

Monitor 14 of 2021 - Committee correspondence

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30 September 2021

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

via email: dlosukkar@treasury.gov.au
cc: minister.sukkar@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 26 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 22 September 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 set out in Chapter 1 of its *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc, and **attached** to this letter.

As set out in the Monitor, noting the significance of its outstanding scrutiny concerns, the committee has resolved to recommend that the Senate disallow the instrument.

On 18 October 2021 the committee intends to give notice of a motion to disallow the instrument, to be moved 15 sitting days after that day. Based on the current sitting pattern this would mean that the motion would be moved on the fourth sitting day in 2022 to provide the Senate with additional time to consider the instrument and the committee's recommendation that the instrument be disallowed.

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*.

Should you have any questions please contact the committee's secretariat on (02) 6277 3066, or by email at 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

Part 1

Disallowable instruments raising significant scrutiny issues

1.3 This part details those instruments subject to disallowance which raise particularly significant scrutiny concerns. Where necessary, the committee may give a notice of motion to disallow an instrument contained in Part 1 to emphasise its scrutiny concerns or to provide the Senate and the committee with additional time to consider the instrument while it is still subject to disallowance.

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

FRL No.	F2021L00863 ¹
Purpose	To amend the governance standards to provide that registered entities must not engage in conduct that may be dealt with as a relevant kind of summary offence, and to require registered entities to maintain reasonable internal control procedures in relation to its resources.
Authorising legislation	<i>Australian Charities and Not-for-profits Commission Act 2012</i>
Portfolio	Treasury
Disallowance	15 sitting days after tabling (tabled in the Senate on 3 August 2021).

Overview

1.4 The instrument amends the Australian Charities and Not-for-profits Commission Regulation 2013 (the Principal Regulations) to alter certain governance standards relating to charities' engagement in, or promotion of, unlawful activities. These amendments include providing that a registered entity must:

- not engage in conduct or omit to engage in conduct that may be dealt with as a summary offence under an Australian law relating to certain types of actions; and
- maintain reasonable internal control procedures to ensure its resources are not used to actively promote another entity's acts or omissions that may be dealt with as such an offence.

1 Accessible on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

1.5 Registered entities must comply with these standards in order to qualify for certain exemptions, benefits and concessions under the *Australian Charities and Not-for-profits Commission Act 2012* (ACNC Act). Failure to comply with these governance standards may result in revocation of the entity's registration under section 35-10 of the ACNC Act and the exercise of certain enforcement powers under Part 4-2 of the ACNC Act.

1.6 The explanatory statement explains that the purpose of these amendments is to 'give the public greater confidence that a registered entity is governed in a way that is consistent with its purposes, and that it protects its assets, reputation, and the people it works with' and 'make clear that in all cases, a registered entity may not be entitled to registration under the Act if it engages in any of the relevant summary offences'.²

Scrutiny concerns

1.7 The committee's most significant outstanding scrutiny concerns with regard to the instrument centre on subsection 45.15(3). This provision requires registered entities to maintain reasonable internal control procedures to ensure that its resources are neither used nor continued to be used to actively promote another entity's unlawful acts or omissions that may be dealt with under paragraphs 45.15(2)(a), (aa) or (b). The committee's comments in relation to these issues are detailed in *Delegated Legislation Monitor 12 of 2021*.³ In summary, the committee is concerned that:

- this provision appears to enable the Australian Charities and Not-for-profits Commission (ACNC) Commissioner to exercise a broad discretion in determining compliance with the governance standards;
- the lack of clarity on what will constitute 'reasonable internal control procedures' may inhibit charities' ability to understand their obligations under the instrument;
- this provision may limit a registered entity's ability to support or promote certain types of political protest, without having committed an unlawful act themselves; and
- it is unclear whether this provision may impermissibly burden the implied freedom of political communication in its terms, operation, or effect.

2 Explanatory statement, p. 4.

3 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 12 of 2021*.

Actions to date

Initial correspondence

1.8 Since July 2021, the committee has been corresponding with the Assistant Treasurer to resolve its technical scrutiny concerns. The committee also considers that this instrument may raise significant policy issues which should be considered by the Senate. Accordingly, the committee drew the instrument to the attention of the Senate in accordance with Senate standing order 23(4) in *Delegated Legislation Monitor 10 of 2021*,⁴ and wrote to the Senate Economics Legislation Committee.⁵

1.9 Since raising concerns in relation to the instrument, the committee has also received considerable correspondence from numerous charities and non-government organisations in both writing and by telephone. This correspondence has served to heighten the committee's scrutiny concerns about the conferral of discretionary powers on the ACNC Commissioner and the potential impact the instrument may have on the implied freedom of political communication.⁶

Recent correspondence

1.10 As a number of its key concerns were not adequately addressed via correspondence, the committee drew its significant outstanding concerns to the attention of the Senate in *Delegated Legislation Monitor 12 of 2021*. In addition, the committee requested more detailed information from the Assistant Treasurer about:

- what objective test will be applied to determine whether a registered entity has complied with the requirements of subsection 45.15(3);
- what factors the ACNC Commissioner must consider in making this determination; and
- how the instrument as a whole, including subsection 45.15(3), does not impermissibly restrict the implied freedom of political communication.

1.11 The Assistant Treasurer responded to the committee's concerns in a letter dated 26 August 2021.⁷ With regard to the committee's concerns about the conferral of discretionary powers under subsection 45.15(3), the Assistant Treasurer advised that there are no legislatively prescribed factors that the ACNC Commissioner must consider in determining whether a registered entity has complied with the

4 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 10 of 2021*, p. 4.

5 Copies of the letters are available on the committee's [website](#).

6 A summary of all prior correspondence on this instrument is set out in *Delegated Legislation Monitor 12 of 2021*.

7 Copies of the letters are available on the committee's [website](#).

requirements of subsection 45.15(3). Instead, it is a question of fact to be determined on the evidence available to the ACNC Commissioner and what evidence is required will vary from case to case.

1.12 The response further advised that, at a general level, the ACNC Commissioner will be required to comply with administrative law principles. If the ACNC Commissioner is satisfied there has been or will be non-compliance with the governance standards, the decision whether or not to take regulatory action, and what regulatory action to take, is subject to the ACNC Commissioner having regard to the matters set out in section 15-10 of the ACNC Act.

1.13 The Assistant Treasurer also reiterated that the requirement to maintain reasonable internal controls and procedures is a feature in many other governance and external conduct standards in the Principal Regulations, and a note to subsection 45.15(3) provides some examples of the types of matters that may be dealt with in the internal control procedures.

1.14 With regard to the committee comments regarding the impact of the instrument on the implied freedom of political communication, the Assistant Treasurer stated that he does not consider that the instrument burdens the implied freedom of political communication as it does not prevent the registered entity engaging in conduct that is not otherwise already unlawful.

1.15 The response noted that, as the requirement in subsection 45.15(3) centres on the registered entity's governance arrangements around the use of its own resources, the registered entity will not contravene this new requirement simply because another entity has ultimately used the registered entity's resources to actively promote unlawful activities.

Committee comment

1.16 The committee thanks the Assistant Treasurer for his constructive engagement with the committee in relation to this instrument. However, the committee retains significant concerns regarding the instrument.

1.17 As the committee has been unable to resolve these technical scrutiny concerns with the Assistant Treasurer, the committee has resolved to draw some further remarks to the attention of the Senate. The committee's comments with regard to these unresolved concerns are outlined below.

Conferral of discretionary powers

1.18 While noting the Assistant Treasurer's response, it remains unclear to the committee how the ACNC Commissioner will not be required to exercise a broad discretion in exercising their powers under subsection 45.15(3). The committee's view is informed by the fact that the determination of what constitutes a reasonable internal control procedure requires the ACNC Commissioner to consider the individual circumstances of each registered entity.

1.19 In the absence of a convincing explanation from the Assistant Treasurer, it does not appear to the committee that determinations made for the purposes of subsection 45.15(3) will be limited to questions of objective fact. In this regard, it appears that this will require the ACNC Commissioner to exercise a broad discretion in determining whether a registered entity has complied with the governance standard.

1.20 In addition, the committee considers that the amendments to both subsections 45.15(2) and 45.15(3) significantly expand the discretion granted to the ACNC Commissioner to exercise revocation powers under section 35-10 and enforcement powers under Part 4-2 of the ACNC Act without sufficient guidance being provided in the law as to how this discretion is to be exercised. In particular, the committee notes that the revocation and enforcement powers may be exercised in circumstances where the Commissioner reasonably believes that 'it is more likely than not' that an entity will not comply with the significantly expanded scope of government standard 3 to encompass what, in at least some cases, are relatively minor summary offences.

1.21 Where an instrument confers broad discretionary powers on a person, the committee considers that there should be a clear explanation of the factors that must be considered in exercising this power and the safeguards in place. In this instance, the committee does not consider that requiring the ACNC Commissioner to comply with broad level administrative law principles is a sufficient substitute for legislatively prescribed criteria to guide the exercise of their powers. Moreover, the committee does not consider that consistency with existing arrangements, including other governance standards, is a sufficient justification for the lack of clarity in this instance.

1.22 The committee reiterates that the lack of clarity around what constitutes 'reasonable internal control procedures' may inhibit registered entities' ability to understand their obligations under the instrument and, as such, may ultimately lead to the deregistration of the entity if they fail to comply. The committee generally considers that provisions which impose obligations on a person should be drafted with sufficient clarity to enable them to understand those obligations. Failure to do so undermines legal clarity and certainty.

