



THE HON JOSH FRYDENBERG MP
TREASURER

Ref: MS21-000114

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

Via email: sdlc.sen@aph.gov.au

Dear Senator

Thank you for your correspondence, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation, concerning the following instruments that are subject to protective disallowance motions:

- *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98* [F2020L00962] (the IDR Instrument), for which the motion expires on Monday 22 February 2021;
- *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787* [F2020L01045] (the Litigation Instrument), for which the motion expires on Tuesday 23 February 2021;
- *ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778* [F2020L01069], *ASIC Corporations (Amendment) Instrument 2020/721* [F2020L01064], *ASIC Corporations (IPO Communications) Instrument 2020/722* [F2020L01066], for which the motions expire on Monday 15 March 2021; and
- *ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734* [F2020L01199], *ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835* [F2020L01261] and *ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834* [F2020L01259], for which the motions expire on Tuesday 11 May 2021.

I recognise that it remains important that instruments made within my portfolio are consistent with the principles outlined in the changes to the Senate's standing orders in November. Furthermore, as I have previously advised, the Government shares the Committee's concerns about ensuring there is appropriate Parliamentary oversight of legislative instruments.

Thank you for making the time to discuss these issues with my office yesterday. To allow us to resolve the Committee's concerns, and based on your discussion with my office, I am seeking the Committee's agreement to the following:

- The Committee will withdraw the motion to disallow the *ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98* before the expiration of the disallowance period on Monday 22 February 2021;
- The Committee will withdraw the motion to disallow the *ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787* prior to the expiration of the disallowance period on Tuesday 23 February 2021, on the basis that ASIC will amend the sunset period for this instrument by 22 February 2021 to provide that the instrument will cease 5 years after commencement;
- For those instruments subject to disallowance motions which expire on 15 March 2021, my office will engage with you and the Committee in good faith to seek a resolution to the Committee's concerns; and
- Following the tabling of the Committee's final report into the exemption of delegated legislation from Parliamentary oversight, my office will again engage with the Committee in good faith to find a longer-term solution to resolve the Committee's concerns in relation to those instruments, subject to disallowance motions which expire on 11 May 2021 and legislative instruments across the portfolio more broadly.

As you know, the Treasury portfolio is responsible for a significant number of delegated powers that modify or exempt persons or entities from the operation of primary laws, many of which are in the *Corporations Act 2001*. Improving the coherence of this framework and the consistency with which it has been managed has been a priority for the Treasury in recent years.

In response to the concerns of the Committee and others, the Treasury has been implementing improvements to ensure that the Committee's concerns are addressed in the development of legislation in a consistent way and are appropriately explained in the associated explanatory materials.

In relation to the broader legislative framework, the Government has commissioned the Australian Law Reform Commission (ALRC) to conduct a review of the corporations and financial services law to consider whether changes could be made to simplify and rationalise the *Corporations Act 2001* and the *Corporations Regulations 2001*.

As part of this review, the ALRC has been specifically asked to consider the coherence of the regulatory design and the hierarchy of laws, including the relationship between the primary law, regulations and delegated powers, including exemption and modification powers. I encourage the Committee to engage the ALRC on its review.

I look forward to continuing to work constructively with you to resolve these issues of mutual concern.

Yours sincerely

THE HON JOSH FRYDENBERG MP

CB / 2 / 2021



Senator the Hon Amanda Stoker
Assistant Minister to the Attorney-General

MC21-002304

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
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Dear Chair *Connie,*

Thank you for your letter of 22 January 2021 to the Attorney-General, regarding the Senate Standing Committee for the Scrutiny of Delegated Legislation's (the Committee) consideration of the Disability (Access to Premises – Buildings) Amendment Standards 2020. The Attorney-General has referred your correspondence to me for response, as the issues raised fall within my portfolio responsibilities. Please find enclosed a response to the queries posed by the Committee which I trust will be of assistance. An updated Explanatory Statement is being prepared to incorporate this information.

The Attorney-General's Department and the Department of Industry, Science, Energy and Resources also welcome an opportunity to brief the Committee if any further information would be of assistance.

