The Hon Darren Chester MP
Minister for Infrastructure and Transport
Deputy Leader of the House
Member for Gippsland

29 AUG 2017

PDR ID: MS17-001839

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

Dear Senator Williams

Thank you for your letter of 17 August 2017 regarding Inspector of Transport Security Regulations 2017 [F2017L00510].

I have sought advice from the Department of Infrastructure and Regional Development in relation to the Committee's concerns regarding incorporation of and access to Annex 13 of *The Convention of International Civil Aviation*.

The Department has advised that the Replacement Explanatory Statement to address these issues was registered on the Federal Register of Legislation on 23 August 2017.

Thank you again for taking the time to write and inform me of your concerns on this matter.

Yours sincerely

DARREN CHESTER
Encl

The Hon Dr David Gillespie MP

Assistant Minister for Health
Member for Lyne

Ref No: MC17-014007

18 AUG 2017

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

Dear Chair

Thank you for your correspondence of 10 August 2017 on behalf of the Senate Regulations and Ordinances Committee (the Committee), including a copy of the Committee's *Delegated legislation monitor 8 of 2017* (the monitor), regarding the Explanatory Statements for the following legislative instruments:

- *Australian Radiation Protection and Nuclear Safety Amendment (2017 Measures No. 1) Regulations 2017* [F2017L00781] (ARPANSA Regulations);
- *National Health (Weighted average disclosed price – October 2017 reduction day) Determination 2017* (PB 44 of 2017) [F2017L00676] (WADP Determination); and
- *Private Health Insurance (Benefit Requirements) Amendment Rules 2017 (No. 4)* [F2017L00603] (Benefit Requirements Rules).

ARPANSA Regulations
The Committee noted in the monitor that the ARPANSA Regulations incorporate documents that are not readily and freely available to the public and that the Explanatory Statement does not provide further information about where those documents can be accessed for free. The Australian/New Zealand Standards that have been incorporated by reference into the *Australian Radiation Protection and Nuclear Safety Regulations 1999* are copyrighted to Standards Australia who have been designated by the Australian Government as the nation's peak non-government standards development organisation. Standards Australia have exclusively licenced SAI Global to publish standards developed by it. Other than accessing a copy, where available, at a public library, there is no alternative method to legally obtain Australian Standards free-of-charge.

The Regulations only apply to the Australian Radiation Protection and Nuclear Safety Agency's licence holders and potential licence holders, which are other Commonwealth departments or agencies. Therefore, in this context, these standards would only affect a small number of technical and scientific personnel from Commonwealth entities and not the general public.

WADP Determination
The Committee's preferred approach was for the description used in the Explanatory Statement of the consultation undertaken by the Department of Health to explicitly state that consultation for the WADP Determination was considered unnecessary (or inappropriate) for stated reasons. The Department accepts the Committee's recommendations, and will update the Explanatory Statement for the WADP Determination accordingly. The Department will ensure all future applicable explanatory statements follow the Committee's advice.

Benefit Requirements Rules
The Committee raised concerns as to whether private health insurance policyholders were affected by the omission of a Medicare Benefits Schedule item in the period 1 May 2017 to 27 May 2017.

It is technically possible that private health insurance policyholders who, in the period 1 to 26 May 2017, received treatment covered by Medicare Benefits Schedule item 42702 may not have received private health insurance benefits covering the costs of hospital accommodation charges. However, insurers are able to make benefit payments in these circumstances, and the Department has not received any correspondence, or other advice, that policyholders experienced out-of-pocket costs due to the amendment not being in effect on 1 May 2017.

Thank you for raising these matters.

Yours sincerely

The Hon Dr David Gillespie MP

cc: The Hon Greg Hunt MP, Minister for Health and Minister for Sport
regords.sen@aph.gov.au

The Hon Dr David Gillespie MP

Assistant Minister for Health
Member for Lyne

Ref No: MC17-014666

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

Dear Senator

Thank you for your correspondence of 17 August 2017 on behalf of the Senate Regulations and Ordinances Committee (the committee), regarding the Explanatory Statements for the legislative instrument *Australian Radiation Protection and Nuclear Safety Amendment (2017 measures No. 1) Regulations 2017* [F2017L00808].

The committee noted in the monitor that the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) Regulations incorporate documents that are not readily and freely available to the public and that the Explanatory Statement does not provide further information about where those documents can be assessed for free. The Australian/New Zealand Standards that have been incorporated by reference into the *Australian Radiation Protection and Nuclear Safety Regulations 1999* are copyrighted to Standards Australia who has been designated by the Australian Government as the nation's peak non-government standards development organisation. Standards Australia have exclusively licenced SAI Global to publish standards developed by it. Other than accessing a copy, where available, at a public library, there is no alternative method to legally obtain Australian Standards free-of-charge.

The Regulations only apply to the ARPANSA's licence holders and potential licence holders, which are other Commonwealth departments or agencies. Therefore, in this context, these standards would only affect a small number of technical and scientific personnel from Commonwealth entities and not the general public.

Yours sincerely

The Hon Dr David Gillespie MP

TREASURER

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

Dear Chair

Thank you for your letter of 10 August 2017 on behalf of the Senate Standing Committee on Regulations and Ordinances (the Committee) requesting advice in relation to the *Banking (prudential standard) determination No. 2 of 2017 – Prudential Standard APS 001 – Definitions* (the Instrument).

I note the Committee's concern that while the Instrument includes definitions taken from the *Framework for Assurance Engagement* (as issued by the Auditing and Assurance Standards Board from time to time), the Explanatory Statement (ES) to the Instrument does not provide a description of the incorporated document or indicate where it could be freely accessed.

I have raised the Committee's concern with the Australian Prudential Regulation Authority (APRA), which is responsible for the Instrument. APRA acknowledges that the ES to the Instrument does not comply with the *Legislation Act 2003*, which requires the ES for a legislative instrument that incorporates a document to contain a description of that document and indicate how it could be accessed.

APRA notes the Committee has stated that where an incorporated document is available for free online, the Committee considers that a best practice approach is for the ES to provide details of the website where the document can be accessed.

Adopting the Committee's approach, APRA has agreed to lodge a replacement ES for inclusion on the Register of Legislative Instruments forthwith. That document will expand the description of the *Framework for Assurance Engagements* and include details of the website where that document can be accessed.

Yours sincerely

The Hon Scott Morrison MP
30 / 8 / 2017

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

Senator the Hon Michaelia Cash
Minister for Employment
Minister for Women
Minister Assisting the Prime Minister for the Public Service

Reference: MC17-048152

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

Dear Chair

Response to the Senate Regulations and Ordinances Committee

This letter is in response to the letter of 10 August 2017 from the Senate Regulations and Ordinances Committee's Secretary, requesting information about scrutiny issues raised in the Committee's *Delegated legislation monitor* 8 of 2017. The Committee has sought my advice on matters relating to three instruments.

Occupational Health and Safety (Maritime Industry) (Prescribed Ship or Unit — Intra-State Trade) Declaration 2017 [F2017L00673; Seafarers Rehabilitation and Compensation (Prescribed Ship — Intra-State Trade) Declaration 2017 [F2017L00674] (the Declarations)

The Committee has sought my advice on the relationship of the Declarations to legislation currently before the Parliament, namely the Seafarers and Other Legislation Amendment Bill 2016 (Bill). As set out in the Explanatory Statements, the Declarations replaced a set of interim declarations made following the Federal Court decision in *Samson Maritime Pty Ltd v Aucote* [2014] FCAFC 182 (the *Aucote* decision). This decision substantially broadened coverage of the Seacare scheme from what it was historically understood to be.

