]** (March 2009), which made a number of amendments to the principal regulations intended to improve the Government's oversight of the international airline licences system. Regulation 18 provided that, where the Secretary of the Department of Infrastructure and Transport (the secretary) decided not to grant an applicant an international airline licence, he or she was not required to provide reasons for the decision to the licence applicant. In contrast, the secretary was required to issue reasons to licence holders in respect of proposed or actual variations, suspensions or cancellations of a licence, and the committee considered that the reason for a divergent approach was not clear on the face of the instrument and its ES. In response to the committee's inquiry, the Minister for Infrastructure, Transport, Regional Development and Local Government (the Transport Minister) advised that the omission of the requirement for the secretary to provide reasons for a decision to refuse an application for an international airline licence was a drafting oversight, and that the regulations would be amended accordingly. The regulations had not yet been amended at the end of the 42nd Parliament.

Timeframe for making a decision

3.41 In May 2008, the committee considered the **Southern Bluefin Tuna Fishery Management Plan Amendment 2008 (No. 1) [F2008L00617]** (February 2008), which made a number of amendments to the Southern Bluefin Tuna Fishery Management Plan 1995 (the plan). New clause 22CA permitted a holder of a statutory fishing right who had taken an overcatch of Southern Bluefin Tuna (SBT), and who had retained the living SBT in a grow cage, to apply to the Australian Fisheries Management Authority (AFMA) for permission to 'tow and release' part of the

overcatch. However, there was no requirement that AFMA consider any such application within a specified timeframe. Given the apparent potential for commercial losses arising from a failure to quickly decide an application (as any fish to die before or during the tow and release would be counted against a licence holder's quota), the committee wrote to the Minister for Agriculture, Fisheries and Forestry (the Fisheries Minister) seeking his advice on the matter. In response, the Fisheries Minister advised that, in practice, AFMA and all quota holders had agreed that there would be only a single tow and release event at the end of each catching season, and permissions would be sought with this understanding. That agreement aside, the majority of applications were responded to in fewer than seven days in accordance with AFMA's service charter. On the basis of the Fisheries Minister's advice, the committee concluded its interest in the matter.

Scrutiny principle (d): ensuring delegated legislation does not contain matters more appropriate for parliamentary enactment

3.42 Scrutiny principle (d) reflects the view that delegated legislation should not deal with matters which should, by their nature, be subject to the full legislative processes of the Parliament.

3.43 While concerns related to this principle are less commonly raised by the committee (or, at least, less commonly characterised in such terms), a specific example in the reporting period was the **Wool Services Privatisation (Research Body) Declaration 2008 [F2008L02725]** (July 2008), which declared Australian Wool Innovation Ltd (AWI) to be the research body for the purposes of the *Wool Services Privatisation Act 2000* (the Wool Act). The ES stated that, while AWI had been similarly declared to be the research body for the purposes of the Wool Act in December 2000, this had inadvertently lapsed in October 2006 when the declaration was repealed by the LIA. Given that the apparent intention of the declaration was to retrospectively validate funding received by AWI between 1 October 2006 and the making of the declaration, the committee inquired of the Agriculture Minister as to whether it may have been more appropriate to effect this through the primary legislation. In response, the Agriculture Minister advised that the declaration did not in fact operate to validate the funding received by AWI, because the declaration of a body for the purposes of the Wool Act was an administrative formality rather than a substantive requirement, and therefore the absence of such a declaration did not affect the Agriculture Minister's ability to contract with AWU in order for it to receive funds.

Instruments modifying Acts

3.44 A second example of the types of issues that may arise in connection with scrutiny principle (d) was **ASIC Class Order [CO 09/459] [F2009L02441]** (June 2009), which amended section 611 of the *Corporations Act 2001* (the Corporations Act) to specify conditional relief from the takeovers provisions in Chapter 6 of that Act for acquisitions of securities under accelerated rights issues. The order was intended to enable an investor in an accelerated rights issue for a company (where the institutional component of a rights issue is conducted before the retail component) to end up owning more than 20 per cent of the company. Given the

widespread support for the change, the committee questioned whether it should have been effected through an amendment to the Corporations Act itself, rather than through a class order, and accordingly wrote to the Minister for Financial Services, Superannuation and Corporate Law (the Corporate Law Minister), seeking advice on the matter. While the Corporate Law Minister acknowledged that such a change should normally be done through amendment of the principal legislation, he advised that poor market conditions in 2008 had seen an increased need for companies to be able to quickly raise capital. The change had therefore been effected through the class order, which was able to be made more quickly than an amendment to the Corporations Act. The Corporate Law Minister assured the committee that consideration of whether the Corporations Act should be amended to achieve the effect of the order would be part of the next review of the relevant part of that Act.

Senator Mark Furner

Chair

Appendix 1

Breakdown of instruments 42nd Parliament

The table below provides a breakdown of instruments scrutinised in the 42nd Parliament by Act and instrument type. For further detail on particular instruments, the consolidated *Delegated legislation monitor* for the relevant years should be consulted.

Act/instrument type	2007-08	2008-09	2009-10
<i>A New Tax System (Family Assistance) Act 1999</i>			
determination	6	7	5
guidelines	-	1	-
rules	2	1	-
specification	1	2	-
<i>A New Tax System (Goods and Services Tax) Act 1999</i>			
determination	3	3	4
instrument	1	4	-
regulation	3	1	1
<i>A New Tax System (Luxury Car Tax) Act 1999</i>			
regulation	-	1	-
<i>A New Tax System (Wine Equalisation Tax) Act 1999</i>			
regulation	-	-	1
<i>Aboriginal and Torres Strait Islander Act 2005</i>			
declaration	1	-	-
regulation	1	-	-
rules	1	-	-
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>			
regulation	3	2	-
<i>ACIS Administration Act 1999</i>			
determination	-	2	-
guidelines	-	-	1
instrument	1	-	1
<i>Acts Interpretation Act 1901</i>			
guidelines	-	1	-
regulation	-	1	1
<i>Aged Care (Consequential Provisions) Act 1997</i>			
determination	1	-	-
<i>Aged Care Act 1997</i>			
determination	29	27	27
principles	18	11	9
<i>Agricultural and Veterinary Chemicals (Administration) Act 1992</i>			
instrument	4	-	-
regulation	-	-	1

