

Monitor 4 of 2020 - Committee correspondence

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3 April 2020

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

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

CC: The Hon Michael Sukkar, Minister for Housing and Assistant Treasurer,
Michael.Sukkar.MP@aph.gov.au

Dear Chair,

**Census and Statistics Amendment (Statistical Information) Regulations 2020
[F2020L00109]**

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 scrutiny principles outlined in Senate standing order 23.

Since 4 December 2019, standing order 23(4) has required 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 above instrument appears to contain significant policy matters relating to the collection of statistical information for the 2021 Census about defence force service and health conditions diagnosed by a doctor or nurse, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw this instrument to the attention of your committee.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments made in the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine this instrument, I note the time for lodging a disallowance notice expires on 8 September 2020.

To assist in your committee's consideration of this matter, please find attached a copy of the instrument and its explanatory statement. These documents are also published on the Federal Register of Legislation at <https://www.legislation.gov.au/Details/F2020L00109>.

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



3 April 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: The Hon David Littleproud MP, Minister for Agriculture, Drought and
Emergency Management, David.Littleproud.MP@aph.gov.au

Dear Chair,

**Future Drought Fund (Drought Resilience Funding Plan 2020 to 2024)
Determination 2020 [F2020L00117]**

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 scrutiny principles outlined in Senate standing order 23.

Since 4 December 2019, standing order 23(4) has required 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 above instrument appears to contain significant policy matters relating to the funding principles and strategic priorities for the \$3.9 billion Future Drought Fund, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw this instrument to the attention of your committee.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments made in the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine this instrument, I note the time for lodging a disallowance notice expires on 8 September 2020.

To assist in your committee's consideration of this matter, please find attached a copy of the instrument and its explanatory statement. These documents are also published on the Federal Register of Legislation at <https://www.legislation.gov.au/Details/F2020L00117>.

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



3 April 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 Mathias Cormann, Minister for Finance,
financeminister@finance.gov.au

The Hon Michael McCormack MP, Minister for Infrastructure,
Transport, Regional Development and Communications,
Michael.McCormack.MP@aph.gov.au

The Hon David Littleproud MP, Minister for Agriculture, Water and the
Environment, minister.littleproud@agriculture.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.

Since 4 December 2019, standing order 23(4) has required 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. 1) Regulations 2020 [F2020L00102]	Traceability Grants Program	\$7 million over four years from 2019-20	The program will provide grants for projects that aim to enhance the supply chain traceability systems and arrangements that support the export of agricultural commodities.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2020 [F2020L00105]	Electromagnetic Energy Program—public communications	\$1.8 million over four years from 2019-20	Funding will be provided to deliver a communications campaign to provide the public with information, based on scientific advice and research, about electromagnetic energy emitted from telecommunications facilities.

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 these instruments, I note that the time for lodging a disallowance notice for both instruments expires on 7 September 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



3 April 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: Senator the Hon Mathias Cormann, Minister for Finance,
financeminister@finance.gov.au

The Hon Peter Dutton MP, Minister for Home Affairs,
Peter.Dutton.MP@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.

Since 4 December 2019, standing order 23(4) has required 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 Commonwealth expenditure on funding to support mental health services for emergency service workers who responded to the 2019-20 Australian bushfires and their families. 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 (Home Affairs Measures No. 2) Regulations 2020 [F2020L00104]	Support services for post-traumatic stress disorder and other mental illnesses— emergency services workers involved in the 2019–2020 bushfire season Support and mental health literacy network for emergency services workers—pilot program	\$11.5 million over three years from 2019-20	Funding will be provided to: <ul style="list-style-type: none"> • support services for post-traumatic stress disorder and other mental illnesses for emergency service workers who responded to the 2019-20 Australian bushfires, and their immediate family members; and • establish a support and mental health literacy network to provide support to emergency service workers (including volunteers and former emergency service workers) 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 this instrument, I note that the time for lodging a disallowance notice expires on 7 September 2020.

Further details about the instrument are published on the Federal Register of Legislation at <https://www.legislation.gov.au/Details/F2020L00104>.

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



3 April 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,
Josh.Frydenberg.MP@aph.gov.au

The Hon Keith Pitt MP, Minister for Resources, Water and Northern
Australia, Keith.Pitt.MP@aph.gov.au

Senator the Hon Mathias Cormann, 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.

