The Senate

Standing

Committee on Regulations and Ordinances

Delegated legislation monitor

Monitor No. 1 of 2014

12 February 2014

© Commonwealth of Australia 2014

ISSN 2201-8689 (print)

ISSN 1447-2147 (online)

This document was prepared by the Senate Standing Committee on Regulations and Ordinances and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

# Membership of the committee

**Current members**

Senator Sean Edwards (Chair) South Australia, LP

Senator Gavin Marshall (Deputy Chair) Victoria, ALP

Senator the Hon Ron Boswell Queensland, NAT

Senator Sam Dastyari New South Wales, ALP

Senator Nova Peris OAM Northern Territory, ALP

Senator Zed Seselja Australian Capital Territory, LP

**Secretariat**

Mr Ivan Powell, Secretary

Dr Patrick Hodder, Senior Research Officer

**Committee legal adviser**

Mr Stephen Argument

**Committee contacts**

PO Box 6100

Parliament House

Canberra ACT 2600

Ph: 02 6277 3066

Email: regords.sen@aph.gov.au

Website: <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances>

# Contents

Membership of the committee *iii*

Introduction *ix*

Chapter 1 – New and continuing matters

Treatment Principles (Australian Participants in British Nuclear Tests)

2006 (No. R54/2013) [F2013L02031] 1

MRCA Treatment Principles (No. MRCC 53/2013) [F2013L02016] 2

Disability Services Act (Administration of Part II of the Act)  
Guidelines 2013 [F2013L02002] 2

Declaration of 'corresponding State laws' [F2013L02043] 3

Commonwealth Places (Mirror Taxes) (Modification of Applied  
Law - Victoria) Notice 2013 [F2013L02055] 3

Commonwealth Scholarships Guidelines (Education) 2013 [F2013L02070] 4

Financial Management and Accountability Amendment (2013 Measures  
No. 1) Regulation 2013 SLI 2013 No. 281 [F2013L02089] 5

Migration Amendment (Unauthorised Maritime Arrival) Regulation  
 2013 SLI 2013 No. 280 [F2013L02104] 6

Amendment No. 1 to the Commonwealth Grant Scheme Guidelines 201 [F2013L02078] 8

Amendment to the list of migratory species under section 209  
of the Environment Protection and Biodiversity Conservation  
Act 1999 (26/11/2013) [F2013L02109] 8

Migration Amendment (Bridging Visas—Code of Behaviour) Regulation  
2013 [F2013L02102] (with reference to Code of Behaviour for Public  
Interest Criterion 4022 - IMMI 13/155 [F2013L02105]) 9

Native Title (Assistance from Attorney-General) Amendment Guideline 2013 [F2013L02084] 12

Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013 [F2013L02135] 13

Amendment to the list of threatened species, ecological communities  
and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (153) (11/11/2013) [F2013L02177] 14

Amendment to the list of threatened species, ecological communities  
and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (131) (20/12/2013) [F2014L00062] 15

Customs Act 1901 - Specified Percentage of Total Factory Costs  
Determination No. 1 of 2013 [F2013L02198] 15

Multiple instruments identified in Appendix 1 16

Chapter 2 – Concluded matters

Trans-Tasman Proceedings Legislation Amendment Regulation 2012  
(No. 2) [Select Legislative Instrument 2012 No. 284] [F2012L02412] 17

Australian Public Service Commissioner's Amendment Direction 2013  
(No. 1) [F2013L01212] 18

Migration Amendment (Visa Application Charge and Related Matters  
No. 2) Regulation 2013 [Select Legislative Instrument 2013 No. 253] [F2013L01963] 18

Carbon Credits (Carbon Farming Initiative) (Reforestation and Afforestation—1.2) Methodology Determination 2013 [F2013L01210] 20

Amendment of Statement of Principles concerning lumbar spondylosis  
No. 69 of 2013 [F2013L01657]; and 21

Amendment of Statement of Principles concerning lumbar spondylosis  
No. 70 of 2013 [F2013L01658] 21

Fisheries Management Amendment Regulation 2013 (No. 1)   
[Select Legislative Instrument No. 132, 2013] [F2013L01291] 22

Complaints Amendment (Living Longer Living Better)  
 Principle 2013 [F2013L01348] 23

Migration Regulations 1994 - Specification under paragraphs 2.61(3A)(b), 2.61(3A)(c), 2.61(3B), subregulations 2.66(3), 2.66(4), 2.66(5), 2.73(3), 2.73(5) and 2.73(9), and paragraphs 1223A(1)(bb), 1223A(1)(b), 1223A(1)(ba) and 1223A(1)(bc) - Forms, Fees, Circumstances and Different Way of Making an Application - June 2013 [F2013L01242] 24

Migration Amendment (Visa Application Charge) Regulation 2013  
[Select Legislative Instrument No. 228, 2013] [F2013L01534] 25

Migration Amendment (Temporary Protection Visas) Regulation 2013  
[Select Legislative Instrument No. 234, 2013] [F2013L01811] 25

Migration Regulations 1994 - Specification of Access to Movement  
Records - IMMI 13/107 [F2013L01896] 28

Corporations and Australian Securities and Investments Commission Amendment Regulation 2013 (No. 1) [Select Legislative Instrument  
No. 192, 2013] [F2013L01431] 29

Income Tax Assessment (Infrastructure Project Designation) Rule 2013 [F2013L01335] 30

Electronic Transactions Amendment (Exemptions) Regulation 2013  
[Select Legislative Instrument No. 169, 2013] [F2013L01389] 31

Family Law Amendment (Fees) Regulation 2013 [Select Legislative  
Instrument No. 136, 2013] [F2013L01243] 31

Financial Management and Accountability Amendment Regulation 2013  
(No. 5) [Select Legislative Instrument No.174, 2013] [F2013L01386]; 32

Financial Management and Accountability Amendment Regulation 2013  
(No. 6) [Select Legislative Instrument No. 219, 2013] [F2013L01511] 32

Financial Management and Accountability Amendment Regulation 2013  
(No. 7) [Select Legislative Instrument No. 229, 2013] [F2013L01512] 32

Court Martial and Defence Force Magistrate Amendment (Travel Expenses) Rules 2013 [F2013L01832] 35

Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2013 [F2013L00216] 36

Social Security (Deeming Threshold Rates) Determination 2013 (No. 2) [F2013L01854] 37

Appendix 1 – Index of instruments scrutinised 39

Appendix 2 – Guideline on consultation 57

Appendix 3 - Correspondence 63

# 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]](#footnote-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 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]](#footnote-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**

# Chapter 1

## New and continuing matters

This chapter lists new matters identified by the committee at its meeting on **12 February 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.

### Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (No. R54/2013) [F2013L02031]

|  |  |
| --- | --- |
| **Purpose** | Modifies the Treatment Principles (No. R52/2013) under the *Veterans' Entitlements Act 1986* (VEA TPs) in the application of the VEA TPs to persons eligible for treatment under the *Australian Participants in British Nuclear Tests (Treatment) Act 2006* |
| **Last day to disallow[[3]](#footnote-3)** | 19 March 2014 |
| **Authorising legislation** | *Australian Participants in British Nuclear Tests (Treatment) Act 2006* |
| **Department** | Veterans' Affairs |

**ISSUE:**

#### Drafting

Item 12 of the schedule to this instrument provides:

12. ...

Unlike the other numbered items in the schedule, there is no amendment specified in the item. The same occurs in relation to items 7 and 23, and within item 59 of the schedule. It is not clear whether this formulation is intentional. **The committee therefore requests further information from the minister**.

### MRCA Treatment Principles (No. MRCC 53/2013) [F2013L02016]

|  |  |
| --- | --- |
| **Purpose** | Determines the places at which, the circumstances in which, and the conditions subject to which, a particular kind or class of treatment may be provided under Part 3 of Chapter 6 of the *Military Rehabilitation and Compensation Act 2004*; and determines the matters in paragraphs 286(1)(d), (e) (f) and (g) of that Act |
| **Last day to disallow** | 19 March 2014 |
| **Authorising legislation** | *Military Rehabilitation and Compensation Act 2004* |
| **Department** | Veterans' Affairs |

**ISSUE:**

#### Drafting

Item 7 of Schedule 1 to this instrument provides:

7. ...

Unlike the other numbered items in Schedule 1, there is no amendment specified in the item. It is not clear whether this formulation is intentional. **The committee therefore requests further information from the ministe**r.

### 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 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 minister; and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

### 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 therefore requests further information from the minister**.

### Commonwealth Places (Mirror Taxes) (Modification of Applied Law - Victoria) Notice 2013 [F2013L02055]

|  |  |
| --- | --- |
| **Purpose** | Provides for applied Victorian taxing laws to be modified to the extent necessary or convenient to enable their effective operation as a Commonwealth law, and for the combined liability of a tax payer under the applied law and the corresponding Victorian state taxing law to be as nearly as possible the same as it would be under a Victorian state taxing law if the Commonwealth place in Victoria were not a Commonwealth place |
| **Last day to disallow** | 24 March 2014 |
| **Authorising legislation** | *Commonwealth Places (Mirror Taxes) Act 1998* |
| **Department** | Treasury |

**ISSUE:**

#### Drafting

This instrument provides for applied Victorian taxing laws to be modified to the extent necessary or convenient to enable their effective operation as a Commonwealth law. While the making date of the instrument is recorded on FRLI, the instrument does not itself reference the making date. The committee's usual expectation is that instruments are dated. **The committee therefore draws this issue to the attention of the minister**.

### 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** | 27 March 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 therefore requests further information from the minister; and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

### 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 therefore requests 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 therefore draws 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)**.

### Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 SLI 2013 No. 280 [F2013L02104]

|  |  |
| --- | --- |
| **Purpose** | Amends the Migration Regulations 1994 to implement the government's intention to ensure that persons who arrive in Australia without visas are not granted permanent protection via a Subclass 866 (Protection) visa |
| **Last day to disallow** | 15 May 2014 |
| **Authorising legislation** | *Migration Act 1958* |
| **Department** | Immigration and Border Protection |

**ISSUE:**

#### (a) Whether instrument is the same in substance as disallowed instrument

This instrument introduces a new visa criterion, such that a Subclass 866 (Protection) visa can only be granted to a person who:

held a visa that was in effect on their last entry to Australia; and

is not an unauthorised maritime arrival (UMA); and

was immigration cleared on the applicant's last entry into Australia.

The ES states that the instrument is made in response to the Senate's disallowance of the Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 (on 2 December 2013), which had reintroduced Temporary Protection Visas (TPVs). Whereas the previous instrument introduced TPVs as the visa to be granted to all UMAs, with a condition that they could not access the Subclass 866 (Protection) visas, the new instrument instead places that condition on the Subclass 866 (Protection) visas.

Section 48 of the *Legislative Instruments Act 2003* places limitations on the remaking of instruments after disallowance, including that an instrument that is 'the same in substance' as a disallowed instrument may not be remade within six months after that disallowance (unless the House that disallowed the instrument rescinds the disallowance resolution or otherwise approved the making of the second instrument).

The concept of 'the same in substance' was considered by the High Court in *Victorian Chamber of Manufactures v Commonwealth (Women's Employment Regulations)* [1943] HCA 21; (1943) 67 CLR 347. In that decision, Chief Justice Latham stated that the question of whether an instrument is the same in substance as a disallowed instrument 'must be applied by the court without any knowledge of the reasons which prompted a House [to disallow it]. The Chief Justice noted that the court should therefore determine whether a new regulation is the same in substance by applying such tests as the court may think proper, and by seeking 'to determine in each case whether such differences as exist between the disallowed regulation and the new regulation are differences in substance'.

Chief Justice Latham concluded that (an equivalent provision to) section 48 of the LIA prevented 'the re-enactment, within six months of disallowance, of any regulation which is substantially the same as the disallowed regulation in the sense that it produces substantially, that is, in large measure, though not in all details, the same effect as the disallowed regulation'.

As to whether the current instrument 'produces substantially, though not in all details, the same effect as the disallowed [instrument]', it may be said that the effect of both instruments is/was to prevent unauthorised maritime arrivals from being eligible for Subclass 866 (Protection) visas. The committee's usual practice where a question of law arises is to seek further information from the relevant instrument maker, and to inquire specifically as to whether legal advice on the legal question was sought. **The committee therefore requests further information from the minister**.

**ISSUE:**

#### (b) Retrospective effect of instrument

As noted above, this instrument adds a new criterion to the Subclass 866 (Protection) visa, making UMAs ineligible to apply for that visa type. The amendment made by the instrument applies to applications for protection visas made, but not finally determined, before the commencement of the instrument (14 December 2013), as well as applications made on or after that day. This means that otherwise valid applications not determined at 14 December 2013 are, by virtue of the new criterion, now invalid, giving the instrument an element of retrospectivity in its effect. The ES provides no justification for this apparent removal of the entitlement in relation to current applications for a protection visa. **The committee therefore requests further information from the minister**.

