

## **Part 2**

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**Legislative instruments registered  
with FRLI 16 February – 19 April 2013**

## Consideration of legislative instruments

2.1 The committee has considered 492 legislative instruments registered with the Federal Register of Legislative Instruments (FRLI) between 16 February 2013 and 19 April 2013. The Committee also considered an instrument previously examined in its *First Report of 2013* and subsequently deferred in its *Third Report of 2013*.<sup>1</sup> The full list of instruments scrutinised by the committee can be found in Appendix 1.

2.2 403 instruments do not appear to raise any human rights concerns and are accompanied by statements of compatibility that are adequate.

2.3 74 instruments do not appear to raise any human rights concerns but are accompanied by statements of compatibility that do not fully meet the committee's expectations. As the instruments in question do not appear to raise human rights compatibility concerns, the committee has written to the relevant Ministers in a purely advisory capacity providing guidance on the preparation of statements of compatibility. The committee hopes that this approach will assist in the preparation of future statements of compatibility that conform more closely to the committee's expectations.

2.4 The committee is seeking further information from the relevant Minister on the following instruments before forming a view about their compatibility with human rights:

- Australian Charities and Not-for-profits Commission Amendment Regulation 2013 (No. 1)
- Australian Public Service Commissioner's Directions 2013
- Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013
- Crimes Amendment Regulation 2013 (No. 1)
- Customs (Drug and Alcohol Testing) Regulation 2013
- Defence (Personnel) Amendment Regulation 2013 (No. 1)
- Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012
- Extradition (Cybercrime) Regulation 2013
- Extradition (Piracy against Ships in Asia) Regulation 2013
- Fees Rules 2013
- Medical Leave Rules 2013

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1 Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012 pp149-160

- Migration Legislation Amendment Regulation 2013 (No. 1)
- Mutual Assistance in Criminal Matters (Cybercrime) Regulation 2013
- Telecommunications (Interception and Access) Amendment Regulation 2013 (No. 1)

2.5 The committee has deferred its consideration of the following instruments to allow closer consideration of their impact on human rights:

- Social Security (Administration) (Declared income management areas - Ngaanyatjarra Lands and Laverton) Determination 2013
- Stronger Futures in the Northern Territory (Alcohol Management Plans) Rule 2013

## **The committee has sought further information in relation to the following legislative instruments**

### **Australian Charities and Not-for-profits Commission Amendment Regulation 2013 (No. 1)**

*FRLI ID: F2013L00402*

*Portfolio: Assistant Treasurer*

#### **Summary of committee view**

2.6 The committee seeks clarification as to why it is necessary to make a disqualified responsible entities register publicly available and how this is compatible with the right to privacy.

#### **Overview**

2.7 The purpose of this instrument is to specify five governance standards with which registered entities must comply in order to become registered under the *Australian Charities and Not-for-profits Commission Act 2012* (the Act) and to remain entitled to be registered under the Act.

#### ***Governance Standard 4 (suitability of responsible entities)***

2.8 A 'responsible entity' is defined in the Act to be a person responsible for the control and/or management of a registered entity, including, for example, a trustee of a charitable trust or a director of a not-for-profit organisation.

2.9 Under the Act, the Commissioner of the Australian Charities and Not-for-profits Commission (ACNC) may suspend or remove a responsible entity if the Commissioner reasonably believes that the registered entity has contravened, or it is more likely than not that they will contravene, a provision of the Act, a governance standard or an external conduct standard.<sup>2</sup>

2.10 Governance Standard 4, prescribed in this regulation, provides the mechanism by which the Commissioner may disqualify a person from being eligible to be a responsible entity, or a particular type of responsible entity, where:

- the entity has been previously suspended or removed as a responsible entity; and
- the entity has been given notice of the disqualification; and
- the Commissioner reasonably believes that the disqualification is justified having regard to the objects of the Act.

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2 See Part 4-2, Division 100 of the Act.

2.11 Section 45.150 of this regulation provides that the Commissioner must maintain a register, to be known as the Disqualified Responsible Entities Register, which includes the name of all disqualified entities (i.e. the name of the disqualified director or trustee), the date they were disqualified, and whether the disqualification remains subject to review. The disqualified responsible entities register will be publicly available on a website maintained by the Commissioner.

### **Compatibility with human rights**

2.12 The statement of compatibility states that the instrument does not engage any human rights. It says that while the instrument provides for the publication of certain information by the ACNC, it does not engage the right to privacy under article 17 of the International Covenant on Civil and Political Rights (ICCPR) because it does not involve the collecting, using, storing and sharing of personal information.

2.13 However, it is unclear how such information could be included on a website maintained by the ACNC Commissioner unless such information is collected, used and stored, and clearly the information is shared given it is put up on a public website. The information that is publicly shared relates to a person's fitness to be a director or trustee and is based on a decision by the Commissioner of a suspected breach, or suspected liability to breach. Making this information publicly available appears to engage and limit the right to privacy, which includes privacy in the workplace, under article 17.

**2.14 The committee intends to write to the Assistant Treasurer to seek clarification as to why it is necessary to make the disqualified responsible entities register publicly available on a website and how this is compatible with the right to privacy.**