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: MC19-002416

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

28 FEB 2019

Dear Chair

Thank you for your correspondence of 15 February 2019 regarding the scrutiny issues identified in *Delegated Legislation Monitor 1 of 2019.* This relates to the Australian Radiation Protection and Nuclear Safety Regulations 2018 [F2018L01694] (ARPANS Regulations). The Committee requested advice on the basis by which the fees set out in Division 4 of Part 5 of the instrument have been calculated.

Section 34 of the *Australian Radiation Protection and Nuclear Safety Act 1998* (the Act), provides that applications for licences to engage in conduct otherwise prohibited by sections 30 or 31 of the Act must be in a form approved by the Chief Executive Officer of the Australian Radiation Protection and Nuclear Safety Authority. They must also be accompanied by such fee as is prescribed in the regulations.

The application fees prescribed by the ARPANS Regulations have been set at a level estimated to only recover the actual average regulatory costs involved in assessing all facility and source licence applications for each licence type specified in the ARPANS Regulations.

The reference in the Explanatory Statement to risk was not meant to imply that source licence application fees were set according to the level of risk exhibited by the relevant material, merely that the categorisation of the material into Group 1, 2 or 3 is based on the level of radioactivity of the nuclide in question and the greater chance of serious harm being caused by an accident involving the material.

It is the amount of regulatory effort required to properly consider the more detailed licence applications received for materials in the higher order groups that attracts the application fee, not the inherent risk applicable to each group.

The application fees for facility and source licences set out in Division 4 of Part 5 of the ARPANS Regulations are cost recovery measures authorised by section 34 of the Act.

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

Yours sincerely

Bridget McKenzie

cc: regords.sen@aph.gov.au

The Hon Sussan Ley MP

Assistant Minister for Regional Development and Territories
Federal Member for Farrer

Ref: MS19-000393

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

Dear Senator John

Thank you for the email of 15 February 2019 from the Secretary of the Senate Standing Committee on Regulations and Ordinances (the Committee) in relation to the *Australian Capital Territory National Land Amendment (Lakes) Ordinance 2018* (the 2018 instrument).

The Committee has sought my advice about the scrutiny issue identified in the Delegated Legislation Monitor 1 of 2019 in relation to this Ordinance. In particular, the Committee requests further advice about why a failure to provide notice to an applicant of the availability of review of certain decisions should not affect the validity of decisions (the effect of a 'no-invalidity' clause in the 2018 instrument). I am pleased to provide further advice on this matter.

The provision in question was included in the 2018 instrument to continue the effect of, and maintain consistency with pre-existing law. It reproduces and continues the effect of the pre-existing section 51(4) of the *Lakes Ordinance 1976* (the Ordinance modified by the 2018 instrument). In addition, it replicates the effect of section 27A (3) of the *Administrative Appeals Tribunal Act 1975* (the AAT Act), which provides that the validity of a reviewable decision is not affected where the decision maker fails to provide the person whose interests are affected with a notice of decision and the right of that person to have the decision reviewed. It is, therefore a provision of a kind commonly used in the context of merits review and included in other Commonwealth laws for the same reason, for example, the *Child Support (Registration and Collection) Act 1988.*

Section 51(4) of the *Lakes Ordinance 1976* has been included for the avoidance of doubt. This is because, even if the provision were not included, mere failure to provide notice to an applicant of their review rights would not, in the context of the statute, result in the invalidity of the reviewable decision. Therefore, section 51(4) does not in practice have the effect of validating decisions that would otherwise be invalid.

In response to the Committee's advice that these matters are being inadequately addressed in the Explanatory Statement for the Ordinance, I have instructed the Department of Infrastructure, Regional Development and Cities to update the Explanatory Statement to include further explanation in line with the reasoning outlined above. I have enclosed for the Committee an advance copy of the updated Explanatory Statement.

If you require further information on this matter, the contact officer within the Department is Catharina van Moort, Director, ACT/NT Section on 02 6274 8175.

Thank you for bringing the Committee's concerns to my attention and I trust this is of assistance.

Yours sincerely

Hon Sussan Ley MP

Enc

THE HON ANGUS TAYLOR MP
MINISTER FOR ENERGY

MC19-001651

- 5 MAR 2019

Senator John Williams
Chair
Senate Regulations and Ordinances Committee
Suite S1.111
Parliament House
CANBERRA ACT 2600
regords.sen@aph.gov.au

Dear Senator ~~Williams~~ John,

Thank you for the correspondence of 15 February 2019 from Ms Anita Coles on behalf of the Committee, requesting additional information about scrutiny issues identified in relation to the Greenhouse and Energy Minimum Standards (Three Phase Cage Induction Motors) Determination 2018 [F2018L01572].

The process for developing the Greenhouse and Energy Minimum Standards (Three Phase Cage Induction Motors) Determination 2018 included an assessment of the appropriateness of any relevant Australian/New Zealand Standards or international standards. Stakeholders clearly identified their preferred approach was the adoption of an international standard.

Incorporating standards by reference, particularly standards setting out detailed technical testing methods, can reduce the cost of delivering the Greenhouse and Energy Minimum Standards (GEMS) scheme as well as the regulatory burden for suppliers of GEMS products. As motors suppliers are already testing their products to the international standard, referencing the international standard limits future testing and compliance costs for industry.

Careful consideration is given to what material it is appropriate to make readily and freely available in the GEMS determination. At a minimum this generally includes enough information for interested parties to ascertain the scope of the instrument without having to purchase any standards. In cases where a standard already covers this information, it requires the inclusion of copyright material in the determination.

I understand that the inclusion of copyright material in GEMS determinations is a matter that the Department of the Environment and Energy is actively considering. The Department has advised me that it is seeking to engage with the relevant copyright holder in order to explore possible solutions to the kind of issues raised by the Committee.

Yours sincerely

ANGUS TAYLOR

THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT

MC19-001652

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

5 MAR 2019

Dear ~~Senator~~ John,

I refer to your correspondence relating to the Senate Regulations and Ordinances Committee - National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2018.
The matter has been referred to me, as Minister for the Environment, as the matters raised fall within my portfolio responsibilities.

The Committee requests my advice whether decisions by the Clean Energy Regulator, under subsection 13(4) of the instrument, to determine whether an individual's training is sufficient to constitute 'knowledge of assurance', are subject to independent merits review. I can confirm that the decisions in question are reviewable by the Administrative Appeals Tribunal.

In order to be registered as a greenhouse and energy auditor, under section 75A of the *National Greenhouse and Energy Reporting Act 2007* (the principal Act), an individual must meet prescribed requirements as to qualifications, knowledge, expertise, competence, independence and other matters. These include requirements relating to knowledge of audit team leadership and assurance as set out in subregulation 6.16(1) of the *National Greenhouse and Energy Reporting Regulations 2008*. Subsection 13(4) of the instrument sets out the ways in which the requirements of this subregulation may be met. Section 13(4) of the instrument provides for any other training or tertiary education an applicant may have successfully completed to be put to the Regulator in consideration in demonstrating their knowledge of assurance. Therefore, the decision under subsection 13(4) forms an intermediate step in the decision-making process for registering an auditor.

The Committee is correct that paragraph 56(j) of the principal Act provides the power for review by the Administrative Appeals Tribunal of any decision to refuse to register an individual in the register of greenhouse and energy auditors under section 75A of the principal Act, including a decision based on a refusal to accept that an individual's training or tertiary education is sufficient to demonstrate knowledge of assurance.

I have raised with the Clean Energy Regulator the Explanatory Statement's failure to indicate whether decisions made under subsection 13(4) are reviewable. The Clean Energy Regulator notes that the purpose of the instrument is to set out the knowledge, qualifications and experience requirement for registration as a greenhouse and energy auditor.

Therefore, all provisions under the instrument have the potential to affect a decision under section 75A of the principal Act. This is stated in the second paragraph under "Purpose and operation of the instrument" which provides that an application may be made to the Administrative Appeals Tribunal, under paragraph 56(j) of the principal Act, for the review of a decision of the Regulator to refuse to register an individual in the register of greenhouse and energy auditors kept under section 75A of the principal Act.

However, the Clean Energy Regulator has indicated that it is willing to remake the Explanatory Statement to directly refer to the role of the Administrative Appeals Tribunal in reviewing decisions under subsection 13(4) of the instrument if the Committee wishes.

Thank you again for your enquiry.

Yours sincerely

MELISSA PRICE

The Hon Stuart Robert MP
Assistant Treasurer

05 MAR 2019

Ref: MC19-001555

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

regords.sen@aph.gov.au

Dear Chair John

The Committee Secretary of the Senate Regulations and Ordinances Committee wrote to my office on 15 February 2019 requesting a response from me in relation to issues raised in *Delegated Legislation Monitor 1 of 2019* regarding *Treasury Laws Amendment (Gift Cards) Regulations 2018* (the Regulations).

The Committee has sought advice as to why it is considered necessary and appropriate to alter the definitions of 'gift cards' and 'post-supply fees' contained in the Australian Consumer Law (the ACL) by the Regulations, rather than primary legislation.

New section 89A supplements the definition of 'gift cards' by specifying that certain articles, i.e. reloadable pre-paid cards and pre-paid electricity, gas or telecommunications service cards, are not gift cards. The articles are specified largely to avoid doubt and provide certainty to industry and consumers. These articles are not commonly known as gift cards – they are not typically given as gifts but rather are used by single individuals to make payments. It was considered appropriate to use delegated legislation to clarify the definition of 'gift card' as the amendment does not substantially alter the existing meaning but rather clarifies that those articles are not subject to the reforms.

Allowing regulations to exempt certain gift cards or those supplied in certain circumstances from all or some of the requirements will provide the Government with the necessary flexibility to make timely changes to support industry to adopt innovative marketing techniques to encourage demand and manage stock levels.

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It will also allow the law to adapt to changes in technology and address any attempts to avoid or undermine the reforms.

New section 89B contains an exhaustive list of permitted fees, i.e. fees or charges for making a booking, fees or charges or exchanging currencies, fees or charges relating to the reissue of a gift card which has been lost, stolen or damaged, and fees or charges that are payment surcharges. Including this level of specificity in the Regulations, as opposed to the primary law, provides the Government with the necessary flexibility to make timely changes based on changing business practices and developments in technology.

The Parliament has oversight of the use of delegated legislation to clarify the scope of the definitions as any regulations are disallowable. As such, on this occasion, it is considered that this approach is an appropriate trade-off for ensuring the reforms meet their objectives and remain fit for purpose.

I hope this information is of assistance.

Yours sincerely

Stuart Robert

The Hon Michael McCormack MP

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

Ref: MC19-000782

05 MAR 2019

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

Dear Senator John Williams

Thank you for your email of 15 February 2019 regarding instruments listed in the Senate Standing Committee on Regulation and Ordinance's *Delegated Legislation Monitor 1 of 2019*, for which I am responsible as Minister for Infrastructure, Transport and Regional Development.

Air Navigation (Essendon Fields Airport) Regulations 2018 and Air Navigation (Gold Coast Airport Curfew) Regulations 2018

The Committee requested advice as to where Volume I of Annex 16 to the Chicago Convention may be accessed free of charge (including by the general public) and requested that the explanatory statement be amended to include this information.

I thank the Committee for consideration of the fundamental principle of the rule of law that every person subject to the law should be able to access its terms readily and freely. The parties subject to the law are aircraft operators and as indicated in the explanatory statement the Annex is available for purchase on the website of the International Civil Aviation Organization (CAO), and that aircraft operators may request a copy free of charge from the Department on Infrastructure, Regional Development and Cities.

Australia is not the copyright holder of the document, which is an international standard and therefore cannot distribute copies to members of the public. The National Library Trove online system https://trove.nla.gov.au allows users to identify libraries in Australia that are open to the public, where in most cases earlier editions may be viewed. The Royal Melbourne Institute of Technology holds a copy of the current edition of Annex 16, Volume I that can be made available on inter-library transfer. The explanatory statement will be amended to note the availability of the document through the National Library online system.

The Hon Michael McCormack MP
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The Committee also requested more detailed advice as to the justification for the reversal of the evidential burden of proof in relation to the identified defences.

As indicated within the explanatory statement, the reversal of the burden of proof contained in the Air Navigation (Gold Coast Airport Curfew) Regulations 2018 and the Air Navigation (Essendon Fields Airport) Regulations 2018 are matters likely to be within the knowledge of the defendant. This reversal of the burden of proof did have regard to the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers.

I acknowledge the Committee's concerns that the weight of an aircraft and whether it is used for a police operation appear to be factual matters, however, these matters are highly dependent on the nature of the operation and this information will be contained either in the aircraft flight manual or the aircraft flight plan. Both of these matters are not ones for which the Secretary would be apprised unless this information was supplied to the Secretary by an aircraft operator in the course of conducting compliance activity.

The primary responsibility for adhering to the Regulations rests with the aircraft operator and it remains appropriate that operators bear the evidential burden of proof. It would also be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matters, due to the burden of proof required in a criminal prosecution under the Criminal Code.

The conduct prescribed is also conduct that should be prohibited to ensure appropriate protections for communities living in close proximity to both airports. These protections include minimising the adverse effects of aircraft noise which could cause public health issues in extreme cases.

The Committee requested advice as to whether dispensation decisions by the Secretary for Essendon Fields Airport or Gold Coast Airport during a curfew period are subject to independent merits review and if not, the characteristics of those decisions that would justify excluding independent merits review.

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

Curfew dispensation decisions are decisions for which there is no appropriate remedy. Once a decision is made to grant or refuse a curfew dispensation it is irrevocable and the decisions operate for a short period.

A curfew dispensation may be granted at the Essendon Fields Airport or the Gold Coast Airport during a curfew period in situations of 'exceptional circumstances'. The decision to grant or refuse a curfew dispensation is based upon administrative guidance documents authorised by the Secretary of the Department of Infrastructure, Regional Development and Cities.

The nature of curfew dispensations are based on circumstances that are often short notice, not foreseeable and require an immediate decision. In these circumstances, the urgency to make a decision to grant or refuse a dispensation request justifies the exclusion of merits review.

A merits review could cause uncertainty compromising the operations of an aircraft, which may include fragile time sensitive cargo, animals or cause undue hardship to passengers including unaccompanied minors, or those requiring mobility assistance. Delays in decision-making may also subject the community in close proximity to the airport to more noise caused by such delays. This would be contrary to the intent of the Regulations which is to protect the community from aircraft noise impacts at sensitive times.

As the Committee has indicated section 23A of the *Air Navigation Act 1920* provides for the review of decisions by the Administrative Appeals Tribunal for certain decisions. If curfew dispensations were to have been subject to review by the Administrative Appeals Tribunal this would have been specified by section 23A.

CASA EX159/18 — Authorised Flight Examiners Exemption 2018

The Committee requested advice as to whether decisions to approve, or refuse to approve, a flight examiner to conduct a flight test are subject to independent merits review and if not, advice as to the characteristics of the decisions that would justify excluding independent merits review.

The Civil Aviation Safety Authority (CASA) has advised that a decision of CASA under section 5 to refuse to grant an authorisation is subject to merits review by the Administrative Appeals Tribunal. This has been reflected in a revised explanatory statement lodged on 30 January 2019.

AD/DHC-2/26 Amdt 1 Passenger Seats and Passenger Seat Attachment Fittings

The Committee requested advice as to the manner in which identified documents at paragraph 1.10 of the Directive were incorporated and a more detailed description of the incorporated documents. The Committee requested that the explanatory statement be amended to include this information.

CASA has advised that the Directive required that there be removed from service any passenger seat assembly that cannot be identified as being manufactured in accordance with a drawing approved by De Havilland Canada or a drawing approved under the Air Navigation or Civil Aviation or the Civil Aviation Safety Regulations.

CASA does not hold any such approvals. The Directive places an onus on the aircraft owner to contact the aircraft manufacturer to obtain an approval, or to engage a person authorised under Part 21 of the Civil Aviation Safety Regulations 1998, to approve the design or modification of the seat specific to their aircraft. On this basis, the Directive does not incorporate documents already in existence.

Civil Aviation Safety Amendment (Part 91) Regulations 2018

The Committee requested advice as to the circumstances in which it is envisaged that the use of force would be used in the exercise of powers (sections 91.220 and 91.225) and when a person would be detained by the operator or pilot in command of an aircraft.

The purpose of the provision is to ensure that the safety of an aircraft, its occupants and persons on the ground is assured in the face of a specific threat to the aircraft from a person on the aircraft, in circumstances where access to law enforcement officers is not possible due to the aircraft being in flight. Threats could arise from planned terrorist acts, unplanned malicious acts (for example exacerbated by alcohol consumption), and acts of persons of unsound mind. Force may need to be used in such circumstances to alleviate the threat to the aircraft, although that is not always the case.

The provision enables such persons to be restrained on the aircraft until the flight comes to an end and law enforcement officers arrive on the scene. Typically a flight would be diverted to the nearest suitable aerodrome in such situations. It is unlikely that any detention or custody on the aircraft would exceed 3 hours in duration, although longer periods are possible on trans-oceanic flights. The measures are expected to be necessary only in the context of commercial operations, airline operations in particular, although the relevant risks exist and must be managed in the interests of safety for all multi-occupant flights.

The Committee requested advice on the training, if any, in use of force and detention powers that pilots and crew undertake.

CASA understands that large commercial carriers train crew in a range of relevant matters including de-escalation techniques, physical subduing of persons, restraint techniques, and procedures for ensuring safe handover of restrained persons to law enforcement officers for purposes prescribed in the transport security laws administered by the Department of Home Affairs. CASA regulates crew member proficiency in the execution of emergency procedures, which includes theoretical knowledge of how to control passengers during emergencies, and covers methods of passenger control, use of restraint equipment and the handling of passengers of unsound mind.

CASA understands that crew for private operations and small scale commercial operations are unlikely to have any relevant formal training, which is not required under transport security laws. CASA considers that it is necessary that pilots of small aircraft have the power to authorise or direct other persons on board to assist with the arrest or restraint of a person, in appropriate circumstances. CASA will publish guidance material in relation to the use of these powers with other guidance on the regulations.