**ISSUE:**

#### (c) Insufficient information regarding consultation

The ES for the instrument states that consultation was not undertaken in this case because the regulation was required as a 'matter of urgency'. While it goes on to state that the urgency is due to the instrument being a 'priority of the Government', there is no information provided as to the facts or circumstances from which the condition of urgency arises. The committee generally seeks further justification in response to effectively unsupported claims of urgency. **The committee therefore requests further information from the minister**.

### Amendment No. 1 to the Commonwealth Grant Scheme Guidelines 2012 [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 therefore requests further information from the minister; and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

### Amendment to the list of migratory species under section 209 of the Environment Protection and Biodiversity Conservation Act 1999 (26/11/2013) [F2013L02109]

|  |  |
| --- | --- |
| **Purpose** | Amends the List of Migratory Species (13/07/2000) by deleting 82 species from the migratory list |
| **Last day to disallow** | 15 May 2014 |
| **Authorising legislation** | *Environment Protection and Biodiversity Conservation Act 1999* |
| **Department** | Environment |

**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 makes no reference to consultation. **The committee therefore requests further information from the minister; and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

### Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013 [F2013L02102] (with reference to Code of Behaviour for Public Interest Criterion 4022 - IMMI 13/155 [F2013L02105])

|  |  |
| --- | --- |
| **Purpose** | Amends the Migration Regulations 1994 to establish an enforceable code of behaviour for certain Bridging E (Class WE) visa holders (instrument F2013L02105 specifies the code of behaviour for applicants seeking to satisfy the criteria for the grant of a Subclass 050 Bridging (General) visa) |
| **Last day to disallow** | 15 May 2014 |
| **Authorising legislation** | Migration Regulations 1994 |
| **Department** | Immigration and Border Protection |

#### Background

Together, these two instruments establish and specify an enforceable code of behaviour as a visa condition for certain Bridging E (Class WE) visa (BVE) holders.

The first instrument (the regulation) provides that the minister must approve a code of behaviour (the code), compliance with which is made a condition of the BVE. The failure of a relevant visa holder to comply with the code enables the minister to cancel the visa. The consequence of cancellation is that the person 'will be returned to immigration detention and may be transferred to an offshore processing centre'. A person whose visa is cancelled in such circumstances is unable to apply for a further BVE.

The code of behaviour (the code) subsequently made under the authority of the regulation requires BVE holders to comply with the laws of Australia and prescribes certain behaviour, including that a BVE holder must not 'harass, intimidate or bully any other person or group of people or engage in anti-social or disruptive activities that are inconsiderate, disrespectful or threaten the peaceful enjoyment of other members of the community [sic]'. The committee notes that the code is itself not disallowable. However, the committee notes that the content of the code has informed its assessment of the regulation for compliance with the committee's scrutiny principles.

**ISSUE:**

#### (a) Matters more appropriate for parliamentary enactment

Scrutiny principle (d) of the committee's terms of reference require the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via principal rather than delegated legislation). This may include instruments which are intended or would have the effect of bringing about 'radical changes in relationships or community attitudes'.[[4]](#footnote-4)

It is noted that, while visa BVE holders do not enjoy the full rights of Australian citizens, such persons are equally subject to Australian law. However, the regulation appears to create potential for such persons to be subject to behavioural standards not applicable to Australian citizens. To this extent, there would appear to be a reasonable possibility that the application of such a code could have the effect of bringing about significant changes in the relationship of Australian citizens to BVE holders. Further, the application of the code to BVE holders could conceivably influence community attitudes if, for example, the community were to regard BVE holders as being subject to standards of behaviour other than might be countenanced or expected of fellow citizens. In light of these considerations, the committee considers there is a question as to whether the changes effected by this instrument are appropriate for inclusion in delegated legislation, and should instead be contained in primary legislation. **The committee therefore requests further information from the minister**.

**ISSUE:**

#### (b) Insufficiently defined power

As noted above, the regulation provides that the minister must approve a code of behaviour. However, the regulation provides no criteria for any such code, effectively establishing a broad power for executive regulation of the behaviour of relevant visa holders. This concern is informed by scrutiny of the code, which prescribes a number of potentially vague and subjective behaviours, such as behaviour which is 'anti-social', 'disruptive', 'inconsiderate' or 'disrespectful', or which 'threatens the peaceful enjoyment of other members of the community [sic]'. Given the serious consequences which may flow from a breach of the code, a question arises as to whether the regulation should provide specific criteria in relation to the content of any code approved by the minister. **The committee therefore requests further information from the minister**.

**ISSUE:**

#### (c) Exemption of instrument from disallowance

As noted above, the regulation provides that the minister must approve a code of behaviour for BVE holders. The code is to be made by instrument in writing. The authority for the making of such an instrument has been provided for by the addition of Part 4.1 to Schedule 4 of the migration regulations. Instruments made under this schedule are exempt from disallowance. Despite the apparently legislative character of such an instrument, and the potentially significant consequences for individuals affected by the code, the committee notes that the ES contains no information on the exemption of the code from disallowance, including:

the broader justification for the exemption of instruments made under Schedule 4;

the extent to which any such justification applies to the code; and

whether, taking into account the nature of the code, it is appropriate to exempt such an instrument from disallowance (and therefore remove it from the effective oversight of the Parliament).

**The committee therefore requests further information from the minister**.

**ISSUE:**

#### (d) Retrospective effect of instrument

The application of the new visa criterion relating to the code of behaviour applies to applications for BVEs made, but not finally determined, before the commencement of the instrument (14 December 2013), as well as applications made on or after that day. This means that otherwise valid applications not determined at 14 December 2013 may, by virtue of the new criterion, now be invalid, giving the instrument an element of retrospectivity in its effect. The ES provides no justification for this apparent removal of the entitlement in relation to current applications for BVEs. **The committee therefore requests further information from the minister**.

**ISSUE:**

#### (e) Consultation

The ES for the regulation states that consultation was not undertaken because the changes were considered to be 'of a machinery nature as they add to the existing cancellation framework under the migration legislation'. Given the substantive effect and consequences which may arise from the application of a code of behaviour on BVE holders, the characterisation of the instrument as machinery in nature on this basis is open to question. This gives rise to a concern that the minister's determination that consultation was unnecessary or inappropriate in this case may not have taken account of, or provided appropriate opportunity for comment by, persons likely to be affected by the instrument. The committee notes that, while the ES states that 'continuing consultation on the draft code' was being undertaken, the ES for the code indicates that consultation was only undertaken internally and with other government departments and agencies, and did not involve consultation with persons likely to be affected by the instrument or with stakeholders more generally. **The committee therefore requests further information from the minister**.

### 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 therefore requests further information from the minister; and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

### Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013 [F2013L02135]

|  |  |
| --- | --- |
| **Purpose** | Amends the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995 to require licence records relating to the import, export or manufacture of ozone depleting substances or synthetic greenhouse gas to be kept at the licensee's principal place of residence, align the fit and proper person test in the principal regulations with the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*, establish a framework for issuing and administering infringement notices under the principal regulations, and insert a reference to the Exemption List for Non-Quarantine and Pre-Shipment Applications of Methyl Bromide for 2014 |
| **Last day to disallow** | 15 May 2014 |
| **Authorising legislation** | *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* |
| **Department** | Environment |

**ISSUE:**

#### Insufficient information regarding infringement notice regime

This instrument makes a number of amendments to the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995, including to establish a framework for issuing and administering infringement notices under the regulations. The ES states that new regulation 911 provides that payment of an infringement notice discharges all liability for an alleged contravention. However, it goes on to state that 'payment does not discharge liability if the notice is subsequently withdrawn and the penalty amount refunded'. Regulation 911 states that in such cases the person may be prosecuted in a court in relation to the alleged contravention. The committee considers that the ability for a notice to be withdrawn and for prosecution to proceed following payment of a penalty amount raises a question of double jeopardy, to the extent that the payment of a fine would normally finalise matters. While there may be a regulatory justification for this element of the infringement notice scheme, the ES does not provide any information as to the need for this provision. **The committee therefore requests further information from the minister**.

### Amendment to the list of threatened species, ecological communities and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (153) (11/11/2013) [F2013L02177]

|  |  |
| --- | --- |
| **Purpose** | Amends the list referred to in section 178, 181 and 183 of the *Environment Protection and Biodiversity Conservation Act 1999* |
| **Last day to disallow** | 15 May 2014 |
| **Authorising legislation** | *Environment Protection and Biodiversity Conservation Act 1999* |
| **Department** | Environment |

**ISSUE:**

#### Drafting

In relation to consultation, the ES for this instrument states that '[i]n accordance with section 184(1)(d) [of the *Environment Protection and Biodiversity Conservation Act 1999*] consultation is not required to be undertaken before the instrument was made'. This section gives the minister the power to correct an inaccuracy in a threatened species list or to update the name of a listed threatened species or listed threatened ecological community in such a list; however, it does not, as suggested, specify any requirements going to consultation. The ES, however, otherwise adequately addresses the question of consultation. **The committee therefore draws this issue to the attention of the minister**.

### Amendment to the list of threatened species, ecological communities and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (131) (20/12/2013) [F2014L00062]

|  |  |
| --- | --- |
| **Purpose** | Amends the Declaration under s178, s181, and s183 of the *Environment Protection and Biodiversity Conservation Act 1999* - List of threatened species, List of threatened ecological communities and List of threatening processes by deleting from the list in the endangered category *Bertya tasmanica* (Tasmanian Bertya) including in the list in the endangered category *Bertya tasmanica* subsp. tasmanica |
| **Last day to disallow** | 15 May 2014 |
| **Authorising legislation** | *Environment Protection and Biodiversity Conservation Act 1999* |
| **Department** | Environment |

**ISSUE:**

#### Drafting

In relation to consultation, the ES for this instrument states that '[i]n accordance with section 184(1)(d) [of the *Environment Protection and Biodiversity Conservation Act 1999*] consultation is not required to be undertaken before the instrument was made'. This section gives the minister the power to correct an inaccuracy in a threatened species list or to update the name of a listed threatened species or listed threatened ecological community in such a list; however, it does not, as suggested, specify any requirements going to consultation. The ES, however, otherwise adequately addresses the question of consultation. **The committee therefore draws this issue to the attention of the minister**.

### Customs Act 1901 - Specified Percentage of Total Factory Costs Determination No. 1 of 2013 [F2013L02198]

|  |  |
| --- | --- |
| **Purpose** | Determines that the specified percentage of the total factory cost of wiring harnesses claimed to be the manufacture of Samoa is 40% where the wiring harnesses: (a) are classified to subheading 8544.30.00 of Schedule 3 to the *Customs Tariff Act 1995*; and (b) are of a kind used in, and are for use in, passenger motor vehicles, as defined in Chapter 87 of the *Customs Tariff Act 1995* |
| **Last day to disallow** | 15 May 2014 |
| **Authorising legislation** | *Customs Act 1901* |
| **Department** | Immigration and Border Protection |

**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 ES for the instrument states:

A reduction in the specified percentage of 10% in respect of the goods included in the Determination granted to Samoa may affect elements of the Australian automotive industry. However, consultation with industry has established that the majority of the Australian automotive industry indicated their support to the continuation of the derogation.

While the committee does not usually interpret section 26 as requiring a highly detailed description of consultation undertaken, it usually regards an overly general description, as in this case, is not sufficient to satisfy the requirements of the *Legislative Instruments Act 2003*. **The committee therefore requests further information from the minister; 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 several 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.[[5]](#footnote-5)

# Chapter 2

## Concluded matters

This chapter lists matters previously raised by the committee and considered at its meeting on **12 February 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.

### Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 2) [Select Legislative Instrument 2012 No. 284] [F2012L02412]

|  |  |
| --- | --- |
| **Purpose** | Amends three principal regulations to provide for fees for the filing of applications under the *Trans-Tasman Proceedings Act 2010* |
| **Last day to disallow** | 15 May 2013 |
| **Authorising legislation** | *Family Law Act 1975*; *Federal Court of Australia Act 1976*; *Federal Magistrates Act 1999* |
| **Department** | Attorney-General's |

**ISSUE:**

#### Unclear basis for increase in fees

The ES which accompanies the instrument does not appear to indicate the basis on which the fees being introduced have been set or calculated, or to describe the new fees relative to those which have been replaced. The committee's usual expectation in cases where an instrument of delegation legislation introduces or adjusts a charge, fee or levy is that the relevant ES makes clear on its face the basis on which that charge, fee or levy has been calculated (in addition to the quantum of the relative change in those cases where there is an adjustment to an existing charge, fee or levy) **[the committee requested further information from the Attorney-General]**.

**ATTORNEY-GENERAL'S RESPONSE:**

The Attorney-General advised that the Regulation does not make any changes to the fee for the registration of a New Zealand judgment in the Family Court of Australia, the Federal Court of Australia or the Federal Circuit Court of Australia, but rather clarifies the quantum of fees that apply to Trans-Tasman proceedings commenced in Australia.