Act/instrument type	2007-08	2008-09	2009-10
<i>Agricultural and Veterinary Chemicals Code Act 1994</i>			
order	1	-	-
regulation	1	1	3
standard	2	-	-
<i>Air Navigation Act 1920</i>			
determination	-	1	-
regulation	1	1	3
<i>Airports Act 1996</i>			
regulation	1	2	9
<i>Air Services Act 1995</i>			
regulation	1	-	-
<i>Airspace Act 2007</i>			
regulation	1	-	-
<i>Annual Appropriation Acts</i>			
determination – reduce appropriation	19	35	24
<i>Antarctic Treaty (Environment Protection) Act 1980</i>			
proclamation	2	-	-
regulation	1	-	-
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>			
regulation	1	-	-
rules	8	7	4
<i>Auditor-General Act 1997</i>			
standard	-	-	1
<i>AusCheck Act 2007</i>			
regulation	1	-	-
<i>Australian Capital Territory (Planning and Land Management) Act 1988</i>			
notice	1	-	-
plan	2	2	3
<i>Australian Citizenship Act 2007</i>			
instrument	5	5	3
regulation	3	-	3
<i>Australian Communications and Media Authority Act 2005</i>			
determination	3	-	3
instrument of revocation	-	-	1
<i>Australian Crime Commission Act 2002</i>			
regulation	1	-	-
<i>Australian Federal Police Act 1979</i>			
regulation	1	1	-
<i>Australian Film, Television and Radio School Act 1973</i>			
determination	2	3	1

Act/instrument type	2007-08	2008-09	2009-10
<i>Australian Hearing Services Act 1991</i> determination	2	-	-
<i>Australian Human Rights Commission Act 2009</i> regulation	-	-	1
<i>Australian Meat and Live-stock Industry Act 1997</i> declaration order regulation	1 3 -	- 5 -	- 5 2
<i>Australian Organ and Tissue Donation and Transplantation Authority Act 2008</i> regulation	-	-	1
<i>Australian Participants in British Nuclear Tests (Treatment) Act 2006</i> instrument principles regulation	1 4 1	- 1 -	- 1 -
<i>Australian Passports Act 2005</i> determination	3	1	1
<i>Australian Postal Corporation Act 1989</i> regulation	2	1	-
<i>Australian Prudential Regulation Authority Act 1998</i> determination instrument regulation	15 2 -	15 1 1	26 3 -
<i>Australian Radiation Protection and Nuclear Safety Act 1998</i> regulation	-	1	2
<i>Australian Securities and Investments Commission Act 2001</i> regulation rules	2 -	- -	2 1
<i>Australian Sports Anti-Doping Authority Act 2006</i> instrument regulation	- -	2 -	 1
<i>Australian War Memorial Act 1980</i> regulation	1	-	-
<i>Authorised Deposit-taking Institutions Supervisory Levy Imposition Act 1998</i> determination	1	1	1
<i>Authorised Non-operating Holding Companies Supervisory Levy Imposition Act 1998</i> determination	1	1	1

Act/instrument type	2007-08	2008-09	2009-10
<i>Automotive Transformation Scheme Act 2009</i> order regulation	- -	- -	1 1
<i>Aviation Transport Security Act 2004</i> regulation	4	4	5
<i>Banking Act 1959</i> determination direction exemption regulation	18 3 4 -	5 5 3 2	1 - 1 1
<i>Bankruptcy Act 1966</i> determination regulation	- 1	1 -	- -
<i>Bankruptcy (Estate Charges) Act 1997</i> determination	1	-	-
<i>Broadcasting Services Act 1992</i> declaration determination guidelines instrument licence area plan notice regulation scheme variation standard	3 1 1 1 5 - 2 2 -	- 9 1 - 6 - - 2 2	- 5 - - 18 1 - - -
<i>Building and Construction Industry Improvement Act 2005</i> direction regulation	- 2	- 1	1 1
<i>Census and Statistics Act 1905</i> regulation	-	-	1
<i>Charter of the United Nations Act 1945</i> declaration determination regulation	3 2 14	3 1 5	2 - 6
<i>Child Care Legislation Amendment Act 1998</i> regulation	-	-	1
<i>Child Support (Assessment) Act 1989</i> regulation	3	-	-
<i>Child Support (Registration and Collection) Act 1988</i> direction	3	1	-
<i>Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006</i> regulation	2	-	-

Act/instrument type	2007-08	2008-09	2009-10
<i>Christmas Island Act 1958</i>			
determination	1	1	1
list of Western Australian Acts that apply in territory	2	2	2
ordinance	-	2	-
regulation	-	-	1
<i>Circuit Layouts Act 1989</i>			
regulation	1	-	-
<i>Civil Aviation Act 1988</i>			
airworthiness directive	1206	1755	708
exemption	63	63	88
instrument	29	73	59
manual of standards	3	1	2
order	77	28	26
regulation	3	9	5
revocation of airworthiness directive	-	-	13
technical standard	-	-	2
<i>Classification (Publications, Films and Computer Games) Act 1995</i>			
regulation	2	2	2
<i>Coal Mining Industry (Long Service Leave) Payroll Levy Act 1992</i>			
regulation	-	1	-
<i>Cocos (Keeling) Islands Act 1955</i>			
determination	1	1	1
list of Western Australian Acts that apply in territory	2	2	2
ordinance	-	1	-
proclamation	1	-	-
regulation	-	-	1
<i>Commonwealth Authorities and Companies Act 1997</i>			
instrument	2	-	-
order	-	2	2
regulation	3	3	2
<i>Commonwealth Electoral Act 1918</i>			
regulation	6	-	1
<i>Commonwealth Places (Mirror Taxes) Act 1998</i>			
regulation	1	1	-
<i>Commonwealth Services Delivery Agency Act 1997</i>			
regulation	-	-	1
<i>Consular Privileges and Immunities Act 1972</i>			
determination	-	1	-
<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>			
determination	-	-	2
regulation	1	-	1
<i>Corporations (Fees) Act 2001</i>			
regulation	1	-	-

Act/instrument type	2007-08	2008-09	2009-10
<i>Corporations (Review Fees) Act 2003</i> regulation	1	-	-
<i>Corporations Act 2001</i> accounting standard auditing standard class order guidelines notice regulation	12 1 26 2 - 15	21 1 23 - 2 8	13 39 33 - - 13
<i>Criminal Code Act 1995</i> regulation	4	13	10
<i>Crimes Act 1914</i> regulation	1	2	3
<i>Crimes (Overseas) Act 1964</i> regulation	2	-	-
<i>Cross-Border Insolvency Act 2008</i> regulation	-	1	-
<i>Currency Act 1965</i> determination	12	12	11
<i>Customs Act 1901</i> defence and strategic goods list determination direction guidelines instrument of approval regulation	1 1 - - 1 20	- - 1 - - 15	1 1 - 1 16 20
<i>Customs Tariff Act 1995</i> regulation	-	-	1
<i>Dairy Produce Act 1986</i> declaration regulation scheme	- - -	1 - -	- 1 1
<i>Datacasting Charge (Imposition) Act 1998</i> determination	1	-	-
<i>Defence Act 1903</i> declaration determination regulation	1 75 7	- 84 3	- 72 -
<i>Defence Force Discipline Act 1982</i> regulation rules	- 3	5 1	3 1

