

Monitor 10 of 2021 - Committee correspondence

Contents

Chapter 2 – Matters of interest to the Senate

Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]	1, 23
Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]	4
Therapeutic Goods (Exempt Monographs) Determination 2021 [F2021L00594] and Therapeutic Goods (Standard for Nicotine Vaping Products) (TGO 110) Order 2021 [F2021L00595]	7

Chapter 3 – Scrutiny of Commonwealth expenditure

Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 2) Regulations 2021 [F2021L00574]....	10, 13
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2021 [F2021L00576]	15
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 1) Regulations 2021 [F2021L00572]	15
Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 1) Regulations 2021 [F2021L00575]	17
Financial Framework (Supplementary Powers) Amendment (Veterans' Affairs Measures No. 1) Regulations 2021 [F2021L00578]	21
Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567].....	17
Industry Research and Development (Carbon Capture, Use and Storage Development Program) Instrument 2021 [F2021L00547].....	10
Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument 2021 [F2021L00536].....	17
Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539].....	17
Industry Research and Development (National Agricultural Innovation Agenda Program) Instrument 2021 [F2021L00561].....	13

Appendix A - New matters

Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]	1, 23
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]	27

Appendix B - Ongoing matters

Aged Care Legislation Amendment (Serious Incident Response Scheme) Instrument 2021 [F2021L00222]	29
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 2) Regulations 2021 [F2021L00409]	31

Appendix C - Concluded matters

Radiocommunications (Spectrum Access Charges – 20 GHz and 30 GHz Bands) Determination 2021 [F2021L00230]	33
Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021 [F2021L00292]	34
Student Assistance Regulations 2021 [F2021L00201]	35



14 July 2021

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 MP, Assistant Treasurer,
dlosukkar@treasury.gov.au; Minister.sukkar@treasury.gov.au

Dear Chair,

Matters of interest to the Senate—Australian Charities and Not-for-profits Commission Governance Standards

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 Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863] appears to contain significant policy matters relating to the registration of charities, 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. An overview of the purpose the instrument is set out at **Attachment A**.

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.

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

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

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

Yours sincerely,

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

ATTACHMENT A

Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]

The *Australian Charities and Not-for-profits Commission Act 2012* (the Act) provides for the registration and regulation of charities by the Australian Charities and Not-for-profits Commission (ACNC). An entity is entitled to registration under the Act if it meets specified requirements, including the requirement to comply with the governance standards set out in the Australian Charities and Not-for-profits Commission Regulation 2013. Registration under the Act is a necessary precondition for access to a range of exemptions, benefits, and concessions, including certain Commonwealth tax concessions.

Governance standard 3 currently provides that registered entities must not engage in conduct that may be dealt with as an indictable offence under an Australian law or by way of a civil penalty of 60 penalty units or more. These regulations provide that an entity may not be entitled to be registered or remain registered under the Act if:

- the entity engages in conduct that may be dealt with as a relevant kind of summary offence under an Australian law; or
- the entity fails to maintain reasonable internal control procedures to ensure its resources are not used to actively promote another entity's acts or omissions that may be dealt with as an indictable offence, a relevant kind of summary offence, or a civil penalty of 60 penalty units or more.

Examples of the kinds of summary offences that are covered include:

- trespass to land or premises (including buildings, vehicles etc.);
- vandalism;
- theft of personal property;
- common assault; and
- threatening violence against an individual.

Case study:

A registered entity exists to relieve poverty in Australia and internationally. As part of its activities, it occasionally advocates against the outsourcing of labour from domestic manufacturers to overseas manufacturers. The registered entity organises an event to trespass onto the property of an Australian company that outsources its labour overseas. The registered entity has failed to comply with the new requirement by engaging in conduct that may be dealt with as a summary offence relating to entering or remaining on real property.¹

1 Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863], Explanatory statement, p. 5.



