MINISTER FOR INDIGENOUS AFFAIRS

Reference: MC17-096790

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

Dear Senator Williams

Thank you for your letter of 16 November 2017 seeking a response to issues contained in the Senate Standing Committee on Regulations and Ordinances *Delegated legislation monitor 14 of 2017* concerning the Torres Strait Regional Authority Election Rules 2017 [F2017L01279] (TSRA Election Rules).

I respond as follows:

As outlined in the Explanatory Statement for the TSRA Election Rules, the election rules largely mirror those in the TSRA Election Rules 1996 which was scheduled to sunset on 1 October 2017.

Drafting

I acknowledge the three incorrect cross-references identified by the Committee. In each case, I consider the correct cross-reference is easily identifiable. However, I will take the earliest possible opportunity to amend the TSRA Election Rules and correct the cross-references the Committee has identified.

I note the courts have adopted the approach of reading a provision containing an incorrect cross-reference as if it contained the correct cross-reference. On this basis, I am confident these minor incorrect cross-references will not undermine the intended legal effect of the respective provisions.

Sub-delegation

The Committee has sought further information in relation to the broad power of delegation provided under rule 166 of the TSRA Election Rules. I advise rule 166 is similar to section 16 of the *Commonwealth Electoral Act 1918*, providing a consistent approach to elections conducted under both legislative schemes. On this basis, the broad power of delegation is necessary and extends to individuals with relevant qualifications, and attributes to exercise the powers or functions.

As this rule is consistent with the Electoral Act, no amendment is necessary to the TSRA Election Rules.

The Department of the Prime Minister and Cabinet will revise the Explanatory Statement to provide further information about rule 166.

Offence provisions

Strict liability offences

I note the Committee's request and the importance of providing additional information about the use of strict liability elements in the TSRA Election Rules and consideration of any associated human rights issues.

I note the respective provisions are consistent with *A Guide to framing Commonwealth offences, infringement notices and enforcement powers.*

Evidential and legal burdens of proof

I note the Committee's request and the importance of providing additional information about the reversal of the burden of proof for a number of offence provisions in the TSRA Election Rules and consideration of any associated human rights issues.

I note the respective provisions are consistent with *A Guide to framing Commonwealth offences, infringement notices and enforcement powers.*

My Department will revise the Explanatory Statement to provide further information about the strict liability offences and the reversal of the burden of proof and consideration of any associated human rights issues.

I trust my response addresses the Committee's issues.

Yours sincerely

NIGEL SCULLION

29 / 11 / 2017

Office of the
Minister for Revenue and Financial Services

The Hon Kelly O'Dwyer MP

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

Dear ~~Senator~~ John

Thank you for your correspondence of 16 November 2017 concerning the Senate Committee on Regulations and Ordinances request for information concerning explanatory material in relation to *ASIC Corporations (Factoring Arrangements) 2017/794* (the instrument).

As you are aware, on 12 September 2017 the Australian Securities and Investments Commission (ASIC) made the instrument which exempts sellers and purchasers of accounts receivable under factoring arrangements from legal requirements relating to derivatives under the *Corporations Act 2001*, where the factoring arrangement would otherwise fall within the definition of a derivative.

This instrument contains provisions outlining the criteria in which a person may be exempted from the legal requirements for derivatives under the Act, in particular that an eligible seller must establish and maintain an internal dispute resolution system which complies with the incorporated standards for complaints handling (Australian Standard AS ISO 10002-2006 *Customer satisfaction – Guidelines for complaints handling in organizations*).

I refer to your request regarding 'how the incorporated standard is or may be made readily and freely available to persons interested in or affected by the instrument; and requests that the explanatory statement be updated to include this information'. I have received advice that the incorporation by reference of the standard reflects the incorporation of the standard in the *Corporations Regulations 2001* at regulations 7.6.02 and 7.9.77.

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Additionally, any persons interested in or affected by the instrument are able to access this information in a number of ways, including in:

- ASIC Regulatory Guide 165: *Licensing: Internal and external dispute resolution*, which provides substantial guidance on how ASIC will apply the standard; and

- several state libraries, including the State Library of New South Wales and the State Library of Queensland, which may be viewed by persons interested in, or affected by, the instrument.

Noting the Committee's concerns that the *Legislation Act 2003* requires that an explanatory statement for a legislative instrument that incorporates a document must contain a description of that document and indicate how it may be obtained, ASIC have also advised that they will amend the explanatory statement to refer readers to the guidance in ASIC Regulatory Guide 165 and the ability to access the standard at public libraries.

I hope this information will be of assistance to you.

Yours sincerely

Kelly O'Dwyer

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~~

Thank you for your correspondence of 16 November 2017, originally directed to the Minister for Revenue and Financial Services, concerning the Senate Regulations and Ordinances Committee's Delegated legislation request (monitor 14 of 2017) for an explanation on the penalties within *ASIC Credit (Flexible Credit Cost Arrangements) Instrument 2017/780* (the instrument). Your correspondence has been referred to me as I have responsibility for this matter.

As you are aware, on 7 September 2017 the Australian Securities and Investments Commission (ASIC) made the instrument that from November 1, 2017 prohibited flex commissions – a type of commission payable by lenders to car dealers. The instrument contains both civil and criminal penalties for breaches of the provisions that prohibit flex commissions.

I refer to your request regarding 'the specific legal authority for the imposition of civil and criminal penalties, including penalties of up to two years' imprisonment, in the instrument'. I have received advice that the penalties imposed under the instrument are consistent with legal authority granted to ASIC under the *National Consumer Credit Protect Action 2009* (the Credit Act).

Specifically, the instrument is made under the statutory power given by s109(3)(d) of the Credit Act. That provision provides that ASIC may, by legislative instrument, declare that provisions to which Part 2-6 of the Act applies apply in relation to a credit activity, or class of persons or credit activities, as if specified provisions were omitted, modified or varied as specified in the declaration.

The Credit Act does not enumerate any particular criteria governing the exercise by ASIC of the modification powers conferred by s109. In accordance with general principle, a power or discretion that is in its terms unconfined is limited only by the context, scope and purpose of the statute of which it forms a part: *R v Australian Broadcasting Tribunal; Ex parte 2HD Pty Ltd* (1979) 144 CLR 45 at 50; see also *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24 at 40.

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The High Court has considered both the need and the scope of ASIC's modifications powers in *Australian Securities and Investments Commission v DB Management Pty Ltd* (2000) 199 CLR 321 (DB Management). That case required consideration of s730 of the Corporations Law (as it was then). This provision contained a modification power similar to the power in s109 of the Credit Act relied on to make the instrument.

