PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield

Minister for Families and Social Services

MS18-001535

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

John

Dear Senator Williams

Thank you for the email of 13 September 2018 from Ms Anita Coles, Committee Secretary, on behalf of the Senate Standing Committee on Regulations and Ordinances (the Committee) concerning the *Adult Disability Assessment Determination 2018* (the Determination).

The Committee has asked for clarification about:

- how personal information of people with disabilities is collected, managed and protected under the Determination; and
- the omission of review provisions previously contained in section 3.1 of the *Adult Disability Assessment Determination 1999 (*1999 Determination*)*.

I am providing additional information to address the Committee's questions below.

Under the Determination, personal information is collected by the Department of Human Services (DHS) and used to determine qualification for, and payability of, Carer Payment (Adult) and/or Carer Allowance (Adult) in accordance with the requirements in the *Social Security Act 1991.*

In remaking the Determination there has been no change to current practice for collecting, managing and protecting the personal information of people with disabilities or their carers.

Division 3 of Part 5 of the *Social Security (Administration) Act 1999* outlines confidentiality arrangements, specifically for the protection of personal information collected for the purposes of administering social security law. Sections 203 and 204 outline the circumstances that constitute unauthorised access to, or use of, information including protected information. An offence under these sections is punishable on conviction by imprisonment for up to two years.

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The *Privacy Act 1988* also requires DHS to have a privacy policy, which outlines what kinds of personal and sensitive information is collected, why this information is collected, and how it is handled.

Details of the policy are provided at www.humanservices.gov.au/organisations/about-us/publications-and-resources/privacy-policy.

DHS takes reasonable steps to protect people's personal information against misuse, interference and loss, and from unauthorised access, modification or disclosure. These steps include:

- storing paper records securely as per Australian Government security guidelines;
- only accessing personal information on a need-to-know basis and by authorised personnel;
- monitoring system access which can only be accessed by authenticated credentials;
- ensuring buildings are secure; and
- regularly updating and auditing storage and data security systems.

Division 3 of Part 5 of the *Social Security (Administration) Act 1999* binds any person dealing with protected information, including personal information. In the exercise of the Secretary's Delegation to the Chief Executive Centrelink, to administer Carer Payment and Carer Allowance, DHS officers are bound by all provisions in the *Social Security (Administration) Act 1999*, including Division 3 of Part 5.

In relation to the omission of the previous Part 3 review provisions from the Determination, decisions made under instruments under the *Social Security Act 1991* are part of social security law. Decisions made under the social security law are reviewable internally under Part 4 of the *Social Security (Administration) Act 1999* and by the Administrative Appeals Tribunal under Part 4A of that Act.

As outlined in the Explanatory Statement, this Act was not in force when the 1999 Determination was made. Therefore, the specific provisions for review are not included in the Determination but are available under the *Social Security (Administration) Act 1999*. There is no change in practice.

I trust this additional information has addressed the Committee's concerns.

Yours sincerely

Paul Fletcher

20/ 9 /2018

THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS

Ref No: MS18-007866

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

John,

Dear Chair

Thank you for your correspondence of 13 September 2018 requesting further information on the Australian Federal Police Regulations 2018.

I have attached my response to the Senate Standing Committee on Regulations and Ordinances' Delegated Legislation Monitor 10 of 2018, as requested in your correspondence.

Yours sincerely

05/10/18

PETER DUTTON

Parliament House Canberra ACT 2600 Telephone: (02) 6277 7860 Facsimile: (02) 6273 4144

Australian Federal Police Regulations 2018

1.25 The Committee requests the minister's advice as to where the AS/NZS 4308:2008 'Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine' can be accessed free of charge, and requests that the explanatory statement be updated to include this information.

The AS/NZS 4308:2008 *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine* (the Standard) is an Australian Standard of Standards Australia. The *Copyright Act 1968* (Cth) has the effect of making the Standard publicly available only in specific circumstances.

The Standard is freely and readily available to all persons directly affected by the law, being Australian Federal Police (AFP) appointees. All such persons have full access to the Standard via an online portal accessible on the AFP intranet. The Standard is also available to prospective or past AFP appointees, as well as persons generally interested in these laws, at the National Library of Australia. However, the Standard cannot be made public by the AFP in light of copyright restrictions.

As noted by the Committee, concerns arise when external materials incorporated into the law are not freely and readily available to persons to whom the law applies, or who may otherwise be interested in the law. However, any detriment caused by incorporated material not being freely and readily available to the public at large must be balanced against the benefit gained from utilising that incorporated material. The proposed amendment strikes an appropriate balance.

<u>Copyright restrictions</u>

The Standard is copyright protected by Standards Australia, which has provided SAI Global with exclusive distributor rights. The AFP's subscription agreement with SAI Global allows it to use and access the relevant standard for internal business purposes only. The AFP is not permitted to copy, distribute or allow access to any third party. As a result of the proprietary rights of Standards Australia, Standards Australia/Standards New Zealand and SAI Global, the AFP is not permitted to make the Standard freely and readily available to the general public.

<u>The benefit of incorporating the relevant standard</u>

The ability for the Australian Federal Police Regulations 2018 (the Regulations) to incorporate relevant aspects of standards published by Standards Australia or Standards Australia/Standards New Zealand is vital to ensuring the AFP applies best practice in its approach to alcohol and drug testing.

There is an expectation from employees that drug tests will be carried out pursuant to current industry standards. Standards Australia and Standards Australia/Standards New Zealand produce standards that are based on sound industrial, scientific and consumer experience and are regularly reviewed to ensure they keep pace with new technologies.

The Standard includes highly technical scientific procedures, particularly relating to testing methods, apparatus and calculations. These procedures are carried out by

trained technicians from an independent company, on behalf of the AFP, in accordance with the Regulations.

Incorporating the Standard into the Regulations supports the integrity of test results and ensures there is no discrepancy between the procedures and testing methods used by the company contracted to conduct drug tests and the Standard referenced in the Regulations.

This information will be included in a supplementary explanatory statement to the Regulations.

1.32 The committee requests the minister's advice as to the processes in place for reviewing employment decisions made under the instrument.

The AFP has review processes in place for a number of different types of employment decisions. These processes are outlined below.

Processes for the suspension of AFP employees

When considering a decision to suspend an employee from duty for suspected misconduct as per Section 8 of the Regulations, it often for reasons that require an immediate response. In such circumstances, however, the AFP employee is provided with an opportunity to make a submission immediately after the suspension decision is made to the suspension decision-maker. This process is regularly practiced. Suspension decisions under the Regulations are subject to administrative law requirements, including a requirement that employees be afforded procedural fairness in decision-making.

Review of suspension decisions are also conducted at regular intervals and may also be conducted at the request of the employee if, for example, the employee raises matters relevant to hardship or other changes of circumstances.

Additionally, as a suspension decision is a ‘decision made under an enactment’, an employee can seek judicial review under the Administrative Decisions (Judicial Review) Act 1977 or under the general law (prerogative writs).

Processes for the filling of vacant positions

The AFP’s National Guideline of Recruitment provides that any internal applicant at the Executive Level and below has a period of seven calendar days to request a review of the recruitment process by directly contacting the delegate. The delegate must not sign off on the outcome of the recruitment process until the conclusion of the seven day review period.

Decisions under the AFP Enterprise Agreement 2017-2020

Employment decisions arise from application of the AFP Enterprise Agreement 2017-2020 (the EA). Section 71 of the EA provides a process for dispute resolution for the purposes of preventing and settling disputes that may arise from the EA.

Underperformance rating in a Performance Development Agreement (PDA)

Section 17 of the 'PDA Procedures' document provides the mechanism for a performance review audit in these circumstances, where the employee and the business area engage in a tiered approach to review. This is a similar approach to the review process that is applicable to disputes arising from the application of the EA.

Other review processes

Outside of these avenues, an employee may seek legal review of an employment decision through the Federal Court system. The Fair Work Commission has no jurisdiction to review matters that arise outside of the industrial framework, unless they involve an unfair dismissal or general protections claim.

1.39 The Committee requests the Minister's more detailed advice as to:

- **the circumstances in which it is envisaged that force would be used in the execution of a search warrant, and any safeguards in place;**
- **the circumstances in which it is envisaged that persons would be called on to assist authorised officers in the execution of warrants, and**
- **the types of persons it is envisaged may be called on to assist authorised officers in the execution of warrants, and their qualifications and expertise.**

Use of force

Paragraph 63(3)(b) of the Regulations places appropriate limitations on the use of force during execution of warrants by adding a safeguard to require reasonable use of force. This ensures the scope of the power is not inappropriately broad and limits the power further than the previous Australian Federal Police Regulations 1979 (the previous Regulations).

Paragraph 63(3)(b) of the Regulations only permits officers to use force against persons or property that is both 'reasonable' and 'necessary' in the circumstances. For example, it might be reasonable and necessary to cut a padlock on a safe, drawer or door to gain access to a particular area where no key can be procured. Similarly, it may be reasonable and necessary to move furniture to search the area behind or below this furniture.

The use of force is subject to strict safeguards. Force may only be used against a person or property where it is necessary to ascertain whether returnable property is to be found on the premises or place specified in the warrant, and the degree of force used must be reasonable in the circumstances. Any use of force against a person or property that does not comply with these requirements would be outside the scope of the warrant and may attract criminal and civil liability. Any unauthorised use of force by officers may also be subject to internal review and review by the Commonwealth Ombudsman as appropriate.

Use of force and professional standards training is also compulsory for all AFP members. Members are required to refresh this training annually and pass a minimum level of proficiency and understanding. This training requires members to exercise restraint and act in proportion to the legitimate objective to be achieved.

Assisting authorised officers in the execution of warrants

In executing a warrant, an officer may draw on the assistance of a person in a variety of ways, including by requesting that they provide information as to the location of particular returnable property or how to access this property.

Persons who may be called on to provide assistance could include the occupier of the property (who may have knowledge as to the layout of the property) or technical experts (who may have knowledge on how to extract information from a particular device).

1.40 The Committee also seeks the Minister's advice as to the appropriateness of amending the instrument to provide that, where an authorised officer obtains the assistance of another person in executing a warrant, the authorised officer must be satisfied that the person assisting has appropriate expertise, skills and training to assist in the execution of the warrant.

Paragraph 63(3)(b) of the Regulations is substantially similar to the iteration in the previous Regulations. The key difference in the Regulations is that a member of the AFP who is authorised to execute warrants can use any assistance they think is appropriate during the execution of the warrant, whereas previously the power to search premises, and seek assistance, was only directly granted to the AFP Commissioner.

The Committee's proposed amendments would not be appropriate, as it would prevent an executing officer from seeking assistance from persons who, while not trained in executing warrants, must cooperate with an officer to ensure the successful execution of a warrant.

For example, an officer may request that a person present on the property provide them with a key to open a safe containing returnable property. This person may not have the appropriate expertise, skills and training to execute a warrant more generally, but their assistance will be vital in locating and seizing the property in question.

I acknowledge, however, that the policy aim underpinning this proposed amendment could be achieved by only allowing an officer to obtain such assistance as is 'reasonable and necessary' in the circumstances. This accords with existing search warrant provisions under section 3G of the *Crimes Act 1914* (Cth) and will ensure that an officer can request assistance on basic tasks from those present, while seeking assistance on more advanced tasks only from appropriately qualified persons.

If the Committee agrees with this approach, I will seek to have these amendments progressed in a separate legislative instrument at a later date.

