The Hon. David Littleproud MP

Minister for Agriculture and Water Resources
Federal Member for Maranoa

Ref: MS18-001603

Senator John Williams
Chair
Senate Regulations and Ordinances Committee
Suite S.1.111
Parliament House
Canberra ACT 2600

- 4 SEP 2018

Dear Senator Williams

The Senate Standing Committee on Regulations and Ordinances (Committee) has requested further information about measures in the *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East) Order 2018* and the *Export Control (Animals) Amendment (Approved Export Programs and Other Measures) Order 2018*. The enclosure sets out my detailed response to the questions raised by the Committee.

I thank the Committee for their consideration of these instruments to improve the regulation of the export of livestock and promote improved animal welfare outcomes.

Yours sincerely

DAVID LITTLEPROUD MP

Enc: Response to a request for information from the Senate Standing Committee on Regulations and Ordinances

Parliament House, Canberra ACT 2600 Telephone: 02 6277 7630 Email: minister@agriculture.gov.au

Response to a request for information from the Senate Standing Committee on Regulations and Ordinances

The *Export Control (Animals) Amendment (Approved Export Programs and Other Measures) Order 2018*

Personal rights and liberties: privacy

The committee requests the minister's more detailed advice as to:

- **The nature of the personal information that may be published by the secretary pursuant to new section 1A.49 of the *Export Control (Animals) Order 2004* (inserted by item 11 of Schedule 1 to the instrument); and**
- **Why it is considered necessary and appropriate to allow the secretary to make this public.**

Section 1A.49 provides that the Secretary of the Department of Agriculture and Water Resources may publish records and reports that are made by accredited veterinarians or authorised officers in relation to approved export programs. An approved export program is a program of activities to be undertaken by an accredited veterinarian or an authorised officer for the purpose of ensuring the health and welfare of eligible live animals in the course of export activities.

The publication of records and reports relating to approved export programs encourages good animal welfare practices on livestock export voyages. It also provides assurance to farmers and members of the community about oversight of the health and welfare of exported live animals. Records and reports may include photographs and video footage.

The publication of material under the new section 1A.49 is important to promote transparency and demonstrate the Australian Government's commitment to promoting a culture focused on animal welfare outcomes. In practice, I expect that publication under this section is likely to only be in limited and exceptional circumstances, and only where it is considered necessary to protect animal welfare outcomes. Personal information may include names, for example, of livestock exporters, accredited veterinarians, stockpersons as well as persons in management and control of livestock export companies. This is intended to deter people from engaging in behaviour which puts the welfare of livestock at risk.

Through these amendments, the Australian Government is continuing to implement measures to improve the regulation of the export of livestock and promote improved animal welfare outcomes. The amendment supports the implementation of the recommendations in the *Independent Review of Conditions for the Export of Sheep to the Middle East during the Northern Hemisphere Summer* undertaken by Dr McCarthy (the McCarthy Review).

Retrospective effect

The committee requests the minister's advice as to whether any persons were, or could be, disadvantaged by the operation of subsection 7.11(a) of the *Export Control (Animals) Order 2004* (inserted by item 16 of Schedule 1 to the instrument); and if so, what steps have been or will be taken to avoid such disadvantage and to ensure procedural fairness for applicants.

Subsection 7.11(a) seeks to ensure that the amendments to the *Export Control (Animals) Order 2004* apply to applications for export permits and health certificates for livestock that had been made before commencement, but had not been decided before that time.

The reason for the retrospective effect of the instrument, in relation to applications for export permits and health certificates that had been made but not yet decided, is to ensure that animal welfare outcomes can be improved and implemented immediately on commencement.

One application was impacted by the commencement of this instrument. The Department of Agriculture and Water Resources (the department) worked closely with this applicant. Advising this applicant of additional information required to be included in their application and assisting them to understand the additional requirements ensured that there was no disadvantage and that there was procedural fairness.

As the regulator, the department is committed to engaging with the livestock export sector to promote compliant behaviour and improved animal welfare outcomes, in accordance with this instrument, which supports the implementation of the recommendations in the McCarthy Review. Through this instrument, the Australian Government is continuing to implement measures to improve the regulation of the export of livestock and promote improved animal welfare outcomes for livestock.

The *Australian Meat and Live-stock Industry (Export of Sheep by Sea to Middle East) Order 2018*

Merits review

The committee requests the minister's advice as to the characteristics of decisions made under section 14 of the instrument that would justify excluding merits review. The committee's assessment would be assisted if the minister's response expressly identified one or more of the grounds for excluding merits review set out in the Administrative Review Council's guidance document *What decisions should be subject to merit review?*

Section 14 of the instrument seeks to enable the Secretary to decide whether to grant an exemption from one or more provisions of the instrument in relation to a consignment of sheep after receiving an application from the holder of a sheep export licence.

A decision to grant or not grant an exemption is about determining the circumstances in which it is acceptable to exclude a consignment of goods from the requirements of the legislation. The department expects exporters to comply with the legislation, and does not foresee exemptions being granted except in exceptional circumstances.

