

Monitor 12 of 2021 - Committee correspondence

Contents

Chapter 1 – Instruments raising significant scrutiny concerns

Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]	1
Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590]	4
Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043]	4
Australia’s Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]	6

Chapter 2 – Matters of interest to the Senate

Fuel Tax (Road User Charge—Gaseous Fuels) Determination 2021 [F2021L00794]	8
Migration Amendment (Merits Review) Regulations 2021 [F2021L00845]	10

Chapter 3 – Scrutiny of Commonwealth expenditure

Financial Framework (Supplementary Powers) Amendment (Attorney-General’s Portfolio Measures No. 1) Regulations 2021 [F2021L00826]	12
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 2) Regulations 2021 [F2021L00827]	14
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 3) Regulations 2021 [F2021L00828]	17
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations 2021 [F2021L00825]	19
Financial Framework (Supplementary Powers) Amendment (Veterans’ Affairs Measures No. 2) Regulations 2021 [F2021L00824]	22
Industry Research and Development (Ahead for Business Program) Instrument 2021 [F2021L00851]	14
Industry Research and Development (Natural Hazards and Disaster Resilience Research Centre Program) Instrument 2021 [F2021L00817]	24

Appendix B - Ongoing matters

Aged Care Legislation Amendment (Serious Incident Response Scheme) Instrument 2021 [F2021L00222]	26
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]	29

Appendix C - Concluded matters

Paid Parental Leave Rules 2021 [F2021L00384]	31
--	----



12 August 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]

Thank you for your response of 28 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 11 August 2021. Whilst noting your advice, the committee remains concerned that the above instrument raises significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's concerns are detailed in full in Chapter 1 of *Delegated Legislation Monitor 12 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc.

Since raising concerns in relation to the instrument, the committee has received considerable correspondence from a wide range of charities and non-government organisations in both writing and by telephone. This correspondence has served to heighten the committee's scrutiny concerns about the potential impact the instrument may have on registered charities.

Conferral of discretionary powers

As set out in the Monitor, the committee remains concerned that subsection 45.15(3) appears to provide for the exercise of a broad discretion by the ACNC Commissioner.

You advised that determining whether a registered entity has reasonable internal control measures is a 'question of fact as assessed against an objective standard'. However, it is unclear how this will not require the ACNC Commissioner to make a subjective judgement, noting that they must have regard to the individual circumstances of each charity. Neither the explanatory statement to the instrument or your response provides clear guidance as to the factors that the ACNC Commissioner must consider in determining whether a registered entity has complied with the requirement in subsection 45.15(3).

In the absence of further information, the committee retains significant concerns that this provision appears to enable the ACNC Commissioner to exercise a broad discretion in determining compliance with the governance standards. The committee's concerns are heightened noting that the lack of clarity on what will constitute 'reasonable internal control procedures' may inhibit charities' ability to understand their obligations under the instrument.

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

- **what objective test will be applied to determine whether a registered entity has complied with the requirements of subsection 45.15(3); and**
- **what factors the ACNC Commissioner must consider in making this determination.**

Implied freedom of political communication

As set out in the Monitor, the committee notes your advice that the instrument does not interfere with the implied freedom of political communication as it relates solely to matters that are unlawful under other Australian laws. However, while noting this advice, the committee remains concerned that this does not provide a clear explanation as to how the instrument as a whole does not impermissibly restrict the implied freedom.

In particular, it remains unclear to the committee how the effect of the requirements in subsection 45.15(3) of the instrument relating to internal control procedures impact on the implied freedom. The committee's concerns centre on the fact that those requirements relate to the promotion of unlawful activities by other entities and not unlawful actions undertaken by the registered entities themselves. Failure to comply with these requirements may result in the application of certain enforcement powers under Part 4-2 of the ACNC Act.

In this regard, it appears that the instrument may limit a registered entity's ability to support or promote certain types of political protest, without having committed an unlawful act themselves. Accordingly, in the absence of further information, it is unclear whether this provision may impermissibly burden the implied freedom of political communication in its terms, operation, or effect.

The committee therefore requests the your more detailed advice as to how the instrument as a whole, including subsection 45.15(3), does not impermissibly restrict the implied freedom of political communication.