Act/instrument type	2007-08	2008-09	2009-10
<i>Defence Force (Home Loans Assistance) Act 1990</i> declaration regulation	6 -	1 1	4 -
<i>Defence Force (Visiting Forces) Act 1963</i> regulation	-	1	-
<i>Defence Force Homes Ownership Assistance Scheme Act 2008</i> determination regulation	- -	2 1	1 -
<i>Defence Force Retirement and Death Benefits Act 1973</i> regulation	1	-	-
<i>Defence Services Homes Act 1918</i> instrument	1	-	-
<i>Dental Benefits Act 2008</i> rules	-	4	1
<i>Designs Act 1906</i> regulation	-	1	-
<i>Diplomatic Privileges and Immunities Act 1972</i> determination	-	1	-
<i>Director of Public Prosecutions Act 1983</i> regulation	1	-	-
<i>Disability Discrimination Act 1992</i> regulation standard	- -	- -	1 3
<i>Disability Services Act 1986</i> approval guidelines standard	1 1 3	- - -	- - 1
<i>Do Not Call Register Act 2006</i> determination specification	1 -	1 -	3 1
<i>Education Services for Overseas Students Act 2000</i> national code of practice regulation	- 1	- -	1 1
<i>Electronic Transactions Act 1999</i> regulation	2	1	2
<i>Energy Efficiency Opportunities Act 2006</i> regulation	-	1	2
<i>Energy Grants (Cleaner Fuels) Scheme Act 2004</i> regulation	1	-	-

Act/instrument type	2007-08	2008-09	2009-10
<i>Environment and Heritage Legislation Amendment Act (No. 1) 2006</i> regulation	1	-	-
<i>Environment Protection (Sea Dumping) Act 1981</i> regulation	-	1	-
<i>Environment Protection and Biodiversity Conservation Act 1999</i> amendment – exempt native specimens	29	33	57
amendment – suitable for live import	6	3	4
amendment – threatened ecological communities	-	6	5
amendment – threatened species	-	1	15
approval – listed migratory species	1	-	-
inclusion – threatened ecological communities	2	-	-
inclusion – threatened species	8	19	-
plan	7	7	8
proclamation	-	1	-
regulation	-	1	4
<i>Evidence Act 1995</i> regulation	-	1	1
<i>Excise Act 1901</i> determination	-	2	2
regulation	-	2	-
<i>Excise Tariff Act 1921</i> guidelines	-	1	-
<i>Export Control Act 1982</i> order	9	4	3
<i>Export Finance and Insurance Corporation Act 1991</i> determination	1	-	-
<i>Export Inspection (Establishment Registration Charges) Act 1985</i> regulation	1	-	2
<i>Export Inspection (Quantity Charge) Act 1985</i> regulation	-	-	2
<i>Export Inspection (Service Charges) Act 1985</i> regulation	1	-	-
<i>Export Inspection and Meat Charges Collection Act 1985</i> regulation	1	-	1
<i>Export Market Development Grants Act 1997</i> declaration	-	1	1
determination	-	3	1
guidelines	-	1	-
instrument	-	-	1
regulation	-	2	-
<i>Extradition Act 1988</i> regulation	4	9	14

Act/instrument type	2007-08	2008-09	2009-10
<i>Fair Work (Registered Organisations) Act 2009</i> regulation	-	-	1
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i> regulation	-	-	1
<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> regulation	-	-	4
<i>Fair Work Act 2009</i> declaration	-	-	1
direction to inspectors	-	-	2
regulation	-	1	8
<i>Family Law Act 1975</i> approval	4	-	1
determination	3	-	1
regulation	9	10	5
<i>Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007</i> regulation	-	1	-
<i>Farm Household Support Act 1992</i> regulation	2	2	1
training scheme amendment	5	-	-
<i>Federal Court of Australia Act 1976</i> rules	5	5	9
<i>Federal Magistrates Act 1999</i> determination	1	-	-
rules	4	2	5
<i>Financial Management and Accountability Act 1997</i> agreement – net appropriation	2	-	-
determination – special account	26	24	12
order	2	1	3
regulation	4	8	6
<i>Financial Sector (Business Transfer and Group Restructure) Act 1999</i> determination	1	-	-
<i>Financial Sector (Collection of Data) Act 2001</i> determination – reporting standard	95	34	28
exemption	2	-	1
regulation	-	1	-
<i>Financial Transaction Reports Act 1988</i> regulation	1	-	-

Act/instrument type	2007-08	2008-09	2009-10
<i>First Home Saver Accounts Act 2008</i> determination regulation	- -	1 1	- -
<i>First Homes Saver Account Providers Supervisory Levy Imposition Act 2008</i> determination	-	-	1
<i>Fisheries Levy Act 1984</i> regulation	2	1	1
<i>Fisheries Management Act 1991</i> determination direction order plan regulation	15 12 - 1 -	9 21 4 - 2	12 20 7 4 5
<i>Fishing Levy Act 1991</i> regulation	-	1	1
<i>Food Standards Australia New Zealand Act 1991</i> regulation	1	-	1
<i>Foreign Acquisitions and Takeovers Act 1975</i> regulation	-	2	3
<i>Foreign States Immunities Act 1985</i> regulation	-	-	1
<i>Forestry Marketing and Research and Development Services Act 2007</i> regulation	-	1	-
<i>Freedom of Information Act 1982</i> regulation	-	-	1
<i>Fringe Benefits Tax Act 1986</i> regulation	-	-	1
<i>Fuel Quality Standards Act 2000</i> determination	1	-	-
<i>Fuel Tax Act 2006</i> determination regulation	1 -	3 1	1 -
<i>General Insurance Supervisory Levy Imposition Act 1998</i> determination	1	1	1
<i>Gene Technology Act 2000</i> determination regulation	2 -	- 1	- -

Act/instrument type	2007-08	2008-09	2009-10
<i>Governance Review Implementation (Treasury Portfolio Agencies) Act 2007</i> regulation	1	-	-
<i>Great Barrier Reef Marine Park Act 1975</i> plan of management regulation	- -	2 1	- 2
<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i> regulation	-	1	-
<i>Health Insurance Act 1973</i> declaration determination guidelines instrument principles regulation	2 31 - - 4 16	3 35 - - 2 16	4 23 1 5 2 24
<i>Heard Island and McDonald Islands Act 1953</i> ordinance	-	-	1
<i>Hearing Services Administration Act 1997</i> determination rules	- 1	1 -	- -
<i>High Court of Australia Act 1988</i> proclamation	-	1	-
<i>Higher Education Funding Act 1988</i> declaration	1	1	1
<i>Higher Education Support Act 2003</i> approval – higher education provider approval – VET provider guidelines list of grants	9 - 17 3	8 34 10 2	14 34 10 4
<i>Household Stimulus Package Act (No. 2) 2009</i> determination scheme	- -	2 1	1 -
<i>Housing Assistance Act 1996</i> determination	-	1	-
<i>Human Rights and Equal Opportunity Commission Act 1986</i> declaration	-	-	1
<i>Immigration (Education) Act 1971</i> instrument regulation	1 2	- -	- -
<i>Immigration (Guardianship of Children) Act 1946</i> instrument	-	2	-

