EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 27

Issued by the Attorney-General

Legislative Instruments Act 2003

Legislative Instruments Amendment Regulations 2005 (No. 2)

Section 62 of the *Legislative Instruments Act 2003* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes a comprehensive regime for the management of Commonwealth legislative instruments, including the creation of the Federal Register of Legislative Instruments as a repository for Commonwealth legislative instruments, explanatory statements and compilations. The Act also improves the mechanisms for Parliamentary scrutiny of legislative instruments. The Act commenced operation on 1 January 2005. On the same day the *Legislative Instrument Regulations 2004* (the Principal Regulations) also came into operation.

The Principal Regulations facilitate the operation of the Act by (amongst other things) providing exemptions from the Act or parts of the Act. The purpose of the *Legislative Instruments Amendment Regulations 2005* (the Regulations) is to amend the Principal Regulations and provide further exemptions from the Act or parts of the Act, being: exemptions from the whole of the Act; exemptions from the disallowance provisions under the Act; and exemptions from the sunsetting provisions of the Act.

The amendments which are made by Part 1 of Schedule 1 to the Regulations exempt certain classes of instruments from the Act which are not legislative instruments. These exemptions are designed to be clarifications to help users of the Act. There are already a range of these instruments in Part 1 of Schedule 1 to the Principal Regulations. Those instruments have been agreed with the Office of Parliamentary Counsel with a view to facilitating current drafting practice which is to identify those instruments which are or are not legislative instruments, unless those instruments are already identified as not being legislative instruments in the Act or in the Principal Regulations, as amended from time to time.

The remaining amendments to the Principal Regulations are a result of reviews by Commonwealth agencies of the relationship between legislation they administer and the Act. Those reviews have identified reasons why the regime which applied prior to

the commencement of the Act should be continued rather than applying aspects of the legislative instruments regime.

Details of the Regulations are set out in the Attachment, including the reasons why the particular exemptions from the Act were made.

The Regulations are a legislative instrument for the purposes of the Act.

The Regulations commence the day after they are registered on the Federal Register of Legislative Instruments.

Consultation was unnecessary for this legislative instrument as this instrument is of a minor or machinery nature only. It has no direct, or substantial indirect effect on business.

ATTACHMENT

Details of the *Legislative Instruments Amendment Regulations 2005 (No. 2)*

Regulation 1 provides that the name of the Regulations is the *Legislative Instruments Amendment Regulations 200*5 *(No. 2).*

Regulation 2 provides that the Regulations commence on the day after they are registered. Because the Regulations are a legislative instrument, the Act requires that they must be registered on the Federal Register of Legislative Instruments to be effective.

Regulation 3 provides that Schedule 1 to the Regulations amends the *Legislative Instruments Regulations 2004* (the Principal Regulations).

Schedule 1 Amendments

Amendments to Part 1 of Schedule 1 to the Principal Regulations

Items 1 and 2 of the Regulations insert new material into Part 1 of Schedule 1 to the Principal Regulations.

Part 1 of Schedule 1 lists the general classes of instruments that are declared not be legislative instruments for the purposes of the Act. These instruments are either administrative in character or would have been legislative instruments but their effect has been spent. Part 1 of Schedule 1 to the Principal Regulations is designed to help users of the Act by clarifying the types of instruments that do not need to be registered.

Item 1 This item inserts new item 26A into Part 1 of Schedule 1 to the Principal Regulations to prescribe an order, direction, or other instrument made in proceedings before a court, a Judge, a Federal Magistrate or Magistrate, an officer of a court, a tribunal or a member or an officer of a tribunal. None of these instruments are legislative in character. This new item makes clear that these types of instruments are not legislative instruments for the purposes of the Act.

This provision is a companion measure to existing items 25 and 26 in the Principal Regulations. Item 25 is an application made to a court, a Judge, a Federal Magistrate or Magistrate (including a Judge, Federal Magistrate or Magistrate acting in a personal capacity), an officer of a court, a tribunal or a member or an officer of a tribunal. These applications are made by a party to a civil, administrative or criminal proceeding or proposed proceeding. Item 26 is an order, direction, or other instrument made in response to such an application.