The Secretary may only grant an exemption if he or she is satisfied that it is appropriate to do so. The Explanatory Statement to the instrument states that this reflects the importance of ensuring animal health and welfare is maintained if an exemption is granted, and that the circumstances that must be taken into account will be specific to the consignment to which the exemption relates and may be difficult to foresee. As such, it is difficult to articulate the characteristics of decisions made under section 14 of the instrument.

The Administrative Review Council's publication '*What decisions should be subject to merit review?*' (1999) indicates that decisions for which there is no appropriate remedy may be suitable to be excluded from merits review.

In circumstances where a consignment of sheep has already been loaded onto a vessel, merits review would not result in a suitable remedy. For example, if an exemption was not granted before sheep departed to the Middle East, the Secretary may subsequently grant an exemption if a vessel loaded with sheep is unable to first dock at Kuwait (as required by the instrument) due to an extreme and unforeseeable weather event that could compromise the welfare of the sheep. In these circumstances, the urgency to grant an exemption justifies the exclusion of merits review, as uncertainty could compromise the welfare of the sheep while the decision was being reviewed. In circumstances where an exemption is not granted before sheep are exported, the holder of an export licence is not prevented from making a new application for an exemption.

A decision to grant an exemption may also have implications beyond the interests of an individual exporter, including adversely impacting trading partners' confidence in the Australian Government's regulatory oversight of exported goods. This in turn may affect the interests of the export industry or a segment of that industry.

The purpose of the instrument is to impose additional conditions on holders of export licences who export sheep by sea to the Middle East. The instrument provides a legal basis for the implementation of several recommendations of the McCarthy Review.

The Hon Greg Hunt MP
Minister for Health

Ref No: MC18-018867

10 SEP 2018

Senator John Williams
Nationals Whip in the Senate
Parliament House
CANBERRA ACT 2600

Dear Senator John

I refer to your letter of 16 August 2018 on behalf of the Senate Regulations and Ordinances Committee, which has requested information about issues identified in relation to the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018* and the *Health Insurance (General Medical Services Table) Regulations 2018.*

With regard to the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2018*, the Committee has sought advice regarding whether refusal of an application for exemption made under clause 1.2.3 of Schedule 1 to the instrument would be subject to independent merits review; and if not, what characteristics of such a decision would justify its exclusion from merits review.

As noted by the Committee in its report, clause 1.2.3 provides exemptions from the capital sensitivity provisions contained within the instrument under which higher rates of Medicare reimbursement are provided for services performed on newer or upgraded equipment. Clause 1.2.2 provides for the new effective life age and maximum extended life age for specified types of diagnostic imaging equipment. For example, for ultrasound, computed tomography, mammography and angiography diagnostic imaging equipment, the new effective life age and maximum extended life age are 10 and 15 years respectively. Clause 1.2.3 of Schedule 1 provides for exemptions from capital sensitivity for (older) equipment used in regional and remote areas. While some exemptions are automatically applied such as those for diagnostic imaging equipment [including those upgraded equipment the age of which exceeds the maximum extended life for the equipment in outer regional, remote or very remote areas (refer to subclause 1.2.3 (3)], subclause 1.2.3(4) provides that the Secretary may grant exemptions in respect of diagnostic imaging equipment in inner regional areas, where the equipment is operated on a rare and sporadic basis, and provides crucial patient access to diagnostic imaging services.

Access to high quality and accurate diagnostic imaging services is crucial in the effective diagnosis of conditions, injuries and diseases. The purpose of the capital sensitivity provisions is to help ensure that patients have access to quality diagnostic imaging services by encouraging providers to regularly replace their older and outdated equipment with new or upgraded equipment. For example, newer computed tomography equipment is able to deliver less ionising radiation during the capture of images than older machines.

Taking into consideration the purpose of the capital sensitivity provisions, the exemption provisions in subclause 1.2.3(4) only apply in very strict and limited circumstances:

(a) the equipment is operated on a rare and sporadic basis; and
(b) it provides crucial patient access to diagnostic imaging services.

In assessing criterion (a), the Secretary or the delegate of the Secretary takes into consideration the usage and number of patients accessing the diagnostic imaging services. In relation to criterion (b), the applicant must provide evidence that the equipment provides crucial patient access to the diagnostic imaging services in which the equipment is used. In addition to these strict criteria, the relevant proprietor of the equipment may only apply if they satisfy the threshold criteria set out in subclause 1.2.3(6). Subclause 1.2.3(6) provides that a relevant proprietor may only apply for an exemption under subclause (4) if the age of the diagnostic imaging equipment exceeds the maximum extended life age for the diagnostic equipment by less than three years and the matters set out in paragraph (4)(a) or (4)(b) all apply. As the extension on the possible use of the equipment after the specified maximum extended life age is limited to less than three years, this also limits the number of proprietors that can apply for exemption. At the same time it is also noted that applying for an exemption and/or reconsideration under subclause 1.2.3(4) and (5), respectively allows the proprietor to continue to provide diagnostic imaging services without the capital sensitivity restrictions applying to the equipment (refer to clause 1.2.1). This is because the exemption from capital sensitivity applies where the application has been made under subclause 1.2.3(4) or (5) and a decision has not been made by the Secretary or the delegate of the Secretary.