ASIC considers that the prohibition, related offences and penalties imposed under the instrument are consistent with the subject matter, scope and purpose of Ch 2 of the Credit Act. In particular they note:

- one of the objects of the Credit Act is to ensure that holders of an Australian credit licence meet minimum standards of conduct in their dealings with consumers. These include requirements to act honestly, fairly and efficiently, and to have in place adequate arrangements to ensure that clients of the licensee are not disadvantaged by any conflict of interest that may arise wholly or partly in relation to credit activities engaged in by the licensee or its representatives: ss47(1)(a) and (b) of the National Credit Act;

- the instrument is consistent with the objectives of ss 47(1)(a) and (b) of the National Credit Act. This view was tested through an extensive consultation process, as set out in ASIC's Regulation Impact Statement (Attachment 2 to Consultation Paper 279 Flex commission arrangements in the car finance industry);

- subsections 109(6) and (7) of the Credit Act expressly recognise that the modification power can be used to create an offence. These subsections provide that: if conduct of a person would not have constituted an offence if a particular declaration had not been made, that conduct does not constitute an offence unless, before the conduct occurred, the text of the declaration had been published in a specified way; and in a prosecution for such an offence, the prosecution must prove that the text had been published as required before the conduct occurred; and

- the penalties imposed under the instrument are consistent with penalties imposed by other provisions in Ch 2 of the Credit Act (e.g. ss 69 and 70).

ASIC further note that the use of a modification power to create an offence and related penalties through subordinate legislation is not unique. Regulation 7.6.02AGA of the Corporations Regulations 2001 - made under a modification power in s926B of the *Corporations Act 2001* (the Corporations Act) - creates a prohibition on providing financial services in relation to specified products unless the person is licensed or registered.

A breach of this prohibition is subject to a civil penalty of 2,000 penalty units and a criminal penalty of 200 penalty units, or 2 years imprisonment or both. Again, the relevant modification powers in the Corporations Act (both ASIC powers in s926A and regulation powers in s926B) are substantially the same as those in the Credit Act.

Thank you for taking the time to write.

Yours sincerely

MICHAEL McCORMACK

30 / 11 /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 Ordinances Committee
Suite S1.111
Parliament House
Canberra ACT 2600

Delegated legislation monitor 14 of 2017

Dear Chair John

I am writing in response to a request from the Senate Regulations and Ordinances Committee for advice about the following two instruments:

- Broadcasting Services (Technical Planning) Guidelines (Consequential Amendments) Instrument 2017 (No. 2) [FL2017L01302]; and
- Radiocommunications (Spectrum Licence Allocation – Multi-band Auction) Determination 2017 [F2017L01255].

Ms Anita Coles, Committee Secretary, wrote to my office on 16 November 2017 drawing attention to the Committee's concerns about these instruments, as set out in the *Delegated legislation monitor 14 of 2017*. The Committee requested my advice in regard to the classification of these instruments as exempt from disallowance, and the combination of disallowable and non-disallowable provisions in legislative instruments.

The rule-maker for both instruments was the Australian Communications and Media Authority (the ACMA). My department has consulted with the ACMA and the Office of Parliamentary Counsel (OPC) about the Committee's concerns.

I am advised that due to an administrative error, both instruments were wrongly classified as exempt from disallowance when received by Parliament and the Committee. I understand that the error was rectified by OPC after the Committee secretariat drew it to OPC's attention.

I agree that this is a serious issue, and I thank the Committee for drawing it to my attention. I am confident that officers in my portfolio understand the significance of ensuring that instruments tabled in the Parliament are correctly classified, so as not to hinder Parliament's effective oversight of delegated legislation.

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The ACMA has also carefully noted the Committee's expectations that "disallowable and non-disallowable provisions should not be combined in the same instrument unless this is entirely unavoidable", and that, in the event that it is necessary to combine disallowable and non-disallowable provisions in the same instrument, any such instrument should be classified as disallowable and the instruments or their ESs should clearly specify the provisions which are able to be disallowed. With respect to the two instruments in question, the ACMA has provided the following advice.

- The Broadcasting Services (Technical Planning) Guidelines (Consequential Amendments) Instrument 2017 (No. 2) was made under subsection 106(1) and paragraph 107(1)(f) of the *Radiocommunications Act 1992* (the Act). The amendments made under the powers arising from these two provisions were made in the same instrument for convenience and efficiency only. The ACMA notes that the amendments made under the different sections were made in separate Schedules, so, had Parliament been minded to disallow the amendment made under paragraph 107(1)(f), it might readily have done so. Now that the ACMA understands the Committee's expectations, the ACMA has undertaken, in any similar future case, to give effect to such amendments in separate instruments rather than separate schedules.

- The Radiocommunications (Spectrum Licence Allocation – Multi-band Auction) Determination 2017 was made under sections 60 and 294 of the Act. The ACMA has provided the following advice about why a single instrument was necessary in this case:

  > "That instrument governs a forthcoming auction of spectrum. Matters dealt with by s.294, being the determination of the amount of spectrum access charge and the timing and other arrangements for its payment are central to, and not easily severable from, the other rules about conducting the auction. The amount of charge payable depends entirely upon the result of the auction and the result of the auction depends upon its rules... The timing of the payment depends fundamentally upon the rules about when the auction closes. It would be a difficult matter to meaningfully separate rules about price and timing of payment from rules about the auction in general, which include, as fundamental elements, establishing the price and determining when it needs to be paid. Severance of those matters into separate instruments would also cause extra costs for participants in the auction (who need to familiarise themselves with its rules) and for the ACMA and the auction manager in conducting the auction."

  In similar future cases, the ACMA has indicated that it would prefer to maintain the current practice of keeping the auction instrument as an integrated whole, but would meet the Committee's expectation that the relevant Explanatory Statement should clearly specify the particular provisions of it which rely on section 294, and which are therefore subject to disallowance.

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

Yours sincerely

MITCH FIFIELD

1/12/17

The Hon Darren Chester MP
Minister for Infrastructure and Transport
A/g Minister for Regional Development
A/g Minister for Local Government and Territories
Deputy Leader of the House
Member for Gippsland

29 NOV 2017

PDR ID: MC17-005525

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 16 November 2017 regarding a number of instruments included in the Standing Committee on Regulations and Ordinances Delegated Legislation Monitor No 14 of 2017.

