The Senate

Standing Committee on Regulations and Ordinances

Delegated legislation monitor

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Introduction

The *Delegated legislation monitor* (the monitor) is the regular report of the Senate Standing Committee on Regulations and Ordinances (the committee). The monitor is published at the conclusion of each sitting week of the Parliament, and provides an overview of the committee's scrutiny of instruments of delegated legislation for the preceding period.[1]

The committee's terms of reference

Senate Standing Order 23 contains a general statement of the committee's terms of reference:

> (1) A Standing Committee on Regulations and Ordinances shall be appointed at the commencement of each Parliament.
>
> (2) All regulations, ordinances and other instruments made under the authority of Acts of the Parliament, which are subject to disallowance or disapproval by the Senate and which are of a legislative character, shall stand referred to the committee for consideration and, if necessary, report.
>
> The committee shall scrutinise each instrument to ensure:
>
> (a) that it is in accordance with the statute;
>
> (b) that it does not trespass unduly on personal rights and liberties;
>
> (c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
>
> (d) that it does not contain matter more appropriate for parliamentary enactment.

Work of the committee

The committee scrutinises all disallowable instruments of delegated legislation, such as regulations and ordinances, to ensure their compliance with non-partisan principles of personal rights and parliamentary propriety.

The committee's longstanding practice is to interpret its scrutiny principles broadly, but as relating primarily to technical legislative scrutiny. The committee therefore does not generally examine or consider the policy merits of delegated legislation. In cases where an instrument is considered not to comply with the committee's scrutiny principles, the committee's usual approach is to correspond with the responsible minister or instrument-maker seeking further explanation or clarification of the matter

1 Prior to 2013, the monitor provided only statistical and technical information on instruments scrutinised by the committee in a given period or year. This information is now most easily accessed via the authoritative Federal Register of Legislative Instruments (FRLI), at www.comlaw.gov.au.

at issue, or seeking an undertaking for specific action to address the committee's concern.

The committee's work is supported by processes for the registration, tabling and disallowance of legislative instruments, which are established by the *Legislative Instruments Act 2003*.[2]

Structure of the report

The report is comprised of the following parts:

- Chapter 1, 'New and continuing matters', sets out new and continuing matters about which the committee has agreed to write to the relevant minister or instrument-maker seeking further information or appropriate undertakings;
- Chapter 2, 'Concluded matters', sets out any previous matters which have been concluded to the satisfaction of the committee, including by the giving of an undertaking to review, amend or remake a given instrument at a future date; related (non-confidential) correspondence is included at Appendix 3;
- Appendix 1 provides an index listing all instruments scrutinised in the period covered by the report;
- Appendix 2 contains the committee's guideline on addressing the consultation requirements of the *Legislative Instruments Act 2003*.
- Appendix 3 contains correspondence relating to concluded matters.

Acknowledgement

The committee wishes to acknowledge the cooperation of the ministers, instrument-makers and departments who assisted the committee with its consideration of the issues raised in this report.

Senator Sean Edwards

Chair

2 For further information on the disallowance process and the work of the committee see *Odger's Australian Senate Practice*, 13th Edition (2012), Chapter 15.

Chapter 1

New and continuing matters

This chapter lists new matters identified by the committee at its meeting on **26 March 2014**, and continuing matters in relation to which the committee has received recent correspondence. The committee will write to relevant ministers or instrument makers in relation to substantive matters seeking further information or an appropriate undertaking within the disallowance period.

Matters which the committee draws to the attention of the relevant minister or instrument maker are raised on an advice-only basis and do not require a response.

Privacy Amendment (External Dispute Resolution Scheme—Transitional) Regulation 2014 [F2014L00219]

Purpose	Amends the Privacy Regulation 2013 to provide a temporary 12-month exemption from the external dispute resolution requirement under subparagraph 21D(2)(a)(i) of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* for utilities and commercial credit providers
Last day to disallow[1]	19 June 2014
Authorising legislation	*Privacy Amendment (Enhancing Privacy Protection) Act 2012*
Department	Attorney-General's

Issue:

No information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The explanatory statement (ES) which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES accompanying this instrument contains no reference to consultation. **The committee therefore requests further information from the**

1 'Last day to disallow' refers to the last day on which notice may be given of a motion for disallowance in the Senate.

Attorney-General; and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*].

Multiple instruments identified in Appendix 1

The committee has identified a number of instruments, marked by an asterisk (*) in Appendix 1, that appear to rely on subsection 33(3) of the *Acts Interpretation Act 1901*, which provides that the power to make an instrument includes the power to vary or revoke the instrument. If that is the case, the committee considers that it would be preferable for the ES for any such instrument to identify the relevance of subsection 33(3), in the interests of promoting the clarity and intelligibility of the instrument to anticipated users. **The committee therefore draws this issue to the attention of ministers and instrument-makers responsible for the instruments identified in Appendix 1**. **The committee provides the following example of a form of words which may be included in an ES where subsection 33(3) of the *Acts Interpretation Act 1901* is relevant**:

> Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.[2]

2 For more extensive comment on this issue see *Delegated legislation monitor* No. 8 of 2013, p. 511.

Chapter 2

Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on **26 March 2014**. The committee has concluded its interest in these matters on the basis of responses received from ministers or relevant instrument-makers.

Correspondence relating to these matters is included at Appendix 3.

Commonwealth Scholarships Guidelines (Education) 2013 [F2013L02070]

Purpose	Revokes and remakes the Commonwealth Scholarships Guidelines (Education) to ensure that the efficiency dividend to university funding included in the 2013-14 budget can be implemented; and separates Indigenous Commonwealth Scholarships from other Commonwealth Scholarships
Last day to disallow[1]	27 March 2014
Authorising legislation	*Higher Education Support Act 2003*
Department	Education

Issue:

No information provided regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the ES for the instrument does not explicitly address the issue of consultation (although the ES contains the heading, 'Consultation') **[the committee requested further information from the minister; and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

1 'Last day to disallow' refers to the last day on which notice may be given of a motion for disallowance in the Senate.

MINISTER'S RESPONSE:

The Minister for Education advised that, as the guidelines were remade primarily to implement the efficiency dividend to university funding announced as part of the 2013-14 Budget, consultation was not considered necessary and was not undertaken.

The minister further advised that the ES had been amended to include the information provided.

COMMITTEE RESPONSE:

The committee thanks the minister for his response and has concluded its interest in the matter.

Amendment No. 1 to the Commonwealth Grant Scheme Guidelines 201 [F2013L02078]

Purpose	Amends the Commonwealth Grant Scheme Guidelines 2012 to implement the efficiency dividend to university funding included in the 2013-14 budget
Last day to disallow	15 May 2014
Authorising legislation	*Higher Education Support Act 2003*
Department	Education

Issue:

No information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the ES for the instrument does not explicitly address the issue of consultation (although the ES contains the heading, 'Consultation') **[the committee requested further information from the minister; and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

MINISTER'S RESPONSE:

The Minister for Education advised that, as the guidelines were remade primarily to implement the efficiency dividend to university funding announced as part of the 2013-14 Budget, consultation was not considered necessary and was not undertaken.

The minister further advised that the ES had been amended to include the information provided.

COMMITTEE RESPONSE:

The committee thanks the minister for his response and has concluded its interest in the matter.

Disability Services Act (Administration of Part II of the Act) Guidelines 2013 [F2013L02002]

Purpose	Formulates guidelines on matters relevant to the administration of Part II of the *Disability Services Act 1986*
Last day to disallow	17 March 2014
Authorising legislation	*Disability Services Act 1986*
Department	Social Services

Issue:

No information provided regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The explanatory statement (ES) which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES accompanying this instrument contains no reference to consultation **[the committee requested further information from the minister; and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

MINISTER'S RESPONSE:

The Assistant Minister for Social Services responded, advising that the National Disability Service and Australian Disability Enterprises were consulted in relation to the making of the guidelines. Policy areas within departments administering programs

covered by the guidelines were also consulted as part of the policy development process. Broader consultation was not considered necessary as the changes were intended to simplify and streamline an established administrative process rather than to implement a change in policy.

The assistant minister further advised that the ES had been amended to include the information provided.

COMMITTEE RESPONSE:

The committee thanks the minister for his response and has concluded its interest in the matter.

Higher Education Support Act 2003 - OS-HELP Guidelines 2013 [F2013L01680]

Purpose	Revokes and remakes the OS-HELP Guidelines
Last day to disallow	4 March 2014
Authorising legislation	*Higher Education Support Act 2003*
Department	Education

Issue:

Incorporation of extrinsic material

This instrument revokes and remakes the OS-HELP Guidelines, which set out procedures that higher education providers must follow in deciding whether to select students for receipt of OS-HELP assistance (which provides loans to Commonwealth supported students to undertake study overseas). Paragraph 3.5.1 of the instrument provides that a student is undertaking overseas study in 'Asia' if they are undertaking study in a country listed in the Australian Bureau of Statistics Standard Australian Classification of Countries. While the *Legislative Instruments Act 2003* allows for extrinsic material to be incorporated into instruments, non-legislative material (as in this case) can generally be incorporated only as in force or existing at a particular date (as opposed to being incorporated as in force or existing 'from time to time').[2] In this case, neither the instrument nor the ES provides sufficient detail to determine the basis on which the material is intended to be incorporated into the instrument **[the committee requested further information from the minister]**.