These criteria, together with the explicit requirements in clause 1.2.5 (Delegation) that applications need to be assessed by delegated senior executive officers, reflect the public health benefit importance of the capital sensitivity provisions as noted earlier and the stringent decision making statutory requirements applying to the granting of these exemptions.

Since the introduction of these provisions in 2011, my Department has recorded 58 applications for exemptions under subclause 1.2.3(6) of which 34 were approved and 24 were not approved. Of the applications that were not approved, there were two reconsiderations.

In relation to reconsideration decisions, I reiterate that the internal review process of my Department applies principles of administrative law to ensure the decision is reconsidered in a fair, independent and robust manner. When an application is refused and the applicant makes a request for reconsideration, another, more senior officer will review the decision against the exemption criteria in clause 1.2.3(4). To enhance confidence in the independence of the reviewing officer and the internal review, steps are taken to ensure that the initial decision-maker is not involved in the reconsideration process.

The reviewing senior officer reconsiders the merits of the application in regards to:

- the applicant's initial application and the justification for meeting each criterion; and
- the reasoning of the applicant in asking for a reconsideration of the decision and any new material provided by the applicant as part of the reconsideration process.

Given that the independent internal reviews are being carried out by a senior executive officer, the small number of reconsideration applications that my Department has received since 2011, and the stringent criteria that the applicant must meet for the delegate of the Secretary to grant an exemption, I am of the view that the current statutory review provisions are consistent with the purpose of the capital sensitivity provisions.

With regard to the *Health Insurance (General Medical Services Table) Regulations 2018*, the Committee has sought advice as to the manner in which the Australian Type 2 Diabetes Risk Assessment Tool is incorporated in the instrument. The Committee has also requested that the instrument or its explanatory statement be amended to include this information.

I note that it is not clear in the instrument or the accompanying explanatory statement that the Australian Type 2 Diabetes Risk Assessment Tool is incorporated as in force at the commencement of the instrument. This was an administrative oversight that will be corrected in line with the example cited by the Committee in *Delegated legislation monitor 8 of 2018*. The *Health Insurance (General Medical Services Table) Regulations 2018* will be amended accordingly and the accompanying explanatory statement will also make the manner of the incorporation clear.

Thank you for bringing these matters to my attention.

Yours sincerely

Greg Hunt

Senator the Hon Michaelia Cash
Minister for Small and Family Business, Skills and Vocational Education

Our Ref: MC18-004285

Senator John Williams (Chair)
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Dear Senator Williams

I refer to the email dated 23 August 2018 from the Secretary of the Senate Regulations and Ordinances Committee (the Committee) to the then Assistant Minister for Vocational Education and Skills, the Hon Karen Andrews MP, concerning the *National Vocational Education and Training Regulator Amendment (Enforcement and Other Measures) Regulations 2018* (the Regulation).

The Committee has requested advice as to the incorrect classification of the Regulation as exempt from disallowance.

The Department of Education and Training advises me that the incorrect classification of the Regulation as exempt from disallowance was an isolated clerical error that occurred during the lodging process of the Regulation on the Federal Register of Legislation. The error was corrected by the department as soon as the Office of Parliamentary Counsel brought it to the department's attention.

As noted by the Committee, the correct classification of instruments is of utmost importance to ensure the effective oversight of delegated legislation by Parliament. The department assures me that its officers involved with the classification of instruments are aware of the importance of correct classification and the department has implemented changes to its processes relating to the classification of instruments to ensure such an error does not occur again.

I thank the Committee for raising this issue and providing me with an opportunity to respond.

Yours sincerely

Senator the Hon Michaelia Cash
04 / 09 / 2018

Parliament House Canberra ACT 2600 Telephone (02) 6277 7320 Fax (02) 6273 4115

The Hon Michael McCormack MP

Deputy Prime Minister
Minister for Infrastructure, Transport and Regional Development
Leader of The Nationals
Federal Member for Riverina

Ref: MC18-006350

31 AUG 2018

Senator John Williams
Chair
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Dear ~~Senator Williams~~ John

Thank you for your letter of 16 August 2018 on behalf of the Senate Standing Committee on Regulations and Ordinances (the Committee), regarding the Committee's request for further information about scrutiny issues identified in relation to particular Civil Aviation and Marine Orders. My response relates to the Committee's comments as outlined in the Delegated legislation monitor No.8 of 2018.

Civil Aviation Order 95.32 (Exemption from Provisions of the Civil Aviation Regulations 1988 — Weight-Shift-Controlled Aeroplanes and Powered Parachutes) Instrument 2018

I have sought advice from the Civil Aviation Safety Authority (CASA) about the concerns raised by the Committee on the manner of incorporation and access to incorporated documents in relation to this instrument, in particular the 'LSA standards' as defined in regulation 21.172 of the *Civil Aviation Safety Regulations 1988* as standards issued by the American Society for Testing and Materials for aeroplanes defined as 'light aircraft'.

