THE HON PETER DUTTON MP
MINISTER FOR IMMIGRATION
AND BORDER PROTECTION

Ref No: MS17-003163

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 17 August 2017, in which the Committee requested further information about the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2017*, the *Migration Amendment (Specification of Occupations) Regulations 2017*, and the *Migration (IMMI 17/060: Specification of Occupations – Subclass 457 Visa) Instrument 2017*.

The Committee has requested further advice as to:

- why it is justifiable for decisions made under new regulations 13GC and 13GE of the *Customs (Prohibited Exports) Regulations 1958* inserted by the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2017* to be excluded from merits review; and
- further information about why the *Migration Amendment (Specification of Occupations) Regulations 2017*, and the *Migration (IMMI 17/060: Specification of Occupations – Subclass 457 Visa) Instrument 2017* do not unduly trespass on personal rights and liberties.

Why it is justifiable for decisions made under regulations 13GC and 13GE inserted by the *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2017* to be excluded from merits review

The *Customs (Prohibited Exports) Amendment (Liquefied Natural Gas) Regulations 2017* inserted a new Division 6 into Part 3 of the *Customs (Prohibited Exports) Regulations 1958* (the Regulations). Division 6 establishes a framework for restrictions on the export of liquefied natural gas (LNG) from LNG projects, to be imposed where the Resources Minister determines there is a reasonable prospect of a gas supply shortage in the domestic market. This mechanism is known as the Australian Domestic Gas Security Mechanism (ADGSM).

The Resources Minister and the Department of Industry, Innovation and Science (Department) have portfolio responsibility for administering the ADGSM.

The absence of merits review of decisions made by the Resources Minister (or an authorised officer) under Division 6 in relation to the ADGSM is justified by the characteristics of such decisions. Division 6 provides for several types of decisions to be made by the Resources Minister:

1. a decision to determine a forthcoming calendar year as a domestic shortfall year (section 13GE);
2. decisions in relation to permissions to export LNG during a domestic shortfall year, including to grant, refuse, vary, impose conditions on, or revoke, export permissions (section 13GC);
3. decisions to consent to the assignment of export permissions (section 13GD); and
4. a decision to publish guidelines (section 13GF).

1. Resources Minister's decision to determine a year as a domestic shortfall year

Under r 13GE, the Resources Minister may determine that the forthcoming calendar year will be a domestic shortfall year. In a domestic shortfall year, exports of LNG are prohibited unless written permission from the Resources Minister is provided (per section 13GC(1)).

The Attorney-General's Department, Administrative Review Council's publication, *What decisions should be subject to merit review?* (ARC Guide) sets out exceptions from merits review for policy decisions of a high political content (at 4.22), for financial decisions with a significant public interest element (at 4.34), and for decisions involving extensive inquiry processes (at 4.53). The Resources Minister's determination of a domestic shortfall year falls within the requirements for these exceptions.

In relation to the first exception, the decision to make a determination is politically sensitive, as it is likely to have a significant effect on the Australian economy, and to affect Australia's relations with other countries.

The imposition of export controls on LNG exports is likely to have significant implications for the Australian economy, including in relation to the availability of natural gas in the market. It will also affect the economic activities of LNG projects and exporters, natural gas suppliers, major gas users (for example, power stations and large manufacturers), gas wholesalers, and other domestic consumers of natural gas, as well as investors in each of these.

Any determination will affect Australia's relations with other countries, particularly those countries with which Australia has free trade agreements, and which are relevant to trading partners and foreign investors in LNG projects.

In relation to the second and third exceptions, a decision to make a determination will involve an evaluation of complex and competing facts and policies to assess whether there is likely to be a domestic shortfall of gas in any part of Australia in the forthcoming calendar year, which will go beyond mere fact finding. Details of this process are set out in the *Customs (Prohibited Exports) (Operation of the Australian Domestic Gas Security Mechanism) Guidelines 2017* (the Guidelines), made by the Resources Minister under section 13GF.

The process will involve an evaluation of complex supply, demand, and export data sourced from market participants, submissions from members of the public, and advice from the Australian Energy Market Operator (AEMO), the Australian Competition and Consumer Commission (ACCC), and the Northern Territory Government (which has regulatory responsibility for the Northern gas market). The Regulations and Guidelines also require the Resources Minister to consult with the Prime Minister, Energy Minister, Industry Minister, Trade Minister, and Minister for Foreign Affairs.

