

Monitor 13 of 2021 - Committee correspondence

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26 August 2021

The Hon Greg Hunt MP
Minister for Health and Aged Care
Parliament House
CANBERRA ACT 2600

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

CC: rezana.berman@health.gov.au; RegOrds@health.gov.au

Dear Minister,

**Aged Care Legislation Amendment (Royal Commission Response No. 1) Principles 2021
[F2021L00923]**

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

Significant impact on personal rights and liberties

Matters more appropriate for parliamentary enactment

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment. This includes whether an instrument has a significant impact on personal rights and liberties.

The instrument amends the Quality of Care Principles 2014 (principal instrument) to set out requirements for the use of restrictive practices in relation to aged care recipients in residential aged care.

Item 9 of Schedule 1 to the instrument inserts new Part 4A into the principal instrument. New Part 4A appears to set out a number of key matters for the purposes of regulating the use of restrictive practices. For example, new Division 2 prescribes certain actions as restrictive practices for the purpose of subsection 54-9(2) of the *Aged Care Act 1997* (Aged Care Act). These include the use of chemical, physical, environmental and mechanical restraints, and the use of solitary confinement practices. Divisions 3 and 4 further provide for the circumstances in which these restrictive practices may be used on aged care recipients and additional responsibilities for approved providers relating to restrictive practices.

The committee considers that significant matters, such as regulating the use of restrictive practices in residential aged care, are more appropriately enacted via primary legislation. Where significant matters are nevertheless left to delegated legislation, the committee would expect a sound justification to be provided.

In this instance, the explanatory statement notes that amendments have recently been made to the Aged Care Act by the *Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Act 2021* (Amending Act) to regulate the use of restrictive practices in the aged care sector. However, the explanatory statement does not address why it is considered necessary and appropriate to prescribe the circumstances in which restrictive practices may be used by delegated legislation, rather than including the matters in the Amending Act.

While the committee acknowledges that section 54-10 of the Aged Care Act sets out some requirements in relation to the use of restrictive practices that must be included in the principal instrument, the committee's scrutiny concerns with regard to inclusion of these matters in delegated legislation are heightened, noting the potentially significant impact of the inappropriate use of restrictive practices on a particularly vulnerable group of people within the community. In this regard, the committee emphasises that full parliamentary consideration would facilitate greater scrutiny of these important measures.

The committee therefore requests your advice as to:

- **why it is considered necessary and appropriate to regulate the use of restrictive practices in residential aged care in delegated legislation; and**
- **why it was not considered appropriate to include the matters prescribed in this instrument in the *Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Act 2021*.**

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 sets out certain exemptions to the requirements for approved providers when an 'emergency' exists. For example, subsection 15FA(2) provides that the requirements set out in paragraphs 15FA(1)(a), (b), (c), (f) and (g) do not apply to the use of restrictive practices in relation to an aged care recipient if the use of the restrictive practice is necessary in an emergency. Section 15GB further provides for alternative responsibilities for approved providers in an emergency.

The explanatory statement to the instrument explains the word 'emergency' in new subsection 15FA(2) is 'not defined, and therefore is defined by its ordinary meaning'. However, in the absence of further information, it is unclear what the 'ordinary meaning' of emergency would be. Additionally, the explanatory statement notes that the term is undefined as 'this will provide the Aged Care Quality and Safety Commission the ability to question the circumstances in which emergency use of restraint was activated, including whether consent had been obtained from the care recipient's restrictive practices substitute decision-maker'. In this regard, it appears that this may enable the Aged Care Quality and Safety Commission (the Commission) to exercise some

discretion in determining whether an emergency occurred. However, it is unclear what factors will be considered in exercising this discretion, who will exercise the power on behalf of the Commission, and whether any limitations or safeguards apply in relation to the exercise of this power.

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

- **what circumstances may constitute an ‘emergency’ in the context of subsection 15FA(2);**
- **the scope of the powers that the Aged Care Quality and Safety Commission may exercise under the instrument to determine whether an emergency occurred, including:**
 - **who will be exercising these powers and whether they are required to possess any particular qualifications, skills or experience; and**
 - **what factors they must consider in making this determination;**
- **the nature and source of any limitations or safeguards on the exercise of the discretionary power to determine whether an emergency occurred, including whether they are set out in law or policy.**

Clarity of drafting

As noted above, Senate standing order 23(3)(e) requires the committee to scrutinise each instrument as to whether its drafting is defective or unclear.