The Attorney-General further advised that the explanatory statement (ES) had been 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**.

### Australian Public Service Commissioner's Amendment Direction 2013 (No. 1) [F2013L01212]

|  |  |
| --- | --- |
| **Purpose** | Makes various amendments to the Australian Public Service Commissioner's Directions 2013, including in relation to the RecruitAbility Scheme |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Public Service Act 1999* |
| **Department** | Australian Public Service Commission |

**ISSUE:**

#### Whether any person disadvantaged by previous error

The ES for this instrument states that one of its purposes is to correct a drafting error in the Australian Public Service Commissioner's Directions 2013, relating to the subsequent employment of persons who have resigned to contest an election. The instrument removes a reference to any such person being entitled to being engaged 'at a lower classification' as this does not reflect the longstanding policy and practice. However, no information is provided in relation to how (if at all) the error corrected by the instrument may have affected any person. The committee's usual approach where an instrument makes corrections, as in this case, is that the ES for the instrument address the question of whether any person was disadvantaged by the omission and, if so, whether and what steps have been taken to address that disadvantage **[the committee requested further information from the Commissioner]**.

**COMMISSIONER'S RESPONSE:**

The Acting Commissioner responded, advising that no person was disadvantaged by the inadvertent inclusion of the words 'or a lower classification' in the instrument, as the error was identified, and subsequently corrected, prior to its commencement.

**COMMITTEE RESPONSE:**

**The committee thanks the Acting Commissioner for her response and has concluded its interest in the matter.**

### Migration Amendment (Visa Application Charge and Related Matters No. 2) Regulation 2013 [Select Legislative Instrument 2013 No. 253] [F2013L01963]

|  |  |
| --- | --- |
| **Purpose** | Omits references in the Principal Regulations to 'concessional competent English' and corrects typographical errors |
| **Last day to disallow** | 17 March 2014 |
| **Authorising legislation** | *Migration Act 1958* |
| **Department** | Immigration and Border Protection |

**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 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 amended in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

**MINISTER'S RESPONSE:**

The minister advised that no consultation was undertaken in relation to the making of the regulation, as the amendments it effected were minor or machinery in nature and did not substantially alter existing arrangements. The minister noted that the amendments were consequential and technical in nature, arising from substantive amendments effected by the Migration Amendment (Visa Application Charge and Related Matters) Regulation 2013 and the Migration Legislation Amendment Regulation 2013 (No. 3). Since consultation was undertaken in relation to the substantive measures contained in those instruments, the minister considered that consultation was unnecessary in relation to the Migration Amendment (Visa Application Charge and Related Matters No. 2) Regulation 2013 [Select Legislative Instrument 2013 No. 253] [F2013L01963].

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.**

### Carbon Credits (Carbon Farming Initiative) (Reforestation and Afforestation—1.2) Methodology Determination 2013 [F2013L01210]

|  |  |
| --- | --- |
| **Purpose** | Determines a method for implementing and monitoring an offsets project under the Carbon Farming Initiative |
| **Last day to disallow**[[6]](#footnote-6) | 4 March 2014 |
| **Authorising legislation** | *Carbon Credits (Carbon Farming Initiative) Act 2011* |
| **Department** | Environment |

#### ISSUE:

#### Interaction of instrument with instruments still in force

This instrument determines a method for implementing and monitoring an offsets project under the Carbon Farming Initiative. However, the instrument does not expressly revoke two previous determinations, and those determinations do not contain a ceasing mechanism. That being so, all three determinations appear to be in force and are listed on the Federal Register of Legislative Instruments (FRLI) as 'current'. It is therefore unclear whether and how the three instruments are intended to operate together **[the committee requested further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister advised that the three determinations provide methodologies for conducting reforestation and afforestation offsets projects under the *Carbon Credits (Carbon Farming Initiative) Act 2011*, and that all three instruments currently remain in force. The minster noted the following in relation to the concurrent operation of the determinations:

proponents of projects can, at the time of seeking project approval, elect to have any one of the three determinations apply to their project;

a proponent for an existing project approved under one of the methodologies may apply to have a different determination apply to their project; and

a revoked methodology will continue to apply to a project approved under that methodology for the remainder of the project.

The minister's response identified the substantive differences between the three determinations, generally arising from refinements to aspects of the methodologies and feedback from stakeholders.

The minister advised that he would instruct the department to make an assessment of whether any superseded methodologies should be revoked; and that ESs would henceforth take account of the need to provide information on the concurrent operation of determinations in cases where more than one determination was on force.

**COMMITTEE RESPONSE:**

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

### Amendment of Statement of Principles concerning lumbar spondylosis No. 69 of 2013 [F2013L01657]; and

### Amendment of Statement of Principles concerning lumbar spondylosis No. 70 of 2013 [F2013L01658]

|  |  |
| --- | --- |
| **Purpose** | (1) Amends each statement to insert new factors and a definition for 'extreme forward flexion of the lumbar spine'; and (2) specifies the date of effect of each amendment |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Veterans' Entitlements Act 1988* and *Military Rehabilitation and Compensation Act 2004* |
| **Department** | Veterans' Affairs |

**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 ESs for the instruments contain no reference to consultation [the committee requested further information from the minister; and requested that the ESs be updated in accordance with the requirements of the *Legislative Instruments Act 2003*].

**MINISTER'S RESPONSE:**

The minister advised that no consultation was undertaken in relation to the making of the instruments. The instruments had been determined by the Repatriation Medical Authority (RMA), acting on the direction of the Specialist Medical Review Council (SMRC) as required by subsection 196B(10) of the *Veterans' Entitlements Act 1986*. Given this legislative requirement, consultation in relation to the making of the instruments was not considered appropriate. The minster noted, however, that the SMRC's practice was to undertake public consultation in performing any review of a decision of the RMA which could lead to such a direction

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**.

### Fisheries Management Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 132, 2013] [F2013L01291]

|  |  |
| --- | --- |
| **Purpose** | Repeals and updates fees that apply to dealings with permits, statutory fishing rights, logbooks and other miscellaneous services |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Fisheries Management Act 1991* |
| **Department** | Agriculture |

**ISSUE:**

#### Whether any person disadvantaged by previous error

The ES for this instrument states that (among other things) it corrects two typographical errors in the Fisheries Management Regulations 1992, where the term 'Fishing Permit' was incorrectly referenced as 'statutory fishing rights'. However, no information is provided as to whether these typographical errors have affected any person. The committee's usual expectation in such cases is that the ES for the instrument address the question of whether any person was disadvantaged by the error and, if so, whether and what steps have been taken to address that disadvantage **[the committee requested further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister advised that no person had been disadvantaged by the typographical error corrected by the instrument the subject of the committee's comment. The part of the regulation containing the incorrect term identifies information requirements for two fishing permit registers, being the High Seas Register and the Fishing Permits Register. These registers only contain information on fishing permit holders, and the error would not have led to information on statutory fishing right holders being stored in those registers.

**COMMITTEE RESPONSE:**

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

### Complaints Amendment (Living Longer Living Better) Principle 2013 [F2013L01348]

|  |  |
| --- | --- |
| **Purpose** | Amends the Complaints Principles 2011 to strengthen the power of the Aged Care Commissioner in examining the decisions and processes of the Secretary in relation to a complaint |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Aged Care Act 1997* |
| **Department** | Social Services |

**ISSUE:**

#### Broadly defined discretion

The instrument makes amendments to the Complaints Principles 2011, which are made under section 96-1 of the *Aged Care Act 1997*. The ES notes that the intent of the relevant amendments is to 'improve the quality and regulation of aged care…[including] strengthening the independence of the [Aged Care Commissioner (ACC)] to improve consumer and industry confidence in Commonwealth aged care complaints handling mechanisms'. In two cases, the instrument effectively preserves the broad discretion of the ACC as to the manner in which it may undertake examination of decisions of the Secretary of the Department of Health. While it may be that the flexibility provided by such a broad discretion as to the manner of investigation of a complaint is desirable, it may be argued that a complainant's knowledge of how a matter was examined by the ACC could be relevant to their confidence in its outcome. It may be desirable, for example, to include a requirement in the relevant notification provisions (13A.25(4) and 13A.31) that the ACC also provide advice to the prescribed persons and bodies on the manner in which an investigation was conducted **[the committee requested further information from the Minister for Social Services]**.

**MINISTER'S RESPONSE:**

The Assistant Minister for Social Services responded, advising that he did not regard it as necessary to include explicit requirements to notify prescribed persons as to the manner in which an investigation was conducted. The assistant minister pointed to a number of aspects of the existing regulatory and administrative framework in support of this view, particularly as the effect of the existing arrangements was that the ACC already provides advice to prescribed persons and bodies on the manner in which an investigation was conducted. The assistant minister noted that the ACC's broad discretion to examine decisions or complaints was established in 2007, and was consistent with the intent of the Complaints Principles to focus on the efficient resolution of complaints based on flexible inquiry processes. The assistant minister drew attention to the fact that the ACC's power was in fact confined by requirements imposed by the Complaints Principles and the *Aged Care Act 1997*, andwas required to be exercised in accordance with the rules of natural justice andthe ordinary requirements of administrative decision making. The assistant minister's response went on to outline the broader accountability measures under which the ACC operates, including publication of Complaints Management Guidelines, annual reports and the ACC's Statement of Intent.

**COMMITTEE RESPONSE:**

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

### Migration Regulations 1994 - Specification under paragraphs 2.61(3A)(b), 2.61(3A)(c), 2.61(3B), subregulations 2.66(3), 2.66(4), 2.66(5), 2.73(3), 2.73(5) and 2.73(9), and paragraphs 1223A(1)(bb), 1223A(1)(b), 1223A(1)(ba) and 1223A(1)(bc) - Forms, Fees, Circumstances and Different Way of Making an Application - June 2013 [F2013L01242]

|  |  |
| --- | --- |
| **Purpose** | Sets various fees that may be charged in relation to an application for approval as a standard business sponsor under the Migration Regulations 1994 |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Migration Act 1958* |
| **Department** | Immigration and Border Protection |

**ISSUE:**

#### Unclear basis for determining fees

This instrument sets various fees that may be charged in relation to an application for approval as a standard business sponsor under the Migration Regulations 1994. However, the ES gives no indication as to the basis on which the fees have been calculated or set. The committee's usual expectation where an instrument of delegated legislation introduces or changes a fee (or charge, levy or scale of costs as the case may be) is that the relevant ES makes clear the basis on which the new or changed fee has been calculated **[the committee requested further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister advised that the effect of the instrument was to move the fees for an application for approval as a standard business sponsor and for a variation of a term of approval as a standard sponsor from the Migration Regulations 1994 into the instrument, with the fees remaining unchanged at $420 in both cases. In relation to the increased nomination charge (from $85 to $330), the minister advised that this reflected a policy decision to increase the sponsor nomination charge rather than impose a visa duration surcharge on 457 visa applicants; the increase was based on the premise that longer duration visa holders draw more heavily on community services and infrastructure.

**COMMITTEE RESPONSE:**

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

### Migration Amendment (Visa Application Charge) Regulation 2013 [Select Legislative Instrument No. 228, 2013] [F2013L01534]

|  |  |
| --- | --- |
| **Purpose** | Increases the Visa Application Charge for all visa applications except Student (Temporary) (Class TU) and Tourist (Class TR) visas |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Migration Act 1958* |
| **Department** | Immigration and Border Protection |

**ISSUE:**

#### Unclear basis for determining fees

This instrument increases the Visa Application Charge (VAC) for all visa applications except Student (Temporary) (Class TU) and Tourist (Class TR) visas. While the ES explains that the instrument effects increases that were outlined in the Government's Economic Statement for 2013-13, it does not itself explain the basis on which the increased fees have been calculated or set. The committee's usual expectation where an instrument of delegated legislation introduces or changes a fee (or charge, levy or scale of costs as the case may be) is that the relevant ES makes clear the basis on which the new or changed fee has been calculated **[the committee requested further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister advised that the basis for the increase of the VAC in all cases was the government's announcement in the economic statement for 2013-14 released on 2 August 2013. This budget measure outlined increased revenue associated with VACs over the forward estimates, based on a 15 per cent increase to all VACs except Student (Temporary) (Class TU) visas and Tourist (Class TR) visas under the Migration Regulations from 1 September 2013.