Civil Aviation Safety Exemption Instruments
I have sought advice from the Civil Aviation Safety Authority (CASA) about the concerns raised by the Committee in relation to these instruments.

CASA has utilised exemptions in this case as a means to provide more timely relief to industry for provisions that are intended to be implemented through regulation amendment.

However, CASA agrees that it is preferable to amend regulations rather than make exemptions. The process for making regulation amendments that will cover these exemptions is underway with CASA expecting to bring forward amending regulations in either 2018 or 2019. More specific information is included below relating to each exemption instrument.

CASA EX120/17 – Exemptions – requirements for helicopter aerial applications endorsements [F2017L01332]
Since Civil Aviation Safety Regulation 1998 (CASR) Parts 61, 141 and 142 commenced in September 2014, CASA has identified various issues or unintended consequences that were then the subject of general exemptions. CASA proposes to amend these Parts (in particular Part 61) to deal with these issues with drafting instructions for an amendment regulation expected in 2018, for making of the regulation in 2019.

CASA EX143/17 – Exemption – DAMP organisations to provide information to CASA [F2017L01300]
CASA has been intending to progress regulation amendments to deal with this exemption but the work has been delayed in order to address higher profile safety critical regulation amendments.

However, CASA has worked with the Office of Parliamentary Counsel during 2016 and 2017 to finalise an amendment package to CASR Part 99 relating to drug and alcohol management, and proposes to introduce the amendment package in early 2018 (together with a Part 99 Manual of Standards). The amendments will deal with the reporting requirements that are the subject of the exemption.

Marine Orders (Navigation Act) Administration Order 2017 [F2017L01336]
The Committee noted that the Order amends Marine Order 12 (Construction — subdivision and stability, machinery and electrical installations) 2016 (MO12) to remake an offence already contained in MO12. As the Committee acknowledges, the remaking of the offence was only intended to correct a numbering error. However, as this was achieved by remaking the offence in its entirety, the Committee has asked for advice about the justification for this strict liability offence and has also requested that the explanatory statement be updated.

Section 23 of MO12 requires a person boarding or leaving a vessel to use the means of access provided or identified by the master of the vessel. Subsection 23(2) provides that non-compliance with Subsection 23(1) is an offence and that strict liability applies to the offence. Subsection 23(3) provides that a person is liable to a civil penalty.

Strict liability offences allow for the imposition of criminal liability without the need to prove fault (see section 6.1 of the Criminal Code). Subsection 341(1) of the *Navigation Act 2012* (the Navigation Act) provides that the regulations may provide for penalties of not more than 50 penalty units for an individual and 250 penalty units for a body corporate for a contravention of the regulations. Under Section 342 of the Navigation Act, marine orders may deal with any matter for which provision may be made by the regulations.

Section 23 of MO12 is an important measure designed to achieve the safety of persons boarding or leaving vessels. Strict liability is imposed for offences in marine orders including in circumstances where there are risks to the life and safety of persons arising from breach of the offences. In this context it is considered that the strict liability offence is warranted as a deterrent.

The penalty (50 penalty units) is relatively low and is within the limitation imposed by paragraph 341(1)(a) of the Navigation Act. The Order also creates a civil penalty for failure to comply with the offence. The civil penalty is regulatory rather than punitive in nature and is authorised by paragraph 341(1)(b) of the Navigation Act.

In framing the offence, regard was given to the Guide on Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (the Guide) published by the Attorney General's Department and is consistent with the principles outlined in the Guide.

To the extent that there is a limitation on human rights as a result of the imposition of the strict liability offence, this is considered to be reasonable, necessary and proportionate to ensure the safety of persons boarding or leaving vessels.

Justification for this strict liability offence will be included in a replacement explanatory statement for the Order as the Committee has requested.

The Committee also noted that the Order incorporates the following documents without indicating in the explanatory statement where they may be obtained:

- the International Life-Saving Appliance Code (referred to in the instrument as the LSA Code);
- the Revised guidelines for the onboard operational use of shipborne automatic identification systems; and
- the Revised guidelines and specifications for pollution prevention equipment for machinery space bilges of ships.

As the Committee's research indicates, these documents are all available for free online.

Guidance as to how and where they may be accessed is provided in the marine orders being amended (see note 1 under Subsection 4(1) of Marine Order 25 (Equipment — lifesaving) 2014, note 3 under Subsection 4(1) of Marine Order 63 (Vessel reporting systems) 2015 and note 5 under Section 4 of Marine Order 91 (Marine pollution prevention — oil) 2014).

However, the replacement explanatory statement for the instrument will also specify the websites where these documents are available free of charge.

Thank you again for informing me of the Committee's concerns on this matter.

Yours sincerely

DARREN CHESTER

MINISTER FOR INDIGENOUS AFFAIRS

Reference: MS17-005421

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

Dear Senator Williams

Thank you for your letter of 16 November 2017 seeking a response to comments contained in the report of the Senate Standing Committee on Regulations and Ordinances, *Delegated legislation monitor 14 of 2017*, concerning the following instrument for which I have portfolio responsibility:

Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 [F2017L01311]

In response to the Committee's request, I have enclosed advice regarding the nature of the documents and information that the Registrar of Indigenous Corporations (the Registrar) may make available to the public under the regulations, and relevant safeguards in place for the protection of individuals' privacy.

The Committee can be assured that the Registrar is aware of, and takes seriously, the protection of the personal privacy of individuals, and this applies equally to any documents covered under section 55 of the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* (CATSI Regulations) that are currently held by the Registrar.

I trust this advice addresses the Committee's concerns and I look forward to working with you to assist in responding to future queries.

Yours sincerely

NIGEL SCULLION

29 / 11 / 2017

Advice in response to request from Senate Standing Committee on Regulations and Ordinances

Advice in relation to the nature of the documents and information that the Registrar may make available to the public under the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* (CATSI Regulations):

Section 55 of the CATSI Regulations deals with information and documents that were created in the context of the predecessor to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act), namely the *Aboriginal Councils and Associations Act 1976* (ACA Act). Chapter 9 of the Registrar's policy statement *PS-12: Registers and the use and disclosure of information held by the Registrar* specifically provides for this issue:

> **9 Information under the *Aboriginal Councils and Associations Act 1976* (ACA Act)**
> 9.1 Another function of the Registrar is to make documents and information relating to the registration of a corporation under the ACA Act available to the public, if the Registrar considers it appropriate. This includes documents and information that before the CATSI Act began were:
>
> - filed or lodged with the Registrar or served on the Registrar under the ACA Act
> - kept by the Registrar under the ACA Act or
> - given to or served on a person by the Registrar under the ACA Act.
>
> 9.2 In determining whether it is appropriate to release information or documents relating to the registration of an Aboriginal and Torres Strait Islander corporation under the ACA Act, the Registrar will consider:
>
> - whether the information or document would be exempt under the CATSI Act
> - whether a third party gave the information to the Registrar and the information related to a particular corporation – for example, information provided by a liquidator or administrator
> - whether there is a public interest or benefit in releasing the information.
>
> 9.3 The Registrar will not release information or documents which relate to a corporation under the ACA Act if they would be exempt information under the CATSI Act.
>
> 9.4 Any personal information contained in a document may be removed before its release.

