THE HON MELISSA PRICE MP
ASSISTANT MINISTER FOR THE ENVIRONMENT

MC18-003955

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

Dear Senator ~~Williams~~ John,

I refer to the letter from the Committee Secretary concerning the drafting of the *Amendment of List of Exempt Native Specimens – South Australian Lakes and Coorong Fishery, February 2018* [F2018L00137].

The Committee requested clarification in relation to whether specimens that belong to taxa listed under section 303CA of the EPBC Act (Australia's CITES list) are excluded from the List of Exempt Native Specimens (the list).

I am advised by the rule-maker that species listed under section 303CA of the *Environment Protection and Biodiversity Conservation Act 1999* (Australia's CITES List) are excluded from the list. The Department of the Environment and Energy has advised me that it notes the Committee's comments about the potential confusion caused by the existing wording and will ensure that future instruments amending the list and their explanatory statements clearly describe the inclusion and exclusion of specimens in the list. The explanatory statement for the South Australian Lakes and Coorong Fishery will be updated in due course to clarify the provision to avoid any confusion on what is included or excluded from the list.

I trust this advice is of assistance to the Committee.

Yours sincerely

MELISSA PRICE

CC: Minister for the Environment and Energy, the Hon Josh Frydenberg MP

Senator the Hon Simon Birmingham

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

Our Ref MS18-000477

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

By email to: regords.sen@aph.gov.au

Dear Chair John,

I refer to the matters raised in the Senate Standing Committee on Regulations and Ordinances' (the Committee) *Delegated legislation monitor 3 of 2018*, with respect to the *Australian Education Amendment (2017 Measures No. 2) Regulations 2017*.

Please find my response to the matters raised by the Committee enclosed.

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

Yours sincerely

Simon Birmingham

Encl.
Response to the Committee.

Adelaide
107 Sir Donald Bradman Drive, Hilton SA 5033
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Canberra
Parliament House Canberra ACT 2600
Ph 02 6277 7350

The committee requests the further advice of the minister in relation to its request that the instrument or its explanatory statement be updated to provide relevant information about the incorporation of the Ministerial Council disability guidelines. The committee requests in particular that the ES be amended to include a description of the guidelines, and indicate how they may be obtained, to ensure compliance with the requirements of paragraph 15J(2)(c) of the Legislation Act 2003.

As indicated in my earlier response, the Ministerial Council disability guidelines have been incorporated into the *Australian Education Regulation 2013* since 2014 (as such the instrument does not incorporate the guidelines by reference), are publically available on my department's website, and I consider that there is general awareness of the guidelines within the school education sector. I note that the Ministerial Council disability guidelines are more readily available to the public than the Explanatory Statement.

Notwithstanding the above, as the Committee has expressed the need to include further information in the Explanatory Statement to ensure other parties, who might be interested in or affected by the Ministerial Council disability guidelines, are able to access those guidelines, a revised Explanatory Statement has been prepared. The revised Explanatory Statement will be registered in due course.

TREASURER

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

Dear Senator

I am writing to provide a response to the request for information from the Senate Regulations and Ordinances Committee outlined in the Committee's *Delegated legislation monitor 4 of 2018* regarding the Cheques Regulations 2018. The Committee inquired about the basis for the fee charged when a person asks the eligible authority to provide information contained in the register of notices.

I appreciate the Committee's consideration of the Regulations and have provided a response in the Attachment.

I hope this information will be of assistance to the Committee.

Yours sincerely

The Hon Scott Morrison MP

12 / 4 / 2018

Parliament House Canberra ACT 2600 Australia
Telephone: 61 2 6277 7340 | Facsimile: 61 2 6273 3420

Attachment

Basis of the fee –section 10

The Committee has requested the Minister's advice in relation to section 10 of the Cheques Regulations 2018 regarding the basis for the fee charged when a person asks the eligible authority to provide information contained in the register of notices.

By way of background, an eligible authority means the Australian Payments Clearing Association Limited (APCA) or a person approved in writing by the Minister. APCA has recently changed its name and is now known as the Australian Payments Network Limited (APN). The register of notices contains information in relation to notified places for internal presentment of cheques. Financial institutions may provide to an eligible authority such information and specify a place as a notified place in relation to cheques.

