



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

12 November 2020

The Hon Christian Porter MP
Minister for Industrial Relations
Parliament House
CANBERRA ACT 2600

Via email: Christian.Porter@aph.gov.au

CC: attorney@ag.gov.au; DLO@ag.gov.au

Dear Minister,

**Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020
[F2020L00702]**

Thank you for your response of 21 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 11 November 2020. Whilst noting your advice, the committee remains concerned that the above instrument raises significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's scrutiny concerns are detailed in Chapter 1 of its *Delegated Legislation Monitor 12 of 2020*, available on the committee's website at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

As set out in the Monitor, the committee requests your advice as to why the explanatory statement to the instrument cannot be amended to include the information previously provided by you with regard to consultation to ensure that it complies with the technical requirements of paragraphs 15J(2)(d) and (e) of the *Legislation Act 2003*.

To facilitate the committee's timely consideration of this matter the committee would appreciate your response by **26 November 2020**.

I also take this opportunity to inform you that on 10 November 2020 the committee placed a notice of motion to disallow the instrument in the Senate to provide additional time for the committee to correspond with you in relation to its technical scrutiny concerns. Your response to the committee's request for further advice will inform the committee's consideration of whether to withdraw the notice of motion to disallow the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email at sdlc.sen@aph.gov.au.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



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12 November 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer,

**Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020
[F2020L00435]**

Thank you for your response of 30 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 11 November 2020. The committee's comments are detailed in Chapter 1 of its *Delegated Legislation Monitor 12 of 2020*, available on the committee's website at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

In summary, in light of your advice that regulations have been made to reinstate the monetary thresholds where a foreign person is renewing a lease over non-sensitive commercial property and that exposure draft regulations have been released which would reinstate the monetary thresholds for other actions from 1 January 2021, the committee has concluded its examination of the instrument and resolved to withdraw the notice of motion to disallow the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email at sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator James Paterson

Chair

Parliamentary Joint Committee on Corporations and Financial Services

Parliament House

CANBERRA ACT 2600

via email: corporations.joint@aph.gov.au

cc: The Hon Josh Frydenberg MP, Treasurer, tsrdlos@treasury.gov.au

Dear Chair,

Matters of interest to the Senate—litigation funding

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instrument appears to contain significant policy matters relating to the regulation of litigation funding, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]	To support the transition to the new regulatory framework for litigation funding schemes commencing on 22 August 2020 and to give effect to government policy on the regulation of litigation funding, including by providing exemptions to responsible entities of litigation funding schemes from certain provisions in Chapter 7 and Chapter 5C of the <i>Corporations Act 2001</i> .	01/12/2020

Should your committee decide to further examine the above instrument, I note that the table above identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate. The committee has also drawn this instrument to the attention of the Senate Economics Legislation Committee.

Further details about the instrument are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator Wendy Askew
Chair
Senate Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: community.affairs.sen@aph.gov.au

cc: Senator the Hon Anne Ruston, Minister for Families and Social Services,
dlos@dss.gov.au

Senator the Hon Richard Colbeck, Minister for Aged Care and Senior
Australians, Minister.Colbeck.DLO@health.gov.au

Dear Chair,

Matters of interest to the Senate

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instruments appear to contain significant policy matters, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw them to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]	To cease, from 1 September 2020, temporary aged care funding increases payable to approved aged care providers announced by the government on 20 March 2020.	07/12/2020
Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]		08/12/2020
Social Security (Coronavirus Economic Response—2020 Measures No. 14) Determination 2020 [F2020L01093]	To amend multiple instruments and modify the <i>Social Security Act 1991</i> to: <ul style="list-style-type: none"> • extend the period in respect of which the COVID-19 supplement will be paid (at a lower rate of \$250); • reinstate the assets tests and the liquid assets test waiting period for certain payments; • temporarily increase the income free area to \$300 a fortnight for certain JobSeeker Payment and Youth Allowance (Other) recipients; and • increase the partner income taper rate for JobSeeker Payment recipients from 25 cents for every dollar over the partner income free area to 27 cents for every dollar over the partner income free area. 	09/12/2020

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine either of the above instruments, I note that the table above identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate.

Further details about the instruments are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator Slade Brockman
Chair
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: economics.sen@aph.gov.au

cc: The Hon Josh Frydenberg MP, Treasurer, tsrdlos@treasury.gov.au

Dear Chair,

Matters of interest to the Senate

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instruments appear to contain significant policy matters, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw them to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]	To provide responsible entities of registered managed investment schemes relief from certain provisions in Chapter 5C of the <i>Corporations Act 2001</i> to facilitate withdrawals by members suffering hardship while the scheme is frozen.	07/12/2020
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]	To support the transition to the new regulatory framework for litigation funding schemes commencing on 22 August 2020 and to give effect to government policy on the regulation of litigation funding, including by providing exemptions to responsible entities of litigation funding schemes from certain provisions in Chapter 7 and Chapter 5C of the <i>Corporations Act 2001</i> .	01/12/2020
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020 [F2020L01165]	To amend the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 to extend the period of wage subsidy support provided under the JobKeeper scheme until 28 March 2021 by introducing a new two-tiered payment structure for fortnights beginning on or after 28 September 2020.	First sitting day of 2021
Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020 [F2020L01131]	To amend the Foreign Acquisitions and Takeovers Regulation 2015 to reinstate certain monetary thresholds for leasehold interests in non-sensitive commercial land that is not vacant.	First sitting day of 2021

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine any of the above instruments, I note that the table above identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate.

Further details about the instruments are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator the Hon James McGrath
Chair
Senate Education and Employment Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: eec.sen@aph.gov.au

cc: The Hon Dan Tehan MP, Minister for Education,
minister@education.gov.au

Dear Chair,

Matters of interest to the Senate—child care funding

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instrument appears to contain significant policy matters relating to child care funding, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2020 [F2020L01052]	To increase the number of allowable absence days that are available to individuals whose children are in care at approved child care services in Victoria and to increase the cap on the appropriation in section 233 of the <i>A New Tax System (Family Assistance) (Administration) Act 1999</i> for payments under the Community Child Care Fund Special Circumstances Grant Opportunity program for the 2020-2021 financial year from \$584 million to \$623 million.	01/12/2020

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that the table above identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate.

Further details about the instrument are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator James Paterson

Chair

Senate Finance and Public Administration Legislation Committee

Parliament House

CANBERRA ACT 2600

via email: fpa.sen@aph.gov.au

cc: Senator the Hon Simon Birmingham, Minister for Finance,
DLO-Finance@finance.gov.au

Dear Chair,

Matters of interest to the Senate

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instrument appears to contain significant policy matters relating to the exercise of powers by consultants and independent contractors, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Public Governance, Performance and Accountability Amendment (2020 Measures No. 3) Rules 2020 [F2020L00782]	To amend the Public Governance, Performance and Accountability Rule 2014 to extend the capacity for consultants or independent contractors and their employees to exercise powers under the <i>Financial Framework (Supplementary Powers) Act 1997</i> , in addition to the <i>Public Governance, Performance and Accountability Act 2013</i> .	30/11/2020

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that the table above identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate.

Further details about the instrument are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator the Hon Eric Abetz

Chair

Senate Foreign Affairs, Defence and Trade Legislation Committee

Parliament House

CANBERRA ACT 2600

via email: fadt.sen@aph.gov.au

cc: Senator the Hon Marise Payne, Minister for Foreign Affairs,
foreign.minister@dfat.gov.au

Dear Chair,

Matters of interest to the Senate—autonomous sanctions

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instrument appears to contain significant policy matters relating to autonomous sanctions, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Ukraine) Continuing Effect Declaration 2020 (No 2) [F2020L01089]	To continue the designations and/or declarations of 138 persons and entities who the Foreign Minister is satisfied meet the criteria for the continuation of targeted financial sanctions and travel bans under the Autonomous Sanctions Regulations 2011, and to revoke the designation of a deceased person.	09/12/2020

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that the table above identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate.

Further details about the instrument are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator Amanda Stoker
Chair
Senate Legal and Constitutional Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: legcon.sen@aph.gov.au

cc: The Hon Peter Dutton MP, Minister for Home Affairs,
dlo@homeaffairs.gov.au

The Hon David Coleman, Minister for Immigration, Citizenship,
Migration Services and Multicultural Affairs,
dlo.immi@homeaffairs.gov.au

Dear Chair,

Matters of interest to the Senate

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instruments appear to contain significant policy matters, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw them to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Coronavirus Economic Response Package (Deferral of Sunsetting—ASIO Special Powers Relating to Terrorism Offences) Determination 2020 [F2020L01134]	To provide that Division 3 of Part III of the <i>Australian Security Intelligence Organisation Act 1979</i> (ASIO Act), which establishes the framework for ASIO to question and detain persons under a warrant in relation to terrorism offences, will continue to operate until 7 March 2021 despite the ASIO Act providing that the provisions sunset on 7 September 2020.	First sitting day of 2021
Migration Amendment (Hong Kong Passport Holders) Regulations 2020 [F2020L01047]	To amend the Migration Regulations 1994 to implement policy changes relating to visas for Hong Kong passport holders, including extending temporary skilled and temporary graduate visas and providing that temporary skill shortage visas will be for a period of five years.	01/12/2020

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine either of the above instruments, I note that the table above identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate.