New item 26A includes in Part 1 of Schedule 1 orders, directions or other instruments made during the conduct of proceedings, regardless of whether there has been an application for such an order, direction or other instrument.

Item 2 This item inserts new item 34 into Part 1 of Schedule 1 to the Principal Regulations to prescribe a corporate plan. This new item makes clear that corporate plans are not legislative instruments for the purposes of the Act.

Corporate plans are not legislative instruments because they are not legislative in character. They do not have substantive effect because they do not determine the law or alter the content of the law.

This item also inserts new item 35 into Part 1 of Schedule 1 to the Principal Regulations. New item 35 is a notice published in the *Gazette* that announces the day on which an international agreement comes into force for Australia. This new item makes clear that such information notices are not legislative instruments for the purposes of the Act.

The day on which an international agreement comes into force for Australia is determined in the agreement. *Gazette* notices that announce such dates are not legislative instruments because they are not legislative in character. They do not have substantive effect because they do not determine the law or alter the content of the law.

Amendments to Part 2 of Schedule 1 to the Principal Regulations

Items 3 to 7 of the Regulations insert new material into Part 2 of Schedule 1 to the Principal Regulations. Part 2 of Schedule 1 lists specific classes of instruments that are declared not be legislative instruments for the purposes of the Act. These instruments and the reasons for their exemption from the Act are set out below.

Item 3 This item inserts new item 1A into Part 2 of Schedule 1 to the Principal Regulations and replaces existing item 1 with a new item 1.

New item 1A exempts from the Act an instrument made under subregulation 2.05(2) and a declaration made under regulation 2.07 of the Air Services Regulations. This means that these instruments are not legislative instruments for the purposes of the Act.

Declarations made under regulation 2.07 of the Air Services Regulations allow Airservices Australia to declare an area of Australian territory to be

- a prohibited area if, in the opinion of Airservices Australia, it is necessary for reasons of military necessity to prohibit the flight of aircraft over the area,

- a restricted area if, in the opinion of Airservices Australia, it is necessary in the interests of public safety or the protection of the environment to restrict the flight of aircraft over the area to aircraft flown in accordance with specified conditions, or

- a danger area if, in the opinion of Airservices Australia, there exists within or over the area an activity that is a potential danger to aircraft flying over the area.

Subregulation 2.05(2) is a companion measure to regulation 2.07. It provides that, where an area is declared a restricted or danger area, Airservices Australia may vary the air traffic services that would otherwise be provided, in accordance with Annex 11 to the Chicago Convention, for that airspace.

Instruments made under these regulations are generally made in urgent circumstances. Any delay in the enforcement of these instruments could adversely impact on the safety or integrity of air navigation or aircraft operation or could otherwise threaten public safety or environmental protection.

The item exempts instruments made under regulation 2.07 and subregulation 2.05(2) from the Act. This ensures that Airservices Australia could respond quickly and efficiently to emergency situations.

The item also replaces existing item 1 in Part 2 of Schedule 1 to the Principal Regulations. The only substantive effect of the amendment is to add an additional matter, new subitem 1(b), to existing item 1.

Item 1 currently refers to an instrument made under the *Aviation Transport Security Act 2004*, other than regulations made under that Act or an instrument made under section 2 or 107 of that Act. That current exemption is continued unchanged in new subitem (a) of item 1.

New subitem 1(b) includes within the scope of this exemption a reference to instruments made under regulations made under the *Aviation Transport Security Act 2004*.

This is consistent with the exemption currently provided in item 1 of subsection 7(1) of the Act. That item exempts instruments (other than regulations and instruments which were disallowable before the Act commenced) made under the *Air Navigation Act 1920*, or under the regulations made under that Act, relating to aviation security. The Aviation Transport Security Act substantively re-enacts the aviation security provisions of the *Air Navigation Act 1920* which are exempt instruments under item 1 of subsection 7(1). However, when the exemption was included in the Principal Regulations, the reference to instruments made under regulations made under the Air Navigation Act relating to aviation security was not reproduced. These instruments are now made under the Aviation Transport Security Regulations. The item is intended to correct this inadvertent error.