When a person requests information contained in the register of notices and pays the associated fee, APN incurs an administrative cost in retrieving this information for the requesting person. The fee has been calculated to reflect the administrative cost of staff time and effort involved in responding to the request. The fee also ensures only serious requests for information are made and deters unnecessary requests for information.

The Cheques Regulations 2018 remake the Cheques Regulations 1987. The explanatory statement for the Cheques Regulations 2018 did not explain the basis of the fee because the Cheques Regulations 2018 replicated the corresponding provisions in the Cheques Regulations 1987, with only a few minor changes that are not intended to change the operation of the provisions. An explanation was not provided in relation to provisions which were not changing to avoid unintentionally changing the meaning of the original provisions. The fee for an eligible authority to provide information contained in the register of notice to a person has not changed.

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

REF: MC18-000969

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

Dear Chair

I refer to the letter of 22 March 2018 from Ms Anita Coles, Committee Secretary of the Standing Committee on Regulations and Ordinances, concerning additional information requested in relation to the *Commonwealth Electoral (Authorisation of Voter Communication) Determination 2018* [F2018L00139] (the Determination), which was raised in the *Delegated legislation monitor* No. 3 of 2018. As these instruments relate to electoral matters, your questions have been referred to me for reply.

The term 'search advertising'

Section 9 of the Determination sets out requirements for notifying particulars of authorisation for various, specified forms of electoral and referendum communications. Many of these are defined in section 4 of the Determination, however 'search advertising' is not.

In the *Delegated legislation monitor* No. 3 of 2018, the Committee considers that the meaning and scope of the term 'search advertising' may not be self-evident to persons interested in or affected by the Determination and has requested advice in relation to the intended meaning and scope of the term 'search advertising', and whether it may be appropriate to include a definition of 'search advertising' in the Determination.

Subsection 321D(7) of the *Commonwealth Electoral Act 1918* (the Electoral Act) provides that the Electoral Commissioner may make a legislative instrument to further determine exceptions to communications or circumstances for electoral and referendum matters; and to also determine further requirements in relation to the particulars which are to be notified as part of the authorisation, across a number of pieces of legislation.

The purpose of the *Commonwealth Electoral (Authorisation of Voter Communication) Determination 2018* (the Determination) is to give effect to the Electoral Commissioner's power under subsection 321D(7) of the Electoral Act to make a legislative instrument.

Item 5 of the table at section 9 of the Determination establishes how the particulars must be notified if the communication is search advertising. In the Determination, it sets out that it must be in the footer of the landing page from the URL; or if the particulars are too long to be included in the word limit of the search advertising – in a website that can be accessed by a URL included in the search advertising.

Search advertising is a commonly used term in the advertising space and used in online and internet marketing. It is the term used to capture the method of using advertisements generated when an internet user types in specific key words or phrases in search of a product or service in a search engine. From the user's perspective, they will see advertisements listed above organic search results.

The way search advertising works is that an entity will 'bid' for terms, and then if the entity wins that term their advertisement will appear when that term is typed into the search engine. The term does not necessarily have to relate exactly to your advertisement – for example, the AEC quite often bids on the term 'moving house' during the enrolment phase of the election to try and capture those who are moving with an 'update your enrolment' message.

Some recent examples from the AEC's advertising campaign for the Batman by-election are included at Attachment A.

It is noted that the definitions provided at section 4 of the Determination are broad and in many cases provide a meaning for a term by way of including a non-exhaustive list of examples. As search advertising is a commonly used term by those in an advertising and marketing space it is believed that users of the Determination would be able to determine the meaning of the term by reading it as is and without the need for any further explanation.

In response to your question, I am advised that during the extensive consultation that the Australian Electoral Commission (AEC) undertook with the stakeholders identified on pages 1 and 2 of the Explanatory Statement, no issues were raised or questions asked in relation to the use of the term, and as such, no further clarification was considered in the drafting of the Determination or the Explanatory Statement.

