ATTORNEY-GENERAL

CANBERRA

19 DEC 2017

MC17-013808

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

Dear Chair Wacka

I am writing in response to the letter from the Committee Secretary of the Standing Committee on Regulations and Ordinances, Ms Anita Coles, dated 30 November 2017. The letter refers to the committee's *Delegated Legislation Monitor, 15 of 2017*, and seeks information about the *Marriage Regulations 2017* and the Privacy (Australian Government Agencies — Governance) APP Code 2017. This letter provides the requested information about the Marriage Regulations. I will write to you separately about the Privacy (Australian Government Agencies — Governance) APP Code 2017.

The committee has requested my advice regarding the appropriate classification of the written instruments that will be prepared by the Registrar of Marriage Celebrants in accordance with sections 39 and 53 of the Marriage Regulations. The committee has expressed concern that these instruments have been described in the Explanatory Statement as administrative in character, and considers that this may not be in compliance with the *Legislation Act 2003*.

There is no general requirement under the Legislation Act for legislation to state on its face the nature of an instrument to be made under that legislation. Where legislation does not state the nature of a particular instrument, subsection 8(4) of the Legislation Act sets out the characteristics that indicate whether the instrument will be a legislative instrument. In particular, an instrument will be a legislative instrument if it is made under a power delegated by Parliament and any provision in the instrument: determines the law or alters the content of the law (as opposed to determining particular cases or circumstances in which the law applies); or 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.

The instruments made under paragraph 39C(1)(b) of the *Marriage Act 1961* and section 53 of the Marriage Regulations do not meet the criteria for a legislative instrument under subsection 8(4) of the Legislation Act.

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Under paragraph 39C(1)(b) of the Marriage Act, the Registrar is to make a 'determination in writing'. In accordance with section 39 of the Marriage Regulations, this determination will not impose obligations on marriage celebrants in a way that could be said to alter the content of the law. The determination made by the Registrar lists the qualifications and skills a celebrant must have, but it does not require celebrants to satisfy those requirements. It is subsection 39C(1) of the Marriage Act that imposes an obligation on the Registrar to be satisfied that a person has the appropriate qualifications and skills to be registered as a marriage celebrant. As such, a determination made by the Registrar pursuant to paragraph 39C(1)(b) of the Marriage Act does not satisfy the criteria in subsection 8(4) of the Legislation Act.

Under subsection 53(3) of the Marriage Regulations, the Registrar must publish a written statement setting out a list of compulsory and optional activities for ongoing professional development. The statement will not impose an obligation on marriage celebrants in a way that could be said to alter the content of the law. Rather, the content of the law, being the obligation imposed on marriage celebrants to undertake professional development activities, is set out in paragraph 39G(1)(b) of the Marriage Act and subsection 53(1) of the Marriage Regulations. A statement setting out a list of professional development activities that could be undertaken in fulfilment of the obligation, as required by subsection 53(3) of the Marriage Regulations, is not legislative in character, as it merely determines the particular professional development activities in which the law (being the obligation to undertake those activities) is to apply. Subsection 53(7) of the Marriage Regulations confirms that the subsection 53(3) statement is administrative in character and does not fall within the definition of 'legislative instrument' in subsection 8(4) of the Legislation Act.

The statements in the Explanatory Statement for the Marriage Regulations are intended to assist a reader, unfamiliar with the requirements of the Legislation Act, to understand the nature of these instruments.

Thank you again for writing on this matter.

Yours faithfully

(George Brandis)

The Hon Darren Chester MP
Minister for Infrastructure and Transport
A/g Minister for Regional Development
A/g Minister for Local Government and Territories
Deputy Leader of the House
Member for Gippsland

14 DEC 2017

PDR ID: MC17-005751

Senator John Williams (Chair)
Senate Regulations and Ordinances Committee
Suite s1.111
Parliament House
CANBERRA ACT 2600

John

Dear Senator Williams

Thank you for your letter of 30 November 2017 regarding the Aviation Transport Security Amendment (Airside Security – 2017 Measures No.1) Regulations 2017 (the instrument). I have sought advice from the Department of Infrastructure and Regional Development in relation to the Committee's request for advice on:

- whether it is possible that an accredited air cargo agent (AACA) could commit the offence in sub-section 3.16D(6) of the instrument; and
- if so, the legislative authority for the potential imposition on such an agent of the penalty set out in that section.

The Office of Transport Security (OTS) within my Department has consulted with the Office of Parliamentary Counsel (OPC) and has confirmed that there was an error in the drafting of the instrument. Although uncommon, it is possible for an AACA to control an access point into the security restricted area at a designated airport. Further, there is no legislative authority under the *Aviation Transport Security Act 2004* to impose a penalty of the size in subsection 3.16D(6) on an AACA, for whom a penalty must not exceed 50 penalty units.

To address this error, OTS will work with OPC to prepare a further administrative amendment to the Aviation Transport Security Regulations 2005 to amend the offence so that a separate penalty of 50 units applies if the industry participant is an AACA.

I note that under the transitional provisions of the instrument (regulations 10.27 and 10.29) industry participants other than airport or aircraft operators (including AACAs) are not required to comply with the provision in question until 21 July 2018. The OTS will work with OPC to ensure the necessary amendments are completed prior to this date. OTS will advise the Committee once the amendments are complete.

As OTS is transitioning to the Home Affairs portfolio, I have copied this to the Hon Peter Dutton MP, Minister for Immigration and Border Protection.

Yours sincerely

DARREN CHESTER

THE HON JULIE BISHOP MP

Minister for Foreign Affairs

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

Dear Chair

Thank you for your letter of 7 December 2017 regarding the *Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) (Documents) Amendment Instrument 2017 (No. 1)*.

The explanatory statement for this instrument did not include the statement previously requested by the Committee due to an administrative oversight by the Department of Foreign Affairs and Trade (DFAT). DFAT will amend the explanatory statement as required, and will ensure that the explanatory statements for future similar instruments include the relevant text.

I trust this information is of assistance.

Yours sincerely

Julie Bishop

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Senator the Hon Simon Birmingham

Minister for Education and Training
Senator for South Australia
Manager of Government Business in the Senate

Our Ref MS17-002036

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

Dear Senator John,

Thank you for your letter of 7 December 2017 requesting a response to issues contained in the Committee's *Delegated legislation monitor 16 of 2017* concerning the 'Child Care Subsidy Minister's Rules 2017' (the Minister's Rules) and 'Child Care Subsidy Secretary's Rules 2017' (the Secretary's Rules).

I provide the following responses to the Committees comments:

Manner of incorporation of documents

The Committee noted that subparagraph 13(7)(c)(ii) and subsection 49(9) of the Minister's Rules appear to, respectively, incorporate by reference the Skills Shortage List and the National Quality Standards, without expressly stating the manner of incorporation in either the instrument or the explanatory statement.

I confirm that the both the Skills Shortage List and the National Quality Standard were to be incorporated as they existed at the time the Minister's Rules were made. I am advised that this approach is consistent with section 14 of the *Legislation Act 2003*. Of course, as the Committee would be aware, the Skills Shortage List is a living document that is publicly available and updated according to labor market analysis. On this basis the relevant Rule is likely to be amended to reflect changes to the list in future if this is required to maintain the policy intent.

The Minister's Rules themselves also refer to the websites on which these documents were hosted when they were made. The documents are readily and freely available to the public through the respective websites. To ensure that the content of the law is fully available to the child care sector and the public generally, copies of the documents will be made available free of charge to people affected by, or interested in, the Minister's Rules on request to the Department of Education and Training.