Item 4 This item inserts new item 3A into Part 2 of Schedule 1 to the Principal Regulations. New subitem 3A(a) lists determinations made under sections 48, 65, 73, 76 & 76A of the *Commonwealth Electoral Act 1918*. New subitem 3A(b) is a direction made under section 59 of that Act. This means that these instruments are not legislative instruments for the purposes of the Act.

These instruments all relate to electoral redistributions.

Determinations are made under section 48 in relation to the number of members of the House of Representatives to be chosen in the states and territories. That section requires the Electoral Commissioner, after ascertaining the number of people in the Commonwealth and states and territories in accordance with section 46 of that Act, to determine the number of members to be chosen in the several states and territories at a general election. Section 48 also describes various calculations the Commissioner must make in arriving at those decisions. Section 49 provides that notification of a determination under section 48 must be given to the Minister by certificate containing

the information required by section 49. The certificate is published in the *Gazette* and laid before both houses of the Parliament.

An instrument under section 65 determines the quota of electors for a State or the Australian Capital Territory for the purposes of each redistribution of a State or the Territory. Section 65 also describes how the Commissioner is to calculate those quotas.

Under section 73, an augmented Electoral Commission (which is established by section 70 for the purposes of each redistribution of a State or the Australian Capital Territory) determines, by notice published in the *Gazette*, the names and boundaries of the Electoral Divisions into which the State or Territory is to be distributed. Section 73 also describes the process to be undertaken in relation to such determinations. Part IV of the Commonwealth Electoral Act makes provision for consultation and for notification of the outcomes of redistributions. Subsection 75(2) details the information to be tabled in the Parliament in relation to a determination under section 73.

Section 76 is concerned with mini-redistributions. A mini-redistribution will occur where, on the day on which writs for a general election are issued, the number of members of the House of Representatives to be chosen in a State at the general election differs from the number of Divisions in accordance with which the State is for the time being distributed. Under subsection 76(6), the Redistribution Commissioners (which are the Electoral Commissioner and the Australian Electoral Officer for the State) determine the names and boundaries of the Electoral Divisions into which the State is to be distributed. Section 76A applies section 76 to the Northern Territory with appropriate modifications. Subsection 76(14) provides for parliamentary scrutiny of the determinations under section 76 and this provision is also applied in relation to section 76A determinations.

Under section 59 of the Commonwealth Electoral Act, a redistribution of a State or the Australian Capital Territory into Divisions shall commence whenever the Electoral Commissioner so directs, by notice published in the *Gazette*. Section 59 provides further details governing the timetable for the making of the direction.

The electoral redistribution scheme set out in the Commonwealth Electoral Act is highly prescriptive, setting out the redistribution process in detail. The policy intention of the amending legislation, the *Commonwealth Electoral Legislation Amendment Act 1984*, which introduced the scheme, was to remove the process from possible or perceived political influence.

The item maintains the underlying policy intention of ensuring the consistency, accuracy and integrity of the system of electoral redistribution.

Item 5 This item inserts new item 9A into Part 2 of Schedule 1 to the Principal Regulations to prescribe a certificate issued under regulation 5A of the *Diplomatic*

Privileges and Immunities Regulations 1989. This means that these instruments are not legislative instruments for the purposes of the Act.

Regulation 5A allows the Minister to issue a certificate requiring the removal of an object where it impairs the dignity of diplomatic premises and staff. Subregulations 5A(3) and (4) provide that a certificate takes effect when it is signed, unless a later time or day is specified in it, and it has effect for a period of 30 days from the day when the certificate was signed. However, subregulation 5A(4) enables further certificates to be issued in respect of the same matters.

While these instruments are probably not legislative instruments, the inclusion of these instruments in the exemptions from the Act removes any possible uncertainty as to the characterisation of the instruments. This could be important if they were subject to a challenge in the courts. The exemption also enables a certificate to be immediately enforceable, if that is necessary, rather than having to wait until after registration under the Act. Thus, the item ensures that Australia's ability to meet its obligations under the *Vienna Convention on Diplomatic Relations* to protect diplomatic premises and staff was not compromised.