I am advised that it is not the intention of the Electoral Commissioner at this stage to update the Determination or the Explanatory Statement with a definition for search advertising, as it understood to be a widely understood and known term.

Anticipated authority

In relation to the Committee's report setting out that section 4 of the *Acts Interpretation Act 1901* allows, in certain circumstances, the making of a legislative instrument in anticipation of the commencement of the empowering provision that authorises the instrument to be made, I note the following.

As stated, the Determination was made on 21 February 2018 and registered on the Federal Register of Legislation on 22 February 2018. The commencement date of the Determination was 15 March 2018. I note the Committee's consideration that in the interests of promoting the clarity and intelligibility of an instrument to anticipated users, that explanatory statements that rely on section 4 of the *Acts Interpretation Act 1901* should clearly identify that the making of the instrument relies on that section. I thank the Committee for drawing the omission of the reference in the explanatory statement to section 4 of the *Acts Interpretation Act 1901* to my and the Electoral Commissioner's attention. We will take this into account in preparing future explanatory statements.

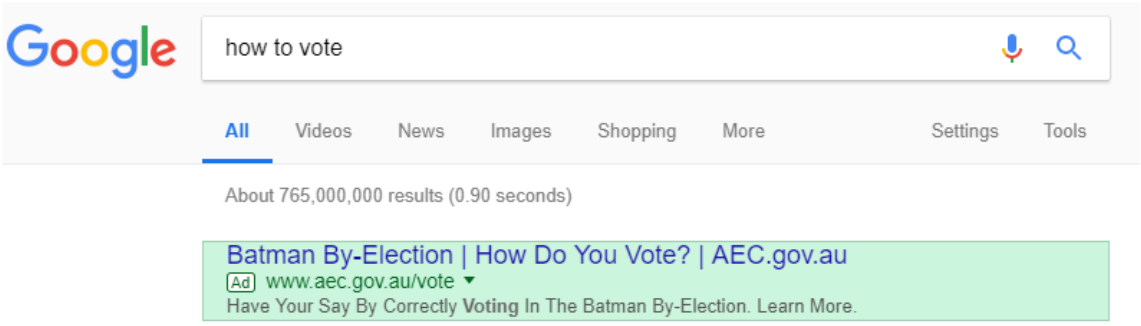
I trust that the above information is of assistance to the Committee in their consideration of these matters.

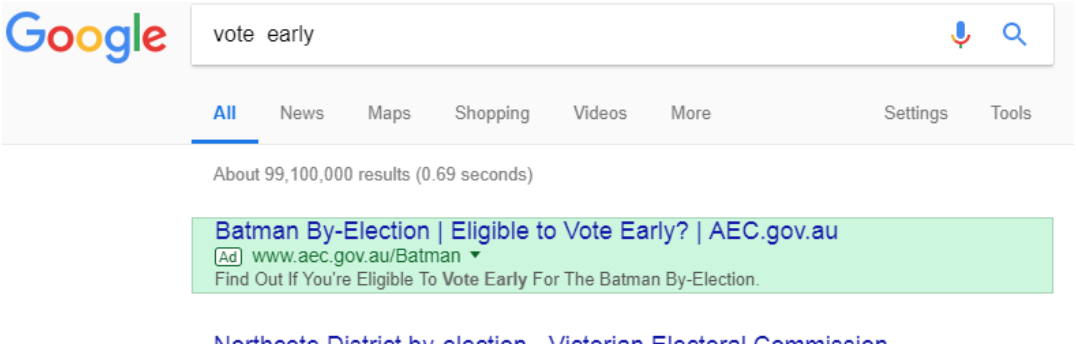
Kind regards

Mathias Cormann
Minister for Finance

6 April 2018

Attachment A





THE HON STEVEN CIOBO MP

Minister for Trade, Tourism and Investment

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

Dear Senator

I provide information in response to the Committee's comments in relation to the *Export Market Development Grants (Approved Bodies) Guidelines 2018* [F2018L00119] ('the 2018 Guidelines'), as set out in the Committee's Delegated Legislation Monitor 3 of 2018 dated 21 March 2018. I apologise for the delay in responding.