2 See section 14, *Legislative Instruments Act 2003*.

MINISTER'S RESPONSE:

The Minister for Eduation advised that the guidelines had incorporated the Australian Bureau of Statistics Standard Australian Classification of Countries (2011, version 2.2) as in force at the time the instrument was made. The minister noted that any potential ambiguity would be addressed in relevant 'communication materials' and in future changes to the guidelines.

COMMITTEE RESPONSE:

The committee thanks the minister for his response and has concluded its interest in the matter.

Declaration of 'corresponding State laws' [F2013L02043]

Purpose	Declares the South Australian *Prohibition of Human Cloning for Reproduction Act 2003* to be a corresponding state law
Last day to disallow	20 March 2014
Authorising legislation	*Research Involving Human Embryos Act 2002*
Department	Health

Issue:

Delay in registering instrument

This instrument was registered on 4 December 2013. It is dated 3 November 2009. The ES for the instrument states that it 'is to take effect from the day after it is registered on the Federal Register of Legislative Instruments (FRLI)' (consistent with subsection 12(1) of the *Legislative Instruments Act 2003*).

However, the committee notes that subsection 25(1) of the *Legislative Instruments Act 2003* requires a rule-maker to lodge a legislative instrument for registration 'as soon as practicable' after the instrument is made. In the case of this instrument, the accommpanying ES provides no explanation as to why it was not practicable to lodge the instrument for registration until approximately four years after it was made **[the committee requested further information from the minister]**.

MINISTER'S RESPONSE:

The Minister for Health advised that the delay in registering the instrument was due to 'administrative oversight'. The minister advised that the oversight was identifed by officers of SA Health, who notified the department that the instrument was not registered on the Federal Register of Legislative Instruments (FRLI). The minister noted that the instrument was now registered, and the National Health and Medical Research Council had advised that 'no practical difficulty' had arisen from the delay in registering the instrument.

COMMITTEE RESPONSE:

The committee thanks the minister for his response and has concluded its interest in the matter.

Native Title (Assistance from Attorney-General) Amendment Guideline 2013 [F2013L02084]

Purpose	Amends the Native Title (Assistance from Attorney-General) Guideline 2012 eligibility requirements for legal financial assistance for native title respondents' legal representation costs, under section 213A of the *Native Title Act 1993*
Last day to disallow	15 May 2014
Authorising legislation	*Native Title Act 1993*
Department	Attorney-General's

Issue:

Insufficient information regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the ES for the instrument does not explicitly address the issue of consultation. The discussion under the heading, 'Consultation', does not expressly state whether or not consultation occurred in relation to the making of the instrument **[the committee requested further information from the Attorney-General; and requested that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

ATTORNEY-GENERAL'S RESPONSE:

The Attorney-General advised that consultation in relation to the making of the instrument had not taken place, due to the nature of the amendments to the guideline. The amendments reinstated the eliibility test for legal representation costs for native title respondents that was in place prior to 1 January 2013. The Attorney-General advised that, due to a significant level of correspondence from stakeholders expressing support for the broadening of the test, as well as statements by the judiciary, consultation was not considered necessary in this case.

The Attorney-General further advised that the ES would be amended to include the information provided.

COMMITTEE RESPONSE:

The committee thanks the Attorney-General for his response and has concluded its interest in the matter.

Home Care Subsidy Amendment (Transitional Workforce Supplement and Various Measures) Determination 2014 [F2014L00096]

Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014 [F2014L00099]

Purpose	The determination provides for the payment of a transitional workforce supplement to eligible approved providers from 12 December 2013 until 30 June 2014; the principle amends Residential Care Subsidy Principles 1997 and provides for the payment of a transitional workforce supplement on and after 12 December 2013 and before 1 July 2014 to approved providers that were eligible to receive the workforce supplement on 11 December 2013
Last day to disallow	13 May 2014
Authorising legislation	*Aged Care Act 1997*
Department	Social Services

Issue:

Insufficient description regarding consultation

Section 17 of the *Legislative Instruments Act 2003* directs a rule-maker to be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business. Section 18, however, provides that in some circumstances such consultation may be unnecessary or inappropriate. The ES which must accompany an

instrument is required to describe the nature of any consultation that has been carried out or, if there has been no consultation, to explain why none was undertaken (section 26). With reference to these requirements, the committee notes that the ES for the determination states:

> Since the September 2013 Election, the Minister has consulted with a number of organisations in relation to the effect of this Principle. The changes in the determination in relation to the dementia and cognition supplement are to correct an error and to enable approved providers to back date their claims for payment for eligible care recipients. A communication strategy will be implemented to inform aged care providers of the amendment.

Similarly, the ES for the principle states:

> Since the September 2013 Election, the Minister has consulted with a number of organisations in relation to the effect of this Principle.

While the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it usually considers that an overly bare or general description, as in this case, is not sufficient to satisfy the requirements of the *Legislative Instruments Act 2003* **[the committee requested further information from the Assistant Minister for Social Services; and requested that the ESs be updated in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

ASSISTANT MINISTER'S RESPONSE:

The minister advised that the ESs had been amended to include the information sought by the committee.

The amended ESs note that the policy to remove the Workforce Supplement was outlined in the September 2013 publication, *The Coalition's Policy for Healthy Life, Better Ageing*. Providers in receipt of the supplement had been consulted in relation to the transitional arrangements set out in the principle. Key stakeholders were consulted in parallel regarding options for the redistribution of the supplement funding.

COMMITTEE RESPONSE:

The committee thanks the assistant minister for his response and has concluded its interest in the matter.

Financial Management and Accountability Amendment (2013 Measures No. 1) Regulation 2013 SLI 2013 No. 281 [F2013L02089]

Purpose	Amends the Financial Management and Accountability Regulations 1997 to add the Australian Aged Care Quality Agency as a prescribed agency in Schedule 1, inserts a new Schedule 1AB to establish legislative authority for new or significantly changed spending activities for the purposes of section 32B, and establishes legislative authority for certain spending activities in the departments of Agriculture, Communications and Prime Minister and Cabinet
Last day to disallow	15 May 2014
Authorising legislation	*Financial Management and Accountability Act 1997*
Department	Finance

Issue:

Addition of new schedule and programs to Financial Management and Accountability Regulations 1997

Section 32B of the *Financial Management and Accountability Act 1997* (FMA Act) provides legislative authority for the government to spend monies on programs specified in the FMA regulations. Section 32B was introduced in response to the decision of the High Court in *Williams v Commonwealth* ([2012] HCA 23) in June 2012. Previously, such programs were listed under Schedule 1AA. This instrument creates a new Schedule 1AB, under which programs will henceforth be listed. Unlike Schedule 1AA, the new schedule does not list programs under departmental headings, and this change is designed to avoid future confusion following machinery of government changes (a change in the name or responsibility of an administering department does not otherwise affect the specification of a program in Schedule 1AA).

The instrument also adds six new programs to Schedule 1AB. While the ES is generally helpful in providing information about the background, objectives and proposed administration of the new programs, only limited or no information is provided as to whether the individual programs possess the relevant characteristics that would justify the exclusion of decisions under each program from merits review.

The committee notes previous correspondence with the minister regarding this issue, and acknowledges the minister's advice that certain types of programs and decisions are unsuitable for merits review; and that decisions under programs listed in Schedule 1AA (now Schedule 1AB) are excluded from ADJR Act review. However, in order to assess whether a program listed in Schedule 1AB possesses the characteristics justifying the exclusion of the ADJR Act, the committee's expectation

is that ESs specifically address this question in relation to each new and/or amended program added to Schedule 1AA (now Schedule 1AB), including a description of the policy considerations and program characteristics that are relevant to the question of whether or not decisions should be subject to merits review **[the committee requested further information from the minister in respect of each listed program (where not already provided]**.

Further, the committee notes the concerns of the Senate Standing Committee for the Scrutiny of Bills regarding the limited justification for excluding such decisions from the *Administrative Decisions (Judicial Review) Act 1997* (ADJR), and questions as to whether the exclusion of ADJR would be appropriate in relation to all decisions pursuant to programs authorised by Schedule 1AA (now Schedule 1AB) **[the committee drew to the attention of senators the comments of that committee on the Financial Framework Legislation Amendment Bill (No. 3) 2012 in the Scrutiny of Bills Eleventh Report of 2012 (19 September 2012)]**.

MINISTER'S RESPONSE:

The Minister for Finance's response provided an attachment addressing in detail the relevant policy considerations and characteristics of programs added to Schedule 1AB. This information included an appropriate level of detail to enable the committee to assess the instruments for compatibility with the committee's scrutiny principles, and particularly scrutiny principle (c) (that rights and liberties are not unduly dependent on administrative decisions not subject to merits review).

The minister further advised that statements of compatibility for future instruments amending Schedule 1AB would include information about the availability of merits review.

COMMITTEE RESPONSE:

The committee thanks the minister for his response and has concluded its interest in the matter.

Appendix 1

Index of instruments scrutinised

The following instruments were considered by the committee at its meeting on **26 March 2014**.