14 July 2021

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

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

cc: The Hon Alan Tudge MP, Minister for Education and Youth,
Minister@education.gov.au

Dear Chair,

Matters of interest to the Senate—Higher Education Standards Framework

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 Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488] appears to contain significant policy matters relating to the regulation of the higher education 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. An overview of the purpose the instrument is set out at **Attachment A**.

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 last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate is 11 August 2021.

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

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

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

Yours sincerely,

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

ATTACHMENT A

Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]

This instrument sets the requirements that a higher education provider must meet, and continue to meet, in order to be registered by the Tertiary Education Quality and Standards Agency (TEQSA) to operate in Australia. They provide the basis for the regulation of Australian higher education providers by TEQSA. The Threshold Standards ensure that the barrier to entry into the higher education sector is set sufficiently high to underpin and protect the quality and reputation of the sector as a whole.

The Threshold Standards also serve other broader purposes in Australian higher education including:

- an articulation of the expectations for provision of higher education in Australia as:
 - a guide to the quality of educational experiences that students should expect
 - a reference for international comparisons of the provision of higher education
 - a reference for other interested parties; and
- a model framework which higher education providers can themselves apply for the internal monitoring, quality assurance and quality improvement of their higher education activities.



14 July 2021

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

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

cc: The Hon Greg Hunt MP, Minister for Health and Aged Care,
Minister.Hunt.DLO@health.gov.au

Dear Chair,

Matters of interest to the Senate—Nicotine vaping products

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 Therapeutic Goods (Standard for Nicotine Vaping Products) (TGO 110) Order 2021 [F2021L00595] and Therapeutic Goods (Exempt Monographs) Determination 2021 [F2021L00594] appear to contain significant policy matters relating to nicotine vaping products, 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. An overview of the purpose the instruments is set out at **Attachment A**.

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 last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate for both instruments is 24 August 2021.

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

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

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

Yours sincerely,

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

ATTACHMENT A

Therapeutic Goods (Standard for Nicotine Vaping Products) (TGO 110) Order 2021 [F2021L00595]

The Order is intended to address concerns held by medical practitioners and pharmacists about the lack of information and controls regarding unregistered nicotine vaping products by establishing minimum safety and quality requirements for unregistered nicotine vaping products with a view to:

- ensuring that health care practitioners and consumers have access to accurate information about the content of these products;
- ensuring that substances with known, demonstrable inhalation risks are not used as ingredients in these products; and
- minimising the risk of, and risks associated with, accidental exposure to or ingestion of these products, particularly by children, given the toxicity of nicotine.

The Order achieves these objectives by specifying a range of labelling, packaging, ingredient, nicotine content (or concentration) and record-keeping requirements. Most notably, these include:

- requiring disclosure of an ingredients list, the nicotine concentration and specific safety warnings on or attached to the container or primary package (including by way of over-stickering) or supplied with the product (including in an information sheet);
- prohibiting the use of active ingredients other than nicotine and eight specific ingredients with known, demonstrable inhalation risks;
- specifying that the nicotine concentration of these products must not exceed 100 mg/mL (base form concentration or equivalent base form concentration);
- requiring nicotine concentration or content to be within +/- 10% of that stated on or attached to the product, or its container or primary package, or in information provided with the product;
- requiring products to have child-resistant packaging; and
- requiring those responsible for import, export or manufacture for the purpose of supply, of these products to maintain records demonstrating conformance with the Order.

Therapeutic Goods (Exempt Monographs) Determination 2021 [F2021L00594]

The Determination complements the Order by providing that those products covered by the Order need not also conform to the default standards that might otherwise apply to them. This is because the Order represents an acceptable standard for the safety and quality of unregistered nicotine vaping products in Australia. The default standards, however, will continue to apply to any nicotine vaping product that may be registered in the Australian Register of Therapeutic Goods.