The Committee requested advice as to the circumstances in which it is envisaged that persons would be called on to assist an operator or a pilot in the exercise of powers under section 91.220.

In practical terms persons other than the pilots would nearly always be called upon to assist. This is both to allow the pilots to continue to fly the aircraft, and to protect pilots from the risk of incapacitation. In some circumstances the pilots would also not leave the cockpit in order to ensure the integrity of cockpit security, in light of the modalities of the 11 September 2001 terrorist attacks.

CASA observes that the 'operator' will generally be a corporate entity. Accordingly, in practical terms, assistance of the operator is likely to be engaged by any employee of the operator on the aircraft, most likely cabin crew. Although the pilot in command can exercise authority through directions to cabin crew, new regulation 91.225 better reflects the reality of how relevant circumstances are dealt with by conferring specific powers on cabin crew.

The Committee requested advice as to the types of persons it is envisaged may be called on to assist an operator or a pilot in the exercise of those powers, and what training, if any, such persons would have in the use of force.

In the face of a threat to the safety of the aircraft, it is the intention that any passenger on board the aircraft might be called upon to assist. Given the nature of the assistance to be sought – the physical restraint of a person – generally persons of strong physical build and/or self-defence or combat skills are likely to be called upon. However, that may not always be possible depending on the make-up of the passengers. No specialised training will be provided for such emergency situations, nor is any such training possible in the context of an unforeseen and immediate threat to aviation safety.

CASA observes that the provisions will replace regulations 224 and 309 of the Civil Aviation Regulations 1988 (CAR). The relevant parts of the both provisions have been in force in substantially the same form since the regulations were originally made (although the latter provision was remade in 2013). They collectively confer on the pilot in command the powers in regulation 91.220. They are rarely used but legalise the use of coercive powers in emergency situations. Other coercive powers in CAR for the purpose of maintaining the safety of aviation include those in regulations 288, 293 and 294.

The addition of regulation 91.225 reflects the practical reality that crew other than the pilot are more likely to have to perform the physical acts of detention, for the reasons stated above in relation to the pilot remaining in the cockpit, notwithstanding the pilot in command's overall responsibility for the aircraft.

The Committee also requested advice as to why it is considered necessary and appropriate to include powers of arrest without warrant, and powers to remove persons from aircraft, restrain persons, and place persons in detention or custody, in delegated legislation.

The powers of arrest without warrant, removal and restraint of persons, and the placement of persons in detention or custody have been part of the aviation safety regulatory scheme since at least 1988 and ensure that threats to aircraft can be controlled through physical measures if required. They are supported by the general powers to make regulations for the purpose of the *Civil Aviation Act 1988* (CA Act), and the power mentioned in paragraph 98(2)(k) of the CA Act in particular.

The purpose of regulations 91.220 and 91.225 of CASR is not to introduce new coercive powers, but only to move and update existing powers into the modern CASR suite to enable the repeal of the old-style CAR provisions. In the context of this purpose, CASA did not understand that it was either necessary or possible within its preferred timeframes to amend the CA Act to incorporate these matters. CASA expects that the new provisions reflect Office of Parliamentary Counsel best practice for such issues, unlike the older provisions to be repealed. CASA will liaise with the Department of Infrastructure, Regional Development and Cities and the Attorney-General's Department to explore whether the provisions should be moved to the CA Act, and the relevant regulations be repealed, as part of any future review of the CA Act.

The powers are distinct from powers under the transport security laws administered by the Department of Home Affairs and provide crew with powers specific to aviation safety in circumstances where security laws may not apply, and where CASA has no control over the circumstances in which they do apply. The powers ensure that the safety objectives of the CA Act, and the regulatory scheme administered by CASA, are able to be met.

Thank you again for taking the time to write on this matter.

Yours sincerely

Michael McCormack

THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS

Ref No: MS19-000613

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

John,

Dear Senator

I refer to the correspondence from the Senate Standing Committee on Regulations and Ordinances (the Committee) dated 15 February 2019 in relation to the *Customs Amendment (Product Specific Rule Modernisation) Regulations 2018* (the Amendment Regulations), which amend the following rules of origin regulations:

- the Customs (Singaporean Rules of Origin) Regulations 2017;
- the Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009;
- the Customs (Japanese Rules of Origin) Regulations 2014; and
- the Customs (Chinese Rules of Origin) Regulation 2015.

The purpose of the Amendment Regulations is to repeal provisions in those rules of origin regulations relating to product specific rules that were made redundant as a consequence of amendments made to the *Customs Act 1901* by the *Customs Amendment (Product Specific Rule Modernisation) Act 2018*.

Prior to commencement of the Amendment Regulations, those regulations prescribed the product specific rules for four of Australia's Free Trade Agreements:

- the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area;
- the Singapore-Australia Free Trade Agreement;
- the Japan-Australia Economic Partnership Agreement; and
- the China-Australia Free Trade Agreement.

The response to the questions posed by the Committee regarding the Amendment Regulations is at Attachment A. I will ensure that the Explanatory Statement will be updated to include the additional information requested by the Committee.

Thank you for bringing these matters to my attention.

Yours sincerely

PETER DUTTON

Attachment A

Customs Amendment (Product Specific Rule Modernisation) Regulations 2018

Consultation

Question - The committee requests the minister's advice as to

- *whether any consultation was undertaken in relation to the instrument and if so, the nature of that consultation; or*
- *whether no consultation was undertaken and if not, why not.*

The committee also requests that the explanatory statement be amended to include this information.

The *Customs Amendment (Product Specific Rule Modernisation) Act 2018* (the PSR Modernisation Act) amended the *Customs Act 1901* to facilitate and streamline the way in which the product specific rules contained in four of Australia's free trade agreements (FTAs) are given effect domestically. The four FTAs are the ASEAN – Australia-New Zealand Free Trade Area (AANZFTA)), the Japan-Australia Economic Partnership Agreement (JAEPA), the China-Australia Free Trade Agreement (ChAFTA) and the Singapore-Australia Free Trade Agreement (SAFTA).

As amended, instead of prescribing the product specific rules for each FTA in regulations made of the Customs Act, the relevant provisions for AANZFTA, JAEPA and ChAFTA in the Customs Act apply the product specific rules for each FTA by direct reference to the product specific rules Annex in the respective FTA. This amendment obviated the continued need for the product specific rules to be prescribed in regulations made under the Customs Act.

For SAFTA, the product specific rules were already applied by direct reference in the Customs Act rather than prescribed in regulations, except for the 'Chemical Chapter Origin Rules' contained in Section B of Annex 2 which had been implemented domestically in regulations made under the Customs Act. To ensure uniform domestic arrangements for FTAs, the amendments made by the PSR Modernisation Act also applied the 'Chemical Chapter Origin Rules' in the Customs Act by direct reference to the FTA treaty.

The *Customs Amendment (Product Specific Rule Modernisation) Regulations 2018* (the Amendment Regulations) are consequential to the amendments made to the Customs Act by the PSR Modernisation Act. The purpose of the Amendment Regulations is to repeal the relevant parts of each regulation that prescribed the product specific rules for AANZFTA, JAEPA and ChAFTA and to repeal the relevant part of the regulation that prescribed the 'Chemical Chapter Origin Rules' for SAFTA.

The amendments made by the Amendment Regulations are consequential to the PSR Modernisation Act and are technical in nature.

Government departments conducted extensive public and targeted stakeholder consultations during the negotiations of AAZNFTA, JAEPA, ChAFTA and SAFTA including on matters that were encompassed in the rules of origin regulations for each of those FTAs. Details of those consultations were set out in the consultation attachment to the National Interest Analysis of each FTA. The Joint Standing Committee on Treaties also conducted an inquiry on each FTA based on written submission and a public hearing.

The PSR Modernisation Act merely changed the manner in which the product specific rules were implemented domestically, from prescription in regulations made under the Customs Act to direct reference to the relevant Annex of the FTA. The Amendment Regulations made consequential amendments to each of the rules of origin regulations to repeal the redundant product specific rules noted above.

Consultation was not appropriate as the amendments made by the Regulations did not change the operation of the Customs Act or the rules of origin regulations that were amended.

The Explanatory Statement has been amended to include this information.

Incorporation

Question - The committee requests the minister's advice as to the manner in which the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 is incorporated; and requests that the explanatory statement be amended to include this information.

The Amendment Regulations incorporate the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (the GATT) to enable certain calculations and definitions of value of goods to be made according to the relevant provisions in GATT, rather than be replicated in the rules of origin regulations.

The GATT is not a disallowable legislative instrument and as such, in accordance paragraph 14(1)(b) of the *Legislation Act 2003* it is applied, adopted or incorporated as in force or existing at the time when the Amendments Regulations commenced. This means that should the relevant provisions of the GATT be updated, amendment to the rules of origin regulations will be necessary to ensure that the updates are incorporated.

The GATT is available to be viewed free of charge on the World Trade Organization website https://www.wto.org/index.htm

The Explanatory Statement has been amended to include this information.

Senator the Hon Marise Payne
Minister for Foreign Affairs

MC19-001161

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

Dear Senator John

I refer to the correspondence of 15 February 2019 from the Secretary of the Senate Standing Committee on Regulations and Ordinances, requesting additional information as referred to in the Committee's Delegated Legislation Monitor 1 of 2019 about the *Charter of the United Nations (Sanctions - Mali) Regulations 2018* (the Regulations).

The Regulations establish an Australian sanctions regime for Mali in accordance with United Nations Security Council Resolution 2374. The Regulations introduce targeted financial sanctions in respect of individuals and entities designated by the United Nations Committee established under the Resolution. Such designations can be made in respect of indviduals and entities responsible for, or complicit in, specific actions or policies that threaten the peace, security or stability in Mali (for example, violating international human rights law or using or recruiting children for armed conflict).

I trust the attached information will assist the Committee in finalising its consideration of the Regulations.

Yours sincerely

MARISE PAYNE

Encl

04 MAR 2019

Senator the Hon Marise Payne, Minister for Foreign Affairs
Parliament House, CANBERRA ACT 2600
Commonwealth Parliamentary Offices, SYDNEY NSW 2000

Response to the Senate Standing Committee on Regulations and Ordinances

(Delegated Legislation Monitor 1 of 2019)

The Committee has requested advice as to the justification for:

1. including offence provisions, which are punishable by up to ten yers imprisonment, in delegated legislation, rather than primary legislation; and
2. applying strict liability to elements of each of the offences in the instrument with reference to the relevant principles in the Attorney-General's Department's 'A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers' (the Guide).

1. Inclusion of offence provisions in delegated legislation

The UN sanctions environment is dynamic, with the UN Security Council imposing sanctions to respond to threats to international peace and security. Australia's UN sanctions framework operates in a manner that ensures Australia is able to give legal effect to its international law obligations and respond to such threats in a timely way.

The *Charter of the United Nations Act 1945* (CoTUNA) enables Australia to apply sanctions giving effect to certain decisions of the United Nations Security Council (UNSC), through the making of country-specific regulations. There are currently 16 countries subject to UNSC sanctions. As Australia is obliged to give effect to UNSC resolutions as a matter of international law, and is not able to unilaterally determine how they will apply to Australia, it is both appropriate and practical that they be implemented through Regulations made by the Governor-General sitting in Council.

As the Guide set outs, the content of an offence set out in an Act or Regulation should be clear from the offence provision itself, although the offence may rely on the Act or Regulation, or another instrument, to define terms used to give context to the offence. As noted in the Guide, while it is desirable for the content of an offence to be clear on the face of legislation, there are circumstances where it appropriate for the content of an offence to be set out by Regulation [see 2.3.4].

One of the examples given in the Guide as to when the content of an offence may be appropriately delegated to Regulations is where elements of the offence are to be determined by an international instrument in order to comply with Australia's obligations under internantional law. Here, the Regulations give effect to Australia's obligations to implement UNSC resolutions as they relate to sanctions.

The legal framework for the domestic implementation of UNSC resolutions was carefully designed to ensure that only provisions giving effect to UNSC sanction obligations can be a UN sanction enforcement law and subject to the offence provisions set out in section 27 of CoTUNA. Specifically, s2B(3) provides:

> *The Minister may only specify a provision [to be a UN sanction enforcement law] to the extent that it gives effect to a decision that:*
>
> *(a) the Security Council has made under Chapter VII of the Charter of the United Nations; and*

(b) Article 25 of the Charter requires Australia to carry out;

in so far as that decision requires Australia to apply measures not involving the use of armed force.

UNSC sanctions-related resolutions, even though they have different country focuses, address conduct of significant global seriousness. As such, it is appropriate for the penalty to be set out in primary legislation and for the offence content to be detailed in Regulations that reflect the terms of the relevant UNSC resolutions. Parliament, in passing CoTUNA, has determined that contravening a UN sanction enforcement law is a serious offence that ought to carry the significant penalties set out in CoTUNA.

Importantly, regulations made under the CoTUNA are registered on the Federal Register of Legislation and made available on the Department of Foreign Affairs and Trade sanctions website page.

2. Strict liability

The Committee has requested advice as to the justification for applying strict liability to elements of each of the offences in the instrument with reference to the relevant principles in the Guide. The Committee has specifically asked how requiring proof of fault in relation to subsections 5(1)(b) and 6(1)(c) of the Regulations would undermine deterrence and what the legitimate grounds are for penalising persons lacking fault in respect of these elements.

The offence provisions relating to targeted financial sanctions in the Regulations operate in the same manner as Australia's other 15 UN sanction regimes enabled by CoTUNA. The Regulations contain two offence provisions: a prohibition on dealing with designated persons or entities; and a prohibition relating to controlled assets. Both provisions contain multiple physical elements to the offence. The application of strict liability does not apply to all elements of these offences. It only applies to *one* factual element; whether or not the relevant conduct was authorised by a permit. Significantly, to prove the offence, it is still necessary to show that a person intended to engage in the conduct constituting the offence. As a strict liability element, a defendant can still rely on the 'mistake of fact' defence available under section 9.2 of the Criminal Code. Accordingly, where a person can show they were under a mistaken but reasonable belief about certain facts, which if true would render the conduct non-criminal, they will not be convicted of the offence even if it can be proved that they intended to deal with a designated person or entity or with a controlled asset.

As set out in the Guide [2.2.6], applying strict liability to a *particular* physical element of an offence (as opposed to *all* physical elements) can be justified where:

1. requiring proof of fault of the particular element to which strict or absolute liability applies would undermine deterrence, and there are legitimate grounds for penalising persons lacking 'fault' in repsect of that element; or
2. the element is a jurisdictional element rather than one going to the essence of the offence.

In the case of these Regulations, we consider that the first exception applies. Specifically, the application of strict liability to a single physical element of the offences relating to the

existance of a permit is necessary to ensure the integrity of Australia's Mali sanctions regime.

In the absence of the strict liability element of the offences in subsections 5(1)(b) and 6(1)(c) of the Mali Regulations, the corresponding fault element that would apply would be recklessness (the automatic default element set out in section 5.6 of the Criminal Code). This would require the prosecution to establish beyond reasonable doubt that a person who has breached UN sanctions was aware of the substantial risk that the dealing was not authorised by a permit, and that it was unjustifiable to take the risk. As the courts have interpreted substantial risk as requiring conscious awareness (as opposed to the risk being obvious or well known), this would require proof of the alleged offender's subjective appreciation of the circumstances. Given the difficulty in obtaining this form of evidence to satisfy the evidentiary threshold 'beyond reasonable doubt', and the consequent impact on achieving a successful prosecution, the sanctions regime would not have its intended deterrent effect.

Sanctions operate to prohibit particular activities, with very limited exceptions. Conduct which would be otherwise prohibited is *only* authorised where a permit has been issued. Permits can only be issued in a limited range of cirucmstances, as determinded by the UNSC and as set out in relevent UNSC resolutions.

Applying strict liability to whether the conduct in question is authorised by a permit, rendering it a factual question, maintains the integrity of the permit system and its strict adherence to the narrow range of exceptions allowed by the UNSC in relation to a particular sanctions regime. It is also consistent with the Government's position that Australians and Australian companies should be encouraged to adopt the highest ethical standards in adhering to Australia's sanctions regimes.

The Hon. David Littleproud MP

Minister for Agriculture and Water Resources
Federal Member for Maranoa

Ref: MC19-001560

12 MAR 2019

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 (Committee) has requested further information about the Basin Salinity Management (BSM) procedures in the *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018* (the Amendment Regulations) when it was tabled in the Senate on 12 February 2019.

I thank the Committee for their consideration of the Amendment Regulations, which improve the regulation of salinity management in the Murray-Darling Basin. I confirm that a replacement explanatory statement for the Amendment Regulations has been prepared to reflect my response enclosed with this letter.

Yours sincerely

DAVID LITTLEPROUD MP

Enc.

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

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Agriculture and Water Resources

Water Act 2007

Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018

Legislative Authority

The *Water Act 2007* (the Act) provides the national legislative framework for the sustainable management of water resources within or beneath the Murray-Darling Basin (the Basin). The Murray-Darling Basin Agreement (the Agreement) and its Schedules are contained in Schedule 1 to the Act.

Section 256 of the Act provides that the Governor-General may make regulations and section 18C of the Act permits regulations to be made under the Act to amend Schedule 1 to incorporate amendments made to, and in accordance with, the Agreement.

The *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018* (the Amendment Regulations) amend Schedule B to the Agreement. Schedule B outlines the salinity management obligations of the Commonwealth, the states of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory (together referred to in the Agreement as the Contracting Governments). As the policy-setting and decision-making body through which the Agreement is implemented, the Murray-Darling Ministerial Council (the Ministerial Council), which consists of a Minister of each of the Contracting Governments, agreed to the proposed amendments contained in the Amendment Regulations on 18 June 2018, which is required by clause 9 of the Agreement.

The Agreement, including its Schedules, is an intergovernmental agreement between the Contracting Governments. The purpose of the Agreement is to promote and coordinate effective planning and management for the equitable, efficient and sustainable use of the water and other natural resources of the Basin, including by implementing arrangements agreed between Contracting Governments to give effect to the *Basin Plan 2012* (the Basin Plan), the Act and State water entitlements.