It is 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 outlined in *Delegated Legislation Monitor 12 of 2021*, the committee would appreciate your response by **26 August 2021**.

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

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

Yours sincerely,

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



12 August 2021

The Hon Angus Taylor MP
Minister for Energy and Emissions Reduction
Parliament House
CANBERRA ACT 2600

Via email: DLOTaylor@environment.gov.au
CC: legislation@environment.gov.au

Dear Minister,

Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590] (first ARENA instrument)

Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] (second ARENA instrument)

Thank you for your response of 3 August 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 11 August 2021. Whilst noting your advice, the committee remains concerned that the above instruments raise significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's concerns are detailed in full in Chapter 1 of its *Delegated Legislation Monitor 12 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc.

As set out in the Monitor, the committee remains concerned that the second ARENA instrument is expanding the remit of the ARENA beyond what was envisaged by Parliament. Given the scope and impact of the measures, the committee also retains its position that the measures in the instrument appear more appropriate for parliamentary enactment.

In addition, the committee notes that section 48 of the *Legislation Act 2003* provides that a legislative instrument that is the same in substance as a legislative instrument that has been disallowed must not be made within six months after the day of disallowance. It is unclear to the committee whether the second ARENA instrument may be considered to be the 'same in substance' as the first ARENA instrument and therefore invalid. Your response of 3 August 2021 stated that the advice set out in that letter is relevant to both the first and second ARENA instruments, which implies similarity between the instruments.

The committee therefore requests your advice as to:

- whether there is any additional evidence, beyond that already provided to the committee, that Parliament intended that functions not relating to renewable energy could be conferred on the ARENA; and
- why the second ARENA instrument should not be considered to be the 'same in substance' as the first ARENA instrument.

Please note that the committee's expectation is to receive a response in time for it to consider and report on the second ARENA 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 outlined in *Delegated Legislation Monitor 12 of 2021*, the committee would appreciate your response by **26 August 2021**.

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

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

Yours sincerely,

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



12 August 2021

Senator the Hon Marise Payne
Minister for Foreign Affairs
Parliament House
CANBERRA ACT 2600

Via email: foreign.minister@dfat.gov.au

CC: legislation@dfat.gov.au

Dear Minister,

Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]

Thank you for your response of 10 August 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument.

The committee had initially planned to meet on 9 August 2021 to consider your response to its comments in *Delegated Legislation Monitor 11 of 2021*. However, in light of time the response was finally received the committee considered your response at an extraordinary private meeting on 10 August 2021, which itself needed to be rescheduled to a later time that day.

The committee takes this opportunity to note that it has been corresponding with your office in relation to this instrument since March and draws to your attention the resolution of the Senate of 23 February 2021 concerning the engagement of ministers and agencies with the committee (Senate resolution 53A). This resolution calls on all ministers and agencies to respond to the committee's requests for information in relation to its technical scrutiny concerns within the timeframes set by the committee.

The committee works on a non-partisan basis to resolve its scrutiny concerns and relies on timely and constructive engagement from all ministers and agencies in order to fulfil its mandate.

The committee's concluding views in relation to the instrument are detailed in full in Chapter 1 of its *Delegated Legislation Monitor 12 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc.

The committee reiterates its view that in the system of representative and responsible government established by the Constitution there are often important scrutiny reasons for providing for shorter sunseting of instruments made by the executive under legislative power delegated by the Parliament; and highlights that in this case a shorter sunseting period is considered justified.

The committee also acknowledges your previous advice that the statutory review of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* will provide an

opportunity to consider whether the measures in the instrument would be more appropriate for primary legislation, and considers that a five-year repeal will allow sufficient time for any recommendations arising from the review to be implemented.

In light of this, the committee welcomes your undertaking to progress an amendment to the instrument to provide that it repeals within five years from commencement.

I also confirm that the committee withdrew the notice of motion to disallow the instrument on 11 August 2021.

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

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

Thank you for your ongoing engagement in relation to this matter.