These factors support the significant level of public interest, as well as the extensive inquiry process, involved with the decision. Where the Resources Minister determines a year as a domestic shortfall year, the Guidelines require a statement of reasons be published on the Department's website.

2. Resources Minister's decisions in relation to export permissions

Under section 13GC, the Resources Minister (or an authorised officer) may grant permission to export LNG in a domestic shortfall year. The ARC Guide sets out exceptions from merits review for decisions allocating a finite resource between competing applicants (at 4.11), decisions involving extensive inquiry processes (4.53), and decisions where there is no appropriate remedy (4.50). The Government considers export permissions decisions fall within these exceptions.

The Guidelines establish a process and identify considerations relevant to making export permissions decisions. It is anticipated that every entity which seeks to export LNG in a domestic shortfall year would be granted an export permission. However, conditions may be imposed on permissions, including the volume of LNG which may be exported and requirements to report export volumes to the Department. These conditions would depend on whether the LNG exporter is located in a market experiencing a shortfall, and whether the associated LNG project is drawing down from the market in net terms (that is, exporting more gas than it contributes to the domestic market).

LNG exporters in markets which are not experiencing a shortfall would be granted unlimited volume permissions. This type of permission allows the exporter to export an unlimited volume of LNG over the permission term, and is anticipated to involve very limited reporting requirements. LNG exporters in a market experiencing a shortfall would be granted an allowable volume permission. This type of permission limits the volume of LNG which may be exported to a set maximum, and would involve stronger reporting requirements to allow the Department to monitor exports. The volume limits applied to permissions for exporters in a shortfall market are calculated using information sought as part of the comprehensive process for making a decision to determine a domestic shortfall year, described above.

The volume limits reflect a calculation of the proportion of the shortfall that would be attributable to LNG exporters, which is allocated to net-deficit exporters on a pro rata basis. In other words, LNG exporters that are in net-deficit will be allowed to export their desired export volumes, minus the amount of their pro rata contribution to the shortfall. Exporters which are not in net-deficit would be allowed to export their projected LNG export volumes for the year.

Thus, in a shortfall market, the total amount of LNG which may be exported is finite, and shared between exporters. The volume limits imposed on exporters are interdependent, such that an allocation of a volume to one exporter would be affected if a decision regarding an allocation of a volume to another exporter were overturned. As such, allowing merits review would create a level of uncertainty for all exporters. Allowing merits review would also necessitate revisiting the extensive inquiry process associated with the decision to determine a domestic shortfall year.

The Government considers the process for determining volume limits, as set out in the Guidelines, is fair, with clear and objective criteria. Furthermore, once volume limits are determined and permissions are in place, the Resources Minister cannot unilaterally vary a condition of a permission without the consent of the permission-holder, unless the permission holder breaches a condition. A breach of a condition will be a readily assessable, objective matter: the permission-holder will either have exceeded their export volume or failed to report information to the Department.

Permission decisions would also be limited in time. It is anticipated that allowable volume permissions would only be granted for the period of a domestic shortfall year (that is, one calendar year), or slightly longer (to provide additional certainty to the permission-holder). As such, they are likely to expire while any merits review process is under consideration. Additionally, the Department understands that, due to the detailed logistics required for the transport of LNG overseas (including shipping contracts), there is likely to be limited scope for exporters to make changes to their exports during the permission period. The benefits of merits review in this situation would therefore be marginal.

Permission decisions are subject to judicial review. The requirements of lawful decision making include observing the rules of natural justice (or procedural fairness). The process followed by the Department would ensure that an applicant, or permission-holder, in respect of whom an adverse decision is proposed to be made would be fully informed of the basis for that decision, and, where that proposed decision flows from non-compliance by the applicant or permission-holder, given an opportunity to rectify it.

3. Decisions to consent to assignments

It is anticipated that assignments of permissions would only occur due to machinery changes (e.g. a change in entity structure). Accordingly, there would not be a need for merits review.

4. Minister's decision to publish guidelines

The ARC Guide provides that merits review is not required for 'legislation-like' decisions which apply generally to the community, rather than being directed towards the circumstances of any particular persons (at 3.3). The Minister's decision to publish guidelines falls within this exception.