Paragraph 15FA(1)(i) provides that an aged care provider may use a restrictive practice if it ‘is not inconsistent’ with the Charter of Aged Care Rights (the Charter) set out in Schedule 1 to the User Rights Principles 2014. However, the explanatory statement explains that this requirement is to ensure the use of the restrictive practice ‘is consistent’ with the Charter. In the absence of further information in the explanatory statement, it is unclear what ‘not inconsistent with’ means in the context of paragraph 15FA(1)(i) and whether this differs from requiring that the practice ‘is consistent with’ the Charter. The committee is concerned that requiring that the use of restrictive practices is ‘not inconsistent with’ the Charter is a lower threshold for aged care providers to comply with, than requiring the practices to be consistent with the Charter.

The committee therefore requests your advice as to the meaning of ‘not inconsistent with’ in the context of paragraph 15FA(1)(i).

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 **9 September 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



26 August 2021

Senator the Hon Michaelia Cash
Attorney-General
Parliament House
CANBERRA ACT 2600

Via email: attorney@ag.gov.au

CC: DLO@ag.gov.au

Dear Attorney-General,

Legislation (Exemptions and Other Matters) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00859]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all 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 – exemption from disallowance

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment. In addition, Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The instrument amends the Legislation (Exemptions and Other Matters) Regulation 2015 (LEOM Regulation) to update references to provisions that are out of date. This has the effect of extending exemptions to disallowance or sunseting in relation to certain legislative instruments.

In particular, item 1 of Schedule 1 to the instrument has the effect of extending an exemption from disallowance for instructions given under subsection 7(3) or (4) of the Air Services Regulations 2019 (Air Services Regulations). These instructions may be given by Airservices Australia in relation to the use of a controlled aerodrome or a specified class of airspace, including the use of airspace above a restricted or danger area.

As you are aware, the committee has significant concerns about the use of delegated legislation to set out exemptions to parliamentary oversight mechanisms, such as disallowance or sunseting. Such measures can undermine parliamentary oversight and subvert the appropriate relationship between the Parliament and the executive. The committee's significant concerns about these matters were most recently set out in detail in the committee's final report of its inquiry into the

exemption of delegated legislation from parliamentary oversight, which was tabled in the Senate in March 2021. It is particularly concerning to the committee that following the tabling of this report, which set out the problems with the LEOM Regulation, exemptions from sunseting and disallowance processes are being further extended with this instrument. The committee also notes with concern that it has not yet received the government's response to this report.

As set out in the final inquiry report, it is the committee's longstanding view that laws made by the executive pursuant to powers delegated by the Parliament should be subject to stringent parliamentary oversight, with very limited exemptions. Where it is nevertheless considered necessary to exempt delegated legislation from disallowance or sunseting, those exemptions should be set out in primary, rather than delegated legislation, and a rigorous justification should be provided in the explanatory materials.

In this instance, the explanatory statement to the instrument notes that 'the reason for this exemption was that disallowance would adversely impact on the orderly management of the aviation industry and air traffic safety management'. The explanatory statement also notes that the item does not substantively change the scope of the existing exemption from disallowance.

However, while noting this explanation, the committee does not consider that consistency with an existing legislative framework or scheme to be an adequate justification for the inclusion of such significant matters in the instrument. In this regard, the explanatory statement does not appear to address why it is considered necessary and appropriate to provide for this exemption from disallowance via delegated legislation, rather than primary legislation.

The committee's concerns with regard to this issue are heightened, noting that instructions given under subsection 7(3) or (4) of the Air Services Regulations are also exempt from sunseting under table item 4 of section 12 of the LEOM Regulation.

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

- **why it is considered necessary and appropriate for instructions given under subsection 7(3) or (4) of the Air Services Regulations 2019 to be exempt from disallowance; and**
- **why it is considered necessary and appropriate to provide for this exemption from disallowance in delegated, rather than primary, legislation.**

Matters more appropriate for parliamentary enactment

Parliamentary oversight – exemption from sunseting

Additionally, the instrument has the effect of continuing or extending certain exemptions from sunseting in relation to particular legislative instruments. In particular, item 2 of Schedule 1 to the instrument has the effect of exempting statements approved under section 34AF of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) from sunseting. These statements relate to the procedures that officers must follow when exercising authority under a questioning warrant. Under subsection 34AF(5) of the ASIO Act, such statements are also exempt from disallowance. The explanatory statement justifies the exemption from sunseting by noting 'the provision is subject to a statutory review process and it provides legal certainty for the status of the instruments'. The explanatory statement also notes that section 34AF of the ASIO Act will sunset on 7 September 2025, although this sunset date may be extended or repealed by the Parliament in the future.