CASA will make the relevant sections of the documents available, in its Canberra or regional offices, by arrangement, and for reading only, to any aircraft operator who is affected by the direction instrument, or to any interested person.

I am advised CASA will lodge a replacement explanatory statement explaining how and where the documents can be viewed.

The Hon Michael McCormack MP
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Marine Order 501 (Administration — national law) Amendment Order 2018

I have sought advice from the Australian Maritime Safety Authority (AMSA) about the concerns raised by the Committee on the manner of incorporation and access to incorporated documents in relation to this instrument, in particular:

- National Law – Marine Surveyors Accreditation Guidance Manual 2014
- National Standard for Commercial Vessels (NSCV)
- Uniform Shipping Laws Code (USL Code)

Section 164 of schedule 1 of the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (national law) allows Marine Orders to make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in any written instrument in force or existing from time to time, including but not limited to the NSCV and the USL Code. Subsection 159(2) and section 163 of the national law allow Marine Orders to prescribe standards for the purpose of the national law.

Accordingly, Section 6 of Marine Order 501 (Administration - national law) 2013 prescribes the National Law – Marine Surveyors Accreditation Guidance Manual 2014 , specific parts of the NSCV, and the USL Code as existing from time to time as standards for the purpose of the national law.

AMSA has advised that each of these documents is freely available online on AMSA's website at www.amsa.gov.au.

I am advised AMSA will lodge a replacement explanatory statement amended to include this information.

Marine Order 507 (Load line certificates — national law) 2018

The Committee has sought advice in relation to the justification for reversing the burden of proof in subsections 15(4) and (5) and in subsections 16(4), (5) and (6) of the instrument, including why it is considered necessary to reverse the legal, rather than merely the evidential, burden.

I understand the relevant subsections have been retained from the previous version of this Marine Order. The relevant offence and defence provisions are therefore not new.

The Australian Government's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* provides that a matter should only be included in an offence-specific defence (as opposed to being specified as an element of the offence) where it is peculiarly within the knowledge of the defendant and it would be significantly more difficult for the prosecution to disprove than for the defendant to establish the matter.

The purpose of a vessel's load line is to identify the legal limit to which a ship may be safely loaded in order to maintain buoyancy. These markings help ensure that a vessel is not overloaded and all persons, including crew and shore based personnel, involved in the loading and unloading of the vessel are aware the vessel's stability. Awareness of a vessel's stability could help prevent the vessel from becoming unseaworthy and mitigate multiple risks including loss of the vessel, loss of life and threats to the marine environment.

Paragraphs 15(1)(c)(iii) and 16(1)(c)(iii) of the instrument create strict liability offences for the master and owner of a vessel for operating a vessel with the load line submerged.

Subsections 15(4) and 16(5) set out possible defences for an owner or master respectively on the basis the load line was submerged only because the vessel was listing (leaning) in the water. Similarly, subsections 15(5) and 16(6) set alternative possible defences on the basis the load line was submerged only because of the density of the water.

The reversal of legal and evidential burden is appropriate for these offences because the operational circumstances which may lead to a vessel's load line being submerged are peculiarly within the knowledge of the owner or master. This defence is only relevant if a prosecution can first establish that an offence has been committed.

For example, the owner or master are uniquely positioned to explain and prove why their vessel may have been listing legitimately as a result of uneven loading, flooding or damage. Similarly, the owner or master are uniquely positioned to explain and prove that local variations in water salinity, type, or temperature at the specific time and location may have caused their vessel's load line to become submerged.

Subsection 16(4), sets out a possible defence for an owner from the same offence on the basis that the owner had appropriately caused a load line mark to be displayed and had no means of knowing that it was no longer displayed. Owners may also be the operator of their vessels, owners should be aware of their obligations under the law and should take all reasonable steps to ensure compliance with the law.

The reversal of legal and evidential burden is appropriate because it is peculiarly within the knowledge of an owner whether or not they have taken any and all reasonable steps to ensure compliance with the load line requirements, and that they had no means of knowing the load line mark had been removed. Again, this defence is only relevant if a prosecution can first establish that an offence has been committed.

I am advised AMSA will lodge a replacement explanatory statement amended to include this information.

Thank you for bringing your concerns to my attention and I trust this is of assistance.

Yours sincerely

Michael McCormack

The Hon Michael McCormack MP

Deputy Prime Minister
Minister for Infrastructure, Transport and Regional Development
Leader of The Nationals
Federal Member for Riverina

Ref: MC18-006447

05 SEP 2018

Senator John Williams
Chair
Standing Committee on Regulations and Ordinances
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Dear ~~Senator Williams~~ John

Thank you for the Committee's letter of 23 August 2018 regarding concerns raised in the committee's Delegated Legislation Monitor No 9 of 2018, in relation to the Civil Aviation Legislation Amendment (Part 149) Regulations 2018 [F2018L010].