**COMMITTEE RESPONSE:**

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

### Migration Amendment (Temporary Protection Visas) Regulation 2013 [Select Legislative Instrument No. 234, 2013] [F2013L01811]

|  |  |
| --- | --- |
| **Purpose** | Re-introduces Temporary Protection Visas (TPVs) for persons who arrive in Australia by unauthorised means |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Migration Act 1958* |
| **Department** | Immigration and Border Protection |

**ISSUES:**

#### (a) Retrospective effect of instrument

This instrument re-introduces Temporary Protection Visas (TPVs) for persons who arrive in Australia by unauthorised means. The ES for the instrument states that people within the TPV cohort (ie holders of the newly introduced TPVs) will not be eligible to apply for or be granted a protection visa (which allows the holder to remain in Australia indefinitely). Further, the ES states that 'any existing application from the [TPV] cohort is unable to meet the requirements for grant' of a permanent protection visa. This suggests that otherwise potentially valid applications are to be invalidated, giving the instrument an element of retrospectivity in its effect. The ES provides no justification for this apparent removal of pre-existing entitlements in relation to applications for a permanent protection visa. **[the committee requested further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister advised that the reintroduction of TPVs was intended to ensure that no permanent visas would be issued to persons classified as unauthorised maritime arrivals, including those found to be genuine refugees. This was part of a suite of measures designed to support the government's border protection strategy to combat people smuggling and to discourage people from making dangerous voyages to Australia. Applying TPVs to persons having arrived prior to 13 August 2013 was important for consistency and fairness, with all relevant applications being assessed against the new criteria for the permanent protection visa.

**COMMITTEE RESPONSE:**

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

#### (b) Undue trespass on personal rights

In addition, the effect of the instrument is that a person who is granted a TPV is ineligible to apply for any other visa types including, for example, family reunion visas. While the committee does not usually consider the policy merits of delegated legislation, scrutiny principle (b) requires the committee to ensure that an instrument does not 'unduly trespass' on personal rights and liberties. In this case, it is unclear to the committee whether the existing discretion to allow a TPV holder to apply for another visa type sufficently accommodates consideration of personal rights and liberties, such as family considerations and rights of the child **[the committee requested further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister noted that there is no right to family reunification under international law, with the protection of the family unit under articles 17 and 23 not amounting to a right to enter Australia where there is no other right to do so. The minister advised that the introduction of TPVs was part of a suite of measures intended to act as a deterrent to people making dangerous voyages by boat to Australia. In conjunction with the regional resettlement arrangements, the inability of a TPV to sponsor their family members provided a disincentive for people who wished to remain united with their families from travelling to Australia via dangerous boat voyages. The extension of this approach to unaccompanied minors was to discourage them from undertaking such voyages to achieve resettlement for their families in Australia. It was the government's view that the need to discourage minors from undertaking dangerous voyages and to maintain the integrity of Australia's borders outweighs the best interests of the child to have the right to family reunification.

**COMMITTEE RESPONSE:**

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

#### (c) Insufficient information regarding consultation

The ES for the instrument states that consultation was not undertaken in this case because the regulation was required as a 'matter of urgency'. However, there is no information provided as to the facts or circumstances from which the condition of urgency arises. The committee generally seeks further justification in response to otherwise unsupported claims of urgency **[the committee requested further information from the minister]**.

The committee noted that the instrument was disallowed on 2 December 2013,[[7]](#footnote-7) with the effect that the instrument had ceased to have effect from the time of disallowance; and that the committee's inquiries remained relevant in respect of any TPVs granted in the period of the instrument's operation.

**MINISTER'S RESPONSE:**

The minister advised that consultation was not taken in this case because the regulation was required as a matter of urgency. The circumstances of urgency arose from the need to implement TPVs as a key element of the government's policies underpinning its border protection strategy to combat people smuggling and discourage people from making dangerous voyages to Australia. The regulation was therefore required as a matter of urgency to maintain the integrity of Australia's borders and to protect the national interest.

**COMMITTEE RESPONSE:**

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

### Migration Regulations 1994 - Specification of Access to Movement Records - IMMI 13/107 [F2013L01896]

|  |  |
| --- | --- |
| **Purpose** | Extends the minimum subscription requirement in the principal class order by a further six months pending any further regulatory developments relating to retail corporate bonds |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Migration Act 1958*; Migration Regulations 1994 |
| **Department** | Immigration and Border Protection |

**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 ES for the instrument contains no reference to consultation **[the committee requested further information from the minister; and requested that the ES be amended in accordance with the requirements of the *Legislative Instruments Act 2003*]**.

**MINISTER'S RESPONSE:**

The minister advised that consultation on the instrument was undertaken with all external stakeholder agencies listed at Column 2 of Schedule B to the instrument, as well as internal department stakeholders.

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**.

**However, to assist with the future preparation of ESs, the committee draws to the minister's attention the committee's guideline on addressing consultation in ESs (reproduced at Appendix 2), and particularly the committee's usual preference for the avoidance of overly general language in describing consultation (such as referring to 'stakeholders' rather than explicitly identifying parties involved in consultative processes).**

### Corporations and Australian Securities and Investments Commission Amendment Regulation 2013 (No. 1) [Select Legislative Instrument No. 192, 2013] [F2013L01431]

|  |  |
| --- | --- |
| **Purpose** | Amends procedures relating to the proceedings and conferences undertaken by the Takeovers Panel, requires the Australian Securities and Investments Commission to disclose to the minister its use of specified information gathering powers, and specifies the date from which directors' reports become subject to Corporations Regulations relating to certain disclosure requirements |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Australian Securities and Investments Commission Act 2001* and *Corporations Act 2001* |
| **Department** | Treasury |

**ISSUE:**

#### Provision of reasons for decisions

The ES for the instrument states that one of its purposes is to remove the requirement for the Takeovers Panel to include reasons with any notice that the panel has decided not to conduct proceedings in relation to an application (under sections 656A, 657C or 657EA of the *Corporations Act 2001*, which generally relate to review of decisions). The ES states that the current requirement 'may cause undue delay to the communication of a decision', and notes that (a) 'it is not intended to alter the general practice of the panel to provide reasons for its decisions' and (b) 'the panel will continue to be subject to the requirement to provide reasons under the *Administrative Decisions (Judicial Review) Act 1977*' (ADJR Act). However, the ES does not make clear how in practice the current requirement may lead to undue delay in notifying decisions, and it is also unclear why complete removal of the requirement is necessary (as opposed to, say, providing an exemption for the requirement to provide reasons where undue delay might arise), particularly if it is not intended to alter the general practice of providing reasons. While the committee acknowledges that the right to request reasons under the ADJR Act will remain, this would presumably require a party to make application to the decision maker, and to this extent the amendment may reduce transparency by increasing the formalities for a person affected by a decision who wishes to know the reasons for that decision **[the committee requested further information from the Assistant Treasurer]**.

**ASSISTANT TREASURER'S RESPONSE:**

The Assistant Treasurer advised that the removal of the requirement to give reasons in this case improved the timeliness with which the panel is able to provide a decision not to conduct proceedings to the parties and the market (though with a brief outline of the reasons), with detailed reasons to follow shortly thereafter. The Assistant Treasurer advised that he regarded the panel's standard practices and the general right of parties to request reasons for panel decisions as likely to be sufficient to achieve the appropriate dissemination of reasons without the need for an explicit obligation in the regulations. However, the government would consider if further amendments were necessary if the current regulation led to any undesirable outcomes.

**COMMITTEE RESPONSE:**

**The committee thanks the Assistant Treasurer for his response and has concluded its interest in the matter**.

### Income Tax Assessment (Infrastructure Project Designation) Rule 2013 [F2013L01335]

|  |  |
| --- | --- |
| **Purpose** | Sets out processes and conditions relating to applications for designated infrastructure project status |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Income Tax Assessment Act 1997* |
| **Department** | Treasury |

**ISSUE:**

#### Unclear basis for determining fee

This instrument sets out processes and conditions relating to applications for designated infrastructure project status. Designated projects are able to access tax incentives intended to promote and support private expenditure on nationally significant infrastructure. Rule 7 of the instrument provides that an application for the designation of a project must be accompanied by an application fee of $20 000. However, no information is provided as to the basis for, or factors considered in relation to, determining the level of this fee. The committee's usual expectation where an instrument of delegated legislation introduces or changes a fee (or charge, levy or scale of costs as the case may be) is that the relevant ES makes clear the basis on which the new or changed fee has been calculated **[the committee requested further information from the Assistant Treasurer**.

**ASSISTANT TREASURER'S RESPONSE:**

The Assistant Treasurer advised that the quantum of the fee was intended to contribute to the administrative costs incurred by the Office of the Infrastructure Coordinator (OIC) associated with the designation process, including determining the eligibility of applications, the setting of conditions under the rules, assessing whether conditions for designation have been met and ongoing monitoring to ensure project implementation is consistent with the designation. Other administrative costs related to the OIC's role in managing the capital expenditure cap and review processes associated with Administrative Appeal Tribunal processes.

**COMMITTEE RESPONSE:**

**The committee thanks the Assistant Treasurer for his response and has concluded its interest in the matter**.

### Electronic Transactions Amendment (Exemptions) Regulation 2013 [Select Legislative Instrument No. 169, 2013] [F2013L01389]

|  |  |
| --- | --- |
| **Purpose** | Repeals several exceptions to the operation of the Act |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Electronic Transactions Act 1999* |
| **Department** | Attorney-General's |

**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 this instrument contains no reference to consultation **[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 was undertaken with the Treasury, Australian Electoral Commission and the (former) Department of Education, Employment and Workplace Relations.

The Attorney-General further advised that the ES had been 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.**

### Family Law Amendment (Fees) Regulation 2013 [Select Legislative Instrument No. 136, 2013] [F2013L01243]

|  |  |
| --- | --- |
| **Purpose** | Exempts independent children's lawyers from paying court fees relating to subpoenas and interim orders |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Family Law Act 1975* and *Federal Circuit Court of Australia Act 1999* |
| **Department** | Attorney-General's |

**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 contains no reference to consultation **[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 was undertaken with the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia.

The Attorney-General further advised that the ES had been 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.**

### Financial Management and Accountability Amendment Regulation 2013 (No. 5) [Select Legislative Instrument No.174, 2013] [F2013L01386];

### Financial Management and Accountability Amendment Regulation 2013 (No. 6) [Select Legislative Instrument No. 219, 2013] [F2013L01511]; and

### Financial Management and Accountability Amendment Regulation 2013 (No. 7) [Select Legislative Instrument No. 229, 2013] [F2013L01512]

|  |  |
| --- | --- |
| **Purpose** | These instruments amend the principal regulations to establish legislative authority for the Government to spend money on on a range of new or existing activities across a number of portfolios |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Financial Management and Accountability Act 1997* |
| **Department** | Finance |

**ISSUE:**

#### Addition of new programs to Schedule 1AA of Financial Management and Accountability Regulations 1997

These instruments rely on section 32B of the *Financial Management and Accountability Act 1997*, which provides legislative authority for the Government to spend monies on programs listed in Schedule 1AA to the Financial Management and Accountability Regulations 1997. Section 32B was introduced in response to the decision of the High Court in *Williams v Commonwealth* ([2012] HCA 23) in June 2012 (the Williams case). The first instrument adds 28 new programs to Schedule 1AA. The second instrument adds two new programs to Schedule 1AA. The third instrument adds 14 new programs to Schedule 1AA and amends entries relating to two existing programs. While the ESs are generally helpful in providing information about the background, objectives and proposed administration of the new and amended programs, 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 are excluded from ADJR Act review. However, in order to assess whether a program listed in Schedule 1AA posseses 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, 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 **[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 noted the committee's reference to the comments of the Senate Standing Committee on the Scrutiny of Bills (the scrutiny committee) in relation to the exemption of items in Schedule 1AA (and now Schedule 1AB) to ADJR review. The minister reiterated previous responses to those comments, to the effect that:

the exemption maintained the status quo prior to the Williams case whereby government decisions about expenditure which involved the allocation of finite resources were not subject to ADJR review;

given the method of allocation of funds in relation to programs included in the schedules, a review outcome which overturned the original decision would necessarily affect other allocations;

rights of review under the *Judiciary Act 1903* wereunaffected;

decisions to spend public monies are subject to the rules and requirements of the *Financial Management and Accountability Act 1997* and its associated regulations, as well as the *Commonwealth procurement rules* and the *Commonwealth grant guidelines*; and

a person unhappy with a spending decision could access other administrative mechanisms, including recourse to the Commonwealth Ombudsman.

In response to the committee's request for additional detail on the particular policy considerations and characteristics of programs added to or amended in Schedule 1AA (and now Schedule 1AB), relevant to the committee's assessment of whether decisions under such programs should indeed be exempt from merits review, the minister provided an attachment addressing in detail the relevant policy considerations and characteristics of programs added or amended by the instruments in question.