Further details about the instruments are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator Katy Gallagher
Chair
Senate Select Committee on COVID-19
Parliament House
CANBERRA ACT 2600

via email: covid.sen@aph.gov.au

cc: The Hon Josh Frydenberg MP, Treasurer, tsrdlos@treasury.gov.au

Senator the Hon Anne Ruston, Minister for Families and Social Services,
dlos@dss.gov.au

The Hon Dan Tehan MP, Minister for Education,
minister@education.gov.au

Senator the Hon Richard Colbeck, Minister for Aged Care and Senior
Australians, Minister.Colbeck.DLO@health.gov.au

Dear Chair,

Matters of interest to the Senate—COVID-19 response instruments

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instruments appear to contain significant policy matters relating to the Australian Government's response to the COVID-19 pandemic, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw them to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]	To cease, from 1 September 2020, temporary aged care funding increases payable to approved aged care providers announced by the government on 20 March 2020.	07/12/2020
Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]		08/12/2020
Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2020 [F2020L01052]	To increase the number of allowable absence days that are available to individuals whose children are in care at approved child care services in Victoria and to increase the cap on the appropriation in section 233 of the <i>A New Tax System (Family Assistance) (Administration) Act 1999</i> for payments under the Community Child Care Fund Special Circumstances Grant Opportunity program for the 2020-2021 financial year from \$584 million to \$623 million.	01/12/2020
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020 [F2020L01165]	To amend the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 to extend the period of wage subsidy support provided under the JobKeeper scheme until 28 March 2021 by introducing a new two-tiered payment structure for fortnights beginning on or after 28 September 2020.	First sitting day of 2021
Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020 [F2020L01131]	To amend the Foreign Acquisitions and Takeovers Regulation 2015 to reinstate certain monetary thresholds for leasehold interests in non-sensitive commercial land that is not vacant.	First sitting day of 2021

Instrument	Purpose	Last day to lodge disallowance notice
Social Security (Coronavirus Economic Response—2020 Measures No. 14) Determination 2020 [F2020L01093]	To amend multiple instruments and modify the <i>Social Security Act 1991</i> to: <ul style="list-style-type: none"> • extend the period in respect of which the COVID-19 supplement will be paid (at a lower rate of \$250); • reinstate the assets tests and the liquid assets test waiting period for certain payments; • temporarily increase the income free area to \$300 a fortnight for certain JobSeeker Payment and Youth Allowance (Other) recipients; and • increase the partner income taper rate for JobSeeker Payment recipients from 25 cents for every dollar over the partner income free area to 27 cents for every dollar over the partner income free area. 	09/12/2020

Should your committee decide to further examine any of the above instruments, I note that the table above identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate. The committee has also drawn these instruments to the attention of the relevant Senate legislation committees.

Further details about the instruments are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator Wendy Askew
Chair
Senate Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: community.affairs.sen@aph.gov.au

cc: Senator the Hon Simon Birmingham, Minister for Finance,
financeminister@finance.gov.au

The Hon Greg Hunt, Minister for Health,
Minister.Hunt.DLO@health.gov.au

Senator the Hon Anne Ruston, Minister for Families and Social Services,
Senator.Ruston@aph.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate.

The instruments listed in the table below, in combination with their enabling Act, authorise the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instruments listed below engage standing order 23(4), and accordingly has resolved to draw them to the attention of your committee:

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2020 [F2020L01041]	Grant to the Trustee for Raise Foundation	\$3 million in 2020-21	Funding will be provided to the Trustee for Raise Foundation to develop and deliver a best-practice early intervention mentoring program aimed at preventing mental illness and reducing suicidal ideation in Year 8 students at public secondary schools in Australia.
	Residential Aged Care Viability Program	\$104.5 million over three years from 2019-20	Funding will be provided to eligible residential aged care providers to ensure an adequate level of continued care for aged care residents.
	Sport and Recreation Program	\$408.8 million over four years from 2019-20	Funding will be provided to support activities relating to: <ul style="list-style-type: none"> • Australia hosting major international sporting events; • promoting participation by all Australians in sport and recreation activities (for example, by providing funding for infrastructure or other resources); and • fostering excellence in Australia's high performance athletes (for example, by investing in research, equipment and infrastructure).
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) Regulations 2020 [F2020L01043]	Reconnect Program	\$71 million over three years from 2020-21	Funding will be provided to community based early intervention and prevention services for young people aged 12 to 18 years (or 12 to 21 years in the case of newly arrived youth) who are homeless or at risk of homelessness, and their families.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine either of the above instruments, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 30 November 2020.

Further details about the instruments are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator the Hon James McGrath
Chair
Senate Education and Employment Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: eec.sen@aph.gov.au

cc: Senator the Hon Simon Birmingham, Minister for Finance,
financeminister@finance.gov.au

The Hon Dan Tehan MP, Minister for Education,
minister@education.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate.

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 4) Regulations 2020 [F2020L01040]	Destination Australia Cheung Kong Exchange Program	\$5.4 million over 12 years from 2019-20	Funding will be provided to increase the number of university students with an offshore study experience through grants to Australian universities to provide two-way, short-term mobility scholarships for domestic and international university students.
	Reading Writing Hotline	\$1.9 million over three years from 2020-21	Funding will be provided for a national advisory and referral service, which links people seeking English language, literacy or numeracy assistance to appropriate training opportunities.
	Adult Learners' Week	\$0.6 million over three years from 2020-21	Funding will be provided to raise awareness of adult education and promote participation by adults in further learning.
	School Leaver Program	\$0.9 million in 2020-21	Funding will be provided for a targeted career information kit and hotline, to be delivered by the National Careers Institute, which will provide information, advice and referral services to support school leavers in 2020 and 2021, who will be disproportionately affected by the COVID-19 pandemic, to make informed decisions about their career or transition to further learning or employment.
	Local Jobs—COVID-19 Recovery Pilot	\$56.7 million over two years from 2020-21	Funding will be provided to support local organisations and stakeholders to develop and implement tailored approaches to accelerate reskilling, upskilling and employment of job seekers in selected employment regions through the engagement of employment facilitators and the establishment of local jobs and skills taskforces.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 30 November 2020.

Further details about the instrument are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator Anthony Chisholm

Chair

Senate Select Committee on Administration of Sports Grants

Parliament House

CANBERRA ACT 2600

via email: sportsgrants.sen@aph.gov.au

cc: Senator the Hon Simon Birmingham, Minister for Finance,
financeminister@finance.gov.au

The Hon Greg Hunt, Minister for Health,
Minister.Hunt.DLO@health.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate.

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on the Sport and Recreation Program. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2020 [F2020L01041]	Sport and Recreation Program	\$408.8 million over four years from 2019-20	Funding will be provided to support activities relating to: <ul style="list-style-type: none"> • Australia hosting major international sporting events; • promoting participation by all Australians in sport and recreation activities (for example, by providing funding for infrastructure or other resources); and • fostering excellence in Australia's high performance athletes (for example, by investing in research, equipment and infrastructure).

Should your committee decide to further examine the above instrument, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 30 November 2020. The committee has also drawn this instrument to the attention of the Senate Community Affairs Legislation Committee.

Further details about the instrument are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator Slade Brockman
Chair
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: economics.sen@aph.gov.au

cc: The Hon Josh Frydenberg MP, Treasurer, tsrdlos@treasury.gov.au

Senator the Hon Simon Birmingham, Minister for Finance,
financeminister@finance.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—Grants to the
International Financial Reporting Standards Foundation**

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate.

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on grants to the International Financial Reporting Standards Foundation. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 2) Regulations 2020 [F2020L01044]	Grants to the International Financial Reporting Standards Foundation	\$2 million in 2020-21	Funding will be provided to the International Financial Reporting Standards Foundation to support the development and promotion of the International Financial Reporting Standards.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 30 November 2020.

Further details about the instrument are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator the Hon David Fawcett
Chair
Senate Environment and Communications Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: ec.sen@aph.gov.au

cc: Senator the Hon Simon Birmingham, Minister for Finance,
financeminister@finance.gov.au

The Hon Paul Fletcher MP, Minister for Communications, Cyber Safety
and the Arts, minister@communications.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—Creative Economy Support Package

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate.