Purpose

The purpose of the Amendment Regulations is to make changes to Schedule B to the Agreement to implement the *Basin Salinity Management 2030* strategy.

The Amendment Regulations formalise the commitments of the Contracting Governments and create new or altered powers or duties for the Murray-Darling Basin Authority (the Authority) in relation to Basin salinity management under Schedule B to the Agreement. In particular, the key changes are as follows: updating the accountability framework to provide for a new approach for actions associated with the recovery, delivery and use of environmental water; changing the accountability for salinity management in catchments and valleys; amending the frequency at which entries in the Salinity Registers and models used under Schedule B are reviewed; changing monitoring obligations and reporting requirements; increasing the scope of audits, but reducing the frequency of audits; and adding a new review process for the *Basin Salinity Management 2030* strategy, which is to commence prior to 2026.

The *Basin Salinity Management 2030* strategy promotes works, measures and other action to reduce or limit the rate at which salinity increases within the Basin; provides for the adoption of

salinity targets; provides accountability arrangements for all actions that result in significant salinity impacts, including environmental water recovery, delivery and use; provides for monitoring, and assessing, auditing and reporting on matters set out in the *Basin Salinity Management 2030* strategy.

The *Basin Salinity Management 2030* strategy, as given effect through the Amendment Regulations, complements the Basin Plan which sets high-level objectives and targets for salinity. The *Basin Salinity Management 2030* strategy is the vehicle by which the Contracting Governments agree to implement individual, collective and coordinated actions in managing salinity in the Basin.

The Amendment Regulations give effect to the new obligations in the *Basin Salinity Management 2030* strategy that are to be implemented over the coming years.

Background

The first strategy to manage salinity collectively in the Basin was the Salinity and Drainage Strategy. The Salinity and Drainage Strategy was replaced in 2001 by the Basin Salinity Management Strategy (BSMS), and Schedule C was replaced in 2002 to give effect to the BSMS. The BSMS was moved to the current Schedule B when the Agreement was replaced in 2008. A timeline of all Basin salinity strategies and schedules is at **Table 1.** In November 2015, the Ministerial Council adopted a new salinity strategy, the *Basin Salinity Management 2030* strategy, to guide joint salinity management from 2015–2030.

Impact and Effect

The effect of the Amendment Regulations is to continue and improve upon the long-running strategies in place to reduce salinity by, among other things, putting limits on salt entering the river, investing in salt interception schemes and improving land and water management practices.

Past strategies have been effective in reducing salinity by, among other things, putting limits on salt entering the river, investing in salt interception schemes and improving land and water management practices. Despite this, salinity continues to pose significant economic, environmental, cultural and social risks if not managed effectively. Controlling salinity to meet the Basin Salinity Target will require ongoing and active management. The Basin Salinity Target is to maintain the average daily salinity at Morgan, the Basin Salinity Target site in South Australia, at a simulated level of less than 800 electrical conductivity (E.C.), for at least 95% of the time, under the hydrologic conditions of the Benchmark Period (clause 7, **[Item 41]**). The Amendment Regulations give effect to the new obligations in the *Basin Salinity Management 2030* strategy that will be implemented over the coming years. The Amendment Regulations give Basin communities confidence in the Contracting Governments' capacity to ensure that salinity levels in the Basin will be appropriate to protect economic, environmental, cultural and social values, until 2030 and beyond.

Consultation

The Office of Best Practice Regulation (OBPR) advised that no Regulatory Impact Statement was required as the Amendment Regulations do not have any regulatory impact on business, individuals or community organisations.

The Authority was consulted during the drafting of the Amendment Regulations. The Ministerial Council agreed to the amendments on 18 June 2018.

Details of the Amendment Regulation

Details of the Amendment Regulations are set out in Attachment A.

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.* A full statement of compatibility is set out in Attachment B.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

The Amendment Regulations commence on the day they are registered on the Federal Register of Legislation.

ATTACHMENT A

Details of the *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018*

For ease of reading, the Explanatory Statement groups the explanation of amendments by their intended purposes rather than clause by clause. The explanations of provisions are grouped as follows:

1. **Introductory provisions** – outlines name, commencement, authority and repeal schedules.
2. **The role of the Authority** – details how the Murray-Darling Basin Authority (the Authority) administers Schedule B on behalf of the parties.
3. **The accountability framework** – sets out the salinity accountability arrangements for environmental water.
4. **Salinity management in valleys** – amends text regarding End-of-Valley Targets (EoVTs), monitoring and reporting.
5. **Management of the Registers** – includes making provisional entries, and managing a new Collective Account and Commonwealth Account.
6. **Review Plan** – sets out a plan for periodic review of Register entries, models and EoVTs.
7. **Reporting** – moves from annual reporting to 'status' and 'comprehensive' reporting alternatively every two years.
8. **Auditing** – reduces the frequency of audit but expand its scope.
9. **Reviews of the Schedule and *Basin Salinity Management 2030* strategy** – adds reviews.
10. **Basin Salinity Management procedures (BSM procedures)** – procedures made by the Basin Officials Committee replace current guidance documents.
11. **Other Amendments made throughout the Amendment Regulations** – amendments to parts of the Schedule which are redundant, or which require updating, modernising or correction to ensure smooth operation are grouped at the end of this Explanatory Statement, as well as transitional provisions.

1. Introductory provisions

Section 1 – Name

This section provides that the title of the Amendment Regulations are the *Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) Regulations 2018* (the Amendment Regulations).

Section 2 – Commencement

This section provides that the Amendment Regulations commence on the day they are registered.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Water Act 2007* (the Act).

Section 4 – Repeal of this instrument

This section provides for the Amendment Regulations to be repealed on the day after commencement.

Section 5 – Schedules

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

Schedule 1 – Amendment of the Murray-Darling Basin Agreement

2. The role of the Authority

The Amendment Regulations incorporate in law through Schedule B to the Agreement those amendments necessary to provide for the new salinity strategy adopted by the Murray-Darling Basin Ministerial Council (the Ministerial Council) in November 2015, the *Basin Salinity Management 2030* strategy. As part of this, there are additional commitments which are placed on the Contracting Governments (consisting of the Commonwealth, the states of New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory, which together are referred to in the Agreement as the Contracting Governments), as well as new or altered powers or duties for the Authority.

Schedule B sets out that the administration provisions of the Schedule are undertaken by the Authority on behalf of the Contracting Governments. The Amendment Regulations set out a clear requirement that, in carrying out certain functions, the Authority acts on the advice or direction of the Basin Officials Committee **[Items 13, 36 – 39, 56, 119, 120, 127, 145, 149]**. Some functions are given directly to the Basin Officials Committee, or are to be carried out in accordance with BSM procedures made by the Basin Officials Committee. This includes **Items 10, 70, 74, 75, 76, 79, 90, 91, 92, 94, 96, 97, 98, 101, 103, 106, 108, 110, 111, 113, 114, 115, 116, 123, 124, 125, 128, 130, 133, 137, 161, 162, 163, 172, 181**.

3. The accountability framework

Background

The existing Schedule requires each Contracting Government to ensure that it does not undertake or permit the undertaking of an action that may have a Significant Effect (an Accountable Action) except in accordance with the Schedule.

Under the Schedule, a Significant Effect is a change in average daily salinity at Morgan, the Basin Salinity Target site in South Australia, of at least 0.1 electrical conductivity (E.C.) by the year 2100, or any salinity impact that the Authority estimates as being significant. This is because, in a variable climate, a change of at least 0.1 E.C. by the year 2100 could contribute to reduction of crop yields, affect aquatic ecosystems and vegetation and damage infrastructure. This obligation is not altered by the Amendment Regulations.

The Schedule currently provides for Accountable Actions to be designated as either 'Joint works or measures' (JWM) or 'State actions'. JWMs are undertaken by the Contracting Governments jointly and state actions are undertaken by one or more State Contracting Governments (a State Contracting Government or State Contracting Governments may include one or more than one Contracting Government, excluding the Commonwealth).

Salinity impacts of Accountable Actions are attributed, in the form of salinity debits and salinity credits, to a State Contracting Government or to the Commonwealth.

The Amendment Regulations reflect new arrangements as agreed by Contracting Governments in the *Basin Salinity Management 2030* strategy attributing salinity debits and credits amongst the parties. In particular, there is a new approach to attribution of debits and credits arising from:

a. actions associated with the recovery, delivery and use of environmental water;

b. environmental works and measures associated with an adjustment to the sustainable diversion limits (SDLs) (SDL adjustment), set by the *Basin Plan 2012* (the Basin Plan); and

c. changes to river operations to support environmental outcomes.

BSM procedures made by the Basin Officials Committee for the purposes of the Schedule, as amended by the Amendment Regulations, and administered by the Authority, set out in detail how salinity debits and credits are to be attributed amongst the Contracting Governments. BSM procedures provide operational detail and consistency to guide monitoring, review, reporting and audit functions and are regularly updated as operational requirements are updated and amended.

Schedule B retains the capacity for the Authority to make protocols under Clause 40, which may be made when considered appropriate by the Authority, in consultation with the Basin Officials Committee.

Salinity impacts relating to environmental water

Environmental water that is expected to have an impact for the purposes of Schedule B include 'Basin Plan Water'. Basin Plan Water is defined in the amended Schedule [**Item 12**] to comprise:

a. all Commonwealth environmental water holdings; and

b. other held environmental water that is held by a State Contracting Government to offset the reduction in the long-term average SDL.

Basin Plan Water includes water that is recovered as part of efficiency measures – this is because water saved by efficiency measures becomes registered as Commonwealth environmental water holdings.

Credits from delivery of Basin Plan Water and use of those credits

Under the Amendment Regulations, if the Authority were to determine that dilution effects from the delivery of Basin Plan Water has a Significant Effect, the Authority has to declare the Proposal to be an Accountable Action. However, delivery of Basin Plan Water is not a JWM or a State action, so **Items 92 – 97** of the Amendment Regulations provide further clarity as to how salinity credits are to be estimated by the Authority. **Items 92 - 93** provide that all actions the Authority may take under subclause 20(1) are subject to subclause 20(2). **Item 94** provides that the Authority may designate an action may be in whole or part a Joint work or measure or a State Action, in accordance with BSM procedures. **Item 95** inserts a note to provide that the Authority can only designate that an action is either a Joint work or measure or a State Action under subclause 20(1)(b), not authorise them. **Item 96** provides that that, if the action is delivery of Basin Plan Water, the Authority must estimate the salinity credits arising from the action and enter the action in Register A, but must not designate it as a Joint work or measure or State Action. **Item 97** provides that the Authority may make a provisional entry of salinity

impacts in Register A or Register B where it is unable to confidently estimate that impact, and that it must make the estimate and amend the relevant Register as soon as practicable.

Item 100 provides that salinity credits arising from delivery of Basin Plan Water that is an Accountable Action are attributed to the Commonwealth Account. **Items 98-99 and 101-105** amend Clause 21 to provide that all actions undertaken by the Authority under subclause 21(1) are subject to subclause 21(2) and clause 21A and that the Authority must act in accordance with BSM Procedures **[Items 98 – 104]**. **Item 105** removes the requirement for the Authority to attribute salinity credits or debits in Register A, when the State Action is a permanent transfer of an entitlement within the meaning of Schedule D to the Agreement.

The Amendment Regulations provide that credits in the Commonwealth Account may (by a Contracting Government assigning them under subclause 23(2A)), and in cases where BSM procedures require it of the Authority, must, subsequently be transferred into the Collective Account (see clause 23(2B) **[Item 113]**). Subclause 23(2C) provides that the Authority must, at the request of a State Contracting Government, transfer that Government's share of salinity credits to that Government's account and amend Register A accordingly. All of these actions must be in accordance with BSM procedures. The Commonwealth may also agree to transfer credits to a State Contracting Government account (this possibility is already provided for in the existing clause 23(1)). The amendments reflect the Contracting Governments' intention that in certain circumstances and for certain types of Accountable Actions, salinity debits are to be 'offset' by Commonwealth credits arising from delivery of Basin Plan Water.

The Amendment Regulations include a provision that requires the Contracting Governments jointly to ensure that transfers of credits from the Commonwealth Account (that is, by way of transfer to the Collective Account or to another Contracting Government) do not exceed available credits in the Commonwealth Account (see clause 16A **[Item 77]**).

Collective Account and collective accountability

In some circumstances it is appropriate for credits or debits from an Accountable Action to be held by the Contracting Governments collectively in Register A, rather than being attributed amongst them. The Amendment Regulations create a new 'Collective Account' to hold those credits or debits. The Amendment Regulations also create a new 'Commonwealth Account' to hold those credits or debits attributed to the Commonwealth (including through the delivery of Basin Plan Water).

The Amendment Regulations provide for the following matters relating to the Collective Account:

Informing Authority of proposal generating credits or debits to be held in Collective Account

The Amendment Regulations provide that the Basin Officials Committee may inform the Authority of a proposal which is intended to generate debits or credits to be held in the Collective Account (clause 17A(2) **[Item 83]**).

Attributing credits and debits to the Collective Account

The Amendment Regulations provide that the Authority must attribute credits or debits arising from an Accountable Action to the Collective Account if so required by BSM procedures or a direction of the Basin Officials Committee. Provisions about attribution to the Collective Account are contained in the amendments to clause 11 **[Items 55 and 56]** and clause 21A(1) **[Item 106]**.

BSM procedures also give effect to attributions to the Collective Account that have already been approved by the Ministerial Council in the *Basin Salinity Management 2030* strategy. These include that, following attribution of salinity credits from Living Murray Initiative

actions to Register A and B consistent with the approach for attributing the 61 E.C. Joint Work and Measures Program (this program has been in place for a number of years and is intended to achieve a 61 E.C. reduction in average salinity at Morgan in South Australia), the net balance of salinity credits in Register A that are not required to offset debits from Living Murray Initiative actions are held in the Collective Account. BSM procedures about attribution of debits or credits arising from a JWM to the Collective Account may also be made to give effect to any subsequent Ministerial Council resolutions under the amendments.

Determining responsibility for action generating credits or debits to be held in Collective Account

The Amendment Regulations provide that, if credits or debits from an Accountable Action were to be held in the Collective Account (noting that clause 21A(2) provides that, for the purposes of attribution by the Authority under clause 21A(1), an Accountable Action does not include delivery of Basin Plan Water), then the Basin Officials Committee must also determine which Contracting Government(s) will be responsible for the following (see clause 21A(3) **[Item 106]**):

a. providing the Authority with information about the action to allow the Authority to assess its salinity impacts; and

b. monitoring and reviewing the action for the purposes of clauses 27, 28 and 33 **[Items 126 – 130 and 133]**.

Items 107 - 111 (clause 22) amend Schedule B to require that the Authority must attribute salinity credits arising from the Accountable Action in accordance with clause 21 or 21A, and in accordance with any BSM procedures.

The costs of undertaking, monitoring and reviewing State Actions whose credits or debits are held in the Collective Account is shared between Contracting Governments in accordance with a determination of the Basin Officials Committee (see clause 47(2) and (3) [**Items 180 - 181**]. Subclause 21A(3) **[Item 106]** provides that the Basin Officials Committee determines which Contracting Government is responsible for the provision of information, monitoring and reviewing of Accountable Actions where salinity credits or salinity debits are attributed to the Collective Account, but does not provide for the allocation of costs against those requirements. Clause 47(3) provides that the allocation of the costs of those requirements will be shared by Contracting Governments in accordance with a determination of the Basin Officials Committee, which provides appropriate administrative oversight for decisions relating to these requirements relating to the Collective Account.

Clause 47(1) is amended so that it is subject to subclauses 27(2) and (3) **[Item 180].**

Assignment of debits and credits from or to the Collective Account

Clause 23 provides for trading or transfers between parties and between Registers. **Items 112 - 116** make amendments to clause 23 to allow Contracting Governments to assign credits or debits to the Collective Account in accordance with the BSM procedures, unless the Basin Officials Committee directs otherwise. This clause is also amended to require the Authority to transfer Commonwealth credits to the Collective Account if required to do so by BSM procedures.

Item 112 repeals the heading of Clause 23 and substitutes it with a new heading that provides that the clause relates to trading and transfer of salinity credits and salinity debits. **Item 113** inserts a subclause 23(2A) that provides that a Contracting Government may assign salinity credits or debits assigned to that Government to the Collective account, if BSM procedures permit, and requires the Authority to then amend Register A to reflect this. It also provides that the Authority must, if required by BSM procedures, transfer any salinity credits attributed to

the Commonwealth Account to the Collective Account and, if requested by a State Contracting Government, transfer that State Contracting Government's share of salinity credits from the Collective Account to that State Contracting Government and, in both cases, amend Register A to reflect that transfer. **Items 114 - 115** provide that BSM procedures are required to be made by the Basin Officials Committee. **Item 116** provides that the Authority may, in accordance with BSM procedures, transfer salinity credits from Register A to Register B or vice versa, if so requested in writing by a Contracting Government.

Accountability for Collective Account

The Amendment Regulations provide that the Contracting Governments must jointly ensure that salinity credits are not transferred from the Commonwealth Account to the Collective Account or to a Contracting Government unless salinity credits are available in the Commonwealth Account; and that the Collective Account has credits equal to or greater than its debits (see clause 16A **[Item 77]**).

Joint works or measures carried out by the Commonwealth

The Agreement permits the Commonwealth to be nominated as the responsible party for the construction, operation or maintenance, or the implementation, of a JWM (clause 56 of the Agreement).

The Amendment Regulations repeal the heading at clause 14 and substitute the heading 'Co-ordinating authorised works or measures' to reflect the fact that if the Commonwealth is the responsible party for a JWM, the Authority is responsible for coordinating the Commonwealth's activities (clause 14 **[Item 66]**). Clause 14 is also amended by **Items 67 - 68** to reflect that the Authority must coordinate the activities of each Contracting Government (removing the word 'State') and its relevant Constructing Authority in undertaking a JWM, as well as an S&DS work or measure. S&DS works or measures mean works or measures entered on the Register maintained under the Salinity and Drainage Strategy and include the works or measures referred to in Appendix 2 as Waikerie Phase 2A SIS (**[item 21],** clause 2(1)(a)).