**COMMITTEE RESPONSE:**

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

**In addition, the committee particularly thanks the minister for the information provided in the attachment to the minister's response. This provided an appropriate level of detail to enable the committee to assess the instruments for compatibility with the committee's scrutiny principles, and the committee's expectation is that future ESs for instruments amending Schedule 1AA and Schedule 1AB will contain similar levels of detail. The moving of spending decisions previously thought to be authorised by the executive power of the Commonwealth to a statutory footing via delegated legislation has brought such decisions into the purview of the committee. The committee is required to scrutinise legislative instruments subject to disallowance with reference to its scrutiny principles, and the provision of suitably detailed information in ESs will support its continuing scrutiny of instruments amending Schedules 1AA and/or Schedule 1AB.**

**In relation to the minister's general remarks on the exemption of the schedules from the ADJR, the scrutiny committee commented that justifying the exemption on the basis of maintaining the status quo prior to the Williams case was problematic, given that this rested on 'the assumption that the relevant powers were part of the executive power of the Commonwealth and did not require statutory authorisation'. The scrutiny committee further noted that there may be some circumstances where ADJR Act review is appropriate. Finally, given the relative advantages of ADJR Act review, the scrutiny committee noted that the availability of other sources of judicial or administrative review does not, of itself, provide a justification for excluding the ADJR Act. Given these remarks, the committee intends to continue to draw to the attention of the Senate the addition of programs to Schedule 1AA and Schedule 1AB, to ensure that senators have the opportunity to consider the appropriateness of the significant expenditure decisions now being authorised by delegated legislation.**

### Court Martial and Defence Force Magistrate Amendment (Travel Expenses) Rules 2013 [F2013L01832]

|  |  |
| --- | --- |
| **Purpose** | Amends the principal rules in relation to the payment of witnesses expenses to a person who has been summonsed to appear as a witness at a court martial or Defence Force magistrate tribunal |
| **Last day to disallow** | 4 March 2014 |
| **Authorising legislation** | *Defence Force Discipline Act 1982* |
| **Department** | Defence |

**ISSUE:**

#### Insufficient information regarding consultation

This instrument makes an amendment to the Court Martial and Defence Force Magistrate Rules 2009 (the principal rules) to provide greater flexibility in relation to the payment of expenses to a person who has been summonsed to appear as a witness at a court martial or Defence Force magistrate trial.

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 instrument states that consultation was considered unnecessary as the rule 'relates to the service of members of the ADF'. While the committee does not usually interpret section 26 as requiring a highly detailed explanation of why consultation was not undertaken, it considers that an overly bare or general explanation, as in this case, is not sufficient to satisfy the requirements of the *Legislative Instruments Act 2003*. Further, noting that the amended subrule 6(4) applies specifically to persons 'other than a defence member', the committee questions whether this justification in fact reflects the reasoning of the rule maker regarding the necessity or otherwise of consultation in this case **[the committee requested further information from the Judge Advocate General of the Australian Defence Force]**.

**MINISTER'S RESPONSE:**

The minister responded, advising that consultation was not undertaken in this case as it was considered unnecessary given that the rule related to the service of members of the ADF. The minister advised that, while the subrule 6(4) did not technically relate to the service of members of the ADF, the broader context of the provision, which provided for non-ADF persons to attend court martial and trial proceedings for ADF personnel, did in fact relate to the service of a member of the ADF.

**COMMITTEE RESPONSE:**

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

### Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2013 [F2013L00216]

|  |  |
| --- | --- |
| **Purpose** | Revokes the Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2010 (No. 1) to change the deemed rates of income upon financial assets for the purposes of the means test for the rate of social security payments administered by FaHCSIA (from 20 March 2013) |
| **Last day to disallow** | 18 June 2013 |
| **Authorising legislation** | *Social Security Act 1991* |
| **Department** | Families, Housing, Community Services and Indigenous Affairs |

**ISSUE:**

#### Unclear basis for calculation or setting of deeming rates

This instrument revokes and replaces the Social Security (Deeming Threshold Rates) (FaHCSIA) Determination 2010 (No. 1) to change the deemed rates of income upon financial assets for the purposes of the means test for the rate of social security payments administered by FaHCSIA. Noting that the deeming rate would presumably have a financial impact on certain individuals, the committee's usual expectation is that the ES to an instrument with a financial impact sets out the basis on which any new fee, rate or charge has been set or calculated **[the committee requested further information from the minister]**.

**MINISTER'S RESPONSE:**

The minister advised that the instrument had been revoked and was no longer in effect. Given this, it was the minister's view that a person would be unlikely to access the revoked determination for information on how the deeming rates were set. However, the minister advised that more information regarding the setting of deeming rates would be included in future ESs in response to the committee's comments.

**COMMITTEE RESPONSE:**

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

### Social Security (Deeming Threshold Rates) Determination 2013 (No. 2) [F2013L01854]

|  |  |
| --- | --- |
| **Purpose** | Reduces the below threshold rate to 2 per cent and the above threshold rate to 3.5 per cent, from 4 November 2013 |
| **Last day to disallow** | 4 March 2013 |
| **Authorising legislation** | *Social Security Act 1991* |
| **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 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 each of the instruments mentioned above contains no reference to consultation **[the committee requested further information from the minister; and requests that the ES be updated in accordance with the requirements of the *Legislative Instruments Act 2003***.

**MINISTER'S RESPONSE:**

The minister responded, advising that consultation was considered to be unnecessary in relation to the making of the instrument, as it was considered that the changes were machinery in nature. A change in deeming rates was considered to be a parameter change rather than a change in policy. That is, the change reflected changes in available market returns rather than a change to the deeming provisions per se.

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**.

# Appendix 1

## Index of instruments scrutinised

The following instruments were considered by the committee at its meeting on **12 February 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.[[8]](#footnote-8) 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. 16 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 6 December 2013**

|  |  |
| --- | --- |
| 1. ***Agricultural and Veterinary Chemicals Code Act 1994*** |  |
| 1. Agricultural and Veterinary Chemicals Code Instrument No. 4 (MRL Standard) Amendment Instrument 2013 (No. 10) [F2013L02030] | 1. E[[9]](#footnote-9) |
| 1. ***Australian Participants in British Nuclear Tests (Treatment) Act 2006*** |  |
| 1. Repatriation Pharmaceutical Benefits Scheme (Australian Participants in British Nuclear Tests) 2006 (No. R45/2013) [F2013L02027] |  |
| 1. Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (No. R54/2013) [F2013L02031] |  |
| 1. ***Australian Prudential Regulation Authority Act 1998*** |  |
| 1. Australian Prudential Regulation Authority (confidentiality) determination No. 21 of 2013 [F2013L02032] |  |
| 1. ***Autonomous Sanctions Act 2011*** |  |
| 1. Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Libya) Amendment List 2013 [F2013L02044] | 1. \* |
| 1. ***Broadcasting Services Act 1992*** |  |
| 1. Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 17 of 2013) [F2013L02042] |  |
| 1. Broadcasting Services (Primary Commercial Television Broadcasting Service) Amendment Declaration 2013 (No. 3) [F2013L01999] | 1. \* |
| 1. ***Carbon Credits (Carbon Farming Initiative) Act 2011*** |  |
| 1. Carbon Credits (Carbon Farming Initiative) (Native Forest from Managed Regrowth) Methodology Determination 2013 [F2013L02036] |  |
| 1. ***Civil Aviation Act 1988*** |  |
| 1. CASA 254/13 - Direction — number of cabin attendants (Sunstate Airlines) [F2013L02019] |  |
| 1. CASA 260/13 - Direction under subregulation 235(2) relating to landing weight and landing distance required [F2013L02020] |  |
| 1. CASA ADCX 025/13 - Revocation of Airworthiness Directives [F2013L02035] |  |
| 1. CASA EX127/13 - Exemption — instrument rating flight tests in a synthetic flight training device [F2013L02034] |  |
| 1. ***Disability Services Act 1986*** |  |
| 1. Disability Services Act (Administration of Part II of the Act) Guidelines 2013 [F2013L02002] |  |
| 1. ***Environment Protection and Biodiversity Conservation Act 1999*** |  |
| 1. Amendment of List of Exempt Native Specimens - Hippopus hippopus (horse’s hoof clam) (19/11/2013) [EPBC303DC/SFS/2013/58] [F2013L01998] |  |
| 1. Amendment of List of Exempt Native Specimens - Pilbara Fish Trawl Interim Managed Fishery (19/11/2013) [EPBC303DC/SFS/2013/56] [F2013L01997] |  |
| 1. Amendment of List of Exempt Native Specimens - Queensland East Coast Otter Trawl Fishery (26/11/2013) (deletion) [EPBC303DC/SFS/2013/53] [F2013L02003] |  |
| 1. Amendment of List of Exempt Native Specimens - Queensland East Coast Otter Trawl Fishery (26/11/2013) (inclusion) [EPBC303DC/SFS/2013/61] [F2013L02004] |  |
| 1. Amendment of List of Exempt Native Specimens - Queensland Gulf of Carpentaria Line Fishery (26/11/2013) (deletion) [EPBC303DC/SFS/2013/60] [F2013L02000] |  |
| 1. Amendment of List of Exempt Native Specimens - Queensland Gulf of Carpentaria Line Fishery (26/11/2013) (inclusion) [EPBC303DC/SFS/2013/48] [F2013L02001] |  |
| 1. ***Financial Management and Accountability Act 1997*** |  |
| 1. Financial Management and Accountability Act 1997 Determination 2013/15 — Section 32 (Transfer of Functions from DRALGAS to Health and PM&C) [F2013L02021] | 1. E |
| 1. Financial Management and Accountability Act 1997 Determination 2013/16 – Section 32 (Transfer of Functions from PM&C to Social Services) [F2013L02022] | 1. E |
| 1. Financial Management and Accountability Act 1997 Determination 2013/17 — Section 32 (Transfer of Functions from Health to Social Services) [F2013L02024] | 1. E |
| 1. Financial Management and Accountability Act 1997 Determination 2013/18 — Section 32 (Transfer of Functions from Industry to Education) [F2013L02025] | 1. E |
| 1. Financial Management and Accountability Act 1997 Determination 2013/19 — Section 32 (Transfer of Functions from DEEWR to PM&C) [F2013L02026] | 1. E |
| 1. ***Food Standards Australia New Zealand Act 1991*** |  |
| 1. Australia New Zealand Food Standards Code — Standard 1.4.2 — Maximum Residue Limits Amendment Instrument No. APVMA 7, 2013 [F2013L02028] | 1. E |
| 1. Food Standards (Application A1075 – Quillaia Extract (Quillaja Extract) as a Food Additive (Emulsifier)) Variation [F2013L02037] | 1. E |
| 1. Food Standards (Proposal P1019 – Carbon Monoxide as a Processing Aid for Fish) Variation [F2013L02039] | 1. E |
| 1. ***Health Insurance Act 1973*** |  |
| 1. Health Insurance (Accredited Pathology Laboratories - Approval) Amendment Principles 2013 (No. 1) [F2013L02017] | 1. \* |
| 1. Health Insurance (Pharmacogenetic Testing) Determination 2013 (No. 1) [F2013L02018] |  |
| 1. ***Higher Education Support Act 2003*** |  |
| 1. Higher Education Provider Approval No. 7 of 2013 [F2013L02041] |  |
| 1. Higher Education Support Act 2003 - VET Provider Approval (No. 71 of 2013) [F2013L02040] |  |
| 1. Higher Education Support Act 2003 - VET Provider Approval (No. 72 of 2013) [F2013L02005] |  |
| 1. ***Migration Act 1958*** |  |
| 1. Migration Act 1958 - Determination of Granting of Protection Class XA Visas in 2013/2014 Financial Year - IMMI 13/156 [F2013L02038] | 1. E |
| 1. ***Military Rehabilitation and Compensation Act 2004*** |  |
| 1. MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012] |  |
| 1. MRCA Treatment Principles (No. MRCC 53/2013) [F2013L02016] |  |
| 1. ***National Health Act 1953*** |  |
| 1. National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 11) (No. PB 79 of 2013) [F2013L02023] |  |
| 1. National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2013 (No. 8) (No. PB 78 of 2013) [F2013L02011] |  |
| 1. National Health (Listed drugs on F1 or F2) Amendment Determination 2013 (No. 7) (No. PB 76 of 2013) [F2013L02008] |  |
| 1. National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No. 13) (No. PB 74 of 2013) [F2013L02013] |  |
| 1. National Health (Pharmaceutical Benefits - Therapeutic Groups) Amendment Determination 2013 (No. 4) (No. PB 77 of 2013) [F2013L02010] |  |
| 1. National Health (Price and Special Patient Contribution) Amendment Determination 2013 (No. 7) (No. PB 75 of 2013) [F2013L02007] |  |
| 1. National Health Act (Pharmaceutical Benefits - Early Supply) Amendment December 2013 - specification under subsection 84AAA(2) (No. PB 83 of 2013) [F2013L02014] | 1. \* |
| 1. National Health Act 1953 - Amendment determination under paragraph 98C(1)(b) (No. PB 80 of 2013) [F2013L02015] |  |
| 1. ***Radiocommunications Act 1992*** |  |
| 1. Radiocommunications (Spectrum Access Charges — 1800 MHz Band) Determination 2013 (No. 1) [F2013L02006] |  |
| 1. ***Research Involving Human Embryos Act 2002*** |  |
| 1. Declaration of 'corresponding State laws' [F2013L02043] |  |
| 1. ***Therapeutic Goods Act 1989*** |  |
| 1. Therapeutic Goods (Listing) Notice 2013 (No. 7) [F2013L02033] |  |
| 1. ***Veterans' Entitlements Act 1986*** |  |
| 1. Repatriation Pharmaceutical Benefits Scheme (No. R43/2013) [F2013L02009] |  |
| 1. Treatment Principles (No. R52/2013) [F2013L02029] |  |