As requested by the Committee, I will ensure that the Explanatory Statement is revised to refer to the manner of incorporation. The manner in which the documents may be accessed will also be clarified in the revised Explanatory Statement.

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Access to incorporated documents

The Committee noted that the definition of 'eligible ISP child' in section 8 of the Minister's Rules appears to incorporate the *Inclusion Support Programme Guidelines 2016–17 to 2018–2019* (ISP Guidelines). However, it was concerned that neither the Minister's Rules nor the Explanatory Statement indicates how the ISP Guidelines may be accessed.

As the Committee has pointed out, the document is available free of charge from the department's website. At the time of writing, the relevant URL is: https://docs.education.gov.au/documents/inclusion-support-programme-guidelines. Again, a copy of this document will be made available free of charge to people affected by, or interested in, the Minister's Rules on request to the department.

In accordance with the Committee's expectations, I will ensure that the Explanatory Statement is revised to include the details of the document and the manner in which it can be located.

Drafting: anticipated authority

The Committee noted its expectation that an express reference is made to subsection 4(2) of the *Acts Interpretation Act 1901*, which allows for the making of instruments in anticipation of the commencement of relevant empowering provisions, wherever reliance is placed on it. This expectation was expressed in relation to both the Minister's Rules and the Secretary's Rules.

The Minister's Rules and the Secretary's Rules were made in expectation of the commencement of the empowering provisions to ensure that the child care sector and potential child care payment recipients had access to relevant subordinate legislation prior to the commencement of the new Child Care Subsidy system in July 2018 and to allow Parliament the opportunity to consider the content of the instruments as early as possible. I will ensure that both the Minister's Rules and the Secretary's Rules Explanatory Statements are revised to clarify that subsection 4(2) of that Act is relied upon to provide the necessary authority for the making of all provisions of the Minister's Rules (other than section 41 and Part 7) and all provisions of the Secretary's Rules, prior to the commencement of the relevant empowering provisions.

I will also ensure that the revised Explanatory Statements are tabled in Parliament as required under the *Legislation Act 2003* as soon as possible.

I trust my response satisfies the Committee in respect of the particular issues.

Yours sincerely

Simon Birmingham

SENATOR THE HON MITCH FIFIELD
MINISTER FOR COMMUNICATIONS
MINISTER FOR THE ARTS
MANAGER OF GOVERNMENT BUSINESS IN THE SENATE

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

Commercial Broadcasting (Tax) (Individual Transmitter Amounts) Determination 2017

Dear Chair John

I am writing in response to a request for my advice from the Senate Standing Committee on Regulations and Ordinances in relation to the Commercial Broadcasting (Tax) (Individual Transmitter Amounts) Determination 2017 (the Determination).

Ms Anita Coles, Committee Secretary, wrote to my office on 30 November 2017 drawing attention to the Committee's concerns about the misclassification of the Determination as exempt from disallowance, as set out in the *Delegated Legislation Monitor 15 of 2017*.

I am advised that due to an administrative error, the Determination was wrongly classified as exempt from disallowance. I understand the error was rectified by the Office of Parliamentary Counsel (OPC) on 23 November 2017, after the Committee's Secretariat drew it to OPC's attention.

I also understand that the Senate Table Office updated its Disallowable Instruments List on the same day to give notice to Senators of the correct classification of the Determination as being disallowable under the alternative disallowance procedure contained in section 13 of the *Commercial Broadcasting (Tax) Act 2017*. The House Table Office confirmed that it did likewise on the next available sitting day of the House of Representatives (4 December 2017). I conclude from this that, unfortunately, a period of three disallowable sitting days in each House expired before the Determination was correctly listed.

I agree that this is a serious issue, and I thank the Committee for drawing it to my attention. I am confident that officers in my Department understand the significance of ensuring that instruments tabled in the Parliament are correctly classified, so as not to hinder the Parliament's effective oversight of delegated legislation.

Thank you for bringing this matter to my attention. I trust this information will be of assistance.

Yours sincerely

MITCH FIFIELD
15/12/17

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TREASURER

Ref: MC17-009453

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

Dear Senator

Thank you for your correspondence of 7 December 2017 forwarding a request from the Regulations and Ordinances Committee for advice on how the fees in Schedule 1B of the Competition and Consumer Regulations 2010 (CCR) were determined.

Schedule 1B sets the fees for applications for authorisation and notifications under Part VII of the *Competition and Consumer Act 2010* (CCA). As you know, the Competition and Consumer Amendment (Competition Policy Review) Regulations 2017 replaced the previous Schedule 1B with a new version. The new fee schedule reflects changes to the CCA made by the Competition and Consumer Amendment (Competition Policy Review) Act 2017.

Generally, the fees in Schedule 1B aim to at least partially cover the costs of considering an application for authorisation or a notification; deter unnecessary applications and notifications; and ensure that fees are not onerous.

The fee for lodging a non-merger authorisation under section 88 of the CCA is unchanged ($7,500). However, as section 88 no longer contains several sub-sections each providing for authorisation for a different type of conduct prohibited by Part IV of the CCA, Schedule 1B no longer prescribes a $7,500 fee for each sub-section. Rather, a single $7,500 fee is listed for non-merger authorisations under section 88.

Schedule 1B previously included a concessional fee of $1,500 for non-merger authorisations which, in practice, applied where persons lodged multiple applications for conduct which might breach multiple provisions of Part IV. The concessional fee applied to all but the first application. However, a single authorisation may now be granted for conduct which might breach multiple provisions of Part IV. Consequently, the concessional fee is no longer needed.

The fees for merger authorisations and for revocation and substitution of merger authorisations are unchanged ($25,000 with no concessional fee). However, Schedule 1B previously listed separate fees for merger authorisation applications under section 50 (domestic mergers) and applications under section 50A (overseas mergers). This reflected the fact that applications under section 50 were made to the Australian Competition Tribunal and applications under section 50A were made to the Australian Competition and Consumer Commission (ACCC). However, all merger authorisation applications are now made to the ACCC. Consequently, Schedule 1B now lists a single merger authorisation application fee.

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The fee for revocation and substitution of non-merger authorisations is unchanged ($2,500 with a $0 concessional fee).

The fee for lodging exclusive dealing notifications under section 93 remains unchanged ($2,500 with a concessional fee of $500), with the exception of third line forcing notifications.

Third line forcing notifications previously attracted a $100 fee. Third line forcing is a type of exclusive dealing involving, for example, selling a product on condition that the buyer purchase another product from a third party (see subsections 47(6), (7), (8)(c) and (9)(d) of the CCA). A special $100 fee for third line forcing notifications was set because it was the only type of exclusive dealing that was prohibited outright, although in most cases it did not raise competition concerns. However, like all other forms of exclusive dealing, third line forcing is now prohibited only where it has the purpose or likely effect of substantially lessening competition. Consequently, the special fee has been removed and the general fee for exclusive dealing notifications applies.

The $100 fee for notifications for private disclosure of price information – which was prohibited by section 44ZZW of the CCA – is no longer required as this prohibition has been abolished (and replaced by a new prohibition added to section 45 on concerted practices that have the purpose or likely effect of substantially lessening competition).

The fee for lodging a collective bargaining notification is unchanged ($1,000 with a $0 concessional fee).

Schedule 1B no longer includes fees for merger clearances, which have been abolished.

Persons may now lodge notifications for resale price maintenance, which is prohibited by section 48 of the CCA. Schedule 1B sets a $1000 fee for this type of notification, with a concession fee of $0, consistent with the fees for collective bargaining notifications.