Yours sincerely

Senator the Hon Amanda Stoker
Assistant Minister to the Attorney-General

Encl. *Response to Senate Standing Committee for the Scrutiny of Delegated Legislation's request regarding the Disability (Access to Premises – Buildings) Amendment Standards 2020*

Response to the Senate Scrutiny of Delegated Legislation Committee

Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]

Legislative Context

In 2001, the Australian Building Codes Board (ABCB) was asked to develop a proposal for technical requirements which could form the basis of a standard regulating non-discriminatory access to buildings under section 31 of the *Disability Discrimination Act 1992* (DDA). The 2010 explanatory statement to the Premises Standards states that the purpose of the standards was to establish a nationally applicable set of provisions that provide for non-discriminatory access to public buildings for people with disability, bringing together the access requirements under the DDA and building law.

The *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards) sets out the technical requirements in the Access Code at Schedule 1.

The Access Code is replicated in the access provisions of the National Construction Code (NCC) 2019 Volume One, which is developed by the Australian Building Codes Board (ABCB). The NCC sets out the minimum requirements for design and construction of new building work (including in existing buildings), plumbing and drainage. The NCC is given legal effect by the relevant building, plumbing and related legislation of each State and Territory. This combination ensures there is a consistent approach to disability access to premises across Australia.

The first review of the Premises Standards resulted in the amendments contained in the Disability (Access to Premises – Buildings) Amendment Standards 2020 (Amendment Standards). The review commenced in 2015 with over 350 submissions received, including from people with a disability, carers and advocates. The resulting Amendment Standards include technical amendments to re-align the Premises Standards with technical changes in the NCC and, notably, the addition of new provisions for adult accessible change facilities (AACF). AACFs are sanitary facilities with additional features (i.e. hoists, change tables, grab rails) to assist people with more profound or complex disability who are unable to use standard accessible facilities independently. The Amendment Standards were approved by all relevant State and Territory Ministers.

The DDA does not prescribe any specific order in which the regulatory framework for equitable access to public buildings is to occur. This has meant that changes to the NCC have occurred in advance of changes to the Premises Standards. While many of the changes set out in the Amendment Standards are technical, one important benefit of the Amendment Standards is to ensure regulatory certainty for both the building industry and citizens by aligning (after appropriate public consultation and review) the requirements of the Premises Standards with the NCC.

Question One: how the Australian Standards incorporated by this instrument and Volume Three of the National Construction Code (NCC Volume Three) may be obtained free of charge

The purpose of incorporating Australian Standards

Australian Standards have been incorporated in the Premises Standards since inception. This is because the Australian Standards provide expert technical information to the cohort that the Premises Standards regulate, the building and construction industry. The technical committees that produce these standards are industry-led.

The Premises Standards do not generally mandate compliance with referenced Australian Standards. This is because there are two options available to enable compliance and certification by a building certifier under the Access Code. The first is complying with the ‘Deemed-to-Satisfy’ provisions of the Access Code (see section 3.2 of the Premises Standards). The Deemed-to-Satisfy provisions primarily refer to technical details found in the Australian Standards (see D3.0 of the Access Code). If the relevant

Australian Standard is complied with as per the Deemed-to-Satisfy provision, then the performance requirements of the Access Code are taken to be met. Consequently, use of the referenced Australian Standards by the building profession is a cost-effective solution to achieving compliance with the relevant requirements of the Premises Standards. The second option for compliance is by using Performance or Alternative Solution pathways to meet the performance requirements (see subsections 3.2(2) and (3) of the Premises Standards). This requires pursuing engineer-approved custom performance solutions, which may be more expensive. A combination of these options may also be pursued.

However, there are some provisions in the Premises Standards where mandatory compliance with the relevant Australian Standard is necessary, including to ensure consistent approaches are taken to the issue (for example, clause H2.2(6) of the Premises Standards dealing with manoeuvring areas for wheelchair turns requires mandatory compliance with clause 6.2 of AS 1428.2 on enhanced and additional requirements for access to public transport buildings). A list of the referenced Australian Standards within the Premises Standards and their costs is at Appendix A.