Yours sincerely,

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



12 August 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: The Hon Barnaby Joyce MP
Minister for Infrastructure, Transport and Regional Development
dlo.joyce@infrastructure.gov.au; minister.joyce@infrastructure.gov.au

Dear Chair,

Matters of interest to the Senate—heavy vehicle road user charge

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

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

Noting that the following instrument appears to contain significant policy matters relating to the road user charge for heavy vehicles, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw them to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Fuel Tax (Road User Charge—Gaseous Fuels) Determination 2021 [F2021L00794]	Heavy vehicles with a gross vehicle mass of more than 4.5 tonnes and used on public roads for business purposes are charged to recover that part of the road construction and maintenance costs that are attributable to heavy vehicles (cost recovery). A portion of the costs are recovered by states and territories through heavy vehicle registration charges and a portion by the Commonwealth through the fuel-based road user charge.	01/09/2021

Instrument	Purpose	Last day to lodge disallowance notice
	This determination sets the new rate of road user charge at 35.3 cents per kilogram for taxable fuels, which is a 2.5 per cent increase to the previous rate.	

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

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

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

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

Yours sincerely,

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



12 August 2021

Senator the Hon Sarah Henderson
Chair
Senate Legal and Constitutional Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

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

cc: The Hon Alex Hawke MP, Minister for Immigration, Citizenship, Migrant
Services and Multicultural Affairs, dlo.immi@homeaffairs.gov.au

Dear Chair,

Matters of interest to the Senate—Administrative Appeals Tribunal application fees

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

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

Noting that the following instrument appears to contain significant matters relating to application fees for independent merits review of certain migration decisions, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw them to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Migration Amendment (Merits Review) Regulations 2021 [F2021L00845]	<p>To increase the fee for certain merits review applications to the Administrative Appeals Tribunal (AAT) from \$1,826 to \$3,000.</p> <p>The fee applies to applications for review of decisions relating to visas other than protection visas and includes decisions in relation to sponsorships and nominations. The new fee is subject to annual increase, from 1 July 2022, in line with existing legislated indexation arrangements.</p>	18/10/2021

Instrument	Purpose	Last day to lodge disallowance notice
	Prior to introducing this measure, the Department of Home Affairs consulted with the Attorney-General's Department and the AAT, however consultation with external stakeholders such as migration agents and peak bodies was not conducted.	

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

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

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

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

Yours sincerely,

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



12 August 2021

Senator the Hon Sarah Henderson
Chair
Senate Legal and Constitutional Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

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

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—Grants to Working Women’s Centres

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

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

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on grants to Working Women’s Centres. 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 (Attorney-General’s Portfolio Measures No. 1) Regulations 2021 [F2021L00826]	Grants to Working Women’s Centres	\$0.2 million in 2021-22 (interim funding)	Grants will be provided to working women’s centres to support the continued operation of these organisations. Working women’s centres are not-for-profit, community organisations that provide free information, advocacy, support and advice to women on work related matters, such as workplace entitlements and rights, gender issues, discrimination and sexual harassment, particularly for women who lack legal representation or are not union members.

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 18 October 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



12 August 2021

Senator 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
DLO.Tudge@dese.gov.au

The Hon Stuart Robert MP, Minister for Employment, Skills, Small and
Family Business
dlorobert@dss.gov.au

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

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

The instruments listed in the table below, in combination with their enabling 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 (Education, Skills and Employment Measures No. 2) Regulations 2021 [F2021L00827]	Innovation Fund for Online and Offshore Education Services	\$9.4 million in 2021-22	The Innovation Fund will provide one-off grants of up to \$150,000 to approximately 60 private providers of English Language Intensive Course for Overseas Students (ELICOS) programs and higher education programs to international students. The grant funding will be targeted at private ELICOS and higher education providers that are most affected by Australia's border closures.
	Child care services website	\$9.2 million over four years from 2021-22, with subsequent ongoing funding of \$0.6 million per year	Funding will be provided for the development, establishment and maintenance of a child care services website that will assist families by publishing the fees, vacancies and operating hours of child care services, and offering a service-by-service comparison of Child Care Subsidy providers.
Industry Research and Development (Ahead for Business Program) Instrument 2021 [F2021L00851]	Ahead for Business Program	\$0.9 million	<p>The Program will support small business owners to take proactive, preventative and early steps to improve their mental wellbeing by continuing to develop and maintain the Ahead for Business digital hub for a further three years from 2021–22.</p> <p>This will include adding new content and promotional activities in various modes including in-person and online engagement with small business stakeholders, business related newsletters, newspapers and social media channels to ensure that the Program provides relevant support information and is reaching small business owners across Australia.</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 for both instruments expires on 18 October 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