1.48 The Committee requests the Minister's detailed advice as to:

- **why it is considered appropriate to provide the Commissioner with a broad discretion to order the disposal of property that he or she considers to be offensive**

- **the appropriateness of amending the instrument to insert (at least high-level) guidance concerning what constitutes 'offensive' property for the purposes of section 76 of the instrument**
- **why it is considered necessary and appropriate to confer a broad immunity from suit on the Commonwealth in relation to the disposal of property under sections 75 and 76 of the instrument, and**
- **why it is considered appropriate not to permit a property owner to claim the market value of property under section 77 that has been lawfully disposed of under sections 74 and 76.**

Disposal of 'offensive' property

The power to dispose of 'offensive' property under section 76 of the Regulations is appropriate, as it ensures that the AFP is not compelled to preserve property that is objectively contrary to the standards of morality, decency and propriety generally accepted by a reasonable person.

If this power was not provided, the AFP would be compelled to hold on to material that may be unacceptably racist, violent or sexual in nature. This can include, for example, child pornography and child abuse material.

Before property can be disposed of under paragraph 76(1)(b), the AFP Commissioner must be 'reasonably satisfied' (emphasis added) that the property is 'offensive in nature'. The term 'reasonably' imports an objective assessment of the offensive nature of the property, and property will not be 'offensive' merely because the Commissioner takes offence.

The fact that the term 'offensive' is not defined allows community standards and common sense to be imported into a decision about whether property is in fact 'offensive' in nature. The term 'offensive' has also been used, without clarification, across the Commonwealth statute book. The term is used in legislation prohibiting offensive names on passports, offensive business names and offensive victim impact statements.[1]

I have also approved a supplementary explanatory statement, which provides that, in assessing whether property is 'offensive in nature' under paragraph 76(1)(b) of the Regulations, the Commissioner may have regard to the following (non-exhaustive) factors:

- the standards of morality, decency and propriety generally accepted by reasonable adults
- the literary, artistic or educational merit (if any) of the property, and
- the general character of the property (including whether it is of a medical, legal or scientific character).

This guidance makes it clear that whether property is 'offensive in nature' is an assessment which must be made on reasonable grounds, taking into account the nature of the material and standards accepted by reasonable adults.

Immunity from suit and market value compensation

[1] *Australian Passports Act 2005* section 53, *Business Names Registration Act 2011* section 9 and *Crimes Act 1914* subsection 16AB(5).

The immunity from suit provisions under sections 75 and 76 of the Regulations, and narrow eligibility criteria for claiming the market value of property under section 77, ensure that the AFP is not punished for disposing of property, or retaining it for law enforcement purposes, in an appropriate manner.

The limited circumstances where it is appropriate for the AFP to be immune from suit could include situations where:

- the AFP disposes of claimable property after taking reasonable action to contact the owner of the property and four months have elapsed since the property came into AFP's custody (section 72)
- the AFP disposes of claimable property that has been held for evidential use as the Commissioner is reasonably satisfied that a person with a valid claim to the property cannot be located or does not want the property (section 73)
- the AFP disposes of property that would have perished after a short period of time (such as dairy products or fruits) (section 74), or
- the AFP disposes of property where reasonably satisfied that it represents a danger to public health and safety (section 76).

If a person was entitled to bring a suit to claim the market value of the property in these circumstances, the AFP would be financially penalised for dealing with the property in an appropriate manner.

However, the Commonwealth's general immunity from suit provided by subsections 75(2) and 76(5) of the Regulations is balanced with other provisions allowing for a person to claim value or proceeds in the property. Section 77 allows the owner of the property to make a claim for the market value of the property at the time it was disposed of where the circumstances required to lawfully dispose of the property under sections 72, 73, 74 or 76 did not exist. Also, section 78 allows a person to obtain the proceeds of sale where the property has been sold under sections 72, 73 or 74.

For example, the AFP may decide to destroy a large quantity of goat's milk (valued at $500) under paragraph 74(1)(b) of the Regulations as it was perishable and due to expire the day after it came into the AFP's possession. If the owner of this milk was entitled to claim its market value before disposal, the AFP would effectively incur a $500 financial penalty for not finding a buyer for this milk at short notice.

If, on the other hand, the AFP managed to sell the milk at short notice at $400, the AFP would incur at least a $100 penalty (the difference between the $400 sale price and the $500 market price). Section 78 of the Regulations instead provides that the owner of the milk would be entitled to the $400 sale price, less the AFP's reasonable costs for storing the milk, ensuring that the AFP is not financially rewarded or punished for dealing with the property appropriately.

Section 77 of the Regulations, however, would appropriately entitle a person to the market value of the property where the basis for disposal did not exist. If the AFP mischaracterised the substance as perishable goat's milk and destroyed it on this

basis, but the substance was in fact non-perishable white paint, the claimant would be entitled to the full market price of this paint under section 77.

The provisions in question are therefore appropriate, as they strike a vital balance between providing compensation to those with an interest in property, while ensuring that the AFP is not financially penalised for dealing with property in an appropriate manner.

1.53 The Committee seeks the Minister's more detailed advice as to why it is considered necessary and appropriate to allow the Commissioner to delegate any of their powers, functions and duties under the instrument to any employee of the Australian Federal Police, and to any special member.

The delegation provision under section 79 of the Regulations is intended to give the AFP sufficient flexibility to ensure that it can fulfil its statutory functions efficiently and effectively. Allowing for the delegation of the AFP Commissioner's powers to AFP employees, special members and the Deputy Commissioner is also consistent with the delegation provisions under subsection 69C(1) of the *Australian Federal Police Act 1979* (Cth) (the AFP Act), as well as equivalent delegation powers under other law enforcement legislation.[2]

Many of these powers, duties and functions are administrative and transactional in nature.

For example, the return of found property by the AFP to lawful owners occurs on a daily basis. A typical scenario is a person finding a wallet and handing it to a police officer. If the owner attends the same police station to report the loss a few hours later, the police officer can immediately return it to the owner. To ensure the AFP operates effectively to meet public expectations, all police officers have been delegated power to return property under section 71 of the Regulations. All police officers receive training in relation to return of property and the AFP has comprehensive governance and rules in place to ensure officers have the appropriate expertise to exercise this delegation.

1.54 The Committee also seeks the Minister's advice as to the appropriateness of amending the instrument to require that the Commissioner be satisfied that persons to whom powers, functions and duties are delegated have the expertise appropriate to the powers delegated.

It is considered unnecessary to amend section 79 of the Regulations as current AFP practices have adequate accountability safeguards to ensure the AFP Commissioner's powers are delegated appropriately.

Consistent with section 34AA of the *Acts Interpretation Act 1901* (Cth), the AFP Commissioner has delegated powers, functions and duties with reference to specified positions (a class of persons) or offices (e.g. AFP members) within the AFP, rather than individually named persons. The use of positions and offices allows for organisational effectiveness and flexibility when appointees are acting in roles.

All AFP positions have detailed role descriptions stating the required skills, knowledge and expertise requirements of the position. This ensures that all persons

[2] See Australian Border Force Act 2015 subsection 25(1)

or classes of persons occupying a role to which a power, function or duty has been delegated will have the requisite skills, knowledge and expertise relevant to the proper and appropriate exercise of that delegation. AFP appointees are also required to receive induction and training when they are appointed to, or are acting in, a role.

Additionally, the AFP has strict chain of command, professional standards and governance requirements, which guide decision making practices to ensure appropriate risk management for the individual exercise of delegated powers.

Further to this, current practices require all requests for delegation of the Commissioner's powers to be initially assessed by the AFP's in-house legal team (AFP Legal), which centrally manages all delegation and authorisation instruments and processes for the AFP. AFP Legal then consults with AFP managers, risk and internal business areas to assess whether it is appropriate for the Commissioner to delegate the power. If delegation is appropriate, only positions with the operational or administrative need are granted the power. For example, delegation of powers in relation to drug and alcohol testing is confined to a very limited number of SES Band 1, 2 and 3 positions which have responsibility for drug and alcohol testing.

1.58 The Committee requests the Minister's advice as to the basis on which the fees in Schedule 3 of the instrument have been calculated.

The fees in Schedule 3 are no higher than those required for cost recovery.

Where the Australian Government has made a decision to charge for a regulatory activity on a full or partial cost recovery basis, these activities are subject to the Australian Government Cost Recovery Guidelines (the CRGs). The CRGs set out the overarching framework under which government entities design, implement and review regulatory charging activities.

While the six overarching charging principles apply to regulatory charging activities, they must also meet the requirements in the CRGs, including:

- policy approval from the Australian Government to charge
- statutory authority to charge
- alignment between expenses and revenue, and
- up-to-date, publicly available documentation and reporting.

Entities, including the AFP, are required to set fees consistent with the CRGs (outlined above) in order to recover the cost of certain activities. Fees take into account all relevant direct and indirect costs associated with delivering the service. The AFP reviews the fees in Schedule 3 as appropriate to ensure they remain consistent with the CRGs.

Senator the Hon Bridget McKenzie
Deputy Leader of The Nationals
Minister for Regional Services
Minister for Sport
Minister for Local Government and Decentralisation
Senator for Victoria

Ref No: MC18-021058

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

03 OCT 2018

Dear Chair John,

Thank you for your correspondence of 20 September 2018 regarding the scrutiny issues identified in relation to the delegated legislation below:

- Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018 [F2018L00850]
- Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2018 Measures No. 1) Regulations 2018 [F2018L00851]

The Standards incorporated into the above instruments can be made available for viewing without charge at the offices of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). Alternatively, public libraries holding copies of the Standard can be identified by contacting ARPANSA.

The revised Explanatory Statements for both instruments, enclosed to this letter, will be promptly lodged with the Office of Parliamentary Counsel so they can be registered on the Federal Register of Legislation. The revisions against each reference to standards are:

> *"This Standard can be made available for viewing without charge at the offices of the Australian Radiation Protection and Nuclear Safety Agency. Alternatively, public libraries holding copies of the Standard can be identified by contacting ARPANSA.*
>
> *"This Standard may also be purchased from SAI Global (www.saiglobal.com)."*

Yours sincerely

Bridget McKenzie

Encl (2)

EXPLANATORY STATEMENT

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Radiation Protection and Nuclear Safety Regulations 1999

Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018

The object of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act) is to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation.

Subsection 85(1) of *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018* (the regulations) amend the *Australian Radiation Protection and Nuclear Safety Regulations 1999* (the ARPANS Regulations) to:

(1) increase the licence application fees prescribed in the ARPANS Regulations by 2.4 per cent, in line with the Australian Bureau of Statistics annualised Wage Price Index (excluding bonuses) for the public sector as at 1 September 2017.

(2) update the publication details of technical standards and codes incorporated by reference in the ARPANS Regulations, including removing references to superseded publications,

(3) add a function for the CEO to be 'competent authority' for any approval under the ARPANSA Transport Code, which requires a competent authority in each jurisdiction and names the CEO as the competent authority for the Commonwealth,

(4) add a new statutory licence condition, which has in the past been a standard licence condition in every licence issued by the CEO,

(5) consolidate two items with identical application fees relating to particle accelerators into a single item, and

(6) exempt certain low hazard radiation apparatus from the requirement to be licensed.

Under section 34 of the Act, an application for a facility or source licence must be in a form approved by the CEO and accompanied by such application fee as is prescribed in the ARPANS Regulations. The licence application fees have been indexed every year since 2010 using ABS wage and labour price indices to recover increased labour costs.

The regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The regulations commenced on 1 July 2018 and the increase to the licence application fees took effect on 1 July 2018.

Details of the regulations are set out in the Attachment below.

The regulations were brought forward concurrently with the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2018 Measures No. 1) Regulation 2018*.

The Act does not specify any condition that needs to be met before the power to make the Regulation may be exercised.