The Declarations continue a necessary interim measure, pending a legislative fix proposed by the Bill. All stakeholders supported the continuation of the declarations, intended to provide some stability to the Seacare scheme pending, Parliament's consideration of a legislative fix.

I thank the Committee for this opportunity to provide further context to the making of these Declarations.

Building and Construction Industry (Improving Productivity) (Federal Safety Officers) General Directions 2017 [F2017L00655]

The Committee has sought my advice regarding the incorporation of the Federal Safety Officer Code of Conduct, dated 1 January 2015, issued by the Federal Safety Commissioner (FSO Code of Conduct), into the *Building and Construction Industry (Improving Productivity) (Federal Safety Officers) General Directions 2017* (the General Directions). The General Directions are made by the Federal Safety Commissioner under subsection 68(5) of the *Building and Construction Industry (Improving Productivity) Act 2016* (the BCI Act). The General Directions direct Federal Safety Officers on how to conduct themselves when exercising powers and performing functions under the BCI Act.

In accordance with section 14 of the *Legislation Act 2003,* the FSO Code of Conduct is incorporated into the General Directions as in force or existing at the time when the General Directions commenced. However, the Committee notes that neither the text of the General Directions nor the explanatory statement expressly states that this is the manner in which the FSO Code of Conduct is incorporated into the General Directions.

The Committee also notes that neither the General Directions nor the explanatory statement provides a description of the FSO Code of Conduct or indicates where it can be freely accessed. Section 4 of the General Directions defines 'FSO Code of Conduct' to mean 'the Federal Safety Officer Code of Conduct, dated 1 January 2015, issued by the Federal Safety Commissioner'. The FSO Code of Conduct is made available to Federal Safety Officers during an induction at the commencement of their engagement and is also available on the Federal Safety Commissioner's website (www.fsc.gov.au/sites/FSC/Resources/AZ/Documents/Federal_Safety_Officer_Code_of_Conduct.pdf).

To address the Committee's expectations regarding the incorporation of material in legislative instruments, the Federal Safety Commissioner will issue a replacement explanatory statement to the General Directions clarifying the manner in which the FSO Code of Conduct is incorporated into the General Directions and detailing where the document can be freely accessed.

Yours sincerely

Senator the Hon Michaelia Cash
25/6 / 2017

The Hon Darren Chester MP
Minister for Infrastructure and Transport
Deputy Leader of the House
Member for Gippsland

05 SEP 2017

PDR ID: MC17-003970

Senator John Williams
Chair
Senate Standing Committee on
Regulations and Ordinances
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator John

Thank you for your letter of 10 August 2017 regarding the Standing Committee on Regulation and Ordinances' request for further information regarding Civil Aviation Order 95.10 Instrument 2017 [F2017L00480] (the Instrument).

Noting the Committee's concerns regarding the incorporation of the Australian Airspace Policy Statement (AAPS), I sought further advice on the matter.

After further consideration, the Civil Aviation Safety Authority (CASA) advises that the Instrument should be remade to clarify the role of the 'classes' of airspace by reference to the "Determination of airspace and controlled aerodromes etc" made under Regulation 5 of the Airspace Regulations 2007, rather than by reference to the AAPS. The Determination is a legislative instrument and would be incorporated as in force from time to time, consistent with Section 14 of the *Legislation Act 2003*.

On this basis, I am advised that CASA proposes to remake the Instrument, with a revised Explanatory Statement that adequately explains the manner of incorporation of the Determination. However, I note that the Instrument may not be remade until the current notice of motion to disallow has been resolved.

I look forward to your advice in relation to withdrawal of the disallowance notice.

Yours sincerely

DARREN CHESTER

TREASURER

Ref: MC17-006888

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

Dear Chair

I refer to the Committee Secretary's letter of 17 August 2017 seeking a further response to a concern with the Explanatory Statement (ES) to the Competition and Consumer (Industry Code–Sugar) Regulations 2017 (the Regulations).

I would like to inform the Committee that I have agreed to update the ES to explicitly state that no consultation was undertaken for the Regulations. I note that the explanation as to why no consultation occurred at the time is already set out in the ES. Please see attached for an excerpt of the updated ES, which includes the additional text.

I trust this change will ensure that the ES is technically compliant with the requirements of the *Legislation Act 2003*.

The updated ES will be lodged on the Federal Register of Legislation and tabled in accordance with standard procedures.

Thank you again for bringing this matter to my attention.

Yours sincerely

The Hon Scott Morrison MP
20 / 8 / 2017

enc.

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

EXPLANATORY STATEMENT

Issued by authority of the Treasurer

Competition and Consumer Act 2010

Competition and Consumer (Industry Code—Sugar) Regulations 2017

The Prime Minister has granted an exemption from the need to complete a Regulation Impact Statement due to special circumstances. Urgent and unforeseen events have occurred in the export sugar industry. The stalemate in commercial negotiations between the parties has created significant uncertainty for regional families and the export sugar industry. The Government is taking immediate action in order to provide certainty regarding regulatory arrangements in the industry.

Due to these circumstances and the urgent need for Government intervention, no consultation was undertaken on the Regulations.

The Hon Michael McCormack MP
Minister for Small Business
Federal Member for Riverina

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

John

Dear Senator

I refer to the Committee Secretariat's letter of 10 August 2017 concerning the following instruments for which I have portfolio responsibility:

- *Consumer Goods (Babies' Dummies and Dummy Chains) Safety Standards 2017* [F2017L00516]
- *Consumer Goods (Children's Nightwear and Limited Daywear and Paper Patterns for Children's Nightwear) Safety Standard 2017* [F2017L00452]
- *Extension of the Ban Period for the Interim Ban on Certain Decorative Alcohol Fuelled Devices* [F2017L00518]

The Committee has asked for information about scrutiny issues identified in the Committee's *Delegated legislation monitor 8 of 2017* concerning the above instruments.

I appreciate the Committee's concern about the incorrect classification of instruments as subject to disallowance and the Committee's interest in understanding the process which led to the error. I have conferred with the Australian Competition and Consumer Commission (ACCC) which is responsible for drafting the explanatory statements for the above instruments. The ACCC has advised me that prior to the Committee bringing this matter to my attention on 15 June 2017 the ACCC had not considered the potential application of section 44 of the *Legislation Act 2003* to instruments of this kind.

I have written to the First Parliamentary Counsel, Mr Peter Quiggin, to request the explanatory statements to the above instruments be rectified on the Federal Register of Legislation.

I have asked the ACCC to implement processes which provide for the correct classification of future instruments made under the ACL. The ACCC has advised me that these processes are in place and instruments prepared following the receipt of the Committee's initial advice on 15 June 2017 are correct.

Parliament House Canberra ACT 2600 Australia
Telephone: +61 2 6277 7610
minister.mccormack@treasury.gov.au

The Committee notes the *Australian Consumer Law (Free Range Egg Labelling) Information Standard 2017* [F2017L00474] which was registered on 26 April 2017. As the Committee notes, the instrument was correctly classified as being exempt from disallowance. The instrument was prepared by my Department.

The Committee also notes the *Further Extension of the Ban Period for the Interim Ban on Certain Decorative Alcohol Fuelled Devices* [F2017L00664] which is incorrectly classified as being subject to disallowance. This instrument was made on 1 June 2017 and registered on 14 June 2017, prior to the Committee bringing this matter to my attention on 15 June 2017. The incorrect reference in the explanatory statement to the instrument will be rectified shortly.

Thank you for taking the time to bring this matter to my attention.

Yours sincerely

MICHAEL McCORMACK

21 / 8 /2017

Senator the Hon Marise Payne
Minister for Defence

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7800

MC17-002301

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

Dear Senator John

Thank you for your letter of 10 August 2017 on behalf of the Senate Standing Committee on Regulations and Ordinance regarding Defence Determination 2017/18, Overseas conditions of service (Budget measure 2017-18 - Overseas allowances) amendment.