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on the Creative Economy Support Package. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 7) Regulations 2020 [F2020L01042]	Creative Economy Support Package	RISE fund: \$75 million in 2020-21 Sustainability Fund: \$35 million in 2020-21	Funding will be provided to mitigate, and support the recovery of the arts sector from, the adverse effects of the COVID-19 pandemic. Key components of the package are the: <ul style="list-style-type: none"> • Restart Investment to Sustain and Expand Fund (the RISE Fund) which will provide financial support to eligible arts businesses to enable presentation of new cultural and creative activities and events, including through innovative operating and digital delivery models; and • COVID-19 Arts Sustainability Fund (the Sustainability Fund) which will provide 'last resort' financial assistance to key Commonwealth-funded arts organisations that are experiencing significant financial difficulty as a direct result of the COVID-19 pandemic, and have taken all reasonable action to maintain their financial position.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 30 November 2020.

Further details about the instrument are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator Susan McDonald
Chair
Senate Rural and Regional Affairs and Transport Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: rrat.sen@aph.gov.au

cc: Senator the Hon Simon Birmingham, Minister for Finance,
financeminister@finance.gov.au

Senator Jonathon Duniam, Assistant Minister for Forestry and Fisheries,
AssistantMinister.Duniam@agriculture.gov.au

The Hon Karen Andrews MP, Minister for Industry, Science and
Technology, Minister.Andrews@industry.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate.

The instruments listed in the table below, in combination with their enabling Acts, authorise the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instruments listed below engage standing order 23(4), and accordingly has resolved to draw them to the attention of your committee:

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 5) Regulations 2020 [F2020L01039]	Payments to Plant Health Australia Limited	\$15.7 million over three years from 2020-21	Funding will be provided to Plant Health Australia Limited to: <ul style="list-style-type: none"> • facilitate and coordinate government-industry partnerships on plant biosecurity matters, plant health, plant pests, diseases and weeds; • facilitate and coordinate emergency responses to plant biosecurity matters, threats to plant health and incursions of plant pests, diseases and weeds; • improve Australia's preparedness and capability to identify, respond to and manage plant biosecurity matters, threats to plant health, plant pests, diseases and weeds; and • develop, manage and coordinate national policies and programs on plant biosecurity matters, plant health, plant pests, diseases and weeds.
Industry Research and Development (Eat Seafood Australia Program) Instrument 2020 [F2020L01101]	Eat Seafood Australia Program	\$4 million in 2020-21	Funding will be provided to Seafood Industry Australia Limited, the peak national seafood representative body, to lead the development and implementation of a 12-month national campaign to encourage Australians to eat more Australian seafood by increasing awareness of the seafood industry and the benefits of eating Australian seafood.
Industry Research and Development (Forestry Recovery Development Fund Program) Instrument 2020 [F2020L01081]	Forestry Recovery Development Fund Program	\$40 million over three years from 2020-21	Funding will be provided to wood processing facilities that have been adversely affected by the 2019-20 bushfires to undertake eligible projects to invest in upgrades to existing manufacturing lines, as well as diversification and innovation to produce value-added wood products.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine any of the above instruments, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on the following dates:

- Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 5) Regulations 2020 [F2020L01039]—30 November 2020;
- Industry Research and Development (Eat Seafood Australia Program) Instrument 2020 [F2020L01101]—9 December 2020; and
- Industry Research and Development (Forestry Recovery Development Fund Program) Instrument 2020 [F2020L01081]—8 December 2020.

Further details about the instruments are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator Katy Gallagher
Chair
Senate Select Committee on COVID-19
Parliament House
CANBERRA ACT 2600

via email: covid.sen@aph.gov.au

cc: Senator the Hon Simon Birmingham, Minister for Finance,
financeminister@finance.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate.

The instruments listed in the table below, in combination with their enabling Act, authorise the Commonwealth to spend public money on the identified grants or programs relating to the Australian government's COVID-19 response. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instruments listed below engage standing order 23(4), and accordingly has resolved to draw them to the attention of your committee:

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 7) Regulations 2020 [F2020L01042]	Creative Economy Support Package	RISE fund: \$75 million in 2020-21 Sustainability Fund: \$35 million in 2020-21	Funding will be provided to mitigate, and support the recovery of the arts sector from, the adverse effects of the COVID-19 pandemic. Key components of the package are the: <ul style="list-style-type: none"> • Restart Investment to Sustain and Expand Fund (the RISE Fund) which will provide financial support to eligible arts businesses to enable presentation of new cultural and creative activities and events, including through innovative operating and digital delivery models; and • COVID-19 Arts Sustainability Fund (the Sustainability Fund) which will provide 'last resort' financial assistance to key Commonwealth-funded arts organisations that are experiencing significant financial difficulty as a direct result of the COVID-19 pandemic, and have taken all reasonable action to maintain their financial position.
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 4) Regulations 2020 [F2020L01040]	School Leaver Program	\$0.9 million in 2020-21	Funding will be provided for a targeted career information kit and hotline, to be delivered by the National Careers Institute, which will provide information, advice and referral services to support school leavers in 2020 and 2021, who will be disproportionately affected by the COVID-19 pandemic, to make informed decisions about their career or transition to further learning or employment.

Instrument	Grant/Program	Amount	Description
	Local Jobs—COVID-19 Recovery Pilot	\$56.7 million over two years from 2020-21	Funding will be provided to support local organisations and stakeholders to develop and implement tailored approaches to accelerate reskilling, upskilling and employment of job seekers in selected employment regions through the engagement of employment facilitators and the establishment of local jobs and skills taskforces.

Should your committee decide to further examine either of the above instruments, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate for both instruments expires on 30 November 2020. The committee has also drawn these instruments to the attention of the relevant Senate legislation committees.

Further details about the instruments are published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

Should you have any questions, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



12 November 2020

Senator the Hon Jane Hume
Assistant Minister for Superannuation, Financial Services and Financial Technology
Parliament House
CANBERRA ACT 2600

Via email: Senator.Hume@aph.gov.au

CC: tsrdlos@aph.gov.au; committeescrutiny@treasury.gov.au;
shelby.brinkley@aph.gov.au

Dear Assistant Minister,

ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]

ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instruments, and the committee seeks your advice in relation to this matter.

Exemptions from primary legislation

Modification of primary legislation

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary rather than delegated legislation). This includes where an instrument modifies or exempts persons or entities from the operation of primary legislation. In addition, Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The instruments implement measures aimed at reducing the costs for issuers undertaking an initial public offer by providing for exemptions from, and modifying the operation of, certain provisions of Chapters 6, 6A, 6C and 6D of the *Corporations Act 2003* (Corporations Act).

The instruments were made under subsections 655A(1), 669(1) and 673(1) and subsection 741(1) of the Corporations Act, respectively. Those subsections allow ASIC to exempt persons, entities and classes of persons and entities from provisions of the Corporations Act, or to declare that certain provisions of that Act apply as if modified or varied.

Provisions that modify or exempt persons or entities from the operation of primary legislation may limit parliamentary oversight, and may subvert the appropriate relationship between Parliament and the executive. The committee considers that such measures should ordinarily be included in primary legislation, unless a sound justification for the use of delegated legislation is provided.

In this instance, the explanatory statements to the instruments explain that it may be appropriate to set out these matters in delegated, rather than primary, legislation as they contain 'tailored policy adjustments designed to ensure the application of primary legislation remain flexible to adapt to market developments and applies in a way that is consistent with the overall intended policy of the primary legislation'.

While the committee acknowledges this explanation, it is concerned that these measures appear to be intended to remain in force for at least 10 years (until the instruments sunset under the *Legislation Act 2003*). The committee's longstanding view is that provisions which modify or exempt persons or entities from the operation of primary legislation should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight.

In light of this, from a scrutiny perspective, the committee considers that the instruments should be amended to specify that they cease to operate three years after it commences. If it becomes necessary to extend the operation of these provisions, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

The committee therefore requests your advice as to whether the instruments could be amended to specify that the instruments cease to operate three years after they commence.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



12 November 2020

Senator the Hon Jane Hume
Assistant Minister for Superannuation, Financial Services and Financial Technology
Parliament House
CANBERRA ACT 2600

Via email: Senator.Hume@aph.gov.au

CC: tsrdlos@aph.gov.au; committeescrutiny@treasury.gov.au;
shelby.brinkley@aph.gov.au

Dear Assistant Minister,

**ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778
[F2020L01069]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Exemptions from primary legislation

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary rather than delegated legislation). This includes where an instrument modifies or exempts persons or entities from the operation of primary legislation. In addition, Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The instrument enables responsible entities of registered schemes to make hardship withdrawal payments to specific investors who meet specified hardship criteria by providing for exemptions from certain provisions of Chapter 5C of the *Corporations Act 2003* (Corporations Act).