Those required to comply with the Premises Standard (e.g. building certifiers, building developers and building managers) typically use and refer to the relevant Australian Standards in the ordinary course of their business and the costs of accessing the referenced Standards are a business expense.

Public Access to Australian Standards

Non-commercial access to Australian Standards is currently facilitated by some public and some university libraries for personal, domestic and household use. To improve and facilitate access for non-commercial use to the referenced Australian Standards in the Premises Standards, the Department of Industry, Science, Energy and Resources (DISER) proposes to:

- Promote awareness of Australian Standards' availability via public, and some university, libraries on the Premises Standards website landing page within the next 10 business days.
- Encourage consumers who have complex needs or issues to contact DISER to seek advice and assistance to access referenced Australian Standards on a case by case basis. The Premises Standards website landing page would be updated with this information within the next 10 business days.

Whether it remains appropriate to continue to incorporate Australian Standards across the standards made under the DDA is the subject of ongoing consideration, including as part of the legislated 5 yearly reviews of the standards. The second statutory review of the Premises Standards was launched in 2020, with the review expected to be completed in mid-2021. Implementation of the review, including any amendments to the Premises Standards, will occur in the following years.

Feedback received during current consultations in the second review of the Premises Standards indicates that even when consumers do gain access to Australian Standards, they can be challenging to read and interpret because they are designed for a professional audience. Based on this feedback, DISER is examining whether existing guidance material and the complaints resolution processes for breach of the Premises Standards (for example, via state and territory processes) are helpful, nationally consistent and easy to understand and follow. There is an opportunity through the review to assist individuals, businesses and state and territory authorities to avoid non-compliance in the first instance and to better address complaints related to Premises Standards. The review is also seeking to identify, through detailed consultations with stakeholders, further options to improve the quality of existing documentation, accessibility and awareness amongst stakeholders.

There is a substantial amount of guidance material available to assist builders and people living with disability to understand the requirements under the NCC and Premises Standards. Examples of guidance material include:

- The AHRC Guidelines prepared after the Premises Standards came into effect.
- The ABCB Guide to NCC Volume One.
- State and territory building authorities have guidance material available for building professionals that provides information on the building sector and the Premises Standards. Also, many state and territory community outreach departments have information available for people living with disability; for example, the Western Australian Department of Communities.
- The majority of states and territories have Access Panels, staffed by volunteers with expertise in building and disability issues, to assist building professionals to overcome technical problems when trying to comply with the Premises Standards requirements.
- Many local councils also provide guidance on compliance with the Premises Standards.
- The Australian Network on Disability provides a rich resource for both building professionals and consumers on the Premises Standards and other disability standards and issues.

This approach seeks to maintain the immediate benefits of the Amendment Standards, notably including regulatory certainty and the new provisions dealing with AACFs, while also ensuring appropriate access to the Australian Standards while work on long term solutions is being completed.

Further, the Standards Australia Distribution and Licensing Policy Framework (November 2019), has outlined a commitment to make Australian Standards for personal, domestic or household use available at no cost to end users. At this stage, it is anticipated that this type of access will be provided online directly by Standards Australia. Standards Australia has stated that it will fund and make available this access to Australian Standards by no later than December 2023.

Question Two: whether the NCC Volume Three is incorporated as in force at a particular point in time, or as in force from time to time, and, if so, whether this is authorised by the instrument's enabling Act

The reference to 'Part B2 of NCC Volume Three' in subclause F3.5(7) of Schedule 1 of the Amendment Standards is a reference to the relevant part of the National Construction Code 2019 in force at the time the Amendment Standards commenced. By virtue of section 2 of the Amendment Standards, this would be the day after they were registered on the Federal Register of Legislation (30 September 2020).