Further information about the *Migration Amendment (Specification of Occupations) Regulations 2017*, and the Migration (IMMI 17/060: Specification of Occupations – Subclass 457 Visa) Instrument 2017

The *Migration Amendment (Specification of Occupations) Regulations 2017* and the *Migration (IMMI 17/060: Specification of Occupations-Subclass 457 visa) Instrument 2017* do not unduly trespass on personal rights and liberties.

The Temporary Work (Skilled) (subclass 457) visa addresses critical skills shortages that cannot be met by Australian workers. As an uncapped, demand-driven programme, it is designed for approved employers to sponsor temporary skilled workers to meet short-term skills needs. As a result, the size and composition of the programme fluctuates according to changes in the Australian economy and labour market.

Specifying a list of eligible occupations for the subclass 457 visa is one mechanism to ensure that foreign workers are being sponsored for jobs experiencing genuine shortages. Regular recalibration of the list maintains public confidence in skilled migration while continuing to support Australian businesses. The Government announced on 18 April 2017 that eligible occupations would be reviewed every six months, based on labour market analysis and informed by stakeholder consultation. The 1 July 2017 amendment is the first of these regular reviews, to be led by the Department of Employment in future.

A legislative instrument made for the purpose of paragraph 2.72(10)(aa) of the *Migration Regulations 1994* may specify that the new occupations list applies to nominations made on or after the day the instrument commences, or made and not finally determined before the day the instrument commences, regardless of whether the nomination, if it relates to an applicant for a visa, was made before, on or after that day (Part 66 of Schedule 13 of the *Migration Regulations 1994*).

Applying the updated occupation list to unfinalised nominations ('the pipeline') aims to strike a balance between the public interest in maintaining control over access to the Australian labour market and the interests of sponsoring businesses and individual visa applicants. The changes were applied in this manner to ensure that access to Australia's labour market over the next four years (the maximum period for which a Subclass 457 visa can be granted) is afforded only where there is a genuine skills need. To ensure businesses and applicants were not unduly disadvantaged by these changes, refunds of nomination fees and visa application charges were made available where the applications could not proceed because an occupation had been removed from eligibility.

Applying the changes to unfinalised applications also prevents significant spikes in visa lodgements prior to changes taking effect, which would distort the programme's intent. Visa applicants who are seeking to enter or remain in Australia on a temporary basis would be aware that Australia's temporary skilled migration programme reflects labour market needs which will fluctuate over time and there is no guarantee that a visa will be granted. In some cases, non-citizens may have to leave Australia, but this is inherent in any temporary visa programme and does not amount to an undue interference with the rights or liberties of those non-citizens.

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

Yours sincerely

PETER DUTTON 07/09/17

THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

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

MC17-016874

05 SEP 2017

Dear Senator Williams

I refer to your letter concerning the *Environment Protection and Biodiversity Conservation Act 1999 - Section 269A - Instrument Adopting Recovery Plan (Boggomoss Snail) (21/06/2017)* [F2017L00736] (the Boggomoss Snail Recovery Plan).

The instrument adopts a recovery plan made by Queensland for the *Adclarkia dawsonensis* (boggomoss snail) as the recovery plan for the species for the purposes of the *Environment Protection and Biodiversity Conservation Act 1999* (the Act).

The interaction of the Act, the *Legislation Act 2003*, and the *Acts Interpretation Act 1901*, limits the Minister's power to revoke a recovery plan that has been made or adopted under the Act. Section 283A of the Act has the effect that a recovery plan may only be revoked if the Minister has decided not to have a recovery plan for the species. When a new recovery plan is made or adopted under the Act, any previous recovery plan that had been made or adopted for the species is not revoked, but rather, displaced. Consequently it is the most recently made or adopted plan that is 'in force' for the purposes of the Act (see for example, section 201(3)(b) of the Act).

Consistent with this approach, I am informed it is the Department of the Environment's (the Department) practice to consider adopting the most recent recovery plan, made by a state or territory, for a particular species as the only recovery plan in force for that species. So, when Queensland made a new recovery plan for the boggomoss snail, the Department recommended I adopt this plan under the EPBC Act. I accepted this recommendation. My adoption of the new plan has the effect of displacing the previous recovery plan for the species.

This displacement does not constitute an amendment to the *Environment Protection and Biodiversity Conservation Act 1999 - section 269A - Instrument Adopting Recovery Plans (06/07/2008) (WA, QLD)* [F2008L02578] (the 2008 instrument), which adopted the previous recovery plan for the boggomoss snail. However, the Department has informed me that it is currently examining whether there are any options to amend the 2008 instrument to remove the reference to the previous recovery plan.