The instrument was made under subsection 601QA(1) of the Corporations Act. This provision allows ASIC to exempt persons, entities and classes of persons and entities from

provisions of the Corporations Act, or to declare that certain provisions of that Act apply as if modified or varied.

Provisions that modify or exempt persons or entities from the operation of primary legislation may limit parliamentary oversight, and may subvert the appropriate relationship between Parliament and the executive. The committee considers that such measures should ordinarily be included in primary legislation, unless a sound justification for the use of delegated legislation is provided.

In this instance, the explanatory statement to the instrument explains that it may be appropriate to set out these matters in delegated, rather than primary, legislation as it provides for greater flexibility to respond to the impacts of COVID-19 on the managed funds sector and to adapt the measures to improve the efficacy of the hardship relief framework.

While the committee acknowledges this explanation, it is concerned that the measures appear to be intended to remain in force for up to five years. The committee's longstanding view is that provisions which modify or exempt persons or entities from the operation of primary legislation should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight. In this regard, it is unclear to the committee why it would be necessary for the measures to remain in force beyond such a period, noting that the instrument is intended to respond to the effects of COVID-19.

In light of this, from a scrutiny perspective, the committee considers that the instrument should be amended to specify that it ceases to operate three years after it commences. If it becomes necessary to extend the operation of these provisions, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

The committee therefore requests your advice as to whether section 8 of the instrument could be amended to specify that sections 5, 6 and 7 of the instrument cease to apply three years after the date the instrument commences.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



12 November 2020

Senator the Hon Jane Hume
Assistant Minister for Superannuation, Financial Services and Financial Technology
Parliament House
CANBERRA ACT 2600

Via email: Senator.Hume@aph.gov.au

CC: tsrdlos@aph.gov.au; committeescrutiny@treasury.gov.au;
Shelby.brinkley@aph.gov.au

Dear Assistant Minister,

**ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787
[F2020L01045]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Exemptions from primary legislation

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary rather than delegated legislation). This includes where an instrument modifies or exempts persons or entities from the operation of primary legislation. In addition, Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any other ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The instrument aims to facilitate the implementation of the new regulatory framework for litigation funding schemes by providing exemptions to responsible entities of litigation funding schemes from certain provisions of Chapters 7 and 5C of the *Corporations Act 2003* (Corporations Act). The explanatory statement to the instrument states that the exemptions are necessary to address practical difficulties that these entities may encounter in transitioning to the new regime.

The instrument was made under subsections 601QA(1), 926A(2) and 1020F(1) of the Corporations Act. Those subsections allow ASIC to exempt persons, entities and classes of persons and entities from provisions of the Corporations Act, or to declare that certain provisions of that Act apply as if modified or varied.

Provisions that modify or exempt persons or entities from the operation of primary legislation may limit parliamentary oversight, and may subvert the appropriate relationship between Parliament and the executive. The committee considers that such measures should ordinarily be included in primary legislation, unless a sound justification for the use of delegated legislation is provided.

In this instance, the explanatory statement to the instrument explains that it may be appropriate to set out these matters in delegated, rather than primary, legislation as they are 'providing minor and technical relief to litigation funding schemes and their operators in circumstances where strict compliance with the primary legislation produces an unintended or unforeseen result'.

While the committee acknowledges this explanation, it is concerned that these measures appear to be intended to remain in force for at least 10 years (until the instrument sunsets under the *Legislation Act 2003*). The committee's longstanding view is that provisions which modify or exempt persons or entities from the operation of primary legislation should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight.

In light of this and noting that the instrument is intended to address transitional matters, from a scrutiny perspective, the committee considers that the instrument should be amended to specify that it ceases to operate three years after it commences. If it becomes necessary to extend the operation of these provisions, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

The committee therefore requests your advice as to whether the instrument could be amended to specify that the instrument ceases to operate three years after it commences.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



12 November 2020

Senator the Hon Jane Hume
Assistant Minister for Superannuation, Financial Services and Financial Technology
Parliament House
CANBERRA ACT 2600

Via email: Senator.Hume@aph.gov.au
CC: shelby.brinkley@treasury.gov.au

Dear Assistant Minister,

ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]

Thank you for your response of 20 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 11 November 2020 and has resolved to seek your further advice about the issues outlined below.

Modification of primary legislation

Parliamentary oversight

You have advised that the Australian Securities and Investment Commission (ASIC) considers that it is not desirable to amend the instrument to specify that Part 3 of the instrument expires three years after it commences. Your response indicates that ASIC considers that limiting the operation of those provisions would increase financial firm uncertainty about ongoing obligations as firms transition to the new internal dispute resolution (IDR) standards.

Your response further notes that the new IDR standards, and the modifications that accompany them, will not effectively commence until 5 October 2021 because the instrument only applies to complaints received by financial firms on or after that date.

While acknowledging this advice, the committee reiterates its longstanding scrutiny view that exemptions from, and modifications to, the operation of primary legislation should not ordinarily be included in delegated legislation. In this instance, the committee notes that Part 3 of the instrument makes substantive modifications to certain provisions of the *Corporations Act 2001* and the *National Consumer Credit Protection Act 2009*. Noting the significance of these modifications and ASIC's concerns about financial firm uncertainty, it

is unclear to the committee why the primary legislation could not be amended to include the modifications.

It is the committee's preference that these matters are included on the face of the primary legislation. However, if it is nevertheless considered necessary to include the matters in delegated legislation, the committee maintains the view that the instrument should at least be subject to more regular parliamentary oversight than other legislative instruments.

In light of your advice regarding the transition period, the committee considers that, if the matters are not included on the face of the primary legislation, the instrument should be amended to specify that Part 3 of the instrument ceases to operate five years after it commences. Amendments to this effect would guarantee that the relevant provisions would be able to operate for a significant period, whilst also ensuring more regular parliamentary oversight of the measures.

In light of the matters outlined above, the committee would appreciate your advice as to:

- **whether it would be appropriate to include the modifications made in Part 3 of the instrument in primary, rather than delegated, legislation, noting that this would provide certainty for financial firms; and**
- **if the modifications are not able to be set out in primary legislation, whether the instrument could be amended to specify that Part 3 of the instrument ceases to operate five years after its commencement.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

The Hon Paul Fletcher MP
Minister for Communications, Cyber Safety and the Arts
Parliament House
CANBERRA ACT 2600

Via email: Paul.Fletcher.MP@aph.gov.au

CC: dlo@communications.gov.au

Dear Minister,

Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]

Thank you for your letter of 3 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation providing an update in relation to consultation undertaken on the above instrument.

The committee considered your letter at its private meeting on 11 November 2020 and has resolved to seek a further update about the issues outlined below.

Adequacy of consultation

In your letter you advised that you have written to representatives of the Australia Post workforce, Licenced Post Office franchises, large and small businesses, and the print industry to seek their views on the impacts of the temporary changes, whether those changes should remain in place until 30 June 2021, and the impact should the changes end earlier than planned.

Your letter also notes that the Senate Environment and Communications Legislation Committee tabled a report on 25 August 2020, recommending against the disallowance of the instrument. You also advised that the Communications, Electrical and Plumbing Union no longer harbours concerns about the changes. You further explained that the government will respond to the Senate committee report and to the two minority reports later this year and that you will provide the committee with a copy of the response at that time.

The committee appreciates your constructive engagement on this issue. However, from a technical scrutiny perspective, the committee remains concerned about the ongoing adequacy of the consultation undertaken in relation to the instrument. In this regard, the

committee would appreciate a further update on progress of the consultation that is currently being undertaken.

In light of this, the committee requests that you provide it with a further update on the progress of consultation, including any issues raised during the consultation, and any outcomes or action taken as a result of the consultation.

I note that the information that you provide in relation to future consultation on the instrument will inform the committee's consideration of whether to withdraw the notice of motion to disallow the instrument which, based on the current sitting pattern, must be considered by the Senate no later than the first sitting day of 2021.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: Josh.Frydenberg.MP@aph.gov.au

CC: tsrdlos@treasury.gov.au; Committeescrutiny@treasury.gov.au;
chris.reside@treasury.gov.au

Dear Treasurer,

Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2020 [F2020L00945]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Compliance with authorising legislation—compliance with legislative preconditions

Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements.

The instrument provides that APRA may disclose certain information provided to it under reporting standards by general insurers and Lloyd's underwriters, for the purposes of the National Claims and Policies Database.