Additional amendments to update the accountability framework are as follows:

a. auditors are to report on the performance of all Contracting Governments (clause 34 **[Items 139 - 144])**

b. a review report may conclude that any Contracting Government has not complied with its obligations under the Schedule (clause 35 **[Items 145 - 148**])

c. the Authority may determine that any Contracting Government has not complied with its obligations under the Schedule (clauses 44 and 46 **[Items 173 – 174** and **178 – 179]**).

Further information on the role of auditors is contained below at **Part 8. Auditing**.

Item 172 inserts subclause 43(1A) which provides that the Authority must not make a determination regarding default by a State Contracting Government (under subclause 43(1)) unless, before making the determination, it has in accordance with any BSM procedures, made an assessment of risk to achieving the Basin Salinity Target, and consulted Contracting Governments.

4. Salinity management in valleys

The Amendment Regulations modify current accountability for salinity management in catchments and valleys, reflecting the policies outlined in *Basin Salinity Management 2030* strategy.

Meeting End-of-Valley Targets will no longer be mandatory

The Amendment Regulations reflect that State Contracting Governments are no longer obliged to undertake a program of actions to meet the End-of-Valley Targets. End-of-Valley Target means a target set out in Appendix 1 as amended from time to time by the Ministerial Council under clause 9 and includes a reference to the relevant End-of-Valley Target site. An End-of-Valley Target site means a site specified in Appendix 1 (**[Items 15-16],** clause 2).

End-of-Valley Targets were established within the BSMS to protect key values and assets in the valleys, based on the understanding that there may be large contributions to the Basin's salinity from those valleys. As a result of the monitoring of those End-of-Valley Targets, contemporary understanding is that future increases in salt loads from most valleys are likely to be small and are unlikely to pose a significant risk to shared water resources.

The contemporary understanding of the reduced salinity risk profile of upland catchments does not require the formal programs of actions envisaged under the BSMS for upland catchments. The Amendment Regulations provide for the role of End-of-Valley Targets to transition to functions that will provide a valley scale context to the identification and management of salinity risk to the shared water resources.

References in the current Schedule to 'achieving' and 'compliance with' the End-of-Valley Targets are therefore no longer relevant, and are removed from throughout Schedule B. Clause 26 **[Item 125]** provides that a State Contracting Government must, in accordance with any BSM procedures, undertake continuous flow and salinity monitoring in respect of relevant End-Of-Valley Target sites for which it is responsible.

Amending End-of-Valley Targets

The End-of-Valley Targets remain in Schedule B, and in certain cases it may be appropriate to amend an End-of-Valley Target. The Amendment Regulations provide that, following a request made by the Authority or a State Contracting Government, the Ministerial Council may, on the recommendation of the Authority, amend an End-of-Valley Target (clause 9).

The changes to clause 9 **[Items 44 – 50]** reflect the altered role of End-of-Valley Targets. **Item 44** repeals the heading for clause 9, 'Reviewing and amending End-of-Valley Targets' and substitutes it with the heading 'Amending End-of-Valley Targets' as the reference to reviewing is now redundant because this is now provided for in clause 33. **Item 45** repeals subclause 9(1) which relates to the requirement for the Authority to review the End-of-Valley Targets at least every 5 years. **Items 46-48 and 50** make minor amendments to reflect the fact that reviews are now provided for in clause 33, to clarify the wording of the subclause and to update the reference to the Strategy. **Item 49** repeals paragraph 9(5)(b) which relates to the requirement for the Authority to provide an opinion on whether any further works or measures are needed to meet the Basin Salinity Target under this clause.

Monitoring at End-of-Valley Target sites and reporting on salinity in valleys

End-of-Valley Targets and the sites at which the End-of-Valley Targets are measured remain important to State Contracting Government modelling, monitoring and reporting obligations. The Amendment Regulations incorporate a definition for 'End-of-Valley Target site', being the site specified in Appendix 1 of the Schedule for each End-of-Valley Target (clause 2, **[Items 15 and 16]**).

The current requirement under the BSM procedures for State Contracting Governments to undertake continuous flow and salinity monitoring for End-of-Valley Target sites is now explicitly included in the Schedule (clause 26 **[Item 125]**). Ongoing monitoring is required to support reviewing the outcomes at End-of-Valley Target sites rather than monitoring the degree to which targets are being met.

As a consequence of the amendments, salinity in valleys will be regularly reviewed and reported on in the context of State Contracting Government reports on End-of-Valley Targets and Register entries (which include both State Actions and Delayed salinity impacts), as required by the Review Plan provided for in clause 32 **[Item 133]**. **Item 133** amends clause 32 to specify the nature of, and matters to be contained in, the Review Plan accordingly. These review and reporting requirements replace the former requirement for Valley reports (formerly clause 30).

5. Management of the Registers

Part V is amended (through **[Items 69 – 123]**) regarding management of the Registers, including providing for a new approach to salinity accountability for actions associated with the recovery, delivery and use of environmental water. The provisions also provide explicitly for the making of 'provisional entries', and for the new Collective Account (defined in **[item 14],** clause 2 to mean the information included in Register A under the heading Collective Account).

Clause 17 is amended to provide a simplified outline of the operation of the Registers **[Items 78 - 83]**. **Item 78** has the effect of setting out that the clause provides a simplified outline of the operation of the Registers and that the Basin Officials Committee may, in addition to Contracting Governments who must, inform the Authority of any Proposal that may have a Significant Effect. **Item 79** amends subclause 17(2) to remove the requirement for the Authority's decision on both registering a Proposal and its treatment to be in accordance with protocols made by the Authority under clause 40 (as these protocols have been replaced by BSM procedures). **Item 80** makes the Authority's estimates, determinations and attributions under subclause 17(3) subject to subclause 17(4). **Item 81** has the effect of removing references to clauses that are no longer relevant and setting out that the Authority must attribute salinity credits or debits in accordance with clause 21 or 21A. **Item 82** provides that the Authority must make a provisional entry in the relevant Register if it is unable to confidently estimate salinity impacts of an Accountable Action, that it must amend the relevant Register to give effect to trading or transfer of salinity credits and debits, that it must re-estimate salinity impacts in accordance with Clause 24 and it may make amendments to either Register, in accordance with clause 24. **Item 83** inserts clause 17A, which provides that a Contracting Government must inform the Authority of any Proposal which the Government considers is likely to have a Significant Effect, and also that the Basin Officials Committee may inform the Authority of a Proposal that it considers is likely to have a Significant Effect and that any salinity credits or debits arising from the Proposal will be attributable to the Collective Account.

Assessing a proposal

If under the amendments, the Authority were to be informed of a proposal that may have a Significant Effect (clause 17A **[Item 83]**), it must assess the proposal to decide whether it has or may have a Significant Effect (clause 18). The reference in clause 2(2) is also updated to clause 17A(1) **[Item 25]**. The amendments to clause 18 **[Items 84 – 90]** provide that at this stage of the process, the Authority's role is to make an assessment of a proposal as presented to it by a Contracting Government, on the basis of information provided by that Government. **Item 84** repeals the heading and substitutes a new heading that provides that the provision relates to determining whether a Proposal or action has a Significant Effect. **Item 85** provides that the Contracting Government will inform the Authority under the subclause 17A(1). **Item 86** provides that the Authority must assess the proposal on the basis of information provided by the Contracting Government. **Item 87** inserts subclause 18(1A), which provides that, if the Basin Officials Committee informs the Authority of a Proposal under subclause 17A(2), the Authority must assess the proposal on the basis of information provided by the Contracting Government nominated by that Committee for that purpose and decide whether the Proposal,

on its own or cumulatively with other actions, may have a Significant Effect. **Item 88** omits the reference to subclause 17(1) and substitutes a reference to clause 17A(1). **Item 89** amends the description of Significant Effect to reflect that it relates to a change in average daily salinity at Morgan by 2100, rather than within 100 years after the estimate is made. **Item 90** amends the reference from protocols made by the Authority to BSM procedures.

If the Authority were to decide that a proposal it was informed of under clause 17A has or may have a Significant Effect (as defined in subclause 18(3)), the Amendment Regulations provide that the Authority must declare it to be an Accountable Action (under clause 19), and then estimate its salinity impacts (clause 19 [**Item 91**]). The declaration of an Accountable Action will bring that action within the salinity accountability arrangements of Schedule B, requiring registration, monitoring, review, reporting and audit under that schedule. To assist the Authority to estimate salinity impacts, the Amendment Regulations provide that the relevant Contracting Government must, in accordance with any BSM procedures, give the Authority relevant information about the Accountable Action. The clause provides which government is the relevant Contracting Government for the purposes of this requirement as follows:

a. the Contracting Government or Governments nominated for the purposes of clause 56 of the Agreement are the relevant Contracting Government or Governments for a JWM;

b. the relevant State Contracting Government or Governments are the relevant Contracting Government or Governments for a State Action (which includes a shared State Action); and

c. the Contracting Government as determined by the Basin Officials Committee in accordance with clause 21A is the relevant Contracting Government for an Action for which debits and credits will be held in the Collective Account.

If the Accountable Action is the delivery of Basin Plan Water the Authority is responsible for obtaining information required to assess the salinity impacts of the Accountable Action. In the Amendment Regulations, a Contracting Government that has information that may assist the assessment must give it to the Authority on request.

Clause 20 [**Items 92 – 97**] amends the Schedule so that once the Authority has estimated the salinity impacts of an action which the Authority considers may be an Accountable Action, it must estimate the salinity credits or debits arising from the action and designate, in accordance with any BSM procedures, that action to be in whole or in part either or both a Joint work or measure or State Action. However, the Amendment Regulations provide that if the action is the delivery of Basin Plan Water, the Authority must enter the action in Register A without designation (Clause 20(2) **[Item 96]**). The delivery of Basin Plan Water does not result in a salinity debit, as provided for by clause 20(2)(a), **[Item 96]**. **Items 92** and **93** make amendments to provide that all actions the Authority takes under clause 20 are subject to sub-clause 20(2). **Item 94** provides that the Authority must designate an action (in whole or part) as either or both a Joint work or Measure or State Action, in accordance with any BSM procedures. **Item 95** inserts a note to clarify that paragraph 20(1)(b) does not empower the Authority to authorise a Joint work or measure or a State Action.

Provisional entries

The Amendment Regulations provide for provisional entries to be made on the Register if it is not possible to confidently estimate the salinity impacts of an Accountable Action or a delayed salinity impact (clause 20A, [**Item 97**]). Provisional entries are based on an estimate of salinity effects of the Accountable Action or delayed salinity impact ('Salinity impact' and 'salinity effect' are terms with defined meanings under Schedule B).

The purpose of provisional entries is to ensure that every Accountable Action, or a Delayed salinity impact, with potentially a Significant Effect is entered on a Register, even if salinity impacts cannot be fully or confidently determined at the time an entry is required to be put on the Register.

Provisional entries do not get entered as a salinity cost effect (debit or credit), as they can only be made in accordance with a relevant method for assessing salinity effects, as provided for in clause 20A(2) **[Item 109].** Salinity effect remains 'a change in the average salinity at Morgan resulting from any action, as estimated by the Authority' which differs from a salinity cost effect which remains 'a change in average salinity costs resulting from an action, as calculated by the Authority' and credits and debits continue to be determined based on the salinity cost effect. As provisional entries do not get entered as salinity debits or credits on the relevant register, those entries are not counted for the purposes of determining whether a Contracting Government is complying with its obligations under Schedule B.

The Amendment Regulations provide that, if a provisional entry is made, the Authority must then as soon as practicable estimate the salinity credits or debits of the Accountable Action or Delayed salinity impact and amend the Register accordingly **[Item 97]**.

The Amendment Regulations provide that the Authority may, on the advice of the Basin Officials Committee, change an existing Register entry to a provisional entry if the Authority believes, on a re-estimation of salinity impacts, that an existing estimate of salinity cost effect is not reliable. If this happens, the Authority must use its best efforts to make a reliable estimate and consequential amendment of the Register as soon as practicable (clauses 24(1) and 24(1A) [**Item 119**]). **Item 117** repeals the heading for Clause 24 and substitutes a heading to provide that clause 24 relates to re-estimating salinity impacts and amendment of Register entries. **Item 118** removes the requirement of the Authority to re-estimate salinity impacts of each Accountable Action at intervals not less than every 5 years and replaces it with a requirement to re-estimate in accordance with a Review Plan under clause 32.

Under the Amendment Regulations, BSM procedures may also be made in relation to the making and administration of provisional entries (clause 41(f)(vii), **[Item 167]**).

Attribution of credits and debits

Amendments to Parts IV and V reflect changes in attribution of salinity credits and salinity debits, in particular to allow for credits or debits from an Accountable Action to be attributed to the new Collective Account (clause 11 **[Item 55 and 56])**, and for the credits from the delivery of Basin Plan Water to be attributed to the Commonwealth Account (see clauses 21 **[Items 98 - 105]**, 21A **[Item 106]** and 23 **[Item 113]**. The delivery of Basin Plan Water does not result in a salinity debit, as per clause 20(2)(a), **[Item 96]**.

Amendment of Register entries

Clause 24 relates to the power of the Authority to make amendments to Register entries. The clause **[Items 118 - 123]** requires the Authority to re-estimate the salinity impacts of any Register entry, after each review of the relevant Register entry (Reviews of Register entries are carried out in accordance with the Review Plan, see clause 32 **[Item 133]** and discussion below). The Authority retains the ability to re-estimate the salinity impacts of a Register entry at any time.

BSM procedures

BSM procedures set out much of the detail relating to maintenance of the Registers, as required to reflect the *Basin Salinity Management 2030* strategy **[Item 167]**.

6. Review Plan

The Amendment Regulations insert a definition of Review Plan **(Item 21)**. The Amendment Regulations replace current provisions about review of Register entries, models and End-of-Valley Targets with requirements for:

a. the Authority to prepare a Review Plan (clause 32 **[Item 133]**), and

b. the Authority and Contracting Governments to review items in the Review Plan at the times specified in the plan for each item (clause 33 **[Item 133]**).

The Review Plan is prepared by the Authority on the advice of the Basin Officials Committee and in accordance with relevant BSM procedures. The plan provides for the review of:

a. Register entries (including provisional entries);

b. models or assessment methods associated with Register entries;

c. End-of-Valley Targets – including associated models and baseline data for each valley; and

d. any other model used or approved by the Authority under clause 38 **[Items 155 – 159]** to estimate salinity impacts.

Responsibility for carrying out reviews is as follows:

a. for Register entries (including provisional entries):

   (i) the Authority, where entries relate to JWM and S&DS works or measures;

   (ii) the relevant State Contracting Government or Governments (if the action is shared by State Contracting Governments), where entries relate to a State Action;

   (iii) as determined by the Basin Officials Committee under paragraph 21A(3)(b) [**Item 106**], where entries relate to salinity debits or credits that are attributed to the Collective Account;

   (iv) the Authority, where entries relate to the Delivery of Basin Plan Water; and

   (v) the relevant State Contracting Government, where entries relate to Delayed salinity impacts.

b. the Authority or the Contracting Government responsible for reviewing the Register entry for reviews of model or assessment methods associated with Register entries;

c. the State Contracting Government responsible for the relevant valley for review of End-of-Valley Targets; and

d. the Authority for review of any other model used by the Authority.

The Review Plan sets out the frequency at which each item must be reviewed so that every item is to be reviewed at least once during the period 2016 – 2026, and once in any ten-year period (that is, all items will be reviewed within ten years of their last review date under the BSMS). More frequent reviews may be specified, for example, for some items, commensurate with the risk, uncertainty or new knowledge in relation to the item.

The Authority and each Contracting Government review and report on the matters for which they are responsible under the Review Plan in accordance with the Review Plan and any BSM

procedures. In the Amendment Regulations, a report arising from a review of Register entries must consider salinity impacts in each of the years 2000, 2015, 2030, 2050 and 2100. A report on a review relating to End-of-Valley Targets must include information about salinity trends, predictions and risk profile for the relevant valley.

7. Reporting

The Amendment Regulations establish new reporting provisions to reflect the *Basin Salinity Management 2030* strategy. Detail about the form and content of all reports, including those under clauses 29, 30 and 31 (paragraph 41(ga), the Review Plan (paragraph 41(gb), the conduct and content of a review report under clause 33 (paragraph 41(gc) and about matters to be included in a review under clause 35 or 35A (paragraph 41(gd) are set out in BSM procedures **[Item 169]**).

State Contracting Governments prepare and give to the Authority status reports and comprehensive reports every two financial years (clause 29 **[Item 133]**). A status report is required to be prepared every two financial years from 1 July 2017, and a comprehensive report is required to be prepared every two years from 1 July 2018.

The Commonwealth is required to prepare and give to the Authority an annual report at the end of each financial year (clause 30 **[Item 133]**).

The Amendment Regulations provide that the Authority must prepare status reports, summary reports and comprehensive reports (clause 31 **[Item 133]**). Status and summary reports are required to be prepared every two financial years from 1 July 2017, and comprehensive reports are required to be prepared every two financial years from 1 July 2018.

Status reports are required to be provided to the Basin Officials Committee, along with a copy of each State Contracting Government's status report for that year, and a copy of the Commonwealth's report.

Summary reports are required to be provided to the Ministerial Council and must include a summary of information contained in the State Contracting Governments' status reports, the Commonwealth's report, and the Authority's status report (clause 31 **[Item 133]**).

Comprehensive reports are also required to be provided to the Ministerial Council, and include:

a. a summary of each State Contracting Government's comprehensive report, and of the Commonwealth's report, received for that year, and

b. outcomes of the audit and assessment report prepared by auditors (clause 34 **[Items 134 – 144]**).