The DDA does not authorise the incorporation of material 'as in force or existing from time to time', nor do the Amendment Standards reflect such an intention. For example, the definition of 'NCC' in item 5 of Schedule 1 includes a note stating that '[i]n 2020, the National Construction Code could be accessed from www.ncc.abcb.gov.au', and a similar note is included for the reference to 'Part B2 of NCC Volume Three' in subclause F3.5(7) of Schedule 1. This is reinforced by the Explanatory Statement for the Amendment Standards, which says at page 4:

The Premises Standards only requires compliance with the specific editions of Australian Standards referenced in the Access Code. Later and earlier versions of those Australian Standards are not recognised. However, this would not prevent a building owner from complying with newer Australian Standards as an alternative solution, if it would satisfy the performance requirements of the Access Code.

Referenced Australian Standards adopted by Premises Standards

Attachment A

No	Standards	Version	Title	Cost to Purchase via SAI Global (AUD\$) + links
1	AS 1428.1	2009	Design for access and mobility Part 1: <i>General requirements for access - New building work</i>	\$276.57
2	AS 1428.1	2001	Design for access and mobility Part 1: <i>General requirements for access - New building work</i>	\$198.67
3	AS 1428.1 (Supplement 1)	1993	Design for access and mobility Part 1: <i>General requirements for Access - Buildings - Commentary (Supplement to AS 1428.1 - 1993)</i>	\$81.60
4	AS 1428.2	1992	Design for access and mobility Part 2: <i>Enhanced and additional requirements - Buildings and facilities</i>	\$178.22
5	AS 1428.4	1992	Design for access and mobility Part 4: <i>Tactile ground surface indicators for the orientation of people with vision impairment</i>	\$81.60
6	AS/NZS 1428.4.1	2009	Design for access and mobility Part 4.1: <i>Means to assist the orientation of people with vision impairment - Tactile ground surface indicators</i>	\$243.02
7	AS 1735.1	2003	Lifts, escalators and moving walks Part 1: <i>General requirements</i>	\$225.35
8	AS 1735.2	2001	Lifts, escalators and moving walks Part 2: <i>Passenger and goods lifts - Electric</i>	\$299.40
9	AS 1735.3	2002	Lifts, escalators and moving walks Part 3: <i>Passenger and goods lifts - Electrohydraulic</i>	\$225.35
10	AS 1735.7	1998	Lifts, escalators and moving walks Part 7: <i>Stairway lifts</i>	\$58.61
11	AS 1735.8	1986	SAA Lift Code Part 8: <i>Inclined lifts</i>	\$81.60
12	AS 1735.12	1999	Lifts, escalators and moving walks Part 12: <i>Facilities for persons with disabilities</i>	\$116.42
13	AS 1735.14	1998	Lifts, escalators and moving walks Part 14: <i>Low-rise platforms for passengers</i>	\$81.60
14	AS 1735.15	2002	Lifts, escalators, and moving walks Part 15: <i>Low-rise passenger lifts - Non-automatically controlled</i>	\$165.26
15	AS 1735.16	1993	Lifts, escalators and moving walks Part 16: <i>Lifts for persons with limited mobility - Restricted use - Automatically controlled</i>	\$110.91
16	AS/NZS 2890.6	2009	Parking facilities Part 6: <i>Off-street parking for people with disabilities</i>	\$110.32



The Hon David Littleproud MP
Minister for Agriculture, Drought and Emergency Management
Deputy Leader of the Nationals
Federal Member for Maranoa

Ref: MS21-000215

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

17 FEB 2021

Via email: sldc.sen@aph.gov.au

Dear Chair

Thank you for your correspondence of 4 February 2021 concerning the Senate Standing Committee for the Scrutiny of Delegated Legislation's (the Committee) concerns in relation to the explanatory statement for the *Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020* (the Instrument).

I note the Committee's concerns regarding the need for additional details on the operation of measures prescribed by the Instrument in its explanatory statement, to ensure these details are available for scrutiny by the Parliament.

I asked the Department of Agriculture, Water and the Environment to prepare a replacement explanatory statement to address the Committee's concerns. Specifically, the replacement explanatory statement for the Instrument includes additional details about the operation of the Supporting Agricultural Shows and Field Days program, including the eligibility criteria for grants under the program. I expect the replacement explanatory statement for the instrument to be lodged for registration on the Federal Register of Legislation in the coming weeks.