14 July 2021

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

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

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

The Hon Sussan Ley MP, Minister for the Environment,
DLOley@environment.gov.au

The Hon Keith Pitt MP, Minister for Resources and Water,
minister.pitt@industry.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

The instruments listed in **Attachment A**, 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 engage standing order 23(4), and accordingly has resolved to draw them 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 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 instruments, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on the following dates:

- 11 August 2021—Industry Research and Development (Carbon Capture, Use and Storage Development Program) Instrument 2021 [F2021L00547]; and
- 24 August 2021—Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 2) Regulations 2021 [F2021L00574].

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

ATTACHMENT A

Instrument	Grant/ Program	Amount	Description
Industry Research and Development (Carbon Capture, Use and Storage Development Program) Instrument 2021 [F2021L00547]	Carbon Capture, Use and Storage Development Program	\$50 million	<p>The Program provides \$50 million as part of the Australian Government’s commitment to accelerate the deployment of carbon capture, use and storage (CCUS) technologies in Australia towards commercial operations. In particular, the Program provides funding to support pilot projects and pre-commercial activities for the capture of carbon dioxide for subsequent use or storage or the use or storage of carbon dioxide.</p> <p>Key activities the Program seeks to support include:</p> <ul style="list-style-type: none"> • Fostering of pilot CCUS projects or technologies that could expand into a regional CCUS hub in the near future, and bring together a network of multiple greenhouse gas emitters in close proximity for large-scale abatement; • Research, development or demonstration projects that use or transform carbon dioxide to create carbon-derived or low-carbon products, including fuels, chemical and building materials; • Pre-commercial activities in developing CCUS infrastructure; or • Retrofitting of CCUS to new or existing assets to reduce emissions from new or ongoing processes.
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 2) Regulations 2021 [F2021L00574]	Underwater Cultural Heritage Program	\$510,000 per year through three-year service level agreements	To provide grants of financial assistance to each state and the Northern Territory to protect and conserve Australia’s underwater cultural heritage. The protected underwater cultural heritage includes shipwrecks, sunken aircraft and other submerged sites, along with individual artefacts associated with these sites.
	Indigenous Rangers Coastal Clean-Ups Project	Up to \$14.8 million over four years from 2020-21.	To facilitate economic opportunities for Aboriginal and Torres Strait Islander peoples by increasing the capacity and number of Indigenous rangers engaged in coastal clean-ups in northern Australia, with a focus on the Gulf of Carpentaria; target marine plastic pollution; and promote Australia’s Indigenous peoples’ ongoing stewardship of land and water.



15 July 2021

Senator Susan McDonald

Chair

Senate Rural and Regional Affairs and Transport Legislation Committee

Parliament House

CANBERRA ACT 2600

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

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

The Hon David Littleproud MP, Minister for Agriculture and Northern
Australia, minister.littleproud@agriculture.gov.au,
DLO-MO@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.

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

The instruments listed 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 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. 2) Regulations 2021 [F2021L00574]	Indigenous Rangers Biosecurity Program	\$25.3 million over three years from 2020-21	To support increased economic opportunities for Indigenous persons, entities and communities through activities that enhance biosecurity outcomes in northern Australia.

Instrument	Grant/Program	Amount	Description
Industry Research and Development (National Agricultural Innovation Agenda Program) Instrument 2021 [F2021L00561]	National Agricultural Innovation Agenda Program	\$1.3 million	<p>The Program initially provides \$1.3 million (GST exclusive) as part of the Australian Government's commitment to provide funding to Agricultural Innovation Australia Ltd to assist it to undertake its activities in relation to developing research and development investment strategies and funding research and development projects identified by such strategies.</p> <p>The purpose of the Program is to invest in research and development that addresses significant issues affecting a number of agricultural sectors, and that supports increased sustainability, productivity and profitability.</p>

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

- 12 August 2021— Industry Research and Development (National Agricultural Innovation Agenda Program) Instrument 2021 [F2021L00561]; and
- 24 August 2021—Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 2) Regulations 2021 [F2021L00574].