Item 134 replaces the heading of Clause 34, to refer to both Audit and assessment. **Item 135** amends subclause 34(1) to reflect that audits are not undertaken annually but instead are undertaken every second financial year following the financial year starting 1 July 2018. **Items 136** and **137** reflect that auditors may now resign by written notice to the Authority and may only be removed by the Basin Officials Committee. **Items 140-144** make minor amendments to reflect the changed schedule of audits and that the audit includes the performance of the Commonwealth as a Contracting Government.

The Amendment Regulations provide that the Authority's status, comprehensive and summary reports must be published by the Authority on its website.

8. Auditing

Auditors continue to be appointed as required by the existing Schedule (clause 34). Appointed auditors are independent and are required, under subclauses 34(3) and (4), to annually reach a

view by consensus on the performance of each State Contracting Government and the Authority in implementing the provisions of the BSMS and prepare a report setting out the findings and recommendations. However, the Amendment Regulations provide that audits are to be carried out every two years rather than annually **[Item 138]**.

Auditors (clause 34(3), **[Item 139]**):

a. audit reports of each review carried out in the preceding two years in accordance with the Review Plan;

b. audit the Registers; and

c. assess the implementation of the *Basin Salinity Management 2030* strategy, and the implementation of the Review Plan.

An audit and assessment will commence by November after the end of the financial year for which a comprehensive report was prepared **[Item 138]**. The Amendment Regulations provide that the Authority may, in consultation with Contracting Governments, amend the terms of reference for an audit or assessment to include additional matters **[Item 139]**.

9. Reviews of Schedule and the *Basin Salinity Management 2030* strategy

Review of Schedule

The Amendment Regulations provide that the Authority must review and report on the operation of the Schedule at such times as the Basin Officials Committee directs (clause 35 **[Item 145]**). The Authority may also report on the operation of Schedule B at any time it considers appropriate. The scope of the review will be determined as appropriate, but may include matters set out in clause 35(2) **[Items 146 – 147],** such as a summary of Delayed salinity impacts (defined as a salinity impact that occurs after 1 January 2000 due to actions taken earlier) and salinity impacts of Accountable Actions. Clause 35(3) removes the word 'State' before the words 'Contracting Governments', as it is not strictly necessary, as per the definition in the Agreement **[Item 148].**

Review of the Basin Salinity Management 2030 Strategy

Clause 35A **[Item 149]** provides that the Authority is required to commence a review of the *Basin Salinity Management 2030* strategy before the end of 2026. Clause 35A provides that the Authority must, before the end of 2025, prepare a plan to review the strategy in consultation with the Contracting Governments. The review must cover matters including but not limited to those envisaged for the Basin Salinity Management 2030 Strategic Review referred to in the *Basin Salinity Management 2030* strategy, or as required by BSM procedures, and must also include a review of the operation of the schedule.

10. BSM procedures

A new provision allows for BSM procedures to be made. BSM procedures set out administrative and technical details as required to give effect to the parties' intentions for the implementation of the Schedule (clause 40A **[Item 163]**). All former references to protocols are replaced in the Amendment Regulations with references to BSM procedures.

BSM procedures are made by the Basin Officials Committee, and must be published by the Authority.

The BSM procedures, once made, will be publicly available, and free of charge, on the Authority's website. The Authority will also provide the BSM procedures to groups who are likely to regularly refer to the Basin Salinity Management 2030 strategy, via

Govdex/Govteams, to members of the Basin Salinity Management Advisory Panel (previously the Basin Salinity Management Strategy Implementation Working Group), and other relevant committees such as the Salt Interception Technical Working Group and the Technical Working Group for Salinity Modelling, who are likely to regularly use the BSM procedures. Advisory Panel and Working Group members are Basin state and territory agency staff who are involved in implementing the Basin Salinity Management 2030 strategy and who undertake their jurisdictions obligations under Schedule B of the Agreement, in Schedule 1 of the Act.

The references to the BSM procedures in Schedule B to the Agreement refer to those procedures as in force from time to time. Clause 40A of Schedule B to the Agreement relevantly provides for the Basin Officials Committee (the BOC) to make, amend or revoke BSM procedures from time to time. Other provisions of Schedule B to the Agreement refer to the BSM procedures as in force from time to time (see the definition of 'BSM procedures' in subclause 2(1) which refers to subclause 40A(1)). The relevant provisions in Schedule B to the Agreement form part of the amendments to the Agreement, set out in Schedule 1 to the Act, as amended by the Amendment Regulations.

References to the BSM procedures in the Agreement

Section 14(2) of the Legislation Act relevantly provides that, unless a contrary intention appears, a legislative instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time. However, for the reasons set out below, this limitation does not apply in relation to the references to the BSM procedures in the Agreement.

Section 18C of the Act provides that the 'regulations may make amendments to Schedule 1 by incorporating into the Agreement amendments made to, and in accordance with, the Murray-Darling Basin Agreement'. The 'Agreement' means 'the Murray-Darling Basin Agreement, as amended from time to time in accordance with that agreement and as set out in Schedule 1' (see section 18A of the Act). Section 18C provides the source of power to make the Amendment Regulations.

The Amendment Regulations set out amendments to the text of the Agreement set out in Schedule 1 to the Act, which are agreed to in accordance with clause 5 of the Agreement. The Amendment Regulations do not, themselves, make provision in relation to a matter by applying, adopting or incorporating a matter contained in a document (such as the BSM procedures) as in force from time to time for the purposes of subsection 14(2) of the Legislation Act. Rather the Amendment Regulations make amendments to the text of the Agreement in Schedule 1 to the Water Act, which have been agreed to in accordance with clause 5 of the Agreement. It is the Agreement which makes provision for matters by reference to a document as in force from time to time (ie the BSM procedures), rather than the Amendment Regulations.

Alternatively, a contrary intention is provided in the Act. By enabling the regulations to amend Schedule 1 'by incorporating into the Agreement amendments made to, and in accordance with' the Agreement, section 18C, read in the context of Part 1A of the Act, provides this contrary intention. The Agreement is not a Commonwealth law that is subject to the limitation in subsection 14(2) of the Legislation Act. Accordingly, it is possible, under clause 5 to the Agreement, for that agreement to be amended to incorporate a matter in an instrument or other writing from time to time. In order for section 18C to be able to reflect the range of possible amendments to the Agreement in the text of Schedule 1 to the Water Act, it is necessary to interpret section 18C as evidencing a contrary intention for the purposes of subsection 14(2) of the Legislation Act.

Clause 41 **[Items 164 – 171]** provides additional examples of matters about which BSM procedures may be made. Additional BSM procedures are required for new areas of

responsibility, such as the Collective and Commonwealth Accounts and new reporting requirements, such as the Review Plan, where it is useful to have administrative guidance that can be updated as processes are developed. The changes include:

a. in relation to administering the Registers (**Item 167**):

   i. the purpose and operation of the Collective Account, including attribution of debits or credits to the Collective Account;

   ii. the attribution or transfer of credits to or from the Commonwealth Account;

   iii. access by a Contracting Government to its share of credits held in the Collective Account; and

   iv. provisional entries and rules about the use of such entries.

b. monitoring Delayed salinity impacts and at End-of-Valley Target sites (**Item 168**);

c. the form and content of reports prepared by the Authority and the Contracting Governments;

d. the form and content of the Review Plan, and the way reviews under that Plan should be conducted and the contents of review reports;

e. matters to be included in a review of the Schedule or of the *Basin Salinity Management 2030* strategy (**Item 169**);

f. removal of items relating to valley reports and reviews, and about meeting End-of-Valley Targets, as a consequence of changes outlined in this Explanatory Statement (**Item 170**); and

g. ensuring that reporting obligations and the nature and content of reports are consistent with the reporting requirements of the Basin Plan, land and water management plans and relevant statutory requirements (**Item 171**).

11. Other amendments made throughout the Amendment Regulations

Redundancies

Estimated baseline conditions (sub-clauses 5(3) and 5(4) [**Item 32**]) and End-of-Valley Targets (clauses 6 and 8 [**Items 40 and 43**]) for the Australian Capital Territory are removed from the Schedule, because these clauses and sub-clauses are no longer be required, by virtue of this information being incorporated through Appendix 1 in the Amendment Regulations.

Updating, modernisation or correction

Purpose of the Schedule – clause 1

The purpose of Schedule B is amended to reflect the *Basin Salinity Management 2030* strategy accountability arrangements for all actions that result in significant salinity impacts, including those for environmental water recovery, delivery and use (clause 1 **[Items 1 – 8]**). **Item 1** adds subclause 1(1) to the clause. **Items 2 and 7** update the reference to the relevant Strategy to refer to *Basin Salinity Management 2030*. **Item 3** provides that salinity will be managed as set out in the following subclauses. **Item 4** amends paragraph 1(a) to provide that salinity can be managed by promoting works, measures and other action. **Item 5** inserts a note to provide that salinity targets under Schedule B also apply for some purposes under the Basin Plan. **Item 6** repeals paragraph 1(c) and substitutes it with a new paragraph that updates the requirements regarding Registers (which were established under the previous Strategy) and sets out that there

are a range of accountability arrangements for actions that result in significant salinity impacts. **Item 8** adds subclause 1(2) which sets out that the accountability arrangements as inserted by **Item 6** include maintaining Registers and that this includes recording salinity impacts and allocating salinity credits and debits to Contracting Governments.

Definitions – clause 2

There are a number of terms used in the Schedule which are defined in the Agreement or the Act. A provision is added at the end of clause 2 **[Item 26]** which provides that such terms as used in the Schedule that are not defined in the Schedule have the meaning given to them by the Act or Agreement. A note is also inserted before clause 2 alerting the reader to the fact that terms Authority, Basin Plan, Committee and Ministerial Council are defined in Clause 2 **[Item 9]**.

Some of the definitions contained in clause 2 are amended, and some new terms are added **[Items 10 – 24]**. These changes are discussed in relevant paragraphs above.

Clause 3

Item 27 corrects an error in paragraph 3(4)(a) by substituting the word 'Committee' with the words 'Ministerial Council'. The subclause refers to subclause 72(1) of the Agreement which outlines what the Ministerial Council must determine in relation to apportionment of costs.

Clause 4

Items 28 and **29** amend the numbering and punctuation in clause 4 as a result of the amendment made by **Item 30**. **Item 30** removes subclause 4(2) which is no longer required, reflecting the change in relevance of End–of-Valley Targets discussed above under the heading 'Salinity management in valleys'.

Clause 45

Item 175 amends the numbering in clause 45 as a result of the addition of sub-clause 45(2) by **Item 177**. **Item 176** removes the reference to 'State' in paragraph 45(a), when describing Contracting Governments, so that the Commonwealth is also included as a Contracting Government. **Item 177** adds a requirement for the Authority to consult with the Committee before it undertakes an act under subclause 45(1). Under subclause 45(1), the Authority has two obligations. The first is that it must consult with the relevant Contracting Government with a view to remedying a situation leading to a determination under either clause 43 or 44. The second is that the Authority must include in its report to the Ministerial Council the Authority's proposal for remedying that situation.

Appendix 1 – End-of-Valley Targets

The amendments to Appendix 1 **[Item 185]** were developed in consultation with jurisdictional representatives. Changes include clarifying that the Basin Salinity Target listed there is the target referred to in clause 7 to the Schedule, and also correcting an historical transposition of figures in two entries – the Bogan End-of-Valley Targets (as absolute values) median salinity and peak salinity values are around the wrong way, and this is corrected by **Item 185**.

Clause 7 is amended to reflect that the Basin Salinity Target is to maintain the average daily salinity at Morgan under the hydrological conditions of the Benchmark Period, and that E.C. stands for Electrical Conductivity **[Items 41 – 42]**.

Appendix 2 – Joint works and measures

Appendix 2 **[Item 186]**, the list of authorised JWM and S&DS works or measures referred to in clause 12, is updated to reflect Ministerial Council resolutions made since the Appendix was last updated.

Changes include describing the Waikerie Salt Interception Scheme (SIS) in its three component parts. One of the parts (Waikerie Phase 2A SIS), nominated as an S&DS work or measure, is also explicitly added to the definition of S&DS works or measures **[Item 21]**. The explicit inclusion of this work in the definition of S&DS works or measures addresses any potential doubt about its status that may otherwise have arisen due to the date on which it was declared effective and entered on the Register.

'Baseline Conditions' and estimates of baseline conditions

Baseline Conditions are the conditions that contributed to the movement of salt through land and water within the Basin as at 1 January 2000. The current Operational Protocols made under Schedule B list those conditions as the suite of conditions in place within catchments and rivers on 1 January 2000 for:

- land use (level of development of the landscape);
- water use (level of diversions from the rivers);
- land and water management policies and practice;
- river operating regimes;
- salt interception schemes;
- run-off generation and salt mobilisation processes; and
- groundwater status and condition.

Salinity, salt load and flow regime at various sites under these Baseline Conditions can be estimated by modelling.

The parties and the Authority (and previously, the Murray-Darling Basin Commission) have estimated salinity and salt load under Baseline Conditions at each of the End-of-Valley Target sites, and at the Basin Salinity Target site at Morgan. These revised estimates were approved by the Authority (and previously the Murray-Darling Basin Commission), and are now set out in Appendix 1 **[Item 185]** of the Schedule.

The distinction between 'Baseline Conditions' and the estimates of the salinity and salt load at particular sites under those conditions is not clear from the current definition of 'Baseline Conditions' and clause 5.

The Amendment Regulations alter the definition of the term 'Baseline Conditions' to mean the conditions that contributed to the movement of salt through land and water within the Basin on 1 January 2000.

The amendments to clause 5 **[Items 31 - 32]** provide that estimates of salinity and salt loads under Baseline Conditions at each End-of-Valley Target site and at Morgan are those set out in Appendix 1.

The amendments to clause 5 set out the process for amending estimates **[Items 33 – 39]**. The Amendment Regulations provide that a State Contracting Government or the Authority may from time to time propose an amendment to an estimate. The Authority must then appoint an appropriately qualified panel to consider a proposed amendment.

The Amendment Regulations provide that once the Authority has considered the advice of the panel it may, on the advice of the Basin Officials Committee [**Item 36**]:

a. endorse a proposed amendment;

b. endorse a proposed amendment subject to it being modified as agreed between the Authority and the relevant Government; or

c. refuse to endorse a proposed amendment [**Item 37**].

The Amendment Regulations provide that after endorsing a proposed amendment, the Authority must then recommend to the Ministerial Council that Appendix 1 be amended in accordance with the endorsed amendment **[Item 38]**.

The Amendment Regulations provide that a State Contracting Government may use a proposed amendment that has been endorsed by the Authority from the time that it is endorsed **[Item 38]**. If a proposed estimate were to be endorsed by the Authority subject to a modification, the relevant Government must, within six months, modify its estimate and give the Authority a copy of the modified estimate. If the Authority were to endorse a proposed amendment subject to modification under paragraph 5(7)(b), the relevant Contracting Government may then use the estimate originally proposed until the relevant Government modifies the estimate in accordance with that agreement, and gives the Authority a copy of the modified estimate (clause 5(9) **[Item 39]**).

The Authority's role in 'endorsing' amendments rather than 'approving' them (as per the current Schedule) reflects the respective responsibilities of the Authority and Ministerial Council. That is, it is the Ministerial Council rather than the Authority that is the body with power to agree to amendments being made to Schedule 1 under clause 5 of the Agreement. The amendments formalise past practice, under which changes to Appendix 1 (i.e. to include estimates for the Australian Capital Territory site) have been provided to the Ministerial Council for subsequent amendment of Appendix 1.

Salinity impacts arising due to change in location of permitted water use

Provisions in the current Schedule relating to salinity impacts of transfers of water entitlements are removed. These changes affect clauses 20(2) and (3), and 21(2)(c) **[Items 96 and 105]**.

The reason for the amendments to these clauses is that salinity impacts only arise from changes in the use of water, not from changes in ownership of water entitlements. If a Contracting Government believes that a transfer of a water entitlement will result in a salinity impact due to a change in use (e.g. because of changes in rules about water use, or a change in a water use licence or permit), then the change in use should, under the amendments, be notified as an Accountable Action and dealt with in accordance with Schedule B.

Consequential amendments to Schedule D to the Agreement to complement these changes in Schedule B have been progressed by the Authority in tandem with other amendments being prepared for Schedule D.

There are three existing Register entries referred to as 'permanent trade accounting adjustment'. The entries were made to reflect changes in the permitted location of use of water following trade. The entries are currently reviewed in accordance with existing Operational Protocols, which will be revised prior to being re-made as BSM procedures. No additional provisions were considered necessary in the Schedule to accommodate these entries or the manner of their review.

Program of Joint works and measures – continued commitment to Basin Salinity Target

The BSMS committed the Contracting Governments to a Joint Program of JWM sufficient to offset increases in salinity by 61 E.C., by the end of 2007. That commitment was set out in clause 10 of the Schedule. The last JWM to have been constructed under the Joint Program was declared effective during 2014, and the parties continue to commit to implementing a Joint Program as required to maintain water quality. This commitment involves carrying on the JWM listed in Appendix 2 to the Schedule.

Items 52, 53 and 54 makes only minor amendments to clause 10, retaining a general commitment to implement a Joint Program to maintain the quality of water in the upper River Murray and River Murray in South Australia, ensuring that salinity levels are appropriate for agricultural, environmental, urban, industrial and recreational uses. The date in paragraph 10(1)(b) **[Item 53]**, that prescribes the requirement for Contracting Governments to implement a Joint Program before 31 December 2007, is updated to before 31 December 2014, to retrospectively reflect the work done by the Contracting Governments up until that time. This change corresponds to subclause 10(2) **[Item 54]**, and also requires a consequential change to subclause 13(2) **[Item 65]**, so that the Basin Officials Committee may determine what costs, salinity credits or debits relating to a Joint work or measure undertaken after 1 January 2015 must be contributed by the Government of Queensland or the Australian Capital Territory [**Items 63 - 64]**.

Item 51 repeals the heading for Part IV and substitutes with a heading to properly reflect its contents, which deal with all works and measures authorised under the Agreement: that is, both JWM and S&DS works or measures.