There is the potential for confusion in having two recovery plans on the Federal Register of Legislation that ostensibly appear to be in force for the same species. To resolve this issue, the Department has informed me it is working closely with the Office of Parliamentary Counsel regarding the publication of recovery plans that displace a previous plan for a species on the Federal Register of Legislation and the description of their status. This will ensure that it is clear from the Register which recovery plan is in force for a particular species.

I also bring to the Committee's attention that I recently adopted, and jointly made, the following recovery plans under section 269A of the Act:

- *Instrument Adopting Recovery Plan (Threatened Tasmanian Orchids)* (9 August 2017) [F2017L01043]; and

- *Instrument Jointly Making the Recovery Plan for the Giant Freshwater Crayfish* (7 July 2017) [F2017L01040].

These two instruments operate in a similar way to the Boggomoss Snail Recovery Plan, in that they both displace a previous recovery plan for one or more species. These instruments are likely to be tabled in the Senate in the week commencing 4 September 2017.

Thank you for writing on this matter.

Yours sincerely

JOSH FRYDENBERG

Cc: Peter Quiggin, First Parliamentary Counsel

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

REF: MS17-001569

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

Dear Senator Williams

I refer to the Committee Secretary's letter dated 17 August 2017 sent to my office seeking further information about the item for the Prime Minister's Veterans' Employment Program in the *Financial Framework (Supplementary Powers) Amendment (Veterans' Affairs Measures No. 3) Regulations 2017*.

The Minister who is responsible for the items in this instrument has provided a response to the Committee's request. The response at Attachment A includes the response from the Minister for Veterans' Affairs, the Hon Dan Tehan MP. I trust this advice will assist the Committee with its consideration of the instrument.

I have copied this letter to the Minister for Veterans' Affairs. Thank you for bringing the Committee's comments to the Government's attention.

Kind regards

Mathias Cormann
Minister for Finance

5 September 2017

Attachment A

Financial Framework (Supplementary Powers) Amendment (Veterans' Affairs Measures No. 3) Regulations 2017

Provided by the Minister for Veterans' Affairs

Response to the Committee's request for information about the Prime Minister's Veterans' Employment Program

The objectives of the Prime Minister's Veterans' Employment Program (Program) are to raise awareness in the Australian business community of the unique skills and experience that veterans can bring to the civilian workplace and increase employment opportunities for veterans.

Under the Program, funding will be provided to:

- establish and support an Industry Advisory Committee on Veterans' Employment to develop and provide advice on practical measures to embed veterans' employment strategies into the recruitment practices of Australian business and promote the skills and professional attributes offered by veterans to employers;
- establish annual awards to recognise the achievements of small, medium and large businesses in creating employment opportunities for veterans; and
- create an Ex-service Organisation Industry Partnership Register to enable ex-service organisations to register their interest in partnering with industry on projects to promote the employment of veterans.

Industry Advisory Committee on Veterans' Employment

The Industry Advisory Committee on Veterans' Employment (the Committee) was established in March 2017 to develop and provide advice on practical measures to embed veterans' employment strategies into the recruitment practices of Australian business and promote the skills and professional attributes offered by veterans to employers.

The Committee is comprised entirely of industry representatives. The Chair, Deputy Chair and a representative of small businesses were directly appointed by the Minister for Veterans' Affairs. Ten companies and the Australian Chamber of Commerce and Industry were each invited to nominate a representative to serve on the Committee. Members serve on a voluntary basis and are not remunerated.

The Government is providing subject matter expertise and support staff to assist the Committee.

Expenditure on this initiative includes the cost of support staff; travel for subject matter experts, support staff and the small business representative to attend Committee meetings; venue hire; catering; and associated meeting expenses. Apart from staffing costs, the nature of the expenditure is for the procurement of goods and services. This expenditure is subject to the requirements of the Commonwealth's resource management framework, including the *Commonwealth Procurement Rules* and the *Public Governance, Performance and Accountability Act 2013*. Given the targeted purpose and nature of the expenditure, merits

review of spending decisions related to supporting the Committee is not considered appropriate.

Annual Awards

The Prime Minister's Veterans' Employment Awards (the Awards) will recognise the achievements of small, medium and large businesses in creating employment opportunities for veterans. The Awards will be held annually, with the inaugural Awards to be held in March 2018.

