



10 December 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

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

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

Dear Treasurer,

ASIC Corporations – various instruments [F2020L00962] [F2020L01045] [F2020L01064] [F2020L01066] [F2020L01069]

Thank you for your responses of 2 December 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instruments. The committee considered your responses at its private meeting on 9 December 2020 and has resolved to seek your further advice about the issues outlined below.

Modification of primary legislation

Parliamentary oversight

The committee welcomes your advice that the government shares its concerns about the need to ensure appropriate parliamentary oversight of delegated legislation. It also welcomes your commitment to continuing to engage with the Australian Securities and Investments Commission (ASIC) to stress that the period in which the instruments are operational should be consistent with not only their policy intent and the need to reduce regulatory burdens, but also with the need to ensure regular parliamentary oversight.

Against this background, the committee notes your advice that it is not appropriate to amend these particular instruments to the time periods requested by the committee, as it is likely that the relevant measures will have ongoing relevance, and will therefore need to extend beyond those proposed periods. However, in this regard, it is unclear to the committee why ASIC could not simply amend the relevant instruments just prior to the time the instruments would cease, if the measures needed to be in place for a longer period.

In the committee's view, such an approach would facilitate appropriate parliamentary oversight of measures which modify primary legislation, without preventing ASIC from continuing those measures in a subsequent instrument, should they still be required.

In the interests of promoting parliamentary oversight of delegated legislation, the committee therefore requests your more detailed advice as to why it would not be possible for ASIC to amend each instrument to limit its duration to that previously suggested by the committee and, if necessary, subsequently amend the instruments if the relevant measures are still required beyond the cessation time.

The committee's expectation is to receive a response in time for it to consider and report on these instruments prior to consideration of the disallowance notices which are currently in place. Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **13 January 2020**.

The committee also notes that one of the instruments was made in response to the COVID-19 pandemic. The committee's views in relation to COVID-19 related delegated legislation are set out in detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight. The interim report highlights the importance of ensuring parliamentary oversight during times of emergency and notes that COVID-19 serves to shine a light on the deeper, systemic issues which inhibit Parliament from effectively overseeing delegated legislation at all times, not just during emergencies.

The committee will continue to closely monitor COVID-19 related delegated legislation in the future to ensure that it complies with the recommendations set out in the interim report.

A copy of the committee's interim report is available at:

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

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



10 December 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]

Thank you for your response of 21 November 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 9 December 2020 and has resolved to seek your further advice about the issues outlined below.

Modification of primary legislation

Parliamentary oversight

Your response advises that the provision of class exemptions via delegated legislation is appropriate as it provides for flexibility in allowing the Australian Competition and Consumer Commission (ACCC) to tailor such exemptions to respond to market factors and individual circumstances. You further advise that the ACCC considers that limiting the duration of the exemption to three years could create uncertainty and undermine the business growth and long-term interests of small network operators. However, you noted that it is not envisaged that the class exemption will be required for the full 10 years as many small network operators will surpass the relevant thresholds within five years.

While noting your advice about the necessity of including class exemptions in delegated legislation, the committee remains concerned to ensure that instruments which provide for exemptions from primary legislation are subject to regular parliamentary oversight. Noting that it is not anticipated that the class exemption will be required for the full ten years, the committee considers that the instrument should be amended to specify that it 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.

The committee therefore requests your advice as to whether the instrument could be amended to specify that the instrument ceases to operate five years after 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. As a result, on 7 December 2020, the committee

gave 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 **13 January 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



10 December 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]

Thank you for your response of 26 November 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 9 December 2020 and has resolved to seek your further advice about the issues outlined below.

Availability of independent merits review

Your response sets out two key reasons as to why it is not appropriate to provide for independent merits review of certain decisions made by the Repatriation Commission and the Military Rehabilitation and Compensation Commission under the Treatment Principles in the *Veterans' Entitlements Act 1986* (VEA) and *Military Rehabilitation and Compensation Act 2004* (MRCA), as varied by this instrument.

First, you advised that the *Veterans' Entitlements Act 1986* (VEA) and *Military Rehabilitation and Compensation Act 2004* (MRCA) do not expressly provide for independent merits review of decisions made pursuant to the Treatment Principles. However, in this regard, the committee notes that neither the VEA nor the MRCA expressly prohibits the provision of independent merits review. In the absence of such an express prohibition, it remains unclear to the committee why the instrument itself cannot be amended to provide for such review.

Second, you advised that, whilst the relevant decisions are not strictly mandatory decisions, the decision-makers are reliant on the assessment by the providers of whether the veteran meets the relevant criteria referred to in the Treatment Principles. In practice, you suggest that this therefore leaves little room for discretion or for independent merits review to operate. You further noted that, if new evidence becomes available that is relevant to the assessment of the veteran's medical needs, the veteran can seek a reassessment of their medical needs.