I note that the Committee has requested further advice about the manner of incorporation of Acts and disallowable legislative instruments; and the legal certainty around the cost of living adjustment calculation

Manner of Incorporation
Section 14(1)(b) of the *Legislation Act 2003* provides that if enabling legislation authorises a provision to be made in relation to any matter by a legislative instrument, the instrument may, unless the contrary intention appears, make provision in relation to that matter (subject to s 14(2)), by incorporating any matter contained in any other writing that exists at the time the instrument commences.

Defence Determination 2017/18 is an amending determination to Defence Determination 2016/19, Conditions of service [F2016L00643]. Section 1.2.5A of Defence Determination 2016/19 establishes a rule whereby a reference to determination made by the Defence Force Remuneration Tribunal under section 58H of the Defence Act 1903 is a reference to that Determination, as in force from time to time, unless specified otherwise. Upon incorporation into Defence Determination 2016/19 the rule at section 1.2.5A will apply and DFRT Determination 2 of 2017, *Salaries,* will be incorporated as in force from time to time.

In future, Defence will ensure that when incorporation is used in amending determinations, that the manner of incorporation is specified in the Explanatory Statement. This practice will enable users to better understand the operation of the determination without the need to rely on specialist legal knowledge or advice, or consult extrinsic material.

Legal certainty

The 'spendable salary factor' referred to in Defence Determination 2017/18 is a reference to information owned by a data service provider. In preparing Defence Determination 2017/18, Defence worked with the data service provider to enable the publication of as much information as possible to support the calculations. However, as the information is the data service provider's intellectual property, Defence sought their consent to publish the formula. The data service provider denied this request on commercial grounds.

On this basis, Defence is developing a tool for members that will be available on the Defence Restricted/Protected Network that will provide members with a personalised estimate of the value of the cost of living adjustment applicable to their personal circumstances prior to, or during, their overseas posting. This estimator applies the spendable salary factor to information entered by the member.

If you would like to discuss this matter in further detail, you may wish to contact Mr Derek Cox, Director Military Conditions and Housing Policy at the Department of Defence

Thank you for bringing the committee's concerns to our attention. I trust this information is of assistance.

Yours sincerely

MARISE PAYNE

29 AUG 2017

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

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

Do Not Call Register (Access Fees) Determination 2017

Dear Chair John

Thank you for the committee's letter of 17 August 2017 concerning the Do Not Call Register (Access Fees) Determination 2017 [F2017L00841] (the Determination).

You have specifically requested clarification of the the basis on which the subscription fees for washing numbers against the Do Not Call Register (DNCR) have been calculated.

The fees have been calculated on a cost recovery basis. The details of the cost-recovery approach the Australian Communications and Media Authority (ACMA) has adopted are set out in the Cost Recovery Implementation Statement (CRIS) for the fees, which is available at **http://www.acma.gov.au/~/media/Finance%20Budgets%20and%20Revenue%20Assurance/Report/Word%20Document/DNCR_CRIS_2017%20docx.docx.** I have attached a copy for your convenience.

In summary, the methodology used by the ACMA estimates the amount that needs to be recovered to fund the DNCR and then establishes the fees needed to recover the costs from classes of subscribers based on their use of the system.

The CRIS confirms the fees are consistent with the Australian Government's Cost Recovery Principles.

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

Yours sincerely,

MITCH FIFIELD
29/8/17
Encl.

Australian Government | acma

Australian Communications and Media Authority

Cost Recovery Implementation Statement

Do Not Call Register— subscription fees effective 1 July 2017

MAY 2017

communicating | facilitating | regulating

Canberra
Red Building
Benjamin Offices
Chan Street
Belconnen ACT

PO Box 78
Belconnen ACT 2616

T +61 2 6219 5555
F +61 2 6219 5353

Melbourne
Level 32
Melbourne Central Tower
360 Elizabeth Street
Melbourne VIC

PO Box 13112
Law Courts
Melbourne VIC 8010

T +61 3 9963 6800
F +61 3 9963 6899

Sydney
Level 5
The Bay Centre
65 Pirrama Road
Pyrmont NSW

PO Box Q500
Queen Victoria Building
NSW 1230

T +61 2 9334 7700 or 1800 226 667
F +61 2 9334 7799

Contents

1. Introduction

1.1 Purpose of the Cost Recovery Implementation Statement

This Cost Recovery Implementation Statement (CRIS) provides information on how the Australian Communications and Media Authority (the ACMA) implements cost recovery for the operation of the Do Not Call Register (the register). All figures used are GST exclusive.

The CRIS provides the basis for engagement with stakeholders on various charging aspects of the register and reports how the register is performing on an annual basis in line with the requirements of the Australian Government Charging Framework.

1.2 Background and description of activity

The ACMA has regulatory functions for telecommunications, spectrum management, broadcasting, content and datacasting, along with other additional functions. Under the *Do Not Call Register Act 2006* (the Act), the ACMA is responsible for establishing and overseeing the operation of the register, which includes determining the subscription fees for accessing the register.

In order to opt-out of receiving certain unsolicited telemarketing calls and marketing faxes, Australian numbers can be placed on the register if they are:

- used primarily for private or domestic purposes
- used or maintained exclusively for transmitting and/or receiving faxes
- used or maintained exclusively for use by a government body
- an emergency service number.

On 31 May 2007, it became illegal for any non-exempt telemarketer to make an unsolicited telemarketing call to any number listed on the register. On 30 May 2010, the Act was amended to allow fax, emergency service and government numbers to be listed on the register. To avoid calling numbers listed on the register, telemarketers and fax marketers are able to check, or 'wash'[1], their calling lists against the numbers listed on the register.

The ACMA has outsourced the operation of the register to an external service provider. The operations were initially outsourced to Service Stream Solutions Pty Ltd (from 1 February 2007 to 30 September 2015) with a contract value of $24.8 million. More recently, a contract with Salmat Digital Pty Ltd commenced on 17 September 2014, with register operations commencing on 22 September 2015, for a contract value of $15.9 million over five years of register operations with options to extend up to a total of eight years.

At the establishment of the Act, the government allowed partial cost recovery of the direct costs of operating the register. From 1 July 2008, the government required industry to contribute to the full direct cost of operating the register. To ensure that the

[1] 'Washing' is a term used to describe the process by which access seekers gain access to the register to find out whether particular numbers are registered (and hence whether they can be contacted).

activity is operating on a full cost-recovery basis, the ACMA regularly compares subscription fee revenue with the direct costs of operating the register.

The direct costs of operating the register are recovered from organisations that access the register for the purposes of engaging in telemarketing and fax marketing activities.

1.3 Stakeholders

The key stakeholders are organisations that engage in telemarketing and fax marketing activities. These range from large telemarketing organisations that engage solely in telemarketing on behalf of other organisations; to telecommunications carriers, financial and banking institutions, travel agents and small businesses that seek to increase business by telemarketing and fax marketing.

2. Policy and statutory authority to recover costs

2.1 Government policy approval to cost recover

Since 2006, there have been a number of government policy decisions on the activities of the register that are subject to cost recovery arrangements.

Explanatory Memorandum for the Do Not Call Register Bill 2006
The Explanatory Memorandum for the Do Not Call Register Bill 2006, circulated by authority of the (then) Minister for Communications, Information Technology and the Arts, recommended the establishment of an 'opt-out' register and that ongoing funding for the register functions be partially cost-recovered from the telemarketing industry.