Clause 12 is amended **[Items 57 - 62]** to provide that the Ministerial Council is required to maintain Appendix 2 as a list of all JWM, and all S&DS works or measures, authorised under clause 56 of the Agreement. Clause 12 in its current form does not clearly require the Appendix to include S&DS works or measures.

Continuing to recognise works and measures from three distinct eras

Works and measures are constructed or implemented by the parties for the purposes of salinity management in order to implement both the Salinity and Drainage Strategy and the BSMS. Further works and measures will be carried out for the purposes of the *Basin Salinity Management 2030* strategy.

Amendments are made to more simply reflect the three eras of Basin salinity management:

a. A new provision requires the Authority to maintain, in accordance with BSM procedures, a record of the proportions in which salinity debits and credits made under each of the three eras of Basin salinity management (clause 21B **[Item 106]**);

b. The term 'Former salinity and drainage work' is replaced with the term 'S&DS works or measures', without altering its meaning; and

c. The term 'BSMS works or measures' is used to identify works and measures done for the purposes of the BSMS.

Monitoring

Amendments are made to ensure that requirements about monitoring for Delayed salinity impacts are explicit, as follows.

Clause 25 is amended [**Item 124]** so that the Authority and each State Contracting Government must carry out such monitoring as it is required to undertake, in accordance with any relevant BSM procedures.

Clause 27, including its title, is amended **[Items 126 – 131]**:

a. so that the clause applies to monitoring for Delayed salinity impacts as well as monitoring impacts of Accountable Actions;

b. to require a State Contracting Government to give to the Authority, within three months, proposed monitoring programs that enable the assessment of Delayed salinity impacts; and

c. to clarify that the obligation to provide monitoring programs for a State Action is imposed on a State Contracting Government, not all Contracting Governments.

If salinity debits or credits arising from an Accountable Action were to be attributed in whole or part to the Collective Account (see clause 21A) **[Item 106]**, the Basin Officials Committee is responsible for specifying which Contracting Government will be responsible for monitoring the action, and for giving the Authority proposed monitoring programs.

Clause 27 is also amended **[Item 127]** so that if a JWM were to be later designated by the Authority as a State Action (see clause 24(2) of the Schedule), the State responsible for that Action is required to give a proposed monitoring program to the Authority within three months after the designation.

Clause 28 **[Items 131 and 132]**, which states the obligation of a Contracting Government to carry out monitoring in accordance with a program accepted under clause 27 **[Items 126 – 130]**, is amended consistently with the changes to clause 27.

Models

Various amendments are made to provisions about models to bring them up to date, as follows.

Models developed by the Authority

The Authority is required to both develop and maintain the models referred to in subclause 36(1) **[Items 150 - 152]**. The Amendment Regulations provide that a model must be capable of estimating or supporting the estimation of:

a. any salinity impacts of Accountable Actions (i.e., JWM, S&DS works or measures, State Actions and delivery of Basin Plan Water); and

b. any Delayed salinity impacts,

at Morgan and such other relevant locations as the Authority may determine, for each of 2000, 2015, 2030, 2050, 2100 and in such other years as the Authority may determine.

A Contracting Government must, under the amendments, provide the Authority information about an Accountable Action or about Delayed salinity impacts that that government holds, in order to assist with the Authority's development, maintenance or alteration of models.

Models developed by State Contracting Governments

Each State Contracting Government is required to both develop and maintain models to simulate the effect of Accountable Actions and Delayed salinity impacts. A State Contracting Government is not be required to develop and maintain a surface water model if a model developed by the Authority is capable of simulating the matters required for a surface water model under subclause 37(1)(a).

Subclause 37 **[Item 154]** is also amended consistently with clause 36 **[Items 150 - 153]**, so that a model or suite of models must be capable of estimating or (in the case of groundwater models) supporting the estimation of the salinity impacts of Accountable Actions and Delayed

salinity impacts for each valley and each End-of-Valley Target site for each of 2000, 2015, 2030, 2050, 2100 and such other years as the Authority may determine.

Assessment and approval of certain models, review of models

Subclause 38(1) **[Item 155]** requires any new model or alteration to a model (whether made by the Authority or by a State Contracting Government) to be assessed in accordance with the BSM procedures. It is envisaged that the BSM procedures will stipulate a form of independent assessment appropriate to each type of model.

A State Contracting Government is required to give a copy of an approved model or alteration to the Authority only if the Authority requests it (subclause 38(6) **[Items 158 - 159]**).

Clause 39 **[Item 160]**, which required the review of models, is removed. Review of models is now be covered by the Review Plan (clause 32, [**Item 133**]).

Sharing costs of S&DS works and measures

The existing Schedule (clause 49) requires that the costs of undertaking an S&DS work or measure must be met entirely by the Contracting Government nominated under the Agreement as being responsible for the work or measure. This is not consistent with the Contracting Governments' intention or with the way that costs for JWM authorised under the Agreement are met. The provision appears to have stemmed from a long-standing error in the Schedule, and has never been applied. **Item 182** repeals clause 48 and substitutes it with a clause to provide for the costs of both JWM, and S&DS works and measures, to be shared amongst the parties in accordance with the cost-sharing provisions set out in clause 72 of the Agreement. Cost shares may be varied amongst Contracting Governments under an agreement made under clause 23 of the Schedule. **Item 184** repeals clause 49.

Transitional provisions

The Amendment Regulations include transitional provisions **[Items 183 – 184]]** to:

a. Recognise that things started by the Contracting Governments, the Authority or the auditors under the current Schedule may not be completed prior to commencement of the Amendment Regulations (clause 52). Such things must be completed in accordance with the current Schedule, unless it is more appropriate for the thing to be completed under the amended Schedule. The clause covers, for example, any re-estimation of salinity impacts that is underway at commencement.

b. Recognise that things have been done by Contracting Governments, the Authority and auditors in anticipation of the amendments (clause 53). This clause covers annual reporting that has been undertaken since the *Basin Salinity Management 2030* strategy was approved by the Ministerial Council, which accords with the new provisions. It also covers the recent appointment of auditors for clause 34, under expanded terms of reference that are consistent with the new provisions.

c. Ensure that the amendments do not affect things already done under the Schedule prior to the amendments (clauses 54, 55 and 56). These provisions cover, for instance, entries on Registers, calculations of salinity impacts etc.

d. Continue the existing Operational Protocols made by the Authority in existence as BSM procedures (clause 57). The instruments will be progressively replaced by new BSM procedures made by the Basin Officials Committee.

e. Provide that an entry currently on a Register that is stated to be a provisional entry, will be taken to have been made as a provisional entry under clause 20A **[Item 97]**.

Table 1: Timeline for Basin Salinity Strategies and Salinity Schedules

1988	1989			1992	1993						2000	2001	2002					2008						2015			2018	Beyond 2018
Salinity and Drainage Strategy 1988-2000 **(S&DS)**												***Basin Salinity Management Strategy 2001-2015*** **(BSMS)**															***Basin Salinity Management 2030*** **(BSM2030)**		
					Schedule C – Salinity and Drainage Strategy **Oct 1993** Implemented S&DS Referred to in current and amended Schedule as '*Salinity and Drainage Strategy*'							**Schedule C – Basin Salinity Management** **1 Nov 2002** Implemented BSMS Replaced previous Schedule C Referred to in current and amended Schedule as '*former Schedule*'							**Schedule B – Basin Salinity Management** **8 Dec 2008** Implemented BSMS Replaced the 'former Schedule', with minor changes to reflect replacement of MDBC with MDBA and BOC. Referred to in current Schedule as '*this Schedule*'							***Schedule B – Basin Salinity Management*** *2018* *Amends current Schedule to implement BSM2030*	
MDB Agreement 1982 As amended 1987, 1990					**MDB Agreement 1992** As amended from time to time, including last in 2006. Replaced the 1982 Agreement (cl 4). Referred to in Water Act as '*former Agreement*'																			**MDB Agreement 2008** As amended from time to time. Revoked the 1992 Agreement (cl 4). Referred to in Water Act as '*Agreement*'								

Notes:

1. S&DS was adopted by the Ministerial Council in April 1989. Implementation of the Strategy was to commence 1 January 1988.
Schedule C was made in October 1993.

2. BSMS was adopted by the Ministerial Council on 28 August 2001.
Schedule C was replaced by the new Schedule C on 1 November 2002 (Council meeting 32). Schedule B replaced the new Schedule C in December 2008.

3. *Basin Salinity Management 2030* strategy was adopted by the Ministerial Council on 27 November 2015

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Water Amendment (Murray-Darling Basin Agreement—Basin Salinity Management) 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 Act*.

Overview of the Legislative Instrument

This legislative instrument amends Schedule B to the Murray-Darling Basin Agreement (the Agreement), which is set out in Schedule 1 to the Act to give effect to aspects of the new *Basin Salinity Management 2030* strategy, to guide joint salinity management until 2030.

Human rights implications

This legislative instrument engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (the ICESCR). The right to an adequate standard of living is protected in Article 11 of the ICESCR and the right to physical and mental health is protected in Article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights, established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water which encompasses an entitlement to 'sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses'.[1] The Amendment Regulation promotes these articles by providing a framework to support water quality through salinity management in the Murray-Darling Basin.

This legislative instrument deals with managing salinity in the Basin to ensure that salinity levels of the upper River Murray and the River Murray in South Australia are appropriate for agricultural, environmental, urban, industrial and recreational uses.

The human rights implications of the legislative instrument must be considered in the context of the Act. The overall framework of the Act supports access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses. This is reflected in Section 1, Part 1, Schedule 1 of the Agreement which specifies that the purpose of the Agreement is to promote and co-ordinate effective planning and management for the equitable, efficient and sustainable use of the water and other natural resources of the Basin, including by implementing arrangements agreed between the Contracting Governments to give effect to the Basin Plan, the Water Act and State water entitlements.

The Amendment Regulation supports the Committee's interpretation of the ICESCR as it supports the right to an adequate standard of living by establishing a framework that promotes Contracting Governments to manage salinity into the future, and uphold water quality standards to support communities and industries. This improves environmental and socio-economic outcomes, and provides certainty for communities who use the Basin water resources for cultural, social, environmental, spiritual and economic purposes; including farmers, who need reliable stock and domestic supplies; tourism operators, rural and regional communities and cities, which need reliable, clean, drinking supplies.

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[1] CESCR General Comment No. 15: The Right to Water E/C 12/2002/11.

The Amendment Regulation also supports Article 8(c)(d) and (i) of the Convention of Biological Diversity (CBD), through promoting water quality in the Murray-Darling Basin, by regulating biological resources with a view to ensuring conservation and sustainable use; promoting the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; endeavouring to provide the conditions needed for compatibility between present uses and the conservation of biological diversity, and the sustainable use of its components.

The Amendment Regulation additionally supports Article 10(e) of the CBD by encouraging cooperation between governmental authorities and its private sector in developing methods for sustainable use of biological resources, by virtue of the consultative process required under the Water Act to enable these amendments to be agreed amongst Basin States.

Conclusion

The legislative instrument is compatible with human rights because it supports the human right to clean, accessible water, through promoting water quality.

The Hon. David Littleproud MP
Minister for Agriculture and Water Resources

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

Ref No: SB19-000480

Senator John Williams (Chair)
Senate Standing Committee on Regulations and Ordinances
Suite S1.111
PARLIAMENT HOUSE
CANBERRA ACT 2600

Dear Chair

Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]

I thank the Senate Standing Committee on Regulations and Ordinances for its letter of 15 February 2019, in which the Committee requested further information about the *Immigration (Guardianship of Children) Regulations 2018* (the Regulations).

Specifically, the Committee has drawn attention to section 6 of the Regulations which sets out the principles that must be observed in deciding whether to direct that a non-citizen under the age of 18 is to become the Minister's ward.

The Committee wrote that it is concerned the Regulations have the effect of prescribing the grounds on which a child may become a ward of the Minister. The Committee wrote that whilst paragraph 12(aa) of the *Immigration (Guardianship of Children) Act 1946* (the Act) provides that regulations can be made for this purpose, it is unclear to the Committee why such matters should not be included in primary legislation.

The Committee may be interested to know of the effect of section 4AA of the Act. Section 4AA was inserted in the Act by the *Statue Law (Miscellaneous Provisions) Act (No 1) 1985* (No. 65, 1985). The purpose of section 4AA is to enable the Minister to direct that a person under 18 years of age shall be a ward of the Minister notwithstanding that the person entered Australia as a non-citizen in the charge of, or for the purpose of living in Australia under the care of, a relative (other than a parent) who is not less than 21 years of age. The Minister may make a direction only if satisfied that it is necessary in the interests of the person to do so. A direction may not be made unless the relative of the person consents to the Minister doing so.

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Paragraph 12(aa) was inserted in the Act at the same time and provides that the Governor-General may make regulations prescribing the principles to be observed in considering whether or not to give a direction under section 4AA.

Following enactment of the amendments to the Act, regulation 3AA, which prescribed principles for the purposes of section 4AA, was inserted in the *Immigration (Guardianship of Children) Regulations 1946* by Statutory Rules 1986, No. 159, commencing on 1 July 1986. This provision subsequently became regulation 5 of the *Immigration (Guardianship of Children) Regulations 2001*, with no substantive amendments to the principles.

From 1 October 2019, the principles will be contained in section 6 of the Regulations in substantially the same form as regulation 5 of the *Immigration (Guardianship of Children) Regulations 2001*, with the addition of the principle at subparagraph 6(b)(iv). Under this provision, a direction must not be given unless it is necessary for any reason that the Minister, or a delegate of the Minister who is giving the direction, considers to be in the interests of the child. The addition of this subparagraph is consistent with section 4AA, which envisages that a direction may be given, with the consent of the child's relative, where this is in the interests of the child.

While the Regulations set out principles to be observed in deciding whether a non-citizen under the age of 18 is to become the Minister's ward, the actual grounds to be met for the exercise of the discretion to make a direction are set out within section 4AA itself. In particular, the relative of the child must consent to the direction being made, and the Minister must be satisfied that it is necessary in the interests of the child to do so. The prescribed principles ultimately must be consistent with section 4AA and cannot affect the rights and interests of non-citizen children in any way that is contrary to the protections set out in that section. Further protection is afforded by virtue of the fact that regulations prescribing principles are disallowable, and are therefore subject to Parliamentary scrutiny.

As the prescribed principles are subordinate to robust provisions in the Act, and as oversight of any amendments is available to the Parliament, I trust you will agree that use of delegated legislation is appropriate in these circumstances.

Yours sincerely

David Coleman

8 / 3 / 2019

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

Ref No: MC19-001185

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

Dear Senator Williams John

Senate Regulations and Ordinances Committee - Telecommunications Amendment (Access to Mobile Number Information for Authorised Research) Regulations

I am writing in response to the Senate Regulations and Ordinances Committee's request for additional information in its *Delegated Legislation Monitor 1 of 2019* in relation to the *Telecommunications Amendment (Access to Mobile Number Information for Authorised Research) Regulations 2018* (the regulations).

The Committee has requested further detail on two matters which I have addressed below.

1.223 - The committee requests the minister's more detailed advice as to why it [is] considered necessary and appropriate to permit the disclosure of unlisted mobile phone numbers and associated postcodes recorded in the Integrated Public Number Database to research entities for 'permitted research'.

The Integrated Public Number Database (IPND) is an industry-wide database containing information relating to all public telephone numbers, making it a valuable tool for public health, electoral and public policy research. The regulations are necessary to ensure that the laws governing access to the IPND for research keep pace with technological and market changes and the IPND continues to serve the public interest in high quality research.

Reforms undertaken in 2007 allowed researchers to access information associated with listed numbers in the IPND; that is, numbers which appear in public number directories. However, in recent times the Australian telecommunications market has seen a significant shift in consumer behaviour, involving a movement from fixed line telephone services to mobile and mobile-only services.

There has been a consistent decline in the number of fixed line services, from 9.42 million in 2012-13 to 8.09 million in 2017-18. In addition, there has been a continued increase in the number of mobile users without a home fixed line phone. At June 2018, 41 per cent of Australian adults (7.70 million) only used mobile service for voice, owning or using a mobile phone but without a fixed line in their home.[1] This shift is most pronounced amongst younger Australians. At May 2018, 79 per cent of Australians aged 65 and over used a fixed-line phone, compared to only 18 per cent of those aged 25–34[2]. With the rise of mobile-only households, particularly amongst younger Australians, research using only listed numbers is likely to be increasingly unrepresentative and therefore unreliable.

To address this shift in technology and consumer behaviour, the regulations allow research entities access anonymised information about unlisted mobile phone numbers to establish a representative cross-section of the community.

In making these regulations, strong privacy protections, beyond those in the 2007 reforms, have been introduced. Most significantly, the only IPND information that can be accessed under these regulations is the mobile number and the associated postcode; no other identifying information in the IPND can be obtained by the researcher. A research entity (or group of entities) seeking to anonymised information about unlisted mobile phone numbers is required to first apply for and obtain an authorisation from the Australian Communications and Media Authority (ACMA). Before the ACMA can grant the authorisation it must be satisfied that each research entity listed in the application will comply with the conditions of the authorisation.

In determining whether a research entity will comply with the conditions in the authorisation, the ACMA must have regard to a range of matters, including the practices, procedures, processes and systems the entity has in place to comply with those conditions, past and current compliance with research authorisations, and the extent to which the applicant's prior collection, use and disclosure of personal information has complied with the *Privacy Act 1988*. The ACMA also has the discretion to consider other relevant matters when deciding whether to issue a research authorisation.

Authorisations are subject to standard conditions, along with any additional conditions specified by the ACMA. In particular, the regulations contain constraints on the use and disclosure of unlisted mobile number information and require compliance with the *Privacy Act 1988* (however, registered political parties must comply with the Australian Privacy Principles given such entities are ordinarily exempted from that Act). Anonymised information about unlisted mobile phone numbers must be destroyed by a research entity if the entity is removed from a research authorisation or the authorisation comes to an end.