I have sought advice from the Civil Aviation Safety Authority (CASA) about the concerns raised by the Committee regarding the evidential burden of proof being placed on the defendant in relation to sections 149.015, 149.435 and 149.440 440 which relate to the issue of authorisations and aviation administration functions by an Approved Self-administering Organisation (ASAO). The penalties for offences, such as the issue of authorisations or undertaking other tasks without being properly authorised to do so, is 50 penalty units.

The regulations set out a defence that the offence does not apply if the person is permitted under the civil aviation regulations to perform the function or if, before the new authorisation is given, CASA has given approval to the ASAO to issue the new authorisation.

As these provisions express matters that could be considered excuses for not complying with these regulations, a defendant who wishes to rely on the relevant matter bears an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists.

The Committee has requested the justification for reversing the evidential burden of proof. CASA has advised that a prosecution would require a reasonable belief that there was no authorisation, which would be difficult for a prosecutor to establish. The penalties for the offences are low, and reversal of the burden of proof in relation to the existence of an authorisation is reasonable in order to ensure the effectiveness of these provisions.

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CASA considers that the reversal of the evidential burden of proof is considered to be appropriate, having regard to the principles in the Attorney-General's Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers because it would be disproportionately more difficult and costly, taking into account the relatively low penalty, for the prosecution to prove that an accused did something without being authorised to do so than it would be for a person to raise evidence of the defence, that is, that they held the appropriate authorisation.

Thank you for bringing your concerns to my attention and I trust this is of assistance.

Yours sincerely

Michael McCormack

The Hon Christian Porter MP
Attorney-General

MC18-008585

31 AUG 2018

Senator John Williams
Chair
Senate Regulations and Ordinances Committee
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Dear Chair John

I am writing in response to the letter from the Committee Secretary of the Standing Committee on Regulations and Ordinances, Ms Anita Coles, on 16 August 2018. The letter refers to the Committee's Delegated Legislation Monitor, 8 of 2018 (the Monitor) and seeks my advice about matters raised concerning the *Court and Tribunal Legislation Amendment (Fees and Juror Remuneration) Regulations 2018* (the Regulations).

The Regulations implement:

- a 17.5 per cent increase in High Court fees and a 3.9 per cent increase in fees for the Federal Court and for general law matters in the Federal Circuit Court, from 1 July 2018; and
- an increase in the frequency of fee indexation with reference to the Consumer Price Index for the High Court of Australia, Federal Court of Australia, Federal Circuit Court of Australia, the Administrative Appeals Tribunal and the National Native Title Tribunal, from biennial to annual indexation.

In the Monitor, the Committee sought my advice on the basis for the calculation of the increased fees, how this relates to cost recovery for the provision of documents and services by the courts, and, to the extent that the increased fees exceed cost recovery, the legislative authority relied upon.

Firstly, it is worth noting that, fees collected by federal courts and tribunals form part of the Commonwealth's consolidated revenue. This characterises the approach of the Commonwealth that (outside true cost recovery organisations) revenue is not hypothecated to fund dedicated expenditure. For this reason, the revenue generated by particular fee increases should not be described as recovering the costs of providing particular court services.

Notwithstanding this, the cost of operating federal courts and tribunals is significantly higher than the revenue that is generated from fees, including the anticipated revenue from these fee increases. In 2018-19, Commonwealth funding to the federal courts and tribunals is estimated at around $465 million, in comparison to anticipated total fee revenue of around $125 million, including the fee increases in the Regulations. If this were to be considered as a true cost recovery regime, this would amount to a cost

recovery rate of around 27 per cent. Further, the increased fees in the High Court, Federal Court and Federal Circuit Court does not materially alter that, as the additional revenue expected to be raised in 2018-19 is around $1.6 million.

The Productivity Commission's 2014 report into *Access to Justice Arrangements* acknowledged that as a share of the costs recouped by government, court fees in Australia are relatively low, and noted that cost recovery in most courts is between 20 to 35 per cent.

With regard specifically to the change in the frequency of indexation from biennial to annual, this will allow fees to better align with increased costs in the provision of services provided by courts and tribunals due to inflation. As such, it does not represent an increase in fees, or in cost recovery, in real terms.

Thank you for the Committee's correspondence on this matter.

Yours sincerely

The Hon Christian Porter MP
Attorney-General

SENATOR THE HON MATHIAS CORMANN
Minister for Finance and the Public Service
Leader of the Government in the Senate

REF: MS18-001336

Senator John Williams
Chair
Senate Standing Committee on
Regulations and Ordinances
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Dear Senator Williams

I refer to the Committee Secretary's letter dated 16 August 2018 sent to my office seeking further information about the item for Rural and Remote Health Infrastructure Projects that is in the following instrument:

- the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2018.*

The Minister for Health, the Hon Greg Hunt MP, who is responsible for the item in the instrument, has provided the attached response to the Committee's request. I trust this advice will assist the Committee with its consideration of the instrument. I have copied this letter to the Minister for Health.