Act/instrument type	2007-08	2008-09	2009-10
<i>Imported Food Control Act 1992</i> order regulation	1 -	- -	2 2
<i>Income Tax Assessment Act 1936</i> lodgement of returns regulation	1 2	3 2	2 3
<i>Income Tax Assessment Act 1997</i> determination guidelines instrument regulation rules	1 - 1 8 4	3 2 - 5 -	1 - - 7 -
<i>Independent Contractors Act 2006</i> regulation	-	1	1
<i>Indigenous Education (Targeted Assistance) Act 2000</i> regulation	1	1	1
<i>Industrial Chemicals (Notification and Assessment) Act 1989</i> regulation standard	1 1	2 -	1 -
<i>Insurance Act 1973</i> determination regulation	- -	19 2	4 1
<i>International Criminal Court Act 2002</i> regulation	1	-	-
<i>International Organisations (Privileges and Immunities) Act 1963</i> regulation	-	1	-
<i>International Transfer of Prisoners Act 1997</i> regulation	1	1	1
<i>Interstate Road Transport Act 1985</i> determination	3	1	3
<i>Interstate Road Transport Charge Act 1985</i> regulation	-	1	-
<i>Jervis Bay Territory Acceptance Act 1915</i> determination ordinance	- 1	2 -	2 1
<i>Judges' Pensions Act 1968</i> regulation	1	-	-
<i>Judiciary Act 1903</i> high court rules legal services directions	1 -	3 3	2 1

Act/instrument type	2007-08	2008-09	2009-10
<i>Lands Acquisition Act 1989</i> regulation	1	-	1
<i>Legislative Instruments Act 2003</i> regulation	3	-	1
<i>Life Insurance Act 1995</i> determination regulation	16 1	4 -	4 1
<i>Life Insurance Supervisory Levy Imposition Act 1998</i> determination	1	1	1
<i>Lighthouses Act 1911</i> regulation	-	-	1
<i>Liquid Fuel Emergency Act 1984</i> determination guidelines	- -	1 1	- -
<i>Long Service Leave (Commonwealth Employees) Act 1976</i> regulation	-	-	1
<i>Maritime Navigation Levy Collection Act 1989</i> regulation	-	1	-
<i>Maritime Navigation (Regulatory Functions) Levy Collection Act 1991</i> regulation	-	1	-
<i>Maritime Transport and Offshore Facilities Security Act 2003</i> notice regulation	- 1	2 1	 1
<i>Marriage Act 1961</i> determination proclamation regulation	- 1 -	- - -	1 1 2
<i>Maternity Leave (Commonwealth Employees) Act 1973</i> regulation	-	-	1
<i>Medical Indemnity Act 2002</i> scheme	1	-	-
<i>Medical Indemnity (Prudential Supervision and Product Standards) Act 2003</i> determination	1	-	-
<i>Medical Indemnity (Run-off Cover Support Payment) Act 2004</i> regulation	1	-	-
<i>Medicare Australia Act 1973</i> regulation	-	-	1

Act/instrument type	2007-08	2008-09	2009-10
<i>Members of Parliament (Life Gold Pass) Act 2002</i> regulation	-	1	-
<i>Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010</i> rules	-	-	1
<i>Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2012</i> rules	-	1	1
<i>Migration Act 1958</i> notice – migration agents continuing professional development regulation revocation specification – United Nations Security Council Resolutions	31 15 - 5	23 11 - 3	25 20 1 3
<i>Military Rehabilitation and Compensation Act 2004</i> determination instrument principles regulation	- - 5 -	4 1 - -	- 1 1 2
<i>Moomba-Sydney Pipeline System Sale Act 1994</i> regulation	-	-	1
<i>Motor Vehicle Standards Act 1989</i> regulation vehicle standard	- 24	- 10	1 12
<i>Mutual Assistance in Criminal Matters Act 1987</i> regulation	-	1	1
<i>Mutual Recognition Act 1992</i> regulation	-	-	1
<i>National Consumer Credit Protection (Fees) Act 2009</i> regulation	-	-	2
<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009</i> regulation	-	-	3
<i>National Consumer Credit Protection Act 2009</i> regulation	-	-	3
<i>National Environment Protection Council Act 1994</i> variation to measure	1	2	-
<i>National Film and Sound Archives Act 2008</i> regulation	1	-	-
<i>National Greenhouse and Energy Reporting Act 2007</i> determination instrument regulation	- - -	1 - 2	2 1 1

Act/instrument type	2007-08	2008-09	2009-10
<i>National Health Act 1953</i>			
determination – immunisation program	3	2	2
determination – pharmaceutical benefit	92	98	91
determination – Australian community pharmacy authority rules	-	1	-
guidelines	1	-	-
regulation	3	1	7
special arrangement – pharmaceutical benefit	27	34	40
<i>National Health Security Act 2007</i>			
determination	-	1	2
instrument	1	-	-
regulation	1	1	1
<i>National Measurement Act 1960</i>			
guidelines	-	-	1
regulation	1	1	2
<i>National Rent Affordability Scheme Act 2008</i>			
determination	-	1	-
regulation	-	1	2
<i>National Residue Survey (Customs) Levy Act 1998</i>			
regulation	1	-	1
<i>National Residue Survey (Excise) Levy Act 1998</i>			
regulation	1	1	-
<i>Nation-building Funds Act 2008</i>			
instrument	-	4	2
<i>Native Title Act 1993</i>			
instrument	-	2	-
regulation	2	-	-
<i>Navigation Act 1912</i>			
direction	-	-	1
marine order	10	7	17
regulation	-	1	1
<i>Northern Territory National Emergency Response Act 2007</i>			
declaration	10	4	-
instrument	2	2	1
<i>Nuclear Non-Proliferation (Safeguards) Act 1987</i>			
regulation	-	-	1
<i>Occupational Health and Safety Act 1991</i>			
code of practice	-	1	-
regulation	1	2	-
<i>Occupational Health and Safety (Maritime Industry) Act 1993</i>			
regulation	-	-	1
<i>Offshore Petroleum and Greenhouse Storage (Safety Levies) Act 2003</i>			
regulation	-	-	3

Act/instrument type	2007-08	2008-09	2009-10
<i>Offshore Petroleum and Greenhouse Storage Act 2006</i> regulation	-	-	3
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> regulation	2	2	2
<i>Papua New Guinea (Members of the Forces Benefits) Act 1957</i> regulation	-	-	1
<i>Parliamentary Entitlements Act 1990</i> regulation	2	1	3
<i>Parliamentary Service Act 1999</i> determination guidelines	- -	1 1	1 -
<i>Patents Act 1990</i> regulation	1	2	2
<i>Payment Systems (Regulation) Act 1998</i> regulation	-	1	-
<i>Payment Systems and Netting Act 1998</i> regulation	1	-	-
<i>Petroleum (Submerged Lands) (Registration Fees) Act 1967</i> regulation	-	-	1
<i>Petroleum (Submerged Lands) Act 1967</i> regulation	1	-	3
<i>Petroleum (Submerged Lands) Fees Act 1994</i> regulation	-	-	1
<i>Primary Industries (Customs) Charges Act 1999</i> regulation	7	1	4
<i>Primary Industries (Excise) Levies Act 1999</i> declaration regulation	1 8	- 5	- 7
<i>Primary Industries Levies and Charges Collection Act 1991</i> regulation	7	4	3
<i>Primary Industries and Energy Research and Development Act 1989</i> regulation	2	1	1
<i>Privacy Act 1988</i> determination guidelines regulation	2 - 4	- - 1	3 1 2
<i>Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007</i> rules	1	-	-