The Federal Register of Legislative Instruments (FRLI) website should be consulted for the text of instruments and explanatory statements, as well as associated information.[1] Instruments may be located on FRLI by entering the relevant FRLI number into the FRLI search field (the FRLI number is shown in square brackets after the name of each instrument listed below).

Instruments marked with an asterisk (*) are the subject of the comment on p. 2 of Chapter 1 relating to subsection 33(3) of the *Legislative Instruments Act 2003* (under the heading 'Multiple instruments identified in Appendix 1').

Instruments received week ending 28 February 2014

Administrative Appeals Tribunal Act 1975	
Administrative Appeals Tribunal Amendment (Norfolk Island Land Valuation Decisions) Regulation 2014 [SLI 2014 No. 1] [F2014L00158]	
Australian Education Act 2013	
Australian Education (Participating States and Territories) Determination 2014 [F2014L00142]	E
Australian Prudential Regulation Authority Act 1998	
Australian Prudential Regulation Authority (confidentiality) determination No. 3 of 2014 [F2014L00184]	
Civil Aviation Regulations 1988	
Civil Aviation Order 40.3.0 Amendment Instrument 2014 (No. 1) [F2014L00145]	*
CASA EX08/14 - Exemption — operations by paragliders in the Corryong Paragliding Open [F2014L00141]	
CASA EX11/14 - Exemption — Sydney Jabiru Flying School solo flight training at Bankstown Aerodrome [F2014L00162]	
CASA EX09/14 - Exemption — recognition of EASA type certification [F2014L00163]	
CASA EX12/14 – Exemption - recent experience requirements for night V.F.R. agricultural ratings [F2014L00173]	
Clean Energy Act 2011	
Clean Energy Auction Revocation Determination 2014 [F2014L00176]	*
Competition and Consumer Act 2010	
Competition and Consumer Act 2010 - Monitoring of Prices, Costs and Profits Relating to the Supply of Regulated Goods by Corporations and the Supply of Goods by Liable Entities	E

1 FRLI is found online at http://www.comlaw.gov.au/.

in Relation to the Carbon Tax Scheme in Australia [F2014L00180]	
Customs Act 1901	
Customs Amendment Regulation 2014 (No. 1) [SLI 2014 No. 4] [F2014L00152]	
Environment Protection and Biodiversity Conservation Act 1999	
Amendment of List of Exempt Native Specimens - Queensland Mud Crab Fishery (19/02/2014) [F2014L00165]	
Christmas Island National Park Management Plan 2014-2024 [F2014L00168]	
Amendment of List of Exempt Native Specimens - Eastern Tuna and Billfish Fishery (24/02/2014) (deletion) [F2014L00185]	
Amendment of List of Exempt Native Specimens - Eastern Tuna and Billfish Fishery (24/02/2014) (inclusion) [F2014L00186]	
Food Standards Australia New Zealand Act 1991	
Australia New Zealand Food Standards Code — Standard 1.4.2 — Maximum Residue Limits Amendment Instrument No. APVMA 2, 2014 [F2014L00175]	E
Food Standards (Application A1081 – Food derived from Herbicide-tolerant Soybean Line SYHT0H2) Variation [F2014L00189]	E
Income Tax Assessment Act 1997 and Superannuation Guarantee (Administration) Act 1992	
Tax and Superannuation Laws Amendment (2014 Measures No. 1) Regulation 2014 [SLI 2014 No. 6] [F2014L00159]	
Migration Act 1958	
Migration Act 1958 - Determination of Eligible Passports - IMMI 13/158 [F2014L00155]	E
Migration Regulations 1994	
Migration Regulations 1994 - Specification of Eligible Education Providers and Educational Business Partners - IMMI 14/007 [F2014L00146]	E
Military Justice (Interim Measures) Act (No. 1) 2009	
Military Justice (Interim Measures) (Remuneration and Entitlements) Amendment Regulation 2014 (No. 1) [SLI 2014 No. 2] [F2014L00156]	
Military Rehabilitation and Compensation Act 2004	
Military Rehabilitation and Compensation (Warlike Service) Determination 2014 (No. 1) [F2014L00154]	E
National Health Act 1953	
National Health Determination under paragraph 98C(1)(b) Amendment 2014 (No. 2) [F2014L00144]	
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2014 (No. 2) [F2014L00147]	
National Health (Listed drugs on F1 or F2) Amendment Determination 2014 (No. 1) (No. PB 15 of 2014) [F2014L00171]	
National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2014 (No. 2) - PB 11 of 2014 [F2014L00183]	
Navigation Act 2012	
Marine Order 70 (Seafarer certification) 2014 [F2014L00177]	*
Marine Order 71 (Masters and deck officers) 2014 [F2014L00178]	
Marine Order 72 (Engineer officers) 2014 [F2014L00179]	

Marine Order 73 (Ratings) 2014 [F2014L00181]	
Navigation Act 2012 and Protection of the Sea (Prevention of Pollution from Ships) Act 1983	
Marine Order 94 (Marine pollution prevention — packaged harmful substances) 2014 [F2014L00169]	*
Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003 and Offshore Petroleum and Greenhouse Gas Storage Act 2006	
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment (Environment Measures) Regulation 2014 [SLI 2014 No. 5] [F2014L00157]	
Privacy Act 1988	
Credit Reporting Privacy Code (CR code) [F2014L00170]	*
Private Health Insurance Act 2007	
Private Health Insurance (Prostheses) Amendment Rules 2014 (No. 1) [F2014L00172]	*
Programs and Awards Statute 2013	
Higher Doctorates Rules 2014 [F2014L00164]	E
Radiocommunications Act 1992	
Radiocommunications (Spectrum Access Charges — 1800 MHz Band) Determination 2014 [F2014L00182]	
Remuneration Tribunal Act 1973	
Remuneration Tribunal Determination 2014/01 - Remuneration and Allowances for Holders of Public Office [F2014L00174]	*
Remuneration Tribunal Determination 2014/03 - Remuneration and Allowances for Holders of Part-Time Public Office [F2014L00188]	*
Remuneration Tribunal Determination 2014/02 - Members of Parliament - Travelling Allowance and Entitlements [F2014L00187]	E
Seat of Government (Administration) Act 1910	
National Land (Road Transport) Ordinance 2014 [F2014L00166]	
National Land (Parking) Repeal Ordinance 2014 [F2014L00167]	
Social Security Act 1991	
Social Security (Waiver of Debts — University of New South Wales approved course of education or study) Specification 2014 [F2014L00161]	
Torres Strait Fisheries Act 1984 and Torres Strait Prawn Fishery Management Plan 2008	
Torres Strait Prawn Fishery Total Allowable Effort Determination 2014 [F2014L00143]	
Veterans' Entitlements Act 1986	
Veterans' Entitlements (Warlike Service—Operation ARIKI) Determination 2014 [F2014L00148]	E
Veterans' Entitlements (Warlike Service—Operation HERRICK) Determination 2014 [F2014L00149]	E
Veterans' Entitlements (Warlike Service—Operation ATHENA) Determination 2014 [F2014L00150]	E
Veterans' Entitlements (Warlike Service—International Security Assistance Force) Determination 2014 [F2014L00151]	E
Veterans' Entitlements (Warlike Service—Operation ENDURING FREEDOM: Afghanistan) Determination 2014 [F2014L00153]	E

Instruments received week ending 7 March 2014

A New Tax System (Family Assistance) Act 1999	
Family Tax Benefit (Entitlement Exclusion - Newborn Upfront Payment and Newborn Supplement) Determination 2014 (No. 1) [F2014L00192]	
Australian Capital Territory (Planning and Land Management) Act 1988	
National Capital Plan - Amendment 82 - Amtech Estate [F2014L00206]	*
National Capital Plan - Amendment 84 - Pialligo Section 9 Part Block 4 and Section 12 Part Block 2 [F2014L00207]	*
Australian Research Council Act 2001	
Australian Research Council Funding Rules for schemes under the Discovery Program for the years 2014 and 2015 [F2014L00193]	E
Broadcasting Services Act 1992	
Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2014) [F2014L00225]	
Charter of the United Nations Act 1945	
Charter of the United Nations (Sanctions—Central African Republic) Regulation 2014 [SLI 2014 No. 9] [F2014L00197]	
Christmas Island Act 1958	
List of Acts of the Western Australian Parliament Wholly of Partly in Force in Christmas Island pursutant to s. 8A, Christmas Island Act 1958 in the period 10 September 2013 to 21 February 2014 and not in previous lists	
Civil Aviation Safety Regulations 1998	
CASA ADCX 004/14 — Repeal of Airworthiness Directives [F2014L00220]	
Cocos (Keeling) Islands Act 1955	
List of Acts of the Western Australian Parliament Wholly of Partly in Force in Cocos (Keeling) Islands pursutant to s. 8A, Cocos (Keeling) Islands Act 1955 in the period 10 September 2013 to 21 February 2014 and not in previous lists	
Corporations Act 2001	
ASIC Class Order [CO 14/25] [F2014L00204]	*
ASIC Class Order [CO 14/26] [F2014L00205]	*
ASIC Class Order [CO 14/55] [F2014L00210]	*
ASIC Class Order [14/128] [F2014L00211]	*
Defence Act 1903	
Defence Determination 2014/10 - Deployment allowance, East Timor peace enforcement allowance and international campaign allowance – amendment	
Defence Determination 2014/11 -Salary rate for training and salary non-reduction – amendment	
Defence Determination 2014/12 - Higher duties and transport contributions – amendment	
Environment Protection and Biodiversity Conservation Act 1999	
Amendment of List of Exempt Native Specimens - South Australian Marine Scalefish Fishery (24/02/2014) (deletion) [F2014L00200]	
Amendment of List of Exempt Native Specimens - South Australian Marine Scalefish Fishery (24/02/2014) (inclusion) [F2014L00201]	
Amendment of List of Exempt Native Specimens - New South Wales Ocean Trap and Line	