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



14 July 2021

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

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

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

The Hon Greg Hunt MP, Minister for Health and Aged Care,
Minister.Hunt.DLO@health.gov.au

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

The instruments listed 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 engage standing order 23(4), and accordingly has resolved to draw them to the attention of your committee:

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2021 [F2021L00576]	Grant to Odyssey House NSW	\$1.5 million in 2020-21	To provide funding to Odyssey House NSW to assist with the development of a new facility by the construction of buildings at Eagle Vale, New South Wales, for the expansion of the Parent's and Children's Program to provide treatment and support services for drug and alcohol use.

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 1) Regulations 2021 [F2021L00572]	National Memorial for Victims and Survivors of Institutional Child Sexual Abuse	\$6.7 million over four years from 2020-21	To provide for the establishment of the National Memorial for Victims and Survivors of Institutional Child Sexual Abuse. This will include support to hold a ceremony to announce the design and future site of the National Memorial, hold a commemorative ceremony to mark the opening of the National Memorial, assist key stakeholders to attend the ceremonies, and establish and maintain a commemorative and educative website to complement the National Memorial.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine either of the above instruments, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate for both instruments expires on 24 August 2021.

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



14 July 2021

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

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

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

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

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

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

The instruments listed in **Attachment A**, 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 engage standing order 23(4), and accordingly has resolved to draw them 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 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 instruments, I note that (based on the current sitting pattern) the time for lodging disallowance notices in the Senate expires on the following dates:

- 11 August 2021—Industry Research and Development (Growing Australia’s Cyber Skills Program) Instrument 2021 [F2021L00536] and Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]; and
- 24 August 2021— Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567] and Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 1) Regulations 2021 [F2021L00575].

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

ATTACHMENT A

Instrument	Grant/ Program	Amount	Description
Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument 2021 [F2021L00536]	Growing Australia's Cyber Skills Program	\$35.2 million over four years from 2020-21	<p>The Program consists of two elements: the Cyber Security Skills Partnership Innovation Fund and the Questacon Cyber Ready Stream.</p> <p>The Cyber Security Skills Partnerships Innovation Fund is a \$26.5 million grants program forming part of the Australian Government's commitment to increase the quality and quantity of cyber security professionals in Australia, including increasing the participation of women in cyber security.</p> <p>The Questacon Cyber Ready Stream includes funding of \$8.7 million for Questacon to deliver the following programs:</p> <ul style="list-style-type: none"> • Questacon Cyber Learning Master Academy: a pilot program for in-field STEM teachers; • Questacon Cyber Squad: a pilot program for non-STEM and out-of-field teachers; • Cyber Program Support: portable resources for family and student engagement, based on existing Questacon assets including exhibits and maths puzzles; • Questacon Cyber STEM Leaders: a national leaders forum and minds in residence program; • National Cyber Design Challenge: a national cyber design challenge for young people aged 8-13.
Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]	Modern Manufacturing Initiative Program	\$1.3 billion over four years from 2020-21	<p>The purpose of the Program is to stimulate business investment in the manufacturing sector by addressing barriers to scale and competitiveness for Australian businesses. It aims to build manufacturing capabilities and networks, lift productivity, create jobs, build global competitiveness and boost the export potential of Australian businesses. Funding will be provided through grants on a co-investment basis.</p> <p>Funding is available through three streams:</p> <ul style="list-style-type: none"> • The Manufacturing Collaboration Stream will support manufacturing collaboration at scale. This stream seeks to bring together businesses, researchers and investors, to build business confidence during the current crisis, aid our job recovery, and stimulate much needed investment.