1.23 The committee's concerns in this instance have been heightened noting the potential impact this may have on registered entities. In this regard, the committee notes that, since initially seeking advice from the Assistant Treasurer, it has continued to receive correspondence from registered entities outlining concerns about the lack of clarity in the governance standards.

1.24 From a scrutiny perspective, the committee considers that the instrument, as drafted, confers an overly broad discretion on the ACNC Commissioner in circumstances where sufficient guidance is not provided in the law as to how this discretion is to be exercised.

Implied freedom of political communication

1.25 While noting that subsection 45.15(3) centres on the use of a registered entity's own resources, rather than just the unlawful activities of another entity, it remains unclear to the committee whether the instrument as a whole could burden the implied freedom of political communication.

1.26 Whilst acknowledging the Assistant Treasurer's view that the instrument does not prevent registered entities from engaging in activity that is not already unlawful, it remains unclear to the committee whether any element of the obligations imposed in the instrument could limit the implied freedom. In this regard, while the instrument does not create new offences which may make a registered entity's actions unlawful, this does not necessarily preclude the instrument from affecting the implied freedom as it may still restrict the behaviour of registered entities. The committee does not consider that the Assistant Treasurer has adequately engaged with how the restrictions on the actions and behaviour of registered entities imposed by the instrument could impact on the implied freedom.

1.27 The committee retains the view that, at a minimum, any potential limitations on the implied freedom should be soundly explained and justified.

1.28 While appreciating his responsiveness to the committee, the committee does not consider that the Assistant Treasurer has provided a sufficient explanation for why the instrument as a whole does not impermissibly limit the implied freedom. In absence of such an explanation, the committee does not consider that the instrument meets its expectations under standing order 23(3).

1.29 In light of the comments above, the committee draws the attention of the Senate to the committee's significant scrutiny concerns regarding the conferral of broad discretionary powers on the ACNC Commissioner and the impact of the instrument on the implied constitutional freedom of political communication.

1.30 Noting the significance of its technical scrutiny concerns, the committee recommends that the Senate disallow the instrument.

1.31 On 18 October 2021 the committee intends to give notice of a motion to disallow the instrument, to be moved 15 sitting days after that day. Based on the current sitting pattern this would mean that the motion would be moved on the fourth sitting day in 2022 to provide the Senate with additional time to consider the instrument and the committee's recommendation that the instrument be disallowed. The committee notes that, under section 45-20 of the ACNC Act, the instrument will not commence until the day after:

- **the disallowance notice is resolved;⁸ or**
- **both Houses of the Parliament pass a resolution approving the instrument.**

8 The disallowance notice may be resolved by being withdrawn or negated by the Senate. The disallowance notice would also be resolved if it was agreed to by the Senate or it was not considered at all by the Senate by the end of the 15th sitting day after it was given. In both of these latter instances the instrument would not commence at all.



30 September 2021

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

via email: angus.taylor@energy.gov.au
cc: dlotaylor@industry.gov.au; legislation@industry.gov.au

Dear Minister,

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

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

Thank you for your response of 8 September 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instruments.

The committee considered your response at its private meeting on 22 September 2021. Whilst noting your advice, the committee remains concerned that the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 (the second ARENA instrument) raises significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's concerns are set out in Chapter 1 of its *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc, and **attached** to this letter.

Noting the significance of its outstanding scrutiny concerns, the committee has also resolved to recommend that the Senate disallow the second ARENA instrument.

On 18 October 2021 the committee intends to give notice of a motion to disallow the instrument, to be moved 15 sitting days after that day. Based on the current sitting pattern this would mean that the motion would be moved on the fourth sitting day in 2022 to provide the Senate with additional time to consider the instrument and the committee's recommendation that the instrument be disallowed.

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*.

Should you have any questions please contact the committee's secretariat on (02) 6277 3066, or by email at 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 Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021

Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021

FRL No.	F2021L00590 and F2021L01043 ⁹
Purpose	<p>F2021L00590: To expand the operating remit of the Australian Renewable Energy Agency and permit the agency to invest in a wider range of clean energy technologies to deliver programs announced in the 2020-21 Budget.</p> <p>F2021L01043: To expand the operating remit of the Australian Renewable Energy Agency to permit it to invest in a wider range of technologies for the deployment of initiatives announced in the 2020-21 Budget.</p>
Authorising legislation	<i>Australian Renewable Energy Agency Act 2011</i>
Portfolio	Industry, Science, Energy and Resources
Disallowance	F2021L01043: 15 sitting days after tabling (tabled in the Senate on 3 August 2021).

Overview

1.32 The Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590] (the first ARENA instrument) sought to amend the Australian Renewable Energy Agency Regulation 2016 to allow the Australian Renewable Energy Agency (the ARENA) to provide financial assistance in relation to the following programs announced in the 2020-21 Budget:

- Freight Energy Productivity Program;
- Future Fuels Fund;
- Industrial Energy Transformation Studies Program;
- Regional Australia Microgrid Pilots Program; and
- Technology Investment Roadmap.

1.33 The first ARENA instrument was disallowed by the Senate on 22 June 2021.

9 Accessible on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

1.34 On 29 July 2021 the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] (the second ARENA instrument) was registered on the Federal Register of Legislation.¹⁰ This instrument enables the ARENA to provide financial assistance in relation to the following programs announced in the 2020-21 Budget:

- Freight Efficiency Assistance Grants;
- Freight Energy Productivity Trial Program;
- Future Fuels Fund;
- Industrial Energy Transformation Studies Program; and
- Regional Australia Microgrid Pilots Program.

1.35 It also confers functions on the ARENA in relation to priority low emissions technologies.¹¹ Both instruments are made under the *Australian Renewable Energy Agency Act 2011* (the ARENA Act).

Scrutiny concerns

Significant matters in delegated legislation

Compliance with Legislation Act 2003 – same in substance

Compliance with authorising legislation

1.36 In *Delegated Legislation Monitor 12 of 2021* the committee set out its detailed scrutiny concerns in relation to whether the instruments comply with their authorising legislation and provide for significant matters more appropriate for parliamentary enactment. The committee requested further information from the minister in relation to these scrutiny concerns.

1.37 The committee also requested advice from the minister as to how the second ARENA instrument differs from the disallowed ARENA instrument in substance.

1.38 The committee set out its concluding comments on the adequacy of consultation undertaken in relation to each ARENA instrument.

10 The priority low emissions technologies relate to aluminium and steel technologies, carbon capture and storage technologies, clean hydrogen technologies, energy storage technologies and soil carbon technologies.

11 *Delegated Legislation Monitor 12 of 2021* stated that the second ARENA instrument amends the Australian Renewable Energy Agency Regulation 2016 (the 2016 Regulation). However, as reflected in the comments above, while the first ARENA instrument sought to amend the 2016 Regulation, the second ARENA instrument is in fact a standalone instrument.

Minister's response

1.39 The minister responded to the committee's concerns in a letter dated 8 September 2021, and this response is addressed in relation to the relevant scrutiny concerns below.

Compliance with Legislation Act 2003 – same in substance

1.40 The minister pointed to the explanatory statement to the second ARENA instrument which advises it makes 'material changes to the nature and scope of the new functions and programs intended to be supported by ARENA, as well as changing aspects of the context in which they will be deployed and reported on'. The minister also advised that in addressing the committee's concerns in relation to both ARENA regulations in one letter, the intention was not to draw comparisons between the actual content of the regulations but to rather highlight the fact that the instruments were made under the same legislative head of power.

Significant matters in delegated legislation

1.41 The minister advised that the use of regulations in this instance is similar to the way regulations under the *Financial Framework (Supplementary Powers) Act 1997* and the *Industry Research and Development Act 1986* empower Commonwealth spending.

1.42 The minister also reiterated that the measures are suited to delegated legislation to provide for prompt delivery of government commitments to reduce greenhouse gas emissions, and that the ARENA is the most appropriate vehicle to deliver these measures due to its expertise.

Compliance with authorising legislation

1.43 The minister reiterated his advice that the ARENA instruments are made in compliance with the ARENA Act. The minister set out his view that there is nothing in the regulation-making power in paragraph 8(f) of the ARENA Act which limits delegated legislation to prescribing additional functions relating only to renewable energy. The minister suggested that, as there is no reason to depart from the plain meaning of the provision, section 15AB of the *Acts Interpretation Act 1901* (which deals with the use of extrinsic material in the interpretation of an Act) is not engaged.

1.44 In his response, the minister explained that the terms of the Act provide a wider scope for the ARENA to have functions beyond those related to renewable energy and that this is "demonstrated by the extended definition given to the term 'renewable energy'" as supported by the constitutional basis of the Act and the inclusion of a broad regulation making power.

1.45 The minister also advised that the context of the bill's passage through the Parliament supports this view, as the second reading speech made on 12 October 2011 confirms that the purpose of the Act is to support clean energy including broader emissions reduction technology.

1.46 Further, the minister pointed to the fact that the definition of ‘renewable energy’ in the ARENA Act includes hybrid technologies and technologies that are related to renewable energy technologies. The minister advised that ‘it could be argued that at least some of the ‘non-renewable’ technologies in the first and second 2021 Regulations are better understood as hybrid, enabling or related technologies in the wider context of renewable energy supply and security in Australia’.

Committee comment

1.47 The committee thanks the minister for his constructive engagement with the committee in relation to this instrument. However, the committee retains significant concerns regarding the instrument.

1.48 As the committee has been unable to resolve these technical scrutiny concerns with the minister, the committee has resolved to draw some further remarks to the attention of the Senate. The committee’s comments with regard to these unresolved concerns are outlined below.

