



3 December 2020

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Via email: [Josh.Frydenberg.MP@aph.gov.au](mailto:Josh.Frydenberg.MP@aph.gov.au)

CC: Senator the Hon Jane Hume, Assistant Minister for Superannuation, Financial Services and Financial Technology, [Senator.Hume@aph.gov.au](mailto:Senator.Hume@aph.gov.au)  
[tsrdlos@treasury.gov.au](mailto:tsrdlos@treasury.gov.au); [Committeescrutiny@treasury.gov.au](mailto:Committeescrutiny@treasury.gov.au)

Dear Treasurer,

**ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199]**

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 prevents offers of stub equity in proprietary companies to retail investors and limits the circumstances in which mandatory custodial arrangements can be used by modifying Chapters 6 and 6D of the *Corporations Act 2003* (Corporations Act).

The instrument was made under sections 655A and 741 of the Corporations Act. These provisions 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 the use of delegated legislation is appropriate as the instrument utilises powers given to ASIC by the Parliament and 'the matters contained in the instrument are a specific amendment designed to ensure the application of primary legislation remained flexible to adapt to market developments and applies in a way consistent with the intended policy and the enabling provisions in the primary legislation'.

While noting this explanation, 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 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 it ceases 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 **17 December 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](mailto: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**



3 December 2020

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Via email: [Josh.Frydenberg.MP@aph.gov.au](mailto:Josh.Frydenberg.MP@aph.gov.au)

CC: [tsrdlos@treasury.gov.au](mailto:tsrdlos@treasury.gov.au); [committeescrutiny@treasury.gov.au](mailto:committeescrutiny@treasury.gov.au)

Dear Treasurer,

**Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Mortgage Brokers) Regulations 2020 [F2020L01189]**

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.

***Significant matters in delegated legislation***

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).

Section 158N of the *National Consumer Credit Protection Act 2009* (National Credit Act) sets out the definition of conflicted remuneration. Section 158NA further provides that the National Consumer Credit Protection Regulations 2010 (principal instrument) may further define conflict remuneration.

This instrument amends the principal instrument to specify the circumstances under which a benefit is and is not conflicted remuneration and prescribe the circumstances under which conflicted remuneration must not be accepted or must not be given.

The committee generally considers that significant matters, such as specifying key elements of the definition of conflicted remuneration, are more appropriately enacted via primary legislation. Where significant matters are nevertheless left to delegated legislation, the committee would expect a sound justification for the use of delegated legislation to be provided.

In this instance, the explanatory statement to the instrument notes that the instrument, together with Schedule 3 to the *Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers (2019 Measures)) Act 2020*, has been made to implement the government's response to Recommendation 1.3 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry to address conflicted remuneration for mortgage brokers. However, the explanatory statement does not provide any information as to why it was considered necessary and appropriate to include significant elements of the definition of conflicted remuneration in delegated legislation.

**The committee therefore requests your advice as to why it was considered necessary and appropriate to prescribe key elements of the definition of conflicted remuneration in delegated, rather than primary, legislation.**

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 **17 December 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](mailto: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**



3 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](mailto:Senator.Ruston@aph.gov.au)

CC: [dlos@dss.gov.au](mailto:dlos@dss.gov.au)

Dear Minister,

**Social Security (Administration) — various instruments [F2020L01221]  
[F2020L01223] [F2020L01224] [F2020L01225] [F2020L01226]**

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 these matters.

***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 committee notes that these five instruments provide for a range of matters in relation to income management measures, including:

- determining that the Northern Territory is a 'declared voluntary income management area' for the purposes of Part 3B of the *Social Security (Administration) Act 1999* (the Act) [F2020L01221];
- specifying classes of persons to be exempt welfare payment recipients for the purposes of section 123UGB of the Act [F2020L01223];
- determining the Northern Territory as a 'declared child protection State or Territory' for the purposes of Part 3B of the Act [F2020L01224];
- setting out the decision-making principles which the Secretary must comply with when considering whether a person should be exempt from income management

under the disengaged youth and long-term welfare payment recipient income management measures [F2020L01225]; and

- setting out the deductible portion of certain welfare payments of a voluntary participant of income management [F2020L01226].

The committee generally considers that significant matters, such as income management measures applying to welfare payment recipients, particularly the circumstances in which recipients may be subject to or exempt from income management, are more appropriately enacted via primary legislation. Where significant matters are nevertheless left to delegated legislation, the committee would expect a sound justification for the use of delegated legislation to be provided. In this regard, the committee notes that no explanation has been provided as to why it is necessary and appropriate to leave these significant matters to delegated legislation.