The Registrar's policy statement, *PS-01: Providing information and advice* outlines the nature of the information that the Registrar may make public as follows:

> 4.2 Information [that] is by its nature uncontroversial. Often information given will be 'public information'. It includes the following:
>
> - the name or Indigenous Corporation Number of a corporation
> - publicly available details about a corporation appearing on the Registrar's website
> - publicly available information or documents on the Register of Aboriginal and Torres Strait Islander Corporations
> - providing copies of a corporation's rule book to its members
> - the address and contact details of the Registrar or staff
> - general information about what functions the Registrar performs
> - information about the Registrar's public education programs
> - official publications produced by the Registrar
> - standard responses covered by the Registrar's publications.

4.3 Information may include telling people what forms to complete or procedures to follow.

4.4 Telling a person which part of the CATSI Act, the regulations, a corporation's rule book or a publication is relevant to their concern or query would also be information.

4.5 In some straightforward cases, providing an explanation of part of the CATSI Act, the Regulations or a corporation's rule book may be classified as information—for example, where the information:

- is a plain English explanation of a straightforward and uncontroversial clause which is well understood
- relates to provisions of the CATSI Act, the Regulations or model rule book for which the Registrar is responsible
- is information which is included in a Registrar's publication.

Relevant safeguards in place for the protection of individuals' privacy:

Paragraph 4.15 of *PS-01: Providing information and advice* states that the Registrar is bound in all these matters by the Information Privacy Principles in the *Privacy Act 1988,* which regulate the collection, use, storage and collection of personal information. Information received from individuals will be dealt with in accordance with these statutory requirements.

Paragraphs 7.1 to 7.8 of the Registrar's policy statement *PS-15: Privacy*, outlines the privacy obligations of the Registrar with respect to the use and disclosure of protected information. This applies to any equivalent material contained in documents created under the ACA Act that are held by the Registrar.

The Office of the Registrar of Indigenous Corporations (ORIC) has also published a privacy statement on its website to demonstrate its commitment to protect the privacy of officers of Aboriginal and Torres Strait Islander corporations. This statement can be found at http://www.oric.gov.au/privacy-statement . As ORIC is part of the Department of the Prime Minister and Cabinet (PM&C), it is also bound by PM&C's Privacy Policy.

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

REF: MS17-017835

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 16 November 2017 sent to my office seeking further information about the item for the Agricultural Trade and Market Access Cooperation Program in the *Financial Framework (Supplementary Powers) Amendment (Agriculture and Water Resources Measures No. 5) Regulations 2017*.

The attached response has been provided by the Assistant Minister for Agriculture and Water Resources, the Hon Luke Hartsuyker MP, on behalf of the Prime Minister, the Hon Malcolm Turnbull MP, in his capacity as the Minister for Agriculture and Water Resources, who has portfolio responsibility for the items in this instrument.

I trust this advice will assist the Committee with its consideration of the instrument.

I have copied this letter to the Assistant Minister for Agriculture and Water Resources. Thank you for bringing the Committee's comments to the Government's attention.

Kind regards

Mathias Cormann
Minister for Finance

30 November 2017

Attachment

Response provided by the Assistant Minister for Agriculture and Water Resources

Response to Senate Standing Committee on Regulations and Ordinances questions on amendments to provide legislative authority for ATMAC program (Delegated legislation monitor 14 of 2017 from 15 November 2017)

Justification for exclusion from merits review

The Agricultural Trade and Market Access Cooperation (ATMAC) grants program has a two-tiered internal merits assessment process: individual merit assessment by a five-member panel of departmental officials and then a merit discussion at the assessment panel meeting. The assessment panel assesses applications on an ongoing, non-competitive basis in the order they are received.

As set out in the program guidelines available on the Department of Agriculture and Water Resources' website (http://www.agriculture.gov.au/SiteCollectionDocuments/market-access-trade/atmac/atmac-grant-programme-guidelines.pdf), the assessment panel assesses eligible applications on their own merit against the weighted assessment criteria, as per the scoring regime and in accordance with the assessment plan. The assessment panel makes a recommendation to the program delegate as the final decision-maker on whether to approve a grant or a targeted project.

Funding decisions are made in accordance with the assessment process set out in the grant program guidelines and the applicable legislative requirements under the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Grants Rules and Guidelines.*

There is no secondary or external merits review for decisions to approve or not approve a grant in this program.

The program involves allocation of finite resources (individual grants of up to $1.5 million to a total program funding of $5 million) that have been specifically allocated across four financial years (see program guidelines for funding allocation across the four years).

A merits review decision made in relation to one grant would affect decisions in relation to others, because a review of an application to be successful could require a reduction in funding to other recipients.

The program guidelines outline the consideration of targeted applications:

> The department may seek an application for a project where a trade issue arises that needs urgent resolution and no applications have been already submitted for a project that would address the issue. The department may also decide to seek an application where, for example, none of the applications received to date address an identified gap or a challenge that the department considers needs to be addressed.
>
> Any applications sought by the department will be considered in isolation of the applications accepted on an ongoing, non-competitive basis and will take precedence. An invitation to submit an application is no guarantee that funding will be provided.

An applicant may lodge a complaint about the handling of their application by the department to the program manager for consideration. Persons who are otherwise affected by decisions or who have complaints about the program also have recourse to the department. The department will investigate any complaints about the program in accordance with its complaints policy and procedures. If a person is not satisfied with the way the department handles the complaint they may lodge a complaint with the Commonwealth Ombudsman.

Prior legislative authority

Prior to 20 September 2017, legislative authority for the ATMAC program was sourced from item 401.011 of Schedule 1AA of the *Financial Framework (Supplementary Powers) Regulations 1997* which relevantly provides:

401.011 Agriculture Advancing Australia – International Agricultural Cooperation
Objective: To maintain and improve international market access opportunities for Australia's agriculture, food, fisheries and forestry industries

Item 244 was added to the Regulations as a measure for the avoidance of doubt to ensure the existence of legislative authority for the payment of funds as part of the ATMAC grants scheme.