Act/instrument type	2007-08	2008-09	2009-10
<i>Private Health Insurance Act 2007</i> rules	23	26	26
<i>Productivity Commission Act 1998</i> regulation	1	-	-
<i>Product Stewardship (Oil) Act 2000</i> regulation	1	-	-
<i>Protection of the Sea (Civil Liability for Bunker Oil Pollution) Act 2008</i> regulation	-	1	-
<i>Protection of the Sea (Oil Pollution Compensation Fund) Act 1993</i> regulation	-	-	2
<i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i> regulation	-	1	-
<i>Protection of the Sea (Shipping Levy) Act 1981</i> regulation	1	-	-
<i>Protection of the Sea (Shipping Levy Collection) Act 1981</i> regulation	-	2	1
<i>Public Lending Right Act 1985</i> instrument	1	1	1
<i>Public Order (Protection of Persons and Property) Act 1971</i> regulation	1	-	-
<i>Public Service Act 1999</i> direction regulation	2 2	2 -	2 -
<i>Quarantine Act 1908</i> determination regulation	- 2	3 1	4 2
<i>Radiocommunications (Receiver Licence Tax) Act 1983</i> determination	3	3	-
<i>Radiocommunications (Transmitter Licence Tax) Act 1983</i> determination	2	1	-
<i>Radiocommunications Act 1992</i> class licence determination guidelines notice plan rules standard	3 9 - 2 6 1 3	9 7 3 3 7 - 3	- 8 5 2 - - -
<i>Radiocommunications Taxes Collection Act 1983</i> regulation	1	-	-

Act/instrument type	2007-08	2008-09	2009-10
Remuneration and Allowances Act 1990 regulation	1	-	-
Remuneration Tribunal Act 1973 determination regulation	18 2	25 1	22 2
Renewable Energy (Electricity) Act 2000 regulation	3	1	7
Resale Royalty Right for Visual Artists Act 2009 determination	-	-	1
Research Involving Human Embryos Act 2002 declaration regulation	8 2	3 -	- -
Retirement Savings Accounts Act 1997 approval declaration regulation	1 2 2	- - 3	- - 1
Retirement Savings Account Providers Supervisory Levy Imposition Act 1998 determination	1	1	1
Royal Commissions Act 1902 regulation	1	-	-
Safety, Rehabilitation and Compensation Act 1988 approval notice regulation standard	- 16 1 -	- 3 1 -	3 1 1 1
Safe Work Australia (Consequential and Transitional Provisions) Act 2008 regulation	-	-	1
Same-Sex Relationships (Equal Treatment in Commonwealth Law – General Law Reform) Act 2008 regulation	-	-	3
Schools Assistance (Learning Together – Achievement Through Choice and Opportunity) Act 2004 approval regulation	1 3	- -	- -
Schools Assistance Act 2008 determination guidelines regulation	- - -	2 2 1	- - 3
Screen Australia Act 2008 regulation	1	-	-

Act/instrument type	2007-08	2008-09	2009-10
<i>Seafarers Rehabilitation and Compensation Act 1992</i> notice regulation	- 1	1 -	- -
<i>Snowy Mountains Engineering Corporation (Conversion into Public Company) Act 1989</i> regulation	-	-	1
<i>Social Security (Administration) Act 1999</i> determination guidelines rules specification	3 9 - -	7 1 1 6	9 1 - 5
<i>Social Security (International Agreements) Act 1999</i> regulation	1	3	1
<i>Social Security Act 1991</i> declaration determination guidelines instrument principles specification	2 33 2 1 3 1	3 17 - - - 4	- 16 - - 1 7
<i>Social Security and Other Legislation Amendment (Economic Security Strategy) Act 2008</i> determination	-	-	1
<i>Student Assistance Act 1973</i> determination guidelines regulation	3 - -	2 1 1	2 - -
<i>Superannuation (Productivity Benefit) Act 1988</i> declaration determination	3 1	3 1	3 1
<i>Superannuation (Resolution of Complaints) Act 1993</i> regulation	1	-	-
<i>Superannuation (Unclaimed Money and Lost Members) Act 1999</i> regulation	-	2	-
<i>Superannuation Act 1976</i> declaration order regulation	1 1 1	4 - 1	- - 1
<i>Superannuation Act 1990</i> declaration trust deed amendment	1 4	3 2	- 1
<i>Superannuation Act 2005</i> declaration trust deed amendment	3 1	3 -	- 1

Act/instrument type	2007-08	2008-09	2009-10
<i>Superannuation Guarantee (Administration) Act 1992</i> regulation	-	1	1
<i>Superannuation Industry (Supervision) Act 1993</i> regulation	4	8	-
<i>Superannuation Supervisory Levy Imposition Act 1998</i> determination regulation	1 -	1 -	1 3
<i>Supported Accommodation Assistance Act 1994</i> determination	-	1	-
<i>Sydney Airport Demand Management Act 1997</i> regulation	-	1	-
<i>Sydney Harbour Federation Trust Act 2001</i> regulation	-	-	2
<i>Tax Agent Services Act 2009</i> regulation	-	-	1
<i>Taxation Administration Act 1953</i> guidelines lodgement of statement notice regulation taxation withholding schedule	- 1 3 - 8	- 1 - 4 3	1 1 - 2 2
<i>Tax Laws Amendment (2009 Measures No. 4) Act 2009</i> declaration	-	-	1
<i>Telecommunications (Carrier Licence Charges) Act 1997</i> determination	6	6	4
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> determination	4	3	1
<i>Telecommunications (Interception and Access) Act 1979</i> declaration determination instrument regulation specification	3 2 3 1 1	1 - 1 1 1	4 - - - -
<i>Telecommunications (Numbering Charges) Act 1997</i> determination	1	-	-