Whilst noting this advice, the committee remains concerned that, unlike strictly mandatory decisions, as drafted the relevant decisions in this instance require the decision-maker to exercise

some discretion, albeit minor. The committee reiterates its view that such decisions should be subject to independent merits review.

Accordingly, the committee requests your further advice as to whether the instrument could be amended to either:

- **provide for independent merits review of decisions made by the commissions to accept financial responsibility for a Rehabilitation in the Home program; or, if not,**
- **expressly provide that such decisions do not involve the exercise of discretion.**

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. As a result, on 30 November 2020, the committee gave 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 **13 January 2021**.

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



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10 December 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]

Thank you for your response of 3 December 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 Wednesday, 9 December 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

Whilst acknowledging the particular circumstances in which the instrument was made, the committee reiterates its longstanding technical scrutiny view that delegated legislation should not be used to extend the operation of primary legislation. This is particularly important where the relevant Act has the capacity to trespass on personal rights and liberties and Parliament has limited its duration in recognition of this issue.

The committee also notes that the instrument was made in response to the COVID-19 pandemic. The committee's views in relation to COVID-19 related delegated legislation are set out in detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight. The interim report highlights the importance of ensuring parliamentary oversight during times of emergency and notes that COVID-19 serves to shine a light on the deeper, systemic issues which inhibit Parliament from effectively overseeing delegated legislation at all times, not just during emergencies.

The committee will continue to closely monitor COVID-19 related delegated legislation in the future to ensure that it complies with the recommendations set out in the interim report.

A copy of the committee's interim report is available at:

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

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

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10 December 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

Dear Treasurer,

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

Thank you for your response of 24 November 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 Wednesday, 9 December 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

The committee notes that the instrument was made in response to the COVID-19 pandemic. The committee's views in relation to COVID-19 related delegated legislation are set out in detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight. The interim report highlights the importance of ensuring parliamentary oversight during times of emergency and notes that COVID-19 serves to shine a light on the deeper, systemic issues which inhibit Parliament from effectively overseeing delegated legislation at all times, not just during emergencies.

The committee will continue to closely monitor COVID-19 related delegated legislation in the future to ensure that it complies with the recommendations set out in the interim report.

A copy of the committee's interim report is available at:

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

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
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10 December 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;
HarriesB@rba.gov.au

Dear Minister,

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

Thank you for your response of 1 December 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 Wednesday, 9 December 2020.

The committee welcomes your advice that the Reserve Bank of Australia has undertaken to amend the instrument to resolve the committee's scrutiny concerns about potential restrictions on the instrument's use. On the basis of this undertaking, 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*.

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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10 December 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]

Thank you for your response of 25 November 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 Wednesday, 9 December 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

While it has concluded its examination of this particular instrument, the committee reiterates its view that where an instrument implements measures which may affect the rights, interests or obligations of individuals, those individuals should be consulted in relation to that instrument.

The committee also notes that the instrument was made in response to the COVID-19 pandemic. The committee's views in relation to COVID-19 related delegated legislation are set out in detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight. The interim report highlights the importance of ensuring parliamentary oversight during times of emergency and notes that COVID-19 serves to shine a light on the deeper, systemic issues which inhibit Parliament from effectively overseeing delegated legislation at all times, not just during emergencies.

The committee will continue to closely monitor COVID-19 related delegated legislation in the future to ensure that it complies with the recommendations set out in the interim report.

A copy of the committee's interim report is available at:

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

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



10 December 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 [F2020L00579]

Thank you for your letter of 3 December 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 9 December 2020. The committee's comments are detailed in Chapter 1 of its *Delegated Legislation Monitor 14 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 consultation with relevant stakeholders and consumers has commenced, and your undertaking to advise the committee of the outcomes of the ongoing review of the temporary arrangements, the committee has concluded its examination of the instrument and resolved to withdraw the notice of motion to disallow the instrument.

The committee also notes that the instrument was made in response to the COVID-19 pandemic. The committee's views in relation to COVID-19 related delegated legislation are set out in detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight. The interim report highlights the importance of ensuring parliamentary oversight during times of emergency and notes that COVID-19 serves to shine a light on the deeper, systemic issues which inhibit Parliament from effectively overseeing delegated legislation at all times, not just during emergencies.

The committee will continue to closely monitor COVID-19 related delegated legislation in the future to ensure that it complies with the recommendations set out in the interim report.

A copy of the committee's interim report is available at:

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

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.

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

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10 December 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 27 November 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 9 December 2020.

In summary, the committee welcomes your undertaking to amend the instrument. The committee notes that this undertaking was implemented on 30 November 2020.

In light of your implemented undertaking to amend the explanatory statement to the instrument, the committee has concluded its examination of the instrument and resolved to withdraw the notice of motion to disallow the instrument.

The committee's concluding comments are set out in Chapter 1 of its *Delegated Legislation Monitor 14 of 2020*, available on the committee's website at:

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

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