Fishery (04/03/2014) [F2014L00222]	
Family Law Act 1975	
Family Law (Bilateral Arrangements—Intercountry Adoption) Amendment (2014 Measures No. 1) Regulation 2014 [SLI 2014 No. 7] [F2014L00213]	
FMA Act Determination 2014/04 — Section 32 (Transfer of Functions from Immigration to Social Services) [F2014L00221]	E
Health Insurance Act 1973	
Health Insurance (General Medical Services Table) Amendment (Various Measures) Regulation 2014 [SLI 2014 No. 10] [F2014L00202]	
Health Insurance (Allied Health Services) Amendment Determination 2014 (No. 1) [F2014L00203]	*
Higher Education Support Act 2003	
Higher Education Support Act 2003 - VET Provider Approval (No. 11 of 2014) [F2014L00217]	
Higher Education Support Act 2003 - VET Provider Approval (No. 13 of 2014) [F2014L00218]	
Marine Safety (Domestic Commercial Vessel) National Law Act 2012	
Marine Order 503 (Certificates of survey — national law) Amendment 2014 (No. 1) [F2014L00195]	*
Membership of the Council Statute 2010	
Membership of the Council (Heads of Faculties and Research Schools) Rules 2014 [F2014L00196]	E
Migration Act 1958	
Migration Act 1958 - Determination of Granting of Protection Class XA Visas in 2013/2014 Financial Year - IMMI 14/026 [F2014L00224]	E
Migration Act 1958 - Determination of Daily Maintenance Amounts for Persons in Detention - IMMI 14/008 [F2014L00226]	E
Migration Regulations 1994	
Migration Regulations 1994 - Specification of Specified Place - IMMI 14/021 [F2014L00190]	E
Migration Regulations 1994 - Specification of a Class of Persons - IMMI 14/019 [F2014L00212]	E
Migration Regulations 1994 - Specification of a Class of Persons - IMMI 14/020 [F2014L00214]	E
Migration Regulations 1994 - Specification of a Class of Persons - IMMI 14/022 [F2014L00215]	E
National Health Act 1953	
National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2014 (No. 2) - PB 12 of 2014 [F2014L00191]	
National Health (Epworth Private Hospitals Paperless Prescribing and Claiming Trial) Special Arrangement 2014 - PB 16 of 2014 [F2014L00194]	
National Health (Botulinum Toxin Program) Special Arrangement Amendment Instrument 2014 (No. 1) - PB 13 of 2014 [F2014L00198]	
National Health (Growth Hormone Program) Special Arrangement Amendment Instrument 2014 (No. 1) - PB 14 of 2014 [F2014L00208]	

Privacy Amendment (Enhancing Privacy Protection) Act 2012	
Privacy Amendment (External Dispute Resolution Scheme—Transitional) Regulation 2014 [SLI 2014 No. 8] [F2014L00219]	
Social Security Act 1991	
Social Security (Exempt Lump Sum) (Thalidomide Class Action Payment) Determination 2014 [F2014L00223]	
Taxation Administration Act 1953	
Taxation Administration Act 1953 - Nil rate determination and exemption from lodging Minerals Resource Rent Tax (MRRT) Instalment Liability Notices - Instrument (No. 1) 2014 [F2014L00209]	*
Telecommunications (Carrier Licence Charges) Act 1997	
Telecommunications (Carrier Licence Charges) Act 1997 - Determination under paragraph 15(1)(b) No. 1 of 2014 [F2014L00216]	

Instruments received week ending 14 March 2014

Agricultural and Veterinary Chemicals Code Act 1994	
Agricultural and Veterinary Chemicals Code Instrument No. 4 (MRL Standard) Amendment Instrument 2014 (No. 3) [F2014L00236]	E
Australian Film, Television and Radio School Act 1973	
Determination of Degrees, Diplomas and Certificates No. 2014/1 [F2014L00228]	
Civil Aviation Regulations 1988	
CASA 47/14 - Permission - flying over a public gathering at the 2014 Tyabb Air Show, Tyabb, Victoria - Permission - flying below minimum height at the 2014 Tyabb Air Show, Tyabb, Victoria [F2014L00235]	
Corporations Act 2001	
ASIC Market Integrity Rules (Competition in Exchange Markets) Amendment 2014 (No. 1) [F2014L00233]	*
Fisheries Management Act 1991 and the Southern and Eastern Scalefish and Shark Fishery Management Plan 2003	
Southern and Eastern Scalefish and Shark Fishery Total Allowable Catch (Non-Quota Species) Determination 2014 [F2014L00232]	
Southern and Eastern Scalefish and Shark Fishery Overcatch and Undercatch Determination 2014 [F2014L00234]	
Southern and Eastern Scalefish and Shark Fishery Total Allowable Catch (Quota Species) Determination 2014 [F2014L00230]	
Fisheries Management Act 1991and the Western Tuna and Billfish Fishery Management Plan 2005	
Western Tuna and Billfish Fishery Overcatch and Undercatch Determination 2014 [F2014L00231]	
Motor Vehicle Standards Act 1989	
Vehicle Standard (Australian Design Rule 4/05 – Seatbelts) 2012 Amendment 1 [F2014L00227]	*
Privacy Act 1988	

Privacy (Persons Reported as Missing) Rule 2014 [F2014L00229]	
Taxation Administration Act 1953	
Taxation Administration Act 1953 – Provision of further time for lodgment of the 2014 Minerals Resource Rent Tax (MRRT) Return – Low volume non-payers' Instrument (No. 1) 2014 [F2014L00237]	

Appendix 2
Guideline on consultation

AUSTRALIAN SENATE

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

Addressing consultation in explanatory statements

Role of the committee

The Standing Committee on Regulations and Ordinances (the committee) undertakes scrutiny of legislative instruments to ensure compliance with non-partisan principles of personal rights and parliamentary propriety.

Purpose of guideline

This guideline provides information on preparing an explanatory statement (ES) to accompany a legislative instrument, specifically in relation to the requirement that such statements must describe the nature of any consultation undertaken or explain why no such consultation was undertaken.

The committee scrutinises instruments to ensure, inter alia, that they meet the technical requirements of the *Legislative Instruments Act 2003* (the Act) regarding the description of the nature of consultation or the explanation as to why no consultation was undertaken. Where an ES does not meet these technical requirements, the committee generally corresponds with the relevant minister seeking further information and appropriate amendment of the ES.

Ensuring that the technical requirements of the Act are met in the first instance will negate the need for the committee to write to the relevant minister seeking compliance, and ensure that an instrument is not potentially subject to disallowance.

It is important to note that the committee's concern in this area is to ensure only that an ES is technically compliant with the descriptive requirements of the Act regarding consultation, and that the question of whether consultation that has been undertaken is appropriate is a matter decided by the rule-maker at the time an instrument is made.

However, the nature of any consultation undertaken may be separately relevant to issues arising from the committee's scrutiny principles, and in such cases the committee may consider the character and scope of any consultation undertaken more broadly.

Requirements of the Legislative Instruments Act 2003

Section 17 of the Act requires that, before making a legislative instrument, the instrument-maker must be satisfied that appropriate consultation, as is reasonably practicable, has been undertaken in relation to a proposed instrument, particularly where that instrument is likely to have an effect on business.

Section 18 of the Act, however, provides that in some circumstances such consultation may be 'unnecessary or inappropriate'.

It is important to note that section 26 of the Act requires that explanatory statements describe the nature of any consultation that has been undertaken or, if no such consultation has been undertaken, to explain why none was undertaken.

It is also important to note that requirements regarding the preparation of a Regulation Impact Statement (RIS) are separate to the requirements of the Act in relation to consultation. This means that, although a RIS may not be required in relation to a certain instrument, the requirements of the Act regarding a description of the nature of consultation undertaken, or an explanation of why consultation has not occurred, must still be met. However, consultation that has been undertaken under a RIS process will generally satisfy the requirements of the Act, provided that that consultation is adequately described (see below).

If a RIS or similar assessment has been prepared, it should be provided to the committee along with the ES.

Describing the nature of consultation

To meet the requirements of section 26 of the Act, an ES must *describe the nature of any consultation that has been undertaken*. The committee does not usually interpret this as requiring a highly detailed description of any consultation undertaken. However, a bare or very generalised statement of the fact that consultation has taken place may be considered insufficient to meet the requirements of the Act.