Compliance with Legislation Act 2003 – same in substance

1.49 The committee notes the minister’s advice that the two ARENA instruments are not the same in substance. As noted in *Odgers’ Australian Senate Practice*,¹² the expression ‘the same in substance’ has been judicially construed by the High Court to refer to ‘any regulation which is substantially the same ... in the sense that it produces substantially, that is, in large measure, though not in all details, the same effect’.¹³ However, in 2015, a single Federal Court judge gave the term a narrower construction, requiring that for an instrument to be invalid, ‘it be in substance or legal effect, identical to the previously disallowed measure’.¹⁴

1.50 The committee acknowledges that the two ARENA instruments are not identical; however, at a broad level, both instruments permit the ARENA to invest in non-renewable technologies and are designed to support the delivery of programs announced in the 2020-21 Budget. As relatively few cases have considered this matter, the committee considers that this issue is ultimately a matter that could only be resolved by judicial consideration.

Significant matters in delegated legislation

1.51 In relation to the inclusion of significant matters in delegated legislation, the committee maintains its view that the measures in the ARENA instrument go beyond filling out the detail of the Act and therefore appear more appropriate for parliamentary enactment. The committee does not generally consider that consistency with existing legislative arrangements, the need for operational

12 Rosemary Laing (ed.), *Odgers’ Australian Senate Practice*, 14th ed, 2016, p. 444.

13 *Victorian Chamber of Manufactures v Commonwealth* (1943) 67 CLR 347, 364.

14 *Perrett v Attorney-General of the Commonwealth of Australia* [2015] FCA 834, [29].

flexibility, or a need to promptly deliver government policies are sufficient justifications for including significant matters in delegated legislation.

1.52 The committee therefore reiterates its concerns that the instrument deals with the significant matter of expanding the jurisdiction of the ARENA from investing in renewable energy technologies to programs relating to energy efficiency and low-emissions technology. Given the scope and impact of the measures, from a scrutiny perspective, it is the committee's view that they are more appropriate for parliamentary enactment.

Compliance with authorising legislation

1.53 From a scrutiny perspective, the committee remains of the view that the second ARENA instrument is expanding the remit of the ARENA beyond what was envisaged by Parliament when the Act was passed. The committee notes that the minister's position is that the absence of a clearly drafted legislative limit or an express statement in the explanatory memorandum that the ARENA is limited to renewable energy indicates that Parliament did not intend the ARENA to be so limited. Respectfully, the committee does not accept this, and considers that the express references to renewable energy in the Act and the explanatory memorandum are a clear indication of Parliament's intent.

1.54 The purpose of the ARENA Act is made clear in the title of the Act itself, and in section 3 which sets out the objects of the Act. Section 15AA of the *Acts Interpretation Act 1901* provides that in interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation. In this regard, the committee's position is that the interpretation that would best achieve the purpose or object of the Act is one that limits the functions of the ARENA to investing in renewable energy technologies.

1.55 While the committee welcomes the minister's advice in relation additional evidence to support the view that Parliament intended that functions not relating to renewable energy could be conferred on the ARENA, it remains that case, as acknowledged by the minister, that there is no reason to depart from the plain meaning of the text of the provisions of the Act.

1.56 The committee recognises that the definition of 'renewable technology' in section 4 of the ARENA Act includes hybrid technologies. However, for the instrument to be empowered under this definition of hybrid technologies in the ARENA Act, the committee's view is that the instrument would need to be redrafted to make it clear that non-renewable aspects are connected to renewable aspects. As the instrument is currently drafted this does not appear to be the case.

1.57 Finally, the committee has consistently stated its view that its scrutiny concerns go beyond any one provision of the instrument and focus on whether the instrument as a whole is authorised by the ARENA Act. In addition, as noted above,

the committee is concerned that the measures in the instrument as a whole are more appropriate for parliamentary enactment.

1.58 In light of the comments above, the committee draws the attention of the Senate to the committee's significant scrutiny concerns regarding the inclusion of significant matters in delegated legislation in the second ARENA instrument and the compliance of the instrument with its authorising legislation.

1.59 Noting the significance of its technical scrutiny concerns, the committee recommends that the Senate disallow the instrument.

1.60 On 18 October 2021 the committee intends to give notice of a motion to disallow the instrument, to be moved 15 sitting days after that day. Based on the current sitting pattern this would mean that the motion would be moved on the fourth sitting day in 2022 to provide the Senate with additional time to consider the instrument and the committee's recommendation that the instrument be disallowed.



30 September 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

Dear Minister

Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 [F2021L01068]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses legislative instruments against scrutiny principles outlined in Senate standing order 23.

The committee considers that the above instrument raises significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's concerns are set out in full in Chapter 1 of its *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc, and **attached** to this letter.

As set out in the Monitor, the committee is deeply concerned that the government has failed to substantively engage with the committee's significant concerns in relation to instruments made under *Biosecurity Act 2015*. By continuing to make instruments under section 477 of the Act which are exempt from disallowance, and failing to provide an adequate explanation for why it is necessary to do so, the committee considers that the government has flagrantly disregarded the recommendations of the committee's interim report of its inquiry into the exemption of delegated legislation parliamentary oversight. The committee intends to rigorously pursue this matter in accordance with the mandate provided by the Senate when it agreed to amend standing order 23 to allow the committee to consider exempt instruments.

In addition, the committee considers that the government has failed to consider the significance of its concerns in relation to the continued extension of the human biosecurity emergency period without any form of parliamentary oversight.

In order to facilitate the committee's timely consideration of the matters outlined in the Monitor the committee requests a response by **14 October 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*.

Should you have any questions 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

Part 2

Exempt instruments raising significant scrutiny issues

1.61 This part details those instruments exempt from disallowance which raise particularly significant scrutiny concerns in relation to the appropriateness of their exemption from disallowance under Senate standing order 23(4A). Where necessary, the committee additionally raises scrutiny concerns in relation to its scrutiny principles set out in Senate standing order 23(3).

Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021

FRL No.	[F2021L01068] ¹⁵
Purpose	To amend the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020 to remove the automatic exemption for a person who ordinarily resides in another country and replace it with a discretionary exemption and make consequential amendments to the Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2020.
Authorising legislation	<i>Biosecurity Act 2015</i>
Portfolio	Health
Source of exemption	Subsection 477(2) of the <i>Biosecurity Act 2015</i>

Overview

1.62 Subsection 477(1) of the *Biosecurity Act 2015* (Biosecurity Act) empowers the minister to make emergency requirements to prevent or control the spread of a listed human disease within Australia or to another country. The Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020 (principal instrument) specifies such emergency requirements restricting overseas travel by Australian citizens or permanent residents and sets out some exemptions for certain classes of individuals.

1.63 The Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 (the instrument) amends the principal instrument to remove the automatic exemption for persons who ordinarily reside in another

15 Accessible on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

country from the overseas travel ban. This has the effect of preventing such persons from travelling overseas unless they are granted an exemption due to exceptional circumstances by the Australian Border Force Commissioner (the Commissioner) or an Australian Border Force (ABF) employee under subsection 7(1) of the principal instrument.

Scrutiny concerns

Exemption from disallowance

1.64 Senate standing order 23(4A) empowers the committee to scrutinise delegated legislation that is exempt from disallowance against all scrutiny principles set out in standing order 23. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

1.65 The instrument is made under subsection 477(1) of the Biosecurity Act. Subsection 477(2) of the Biosecurity Act provides that instruments made under subsection 477(1) are exempt from disallowance.

1.66 The committee has significant concerns about the exemption of legislative instruments from disallowance by the Parliament, with particular regard to exempt instruments made under the Biosecurity Act. These concerns are set out in detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight.¹⁶ The committee takes this opportunity to express its significant concern that the government has not yet responded to the interim report which was tabled in the Senate on 2 December 2020.

1.67 Noting this, it appears to the committee that the government has failed to substantively engage with the committee's significant concerns. By continuing to make instruments under section 477 of the Biosecurity Act which are exempt from disallowance and failing to provide an adequate explanation for why it is necessary to do so, the committee considers that the minister has flagrantly disregarded the recommendations of the committee's interim report. The committee intends to rigorously pursue this matter in accordance with the mandate provided by the Senate when it agreed to amend standing order 23 to allow the committee to consider exempt instruments.

1.68 The committee considers that emergency delegated legislation should be subject to appropriate parliamentary oversight, with limited exemptions from disallowance. This approach ensures respect for Parliament's constitutional role as the primary institution responsible for making law and scrutinising possible encroachments on personal rights and liberties. It also accords with the Senate's

16 Senate Standing Committee for the Scrutiny of Delegated Legislation, [*Exemption of delegated legislation from parliamentary oversight: Interim Report*](#) (November 2020).

requirement that that exemptions should only be made in exceptional circumstances and will only be justified in rare cases.¹⁷

1.69 Where such an instrument is nevertheless exempt from disallowance, the committee expects that a sound justification should be provided in the explanatory statement. In this instance, the explanatory statement states:

The risk of such disallowance would inhibit the Commonwealth's ability to act urgently on public health advice to manage a human biosecurity risk that could threaten or harm human health as it would create uncertainty as to whether the instrument might be disallowed.¹⁸

1.70 While noting this explanation, the committee does not consider the need to act urgently or potential uncertainty on their own to be an adequate justification for the exemption of delegated legislation from parliamentary oversight. In particular, the committee notes that the disallowance procedure would not inhibit the immediate commencement of the instrument. In this regard, the committee does not consider that making a legislative instrument subject to disallowance would, of itself, prevent the government from taking immediate and decisive action in response to a significant emergency. In the absence of further information in the explanatory statement, it is unclear whether there is another justification for the exemption of the instrument from disallowance.