2006–07 Budget paper No. 2
In the 2006–07 Budget, the government provided $33.1 million over four years (and ongoing for forward years) to establish and maintain a Do Not Call Register containing numbers telemarketers must not contact, with certain exceptions. The register operations were established through a competitive tender process to appoint a service provider. The ACMA was responsible for overseeing the operations and enforcing the register legislation.

It was anticipated that approximately $15.9 million of this allocation would be recovered over four years (and ongoing over forward years) from the telemarketing industry through the payment of fees to access the register.

2008–09 Budget paper No. 2
In the 2008–09 Budget, the government agreed that the telemarketing industry would be required to fund the full operational costs of the register by increasing annual subscription fees from 1 July 2008. Previously, the telemarketing industry was only required to fund part of the direct operating costs of the register. This would provide savings of $4.2 million over four years.

2009–10 Budget paper No.2
In the 2009–10 Budget, the government provided $4.7 million over four years (and ongoing for forward years) to extend the register and allow the registration of all Australian telephone (excluding business numbers) and fax numbers on the register. Of this amount, $3.5 million over four years (and ongoing over forward years) would be recovered from the telemarketing and fax marketing industries.

2.2 Statutory authority to impose cost recovery charges

The Do Not Call Register (Access Fees) Amendment Determination 2017 (No. 1) is made under subsection 21(1) of the Act. It sets out that the ACMA may determine fees payable by access-seekers to access the register and how those fees are to be paid. The fees payable are set using the regulatory charging principles of the Australian Government Cost Recovery Guidelines.

3. Cost recovery model

3.1 Outputs and business processes of the activity

The register provides a service for those making unsolicited telemarketing calls or sending unsolicited marketing faxes to check or 'wash' their number lists against the register. The washed list is returned with registered numbers identified.

The register is a mix of services, processes and technology. The register business processes include:

- a secure database of registered numbers
- a call centre with IT support
- a customer management system
- a dedicated website
- a financial system for account management
- four washing channels.

3.2 Methodology

In 2009, the Australian National Audit Office assessed whether the fees and charges were appropriately set and collected to recover the costs of the register in accordance with government policy. The audit confirmed that the methodology the ACMA used was appropriate.

In reviewing the modelling, the ACMA has taken into account the current cost recovery policy of promoting consistent, transparent and accountable charging for government activities and the proper use of public resources. There has been no change in the methodology used as the model meets the Australian Government Cost Recovery Guidelines and the Australian Government Charging Framework.

3.3 Costs of the activity

The ACMA maintains separate financial records for the register in order to identify the direct costs associated with its operation. The calculation of the direct costs to be recovered is carried out through a separate costing model specifically set up for this purpose.

In calculating the total estimated direct cost recoverable figure, the following have been excluded:

- procurement of a new register operator and transition from the former operator (totalling $1.0 million)
- establishment costs (totalling $3.6 million) for the new register operator to build its register systems
- the ACMA's staff costs for procurement and transition to a new register operator and the establishment of a new register
- the ACMA's regulatory functions in monitoring and enforcing compliance with the Act, for example, the costs involved in investigating complaints or taking enforcement action
- the consumer share of the register's education program costs.

The cost for these activities is met through central budget funding.

Table 1 summarises the actual and estimated direct costs associated with operating the register between 2014–15 and 2017–18.

Table 1: Direct operating costs of the register

Direct costs	Actual 2014–15 ($m)	Actual 2015–16 ($m)	Estimate 2016–17* ($m)	Estimate 2017–18 ($m)
Contractors	1.94	1.75	1.66	1.69
Staff	0.56	0.55	0.52	0.54
Consultants	0.01	0.01	0.02	0.01
Other	0.03	0.03	0.03	0.03
Total	**2.54**	**2.34**	**2.23**	**2.27**

**Estimates for 2016–17 are based on Dec 2016 year-to-date actuals.*

Totals may not add up due to rounding.

Calculation of costs

The estimated contractor costs for 2016–17 are made up of contract fees of approximately $1.66 million for service provided during the contract by Salmat Digital Pty Ltd. The AusTender process was used to competitively award this contract (ATM ID 13ACMA196 on 9 April 2013).

Time is used as the primary means for allocating staff costs to activities performed by ACMA staff. The relevant hourly rate for the calculation of staff costs is published in the Telecommunications (Charges) Determination 2017. The hourly rate from 1 July 2012 to 31 March 2017 was $197. The hourly rate from 1 April 2017 is $202.

For 2016–17 and 2017–18, the cost recoverable average staffing level (ASL) is estimated as 1.84 ASL to perform register-related activities such as:

- contract management of the new service provider
- preparation and updating of industry communications (for example, fact sheets, guides, ACMA web content)
- financial administration of subscriptions.

In 2016–17, the estimated 1.84 ASL cost recovered consists of ACMA staff completing the tasks set out in Table 2.

Table 2: Register activities completed by ACMA staff

Task	Description
Contract management	Management of contractors including the register service provider.
Project management	Project management of any changes to IT and/or register services, development and implementation of communications, developing and reviewing register website content, management of budgets and cost recovery.
Administration	Management of the register activities including the administration of access seeker accounts, invoices, payments, refunds, enquiries, data analysis and washing. Oversee financial delegations and other related finance activities.

ASL associated with contract management, administrative, financial and communications functions is required year-on-year as these are ongoing register tasks. However, in recent years the ASL costs have decreased[2] as certain activities have been automated and the register operations have matured.

The consultant costs represent modelling services provided by ACIL Allen Consulting for the determination of fees. In 2016–17 and 2017–18, these costs include commissioned research into industry demand driver analysis.

Other costs relate primarily to bank charges, merchant fees, telephony charges and the listing of the register in the White Pages.

3.4 Structure of the charges

The costs of maintaining the register are directly related to the service being provided to individuals or organisations wanting to check numbers against the register. For this reason, subscription fees are set to recover the direct costs of operating the register.

In 2006, the ACMA engaged Access Economics (an independent consultancy organisation) to assist with the development of the original Subscription Fee Model. Under this model, there are eight annual subscription types to choose from (see Table 3). The type of subscription purchased entitles the telemarketer or fax marketer to submit a specified maximum quantity of numbers, ranging from 500 to 100 million, for checking against the register during a 12-month period.

In determining the subscription fees, the likely demand for subscriptions is forecast based on historical demand and demand driver analysis. The forecasts comprise two components:

> trend analysis from the historical data to a defined period

> a simple growth rate across each subscription type for each month thereafter.

The likely demand for subscriptions and the total cost to recover from industry are then inserted into the Subscription Fee Model. The model determines the amounts the subscription fees must be set at (by type) in order to generate sufficient subscription fee revenue to cover the direct operating costs of the register from industry.

Where applicable, over- or under-recovery of costs from previous periods are also considered when determining the subscription fees.

The estimated demand for subscriptions in 2016–17 is based on nine months of actuals (up to April 2017). The June 2017 estimates have been forecast applying the 'regression' component of the forecast to June 2017, based on the period from January 2016 to December 2016. The estimates from July 2017 have been forecast by applying simple growth rates.

[2] Reduction of 0.69 ASL since 2014-15.

Table 3: Historical growth and forecast growth rate

Subscription type	Historical growth (Jan 2016 to Dec 2016)	Growth rate (from July 2017)
Type A (500 washes)	100%	0%*
Type B (20,000 washes)	-13%	-3%
Type C (100,000 washes)	-9%	-5%
Type D (1,000,000 washes)	-15%	-5%
Type E (10,000,000 washes)	-50%	0%
Type F (20,000,000 washes)	0%	0%
Type G (50,000,000 washes)	0%	0%
Type H (100,000,000 washes)	0%	0%

**0 per cent growth rate applied as no charges are currently applied for type a subscriptions*

Source: ACIL Allen Consulting.

Under the Subscription Fee Model, subscription fees will increase by 42 per cent in 2017–18.