**The committee therefore requests your advice as to why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation, for these significant income management measures.**

### ***Compliance with Legislation Act 2003—consultation***

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. This includes the requirements in paragraph 15J(2)(d) and (e) of the *Legislation Act 2003*, which provide that the explanatory statement to an instrument must describe the nature of any consultation that was undertaken in relation to the instrument, or, if no consultation was undertaken, explain why no consultation was undertaken.

In addition, 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.

The explanatory statements to each of the five instruments provide an identical description of the consultation that was undertaken. The explanatory statements explain that consultation was undertaken with Services Australia, the National Indigenous Australians Agency and the Northern Territory Government on the operation of the 2010 version of each instrument which is being replaced. The explanatory statements also explain that the department engaged with communities and stakeholders in the Northern Territory on the transition from income management to the cashless debit card, including community visits and stakeholder groups. This engagement involved discussions about current income management policy.

The description does not specifically address whether consultation was undertaken on the specific measures in each instrument prior to the instrument being made.

**The committee therefore requests your advice as to whether persons likely to be affected by the specific measures in each instrument, such as welfare recipients on income management or peak organisations representing their interests, were consulted in relation to the specific measures, and if not, why not.**

### ***Broad discretionary power***

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 Social Security (Administration) (Exempt Welfare Payment Recipients – Principal Carers of a Child) (Indications of Financial Vulnerability) Principles 2020 [F2020L01225] provides for decision-making principles that the secretary must comply with when deciding whether an individual shows signs of financial vulnerability for the purposes of paragraph 123UGD(1)(d) the Act.

Where an instrument provides for a person to exercise discretionary powers in relation to decisions which affect an individual, the committee expects those discretionary powers to be sufficiently defined. In this instance, the committee considers that the decision-making principles in Part 2 of the instrument are broadly framed and therefore do not adequately constrain the secretary's broad power to determine whether a welfare payment recipient is financially vulnerable.

**The committee therefore requests your advice as to whether any further limits apply, in legislation or policy, to constrain the scope of the secretary's broad power to determine whether a welfare payment recipient is financially vulnerable for the purposes of paragraph 123UGD(1)(d) of the 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 **17 December 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](mailto: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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**Senate Standing Committee for the  
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3 December 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](mailto:Senator.Colbeck@aph.gov.au)  
CC: [Minister.Colbeck.DLO@health.gov.au](mailto:Minister.Colbeck.DLO@health.gov.au);  
[parliamentary.committees@health.gov.au](mailto:parliamentary.committees@health.gov.au)

Dear Minister,

**Contingence Aids Payment Scheme 2020 [F2020L00758]**

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 2 December 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

The committee welcomes your undertaking to amend the instrument to provide for independent merits review by the Administrative Appeals Tribunal of decisions made under sections 21 and 22 of the instrument. The committee also welcomes your broader undertaking to progress amendments to the *National Health Act 1953* to expressly provide that instruments which are made under sections other than sections 14 and 15 of the Act, are not invalid as a consequence of providing for independent merits review.

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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3 December 2020

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Via email: [Josh.Frydenberg.MP@aph.gov.au](mailto:Josh.Frydenberg.MP@aph.gov.au)

CC: [tsrdlos@treasury.gov.au](mailto:tsrdlos@treasury.gov.au); [Committeescrutiny@treasury.gov.au](mailto:Committeescrutiny@treasury.gov.au);

Dear Treasurer,

**Corporations (Coronavirus Economic Response) Determination (No. 4) 2020  
[F2020L01206]**

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, and has resolved to draw your attention to the following matter.

***Matters more appropriate for parliamentary enactment***

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 (that is, matters that should be enacted by primary rather than delegated legislation).

The instrument temporarily modifies the operation of the civil penalty provisions in subsections 674(2), 674(2A), 675(2) and 675(2A) of the *Corporations Act 2001* (Corporations Act). The unmodified provisions establish an objective test for the disclosure of information where the information would have a material effect on the price or value of the entity's enhanced disclosure (ED) securities.

The modifications in the instrument replace this objective test with a temporary test based on the knowledge, recklessness or negligence of a disclosing entity or its officers with respect to whether certain information would have a material effect on the price or value of its ED securities and therefore should be disclosed under sections 674 or 675. Breach of the continuous disclosure obligations attracts both civil and criminal penalties. However, the modifications made by the instrument only affect the operation of the civil penalty provisions. The modifications made by the instrument will remain in force for six months.