In addition, item 3 of Schedule 1 to the instrument has the effect of extending exemptions from sunseting in relation to standards made under section 12 of the *Road Vehicle Standards Act 2018*.

The explanatory statement to the instrument notes that it is appropriate to continue the exemption as 'the instruments form part of an intergovernmental scheme and they provide commercial certainty due to the fact that they remain relevant for the life of the vehicle'.

The committee considers that the sunseting framework provides an important opportunity for Parliament to maintain effective and regular oversight of delegated legislative powers, and, in particular, ensure that the content of legislative instruments remains lawful.

As noted above, the committee generally considers that exemptions from parliamentary oversight mechanisms should be outlined in primary, rather than delegated, legislation and soundly justified in the explanatory materials.

In this instance, the explanatory statement states that items 2 and 3 are consistent with your established criteria for assessing whether it is appropriate to exempt an instrument or classes of instruments from sunseting. However, while noting this explanation, the committee remains concerned that the explanatory statement does not explain why it is necessary and appropriate to provide for these exemptions in delegated legislation.

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

- **why it is considered necessary and appropriate for statements approved under section 34AF of the *Australian Security Intelligence Organisation Act 1979* and standards made under section 12 of the *Road Vehicle Standards Act 2018* to be exempted from the sunseting regime in Part 4 of Chapter 3 of the Legislation Act; and**
- **why it is considered necessary and appropriate to provide for these exemptions to sunseting in delegated, rather than primary, legislation.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **9 September 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



26 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,

Charter of the United Nations Listings

Thank you for your response of 6 August 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) in relation to the above instruments. The committee considered your response at its private meeting on 25 August 2021.

The committee acknowledges your advice that legislative instruments made under Part 4 of the *Charter of the United Nations Act 1945* (the Act) are subject to disallowance, and that your department will prepare replacement explanatory statements for the listings instruments to remove reference to the instruments not being subject to disallowance.

The committee also acknowledges your clarification in relation to the difference in wording used in the explanatory statements to the listings instruments.

The committee has further considered the listings instruments in light of your advice and the terms of the Charter of the United Nations Amendment Bill 2021 (the bill), which was introduced into the House of Representatives on 11 August 2021. Following this consideration, the committee has resolved to seek your further advice about the matters outlined below.

Compliance with Legislation Act 2003—registration of instruments

Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements. These include the requirements prescribed by the *Legislation Act 2003* (Legislation Act) with regard to the registration of legislative instruments.

The committee acknowledges that, if passed, the bill will confirm the application and enforceability of listings made under subsection 15(1) or 15(3) of the Act since 2001. However, noting the importance of the counter-terrorism financial sanctions regime, the committee remains deeply concerned about the significant delay in registering the listings instruments and the impact this may have on the validity of any action that has been taken under the instruments prior to their registration on the Federal Register of Legislation on 26 May 2021.

The importance and significance of appropriate parliamentary scrutiny of this matter is underscored by the fact that a number of parliamentary committees are pursuing the matter, including the Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights.

In light of the above, the committee would appreciate your advice as to when and how your department became aware that it would be necessary to register the listing instruments on the Federal Register of Legislation to ensure their enforceability.

Adequacy of explanatory materials

Senate standing order 23(3)(g) requires the committee to scrutinise each instrument as to whether the accompanying explanatory material provides sufficient information to gain a clear understanding of the instrument.

Following the consideration outlined above, the committee has identified two further matters of concern in relation to the explanatory statements accompanying the listings instruments.

First, the committee notes that the explanatory statements make only brief reference to the impact of the instruments on human rights.