The regulations also include sanctions for non-compliance with authorisation conditions. The ACMA can remove an entity from a research authorisation for contravention of any condition of a research authorisation. An entity that has been removed from an authorisation will be prohibited from using any research information that it has collected. An authorised research entity or former research entity also commits an offence of strict liability if the entity contravenes a condition of an authorisation.

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[1] Statistics from the Australian Communications and Media Authority, Communications Report 2017-18.
[2] Ibid.

1.229 - The committee requests the Minister's advice as to the justification for the imposition of strict liability to a number of new offences. The committee's consideration of the appropriateness of a provision which imposes strict liability is assisted if the advice explicitly addresses relevant principles as set out in the Guide to Framing Commonwealth Offences.

The regulations contain offences of strict liability for a research entity that breaches any condition of a research authorisation, and for former research entities that breach the prohibition on use and disclosure of IPND information or fail to destroy information within 10 business days after the authorisation has ended.

The *Guide to Framing Commonwealth Offences* was drawn on in framing the offence provisions within the regulations. The Guide indicates that the application of strict liability to all physical elements of an offence (as is the case with the provisions within the regulations) generally is only considered appropriate where all of the following apply:

- the offence is not punishable by imprisonment;
- the offence is punishable by a fine of up to 60 penalty units for an individual in the case of strict liability;
- the punishment of offences not involving fault is likely to significantly to enhance the effectiveness of the enforcement regime in deterring certain conduct; and
- there are legitimate grounds for penalising persons lacking fault, for example because he or she will be placed on notice to guard against the possibility of any contravention.

The penalty for imposed by the regulations does not include imprisonment and is limited to 10 penalty units (which is also consistent with the maximum permitted under subsection 594(2) of the *Telecommunications Act 1997*).

It is important that information obtained from end users as a result of research is secured against unauthorised use or disclosure. The offence provisions in the regulations are triggered by a breach of any of the conditions of a research authorisation, or where former research entities breach the prohibition on use and disclosure of IPND information or fail to destroy information within 10 business days after the authorisation has ended. Strict liability offence provisions provide a strong incentive for compliance with these privacy protections, thereby enhancing the effectiveness of the enforcement regime.

It follows that the strict liability offence provisions are also designed to put research entities on notice that they should guard against the possibility of any contravention of an authorisation condition. A person who may contravene the offence provisions can guard against such a contravention by complying with all conditions of a research authorisation, complying with the use and disclosure requirements and destroying IPND information within 10 business days after the authorisation has ended.

I thank the Committee for its questions and I trust this information will be of assistance.

Yours sincerely

MITCH FIFIELD

6/3/19

SENATOR THE HON. RICHARD COLBECK
Assistant Minister for Agriculture and Water Resources
Liberal Senator for Tasmania

Ref: MC19-001441

05 MAR 2019

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

Dear Senator Williams John,

The Senate Standing Committee on Regulations and Ordinances (Committee) has requested further information about measures in the *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018*. The enclosure sets out my response to the questions raised by the Committee.

I thank the Committee for their consideration of the instrument.

Yours sincerely

Richard Colbeck

Enc.

Telephone 02 6277 3855 Parliament House, Canberra ACT 2600 Australia Email assistantminister.colbeck@agriculture.gov.au

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

The Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018 (the Regulations)

The committee requests the minister's advice as to:

- The manner in which the country specific guidelines identified in the Regulations[1] are incorporated into the instrument.
- How these documents are or may be made readily and freely available to persons interested in or affected by the instrument.
- The committee also requests that the explanatory statement be amended to include this information.

Manner of incorporation

The Country specific guidelines provided in Schedule 1 to the Regulations are incorporated by reference to the versions of those documents as they applied on the particular dates they were co-endorsed by the relevant governments.

In relation to item 6 in Schedule 1 to the Regulations, the Country specific guideline for Indonesia, co-endorsed by the Government of Australia and the Government of Indonesia on 1 October 2018 is incorporated by reference to the version of that document as it applied on 1 October 2018.

In relation to item 7 in Schedule 1 to the Regulations, the Country specific guideline for Malaysia, co-endorsed by the Government of Australia and the Government of Malaysia on 10 March 2017, is incorporated by reference to the version of that document as it applied on 10 March 2017.

In relation to item 8 in Schedule 1 to the Regulations, the Country specific guideline for the Republic of Korea, co-endorsed by the Government of Australia and the Government of the Republic of Korea on 26 June 2018, is incorporated by reference to the version of that document as it applied on 26 June 2018.

Availability of the documents

The Country specific guidelines for the Republic of Korea, Malaysia and Indonesia are all freely available on the website of the Department of Agriculture and Water Resources: http://www.agriculture.gov.au/forestry/policies/illegal-logging/importers/resources#country-specific-guidelines

Replacement explanatory statement

I have approved a replacement explanatory statement for the Regulations containing information about incorporation of the country specific guidelines and information on their availability.

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[1] The country specific guidelines provided in the Regulations are the country specific guidelines for Indonesia, Malaysia and the Republic of Korea.

EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister for Agriculture and Water Resources
Parliamentary Secretary to the Minister for Agriculture and Water Resources

Illegal Logging Prohibition Act 2012

Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018

Legislative Authority

The *Illegal Logging Prohibition Act 2012* (the Act) aims to reduce the harmful environmental, social and economic impacts of illegal logging by restricting the importation and sale of illegally logged timber in Australia. The Act requires importers of regulated timber products and processors of domestically grown raw logs to conduct a due diligence process in order to reduce the risk that illegally logged timber is imported or processed.

Section 86 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Illegal Logging Prohibition Regulation 2012* (principal Regulation) prescribes due diligence requirements for importing regulated timber products and processing domestically grown raw logs. The due diligence requirements are prescribed to minimise the risk of a regulated timber product containing illegally logged timber in the Australian market.

Purpose

The purpose of the *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018* (the Amendment Regulations) is to amend the principal Regulation to add to Schedule 2 a new country specific guideline for the Republic of Korea and to replace the country specific guidelines for Malaysia and Indonesia with updated versions. The amending Regulations also provide a 'reasonableness' standard an importer or processor must meet when using the 'timber legality frameworks' risk assessment optional process as part of their due diligence.

Background

The amendment to add the new country specific guideline for the Republic of Korea provides an additional option for importers of regulated timber products from the Republic of Korea to conduct due diligence. Importers may elect to use the country specific guideline option provided for in section 12 of the principal Regulation if the country specific guideline for the Republic of Korea applies to the timber in the product, or the area in which the timber is harvested. The amendments to add the revised versions of the country specific guidelines for Malaysia and Indonesia enable importers of regulated timber products from these countries to access the most up-to-date guidance material on forestry legal frameworks in order to carry out their due diligence.

The other amendment, which provides that the identification and assessment of risk, and any outcome of that identification and assessment, must be 'reasonable' is designed to ensure that importers and processors carry out the due diligence requirements in a reasonable and defensible way.

Impact and Effect

The principal Regulation has been amended to add the new country specific guideline for the Republic of Korea, and the revised versions of the country specific guidelines for Malaysia and Indonesia. These documents offer importers guidance on how to meet their due diligence obligations for regulated timber products originating from those countries.

The principal Regulation has also been amended to establish the standard which importers and processors must meet when identifying and assessing risk using the timber legality frameworks option as part of their due diligence. The amendment requires the identification and assessment of risk, and the outcome of that identification and assessment, to be reasonable. This is an objective test that may be assessed by reference to the records that an importer and processor is required to keep under section 11 and section 20 of the principal Regulation.

For example, where an importer or processor identifies and assesses, by the use of the timber legality framework and consideration of the information gathered under section 10 of the principal Regulation, that a regulated timber product or raw log may be at risk of being illegally logged, the importer or processor cannot then reach an inconsistent finding that the regulated timber product or raw log is at low risk of being illegally logged. The outcome reached must be reasonable and justifiable based on the written record of the identification and assessment of risk undertaken.

This amendment establishes a 'reasonableness' standard consistent with the standard already provided for in the 'prescribed risk factors' and 'country specific guideline and state specific guideline' risk assessment optional processes prescribed in Division 1 of Part 3 of the principal Regulation.

Consultation

In February 2016, in response to the 'Independent Review of the Impact of the Illegal Logging Regulations on Small Business', the government agreed to the review recommendation to fast track the development of additional country specific guidelines to ensure businesses had access to increased guidance on the information they can gather from suppliers in key trading partner countries. The governments of Malaysia, Indonesia, and the Republic of Korea were consulted during the development or revision of the individual country specific guidelines and co-endorsed the final guidelines.

The Office of Best Practice Regulation has been consulted and has advised that the amendments are machinery in nature and a regulation impact statement is not required (OBPR ID Number: 23960).

Details/ Operation

Details of the Amendment Regulations are set out in the Attachment A.

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

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

ATTACHMENT A

Details of the *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018*

Section 1 – Name

This section provides that the name of the Amendment Regulations is the *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018*.

Section 2 – Commencement

This section provides for the Amendment Regulations to commence on the day after the Regulation is registered.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Illegal Logging Prohibition Act 2012*.

Section 4 – Schedules

This section provides that the *Illegal Logging Prohibition Regulation 2012* (the principal Regulation) is amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 amends paragraph 11(2)(b) to provide that the risk identification and assessment process set out in that paragraph would be subject to the standard set out in the subsection 11(2A). Subsection 11(3) of the principal Regulation already provides that an importer who contravenes subsection 11(2) is liable to a maximum civil penalty of 100 penalty units.

Item 2 inserts subsection 11(2A) to establish the standard by which the risk identification and assessment process set out in paragraph 11(2)(b) must be measured. Subsection 11(2A) provides that the identification and assessment of risk mentioned in paragraph 11(2)(b) and any outcome of that identification and assessment, must be reasonable. This is an objective test that may be assessed by reference to the record that an importer is required to keep under section 11 of the principal Regulation.

Item 3 amends paragraph 20(2)(b) to provide that the risk identification and assessment process set out in that paragraph would be subject to the standard set out in subsection 11(2A). Subsection 20(3) of the principal Regulation already provides that a processor who contravenes subsection 20(2) is liable to a maximum civil penalty of 100 penalty units.

Item 4 inserts subsection 20(2A) to establish the standard by which the risk identification and assessment process set out in paragraph 20(2)(b) would be measured. Subsection 20(2A) provides that the identification and assessment of risk, mentioned in paragraph 20(2)(b), and any outcome of that identification and assessment, must be reasonable. This is an objective test that may be assessed by reference to the record that a processor is required to keep under section 20 of the principal Regulation.

Item 5 omits the references to the year "2014" in notes 2 and 3 in Clause 1 of Schedule 2 to the principal Regulation and substitutes the references in both notes with the year "2018", to reflect that, as at 2018, the information about the Forest Stewardship Council (FSC) forest management certification and chain of custody standards, and the Programme for the Endorsement of Forest Certification (PEFC) forest management certification and chain of custody standards, could be viewed on the FSC and PEFC websites.

Item 6 repeals table item 3 in clause 2 of Schedule 2 to the principal Regulation which lists the country specific guideline for Indonesia, co-endorsed by the Government of Australia and the Government of Indonesia on 21 October 2014. The item substitutes a new table item 3 which lists the country specific guideline for Indonesia, co-endorsed by the Government of Australia and the Government of Indonesia on 1 October 2018. Importers of regulated timber products from Indonesia are required to use this revised and updated version of the country specific guideline for Indonesia when they elect to use the country specific guidelines optional process provided in section 12 of the principal Regulation.

The Country specific guideline for Indonesia, co-endorsed by the Government of Australia and the Government of Indonesia on 1 October 2018 is incorporated by reference to the version of that document as it applied on 1 October 2018

The country specific guideline for Indonesia is freely available at:
http://www.agriculture.gov.au/forestry/policies/illegal-logging/importers/resources#country-specific-guidelines

Item 7 repeals table item 4A in clause 2 of Schedule 2 to the principal Regulation, which lists the country specific guideline for Malaysia, co-endorsed by the Government of Australia and the Government of Malaysia on 13 February 2015. The item substitutes a new table item 4A which lists the country specific guideline for Malaysia, co-endorsed by the Government of Australia and the Government of Malaysia on 10 March 2017. Importers of regulated timber products from Malaysia are required to use this revised and updated version of the country specific guideline for Malaysia when they elect to use the country specific guidelines optional process provided in section 12 of the principal Regulation.

The country specific guideline for Malaysia, co-endorsed by the Government of Australia and the Government of Malaysia on 10 March 2017, is incorporated by reference to the version of that document as it applied on 10 March 2017.

The country specific guideline for Malaysia is freely available at:
http://www.agriculture.gov.au/forestry/policies/illegal-logging/importers/resources#country-specific-guidelines

Item 8 inserts table item 5B in clause 2 of Schedule 2 to the principal Regulation to list the country specific guideline for the Republic of Korea, co-endorsed by the Government of Australia and the Government of the Republic of Korea on 26 June 2018. The new country specific guideline for the Republic of Korea provides guidance material for importers of regulated timber products from the Republic of Korea when gathering information to meet their due diligence requirements provided in section 10 of the principal Regulation. Importers may elect to use the country specific guideline optional process under section 12 of the principal Regulation, if the country specific guideline for the Republic of Korea applies to the timber in the product, or the area in which the timber is harvested.

The country specific guideline for the Republic of Korea, co-endorsed by the Government of Australia and the Government of the Republic of Korea on 26 June 2018, is incorporated by reference to the version of that document as it applied on 26 June 2018.

The country specific guideline for the Republic of Korea is freely available at: http://www.agriculture.gov.au/forestry/policies/illegal-logging/importers/resources#country-specific-guidelines

Item 9 omits the reference to the year "2014" in the notes in Clauses 2 and 3 of Schedule 2 to the principal Regulation and would substitute it with a reference to the year "2018" to reflect that, as at 2018, the country specific guidelines and state specific guidelines could be viewed on the website of the Department of Agriculture and Water Resources.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Illegal Logging Prohibition Amendment (Due Diligence Improvements) 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 *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018* amend the *Illegal Logging Prohibition Regulation 2012* to add new and revised country specific guidelines to Schedule 2, and to apply a 'reasonableness' standard an importer or processor must meet when using the 'timber legality frameworks' risk assessment optional process as part of their due diligence.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon. Richard Colbeck
Assistant Minister for Agriculture and Water Resources
Parliamentary Secretary to the Minister for Agriculture and Water Resources

The Hon Dan Tehan MP
Minister for Education

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7350

Our Ref: MC19-000577

Senator John Williams
Chair
Senate Standing Committee on Regulations and Ordinances
regords.sen@aph.gov.au

14 MAR 2019

Dear Senator Wacka,

I note that the Committee's Delegated Legislation Monitor No. 1 of 2019 released on 13 February 2019 sought my response in relation to issues identified with respect to the legislative instrument *Higher Education Support (Parapharm Pty Ltd) Higher Education Provider Approval Revocation 2018* (F2018L01835) (the instrument).

The Department of Education and Training has accepted the Committee's feedback that the explanatory statements accompanying legislative instruments should clearly indicate whether or not any consultation was undertaken, or, where no consultation has occurred, the reason for this being the case. The Department will ensure that future explanatory statements accompanying similar legislative instruments provide this information.

A replacement explanatory statement to the instrument will be prepared confirming that no consultation was necessary in order to satisfy the requirements of Section 17 of the Legislation Act. An explanation as to why no consultation was necessary will also be included in line with the requirements of paragraphs 15J(2)(d) and (e) of the Legislation Act. A preliminary draft of the proposed replacement explanatory statement is attached for the Committee's reference.

Officers of my department will be instructed to take action to implement this commitment by ensuring that the draft replacement explanatory statement is approved by the rule maker in accordance with paragraph 15J(2)(d) and (e) of the Legislation Act and registered on the Federal Register of Legislation as soon as is achievable following the rule maker's approval.

Thank you for bringing the Committee's concerns to my attention.

Yours sincerely

DAN TEHAN

THE HON MELISSA PRICE MP
MINISTER FOR THE ENVIRONMENT

Senator John Williams
Chair
Senate Regulations and Ordinances Committee
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MC19-001662

Dear Senator ~~Williams~~ John,

I refer to your correspondence concerning the *Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Methyl Bromide, Fire Protection and Other Measures) Regulations 2018* [F2018L01730] (the **OPSGGM Amendment Regulations**) and the *Amendment of List of Exempt Native Specimens – Commonwealth Northern Prawn Fishery, December 2018* [F2019L00015] (the **LENS Northern Prawn Fishery Amendment**).

The Senate Regulations and Ordinances Committee has requested advice as to whether each of the standards incorporated in the OPSGGM Amendment Regulations (AS/NZS ISO 817 and AS/NZS 5149 (Parts 1 to 4) (2016 Australian Standards)) can be accessed free of charge; and requested that the explanatory statement be amended to include this information. On the first matter, I am advised that currently, online access to the standards has been suspended by SAI Global. The Australian Government envisages that the parties most likely to access the referenced documents are members of industry whose products and services are covered by the Determination. Those parties can readily purchase the standards from Standards Australia, through its exclusive licensee SAI Global.

The Australian refrigeration and air conditioning industry has been working with the standards referenced in the OPSGGM Regulations since they were adopted in Australia in 2016. The cost of becoming familiar with new or revised standards is a cost businesses absorb into their operating costs. Manufacturing, installing and maintaining equipment according to relevant Australian and international standards is a customer expectation. Operating according to relevant standards protects a business from legal claims for injury, death, property damage and sub-standard equipment operation.

The regulated community and the general public may access hard copies of the standards referenced in the OPSGGM Amendment Regulations without purchasing them, through National and State Libraries, with the National Library of Australia providing the facility to scan pages to a USB drive, also free of charge, provided it is for non-commercial purposes.

The COAG Industry and Skills Council Standards Accessibility Working Group continues to work to develop solutions to greater public access of standards beyond their availability in National and State libraries. In April 2018, the Working Group reported to relevant COAG Ministers its findings of a detailed investigation into access to Australian standards. Ministers agreed that recommendations on solutions to the longstanding issue of access to, and charges for, standards be progressed as a matter of priority.