Table 4: Summary of actual and estimated subscription demand and subscription fees for the period 2014–15 to 2017–18

Type	No. of washes	Demand				Fees	
		2014–15 (actual)	2015–16 (actual)	2016–17 (estimate)	2017–18 (estimate)	2011-17*	2017-18
Type A	500	415	413	921	860	$0	$0
Type B	20,000	1,425	997	928	887	$79	$113
Type C	100,000	1,319	1,203	1,082	1,011	$370	$525
Type D	1,000,000	388	286	253	232	$3,200	$4,540
Type E	10,000,000	11	8	8	7	$27,000	$38,310
Type F	20,000,000	-	1	1	1	$45,000	$63,850
Type G	50,000,000	2	2	1	1	$67,500	$95,775
Type H	100,000,000	2	3	3	3	$90,000	$127,700
Total		**3,562**	**2,913**	**3,197**	**3,002**		
Total less Type A		**3,147**	**2,500**	**2,276**	**2,142**		

**Previous fee increase occurred on 1 January 2011.*

Accrued revenue (for a subscription type) is used in the modelling. The total annual revenue is spread equally over 12 months. This has been done to reflect the typical usage profile of an annual list-washing subscription.

The Subscription Fee Model adopts the following key charging structure characteristics based on the full direct operating cost-recovery regime:

- The pricing structure assumes a fixed subscription fee, which allows the telemarketer or fax marketer to check (wash) a certain quantity of numbers against the register. Any demand for washing above the maximum limit of the subscription will require another subscription to be purchased.
- Individuals or businesses who engage in telemarketing and/or fax marketing and would like to test the washing service before purchasing a subscription, may take out a subscription Type A without having to pay a fee. This is a negligible cost to the register operator and allows users to 'try before they buy' future subscriptions.
- If a telemarketer or fax marketer submits a contact list for washing and does not have sufficient remaining numbers available on its subscription, it will have to purchase a new annual subscription (other than Type A) before the washing transaction can be completed.
- When a telemarketer or fax marketer pays the subscription fee, it is entitled to a quantity of numbers (depending on the subscription type) to be submitted for washing during a 12-month period
- Each of the subscription fees (apart from Type A) is determined using a combination of the following factors:
    - the upper threshold for each subscription type
    - the upper threshold for Type A subscriptions (500)
    - a lower per unit cost of washing for a user purchasing a higher level subscription type (to reflect economies of scale for the register operator)
    - for type B, rounding is up to the nearest $1; for Type C, up to the nearest $10; and for Types D to H, up to the nearest $100.
- No GST is payable on the subscription fees.
- Estimated subscription numbers are based on actual subscription numbers since the beginning of the register's operation and subscription renewal rates.

The model uses a 'goal seek[3]' function to determine the subscription fees. There are four main inputs required:

- the estimated demand for subscriptions by type
- the total direct operating costs to recover in a given financial year
- an 'economies-of-scale' adjustment applicable to higher-level subscription types
- the rounding rules to apply (by subscription type).

Based on these four inputs, the model identifies a set of fees that, when applied to the estimated subscription demand, achieves a total subscription fee revenue amount (on an accrual basis) as close as possible to the total direct operating costs the ACMA is seeking to recover in the financial year concerned.

Based on the above charging structure characteristics, the subscription fees have been set at levels that both minimise the impact on businesses or individuals that use telemarketing and/or fax marketing on an ad hoc basis (and so do not require regular

[3] Goal seek is a Microsoft excel feature that allows you to find the result by adjusting the input value, that is, the direct costs to be recovered.

access to the register), and cater for larger users with significant demand for list-washing services.

4. Risk assessment

The ACMA mitigates the risks associated with the management of the cost recovery activities applicable to the register by:

- analysing risks
- using appropriate risk control strategies
- reviewing processes regularly
- taking appropriate action as a result of those reviews.

In accordance with the charging framework, the ACMA has undertaken a Charging Risk Assessment, resulting in a risk rating of 'medium' for 2017–18.

The 'medium' rating is based on an assessment of a number of components, including:

- medium risk for the complexity in the cost recovery arrangements (that is, the type of cost recovery charges used are fees)
- high risk rating for the level of change in the cost recovery arrangements in the 2016–17 CRIS (that is, the increase in fees is above 10 per cent)
- low risk for the level of cost recovery revenues as the total proposed annual costs recovery revenue is less than $10 million ($2.34 million in 2015–16)
- low risk for the level of change for cost recovery activities (that is, changes only in the level of existing cost recovery charges)
- low risk for the level of change in legislative arrangements (that is, proposed to amend Do Not Call Register (Access Fees) Amendment Determination 2010 (No. 1) to reflect increase in fees)
- low risk for the level of complexity of working with other government entities to deliver the regulatory functions (that is, none involved)
- low risk for the level of impact of cost recovery on payers (cost recovery was introduced to the industry in 2007 and industry has been consulted in setting the fees including the proposed 42 per cent change in fees)
- low risk for consultation with stakeholders, as stakeholders were consulted in March/April 2017.

One item has been assessed as high risk and three items have been assessed as a medium risk. This risk has been mitigated by the successful implementation of the current fee pricing structure since 2007, however forecasting demand to set the fees remains an on-going risk.

Forecasting

The ACMA can estimate the direct costs to operate the register with confidence, however estimating future revenue over the longer term is considered a key risk.

To manage this risk, the ACMA has engaged external economic expertise, commissioned a survey of the users of the washing service to analyse industry demand drivers and conducted telephone interviews with high-volume users of the washing service. The ACMA will also continue to monitor real-time demand on an ongoing basis.

5. Stakeholder engagement

Prior to statutory public consultation, the ACMA conducted qualitative and quantitative research on the drivers of demand in the telemarketing industry. This included an industry survey and telephone interviews with high-volume users of the DNCR washing service.

Industry survey
In October 2016, all active users (1,719) of the DNCR washing service were invited to complete the survey.

Eighty-seven responses to the survey were received, giving a response rate of five per cent. This response rate is not considered sufficiently robust to gauge future demand.

Due to the small sample size, caution has been taken when interpreting the results; however, results include:

- the most common use for washed numbers was to make phone calls to potential customers on behalf of the user's own organisation
- some respondents on-sold washed numbers to other organisations (12 per cent)
- the majority of respondents wash numbers at least once a week (48 per cent)
- of the eight factors provided to respondents, 'price of telemarketing/fax marketing operations' had the greatest reported influence on their organisations' demand for washing numbers, slightly ahead of 'cost of DNCR subscriptions'.

Telephone interviews
In early 2017, the ACMA conducted phone interviews with eight high-volume users of the DNCR washing service to assist in gathering qualitative information about the long-term drivers of subscription demand.

These consultations reinforce the messages conveyed through the survey. The key points in relation to developing growth parameters are that:

- no respondent indicated that they expect to see longer-term growth in subscription purchases
- all respondents referred to the increased use of alternative marketing channels/platforms
- several respondents referred to the large volume of fixed and mobile numbers on the register, and the growing use of consent-based marketing (both long-term drivers of a decline).

Consultation paper
A discussion paper, draft instruments and this Cost Recovery Implementation Statement were issued for public comment for a four-week period from 17 March 2017. The discussion paper sought feedback on the options identified to cost recover the direct costs of the register. It also asked whether there were alternate options for setting new charges to recover the direct costs of the register.

The discussion paper was published on the ACMA's website and all register users with an active washing account were notified about the public consultation process and invited to make a submission on the ACMA's proposal to amend fees.

Three substantive submissions (Choice, Communications Alliance and Vodafone Hutchison Australia) and two online comments from individuals were received. The proposed fee increase of 42 per cent was not contested in any of the submissions.