ATTORNEY-GENERAL

CANBERRA

5 DEC 2017
MC17-013038

Ms Anita Coles
Committee Secretary
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Ms Coles

Thank you for your letter of 17 November 2017 on behalf of the Senate Standing Committee on Regulations and Ordinances (the Committee) that requests my advice on two matters concerning the *Guidelines Relating to the Registration and Cancellation of a Registered Debt Agreement Administrator and Ineligibility of an Unregistered Debt Agreement Administrator* [F2017L01308] (the Guidelines).

First, the Committee requests my advice as to why a Statement of Compatibility with Human Rights (Statement of Compatibility) was not included in the Explanatory Statement (ES) and requests that the ES be updated in accordance with the requirements of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Parliamentary Scrutiny Act). Second, the Committee requests my advice as to consultation undertaken on the instrument and requests that the ES be updated in accordance with the requirements of the *Legislation Act 2003* (Legislation Act).

In response to the Committee's first request, the rule-maker has advised me that a Statement of Compatibility was omitted because of an administrative oversight. The rule-maker has advised me that he will update the ES in accordance with the requirements of the Parliamentary Scrutiny Act.

In response to the Committee's second request, the rule-maker has advised me that no consultation was undertaken in relation to the Guidelines. The rule-maker determined that this was appropriate because I am currently pursuing reform of the debt agreement system which will require amendment of the Guidelines in the near future. It was necessary for the rule-maker to make the Guidelines in advance of finalising reform of the debt agreement system because the Guidelines replaced an instrument that sunsetted on 1 October 2017. The rule-maker has advised me that he will consult with stakeholders on amendments to the Guidelines as part of finalising reform of the debt agreement system. The rule-maker has also advised me that he will update the ES in accordance with the requirements of the Legislation Act.

Parliament House Canberra ACT 2600 Telephone: (02) 6277 7300 Facsimile: (02) 6273 4102

Thank you again for writing on this matter.

Yours faithfully

(George Brandis)

The Hon Greg Hunt MP
Minister for Health
Minister for Sport

Ref No: MC17-019763

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

4 DEC 2017

Dear Chair John

I refer to the Standing Committee on Regulation and Ordinances letter of 16 November 2017 seeking a response in relation to the Health Insurance (Approved Pathology Undertakings) Approval 2017 [F2017L01293] and the Health Insurance (Accredited Pathology Laboratories) Principles 2002 [F2017L01291] that were recently tabled.

I note the Committee's concerns relate to the information that may be provided by Approved Pathology Practitioners or the Approved Pathology Authority to government officials in accordance with the legislative instrument and whether there is any undue impact on individual's privacy or personal rights. I am confident that the requirements in the legislative instrument do not infringe on individual's personal rights or liberties.

The Commonwealth introduced a compulsory accreditation system in relation to Medicare benefits for pathology in 1986. In order to be accredited, a pathology laboratory must meet specified quality standards. Medicare benefits are only payable for pathology services if:

- approved services are performed in a laboratory within an appropriate Accredited Pathology Laboratory category;
- the service is rendered by or on behalf of an Approved Pathology Practitioner; and
- the proprietor of the laboratory is an Approved Pathology Authority.

Section 7(1) of Schedule 1 of the *Health Insurance (Approved Pathology Undertakings) Approval 2017* allows for relevant information related to pathology services provided by an Approved Pathology Practitioner or on behalf of the Approved Pathology Practitioner, to be provided to the Australian Government Department of Human Services, who manage the administration of laboratory status and Medicare payments for pathology services.

Alternatively, the information may be provided to the Australian Government Department of Health, who has responsibility for compliance activities. For example, the information may include records of pathology services claimed to have been rendered by the Approved Pathology Practitioner or on their behalf that may inform the monitoring of Medicare payments for the purposes of ensuring the appropriate use of public funds or compliance activities. The requestor of the information is considered to have the responsibility of determining whether any clinical information is relevant to any issues arising from the Undertaking.

Section 12(1) of Schedule 2 of the Health Insurance (Approved Pathology Undertakings) Approval 2017 enables the Approved Pathology Authority, or the proprietor of the laboratory, to provide any requested relevant information to the Australian Government Department of Human Services relating to the pathology laboratory or pathology services provided at the laboratory or services provided by the Approved Pathology Practitioner that has signed the Undertaking. The example provided for section 7(1) would be relevant to this provision.

In terms of safeguards addressing disclosure of personal information or clinical information, as part of the national pathology accreditation program, laboratories are required to have protocols and procedures relating to the tracking of specimens and test results and the disclosure of test results. In addition, a pathology request form and laboratory records often are identified with a patient name and up to two other unique identifiers, such as unique medical record number or date of birth.

There are also legal safeguards in place relating to the disclosure of this information. To the extent that the information requested would include information patient clinical details, the secrecy provision in section 130(1) of the *Health Insurance Act 1973* (the Act) prohibits a person from directly or indirectly divulging or communicating to any person any information with respect to the affairs of another person acquired by him or her in the performance of his or her duties, or in the exercise of his or her powers or functions under the Act. This secrecy provision extends to information acquired by the requestors under section 7(1) of Schedule 1 to the instrument from Approved Pathology Practitioners, and the sharing of that information with recipients. Therefore, once the requestors and recipients have been provided with the information about the affairs of a person (e.g. identified clinical information), the requestors and recipients are bound by section 130(1) of the Act not to divulge or communicate that information, unless an exception applies. A general exception allowing information to be divulged in the exercise of powers, functions and duties under the Act is included in section 130(1) itself. Any disclosure that occurs outside these exceptions is prohibited and could constitute an offence, attracting criminal penalties.

Section 135A of the *National Health Act 1953* (NH Act) is the secrecy provision that applies to information acquired under the NH Act. For relevant purposes, this secrecy provision mirrors the secrecy provision in the HI Act (i.e. section 130(1) of the Act). This provision may be invoked subject to whether information is shared and disclosed. If the NH Act should apply, section 135A will prohibit disclosure of information (unless an exception applies) in the event that information is acquired for the purposes of the NH Act (in addition to the Act).

Furthermore, the Department and other recipients/requestors are 'APP entities' for the purposes of the *Privacy Act 1988* and are therefore subject to the principles regarding the handling of personal information arising from that Act.