A copy of the replacement explanatory statement is enclosed with this letter.

Thank you for raising this matter.

Yours sincerely

DAVID LITTLEPROUD MP

Enc.

REPLACEMENT EXPLANATORY STATEMENT

Issued by the authority of the Minister for Agriculture, Drought and Emergency Management

Industry Research and Development Act 1986

Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020

Purpose and Operation

Section 33 of the *Industry Research and Development Act 1986* (the IR&D Act) provides a mechanism for the Minister to prescribe programs, by disallowable legislative instrument, in relation to industry, innovation, science or research, including in relation to the expenditure of Commonwealth money under such programs.

The Minister for Industry, Science and Technology has delegated the Minister's power under subsection 33(1) to the Minister for Agriculture, Drought and Emergency Management, under subsection 33(6) of the IR&D Act to prescribe the Supporting Agricultural Shows and Field Days Program.

The statutory framework provided by section 33 of the IR&D Act enables a level of flexibility to provide authority for Commonwealth spending activities in relation to industry, innovation, science and research programs. This allows the Government to respond quickly and appropriately to the need to implement innovative ideas and pilot programs on an ongoing basis and as opportunities arise. Prescribing programs in legislative instruments provides transparency and parliamentary oversight of Government programs and spending activities, whilst reducing administrative burden on the Commonwealth.

Once a program is prescribed by the Minister under section 33, subsection 34(1) allows the Commonwealth to make, vary or administer arrangements in relation to activities under the prescribed program. Arrangements may include contracts, funding agreements or other arrangements, and may provide for money to be payable by the Commonwealth to one or more third parties. The power conferred on the Commonwealth by subsection 34(1) may be exercised on behalf of the Commonwealth by a Minister or an accountable authority of a non-corporate entity, or by their delegate (under section 36).

The purpose of the Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 (the Legislative Instrument) is to prescribe the Supporting Agricultural Shows and Field Days Program (the program). The funding for the program has been secured from the COVID-19 Relief and Recovery Fund. The program provides \$39.025 million in the 2020-21 financial year as part of the Australian Government's response to the significant challenges posed by COVID-19. The program will provide agricultural show societies and organisers of field days with the assistance they need to meet the challenges posed by COVID-19 because they will play a critical role in supporting regional communities to recover from COVID-19. The program will provide

reimbursements to agricultural show societies and organisers of field days that cancel their 2020 show because of COVID-19, a \$100,000 grant to the national peak body Agricultural Shows Australia, and a \$100,000 grant to the national peak body the Association of Agricultural Field Days of Australasia.

Funding authorised by this Legislative Instrument comes from Program 3.10: Agricultural Resources, Outcome 3. Details will be set out in the *Portfolio Budget Statements 2020-21 (Agriculture, Water and the Environment Portfolio)*, *Budget 2020-21 – Budget Paper No. 2*, and the *Economic and Fiscal Update – July 2020*.

The program will be delivered by the Department of Social Services' Community Grants Hub, which is a specialised design, management and delivery body with extensive expertise and capability in delivering similar programs.

The program is an ad hoc grants program. The program is administered by the Department of Agriculture, Water and the Environment (the department) in accordance with the *Commonwealth Grant Rules and Guidelines 2017* (<http://www.finance.gov.au/sites/default/files/commonwealth-grants-rules-and-guidelines.pdf>).

Spending decisions will be made by the program delegate who is the department's First Assistant Secretary, Agricultural Policy Division, responsible for administering the program, taking into account the recommendations of the department.

The program has five components:

1. Assistance for agricultural field days - \$2.59 million component to reimburse eligible costs of agricultural field days up to \$70,000;
2. Assistance for non-capital city shows - \$10.235 million component to reimburse eligible costs of non-capital city (local) shows up to \$70,000;
3. Assistance for capital city shows - \$26 million component to reimburse eligible costs to a prescribed cap agreed by Government;
4. Assistance to Agricultural Shows Australia (ASA) - \$100,000 one-off grant to peak body ASA to support its National Rural Ambassador competition in 2020 and 2021;
5. Assistance to the Association of Agricultural Field Days of Australasia (AAFDA) - \$100,000 one-off grant to peak body AAFDA to support its annual conference scheduled for 2020 and 2021 and training and assistance for members on recovery management planning.

