

REPLACEMENT EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance and the Public Service

Public Works Committee Act 1969

Public Works Committee Legislation Amendment (2019 Measures No.1) Regulations 2019

Legislative Authority

The *Public Works Committee Act 1969* (the Act) provides for the establishment, as soon as practicable after the commencement of the first session of each Parliament, of a joint committee of members of the Parliament to be known as the Parliamentary Standing Committee on Public Works (the Committee).

Section 40 of the Act permits the Governor-General to make regulations, not inconsistent with the Act, prescribing all matters that by the Act are required or permitted to be prescribed for carrying out or giving effect to the Act.

Purpose

The purpose of the *Public Works Committee Legislation Amendment (2019 Measures No.1) Regulations 2019* (the Regulations) is three-fold:

- Firstly, to amend the *Public Works Committee Regulation 2016* (the Principal Regulation) to specify that the threshold amount for the referral of defence related public works to the Committee for inquiry and report under the Act is the amount of \$75 million. The threshold amount for the referral of other public works to the Committee for inquiry and report under the Act will remain the amount of \$15 million;
- Secondly, to update to the list of entities to which the Act does not apply; and
- Thirdly, as transitional and consequential amendments, to correct references in the *Defence Force Discipline Appeals Regulation 2016* (DFDA Regulation) and in the *Migration Regulations 1994* (Migration Regulations) to the Principal Regulation.

Details of the Regulations are set out in [Attachment A](#).

Background

Under the Act, public works the estimated cost of which exceeds the threshold amount may not be commenced unless (inter alia) the work has been referred to the Committee in accordance with section 18 of the Act.

Section 18(9) of the Act specifies the threshold amount to be \$15 million, or such other amount as may be specified in the regulations.

Defence public works referral threshold

Recommendation 3 of the 2015 *First Principles Review of Defence* was that the Department of Defence (Defence) implement an enterprise approach to the delivery of corporate and military enabling services to maximise their effectiveness and efficiency. One of the keys to delivering an enterprise approach is Recommendation 3.3, that Government amend the Act to set a \$75 million threshold amount for referring proposed defence public works to the Committee.

On 1 April 2015, the recommendation to increase the defence public works referral threshold received in-principle agreement from the Government.

Parliamentary oversight of public works for defence purposes between \$2 million and \$75 million (medium works) will continue. The Public Works Committee Procedure Manual sets out that each medium works notification will be examined by the Committee, which will determine whether it has any questions or concerns about the project. The Procedure Manual states that construction of a medium work project must not proceed until the Committee has had an opportunity to examine and approve the project to proceed as a medium work. In considering these notifications, the Committee may decide to seek referral of a medium works project for inquiry.

Entities to which the Act does not apply

Section 7 in the Principal Regulation identifies authorities of the Commonwealth to which the Act does not apply.

An amendment will replace 'ASC Engineering Pty Ltd' with 'Australian Naval Infrastructure Pty Ltd', following a change to the name of the company, and will remove 'ASC Shipbuilding Pty Limited' as it is no longer a Commonwealth entity.

Transitional and consequential amendments

The Principal Regulation superseded the *Public Works Committee Regulations 1969* (the 1969 regulations) which were due to sunset under section 50 of the *Legislation Act 2003*.

Although there was no material difference between the 1969 regulations and the Principal Regulation, there are two references to the 1969 regulations contained in other regulations that should be corrected due to the commencement of the Principal Regulation.

Amendment of DFDA Regulation

Section 16 of the DFDA Regulation refers to Schedule 2 to the 1969 regulations in the context of fees payable to witnesses at Defence Force discipline appeals hearings.

The reference to Schedule 2 to the 1969 regulations in the DFDA Regulation will be replaced with a reference to Part 4 of the Principal Regulation, which deals with fees and expenses of witnesses and assessors.

Amendment of the Migration Regulations

Sub-regulation 5.07(1) of the Migration Regulations contains a reference to Schedule 2 to the 1969 regulations in the context of witness fees for persons appearing before a Commissioner, as provided for under section 203 of the *Migration Act 1958*.

The reference to Schedule 2 to the 1969 regulations will be replaced with a reference to Part 4 of the Principal Regulation, which deals with fees and expenses of witnesses and assessors.

Consultation

The Assistant Minister for Defence requested the proposed amendment in relation to the Defence referral threshold. The Parliamentary Standing Committee on Public Works has been consulted in relation to the Defence referral threshold and did not provide its support.

The Attorney-General and the then Minister for Immigration and Border Protection have been consulted on the proposed DFDA Regulation amendment and the proposed Migration Regulations amendment, and each has agreed to the relevant proposed amendment.

The Office of Best Practice Regulation (OBPR) has been consulted on the Regulations. The OBPR has advised that no Regulatory Impact Statement was required (OBPR reference 24982 refers). The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

A Statement of Compatibility with Human Rights is set out in Attachment B.

ATTACHMENT A

Details of the Public Works Committee Legislation Amendment (2019 Measures No. 1) Regulations 2019

Section 1 – Name

This section provides that the name of the instrument is the *Public Works Committee Legislation Amendment (2019 Measures No. 1) Regulations 2019* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence the day after the Regulations are registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Defence Force Discipline Appeals Act 1955*, the *Migration Act 1958* and the *Public Works Committee Act 1969*.

Section 4 – Schedules

This section provides that each instrument referred to in a schedule to the Regulations is amended or repealed as provided for in that schedule.

Schedule 1 – Amendments

Defence Force Discipline Appeals Regulation 2016

Item 1 – Section 16

This item omits the reference to ‘Schedule 2 to the *Public Works Committee Regulations 1969*’ and inserts a reference to ‘Part 4 of the *Public Works Committee Regulation 2016*’.

Migration Regulations 1994

Item 2 – Subregulation 5.07(1)

This item omits the reference to ‘Schedule 2 to the Public Works Committee Regulations as in force from time to time’ and inserts a reference to ‘Part 4 of the *Public Works Committee Regulation 2016*’.

Public Works Committee Regulation 2016

Item 3 – Section 7 (table item 2)

This item omits the reference to ‘ASC Engineering Pty Ltd’ and inserts a reference to ‘Australian Naval Infrastructure Pty Ltd’.

Item 4 – Section 7 (table item 3)

This item omits the reference to ‘ASC Shipbuilding Pty Limited’.

Item 5 – at the end of Part 2

This item adds section 7A that specifies that the threshold amount for defence public works is the amount of \$75,000,000.

Item 6 – after Part 4

This item inserts a new ‘Part 5 – Transitional provisions’ that makes clear that the amendment made by Item 5 of Schedule 1 of these Regulations does not apply in relation to a work referred to the Committee under section 18 of the *Public Works Committee Regulation 2016* before that item commenced.

Statement of Compatibility with Human Rights

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

Public Works Committee Legislation Amendment (2019 Measures No. 1) Regulations 2019

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

Overview of the Legislative Instrument

The *Public Works Committee Legislation Amendment (2019 Measures No.1) Regulations 2019* specifies the referral threshold amount for a public work for defence purposes to be the amount of \$75,000,000 and updates references to Schedule 2 of the former *Public Works Committee Regulations 1969*, presently contained in the *Defence Force Regulation 2016* and in the *Migration Regulations 1994*, with a reference to Part 4 of the *Public Works Committee Regulation 2016*.

The amendments to the *Defence Force Regulation 2016* and the *Migration Regulations 1994*, which lie outside the portfolio responsibility of the Minister for Finance and the Public Service, have been agreed by the relevant portfolio Ministers.

Human Rights implication

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon Mathias Cormann
Minister for Finance and the Public Service**