Instrument	Grant/ Program	Amount	Description
			<ul style="list-style-type: none"> The Manufacturing Translation Stream will support projects that aid the translation of high quality research and ideas into commercial outcomes and support businesses to scale-up and become more competitive and resilient. It will support businesses to adopt new technologies and improve their manufacturing processes to boost productivity and competitiveness.
			<p>The Manufacturing Integration Stream will target the integration of local businesses with domestic and international firms to facilitate the delivery of products and services into domestic and global value chains. By enhancing integration into domestic and global value chains, businesses can experience increased productivity, innovation, and collaboration, as well as exposure to new technologies, processes and skills.</p>
Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567]	Beetaloo Cooperative Drilling Program	\$50 million	The purpose of the Program is to encourage and facilitate accelerated gas exploration in the Beetaloo sub-basin through the provision of grants. The Program will support the development of the Northern Territory gas industry while building on the Australian Government's commitment to unlocking gas supply and contributing to gas security across Australia.
Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 1) Regulations 2021 [F2021L00575]	South Asia Regional Training and Technical Assistance Centre	\$2.5 million over five years from 2021-22	To assist South Asian countries to design and implement policies that promote economic growth and reduce poverty.



14 July 2021

Senator the Hon Eric Abetz
Chair
Senate Foreign Affairs, Defence and Trade Legislation Committee
Parliament House
CANBERRA ACT 2600

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

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

The Hon Darren Chester MP, Minister for Veterans' Affairs and Defence
Personnel, minister@dva.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—Grant to The Royal
Australian and New Zealand College of Psychiatrists**

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

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

The instrument listed below, in combination with its enabling Act, authorises the Commonwealth to spend public money on a grant to The Royal Australian and New Zealand College of Psychiatrists. 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 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 (Veterans' Affairs Measures No. 1) Regulations 2021 [F2021L00578]	Grant to The Royal Australian and New Zealand College of Psychiatrists	\$5.5 million over four years from 2020-21	To provide funding to The Royal Australian and New Zealand College of Psychiatrists for military and veteran mental health psychiatry training positions to increase the availability of mental health support services for defence force members and veterans and their families. The objective of the training program is to strengthen the psychiatry workforce capability and improve access to psychiatrists with specialised training in military and veteran mental health.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 24 August 2021.

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

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

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

Yours sincerely,

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



15 July 2021

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

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

CC: dlosukkar@treasury.gov.au

Dear Assistant Treasurer,

Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments 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.

Conferral of discretionary powers

Clarity of drafting

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. This includes where instruments confer discretionary powers on a person. In addition, Senate standing order 23(3)(e) requires the committee to scrutinise each instrument as to whether its drafting is defective or unclear.

The instrument amends the Australian Charities and Not-for-profits Commission Regulation 2013 (principal instrument) to alter governance standards relating to charities' engagement in, or promotion of, certain unlawful activities. Registered entities must comply with the standards in order to qualify for certain exemptions, benefits and concessions under the *Australian Charities and Not-for-profits Commission Act 2021* (ACNC Act). Failure to comply with the governance standards may result in revocation of the entity's registration under section 35-10 of the ACNC Act and the exercise of certain enforcement powers under Part 4-2 of the ACNC Act.

The amendments made by the instrument appear to enable the Australian Charities and Not-for-profits Commission (ACNC) Commissioner to exercise a range of discretionary powers in determining whether a registered entity has failed to comply with the governance standards through engaging in, or promoting, unlawful conduct. For example, the instrument inserts new paragraph 45.15(2)(aa) into the principal instrument. This paragraph provides that registered entities must not engage in conduct, or omit to engage in conduct, if that conduct may be dealt with as a summary offence under Australian law and the offence relates to certain types of actions. While

the explanatory statement to the instrument provides some examples as to the type of offences to which this provision may apply, it is unclear what the full scope of the offences may be. In this regard, it appears that the ACNC Commissioner may exercise some discretion in determining what summary offences may be covered by paragraph 45.15(2)(aa). It is unclear why the specific offences are not set out on the face of the instrument, or whether there are any limitations on, or guidance in relation to, the exercise of this discretion.