Act/instrument type	2007-08	2008-09	2009-10
<i>Telecommunications Act 1997</i>			
declaration	4	1	1
determination	2	3	2
instrument	-	-	2
notice	2	1	2
numbering plan	2	-	1
regulation	-	1	1
rules	-	1	1
technical standard	-	7	3
<i>Television Licence Fees Act 1964</i>			
regulation	1	-	-
<i>Textile, Clothing and Footwear Investment and Innovation Program Act 1999</i>			
scheme	1	-	2
<i>Therapeutic Goods Act 1989</i>			
determination	1	-	1
exemption	5	6	-
guidelines	-	-	1
notice	2	5	10
order	5	11	-
regulation	3	5	10
specification	-	-	1
<i>Torres Strait Fisheries Act 1984</i>			
management plan	-	1	-
notice	1	-	-
<i>Tradex Scheme Act 1999</i>			
regulation	-	1	-
<i>Trade Practices Act 1974</i>			
declaration	7	-	1
determination	1	5	8
instrument	-	1	-
notice – consumer protection	3	6	2
principles	2	5	-
regulation	10	6	7
revocation – designated outwards secondary shipper body	6	-	-
standard – consumer protection safety	-	-	1
<i>Transport Safety Investigation Act 2003</i>			
regulation	-	-	1
<i>Trans-Tasman Mutual Recognition Act 1997</i>			
regulation	1	1	2

Act/instrument type	2007-08	2008-09	2009-10
<i>Veterans' Entitlements Act 1986</i>			
declaration	1	-	-
determination	17	4	4
guidelines	2	-	-
instrument	6	1	3
principles	1	-	1
regulation	3	-	-
specification	1	-	2
statement of principles	91	83	85
<i>Water Act 2007</i>			
regulation	-	4	3
rules	-	-	2
<i>Wheat Export Marketing Act 2008</i>			
scheme	-	1	-
<i>Wheat Marketing Act 1989</i>			
scheme	1	-	-
<i>Witness Protection Act 1994</i>			
regulation	-	-	1
<i>Wool Services Privatisation Act 2000</i>			
declaration	-	1	-
<i>Workplace Relations Act 1996</i>			
direction	1	-	-
regulation	7	1	-
Total number of regulations	316	281	396
Total number other	2666	3123	2072
Total	2982	3404	2468

Appendix 2

Undertakings

Table 1: Undertakings implemented in the 42nd Parliament

Instrument	Date of undertaking	Undertaking	Implemented by
Department of Agriculture, Fisheries and Forestry			
Export Control (Meat and Meat Products) Amendment Orders 2006 (No. 1) [F2006L01737]	2 August 2006	Clauses 12.4: amend to clarify notification requirements for person convicted of 'serious offence' Clause 12.5: amend to clarify notification requirements for occupier of a registered establishment	Export Control (Meat and Meat Products) Amendment Orders 2008 (No. 1) [F2008L03834] [13 October 2008]
NPF GD Direction No. 03 - Gear Determination [F2006L02448]	7 September 2006	Clause 3: amend to clarify intent of the preamble	NPF GD Determination No. 05 - Gear Determination [F2010L02144] [19 July 2010]
Primary Industries Levies and Charges Collection Amendment Regulations 2001 (No.5) [Statutory Rules 2001 No.235] [F2001B00315]	2 November 2001	Amend to provide for merits review of decisions to refuse to grant or continue exemptions for lodging quarterly levy returns for farmed prawns	Primary Industries Levies and Charges Collection Amendment Regulations 2008 (No. 4) [Select Legislative Instrument 2008 No. 224] [F2008L04490] [28 November 2008]
Primary Industries Levies and Charges Collection Amendment Regulations 2003 (No.8) [Statutory Rules 2003 No.222] [F2003B00233]	13 October 2003	Amend to include a cross reference from the export wheat charge to regulation 12 that indicates the retention periods for records	Primary Industries Levies and Charges Collection Amendment Regulations 2008 (No. 4) [Select Legislative Instrument 2008 No. 224] [F2008L04490] [28 November 2008]

Instrument	Date of undertaking	Undertaking	Implemented by
Attorney-General's Department			
Customs Regulations (Amendment) [Statutory Rules 1998 No. 38] [F1998B00034]	7 July 1998	Amend 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))	Customs Amendment Regulations 2009 (No. 1) [Select Legislative Instrument 2009 No. 91] [F2009L02120] [4 June 2009] [The regulations were repealed following the termination of the Manufacturing in Bond Scheme]
Customs Act 1901 - Infringement Notice Guidelines (2006) [F2006L01860]	4 September 2006	Amend the <i>Customs Act 1901</i> to include in the list of matters that must be included in an infringement notice the statement that a person cannot be prosecuted if the fine is paid within 28 days of the service of the notice	<i>Customs Amendment (Enhanced Border Controls and Other Measures) Act 2009</i> [22 May 2009]
Department of Broadband, Communications and the Digital Economy			
Australian Postal Corporation Amendment Regulations 2008 (No. 1) [Select Legislative Instrument 2008 No. 25] [F2008L00792]	6 June 2008	Amend paragraph 3H(b) to clarify that the quarantine inspection will be carried out by the quarantine inspection officer	Australian Postal Corporation Amendment Regulations 2009 (No. 1) [Select Legislative Instrument 2009 No. 79] [F2009L01620] [14 May 2009]

Instrument	Date of undertaking	Undertaking	Implemented by
Broadcasting Services (Anti-Terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2006 [F2006L00871]; and Broadcasting Services (Anti-Terrorism Requirements for Open Narrowcasting Television Services) Standard 2006 [F2006L00870]	5 September 2006	Amend the standards to replace the expression 'terrorist organisation' with 'listed terrorist' to provide narrowcast broadcasters with greater certainty when determining whether a program will breach the standards	Broadcasting Services (Anti-Terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2008 [F2008L04444] [20 November 2008]; and Broadcasting Services (Anti-Terrorism Requirements for Open Narrowcasting Television Services) Standard 2008 [F2008L04443] [20 November 2008]
Department of Education, Employment and Workplace Relations			
Higher Education Support Act 2003 - Commonwealth Scholarships Guidelines (Education) 2010 (DEEWR) [F2010L00696]	24 June 2010	Amend subclause 2.10 to ensure that the terms 'Indigenous Enabling CECS' and 'scholarship period' are consistently defined	Higher Education Support Act 2003 - Commonwealth Scholarships Guidelines (Education) 2010 - Amendment No. 1 [F2010L01875] [16 June 2010]
Higher Education Support Act 2003 - Other Grants Guidelines (Research) 2008 (DIISR) [F2008L04398]	16 March 2009	Amend the guidelines to clarify the meaning of the indemnity provisions in sub-clause 6.3.	Higher Education Support Act 2003 - Other Grants Guidelines (Research) 2009 (DIISR) [F2009L03950] [24 September 2009]
Department of Families, Housing, Community Services and Indigenous Affairs			
Family Assistance (Public Interest Certificate Guidelines) (FaHCSIA) Determination 2008 [F2008L01977]	16 September 2008	Amend paragraph 11(c) of the guidelines to remove the reference to 'an incorrectly held opinion'	Family Assistance (Public Interest Certificate Guidelines) (FaHCSIA) Determination 2010 [F2010L01846] [25 June 2010]