Consultation:

No consultation was therefore undertaken among licence holders (all of whom are Commonwealth entities) as the amendments are machinery in nature and are done annually to ensure the regulations are up-to-date. The Office of Best Practice Regulation (OBPR) exempted ARPANSA from the need to prepare a regulatory impact statement for the amendments (OBPR ID**:** 22587) as the amendments are machinery in nature and are not likely to result in any change to regulatory costs.

Authority: Subsection 85(1) of the *Australian Radiation Protection and Nuclear Safety Act 1998*

Attachment

Details of the *Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018*

Section 1 – Name

This section would provide that the name of the regulations is the *Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018.*

Section 2 – Commencement

This section would provide for the regulations to commence on 1 July 2018.

Section 3 – Authority

This section would provide that the regulations are made under the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Section 4 – Schedules

This section would provide that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments of fees

Australian Radiation Protection and Nuclear Safety Regulations 1999

Item 1 Amendments of listed provisions—Schedule 3A

Clause 1 of Schedule 3A has a table that lists the fees that must accompany an application for a facility licence for particular activities in relation to nuclear installations. The amendments would increase the application fees in the table in Schedule 3A by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Amount ($)
1.	Preparing a site for a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of less than 1 megawatt	29,438 to 30,144
2.	Constructing a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of less than 1 megawatt	183,999 to 188,414

Table Item	Thing authorised to be done by licence	Amount ($)
3.	Possessing or controlling a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of less than 1 megawatt	147,200 to 150,732
4.	Operating a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of less than 1 megawatt	73,598 to 75,364
5.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear reactor that was used for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and had maximum thermal power of less than 1 megawatt	73,598 to 75,364
6.	Preparing a site for a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of 1 megawatt or more	147,200 to 150,732
7.	Constructing a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of 1 megawatt or more	588,802 to 602,933
8.	Possessing or controlling a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of 1 megawatt or more	147,200 to 150,732
9.	Operating a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of 1 megawatt or more	630,862 to 646,002
10.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear reactor that was used for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and had maximum thermal power of 1 megawatt or more	147,200 to 150,732
11.	Preparing a site for a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	14,718 to 15,071
12.	Constructing a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	66,238 to 67,827
13.	Possessing or controlling a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	14,718 to 15,071

Table Item	Thing authorised to be done by licence	Amount ($)
14.	Operating a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	66,238 to 67,827
15.	De-commissioning, disposing of or abandoning a controlled facility, being a plant that was used for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	29,438 to 30,144
16.	Preparing a site for a controlled facility, being: (a) a nuclear waste storage facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	350,479 to 358,890
17.	Constructing a controlled facility, being: (a) a nuclear waste storage facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	420,574 to 430,667
18.	Possessing or controlling a controlled facility, being: (a) a nuclear waste storage facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	14,718 to 15,071
19.	Operating a controlled facility, being: (a) a nuclear waste storage facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that contains controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 8	220,801 to 226,100
20.	De-commissioning, disposing of or abandoning a controlled facility, being: (a) a nuclear waste storage facility that formerly contained controlled materials with an activity that was greater than the applicable activity level prescribed by regulation 7; or (b) a nuclear waste disposal facility that formerly contained controlled materials with an activity that was greater than the applicable activity level prescribed by regulation 8	29,438 to 30,144
21.	Preparing a site for a controlled facility, being a facility to produce radioisotopes, that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	73,598 to 75,364
22.	Constructing a controlled facility, being a facility to produce radioisotopes, that is designed to contain controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	147,200 to 150,732

Table Item	Thing authorised to be done by licence	Amount ($)
23.	Possessing or controlling a controlled facility, being a facility producing radioisotopes and containing controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	14,718 to 15,071
24.	Operating a controlled facility, being a facility producing radioisotopes and containing controlled materials with an activity that is greater than the applicable activity level prescribed by regulation 11	132,480 to 135,659
25.	De-commissioning, disposing of, or abandoning a controlled facility, being a facility that formerly produced radioisotopes and contained controlled materials with an activity that was greater than the applicable activity level prescribed by regulation 11	29,438 to 30,144

Item 2 Amendments of listed provisions—Part 1 of Schedule 3B

Clause 1 of Schedule 3B has a table that lists the fees that must accompany an application for a facility licence for particular kinds of prescribed radiation facilities. The proposed amendments would increase the application fees in the table by 2.4 per cent as follows:

Table Item	Kind of prescribed radiation facility	Amount ($)
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	13,246 to 13,563
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	13,246 to 13,563
5.	Irradiator containing more than 10^{13} Bq of a controlled material and including shielding as an integral part of its construction, but the shielding does not prevent a person from being exposed to the source	13,246 to 13,563
6.	Irradiator containing more than 10^{13} Bq of a controlled material and including shielding as an integral part of its construction, and with a source that is not inside the shielding during the operation of the irradiator	13,246 to 13,563
7.	Facility for the production, processing, use, storage, management or disposal of: (a) unsealed sources for which the result worked out using the steps mentioned in subregulation 6(2) is greater than 10^6; or (b) sealed sources for which the result worked out using the steps mentioned in subregulation 6(2) is greater than 10^9	26,495 to 27,130

Item 3 Amendments of listed provisions—Part 2 of Schedule 3B

Clause 2 of Schedule 3B has a table that lists the fees that must accompany an application for a facility licence for particular activities in relation to certain prescribed radiation facilities. The proposed amendments would increase the application fees in the table by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Amount ($)
1.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	44,158 to 45,217
2.	Disposing of or abandoning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	29,438 to 30,144
3.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used for the mining, processing, use, storage, management or disposal of radioactive ores	44,158 to 45,217
4.	Disposing of or abandoning a controlled facility, being a prescribed radiation facility that was formerly used for the mining, processing, use, storage, management or disposal of radioactive ores	29,438 to 30,144

Item 4 Amendments of listed provisions—Schedule 3BA

Clause 1 of Schedule 3BA has a table that lists the application fees that must accompany an application for a facility licence for particular activities in relation to prescribed legacy sites. The proposed amendments would increase the application fees in the table by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Amount ($)
1.	Possess or control a controlled facility that is a prescribed legacy site	14,332 to 14,675
2.	Remediate a controlled facility that is a prescribed legacy site	214,996 to 220,155
3.	Abandon a controlled facility that is a prescribed legacy site	28,665 to 29,352

Item 5 Amendments of listed provisions—Part 2 of Schedule 3C

Clause 2 of Schedule 3C lists the application fees that must accompany an application for a source licence to deal with particular kinds of controlled apparatus or controlled material. For purposes of source licence application fees, controlled material and controlled apparatus have been divided into three groups, namely Group 1, Group 2 and Group 3, in ascending order of risk to people and the environment. The proposed amendments would increase the application fees in the table by 2.4 per cent as follows:

Table Item	Number of controlled apparatus or controlled materials in the same location to be dealt with under the application	Fees ($)
1.	For less than 4 controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	 734 to 751 2,942 to 3,012 8,829 to 9,040
2.	For more than 3, but less than 11, controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	 1,910 to 1,955 5,887 to 6,028 17,661 to 18,084
3.	For 11 or more controlled apparatus or controlled materials from: (a) Group 1 (b) Group 2 (c) Group 3	 3,679 to 3,767 11,065 to 11,330 32,382 to 33,159

Part 2—Other amendments

Australian Radiation Protection and Nuclear Safety Regulations 1999

Item 6 Regulation 3 (definition of *AS/NZS IEC 60825.1:2014*)

The proposed amendment would update the reference to the most recent version of the Standard.

This Standard can be made available for viewing without charge at the offices of the Australian Radiation Protection and Nuclear Safety Agency. Alternatively, public libraries holding copies of the Standard can be identified by contacting ARPANSA.

This Standard may also be purchased from SAI Global (www.saiglobal.com).

Item 7 Regulation 3 (definition of *AS/NZS IEC 60825.2:2011*)

The proposed amendment would update the reference to the most recent version of the Standard.

This Standard can be made available for viewing without charge at the offices of the Australian Radiation Protection and Nuclear Safety Agency. Alternatively, public libraries holding copies of the Standard can be identified by contacting ARPANSA.

This Standard may also be purchased from SAI Global (www.saiglobal.com).

Item 8 Regulation 3 (definition of *AS/NZS IEC 62471:2011*)

The proposed amendment would update the reference to the most recent version of the Standard.

This Standard can be made available for viewing without charge at the offices of the Australian Radiation Protection and Nuclear Safety Agency. Alternatively, public libraries holding copies of the Standard can be identified by contacting ARPANSA.

This Standard may also be purchased from SAI Global (www.saiglobal.com).

Item 9 Regulation 3 (definition of *Disposal Code of Practice*)

The proposed amendment would repeal the definition of the now defunct *Disposal Code of Practice* (including the note) which has been superseded by Amendment 7 to the National Directory for Radiation Protection (NDRP).

Item 10 Regulation 3 (definition of *Mining and Mineral Processing Code and Safety Guide*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au).

Item 11 Regulation 3 (note to the definition of *Mining and Mineral Processing Code and Safety Guide*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 12 Regulation 3 (definition of *Planned Exposure Code*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 13 Regulation 3 (note to the definition of *Planned Exposure Code*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 14 Regulation 3 (definition of *Security Code of Practice*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 15 Regulation 3 (note to the definition of *Security Code of Practice*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 16 Regulation 3 (definition of *Transport Code*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 17 Regulation 3 (note to the definition of *Transport Code*)

The proposed amendment would update the reference to the most recent version of the Code. The Code is available in the ARPANSA website (www.arpansa.gov.au)..

Item 18 At the end of regulation 3B

The proposed amendment would prescribe to the CEO the function of acting as the competent authority for the Commonwealth in the ARPANS Regulations. The Transport Code assigns the regulatory authority in each Australian jurisdiction as the competent authority for these approvals. The CEO of ARPANSA is the competent authority for the Commonwealth but this function has not been formalised in the Act or Regulations. Paragraph 15(1)(i) of the Act provides that the CEO's functions may include "such other functions as are conferred by this Act, the regulations or any other law".

Item 19 Paragraphs 48(2)(a) and (3)(a)

Paragraphs 48(2)(a) and (3)(a) refer to a withdrawn Code of Practice which has been superseded by Amendment 7 to the National Directory of Radiation Protection. The proposed amendment would repeal the references to the withdrawn Code.

Item 20 After regulation 50

The proposed amendment would add a statutory licence condition that requires a licence holder to maintain an accurate inventory of controlled apparatus and material. This is a standard licence condition imposed by the CEO of ARPANSA in all licences that the CEO grants under the Act. The amendment reflects an approach that licence conditions imposed by the CEO in licences should only be licence conditions specific to the particular licence. Standard licence conditions applying to all licences should be in the Regulations.

Item 21 Clause 1 of Schedule 1 (table item 1)

The proposed amendment would update the publication details of the referenced guideline to the author of the guideline.

Item 22 Clause 1 of Schedule 1 (table item 7)

The proposed amendment would substitute a simplified description of the application of the referenced guideline and update the publication details of the guideline to the author of the guideline.

Item 23 Clause 1 of Schedule 1 (note to table)

The proposed amendment would expand the number of items that can be accessed from the ARPANSA website (www.arpansa.gov.au) and add a note identifying guidance material available in relation to the Australian Standard referenced in table item 5.

Item 24 Clause 1 of Schedule 2 (table item 6, column headed "Description of dealing")

The proposed amendment would update the reference to the most recent version of the Standard.

This Standard can be made available for viewing without charge at the offices of the Australian Radiation Protection and Nuclear Safety Agency. Alternatively, public libraries holding copies of the Standard can be identified by contacting ARPANSA.

This Standard may also be purchased from SAI Global (www.saiglobal.com).