12 August 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: The Hon Paul Fletcher MP, Minister for Communications, Urban
Infrastructure, Cities and the Arts
dlo@communications.gov.au

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

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

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 3) Regulations 2021 [F2021L00828]	Regional Arts Fund	\$19.7 million over four years from 2021-22	The Regional Arts Fund provides funding for two main grant opportunities: <ul style="list-style-type: none">• Project Grants and Quick Response Grants, which provide funding for arts projects, professional development for artists and arts workers, and community capacity building projects; and• Strategic Partnership Grants, which provide funding for strategic projects that contribute to the furtherance of regional arts nationally.

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 18 October 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



12 August 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

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

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

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

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations 2021 [F2021L00825]	Boosting the Local Care Workforce Program	\$16.8 million over two years from 2021-22	The Program is intended to facilitate an adequate and appropriate supply of disability, aged care and veterans' care service providers, including for the purposes of the National Disability Insurance Scheme, the <i>Aged Care Act 1997</i> and the <i>Veterans' Entitlements Act 1986</i> . Additional funding is being provided until 30 June 2023 to strengthen the focus on connecting employment service and training providers with care and support providers, and support the development of a care and support work sector across disability, aged care and veterans' care.
	Volunteer Management Activity	Up to \$43.5 million over six years from 2020-21	The redesigned Volunteer Management Activity includes an online platform to provide volunteer management tools, training and resources to volunteer support services, volunteer involving organisations and volunteers, and grants to volunteering peak bodies to develop and implement strategies to build the capacity of volunteer support services, volunteer involving organisations and volunteers, and remove barriers to volunteering for certain priority groups such as people with disability, newly arrived migrants, and First Nations people.
	Stronger Places, Stronger People	\$24 million over three years from 2021-22	The Stronger Places, Stronger People initiative is intended to improve outcomes for children in disadvantaged communities through: <ul style="list-style-type: none"> • supporting families, and assisting communities to support families, to prepare for parenthood and caregiving responsibilities and further the development of the children in their care; and • discouraging use of harmful substances such as tobacco, alcohol and drugs amongst prospective parents; and • encouraging young people to seek employment; and • preparing young people for employment; and • ensuring women have access to appropriate pre-natal and post-natal services; and • undertaking measures to help children to live safely and outside the youth justice system.

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 18 October 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



12 August 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: The Hon Andrew Gee MP, Minister for Veterans' Affairs
minister@dva.gov.au

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—Veterans' Wellbeing and Support Program

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

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

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

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Veterans' Affairs Measures No. 2) Regulations 2021 [F2021L00824]	Wellbeing and Support Program	\$23.3 million over four years from 2021-22	The Program will provide case management services to highly vulnerable veterans who are transitioning into civilian life after their service in the Australian Defence Force, or have complex care needs.

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 18 October 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



12 August 2021

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

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

cc: The Hon Christian Porter MP, Minister for Industry, Science and Technology
industrydlo@industry.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—Natural Hazards and Disaster Resilience Research Centre Program

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

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

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

Instrument	Grant/Program	Amount	Description
Industry Research and Development (Natural Hazards and Disaster Resilience Research Centre Program) Instrument 2021 [F2021L00817]	Natural Hazards and Disaster Resilience Research Centre Program	\$85 million	The Program will provide grant funding to support the establishment of a new research centre that will focus on natural hazards resilience and disaster risk reduction to support the needs of emergency service agencies and communities in preparing for, responding to and recovering from future natural disasters.

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 18 October 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



12 August 2021

The Hon Greg Hunt MP
Minister for Health and Aged Care
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 28 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 11 August 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 further advice regarding new subsections 15NA(11) and 15NB(3) of the Quality of Care Principles, inserted by this instrument.

You have advised that new subsection 15NA(11) aims to clarify the circumstances in which it would be appropriate to notify the Aged Care Quality and Safety Commission (the Commission) about the unexplained absence of a residential care recipient. You advised that this provision was included in the instrument following consultation which indicated that it was not appropriate for every single unexplained absence to be reported to the Commission. You also advised that new subsection 15NB(3) aims to ensure that the rights of recipients of aged care are maintained, in particular their autonomy and choice.