In February 2019, Standards Australia announced that it will look to improve access to standards in the wake of a December 2018 ruling, that SAI Global will no longer have exclusive distribution rights. Standards Australia are exploring additional distribution channels (which currently are provided only in hard copy and in PDF) as the first stage of its transition.

The Committee also requested my advice as to the justification for reversing the evidential burden of proof in subsection 304A(2). While the explanation provided in the statement of compatibility with human rights remains appropriate for the offence-specific defence in subsection 304A(2), the Department of the Environment and Energy (the Department) will prepare an amendment for the explanatory statement and statement of compatibility in due course to clarify that, consistent with the equivalent offence in regulation 113A:

- the offence-specific defence in sub-section 304A(2) applies only to the person (likely to be a business) that engaged the licence holder to perform services under an agreement, not the licence holder;
- the burden of proof in sub-section 304A(2) falls on that person, not the licence holder or the Commonwealth; and
- it is considered that the person who entered into an agreement with the licence holder for the purposes of performing services, and who obtains the benefits of the defence in subsection 304A(2) is the most appropriate person to provide evidence concerning such an agreement. While the existence and content of such an agreement would also be within the knowledge of the relevant third party, it is considered that it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter, particularly given the commercial nature of these agreements and the likely reluctance of third parties to provide the Commonwealth with their commercial information.

A replacement Explanatory Statement is being prepared for my approval, which will provide both information in relation to how the incorporated standards can be accessed, and clarify the matter of the reversal of the evidential burden of proof in subsection 304A(2).

In regards to the LENS Northern Prawn Fishery Amendment, the Committee requested clarification in relation to whether an assessment in relation to the Commonwealth Northern Prawn Fishery was 'primarily relied on' in making the instrument.

All relevant information is taken into consideration prior to a decision being made to approve a fishery under Parts 13 and 13A of the EPBC Act or amend the List of Exempt Native Specimens, including:

- the application for approval of the fishery and associated assessment of the fishery's operations submitted by the jurisdiction along with public comments received on the submission;
- the Department's assessment of the submission by the jurisdiction;
- the strategic assessment under Divisions 1 or 2 of the EPBC Act;
- overarching legislation and regulatory requirements; and
- any changes to the management arrangements since completing the strategic assessment.

In addition, the Department consults with the Australian Fisheries Management Authority in relation to current or potential issues concerning impacts to the target stocks, bycatch and protected species, and to the wider marine environment.

Thank you for raising this matter with me.

Yours sincerely

MELISSA PRICE

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

REF: MS19-000017

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

Dear Senator Williams

Thank you for the Senate Regulations and Ordinances Committee's letter dated 15 February 2019 regarding the Public Service Amendment (Miscellaneous Measures) Regulations 2018 [F2018L01722]. I apologise for the delay in responding.

I advise that the amendments to the *Public Service Regulations 1999* were specifically at the request of the Merit Protection Commission and the Fair Work Commission.

The amendments in relation to Part 5 of the Regulations were of a technical nature to articulate more clearly the existing policy position of the Merit Protection Commission. The Fair Work Commission specifically requested the amendment to Regulation 2.2(2)(c), which was only of concern to the Fair Work Commission. For these reasons, it was considered that the amendments did not require broader consultation.

Attached at A is the requested amended Explanatory Statement (ES) including the reasons for the limited consultation. I have initialled each page of the ES.

If you have any queries, please contact Ms Kerren Crosthwaite, Group Manager, Integrity, Performance and Employment Policy on 02 6202 3948.

Kind regards/

Mathias Cormann
Minister for Finance and the Public Service

13 March 2019

EXPLANATORY STATEMENT

Subject— *Public Service Act 1999*

Public Service Amendment (Miscellaneous Measures) Regulations 2018

The *Public Service Act 1999* (the 'Act') provides for the establishment and management of the Australian Public Service ('APS').

Subsection 79(1) of 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 Act contains other provisions that authorise the making of regulations[1].

The purpose of the *Public Service Amendment (Miscellaneous Measures) Regulations 2018* (the 'Amendment Regulations') is to amend the *Public Service Regulations 1999* (the 'Principal Regulations') to exempt members of the Fair Work Commission ('FWC') from the Australian Public Service ('APS') Code of Conduct ('Code'), and to clarify certain operational matters in connection with the review functions of the Merit Protection Commissioner ('MPC'). These amendments support the policy intentions of the Principal Regulations.

Overview of the amendments

Statutory office holder bound by Code of Conduct

Subsection 14(1) of the Act provides that Agency Heads and statutory office holders are bound by the Code, subject to regulations made under subsection 14(2A).

Regulation 2.2 of the Principal Regulations provides that statutory office holders are bound by the Code in relation to their dealings with APS employees, in a supervisory or other capacity.

Paragraph 2.2(2)(c) of the Principal Regulations exempts several classes of office holder from the Code, including members of the Australian Defence Force, judicial appointments, and members of certain boards and tribunals.

Members of the FWC are statutory office holders presently bound by the Code. The FWC Member Code of Conduct, updated in January 2018, sets out the FWC's responsibility to provide a safe workplace and obliges Members to 'treat all [FWC] staff and other Members with respect, courtesy, and without harassment'.

As FWC members are covered by the FWC Member Code of Conduct, it is considered unnecessary that they be covered by a separate code with significant overlap.

The Amendment Regulations therefore exempt FWC members from the Code.

[1] For the purposes of the Amendment Regulations, these include subsections 14(2A), 14(3), 33(1) and (2), and 50(1)(e).

Applications for primary review

APS employees are entitled to review of certain matters relating to their employment. Subregulation 5.24(1) of the Principal Regulations provides that applications for primary review may generally be made to the **relevant** Agency Head. In certain circumstances, the relevant Agency Head may not be the employee's current Agency Head.

Subregulation 5.23(4) prescribes circumstances where an action is not reviewable or ceases to be reviewable. One of these prescribed circumstances is where an employee fails to apply to **the employee's Agency Head** for primary review within l20 days. This language is inconsistent with subregulation 5.24(1), which provides that applications for primary review may be made to an Agency Head other than the employee's Agency Head (provided the other Agency Head is the **relevant** Agency Head).

The purpose of the amendment is to ensure the language used by subregulation 5.23(4) is consistent with subregulation 5.24(1).

Review of determination of breach of Code of Conduct by former APS employee

Division 7.3 of the Principal Regulations provides that one of the MPC's functions is to review determinations of breach of the Code by **former** APS employees. If the MPC conducts a review of this type, regulation 7.2D requires the MPC to make a recommendation to the relevant Agency Head and to provide reasons for the recommendation.

The purpose of new regulation 7.2DA is to set out steps that must be taken by an Agency Head following receipt of a recommendation by the MPC under regulation 7.2D. The inclusion of new regulation 7.2DA is intended to remove any doubts about an Agency Head's capacity to act on a recommendation by the MPC. The amendment is consistent with existing regulation 5.32 in respect of reviews requested by current (i.e. not former) APS employees.

Consultation

Both the FWC and the MPC specifically requested the amendments relevant to them. In relation to the FWC amendment, this only affects FWC members, and accordingly no further consultation was required on the amendments to paragraph 2.2.(2)(c) of the Principal Regulations.

In relation to the MPC amendment to Subregulation 5.23(4) and inserting new regulation 7.2DA, these are technical amendments to give effect to the original policy intention. Similarly, no consultation was required.

Regulation Impact Statement

No regulation impact statement is required for the measures contained in the Amendment Regulations.

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights has been completed for the Amendment Regulations, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement's assessment is that the Amendment Regulations are 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 Amendment Regulations

The Amendment Regulations amend the Principal Regulations to exempt members of the FWC from the Code, and to clarify certain operational matters in connection with the MPC's review functions.

Human rights implications

The Amendment Regulations engage the right to work and rights in work.

The right to work and rights in work are contained in Articles 6(1), 7, and 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights.

Exempting FWC members from the Code does not curtail APS employees' rights in work. FWC members' conduct, including in relation to APS employees, is regulated by the FWC Members' Code of Conduct and obligations under the *Fair Work Act 2009*. The Members' Code of Conduct includes the FWC's responsibility to provide a safe workplace, and obliges members to 'treat all [FWC] staff and other Members with respect, courtesy, and without harassment'. As FWC members are covered by the FWC Members' Code of Conduct, exempting FWC members from the Code will have little practical impact.

Section 33 of the Act provides that an APS employee is entitled to review of any APS action that relates to his or her APS employment. The right to review is supported by one of the Employment Principles in section 10A of the Act, which provides that the APS is a career-based public service that makes fair employment decisions with a fair system of review.

The Amendment Regulations clarify certain operational matters in connection with the MPC's review functions. This is intended to improve the operational efficiency and effectiveness of the review of action framework and provide greater clarity and certainty to employees.

The Amendment Regulations promote APS employees' rights in work.

Conclusion

The Amendment Regulations are compatible with human rights.

Detail of the Amendment Regulations are included in the Attachment.

The Amendment Regulations commence on the day after the instrument is registered.

Authority: Subsection 79(1) of the *Public Service Act 1999*

Details of the *Public Service Amendment (Miscellaneous Measures) Regulations 2018*

Section 1—Name of Regulations

This section provides that the title of the Amendment Regulations is the *Public Service Amendment (Miscellaneous Measures) Regulations 2018.*

Section 2—Commencement

This section provides for the Amendment Regulations to commence on the day after they are registered on the Federal Register of Legislation.

Section 3—Authority

This section provides that the Amendment Regulations are made under the *Public Service Act 1999.*

Section 4—Schedule(s)

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

Schedule 1—Amendments.

Item [1]—Insertion of subparagraph 2.2(2)(c)(viii)

Paragraph 2.2(2)(c)(viii) provides that an appointment as a member of the FWC is not a prescribed appointment for the purposes of the definition of a statutory office holder in subsection 14(3) of the Act. This has the effect of exempting FWC members from the Code.

Item [2]—Substitution of table item 1, column headed 'Action'

This item omits the words 'an affected employee's Agency Head', and substitutes 'the relevant Agency Head'.

Item [3]—Insertion of regulation 7.2DA

This item inserts new regulation 7.2DA, which provides for actions to be taken by an Agency Head on receipt of a recommendation under regulation 7.2D in relation to a former APS employee. The new provision is similar to regulation 5.32 of the Principal Regulations in relation to a current employee.

Subregulation 7.2DA(1) provides that if an Agency Head receives a recommendation under regulation 7.2D of the Principal Regulations, the Agency Head must as soon as possible consider the recommendation and make a decision about the recommendation.

Subregulation 7.2DA(2) provides that the Agency Head may confirm the relevant determination, vary the determination, or set the determination aside and make a new determination.

Subregulation 7.2DA(3) provides that if an Agency Head acts in accordance with a recommendation made under regulation 7.2D of the Principal Regulations, the Agency Head is not required to seek the view of the affected former employee before acting on the recommendation.

A note to subregulation 7.2DA(3) explains that the views of the APS employee have already been sought by the MPC during the review in accordance with the principles of procedural fairness.

Subregulation 7.2DA(4) provides that new subregulation 7.2DA(2) does not limit the relevant Agency Head's employer powers in relation to the determination or the affected former employee.

An example given is that an Agency Head may take other appropriate action to rectify effects of the determination, or to restore the affected former employee to the position they would have been in had the determination not been made.

Subregulation 7.2DA(5) provides that if, after receiving a recommendation from the MPC under 7.2D of the Principal Regulations, the agency head was considering making a finding of a breach of the Code that was different from:

- the original finding made by the agency head, or
- a finding recommended by the MPC,

then the Agency Head must follow their procedures for determining suspected breaches of the Code before making that finding.

Subregulation 7.2DA(6) provides that the Agency Head must inform the affected former employee and the MPC in writing of the decision they have made about the MPC's recommendation, and the reasons for that decision.

Item [4]—Insertion of Division 10.2

This item provides for transitional arrangements in relation to amendments made by the Amendment Regulations.

Regulation 10.12 provides that paragraph 2.2(2)(c) of the Principal Regulations as amended by the Amendment Regulations applies in relation to a person who is a member of the FWC on or after the day Schedule 1 to the Amendment Regulations commences ('Commencement Day').

Regulation 10.13 provides that new regulation 7.2DA applies in relation to a recommendation made under regulation 7.2D of the Principal Regulations received by an Agency Head on or after Commencement Day, and which results from a review of a determination under Division 7.3 of the Principal Regulations that began before, on, or after Commencement Day.

Item [5]—Dictionary (definition of *member of the Fair Work Commission*)

This item inserts a new definition of 'member of the Fair Work Commission' in the Dictionary to the Principal Regulations. The term is defined to have the same meaning as 'FWC member' in section 12 of the *Fair Work Act 2009*.

SENATOR THE HON ZED SESELJA

Assistant Minister for Treasury and Finance

REF: MC19-001111

Senator John Williams
Chair
Senate Standing Committee on Regulations and Ordinances
Suite S1.11
Parliament House
CANBERRA ACT 2600

Dear Senator

Senate Standing Committee on Regulations and Ordinances - Lands Acquisition Amendment Regulations 2018

Thank you for your letter of 15 February 2019 concerning scrutiny by the Senate Standing Committee on Regulations and Ordinances of the Lands Acquisition Amendment Regulations 2018 (the Regulations).

I note that in addition to the consultation undertaken with the Office of Best Practice Regulation, the Department of Finance consulted the Australian Government Solicitor in confirming the applicable Reserve Bank of Australia rate to apply in the Regulations.

The Department of Finance is liaising with the Office of Parliamentary Counsel on updating the Explanatory Statement, as per the request of the Committee.

Yours sincerely

Senator the Hon Zed Seselja
Assistant Minister for Treasury and Finance

Encl. Replacement Explanatory Statement.

EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister for Treasury and Finance

Lands Acquisition Act 1989

Lands Acquisition Amendment Regulations 2018

The Lands Acquisition Act 1989 (the Act) relates to the acquisition of land by the Commonwealth and certain authorities and dealings with land so acquired, and for other purposes.

Section 140 of the Act provides that the Governor General may make regulations, not inconsistent with the Act, 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 Lands Acquisition Regulations 2017 (the Principal Regulations) prescribe the interest rate for interest payable on compensation payable for land compulsorily acquired under the Act.

The purpose of the proposed Lands Acquisition Amendment Regulations 2018 (the Amendment Regulations) is to amend the Principal Regulations to clarify the correct rate of interest for the purposes of calculating the interest payable on the compensation determined under the Act.

Sections 91(2) and 115(2) of the Act prescribe that interest holders in land that has been compulsorily acquired are entitled to payment by the Commonwealth of interest on the compensation at the rate specified in, or ascertained in accordance with, the Principal Regulations, where payment of compensation is delayed.

The amendments in the Amendment Regulations clarify the wording of the Principal Regulations to explicitly state that the relevant interest rate is the Commonwealth government 5-year bond, as listed in the table published by the Reserve Bank of Australia.

Details of the Amendment Regulations are set out in Attachment A.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The Amendment Regulations would be a legislative instrument for the purposes of the Legislation Act 2003.

The Amendment Regulations would commence on the day after registration.

The Minute recommends that the Amendment Regulations be made in the proposed form.

Authority: Section 91(2) and 115(2) of the *Lands Acquisition Act 1989*

ATTACHMENT A

Details of the *Lands Acquisition Amendment Regulation 2018*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Lands Acquisition Amendment Regulations 2018.*

Section 2 - Commencement

This section provides for the Regulations to commence on 1 November 2018.

Section 3 - Authority

This section would provide that the Regulations are made under the *Lands Acquisition Act 1989.*

Section 4 - Schedule(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

Item [1] – section 8

This item amends section 8 of the Principal Regulations to insert a reference to 'Commonwealth government 5-year bonds' to identify the relevant bond rate from those in the table *Capital Market Yields-Government Bonds-Monthly-F2.1.*

Item [2] - section 8 (note)

This item amends the note to update the year reference to reflect the correct version of the table.

Item [3] – section 9

This item amends section 9 of the Principal Regulations to insert a reference to 'Commonwealth government 5-year bonds' to identify the relevant bond rate from those in the table *Capital Market Yields-Government Bonds-Monthly-F2.1.*

Item [4] - section 9 (note)

This item amends the note to update the year reference to reflect the correct version of the table.

Consultation

The Office of Best Practice Regulation (OBPR) was also consulted (OBPR reference:24312) on the Amendment Regulations. The OBPR considered that any amendments to clarify the interest rate would be minor in nature and that no Regulatory Impact Statement (RIS) was required. The Australian Government Solicitor was also consulted in confirming the applicable Reserve Bank of Australia rate to apply in the Regulations.

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

The Amendment Regulations are compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Lands Acquisition Amendment 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 purpose of the *Lands Acquisition Amendment Regulations 2018* is to amend the *Lands Acquisition Regulations 2017* to clarify the correct rate of interest for the purposes of calculating the interest rate referable to the compensation payable under the *Lands Acquisition Act 1989*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Honourable Zed Seselja
Assistant Minister for Treasury and Finance

The Hon Greg Hunt MP
Minister for Health

Ref No: MC19-002423

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

26 MAR 2019

Dear Chair John

I refer to correspondence of 15 February 2019 from the Standing Committee on Regulations and Ordinances (the Committee) requesting additional information as referred to in the Committee's Delegated Legislation Monitor 1 of 2019 about the *National Health (Highly specialised drugs program) Special Arrangement 2010 (PB 116 of 2010)* (the Instrument). I regret the delay in responding.

The Committee has requested advice specifically about whether the Asthma Control Questionnaire (ACQ) which is currently included as part of the Pharmaceutical Benefit Scheme restriction criteria for the drugs Benralizumab (Fasenra®), Mepolizumab (Nucala®) and Omalizumab (Xolair®) can be accessed free-of-charge

I can advise that the ACQ is available to prescribers at no cost through the suppliers of the medicines in question. Prescribers can contact the suppliers of these asthma medications directly to obtain free copies of the ACQ/calculation sheet. Contact details for the suppliers are contained within each of those medicine's restriction text or accompanying notes that can be found online at www.pbs.gov.au.

Thank you for writing on this matter.

Yours sincerely

Greg Hunt