I trust this information will be of assistance to you.

Yours sincerely

The Hon Scott Morrison MP

4 / 1 / 2018

The Hon. Dr John McVeigh MP

Minister for Regional Development, Territories and Local Government
Federal Member for Groom

Ref: MC17-005796

18 JAN 2018

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

Dear Senator Williams

Thank you for your letter of 30 November 2017 to the Hon Darren Chester MP, the then Acting Minister for Local Government and Territories, regarding the Senate Standing Committee on Regulations and Ordinances (the Committee's) request for further information in the Delegated Legislation Monitor 15 of 2017 on the Norfolk Island Continued Laws Amendment (2017 Measures No. 2) Ordinance 2017 (the Ordinance). Your letter has been brought to my attention.

The Committee requests advice as to whether the increased airport fees contained in the Ordinance go beyond cost recovery and so constitute taxes. I can advise the fees do not extend beyond recovering routine costs associated with operating the airport. For items 2M and 2Q of the Ordinance, the increase was calculated to reflect the true cost to the airport operator of processing passengers. The fee in item 2N was calculated to recover increased staff costs in attending regular passenger services.

I note the Committee's concern about the broad sub-delegation of powers under the Airport Act 1991 (NI) (the Act) to an 'employee of the Administration'. This matter will be addressed when the Act is next amended.

Thank you again for informing me of the Committee's concerns on this matter.

Yours sincerely

John McVeigh MP

ATTORNEY-GENERAL

CANBERRA

19 DEC 2017

MC17-013810

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

Dear Chair Wacka

I am writing in response to the letter from the Committee Secretary of the Standing Committee on Regulations and Ordinances, Ms Anita Coles, dated 30 November 2017. The letter refers to the committee's *Delegated Legislation Monitor 15 of 2017* and seeks information about the Marriage Regulations 2017 and the Privacy (Australian Government Agencies — Governance) APP Code 2017 (the Code). This letter provides the requested information about the Code. I will write to you separately about the Marriage Regulations 2017.

The Australian Information and Privacy Commissioner, Mr Timothy Pilgrim PSM (the Commissioner), made the Code under Part IIIB of the *Privacy Act 1988* (Cth) (the Privacy Act). I have sought the Commissioner's advice about the matters the committee raised in relation to the Commissioner's authority to make the Code under section 26G of the Privacy Act; and about whether the Code's explanatory statement could include additional information about the meaning of the term 'senior official' in the Code.

Legislative authority: power to make instrument

The Commissioner has advised that, on 27 March 2017, he issued a request under section 26E of the Privacy Act to the Department of the Prime Minister and Cabinet (PM&C) to develop an APP code. This request set out the effect of section 26A of the Privacy Act, and specified that the request must be complied with by 25 July 2017 (a period of 120 days). It also specified the matters that the APP code must deal with, and the class of APP entities that should be bound by the code. The request, together with the letter which accompanied the request (and which outlined why the Commissioner was satisfied that the request was in the public interest), were both published on the Office of the Australian Information Commissioner (OAIC) website on 18 May 2017,[1] in accordance with the publication requirement in subsection 26E(7) of the Privacy Act.

[1] See www.oaic.gov.au/media-and-speeches/statements/developing-an-aps-wide-privacy-code, www.oaic.gov.au/resources/media-and-speeches/statements/developing-an-aps-wide-privacy-code/letter-from-oaic.pdf and www.oaic.gov.au/resources/privacy-law/privacy-registers/privacy-codes/aps-privacy-code-formal-request.pdf.

On 17 May 2017, the Secretary of PM&C, Dr Martin Parkinson AC PSM, wrote to the Commissioner advising that, in his view, the OAIC would be uniquely placed to provide the expertise needed to develop the Code. Dr Parkinson stated that he would support the OAIC undertaking the development of the Code. The Commissioner then commenced developing the Code under section 26G of the Privacy Act. As set out in the explanatory statement that accompanied the Code, a draft version of the code was released for public consultation on 30 June 2017, and a final version was registered with the Office of Parliamentary Counsel (OPC) on 27 October 2017.

Dr Parkinson's response to the Commissioner can be found on the OAIC's website along with the Commissioner's correspondence to PM&C.[2] These documents are also attached for the committee's reference.

Drafting: unclear meaning of 'senior official'

The Commissioner has advised that he did not define the term 'senior official' in the code. This term is intended to have its ordinary meaning and to be sufficiently flexible to apply to all the agencies bound by the code (which have varying organisational structures).

The Commissioner considers that it is a matter for agencies to determine what level of seniority is required to effectively perform the 'Privacy Champion' functions set out in section 11 of the code, in the context of the particular agency. However, given the strategic and cultural nature of the functions, the Commissioner would generally expect the Privacy Champion to be an SES employee, or a staff member of equivalent seniority (in agencies where the SES classification is not used or relevant).

The Commissioner did consider whether it was appropriate to define this term, for example, with reference to the definition of 'senior official' or 'SES employee' as used in the *Public Service Act 1999*. However, during the consultation period the Commissioner was reminded that not all agencies bound by the Code employ their staff under the Public Service Act (and therefore do not classify their senior staff as SES employees as per the terms of that Act). For this reason, it would not have been appropriate to define the term in this way, as certain agencies would not have been able to comply with such a requirement.

In light of the committee's question, on 6 December 2017 the Commissioner registered a replacement explanatory statement for the Code. The replacement explanatory statement contains the following additional statement in relation to section 11:

> The term senior official is not defined in the code, and is intended to have its ordinary meaning. It is a matter for agencies to determine the appropriate level of seniority required to effectively perform the functions set out in section 11, within the context of the particular agency and having regard to its specific organisational structure. However, given the strategic and cultural nature of the functions, the Commissioner would generally expect the Privacy Champion to be an SES employee, or a staff member of equivalent seniority (in agencies where the SES classification is not used or relevant).

The responsible adviser for this matter in my Office is Jules Moxon who can be contacted on 02 6277 7300.

[2] See www.oaic.gov.au/resources/media-and-speeches/statements/developing-an-aps-wide-privacy-code/letter-from-pmc.pdf.

Thank you again for writing on this matter.

Yours faithfully

(George Brandis)

Encl: Correspondence from the Australian Information and Privacy Commissioner, Mr Timothy Pilgrim PSM, to the Secretary of the Department of the Prime Minister and Cabinet, Dr Martin Parkinson AC PSM, of 27 March 2017; and Dr Parkinson's reply of 17 May 2017.

Australian Government
Office of the Australian Information Commissioner

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Our reference: D2017/001301

Dr Martin Parkinson AC PSM
Secretary, Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Dear Secretary

Request for PM&C to develop an APS privacy code

As you may be aware, the *Privacy Act 1988* (Cth) (Privacy Act) enables the Australian Information Commissioner to request the development of a privacy code where they are satisfied that it is in the public interest to do so.[1] While the Privacy Act empowers the Commissioner to develop a code on their own initiative, in the first instance I am formally required to nominate an APP entity as the relevant code developer, and give that entity the opportunity to develop the code itself.

In this regard, I am writing to request that the Department of the Prime Minister and Cabinet (PM&C) develop an Australian Public Service (APS) privacy code. More particularly, I am requesting PM&C to draft a code that:

- applies to Australian government agencies covered by the Privacy Act, and
- addresses those agencies' obligations under Australian Privacy Principle (APP) 1.2 by requiring the adoption of effective privacy governance measures.