The total value of grants awarded under the program cannot exceed the amount of available funds. Should the value of eligible expenditure claimed exceed the amount of available funds, then each applicant's claim will be reduced to ensure that claims do not exceed the amount of available funds.

Eligibility criteria for applying for a grant are set out in the program guidelines. These Guidelines may be viewed by the public on the Community Grants Hub website at www.communitygrants.gov.au/grants/supporting-agricultural-shows-field-days-program.

Eligible applicants for components 1,2, and 3 of the program are:

- Indigenous Corporations
- Companies
- Cooperatives
- Incorporated Associations and
- Trustees on behalf of a Trust.

The following are not eligible to apply for a grant:

- Corporate Commonwealth Entities
- Non-Corporate Commonwealth Entities
- Non-Corporate Commonwealth Statutory Authorities
- Commonwealth Companies
- Corporate State or Territory Entities
- Non-corporate State and Territory Entities
- Non-corporate State or Territory Statutory Authorities
- Local Governments
- International Entities
- Sole Traders
- Statutory Entities
- Partnerships
- Unincorporated Associations and
- Persons.

Applications will only be accepted from entities that:

- Have cancelled their scheduled agricultural show or field day in 2020 because of COVID-19 and
- Are members of Agricultural Shows Australia or
- Are members of a state and territory agricultural show society that is a member of Agricultural Shows Australia or
- Run Australian agricultural field day events that market principally to the rural sector with at least 70% of the total exhibit area being agricultural exhibitors (those that have products and services focused at the agricultural and horticultural sectors). The focus of these events must be on commercial agricultural enterprises, investment and innovation.

For components 1, 2, and 3 of the program, the eligible grant activity will be limited to eligible expenditure paid by the applicant for the organisation of an agricultural show or field day that was scheduled to be held in 2020 and cancelled because of COVID-19.

Eligible expenditure items include fixed or unrecoverable costs such as:

- Rent
- Rates
- Utilities, including electricity, gas and water
- Insurance
- Telecommunications
- IT system maintenance and licensing costs
- Website costs
- Bank fees
- Fire alarms and equipment
- Cleaning supplies and services
- National and state show body affiliation costs
- Audit fees
- Marketing
- Ticketing
- Hire of equipment
- Contractors
- Set-up costs, and
- Security.

The decision-maker will have the authority to waive the eligibility criteria. This is intended to enable the delegate to apply the principles of proportionality, in line with *Commonwealth Grant Rules and Guidelines 2017*. Proportionality in grants administration involves striking an appropriate balance between complexity, risks, outcomes, and transparency. Officials are obligated to ensure that grants administration appropriately reflects the capabilities of potential and successful grantees and accommodates the Australian Government's need for robust and accountable processes, consistent with the risks involved.

This program is a demand-driven, eligibility-based program. The decision-maker's assessment of eligibility and the grant amount is final. Merits review is not appropriate because the program involves the allocation of finite resources between competing applicants, and any decision to overturn an allocation that has already been made to another party would be affected by overturning the original decision.

Applications will be verified against the eligibility criteria set out in the program guidelines in two stages. At first instance, applications will be assessed by the Community Grants Hub against the eligibility criteria. Applications must address the eligibility criteria and provide relevant supporting information. The amount of detail and supporting evidence should be

relative to the funding amount requested. Larger and more complex projects should include more detailed evidence.

After considering the applications, the Community Grants Hub will make recommendations to the program delegate regarding those applications suitable for funding. The program delegate will make the final decision about which grants to approve, taking into consideration the Community Grants Hub's recommendations, and the availability of grant funds. The program delegate will not approve funding if there are insufficient program funds available for the program.

Both successful and unsuccessful applicants will be informed in writing. Unsuccessful applicants will be advised of what aspect of their application has rendered them ineligible.