1.71 The committee's concerns with regard to the exemption of the instrument from disallowance are heightened, noting that the instrument appears to raise a number of significant technical scrutiny issues. The committee's comments regarding these issues are outlined below.

1.72 The committee therefore requests the minister's more detailed advice as to:

- **why it is considered necessary and appropriate for the instrument to be exempt from disallowance; and**
- **whether the government will consider moving amendments to the Biosecurity Amendment (Enhanced Risk Management) Bill 2021 to amend section 477 of the Biosecurity Act to provide that any determinations setting out emergency requirements in the future will be subject to disallowance.**

1.73 The committee notes that if the government is not amenable to moving such an amendment it may consider moving its own amendment to bill.

17 *Senate resolution 53B: Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021, https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/Resolutions_expressing_opinions_of_the_Senate/.

18 Explanatory statement, p. 2.

Freedom of movement

1.74 Senate standing order 23(3)(h) requires the committee to scrutinise each legislative instrument as to whether it trespasses unduly on personal rights and liberties, including the freedom of movement.

1.75 The instrument removes the automatic exemption from the existing overseas travel ban for Australian citizens and permanent residents who ordinarily reside in a country other than Australia. This amendment ensures that those Australians who ordinarily live overseas will no longer be able to automatically leave Australia if they come back to visit, and will instead need to apply for an exemption, demonstrating a compelling reason to leave Australia. Failure to comply with emergency requirements may also attract a custodial penalty of up to five years' imprisonment or a fine of 300 penalty units (\$63,000), or both.¹⁹ Accordingly, it appears that these measures may significantly limit the freedom of movement of these individuals.

1.76 Where an instrument may significantly limit the personal rights and liberties, the committee considers that an explanation should be provided as to the scope of the limitations and outline what impacts this may have. In this instance, the explanatory statement to the instrument explains:

As repatriation flights continue, it will be critical to manage the numbers of people leaving Australia with the intention of returning in the near future to ensure flight and quarantine availability is prioritised for individuals who have been stranded overseas for some time. The amendment will reduce the pressure on Australia's quarantine capacity, reduce the risks posed to the Australian population from COVID-19, and assist in returning vulnerable Australians back home.²⁰

1.77 However, in the absence of further information, it is unclear what the expected impact of the measures may be on the rights of relevant individuals. In this regard, the committee notes that the explanatory statement does not contain a statement of compatibility with human rights.

1.78 The committee therefore requests the minister's advice as to:

- **what the expected impact of the measures implemented by the instrument will be on the freedom of movement of Australian citizens and permanent residents who ordinarily reside in another country, including the number of individuals who may be affected by the amendments; and**
- **whether the explanatory statement to the instrument can be amended to include this information.**

19 *Biosecurity Act 2015*, subsection 479(3).

20 Explanatory statement, p. 2.

Matters for appropriate for parliamentary enactment

Modification of the operation of primary legislation

1.79 Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment, which should be included in primary, rather than delegated, legislation. Senate standing order 23(3)(l) also requires the committee to consider whether an instrument contains provisions which amend or modify the operation of primary legislation.

1.80 As noted above, the principal instrument establishes emergency requirements for the purposes of subsection 477(1) of the Biosecurity Act. Subsection 477(5) provides that such emergency requirements have effect despite 'any provision of any other Australian law' and may override the operation of primary legislation.

1.81 The committee has long been concerned with provisions in delegated legislation which modify or override primary legislation. The committee considers that, at a minimum, such provisions should be soundly justified in the explanatory statement. In this instance, the explanatory statement does not appear to explain why it is necessary and appropriate to specify that the relevant requirements may override any Australian law.

1.82 Further, the committee's longstanding view is that instruments which modify or override primary legislation should be time limited to ensure a minimum degree of regular parliamentary oversight. The committee considers that limiting the duration of emergency delegated legislation is particularly necessary to guard against the risk that temporary extraordinary measures enacted in response to the emergency become an ongoing part of the law without appropriate parliamentary scrutiny.

1.83 In this instance, the requirements set out in the instrument may remain in force for the duration of a human biosecurity emergency period declared under section 475 of the Biosecurity Act. The human biosecurity emergency period is due to end on 17 December 2021 and has been extended six times since originally declared in March 2020. Most recently the emergency period was extended by the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021 [F2021L01232].²¹ The committee is concerned that there is no limitation on the number of times that the period may be further extended without effective parliamentary oversight. In this regard, the committee notes that instruments which extend the human biosecurity emergency period are similarly exempt from disallowance by the Parliament.²² As

21 This instrument will be formally considered by the committee in an upcoming *Delegated Legislation Monitor*.

22 *Biosecurity Act 2015*, subsection 476(3).

such, there is very limited parliamentary oversight of the amount of time in which significant emergency measures, such as the overseas travel ban, may remain in place. This significantly undermines Parliament's ability to fulfil its rights-assessing and rights-protecting responsibilities with respect to delegated legislation. Although the committee has, on multiple occasions, raised concerns about the exemption of the human biosecurity emergency provisions of the Biosecurity Act from disallowance and the continued extension of the emergency period without parliamentary oversight, it appears that the government has failed to consider significance of these concerns.

1.84 The committee's concerns with regard to this issue are heightened, noting the significant impact of the instrument on the personal rights and liberties of individuals. Matters which have a significant impact on personal rights and liberties are more appropriately enacted via primary legislation rather than delegated legislation. Where such matters are nevertheless included in delegated legislation, the committee expects that a sound justification should be provided in the explanatory statement. In the absence of further information in the explanatory statement to this instrument, it is unclear why it is necessary and appropriate to include these matters in delegated, rather than primary, legislation.

1.85 In light of the matters outlined above, the committee requests the minister's advice as to:

- **why it is considered necessary and appropriate for the emergency requirements outlined in the instrument to override any Australian law;**
- **why it is considered necessary and appropriate to include significant matters, which may limit the freedom of movement of a broad class of Australian citizens and permanent residents, in delegated legislation;**
- **whether the explanatory statement to the instrument can be amended to include this information; and**
- **whether the government will consider moving amendments to the Biosecurity Amendment (Enhanced Risk Management) Bill 2021 to amend section 476 of the Biosecurity Act to provide that any future variations to extend a human biosecurity emergency period will be subject to disallowance.**

1.86 The committee notes that if the government is not amenable to moving such an amendment it may consider moving its own amendment to bill.

Conferral of discretionary powers

1.87 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.

1.88 As noted above, the instrument removes the automatic exemption from the restriction on overseas travel for persons who ordinarily reside in another country. This has the effect of preventing such persons from travelling overseas unless they are granted an exemption due to exceptional circumstances by the Commissioner or an ABF employee under subsection 7(1) of the principal instrument. In this regard, the instrument appears to expand the class of persons to whom they may exercise their discretionary powers under subsection 7(1).

1.89 The committee considers that instruments that confer discretionary powers on a person should set out the factors which the person must consider in exercising the discretion. The explanatory statement should also address the purpose and scope of the discretion and why it is necessary, and explain who will be exercising the discretion, including whether they possess the appropriate qualifications and necessary skills. The committee also expects the explanatory statement to explain the nature and source of any relevant limitations and safeguards, including whether they are contained in law or policy.

1.90 In this instance, the explanatory statement to the instrument does not appear to explain what the effect of the amendments will be in relation to the discretionary powers under subsection 7(1) of the principal instrument. Additionally, the explanatory statement does not provide details as to the scope of the discretion, including the factors that will be considered in exercising the powers, or outline any relevant safeguards.

1.91 The committee therefore requests the minister's advice as to whether the instrument expands the class of persons for whom discretionary powers under subsection 7(1) of the principal instrument may be exercised, and if so:

- **the factors that must be considered in exercising this discretion, including guidance as to the 'exceptional circumstances' in which an exemption may be granted from the overseas travel ban;**
- **which ABF employees will be exercising discretionary powers under subsection 7(1), including whether they possess the appropriate qualifications and necessary skills; and**
- **whether there are any safeguards or limitations on the exercise of the discretionary powers, including whether they are contained in law or policy.**

1.92 The committee also requests that the explanatory statement be amended to include this information.

Consultation with experts and persons affected by the instrument

1.93 Senate standing order 23(3)(d) requires the committee to scrutinise each instrument as to whether persons likely to be affected by the instrument, including relevant experts, were adequately consulted in relation to the specific instrument.

1.94 Section 17 of the *Legislation Act 2003* (Legislation Act) requires that, prior to an instrument being made, the rule-maker must be satisfied that appropriate consultation was undertaken. In determining whether the consultation undertaken is appropriate, the rule-maker may have regard to the extent to which the consultation ensured that persons likely to be affected by the instrument had an adequate opportunity to comment on its proposed content, as per paragraph 17(2)(b) of the Legislation Act. In addition, the rule-maker may have regard to the extent to which the consultation drew on the knowledge of persons with expertise in fields relevant to the proposed instrument, as per paragraph 17(2)(a) of the Legislation Act.

1.95 The committee therefore expects that explanatory statements to instruments should provide details of any consultation that was undertaken with persons likely to be affected by the instrument and with persons with expertise in fields relevant to the instrument. If no such consultation was undertaken, the committee expects explanatory statements to justify the reason for this.

1.96 The explanatory statement to this instrument provides that consultation was undertaken with a number of government departments, including the Department of Home Affairs, the Australian Border Force, the Department of Foreign Affairs and Trade, and the Department of the Prime Minister and Cabinet.