Government funding will be spent on enabling and managing online nominations through a dedicated Program website, conducting the Awards event, and promoting the work of the Committee and wider Program with a particular focus on the Awards. Government funding for the Awards will be supplemented by industry sponsorship and in-kind support. There will be no payments to the winners of the Awards, although payment of travel costs for their attendance may be covered.

Government funds will be used to procure goods and services and spending decisions will be made in accordance with the requirements of the Commonwealth's resource management framework, including the *Commonwealth Procurement Rules* and the *Public Governance, Performance and Accountability Act 2013*. Under this framework, contracts will be awarded through open, competitive processes and will be reported on AusTender.

Promotion of the Awards is likely to include an advertising campaign. If such a campaign is conducted, it will be conducted, as far as is applicable given the utilisation of industry sponsorship and in-kind support, in accordance with the Department of Finance's Whole-of-Australian Government Advertising Arrangement.

Given the finite amount and nature of the expenditure, merits review of spending decisions is not considered appropriate. In addition, allowing further review of these decisions would substantially delay the implementation of the Awards.

Nominations for awards will be made by businesses, other organisations and individuals. Eligibility will vary across the Award categories, depending on the nature of the category. The criteria for each category of awards will be made publicly available so that organisations and individuals are able to consider those criteria when making a decision as to whether they are eligible to submit a nomination. As eligibility will not be a discretionary decision, merits review of whether a nominator is eligible to submit a nomination is not appropriate.

Nominations will be reviewed by judging panels allocated to each category, made up of independent judges and possibly also DVA representatives. Independent judges are not expected to be remunerated, although costs associated with their attendance at the event may be covered. Allowing review of the decisions of judging panels about finalists and winners would result in the potential for significant uncertainty that could undermine the integrity and standing of this and similar Awards processes, and has the potential to delay the Awards event with resulting reputational damage and additional costs. In recognition of this, a high level of probity will be implemented to manage the judging process, including management of conflicts of interest and ensuring that the judging panels are impartial. Unsuccessful nominators will be notified in writing of the panels' decisions and will be able to obtain limited feedback on the reasons why the nomination was unsuccessful.

Ex-service Organisation Industry Partnership Register

The Register will enable ex-service organisations to register their interest in partnering with industry on projects to promote the employment of veterans. The Register will be delivered through a dedicated Program website, utilising and modifying existing DVA and Department of Human Services ICT assets. Contractors will be engaged to work with existing departmental staff to develop the register.

Apart from payments to contractors, spending will be limited to the procurement of goods and services. Accordingly, it will be subject to the requirements of the Commonwealth's resource management framework, including the *Commonwealth Procurement Rules* and the *Public Governance, Performance and Accountability Act 2013*. Given the nature and purpose of the expenditure on the development of the Register, merits review is not appropriate.

Review of decisions under the Program

The main objectives of the Program will be largely achieved by an industry-led Committee, which is expected to fund the implementation of its own recommendations. Any proposals of the Committee pursued by Government would be considered in a future Budget process.

Apart from staffing and contractor costs, spending decisions under the Program will be for the purpose of procuring goods and services to support the Committee, run an Awards process and event, and establish a Partnership Register. Such spending decisions will be made under the Commonwealth's resource management framework.

In addition, the review and audit process undertaken by the Australian National Audit Office also provides a mechanism to review Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms help to ensure the proper use of Commonwealth resources, and appropriate transparency around decisions relating to making, varying or administering arrangements to spend public money. Further, the right of review under section 75(v) of the Australian Constitution, and review under section 39B of the *Judiciary Act 1903*, may also be available. Persons affected by spending decisions would also have recourse to the Commonwealth Ombudsman where appropriate.

TREASURER

Ref: MC17-006883

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Dear Chair

Thank you for your correspondence of 17 August 2017 concerning the Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measurers) Regulations 2017 [F2017L00811] and the Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining) Regulations 2017 [F2017L00803]. My responses to the Committee's questions are set out below.

Retrospective commencement

Some of the provisions in each instrument are introduced to give effect to the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streamlining) Bill 2017* which commenced on the day after Royal Assent which was 24 June 2017. The commencement provisions in each regulatory instrument provide that the regulations commence at the time the Bill provisions commence. At the time it was envisaged that Royal Assent would not occur until after the regulations were made. There was no intention that the regulations would operate retrospectively which is why the Explanatory Statements did not address this issue. The retrospective commencement of the two regulations is due to an oversight and technical error in the drafting of the commencement provisions of both instruments.