I have set out some further information for you below about the request, including the reasons why I believe the development of a privacy code is in the public interest and why I believe my Office is well placed to develop that code. In summary, I believe that the code will symbolise the APS's commitment to the protection of privacy, and build public trust and confidence in the Australian Government's information-handling practices and proposed new uses of data.

Further specifics of the code are set out in the attached formal request, which I am required to make publically available as soon as practicable.[2] I would appreciate your response to the request as soon as possible.

[1] See s 26E of the Privacy Act. More broadly, Part IIIB of the Privacy Act sets out the requirements for the development and registration of APP codes.

[2] As per s 26F(7) of the Privacy Act.

PM&C as the code developer

Your Department is recognised as a strong supporter of privacy-enhancing initiatives. This has been particularly evident through the lead role PM&C plays in the implementation of the Prime Minister's *Public Data Policy Statement*,[3] committing to uphold the highest standards of security and privacy for the individual. This also aligns with PM&C's responsibility for fostering a high performing public sector. For these reasons, in accordance with the technical requirements of Part IIIB of the Privacy Act, I have nominated PM&C to act on behalf of all APS agencies as the code developer.

Having said that, I am mindful that the development of the proposed privacy code will require specific privacy expertise and experience that my Office may be uniquely placed to provide. For this reason, while I know that you would strongly support development of the code as an initiative that supports the Australian Government's commitment to upholding privacy, I am also aware that you may be minded to decline my request to develop the code, preferring to support its development and implementation by my Office. Should this be the case, I would be pleased to act as the code developer.[4] In doing so, I would seek close engagement with your Department. I would also ensure that the broader APS is consulted appropriately throughout the development process and would welcome opportunities your Department could provide to facilitate this.

As your Department has consistently advocated for the protection of privacy as part of its ongoing work on the Public Data Policy agenda, I am confident that you will lend your support to this initiative, and assist by providing the cultural leadership that will be necessary for successful implementation of the code. In this regard, I believe that the code will be a key privacy protection mechanism which will help to facilitate the success of the Australian Government's broader data, cyber and innovation agendas.

Enhancing privacy capability across the APS

There are a number of key factors and policy drivers that have informed my decision to propose the development of an APS-wide privacy code. As you would be aware, a number of policy developments demonstrate the increasing centrality of personal information to all aspects of government activity and policy-making. In particular, there is a growing emphasis on maximising the utility of government data, and ensuring that data can be shared efficiently and effectively.

Some of these key developments include:

- The Australian Government's data innovation agenda, as outlined in its *Public Data Policy Statement*, which seeks to optimise the use and reuse of public data; to release non-sensitive data as open by default; and to collaborate with the private and research sectors to extend the value of public data for the benefit of the Australian public.

[3] Available on PM&C's website, at: https://www.PM&C.gov.au/resource-centre/data/australian-government-public-data-policy-statement.

[4] As I am empowered to do under s 26G of the Privacy Act.

- The broader work of the Australian Government, and particularly the new Digital Transformation Agency (DTA), to move to a 'digital first' service delivery model. As part of this, the DTA is implementing wide scale change in digital capability across government departments, with the aim of benefiting the public and other users of government services.
- The Open Government Partnership, which aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In particular, commitment 2.2 in the Government's National Action Plan proposes to build and maintain public trust to address concerns about data sharing. A key milestone is to 'work with the Office of the Australian Information Commissioner to improve privacy risk management capability across the Australian Public Service'.
- The Productivity Commission's Data Availability and Use Draft Report, which recommends the creation of a new framework to facilitate data sharing and access. The central component of this new framework would be a 'Data Sharing and Release Act' that will apply across Australia to all digital data.[5]
- The Office of the Cyber Security Special Adviser's *Review of the Events Surrounding the 2016 eCensus* (the MacGibbon Review), which noted the OAIC's recommendation for an APS-wide privacy code to 'assure Australians that privacy is a key consideration in the planning and execution of government projects'.
- The EU's *General Data Protection Regulation* (GDPR), which will enter into force in 2018. The GDPR will have a significant impact on Australian business, as organisations will have to comply with obligations under the GDPR, for example, if they want to provide goods or services in the EU. There may also be regulatory implications for Australian Government agencies. A privacy code would therefore assist APS agencies to prepare for the introduction of the GDPR, and allow the APS to show leadership in the Australian context against the backdrop of a global shift towards greater accountability for privacy matters.

I believe that together, these factors underline the existence of a strong need for APS agencies to enhance their existing privacy capability to enable them to better prepare for (and address) contemporary privacy issues. Given the range of new policy proposals which seek to expand uses of (and access to) personal information held by government, in my view the APS first needs to take steps to build public trust and confidence in the ability of the APS to implement its agenda consistent with community expectations, and in a way that respects privacy.

Against this background, it is particularly important to remember that many APS agencies have powers to collect personal information on a compulsory basis, in exchange for the

[5] Further consideration may need to be given to the interaction between the Productivity Commission's *proposed Data Sharing and Release Act* and the Privacy Act. However, I do not consider that the Productivity Commission's agenda is incompatible with progressing the code. On the contrary, I believe that now is the right time to be addressing these matters, at a stage when privacy can be considered meaningfully during the design and implementation phase of any proposed reforms.

provision of services and payments. This means that in a practical sense, individuals are not always able to exercise meaningful choice over how their personal information is used.

Finally, a number of Australian Government agencies have been involved in several high profile privacy incidents in recent times. While these have been the result of a range of circumstances, through my Office's subsequent involvement in them, I have formed the view that there is a need to strengthen the overall privacy governance processes within APS agencies. I believe that if this is not done, there is a risk that the community may lose trust in the ability of government to deliver on key projects which involve the use of personal information.

The public interest in a privacy code

In light of all of these contextual factors, I believe there is a clear and demonstrable need for APS agencies to move beyond a focus on mere compliance with the APPs, towards a best practice approach to privacy governance. In particular, APS agencies need to be prepared for the numerous modern privacy challenges that lie ahead.

In my view, there is also an urgent need for the Australian Government to build a social licence for its uses of data, particularly in the current context where there are plans to increase data use and availability, and increasingly to make data 'open' by default. A social licence for data use is built on a number of elements. It is important for agencies to be transparent about their practices, so that individuals understand how government intends to use their personal information. Further, the broader community must believe that the uses of data which are permitted are valuable and reasonable, considering the relevant circumstances.

The proposed privacy code would facilitate the building of a social licence for the Australian Government's current and future uses of data, by ensuring that Agencies are implementing the practices, procedures and systems required under APP 1.2 to ensure effective privacy governance. Importantly, the effective implementation of APP 1.2 via the proposed privacy code will also help to build greater transparency, and to foster an APS-wide culture of respect for privacy and the value of personal information.

I therefore consider that the development of an APS-wide privacy code is in the public interest.

What the privacy code should contain

The privacy code will make explicit how all APS agencies are to meet their obligations under APP 1.2. This APP relates to the implementation of reasonable practices, procedures and systems to ensure that an entity complies with the APPs, and to enable it to deal with privacy-related inquiries and complaints.

The proposed privacy code would not create additional obligations per se. Instead, it would set out the key practical steps that I expect agencies to take in order to comply with APP 1.2. As outlined in the attachment, I believe that the proposed code should require all agencies to take the following practical steps:

- have a privacy management plan
- appoint a dedicated privacy contact officer
- appoint a senior official as a 'Privacy Champion' to provide cultural leadership and promote the value of personal information
- undertake written Privacy Impact Assessments (PIAs) for all 'high risk' projects or initiatives that involve personal information
- keep a register of all PIAs conducted and make this available to the OAIC on request, and
- take steps to enhance internal privacy capability, including by undertaking any necessary training, and conducting regular internal audits of personal information-handling practices.