Where consultation has taken place, the ES to an instrument should set out the following information:

Method and purpose of consultation

An ES should state who and/or which bodies or groups were targeted for consultation and set out the purpose and parameters of the consultation. An ES should avoid bare statements such as 'Consultation was undertaken'.

Bodies/groups/individuals consulted

An ES should specify the actual names of departments, bodies, agencies, groups et cetera that were consulted. An ES should avoid overly generalised statements such as 'Relevant stakeholders were consulted'.

Issues raised in consultations and outcomes

An ES should identify the nature of any issues raised in consultations, as well the outcome of the consultation process. For example, an ES could state: 'A number of submissions raised concerns in relation to the effect of the instrument on retirees. An exemption for retirees was introduced in response to these concerns'.

Explaining why consultation has not been undertaken

To meet the requirements of section 26 of the Act, an ES must *explain why no consultation was undertaken*. The committee does not usually interpret this as requiring a highly detailed explanation of why consultation was not undertaken. However, a bare statement that consultation has not taken place may be considered insufficient to meet the requirements of the Act.

In explaining why no consultation has taken place, it is important to note the following considerations:

Specific examples listed in the Act

Section 18 lists a number of examples where an instrument-maker may be satisfied that consultation is unnecessary or inappropriate in relation to a specific instrument. This list is not exhaustive of the grounds which may be advanced as to why consultation was not undertaken in a given case. The ES should state why consultation was unnecessary or inappropriate, and explain the reasoning in support of this conclusion. An ES should avoid bare assertions such as 'Consultation was not undertaken because the instrument is beneficial in nature'.

Timing of consultation

The Act requires that consultation regarding an instrument must take place before the instrument is made. This means that, where consultation is planned for the implementation or post-operative phase of changes introduced by a given instrument, that consultation cannot generally be cited to satisfy the requirements of sections 17 and 26 of the Act.

In some cases, consultation is conducted in relation to the primary legislation which authorises the making of an instrument of delegated legislation, and this consultation is cited for the purposes of satisfying the requirements of the Act. The committee may regard this as acceptable provided that (a) the primary legislation and the instrument are made at or about the same time and (b) the consultation addresses the matters dealt with in the delegated legislation.

Seeking further advice or information

Further information is available through the committee's website at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_ctte/index.htm or by contacting the committee secretariat at:

Committee Secretary

Senate Regulations and Ordinances Committee

PO Box 6100

Parliament House

Canberra ACT 2600

Australia

Phone: +61 2 6277 3066

Fax: +61 2 6277 5881

Email: RegOrds.Sen@aph.gov.au

Appendix 3
Correspondence

THE HON CHRISTOPHER PYNE MP
MINISTER FOR EDUCATION
LEADER OF THE HOUSE
MEMBER FOR STURT

17 MAR 2014

Our Ref MC14-002186

Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

Dear Chair

On 12 February 2014, Mr Ivan Powell, your Committee Secretary, wrote to me requesting a response in relation to issues raised in Delegated legislation monitor No. 1 of 2014 about the *Commonwealth Scholarships Guidelines* (Education) 2013 (Scholarships Guidelines) and Amendment No.1 to the *Commonwealth Grant Scheme Guidelines* 2012 (CGS Guidelines).

These legislative instruments were made in December 2013, primarily to implement the efficiency dividend to university funding that was announced by the previous government and included in its 2013–2014 Budget.

The Committee raised concerns regarding the Explanatory Statements which accompanied the Scholarships Guidelines and the CGS Guidelines, in particular, whether the information provided on consultation was sufficient to satisfy the requirements of the *Legislative Instruments Act 2003* (the Act). I acknowledge the Committee's concerns and plan to table an amended Explanatory Statement for each set of Guidelines to address the issues raised. I have enclosed copies of the revised Explanatory Statements.

By way of explanation, as you are aware, Section 17 of the Act provides that, before a rule-maker makes a legislative instrument, the rule-maker must undertake appropriate consultation. Section 18 provides that, depending on an instrument's nature, consultation may not be necessary or appropriate. This includes where an instrument gives effect, in terms announced in the Budget, to a decision to confer, revoke or alter an entitlement. The efficiency dividend is such a measure and consequently no consultation was undertaken. However, I note that, under paragraph 26(1A)(e) of the Act, if no consultation was undertaken, the explanatory statement must explain why this is the case.

I have asked my department to ensure in future that explanatory statements are explicit about whether consultation was undertaken and, if not, the reason why.

Thank you for bringing this matter to my attention.

Yours sincerely

Christopher Pyne MP

Encl.

SENATOR THE HON MITCH FIFIELD

ASSISTANT MINISTER FOR SOCIAL SERVICES

BR14-000139

Senator Sean Edwards
Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House, Canberra

Dear Senator Edwards Sean

Thank you for your letter of 12 February 2014 (Ref: 2/2014) seeking advice on the *Disability Services Act (Administration of Part II of the Act) Guidelines 2013* [FL2013L02002] as directed under Monitor No. 1 of 2014.

An amendment to the Explanatory Statement (ES) is provided below addressing the requirements under the *Legislative Instruments Act 2003* regarding consultation. The amended ES will also be lodged on the Federal Register of Legislative Instruments.

Consultation *Disability Services Act (Administration of Part II of the Act) Guidelines 2013*
Broad consultations, seeking written submissions, were considered unnecessary in relation to the making of the instrument, as the changes simplify and streamline an established administrative process rather than a change in policy.

These Guidelines were developed in discussions with National Disability Services (NDS), the peak body for non-government disability services. Comments were also provided by Australian Disability Enterprises who are funded to provide supported employment to people with disability and who were seeking to amalgamate or merge during 2013.

The organisations and the peak body raised concerns about the complexity and red tape in applying for grants of financial assistance as well as the unreasonable delays that the current Guidelines imposed and were supportive of a streamlined process.

Policy areas within the (former) Department of Families, Housing, Community Services and Indigenous Affairs and also the (former) Department of Education, Employment and Workplace Relations, whose programmes are covered by these Guidelines, were consulted during the development process.

A copy of this response will be emailed to the secretariat at regords.sen@aph.gov.au as requested in the original correspondence.

Thank you again for writing.

Yours sincerely

MITCH FIFIELD
17/3/14

PARLIAMENT HOUSE, CANBERRA ACT 2600 TELEPHONE: 02 6277 7280 EMAIL: MINISTER.FIFIELD@DSS.GOV.AU

THE HON CHRISTOPHER PYNE MP
MINISTER FOR EDUCATION
LEADER OF THE HOUSE
MEMBER FOR STURT

20 MAR 2014

Our Ref MC14-000414

Mr Ivan Powell
Chair
Australian Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Mr Powell

Thank you for your letter of 5 December 2013 drawing my attention to the Senate Standing Committee on Regulations and Ordinances' request for my advice on the definition of 'Asia' in the *Higher Education Support Act 2003* - OS-HELP Guidelines 2013.

Specifically, the Committee has noted that, in accordance with subsection 14(2) of the *Legislative Instruments Act 2003*, the reference to the Australian Bureau of Statistics (ABS) Standard Australian Classification of Countries in paragraph 3.5.1 of the OS-HELP Guidelines is to that document as in force at a particular date. I understand that the Committee has sought clarification that this is as intended, by asking for further information as to how the material in the ABS Standard Australian Classification of Countries is to be incorporated into the OS-HELP Guidelines.

The changes to the OS-HELP Guidelines were made by the previous government. Under the changes, the definition of 'Asia' is based on the ABS Standard Australian Classification of Countries current at the time the instrument was made. In this case, that document is the ABS Standard Australian Classification of Countries, 2011, Version 2.2, released on 13 February 2013. I am advised that this was in line with the intent underlying the changes. This classification provides a convenient basis for determining which countries are included or excluded for the purpose of eligibility for the higher OS-HELP loan amount, reflecting the Australian Government's view at the time of the priority countries for further encouragement of overseas study.

While the ABS publishes revisions of the Standard Australian Classification of Countries from time to time, the countries listed in each minor group remain relatively constant between revisions, although the precise names for countries may change with changing domestic and international naming conventions. The last substantive change to the countries listed in the minor groups referred to in paragraph 3.5.1 of the OS-HELP Guidelines was the addition of East Timor to the Maritime South-East Asia minor group in 1999.

Given the infrequency with which countries are added to or removed from minor groups in the ABS Standard Australian Classification of Countries, I have no concerns with fixing the list of countries for the purposes of subsection 121.5(2) of the *Higher Education Support Act 2003* by reference to that document which was current at the time the instrument was made. Should the lists of countries in minor groups change for whatever reason, I or a future Minister will no doubt have regard to that change in deciding whether or not to amend the OS-HELP Guidelines to refer to the new lists.

While I am satisfied that the OS-HELP Guidelines are working effectively and as intended, I thank the committee for bringing this issue, and the potential for misunderstanding, to my attention. I have asked the Department of Education to address any ambiguities which may arise in relation to this matter in relevant communications materials and, if necessary, in future changes to the Guidelines.

I hope the above information is of assistance to the Committee, and thank you for seeking my advice on this matter.