The instrument was made under section 1362A of the Corporations Act, which was inserted by item 1 of Schedule 8 to the *Coronavirus Economic Response Package Omnibus Act 2020*. Section 1362A provides that the Treasurer may, by disallowable legislative instrument, temporarily modify specified provisions of the Corporations Act. The Treasurer must first be satisfied that it would not be reasonable to expect persons to comply with the relevant provisions because of the impact of COVID-19.

Section 1362A of the Corporations Act appears to be a Henry VIII clause, as it enables delegated legislation to modify the operation of legislation which has been passed by the Parliament. The committee notes that the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills committee) commented on section 1362A when the Coronavirus Economic Response Package Omnibus Bill 2020 was before the Parliament. The Scrutiny of Bills committee emphasised that there are significant scrutiny concerns with Henry VIII clauses, as such clauses impact on levels of parliamentary scrutiny and may subvert the appropriate relationship between Parliament and the Executive.

This committee shares the views of the Scrutiny of Bills committee regarding Henry VIII clauses, and takes this opportunity to reiterate that committee's concerns about the modification of primary legislation by delegated legislation.

The committee also considers that the instrument raise significant policy matters relating to the Commonwealth Government's response to the COVID-19 pandemic, and therefore engages standing order 23(4). Accordingly, the committee has resolved to draw the instrument to the attention of the Senate and relevant Senate committees.

Finally, 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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3 December 2020

The Hon Keith Pitt MP  
Minister for Resources, Water and Northern Australia  
Parliament House  
CANBERRA ACT 2600

Via email: [Keith.Pitt.MP@aph.gov.au](mailto:Keith.Pitt.MP@aph.gov.au)

CC: [minister.pitt@industry.gov.au](mailto:minister.pitt@industry.gov.au)

Dear Minister,

**Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment  
(Cross-boundary Greenhouse Gas Storage) Regulations 2020 [F2020L01177]**

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 provides for the amount of annual titles administration levy imposed on a cross-boundary greenhouse gas assessment permit. The explanatory statement to the instrument notes that the levy imposed by the instrument is for cost-recovery purposes. Whilst noting this information, the committee is concerned that the instrument may impose charges which would be more properly regarded as taxation. In particular, the committee notes that the instrument is made under the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* (Levies Act). Section 10E of the Levies Act provides for the imposition of annual titles administration levies. Section 11 further provides that the amount of the relevant levy may be prescribed by regulations made under the Act; however, it does not set any cap on the amount that may be charged.

In the committee's view, the levying of taxation is one of the most fundamental functions of the Parliament. Consequently, the committee considers that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax. In this instance, while the instrument is made under the Levies Act, that Act only provides limited guidance as to the amounts of levy that may be imposed. This heightens the committee's scrutiny concerns about the determination of levies by delegated legislation, rather than primary legislation.

As the levying of taxation in delegated legislation is a systemic technical scrutiny matter, the committee has resolved draw these instruments to the attention of the Senate in its *Delegated Legislation Monitor 13 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*.

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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3 December 2020

The Hon Michael Sukkar MP  
Minister for Housing and Assistant Treasurer  
Parliament House  
CANBERRA ACT 2600

Via email: [Michael.Sukkar.MP@aph.gov.au](mailto:Michael.Sukkar.MP@aph.gov.au)

CC: [tsrdlos@aph.gov.au](mailto:tsrdlos@aph.gov.au); [committeescrutiny@treasury.gov.au](mailto:committeescrutiny@treasury.gov.au)

Dear Assistant Treasurer,

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

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, 2 December 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

The committee welcomes your undertaking to amend the instrument to provide that it ceases three years after commencement, in response to the committee's scrutiny concerns.

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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3 December 2020

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

Dear Minister

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

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 2 December 2020.