Thank you for bringing the Committee's comments to the Government's attention.

Kind regards

Mathias Cormann
Minister for Finance and the Public Service

6 September 2018

Attachment

Provided by the Minister for Health, the Hon Greg Hunt MP

Response to request from the Senate Standing Committee on Regulations and Ordinances in relation to item 292 in the *Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2018*

Committee query:
The committee requests the Minister's advice regarding whether new grant decisions made under the Rural and Remote Health Infrastructure Projects activity will be subject to independent merits review; and if not, what characteristics of those decisions justify their exclusion from the merits review.

The purpose of the RRHIP is to provide the flexibility to deliver the current projects originally commenced under the Health and Hospitals Fund (HHF) and the authority to vary the project scope without modifying the program objectives. The purpose of the RRHIP is therefore not to provide an additional competitive grant opportunity, but to provide a path for existing projects to be completed. The scope of the RRHIP does not involve decisions concerning new grant recipients.

RRHIP will continue to provide funding to support the delivery of existing health infrastructure but with increased flexibility to address specific regional, rural and remote needs. RRHIP will run over four years from 2018-19 to 2021-22.

The objectives of the RRHIP are to:

- deliver improved health infrastructure in regional, rural and remote areas; and
- improve regional and remote health outcomes.

The expected outcomes of the RRHIP include:

- enhanced health care facilities, directly benefiting local communities; and
- improved access to better and more timely health care, delivered closer to home.

Due to the abolition of the HHF Program Board, the existing HHF projects no longer have the flexibility to be adjusted to allow them to continue under the HHF. The RRHIP was announced in the 2018-19 Budget for the sole purpose of continuing the existing HHF projects which could not continue without this flexibility. These projects have already commenced, with the majority of these projects also commencing construction activity. As such it would not be value for money to open a grant opportunity up to new applicants to start projects from scratch. It is therefore intended to offer the grants only to the existing recipients of the original HHF projects. The direct source arrangements are considered appropriate as these grants are to enable the completion of projects already commenced under the HHF.

The Hon Sussan Ley MP

Assistant Minister for Regional Development and Territories
Federal Member for Farrer

Ref: MC18-006390

Senator John Williams (Chair)
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Dear ~~Senator Williams~~ John

Thank you for your correspondence of 16 August 2018 regarding Pay Parking Fees Rule 2018 and Parking Permit Fee Rules 2018.

The Senate Regulations and Ordinances Committee has requested clarification as to the basis on which the pay parking fees on National Land have been calculated. There are two instruments in question; the Pay Parking Fees Rule 2018 and the Parking Permit Fees Rule 2018 (the Rules). Both Rules came into effect on 1 July 2018.

Pay Parking Fees Rule 2018 Schedule 1 sets an hourly fee of $2.90 and a daily fee of $14.00. Schedule 2 to that instrument sets a fee of $67.50 for pre-paid tickets allowing parking for five days. Parking Permit Fees Rule 2018 Schedule 1 prescribes a rate of $14.00 per parking space per business day for construction and special event permits.

The Australian Government introduced pay parking on National Land on 1 October 2014, through the *National Land (Road Transport) Ordinance 2014 (Cth)* ('the Ordinance'), which established the pay parking scheme on National Land and set out administrative arrangements. The Ordinance applies ACT Laws (generally about paid parking) to National Land. Under the Ordinance, the Minister has the authority to determine fees with application of section 96 (determination of fees, charges and other amounts) of the *Road Transport (General) Act 1999 (ACT)*.

Prior to the introduction of pay parking on 1 October 2014, it was agreed by the Australian Government that pricing would be set at the then current market rate, based on the rates of nearby parking areas managed by the ACT government. This approach is consistent with the Resource Management Guideline 302 – Australian Government Charging Framework. This price point was utilised to ensure the incentive for commuters to encroach on National Land was removed, thereby maintaining accessibility to the national institutions.

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Between the introduction of pay parking in 2014 and the commencement of the Rules on 1 July 2018, fees for pay parking on National Land have remained unchanged. In comparison, ACT government pricing has increased annually. The current comparable ACT government parking rate is $13.90 per day. The determination of the 1 July 2018 fees maintains the original intent of the pay parking scheme on National Land being consistent with market rates.

Thank you for bringing your concerns to my attention and I trust this is of assistance

Yours sincerely

Sussan Ley

The Hon Christian Porter MP
Attorney-General

MC18-008590

31 AUG 2018

Senator John Williams
Chair
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Dear ~~Chair~~

I am writing in response to the letter from the Committee Secretary of the Standing Committee on Regulations and Ordinances, Ms Anita Coles, dated 16 August 2018. The letter refers to the Standing Committee's Delegated Legislation Monitor 8 of 2018 and seeks information about the incorporation of an international standard – ISO 10002-2006 *Customer Satisfaction – Guidelines for complaints handling in organisations* into the Privacy (Credit Reporting) Code 2014 (Version 2.0) (the CR Code). I am writing to provide the information requested by the Committee. I will write to you separately about the *Court and Tribunal Legislation Amendment [Fees and Juror Remuneration] Regulations 2018*.