In its submission, Choice raised broader policy questions (including the status of registered charities and other entities designated exempt from the Act). The ACMA has forwarded the Choice submission to the Department of Communications and the Arts for consideration.

Submissions from Communications Alliance and Vodafone Hutchison Australia discussed the integrity of data in the DNCR after the move to indefinite registration in 2011. This matter is under consideration by the ACMA.

6. Financial estimates

Financial estimates for the register operations for the financial year 2016–17 and three forward years are provided in Table 5.

Table 5: Financial estimates by activity, based on a 42 per cent increase in fees

	2016–17 Budget ($m)	2017–18 Budget ($m)	2018–19 Budget ($m)	2019–20 Budget ($m)
Expenses = X	2.24	2.28	2.33	2.41
Revenue = Y	2.00	2.24	2.47	2.39
Balance = Y – X	-0.24	-0.04	0.14	-0.02
Cumulative balance	**0.48**	**0.44**	**0.58**	**0.56**

Material variance

Over the forward years, the average increase in total expenses is around two per cent due to the application of expected Consumer Price Index increases.

In 2016–17, demand for subscriptions is expected to continue declining. The modelling for demand uses a long-term zero to negative growth rate, depending on the subscription type (see Table 3). The downward revenue trend is expected to be offset by the increase in fees by 42 per cent.

Impact on balance management strategy

The register has been in cumulative over-recovery since 2012–13. This was due to a spike in revenue in from 2012 to 2014. Revenue then started to decline in 2014–15 (18 per cent) and has continued to do so, resulting in a reduction in the cumulative over-recovery.

The ACMA estimates an under-recovery of $0.24 million for 2016–17, resulting in a cumulative over-recovery to date of $0.48 million, which is expected to reduce to $0.14 million in 2021–22. The increase in fees is expected to align expenses and revenue to achieve a neutral recovery over the forward estimates.

Noting that subscription volumes for the first three months of 2017 have increased, the ACMA will closely monitor revenue trends over the next 12 months to manage potential under- or over-recoveries, prior to undertaking the annual cost recovery review for the 2017–18 financial year.

7A. Financial performance

Table 6 shows the actual direct costs of operating the register, compared to the associated accrued subscription fee revenue since the commencement of the register.

Table 6: Historical expenses and revenue

	2007–13 ($m)	2013–14 ($m)	2014-15 ($m)	2015-16 ($m)
Expenses = X	15.44	2.77	2.54	2.34
Revenue = Y	15.51	3.34	2.73	2.23
Balance = Y – X	0.07	0.57	0.19	-0.11
Cumulative balance*	**0.07**	**0.64**	**0.83**	**0.72**

**Totals may not add up due to rounding.*

Material variance

Expenses for 2015–16 reduced from the previous financial year, as the contract costs decreased by 10 per cent. This was due to the lower contract fees for the outsourced operation of the register with the new register service provider (Salmat Digital).

In 2014–15, ACMA staff costs decreased significantly due mainly to the ACMA prioritising non-cost-recoverable procurement, and transition and establishment activities related to a new register operator.

Revenue is accounted for on a 12-month accrual basis. For example, if 20 subscriptions were purchased in July for a total revenue of $120,000, each month in the following 12 months would be credited with $10,000. This allows for revenue to be spread over 12 months and moderates the immediate impact of actual revenue on any cumulative under-/over-recovery.

The downturn in revenue identified in 2014–15 now appears to be a longer-term trend and may reflect several influences, such as:

> movement from telemarketing to other forms of marketing

> increased use of digital channels/platforms

> increased use of consent-based calls that are not required to be washed

> high labour costs in call centres.

Additionally, the industry survey and consultations have identified several aspects of the register that have an impact on demand, including:

> the quantity of numbers on the register

> permanent registration

> reduced number churn, that is, numbers on the register are unlikely to be removed

> industry concerns regarding the validity of numbers on the register.

7B. Non-financial performance

The ACMA's non-financial performance is largely available through published annual reports, Portfolio Budget Statements, the Regulatory Performance Framework and the *Corporate plan 2016–20*.

A range of performance indicators will be used in 2017–18 to measure the ACMA's performance against legislative requirements. These include:

- register services being available for at least 99 per cent of the scheduled hours
- 90 per cent of complaints about unsolicited communications are completed within 15 days
- 100 per cent of unsolicited communications investigations are completed within an average of eight months.

In 2016–17, the ACMA is expected to meet these targets.[4]

[4] See the ACMA PBS 2016–17, https://www.communications.gov.au/2016-17-budget-communications-and-arts-portfolio.

8. Key forward dates and events

Table 7: Key forward dates and events for the review of the register subscription fees

Key events	Indicative date
Update of actual amounts (for 2016–17)	October 2017
Stakeholder consultation (if required)	Feb- May 2018
Update of forward estimates	June 2018

9. CRIS approval and change register

Certification

I certify that this CRIS complies with the Australian Government Cost Recovery Guidelines.

_____

Richard Bean
Acting Chair

Date of Certification: _____ /_____/ 2017

Table 8: Change register

Date of CRIS change	Description of CRIS change	Approver	Basis for change
26 June 2017	Approval of the CRIS Version 3.0	The Minister for Communications	Annual CRIS update
15 May 2017	Certification of the CRIS Version 3.0	ACMA Chairman	Annual CRIS update
18 August 2016	Certification of the CRIS Version 2.0	ACMA Chairman	Annual CRIS update
30 July 2014	Agreement to the CRIS Version 1.0	The Minister for Communications	Annual CRIS update
27 June 2014	Certification of the CRIS Version 1.0	ACMA CEO	Annual CRIS update

THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

MC17-016709

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

Dear Senator Williams

I refer to a letter from Committee Secretary, Toni Dawes, concerning the Senate Standing Committee for Regulations and Ordinances' consideration of the Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017 (the Regulations).

My advice in response to the matters raised by the Committee regarding the nature of consultation undertaken for the Regulations, and the delegation of legislative functions and powers is at Attachment A. The Committee has requested the Explanatory Statement for the Regulations be updated to reflect the nature of consultation undertaken. A Supplementary Explanatory Statement for the Regulations is also attached.

Ms Dawes' letter also included the Committee's consideration of the Instrument Adopting Recovery Plan (Boggomoss Snail) under the Environment Protection and Biodiversity Conservation Act 1999. I will provide a response these issues in further correspondence.

Yours sincerely

JOSH FRYDENBERG

Attachment A: Response to the Senate Standing Committee on Regulations and Ordinances regarding the Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017

The *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017* (the Regulations) amends the *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996* (the Primary Regulations), the *Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990* (the Fees Regulations), the *Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2003* (the East Timor Regulations), the *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999* (the Waigani Regulations), the *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996* (OECD Regulations) and the *Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9 Regulations 1999* (the Decision IV/9 Regulations).

The purpose of the Regulations is to:

(a) Amend the Primary Regulations, the East Timor Regulations, the Waigani Regulations, the OECD Regulations and the Decision IV/9 Regulations as a consequence of the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2017* (Amendment Act) – the consequential measures; and

(b) Bring the Primary Regulations and the Fee Regulations into compliance with the Australian Government Cost Recovery Guidelines by introducing measures to achieve full cost recovery of the permitting scheme under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Act) – the cost recovery measures.

1. Description of Consultation

Consultation was undertaken with relevant industry stakeholders with respect to the consequential measures as part of the development of the Amendment Act. This included the release of an Issues Paper in June 2012 through which industry and other interested stakeholders were provided an opportunity to comment. In 2015 the Department of the Environment and Energy engaged a consultant to seek input from public and private sector hazardous waste stakeholders on priorities for hazardous waste reform. Feedback from these processes was considered in the development of the final amendments to the Act. As the consequential measures were required as a consequence of the Amendment Act, no further consultation on the consequential measures for the Regulations was considered necessary.