At this stage, I would expect that the code would maintain the flexibility and scalability of the APPs. In addition, key concepts such as 'Privacy Champion' and 'high risk projects' should be drafted broadly.

My Office would also issue comprehensive guidance and educational materials to assist agencies to comply with the code. Your Department's input would be invaluable and the OAIC would seek to work closely with you in developing and disseminating these resources. I would also seek your support to engage the APSC to help ensure that privacy capability and skills are built into APS learning and development offerings.

Regulatory Impact

As outlined above, the code would not create new obligations, but would instead assist agencies to meet their existing obligations by making explicit how they are to comply with APP 1.2.

As many agencies already have some of these practical measures in place, such as the Department of Immigration and Border Protection's Privacy Management Plan, meeting the proposed requirements of the code is unlikely to be onerous. However, implementation of the code requirements across the board will be necessary to ensure a consistent level of privacy governance across the APS.

Further, the development of OAIC guidance and educational materials will not only help to enable the broader cultural change across the APS which the privacy code seeks to achieve, it will also support agencies (and particularly smaller agencies) to meet their existing obligations, creating regulatory efficiencies.

In addition, the development of a privacy code may provide an opportunity to consider whether the *Data-matching Program (Assistance and Tax) Act 1990* and the *Guidelines on Data Matching in Australian Government Administration* (the voluntary data matching guidelines produced by my Office) remain necessary. Instead, the code could regulate these activities, allowing agencies to take a more flexible, modern approach to addressing the privacy risks associated with data-matching. This would also allow agencies to take a consistent approach to privacy regulation across all their high-risk activities involving personal information.

I therefore consider that the code will not result in any overall net increase in regulation, and would likely create efficiencies.

Way forward

As stated above I would appreciate your response to the attached request as soon as possible.

I am, of course, available to discuss any aspect of this request with you personally. However, if your staff would like to discuss this letter or the request, the OAIC contacts for this matter are Ms Angelene Falk, Deputy Commissioner and Ms Melanie Drayton, Assistant Commissioner, who can be contacted on [*contact details removed*].

Yours sincerely

Timothy Pilgrim PSM
Australian Information Commissioner
Australian Privacy Commissioner

27 March 2017

Australian Government
Office of the Australian Information Commissioner

Request to develop an APP code under s 26E of the Privacy Act

Australian Information Commissioner, Timothy Pilgrim

Nominated APP code developer:	**The Department of the Prime Minister and Cabinet**
Request date:	**27 March 2017**
Date request must be complied with:	**25 July 2017**

Request to develop an APP code

1. In my capacity as the Australian Information Commissioner under s 26E(2) of the *Privacy Act 1988* (Cth) (the Privacy Act), I:

    a. nominate the Department of the Prime Minister and Cabinet (PM&C) to act as an APP code developer, as a representative of all Australian Public Service (APS) agencies, and

    b. request that PM&C develop an APP code (privacy code) to apply to all APS agencies.

2. I note that if PM&C does not comply or declines to comply with this request (for whatever reason), I intend to develop the code on my own initiative as per s 26G(2) of the Privacy Act.

Particulars of the request

Timing

3. This request must be complied with within 120 days, or by 25 July 2017.

APP entities that are to be bound by the privacy code

4. The privacy code will apply to all acts and practices of agencies. 'Acts and practices' has the meaning given in s 7 of the Privacy Act, and 'agency' has the meaning given in s 6(1) of the Privacy Act.

5. The privacy code will therefore apply only to the extent that an agency has existing obligations under the Privacy Act. That is, the code will not apply to any acts or practices which are exempt from the operation of the Privacy Act, or any agencies which do not otherwise have obligations under the APPs.

Requirements of the APP code

6. The privacy code will set out how Australian Privacy Principle (APP) 1.2 is to be complied with.

7. The privacy code will require all entities bound by the code to take the following steps:

    a. have a privacy management plan

    b. appoint a dedicated privacy contact officer

    c. appoint a senior official as a 'Privacy Champion' to provide cultural leadership and promote the value of personal information

    d. undertake written Privacy Impact Assessments (PIAs) for all 'high risk' projects or initiatives that involve personal information

    e. keep a register of all PIAs conducted and make this available to the OAIC on request, and

    f. take steps to enhance internal privacy capability, including by undertaking any necessary training, and conducting regular internal audits of personal information-handling practices.

8. If an agency fails to take any of the steps required by the code, as set out in paragraph 7 of this request, this will amount to a breach of the code and a contravention of s 26A of the Privacy Act.

Other instructions

9. Relevant terms in the privacy code are to be drafted broadly.

10. The Information Commissioner must be consulted on the drafting of the code.

11. The privacy code should aim to maintain the flexibility and scalability of the APPs. That is, it should be able to be applied to agencies of different sizes, and with varying responsibilities in relation to personal information.

12. The OAIC will issue comprehensive guidance and educational materials to assist agencies to comply with the code.

Public interest considerations

13. I am satisfied that the development of an APP code is in the public interest. In deciding whether the proposed code would be in the public interest, I have had regard to the following:

    - The potential for data breaches and other privacy incidents involving APS agencies, which have the ability to damage public trust in government's information-handling practices
    - The increasing emphasis in current policy-making on improving the availability of data (including data that contains personal information), and enabling greater sharing of data
    - The ongoing shift towards the digital or online provision of many government services, and
    - The community's increasing awareness of and concern about privacy issues occurring in light of the above contextual factors.

Australian Government

Department of the Prime Minister and Cabinet

SECRETARY

DR MARTIN PARKINSON AC PSM

Ref: EC17-000690

Mr Timothy Pilgrim PSM
Australian Information Commissioner
Australian Privacy Commissioner
GPO Box 5218
Sydney NSW 2001

Dear Information Commissioner,

Australian Public Service Privacy Code

Thank you for your letter of 27 March 2017 regarding the development of an Australian Public Service Privacy Code.

The Australian Public Service has a strong commitment to the privacy and security of personal information. I welcome the development of a Privacy Code to build public trust and confidence in the Australian Government's information-handling practices and proposed new uses of data.

As discussed at the Secretaries Board Meeting on 3 May 2017, and as outlined in your letter to me, your Office is uniquely placed to provide the expertise needed to develop the Privacy Code. As such, I support your Office undertaking the development of the Privacy Code.

My Department welcomes the opportunity to support your Office in this undertaking.

Yours sincerely

Dr Martin Parkinson AC PSM
17 May 2017

CC: John Lloyd PSM, Australian Public Service Commissioner

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PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Urban Infrastructure
PDR ID: MS17-002618

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

Dear Senator Williams

Vehicle Standard (Australian Design Rule (ADR) 3/04 – Seats and Seat Anchorages) 2017

I refer to the letter dated 30 November 2017 from the Secretary of the Senate Standing Committee on Regulations and Ordinances (the Committee) regarding the Vehicle Standard (ADR 3/04 – Seats and Seat Anchorages) 2017 (the Determination).

The Committee has requested further information from me about two scrutiny issues identified in relation to the Determination. I would like to provide the following advice to the Committee in response to these matters as they appear in the Delegated Legislation Monitor No. 15 of 2017.

1. Manner of incorporation of documents

Clause 7 of the Determination incorporates a reference to the United Nations (UN) Regulation No. 17 (R 17). This is an international standard, which specifies equivalent requirements and test methods to Appendix A of the Determination.