The Committee has raised concerns of principle regarding the clarity and intelligibility of the instrument to readers because, at the time the 2018 Guidelines were registered on the Federal Register of Legislation (on 15 February 2018), the *Export Market Development Grants Regulations 2018* ('the Regulations') had not yet been made or registered.

This was an administrative error by the Australian Trade and Investment Commission. The 2018 Guidelines were not intended to precede the 2018 Regulations and both the Guidelines and Regulations will commence on 1 July 2018.

I understand the Committee is now aware the Regulations were made by the Governor General on 2 March 2018 and registered on 8 March 2018.

Yours sincerely

Steven Ciobo

07 MAY 2018

Parliament House Canberra ACT 2600 Australia
Telephone (02) 6277 7420 E-mail Trade.Minister@dfat.gov.au

The Hon Greg Hunt MP
Minister for Health

Ref No: MC18-005708

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

16 APR 2018

Dear Chair John

I refer to correspondence of 22 March 2018 on behalf of the Senate Regulations and Ordinances Committee concerning a request for information about scrutiny issues identified in relation to the Narcotic Drugs Amendment (Cannabis) Regulations 2018 (the Regulation).

You have raised two primary issues, on the meaning of 'connections and associations' to inform whether a licence or permit applicant is a 'fit and proper' person and on the management of a person's privacy.

Fit and proper person – how does an applicant know what are 'connections and associations'?
Since the introduction of the regulatory scheme for the cultivation, production and manufacture of medicinal cannabis in late 2016, my Department has been working with stakeholders, including applicants and potential applicants, for the various cannabis licences and permits to ensure that applicants can determine with sufficient precision what connections and associations must be disclosed. An application for a licence or permit has not been refused for the applicant's failure to include sufficient information about its connections and associations; additional information has often been sought.

In August 2017, my Department examined the requirements for information specified in each of the notices given to applicants and made by the Secretary under section 14J of the *Narcotic Drugs Act 1967* (the Act) over the previous twelve months. The purpose of the exercise was to identify refinements to the application forms requiring information relevant to the applicant's connections and associations; in turn, this would assist applicants understand how they might meet the requirement to be 'a fit and proper person'. The forms were amended to include requests for information about persons who have the capacity to influence the finances or activities of a body corporate applicant. It is mandatory for the applicant to include this information in the form.

Experience has dictated that often the precise nature of the applicant's relationships is best understood through discussion with the applicants, having regard to the information included in the application form or information provided by the applicant under further request for information by the delegate of the Secretary for my Department. For example, my Department will interview applicants to understand the nature of the relationships to the body corporate applicant of persons that the applicant has identified as a connection or association or that my Department has independently identified using alternative sources of information available to it. There is no 'one size fits all'.

Building on this work, my Department is in the course of revising the relevant guidance documents and application forms and expects that they will be published in August 2018.

Departmental management of a person's privacy

The information about persons associated or connected to the applicant or licence holder can be provided by the applicant as part of the application process for a licence, or by relevant Commonwealth, State and Territories' law enforcement agencies and other regulatory agencies. The application forms filled in by the applicants, in effect, inform the applicant that the information they provide, including personal information, will be provided to law enforcement agencies and other regulatory agencies for the purposes of assessing their application. Applicants are also asked to provide consent to the disclosure of information to relevant law enforcement and regulatory agencies.

The Secretary is also empowered to require information from any other source including heads of state or territory agencies. Personal information collected in this way is taken to be authorised for the purpose of the *Privacy Act 1988* (sections 14 and 14L).

Personal and other information relevant to the application or the licence can only be used in the assessment of the person's application for a licence or the person's suitability to continue to hold a licence under the Act, subject to other provisions under the Act that allows disclosure of that information in specified circumstances. Disclosure of personal information obtained and held by the Secretary is prohibited unless disclosure is consistent with the circumstances set out in section 14N of the Act. Disclosure of information in those circumstances is authorised for the purposes of the *Privacy Act 1988*.