On 29 May 2018 the acting Australian Information Commissioner approved the CR Code under subsection 26T(5) of the *Privacy Act 1988*. The varied instrument commenced on 1 July 2018. Paragraph 21.1 of this instrument incorporates into the law by reference the *ISO 10002-2006 Customer satisfaction—Guidelines for complaints handling in organizations*. This document had previously been incorporated by reference to the CR Code (Version 1.0), which commenced on 12 March 2014.

In accordance with the *Legislation Act 2003*, paragraph 21.1 of the CR Code (Version 2.0) refers to a 2006 publication in existence at the time the instrument commenced, rather than to a document existing from time to time. The Australian Information Commissioner has advised that new versions of this standard are released with the year of publication incorporated into the title. For instance, *ISO 10002-2006* has been successively superseded by *ISO 10002-2006 AMDT 1*, *ISO 10002-2014*, and *ISO 10002-2018*. However, paragraph 21.1 specifically refers to the 2006 version of the Standard.

ISO 10002-2006 is available for purchase by the public by visiting the SAI Global web shop at www.saiglobal.com. However, the Standard is also freely available at the National Library of Australia and at a number of public libraries, such as the State Libraries of New South Wales and Queensland. I am advised that the Office of the Australian Information Commissioner will source a copy of the Standard and make it available for inspection.

The Commissioner will lodge an amended explanatory statement (ES) with OPC for this instrument (which will be registered and tabled in Parliament in due course). The amended ES will include the following in relation to paragraph 21.1:

- a reference to sections 26M and 26T(5) of the Privacy Act, which, consistent with the Legislation Act, provide the authority to incorporate *ISO 10002-2006* into the law by reference
- a description of *ISO 10002-2006* and of the manner in which *ISO 10002-2006* is incorporated by reference, which makes clear that the 2006 document applies; and
- information that *ISO 10002-2006* can be readily and freely accessed at certain named public libraries, and upon request through the Office of the Australian Information Commissioner.

I trust this information is of assistance.

Yours sincerely

The Hon Christian Porter MP
Attorney-General

The Hon. David Littleproud MP

Minister for Agriculture and Water Resources
Federal Member for Maranoa

Ref: MC18-029586

2 4 AUG 2018

Senator John Williams
Chair
Senate Standing Committee on Regulations and Ordinances
Suite S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Williams

I am writing in response to the letter dated 16 August 2018 from Ms Anita Coles, Secretary of the Senate Standing Committee on Regulations and Ordinances (the Committee), about the *Regional Investment Corporation Operating Mandate Direction 2018* (the Mandate).

The Committee has requested my advice as to whether decisions made by the Regional Investment Corporation (RIC) in relation to the granting of farm business loans are subject to merits review by an independent tribunal and, if not, the characteristics of the decisions that would justify excluding merits review.

I thank the Committee for its comments and enclose my response.

I trust that the information provided confirms the relevant measures in the Mandate are appropriate.

Yours sincerely

David Littleproud MP

Enc.

Parliament House, Canberra ACT 2600 Telephone: 02 6277 7520 Facsimile: 02 6273 4120 Email: minister@agriculture.gov.au

RESPONSE TO THE SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES, DELEGATED LEGISLATION MONITOR 8 OF 2018

REGIONAL INVESTMENT CORPORATION OPERATING MANDATE DIRECTION 2018 [F2018L00778]

Independent merits review in relation to the grant of farm business loans

> *The committee requests the minister's advice as to:*
>
> *- whether decisions made by the Regional Investment Corporation in relation to the grant of farm business loans are subject to merits review by an independent tribunal; and*
>
> *- if those decisions are not subject to such merits review, the characteristics of the decisions that would justify excluding merits review.*

Decisions made by the Regional Investment Corporation (RIC) on whether to grant farm business loans are subject to an internal review process within the RIC, rather than merits review by an independent tribunal. This approach reflects the governance arrangements of the RIC and its role in managing Commonwealth funds.

The RIC is a corporate Commonwealth entity with an independent expertise-based Board, whose role is to ensure the proper, efficient and effective performance of the RIC's functions. Section 11(1) of the *Regional Investment Corporation Operating Mandate Direction 2018* (the Mandate) requires the RIC to undertake all aspects of loan management in a prudential manner to minimise the risk of default. Allowing a tribunal to have authority over the RIC's decision to grant a loan may jeopardise the capacity of the Board to ensure the RIC is adequately managing the financial risk to the Commonwealth associated with granting a loan.