The instrument was made under subsection 57(2) of *the Australian Prudential Regulation Authority Act 1998* (APRA Act). Subsection 57(3) of the Act requires that APRA must not make a determination under subsection 57(2) unless APRA has given interested parties a reasonable opportunity to make representations in relation to whether or not the relevant reporting documents contain confidential information.

The explanatory statement to the instrument explains that consultation in relation to confidentiality of disclosures was undertaken in 2008 and 2009 and that no further consultation was undertaken in relation to this instrument as APRA was satisfied that the prior consultation was appropriate.

In the absence of further information, it is unclear whether all interested parties for the determination were provided with a reasonable opportunity to make representations in relation to confidential information as required by subsection 57(3) of the APRA Act.

The committee therefore requests your advice as to whether, prior to making this specific instrument, APRA gave all parties interested in the instrument a reasonable opportunity to make representations in relation to whether or not the relevant reporting documents contain confidential information, noting the requirements in subsection 57(3) of the APRA Act.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

Senator the Hon Richard Colbeck
Minister for Aged Care and Senior Australians
Parliament House
CANBERRA ACT 2600

Via email: Senator.Colbeck@aph.gov.au
CC: Minister.Colbeck.DLO@health.gov.au;
parliamentary.committees@health.gov.au

Dear Minister,

Contingence Aids Payment Scheme 2020 [F2020L00758]

Thank you for your response of 28 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument.

The committee considered your response at its private meeting on 11 November 2020 and has resolved to seek your further advice about the issues outlined below.

Availability of independent merits review

The committee welcomes your undertaking to provide for internal review of decisions made under sections 21 and 22 of the instrument; however, the committee reiterates its longstanding scrutiny view that it does not consider internal review to be an appropriate substitute for independent merits review.

In your response you advised that there is a low risk of any request for reviews of these decisions and that to date no decisions have been made under sections 21 or 22 of the instrument. While acknowledging this advice, the committee does not consider the low risk of review is an appropriate justification for the exclusion of independent merits review.

You also advised that sections 14 and 15 of the *National Health Act 1953* (the Act) limit the types of decisions under the instrument that may be subject to review by the Administrative Appeals Tribunal. However, as noted in my initial letter, the committee does not consider the fact that the Act provides for merits review of some decisions excludes the provision of merits review for other decisions. In this regard, the committee has long considered that the failure of an enabling Act to provide for independent merits review is not, of itself, a sufficient justification for failing to provide for independent merits review of discretionary decisions. Furthermore, the enabling provision for the instrument

(section 12 of the Act) does not appear to specifically exclude the provision of independent merits review beyond what is provided for in sections 14 and 15 of the Act.

Finally, the committee notes that your response did not explicitly address whether there is any justification for the exclusion of independent merits review of decisions made under sections 21 and 22 of the instrument, by reference to the Administrative Review Council's guidance document, *What decisions should be subject to merit review?*.

Accordingly, the committee requests your further advice as to whether the instrument can amended to provide for independent merits review by the Administrative Appeals Tribunal of decisions made under sections 21 and 22.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency your undertaking to amend the instrument will be recorded in the *Delegated Legislation Monitor*, and that this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

The Hon Peter Dutton MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

Via email: Peter.Dutton.MP@aph.gov.au

CC: dlo@homeaffairs.gov.au

Dear Minister,

Coronavirus Economic Response Package (Deferral of Sunsetting—ASIO Special Powers Relating to Terrorism Offences) Determination 2020 [F2020L01134]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Modification of primary legislation

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to examine each legislative instrument as to whether it contains matters more appropriate for parliamentary enactment (matters that should be included in primary rather than delegated legislation). In addition, standing order 23(3)(k) requires the committee to examine each instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes where an instrument may limit parliamentary oversight.

The instrument is made under subitem 1(2) of Schedule 16 to the *Coronavirus Economic Response Package Omnibus Act 2020*, which provides that the relevant minister may, by legislative instrument, determine a new sunsetting date that is no later than six months from the original sunsetting date for Acts or legislative instruments that are due to sunset on or before 15 October 2020.

Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) establishes the framework for the Australian Security Intelligence Organisation (ASIO) to question and detain persons under a warrant in relation to terrorism offences. The provisions set out significant coercive powers, including ASIO's powers with respect to

compulsory questioning warrants (without detention), and compulsory questioning warrants which authorise detention for up to seven days. Under section 34ZZ of the ASIO Act, the provisions were due to sunset on 7 September 2020. However, the instrument provides that the provisions will now continue to operate until 7 March 2021. In this regard, the measures in the instrument constitute a significant extension to ASIO's compulsory questioning and detention warrants regime.

The committee has significant scrutiny concerns about enabling delegated legislation to override the operation of legislation which has been passed by the Parliament. Such provisions may limit parliamentary oversight, and may subvert the appropriate relationship between Parliament and the executive. In this regard, the committee generally considers that such measures should ordinarily be included in primary legislation, unless a sound justification for the use of delegated legislation is provided.

In this instance, the explanatory statement to the instrument notes that parliamentary consideration of the Australian Security Intelligence Organisation Amendment Bill 2020 (the ASIO bill), which proposes to repeal ASIO's current detention powers as set out in Division 3 of Part III of the ASIO Act and introduce a new questioning warrant framework, was delayed due to changes to the parliamentary schedule resulting from the COVID-19 pandemic. Accordingly, the explanatory statement explains that the instrument is necessary to 'ensure that ASIO will continue to have operational powers to respond to the ongoing threat of terrorist activities in Australia' until the provisions in the ASIO bill are operative.

While noting this explanation, the committee remains concerned that using delegated legislation to extend the operation of ASIO's compulsory questioning and detention warrants regime limits parliamentary consideration of the regime. In this regard, the committee notes that previous extensions to the regime were appropriately enacted by primary legislation. Most recently the regime was extended by the *Australian Security Intelligence Organisation Amendment (Sunsetting of Special Powers Relating to Terrorism Offences) Act 2019*, a standalone bill containing a single amendment to extend the sunset date by one year

The committee acknowledges that the extraordinary circumstances relating to the COVID-19 pandemic may have necessitated the use of delegated legislation to defer the sunsetting of primary legislation when Parliament was not sitting. However, it is unclear why it continues to be necessary or appropriate to continue to make significant extensions to the operation of primary legislation via delegated legislation noting that regular parliamentary sittings have recommenced. In this regard, the committee notes that a standalone bill to extend the sunset date in section 34ZZ of the ASIO Act could have been introduced into the Parliament to provide the Parliament with the opportunity to consider the appropriateness of extending the operation of the compulsory questioning and detention warrants regime as an interim step while the Parliament considered the more complex changes proposed in the ASIO bill. It is also unclear why it was considered necessary and appropriate to defer sunsetting for a full six months, particularly noting that the ASIO bill is currently before the Parliament.

The committee therefore requests your advice as to:

- why it was considered necessary and appropriate to extend the operation of ASIO's compulsory questioning and detention warrants regime by delegated legislation, rather than primary legislation, particularly noting that parliamentary sittings have recommenced and a standalone bill to extend the regime could have been introduced into, and considered by, the Parliament; and
- why it was considered necessary and appropriate to extend the operation of the regime for the full six months permitted under the *Coronavirus Economic Response Package Omnibus Act 2020*, as opposed to a shorter period.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
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www.aph.gov.au/senate_sdlc

12 November 2020

Senator the Hon Anne Ruston
Minister for Families and Social Services
Parliament House
CANBERRA ACT 2600

Via email: Senator.Ruston@aph.gov.au
CC: dlos@dss.gov.au

Dear Minister,

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]

Thank you again for your response of 6 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument. At its private meeting on 11 November 2020 the committee further considered your response.

As advised in my letter of 8 October 2020, the committee has resolved to withdraw the notice of motion to disallow the instrument, contingent on the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (the bill) being agreed to by the Senate.

In light of the fact that parliamentary scrutiny of the bill is ongoing, including by the Community Affairs Legislation Committee, the committee has resolved to further postpone the notice of motion to disallow the instrument to 7 December 2020. I note that, based on the current sitting pattern, the disallowance notice must be resolved by this date or the instrument will be deemed to have been disallowed.

The committee is next scheduled to meet on 2 December 2020 and will further consider whether to proceed with the disallowance notice at that time. The committee's consideration of its approach to this matter will be informed by the status of the bill in the Senate when the committee meets on 2 December.

Noting this, and the committee's scrutiny view that it is appropriate for the extension or continuation of the cashless debit card measure to be considered by the Parliament at the earliest practicable opportunity, the committee requests your advice as to whether the bill can be scheduled for debate in the Senate in the sitting week beginning 30 November 2020.

To facilitate the committee's consideration of the matters above, the committee would appreciate your response by **19 November 2020**.