Item 6 This item substitutes a new item 11 for the current item 11 in Part 2 of Schedule 1 to the Principal Regulations. The effect of the change is to maintain the current exemptions for certain instruments under the *Intelligence Services Act 2001* and add guidelines issued under subclause 1(6) of Schedule 2 to the *Intelligence Services Act 2001*. This means that these instruments are not legislative instruments for the purposes of the Act.

Subsection 6(4) of the *Intelligence Services Act 2001* prohibits the Australian Security Intelligence Service (ASIS) from planning for, or undertaking, activities that involve:

(a) paramilitary activities; or
(b) violence against the person; or
(c) the use of weapons

by staff members or agents of ASIS. Subsection 6(5) makes clear that this does not prevent:

(a) the provision of weapons, or training in the use of weapons or in self-defence techniques, in accordance with Schedule 2 to that Act; or
(b) the use of weapons or self-defence techniques in accordance with Schedule 2.

Subsection 6(6) provides that ASIS must not provide weapons, or training in the use of weapons or in self-defence techniques, other than in accordance with Schedule 2.

Subclause 1(6) of Schedule 2 to the *Intelligence Services Act* requires the Director-General of ASIS to issue guidelines for the purposes of Schedule 2 on matters related to the use of weapons and self-defence techniques by personnel of the Service. Subclause 1(7) provides that, as soon as practicable after making the guidelines, the

Director-General must give the Inspector-General of Intelligence and Security a copy of the guidelines.

Depending on the matters included in such guidelines, they may be administrative or legislative. Note that subsection 5(4) of the Act has the effect that if some provisions of an instrument are of a legislative character then the whole instrument is a legislative instrument. Inclusion of the guidelines as an exemption to the Act removes uncertainty about the characterisation of the instruments. It also ensures that neither the capacity of these agencies to carry out their statutory functions nor national security could be adversely impacted by the publication of the guidelines on the Federal Register of Legislative Instruments.

Item 7 This item replaces existing item 12 of Part 2 of Schedule 1 to the Principal Regulations with new items 12 to 14.

Item 12 of Part 2 of Schedule 1 to the Principal Regulations currently refers to an instrument made under the *Maritime Transport Security Act 2003*, other than regulations made under that Act or an instrument made under section 2 or 182 of that Act. A reference to these instruments is continued by new subitem 12(a). New subitem 12(b) inserts a reference to an instrument made under regulations made under the *Maritime Transport Security Act 2003*.

This is a companion measure to the amendment which is made by item 3 in relation to instruments made under regulations made under the Aviation Transport Security Act. The exemption is consistent with the current exemption of security-related instruments under the Maritime Transport Security Act.

New item 13 is a determination under paragraph 154A(4)(c) of the *Superannuation Act 1976*.

By virtue of paragraph 154A(4)(b), regulations which were in force immediately before 1 July 1990 and which make provision in relation to interest payable under a range of provisions which are listed in subsection 154A(3) are treated as determinations made by the Board of the Commonwealth Superannuation Scheme. Paragraph 154A(4)(c) allows the Board to amend or repeal these determinations in relation to the rates of interest and notional interest for the purposes of the Commonwealth Superannuation Scheme (the CSS).

New item 14 is a companion measure which relates to interest rate determinations under the Public Sector Superannuation Scheme (the PSS). The new item 14 inserts a determination under paragraph 3(1)(d) of the PSS Scheme Trust Deed which is made under section 4 of the *Superannuation Act 1990*. The terms of the Trust Deed are set out in the Schedule to the Superannuation Act. However, under section 5, the Minister has power to make a range of amendments to the Trust Deed with the consent of the Board. Paragraph 3(1)(d) of the Trust Deed currently provides that the Board may determine interest rates for the purposes of the PSS.

Interest determinations provide, amongst other things, for an exit rate of interest which is applied to the accounts of CSS or PSS members who leave their Scheme. Generally, weekly interest rates are struck. However, from time to time, it can be necessary for daily rates to be determined.