As stipulated in subsections 9(2) and 9(3) of the Mandate, the RIC can only offer farm business loans in accordance with certain loan specifications, and must be satisfied an applicant fulfils mandatory requirements before offering a farm business loan. These specifications and requirements include that the business is in financial need of a concessional loan, has the capacity to repay the loan, and is financially viable or has sound prospects of a return to financial viability. While a decision-maker's specialised expertise does not in and of itself justify the exclusion of merits review, the RIC is a unique position to determine if the granting of a loan meets the requirements set out in the Mandate. For example, as part of its consideration of loan applications, the RIC will undertake a commercial assessment of the business applying for a loan, with consideration given to the financial circumstances of the business and the outlook for the agricultural activities being undertaken. The RIC will also make its loan decisions in accordance with policies and procedures set by the Board.

Internal review process

Under Section 12 of the Mandate, the RIC's Board is required to establish an internal review procedure that is transparent, robust and fair. Section 12 of the Mandate also sets out requirements for this procedure, including that internal reviews and decisions on internal reviews are undertaken by an individual who was not the primary decision maker in the original decision. In addition, the farm business loan guidelines prepared by the RIC must include details of the right to request a review of application decisions and the process for requesting a review. This is an appropriate and sufficient mechanism, and ensures applicants can have loan decisions reviewed in a transparent, robust and fair manner.

SENATOR THE HON MATHIAS CORMANN
Minister for Finance and the Public Service
Leader of the Government in the Senate

REF: MC18-108888

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

Dear Senator Williams

I write to you in reference to an email of 16 August 2018 from the Senate Regulations and Ordinances Committee Secretary, Ms Anita Coles, requesting information on consultation undertaken on Remuneration Tribunal (Members' Fees and Allowances) Amendment Regulations 2018.

These Amendment Regulations 2018 provide for a two per cent increase in fees payable to the two members and the President of the Remuneration Tribunal.

The Department of the Prime Minister and Cabinet initially consulted the Remuneration Tribunal Secretariat, staffed by APS employees in the Australian Public Service Commission, on the proposal to increase the Remuneration Tribunal members' fees. However, as the Remuneration Tribunal is the Australian Government statutory authority with responsibility to determine, report on or provide advice about remuneration, including for part-time holders of various public offices, the Department did not consult any further. The Department also reviewed trends and market forces and had regard to general increases across the public sector and sources, such as the wage price index produced by the Australian Bureau of Statistics. This is in line with the Government's approach to a transparent and consistent method of remunerating senior public officials.

I attach a revised Explanatory Statement reflecting this advice for your consideration. The Department has arranged for it to be published on the Federal Register of Legislation.

I hope this information is of assistance to the Committee.

Kind regards

Mathias Cormann
Minister for Finance and the Public Service

September 2018

SENATOR THE HON MATHIAS CORMANN
Minister for Finance and the Public Service
Leader of the Government in the Senate

REF: MC18-002464

Senator John Williams (Chair)
Senate Regulations and Ordinances Committee
Suite S1.111
Parliament House
CANBERRA ACT 2600

Dear Chair

I refer to correspondence from the Committee Secretary of the Standing Committee on Regulations and Ordinances, dated 16 August 2018, seeking advice in relation to the *Superannuation Amendment (PSS Trust Deed) Instrument 2018* (the PSS Amending Deed) and regulations made under the *Financial Framework (Supplementary Powers) Act 1997*. I am writing to provide information in relation to the PSS Amending Deed. I will write to you separately about the regulations made under the *Financial Framework (Supplementary Powers) Act 1997*.

The Committee has sought my advice on the amendment provided for by Item 7 of Schedule 1 to the PSS Amending Deed. The item enables the Finance Minister to delegate all or any of his or her powers under the PSS Trust Deed, other than the power of delegation itself, to the Commonwealth Superannuation Corporation (CSC) *or a member of the staff of CSC*. The PSS Trust Deed previously included a similar provision enabling the Finance Minister to delegate all or any of his or her powers to staff of ComSuper, which administered the Commonwealth schemes before the organisation's merger with CSC in 2015. The PSS Amending Deed, therefore, preserves and continues the possibility of the delegation of certain powers to staff of CSC, the trustee and administrator of the scheme.

I should point out that the powers conferred on the Finance Minister by the PSS Trust Deed are, in themselves, limited. Additionally, these powers have never been delegated, and there are no plans to do so. Were I to do so, I can assure the Committee that rigorous consideration would be given to limiting the delegation to particular senior positions.

As you may be aware, the PSS Trust Deed is made under the *Superannuation Act 1990*. The amendment made by Item 7 of Schedule 1 of the PSS Amending Deed is equivalent to an amendment previously made by the *Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015*, to the Finance Minister's delegation power in paragraph 47(a) of the *Superannuation Act 1990*.

Nevertheless, I appreciate the Committee's concerns with the scope of the delegation power under paragraph 13.1(a) of the PSS Trust Deed. Given the powers involved, I am satisfied that delegation of the powers can reasonably be limited to CSC staff in senior positions appropriate to the power delegated. I therefore propose amending the PSS Trust Deed at the next available opportunity to provide for this.

Thank you for raising the matter with me.

Kind regards

Mathias Cormann
Minister for Finance and the Public Service

3 August 2018