**Instruments received week ending 13 December 2013**

|  |  |
| --- | --- |
| 1. ***Australian Prudential Regulation Authority Act 1998*** |  |
| 1. Australian Prudential Regulation Authority (confidentiality) determination No. 25 of 2013 [F2013L02065] |  |
| 1. Australian Prudential Regulation Authority (confidentiality) determination No. 26 of 2013 [F2013L02066] |  |
| 1. ***Autonomous Sanctions Act 2011*** |  |
| 1. Autonomous Sanctions (Designated Persons and Entities - Democratic People's Republic of Korea) Amendment List 2013 [F2013L02049] |  |
| 1. ***Civil Aviation Act 1988*** |  |
| 1. Civil Aviation Order 100.5 Amendment Instrument 2013 (No. 3) [F2013L02068] |  |
| 1. CASA 267/13 - Approval — means of providing surface wind information - Exemption — provision of a wind direction indicator [F2013L02069] |  |
| 1. CASA EX121/13 - Exemption - from standard take-off and landing minima - Japan Airlines [F2013L02072] |  |
| 1. CASA EX123/13 - Exemption — solo flight training at Archerfield Aerodrome using ultralight aeroplanes registered with Recreational Aviation Australia [F2013L02061] |  |
| 1. CASA EX124/13 - Exemption - from standard take-off and landing minima - Philippine Airlines [F2013L02071] |  |
| 1. ***Commonwealth Places (Mirror Taxes) Act 1998*** |  |
| 1. Commonwealth Places (Mirror Taxes) (Modification of Applied Law - Victoria) Notice 2013 [F2013L02055] | 1. \* |
| 1. ***Corporations Act 2001*** |  |
| 1. ASIC Class Rule Waiver [CW 13/1543] [F2013L02062] |  |
| 1. ***Customs Act 1901*** |  |
| 1. Customs By-law No. 1339704 [F2013L02056] | 1. E |
| 1. Revocation of Customs By-law - Instrument of Revocation No. 3 (2013) [F2013L02057] | 1. E |
| 1. ***Defence Act 1903*** |  |
| 1. Defence Determination 2013/55, Means of travel – amendment |  |
| 1. Defence Determination 2013/56, Interdependent partner, recreation leave and travel costs - amendment |  |
| 1. Defence Determination 2013/57, Education assistance - amendment |  |
| 1. Defence Determination 2013/58, Higher duties allowance - amendment | 1. \* |
| 1. Defence Determination 2013/59, Dependents with special needs, Maternity leave and travel - amendment |  |
| 1. Defence Determination 2013/60, Post indexes - price review |  |
| 1. Defence Honours and Awards Appeals Tribunal Amendment Procedural Rule 2013 (No. 1) [F2013L02047] | 1. \* |
| 1. ***Environment Protection and Biodiversity Conservation Act 1999*** |  |
| 1. Amendment - List of Specimens Taken to be Suitable for Live Import (17/11/2013) (1) [EPBC/s.303EC/SSLI/Amend/065] [F2013L02051] |  |
| 1. Amendment - List of Specimens Taken to be Suitable for Live Import (17/11/2013) (2) [EPBC/s.303EC/SSLI/Amend/066] [F2013L02052] |  |
| 1. Environment Protection and Biodiversity Conservation Act 1999 - Conservation Themes for Prioritising Nominations for Listing Threatened Species, Threatened Ecological Communities and Key Threatening Processes for the Assessment Period Commencing 1 October 2014 (21/11/2013) (155) [F2013L02074] | 1. E |
| 1. ***Fair Work Act 2009*** |  |
| 1. Fair Work Commission Rules 2013 [F2013L02054] |  |
| 1. ***Financial Sector (Collection of Data) Act 2001*** |  |
| 1. Financial Sector (Collection of Data) (reporting standard) determination No. 100 of 2013 - SRS 703.0 - Fees Disclosed [F2013L02064] |  |
| 1. ***High Court of Australia Act 1979*** |  |
| 1. High Court Amendment Rules 2013 (No. 2) [Select Legislative Instrument 2013 No. 257] [F2013L02048] |  |
| 1. ***Higher Education Support Act 2003*** |  |
| 1. Commonwealth Scholarships Guidelines (Education) 2013 [F2013L02070] |  |
| 1. Higher Education Support Act 2003 – Tax file number guidelines for higher education providers and Open Universities Australia Revocation 2013 [F2013L02067] | 1. \* |
| 1. Higher Education Support Act 2003 - VET Provider Approval (No. 73 of 2013) [F2013L02045] |  |
| 1. Higher Education Support Act 2003 - VET Provider Approval (No. 74 of 2013) [F2013L02059] |  |
| 1. ***Migration Act 1958*** |  |
| 1. Migration Agents Regulations 1998 - Specification of Class of Persons - IMMI 13/153 [F2013L02053] | 1. \* |
| 1. Migration Regulations 1994 - Specification of Post Office Box and Courier Addresses - IMMI 13/144 [F2013L02046] | 1. E |
| 1. ***Parliamentary Service Act 1999*** |  |
| 1. Parliamentary Service Amendment Determination 2013 (No. 1) [F2013L02060] | 1. \* |
| 1. ***Remuneration Tribunal Act 1973*** |  |
| 1. Remuneration Tribunal Determination 2013/24 - Remuneration and Allowances for Holders of Public Office [F2013L02073] | 1. \* |
| 1. ***Social Security (Administration) Act 1999*** |  |
| 1. Social Security (Administration) (Specified vulnerable and declared voluntary income management areas) Amendment Determination 2013 [F2013L02058] | 1. \* |
| 1. ***Superannuation Act 2005*** |  |
| 1. Tenth Amendment of the Superannuation (PSSAP) Trust Deed [F2013L02063] |  |
| 1. ***Taxation Administration Act 1953*** |  |
| 1. Taxation Administration Act 1953 (Meaning of End Benefit) Instrument 2013 [F2013L02050] |  |

**Instruments received week ending 20 December 2013**

|  |  |
| --- | --- |
| 1. ***Aboriginal Land Rights (Northern Territory) Act 1976*** |  |
| 1. Aboriginal Land Rights (Northern Territory) Amendment (Delegation) Regulation 2013 [SLI 2013 No. 272] [F2013L02122] |  |
| 1. ***Australian Broadcasting Corporation Act 1983*** |  |
| 1. Australian Broadcasting Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013 [F2013L02091] |  |
| 1. ***Australian Citizenship Act 2007*** |  |
| 1. Australian Citizenship Amendment (Foreign Currency) Regulation 2013 [SLI 2013 No. 267] [F2013L02120] |  |
| 1. ***Australian Education Act 2013*** |  |
| 1. Australian Education (SES Scores) Determination 2013 [F2013L02136] |  |
| 1. ***Australian Prudential Regulation Authority Act 1998*** |  |
| 1. Australian Prudential Regulation Authority (confidentiality) determination No. 24 of 2013 [F2013L02086] |  |
| 1. Australian Prudential Regulation Authority(confidentiality) determination No. 23 of 2013 [F2013L02088] |  |
| 1. ***Civil Aviation Act 1988*** |  |
| 1. Civil Aviation Legislation Amendment (Flight Crew Licensing and Other Matters) Regulation 2013 [SLI 2013 No. 274[ [F2013L02129] |  |
| 1. Civil Aviation Legislation Amendment (Maintenance and Other Matters) Regulation 2013 [SLI 2013 No. 275[ [F2013L02128] |  |
| 1. ***Civil Aviation Regulations 1988*** |  |
| 1. CASA 239/13 - Direction under regulation 209 - conduct of parachute training operations [F2013L02111] |  |
| 1. CASA EX131/13 - Exemption — Jetstar Boeing 787-8 aircraft passive participation in land and hold short operations [F2013L02082] |  |
| 1. ***Competition and Consumer Act 2010*** |  |
| 1. Competition and Consumer Amendment Regulation 2013 (No. 4) [SLI 2013 No. 277[ [F2013L02092] |  |
| 1. ***Corporations Act 2001*** |  |
| 1. ASIC Class Order [CO 13/1534] [F2013L02077] |  |
| 1. ***Court Security Act 2013*** |  |
| 1. Court Security Regulation 2013 [SLI 2013 No. 260] [F2013L02112] |  |
| 1. ***Criminal Code Act 1995*** |  |
| 1. Criminal Code (Terrorist Organisation—Islamic State of Iraq and the Levant) Regulation 2013 [SLI 2013 No. 261] [F2013L02097] |  |
| 1. ***Customs Act 1901*** |  |
| 1. Customs Amendment (Infringement Notices) Regulation 2013 [SLI 2013 No. 271] [F2013L02125] |  |
| 1. ***Environment Protection and Biodiversity Conservation Act 1999*** |  |
| 1. Amendment - List of Specimens taken to be Suitable for Live Import (26/11/2013) (1) [F2013L02079] |  |
| 1. Amendment - List of Specimens taken to be Suitable for Live Import (26/11/2013) (2) [F2013L02080] |  |
| 1. Amendment of List of Exempt Native Specimens - Western Australian Pearl Oyster Fishery (12/12/2013) [F2013L02087] |  |
| 1. Amendment to the list of migratory species under section 209 of the Environment Protection and Biodiversity Conservation Act 1999 (26/11/2013) [F2013L02109] |  |
| 1. Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (145) (21/11/2013) [F2013L02075] |  |
| 1. Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (146) (04/11/2013) [F2013L02106] |  |
| 1. Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (150) (03/12/2013) [F2013L02107] |  |
| 1. Environment Protection and Biodiversity Conservation (Commonwealth Marine Reserves) Proclamation 2013 [F2013L02108] | 1. E |
| 1. ***Fair Work Act 2009*** |  |
| 1. Fair Work Amendment (Anti-Bullying) Regulation 2013 [SLI 2013 No. 263] [F2013L02094] |  |
| 1. Fair Work (State Declarations - employer not to be a national system employer) Endorsement 2013 (No. 3) [F2013L02116] | 1. E |
| 1. ***Family Law Act 1975*** |  |
| 1. Family Law Amendment (Scale of Costs) Rules 2013 [SLI 2013 No. 282] [F2013L02132] |  |
| 1. ***Financial Management and Accountability Act 1997*** |  |
| 1. Financial Management and Accountability Amendment (2013 Measures No. 1) Regulation 2013 [SLI 2013 No. 281] [F2013L02089] |  |
| 1. Financial Management and Accountability Act 1997 Determination 2013/20 – Section 32 (Transfer of Functions from DEEWR to Education and Employment) [F2013L02110] | 1. E |
| 1. ***Fisheries Levy Act 1984*** |  |
| 1. Fisheries Levy (Torres Strait Prawn Fishery) Amendment Regulation 2013 (No. 1) [SLI 2013 No. 259] [F2013L02099] |  |
| 1. ***Fisheries Management Act 1991*** |  |
| 1. Logbook Determination (Particular Fisheries) 2013 No. 2 [F2013L02114] | 1. \* |
| 1. ***Fisheries Management Act 1991 and Fishing Levy Act 1991*** |  |
| 1. Fishing Levy Regulation 2013 [SLI 2013 No. 258] [F2013L02127] |  |
| 1. ***Food Standards Australia New Zealand Act 1991*** |  |
| 1. Australia New Zealand Food Standards Code - Standard 1.4.2 - Maximum Residue Limits Amendment Instrument No. APVMA 8, 2013 [F2013L02130] | 1. E |
| 1. ***Great Barrier Reef Marine Park Act 1975*** |  |
| 1. Great Barrier Reef Marine Park Amendment (Outlook Report and Other Measures) Regulation 2013 [SLI 2013 No. 264] [F2013L02137] |  |
| 1. ***Health Insurance Act 1973*** |  |
| 1. Health Insurance (Allied Health Services) Determination 2014 [F2013L02134] | 1. \* |
| 1. Health Insurance (Pharmacogenetic Testing - Epidermal Growth Factor Receptor) Determination 2013 [F2013L02131] |  |
| 1. ***Higher Education Support Act 2003*** |  |
| 1. Amendment No. 1 to the Commonwealth Grant Scheme Guidelines 2012 [F2013L02078] |  |
| 1. ***Insurance Act 1973*** |  |
| 1. Insurance (exemption) determination No. 2 of 2013 - Audit requirements relating to certain yearly statutory accounts [F2013L02141] |  |
| 1. Insurance (prudential standard) determination No. 1 of 2013 - Prudential Standard GPS 230 - Reinsurance Management [F2013L02139] |  |
| 1. Insurance (prudential standard) determination No. 2 of 2013 - Prudential Standard GPS 310 - Audit and Related Matters [F2013L02140] |  |
| 1. ***Migration Act 1958*** |  |
| 1. Migration Amendment (AusAID) Regulation 2013 [SLI 2013 No. 268] [F2013L02103] |  |
| 1. Migration Amendment (Bridging Visas—Code of Behaviour) Regulation 2013 SLI 2013 No. 269 [F2013L02102] |  |
| 1. Migration Amendment (Disclosure of Information) Regulation 2013 [SLI 2013 No. 270] [F2013L02101] |  |
| 1. Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013 [SLI 2013 No. 280] [F2013L02104] |  |
| 1. ***Migration Regulations 1994*** |  |
| 1. Code of Behaviour for Public Interest Criterion 4022 - IMMI 13/155 [F2013L02105] | 1. E |
| 1. Migration Regulations 1994 - Specification of Payment of Visa Application Charges and Fees in Foreign Currencies (Conversion Instrument) - IMMI 13/126 [F2013L02085] | 1. E |
| 1. Migration Regulations 1994 - Specification of Places and Currencies for Paying of Fees - Places and Currencies Instrument - IMMI 13/127 [F2013L02115] | 1. E |
| 1. ***National Health Act 1953*** |  |
| 1. National Health (Supplies of out-patient medication) Determination 2013 [F2013L02133] | 1. \* |
| 1. National Health (Weighted average disclosed price - main disclosure cycle) Determination 2013 (No. 2) (PB 82 of 2013) [F2013L02124] | 1. \* |
| 1. ***Native Title Act 1993*** |  |
| 1. Native Title (Assistance from Attorney-General) Amendment Guideline 2013 [F2013L02084] | 1. \* |
| 1. ***Navigation Act 2012*** |  |
| 1. Marine Order 18 (Measures to enhance maritime safety) 2013 [F2013L02096] | 1. \* |
| 1. Marine Order 21 (Safety of navigation and emergency procedures) Modification 2013 (No. 1) [F2013L02095] |  |
| 1. ***Navigation Act 2012 and Protection of the Sea (Prevention of Pollution from Ships) Act 1983*** |  |
| 1. Marine Order 96 (Marine pollution prevention — sewage) 2013 [F2013L02098] | 1. \* |
| 1. ***Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003*** |  |
| 1. Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Safety Case and Environment Plan Levies) Regulation 2013 [SLI 2013 No. 273] [F2013L02117] |  |
| 1. ***Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*** |  |
| 1. Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Various Matters) Regulation 2013 [SLI 2013 No. 265] [F2013L02135] |  |
| 1. ***Privacy Act 1988*** |  |
| 1. Privacy Regulation 2013 [SLI 2013 No. 262] [F2013L02126] |  |
| 1. ***Private Health Insurance Act 2007*** |  |
| 1. Private Health Insurance (Benefit Requirements) Amendment Rules 2013 (No. 7) [F2013L02113] | 1. \* |
| 1. ***Programs and Awards Statute 2013*** |  |
| 1. Assessment Rules (No. 4) 2013 [F2013L02138] | 1. E |
| 1. Coursework Handbook Rules 2013 [F2013L02083] | 1. E |
| 1. ***Protection of the Sea (Prevention of Pollution from Ships) Act 1983, Protection of the Sea (Harmful Anti-fouling Systems) Act 2006 and Navigation Act 2012*** |  |
| 1. Marine Order 1 (Administration) 2013 [F2013L02093] |  |
| 1. ***Public Service Act 1999*** |  |
| 1. Public Service Amendment (Public Interest Disclosure and Other Matters) Regulation 2013 [SLI 2013 No. 276] [F2013L02121] |  |
| 1. ***Public Works Committee Act 1969*** |  |
| 1. Public Works Committee Amendment Regulation 2013 (No. 2) [SLI 2013 No. 266] [F2013L02119] |  |
| 1. ***Radiocommunications Act 1992*** |  |
| 1. Radiocommunications (26.5–31.3 GHz Band) Reform Instrument 2013 [F2013L02100] |  |
| 1. ***Retirement Savings Accounts Regulations 1997 and Superannuation Industry (Supervision) Act 1993 and Superannuation Contributions Tax (Assessment and Collection) Act 1997*** |  |
| 1. Superannuation Legislation Amendment (2013 Measures No. 2) Regulation 2013 [SLI 2013 No. 278] [F2013L02118] |  |
| 1. ***Social Security Act 1991*** |  |
| 1. Social Security Foreign Currency Exchange Rate Determination 2013 (No. 2) [F2013L02076] | 1. \* |
| 1. ***Special Broadcasting Service Act 1991*** |  |
| 1. Special Broadcasting Service Corporation (Selection criteria for the appointment of non-executive Directors) Determination 2013 [F2013L02090] |  |
| 1. ***Student Assistance Act 1973*** |  |
| 1. Student Assistance (Education Institutions and Courses) Amendment Determination 2013 (No. 1) [F2013L02081] | 1. \* |
| 1. ***Taxation Administration Act 1953 and Income Tax Assessment Act 1936 and A New Tax System (Goods and Services Tax) Act 1999 and Income Tax Assessment Act 1997*** |  |
| 1. Tax Laws Amendment (2013 Measures No. 1) Regulation 2013 [SLI 2013 No. 279] [F2013L02123] |  |