Interest rate determinations are likely to be legislative instruments and the exemptions means that these instruments are not legislative instruments for the purposes of the Act. These exemptions reflect the fact that setting of interest rates is based on commercial considerations that are a matter for the relevant Board. Disallowance of the interest determinations could adversely affect the operation of the schemes by disrupting the orderly distribution of funds to members leaving the schemes. The frequency and numbers of interest determinations also make registration on the Federal Register of Legislative Instruments administratively burdensome.

All interest determinations which are made before the Regulations commence will be registered under the Act in the normal way. However, once the Regulations come into operation, the determinations will cease to be registered. The rates are published on the relevant Board's website and are updated on the day they become applicable (usually the business day immediately after the calculation of the interest determination).

Amendments to Schedule 2 to the Principal Regulations

Items 8 to 11 of the Regulations insert new material into Schedule 2 to the Principal Regulations. Schedule 2 lists specific classes of instruments that are to be exempt from the disallowance provisions of the Act. These instruments and the reasons for their exemption from the Act are set out below.

Item 8 This item inserts two new items after item 1 in Schedule 2 to the Principal Regulations.

New item 1A is a notice given under subsection 17(1) of the *Air Services Act 1995*.

Notices may be issued by the Minister under section 17 of the *Air Services Act 1995* notifying Airservices Australia of the Minister's views on the appropriate strategic direction for Airservices Australia and the manner in which it should perform its functions. Section 74 of the Air Services Act requires notices to be tabled in the Parliament within 15 sitting days after they are made but does not make them disallowable.

While it is not likely that the notices are legislative in character, as they inform the agency of the Minister's policy objectives and do not alter or determine the law, the notices are included in Schedule 2 in order to remove any possible uncertainty about their status. This ensures that there is no adverse impact on the exercise of the executive functions. This exemption is consistent with the existing exemption from

disallowance for ministerial directions to any person or body which is contained in item 41 of subsection 44(2) of the Act.

New subitem 1B(a) is a designation or determination made under regulation 2.02 of the Air Services Regulations. This means that these instruments are not subject to the disallowance provisions of the Act.

Subregulation 2.02 allows Airservices Australia to designate air routes and airways for the purposes of assisting the safe navigation of aircraft. Under subregulation 2.02(2), Airservices Australia may determine the conditions of use of a designated air route or airway. Under subregulation 2.02(3), a designation or determination does not take effect until it is published in the Aeronautical Information Publication (AIP) or a Notice to Airmen (NOTAMS), as provided for in regulation 4.12.

New subitem 1B(b) is a direction given under regulation 2.03 of the Air Services Regulations. This means that these instruments are not subject to the disallowance provisions of the Act.

Subregulation 2.03 allows Airservices Australia to give directions, relating to the safety of aircraft, in connection with the use or operation of a designated air route or airway, or air route or airway facilities. Under subregulation 2.03(2), a direction does not take effect until it is published in the AIP or a NOTAMS, as provided for in regulation 4.12.

New subitem 1B(c) is a determination made under regulation 2.04 of the Air Services Regulations. This means that these instruments are not subject to the disallowance provisions of the Act.

Subregulation 2.04(1) allows Airservices Australia to make the following determinations about controlled aerodromes and airspace:

(a) that an aerodrome is a controlled aerodrome;
(b) that a volume of airspace is of a class specified, in accordance with Annex 11 to the Chicago Convention, as Class A, B, C, D, E, F or G;
(c) that a volume of airspace is:
    (i) a flight information area; or
    (ii) a flight information region;
(d) that a volume of airspace extending upwards from a specified altitude is a control area;
(e) that a volume of airspace extending upwards from ground or water to a specified altitude is a control zone.

Under subregulation 2.04(3), a determination has effect for a specified period, or until a specified event happens, or for the duration of specified circumstances, unless earlier revoked. However, subregulation 2.04(4) provides that a determination does not take

effect until it is published in the AIP or a NOTAMS, as provided for in regulation 4.12.