Instrument	Date of undertaking	Undertaking	Implemented by
Social Security (Public Interest Certificate Guidelines) (FaHCSIA) Determination 2008 [F2008L01976]	16 September 2008	Amend paragraph 11(c) of the guidelines to remove the reference to 'an incorrectly held opinion'	Social Security (Public Interest Certificate Guidelines) (FaHCSIA) Determination 2010 F2010L01849 [25 June 2010]
National Rental Affordability Scheme Regulations 2008 [Select Legislative Instrument 2008 No. 232] [F2008L04484]	10 March 2009	Amend the regulations to provide for merits review of decisions made under regulations 22, 28 and 30(1)	National Rental Affordability Scheme Amendment Regulations 2009 (No. 1) [Select Legislative Instrument 2009 No. 133] [F2009L02494] [24 June 2009]
Department of Health and Ageing			
Australian Sports Anti-Doping Authority Regulations 2006 [Select Legislative Instrument 2006 No. 47] [F2006L00765]	26 April 2006	Amend the regulations to specify a more precise definition of 'athlete'; and require notification of other persons if ASADA asks an athlete who is a minor to provide a sample or to inform ASADA of their location	National Anti-Doping Scheme Amendment Instrument 2008 (No. 001/008) [F2008L03530] [23 September 2008]
Health Insurance (Gippsland and South Eastern New South Wales Mobile MRI Trial) Determination HS/05/2007 [F2007L03671]	29 April 2008	Amend the determination to remove specification 'as in force from time to time' from the definition of 'funding agreement'	Health Insurance (Gippsland and South Eastern New South Wales Mobile MRI Trial) Determination 2008 F2008L03033 [5 August 2008]
Department of Immigration and Citizenship			
Migration Legislation Amendment Regulations 2009 (No. 2) [Select Legislative Instrument 2009 No. 116] [F2009L02376]	16 September 2009	Amend regulation to ensure that it achieves the policy intent that non-citizens be able to benefit from regulation 2.20B whether or not they are immigration cleared	Migration Amendment Regulations 2009 (No. 13) [Select Legislative Instrument 2009 No. 289] [F2009L04027] [29 October 2009]

Instrument	Date of undertaking	Undertaking	Implemented by
Department of Infrastructure and Transport			
Air Navigation Amendment Regulations 1998 (No.1) [Statutory Rules 1998 No.321] [F1998B00339]	9 March 1999	Clarify the safeguards for identity cards (to be included in a note)	Undertaking made redundant by repeal of regulations by Air Navigation Amendment Regulations 2009 (No. 2) [Select Legislative Instrument 2009 No. 274] [F2009L03775] [10 October 2009]
Civil Aviation Order 82.6 Amendment Order (No. 1) 2007 [F2007L02608]	20 November 2007	Amend certain parts of the order to expressly require that CASA's approval be given in writing	Civil Aviation Order 82.6 Amendment Order (No. 1) 2008 [F2008L01742] [19 May 2008]
CASA 516/07 - Instructions - RNAV (RNP-AR) approaches and departures [F2007L04645]	14 May 2008	Amend the instrument to remove the term 'without fear or favour' in relation to the completion of incident forms	CASA 251/08 - Instructions - RNAV (RNP-AR) approaches and departures [F2008L01327] [22 May 2008]
Marine Orders - Part 28: Operations standards and procedures, Issue 3 (Order No. 4 of 2009) [F2009L03639]	12 January 2010	Amend Part 28 to require that watchkeeping duties records must be kept for a specified period	Marine Orders - Part 28: Operations standards and procedures, Issue 3 - Amendment (Order No. 2 of 2010) [F2010L00734] [24 March 2010]
Department of Innovation, Industry, Science and Research			
National Trade Measurement Regulations 2009 [Select Legislative Instrument 2009 No. 233] [F2009L03479]	27 November 2009	Amend the regulations to protect a licensee of a weighbridge from strict liability offences where circumstances are beyond their control	National Trade Measurement Amendment Regulations 2010 (No. 1) [Select Legislative Instrument 2010 No. 180] [F2010L01784] [29 June 2010]

Instrument	Date of undertaking	Undertaking	Implemented by
Department of Resources, Energy and Tourism			
Offshore Petroleum and Greenhouse Gas Storage (Management of Greenhouse Gas Well Operations) Regulations 2010 [Select Legislative Instrument 2010 No. 28] [F2010L00441]	26 March 2010	Amend regulations to provide for a time limit of 30 days for decisions concerning the acceptance, rejection or variation of well operations management plans or the acceptance or rejection of a titleholder's objection	Offshore Petroleum and Greenhouse Gas Storage (Resource Management and Administration) Regulations 2011 [Select Legislative Instrument 2011 No. 54] [F2011L00647] [21 April 2011]
Offshore Petroleum (Safety) Regulations 2009 [Select Legislative Instrument 2009 No. 382] [F2009L04578]	2 March 2010	Amend the regulations to split subregulation 4.22(2) into two offences: one for lack of qualifications to which strict liability would be applied and one for lack of competency (not strict liability)	Offshore Petroleum (Safety) Amendment Regulations 2010 (No. 1) [Select Legislative Instrument 2010 No. 122] [F2010L01496] [3 June 2010]
Department of Sustainability, Environment, Water, Population and Communities			
Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2009 (No. 1) [Select Legislative Instrument 2009 No. 4] [F2009L00224]	18 August 2009	Amend regulation 111 to insert a specific and unambiguous phrase relating to the strict liability offence of 'handling a refrigerant'	Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulations 2010 (No. 1) [Select Legislative Instrument 2010 No. 64] [F2010L00945] [14 April 2010]
Sydney Harbour Federation Trust Amendment Regulations 2009 (No. 1) [Select Legislative Instrument 2009 No. 191] [F2009L02985]	22 October 2009	Amend the regulations to specifically exclude guide and hearing dogs from specified offences	Sydney Harbour Federation Trust Amendment Regulations 2010 (No. 1) [Select Legislative Instrument 2010 No. 48] [F2010L00746] [24 March 2010]

Instrument	Date of undertaking	Undertaking	Implemented by
The Treasury			
Superannuation Industry (Supervision) Amendment Regulations 2007 (No 5) [Select Legislative Instrument 2007 No. 343] [F2007L03906]	28 April 2008	Amend regulations to remove retrospective commencement of certain items; and to ensure retrospective operation of other item does not disadvantage any person other than the Commonwealth	Superannuation Industry (Supervision) Amendment Regulations 2007 (No. 5) Amendment Regulations 2008 (No. 1) Select Legislative Instrument 2008 No. 133] [F2008L02174] [24 June 2008]; and Superannuation Industry (Supervision) Amendment Regulations 2008 (No. 2) [Select Legislative Instrument 2008 No. 134] [F2008L02173] [24 June 2008]
Department of Veterans' Affairs			
Treatment Principles (Australian Participants in British Nuclear Tests) 2006 - Removal of Prior Approval under the Rehabilitation Appliances Program) Instrument 2007 [F2007L03676]	28 April 2008	Amend part 11 of the principles to require prior approval to be given in writing	Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (Incorporated Documents Update) Instrument 2008 (No. R17/2008) [F2008L03189] [15 August 2008]