Since 4 December 2019, standing order 23(4) has required 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 (Treasury Measures No. 1) Regulations 2020 [F2020L00101]	Small business bushfire financial support line	\$3.5 million over 3 years from 2019-20	Funding will be provided to establish a national telephone service that offers financial counselling to small businesses that have been affected by the 2019–2020 bushfire emergency.
Industry Research and Development (Northern Endeavour Temporary Operations Program) Instrument 2020 [F2020L00125]	Northern Endeavour Temporary Operations Program	\$10 million (initial funding)	The program provides funding to support safe operations at the Northern Endeavour floating production storage and offtake facility over the Laminaria-Corallina Oil and Gas Project in Commonwealth waters in the Timor Sea, following the liquidation of the title holder for this project.

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 these instruments, I note that the time for lodging a disallowance notice expires as follows:

- Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 1) Regulations 2020 — 7 September 2020;
- Industry Research and Development (Northern Endeavour Temporary Operations Program) Instrument 2020 — 10 September 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



3 April 2020

The Hon David Littleproud MP
Minister for Agriculture, Drought and Emergency Management
Parliament House
CANBERRA ACT 2600

Via email: David.Littleproud.MP@aph.gov.au

CC: Minister.Littleproud@agriculture.gov.au
DLO.MO@agriculture.gov.au

Dear Minister,

Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]

Thank you for your response of 24 February 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 1 April 2020.

At that meeting, the committee resolved to conclude its consideration of the first of the two scrutiny issues raised in its initial request, and seek your further advice about the second matter, outlined below.

Parliamentary oversight

The committee sought your advice as why the instrument does not require written reports of reviews of the instrument to be tabled in Parliament and published online. In response, you advise that the Department of Agriculture, Water and the Environment (the department) will publish the reports of the reviews online 'so as to ensure that all stakeholders will have the opportunity to consider the findings and the recommendations from the reviews'. You also explain that it would not be appropriate to amend the instrument to require such reports to be tabled, as this is not a feature of other industry code review processes, and such a requirement might compromise the flexibility needed in relation to the timing of the public release of the reports.

In light of the department's intention to publish written reports of the reviews online, the committee has resolved to take no further action in relation to this matter. However, the committee reiterates its preference that instruments which provide for the review of significant matters should also require that such reports are tabled in Parliament, noting that this process alerts parliamentarians to the existence of the documents and provides opportunities for debate which are not available where documents are not tabled.

Unclear drafting; significant penalties

The committee also sought your advice as to whether the instrument could be amended to ensure that the scope of the civil penalty provisions is limited by terms defined in the written law. In response, you advise that the department considers that the instrument could not be amended as requested in a way that maintains consistency with the objectives and purpose of the instrument.

Your response explains that penalising dishonesty and the failure to have regard to the legitimate interests of other parties is a 'foundational concept' which underpins both this instrument and other mandatory industry codes under the *Competition and Consumer Act 2010*. In this regard, you identify two other instruments which also impose civil penalties of 300 penalty units for contravention of a good faith obligation. Whilst noting these examples, the committee does not consider that consistency with other laws is, of itself, a sufficient justification for potentially compromising the rule of law principle of legal certainty by imposing significant civil penalties for non-compliance with a standard undefined by the written law.

Moreover, the committee is aware of other industry codes which seek to promote honest conduct, and conduct which has regard to the legitimate interests of other parties, without imposing a civil penalty for the breach of such an undefined obligation. These include the Competition and Consumer (Industry Codes – Food and Grocery) Regulation 2015 [F2015L00242] and the Competition and Consumer (Industry Code – Sugar) Regulations 2017 [F2017L00387]. The committee is also aware of other industry codes which do not impose a general good faith obligation at all, such as the Competition and Consumer (Industry Codes—Oil) Regulations 2017.

Accordingly, noting that other industry codes have taken different approaches to promoting honest and fair dealings with other parties, it remains unclear to the committee why it is necessary to advance this objective in the present instrument in a way that undermines legal clarity and certainty by imposing significant civil penalties for non-compliance with a term undefined by the written law.