New subitem 1B(d) is a designation made under regulation 2.09 of the Air Services Regulations. This means that these instruments are not subject to the disallowance provisions of the Act.

Subregulation 2.09(1) allows Airservices Australia to designate an area as a flying training area. Under subregulation 2.09(3), a designation has effect for a specified period, or until a specified event happens, or for the duration of specified circumstances, unless earlier revoked. However, subregulation 2.09(4) provides that a designation does not take effect until it is published in the AIP or a NOTAMS, as provided for in regulation 4.12.

New subitem 1B(e) are instructions given under subregulation 3.03(3) or 3.03(4) of the Air Services Regulations. This means that these instruments are not subject to the disallowance provisions of the Act.

Subregulation 3.03(3) allows Airservices Australia to give instructions to aircraft flying in accordance with the International Flight Rules or the Visual Flight Rules about the use of a controlled aerodrome or an airspace to which a determination under paragraph 2.04(1)(b) applies.

Subregulation 3.03(4) allows Airservices Australia to give instructions to aircraft about the use of airspace above an area which has been declared under regulation 2.07 to be a restricted or danger area or an airspace to which a determination under paragraph 2.04(1)(b) applies.

Disallowance of the instruments listed under subitems 1B(a) - (e) would adversely impact on the orderly management of the aviation industry, increasing uncertainty for commercial aircraft operators, providers of air traffic services and aviation regulators. The exemptions improve certainty in regulation of the industry contributing to reduction of commercial and safety risks for the industry and the public.

Item 9 This item inserts two new items after item 2 in Schedule 2 to the Principal Regulations.

New item 2A is a notice given under section 12A of the *Civil Aviation Act 1988.*

Notices may be issued by the Minister under section 12A notifying the Civil Aviation Safety Authority of the Minister's views on the appropriate strategic direction for the Civil Aviation Safety Authority and the manner in which the Civil Aviation Safety Authority should perform its functions.

This item exempts notices sent by the Minister under section 12A from the disallowance provisions. While it is not likely that the notices are legislative in

character, as they inform the agency of the Minister's policy objectives and do not alter or determine the law, the notices are included in Schedule 2 in order to remove any possible uncertainty about their status. This ensures that there is no adverse impact on the exercise of the executive functions. This exemption is consistent with the existing exemption from disallowance for ministerial directions to any person or body which is contained in item 41 of subsection 44(2) of the Act.

New subitem 2B(a) exempts, from disallowance under the Act, instruments under section 80, subsections 200D(2), 225(1), 227(3) and 227(4) and paragraph 305A(1)(c) of the *Commonwealth Electoral Act 1918*.

These instruments designate polling places.

Subsection 80(1) provides that the Electoral Commission may, by notice published in the *Gazette*, appoint polling places for each Division and abolish any polling place. Subsection 80(3) requires the publication of a newspaper notice prior to the date of polling setting out information about polling places for Divisions.

Subsection 200D(2) provides that the Electoral Commission, by notice in the *Gazette*, is to declare a place to be a pre-poll voting office and enables the making of an application and to publish the days and hours when applications may be made to pre-poll voting officers.

Subsection 225(1) provides that the Electoral Commission, by notice in the *Gazette*, may declare the whole or part of a hospital to be a special hospital. This section enables patients at special hospitals to be visited by electoral staff for the purposes of voting in elections.

Subsection 227(3) enables the Electoral Commission to declare a Division to be a remote Division to which section 227 applies. Subsection 227(4) requires the Electoral Commission, by notice in the *Gazette*, to determine the places electoral staff teams should visit for the purposes of section 227. That section regulates the establishment and use of mobile booths.

Paragraph 305A(1)(c) provides that the Electoral Commission, by notice in the *Gazette*, may specify a person or body for the purpose of requiring disclosure of any gifts made to that person or body by another person during the disclosure period in relation to an election.

New subitem 2B(b) is a declaration made under subsection 246(1) of Commonwealth Electoral Act. This declaration facilitates the establishment of polling stations in Antarctica or the Antarctic region. This means that these instruments are not subject to the disallowance provisions of the Act. Under section 247, the Electoral Commission appoints an Antarctic Returning Officer and an Assistant Antarctic Returning Officer, for each station.