Noting this, the committee's view is that the explanatory statements do not adequately detail or assess the compatibility of each instrument with human rights. In this respect, the Parliamentary Joint Committee on Human Rights provides the following guidance to departments and other legislation proponents in its 'Guidance note 1 – drafting statements of compatibility':

The committee considers statements of compatibility as essential to the examination of human rights in the legislative process. The committee expects statements to read as stand-alone documents. The committee relies on the statement as the primary document that sets out the legislation proponent's analysis of the compatibility of the bill or instrument with Australia's international human rights obligations.¹

Secondly, the committee notes that the Charter of the United Nations Amendment Bill 2021 (the bill) is intended to confirm the validity of action that has been taken, or which may in the future need to be taken, in respect of conduct relating to the listings instruments that were not registered on the Federal Register of Legislation at the time of their making. In doing so, the bill appears to override subsection 12(2) of the *Legislation Act 2003* (Legislation Act), which provides that legislative instruments which commence before the instrument is registered are taken not to retrospectively apply to a person if the person's rights would be affected so as to disadvantage the person; or if liabilities would be imposed on the person in respect of anything done or omitted to be done before the instrument is registered.

This matter is not addressed in the explanatory statements as they were prepared prior to the introduction of the bill and therefore it appears that, if the bill is passed, the statements will incorrectly refer to the application of subsection 12(2) of the Legislation Act to the instruments.

1 Available at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources.

In light of the above, the committee would appreciate your advice as to:

- **whether the explanatory statements can be amended to provide more robust statements of compatibility with human rights; and**
- **whether the explanatory statements can be amended to clarify the impact of the Charter of the United Nations Amendment Bill 2021 on the operation of the instruments.**

As advised in my letter of 12 August 2021, in accordance with the committee's usual practice, the committee gave a notice of motion to disallow the listings instruments on 24 August 2021, 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 **9 September 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 ongoing 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**

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26 August 2021

Senator the Hon Amanda Stoker
Assistant Minister to the Attorney-General
Parliament House
CANBERRA ACT 2600

Via email: AMO.DLO@ag.gov.au

Dear Assistant Minister,

Bankruptcy Regulations 2021 [F2021L00261]

Thank you for your response of 17 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 25 August 2021. The committee welcomes your undertaking to amend the instrument so that Schedules 2–4 of the Regulations will repeal within five years from the commencement of the instrument. On the basis of this undertaking, the committee has concluded its examination of the instrument and resolved to withdraw the ‘protective’ notice of motion to disallow the instrument.

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

Thank you again for your assistance with this matter.

Yours sincerely,

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



26 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: 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 Richard Colbeck, Minister for Senior Australians
and Aged Care Services
Minister.Colbeck.DLO@health.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—Home Care Workforce Support Program

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments 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 Home Care Workforce 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 (Health Measures No. 3) Regulations 2021 [F2021L00864]	Home Care Workforce Support Program	\$91.8 million over two years from 2021-22	<p>The program will provide support to attract, train and retain an additional 13,000 future aged care workers, and increase the skills of the aged care workforce. Grant funding will be provided to organisations or consortia for activities to support the growth of the home care workforce by assisting home care service providers to attract, train and retain new personal care workers in their local area, in each state and territory. These activities could include screening candidates to determine suitability for work in the home care sector, supporting students to complete work placements in the aged care sector, developing peer support networks for new personal care workers, and supporting existing workers to build supervisory skills.</p> <p>The program is part of the \$452.2 million package to address immediate priorities in the aged care sector in response to the Final Report from the Royal Commission into Aged Care Quality and Safety.</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 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



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

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

The Hon Angus Taylor MP, Minister for Energy and Emissions Reduction
dlotaylor@industry.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—Blue Carbon Ecosystems

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments 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 Blue Carbon Ecosystems 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 (Agriculture, Water and the Environment Measures No. 3) Regulations 2021 [F2021L00862]	Blue Carbon Ecosystems	\$30.6 million over four years from 2021-22	Funding will be provided to support projects in regional Australia and in foreign countries that relate to restoring coastal ecosystems and demonstrating environmental economic accounting, and international events and partnerships relating to blue carbon and rainforests. Blue carbon is the carbon sequestered and stored in coastal and marine ecosystems. The program will fund Australian organisations to deliver on-the-ground coastal ecosystem restoration projects (for example, in relation to mangroves, tidal marshes and seagrasses) in at least four selected sites in regional Australia. On-the-ground projects for at least four selected sites in developing countries overseas will also be funded under the program.