The committee would therefore appreciate your further advice as to why it is considered necessary and appropriate to impose significant civil penalties for non-compliance with a term undefined by the written law in this instrument, when other industry codes have sought to promote honest and fair dealings with other parties without such provisions.

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 April 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



3 April 2020

The Hon David Littleproud MP
Minister for Agriculture, Drought and Emergency Management
Parliament House
CANBERRA ACT 2600

Via email: David.Littleproud.MP@aph.gov.au
CC: Minister.Littleproud@agriculture.gov.au
DLO.MO@agriculture.gov.au

Dear Minister,

Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019 [F2019L01564]

Thank you for your response of 3 March 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 1 April 2020.

The committee remains concerned about the scrutiny issue outlined below, and has resolved to seek further information in relation to this matter.

Automated decision-making

The committee welcomes your acknowledgment that decisions made under subsections 19(4), 20(7) and 23(2) of the instrument are not suitable to be made by computer due to their discretionary nature, and your advice that current departmental policy and practice reflects this position.

In light of your advice, it remains unclear to the committee why the instrument itself does not expressly prohibit the use of computer programs to make discretionary decisions, noting that policy and practice can change over time without parliamentary oversight. In particular, the committee is concerned that while the computer programs currently used by the department are not capable of being used to make discretionary decisions, technological developments could make this possible in the future, and this would not be subject to any legislative limitations or prohibition.

The committee therefore requests that the instrument be amended to clarify that decisions made under subsections 19(4), 20(7) and 23(2) of the instrument cannot be made by computer programs due to their discretionary nature, consistent with current departmental policy and practice.

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 April 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



3 April 2020

The Hon Dan Tehan MP
Minister for Education
Parliament House
CANBERRA ACT 2600

Via email: Dan.Tehan.MP@aph.gov.au

CC: Rob.Mason@dese.gov.au; Amanda.Gilkes@dese.gov.au

Dear Minister,

Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019 [F2019L01699]

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.

Merits review

Item 3 of Schedule 2 to the instrument inserts new Chapter 2 into the Higher Education Provider Guidelines 2012 (principal guidelines). New section 2.10.5 of the principal guidelines requires the HELP Tuition Protection Director (Director) to give written notice to each higher education provider liable to pay a HELP tuition protection levy which sets out the amount of the levy, the calculation for each levy component that applies to the provider, and the day by which the provider must pay the levy.

New sections 2.10.25 to 2.10.35 of the principal guidelines set out the circumstances in which a liable provider may request a review of a such a determination by the Director, the options available to the Director in reviewing the decision, and the notice requirements attaching to the review decision.

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 engagement with your department, the committee understands that the determination of levy components involves, at most, the exercise of strictly confined discretion, concerning the assessment of additional information or evidence provided by

the provider. Nevertheless, the capacity of the decision-maker to exercise some discretion, albeit minor, combined with the availability of internal review, indicates that the determination of levy components cannot accurately be described as 'automatic'.

Accordingly, the committee requests your advice as to what characteristics of the determination of levy components justifies 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 **17 April 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



3 April 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

Dear Minister,

**National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019)
[F2019L01542]**

Thank you for your response of 2 March 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 1 April 2020.

Your detailed response has greatly assisted the committee in its consideration of the instrument. Nevertheless, the committee retains some scrutiny concerns about section 25 of the instrument, and has resolved to seek your further advice about the matters outlined below.

Scope of administrative powers

In its letter of 13 February 2020, the committee sought your advice as to the scope of section 25 of the instrument and, in particular, whether the instrument could be amended to provide greater specificity as to the qualifications and experience which an authorised person must possess. Your response identifies a number of reasons why it is unnecessary to amend the instrument in this manner, including the time-limited and pilot nature of the program. Your response also indicates that, should the government decide to implement a national naloxone program, your department will 'consider at that time as to whether it is appropriate to amend the instrument be more prescriptive around the qualifications and experience'.

In light of your advice, the committee has concluded its consideration of this matter.

Compliance with authorising legislation

The committee also sought your advice as to the source of legal authority for section 25 of the instrument. Your response helpfully clarifies that the government considers that this section relies exclusively on the authority of section 100 the *National Health Act 1953* (the

Act), rather than the decision in *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560. It further explains that the authorisation of a third party to perform the secretary's powers and functions with respect to the special arrangement constitutes a matter 'in relation to' the provision of an adequate supply of pharmaceutical benefits to certain persons, within the meaning of subsection 100(1) of the Act.