The two grants to the national peak bodies; ASA and AAFDA, will be administered through an ad hoc grant to each entity. These grant amounts and grantees have been selected for their roles and expertise in coordinating show societies and field days organisers. There will not be any planned selection processes for these grants, they are not available to a range of grantees or on an ongoing basis and are a result of a specific ministerial decision. The ad hoc Grant Opportunity Guidelines (GOG) for these grants will waive the need for a selection process. Due to the absence of a selection process, there will be no assessment of providers. Therefore, any fraud checks and the program risk assessment will be conducted by the department.

Spending decisions for the two ad hoc grants will be made by the program delegate who is the department's First Assistant Secretary, Agricultural Policy Division.

Persons who are otherwise affected by decisions or who have complaints about any aspect of the program will have the standard recourse to the department. Furthermore, if a person is not satisfied with the way the department handles the complaint, they may lodge a complaint with the Commonwealth Ombudsman.

Executive power and express incidental power (s 61 and s 51(xxxix))

The express incidental power empowers the Parliament to make laws with respect to matters incidental to the execution of any power vested in the Parliament, the executive or the courts by the Constitution. Section 61 of the Constitution supports activities that are peculiarly adapted to the government of a nation and cannot be carried out for the benefit of the nation otherwise than by the Commonwealth. In that regard, funding provided under the Legislative Instrument will be directed towards alleviating and mitigating the short-term economic consequences of COVID-19, an unforeseen crisis of immediate national significance, on agricultural show societies and organisers of field days.

Authority

Section 33 of the *Industry Research and Development Act 1986* provides authority for the Legislative Instrument.

Consultation

In accordance with section 17 of the *Legislation Act 2003*, the Office of Constitutional Law (in conjunction with Australian Government Solicitor), the Attorney-General's Department and the Department of Industry, Science, Energy and Resources have been consulted on this Legislative Instrument.

Regulatory Impact

It is estimated that the regulatory burden is likely to be minor (OBPR reference number ID 42529).

Details of the Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020*.

Section 2 – Commencement

This section provides that the Legislative Instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section specifies the provision of the *Industry, Research and Development Act 1986* (the Act) under which the Legislative Instrument is made.

Section 4 – Definitions

This item provides for definitions of terms used in the Legislative Instrument.

Section 5 – Prescribed Program

This section prescribes the Supporting Agricultural Shows and Field Days Program (the program) for the purposes of s 33 of the Act.

The program provides \$39.025 million as part of the Australian Government's response to the significant challenges posed by COVID-19. The program will provide agricultural show societies and organisers of field days with the assistance they need to meet the challenges posed by COVID-19 because they will play a critical role in supporting regional communities to recover from COVID-19. The program will provide reimbursements to agricultural show societies and organisers of field days that cancel their 2020 show because of COVID-19, and a \$100,000 grant to the national peak body Agricultural Shows Australia. The program will also provide the peak body for field days, the Association of Agricultural Field Days of Australasia, a one-off \$100,000 grant to support its annual conference scheduled for 2020 and 2021 and training and assistance for members on recovery management planning.

Section 6 – Specified Legislative Power

This section specifies that the legislative power in respect of which the Legislative Instrument is made is the power of the Parliament to make laws with respect to enterprises and activities that are peculiarly adapted to the government of a nation and cannot otherwise be carried on for the benefit of the nation (s 61 and s 51(xxxix)) of the Constitution).

Statement of Compatibility with Human Rights

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

Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020

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 Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 (the Legislative Instrument) is to prescribe the Supporting Agricultural Shows and Field Days Program (the program).

The program provides \$39.025 million as part of the Australian Government's response to the significant challenges posed by COVID-19. The funding for the program has been secured from the COVID-19 Relief and Recovery Fund.

The program will provide agricultural show societies with the assistance they need to meet the challenges posed by COVID-19 because they will play a critical role in supporting regional communities to recover from COVID-19.