Additionally, the instrument inserts a note to subsection 45.15(2) to the principal instrument. This note states that the ACNC Commissioner may consult with a law enforcement agency or other relevant entity in forming a reasonable belief about compliance with the governance standards under subsection 35-10(1) of ACNC Act. The explanatory statement explains that this is intended to 'address general concerns from stakeholders about the ACNC Commissioner's discretion and enforcement powers'. However, it does not provide guidance as to the scope of this discretion, such as the circumstances in which the ACNC Commissioner may seek such advice, or indicate which entities may be contacted.

Further, the instrument inserts new subsection 45.15(3) into the principal instrument. This provision requires registered entities to maintain reasonable internal control procedures to ensure that its resources are neither used nor continued to be used to actively promote another entity's acts or omissions that may be dealt with under paragraphs 45.15(2)(a), (aa) or (b). Some examples of the types of internal procedures that a registered entity may maintain are set out on the face of the instrument. The explanatory statement further notes that 'whether internal control procedures are reasonable in any particular case is to be determined objectively and will depend on the specific circumstances of the registered entity, including its size, purpose and activities'. It also explains that this is consistent with the requirements for external conduct standards. However, in the absence of further information in the explanatory statement, it is unclear what objective test will be applied in determining whether a registered entity has complied with the requirements in subsection 45.15(3).

The committee generally considers that instruments that confer discretionary powers on a person should clearly address the purpose and scope the discretion and why it is considered necessary in the explanatory statement. Additionally, the committee expects that the explanatory statement should explain the factors that must be considered in exercising the discretion, and the nature and source of any relevant limitations and safeguards, including whether they are contained in law or policy. In this instance, the committee considers that the explanatory statement does not provide sufficient detail as to the scope of these discretionary powers, their necessity, or any relevant limitations. The committee considers that such information is important to enable charities to clearly understand their obligations under the governance standards. The committee concerns are particularly amplified noting that the discretionary powers to be exercised by the Commissioner may relate to the determination of whether a criminal law has been breached.

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

- **why it is considered necessary and appropriate to expand the discretion that the ACNC Commissioner may exercise in determining whether a registered charity complies with the governance standards under section 45.15 of the principal instrument;**
- **the scope of the powers that the ACNC Commissioner may exercise under the instrument, including:**
 - **what specific summary offences that registered entities may not engage in under new paragraph 45.15(2)(aa);**
 - **the factors that the ACNC Commissioner must consider when determining when to seek advice from law enforcement agencies or other relevant entities in forming a**

reasonable belief about compliance with the governance standards under section 35-10 of the ACNC Act;

- what objective test is applied to determine whether a registered entity has complied with the requirements of subsection 45.15(3); and
- the nature and source of any limitations or safeguards on the exercise of the ACNC Commissioner's discretionary powers under section 45.15, including whether they are set out in law or policy.

Implied freedom of political communication

Senate standing order 23(3)(b) requires the committee to scrutinise each legislative instrument as to whether it appears to be supported by a constitutional head of legislative power and is otherwise constitutionally valid. This includes whether an instrument may restrict the implied freedom of political communication.

As outlined above, the instrument has the effect of preventing registered entities from engaging in or actively promoting certain kinds of unlawful activity as this may affect an entity's entitlement to registration under the Act.

In the absence of contrary information in the explanatory statement to the instrument, it is unclear whether the instrument may limit registered entities' implied freedom of political communication, by preventing them from engaging in, or supporting certain activities. This may include limiting their ability to engage in, or support, certain types of political protest.

The committee makes no judgement on the permissibility of limitations on the implied freedom, or on the constitutionality of the instrument, more broadly. However, from a scrutiny perspective, the committee generally expects that instruments which may have the potential to infringe the implied freedom of political communication should include an explanation of how the instrument does not impermissibly restrict the implied freedom in the explanatory statement.

The committee therefore requests your advice as to how the instrument is compliant with the implied freedom of political communication, and whether the explanatory statement can be amended to include this analysis.

