

EXPLANATORY STATEMENT

Select legislative Instrument No. 266, 2013

Subject *Public Works Committee Amendment Regulation 2013 (No. 2)*

Public Works Committee Act 1969

The *Public Works Committee Act 1969* (PWC Act) established the Public Works Committee to inquire into and report on public works referred to it by the Parliament. A public work is a work that is to be carried out by or for the Commonwealth, and for which moneys are appropriated by the Parliament.

Section 40 of the PWC Act provides, in part, that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that by that Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to that Act.

Subsection 6A(1) of the PWC Act provides that the Act applies to every authority of the Commonwealth. However, subsection 6A(3) provides that where the Governor-General is satisfied that an authority of the Commonwealth is engaging in trading or other activities, or is providing services, in competition with other bodies, the Governor-General may make regulations declaring that the Act does not apply to that authority.

The PWC Act recognises, there are certain circumstances, when a government owned body is competing directly with private entities, that the additional scrutiny of the Public Works Committee (PWC) is an unfair burden on that body.

The purpose of the Regulation is to exempt Defence Housing Australia (DHA) and its wholly owned subsidiaries from the provisions of the PWC Act

DHA is a self-funding Government Business Enterprise trading in a competitive environment. Funding from DHA's commercial operations supports the provision of housing to Defence members and their families, as well as ensuring a consistent return to the Commonwealth through its shareholder ministers.

DHA is in competition with other property developers and providers of property investment and leaseback services. DHA sells a portion of its dwellings to investors and leases back those properties, known as Sale and Lease Back (SLB). The revenue generated through SLB funds DHA's operations and enables it to provide quality housing to Defence members and their families. DHA competitively buys land and houses in the general market. Using fully-owned, income-producing DHA assets, DHA competes directly in the investment market through its wholly owned subsidiary, DHA Investment Management Limited.

Commercial activities undertaken by DHA include:

- developing and building housing and apartments for sale to investors and to the public on DHA-owned land;
- developing and selling land to the public;

- entering into partnerships and joint ventures where sound business practices dictate;
- forming companies and selling investment products;
- leasing housing from investors for use by Defence members and their families (tenants);
- renting DHA-owned houses and investor-owned houses to Defence members; and
- renting DHA-owned, investor-owned and Defence-owned houses to the general public.

This proposal will see DHA's construction projects on non-Commonwealth land being exempt from PWC scrutiny. The development and building of housing for the Department of Defence on Commonwealth land by DHA, with an estimated cost of more than \$15 million, will continue to be referred to the PWC for scrutiny and reported to both Houses of Parliament. DHA also remains subject to Parliamentary oversight, including by the Senate Foreign Affairs, Defence and Trade Legislative Committee, and would continue to table its annual report in Parliament.

This partial exemption from PWC oversight removes a substantial compliance overhead and, by also reducing cost and time overheads, allows DHA to be more competitive in the property development, property sales and investment markets. In addition, exempting DHA from the PWC approval process ensures that DHA is subject to the same Commonwealth, State and local government laws that apply to competing parties.

The Office of Best Practice Regulation advised that a Regulatory Impact Statement was not required for the Regulation which is minor or machinery of government in nature and does not substantially alter existing arrangements.

The Department of Defence and Defence Housing Australia were consulted in the preparation of this Regulation.

The Regulation amends the *Public Works Committee Regulations 1969*, to include DHA as an exempt Commonwealth authority under subsection 6A(3) of the PWC Act.

The PWC Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

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

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

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

Public Works Committee Amendment Regulation 2013 (No. 2)

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 purpose of the Legislative Instrument is to amend the *Public Works Committee Regulations 1969*, to include Defence Housing Australia (DHA) as an exempt Commonwealth authority under subsection 6A(3) of the *Public Works Committee Act 1969*.

Human Rights Implications

This Legislative Instrument does not engage any of the applicable rights or freedoms. The amendments do not limit any rights, nor establish any new offences or penalties.

Conclusion

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

Senator the Hon Michael Ronaldson, Special Minister of State