The circumstances set out in section 14N include:

(a) disclosure is in the course of performing functions or duties, or exercising powers under the Act; or
(b) disclosure is for the purposes of the Act;
(c) disclosure is required or authorised by or under a law of the Commonwealth, State or Territory; or
(d) the person to whom the information relates consents to the disclosure; or
(e) disclosure is to a Commonwealth, State or Territory law enforcement agency; or
(f) disclosure to an agency of the Commonwealth, a State or Territory that is responsible for, or deals with, matters relating to health, therapeutic goods, poisons, industrial chemicals, land management or the registration of pharmacies or the regulation of pharmacies.

The collection, obtaining, holding and disclosure of personal information is otherwise subject to the requirements under the Privacy Act and any sanctions available under that Act for breaches of those requirements.

My Department's information management system for cannabis licences and permits, TRIM, is only accessible to employees of my Department working in the Office of Drug Control (ODC) whose duties include considering applications for cannabis licences and permits.

For information specifically relating to the criminal review element of the fit and proper person assessment of applicants and their connections and associates, additional controls are in place such that only the Directors and Assistant Directors within ODC have access to the outcomes of requests for information to law enforcement entities. The information is stored within limited access TRIM containers and, in some cases, on my Department's PROTECTED offline environment.

In the few circumstances where sensitive law enforcement information has been provided (rating a classification of PROTECTED), the delivery of that information has been by secure hard copy courier rather than over email. That material is subsequently stored in locked containers within the ODC secure room (access controlled and audited.

The ODC takes an 'onion' approach to physical security, with:

- access controls into the building including physical guarding
- swipe entry into the ODC work area – limited to ODC staff and Departmental senior executive staff only
- a separately 'access controlled' secure room within this secure work area with limited numbers of staff having access, and
- Class C containers within that secure room.

Thank you for writing on this matter.

Greg Hunt

SENATOR THE HON MITCH FIFIELD
DEPUTY LEADER OF THE GOVERNMENT IN THE SENATE
MINISTER FOR COMMUNICATIONS
MINISTER FOR THE ARTS

Ref No: MS18-000385

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

Reply to Standing Committee on Regulations and Ordinances - *National Gallery Regulations 2018* and *Telecommunications Code of Practice 2018*

Dear Chair John

As requested by the Secretary of the Standing Committee on Regulations and Ordinances on 29 March 2018, I am pleased to provide further advice on the *National Gallery Regulations 2018* and the *Telecommunications Code of Practice 2018* at Attachments A.1 and A.2 respectively. I thank the Committee for identifying these issues.

National Gallery Regulations 2018

The *National Gallery Regulations 2018* would replace the *National Gallery Regulations 1982*, which sunsetted on 1 April 2018 in accordance with the *Legislation Act 2003*. The regulations, which support the *National Gallery Act 1975*, include specific provisions for matters such as offences, security, and service of alcohol, among others.

The Committee has sought detailed advice regarding the evidential burden of proof in subsections 9(2) and 21(2), and section 25 of the *National Gallery Regulations 2018.* A response is included at Attachment A.1.

Telecommunications Code of Practice 2018

The Committee has identified two issues regarding the remade *Telecommunications Code of Practice 2018* (Code). The Code is a ministerial instrument made under Schedule 3 to the *Telecommunications Act 1997* (the Act).

Schedule 3 provides telecommunications carriers some powers and immunities to undertake inspections and to install and maintain their facilities. These powers primarily relate to low-impact facilities which are specified in the *Telecommunications (Low-impact Facilities) Determination 2018* (Determination). The Act and the Code set out requirements on carriers when exercising their powers.

The Code was remade following six weeks of public consultation, from 9 June to 21 July 2017. The Government published a consultation paper setting out 24 specific changes to carrier powers and immunities, as well as marked-up versions of the Code and Determination. Two of the reforms were included in the remade Code.

The Government is presently undertaking further consultation on carrier powers and immunities. This work will address feedback received in 2017. It is my intention to amend the Code to address the concerns raised by the Committee as part of these additional changes, which I expect will be made later this year. For the reasons set out in Attachment A.2, I do not consider that the issues need to be addressed immediately.