In the interests of transparency, I note that your response and this correspondence will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email at sdlc.sen@aph.gov.au.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



12 November 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: Josh.Frydenberg.MP@aph.gov.au

CC: tsrdlos@treasury.gov.au; Committeescrutiny@treasury.gov.au;
chris.reside@treasury.gov.au

Dear Treasurer,

Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020 [F2020L01165]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Matters more appropriate for parliamentary enactment

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be included in primary, rather than delegated, legislation).

The instrument amends the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 to make a number of significant changes to the JobKeeper scheme. Among other things, these changes include:

- extending the operation of the JobKeeper scheme until 28 March 2021;
- establishing new payment rates from 28 September 2020 to provide that the JobKeeper scheme is tapered in the December 2020 and March 2021 quarters;
- introducing a new actual decline in turnover test for entities to qualify for the JobKeeper scheme from 28 September 2020; and
- delegating additional discretionary powers to the Commissioner for Taxation to administer the JobKeeper scheme.

The committee generally considers that significant matters, such as significant COVID-19 economic response measures, are more appropriately enacted via primary, rather than delegated, legislation. This is to ensure a greater degree of parliamentary oversight of significant policy matters. Where significant matters nonetheless are left to delegated legislation, the committee expects a sound justification to be provided.

In this context, the committee acknowledges that the extraordinary circumstances created by the COVID-19 pandemic may have necessitated the establishment of the JobKeeper scheme via delegated legislation when the Parliament was not sitting. However, it is unclear why it continues to be necessary to leave significant details as to how the scheme will operate, including the implementation of significant changes to the scheme, to delegated legislation, particularly noting that regular parliamentary sittings have recommenced. In this instance, the explanatory statement to the instrument provides no justification as to why it is necessary to utilise delegated, rather than primary, legislation.

The committee therefore requests your advice as to why it is considered necessary and appropriate to implement significant changes to the JobKeeper scheme via delegated legislation, rather than primary legislation, particularly noting that regular parliamentary sittings have recommenced.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdic.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

Senator the Hon Simon Birmingham
Minister for Finance
Parliament House
CANBERRA ACT 2600

Via email: Senator.Birmingham@aph.gov.au

CC: DLO-Finance@finance.gov.au; plc@finance.gov.au; FFSPRegs@finance.gov.au

Dear Minister,

Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]

The Senate Standing Committee for the Scrutiny of Delegated Legislation has been corresponding with your predecessor in relation to technical scrutiny concerns relating to the above instrument.

The committee considered the former minister's response dated 26 October 2020 at its private meeting on 11 November 2020. The former minister's response included a response to the committee's scrutiny concerns from the Minister for Agriculture, Drought and Emergency Management (the Emergency Management Minister). On the basis of that advice, the committee has resolved to seek further advice about the issues outlined below.

Significant matters in delegated legislation

Parliamentary oversight

The Emergency Management Minister advised that it was necessary to establish the pandemic leave disaster payment program (the program) in delegated, rather than primary, legislation due to the urgent need to respond quickly to the escalating COVID-19 public health emergency in Victoria. The minister noted that this approach was appropriate as:

- there were no other readily available legislative mechanisms for administering the payments;
- Parliament was not sitting at the time the program was being considered; and
- the program is time-limited and ad hoc (rather than recurrent) and non-regulatory, with a limited purpose and eligibility criteria.

The response further advised that the minister considered it appropriate to set out core elements of the program in the grant opportunity guidelines, rather than in a legislative instrument, as this approach provides sufficient flexibility to ensure that payments could be extended to other states and territories quickly to promote compliance with public health directives.

The response clarified that funding of \$34.3 million in 2020-21 for one-off payments of \$1,500 to eligible workers in relevant states was included in the 2020-21 Budget. However, the response also noted that there is no effective cap on the expenditure as payments are demand driven but any further funding is subject to government decision and parliamentary scrutiny through the budget process. The minister undertook to amend the explanatory statement to the instrument to reflect this information regarding funding for the program.

The committee welcomes the undertaking to amend the explanatory statement to the instrument to provide greater clarity as to the funding provided under the program and notes that this undertaking was implemented on 27 October 2020. However, the committee reiterates its longstanding scrutiny view that significant matters, such as significant elements of the government's policy response to the COVID-19 pandemic, are more appropriately enacted via primary, rather than delegated, legislation. This is to ensure a greater degree of parliamentary oversight of significant policy matters.

The committee acknowledges that the extraordinary circumstances created by the COVID-19 pandemic may have necessitated the establishment of the program, on a time-limited basis, via delegated legislation when the Parliament was not sitting. However, noting that parliamentary sittings have recommenced, it is unclear why it continues to be necessary to do so. In this regard, the committee considers that, from a scrutiny perspective, it would be more appropriate to introduce primary legislation to support the continued operation of the program, particularly noting that the program appears to be akin to existing payments, such as the Australian Government Disaster Recovery Payment which is appropriately established in primary legislation (Part 2.24 of the *Social Security Act 1991*).

Further, noting that the program has been significantly expanded beyond the scope originally outlined in the explanatory statement, the committee's concerns with regard to the inclusion of significant details of the program in non-legislative policy guidance are further heightened. It remains the committee's preference that such matters are set out in primary legislation. However, the committee considers that such detail should, at minimum, be included in a disallowable legislative instrument, rather than in the grants opportunity guidelines, which are not subject to parliamentary oversight.

The committee therefore requests your advice as to:

- **how long it is envisaged that the pandemic leave disaster payment program is likely to remain open for new claims;**
- **the appropriateness of establishing at least the broad scope of the program in primary legislation, noting that parliamentary sittings have recommenced and that similar payments have appropriately been established in primary legislation; and**

- **whether, at a minimum, the scope and details of the program could be set out in a disallowable legislative instrument, rather than in the grants opportunity guidelines, to provide at least some level of parliamentary oversight of important aspects of the program, such as the eligibility criteria for the payments.**

Availability of independent merits review

The minister's response noted that decisions made in the administration of the program are not subject to independent merits review as such decisions can be classified as mandatory in nature. The response suggested that such decisions are mandatory in nature as they are based on objective circumstances of fact and, as such, involve no discretion. The minister further advised that the decisions to reject a person's claim are subject to internal review processes within Services Australia.

The committee shares the view that automatic or mandatory decisions may be unsuitable for independent merits review. However, the committee remains concerned that, unlike strictly automatic or mandatory decisions, the relevant decisions in this instance may require the decision-maker to exercise some discretion, albeit minor. For example, it appears that there may be scope for disagreement on the facts of whether a person has exhausted all sick leave entitlements or has had close contact with a person diagnosed with COVID-19.

Generally, where there is any scope for disagreement about whether particular facts have occurred, the automatic or mandatory nature of a decision flowing from those facts will not mean that the decision is inappropriate for review, although such review will be confined to ascertaining whether relevant facts have occurred. In this instance, the provision of internal review appears to indicate that there is some scope for disagreement on the particular facts, or else that there is scope for discretion to be exercised.

As such, it appears that the decisions cannot accurately be described as automatic or mandatory. Accordingly, in the absence of any other reason to exclude independent merits review, the committee remains of the view that independent merits review should be available for decisions made in relation to the administration of the program.

The committee therefore requests your advice as to whether independent merits review can be made available for decisions made in relation to the administration of the pandemic leave disaster payment program.

Consultation with persons affected

The minister's response advised that no public consultation was undertaken in relation to the instrument as the escalating health crisis in Victoria necessitated the quick commencement of the program in order to promote compliance with public health directives.

The response further advised that as the payment imposed no regulatory burden on business, consultation was not considered necessary. However, the payment mirrored the existing payment in Victoria at the time, and the eligibility criteria was developed based on stakeholder feedback and existing cases, and that Services Australia provides feedback from potential claimants.

The committee generally considers that such information should be included in the explanatory statement to the instrument, noting the importance of explanatory statements as a point of access to understanding the law.

The committee therefore requests your advice as to whether the explanatory statement to the instrument could be amended to provide greater detail as to why only limited consultation was undertaken in relation to the development of this specific instrument.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

The Hon Sussan Ley MP
Minister for the Environment
Parliament House
CANBERRA ACT 2600

Via email: Sussan.Ley.MP@aph.gov.au

CC: DLOley@environment.gov.au; legislation@environment.gov.au

Dear Minister,

Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Instruments subject to copyright

Senate standing order 23(3)(f) requires the committee to scrutinise each legislative instrument as to whether it, and any document it incorporates, may be freely accessed and used, including whether it is subject to copyright or other similar restrictions.

The instrument sets out a framework for the Reserve Bank of Australia to manage the Commonwealth Heritage values of the Reserve Bank of Australia's Head Office. The covering pages for the instrument state that the instrument was prepared by NBRS & PARTNERS Pty Ltd and remains the property of NBRS & PARTNERS Pty Ltd, and may only be used for the purposes for which it was produced. The covering pages also provide that unauthorised use of the instrument in any form whatsoever is prohibited.