1.97 Despite the significant impact of these measures on Australian citizens and permanent residents who ordinarily reside overseas, it is unclear whether experts or individuals or groups likely to be impacted by the measures were consulted. This is particularly concerning to the committee given the restrictive nature of the measures being introduced, heightened by the fact the instrument is exempt from disallowance. Moreover, the effect of the overseas travel ban on Australian expatriates has been a live issue since the making of the principal instrument in March 2020 and the six subsequent extensions of the human biosecurity emergency period. Noting this, the committee considers there has been sufficient time to consult with people who are now impacted by the measures set out in this instrument. Additionally, the explanatory statement does not contain any justification for why relevant individuals or experts were not consulted in this instance.

1.98 The committee therefore requests the minister's advice as to:

- **whether consultation was undertaken in relation to the instrument with persons with relevant expertise;**
- **whether consultation was undertaken in relation to the instrument with individuals likely to be impacted by the measures; and**
- **if no consultation was undertaken with experts or individuals likely to be impacted, the justification for not undertaking this consultation, and whether this justification can be included in the explanatory statement to the instrument.**



30 September 2021

The Hon David Littleproud MP
Minister for Agriculture and Northern Australia
Parliament House
CANBERRA ACT 2600

via email: minister.littleproud@agriculture.gov.au; DLO-MO@agriculture.gov.au

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

Dear Minister,

Northern Australia Infrastructure Facility Investment Mandate Direction 2021 [F2021L00942]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses legislative instruments against scrutiny principles outlined in Senate standing order 23.

The committee considers that the above instrument raises significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's concerns are set out in Chapter 1 of its *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc, and **attached** to this letter.

In order to facilitate the committee's timely consideration of the matters outlined in the *Delegated Legislation Monitor* the committee would appreciate a response by **14 October 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*.

Should you have any questions please contact the committee's secretariat on (02) 6277 3066, or by email at 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

Northern Australia Infrastructure Facility Investment Mandate Direction 2021

FRL No.	[F2021L00942] ²³
Purpose	To provide a direction to the Northern Australia Infrastructure Facility's Board in relation to the performance of the functions of the Facility.
Authorising legislation	<i>Northern Australia Infrastructure Facility Act 2016</i>
Portfolio	Infrastructure, Transport, Regional Development and Communications
Source of exemption	Item 2 of section 9 of Legislation (Exemptions and Other Matters) Regulation 2015

Overview

1.99 The Northern Australia Infrastructure Facility (the Facility) provides financial assistance to States, Territories and other entities to develop economic infrastructure in Northern Australia.

1.100 The Northern Australia Infrastructure Facility Investment Mandate Direction 2021 (the instrument) provides an investment mandate to the Facility to guide the functions of the Facility and how it invests.

Scrutiny concerns

Exemption from disallowance

1.101 Senate standing order 23(4A) empowers the committee to scrutinise delegated legislation that is exempt from disallowance against all scrutiny principles set out in standing order 23. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

1.102 At a minimum, the committee expects all explanatory statements to exempt instruments to identify the source of the exemption and justify why the exemption is appropriate in the specific context of the instrument.

1.103 In this regard, the explanatory statement identifies the source of the exemption from disallowance as section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015, as it is a ministerial direction. However, it makes no attempt to justify why it is appropriate for this ministerial direction to be exempt.

23 Accessible on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

1.104 In its final report of the inquiry into the exemption of delegated legislation from parliamentary oversight (the final report), the committee highlighted specific concerns in relation to the use of framework laws which leave crucial details regarding how public money will be spent or invested to delegated legislation which is exempt from disallowance.²⁴ The committee takes this opportunity to express its significant concern that the government has not yet responded to the final report which was tabled in the Senate on 16 March 2021.

1.105 Noting the above, the committee's clear view is that it is inappropriate for this instrument to be exempt from disallowance. This accords with the Senate's requirement that that exemptions should only be made in exceptional circumstances and will only be justified in rare cases.²⁵ The classification of this instrument as exempt from disallowance prevents parliamentary oversight of how public money will be invested by the Facility. The committee notes the following explanation of the measures in the explanatory statement:

It is a major initiative of the Commonwealth's White Paper on Developing Northern Australia (Our North, Our Future), and integral to the Commonwealth's strategy for Northern Australia. The Facility is a \$5 billion Corporate Commonwealth Entity offering equity, and/or concessional debt to encourage investment in infrastructure in Northern Australia.²⁶

1.106 The explanatory statement indicates the importance of the measures for the government's strategy for Northern Australia, and the significant funding of \$5 billion. As such, the committee considers that it is not appropriate for the Parliament's role to be so limited by the exemption from disallowance.

1.107 The committee notes that commercial and operational certainty of the measures can be maintained while still providing for effective parliamentary oversight. As set out in the final report, many concerns in relation to subjecting an instrument to disallowance could be addressed by an instrument not coming into force until such time as the disallowance period has passed, by shorter disallowance periods in some limited cases, or by providing for an instrument to be approved through a vote of the Houses of the Parliament. This latter option could potentially

24 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Final report of the inquiry into the exemption of delegated legislation from parliamentary oversight*, 16 March 2021, pp. 32-3, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Final_report.

25 *Senate resolution 53B: Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021, https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/Resolutions_expressing_opinions_of_the_Senate/.

26 Explanatory statement, p. 2.

allow for an instrument to be approved and enter into force more quickly than might otherwise occur under the typical 15 sitting day disallowance period.²⁷

1.108 In light of the above, the committee requests the minister's detailed advice as to why it is considered necessary and appropriate for the instrument to be exempt from disallowance.

27 A recent instance of this was the Australian Charities and Not-for-Profits Commission Amendment (2021 Measures No. 1) Regulations 2021, which was tabled and approved by the Senate in two sitting days. See Senate Standing Committee for the Scrutiny of Delegated Legislation, *Final report of the inquiry into the exemption of delegated legislation from parliamentary oversight*, 16 March 2021, p. 109, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Final_report.



30 September 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,

Civil Dispute Resolution Regulations 2021 [F2021L01031]

The Senate Standing Committee for the Scrutiny of Delegated Legislation assesses 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 these matters.

Exemption from the operation of primary legislation

Parliamentary oversight

Senate standing order 23(3)(l) requires the committee to consider whether an instrument contains modifications to or exemptions from the operation of primary legislation. In addition, Senate standing order 23(3)(m) 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.

Section 6 of the instrument prescribes certain proceedings as excluded proceedings for the purposes of subsection 17(1) of the *Civil Dispute Resolution Act 2011* (the Act). This has the effect of exempting these proceedings from the requirements of the Act. The provision appears intended to remain in force until the instrument is due to sunset in October 2031.

The committee's longstanding view is that provisions which modify or exempt a person or entities from the operation of primary legislation should be included in primary rather than delegated legislation. If the provisions are in delegated legislation, the instrument should operate no longer than strictly necessary. The committee considers that in most cases, this means the instrument should cease to operate no more than three years after it commences to ensure a minimum degree of regular parliamentary oversight. This view was clearly set out in the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight, tabled in the Senate on 16 March 2021 (see pages 120-121).

The explanatory statement provides justifications for why the exemptions in section 6 are necessary and appropriate. However, in the absence of additional information, it is unclear to the committee why the excluded proceedings are being specified in delegated legislation rather than primary legislation.

In light of this, from a scrutiny perspective, the committee considers that the instrument should be amended to specify that it ceases to operate three years after 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.

The committee therefore requests your advice as to:

- **why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation, to prescribe proceedings which are excluded from the requirements of the *Civil Dispute Resolution Act 2011*;**
- **whether the instrument can be amended to provide that the measures cease within three years after commencement; and**
- **whether there is any intention to conduct a review of the relevant provisions to determine if they remain necessary and appropriate, including whether it is appropriate to include the provisions in delegated legislation.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. The committee has therefore resolved to give a notice of a motion to disallow the instrument on 18 October 2021 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 **14 October 2021**.

Finally, please note that, in the interests of transparency this correspondence and your response will be published on the 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.

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



30 September 2021

The Hon Alan Tudge MP
Minister for Education and Youth
Parliament House
CANBERRA ACT 2600

Via email: minister@education.gov.au

CC: dlo@education.gov.au; DLO.Tudge@dese.gov.au

Dear Minister,

Education Services for Overseas Students (Exempt Courses) Instrument 2021 [F2021L00877]

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

Compliance with Legislation Act 2003 – incorporation

Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements. This includes the requirement in paragraph 15J(2)(c) of the *Legislation Act 2003* (Legislation Act) that the explanatory statement to an instrument that incorporates a document contains a description of that document, including the manner in which it is incorporated and how it may be obtained.

The instrument refers to any unit of competency identified in ‘the National Register referred to in section 216 of the *National Vocational and Training Regulator Act 2011*’. The explanatory statement to instrument notes that ‘any later or superseding versions of these units, as identified on the National Register, are also included in the operation of this Part’ and provides a link to the National Register. In this regard, it appears that the National Register may be incorporated by reference into the instrument as in force from time to time. However, the explanatory statement does not clarify whether it is intended to be incorporated nor does it provide for the manner in which the document is incorporated.

The committee understands that it is the position of your department that the National Register is not incorporated by reference in the instrument. However, it appears that the only way to understand the classes referred to in Part 1 and Part 2 of Schedule 1 to the instrument is by accessing the National Register.

In light of the above, the committee requests your advice as to whether the National Register referred to in section 216 of the *National Vocational and Training Regulator Act 2011* is incorporated by reference in 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. The committee has therefore resolved to give a notice of a motion to disallow the instrument on 18 October 2021 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 **14 October 2021**.