Appendix A of the Determination incorporates references to the Consolidated Resolution on the Construction of Vehicles (R.E.3), a number of other UN Regulations, ISO 6487 (1980) and ISO 6487 (2002).

As these standards are not legislative instruments, subsections 14(1)(b) and 14(2) of the *Legislation Act 2003* (the Legislation Act) have the effect that the Determination can only incorporate the standards as in force at the time the Determination commenced, and not 'as in force or existing from time to time'.

I note the Committee's comments on facilitating the public's ability to understand the operation of the Determination. For this reason, I instructed the Department of Infrastructure and Regional Development to amend the Explanatory Statement (ES) to explicitly state that these standards are incorporated as in force at the commencement of the Determination.

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Appendix A, Section 7 of the Determination also incorporates the Agreement, Appendix 2 (E/ECE/324-E/ECE/TRANS/505/Rev.2). However, in accordance with clause 6 (Exemptions and Alternative Procedures) of the Determination, compliance with Appendix A Section 7 is not required.

2. Access to incorporated documents

I understand the importance of ensuring persons interested in or affected by an instrument have adequate access to its terms, including any incorporated documents.

The Consolidated Resolution on the Construction of Vehicles (R.E.3.) and the UN Regulations are freely available online through the UN World Forum for the Harmonization of Vehicle Regulations (WP.29). The WP.29 website is **www.unece.org/trans/main/welcwp29.html**.

ISO 6487 (1980) and ISO 6487 (2002) are available for purchase only, through the International Organization for Standardization (ISO). These are highly technical standards, which specify requirements and recommendations for measurement techniques involving the instrumentation used in impact tests carried out on road vehicles. They have been referenced in the ADRs, other national/regional vehicle standards and international vehicle standards for many years. Vehicle test facilities (in particular crash test laboratories) access these standards as part of their professional library.

In line with best-practice and consistent with section 15J of the Legislation Act, I instructed the department to amend the ES to include a description of these standards as well as details of how to access them.

A marked up copy of the revised ES, as amended by the department, to address the issues raised by SSCRO is provided for your information at Attachment A. I understand the replacement ES will shortly be registered on the Federal Register of Legislation.

I trust this information supports the Committee in finalising its consideration of the Determination.

Yours sincerely

Paul Fletcher

6 / 12 /2017

Enc

Vehicle Standard (Australian Design Rule 3/04 – Seats and Seat Anchorages) 2017

Made under section 7 of the *Motor Vehicle Standards Act 1989*

Replacement Explanatory Statement

Issued by the authority of the Minister for Urban Infrastructure

~~September~~ December 2017

CONTENTS

1. LEGISLATIVE CONTEXT

Vehicle Standard (Australian Design Rule 3/04 – Seats and Seat Anchorages) 2017 is made under the *Motor Vehicle Standards Act 1989* (the Act). The Act enables the Australian Government to establish nationally uniform standards that apply to new road vehicles when they are first supplied to the market in Australia. The Act applies to such vehicles whether they are manufactured in Australia or imported.

The making of the vehicle standards necessary for the Act's effective operation is provided for in section 7 which empowers the Minister to "determine vehicle standards for road vehicles or vehicle components".

Vehicle Standard (Australian Design Rule 3/04 – Seats and Seat Anchorages) 2017 (ADR 3/04) is being made to replace Vehicle Standard (Australian Design Rule 3/03 – Seats and Seat Anchorages) 2006 (ADR 3/03), which was originally determined in 2006.

2. CONTENT AND EFFECT OF ADR 3/04 – SEATS AND SEAT ANCHORAGES

2.1. Overview of the ADR

This vehicle standard prescribes requirements for seats, their attachment assemblies, their installation and any head restraint fitted, to minimise the possibility of occupant injury due to forces acting on the seat as a result of vehicle impact.

The requirements of this standard are taken from the international standard UN Regulation No. 17, incorporating all amendments adopted by the UN as of September 2017.

2.2. Effect of the ADR

This standard is being made to fully harmonise the ADR with the international standard UN Regulation No. 17.

The standard will apply to ADR category LEP and LEG (motor tricycles), all category M vehicles (passenger vehicles and omnibuses) and all category N vehicles (goods vehicles). New model vehicles will need to be certified to this standard from 1 November 2019. There is no mandatory application date for all other vehicles. They may comply with this vehicle standard or continue to comply with earlier versions of this vehicle standard as applicable for particular vehicle categories.

ADR category LEP, MA, MB, MC, MD1, MD3, MD4 and ME vehicles certified to this standard will also need to be certified to ADR 34/03. The same will apply for ADR category MD2 and NA vehicles equipped with *'Upper Anchorages'* (top tether anchorages) and/or ISOFIX anchorage systems. This will ensure a specific strength test (taken from the current ADR 3/03) will continue to apply for any vehicle top tether anchorages mounted on the seat back or more than 100 mm below the top of the seat back. A complementary explanatory statement is available for ADR 34/03.

2.3. Incorporated Documents

This standard incorporates references to a number of standards of a highly technical nature. These standards are typically accessed by vehicle manufacturers and test facilities as part of their professional library.

Clause 7 of this standard incorporates a reference to the UN Regulation No. 17 - UNIFORM PROVISIONS CONCERNING THE APPROVAL OF VEHICLES WITH REGARD TO THE SEATS, THEIR ANCHORAGES AND ANY HEAD RESTRAINTS (R 17). This is an international standard, which specifies equivalent requirements and test methods to Appendix A of the ADR.

Appendix A of this standard incorporates references to the Consolidated Resolution on the Construction of Vehicles (R.E.3.) – document ECE/TRANS/WP.29/78/Rev. 3, Regulation No. 21 (R 21), Regulation No. 25 (R 25), Regulation No. 80 (R 80), ISO 6487 (1980) and ISO 6487 (2002).

In accordance with subsections 14(1)(b) and 14(2) of the *Legislation Act 2003*, these standards are incorporated as in force at the commencement of the Determination.

The Consolidated Resolution on the Construction of Vehicles (R.E.3.) – document ECE/TRANS/WP.29/78/Rev. 3, and the UN Regulations (including R 17, R 21, R 25, and R 80) may be freely accessed online through the UN World Forum for the Harmonization of Vehicle Regulations (WP.29). The WP.29 website is https://www.unece.org/trans/main/welcwp29.html.

The ISO 6487 (1980) and ISO 6487 (2002) standards incorporated by reference in Appendix A of this standard are available for purchase only, through the International Organization for Standardization (ISO). These are highly technical standards, which specify requirements and recommendations for measurement techniques involving the instrumentation used in impact tests carried out on road vehicles. They have been referenced in the ADRs, other national/regional vehicle standards and international vehicle standards for many years. Vehicle test facilities (in particular crash test laboratories) access these standards as part of their professional library.

3. BEST PRACTICE REGULATION

3.1. Benefits and Costs

This vehicle standard will have a neutral regulatory impact, including in terms of both the benefits and costs of regulation.

3.2. General Consultation Arrangements

It has been longstanding practice to consult widely on proposed new or amended vehicle standards. For many years there has been active collaboration between the Commonwealth and the state/territory governments, as well as consultation with industry and consumer groups. Much of the consultation takes place within institutional arrangements established for this purpose. The analysis and documentation prepared in a particular case, and the bodies consulted, depend on the degree of impact the new or amended standard is expected to have on industry or road users.

Depending on the nature of the proposed changes, consultation could involve the Technical Liaison Group (TLG), Strategic Vehicle Safety and Environment Group (SVSEG), Transport and Infrastructure Senior Officials' Committee (TISOC) and the Transport and Infrastructure Council (the Council).