Yours sincerely

Christopher Pyne MP

THE HON PETER DUTTON MP
MINISTER FOR HEALTH
MINISTER FOR SPORT

Ref No: MC14-001139

Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

Dear Chair

I refer to the correspondence received from the Senate Standing Committee on Regulations and Ordinances dated 12 February 2014, drawing my attention to the delay in registering the Declaration of 'corresponding State laws' [F2013L02043].

The instrument was made on 3 November 2009 by former Parliamentary Secretary for Health, the Hon Mark Butler MP, declaring that the South Australian legislation *Prohibition of Human Cloning for Reproduction Act 2003* and the *Research Involving Human Embryos Act 2003*, following amendments to the legislation made by South Australia in 2009, to be 'corresponding State laws' for the purposes of the *Research Involving Human Embryos Act 2002*.

I have sought advice from my Department as to the cause for the delay in registering the instrument. I understand that the delay was due to an administrative oversight.

My Department was alerted in late 2013 by officers from SA Health that the instrument was not registered on the Federal Register of Legislative Instruments. My Department acted to register the instrument once the oversight was identified. Following consultation with the National Health and Medical Research Council, I am advised that no practical difficulty resulted from the delay in registering the instrument.

Yours sincerely

19/3/14

PETER DUTTON

Parliament House Canberra ACT 2600 Telephone: (02) 6277 7220 Facsimile: (02) 6273 4146

ATTORNEY-GENERAL

CANBERRA

MC14/04423

Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
PARLIAMENT HOUSE ACT 2600

regords.sen@aph.gov.au

Dear Chair Sean,

Thank you for your letter of 12 February 2014 on behalf of the Senate Standing Committee on Regulations and Ordinances, seeking additional information on consultation undertaken prior to amending the *Native Title (Assistance from Attorney-General) Amendment Guideline 2013* (the guideline). I note that the relevant request is at page 12 of the Committee's Delegated Legislation Monitor Report 1 of 2014, dated 12 February 2014.

My department did not undertake any specific consultation process with relevant stakeholders prior to making amendments to the guideline. The nature of the amendments to the guideline were such that specific consultation was considered to be unnecessary, consistent with section 18 of the *Legislative Instruments Act 2003*.

The amendments to the guideline reinstated the eligibility test for legal representation costs for native title respondents that was in place prior to 1 January 2103. The test was originally included in the *Native Title (Provision of Financial Assistance) Guidelines 2006*, which were repealed by the *Native Title (Assistance from Attorney-General) Guideline 2012*.

There was widespread stakeholder support for changing the eligibility test, following the tightening of the scheme eligibility on 1 January 2013. During 2013, my department received correspondence from a variety of stakeholders, including State and Territory Attorneys-General, pastoralist peak bodies and local government associations, raising their concerns with the 2013 eligibility test and requesting that the test should be broadened. In Queensland and Western Australia, the judiciary made statements in support of the reinstatement of the broader eligibility test.

Given the level of correspondence from relevant stakeholders, and that the main amendment to the guideline was the reinstatement of the eligibility test that was in force prior to 1 January 2013, my department considered that additional consultation was not necessary.

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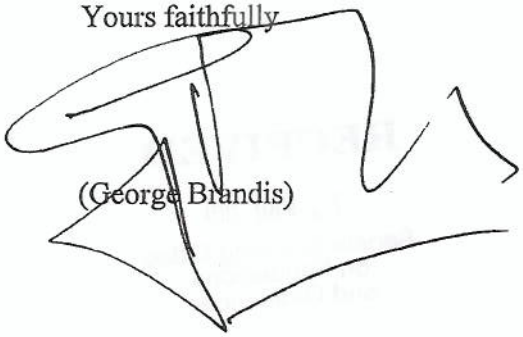
My department will amend the Explanatory Statement, in accordance with the requirements of the *Legislative Instruments Act 2003*, in consultation with the Office of Parliamentary Counsel.

The responsible adviser for this matter in my office is Liam Brennan who can be contacted on (02) 6277 7300.

Thank you again for writing on this matter.

Yours faithfully



(George Brandis)

24 MAR 2014

SENATOR THE HON MITCH FIFIELD
ASSISTANT MINISTER FOR SOCIAL SERVICES

MC14-002391

Chair
Senate Standing Committee on Regulations and Ordinances
Room S1.111
Parliament House
CANBERRA ACT 2600

Dear Chair

Thank you for your letter of 5 March 2014 about the report of the Senate Regulations and Ordinances Committee, *Delegated legislation monitor* No. 2 of 2014 (5 March 2014), concerning the following instruments for which I have portfolio responsibility:

- Home Care Subsidy Amendment (Transitional Workforce Supplement and Various Measures) Determination 2014 [F2014L00096]; and
- Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014 [F2014L00099]

I have reviewed and updated the Explanatory Statements for these instruments to include the additional information as requested by the Committee. I have enclosed copies of the updated Explanatory Statements for your information.

Thank you again for writing.

Yours sincerely

MITCH FIFIELD

Encl.

24/3/14

PARLIAMENT HOUSE, CANBERRA ACT 2600 TELEPHONE: 02 6277 7280 EMAIL: MINISTER.FIFIELD@DSS.GOV.AU

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Home Care Subsidy Amendment (Transitional Workforce Supplement and Various Measures) Determination 2014

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons approved under the Act to provide aged care services (approved providers) can be eligible to receive subsidy payments in respect of the care they provide to approved care recipients.

Part 3.2 of the Act relates to home care subsidy. Home care subsidy is a payment by the Commonwealth to approved providers for providing home care to care recipients.

The amount of home care subsidy that is payable in respect of a day is the amount determined by the Minister by legislative instrument, or worked out in accordance with the method determined by the Minister by legislative instrument.

Prior to 12 December 2013, the amount of home care subsidy payable to eligible approved providers included a workforce supplement, with eligibility requirements set out in the Minister's determination of the amount of home care subsidy. The purpose of the *Home Care Subsidy Amendment (Transitional Workforce Supplement and Various Measures) Determination 2014* (the Amending Determination) is to provide for payment of a transitional workforce supplement to eligible approved providers from 12 December 2013 until 30 June 2014.

This amending determination also amends the scores that determine eligibility for the dementia and cognition supplement when the assessment is made in accordance with the Kimberley Indigenous Cognitive Assessment (KICA-Cog) tool. It also allows for back payments of home care subsidy, that includes the dementia and cognitive supplement, to be made to any approved providers who believed that a care recipient was not eligible because of the way the scores were previously specified in the determination.

The Amending Principle is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

Consultation

The Government publicly released *The Coalition's Policy for Healthy Life, Better Ageing* in September 2013. Within this document the Government outlined its intention to remove the Workforce Supplement and to work with providers on how the funding is redistributed to the aged care sector.

Since the September 2013 Election, the Government has suspended new applications for the Workforce Supplement and later ceased the Supplement (by disallowing the

relevant legislation). In doing so, providers in receipt of the Supplement were consulted regarding transitional arrangements, which are reflected in this Principle. Consultations with key stakeholders on options to redistribute the Workforce Supplement funding have occurred in parallel.

The changes in the determination in relation to the dementia and cognition supplement are to correct an error and to enable approved providers to back date their claims for payment for eligible care recipients. No additional consultation was undertaken as there had already been substantial consultation prior to the introduction of these supplements. A communication strategy will be implemented to inform aged care providers of the amendment.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (OBPR ID 16276).

Commencement

The Amending Principle commences on the day after it is registered.

ATTACHMENT

Details of Home Care Subsidy Amendment (Transitional Workforce Supplement and Various Measures) Determination 2014.

Clause 1 states that the name of the Amending Determination is the *Home Care Subsidy Amendment (Transitional Workforce Supplement and Various Measures) Determination 2014*.

Clause 2 states that the Amending Determination commences on the day after it is registered.

Clause 3 provides that the authority for the making of the Amending Determination is the *Aged Care Act 1997*.

Clause 4 provides that for each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Aged Care (Home Care Subsidy Amount) Determination 2013

Item 1 - Section 5 (definition of *Aged Care Workforce Supplement Guidelines*)
This item repeals and substitutes the definition of *Aged Care Workforce Supplement Guidelines* with the definition of *Aged Care Transitional Workforce Supplement Guidelines*, which means the document with that title published by the Department of Social Services (the Department), as existing upon the commencement of the Amending Determination.

Item 2 – Paragraph 6(1)(c)
This item repeals and substitutes a paragraph that referred to the workforce supplement with a paragraph that refers to the transitional workforce supplement (if applicable) in respect of the relevant day worked out under Division 2.4.

Item 3 – After Division 2.3
This item inserts Division 2.4 which relates to arrangements for the payment of the transitional workforce supplement from 12 December 2013 until 30 June 2014, inclusive of both those days.

The transitional workforce supplement applies to a care recipient in respect of a day and circumstances in which the supplement ceases to apply.

The transitional workforce supplement will be payable to an approved provider for a care recipient in respect of a day if:

- the day in question falls within the period 12 December 2013 to 30 June 2014 inclusive of both those days;

- the approved provider is eligible to receive home care subsidy for the care recipient in respect of the day; and
- the approved provider conducting the home care service was eligible to receive the workforce supplement on 11 December 2013.

This item also provides that the transitional workforce supplement ceases to apply to a care recipient in respect of a day if either:

- the Secretary decides that the approved provider is no longer eligible for the transitional workforce supplement; or
- the approved provider requests, in writing, the Secretary to cease payment of the transitional workforce supplement.