Finally, please note that, in the interests of transparency this correspondence and your response will be published on the 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.

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



30 September 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: tsrdlos@treasury.gov.au

CC: committeescrutiny@treasury.gov.au; chris.reside@treasury.gov.au

Dear Treasurer,

Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080]

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

Exemptions from the operation of primary legislation

Parliamentary oversight

Senate standing order 23(3)(l) requires the committee to consider whether an instrument contains continuing exemptions to the operation of primary legislation. In addition, Senate standing order 23(3)(m) 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.

This instrument, in conjunction with Schedule 5 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (the Act), amends the Corporations Regulations 2001 to implement recommendations 3.4 and 4.1 of the Financial Services Royal Commission in relation to the hawking of financial products.

Schedule 5 to the Act provides that a person cannot offer to sell or issue a financial product to a consumer if the offer is made in the course of, or because of, unsolicited contact with the consumer. The instrument inserts exceptions to the prohibition under Schedule 5 in circumstances where a consumer is expected to have enough knowledge to adequately assess the suitability of the product or where another part of the law already provides a consumer with adequate protection from being hawked a financial products. The exemptions appear intended to remain in force for an unspecified period of time as the Corporations Regulations 2001 are not subject to sunseting.

The committee's longstanding view is that provisions which amend or modify the operation or primary legislation, or exempt person or entities from the operation of primary legislation, should be included in primary rather than delegated legislation. If the provisions are in delegated legislation, the instrument should operate no longer than strictly necessary. The committee considers that in most cases, this means the instrument should cease to operate no more than three years after it commences to ensure a minimum degree of regular parliamentary oversight. This view was clearly set

out in the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight, tabled in the Senate on 16 March 2021 (see pages 120-121).

In addition, as per the committee's guidelines, the committee considers that the explanatory statement should indicate whether there is any intention to conduct a review of the relevant provisions to determine if they remain necessary and appropriate, including whether it is appropriate to include the provisions in delegated legislation.

The explanatory statement to this instrument does not address the reason these exemptions are provided for in delegated, rather than primary, legislation. In addition, the explanatory statement does not appear to address why it is appropriate for the exemption to continue in force for an unspecified period of time.

In light of this, from a scrutiny perspective, the committee considers that the Corporations Regulations 2001 should be amended to specify that the exceptions set out in this instrument cease to operate three years after they commence. If it becomes necessary to extend the operation of these provisions, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

The committee therefore requests your advice as to:

- **why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation, to introduce these measures;**
- **whether the Corporations Regulations 2001 can be amended to provide that the exceptions set out in the instrument cease to operate three years after they commence; and**
- **whether there is any intention to conduct a review of the relevant provisions to determine if they remain necessary and appropriate, including whether it is appropriate to include the provisions in delegated legislation.**

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

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **14 October 2021**.

Finally, please note that, in the interests of transparency this correspondence and your response will be published on the 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.

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



30 September 2021

The Hon Sussan Ley MP
Minister for the Environment
Parliament House
CANBERRA ACT 2600

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

Dear Minister,

Great Barrier Reef Marine Park Amendment (No-Anchoring Areas) Regulations 2021 [F2021L00843]

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

***Compliance with the Legislation Act 2003
Parliamentary oversight***

Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements. This includes the requirements of the *Legislation Act 2003* (Legislation Act). In addition, standing order 23(3)(m) requires the committee to consider whether an instrument complies with any other ground relating to the technical scrutiny of delegated legislation. This includes where an instrument limits parliamentary oversight.

The instrument amends the Great Barrier Reef Marine Park Regulations 2019 (the Principal Regulations) to create new strict liability offence and infringement notice offence provisions for anchoring in a declared no-anchoring area.

Item 1 of Schedule 1 to the instrument provides that no-anchor areas will be set out in notifiable instruments declared under paragraph 5(2)(b) of the Principal Regulations. Item 3 of Schedule 1 inserts new section 171A into the Principal Regulations, which provides that it is an offence of strict liability to drop an anchor for a vessel, an aircraft or any other facility in a no-anchoring area. The offence carries a penalty of 50 penalty units.

The committee has longstanding concerns about the use of notifiable instruments to provide for significant matters. This is because, in contrast to legislative instruments, notifiable instruments are not subject to tabling, disallowance, sunseting, or other parliamentary processes.

Where an instrument provides for the making of notifiable instruments, the explanatory statement should justify why it is appropriate to include the matters in a notifiable, rather than a legislative, instrument.

In this regard, the explanatory statement explains that 'it is no longer necessary to describe no-anchoring areas in Schedule 3 of the Principal Regulations, as the descriptions for these no-anchoring areas have all been consolidated with the descriptions for other no-anchoring areas in a single instrument.'

The committee understands from informal correspondence with the department that its position is that the declaration of no-anchor areas is not legislative in character and is therefore appropriate for inclusion in a notifiable instrument.

However, paragraph 8(4)(b) of the Legislation Act provides that an instrument is a legislative instrument if:

- it determines the law or alters the content of the law, rather than determining particular cases or particular circumstances in which the law, as set out in an Act or another legislative instrument or provision, is to apply, or is not to apply; and
- has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

It is the view of the committee that the declaration of a no-anchor area determines the law or alters the content of the law. The declaration of a no-anchor area also has a direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right, by setting out elements which are relevant to a strict liability offence. Dropping anchor in a no-anchor area is a strict liability offence, which indicates that the definition of a no-anchor area is integral to the offence, and the offence provision would have no meaning without the definition of a no-anchor area, thereby determining the content of the law which affects rights and obligations.

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

- **why it is considered necessary and appropriate for the declaration of a no-anchor area to be set out in a notifiable instrument; and**
- **how the declaration of a no-anchor area in this context is not legislative in character within the meaning 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. The committee has therefore resolved to give a notice of a motion to disallow the instrument on 18 October 2021 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 **14 October 2021**.

Finally, please note that, in the interests of transparency this correspondence and your response will be published on the 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.

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



30 September 2021

Senator the Hon Bridget McKenzie
Minister for Regionalisation, Regional Communications and Regional Education
Parliament House
CANBERRA ACT 2600

Via email: minister.mckenzie@infrastructure.gov.au

Dear Minister,

Industry Research and Development (Regional Decentralisation Agenda—Securing Raw Materials Program) Instrument 2021 [F2021L00973]

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

Parliamentary oversight

Adequacy of explanatory materials

Senate standing order 23(3)(m) requires the committee to consider whether an instrument complies with any other ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight. In addition, 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.

This instrument prescribes the Regional Decentralisation Agenda—Securing Raw Materials Program. However, the eligibility criteria for the program is not set out on the face of the instrument, nor are they set out in detail in the instrument's accompanying explanatory statement.

In general, the committee will be concerned where significant details concerning the operation and application of measures prescribed by an instrument are set out in non-legislative policy guidance. The committee notes that this issue often arises in instruments made under Part IV of the *Industry Research and Development Act 1986*.

In this instance, the instrument provides for the broad purposes of the program. While the explanatory statement contains high-level guidance as to how the program may operate, it states that further information about the program including the eligibility criteria will be set out in grant guidelines.

The committee understands from informal correspondence that your department's preferred approach is for eligibility criteria for programs to be specified in grant guidelines. However, parliamentary oversight is limited where such criteria are not set out in either the instrument itself or its explanatory statement. The committee considers that the scrutiny of instruments which, in

combination with their enabling Act, authorise the Commonwealth to spend public money is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. The eligibility criteria for this program should therefore be included in the legislative instrument itself which is subject to parliamentary oversight, or at least in the explanatory statement accompanying the instrument, as opposed to non-legislative guidance.

The committee also generally expects explanatory statements to fully explain the purpose and operation of each section of the relevant instrument. This accords with the requirements of paragraph 15J(2)(b) of the *Legislation Act 2003*, as well as the more general expectation that an explanatory statement be sufficiently comprehensive as to assist with the interpretation of the law.

In light of the above, the committee would appreciate your advice as to whether the instrument could be amended to set out the eligibility criteria for the program, or at a minimum, whether the explanatory statement to the instrument could be amended to include this detail.

Constitutional validity

Senate standing order 23(3)(b) requires the committee to scrutinise each legislative instrument as to whether it appears to be supported by a constitutional head of legislative power and is otherwise constitutionally valid.

The committee notes that, in *Williams No. 1*,¹ the High Court held that in most cases the Commonwealth requires some form of legislative authority in order to expend public money. In this regard, the committee notes that section 33 of the *Industry Research and Development Act 1986* (Industry Act) provides that the minister may, by legislative instrument, prescribe one or more programs in relation to industry, innovation, science or research, including in relation to the expenditure of Commonwealth money under such programs. That section also provides that a program may only be prescribed to the extent that it is with respect to one or more legislative powers of the Parliament, and that the relevant instrument must specify the legislative power or powers in respect of which the instrument is made.

Section 6 of the instrument provides that the instrument purports to derive its constitutional basis from paragraph 51(xx) of the Constitution, to make laws with respect to foreign corporations and trading or financial corporations formed within the limits of the Commonwealth.

The instrument does not prescribe any terms or conditions to which this funding is subject. The committee notes that the explanatory statement explains that “terms and conditions with which grantees must comply to receive funding under the Program will be set out in grant agreements in accordance with section 35 of the Act.”