The committee's longstanding view is that legislative instruments should not be subject to copyright or other similar restrictions because such restrictions may inhibit the capacity of people to access and use the law. If, in practice, the statement in the covering pages is not intended to impact individuals' ability to access and use the instrument, the committee considers that it would be appropriate for the statement to be removed from the instrument to avoid confusion on the part of users of the instrument.

The committee therefore requests your advice as to whether the instrument could be amended to remove the statement relating to use of the instrument.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

Senator the Hon Anne Ruston
Minister for Families and Social Services
Parliament House
CANBERRA ACT 2600

Via email: Senator.Ruston@aph.gov.au

CC: dlos@dss.gov.au

Dear Minister,

**Social Security (Coronavirus Economic Response—2020 Measures No. 14)
Determination 2020 [F2020L01093]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Modification of primary legislation

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary rather than delegated legislation). This includes where an instrument modifies primary legislation. In addition, Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The instrument was made pursuant to provisions of the *Social Security Act 1991* (Social Security Act) relating to the COVID-19 supplement and item 40A of Schedule 11 to the *Coronavirus Economic Response Package Omnibus Act 2020*, which provides that the minister may make a determination modifying the operation of the social security law relating to the qualification for, or the rate of, a social security payment.

The instrument has the effect of modifying certain provisions of the Social Security Act to make a number of significant changes to social security payments, including extending the period that the COVID-19 supplement will be paid (at a lower rate of \$250), reinstating the

assets test and liquid assets test waiting period, temporarily increasing the income free area for JobSeeker Payment and Youth Allowance (Other) recipients, and increasing the temporary partner income taper rate for JobSeeker Payment recipients from 25 to 27 per cent.

The committee has significant scrutiny concerns about enabling delegated legislation to override the operation of legislation which has been passed by Parliament. Such provisions may limit parliamentary oversight, and may subvert the appropriate relationship between Parliament and the executive. In this regard, the committee generally considers that such measures should ordinarily be included in primary legislation, unless a sound justification for the use of delegated legislation is provided.

The committee acknowledges that the extraordinary circumstances relating to the COVID-19 pandemic may have necessitated the use of such provisions when the Parliament was not sitting. However, it is unclear why it continues to be necessary or appropriate to continue to make significant modifications to primary legislation via delegated legislation noting that regular parliamentary sittings have recommenced. In this regard, the committee notes that the explanatory statement provides no justification for why it is necessary and appropriate for the instrument to modify primary legislation.

The committee therefore requests your advice as to why it is considered necessary and appropriate to continue to use delegated legislation to make significant modifications to primary legislation, particularly noting that regular parliamentary sittings have recommenced.

Consultation with persons affected

Senate standing order 23(3)(d) requires the committee to scrutinise each instrument as to whether persons likely to be affected by the instrument were adequately consulted in relation to it.

In this instance, the explanatory statement to the instrument states that consultation was undertaken with the Department of Veterans' Affairs, the Department of Agriculture, Water and the Environment and Services Australia. The explanatory statement notes that the majority of measures introduced by the instrument were announced in July 2020 and have been considered in public hearings by the Senate Select Committee on COVID-19. Additionally, the explanatory statement explains that no public consultation was undertaken in relation to certain provisions as they have a beneficial effect on recipients of social security payments. However, in the absence of further information in the explanatory statement, it is unclear whether public consultation was undertaken in relation to any of the other provisions of the instrument.

The committee therefore requests your advice as to whether persons likely to be affected by the instrument, such as social security payment recipients, were consulted in relation to any of the measures implemented by the instrument, and if not, why not.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion

to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

The Hon Michael Sukkar MP
Assistant Treasurer
Parliament House
CANBERRA ACT 2600

Via email: Michael.Sukkar.MP@aph.gov.au

CC: tsrdlos@aph.gov.au; committeescrutiny@treasury.gov.au

Dear Assistant Treasurer,

Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Modification of primary legislation

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary rather than delegated legislation). This includes where an instrument modifies or exempts persons or entities from the operation of primary legislation. In addition, Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The instrument was made under section 370-5 of Schedule 1 to the *Taxation Administration Act 1953* (TA Act). Section 370-5 provides that the Commissioner for Taxation (Commissioner) may, by legislative instrument, determine a modification of the operation of a provision of a taxation law if the modification is not inconsistent with the intended purpose or operation of the provision, and the Commissioner considers that it is reasonable.

The instrument modifies paragraph 38-510(1)(a) of *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to provide that certain disabled individuals may obtain a current certificate of medical eligibility from a registered medical practitioner to qualify for access to the GST-free supply of cars or car parts. The explanatory statement notes that the modification supports the intent of paragraph 38-510(1)(a) as it ensures that a person who is medically qualified is certifying that an individual meets the existing medical requirement in the provision.

While the instrument appears to be within the scope of the enabling provision, the committee is concerned that provisions of delegated legislation that modify primary legislation may limit parliamentary oversight, and may subvert the appropriate relationship between Parliament and the executive. In this regard, the committee notes concerns raised by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills committee) when it considered provisions of the *Tax and Superannuation Laws Amendment (2016 Measures No. 2) Act 2016*. The Scrutiny of Bills committee raised concerns about the broad conferral of legislative power on an unelected official to modify the operation of significant primary legislation.

In addition, the committee is concerned that the modification appears to be intended to remain in force for at least 10 years (until the instrument sunsets under the *Legislation Act 2003*). The committee's longstanding view is that provisions which modify or exempt persons or entities from the operation of primary legislation should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight.

In light of this, from a scrutiny perspective, the committee considers that the instrument should be amended to specify that it ceases to operate three years after it commences. If it becomes necessary to extend the operation of these provisions, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

The committee therefore requests your advice as to:

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

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



12 November 2020

The Hon Peter Dutton MP
Minister for Home Affairs
Parliament House
CANBERRA ACT 2600

Via email: Peter.Dutton.MP@aph.gov.au

CC: dlo@homeaffairs.gov.au

Dear Minister,

Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2019 [F2020L01141]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Scope of administrative powers

Senate standing order 23(3)(c) requires the committee to scrutinise each instrument as to whether it makes rights, liberties, obligations or interests unduly dependent on insufficiently defined administrative powers.

The instrument repeals and replaces the Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2018 (2018 instrument) to reflect a restructure of the Department of Home Affairs (department).

Section 5 of the instrument provides that certain individuals in the department, including certain Executive Level 1 and 2 employees, are specified as a Communications Access Co-ordinator, for the purposes of subsection 6R(2) of the *Telecommunications (Interception and Access) Act 1979* (TIA Act). This appears to have the effect of enabling such individuals to exercise a range of significant powers and functions under the TIA Act and the *Telecommunications Act 1997*.

Where an instrument delegates functions or powers, the committee generally expects that the scope and purpose of those powers should be clearly explained on the face of the instrument or in the explanatory statement. The committee also generally expects that

such delegation should be restricted to members of the Senior Executive Service or, at a minimum, that the relevant persons have appropriate qualifications and expertise.

In this instance, the explanatory statement to the instrument does not provide any information as to the scope of the powers and functions that will be performed by the individuals specified as a Communications Access Co-ordinator under the instrument, nor does it outline any relevant qualifications or expertise they are required to possess.

The committee therefore requests your advice as to:

- **what functions and powers will be, or have been, performed or exercised by individuals specified as a Communications Access Co-ordinator under section 5 of the instrument;**
- **what qualifications and expertise individuals specified as a Communications Access Co-ordinator under section 5 of the instrument are required to possess; and**
- **what functions and powers individuals specified as a Communications Access Co-ordinator under section 5 of the instrument may further subdelegate (if any).**

Compliance with Legislation Act 2003—registration of instrument

In addition, Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements. These include the requirements prescribed by the *Legislation Act 2003* (Legislation Act) with regard to the registration of legislative instruments.

Subsection 15G(1) of the Legislation Act provides that a rule-maker must lodge a legislative instrument for registration as soon as practicable after its made. Subsection 15K(1) further provides that a legislative instrument is not enforceable by or against any person unless the instrument is registered as a legislative instrument.

In this instance, the instrument was made on 1 July 2019; however it was not registered on the Federal Register of Legislation until 7 September 2020. As a result, pursuant to section 2 of the instrument, the instrument commenced at the start of the day on 8 September 2020 and therefore did not have effect prior to that time. As a result, the 2018 instrument was also not repealed and replaced until this time.