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

Yours sincerely

MITCH FIFIELD

16/4/18

Encl.

The Committee requests the minister's more detailed advice as to the justification for reversing the evidential burden of proof in subsections 9(2) and 21(2), and section 25, of the instrument. The committee's assessment would be assisted if the minister's response expressly addressed the principles set out in the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers.

Response:

Subsection 9(2)

The reversal of the evidential burden of proof in subsection 9(2) is appropriate, having regard to the principles in the Attorney-General's Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide).

In regard to paragraph 9(2)(a), it would be disproportionately more difficult and costly, taking into account the relatively low penalty, for the prosecution to prove that an accused person sold or supplied liquor without being authorised to do so than it would be for a person to raise evidence of the defence, that they held the appropriate authorisation. An accused could cheaply and readily raise evidence of the authorisation.

In regard to paragraph 9(2)(b), it is within the peculiar knowledge of a person supplying liquor (other than by way of sale) that they obtained the liquor on Gallery land or in a Gallery building from an authorised liquor supplier. There may well be no way for the Gallery Council or staff members to know with certainty the origin of liquor supplied by a person, including the circumstances in which it was first supplied to that person by another party. It would be significantly and disproportionately (given the low penalty) more difficult for the prosecution to prove, for example, that relevant liquor was not supplied to a person on gallery land, than it would be for the person to raise evidence that his or her conduct fell within the defence.

I note that once the evidential burden is discharged, the prosecution would then be required to disprove the matter beyond reasonable doubt.

In addition to the above matters, in accordance with the Guide, creating the defence is more readily justified as the offence carries a relatively low penalty of 5 penalty units and the conduct proscribed by the offence aims to achieve the important public health and safety objective of preventing unauthorised supply of liquor, including to minors.

Subsection 21(2)

The reversal of the evidential burden of proof in subsection 21(2) is also appropriate. This is because the matters specified in that subsection are likely to be within the peculiar knowledge of the person involved. These matters are whether the person has a disability (within the meaning of the *Disability Discrimination Act 1992*); whether an animal belonging to that person or in their charge is an assistance animal; and whether the person is a member of a police force acting in accordance with their duties.

It would again be significantly and disproportionately more difficult for the prosecution to prove that a person is not a person with a disability and that their animal is not an assistance animal, than it would be for any accused to raise the relevant defence by providing evidence

of their own status (and that of their assistance animal). This is similarly the case in relation to proving that a person is not a police officer acting in accordance with their duties.

I note that once the evidential burden is discharged, the prosecution would then be required to disprove the matter beyond reasonable doubt.

In accordance with the Guide, as noted, the penalty for contravention of subsection 21(2) is the relatively low amount of five penalty units, which tends to support a defence provision in these circumstances.

Section 25

The reversal of the evidential burden of proof in section 25 is similarly appropriate. It would again be disproportionately difficult and costly, taking into account the low penalty, for the prosecution to prove that the Council had not consented in writing to a person engaging in conduct that contravenes Part 3 or 4 of the instrument, than for the person to raise evidence of the written consent.

It would be similarly disproportionately difficult and costly for the prosecution to prove that a person is not a member of the Council, the Director or a staff member acting in accordance with their duties, than for the person to raise evidence of their appointment or employment and associated duties.

Any accused could cheaply and readily raise evidence of their written consent, or of their appointment or employment and associated duties.

I note that once the evidential burden is discharged, the prosecution would then be required to disprove the matter beyond reasonable doubt.

In accordance with the Guide, creating the defence is more readily justified as the offence carries a relatively low penalty of 5 penalty units.

In addition, I note that the defence provisions in section 25 are consistent with the approach taken in similar regulations governing the operation of certain other national cultural institutions, such as the National Portrait Gallery of Australia (see for example section 24 of the *National Portrait Gallery Regulation 2013* which is framed in similar terms). A consistent approach to the framing of defence provisions across the national cultural institutions is desirable, where possible, and the framing of proposed section 25 supports this approach.

The committee requests the minister's advice as to the standards to which sections 2.7, 3.7, 4.7, 5.7 and 6.7 of the instrument refer, and how those standards may be accessed free of charge.