This item also requires the Secretary to invite the approved provider to make submissions, within 28 days, before deciding whether the approved provider is no longer eligible for the transitional workforce supplement and to take any submissions received within that timeframe into account. The Secretary is also required to have regard to the eligibility criteria specified in the *Aged Care Transitional Workforce Supplement Guidelines* in making a decision regarding an approved provider's continuing eligibility for the supplement.

This item also provides that a decision made by the Secretary that an approved provider is no longer eligible for the transitional workforce supplement is a reviewable decision to which Part 6.1 of the Act applies. This gives the approved provider the right to seek internal reconsideration by the Secretary and external review of the decision by the Administrative Appeals Tribunal.

This item states that the amount of transitional workforce supplement for a particular day is 1% of the basic subsidy amount that is payable in respect of the day for the care recipient.

Item 4 – Paragraph 18(1)(e)

This item repeals paragraph 18(1)(e), which required an approved provider to lodge a claim for subsidy that included a claim for the dementia and cognition supplement no later than 56 days after any day for which the supplement was claimed in respect of a care recipient. This amendment allows for back payments of the dementia and cognition supplement to be made for a period longer than 56 days. This is in recognition that approved providers can now claim for care recipients who were unintentionally excluded, because of an error in the original determination, but who were in fact the intended beneficiaries of the supplement from the date of implementation, 1 August 2013.

Item 5 – Paragraph 18(4)(d)

This item amends the scores that determine eligibility for the dementia and cognition supplement when the assessment is made in accordance with the KICA-Cog tool. The amendment changes the score from "34 or more" to "33 or less" as the former indicates that the care recipient is only mildly cognitively impaired whereas "33 or less" indicates that the care recipient is moderately to severely cognitively impaired. The wording "33 or less" is consistent with the language used in the tool itself.

Statement of Compatibility with Human Rights

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

Home Care Subsidy Amendment (Transitional Workforce Supplement and Various Measures) Determination 2014

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

Overview of the Legislative Instrument

A purpose of this Amending Determination is to provide for payment of a transitional workforce supplement to eligible approved providers during the period commencing on 12 December 2013 and ending on 30 June 2014.

This Amending Determination also amends the scores that determine eligibility for the dementia and cognition supplement when the assessment is made in accordance with the Kimberley Indigenous Cognitive Assessment (KICA-Cog) tool. This amendment corrects an error in the determination.

The Amending Instrument also repeals a provision that set a 56 day time limit on back payments of the dementia and cognition supplement. This amendment allows for back payments of the dementia and cognition supplement to be made for a period longer than 56 days to approved providers who, because of the error in the determination, did not claim the supplement because they believed that a care recipient was not eligible.

Human Rights Implications

The legislative instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights, and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities.

The legislative instrument will enable the Australian Government to provide additional funding in the form of a transitional workforce supplement to approved providers of home care that were eligible for the workforce supplement on 11 December 2013. This ensures that providers who have relied on the supplement in providing wage increases to their staff will continue to receive an equivalent level of funding for the remainder of 2013-14. This protects the level and standard of care being provided to clients.

This legislative instrument will also allow for the back payment of the dementia and cognition supplement to approved providers in respect of care recipients who were intended to be eligible for the supplement but were inadvertently excluded because of an error in the determination.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human right to health and the right to an adequate standard of living.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Social Services

Aged Care Act 1997

Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014

The *Aged Care Act 1997* (the Act) provides for the regulation and funding of aged care services. Persons who are approved under the Act to provide residential aged care services (approved providers) can be eligible to receive residential care subsidy payments in respect of the care they provide to approved care recipients.

Section 96-1 of the Act allows the Minister to make Principles providing for various matters required or permitted by a Part or section of the Act. Among the Principles made under section 96-1 are the *Residential Care Subsidy Principles 1997* (the Principles).

Part 3.1 of the Act relates to residential care subsidy. Residential care subsidy is a payment by the Commonwealth to approved providers for providing residential care to care recipients. Section 44-5 of the Act provides for the payment of primary supplements. Supplements are paid to approved providers in respect of a payment period as part of residential care subsidy.

Section 44-16 of the Act states that the Principles may provide for additional primary supplements. Prior to 12 December 2013, the Principles provided for an additional primary supplement called the workforce supplement, along with the eligibility criteria for this supplement.

The purpose of the *Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014* (the Amending Principle) is to provide for payment of a transitional workforce supplement on and after 12 December 2013 and before 1 July 2014 to approved providers that were eligible to receive the workforce supplement on 11 December 2013.

Subsection 44-16(3) of the Act provides that the Minister may determine, by legislative instrument, in respect of each supplement the amount of the supplement or the way in which the amount of the supplement is to be worked out. The Amending Principle determines the way in which the amount of the transitional workforce supplement is to be worked out.

The Amending Principle is a legislative instrument for the purposes of the *Legislative Instruments Act 2003.*

Consultation

The Government publicly released *The Coalition's Policy for Healthy Life, Better Ageing* in September 2013. Within this document the Government outlined its intention to remove the Workforce Supplement and to work with providers on how the funding is redistributed to the aged care sector.

Since the September 2013 Election, the Government has suspended new applications for the Workforce Supplement and later ceased the Supplement (by disallowing the relevant legislation). In doing so, providers in receipt of the Supplement were consulted regarding transitional arrangements, which are reflected in this Principle. Consultations with key stakeholders on options to redistribute the Workforce Supplement funding have occurred in parallel.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that no Regulation Impact Statement is required (OBPR ID16276).

Commencement

The Amending Principle commences on the day after it is registered on the Federal Register of Legislative Instruments (FRLI).

ATTACHMENT

Details of the Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014.

Clause 1 states that the name of the Amending Principle is the *Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014.*

Clause 2 states that the Amending Principle commences on the day after it is registered.

Clause 3 provides that the authority for the making of the Amending Principle is the *Aged Care Act 1997.*

Clause 4 provides that for each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Residential Care Subsidy Principles 1997

Item 1 - Section 21.3 (definition of *Aged Care Workforce Supplement Guidelines*)
This item repeals and substitutes the definition of *Aged Care Workforce Supplement Guidelines* with the definition of *Aged Care Transitional Workforce Supplement Guidelines*, which means the document with that title published by the Department of Social Services (the Department), as existing upon the commencement of the Amending Principle.

Item 2 – Section 21.24
This item repeals and substitutes a section that states that this part provides for additional primary supplements and specifies the circumstances in which they will apply to a care recipient in respect of a payment period.

Item 3 – After Part 10 Division 4
This item inserts Division 5 which relates to arrangements for the payment of the transitional workforce supplement from 12 December 2013 until 30 June 2014, inclusive of both those days.

This item sets out the circumstances in which the transitional workforce supplement applies to a care recipient in respect of a day and circumstances in which the supplement ceases to apply.

The transitional workforce supplement will be payable to an approved provider for a care recipient in respect of a day if:

- the day in question falls within the period 12 December 2013 to 30 June 2014 inclusive of both those days;

- the approved provider provides residential care to the care recipient on the day in question; and
- the approved provider was eligible to receive the workforce supplement on 11 December 2013.

This item also provides that the transitional workforce supplement ceases to apply to a care recipient in respect of a day if either:

- the Secretary decides that the approved provider is no longer eligible for the transitional workforce supplement; or
- the approved provider requests, in writing, the Secretary to cease payment of the transitional workforce supplement.

This item also requires the Secretary to invite the approved provider to make submissions, within 28 days, before deciding whether the approved provider is no longer eligible for the transitional workforce supplement and to take any submissions received within that timeframe into account. The Secretary is also required to have regard to the eligibility criteria specified in the *Aged Care Transitional Workforce Supplement Guidelines* in making a decision regarding an approved provider's continuing eligibility for the supplement.

This item also provides that a decision made by the Secretary that an approved provider is no longer eligible for the transitional workforce supplement is a reviewable decision to which Part 6.1 of the Act applies. This gives the approved provider the right to seek internal reconsideration by the Secretary of the decision and external review of the decision by the Administrative Appeals Tribunal.

This item also provides that the amount of transitional workforce supplement for a particular day is 1% of the basic subsidy amount that is payable in respect of the day for the care recipient.

Statement of Compatibility with Human Rights

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

Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014

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

Overview of the Legislative Instrument

The purpose of the *Residential Care Subsidy Amendment (Transitional Workforce Supplement) Principle 2014* (the Amending Principle) is to provide for payment of a transitional workforce supplement to eligible approved providers during the period commencing on 12 December 2013 and ending on 30 June 2014.

Human Rights Implications

This legislative instrument is compatible with the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of physical and mental health as contained in article 11(1) and article 12(1) of the International Covenant on Economic, Social and Cultural Rights , and article 25 and article 28 of the Convention on the Rights of Persons with Disabilities. This legislative instrument will enable the Australian Government to provide additional funding in the form of a transitional workforce supplement to approved providers who were eligible for the workforce supplement on 11 December 2013. This ensures that providers who have relied on the supplement in providing wage increases to their staff will continue to receive an equivalent level of funding for the remainder of 2013-14. This protects the level and standard of care being provided to clients.