However, case law suggests that a law which provides the Commonwealth with the authority to make an agreement or payment to a constitutional corporation is not a law with respect to trading or financial corporations because:

The law makes no provision regulating or permitting any act by or on behalf of any corporation. The corporation’s capacity to make the agreement and receive and apply the payments is not provided by the impugned provisions. Unlike the law considered in *New South Wales v The Commonwealth (Work Choices Case)*,² the law is not one authorising or regulating the activities, functions, relationships or business of constitutional corporations

¹ *Williams v Commonwealth* (2012) 248 CLR 156 (*Williams No. 1*).

² (2006) 229 CLR 1.

generally or any particular constitutional corporation; it is not one regulating the conduct of those through whom a constitutional corporation acts or those whose conduct is capable of affecting its activities, functions, relationships or business.³

Where an instrument prescribes a program in relation to the expenditure of Commonwealth money and it seeks to rely on the corporations power for its constitutional authority, the committee expects that the explanatory statement will:

- explain how the proposed recipients fall within the category of constitutional corporations, by reference to any relevant case law; and
- explain how the circumstances of the relevant program differ from the circumstances in *Williams No. 2*, in which the court held that a law which gives the Commonwealth authority to make an agreement or payment to a constitutional corporation is not, of itself, a law with respect to a trading or financial corporation.

As outlined above, the instrument authorises Commonwealth expenditure on the Regional Decentralisation Agenda—Securing Raw Materials Program. It does not appear to the committee to regulate the activities, functions, relationships or business of recipient constitutional corporations. Consequently, in light of the decision in *Williams (No 2)*, it is unclear how the instrument could be supported by the corporations power.

In light of the above, the committee requests your advice as to the constitutional validity of this instrument, including how the instrument is a law with respect to trading or financial corporations.

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. The committee has therefore resolved to give a notice of a motion to disallow the instrument on 18 October 2021 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 **14 October 2021**.

In the interests of transparency, please note this correspondence will be published on the 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.

Thank you for your assistance with this matter.

Yours sincerely,

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

³ *Williams v Commonwealth (No. 2)* (2014) 252 CLR 416, 461 [50] ('*Williams No. 2*').



30 September 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: 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 Minister,

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

Thank you for your response of 3 September 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 22 September 2021 and has resolved to seek your further advice about the issues outlined below.

Clarity of drafting

Conferral of discretionary powers

In your letter, you advised that ‘emergency’ is not defined in the context of this instrument as providing a prescriptive definition may result in unintended consequences and may exclude situations of genuine emergency. However, you note that emergency may be understood by its ‘ordinary meaning’ as ‘an unforeseen occurrence, or sudden and urgent occasion for action’.

While noting this explanation, the committee remains concerned that, as currently drafted, neither the instrument nor its explanatory statement provides any detail as to the scope of the term ‘emergency’. While acknowledging your advice that being overly prescriptive in defining the term may have adverse effects, it appears that the lack of clarity around when it is appropriate to exercise extraordinary measures could also have a significant impact on individuals affected by the instrument. The committee’s concerns with regard to this issue are heightened noting that the instrument relates to the use of coercive powers on highly vulnerable persons in residential aged care. In this way, the committee considers that it would be appropriate for greater detail around the scope of the term ‘emergency’ to be provided on the face of the instrument.

Your response further noted that while the term is not specifically intended to be discretionary, the Aged Care Commissioner or their delegate will review and monitor compliance when emergency procedures have been used and take regulatory actions where required. Your response stated that, pursuant to subsections 76(1) and 76(1A) of the *Aged Care Quality and Safety Commission Act 2018*, the Aged Care Commissioner may not delegate powers and functions unless they are satisfied that the person has suitable training or experience to properly perform the

function or exercise the power. However, in the absence of further information, it is unclear what training or experience may be considered appropriate by the Aged Care Commissioner in this context.

Again, noting that the instrument relates to significant limitations on the personal rights and liberties of individuals in aged care facilities, including enabling aged care providers to not comply with ordinary safeguards, the committee considers that the powers and functions of the Aged Care Commissioner in relation to emergency use of restrictive practices should only be exercised by appropriately qualified individuals.

Accordingly, the committee requests your advice as to:

- **what specific training and experience delegates of the Aged Care Commissioner are required to possess in exercising relevant powers and functions under the instrument to determine whether an emergency occurred and to otherwise review and monitor providers' compliance with the emergency use of restrictive practices; and**
- **whether the instrument could be amended to provide a definition of 'emergency', or alternatively, whether the explanatory statement to the instrument could be amended to clarify the 'ordinary meaning' of emergency in the context of the instrument.**

Clarity of drafting

You advised that the requirement in paragraph 15FA(1)(i) of the instrument, which enables aged care providers to use a restrictive practice if it is 'not inconsistent with' the Charter of Aged Care Rights (the Charter), is intended to ensure that providers do not use restrictive practices that are generally in conflict, at odds, or contrary to the Charter. Your response clarified that the inconsistency between the instrument and its explanatory statement, in stating this provision requires that the use of restrictive practices is 'consistent with' the Charter, was an oversight and it was not intended to alter the meaning of paragraph 15FA(1)(i) of the instrument.

In addition, you drew the committee's attention to existing provisions in the *Aged Care Act 1997* (Aged Care Act) which require aged care providers to not act in a way which is inconsistent with the Charter of Aged Care Rights, including paragraph 54-10(1)(g) of the Aged Care Act.

While noting your advice, the committee remains concerned that requiring that the use of restrictive practices is 'not inconsistent with' the Charter is a lower threshold, and more uncertain, for aged care providers than requiring the practices to be 'consistent with' the Charter. While the committee acknowledges that the existing language in the Aged Care Act specifies this lower threshold, the committee considers that it would be appropriate for both the instrument and the Aged Care Act to be amended to provide that actions undertaken by aged care providers must be 'consistent with' the Charter of Aged Care Rights. In this regard, the committee notes that it would be possible to draft and circulate government amendments to the Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021, which is currently before the Parliament, to reflect this suggestion.

The committee therefore requests your advice as to:

- **whether the *Aged Care Act 1997* could be amended to require that actions undertaken by aged care providers must be 'consistent with' the Charter of Aged Care Rights; and**
- **whether the instrument could be amended to provide that paragraph 15FA(1)(i) requires that actions undertaken by aged care providers must be 'consistent with' the Charter of Aged Care Rights.**

Please note that the committee expects to be in a position to finally report on the instrument while it is still subject to disallowance. The committee has therefore resolved to give a notice of a motion to disallow the instrument on 18 October 2021 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 **14 October 2021**.

Finally, please note that, in the interests of transparency this correspondence and your response will be published on the 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.

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



30 September 2021

The Hon Angus Taylor MP
Acting Minister for Industry, Science and Technology
Parliament House
CANBERRA ACT 2600

Via email: angus.taylor@energy.gov.au

CC dlotaylor@industry.gov.au; legislation@industry.gov.au
industrydlo@industry.gov.au

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

Dear Minister,

**Industry Research and Development instruments [F2021L00610] [F2021L00536] [F2021L00539]
[F2021L00547] [F2021L00567]**

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instruments. The committee considered the former minister's response of 26 August 2021 in relation to these instruments at its private meeting on 22 September 2021 and has resolved to seek your further advice about the issues outlined below.

Adequacy of explanatory materials

Parliamentary oversight

Matters more appropriate for parliamentary enactment

The former minister advised that the *Industry Research and Development Act 1986* does not require that an explanatory statement to an instrument prescribing a program set out the eligibility criteria for the program. The former minister also advised that the legal limits of such programs are constrained by the programs as defined on the face of the instrument. Finally, the former minister advised that the explanatory statements to the above instruments address the matters required under section 15J of the *Legislation Act 2003*, and that as the eligibility criteria for grants can change over time they are best placed in grant guidelines.

In relation to the former minister's advice that the eligibility criteria for the programs may change over time, this further indicates to the committee that at least high-level details of such criteria should be included on the face of the instrument or in the explanatory statements to the instruments, as opposed to being set out in the grant guidelines. Where the requirements in relation to the expenditure of Commonwealth funds are anticipated to change over time, parliamentary oversight of these changing requirements must be maintained. The importance of parliamentary oversight in this context is not limited by the requirements prescribed by the *Legislation Act 2003* in relation to explanatory statements.

The committee considers that effective parliamentary oversight is particularly important in relation to programs involving significant expenditure such as the Modern Manufacturing Initiative Program. The committee notes the former minister's advice that 'reliance on subordinate legislation is entirely appropriate for a program of this kind'. However, noting that the program is intended to provide \$1.3 billion in government funding, the committee considers that further details in relation to the scope of the program should at least be included in delegated legislation. If it is necessary to change the scope of the program over time, it would be appropriate for such changes to be facilitated by the making of an amending instrument as necessary to facilitate a minimum level of parliamentary oversight.

In light of the above, the committee reiterates its concern that significant details concerning the operation and application of measures prescribed by the instruments are being set out in non-legislative policy guidance.

The committee would therefore appreciate your advice as to:

- **whether further details in relation to the scope of the Modern Manufacturing Initiative Program, and the purposes for which funding can be applied under the program, can be set out on the face of the Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021; and**
- **whether the explanatory statements to all five industry research and development instruments can be amended to include the eligibility criteria for the relevant program, as previously requested by the committee, in light of the essential role of Parliament in maintaining oversight of Commonwealth expenditure.**

Please note that the committee expects to be in a position to finally report on the instruments while they are still subject to disallowance. Therefore, on 11 August 2021 and 24 August 2021 the committee gave notice of motions to disallow the instruments 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 **14 October 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



30 September 2021

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

Via email: dlo@communications.gov.au

Dear Minister,

Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651]

Thank you for your response of 24 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 22 September 2021 and has resolved to seek your further advice about the issues outlined below.