Further information about the specific provisions in the Health Insurance (Approved Pathology Undertakings) Approval 2017 can be provided to the Committee upon request. If this is the case, the Committee is requested to consider the disallowance of a particular provision rather than the whole Instrument.

The Committee's comments in relation to the incorrect reference to the subsection regarding the definition of independent body in the Health Insurance (Accredited Pathology Laboratories-Approval) Principles 2017 (Pathology Principles) have been noted. This reference was identified as part of a further proposed amendment to the Pathology Principles that is currently underway.

Thank you for ~~writing~~ on this matter.

~~Greg Hunt~~

SENATOR THE HON MICHAELIA CASH
ACTING MINISTER FOR INDUSTRY, INNOVATION AND SCIENCE
SENATOR FOR WESTERN AUSTRALIA

MS17-003404

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

Dear Senator

I thank the Senate Standing Committee on Regulations and Ordinances for its letter of 16 November 2017, in which the Committee requested further information about the Industry Research and Development (Cooperative Research Centres Projects Program) Instrument 2017 (the Instrument).

The Committee has requested further advice as to whether funding decisions made under the Cooperative Research Centres Projects Program (the Program) are subject to independent review of their merits; and if not, what characteristics of the Program justify the exclusion of such decisions from external merits review.

Funding decisions made under the Program are not subject to external merits review. Merits review would not be appropriate within the context of the Program, as funding decisions involve the allocation of finite resources, and overturning an original funding decision could affect an allocation to another party. This is consistent with the Administrative Review Council guide, *What decisions should be subject to merits review?* available at https://www.arc.ag.gov.au/Publications/Reports/Pages/Downloads/Whatdecisionsshouldbesubjecttomeritreview1999.aspx. The Program is subject to a robust and extensive assessment process, an enquiry and feedback process, and an existing complaints mechanism for affected applicants.

Funding for the Program is provided under the broader Cooperative Research Centres (CRC) Program. The CRC Program provides funding of $710 million over the forward estimates to support:

- CRC grants (which are supported by item 418.004 of Schedule 1AA of the *Financial Framework (Supplementary Powers) Regulations 1997*, and for which there is no maximum value, but which are typically $30-50 million); and
- grants for CRC Projects (which are supported by the Instrument, and which may be up to a maximum of $3 million).

There is no specified annual amount allocated to each of these two funding streams. The number of CRC grants and grants for CRC Projects that will be funded in each selection round will depend on the number of applications received, the relative merits of applications, the amount of available funding and the need to ensure sufficient funding is available for future selection rounds.

Program funding is provided through a competitive, merit based process in accordance with the Commonwealth Grants Rules and Guidelines https://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf and the Cooperative Research Centres Projects Guidelines (the Program Guidelines) available at https://www.business.gov.au/CRC-P.

To be eligible to receive funding, applicants must meet the eligibility criteria and rank competitively on the selection criteria against all other compliant applications. The selection criteria are set out in section 12 of the instrument and further guidance is outlined in the Program Guidelines.

At first instance, applications are assessed by the Department of Industry, Innovation and Science (the department) against the eligibility criteria, with the program delegate determining each application's compliance with the eligibility criteria.

Following this, the merit selection process outlined in section 13 of the instrument applies. Innovation and Science Australia (the Board) considers eligible applications against each of the six selection criteria. To be competitive, applications must score highly against each selection criterion.

After considering the applications, the Board makes recommendations to the Minister on: which projects are suitable for funding; the national benefits to be delivered through funding the projects; the level of program funding proposed for each project; and any conditions that should apply to any offers of funding.

The Minister makes the final decision about which grants to approve and the level of funding for each project, taking into consideration the Board's recommendations, and the availability of grant funds. Funding will not be approved if there are insufficient Program funds available across relevant financial years for the Program.

Both successful and unsuccessful applicants are informed in writing. Unsuccessful applicants are given feedback and may request an opportunity to discuss the outcome with the department. Unsuccessful applicants can submit a new application for the same or similar project in future funding rounds if weaknesses identified in their previous application are addressed.

Persons who are otherwise affected by decisions or who have complaints about the Program also have recourse to the department. The department will investigate any complaints about the Program in accordance with its complaints policy and procedures. If a person is not satisfied with the way the department handles the complaint, they may lodge a complaint with the Commonwealth Ombudsman.

I have approved a replacement Explanatory Statement containing this explanation (copy attached), and my department has amended its processes to ensure future Explanatory Statements contain such detail. I trust this information is of assistance to the Committee.

Yours sincerely

MICHAELIA CASH

28 / 11 / 2017

Minister for Revenue and Financial Services

The Hon Kelly O'Dwyer MP

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

Dear Senator

Retirement Savings Accounts Tax File Number approval No. 1 of 2017 and Taxation Administration Regulations 2017

I refer to the Committee's letter of 16 November 2017 concerning the above legislative instruments. I thank the Committee for its interest in these matters, and I provide the following response to the Committee's comments.

Retirement Savings Accounts Tax File Number approval No. 1 of 2017

This instrument was originally made by the Australian Prudential Regulation Authority (APRA) in 2007 and was recently remade by APRA.

APRA has advised me that at the time this legislative instrument was lodged for registration on the Federal Register of Legislation (FRL), it was correctly marked as not being exempt from disallowance. As the Office of Parliamentary Counsel (OPC) is the agency charged with registration of legislative instruments and with arrangement of their tabling before Parliament, it appears that the misclassification occurred due to an error while the legislative instrument was with OPC.

I have asked APRA to bring the issue raised by the Committee to the attention of OPC to address this misclassification.

Taxation Administration Regulations 2017

Section 7 of the *Taxation Administration Regulations 2017* provides for evidentiary certificates to be issued in prosecutions of persons in respect of offences under section 8C and 8D of the *Taxation Administration Act 1953* for refusing or failing to do specified things under a taxation law, or when attending before the Commissioner of Taxation (Commissioner) or another person pursuant to a taxation law.

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Section 7 was remade as part of the sunsetting of the *Taxation Administration Regulations 1976*. The former section 5 of the *Taxation Administration Regulations 1976* provided that the certificate was evidence of the facts stated in the certificate. The remade section 7 of the *Taxation Administration Regulations 2017* provides that a certificate is prima facie evidence of the matters set out in the certificate.