Table 2: Undertakings outstanding at the end of the 42nd Parliament

Instrument	Date of undertaking	Undertaking
Department of Agriculture, Fisheries and Forestry		
Export Control (Animals) Amendment Order 2006 (No. 1) [F2006L02383]	13 September 2006	Amend subsection 3.07(4) to clarify that a notice may be subject to conditions Amend sections 3.13 and 2.51 to provide for merits review of a decision concerning the costs that an exporter is required to pay
Quarantine Service Fees Amendment Determination 2009 (No. 2) [F2009L02996]	25 October 2009	Amend section 7C to prescribe factors to guide DAFF secretary when exercising discretion under section 7C(5) relating to forfeiture of a deposit for services
Attorney-General's Department		
Australian Federal Police Amendment Regulations 2000 (No.2) [Statutory Rules 2000 No. 138]	28 September 2000	Amend the regulations to clarify from whom salary deductions are to be made for judgment debts
Auscheck Regulations 2007 [Select Legislative Instrument 2007 No. 137] [F2007L01570]	4 October 2007	Amend the note to regulation 11 to include a reference to the Cost Recovery Impact Statement that was prepared during the making of the regulations
Customs (Prohibited Exports) Amendment Regulations 2010 (No. 1) [Select Legislative Instrument 2010 No. 15] [F2010L00538]	3 June 2010	Amend the regulations to limit the authorisation to give permissions for the import and export of arms or related matériel to or from Eritrea to senior departmental employees

Instrument	Date of undertaking	Undertaking
Customs (Prohibited Imports) Amendment Regulations 2010 (No. 1) [Select Legislative Instrument 2010 No. 14] [F2010L00540]	3 June 2010	Amend the regulations to limit the authorisation to give permissions for the import and export of arms or related matériel to or from Eritrea to senior departmental employees
Department of Education, Employment and Workplace Relations		
Student Assistance (Public Interest Certificate Guidelines) Determination 2008 [F2008L01262]	16 September 2008	Amend paragraph 10(c) of the guidelines to remove the reference to 'an incorrectly held opinion'
Department of Families, Community Services and Indigenous Affairs		
Aboriginal Land Grant (Jervis Bay Territory) By-laws 2005 [F2005L04071]	23 March 2006	Amend to: Clarify the position with regard to the return of confiscated items Clarify scope of 'commercial activities' Require wardens to produce an identity card Clarify the provision concerning the keeping of dogs and cats within the community
Disability Services (Eligible Services) Approval (FaHCSIA) 2008 [F2008L01381]	15 August 2008	Amend section 5 to make the delegation powers consistent with those provided for in section 33 of the <i>Disability Services Act 1986</i>
Department of Health and Ageing		
Therapeutic Goods Amendment Regulations 2003 (No.5) [Statutory Rules 2003 No. 301] [F2003B00315]	11 March 2004	Amend the regulations to clarify the meaning of 'narrowcast transmission' in regulation 5BA; and the terms 'special interest groups' and 'programs of limited appeal'

Instrument	Date of undertaking	Undertaking
Therapeutic Goods Amendment Regulations 2009 (No. 6) [Select Legislative Instrument 2009 No. 374] [F2009L04018]	15 March 2010	Amend paragraph 41C(1)(d) to remove 'inefficiency as a ground for the termination of advisory board members
Department of Infrastructure and Transport		
Air Navigation Amendment Regulations 2009 (No. 1) [Select Legislative Instrument 2009 No. 23] [F2009L00564]	6 April 2009	Amend regulation 18 to require the Secretary of the Department of Infrastructure and Transport to provide a statement of reasons for a decision to refuse an application for an international airline licence
Airports (Environment Protection) Amendment Regulations 1998 (No.3) [Statutory Rules 1998 No. 349] [F1998B00366]	16 March 1999	Amend the regulations to provide for a reasonable period for reporting (r. 6.03(1))
Civil Aviation Amendment Regulations 2002 (No.2) [Statutory Rules 2002 No. 167] [F2002B00162]	26 September 2002	Amend the strict liability offence in regulation 65.060 of the Civil Aviation Safety Regulations 1998 to include an appropriate defence
Civil Aviation Amendment Regulations 2003 (No.4) [Statutory Rules 2003 No. 189] [F2003B00198]	18 September 2003	Amend r. 173.175 of the Civil Aviation Safety Regulations 1998 to include similar provisions to r. 173.340(4) concerning information that CASA intends to rely on when considering appointments of certified designers or the Chief Designer

Instrument	Date of undertaking	Undertaking
Civil Aviation Safety Amendment Regulations 2008 (No. 1) [Select Legislative Instrument 2008 No. 192] [F2008L03483]	11 November 2008	Amend regulations 99.115 and 99.120 to clarify the intent of the provisions regarding the need for consent in obtaining a sample for drug and alcohol testing On 2 December 2008, the minister advised that CASA would consider the matter further when substantive amendments to regulations were next made
Manual of Standards Part 139H - Standards Applicable to the Provision of Aerodrome Rescue and Fire Fighting Services [F2005B00290]	14 August 2003	Amend r. 139.875 of the Civil Aviation Safety Regulations 1998 to require records to be kept for a maximum of seven years to align with Airservices Australia National Operating Standard Document 001
Marine Orders - Part 6: Marine Radio Qualifications, Issue 5 (Order No. 5 of 2000) [F2006B0027]	27 October 2000	Amend to clarify the intent of paragraph 8.4.1 and to remove the reference to paragraph 8.4.2 being a penal provision
Department of Resources, Energy and Tourism		
Offshore Petroleum and Greenhouse Gas Storage (Management of Greenhouse Gas Well Operations) Regulations 2010 [Select Legislative Instrument 2010 No. 28] [F2010L00441]	26 March 2010	Amend subregulations 3.2(1) and 3.5(1) to provide for a time limit of 30 days for decisions concerning the acceptance, rejection or variation of well operations management plans or the acceptance or rejection of a titleholder's objection
The Treasury		
Excise Regulations (Amendment) [Statutory Rules 1995 No. 425] [F1996B03088]	16 May 1996	Amend the <i>Excise Act 1901</i> to provide for Administrative Appeals Tribunal review of decisions made under s. 61C of that Act

Appendix 3

Guideline on consultation

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

Guideline for preparation of explanatory statements: consultation

Role of the committee

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

Purpose of guideline

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

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

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

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

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

Requirements of the Legislative Instruments Act 2003

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

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

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

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

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

Describing the nature of consultation

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

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

Method and purpose of consultation

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

Bodies/groups/individuals consulted

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

Issues raised in consultations and outcomes

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

Explaining why consultation has not been undertaken

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

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

Specific examples listed in the Act

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

Timing of consultation

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

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

Seeking further advice or information

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

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