



SENATOR THE HON RICHARD COLBECK

Minister for Aged Care and Senior Australians

Minister for Youth and Sport

Ref No: MS20-001337

24 NOV 2020

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear Chair

Thank you for your correspondence of 12 November 2020 concerning the Senate Standing Committee for the Scrutiny of Delegated Legislation (Committee) concerns with the *Continence Aids Payment Scheme 2020* (CAPS Instrument).

The Committee has sought my further advice as to whether the CAPS Instrument can be amended to provide for independent merits review by the Administrative Appeals Tribunal (AAT) of decisions made under sections 21 and 22 of the CAPS Instrument.

As discussed in my letter of 28 October 2020, I am advised that sections 14 and 15 of the *National Health Act 1953* (NH Act) may operate to limit (by implication) the types of decisions that may be subject to AAT review under the CAPS Instrument. However, I note the Committee's view that it does not consider that the fact that the NH Act specifically provides for merits review of some decisions excludes the provision of merits review for other decisions.

I have considered the matters raised in your correspondence and will seek to amend the CAPS Instrument to provide for merits review by the AAT of decisions made under sections 21 and 22 of the Instrument, in addition to internal review. However, there would remain a risk that an instrument providing for AAT review of decisions not covered by section 14 or 15 of the NH Act may be invalid. To address this risk, I have asked the Department of Health to progress amendments to the NH Act to put this issue beyond doubt.

I will advise the Committee when the amendments have been made to the CAPS Instrument.

Yours sincerely

Richard Colbeck

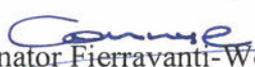


Senator the Hon Anne Ruston

**Minister for Families and Social Services
Senator for South Australia
Manager of Government Business in the Senate**

Ref: MB20-000954

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear  Senator Fierravanti-Wells

Thank you for your letter of 12 November 2020 on behalf of the the Senate Standing Committee for the Scrutiny of Delegated Legislation regarding the Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020 (the Determination) and the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019.

As you know, following the 2020-21 Budget which confirmed the Government's commitment to the Cashless Debit Card (CDC) and announced funding to support its operation as an ongoing measure, a new Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (the Bill) was introduced in the House of Representatives on 8 October 2020. The Senate referred the Bill to the Senate Community Affairs Legislation Committee for inquiry and report. On 17 November 2020, the Committee released its report and recommended that the Bill be passed.

The Morrison Government remains committed to the consideration of this legislation as soon as practicable. On 12 November, debate in relation to this Bill commenced in the House of Representatives and I expect the debate will conclude early in the sitting week of 30 November to enable the Senate to consider the Bill in the final sitting period of the year. In the event the Bill is not considered and passed by both chambers before the end of this year, the Cashless Debit Card and Income Management in Cape York will cease. Income Management participants in the Northern Territory will remain on the BasicsCard.

Given the Bill is currently being considered by the Parliament, I request that the disallowance motion for the determination is withdrawn to ensure the measure is not disallowed on 7 December 2020, one week before the new legislation must otherwise be considered. The debate on the primary Bill will provide the opportunity for parliamentary scrutiny and consideration the disallowance motion has sought.

If the Determination is disallowed and this motion is agreed to, there would be immediate and serious impacts on around 13,000 CDC program participants. Long-standing financial arrangements put in place by participants would be invalidated, leading to declined payments for scheduled payments, including rental payments. If the Bill is subsequently passed, the cessation and subsequent reapplication of restrictions on participants within a short period of time is likely to create difficulties and confusion for participants.

I trust this information demonstrates the Government's commitment to consider the Bill as early as is practical.

Yours sincerely

Anne Ruston

26/11 / 2020



THE HON MICHAEL SUKKAR MP
Minister for Housing and Assistant Treasurer

Ref: MS20-002576

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

Thank you for your letter on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation regarding the *Taxation Administration (Remedial Power – Certificate for GST free supplies of Cars for Disabled People) Determination 2020* (the Determination).

In that letter, the Committee sought my advice as to:

- whether there are any plans to include the modification implemented by the Determination in future amendments to the GST Act; and
- whether the Determination could be amended to specify that the Determination ceases to operate three years after it commences.

The Australian Taxation Office (ATO), who drafted the Determination, was consulted in the preparation of this response.

As you may be aware, the Determination modifies the operation of paragraph 38-510(1)(a) of the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to ensure continued access to GST-free supplies of cars and car parts for people who:

- have lost the use of one or more limbs to such an extent that they are unable to use public transport; and
- intend to use the car for personal transportation to or from gainful employment.

The Determination enables this continued access by allowing a registered medical practitioner to issue a certificate, now titled 'certificate of medical eligibility', certifying that the individual has lost the use of one or more limbs to such an extent that they are unable to use public transport.

Amending the GST Act to include the modification implemented by the Instrument

In regards to the Committee's first listed concern, I have been advised that an amendment, in line with the modification by the Instrument, to paragraph 38-510(1)(a) of GST Act is currently on Treasury's Miscellaneous and Technical Amendments (MTA) Register.

The amendment was intended to be included in the final MTA Bill for this year however due to other drafting priorities this did not occur. It is expected that the amendment will therefore form part of a future MTA Bill.

Until this time, the Determination will allow the continuity of access to GST-free supplies of cars and car parts for people who live with disabilities and meet the criteria in the Determination.

Amending the instrument to specify that it ceases three years after commencement

I note the Committee's concerns relating to the Determination ceasing to operate within three years after the commencement. ATO have advised that they have taken these comments into consideration and noting that there are plans to amend the GST Act to include the modification, the ATO have undertaken to amend the Determination to specify that it ceases three years after commencement. The ATO have indicated that this amendment may be made to the Determination by including a self-repealing provision to this effect.

The Commissioner of Taxation proposes to make this amendment by issuing an amending instrument after the Determination commences. This will ensure the modification commences as soon as possible whilst addressing the Committee's concerns. The Commissioner considers that it remains important for the modification to commence as soon as possible for the following reasons:

- legislative change is required as soon as possible to provide certainty to affected individuals. The modification will deliver tangible benefits for disabled persons that need to access GST-free supplies of cars and car parts into the future; and
- the modification changes the entity responsible for certifying that the individual meets the medical requirement of paragraph 38-510(1)(a) of the GST Act whilst maintaining the other requirements of that provision. This change ensures that a medically qualified person continues to certify that an individual meets the medical eligibility requirement. It also streamlines the process for the individual compared with the process under the current law because the certifying entity also issues the certificate of medical eligibility rather than two different entities being involved. The individual also has reduced compliance costs by not having to pay fees to two separate entities.

The ATO will commence work on amending the Determination with a plan to register the amending instrument early next year, following any legislative requirements under the *Legislation Act 2003* and consultation processes.

I trust this information will be of assistance to you.

Yours sincerely

The Hon Michael Sukkar MP