Providing for a certificate to establish prima facie evidence of the matter is appropriate in this case, since the certificates would be issued by a Commissioner, a Second Commissioner or a Deputy Commissioner and are based on interactions that the person has had with the Commissioner or the Commissioner's employees. Specifically, section 8C is about whether a person has refused or failed to provide the Commissioner with information in certain circumstances, or had an interaction with the Commissioner on a specified event. Section 8D is about whether a person has failed to answer questions when attending before the Commissioner. In cases in which there are no disputes about the facts, requiring these administrative facts to be proved in court would be an unnecessary imposition on the courts.

In the event there is any dispute about the matters set out in a certificate, as it is only 'prima facie' evidence of the matters described above, it can be rebutted by evidence to the contrary provided by the defendant and the prosecution must prove any contested matters beyond reasonable doubt. Moreover, if there is a dispute over whether a person has refused or failed to do a thing required by those sections, evidence of this is likely to be peculiarly within the knowledge of the defendant. In such circumstances, it is appropriate that the defendant be required to adduce the matters that are peculiarly within their knowledge.

I note that the provisions of section 7 are consistent with those of the prior section 5, with the only substantive change being the clarification that the certificate was only prima facie evidence.

I trust this information is of assistance to the Committee.

Yours sincerely

Kelly O'Dwyer

PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Urban Infrastructure

PDR ID: MC17-002543

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

Dear Senator Williams

Vehicle Standard (Australian Design Rule 88/00 – Electronic Stability Control (ESC) Systems) 2017

I refer to the letter dated 16 November 2017 from the Secretary of the Senate Standing Committee on Regulations and Ordinances (the Committee) regarding the Vehicle Standard (Australian Design Rule 88/00 – Electronic Stability Control (ESC) Systems) 2017 (the Determination).

The Committee has requested further information from me about two scrutiny issues identified in relation to the Determination. I would like to provide the following advice to the Committee in response to these matters as they appear in the Delegated Legislation Monitor No. 14 of 2017.

1. Manner of incorporation of documents

Clause 7 of the Determination incorporates references to the United Nations (UN) Regulation No. 140 (R 140) and the UN Global Technical Regulation No. 8 (GTR 8). These are international standards, which specify equivalent requirements and test methods to Appendix A of the Determination.

Appendix A of the Determination incorporates references to the Consolidated Resolution on the Construction of Vehicles (R.E.3), a number of other UN Regulations, ISO 15037 Part 1: 2005, ISO 15037 Part 2: 2002, ASTM E1136 and ASTM E1337-90.

As these standards are not legislative instruments, subsections 14(1)(b) and 14(2) of the *Legislation Act 2003* (the Legislation Act) have the effect that the Determination can only incorporate the standards as in force at the time the Determination commenced (22 September 2017), and not 'as in force or existing from time to time'.

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I note the Committee's comments on facilitating the public's ability to understand the operation of the Determination. For this reason, I instructed the Department of Infrastructure and Regional Development to amend the Explanatory Statement (ES) to explicitly state that these standards are incorporated as in force at the commencement of the Determination.

Appendix A, Section 11 of the Determination also incorporates the Agreement, Appendix 2 (E/ECE/324-E/ECE/TRANS/505/Rev.2). However, in accordance with clause 6 (Exemptions and Alternative Procedures) of the Determination, compliance with Appendix A Section 11 is not required.

2. Access to incorporated documents

I understand the importance of ensuring persons interested in or affected by an instrument have adequate access to its terms, including any incorporated documents.

The Consolidated Resolution on the Construction of Vehicles (R.E.3.), the UN Regulations and the UN Global Technical Regulations are freely available online through the UN World Forum for the Harmonization of Vehicle Regulations (WP.29). The WP.29 website is **www.unece.org/trans/main/welcwp29.html**.

ISO 15037 Part 1 and Part 2 are freely available through the National Library of Australia (NLA) eResources system, which provides access to the British Standards Online database. As a licensed resource, a library card is required to access the database and anyone with an Australian residential address is eligible to request one.

ASTM E1136 and ASTM E1337-90 are freely available online through the ASTM International Reading Room. This requires registration using an email and password. The ASTM International Reading Room website is **www.astm.org/readinglibrary/**.

In line with best-practice and consistent with section 15J of the Legislation Act, I instructed the Department to amend the ES to include a description of these standards as well as details of how to access them through the WP.29 website, the NLA and the ASTM International Reading Room.

A marked up copy of the revised ES, as amended by the Department, to address the issues raised by SSCRO is provided for your information at Attachment A. I understand the replacement ES will shortly be registered on the Federal Register of Legislation.

I trust this information supports the Committee in finalising its consideration of the Determination.

Yours sincerely

Paul Fletcher

28 / 11 /2017

Vehicle Standard (Australian Design Rule 88/00 – Electronic Stability Control (ESC) Systems) 2017

Made under section 7 of the *Motor Vehicle Standards Act 1989*

Replacement Explanatory Statement

Issued by the authority of the Minister for Urban Infrastructure

~~August~~ November 2017

CONTENTS

1. LEGISLATIVE CONTEXT

Vehicle Standard (Australian Design Rule 88/00 – Electronic Stability Control (ESC) Systems) 2017 is made under the *Motor Vehicle Standards Act 1989* (the Act). The Act enables the Australian Government to establish nationally uniform standards that apply to new road vehicles when they are first supplied to the market in Australia. The Act applies to such vehicles whether they are manufactured in Australia or imported.

The making of the vehicle standards necessary for the Act's effective operation is provided for in section 7 which empowers the Minister to "determine vehicle standards for road vehicles or vehicle components".

Vehicle Standard (Australian Design Rule 88/00 – Electronic Stability Control (ESC) Systems) 2017 (ADR 88/00) is a new standard made as part of a restructure of ADR requirements for brake systems on light vehicles. A new standard is proposed to align with the relevant international standard, the United Nations (UN) Regulation No. 140, which was developed as part of a restructure of the UN requirements for the approval of passenger cars with regard to braking, to facilitate a worldwide certification system known as International Whole Vehicle Type Approval (IWVTA).

2. CONTENT AND EFFECT OF ADR 88/00 – ELECTRONIC STABILITY CONTROL (ESC) SYSTEMS

2.1. Overview of the ADR

This vehicle standard prescribes requirements for Electronic Stability Control (ESC) Systems on passenger cars and light commercial vehicles. The function of the standard is to reduce the risk of crashes involving a loss of directional control of the vehicle, including those resulting in vehicle rollover.

ESC is an advanced vehicle stability system that automatically brakes individual wheels to help drivers steer in the intended direction, in circumstances where this would otherwise not be possible (for example, when a driver enters a corner at too high a speed or suddenly swerves to avoid an obstacle ahead).

