

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Supplementary Budget Estimates 15-18 October 2012

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Outcome/Program: 1.1.1 Domestic Policy

Topic: Regulation Impact Statements - Exemptions

Senator: Senator Sinodinos

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Question:

Senator SINODINOS: These are fairly brief questions. They go to the role of the department in the whole issue of assessing best practice on regulation by departments. Under the best practice handbook, the Prime Minister has the ability to exempt ministers from having to complete regulation impact statements. I guess I just want some elaboration on the process under which these exemptions are given. What role does PM&C specifically take in advising the Prime Minister on the appropriateness or otherwise of granting an exemption?

Mr de Brouwer: In general, ministers would write to the Prime Minister seeking an exemption, listing the reasons why they are doing so. As with normal correspondence, the department would provide advice to the PM on that basis.

Senator SINODINOS: What sort of criteria do you take into account in determining whether it is appropriate to grant an exemption or not? What frames your advice?

Mr de Brouwer: We had a conversation around this at previous estimates. There are no specific guidelines of what the PM would look at in framing her decision. I may have to come back to you. I will just refresh myself on some of the material and come back to you.

Senator SINODINOS: In that context, there seems to have been an increasing trend to grant the exemptions, so you might look at your answer in that context.

Mr de Brouwer: Yes.

Senator SINODINOS: Can you recall any instances where a minister wrote to the Prime Minister seeking an exemption but was not granted that exemption?

Mr de Brouwer: Off the top of my head, I cannot recall. I will take that one on notice.

Senator SINODINOS: Or instances where the Prime Minister initiated the granting of an exemption?

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Mr de Brouwer: Again, I cannot recall a situation where that has happened. I will take that one on notice.

Answer:

Exemptions from the regulatory impact statement (RIS) requirements for exceptional circumstances can only be granted by the Prime Minister in writing at the request of the responsible minister or agency head.

There are no legislated criteria for the granting of Prime Minister's exemptions from the requirement to undertake a regulatory impact statement. Factors that are taken into account in considering exemption requests include the exceptional nature and urgency of the matter and the time required to prepare a compliant regulation impact statement.

The Office of Best Practice Regulation (OBPR) must be informed when an exemption is granted and must be provided with a copy of the letter signed by the Prime Minister granting the exemption. If the Prime Minister grants an exemption, the agency is deemed as compliant with RIS requirements. For matters where an exemption is granted, a post implementation review of the decision needs to be commenced within two years.

The OBPR maintains a central online public register of all RISs and assessments of RISs. The register also records regulatory proposals where a Prime Minister's exemption has been granted; five exemptions were granted in 2011-12, down from 14 in 2010-11. The register does not record when a regulatory proposal has not been granted a Prime Minister's exemption from the RIS requirements. There is no record of a Prime Minister's exemption not being granted where a minister has written to the Prime Minister seeking an exemption.