As the Committee has acknowledged, subsection 12(2) of the *Legislation Act 2003* prevents the provision being applied retrospectively to persons who would be disadvantaged. At the time of writing, no foreign persons have been disadvantaged because no applications received during this timeframe required the application of the new provisions. The relevant timeframe in which this provision could have been incorrectly enforced has now passed.

No Statement of compatibility

The absence of a human rights compatibility statement in the Explanatory Statement for the Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measurers) Regulations 2017 [F2017L00811] was a technical oversight due to advice received from the Executive Council Secretariat.

An assessment however was undertaken and the instrument is assessed as compatible with human rights. A revised Explanatory Statement providing a statement of compatibility will be registered with the Federal Register of Legislation and tabled through their processes.

I trust this information will be of assistance to you.

Yours sincerely

The Hon Scott Morrison MP

7 / 9 / 2017

THE HON JOSH FRYDENBERG MP
MINISTER FOR THE ENVIRONMENT AND ENERGY

MC17-016850

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

Dear Senator Willliams

I refer to your letter concerning the *National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2017* [F2017L00827].

I am advised by the Clean Energy Regulator (CER) that it notes the issues identified by Senate Regulations and Ordinances Committee, in relation to the *National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2017* ('the Instrument') and its explanatory statement.

The CER will remake the Instrument and amend the explanatory statement, as soon as practicable, to correct both of the identified issues and maintain compliance with the *Legislation Act 2003*. This is expected to occur by the end of September 2017. The explanatory statement will make explicit reference to the consultation that was undertaken in June 2017.

Thank you for writing on this matter.

Yours sincerely

JOSH FRYDENBERG

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

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Television and radio licence fee regulations

John

Dear Senator Williams

I am writing in response to the Committee's request, articulated in the Delegated Legislation Monitor 8 of 2017, that I provide further information about the *Radio Licence Fees Regulations 2017* and the *Television Licence Fees Amendment Regulations 2017* (together, the Regulations). Specifically, the Committee has sought additional information about the relationship between the Regulations and the Broadcasting Legislation Amendment (Broadcasting Reform) Bill 2017 (the Broadcasting Reform Bill), which is currently before the Senate.

This Bill implements a number of the elements of the Government's Broadcasting and Content Reform Package (the Package) – an integrated suite of reforms designed to enable the Australian media industry to compete on a level playing field in the digital media landscape. One of the key components of the Package, which I announced on 6 May 2017, is the permanent abolition of broadcasting licence fees and datacasting charges.

Once passed, the Broadcasting Reform Bill will give effect to this change, with application for licence fees that would otherwise be payable for the 2016-17 accounting period. Consistent with my announcement of 6 May 2017 and the associated measure included in the 2017-18 Budget, commercial broadcasting licensees will not pay any licence fees for the 2016-17 year, which would otherwise be payable on 31 December 2017.

The Broadcasting Reform Bill and the related Commercial Broadcasting (Tax) Bill 2017 passed the House on 21 June 2017 and were introduced into the Senate the following day. Although the abolition of licence fees, as proposed by the Schedule 5 to the Broadcasting Reform Bill, will apply to the fees payable for the 2016-17 accounting period, the delays in the passage of the Bill in the Senate beyond 30 June 2017 meant that relevant licensees were unable to account for and recognise the cut in their financial statements for the 2016-17 year.

Commercial television and radio broadcasting licensees are operating in a particularly challenging environment and are facing acute pressures as a result of falling audiences and advertising revenues and rising costs. It is the Government's view that broadcasting licence fees are an outdated and unnecessary tax on our commercial broadcasters, and should be repealed with effect from the 2016-17 financial year. The Regulations, which were made by the Governor-General on 27 June and took effect on 30 June 2017, remove fees payable for the 2016-17 accounting period by setting the effective rate of fees for that year at zero per cent.