In the absence of further information in the explanatory materials, it is unclear why the registration of the instrument was delayed and, accordingly, how this complies with the requirements of subsection 15G(1) of the Legislation Act. In addition, it is unclear whether any functions were performed or powers were exercised pursuant to the instrument prior to it being registered.

The committee would therefore appreciate your advice as to:

- **why the registration of the instrument was delayed by approximately 14 months; and**

- **whether each individual who performed the functions or exercised the powers of a Communications Access Co-ordinator in the period between 1 July 2019 and 7 September 2020 were authorised to do so under the 2018 instrument.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

The Hon Paul Fletcher MP
Minister for Communications, Cyber Safety and the Arts
Parliament House
CANBERRA ACT 2600

Via email: Paul.Fletcher.MP@aph.gov.au

CC: dlo@communications.gov.au

Dear Minister,

**Telecommunications (Superfast Broadband Network Class Exemption)
Determination 2020 [F2020L01061]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Modification of primary legislation

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary rather than delegated legislation). This includes where an instrument modifies or exempts persons or entities from the operation of primary legislation. In addition, Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any other ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

Section 7 of the instrument exempts certain classes of persons from the requirements of sections 142C or 143 of the *Telecommunications Act 1997* (Telecommunications Act), relating to the supply of eligible services on a wholesale basis.

The instrument is made under subsections 143A(1) and (2) of the Telecommunications Act. Those provisions allow the Australian Competition and Consumer Commission to make a determination exempting specified classes of persons from the separation requirements in sections 142C or 143 of the Telecommunications Act.

Provisions of delegated legislation that modify or exempt persons or entities from the operation of primary legislation may limit parliamentary oversight, and may subvert the appropriate relationship between Parliament and the executive. The committee considers that such measures should ordinarily be included in primary legislation, unless a sound justification for the use of delegated legislation is provided. In this instance, the exemption in section 7 of the instrument appears to capture any person who meets the criteria in paragraphs 143A(1)(b)–(e) or 143A(2)(b)–(e) of the Telecommunications Act. It is therefore unclear why it is necessary to provide a power for exemptions to be made by delegated legislation when the criteria for the exemption is already specified in the primary legislation.

In addition, the committee is concerned that these measures appear to be intended to remain in force for at least 10 years (until the instrument sunsets under the *Legislation Act 2003*). The committee's longstanding view is that provisions which modify or exempt persons or entities from the operation of primary legislation should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight.

In light of this, from a scrutiny perspective, the committee considers that, if it is not proposed to set out the exemption on the face of the primary legislation, the instrument should at least be amended to specify that it ceases to operate three years after it commences. If it becomes necessary to extend the operation of the exemption, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

In light of the above, the committee requests your advice as to:

- **why it is considered necessary and appropriate to provide for the exemptions from the separation requirements in sections 142C or 143 of the Telecommunications Act in delegated, rather than primary, legislation; and**
- **if it is not proposed to set out these exemptions on the face of the primary legislation, whether the instrument could at least be amended to specify that the instrument ceases to operate three years after it commences.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



12 November 2020

The Hon Darren Chester MP
Minister for Veterans' Affairs
Parliament House
CANBERRA ACT 2600

Via email: Darren.Chester.MP@aph.gov.au
CC: minister@dva.gov.au; legislation@dva.gov.au

Dear Minister,

Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Availability of independent merits review

Senate standing order 23(3)(i) requires the committee scrutinise each legislative instrument as to whether it unduly excludes, limits or fails to provide for independent review of decisions affecting rights, liberties, obligations or interests.

The instrument amends the Treatment Principles (Instrument 2013 No. R52) and the MRCA Treatment Principles (Instrument 2013 No. MRCC53) to provide that the Repatriation Commission and the Military Rehabilitation and Compensation Commission (the commissions) may decide to accept financial responsibility for a Rehabilitation in the Home program.

Where an instrument empowers a decision-maker to make discretionary decisions with the capacity to affect rights, liberties, obligations or interests, the committee ordinarily expects that those decisions should be subject to independent merits review.

Following informal correspondence with your department, the committee understands that decisions made by a delegate of the commissions to accept financial responsibility for a Rehabilitation in the Home program will involve at least some discretion, however they will not be subject to independent merits review. As these decisions may involve at least

an element of discretion, although limited, it appears that they are suitable for independent merits review.

The committee therefore requests your advice as to what characteristics of the decisions made by the commissions to accept financial responsibility for a Rehabilitation in the Home program justify the exclusion of independent merits review, by reference to the established grounds set out in the Administrative Review Council's guidance document, *What decisions should be subject to merit review?*.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **26 November 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

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



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

12 November 2020

The Hon Greg Hunt MP
Minister for Health
Parliament House
CANBERRA ACT 2600

Via email: Greg.Hunt.MP@aph.gov.au
CC: Minister.Hunt.DLO@health.gov.au;
parliamentary.committees@health.gov.au

Dear Minister,

**Narcotic Drugs (Licence Charges) Amendment (2020 Measures No. 1) Regulations 2020
[F2020L00901]**

Thank you for your letter of 29 September 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation providing additional information in response to the committee's scrutiny concerns about the above instrument. The committee appreciates your active engagement with the committee on this issue.

I note that the committee concluded its examination of the instrument in *Delegated Legislation Monitor 12 of 2020*.

Please note that, in the interests of transparency, this correspondence will be published on the committee's website.

Thank you for your assistance with this matter.

Yours sincerely,

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



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**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

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12 November 2020

The Hon Nola Marino MP
Assistant Minister for Regional Development and Territories
Parliament House
CANBERRA ACT 2600

Via email: Nola.Marino.MP@aph.gov.au

CC: minister.marino@infrastructure.gov.au; rob.terrell@infrastructure.gov.au

Dear Assistant Minister,

**Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020
[F2020L00870]**

Thank you for your response of 22 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 11 November 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

The committee welcomes your undertaking to amend the explanatory statement to the instrument to set out further details in relation to the qualifications and expertise required of delegates of the Employment Liaison Officer and notes that this undertaking was implemented on 27 October 2020.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,

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



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**Senate Standing Committee for the
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12 November 2020

Senator the Hon Simon Birmingham
Minister for Finance
Parliament House
CANBERRA ACT 2600

Via email: Senator.Birmingham@aph.gov.au

CC: DLO-Finance@finance.gov.au; plc@finance.gov.au

Dear Minister,

**Public Governance, Performance and Accountability Amendment (2020 Measures No. 3)
Rules 2020 [F2020L00782]**

Thank you for your response of 22 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 11 November 2020. On the basis of your advice, the committee has concluded its examination of the instrument as a technical scrutiny matter.

However, noting that the use of delegated legislation to authorise consultants, independent contractors and their employees to exercise significant powers is an important matter and that this is a systemic issue, the committee has resolved to draw the instrument to the attention of the Senate, pursuant to Senate standing order 23(4).

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,

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



12 November 2020

The Hon Paul Fletcher MP
Minister for Communications, Cyber Safety and the Arts
Parliament House
CANBERRA ACT 2600

Via email: Paul.Fletcher.MP@aph.gov.au

Dear Minister,

Radiocommunications (Spectrum Licence Tax) Amendment Determination 2020 (No. 1) [F2020L01167]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument.

Levying of taxation in delegated legislation

Matters of interest to the Senate

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary legislation rather than delegated legislation). In addition, Senate standing order 23(4) requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest.

The instrument introduces a new Electromagnetic Energy (EME) component of the spectrum license tax imposed on designated spectrum licenses. The explanatory statement notes that this new EME component is designed to recover the costs of the EME program.

Whilst acknowledging this information, the committee notes that the instrument is made under the *Radiocommunications (Spectrum Licence Tax) Act 1997* (the Act). Subsection 7(1) of the Act provides that the amount of tax in relation to a spectrum licence is the amount ascertained in accordance with a written determination made by the ACMA. However, it does not set any cap on the amount that may be imposed.

The committee considers that one of the most fundamental functions of the Parliament is to levy taxation. In this regard, the committee's consistent scrutiny view is that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax. In this instance, there is no cap on the face of the Act as to the amount of tax that may be imposed, which compounds the committee's scrutiny concerns in relation to this tax due to the limited parliamentary oversight afforded to it.

As the levying of taxation in delegated legislation is a systemic matter, the committee has resolved draw this instrument to the attention of the Senate in its *Delegated Legislation Monitor 12 of 2020*.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Yours sincerely,

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



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

12 November 2020

The Hon Greg Hunt
Minister for Health
Parliament House
CANBERRA ACT 2600

Via email: Minister.Hunt.DLO@health.gov.au

CC: rezana.berman@health.gov.au

Dear Minister,

**Therapeutic Goods Legislation Amendment (2020 Measures No. 1) Regulations 2020
[F2020L00946]**

Thank you for your response of 27 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 11 November 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,

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