The cost recovery measures included in the Regulations reflect the Cost Recovery Implementation Statement (CRIS) for Hazardous Waste Permitting. In 2015 and 2016 the Department consulted with relevant businesses on a draft cost recovery implementation statement outlining options for changing permit scheme fees and charges. A Draft CRIS outlining various cost recovery options was circulated among targeted stakeholders by email on 20 May 2015. All stakeholders were invited to provide written comments by 2 June 2015. The Centre for International Economics, working on behalf of the Department, conducted direct consultation with selected stakeholders in mid-2015.

A revised draft of the CRIS was circulated among recent applicants for hazardous waste permits by email on 16 January 2016. Stakeholders were invited to provide written comments by 15 February 2016. Their feedback was incorporated into the final cost recovery implementation statement.

2. Delegation of administrative powers

The Committee has requested advice about the inclusion of limitations on the types of powers and functions that may be exercised by Executive Level 2 officers, and the requisite qualifications of those officers, in the OECD Regulations.

While I note the Committee's concerns, I do not think it is necessary to specify the qualifications and attributes of Executive Level 2 officers exercising my functions and powers in the OECD Regulations

As reflected in the Explanatory Statement for the Regulations, it is my intention to only delegate functions and powers under the OECD Regulations to Executive Level 2 employees within the Department who have day-to-day responsibility for the administration of those Regulations. This would be reflected in the Instrument of Delegation that I make. This approach is consistent with the approach taken more broadly with respect to my Department, including for example, the *Environment Protection and Biodiversity Conservation Act 1999* and the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989.*

This approach ensures that only those Executive Level 2 officers who have a detailed understanding of the operation of the OECD Regulations are able to exercise my functions and powers under those Regulations.

It is also unnecessary to specify the limitations on the types of functions and powers that may be exercised by Executive Level 2 officers in the OECD Regulations. Delegates, at whatever level, will be able to exercise functions and powers under the OECD Regulations where it is appropriate for decisions to be made at that particular level. This will not prevent significant decisions being made by persons of a higher classification, including myself where necessary. This approach is consistent with the delegation of my functions and powers under the Act.

As stated in the Explanatory Statement, this approach is also consistent with the *Australian Administrative Law Guide* which documents that it may be appropriate for junior officers to make decisions involving a limited exercise of discretion, or under legislative provisions that give rise to a high volume of decisions to be made.

SUPPLEMENTARY EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment and Energy

Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017

Background

The *Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment (2017 Measures) Regulations 2017* (the Regulations), which came into effect on 1 July 2017, amends the *Hazardous Waste (Regulation of Exports and Imports) Regulations 1996* (the Primary Regulations), the *Hazardous Waste (Regulation of Exports and Imports) (Fees) Regulations 1990* (the Fees Regulations), the *Hazardous Waste (Regulation of Exports and Imports) (Imports from East Timor) Regulations 2003* (the East Timor Regulations), the *Hazardous Waste (Regulation of Exports and Imports) (Waigani Convention) Regulations 1999* (the Waigani Regulations), the *Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations 1996* (the OECD Regulations) and the *Hazardous Waste (Regulation of Exports and Imports) (Decision IV/9) Regulations 1999* (Decision IV/9 Regulations).

The Regulations:

(a) Make consequential amendments to the Primary Regulations, the East Timor Regulations, the Waigani Regulations, the OECD Regulations and the Decision IV/9 Regulations as a result of the *Hazardous Waste (Regulation of Exports and Imports) Amendment Act 2017* (the Amendment Act) – the consequential measures; and

(b) Bring the Primary Regulations and the Fee Regulations into compliance with the Australian Government Cost Recovery Guidelines by introducing measures to achieve full cost recovery of the permitting scheme under the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the Act) – the cost recovery measures.

The details of the Regulations is set out in the Explanatory Statement for the Regulations.

Purpose

The purpose of this Supplementary Explanatory Statement is to set out the details of consultation undertaken in developing the Regulations.

Consultation

Consultation was undertaken with relevant industry stakeholders with respect to the consequential measures as part of the development of the Amendment Act. This included the release of an Issues Paper in June 2012 through which industry and other interested stakeholders were provided an opportunity to comment. In 2015 the Department of the Environment and Energy engaged a consultant to seek input from public and private sector hazardous waste stakeholders on priorities for hazardous waste reform. Feedback from these processes was considered in the development of the final amendments to the Act. As the consequential measures were required as a consequence of the Amendment Act, no further consultation on the consequential measures for the Regulations was considered necessary.

The cost recovery measures included in the Regulations reflect the Cost Recovery Implementation Statement (CRIS) for Hazardous Waste Permitting. In 2015 and 2016 the Department consulted with relevant businesses on a draft cost recovery implementation statement outlining options for changing permit scheme fees and charges. A Draft CRIS outlining various cost recovery options was circulated among targeted stakeholders by email on 20 May 2015. All stakeholders were invited to provide written comments by 2 June 2015. The Centre for International Economics, working on behalf of the Department, conducted direct consultation with selected stakeholders in mid-2015.

A revised draft of the CRIS was circulated among recent applicants for hazardous waste permits by email on 16 January 2016. Stakeholders were invited to provide written comments by 15 February 2016. Their feedback was incorporated into the final cost recovery implementation statement.

Senator the Hon Simon Birmingham

Minister for Education and Training
Senator for South Australia

Our Ref MC17-005311

24 AUG 2017

Senator John Williams
Chair
Senate Regulations and Ordinances Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator John,

I thank the Senate Standing Committee on Regulations and Ordinances (the Committee) for its letter of 10 August 2017, seeking my advice on delegation issues related to the *Higher Education (HELP Program Commonwealth Officers) Instrument 2017* (the Instrument).

I have attached my response to the issues raised by the Committee regarding the Instrument.

I trust that my response will address the Committee's comments and assist its understanding of the need to specify 'Commonwealth officers' employed by the Australian Government Actuary as 'HELP program Commonwealth officers' in the Instrument.

Yours sincerely

Simon Birmingham

Encl.

Adelaide
107 Sir Donald Bradman Drive, Hilton SA 5033
Ph 08 8354 1644

Canberra
Parliament House Canberra ACT 2600
Ph 02 6277 7350

Response to the Senate Standing Committee on Regulations and Ordinances:
Higher Education (HELP Program Commonwealth Officers) Instrument 2017

Broad delegation of 'HELP program Commonwealth officer' power – Minister's power to delegate

The Standing Committee on Regulations and Ordinances (the Committee) has sought further advice in its *Delegated legislation Monitor 8 of 2017* regarding the *Higher Education (HELP Program Commonwealth Officers) Instrument 2017* (the Instrument) made by the Minister under subsection 180-28(8) of the *Higher Education Support Act 2003* (the Act). The Instrument specifies Commonwealth officers employed by the Australian Government Actuary (AGA) as 'HELP program Commonwealth officers'. The Committee has requested my advice regarding the need to specify all Commonwealth officers employed by the Office of the AGA as 'HELP program Commonwealth officers'.

The purpose of the Instrument is to allow various officers employed by the AGA to be able to use and disclose Higher Education Support Act information (HESA information) for the purpose of maintaining a Higher Education Loan Program (HELP) debtor and earnings database. The HELP debtor and earnings database is important to the Department of Education and Training (Education) because it addresses recommendations in the Australian National Audit Office's (ANAO) report on the *Administration of Higher Education Loan Program Debt and Repayments* (report no. 31 of 2015–16, published on 5 May 2016). The ANAO recommended that 'Education and the Australian Taxation Office (ATO) expand the information provided publicly to include a broader range of information such as the growth in HELP debt and collection of repayments' (Recommendation 4) and that 'Education more fully analyses characteristics of debt and repayments, and consider this information to inform program design' (Recommendation 5).