In summary, in light of the fact that the imminent debate on the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 will provide an opportunity for the Parliament to consider the proposed continuation of the cashless debit card scheme, 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 13 of 2020*, available on the committee's website at:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Monitor](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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



3 December 2020

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

via email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

cc: Senator the Hon Richard Colbeck, Minister for Aged Care and Senior  
Australians, [Minister.Colbeck.DLO@health.gov.au](mailto:Minister.Colbeck.DLO@health.gov.au)

Dear Chair,

### **Matters of interest to the Senate—COVID-19 support supplement**

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 supplements in the aged care sector, 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
<b>Aged Care Legislation Amendment (Subsidies—COVID-19 Support Supplement and Workforce Continuity Funding Measures No. 2) Instrument 2020 [F2020L01183]</b>	To prescribe a second COVID-19 support supplement payment, which is payable for each day in June 2020 that a care recipient was being provided residential care by their approved provider, and continue, from 1 September 2020, the temporary increases to the viability supplement and to the homeless supplement which had ended on 31 August 2020.	1 <sup>st</sup> day of sitting 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 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



3 December 2020

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

via email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

cc: The Hon Josh Frydenberg MP, Treasurer, [tsrdlos@treasury.gov.au](mailto:tsrdlos@treasury.gov.au)  
The Hon Keith Pitt MP, Minister for Resources, Water and Northern  
Australia, [Keith.Pitt.MP@aph.gov.au](mailto:Keith.Pitt.MP@aph.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
<b>Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules (No. 2) 2020 [F2020L01200]</b>	To give certain entities or classes of entities an alternative basis on which they may satisfy the actual decline in turnover test or the decline in turnover test to be eligible for JobKeeper payments. This will ensure that entities in certain classes will still be eligible to receive assistance through JobKeeper payments where their particular circumstances are not specifically accounted for in the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020.	1 <sup>st</sup> day of sitting of 2021
<b>Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 [F2020L01194]</b>	To modify the <i>Corporations Act 2001</i> to enable meetings to be run electronically and to enable electronic signatures to be used, to relieve companies from problems they face due to COVID-19.	1 <sup>st</sup> day of sitting of 2021
<b>Corporations (Coronavirus Economic Response) Determination (No. 4) 2020 [F2020L01206]</b>	To modify the operation of certain civil penalty provisions in the <i>Corporations Act 2001</i> to establish a temporary test based on a disclosing entity or its officers' knowledge, recklessness or negligence with respect to whether certain information would have a material effect on the price or value of its enhanced disclosure securities and therefore should be disclosed.	1 <sup>st</sup> day of sitting of 2021
<b>Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Mortgage Brokers) Regulations 2020 [F2020L01189]</b>	To address conflicted remuneration for mortgage brokers, as per Recommendation 1.3 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, including by setting out what is conflicted remuneration and circumstances in which conflicted remuneration must not be accepted or given.	1 <sup>st</sup> day of sitting 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



3 December 2020

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

via email: [covid.sen@aph.gov.au](mailto:covid.sen@aph.gov.au)

cc: The Hon Josh Frydenberg MP, Treasurer, [tsrdlos@treasury.gov.au](mailto:tsrdlos@treasury.gov.au)  
Senator the Hon Richard Colbeck, Minister for Aged Care and Senior  
Australians, [Minister.Colbeck.DLO@health.gov.au](mailto: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
<b>Aged Care Legislation Amendment (Subsidies—COVID-19 Support Supplement and Workforce Continuity Funding Measures No. 2) Instrument 2020 [F2020L01183]</b>	To prescribe a second COVID-19 support supplement payment, which is payable for each day in June 2020 that a care recipient was being provided residential care by their approved provider, and continue, from 1 September 2020, the temporary increases to the viability supplement and to the homeless supplement which had ended on 31 August 2020.	1 <sup>st</sup> day of sitting of 2021
<b>Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules (No. 2) 2020 [F2020L01200]</b>	To give certain entities or classes of entities an alternative basis on which they may satisfy the actual decline in turnover test or the decline in turnover test to be eligible for JobKeeper payments. This will ensure that entities in certain classes will still be eligible to receive assistance through JobKeeper payments where their particular circumstances are not specifically accounted for in the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020.	1 <sup>st</sup> day of sitting of 2021
<b>Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 [F2020L01194]</b>	To modify the <i>Corporations Act 2001</i> to enable meetings to be run electronically and to enable electronic signatures to be used, to relieve companies from problems they face due to COVID-19.	1 <sup>st</sup> day of sitting of 2021
<b>Corporations (Coronavirus Economic Response) Determination (No. 4) 2020 [F2020L01206]</b>	To modify the operation of certain civil penalty provisions in the <i>Corporations Act 2001</i> to establish a temporary test based on a disclosing entity or its officers' knowledge, recklessness or negligence with respect to whether certain information would have a material effect on the price or value of its enhanced disclosure securities and therefore should be disclosed.	1 <sup>st</sup> day of sitting of 2021

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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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