Item 25 Clause 1 of schedule 2 (at the end of the cell at table item 7, column headed "Description of dealing")

The proposed amendment would provide that:

- radar equipment used for communications;
- radiofrequency equipment used for communications;
- an artificial optical source emitting ultraviolet A radiation (315—400 nm);
- a completely enclosed apparatus containing an ultraviolet radiation light source (e.g. a spectrophotometer);
- a biological safety cabinet (laminar flow or biohazard) with a failsafe interlocking system;
- an embedded (enclosed) laser product with an accessible emission that is lower than the accessible emission limits of a Class 3B laser product, as set out in AS/NZS IEC 60825.1:2014, during normal operations

are exempt dealings for the purposes of the Act.
The list of new exemptions reflects the fact that some forms of non-ionising radiation are intrinsically safe or exposure limits are almost impossible to reach unless there is exposure for thousands of hours.

Item 26 Clause 1 of Schedule 3B (table items 1 and 2)

Clause 1 of Schedule 3B to the ARPANS Regulations has a table that sets out the application fees for particular kinds of prescribed radiation facilities. The proposed amendments would repeal table items 1 and 2 and replace them with a new table item 1 as follows:

Table Item	Kind of prescribed radiation facility	Amount ($)
1.	Particle accelerator that: (a) has, or is capable of having, a beam energy greater than 1 MeV; or (b) can produce neutrons	13,563

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The Regulations amend the Australian Radiation Protection and Nuclear Safety Regulations 1999 (the ARPANS Regulations) to increase licence application fees by 2.4 per cent and to make other minor amendments.

Human Rights Implications

The amendments are compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights.

The amendments increase the licence application fees paid by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for licences to deal with radiation apparatus or radioactive sources or to engage in activities in relation to radiation facilities and nuclear installations.

Other amendments are minor or machinery in nature, namely, updating the publication details of technical standards and codes incorporated by reference in the ARPANS Regulations, and clarifying certain provisions in the ARPANS Regulations to facilitate interpretation and application.

Conclusion

This Instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health.

Senator the Hon. Bridget McKenzie, Minister for Rural Health

EXPLANATORY STATEMENT

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998

Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2018 Measures No. 1) Regulations 2018

The object of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the ARPANS Act) is to protect the health and safety of people, and to protect the environment, from the harmful effects of radiation.

The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act* 1998 (the Licence Charges Act) is an Act to impose charges on licences issued under the ARPANS Act and for related purposes.

Section 6 of Licence Charges Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Licence Charges Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Licence Charges Act.

The *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2018 Measures No. 1) Regulations* 2018 (the regulations) amend the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000* (Licence Charges Regulations) to:

(1) increase the annual licence charges prescribed in the Licence Charges Regulations by 2.4 per cent, in line with the Australian Bureau of Statistics (ABS) annualised Wage Price Index (excluding bonuses) for the public sector as at 1 September 2017.

(2) consolidate two items with identical annual licence charges relating to particle accelerators into a single item, and

(3) update the publication details of an Australia/New Zealand Standard, which is incorporated by reference in the Licence Charges Regulations.

Under subsection 32(1) of the *Australian Radiation Protection and Nuclear Safety Act 1998* (ARPANS Act) the Chief Executive Officer (CEO) of ARPANSA may issue a facility licence to a controlled person to undertake certain actions, such as the construction or operation of or the decommissioning of a nuclear installation or a prescribed radiation facility. Subsection 33(1) provides that the CEO may issue a source licence to a controlled person authorising the controlled person to possess, control, use, operate or dispose of controlled apparatus or a controlled material. A 'controlled person' is a Commonwealth entity or a Commonwealth contractor. An example of controlled material is Technetium-99, which is commonly used in nuclear medicine and an example of a controlled apparatus is an X-ray machine.

The Licence Charges Act provides that the holder of a facility or source licence, at any time during a financial year, is liable to pay a charge for the licence for that year. The amounts of these annual licence charges are prescribed in the Licence Charges Regulations.

The annual licence charges have been indexed every year since 2010 using ABS wage and labour price indices to recover increased labour costs.

The regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The regulations commenced on 1 July 2018. The increases to the annual licence charges took effect on 1 July 2018.

Details of the regulations are set out in the Attachment below.

The regulations were brought forward concurrently with the *Australian Radiation Protection and Nuclear Safety Amendment (2018 Measures No. 1) Regulations 2018*.

The Licence Charges Act does not specify any condition that needs to be met before the power to make the regulations may be exercised.

Consultation:

No consultation was undertaken among licence holders (all of whom are Commonwealth entities) as the amendments are machinery in nature and are done annually to ensure the Licence Charges Regulations are up-to-date. The Office of Best Practice Regulation (OBPR) exempted ARPANSA from the need to prepare a regulatory impact statement for the amendments (OBPR ID**:** 22587). The OBPR agreed that the amendments are machinery in nature and are not likely to result in any change to regulatory costs.

Authority: Section 6 of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*

ATTACHMENT

Details of the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2018 Measures No. 1) Regulations 2018*

Section 1 – Name

This section provides that the name of the regulations is the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2017 Measures No. 1) Regulations 2017*.

Section 2 – Commencement

This section provides for the regulations to commence on 1 July 2018.

Section 3 – Authority

This section provides that the regulations are made under the *Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998*.

Section 4 – Schedules(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments of charge amounts

Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000

Item 1 Amendments of listed provisions—Schedule 1

Clause 1 of Schedule 1 of the Licence Charges Regulations has a table that sets out the amounts of the annual licence charges that must be paid for facility licences that authorise specific activities that may be undertaken at or in relation to particular kinds of nuclear installations. The proposed amendments would increase the amounts of the annual licence charges listed in the table by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Charge ($)
1.	Preparing a site for a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of less than 1 megawatt	25,757 to 26,375

Table Item	Thing authorised to be done by licence	Charge ($)
2.	Constructing a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of less than 1 megawatt	64,399 to 65,944
3.	Possessing or controlling a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of less than 1 megawatt	25,757 to 26,375
4.	Operating a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) with maximum thermal power of less than 1 megawatt	128, 801 to 131,892
5.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear reactor that was used for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and had maximum thermal power of less than 1 megawatt	64,399 to 65,944
6.	Preparing a site for a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of 1 megawatt or more	51,520 to 52,756
7.	Constructing a controlled facility, being a nuclear reactor that is designed for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and to have maximum thermal power of 1 megawatt or more	128,801 to 131,892
8.	Possessing or controlling a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies) and with maximum thermal power of 1 megawatt or more	128,801 to 131,892
9.	Operating a controlled facility, being a nuclear reactor for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies and with maximum thermal power of 1 megawatt or more	991,767 to 1,015,569
10.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear reactor that was used for research or production of nuclear materials for industrial or medical use (including critical and subcritical assemblies); and had maximum thermal power of 1 megawatt or more	257,602 263,784
11.	Preparing a site for a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	12,878 to 13,187
12.	Constructing a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	25,757 to 26,375

Table Item	Thing authorised to be done by licence	Charge ($)
13.	Possessing or controlling a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	12,878 to 13,187
14.	Operating a controlled facility, being a plant for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	64,399 to 65,944
15.	De-commissioning, disposing of or abandoning a controlled facility, being a plant that was used for preparing or storing fuel for use in a nuclear reactor of a kind mentioned in any of items 1 to 9 above	25,757 to 26,375
16.	Preparing a site for a controlled facility, being a nuclear waste storage or disposal facility that is designed to contain waste with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations	12,878 to 13,187
17.	Constructing a controlled facility, being: a nuclear waste storage or disposal facility that is designed to contain waste with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations	25,757 to 26,375
18.	Possessing or controlling a controlled facility, being: a nuclear waste storage or disposal facility with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations	12,878 to 13,187
19.	Operating a controlled facility, being a nuclear waste storage or disposal facility with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations	64,399 to 65,944
20.	De-commissioning, disposing of or abandoning a controlled facility, being a nuclear waste storage or disposal facility that formerly contained waste with an activity that is more than the relevant activity level prescribed by regulation 8 of the ARPANS Regulations.	25,757 to 26,375
21.	Preparing a site for a controlled facility, being a facility to produce radioisotopes, containing a mixture of controlled materials, with an activity that is more than the activity level prescribed by regulation 11 of the ARPANS Regulations	25,757 to 26,375
22.	Constructing a controlled facility, being a facility to produce radioisotopes, containing a mixture of controlled materials, with an activity that is more than the activity level prescribed by regulation 11 of the ARPANS Regulations	64,399 to 65,944
23.	Possessing or controlling a controlled facility, being a facility to produce radioisotopes, containing a mixture of controlled materials, with an activity that is more than the activity level prescribed by regulation 11 of the ARPANS Regulations	25,757 to 26,375
24.	Operating a controlled facility, being a facility to produce radioisotopes, containing a mixture of controlled materials, with an activity that is more than the activity level prescribed by regulation 11 of the ARPANS Regulations	103,040 to 105,512

Table Item	Thing authorised to be done by licence	Charge ($)
25.	De-commissioning, disposing of, or abandoning a controlled facility, being a facility that formerly produced radioisotopes, containing a mixture of controlled materials, with an activity that was more than the activity level prescribed by regulation 11 of the ARPANS Regulations	64,399 to 65,944

Item 2 Amendments of listed provisions—Part 1 of Schedule 2

Clause 1 of Schedule 2 to the Licence Charges Regulations has a table that sets out the annual licence charges for particular kinds of prescribed radiation facilities. The proposed amendments would increase the annual licence charges listed in the table by 2.4 per cent as follows:

Table Item	Kind of prescribed radiation facility	Charge ($)
3.	Irradiator containing more than 10^{15} becquerel (Bq) of a controlled material	13,246 to 13,563
4.	Irradiator containing more than 10^{13} Bq of a controlled material but not including shielding as an integral part of its construction	13,246 to 13,563
5.	Irradiator containing more than 10^{13} Bq of a controlled material and including shielding as an integral part of its construction, but the shielding does not prevent a person from being exposed to the source	13,246 to 13,563
6.	Irradiator containing more than 10^{13} Bq of a controlled material and including shielding as an integral part of its construction, and with a source that is not inside the shielding during the operation of the irradiator	13,246 to 13,563
7.	Facility for the production, processing, use, storage, management or disposal of: (a) unsealed sources for which the result worked out using the steps mentioned in subregulation 6(2) is greater than 10^6; or (b) sealed sources for which the result worked out using the steps mentioned in subregulation 6(2) is greater than 10^9	26,495 to 27,130

Item 3 Amendments of listed provisions—Part 2 of Schedule 2

Clause 2 of Schedule 2 to the Licence Charges Regulations has a table that sets out the annual licence charges for facility licences for certain activities in relation to prescribed radiation facilities. The proposed amendments would increase the annual licence charges in the table by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Charge ($)
1.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	44,158 to 45,217
2.	Disposing of or abandoning a controlled facility, being a prescribed radiation facility that was formerly used as a nuclear or atomic weapon test site	29,438 to 30,144
3.	De-commissioning a controlled facility, being a prescribed radiation facility that was formerly used for the mining, processing, use, storage, management or disposal of radioactive ores	44,158 to 45,217

Table Item	Thing authorised to be done by licence	Charge ($)
4.	Disposing of or abandoning a controlled facility, being a prescribed radiation facility that was formerly used for the mining, processing, use, storage, management or disposal of radioactive ores	29,438 to 30,144

Item 4 Amendments of listed provisions—Schedule 2A

Clause 1 of Schedule 2A to the Licence Charges Regulations has a table that sets out the annual licence charges for facility licences for prescribed legacy sites. The proposed amendments would increase the annual licence charges in the table by 2.4 per cent as follows:

Table Item	Thing authorised to be done by licence	Charge ($)
1.	Possess or control a controlled facility that is a prescribed legacy site	14,332 to 14,573
2.	Remediate a controlled facility that is a prescribed legacy site	214,996 to 220,155
3.	Abandon a controlled facility that is a prescribed legacy site	28,665 to 29,352

Item 5 Amendments of listed provisions—Schedule 2B

Clause 1 of Schedule 2B to the Licence Charges Regulations has a table that sets out the annual licence charges for facility licences for designated licence holders. The proposed amendments would increase the annual licence charges in the table by 2.4 per cent as follows:

Table Item	Designated licence holder	Charge ($)
1.	Australian Nuclear Science and Technology Organisation	2,320,116 to 2,375,798
2.	Department of Defence	282,400 to 289,177

Item 6 Amendments of listed provisions—Part 2 of Schedule 3

Clause 2 of Schedule 3 has a table that sets out the annual licence charges for source licences to deal with particular kinds of controlled apparatus or controlled material. For this purpose, controlled material and controlled apparatus have been divided into three groups, namely Group 1, Group 2 and Group 3, in ascending order of risk to people and the environment. The proposed amendments would increase the licence charges in the table by 2.4 per cent as follows:

Table Item	Number of controlled apparatus or controlled materials in the same location that persons are authorised to deal with under the licence	Charge ($)
1	For less than 4 controlled apparatus or controlled materials from:	
	Group 1	1,209 to 1,238
	Group 2	4,838 to 4,954
	Group 3	14,514 to 14,862
2	For more than 3, but less than 11, controlled apparatus or controlled	

Table Item	Number of controlled apparatus or controlled materials in the same location that persons are authorised to deal with under the licence	Charge ($)
	materials from:	
	Group 1	3,141 to 3,216
	Group 2	9,675 to 9,907
	Group 3	29,024 to 29,720
3	For 11 or more controlled apparatus or controlled materials from:	
	Group 1	6,047 to 6,192
	Group 2	18,186 to 18,622
	Group 3	53,212 to 54,489

Item 7 Amendments of listed provisions—Part 3 of Schedule 3

Clause 3 of Schedule 3 has a table that sets out the annual licence charges for three particular licence holders. The proposed amendments would increase the licence charges listed in the table by 2.4 per cent as follows:

Table Item	Licence holders	Charge ($)
1	Department of Defence	390,236 to 399,601
2	Australian Nuclear Science and Technology Organisation	163,303 to 167,222
3	Commonwealth Scientific and Industrial Research Organisation	303,331 to 310,610

Part 2—Other amendments

Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000

Item 8 Clause 1 of Schedule 2 (table items 1 and 2)

Clause 1 of Schedule 2 to the Licence Charges Regulations has a table that sets out the annual licence charges for particular kinds of prescribed radiation facilities. The proposed amendments would repeal the references to table items 1 and 2 and replace them with a new table item 1 as follows:

Table Item	Kind of prescribed radiation facility	Charge ($)
1.	Particle accelerator that: (a) has, or is capable of having, a beam energy greater than 1 MeV; or (b) can produce neutrons	13,563

Item 9 Clause 1 of Schedule 3 (table items 23 and 24, column headed "Controlled apparatus or controlled material")

Table items 23 and 24 refer to an Australian/New Zealand Standard on optical fibre communication system. The proposed amendment would update the reference to the most recent version of the Standard.

This Standard can be made available for viewing without charge at the offices of the Australian Radiation Protection and Nuclear Safety Agency. Alternatively, public libraries holding copies of the Standard can be identified by contacting ARPANSA.

This Standard may also be purchased from SAI Global (www.saiglobal.com).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment (2018 Measures No. 1) Regulations 2018

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The Regulations amend the Australian Radiation Protection and Nuclear Safety (Licence Charges) Regulations 2000 (Licence Charges Regulations) to increase annual licence charges by 2.4 per cent and to make other minor amendments.

Human Rights Implications

The amendments are compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights.

The amendments increase the annual licence charges paid by Commonwealth entities to the Australian Radiation Protection and Nuclear Safety Agency for licences to deal with radiation apparatus or radioactive sources or to engage in activities in relation to radiation facilities and nuclear installations.

Other amendments are minor or machinery in nature, namely, amendments to update the publication details of an Australia/New Zealand Standard, which is incorporated by reference in the Licence Charges Regulations and an amendment to consolidate two references to a particle accelerator into one reference.

Conclusion

This Instrument is compatible with human rights as it promotes the human right to an adequate standard of living and the highest attainable standard of physical and mental health.

Senator the Hon. Bridget McKenzie, Minister for Rural Health

THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT

MC18-017067

03 OCT 2018

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

Dear ~~Senator~~ John

I refer to the Senate Standing Committee on Regulations and Ordinance's (the Committee's) comments in relation to the *Carbon Credits (Carbon Farming Initiative – Industrial Equipment Upgrades) Methodology Determination 2018* (the Determination).

The Committee requested advice on how standards incorporated in the Determination may be accessed free of charge and whether 'AS 4777' was the full title of the incorporated standard. On the first matter, the National Library of Australia provides free access to the standards incorporated in the Determination to the general public for non-commercial purposes. On the second matter, I am advised there are three parts to the AS 4777 currently in force (AS 4777.1, AS 4777.2 and AS 4777.3). As such, a reference to the AS 4777 is a reference to all three parts of the incorporated standard as in force from time to time (indicated by the status of 'current').

The Committee also requested advice about whether the then Minister for the Environment and Energy, the Hon Josh Frydenberg MP, complied with the conditions set out in section 106 of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act), and if so, where the advice provided by the Emissions Reduction Assurance Committee on the method may be accessed. Before making the Determination, the Minister obtained advice from the Emissions Reduction Assurance Committee and considered this advice, in accordance with section 106 of the Act. This advice is available at: www.environment.gov.au/climate-change/government/emissions-reduction-fund/methods/industrial-equipment-upgrades.

The above information has been included in the enclosed approved supplementary explanatory statement, which will be registered on the Federal Register of Legislation in due course.

Thank you for writing on this matter.

Yours sincerely

MELISSA PRICE

CC: Minister for Energy, the Hon Angus Taylor MP

Enc

SUPPLEMENTARY EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment

Carbon Credits (Carbon Farming Initiative—Industrial Equipment Upgrades) Methodology Determination 2018

Background

This determination is made under subsection 106(1) of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (the Act). The *Carbon Credits (Carbon Farming Initiative—Industrial Equipment Upgrades) Methodology Determination 2018* (the Determination) commenced on 30 August 2018.

The details of the Determination are set out in the initial explanatory statement to the Determination.

Purpose

The purpose of this supplementary explanatory statement is to:

- set out details of how individuals can obtain access to copies of Australian Standards referenced in the Determination for non-commercial purposes; and
- provide a web address where the advice obtained from the Emissions Reduction Assurance Committee under section 106 of the Act may be accessed.

Access to Australian Standards referenced in the Determination

The Australian Standards referenced in the legislative instrument provide technical requirements for energy auditing activities (AS/NZS 3598.1:2014 and AS/NZS 3598.2:2014), and for measurement of electric power using inverters (AS 4777.1, AS 4777.2 and AS 4777.3).

The National Library of Australia provides free access to these Standards to the general public for non-commercial purposes.

Emissions Reduction Assurance Committee Advice under section 106 of the Act

Prior to making the Determination, the then Minister for the Environment and Energy, the Hon Josh Frydenberg MP, obtained advice from the Emissions Reduction Assurance Committee and had regard to this advice, in accordance with section 106 of the *Carbon Credits (Carbon Farming Initiative) Act 2011*. The Committee advice can be accessed at www.environment.gov.au/climate-change/government/emissions-reduction-fund.

THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT

MC18-016666

20 SEP 2018

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

Dear ~~Senator~~ John,

I refer to your correspondence concerning the Senate Regulations and Ordinances Committee's scrutiny of the Carbon Credits (Carbon Farming Initiative - Sequestering Carbon in Soils in Grazing Systems - Revocation) Instrument 2018 [F2018L01113].

I understand that the Senate Regulations and Ordinance Committee is requesting my advice on a matter following their scrutiny of the above instrument. The committee have requested my advice on whether the condition in s 123(5) of the *Carbon Credits (Carbon Farming Initiative) Act 2011* has been satisfied in regards to the revocation of the Sequestering Carbon in Soils in Grazing Systems methodology determination.

Section 123(5) requires the Minister to cause advice received from the Emissions Reduction Assurance Committee to be published on the Department's website as soon as practicable after any decision to revoke a methodology determination. The Hon Josh Frydenberg made the decision to revoke the methodology on 30 July 2018 by signing the revocation instrument. The instrument was then registered by the Department on 15 August 2018.

I can confirm that the Department published the ERAC's letter of advice on 27 August 2018 on behalf of the Hon Josh Frydenberg MP who was the responsible Minister at the time. The letter of advice from the ERAC is available at the following web address: https://www.environment.gov.au/climate-change/government/emissions-reduction-fund/methods/sequestering-carbon-in-soils

Thank you for bringing the concerns of the Committee to my attention.

Yours sincerely

MELISSA PRICE

28 September 2018

The Hon Stuart Robert MP
Assistant Treasurer

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

Dear Senator John

Thank you for your letter on behalf of the Senate Regulations and Ordinances Committee (the Committee) dated 13 September 2018, drawing my attention to the Committee's *Delegated legislation monitor 10 of 2018* which seeks advice about the **Census and Statistics (Information Release and Access) Determination 2018 [F2018L01114]** (the Determination).

The Committee has requested advice as to:

- whether decisions by the Australian Statistician to authorise the disclosure of information, and decisions relating to disclosure under Parts 2 and 3 of the instrument, are subject to merits review; and
- if not, the characteristics of those decisions that would justify their exclusion from merits review.

The Determination is made under section 13 of the *Census and Statistics Act 1905*, and provides the framework under which information may be disclosed under that Act. The Determination remakes and improves upon the framework that was previously contained in the *Statistics Determination 1983*, which was due to 'sunset' on 1 October 2018.

As noted by the Committee in its *Delegated legislation monitor*, the release of information in accordance with the determination requires the written approval of the Australian Statistician. As a general principle, decisions involving the exercise of administrative discretion that may materially affect an individual's interest should be subject to merits review.

However, consistent with decisions that were made under the *Statistics Determination 1983*, decisions under the Determination are not subject to a general merits review on the basis that the Determination carefully specifies the only circumstances in which information may be disclosed. These conditions are factual and there is no determination or opinion that the Australian Statistician must form to disclose information.

Parliament House Canberra ACT 2600 Australia
Telephone: 61 2 6277 7230

The strict conditions for disclosure contained in the Determination provide appropriate safeguards to protect those individuals and organisations whose information should not be disclosed. Importantly, the Determination does not permit, and is incapable of permitting, the disclosure of information of a personal or domestic nature that is likely to enable the identification of an individual.

The Australian Statistician may also impose certain conditions on the recipients of information that is disclosed under the Determination in respect of the information, where it is appropriate to do so. Such conditions may be imposed to provide additional safeguards for the handling of information, including restrictions about who can access the information and the circumstances under which it can be accessed. While the decision to impose such conditions are not subject to merits review, they can only be applied in respect of those disclosures that require specific undertakings to be given by an individual or the responsible officers of an organisation seeking to obtain information. Individuals or organisations seeking to obtain information under the determination have complete discretion about whether or not to accept the conditions.

The decisions of the Australian Statistician are subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977* on the basis that they are administrative decisions to which that Act applies and are not covered by any of the applicable exclusions to the Act. This ensures that any concerns about whether the Australian Statistician has validly made a decision under the Determination can be reviewed by the Courts.