The making of the Regulations in this manner does not circumvent or otherwise erode the intent of Parliament in relation to the imposition of licence fees, as the effective removal of the licence fees is time limited and only applies to one financial period (the 2016-17 accounting year or equivalent). The Regulations do not permanently abolish the fees. Absent the passage of the Broadcasting Reform Bill, licence fees will continue to be imposed for 2017-18 accounting period and beyond under the *Television Licence Fees Act 1964* and the *Radio Licence Fees Act 1964*. In this regard, the Regulations were not made with the purpose of permanently ending licence fees without Parliamentary approval. For completeness, I would also note that Regulations were made under the *Television Licence Fees Act 1964* on many occasions over recent years to provide for reductions in the licence fees payable by commercial television broadcasting licensees.

I thank the Committee for bringing this matter to my attention and I trust this information is of assistance.

Yours sincerely

MITCH FIFIELD

2/9/17

The Hon Greg Hunt MP
Minister for Health
Minister for Sport

Ref No: MC17-015165

Senator John Williams
Chair
Senate Regulations and Ordinances Committee
PO Box 6100
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05 SEP 2017

Dear Chair John

I refer to the Committee's letter of 17 August 2017 seeking advice in relation to:

- the meaning of the term 'good medical practice' in each of the recent *Therapeutic Goods (Authorised Supply of Specified Biologicals) Rules 2017*, *Therapeutic Goods (Authorised Supply of Specified Medical Devices) Rules 2017* and *Therapeutic Goods (Authorised Supply of Specified Medicines) Rules 2017*; and
- how the fees introduced by the recent *Therapeutic Goods Legislation Amendment (2017 Measures No.1) Regulations 2017* for sponsor requests to reinstate therapeutic goods cancelled for non-payment of annual product charges were calculated.

'Good medical practice'

The effect of the above Rules instruments is to list unapproved products that health practitioners can supply to their patients by notifying the Therapeutic Goods Administration (TGA), rather than (as was the case before these instruments were made) through pre-approval.

The term 'good medical practice' has been used in regulation 12A of the *Therapeutic Goods Regulations 1990* since 1991. This provision authorises medical practitioners to supply unapproved medicines to persons who are "Category A" patients (persons who are seriously ill), and supply under this mechanism must be in accordance with good medical practice.

The TGA document "*Special Access Scheme: Guidance for health practitioners and sponsors*" (July 2017), which includes guidance on the supply of unapproved goods under these Rules, explains that 'good medical practice' refers to a series of standards that health practitioners should adhere to when treating patients. These standards are generally patient-centred and comprise ethical and professional benchmarks expected by a health practitioner's professional peers, as well as the community. For example, registered medical practitioners operate in accordance with the principles in the Medical Board of Australia's '*Good Medical Practice: A Code of Conduct for Doctors in Australia*', and dental practitioners would be expected to comply, in most cases, with the Dental Board of Australia's '*Code of Conduct for registered health practitioners*'.

Given the above, it is expected that health practitioners in particular, and patients, would be familiar with, and understand, the meaning of this term.

It is anticipated that the above Rules for medicines and biologicals will shortly be re-made to include additional products, and that the explanatory statements for those re-made Rules will incorporate the above explanation. A replacement explanatory statement for the medical devices Rules that incorporates the above will also be provided.

Reinstatement fees

The *Therapeutic Goods Legislation Amendment (2017 Measures No.1) Regulations 2017* introduced application fees for the purposes of a number of provisions recently added to the *Therapeutic Goods Act 1989* (the Act) that allow sponsors whose goods were cancelled from the Australian Register of Therapeutic Goods (the Register) because they failed to pay the annual charge for their goods to apply to the Secretary for their products to be reinstated to the Register (sections 30AA, 32GDA and 41GLB of the Act refer).

These application fees (in items 6, 8 and 9 of Schedule 8 to the *Therapeutic Goods Legislation Amendment (2017 Measures No. 1) Regulations 2017*), which in each case comprise a fee of $150 if the request relates to a single entry in the Register and a fee of $50 for any additional entries covered by the same request, reflect the administrative work involved in processing requests of this nature.

In relation to the fee of $150 for a request relating to only one entry, this fee reflects the TGA's costs, and includes direct staff time of one hour (on average), and the relative allocation of support and corporate costs. For a request that relates to more than one entry, it is estimated that whilst one hour of staff time will be required for the first entry, around 20 minutes of additional time will be required to complete the administrative tasks associated with each additional entry. Therefore, where a request relates to more than one entry, a fee of $150 for the first entry, plus $50 for each additional entry, applies.

The explanatory statement for these regulations will be updated accordingly as soon as possible to incorporate the above explanation.

Yours sincerely

Greg Hunt