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 **28 July 2021**.

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



14 July 2021

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

Via email: financeminister@finance.gov.au

CC: DLO-Finance@finance.gov.au

Dear Minister,

Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]

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

Matters more appropriate for parliamentary enactment

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment, which should be included in primary, rather than delegated, legislation. In addition, Senate standing order 23(3)(k) requires the committee to consider whether an instrument complies with any other ground relating to the technical scrutiny of delegated legislation, including whether it is subject to sufficient parliamentary oversight.

The instrument amends the Financial Framework (Supplementary Powers) Regulations 1997 (FFSP Regulations) to include item 470 which establishes legislative authority for government spending of over \$1.4 billion on the Commonwealth Disability Support for Older Australians (DSOA) Program.

The DSOA Program provides funding for disability services to individual older people with a disability who are ineligible for the National Disability Insurance Scheme (NDIS). The explanatory statement to the instrument states that the DSOA Program is intended to deliver improved parity with the NDIS and a more client-centred program through:

- funding for disability services being better aligned with market pricing and nationally consistent across states and territories;
- moving all clients to individual support packages to refocus service delivery on individual client needs; and

- meeting the Commonwealth's commitment to continue supporting the DSOA clients with complex needs to live at home or in a supported accommodation and to access increased support as their needs change.

By authorising government spending on the DSOA Program, the instrument deals with significant matters relating to Commonwealth disability support policy; however there is no detail as to how the program will operate on the face of the instrument.

The committee further understands that there is currently no other delegated legislation or primary legislation supporting or regulating the DSOA Program beyond table item 470 in Part 4 of Schedule 1AB to the FFSP Regulations.

Noting that the DSOA Program appears to be a significant element of Commonwealth disability support policy, the committee would appreciate your advice as to:

- **why it is considered necessary and appropriate to provide for the DSOA program through regulations, rather than primary legislation; and**
- **whether consideration was given to establishing the DSOA program in 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 **28 July 2021**.

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



14 July 2021

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

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

Dear Minister,

**Aged Care Legislation Amendment (Serious Incident Response Scheme) Instrument 2021
[F2021L00222]**

Thank you for your response of 21 June 2021 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 14 July 2021 and has resolved to seek your further advice about the issues outlined below.

Significant matters in delegated legislation

Parliamentary oversight

Thank you for your advice that the overarching definition of 'reportable incident' is contained in primary legislation under subsection 54-3(2) of the *Aged Care Act 1997* (the Act). You have advised that in most instances the definitions and clarifications of terms under section 15NA of the instrument are inclusive and do not override or modify the overarching definition in the Act. The only expression that is not inclusive is 'unexplained absence of a residential care recipient from residential care services of the provider' under new subsection 15NA(11).

Paragraph 54-3(2)(h) of the Act provides that a reportable incident includes an 'unexplained absence of the residential care recipient from the residential care services of the provider'. The instrument provides that the expression in paragraph 54-3(2)(h) instead means 'an absence of the residential care recipient from the residential care services in circumstances where there are reasonable grounds to report the absence to police'. This is a significant modification to the provision in the Act. The committee has long been concerned with provisions in delegated legislation which modify the operation of primary legislation, particularly where those modifications appear to substantially depart from the original provision.

In relation to subsection 15NB of the instrument, which modifies the definition of 'reportable incident' by setting out what is not a reportable incident, you have advised that these modifications are included in delegated legislation to allow flexibility in tailoring the operation of the scheme and allowing for unintended consequences to be addressed. You have also advised that subsection 15NB(2) will be revised in July 2021 to align with other changes.

The committee appreciates the further information about the inclusion of subsection 15NB in delegated legislation. However, the committee considers that subsection 15NB(3), which provides that 'an incident is not a reportable incident if the incident results from the residential care recipient deciding to refuse to receive care or services offered by the approved provider', significantly impacts on the definition of 'reportable incident'. For this reason, the committee remains concerned about its inclusion in delegated, rather than primary, legislation.