**Instruments received week ending 27 December 2013**

|  |  |
| --- | --- |
| 1. ***Australian Prudential Regulation Authority Act 1998*** |  |
| 1. Australian Prudential Regulation Authority (confidentiality) determination No. 27 of 2013 [F2013L02158] |  |
| 1. ***Currency Act 1965*** |  |
| 1. Currency (Perth Mint) Determination 2013 (No. 5) [F2013L02142] |  |
| 1. ***Customs Act 1901*** |  |
| 1. Customs (Definition of “compliance period”) Determination 2013 [F2013L02172] |  |
| 1. Customs (Definition of “small-medium enterprise”) Determination 2013 [F2013L02171] |  |
| 1. ***Environment Protection and Biodiversity Conservation Act 1999*** |  |
| 1. Amendment of List of Exempt Native Specimens - Tasmanian Scalefish Fishery (16/12/2013) [F2013L02156] |  |
| 1. ***Fair Work Act 2009*** |  |
| 1. Fair Work Commission Amendment (Anti-Bullying and Other Measures) Rules 2013 [F2013L02160] |  |
| 1. ***Fees Statute 2006*** |  |
| 1. Tuition Fees Order (No. 2) 2013 [F2013L02154] | 1. E |
| 1. ***Financial Sector (Collection of Data) Act 2001*** |  |
| 1. Financial Sector (Collection of Data) (reporting standard) determination No. 101 of 2013 - GRS 460.0 - Reinsurance Assets by Counterparty [F2013L02147] |  |
| 1. Financial Sector (Collection of Data) (reporting standard) determination No. 102 of 2013 - GRS 460.1 - Exposure Analysis by Reinsurance Counterparty [F2013L02148] |  |
| 1. Financial Sector (Collection of Data) (reporting standard) determination No. 103 of 2013 - GRS 460.0\_G - Reinsurance Assets by Counterparty (Level 2 Insurance Group) [F2013L02149] |  |
| 1. Financial Sector (Collection of Data) (reporting standard) determination No. 104 of 2013 - GRS 460.1\_G - Exposure Analysis by Reinsurance Counterparty (Level 2 Insurance Group) [F2013L02151] |  |
| 1. ***Higher Education Support Act 2003*** |  |
| 1. Higher Education (Maximum Amounts for Commonwealth Scholarships) Determination 2013 [F2013L02164] |  |
| 1. Higher Education (Maximum Amounts for Other Grants) Determination 2013 [F2013L02165] |  |
| 1. Higher Education Support (Maximum Grant Amounts) List Variation 2013 [F2013L02145] |  |
| 1. Higher Education Support Act 2003 - List of Grants under Division 41 for 2014 [F2013L02144] |  |
| 1. ***Migration Act 1958*** |  |
| 1. Migration Act 1958 - Revocation of IMMI 13/156 'Granting of Protection Class XA Visas in 2013/2014 Financial Year' - IMMI 13/159 [F2013L02163] | 1. E |
| 1. ***National Health Act 1953*** |  |
| 1. National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2013 (No. 14) (No. PB 88 of 2013) [F2013L02170] |  |
| 1. National Health (Prescriber bag supplies) Amendment Determination 2013 (No. 2) (No. PB 90 of 2013) [F2013L02168] |  |
| 1. National Health (Price and Special Patient Contribution) Amendment Determination 2013 (No. 8) (No. PB 89 of 2013) [F2013L02169] |  |
| 1. National Health Act 1953 - Amendment determination under paragraph 98C(1)(b) (No. PB 91 of 2013 [F2013L02167] |  |
| 1. ***Private Health Insurance Act 2007*** |  |
| 1. Private Health Insurance (Data Provision) Rules 2013 [F2013L02161] | 1. \* |
| 1. Private Health Insurance (Health Insurance Business) Rules 2013 [F2013L02159] | 1. \* |
| 1. ***Public Interest Disclosure Act 2013*** |  |
| 1. Public Interest Disclosure Standard 2013 [F2013L02146] |  |
| 1. ***Radiocommunications Act 1992*** |  |
| 1. Radiocommunications (Unacceptable Levels of Interference — 2.3 GHz Band) Determination 2013 [F2013L02155] |  |
| 1. Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters — 2.3 GHz Band) 2013 [F2013L02143] |  |
| 1. Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers — 2.3 GHz Band) 2013 [F2013L02150] |  |
| 1. ***Social Security (Administration) Act 1999*** |  |
| 1. Social Security (Administration) (Recognised State/Territory Authority - Qld Family Responsibilities Commission) Determination 2013 [F2013L02153] | 1. \* |
| 1. ***Social Security Act 1991*** |  |
| 1. Social Security (Personal Care Support) (NSW Government Individual Budgets: Direct Payments) Determination 2013 [F2013L02152] |  |
| 1. ***Tertiary Education Quality and Standards Agency Act 2011*** |  |
| 1. Tertiary Education Quality and Standards Agency Act 2011 - Determination of Fees No. 3 of 2013 [F2013L02162] | 1. \* |
| 1. Tertiary Education Quality and Standards Agency Act 2011 - Notice of revocation of Ministerial Direction No. 1 of 2013 [F2013L02157] |  |
| 1. ***Work Health and Safety Act 2011*** |  |
| 1. Work Health and Safety (Operation Sovereign Borders) Declaration 2013 [F2013L02166] |  |

**Instruments received week ending 3 January 2014**

No instruments were received.

**Instruments received week ending 10 January 2014**

No instruments were received.