I appreciate the Committee's consideration of Determination, and I trust this information will be of assistance to the Committee.

Yours sincerely

Stuart Robert

THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS

Ref No: MS18-007493

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

Dear John,

I am writing in response to the letter from the Committee Secretary of the Standing Committee on Regulations and Ordinances, Ms Anita Coles, on 13 September 2018. The letter refers to the Committee's Delegated Legislation Monitor, 10 of 2018 (the Monitor) and seeks my advice on the *Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2018* and specifically subsection 5(2) of the Regulations which set out the other names by which al-Shabaab is also known.

In the Monitor, the Committee sought my advice as to whether I intended to list the 'Young Mujahideen Movement in Somalia' and the 'Youth Wing' as separate entries in paragraphs 5(2)(u) and 5(2)(v) of the Regulations. I note the Committee's concern that the previous version of the instrument, the *Criminal Code (Terrorist Organisation—Al-Shabaab) Regulations 2015,* listed the 'Young Mujahideen Movement in Somalia, Youth Wing' (combining the references in paragraphs 5(2)(u) and 5(2)(v)).

I confirm that it was my intention to list the 'Young Mujahideen Movement in Somalia' and the 'Youth Wing' as separate aliases of al-Shabaab in the Regulations. This decision was based on advice from the Australian Security and Intelligence Organisation that these separate names were more accurate aliases for al-Shabaab. I further advise that the inconsistency between the list of aliases in the Statement of Reasons in the explanatory statement and the Regulations was due to a minor typographical error in the Statement of Reasons.

I have copied this letter to the Committee Secretariat.

Thank you again for consulting me on this report.

Yours sincerely

19/09/18

PETER DUTTON

Parliament House Canberra ACT 2600 Telephone: (02) 6277 7860 Facsimile: (02) 6273 4144

SENATOR THE HON LINDA REYNOLDS CSC
ASSISTANT MINISTER FOR HOME AFFAIRS

MS18-007862

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

Dear Senator

I refer to the correspondence from the Senate Standing Committee on Regulations and Ordinances (the Committee) dated 13 September 2018 in respect of the *Customs Legislation Amendment (Prohibited Exports and Imports) Regulations 2018* (the Amendment Regulations).

The Amendment Regulations support recent United Nations Security Council Resolutions with respect to the Democratic People's Republic of Korea. The Minister for Foreign Affairs has policy responsibility for matters relating to United Nations Security Council Resolutions, and had requested the related amendments to ensure Australia's domestic legislation gives effect to our UN sanction obligations.

The Department of Home Affairs has consulted with the Department of Foreign Affairs and Trade on the Committee's request in respect of the Amendment Regulations and the response to the questions posed by the Committee is at **Attachment A**.

Thank you for bringing these matters to my attention.

Yours sincerely

LINDA REYNOLDS

26/9/2018

Attachment A

Customs Legislation Amendment (Prohibited Exports and Imports) Regulations 2018

Merits review

Question – the committee request the minister's advice as to whether decisions by the Foreign Minister and by authorised persons in relation to the grant of permission for the export of goods to, and the import of goods from, the Democratic People's Republic of Korea, would be subject to merits review.

The *Charter of the United Nations Act 1945* (the Act) does not provide for merits review. Accordingly, decisions by the Minister for Foreign Affairs to grant a permit under the *Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulations 2008* (2008 Regulations) authorising the export of goods to, and the import of goods from, the Democratic People's Republic of Korea that would otherwise breach the Act are not subject to merits review.

The requirement for permission from the Minister for Foreign Affairs to import or export under the 2008 Regulations is reflected in the requirements for permission to export under regulation 13CO of the *Customs (Prohibited Exports) Regulations 1958* (the Prohibited Exports Regulations) and to import under regulation 4Y of the *Customs (Prohibited Imports) Regulations 1956* (the Prohibited Imports Regulations), which are also not subject to merits review.

Question – if not, the characteristics of those decisions that would justify their exclusion from merits review.

It is the Government's position that any limitation on access to merits review for such decisions should be justified in line with the principles developed by the Administrative Review Council (ARC). The ARC's publication '*What decisions should be subject to merits review?*' provides examples of situations where exclusion of merits review may be justified. Included in this category are policy decisions of a high political content (from 4.22).

The decisions of the Minister for Foreign Affairs in relation to permission for the export of goods to, and the import of goods from, the Democratic People's Republic of Korea, fall unambiguously within the scope of this exception. The ARC cites illustrative examples of decisions that may fall within this exception, including decisions:

- affecting the Australian economy;
- affecting Australia's relations with other countries;
- concerning national security; and
- concerning major political controversies.

Ministerial permit decisions under the 2008 Regulations, the Prohibited Exports Regulations and the Prohibited Imports Regulations can engage these examples.

The Charter of the United Nations Act has the legitimate objective of giving domestic effect to United Nations Security Council Resolutions and providing a foreign policy mechanism for the Australian Government to address situations of international concern. The exclusion of merits review in relation to sanctions-related decisions is warranted by the seriousness of the foreign policy and national security considerations involved, as well as the potentially sensitive nature of the evidence relied on in reaching those decisions.

Where the United Nations Security Council has resolved that there will be limitations on engagement with a sanctioned regime, Australia, as a member of the United Nations, must comply with these international legal obligations.

While merits review is unavailable for a decision by the Minister regarding the issuing of a permit, an applicant can still seek judicial review of a decision.

The Hon. David Littleproud MP

Minister for Agriculture and Water Resources
Federal Member for Maranoa

Ref: MS18-001739

02 OCT 2018

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

Dear Senator Williams

The Senate Standing Committee on Regulations and Ordinances (the Committee) has requested further information about measures in the *Export Control (Animals) Amendment (Notices of Intention to Export) Order 2018*. The enclosure sets out my response to the question raised by the Committee.

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

Yours sincerely

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

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

The Export Control (Animals) Amendment (Notices of Intention to Export) Order 2018

Consultation

The committee requests the minister's advice as to:

- **whether any stakeholders were consulted in relation to the instrument (as opposed to being merely informed); or**
- **if no consultation was undertaken, why not.**

The Export Control (Animals) Amendment (Notices of Intention to Export) Order 2018 (Order) introduces provisions for the Secretary of the Department of Agriculture and Water Resources to approve or refuse a Notice of Intention to export. It applies to all types of livestock to ensure consistency across the industry and to assist exporters who manage mixed consignments. The additional decision point will provide added assurance that the export of live-stock will be compliant with the regulatory requirements throughout the export supply chain. This will support improved animal welfare outcomes and reduce the impacts on the export sector in relation to an export that may not occur.

Through this Order, the Australian Government is continuing to implement measures to improve the regulation of the export of livestock and promote improved animal welfare outcomes while supporting the live sheep export trade. This Order further strengthens this approach.

No public consultation was undertaken during the preparation of the Order, but members of the key stakeholder group, Australian Livestock Exporters' Council, indicated their support for the amendment prior to it being made. The preparation of the Order followed several months of discussions between Commonwealth, state and territory governments, industry stakeholders and animal welfare groups. This has been on-going since footage of sheep in severe heat stress was released in April 2018. It was not reasonably practicable to undertake consultation as the instrument was required as a matter of urgency, in order to implement the government's response to provide better assurance of animal welfare for livestock exports to the Middle East. Significant public concern and community expectations of a swift government response prevented ordinary consultation processes being undertaken on this occasion.

The Hon Christian Porter MP
Attorney-General

MC18-010615

10 OCT 2018

Senator John Williams
Chair
Senate Regulations and Ordinances Committee
Parliament House
CANBERRA ACT 2600
regords.sen@aph.gov.au

Dear ~~Chair~~ Senator

I am writing in response to the letter from the Committee Secretary of the Standing Committee on Regulations and Ordinances, Ms Anita Coles, dated 13 September 2018. The letters refers to the Committee's Delegated Legislation Monitor 10 of 2018 (the Monitor) and seeks my advice about matters raised concerning the *Federal Circuit Court Amendment (Costs and Other Measures) Rules 2018* (the Rules).

The Rules make a series of amendments to the *Federal Circuit Court Rules 2001*. In the Monitor, the Committee sought my advice on the omission of information relating to Schedule 1, Part 2 from the Explanatory Statement, and the inclusion of information relating to Schedule 2 (which does not appear in the instrument).

The Committee's concerns were brought to attention of the Court as the Rules were made by Judges of the Court. I am advised that the matters referred to by the Committee were due to an oversight. The Court registered a revised Explanatory Statement on 20 September 2018 to address this issue.

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

Yours sincerely

The Hon Christian Porter MP
Attorney-General

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

REF: MS18-001405

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

Dear Senator Williams

I refer to the Committee Secretary's letters dated 16 August 2018 and 13 September 2018 sent to my office seeking further information about certain items in the following instruments:

- the *Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2018*;
- the *Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 1) Regulations 2018*; and
- the *Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2018*.

The Ministers who have portfolio responsibility for the specific items in those instruments have provided the attached responses to the Committee's request. I trust that this advice will assist the Committee with its consideration of the instruments. I have copied this letter to the relevant Ministers.

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

Mathias Cormann
Minister for Finance and the Public Service

October 2018

Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2018

Table item 277 – Skills Checkpoint for Older Workers Program

Joint Response provided by the Minister for Small and Family Business, Skills and Vocational Education and the Minister for Jobs, Industrial Relations and Women

The Senate Standing Committee on Regulations and Ordinances requests the Minister's advice regarding the characteristics of decisions by service providers in relation to the Skills Checkpoint for Older Workers Program and related Incentive that would justify their exclusion from merits review by an external body independent of the department.

Skills Checkpoint for Older Workers Program

The Skills Checkpoint for Older Workers Program (the Program) will provide Australians between 45 and 70 years of age with advice and guidance on upskilling for a current job, transitioning into a new role within their current occupation or transitioning into a new occupation. The Program is consistent with the Australian Government's *2015 Intergenerational Report*. The capped funding Program will run from September 2018 until June 2022 and is managed by the Department of Education and Training.

An open tender process is currently being conducted to select service providers to deliver the Program to participants. Service providers will be required to perform a range of functions including:

- eligibility assessment for each potential participant against the eligibility criteria to determine the potential participant's eligibility to receive the Program services;
- interviewing each participant to collect relevant information from the participant;
- conducting a series of tests to determine the participant's skill levels across a range of criteria;
- analysing test results;
- providing participants with a career plan that will include recommendations and information on career pathways and appropriate training;
- conducting a final advisory interview to discuss the career plan and provide referrals to other services where relevant.

Eligibility Criteria

Before a person is able to receive services through the Program, the service provider will determine whether they meet the eligibility criteria, as approved by the Government and published in the request for tender, namely:

> In order to be eligible to receive Program services, participants must be an Australian citizen or Permanent Resident, aged 45 to 70 years old and either:
>
> (a) employed and at risk of entering the income support system (e.g. those in industries undergoing structural adjustment); or
>
> (b) unemployed for no more than three consecutive months and not registered for assistance through an Australian Government employment services program, such as *jobactive*.

The Service provider makes the decision about whether an applicant meets the criteria to participate in the Program and receive Program services. Once the Program funds allocated for each financial year have been expended, the service provider will not be able to provide Program services to any new applicants in that financial year.

Funding

Funding of $17.4 million for the Program was included in the 2018–19 Budget. The Program will be delivered over four years and there will be a finite number of participants that will receive the Program services in each of those years. Participants will be accepted into the program on a first come, first served basis, until allocated program places for each financial year are filled. No new participants will be able to join the program if there are no places remaining for the given financial year.