Disallowance of the instruments listed in subitems 2B(a) and (b) in relation to designation of polling places could adversely impact on the orderly conduct of polling. In addition, exposure of the instrument under paragraph 305A(1)(c) to possible disallowance is undesirable as it may adversely impact on the perception of impartiality and integrity of the election funding and disclosure scheme.

Item 10 This item inserts a new item after item 6 in Schedule 2 to the Principal Regulations. New item 6A is a determination made under subsection 6(1) of the *Military Rehabilitation and Compensation Act 2004.* This means that these instruments are not subject to the disallowance provisions of the Act.

Subsection 6(1) enables the Minister for Defence to determine in writing that particular defence service is 'warlike' or 'non-warlike' service.

These determinations have implications for the allowances and benefits of members of the Australian Defence Force on deployments. They are made by the Minister for Defence on the advice from the Chief of the Defence Force, who relies on material that is always sensitive and frequently classified.

The determinations are not currently disallowable. The Senate Scrutiny of Bills Committee, when considering the then Military Rehabilitation and Compensation Bill 2004, accepted that these determinations should not be subject to disallowance.

The new item exempts determinations made under subsection 6(1) from the disallowance provisions. This preserves the current arrangements.

Item 11 This item inserts two new items after item 7 in Schedule 2 to the Principal Regulations. This means that these instruments are not subject to the disallowance provisions of the Act.

New item 8 is a privacy code approved by the Privacy Commissioner under section 18BB of the *Privacy Act 1988*. Privacy codes approved under section 18BB may supplant the obligations in the National Privacy Principles. The codes are approved pursuant to the Government's co-regulatory regime that allows organisations and industries to have and to enforce their own privacy codes which are adapted to their particular needs.

Subsection 18BB(2) provides that, before the Privacy Commissioner approves a privacy code, he or she must be satisfied that a number of conditions have been satisfied, including that only organisations that consent to be bound by the code are, or will be, bound by the code. If the approval of a privacy code were subject to disallowance, organisations may be less inclined to consent to be bound by the code. This undermines the policy of the co-regulatory regime.

The exemption provides certainty for organisations who agree to be bound by the code and increase participation in the co-regulatory regime.

New item 9 is a determination made under section 16 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

Subsection 16(1) requires the Minister to determine in writing one or more universal service subsidies for a particular claim period. A copy of the determination must be published in the *Gazette*. Under subsection 16B(2), a determination applies for a maximum period of 3 years.

These determinations are intended to guarantee all Australians reasonable access to standard telephone services across Australia, in particular, in unprofitable areas of rural and remote Australia. All licensed telecommunications carriers are required to contribute to the determined universal subsidy amount.

This item exempts determinations made by the Minister under section 16 from the disallowance provisions of the Act to meet the need for certainty once subsidies are set and, in particular, to provide certainty for the telecommunications providers about the size of their universal service subsidy obligations.

Amendments to Schedule 3 to the Principal Regulations

Item 12 of the Regulations inserts new material into Schedule 3 to the Principal Regulations. Schedule 3 lists specific classes of instruments that are to be exempt from the sunsetting provisions of the Act.

Item 12 This item inserts a new item after item 3 in Schedule 3 to the Principal Regulations. This is a determination made under subsection 6(1) of the *Military Rehabilitation and Compensation Act 2004*. The Regulations also exempt those determinations from the disallowance provisions of the Act, as discussed above.

The inclusion of this new item in Schedule 3 means that these instruments are not subject to the sunsetting provisions of the Act.

Subsection 6(1) enables the Minister for Defence to determine in writing that particular defence service is ‘warlike’ or ‘non-warlike’ service.

These determinations have implications for the allowances and benefits of members of the Australian Defence Force on deployments and are intended to have a continuing effect. This exemption promotes certainty for the members of the Defence Force to which the determinations apply by not having those determinations subject to review under the Act in accordance with the sunsetting timetable.