Regarding both new subsections, you have reiterated that they are in delegated legislation rather than primary legislation to provide flexibility and allow for prompt modification if the measures have any unintended consequences.

You further advised that the legislative arrangements for the Serious Incident Response Scheme (SIRS) will be reviewed as part of a project to introduce a new Aged Care Act. The new Act will replace the existing Act and result in all existing instruments being repealed and redrafted under the new Act's structure.

While the committee appreciates your detailed advice, it remains concerned that the instrument deals with significant matters relating to the scope of what is considered to be a 'reportable incident'. The committee reiterates that the meaning of 'reportable incident' is integral to the operation of the SIRS and its objective of preventing abuse and neglect of older Australians in residential aged care.

As you may be aware, on 16 June 2021 the Senate resolved to amend standing order 23 to reinforce the committee's scrutiny principles regarding delegated legislation which amends or modifies the operation of primary legislation. The committee therefore intends to rigorously pursue this type of scrutiny concern in accordance with the mandate provided by the Senate.

The committee has long been concerned with provisions in delegated legislation which modifies the operation of primary legislation, particularly where those modifications appear to substantially depart from the original provision.

The committee therefore expects the explanatory statement to any modification instrument to comprehensively justify the nature and scope of the relevant modifications. When these provisions are included in delegated legislation, it is the committee's longstanding view that these provisions should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight.

In addition, as per the committee's guidelines, the committee considers that the explanatory statement should advise of any upcoming reviews which to determine if the provisions remain necessary and appropriate, including whether it is appropriate to include the provisions in delegated legislation.

In light of the committee's ongoing concerns that instrument deals with significant matters relating to the scope of what is considered to be a 'reportable incident', from a scrutiny perspective, the committee considers that the instrument should cease to operate three years after commencement. If it becomes necessary to extend the operation of these provisions, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

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

- **the expected timeframe and scope for the project to introduce a new Aged Care Act and whether this information can be included in the explanatory statement to this instrument; and**
- **whether the provisions inserted into the Quality of Care Principles 2014 by the instrument will sunset on 1 October 2024 in accordance with section 50 of the *Legislation Act 2003*.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. Noting that the 15th sitting day after the instrument was tabled in the Senate was 4 August 2021, the committee gave a notice of motion to disallow the instrument on that day as a precautionary measure to allow additional time for the committee to consider information received.

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



12 August 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 (Health Measures No. 1) Regulations 2021 [F2021L00290]

Thank you for your response of 27 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 11 August 2021 and has resolved to seek your further advice about the issues outlined below.

Matters more appropriate for parliamentary enactment

Parliamentary oversight

Thank you for your advice that the Disability Support for Older Australians (DSOA) program currently supports just under 3,000 older people with disability and that to be eligible for DSOA a person must have been receiving services under the previous Commonwealth Continuity of Support (CoS) Program.

You also advised that although significant funding of \$1.45 billion is attached to the program, that this is due to the current client base being high needs. In addition, you advised that despite this high level of funding, the DSOA program is not a structural part of the Commonwealth's response to disability services, noting that over time, the cohort of DSOA program participants will decrease to zero.

Finally, you advised that primary legislation is not considered necessary for the DSOA program on the basis that the program is delivered through grants, that there are no ongoing eligibility criteria, and that the program has a relatively short life span.

Although the committee acknowledges your advice that providers under DSOA program are overseen by the NDIS Quality and Safeguards Commission, 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 Financial Framework (Supplementary Powers) Regulations. The committee therefore remains concerned that there is no detail as to how the program will operate

on the face of the instrument including, for example, that the table item only relates to persons who had been receiving services under the CoS program.

The committee therefore requests that the instrument be amended to include core details of how the DSOA program will operate on the face of the instrument.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. Noting that the 15th sitting day after the instrument was tabled in the Senate was 11 August 2021, the committee gave a notice of motion to disallow the instrument on that day as a precautionary measure to allow additional time for the committee to consider information received.

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



AUSTRALIAN
SENATE

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

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

12 August 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,

Paid Parental Leave Rules 2021 [F2021L00384]

Thank you for your response of 30 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 4 August 2021. On the basis of your advice, and your undertaking to update the explanatory statement and correct subsection 11(6) of the instrument, 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