Merits Review

Noting the above, decisions by service providers as to whether a potential participant meets the criteria to receive Program services will not be subject to independent merits review. In the context of the Administrative Review Council's document 'What decisions should be subject to merit review?' the characteristics of such decisions that support this conclusion are that:

- the eligibility criteria which are set out above are factually based and there is very limited scope for disagreement about whether or not the particular facts have occurred and therefore the decision is automatic or mandatory; and
- the service provider's decision allocates a finite resource between competing applicants. The funding for the Program is capped and the number of applicants who will be able to receive the Program services will also be capped and so any reversal of a decision on whether an applicant has been successful may displace another successful applicant.

Skills and Training Incentive

The Skills and Training Incentive (the Incentive) is managed by the Department of Jobs and Small Business and will be administered by service providers contracted to deliver the Program. The Incentive will only be available to Program participants.

The Incentive is a contribution of up to $2,000 for training for a participant where that training has been identified by service providers in the participant's career plan and is linked to the participant's current job, a future job opportunity, or an industry or skill in demand. Either the participant or their employer must match the Incentive.

A participant can access the Incentive from 1 January 2019 – 31 December 2020 subject to:

- there being remaining allocations;
- the relevant training being identified in the participant's career plan; and
- either the participant or the participant's employer co-funding the training.

In administering the Incentive, service providers will:

- provide a participant with information about the Incentive if the provider determines (based on whether the Incentive is still in operation and whether there are remaining allocations) that the Incentive will be available at the time that the participant will receive their career plan; and
- organise referrals and assist with the participant's enrolment in training opportunities where relevant training is recommended in the participant's career plan and the participant would like to use the Incentive to undertake the training.

Merits Review

Noting the above, decisions by service providers as to whether a potential participant meets the criteria to receive an Incentive will not be subject to independent merits review. In the context of the Administrative Review Council's document 'What decisions should be subject to merit review?', the characteristics of such decisions that support this conclusion are that the decisions are automatic or mandatory decisions and they are decisions allocating a finite resource between competing applicants.

Automatic or mandatory decisions

A determination about whether a Program participant is able to access the Incentive is largely based on objective matters of fact and does not involve significant discretionary elements.

The only circumstance in which discretion is exercised is where training is not provided by a registered training organisation or a higher education provider. In these instances, the provider must have prior approval from the department before making a claim against the Incentive for the training course.

Also, there is a relatively low threshold required in order for training to be relevant for the purposes of the Incentive. This reflects that rather than trying to minimise access to the Incentive, the Department of Jobs and Small Business and providers will be promoting it to encourage eligible people and employers to participate. Such participation helps achieve the Australian Government's objectives of creating jobs, reducing unemployment and reducing dependence on the social security system.

Decisions allocating a finite resource between competing applicants

Decisions about access to the Incentive involve allocating a finite resource between competing applicants. This further indicates the decisions are inappropriate for merits review. Up to 3,600 participants a year assessed as part of the Program may have access to the Incentive. This is a capped allocation. The Incentive will also only be in operation for two of the four years the Program will run. This means that not all participants in the Program will be able to access the Incentive. An allocation that has already been made to another participant, or decisions relating to other participants, could be affected by overturning a decision not to allow a participant to access the Incentive in relation to particular training.

Other relevant factors for the Program and the Incentive

There is sufficient administrative accountability, without merits review by an external body independent of the department, as the process of allowing access to the Program services and the Incentive is fair, noting that:

- service providers will be required to establish a complaints resolution process to deal fairly with complaints about delivery of the Program and the Incentive and prominently display on its website the existence of the complaints handling process;
- participants or affected persons who are unsatisfied with a provider's services, including a provider's decision about whether a potential participant meets the criteria to receive Program services or specific training will attract the Incentive, can complain to the provider or the relevant department;
- departmental officers must comply with their Australian Public Service Code of Conduct obligations at all times, including in relation to impartiality and conflicts of interest. If a department is asked to review a participant's complaint about the provider's decision making, departmental officers who have a conflict of interest will declare that conflict. Each department will ensure it manages any conflicts of interest in accordance with the whole-of-government and respective departmental policies;
- providers will also have conflict of interest obligations under their contractual arrangements; and
- the criteria around the availability of the Program and the Incentive to potential participants are clear and will be publicly available.

Table item 278 – High Achieving Teachers Program

Response provided by the Minister for Education

The Senate Standing Committee on Regulations and Ordinances requests the Minister's advice regarding whether decisions by service providers in relation to the High Achieving Teachers Program that affect the interests of participants or potential participants in the program will be subject to independent merits review; and if not, the characteristics of such decisions that would justify their exclusion from merits review.

Background to the High Achieving Teachers Program

The Government supports the growth and emergence of alternative, employment-based pathways into the teaching profession.

Many secondary schools in regional and remote communities, and low socio-economic areas, experience significant challenges attracting and retaining teaching staff, and finding teachers with the subject expertise they need. This has repercussions on those schools' ability to provide access to quality education for students.

Alternative, employment-based pathways into teaching can increase the quality of teaching, and therefore education, across the schooling system by broadening the entry points into teaching, helping to address teacher shortages, and placing high-performing individuals in the schools that need them most.

To support the continued growth and emergence of these pathways and support improved access to high-quality teaching for school students, the Department of Education and Training (the Department) is undertaking a competitive open tender procurement process.

The Department will select one or more service providers to deliver alternative, employment-based pathways into teaching at a national and local level, to commence from 2020. These pathways will assist schools by selecting participants with the skills and experience that schools need. Once placed in schools, participants will share their knowledge and experience with students as they complete an accredited teaching qualification and develop into high-quality teachers.

Implementation of the High Achieving Teachers Program

The successful tenderer(s) (service provider) will be responsible for all aspects of administering and delivering the Program, including the selection of high-quality participants with professional or academic experience in a field other than teaching, and who possess the personal qualities and skills to become high-quality teachers.

In selecting participants, the service provider(s) must attract a sufficient number of high-quality applicants with the personal qualities, skills, knowledge and experience that placement schools need. This may include:

(a) individuals with a background in science, technology, engineering or mathematics ('STEM') or information and communications technology ('ICT');
(b) individuals who identify as Aboriginal and/or Torres Strait Islander;
(c) individuals living in regional or remote areas;
(d) individuals seeking a career change with experience working in a field other than teaching.

In selecting participants, the service provider(s) must apply any guidance regarding the selection of initial teacher education students provided by the Australian Institute of Teaching and School Leadership.

The service provider(s) must ensure that participants:

(a) are selected based on an assessment of their potential to become high-quality teachers, their ability to address a specific teacher workforce challenge and their commitment to the teaching profession;
(b) do not already hold an initial teacher education qualification that allows them to register to teach in one or more States or Territories;
(c) are not already in the process of completing an Australian accredited initial teacher education qualification;
(d) are able to meet the relevant legislative and regulatory requirements in the State or Territory in which they will be placed to undertake the duties of a teacher ('permission to teach') prior to commencing their school placement; and
(e) are suitable to work with children, including by being able to meet any requirements in State and Territory legislation relating to working with children.

As part of their tender response, tenderers were required to outline how they will:

(a) attract and assess a suitable number of high-quality applicants; and
(b) select participants with the personal qualities, skills, knowledge and experience to become high-quality teachers, address a specific teacher workforce challenge and with a commitment to the teaching profession.

While the process for becoming a participant is application based, as noted above, the service provider(s) will be required to assess all applicants on the basis of their personal qualities, skills, knowledge and experience, including whether the relevant applicant's attributes will address a specific teacher workforce challenge. The Department considers that the above requirements will enhance administrative accountability in relation to decisions about applicants, made by the service provider(s).

Characteristics of decisions and related matters

Noting the above, decisions of the service provider(s) that affect the interests of participants or potential participants will not be subject to independent merits review. The characteristics of such decisions are as follows:

(a) the service provider(s) will be required to select a limited number of participants from potentially a large and high-quality pool of applicants. As an example, in an alternative pathways to teaching program administered by the Department in 2017, more than 1,500 individuals applied for the program for only 150 places. As such, from a resourcing and timing perspective, including taking into account the finite number of places for competing high-quality applicants and the effective use of Commonwealth resources, it would not be feasible for the service provider(s) or the Department to make such decisions subject to independent merits review;
(b) given that the number of places are finite, any reversal of a decision on whether an applicant is successful or not may then cause the displacement of, and disadvantage, another successful applicant;
(c) the relevant application process is not directly related to the provision of Commonwealth funding or other entitlement. Rather, the service provider(s) will be engaged under contract with the Department to make decisions about whether the personal qualities, skills, knowledge and experience of applicants would target the specific needs of secondary schools, and address specific teacher workforce challenges. These decisions are based on the expertise of service provider(s);
(d) any decision to offer a place to an applicant must necessarily be done with reference to the identified vacancies in schools. There are scenarios where individuals who may have the characteristics to become high-quality teachers, may nevertheless not be offered a place because their subject-specific skills and experience do not match specific identified vacancies in schools.

Further to the above, the Department will be imposing additional requirements on the service provider(s) to provide for enhanced administrative accountability.

The service provider(s) will be required to establish a feedback and complaints process to deal with any feedback and complaints from applicants or participants.

As part of this process, the service provider(s) will be required to ensure that the feedback and complaints process:

(a) clearly indicates that applicants and participants may also provide feedback or complaints directly to the Department;
(b) is underpinned by principles of fairness, accessibility, responsiveness and efficiency; and
(c) is developed and implemented, as far as possible, based on the *Commonwealth Ombudsman's Better Practice Guide to Complaint Handling*.

The service provider(s) will also be required to ensure that their feedback and complaints process is publicised to applicants and participants. The service provider(s) must keep a register that includes, but is not limited to:

(a) all feedback and complaints received by the service provider;
(b) all feedback and complaints referred to the service provider by, or through, the Department; and
(c) any personnel and subcontractors (if any) which are the subject of the feedback or complaint, circumstances giving rise to the feedback or complaint, the investigation undertaken (where relevant), and any follow-up action.

The service provider(s) will also be required to support, assist and fully cooperate with a Department appointed independent evaluator for the purposes of evaluating all aspects of the Program.

The Department considers that the above requirements will provide for appropriate administrative accountability by its service provider(s) and will assist to ensure that any decisions made are fair, objective and transparent.

Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 1) Regulations 2018

Table item 282 – MH17 Dutch national prosecution – travel assistance

Response provided by the Minister for Foreign Affairs

Response to the request for advice contained in the *Delegated legislation monitor 8 of 2018* on the need for independent merits review relating to the MH17 Dutch National Prosecution – travel assistance activity (table item 282)

As the Minister with portfolio responsibility for this spending activity, I can confirm that decisions made relating to travel assistance under this activity are of a nature suitable for independent review. As detailed in the explanatory statement, a multi-layered internal review process will apply. The Department of Human Services (DHS) will administer payments and make decisions applying the eligibility criteria based on factual considerations. If claimants are not satisfied after following the review processes outlined in the explanatory statement, they may then seek a review from the Commonwealth Ombudsman. I believe this process is sufficient to meet the Committee's expectations set out in the *Guideline on regulations that amend Schedule 1AB to the Financial Framework (Supplementary Powers) Regulations 1997*.

The policy guidelines for this activity will be drafted to minimise the use of subjective tests and discretion, where appropriate, and ensures the decision-maker has clear guidance as to how a claim should be assessed. The victims of the downing of Malaysia Airlines Flight MH17 are known to Government. Family members claiming assistance under this activity will be required to meet proof of identity testing, consistent with Level of Assurance 3 under the National Identity Proofing Guidelines. Assistance will be limited to a certain number of family members per victim. Family members claiming assistance will be assessed against a next-of-kin hierarchy, which will be published as part of the policy guidelines.