- TLG consists of technical representatives of government (Australian and state/territory), the manufacturing and operational arms of the industry (including organisations such as the Federal Chamber of Automotive Industries and the Australian Trucking Association) and of representative organisations of consumers and road users (particularly through the Australian Automobile Association).
- SVSEG consists of senior representatives of government (Australian and state/territory), the manufacturing and operational arms of the industry and of representative organisations of consumers and road users (at a higher level within each organisation as represented in TLG).
- TISOC consists of state and territory transport and/or infrastructure Chief Executive Officers (CEOs) (or equivalents), the CEO of the National Transport Commission, New Zealand and the Australian Local Government Association.
- The Council consists of the Australian, state/territory and New Zealand Ministers with responsibility for transport and infrastructure issues.

Editorial changes and changes to correct errors are processed by the Department of Infrastructure and Regional Development. This approach is only used where the amendments do not vary the intent of the vehicle standard.

Proposals that are regarded as significant need to be supported by a RIS meeting the requirements of the Office of Best Practice Regulation (OBPR) as published in *the Australian Government Guide to Regulation* and the Council of Australian Governments' *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies.*

3.3. Specific Consultation Arrangements for this Vehicle Standard

This standard was proposed, discussed and supported during 2016-17 at meetings of AMVCB, TLG and SVSEG. It was acknowledged that these groups are at the appropriate level to consider this type of change. A draft ADR was also provided as part of this consultation process to AMVCB.

The Department of Infrastructure and Regional Development also consulted with the Office of Best Practice Regulation (OBPR) within the Department of Prime Minister and Cabinet on this standard. A Regulation Impact Statement is not required, as the decision maker is not the Australian Government's Cabinet, and this vehicle standard will have a neutral regulatory impact. The OBPR reference number is 22612.

4. STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The following Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

4.1. Overview of the Legislative Instrument

ADR 3/04 is being made to replace ADR 3/03. It prescribes requirements for vehicle seats, their attachment assemblies, their installation and any head restraint fitted.

4.2. Human Rights Implications

ADR 3/04 does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

4.3. Conclusion

ADR 3/04 is compatible with human rights, as it does not raise any human rights issues.

PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Urban Infrastructure
PDR ID: MS17-002618

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

Dear Senator Williams

Vehicle Standard (Australian Design Rule (ADR) 34/03 – Child Restraint Anchorages and Child Restraint Anchor Fittings) 2017

I refer to the letter dated 30 November 2017 from the Secretary of the Senate Standing Committee on Regulations and Ordinances (the Committee) regarding the Vehicle Standard (ARD 34/03 – Child Restraint Anchorages and Child Restraint Anchor Fittings) 2017 (the Determination).

The Committee has requested further information from me about two scrutiny issues identified in relation to the Determination. I would like to provide the following advice to the Committee in response to these matters as they appear in the Delegated Legislation Monitor No. 15 of 2017.

1. Manner of incorporation of documents

The Determination incorporates references to the Consolidated Resolution on the Construction of Vehicles (R.E.3), a number of United Nations (UN) Regulations, technical drawings produced by the TNO (Research Institute for Road Vehicles) – Netherlands, and the Society of Automotive Engineers (SAE) J879b Motor Vehicle Seating Systems, July 1968 (SAE J879b) standard.

As these standards are not legislative instruments, Subsections 14(1)(b) and 14(2) of the Legislation Act 2003 (the Legislation Act) have the effect that the Determination can only incorporate the standards as in force at the time the Determination commenced, and not 'as in force or existing from time to time'.

I note the Committee's comments on facilitating the public's ability to understand the operation of the Determination. For this reason, I instructed the Department of Infrastructure and Regional Development to amend the Explanatory Statement (ES) to explicitly state that these standards are incorporated as in force at the commencement of the Determination.

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2. Access to incorporated documents

I understand the importance of ensuring persons interested in or affected by an instrument have adequate access to its terms, including any incorporated documents.

The technical drawings produced by the TNO (Research Institute for Road Vehicles) – Netherlands define a test dummy which corresponds to the 6-year manikin described in Annex 8 – Appendix 1 of the UN Regulation No. 44 (R 44) – (Document E/ECE/324/Rev.1/Add.43/Rev.3). Compliance with these drawings is an option to another criterion directly specified in the ADR.

The SAE J879b standard is available for purchase only, through SAE International. Vehicle manufacturers and test facilities (in particular crash test laboratories) access this SAE standard as part of their professional library and it has been referenced in the ADRs for over 30 years. In addition, compliance with the test referencing SAE J879b is an option to another test directly specified through the ADR.

The Consolidated Resolution on the Construction of Vehicles (R.E.3.), the UN Regulations and the UN Global Technical Regulations are freely available online through the UN World Forum for the Harmonization of Vehicle Regulations (WP.29). The WP.29 website is **www.unece.org/trans/main/welcwp29.html**.

In line with best-practice and consistent with section 15J of the Legislation Act, I instructed the department to amend the ES to include a description of these standards as well as details of how to access them.

A marked up copy of the revised ES, as amended by the department, to address the issues raised by SSCRO is provided for your information at Attachment A. I understand the replacement ES will shortly be registered on the Federal Register of Legislation.

I trust this information supports the Committee in finalising its consideration of the Determination.

Yours sincerely

Paul Fletcher

7 / 12 /2017

Enc

Vehicle Standard (Australian Design Rule 34/03 – Child Restraint Anchorages and Child Restraint Anchor Fittings) 2017

Made under section 7 of the *Motor Vehicle Standards Act 1989*

Replacement Explanatory Statement

Issued by the authority of the Minister for Urban Infrastructure

~~September~~ December 2017

CONTENTS

1. LEGISLATIVE CONTEXT

Vehicle Standard (Australian Design Rule 34/03 – Child Restraint Anchorages and Child Restraint Anchor Fittings) 2017 is made under the *Motor Vehicle Standards Act 1989* (the Act). The Act enables the Australian Government to establish nationally uniform standards that apply to new road vehicles when they are first supplied to the market in Australia. The Act applies to such vehicles whether they are manufactured in Australia or imported.

The making of the vehicle standards necessary for the Act's effective operation is provided for in section 7 which empowers the Minister to "determine vehicle standards for road vehicles or vehicle components".

Vehicle Standard (Australian Design Rule 34/03 – Child Restraint Anchorages and Child Restraint Anchor Fittings) 2017 (ADR 34/03) is being made to replace Vehicle Standard (Australian Design Rule 34/02 – Child Restraint Anchorages and Child Restraint Anchor Fittings) 2012 (ADR 34/02), which was originally determined in 2012.

2. CONTENT AND EFFECT OF ADR 34/03 – CHILD RESTRAINT ANCHORAGES AND CHILD RESTRAINT ANCHOR FITTINGS

2.1. Overview of the ADR

This vehicle standard prescribes requirements for top tether anchorages and their fittings so that child restraints may be adequately secured to the vehicle. It specifies a standard package of fitting hardware and accessibility requirements to facilitate correct installation and interchangeability of child restraints. It also specifies requirements for any ISOFIX lower anchorages to which the lower portion of a child restraint may be attached on a vehicle seat.

ISOFIX is a system for attaching child restraints to vehicles, which has been adopted internationally by the United Nations World Forum for the Harmonization of Vehicle Regulations.