Response:

The provisions provide that when engaging in a low-impact activity, a carrier must conduct the activity in accordance with any standard that relates to the activity, is recognised by the Australian Communications and Media Authority (ACMA) as a standard for use in that industry, and is likely to reduce a risk to the safety of the public if the carrier complies with the standard. The provisions replicate clause 12 in Schedule 3 to the Act, but also include examples of applicable standards.

I can advise the Committee that two standards are recognised by the ACMA, both of which are included in the examples provided in sections 2.7, 4.7, 5.7 and 6.7 of the Code. Section 3.7 only references "a relevant standard or code under Part 6 of the Act".

The first example is the *Australian Radiation Protection Standard for Maximum Exposure Levels to Radiofrequency Fields – 3kHz to 300GHz* (RPS3). The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) developed RPS3, which sets the electromagnetic energy (EME) exposure limit standard. The ACMA recognises the limits in RPS3 in its two standards that regulate EME from telecommunications facilities and wireless communications devices. The standards are the *Radiocommunications (Electromagnetic Radiation – Human Exposure) Standard 2014* and the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2015*. Both of the standards are freely available on the Federal Register of Legislation. RPS3 is freely available from ARPANSA's website at: **www.arpansa.gov.au/regulation-and-licensing/regulatory-publications/radiation-protection-series/codes-and-standards/rps3**.

The second example is a relevant standard or code under Part 6 of the Act. The *Industry Code for Mobile Phone Base Station Deployment C564:2011* (the Industry Code) sets out additional processes that mobile carriers are to follow when they are installing low-impact facilities. The Industry Code was developed by the Communications Alliance and is registered by the ACMA under Part 6 of the Act. It is freely available on the ACMA's Codes information webpage at: **www.acma.gov.au/theACMA/Library/Corporate-library/Forms-and-registers/register-of-codes**.

The structure of sections 2.7, 3.7, 4.7, 5.7 and 6.7 of the Code was carried over from the *Telecommunications Code of Practice 2018.* At the next available opportunity, the sections will be amended in accordance with the best practice approach suggested by the Committee.

The committee requests the minister's advice as to why section 2.14 of the instrument appears to require compliance with a legislative provision that has been repealed, and whether this section should be removed or clarified.

Response:

Section 2.14 of the *Telecommunications Code of Practice 2018* does not impose a requirement on carriers. Subsections 2.14(1) and (3) do not impose a requirement on carriers

– they note that other provisions may apply. While subsection 2.14(2) is framed as requiring carriers to comply with clause 55 of Schedule 3 to the Act, as the Committee notes, clause 55 was repealed in 2014. To the extent that a provision in subordinate legislation is stated to require compliance with a repealed provision of an Act, the provision in the subordinate legislation has no force or legal effect.

Section 2.14 should have been repealed when clause 55 of Schedule 3 was repealed in 2014, however this did not occur. I thank the Committee for identifying the issue and I will remove section 2.14 at the next available opportunity.

SENATOR THE HON MITCH FIFIELD
DEPUTY LEADER OF THE GOVERNMENT IN THE SENATE
MINISTER FOR COMMUNICATIONS
MINISTER FOR THE ARTS

Ref No: MS18-000370

Senator John Williams
Chair
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CANBERRA ACT 2600

Response to Senate Regulations and Ordinance Committee: Producer Offset Rules 2018

Dear Chair John

I write regarding the Senate Regulations and Ordinances Committee's request for further information regarding the Producer Offset Rules 2018 as included in Delegated Legislation Monitor 3 of 2018. The request sought further advice in relation to the basis on which the fees set out in section 11 of the instrument have been calculated.

Screen Australia, in its administration of the Producer Offset, is required to undertake the final certificate assessment process. However, the provisional certificate application process is a service provided to industry at a significant administrative cost to Screen Australia. Consequently Producer Offset Rules impose a modest fee on applicants for provisional certificates, with the level of the fee scaled to reflect the size of the production.

The rate of application fees for a provisional certificate is charged at a level below full cost recovery. This is because provisional certificates are often used to assist with financing and loans and there would be criticism from the sector if charges were increased.