Conclusion

This legislative instrument is compatible with human rights as it promotes the human right to health and the right to an adequate standard of living.

Senator the Hon Mitch Fifield
Assistant Minister for Social Services

SENATOR THE HON MATHIAS CORMANN
Minister for Finance

REF: C14/932

Senator Sean Edwards
Chair
Senate Standing Committee on
Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Senator Edwards

I refer to the letter of 12 February 2014 sent to my office from the Committee Secretary to the Senate Standing Committee on Regulations and Ordinances (the Committee) seeking my advice on the issues raised by the Committee about amendments to the *Financial Management and Accountability Regulations 1997* (the FMA Regulations).

The amendments are in the *Financial Management and Accountability Amendment (2013 Measures No. 1) Regulation 2013*. The Committee's comments in the *Delegated legislation monitor, Monitor No 1 of 2014* relate to the characteristics of items in Schedule 1AB to the FMA Regulations in determining whether they should be subject to merits review. I note that the Committee has drawn Senators' attention to previous comments by the Senate Standing Committee on the Scrutiny of Bills (Scrutiny of Bills Committee) on the exemption from the *Administrative Decisions (Judicial Review) Act 1977* of decisions under section 32B of the *Financial Management and Accountability Act 1997*. In this regard, I refer the Committee to my response of 4 February 2014.

In relation to the Committee's request for further information about merits review of the programmes, responses have been provided by the departments which administer those programmes or items. The responses are at Attachment A. I wish to inform the Committee that future explanatory documentation for amendments to Schedules to the FMA Regulations will contain the necessary information about merits review for each item.

I trust this information addresses the Committee's concerns.

Kind regards

Mathias Cormann
Minister for Finance

24 March 2014

Response to Comments by the Senate Regulations and Ordinances Committee on the *Financial Management and Accountability Amendment (2013 Measures No. 1) Regulation 2013*

General Comment

The following responses to the Committee's request have been provided by the departments which administer the items in Schedule 1AB in the *Financial Management and Accountability Amendment (2013 Measures No. 1) Regulation 2013.*

Responses from Departments

Department of Communications

Item 1	Digital productivity – Telehealth trial with Townsville-Mackay Medicare Local

The Department of Communications has provided the following information for this item.

This item involves arrangements for the making of one-off grant payments, on a targeted basis, to certain recipients. Grants under this programme are made in accordance with the *Commonwealth Grant Guidelines* and programme guidelines developed for the programme. The programme guidelines do not make specific provisions for review of decisions since the grant is made on a one-off basis to an individual recipient. The Guidelines indicate that the Minister will approve the spending associated with the programme.

Department of Agriculture

Item 2	Red Meat and Cattle sector – International Co-operation and Investment Programme
Item 3	Support for national expositions relating to primary industry

The Department of Agriculture has provided the following information for these items.

Expenditure under both items occurs in accordance with the *Financial Management and Accountability Act 1997* and the *Financial Management and Accountability Regulations 1997* (FMA Regulations), including obligations contained in the *Commonwealth Grant Guidelines* and *Commonwealth Procurement Rules.*

Item 2 - Red Meat and Cattle sector – International Co-operation and Investment Programme

This item establishes legislative authority for the Government to fund agricultural co-operation and investment projects between Australia and Indonesia.

Projects to be funded under the $10 million program will be developed collaboratively with Indonesia through an Indonesia-Australia government industry partnership. The partnership will function as a high level advisory government industry body, providing strategically focused advice and recommendations on areas of priority investment and agricultural co-operation.

Given that projects will be conceived and developed collaboratively, the need for any form of review process is reduced, as the collaborative style of project conception will mitigate the risk of aggrieved or unsuccessful applicants. That aside, the expenditure that results from the collaborative partnership will fall into one of two categories:

- ad-hoc or targeted expenditure; or
- expenditure that results from a competitive process.

In relation to ad-hoc or targeted expenditure, internal merits review is not possible as there are no 'unsuccessful applicants'. Accordingly, no entities exist that would be able to utilise an internal merits review process.

In relation to expenditure that results from a competitive process, internal merits review will not be offered because there will only a limited pool of money available for the activity. Once that initial pool has been allocated to successful applicants, there will be no further money available. This means that any internal review process would be of no benefit to unsuccessful applicants.

Item 3 - Support for national expositions relating to primary industry

This item establishes legislative authority for the Government to provide funding to support the conduct of national expositions relating to primary industry, such as the Beef Australia exposition.

As expositions are expected to be industry-driven, applications for Australian Government support will generally be received on an ad hoc basis. As such, decisions on funding will be made on a non-competitive basis to support departmental objectives.

When expenditure is ad-hoc or targeted, internal merits review is not possible as there are no 'unsuccessful applicants'. Accordingly, no entities exist that would be able to utilise an internal merits review process.

Department of the Prime Minister and Cabinet

Item 4	Empowered Communities
Item 5	Better Employment Outcomes for Indigenous Australians
Item 6	School Attendance Strategies

The Department of the Prime Minister and Cabinet has provided the following information for these items.

Item 4 - Empowered Communities

Empowered Communities is being led by Indigenous leaders from eight different regions across Australia who are working together with governments and corporate Australia to design a new approach to strengthen Indigenous responsibility and improve outcomes for Aboriginal and Torres Strait Islander people.

The Government has committed $5 million for the design phase of the Empowered Communities initiative. An Empowered Communities Taskforce has been set up to lead the design work for the Empowered Communities model and will recommend options to the Australian Government to consider in mid to late 2014.

Item 4 relates to a spending decision involving the allocation of finite resources where overturning the decision would impact another party to whom the resources have been allocated. The Government has committed $5 million for the Empowered Communities initiative. From this, funding of $1.5 million has been provided to Jawun Indigenous Corporate Partnerships for engagement work. The remaining $3.5 million is being managed by the Department of the Prime Minister and Cabinet for staff costs, travel, secretariat and consultations. There is a limited amount of funding and no further money has been allocated.

Empowered Communities is subject to the review and audit processes undertaken by the Australian National Audit Office. This provides a mechanism for review and reporting to Parliament of any concerns which may arise about spending decisions under the programme. Empowered Communities is also subject to the rules in the *Financial Management and Accountability Act 1997*, the FMA Regulations and the requirements in the *Commonwealth Procurement Rules* and the *Commonwealth Grant Guidelines*. These assist in ensuring the proper use of Commonwealth resources and that there is appropriate transparency around decisions relating to the expenditure of public money.

Item 5 - Better Employment Outcomes for Indigenous Australians

Better Employment Outcomes for Indigenous Australians is designed to increase employment outcomes and participation in economic activities for Indigenous Australians by funding vocational training and employment centres (VTECs) to provide training and employment related services. The VTEC initiative is a subcomponent of the Indigenous Employment Programme.

Item 5 relates to a spending decision involving the allocation of finite resources where overturning the decision would impact another party to whom the resources have been allocated. Once the initial pool of money has been allocated to successful applicants, there is no further money available.

If there are complaints about any expenditure under Better Employment Outcomes for Indigenous Australians, the complainant is able to seek internal review by the Department, or can seek review by external mechanisms including the Commonwealth Ombudsman.

Further, the programme is subject to the review and audit processes undertaken by the Australian National Audit Office. This provides a mechanism for review and reporting to Parliament of any concerns which may arise about spending decisions under the programme. Better Employment Outcomes for Indigenous Australians is also subject to the rules in the *Financial Management and Accountability Act 1997*, the FMA Regulations and the requirements in the *Commonwealth Procurement Rules* and the *Commonwealth Grant Guidelines*. These assist in ensuring the proper use of Commonwealth resources and that there is appropriate transparency around decisions relating to the expenditure of public money.

Item 6 - School Attendance Strategies

Item 6 relates to a spending decision involving the allocation of finite resources where overturning the decision would impact another party to whom the resources have been allocated. The initial pool of money has been allocated, targeting remote communities with low school attendance rates, in most instances below 70 per cent. Stage 2 funding has been announced.

Providers were approached by the Department and asked to develop an application for funding through the Remote Jobs and Communities Program Community Development Fund (RJCP-CDF), in accordance with the *Commonwealth Procurement Guidelines and RJCP-CDF Program Guidelines*. During the application process, providers were also made aware of the Department's complaint handling process.

The Remote School Attendance Strategy operates within the Remote Jobs and Community Programme Guideline parameters. Guidelines indicate that applicants could seek review of decisions and unsuccessful applicants were reminded of their right to request the Commonwealth Ombudsman to review the decision.

The Remote School Attendance Strategy is an Australian Government programme that is subject to the review and audit processes undertaken by the Australian National Audit Office. This provides a mechanism for review and reporting to Parliament of any concerns which may arise about spending decisions under the programme. The Remote School Attendance Strategy is also subject to the rules in the *Financial Management and Accountability Act 1997*, the FMA Regulations and the requirements in the *Commonwealth Procurement Rules* and the *Commonwealth Grant Guidelines*. These assist in ensuring the proper use of Commonwealth resources and that there is appropriate transparency around decisions relating to the expenditure of public money.

Given the above factors, there is an appropriate level of administrative oversight and external merits review is unnecessary.