The committee is particularly concerned that the significant modifications to the primary legislation in subsection 15NA(11) and 15NB(3) of the instrument have been made within months of the passage of the Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Bill 2020 through the Parliament, and the commencement of the Act on 1 April 2021. It is not clear to the committee why these provisions were not included on the face of the bill.

The committee therefore requests your advice as to:

- **whether the modification to the definition of 'reportable incident' in subsection 15NA(11) of the instrument can be provided for in the *Aged Care Act 1997*, rather than in delegated legislation; and**
- **whether the exception to the definition of 'reportable incident' in subsection 15NB(3) of the instrument can be provided for in the *Aged Care Act 1997*, rather than in delegated 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 **28 July 2021**.

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



14 July 2021

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

Via email: financeminister@finance.gov.au

CC: DLO-Finance@finance.gov.au

Dear Minister,

Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 2) Regulations 2021 [F2021L00409]

Thank you for your response of 9 July 2021 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, 14 July 2021 and has resolved to seek your further advice about the issues outlined below.

Parliamentary oversight

Thank you for your advice that grant agreements executed under the Tourism Aviation Network Support (TANS) program provide for a total funding amount of \$210,740,137.70 (GST inclusive) over 2020-21 and 2021-22.

The committee acknowledges your advice that the government did not disclose the funding commitment to the TANS program when the instrument was introduced, or subsequently in the Budget papers, pending the outcome of the grant process and subsequent commercial negotiation of program costs with airlines.

In light of the fact that the funding amount is now available, and noting the importance of explanatory materials as a point of access to understanding the law for parliamentarians, courts and members of the public, the committee requests that the explanatory statement to the instrument be amended to include this information.

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 **28 July 2021**.

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



15 July 2021

The Hon Paul Fletcher MP
Minister for Communications, Urban Infrastructure, Cities and the Arts
Parliament House
CANBERRA ACT 2600

Via email: dlo@communications.gov.au

Dear Minister,

Radiocommunications (Spectrum Access Charges – 20 GHz and 30 GHz Bands) Determination 2021 [F2021L00230]

Thank you for your response of 30 June 2021 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 14 July 2021.

You confirmed that the instrument is subject to the standard sunset provisions of the *Legislation Act 2003* and explained that the provision in section 4 of the instrument has been included to provide for the repeal of the instrument in the unlikely event that the standard sunset provisions no longer apply.

The committee welcomes the undertaking made by the Australian Communications and Media Authority (ACMA) to lodge an updated explanatory statement to include this clarification. Further, the committee notes your advice that the ACMA will review the need for similar repeal provisions in future instruments.

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

15 July 2021

The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600

Via email: DLOWyatt@pmc.gov.au

Dear Minister,

**Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021
[F2021L00292]**

Thank you for your response of 30 June 2021 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 14 July 2021. On the basis of your undertaking to amend the explanatory statement to include further information on privacy protections, 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



15 July 2021

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

Via email: dlos@dss.gov.au

Dear Minister,

Student Assistance Regulations 2021 [F2021L00201]

Thank you for your response of 6 July 2021 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 14 July 2021. The committee welcomes your constructive engagement with its scrutiny concerns and your undertakings to amend both the instrument and its explanatory statement. The committee notes that you have undertaken to:

- amend sections 5, 6, 13, 16, 19 and 20 where possible to include definitions which are currently in external ABSTUDY policy, and amend the explanatory statement;
- remove the term 'likely' in paragraphs 14(1)(c), 16(1)(d) and (e) and replace it with the term 'will', and amend the explanatory statement;
- remove the term 'reasonably' from subsections 19(3)-(5) and 27(3), and amend the explanatory statement;
- amend paragraph 26(a) to insert an awareness requirement, and amend the explanatory statement; and
- repeal Part 3 of the instrument.

In light of these undertakings and the information provided in your response, 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