Whilst noting this interpretation, the committee remains concerned that the use of section 100 of the Act to support the authorisation of private third parties to perform the powers and functions of the secretary to administer a special arrangement constitutes an unusual and potentially unintended use of that power. The committee would expect clearer evidence in the enabling provision than 'in relation to' to support a statutory intention to authorise outsourcing of administrative powers.

Accordingly, the committee requests your advice as to what evidence is available beyond the terms of section 100 of the Act to indicate that Parliament intended section 100 to provide legislative authority for the authorisation of private third parties to perform all of the powers and functions of the secretary in administering special arrangements.

To facilitate the committee's consideration of the matters above, the committee would appreciate your response by **17 April 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



3 April 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; CommitteeScrutiny@treasury.gov.au

Dear Assistant Minister,

**ASIC Corporations (Life Risk Insurance and Consumer Credit Insurance) Instrument
2019/839 [F2019L01570]**

Thank you for your response of 24 March 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 1 April 2020.

The committee takes this opportunity to reiterate its scrutiny view that delegated legislation should not modify provisions of primary legislation, particularly where the relevant provision modified is a criminal offence punishable by imprisonment.

However, the committee welcomes your advice that the government intends to introduce the Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2020 Measures) Bill 2020 into the Parliament this year, and that ASIC intends to repeal the instrument once that bill is passed.

On the basis of this 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



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

3 April 2020

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

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

CC: parliamentary.committees@health.gov.au

Dear Minister,

**Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules
2019 [F2019L01684]**

Thank you for your response of 28 February 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 1 April 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



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

3 April 2020

The Hon Karen Andrews MP
Minister for Industry, Science and Technology
Parliament House
CANBERRA ACT 2600

Via email: Karen.Andrews.MP@aph.gov.au

CC: industrydlo@industry.gov.au; CommitteeScrutiny@treasury.gov.au

Dear Minister,

Competition and Consumer Amendment (Australian-made Complementary Medicines) Regulations 2019 [F2019L01627]

Thank you for your response of 27 February 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 1 April 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



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3 April 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

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

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

Dear Treasurer,

**Corporations Amendment (Design and Distribution Obligations) Regulations 2019
[F2019L01626]**

Thank you for your response of 28 February 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 1 April 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



3 April 2020

Senator the Hon Mathias Cormann
Minister for Finance
Parliament House
CANBERRA ACT 2600

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

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

Dear Minister,

Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2019 [F2019L01642]

Thank you for your response of 27 February 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 1 April 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

The committee welcomes the implementation of your undertaking to amend the explanatory statement to the instrument to provide further information as to the amount of funding that has been expended on the grant to the DP Jones Nursing Home authorised by the instrument.

In the interests of transparency, I note that your undertaking will be recorded in the *Delegated Legislation Monitor*, and that 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



3 April 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

Dear Minister,

National Health (Supplies of out-patient medication) Determination 2019 (No. 2) (PB 110 of 2019) [F2019L01703]

Thank you for your response of 13 March 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 1 April 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 remove all references to the National Health Reform Agreement and to provide for a definition for Pharmaceutical Reform Arrangements on the face of the instrument.

In the interests of transparency, I note that your undertaking will be recorded in the *Delegated Legislation Monitor*, and that 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



3 April 2020

Senator the Hon Zed Seselja
Assistant Minister for Finance, Charities and Electoral Matters
Parliament House
CANBERRA ACT 2600

Via email: senator.seselja@aph.gov.au

CC: dlo-amf@finance.gov.au

Dear Assistant Minister,

Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]

Thank you for your response of 17 March 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 1 April 2020.

The committee welcomes your undertaking to progress amendments to primary legislation that would enable merits review of decisions made under the instrument, within the framework provided for in the *Taxation Administration Act 1953*.

On the basis of this advice, the committee has concluded its examination of the instrument.

In the interests of transparency, I note that your undertaking will be recorded in the *Delegated Legislation Monitor*, and that this correspondence will be published on the committee's website. The committee would appreciate receiving your further advice once this undertaking has been implemented.

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