The Producer Offset Rules 2018 have effectively adopted the same fees and structure as the 2007 Rules, which are sunsetting. The fee structure has not changed since being introduced. The fee levels contained in the Rules are the fees as charged under the last year of the 2007 Rules, and continue the mechanism to adjust the fees for CPI.

I trust this information will be of assistance.

Yours sincerely

MITCH FIFIELD
10/4/18

PARLIAMENT HOUSE, CANBERRA ACT 2600 | 02 6277 7480 | MINISTER@COMMUNICATIONS.GOV.AU

THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

MC18-004181

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

4 MAY 2018

Dear Senator Williams

I refer to correspondence from the Committee Secretary, Ms Anita Coles, concerning the Senate Standing Committee on Regulations and Ordinances' consideration of the *Sea Installations Regulations 2018* [F2018L00214].

My advice in response to the matters raised by the Committee regarding the basis on which the application fees in sections 8, 9 10 and 11 of the instrument have been calculated is at **Attachment A**.

I thank the Senate Standing Committee on Regulations and Ordinances for raising this matter with me.

Yours sincerely

JOSH FRYDENBERG

Enc

ATTACHMENT A

Basis for the fee arrangements in the *Sea Installations Regulations 2018*

The *Sea Installations Regulations 1989* (the previous regulations), made on 25 October 1989, were subject to the sunsetting provisions of the *Legislation Act 2003* and were due to sunset on 1 April 2018.

A review of the previous regulations was conducted by the Department of the Environment and Energy (Department) to ascertain whether the previous regulations continued to be fit for their intended purpose, and if so, whether they should be re-made with or without revisions or whether they should be allowed to sunset.

The review, finalised in February 2018, recommended that the previous regulations be remade with minor revisions to modernise language and remove obsolete references that relate to obtaining new sea installations permits. This was determined to be the most cost effective and least burdensome method of ensuring, among other purposes, that the regulated community would continue to have legal certainty around the administration of the one remaining permit that continues to have legal effect under the *Sea Installations Act 1987* (the Act).

The decision to remake the previous regulations included retaining the existing fee structure; as a result, the provisions of the previous regulations imposing application fees were remade without amendment. The Department advises that the fees payable for an application to renew or vary a sea installations permit (set out in sections 8, 9, 10 and 11 of the *Sea Installations Regulations 2018* (SI Regulations)) are calculated on a cost recovery basis:

- The explanatory statement for the previous regulations confirms that fees were imposed to recover the costs associated with processing applications and issuing permits. For example, that explanatory statement states that the purpose of the regulations is to, amongst other matters, "provide for the charging of application fees for new permits, and renewal and variation of permits under the *Sea Installations Act 1987*; these application fees are to cover the administrative costs of considering such applications and issuing the permit".
- The explanatory statement for the previous regulations also states "application fees will be calculated on the basis of a percentage of the costs of constructing, transporting and installing the installation in all cases except for simple variations".
- In relying on the fee calculations from the previous regulations, the Department's intention is that the existing sea installation permit holder's cost recovery fees for either a renewal or a variation will be a portion of what it will cost the Great Barrier Reef Marine Park Authority (GBRMPA) to process an application.
    - The cost recovery fees for a renewal of the permit is capped at $1000 (subsection 12(1)). While *prima facie* the fees to be charged for any variation will be a percentage of the cost of constructing, transporting and installing an addition to the permanently moored vessel (for example, subsection 9(1)), the fees are reasonably related to the costs associated with the GBRMPA renewing the permit and will not be a tax.
    - The cost of updating the basis for fee payments in the SI Regulations to a contemporary cost recovery system, which would by necessity include additional regulatory drafting costs, when only one permit remains and the Australian Government has demonstrated its clear intention to minimise duplication by removing the permit provisions from the SI Act, would exceed the public benefit.

In summary, the fee will be imposed to recover the cost associated with processing applications to renew or vary the remaining sea installations permit still in effect. The fees payable under the SI Regulations therefore do not extend beyond cost recovery.