The requirements of this standard are taken from the international standard UN Regulation No. 140, as adopted by the UN.

2.2. Effect of the ADR

This standard, together with two associated new ADRs 31/04 (Brake Systems for Passenger Cars) and 89/00 (Brake Assist Systems), are being made to restructure the ADR requirements for brake systems on light vehicles to align with the latest international standards adopted by the UN. This will enable industry to continue the current practice of utilising UN approvals to demonstrate compliance to the ADR requirements.

The standard will apply to ADR category MA (passenger cars), MB (passenger vans), MC (four-wheel drives or sports utility vehicles) and NA vehicles (light commercial vehicles – which include utilities and goods vans of up to 3.5 tonnes). New model vehicles will need to be certified to this standard from 1 July 2019. There is no mandatory application date for all other vehicles. They may comply with this vehicle standard or continue to comply with ADR 31/03 or ADR 35/05, as applicable for the particular vehicle category.

2.3. Incorporated Documents

This standard incorporates references to a number of standards of a highly technical nature. These standards are typically accessed by vehicle manufacturers and test facilities as part of their professional library.

Clause 7 of this standard incorporates references to the UN Regulation No. 140 – UNIFORM PROVISIONS CONCERNING THE APPROVAL OF PASSENGER CARS WITH REGARD TO ELECTRONIC STABILITY CONTROL (ESC) SYSTEMS (R 140) and the UN Global Technical Regulation No. 8 – ELECTRONIC STABILITY CONTROL SYSTEMS (GTR 8). These are international standards, which specify equivalent requirements and test methods to Appendix A of the ADR.

Appendix A of this standard incorporates references to the Consolidated Resolution on the Construction of Vehicles (R.E.3.) – document ECE/TRANS/WP.29/78/Rev. 4, Regulation No. 10 (R 10), Regulation No. 13 (R 13), Regulation No. 13-H (R 13-H), Regulation No. 121 (R 121), ISO 15037 Part 1: 2005, ISO 15037 Part 2: 2002, ASTM E1136 and ASTM E1337-90.

In accordance with subsections 14(1)(b) and 14(2) of the *Legislation Act 2003,* these standards are incorporated as in force at the commencement of the Determination.

The Consolidated Resolution on the Construction of Vehicles (R.E.3.) – document ECE/TRANS/WP.29/78/Rev. 4, the UN Regulations (including R 10, R 13, R 13-H, R 121 and R 140) and the UN Global Technical Regulations (including GTR 8), may be freely accessed online through the UN World Forum for the Harmonization of Vehicle Regulations (WP.29). The WP.29 website is https://www.unece.org/trans/main/welcwp29.html.

ISO 15037 Part 1 and Part 2 may be freely accessed online through the National Library of Australia (NLA) eResources system, which provides access to the British Standards Online database. A library card is required and can be obtained by anyone with an Australian residential address. The NLA website is https://www.nla.gov.au/.

ASTM E1136 and ASTM E1337-90 may be freely accessed online through the ASTM International Reading Room. This requires the user to register using an email and password. The ASTM International Reading Room website is https://www.astm.org/readinglibrary/.

3. BEST PRACTICE REGULATION

3.1. Benefits and Costs

As this standard, together with the associated new ADRs 31/04 and 89/00, restructure the ADR requirements for brake systems on light vehicles in a way that is machinery (administrative) in nature, it will have a neutral regulatory impact, including in terms of both the benefits and costs of regulation.

3.2. General Consultation Arrangements

It has been longstanding practice to consult widely on proposed new or amended vehicle standards. For many years there has been active collaboration between the Commonwealth and the state/territory governments, as well as consultation with industry and consumer groups. Much of the consultation takes place within institutional arrangements established for this purpose. The analysis and documentation prepared in a particular case, and the bodies consulted, depend on the degree of impact the new or amended standard is expected to have on industry or road users.

Depending on the nature of the proposed changes, consultation could involve the Technical Liaison Group (TLG), Strategic Vehicle Safety and Environment Group (SVSEG), Transport and Infrastructure Senior Officials' Committee (TISOC) and the Transport and Infrastructure Council (the Council).

- TLG consists of technical representatives of government (Australian and state/territory), the manufacturing and operational arms of the industry (including organisations such as the Federal Chamber of Automotive Industries and the Australian Trucking Association) and of representative organisations of consumers and road users (particularly through the Australian Automobile Association).
- SVSEG consists of senior representatives of government (Australian and state/territory), the manufacturing and operational arms of the industry and of representative organisations of consumers and road users (at a higher level within each organisation as represented in TLG).
- TISOC consists of state and territory transport and/or infrastructure Chief Executive Officers (CEOs) (or equivalents), the CEO of the National Transport Commission, New Zealand and the Australian Local Government Association.
- The Council consists of the Australian, state/territory and New Zealand Ministers with responsibility for transport and infrastructure issues.

Editorial changes and changes to correct errors are processed by the Department of Infrastructure and Regional Development. This approach is only used where the amendments do not vary the intent of the vehicle standard.

Proposals that are regarded as significant need to be supported by a RIS meeting the requirements of the Office of Best Practice Regulation (OBPR) as published in *the Australian Government Guide to Regulation* and the Council of Australian Governments' *Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies.*

3.3. Specific Consultation Arrangements for this Vehicle Standard

This standard was proposed, discussed and supported during 2016-17 at meetings of AMVCB, TLG and SVSEG. It was acknowledged that these groups are at the appropriate level to consider this type of change. A draft ADR was also provided as part of this consultation process to AMVCB and TLG.

The Department of Infrastructure and Regional Development also consulted with the Office of Best Practice Regulation (OBPR) within the Department of Prime Minister and Cabinet on this standard. A Regulation Impact Statement is not required, as the decision maker is not the Australian Government's Cabinet, and this standard, together with the associated new ADRs 31/04 and 89/00, restructure the ADR requirements for brake systems on light vehicles in a way that is machinery in nature. The OBPR reference number is 22611.

4. STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The following Statement is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

4.1. Overview of the Legislative Instrument

ADR 88/00 is being made together with ADRs 31/04 and 89/00 to restructure the ADR requirements for brake systems on light vehicles to mirror the latest UN regulation structure. It prescribes requirements for Electronic Stability Control (ESC) Systems on passenger cars and light commercial vehicles.

4.2. Human Rights Implications

ADR 88/00 does not engage any of the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

4.3. Conclusion

ADR 88/00 is compatible with human rights, as it does not raise any human rights issues.