The HELP debtor and earnings database is created from data provided by the AGA, Education and the ATO. The database contains de-identified information on HELP debtors, including demographic, educational, income and occupation-related information. Information from the HELP debtor and earnings database will enhance Education's ability to analyse HELP debt and debtors, including analysing differences between those who repay and those who are below the repayment threshold. Information from the HELP debtor and earnings database will be critical in addressing the abovementioned ANAO recommendations.

The specification of 'Commonwealth officers' employed by the AGA as 'HELP program Commonwealth officers' must be sufficiently broad as to capture the various classes of officers employed by the AGA who need to use and disclose HESA information in the development, use and maintenance of the HELP debtor and earnings database at any time. There is a need to specify all 'Commonwealth officers' employed by the AGA as 'HELP program Commonwealth officers' in the instrument as the AGA is a small functional unit that does not have sufficiently well-defined positions and hierarchies to allow further specificity within the instrument. As the AGA employs a small number of officers (currently 12 individuals) who all have similar qualifications, skill sets and job roles, this makes it impractical to limit delegation to a specific sub-set of these Commonwealth officers. The Instrument must be sufficiently flexible to allow for movement of specific AGA officers who are required to access, use and disclose HESA information from within the HELP debtor and earnings database. I am satisfied that the Commonwealth officers employed by the AGA hold the appropriate qualifications and attributes to perform the delegated functions and that the Instrument is not excessively wide in its application.

I note the Committee's view that the term 'Commonwealth officer' is defined very broadly in subsection 179-15(2) of the Act. Such a broad delegation may bring into question whether a person's right to privacy is being limited to the extent that it expands the category of specified officers that are authorised to use and disclose personal information. However, I consider that there are existing safeguards in place that provide strong protections in relation to such privacy matters. The Instrument's explanatory statement states that this delegation is limited to only those Commonwealth officers who are exercising functions

identified in subsection 180-28(5) of the Act, namely to assist in the development or administration of the HELP program. All persons specified as 'HELP program Commonwealth officers' are bound by the Australian Privacy Principles (APPs) in the *Privacy Act 1988* when dealing with personal information. The APPs regulate how agencies may collect, use, disclose and store personal information and how individuals may access and correct personal information held about them.

Having regard to the matters noted above, I consider that the delegation has been drafted with the maximum level of specificity possible in relation to the term 'Commonwealth officer'. Therefore, I recommend that the Instrument be maintained in its current form.

THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION AND BORDER PROTECTION

Ref No: MS17-002995

Chair
Senate Standing Committee on Regulations and Ordinances
Suite S1.111
Parliament House
Canberra ACT 2600

Dear Chair

I thank the Senate Standing Committee on Regulations and Ordinances for its letter of 10 August 2017, in which the Committee requested further information about the *Migration Legislation Amendment (2017 Measures No. 2) Regulations 2017* and the *Migration Amendment (Working Holiday Maker Visa Application Charges) Regulations 2017.*

The Committee has requested further advice in relation to the basis on which the amounts of the visa application charges (VACs) have been calculated for:

- the Skilled Independent (Subclass 189) (New Zealand stream) visa; and
- the Working Holiday (Subclass 417) visa and the Work and Holiday (Subclass 462) visa (known as the 'Working Holiday Maker visas').

As noted at pages 62-3 of the Consolidated Financial Statements for the Australian Government for the financial year ended 30 June 2016, a review of the classification of VACs determined that the revenue for these charges had increased over a number of years without a commensurate increase in costs. As a result, VACs were reclassified from non-taxation to taxation revenue to reflect the sustained change in the nature of the revenue in accordance with principles contained in the Australian Bureau of Statistics *Australian System of Government Finance Statistics: Concepts, Sources and Methods 2005 — ABS Catalogue No. 5514.0* (ABS GFS Manual). This reclassification took effect from the 2015-16 Mid-Year Economic and Fiscal Outlook.

In particular, the reclassification is consistent with the principle that fees from regulatory services are designed to cover all or part of the cost of providing a regulatory function. If the revenue collected is clearly out of proportion to the costs of providing the regulatory service, then the fee is classified as taxation revenue.

The VAC amount for individual visa subclasses is set by Government as part of the Budget process. The *Migration Act 1958* provides that the amount of the VAC is to be prescribed in the *Migration Regulations 1994* and must not exceed the limit determined under the *Migration (Visa Application) Charge Act 1997*.

The amounts of the VACs for the referenced visas are consistent with the above principles. I further consider the VAC amounts are appropriate for the reasons outlined in my previous letters to the Committee.

I trust that this information is of assistance to the Committee.

Yours sincerely

PETER DUTTON 22/08/17.

The Hon Christian Porter MP
Minister for Social Services

MC17-010051

18 AUG 2017

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

Dear Chair

Thank you for your letter of 10 August 2017 regarding the Social Security (Exemptions from Non-payment and Waiting Periods - Activities) Specification 2017 (F2017L00719). I appreciate the time you have taken to bring this matter to my attention.

I note the comment provided that the definition of *Stream C employment services* in Section 5 of the instrument refers to the *jobactive Deed 2015-2020* however, no explanation of the document or how it can be obtained is included in either the explanatory statement or the instrument.

In response to the Committee's concerns, a replacement explanatory statement that includes a description of the incorporated document and how it may be obtained will be registered on the Federal Register of Legislation and tabled prior to the expiration of the disallowance period.

Thank you again for bringing your concerns to my attention.

Yours sincerely

The Hon Christian Porter MP
Minister for Social Services

THE HON KAREN ANDREWS MP
ASSISTANT MINISTER FOR VOCATIONAL EDUCATION AND SKILLS

Our Ref MC17-005558

29 AUG 2017

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

Dear Chair

Thank you for your letter of 17 August 2017 on behalf of the Senate Regulations and Ordinances Committee (the committee) in relation to the *VET Student Loans (Charges) Regulations 2017* (the Regulations).

The purpose of the Regulations is to prescribe the amount of an approved course provider charge payable in respect of a financial year by an approved course provider under section 7 of the *VET Student Loans (Charges) Act 2016*.

The committee has requested more information regarding the basis on which the annual charge rates were calculated. Consistent with the Australian Government Cost Recovery Guidelines, all details regarding the methodology for setting the annual charge rates are set out in a Cost Recovery Implementation Statement.

The annual charge applies to all approved VET Student Loans providers and assists with recovering the costs associated with program administration. These include compliance and auditing, payments, processing and actioning complaints, and provider and student management costs.

As outlined in the Cost Recovery Implementation Statement, the annual charge rates were determined according to the following methodology:

- Identifying the activities that comprise the administration of VET Student Loans;
- Determining whether the regulatory effort for each activity applies equally across all providers, or whether some providers will require more regulatory effort than others;
- Estimating the effort (time, skill and resources) required to complete each activity; and
- Calculating the total cost of each activity.

A key driver in setting the annual charge rates was that the regulatory effort required to administer the program was proportionate to the enrolment numbers at any particular provider. As a result, three annual charge amounts of $1,280, $12,480 and $62,870, based on student enrolments, were arrived at.

I have enclosed the Cost Recovery Implementation Statement for your information. The Statement is also available at www.education.gov.au/vet-student-loans.

In drafting future explanatory statements, I will endeavour to ensure that information of this nature is more clearly presented and that links to relevant documents are provided.

I thank the committee for its comments and I trust this information is of assistance.

Yours Sincerely

Karen Andrews MP

Encl.
cc. Minister for Education and Training, Senator the Hon Simon Birmingham