2.2. Effect of the ADR

This vehicle standard is being made to combine safety requirements for child restraint anchorages from ADRs 3/03 and 34/02 into a single ADR. This will mean light vehicle manufacturers will only have to use one ADR in future to demonstrate compliance with child restraint anchorage related requirements.

Safety requirements are also being set in this standard for any child restraint anchorages fitted to ADR category MD2 or NA vehicles. Although it will not be mandatory for manufacturers to fit child restraint anchorages to these vehicles, any child restraint anchorages optionally fitted by manufacturers will need to meet a prescribed set of design, location and strength related requirements.

The standard will apply to ADR category LEP (motor tricycles), category M vehicles (passenger vehicles and omnibuses) and category NA vehicles (light goods vehicles).

New model vehicles will need to be certified to this standard from 1 November 2019. All new category MD2 and NA vehicles equipped with one or more *'Upper Anchorages'* (top tether anchorages) and/or ISOFIX anchorage systems will also need to be certified to this standard from 1 November 2022. There is no mandatory application date for all other vehicles. They may comply with this vehicle standard or continue to comply with ADR 34/02 or its acceptable prior rule.

A complementary explanatory statement is available for ADR 3/04.

2.3. Incorporated Documents

This standard incorporates references to a number of standards of a highly technical nature. These standards are typically accessed by vehicle manufacturers and test facilities as part of their professional library.

Clause 10 of this standard incorporates a reference to technical drawings produced by the TNO (Research Institute for Road Vehicles) – Netherlands. These are the design drawings for a test dummy representing a 50th percentile 6-year old child.

Clause 11 of this standard incorporates a reference to the Society of Automotive Engineers J879b Motor Vehicle Seating Systems, July 1968 (SAE J879b). This SAE standard specifies test procedures for motor vehicle seats and seat adjusters.

Clause 12 of this standard incorporates a reference to the Consolidated Resolution on the Construction of Vehicles (R.E.3) – (Document TRANS/WP29/78/Rev.4).

Clause 13 incorporates a reference to UN Regulation No. 44 – UNIFORM PROVISIONS CONCERNING THE APPROVAL OF RESTRAINING DEVICES FOR CHILD OCCUPANTS OF POWER-DRIVEN VEHICLES ("CHILD RESTRAINT SYSTEMS") (R 44).

Clause 14 of this standard incorporates references to UN Regulation No. 14 - UNIFORM PROVISIONS CONCERNING THE APPROVAL OF VEHICLES WITH REGARD TO SAFETY-BELT ANCHORAGES, ISOFIX ANCHORAGES SYSTEMS AND ISOFIX TOP TETHER ANCHORAGES AND ISIZE SEATING POSITIONS (R 14) and UN Regulation No. 16 - UNIFORM PROVISIONS CONCERNING THE APPROVAL OF: I. SAFETY-BELTS, RESTRAINT SYSTEMS, CHILD RESTRAINT SYSTEMS AND ISOFIX CHILD RESTRAINT SYSTEMS FOR OCCUPANTS OF POWER-DRIVEN VEHICLES and II.VEHICLES EQUIPPED WITH SAFETY-BELTS, SAFETY-BELT REMINDERS, RESTRAINT SYSTEMS, CHILD RESTRAINT SYSTEMS AND ISOFIX CHILD RESTRAINT SYSTEMS AND I-SIZE CHILD RESTRAINT SYSTEMS (R 16).

In accordance with subsections 14(1)(b) and 14(2) of the *Legislation Act 2003*, these reference documents and standards are incorporated as in force at the commencement of the Determination.

The technical drawings incorporated by reference in clause 10 of this standard were produced by the TNO (Research Institute for Road Vehicles) – Netherlands and define a test dummy which also corresponds to the 6-year manikin described in Annex 8 – Appendix 1 of the UN Regulation No. 44 (R 44) – (Document E/ECE/324/Rev.1/Add.43/Rev.3). Compliance with these drawings is an option to another criterion directly specified in the ADR.

The SAE J879b standard incorporated by reference in clause 11 of this standard is available for purchase only, through SAE International. Vehicle manufacturers and test facilities (in particular crash test laboratories) access this SAE standard as part of their professional library and it has been referenced in the ADRs for over 30 years. In addition, compliance with the test referencing SAE J879b is an option to another test directly specified through the ADR.

The Consolidated Resolution on the Construction of Vehicles (R.E.3.) – (Document TRANS/WP29/78/Rev.4), and the UN Regulations (including R 14, R 16 and R 44) are international standards and guidance documents that may be freely accessed online through the UN World Forum for the Harmonization of Vehicle Regulations (WP.29). The WP.29 website is https://www.unece.org/trans/main/welcwp29.html.

3. BEST PRACTICE REGULATION

3.1. Benefits and Costs

This vehicle standard will have no more than a minor regulatory impact on business, community organisations or individuals.

3.2. General Consultation Arrangements

It has been longstanding practice to consult widely on proposed new or amended vehicle standards. For many years there has been active collaboration between the Commonwealth and the state/territory governments, as well as consultation with industry and consumer groups. Much of the consultation takes place within institutional arrangements established for this purpose. The analysis and documentation prepared in a particular case, and the bodies consulted, depend on the degree of impact the new or amended standard is expected to have on industry or road users.

Depending on the nature of the proposed changes, consultation could involve the Technical Liaison Group (TLG), Strategic Vehicle Safety and Environment Group (SVSEG), Transport and Infrastructure Senior Officials' Committee (TISOC) and the Transport and Infrastructure Council (the Council).

- TLG consists of technical representatives of government (Australian and state/territory), the manufacturing and operational arms of the industry (including organisations such as the Federal Chamber of Automotive Industries and the Australian Trucking Association) and of representative organisations of consumers and road users (particularly through the Australian Automobile Association).

- SVSEG consists of senior representatives of government (Australian and state/territory), the manufacturing and operational arms of the industry and of representative organisations of consumers and road users (at a higher level within each organisation as represented in TLG).
- TISOC consists of state and territory transport and/or infrastructure Chief Executive Officers (CEOs) (or equivalents), the CEO of the National Transport Commission, New Zealand and the Australian Local Government Association.
- The Council consists of the Australian, state/territory and New Zealand Ministers with responsibility for transport and infrastructure issues.

Editorial changes and changes to correct errors are processed by the Department of Infrastructure and Regional Development. This approach is only used where the amendments do not vary the intent of the vehicle standard.

Proposals that are regarded as significant need to be supported by a RIS meeting the requirements of the Office of Best Practice Regulation (OBPR) as published in *the Australian Government Guide to Regulation* and the Council of Australian Governments' *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies.*

3.3. Specific Consultation Arrangements for this Vehicle Standard

This standard was proposed, discussed and supported during 2016-17 at meetings of AMVCB, TLG and SVSEG. It was acknowledged that these groups are at the appropriate level to consider this type of change. A draft ADR was also provided as part of this consultation process to AMVCB.

The Department of Infrastructure and Regional Development also consulted with the Office of Best Practice Regulation (OBPR) within the Department of Prime Minister and Cabinet on this standard. A Regulation Impact Statement is not required, as the decision maker is not the Australian Government's Cabinet, and the changes will have no more than a minor regulatory impact. The OBPR reference number is 22612.

4. STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The following Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

4.1. Overview of the Legislative Instrument

ADR 34/03 is being made to replace ADR 34/02. It prescribes child restraint anchorage and anchor fitting requirements for passenger vehicles as well as light commercial vehicles.

4.2. Human Rights Implications

ADR 34/03 does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

4.3. Conclusion

ADR 34/03 is compatible with human rights, as it does not raise any human rights issues.