The program will provide reimbursements to agricultural show societies that cancel their 2020 show because of COVID-19, and a \$100,000 grant to the national peak body Agricultural Shows Australia to fund its National Rural Ambassador and Young Judges & Paraders competitions for 2020 and 2021. The program will also provide the peak body for field days, the Association of Agricultural Field Days of Australasia (AAFDA), a one-off \$100,000 grant to support its annual conference scheduled for 2020 and 2021 and training and assistance for members on recovery management planning.

Human Rights Implications

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.

The Hon. David Littleproud MP

Minister for Agriculture, Drought and Emergency Management



PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Communications,
Urban Infrastructure,
Cities & the Arts

MS21-000058

Senator The Hon Concetta Fierravanti-Wells
Chair, Senate Committee for the Scrutiny of Delegated Legislation
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator

Thank you for your letter dated 22 January 2021, regarding the Senate Standing Committee for the Scrutiny of Delegated Legislation's (the Committee) concerns in relation to the *Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020* (the Determination). I am sorry it has taken me so long to respond.

I understand the Committee's concerns relate primarily to the legislative authority for exempting third-party contractors from the requirements of Parts 3.1, 4.1 and 4.2 of the *Radiocommunications Act 1992* (the Act).

With respect to the matter of authorising exemptions for third-party contractors from parts of the Act, subsection 27(2) of the Act allows the Australian Communications and Media Authority (ACMA) to determine exemptions in relation to classes of persons to whom the section applies. Subsection 27(1) of the Act defines to whom the section applies, including 'a person performing a function or duty in relation to... (b) the Australian Federal Police or a police force of a State or Territory.'

The authority for ACMA to determine exemptions is intended to apply to all persons performing duties or functions *in relation to* defence, security, international relations and various law enforcement and emergency bodies and organisations, either named or generically described. The exemption power is not confined to members of those bodies and organisations but is deliberately intended to extend to those who may play an important auxiliary role. For example, the explanatory memorandum to the *Communications Legislation Amendment Bill (No. 1) 2002* advised that this provision is designed to encompass the roles that non-police personnel had in certain operations, such as the role of non-police staff in performing technical surveillance operations.

Within the context of this Determination, the role of contractors in testing and maintaining devices that are to be operated to disrupt or disable an unmanned aircraft is a function or duty in relation to the Australian Federal Police or the police force of a State or Territory, for the purposes of section 27 of the Act. The definition of 'relevant contractor' is a person who 'has entered into a contract with a police force to perform a function or duty in relation to that police force that consists of one or both of the following: (a) testing of a device that is to be operated to disrupt or disable an unmanned aircraft... or (b) maintenance of a device that is to be operated to disrupt or disable unmanned aircraft'. Without this extension to contractors having expert technical skills, the relevant police forces would not have access to properly-tested and properly-maintained equipment of the kind which the Determination is intended to facilitate.

ACMA will provide a revised explanatory statement for the Determination to further clarify the authority on which it has been made insofar as it relates to contractors, incorporating my advice as set out above.

I note that the Committee also queried whether the matters dealt with in the Determination would be more appropriately addressed by parliamentary enactment. ACMA has the authority to provide exemptions of this kind through determinations, rather than through primary legislation, as the scope of section 27 is very specifically targeted to critical defence, law enforcement and emergency management purposes. Instead of providing a broad exemption for all such purposes, the Act requires consideration by ACMA and further parliamentary scrutiny before an exemption applies. Providing ACMA with the exemption power in section 27, which can only be exercised by way of legislative instrument, enables swifter and more agile regulation of exemptions as the need arises in different situations, while retaining Parliament's oversight of the delegated legislation and its capacity to address any potential overreach.

In the case of the Determination, the growth in the use of unmanned aircraft (drones) has increased significantly in recent years. The Determination provides police forces with exemptions to parts of the Act to enable the use of devices that can disrupt and disable drones. This is a very specific purpose for which the exemption has been granted, that could not have been reasonably anticipated at the time the Act was drafted.

Thank you for bringing the Committee's concerns to my attention. I hope the information in this letter is of some help.

Yours sincerely

Paul Fletcher

15 / 2 / 2021