The policy guidelines for the travel assistance have not yet been published and spending under this activity has not commenced. Finalisation of the policy guidelines is dependent on the Dutch confirming arrangements for next-of-kin participation in the Dutch National Prosecution. This will determine the eligibility period and frequency of assistance.

Preparations for the Dutch National Prosecution are still ongoing. Dates for the prosecution have not been announced and arrangements for next-of-kin participation are not confirmed. Due to the sensitive nature of the prosecution, we are unlikely to be given significant notice. We continue to work closely with the Dutch authorities on their preparations for the prosecution. I will finalise the policy guidelines once the Dutch have confirmed the timing and arrangements for the prosecution. The final policy guidelines will be made available on the DHS website. I will also provide a copy of the final version to the Chair of the Committee.

I trust this information satisfies the Committee's request.

Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2018

Table item 297 – Supporting Sustainable Access to Drinking Water

Response provided by the Minister for Defence

The Committee requested the Minister's advice as to the characteristics of decisions in relation to the provision of assistance under the *Supporting Sustainable Access to Drinking Water* program that would justify excluding merits review, taking into consideration the Administrative Review Council's guidance document, *What decisions should be subject to merit review?*

As outlined in the Explanatory Statement (ES) to the Regulations, the purpose of the *Supporting Sustainable Access to Drinking Water* program is to provide sustainable access to drinking water and necessary water infrastructure to property owners in communities surrounding four Defence sites – the Army Aviation Centre Oakey, and RAAF Bases Williamtown, Tindal and Pearce – where environmental site assessments have identified them as using bores containing per- and poly-fluoroalkyl substances (PFAS) above the Australian Drinking Water Guideline values, as their primary source of drinking water.

Taking into consideration the purpose and scope of the program, assistance is available in relatively strict and limited circumstances under this program:

(a) properties affected by PFAS contamination resulting from activities at the above four sites; and

(b) the contamination is above the Australian Drinking Water Guideline values, which is publicly accessible at https://www.nhmrc.gov.au/guidelines/publications/eh52.

Criterion (a) is based on the location of the property. Criterion (b) is based on an Australian standard, which is an objective criterion. As outlined in the ES, there is no formal application process for the program or direct funding. The Department of Defence (Defence) works with its environmental consultants to identify and approach affected properties that are eligible for assistance under the program, with bores being sampled to determine the level of PFAS contamination present. The circumstances of each property owner are considered against the program's eligibility criteria.

Under the program, Defence has identified and worked collaboratively with property owners in affected communities to achieve desired outcomes, as directed by the Government. The majority of property owners eligible for the program have already been contacted and Defence continues to work with them to implement support measures to suit each individual's circumstances.

As set out above, the eligibility criteria for the program indicate that the determination of eligibility for assistance is largely, if not wholly, based on matters of fact and scientific evidence obtained during environmental investigations. There is little to no scope for subjective or discretionary decision-making. In this regard, to the extent that decisions under the program are mandatory or procedural in nature (that is, based on an obligation to

act on the existence of specified circumstances), they are not considered suitable for external merits review.

Further, in relation to the reconsideration of decisions, it is noted that Defence's internal review process applies principles of administrative law to ensure decisions are reconsidered in a fair, independent and robust manner. If in the unlikely circumstances that a request is refused and the resident seeks reconsideration, a Senior Executive Service officer will review the decision against the program criteria and the individual's circumstances. To enhance confidence in the independence of the reviewing officer and the internal review process, steps are taken to ensure that the initial decision-maker is not involved in the reconsideration process. The reviewing senior officer reconsiders the merits of the request in regards to:

- the individual's initial request;
- the reasoning of the individual in asking for a reconsideration of the decision and any new material provided by the individual as part of the reconsideration process.

Given that independent internal reviews would be carried out by a Senior Executive Service officer, and the clear criteria that the resident must meet for the delegate of the Secretary to provide support under the program, the current review mechanism is consistent with the purpose of the program.

In conclusion, Defence is of the view that the characteristics of the program and the decisions justify their exclusion from merits review.

THE HON DAVID COLEMAN MP
MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS

Ref No: MS18-007912

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

Dear Chair John

I thank the Senate Standing Committee on Regulations and Ordinances for its letter of 13 September 2018, in which the Committee requested further information about the *Migration Amendment (Skilling Australians Fund) Regulations 2018* (the Amending Regulations). My comments in relation to the concerns raised by the Committee follow.

The Committee has requested more detailed advice as to why it is considered appropriate to exclude decisions relating to the refund of charges and fees, made under regulations 2.73AA and 5.37A of the *Migration Regulations 1994* (the Migration Regulations), from merits review. In particular, the Committee has requested advice as to why it would not be appropriate to provide for merits review in relation to such decisions, and allow affected businesses to determine whether it is in their interests to seek review.

Regulations 2.73AA and 5.37A provide that, in specified situations, employers may be able to obtain a refund of the nomination fee and nomination training contribution charge (NTCC) payable in relation to the nomination of skilled overseas workers for the temporary and permanent employer-sponsored visa programs.

The nomination fee is $330 (for the Temporary Skill Shortage (TSS) visa), $540 (for the permanent employer-sponsored Employer Nomination Scheme (ENS) (subclass 186) and Regional Sponsored Migration Scheme (RSMS) (subclass 187) visas) or nil for permanent visa nominations for positions in regional Australia. The NTCC, which is a tax, ranges from $1200 to $7200, depending on a range of factors.

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The availability of refunds reflects the possibility that, for various reasons, employers may not receive any benefit from the nominated overseas worker and this may be through no fault of the employer. The nomination application fee, which is a fee for service rather than a tax, will not be refunded in cases where the service has been provided; that is, the nomination application has been processed.

As the Committee has noted, some of the grounds for refund turn on objective criteria that will not be in question, for example where the nominated person is refused a visa on health or character grounds. It is intended that the Department of Home Affairs will always provide a refund of the NTCC in those situations, and merits review by the Administrative Appeals Tribunal (AAT) would therefore be redundant. In relation to refund grounds that may give rise to dispute, I consider that genuine disputes are likely to be rare and, in view of the costs of AAT review to the employer and to the Department as respondent, it is not appropriate to provide for AAT review rights.

This is consistent with the position in relation to refunds of fees and charges under the Migration Regulations, including visa application charges. Those decisions are not, and have never been, subject to review by the AAT. I also note that any alleged maladministration of the refund provisions could be referred to the Commonwealth Ombudsman.

In light of the considerations outlined above, I am of the view that the position reflected in the Amending Regulations is appropriate.

I trust this information is of assistance to the Committee.

Yours sincerely

David Coleman

7 / 11 /2018

The Hon Dan Tehan MP
Minister for Education

Parliament House
CANBERRA ACT 2600

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Our Ref: MC18-004701

Senator John Williams (Chair)
Senate Regulations and Ordinances Committee
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10 OCT 2018

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Dear Senator Williams

Thank you for your email of 20 September 2018 regarding the Other Grants Guidelines (Education) Amendment (No. 1) 2018 (the Guidelines). The Committee has requested advice about whether grants made under the Regional Study Hubs Program (RSHP) should be subject to merits review. Merits review was not considered appropriate for the RSHP for the following reasons.

Funding for the RSHP will be provided under Part 2-3 of the *Higher Education Support Act 2003* (HESA). Under Part 2-3 of HESA, the Minister has the discretion to:

- approve grants made under part 2-3 (section 41-20)
- determine the amount of those grants (where the Other Grants Guidelines do not specify an amount) (section 41-30), and
- determine the conditions that attach to the grant (also where the conditions are not determined by the Other Grants Guidelines) (section 41-25).

Section 206-1 of HESA specifies the decisions made under the Act that are reviewable decisions. As the Committee has noted, funding decisions made under part 2-3 of HESA are not specified. Furthermore, $16.7 million was allocated to the RSHP in the 2018-19 Budget. That is, there is a finite amount of funding available for the RSHP, and funding will not be able to be provided to all applicants. Providing for merits review in this case would be beyond the scope of HESA and delay delivery of funding to successful applicants, as a decision in relation to one application affects all other applications where a finite amount of funding is available.

While merits review is not available to applicants under the RSHP, I will decide the applications following an open application round. A panel of departmental officials has assessed all eligible applications against criteria set out in the Application Guide for the program. I will decide the outcome of the application round taking into account their evaluation and recommendations.

I thank the Committee for its question.

Yours sincerely

DAN TEHAN

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

Ref No: MS18-001150

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Dear Senator Williams John

Disallowable Legislative Instrument - Radiocommunications (Use by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2018 [F2018L01185]

I refer to correspondence from Ms Anita Coles, Secretary of the Senate Committee on Regulations and Ordinances (the Committee) dated 20 September 2018, about the Radiocommunications (Use by Corrective Services NSW of PMTS Jamming Devices at Lithgow Correctional Centre) Exemption Determination 2018 [F2018L01185].

In response to the Committee's request for advice, I am pleased to inform you that a map of the Lithgow Correctional Centre is available free of charge from the Australian Communication and Media Authority (the Authority) website at **https://www.acma.gov.au/Home/Industry/Spectrum/Radiocomms-licensing/Spectrum-licences/mobile-phone-jammers-in-prisons.**

I am also advised that publication of the device agreement would defeat its key purpose of preventing criminal activity by inmates, and so would not be in the public interest.

The Authority will soon produce an updated explanatory statement which will include the precise web address for the map and outline the reasons why it is not in the public interest for the agreement to be made public.

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

Yours sincerely

MITCH FIFIELD
9/10/18

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Minister for Jobs and Industrial Relations

Minister for Women

The Hon Kelly O'Dwyer MP

Ref: MC18-002920

Senator John Williams
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Parliament House
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Dear Senator John

I refer to the letter of 20 September 2018 from Ms Anita Coles, Committee Secretary, concerning the *Safety, Rehabilitation and Compensation (Catastrophic Injury) Rules 2018* and *Seafarers, Rehabilitation and Compensation (Catastrophic Injury) Rules 2018,* which sets out when an injury will be classified as a 'catastrophic injury'.

Employees who meet the definition will not be subject to a monetary cap on the amount of compensation they can receive each fortnight for attendant care services and household services under the Comcare and Seacare workers' compensation schemes, consistent with the benchmarks set by the National Injury Insurance Scheme.

The Committee has noted that two classes of injury classified as 'catastrophic injuries' require the impairment of the person to be assessed by reference to the Functional Independence Measures (FIM). As with many (if not all) claims for injury compensation, completion of the FIM may involve the collection of a personal information relating to injured persons.

The FIM assessment can only be carried out by a person who has been trained in the use of the FIM and is credentialed in the use of the FIM at the time of the assessment. These medical and health professionals (that is, nurses, doctors and allied health staff such as occupational therapists and physiotherapists) are regulated by Australian Health Practitioner Regulation Agency.

Personal information collected in the course of a FIM assessment will be used and managed by:

- medical and health professionals in accordance with their professional obligations, subject to applicable Commonwealth, state or territory privacy laws
- relevant authorities in the Comcare scheme (that is, Comcare and licensees) in accordance with the functions and powers conferred on such authorities by the *Safety, Rehabilitation and Compensation Act 1988* ('the SRC Act'), subject to applicable Commonwealth, state or territory privacy laws
- employers in the Seacare scheme in accordance with the functions and powers conferred on such employers by the *Seafarers Rehabilitation and Compensation Act 1992* ('the Seafarers Act'), subject to applicable Commonwealth, state or territory privacy laws.

For the avoidance of doubt, the instruments do not in any way alter:

- the existing framework around the use and management of personal information by medical and health professionals, by relevant authorities under the SRC Act or by employers under the Seafarers Act; or
- the existing safeguards that are in place to protect individuals' privacy in relation to that information.

I hope this information will be of assistance to you.

Yours sincerely

Kelly O'Dwyer