**Instruments received week ending 17 January 2014**

|  |  |
| --- | --- |
| 1. ***Aged Care Act 1997*** |  |
| 1. Accountability Amendment (Quality Agency) Principle 2013 [F2013L02179] | 1. \* |
| 1. Complaints Amendment (Quality Agency) Principle 2013 [F2013L02181] | 1. \* |
| 1. Residential Care Subsidy Amendment (Leave from Care) Determination 2013 [F2013L02182] | 1. \* |
| 1. Information Amendment (Quality Agency) Principle 2013 [F2013L02183] | 1. \* |
| 1. Residential Care Subsidy Amendment (Quality Agency) Principle 2013 [F2013L02184] | 1. \* |
| 1. Committee Amendment (Aged Care Financing Authority) Principle 2013 [F2013L02185] | 1. \* |
| 1. User Rights Amendment (Investment of Accommodation Bonds) Principle 2013 [F2013L02186] | 1. \* |
| 1. Quality Agency Reporting Principles 2013 [F2013L02189] | 1. \* |
| 1. ***Auditor-General Act 1997*** |  |
| 1. Australian National Audit Office (ANAO) Auditing Standards (19/12/2013) [F2014L00027] | 1. \* |
| 1. ***Australian Aged Care Quality Agency (Transitional Provisions) Act 2013*** |  |
| 1. Australian Aged Care Quality Agency (Transitional Provisions) Regulation 2013 [SLI 2013 No. 255] [F2013L02190] |  |
| 1. ***Australian Aged Care Quality Agency Act 2013*** |  |
| 1. Quality Agency Principles 2013 [F2013L02188] |  |
| 1. ***Banking Act 1959*** |  |
| 1. Banking (prudential standard) determination No. 3 of 2013 - Prudential Standard APS 210 – Liquidity [F2013L02187] |  |
| 1. Broadcasting Services Act 1992 Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 18 of 2013) [F2014L00029] |  |
| 1. Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 19 of 2013) [F2014L00030] |  |
| 1. Licence Area Plan - Sydney Radio - Variation No. 1 of 2013 [F2014L00057] |  |
| 1. ***Charities Act 2013*** |  |
| 1. Charities (Definition of Government Entity) Instrument 2013 [F2013L02173] |  |
| 1. ***Civil Aviation Act 1988 and Civil Aviation Safety Regulations 1998*** |  |
| 1. Manual of Standards Part 172 Amendment Instrument 2013 (No. 1) [F2013L02178] | 1. \* |
| 1. ***Civil Aviation Act 1988, Civil Aviation Safety Regulations 1998 and Civil Aviation Regulations 1988*** |  |
| 1. Civil Aviation Order 48.1 Amendment Instrument 2013 (No. 1) [F2013L02192] |  |
| 1. ***Civil Aviation Regulations 1988*** |  |
| 1. CASA 294/13 - Direction under subregulation 235(2) relating to landing weight and landing distance required [F2014L00003] |  |
| 1. CASA EX135/13 - Exemption – carriage of flight data recorder – Pel-Air Aviation [F2013L02174] |  |
| 1. CASA EX134/13 - Exemption — operations by hang-gliders in the Corryong Cup [F2013L02197] |  |
| 1. CASA EX129/13 - Exemption – recency requirements for night flying – Regional Express Pty Ltd [F2014L00002] |  |
| 1. CASA ADCX 026/13 - Revocation of Airworthiness Directives [F2014L00041] |  |
| 1. CASA ADCX 001/14 - Revocation of Airworthiness Directives [F2014L00048] |  |
| 1. ***Civil Aviation Safety Regulations 1998 and Acts Interpretation Act 1901*** |  |
| 1. CASA ADCX 027/13 - Revocation of Airworthiness Directives [F2014L00042] |  |
| 1. Corporations Act 2001 ASIC Class Order [CO 13/1621] [F2014L00039] |  |
| 1. ***Customs Act 1901*** |  |
| 1. Customs Act 1901 - Specified Percentage of Total Factory Costs Determination No. 1 of 2013 [F2013L02198] |  |
| 1. ***Disability Services Act 1986*** |  |
| 1. Disability Services Act (National Standards for Disability Services) Determination 2013 [F2013L02180] | 1. \* |
| 1. ***Education Services for Overseas Students (TPS Levies) Act 2012*** |  |
| 1. Education Services for Overseas Students (TPS Levies) (Risk Rated Premium and Special Tuition Protection Components) Determination 2013 [F2013L02176] |  |
| 1. ***Environment Protection and Biodiversity Conservation Act 1999*** |  |
| 1. Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (147) (04/12/2013) [F2013L02175] |  |
| 1. Amendment to the list of threatened species, ecological communities and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (153) (11/11/2013) [F2013L02177] |  |
| 1. Amendment to the list of threatened species under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (148) (12/12/2013) [F2014L00004] |  |
| 1. Amendment of List of Exempt Native Specimens - Northern Prawn Fishery (20/12/2013) (inclusion) [F2014L00046] |  |
| 1. Amendment of List of Exempt Native Specimens - Northern Prawn Fishery (20/12/2013) (deletion) [F2014L00047] |  |
| 1. ***Fair Work (Building Industry) Act 2012*** |  |
| 1. Amendment No. 1 to the Building Code 2013 [F2013L02196] |  |
| 1. ***Federal Court of Australia Act 1976*** |  |
| 1. Federal Court Amendment (Costs and Other Measures) Rules 2013 [SLI 2013 No. 283] [F2014L00001] |  |
| 1. ***Financial Management and Accountability Act 1997*** |  |
| 1. Financial Management and Accountability Act 1997 Determination 2013/21 – Section 32 (Transfer of Functions from Social Services to AACQA) [F2013L02194] | 1. E |
| 1. Food Standards Australia New Zealand Act 1991 Food Standards (Application A1077 – Fungal Chitosan as a Processing Aid) Variation [F2014L00033] | 1. E |
| 1. Food Standards (Application A1080 – Food derived from Herbicide-tolerant Cotton MON88701) Variation [F2014L00035] | 1. E |
| 1. Food Standards (Proposal M1009 – Maximum Residue Limits) Variation [F2014L00037] | 1. E |
| 1. ***Higher Education Support Act 2003*** |  |
| 1. Higher Education Support Act 2003 - VET Provider Approval (No. 75 of 2013) [F2014L00031] |  |
| 1. Higher Education Support Act 2003 - VET Provider Approval (No. 1 of 2014) [F2014L00043] |  |
| 1. Amendment No. 1 to the VET Guidelines 2013 [F2014L00049] | 1. \* |
| 1. Higher Education Support Act 2003 - Revocation of Approval as a Higher Education Provider (Jansen Newman Institute Pty Ltd) [F2014L00053 |  |
| 1. ***Motor Vehicle Standards Act 1989*** |  |
| 1. Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005 Amendment 7 [F2014L00032] | 1. \* |
| 1. Vehicle Standard (Australian Design Rule 38/04 – Trailer Brake Systems) 2013 [F2014L00055] |  |
| 1. ***National Health Act 1953*** |  |
| 1. National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2013 (No. 9) (No. PB 92 of 2013) [F2013L02191] |  |
| 1. National Health (Paraplegic and Quadriplegic Program) Special Arrangement Amendment Instrument 2013 (No. 4) (No. PB 94 of 2013) [F2013L02193] |  |
| 1. National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2013 (No. 12) (No. PB 93 of 2013) [F2013L02195] |  |
| 1. National Health Determination under paragraph 98C(1)(b) Amendment 2014 (No. 1) (PB 3 of 2014) [F2014L00050] |  |
| 1. National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2014 (No. 1) (No. PB 1 of 2014) [F2014L00051] |  |
| 1. National Health (Price and Special Patient Contribution) Amendment Determination 2014 (No. 1) (No. PB 2 of 2014) [F2014L00052] |  |
| 1. ***Plant Health Australia (Plant Industries) Funding Act 2002*** |  |
| 1. Plant Health Australia (Plant Industries) Funding Determination 2013 [F2014L00056] | 1. \* |
| 1. ***Primary Industries (Excise) Levies Act 1999*** |  |
| 1. Primary Industries (Excise) Levies (Designated Bodies) Declaration 2013 [F2014L00054] |  |
| 1. ***Private Health Insurance Act 2007*** |  |
| 1. Private Health Insurance (Complying Product) Amendment Rules 2013  (No. 5) [F2014L00017] |  |
| 1. Private Health Insurance (Incentives) Amendment Rules 2013 (No. 1) [F2014L00019] | 1. \* |
| 1. ***Radiocommunications (Receiver Licence Tax) Act 1983*** |  |
| 1. Radiocommunications (Receiver Licence Tax) Amendment Determination 2013 [F2014L00036] |  |
| 1. Radiocommunications (Transmitter Licence Tax) Amendment Determination 2013 [F2014L00038] |  |
| 1. ***Radiocommunications Act 1992*** |  |
| 1. Radiocommunications (Trading Rules for Spectrum Licences) Amendment Determination 2013 [F2014L00034] |  |
| 1. Radiocommunications Licence Conditions (PTS Licence) Determination 2013 [F2014L00045] |  |
| 1. ***Safety, Rehabilitation and Compensation Act 1988*** |  |
| 1. Safety, Rehabilitation and Compensation (Definition of Employee) Amendment Notice 2013 [F2014L00006] |  |
| 1. ***Social Security Act 1991*** |  |
| 1. Social Security (Personal Care Support) (United Kingdom Government Personal Independence Payment) Determination 2013 [F2014L00021] |  |
| 1. ***Taxation Administration Act 1953*** |  |
| 1. Taxation Administration Act 1953 - PAYG withholding - Occasional payroll donations to deductible gift recipients No. 4 [F2014L00012] | 1. \* |
| 1. ***Telecommunications (Interception and Access) Act 1979*** |  |
| 1. Notice of a declaration of a Commonwealth Royal Commission as an eligible Commonwealth authority under section 5AA of the Telecommunications (Interception and Access) Act 1979 [F2014L00040] |  |
| 1. ***Therapeutic Goods Act 1989*** |  |
| 1. Poisons Standard Amendment No. 1 of 2014 [F2014L00044] | 1. E |
| 1. ***Veterans' Entitlements Act 1986*** |  |
| 1. Statement of Principles concerning heart block No. 2 of 2014 [F2014L00005] |  |
| 1. Statement of Principles concerning heart block No. 1 of 2014 [F2014L00007] |  |
| 1. Statement of Principles concerning dermatomyositis No. 9 of 2014 [F2014L00008] |  |
| 1. Statement of Principles concerning dental pulp and apical disease No. 4 of 2014 [F2014L00009] |  |
| 1. Statement of Principles concerning morbid obesity No. 5 of 2014 [F2014L00010] |  |
| 1. Statement of Principles concerning dermatomyositis No. 10 of 2014 [F2014L00011] |  |
| 1. Statement of Principles concerning chronic fatigue syndrome No. 11 of 2014 [F2014L00013] |  |
| 1. Statement of Principles concerning dental pulp and apical disease No. 3 of 2014 [F2014L00014] |  |
| 1. Statement of Principles concerning chronic fatigue syndrome No. 12 of 2014 [F2014L00015] |  |
| 1. Statement of Principles concerning fibromyalgia No. 13 of 2014 [F2014L00016] |  |
| 1. Statement of Principles concerning fibromyalgia No. 14 of 2014 [F2014L00018] |  |
| 1. Statement of Principles concerning sick sinus syndrome No. 15 of 2014 [F2014L00020] |  |
| 1. Statement of Principles concerning morbid obesity No. 6 of 2014 [F2014L00022] |  |
| 1. Statement of Principles concerning narcolepsy No. 7 of 2014 [F2014L00023] |  |
| 1. Statement of Principles concerning sick sinus syndrome No. 16 of 2014 [F2014L00024] |  |
| 1. Statement of Principles concerning narcolepsy No. 8 of 2014 [F2014L00025] |  |
| 1. Amendment Statement of Principles concerning Alzheimer-type dementia No. 17 of 2014 [F2014L00026] |  |
| 1. Amendment Statement of Principles concerning Alzheimer-type dementia No. 18 of 2014 [F2014L00028] |  |

**Instruments received week ending 24 January 2014**

|  |  |
| --- | --- |
| 1. ***Agricultural and Veterinary Chemicals Code Act 1994*** |  |
| 1. Agricultural and Veterinary Chemicals Code Instrument No. 4 (MRL Standard) Amendment Instrument 2014 (No. 1) [F2014L00065] | 1. E |
| 1. ***Corporations Act 2001*** |  |
| 1. ASIC Class order [CO 13/1644] [F2014L00058] | 1. \* |
| 1. ASIC Market Integrity Rules (FEX Market) 2013 [F2014L00063] |  |
| 1. ***Environment Protection and Biodiversity Conservation Act 1999*** |  |
| 1. Amendment to the list of threatened species, ecological communities and key threatening processes under section 178, 181 and 183 of the Environment Protection and Biodiversity Conservation Act 1999 (131) (20/12/2013) [F2014L00062] |  |
| 1. ***Higher Education Support Act 2003*** |  |
| 1. Higher Education Provider Approval No. 1 of 2014 [F2014L00059] |  |
| 1. Higher Education Support Act 2003 - VET Provider Approval (No. 2 of 2014) [F2014L00060] |  |
| 1. ***National Health Act 1953*** |  |
| 1. National Health Act 1953 - Amendment Determination under section 84AH (2014) (No. 1) (No. PB 7 of 2014) [F2014L00064] |  |
| 1. ***Social Security Act 1991*** |  |
| 1. Social Security (Australian Government Disaster Recovery Payment) Determination 2014 (No. 1) [F2014L00061] | 1. E |

**Instruments received week ending 31 January 2014**

No instruments were received.

# 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](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_ctte/guidelines.htm) 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*](http://www.comlaw.gov.au/Details/C2012C00041) (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](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=regord_ctte/alert2012.htm).

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](mailto:RegOrds.Sen@aph.gov.au)

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. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
3. 'Last day to disallow' refers to the last day on which notice may be given of a motion for disallowance in the Senate. [↑](#footnote-ref-3)
4. Senate Standing Committee on Regulations and Ordinances website, ' Application of the committee's scrutiny principles', <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/guidelines/principles>, accessed 10 February 2013. [↑](#footnote-ref-4)
5. For more extensive comment on this issue see Monitor No. 8 of 2013, p. 511. [↑](#footnote-ref-5)
6. 'Last day to disallow' refers to the last day on which notice may be given of a motion for disallowance in the Senate. [↑](#footnote-ref-6)
7. For further information see the Disallowance Alert 2013 webpage at <http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Alerts>. [↑](#footnote-ref-7)
8. FRLI is found online at http://www.comlaw.gov.au/. [↑](#footnote-ref-8)
9. Instruments marked E are exempt from disallowance. As Senate Standing Order 23 directs the committee to consider instruments that are subject to 'disallowance or disapproval', exempt instruments are not scrutinised by the committee. [↑](#footnote-ref-9)