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



26 August 2021

Senator Claire Chandler
Chair
Senate Finance and Public Administration Legislation Committee
Parliament House
CANBERRA ACT 2600

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

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

Senator the Hon Bridget McKenzie
Minister for Emergency Management and National Recovery and Resilience
Senator.McKenzie@aph.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—Black Summer Bushfire Recovery Grants Program

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments 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 Black Summer Bushfire Recovery Grants 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 (Prime Minister and Cabinet Measures No. 1) Regulations 2021 [F2021L00860]	Black Summer Bushfire Recovery Grants Program	\$280 million over three years from 2021-22	<p>The Black Summer Bushfire Recovery Program will provide grants to community organisations and bushfire-affected local government areas (LGAs) and communities for economic, social and infrastructure projects that have benefit for the community. This grant funding aims to support the short to medium-term recovery needs of communities affected by the 2019-20 bushfires, and initiatives to increase the resilience of such communities against future bushfires.</p> <p>Grants will be provided through an open competitive funding round, with grant amounts to range from \$20,000 to \$10 million for projects across LGAs that were declared natural disasters as a result of the 2019-20 bushfires. These LGAs are located in Queensland, New South Wales, Australian Capital Territory, Victoria, South Australia and Tasmania.</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 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



26 August 2021

Senator Susan McDonald
Chair
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
DLO-Finance@finance.gov.au

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—various programs

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments 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 (Agriculture, Water and the Environment Measures No. 3) Regulations 2021 [F2021L00862]	Agriculture Stewardship Package	\$32.1 million over four years from 2021-22	Funding will be provided for additional activities under the Agriculture Stewardship Package, which helps farmers improve on-farm land management practices. The additional components aim to test the concept of buying and selling biodiversity improvement services from farmers, and how the Commonwealth can leverage growing interest in biodiversity outcomes from private investors. Over time, the aim is to create a credible market mechanism that improves biodiversity and creates new income opportunities for farmers. Key deliverables include trialling the Enhancing Remnant Vegetation Pilot, implementing the Australian Farm Biodiversity Certification Scheme, and developing a biodiversity trading platform to link buyers and sellers of biodiversity services.
	Australian Farm Data Code	\$0.5 million over three years from 2021-22	Funding will be provided for a one-off, ad hoc grant to modify, expand, implement and raise awareness of the Australian Farm Data Code. The expanded Code will support increased producer and service provider awareness of how farm data can be stored, managed and shared and instil greater confidence by end users to adopt digital technologies.
	AgCAREERSTART	\$5.1 million over two years from 2021-22	Funding will be provided to an industry-led consortium to develop and pilot a program that provides school leavers the opportunity to work in agriculture by undertaking a structured and supported gap year placement at a farm and relevant training.
	AgUP	\$7.3 million over four years from 2021-22	Funding will be provided for a grants program for industry-led initiatives that provide opportunities for upskilling and career progression in the agriculture industry.
	Modern Workforce Management and Planning Practices Project	Approximately \$1.0 million over two years from 2021-22	Funding will be provided to support the development of educational materials for agricultural employers on workforce management and planning practices. These materials will help agricultural employers adjust to disruptions and challenges in the labour market and improve the industry's image and reputation.

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



26 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 Richard Colbeck, Minister for Senior Australians
and Aged Care Services
Minister.Colbeck.DLO@health.gov.au

parliamentary.committees@health.gov.au

Dear Chair,

Matters of interest to the Senate

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments against the scrutiny principles outlined in Senate standing order 23.

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

Noting that the following instruments appear to contain significant policy matters relating to the use of restrictive practices in aged care settings and the national reporting of vaccinations, 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
Aged Care Legislation Amendment (Royal Commission Response No. 1) Principles 2021 [F2021L00923]	To set out requirements for the use of restrictive practices in relation to aged care recipients in residential aged care. The amendments are in response to the recommendations of the Royal Commission into Aged Care Quality and Safety and the Independent Review of the Legislative Provisions Governing the Use of Restraint in Residential Aged Care.	18/10/2021

Instrument	Purpose	Last day to lodge disallowance notice
Australian Immunisation Register Amendment (National Immunisation Program Vaccines) Rules 2021 [F2021L00925]	To mandate that vaccination providers must report the administration of National Immunisation Program vaccines to the Australian Immunisation Register. Prior to the commencement of the instrument only COVID-19 and influenza vaccinations were reported to the Register.	18/10/2021

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

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

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

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

Yours sincerely,

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