***Exemptions from primary legislation
Parliamentary oversight***

Thank you for your advice that the matters in the instrument are more appropriate for delegated legislation as the exemptions to primary legislation are numerous and technical and require a flexible approach. The explanation you have provided in your response would be a beneficial addition to the instrument's explanatory statement.

You have also advised that the instrument will sunset in 10 years as this is the default under the *Legislation Act 2003* (the Legislation Act), and that some of the exceptions may need to endure and a ten year duration will provide certainty to industry and consumers.

While noting this advice, the committee reiterates its views that exemptions from primary legislation by delegated legislation should not continue in force for such time as to operate as a de facto amendment to the principal Act. The committee's longstanding view is that provisions which exempt person or entities from the operation of primary legislation should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight.

The committee considers that certainty for industry and consumers is best afforded through the inclusion of measures in primary legislation. Nevertheless, where such measures are included in delegated legislation, parliamentary oversight should be facilitated by providing for a duration of three years as opposed to the default sunset of 10 years.

A three year timeframe for this instrument is considered appropriate as it will allow for exemptions to the operation of primary legislation to continue, while providing a significant period of time while the instrument is in force for your department to consider whether the exemptions provided by the instrument will be required for a longer period.

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

- **whether the explanatory statement to the instrument can be amended to include the justification for including these measures in delegated as opposed to primary legislation, as set out in your letter of 24 August 2021; and**
- **whether the instrument can be amended to provide that it ceases within three years from commencement.**

Please note that the committee expects to be in a position to finally report on the instrument while it is still subject to disallowance. Therefore, on 24 August 2021 the committee gave 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 **14 October 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



30 September 2021

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

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

CC: parliamentary.committees@health.gov.au

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

Dear Minister,

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

Thank you for your response of 24 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 22 September 2021. On the basis of your advice and undertaking to register the supplementary explanatory statement provided in your letter, the committee has concluded its examination of the instrument.

I further advise that committee has also resolved to withdraw the 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*.

Should you have any questions 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



30 September 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 Lists

Thank you for your response of 2 September 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instruments.

The committee considered your response at its private meeting on 22 September 2021. On the basis of your undertaking to amend the explanatory statements to the instruments, the committee has concluded its examination of the instruments.

I further advise that the committee has also resolved to withdraw the notices of motion to disallow each 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*.

Should you have any questions 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



30 September 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 24 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 22 September 2021. On the basis of your advice, the committee has concluded its examination of the instrument. The committee also welcomes your undertaking to amend table item 470 in Part 4 of Schedule 1AB to the Financial Framework (Supplementary Powers) Regulations 1997.

In light of your undertaking, the committee has also resolved to withdraw the 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*.

Should you have any questions 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



30 September 2021

Ms Philippa Lynch PSM
Chief Executive and Principal Registrar
High Court of Australia
PO Box 6309
KINGSTON ACT 2604

Via email: philippa.lynch@hcourt.gov.au

CC: nerissa.kitson@hcourt.gov.au

Senator the Hon Michaelia Cash, Attorney-General,
attorney@ag.gov.au; DLO@ag.gov.au

Dear Ms Lynch,

High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021 [F2021L00391]

Thank you for your letter of 16 September 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument.

The committee considered your letter at its private meeting on 22 September 2021. On the basis of your advice, the committee has concluded its examination of the instrument. In particular, the committee welcomes your suggested amendment to the instrument to insert a new section 5A, as set out in the draft amending instrument.

I further advise that committee has also resolved to withdraw the notice of motion to disallow the instrument in light of your suggested amendment to 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*.

Should you have any questions 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



30 September 2021

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

Via email: dlo@communications.gov.au

Dear Minister,

Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021 [F2021L00277]

Thank you for your response of 24 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 22 September 2021. On the basis of your advice and undertaking to amend the explanatory statement to the instrument to address the committee's concerns, the committee has concluded its examination of this instrument.

I further advise that committee has also resolved to withdraw the 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*.

Should you have any questions 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



30 September 2021

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

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

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

Dear Chair,

Matters of interest to the Senate—overseas travel ban and medicinal cannabis

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 overseas travel ban for persons who ordinarily reside in another country and the supply of medicinal cannabis products in Australia respectively, 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
Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 [F2021L01068]	This instrument removes the automatic exemption from the overseas travel ban for persons who ordinarily reside in another country and replaces it with a discretionary exemption.	Exempt from disallowance

Instrument	Purpose	Last day to lodge disallowance notice
Therapeutic Goods (Medicinal Cannabis Products) (Information) Specification 2021 [F2021L01087]	<p>This instrument specifies the kinds of therapeutic goods information relating to the supply of medicinal cannabis products in Australia that the Secretary may release to the public under section 61 of the <i>Therapeutic Goods Act 1989</i>.</p> <p>Specifically, the instrument facilitates the publication of aggregated and de-identified statistical information including the numbers of applications or notifications (collectively, “submissions”) made in relation to medicinal cannabis products under the authorised prescriber, special access scheme category A and special access scheme category B pathways in Australia. The numbers of submissions are specified in the instrument with reference to one or more parameters including:</p> <ul style="list-style-type: none"> • time periods; • the relevant state or territory in which the medicinal cannabis products are prescribed; • the indications for which the products have been prescribed; • the active ingredients relating to those products; and • the status of the submissions (such as approved, withdrawn, refused, pending or received). 	23/11/2021

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, where applicable, 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



30 September 2021

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

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

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

Dear Chair,

Matters of interest to the Senate—Your Future, Your Super reforms

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 Your Future, Your Super reforms, 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
Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021 [F2021L01077]	<p>This instrument supports the implementation of an annual superannuation performance test and comparison tool for superannuation products. Among other matters, the instrument specifies:</p> <ul style="list-style-type: none">when APRA must conduct the annual performance test, which products are subject to the annual performance test and the requirements for the annual performance test;	22/11/2021

Instrument	Purpose	Last day to lodge disallowance notice
	<ul style="list-style-type: none"> the form and content requirements for the notice a trustee is required to give to beneficiaries who hold a product that has failed the performance test; and the circumstances where APRA may lift a prohibition on a trustee from accepting new beneficiaries into an underperforming product. 	
Treasury Laws Amendment (Your Future, Your Super—Single Default Account) Regulations 2021 [F2021L01073]	<p>This instrument supports the single default superannuation account reforms in Schedule 1 to the <i>Treasury Laws Amendment (Your Future, Your Super) Act 2021</i>. Among other matters, the instrument specifies:</p> <ul style="list-style-type: none"> requirements that a fund must meet to be a stapled fund; and procedural matters relating to requests to and responses from the Commissioner of Taxation about stapled funds. 	22/11/2021

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, where applicable, 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



30 September 2021

Senator the Hon Matthew Canavan

Chair

Senate Education and Employment Legislation Committee

Parliament House

CANBERRA ACT 2600

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

cc: Senator the Hon Michaelia Cash, Minister for Industrial Relations
attorney@ag.gov.au

Dear Chair,

Matters of interest to the Senate—National Inquiry into Sexual Harassment in the Workplace

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 instrument appears to contain significant policy matters relating to sexual harassment in the workplace, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Fair Work Amendment (Respect at Work) Regulations 2021 [F2021L00972]	This instrument gives effect to recommendation 31 of the Respect@Work: National Inquiry into Sexual Harassment in the Workplace by, among other matters: <ul style="list-style-type: none">• adding sexual harassment to the list of conduct falling within the definition of 'serious misconduct' in the Fair Work Regulations 2009; and	18/10/2021

Instrument	Purpose	Last day to lodge disallowance notice
	<ul style="list-style-type: none"> supporting amendments made by the <i>Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021</i> to include 'sexual harassment' in the Fair Work Commission's existing stop-bullying jurisdiction. 	

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, where applicable, the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate.

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

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

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

Yours sincerely,

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



30 September 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: The Hon Ben Morton MP, Assistant Minister for Electoral Matters
DLO-AMEM@finance.gov.au

Dear Chair,

Matters of interest to the Senate—authorisation of voter communication

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 instrument appears to contain significant policy matters relating to voter communications, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Commonwealth Electoral (Authorisation of Voter Communication) Determination 2021 [F2021L00961]	<p>This instrument sets out:</p> <ul style="list-style-type: none">requirements for notifying particulars in relation to a communication for the purposes of the <i>Commonwealth Electoral Act 1918</i>, <i>Referendum (Machinery Provisions) Act 1984</i> and certain Broadcasting Acts; andcommunications which are exempt from the authorisation requirements.	18/10/2021

Instrument	Purpose	Last day to lodge disallowance notice
	<p>In particular, the instrument:</p> <ul style="list-style-type: none"> • requires particulars in relation to a communication to be notified in English and any other language used for the rest of the communication; • requires particulars in relation to a communication to be formatted and placed in a certain way so as to be legible and reasonably prominent; • sets out where the particulars of a printed communication must be notified and where or when the particulars of a non-printed communication such as speech, music or electronic billboard must be notified; and • exempts media releases and envelopes that contain the name and address of the notifying entity. 	

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, where applicable, the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate.

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

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

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

Yours sincerely,

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



30 September 2021

Senator Susan McDonald
Chair
Senate Rural and Regional Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

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

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

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

Dear Chair,

Matters of interest to the Senate—Northern Australia Infrastructure Facility

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 instrument appears to contain significant policy matters relating to the Northern Australia Infrastructure Facility, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Northern Australia Infrastructure Facility Investment Mandate Direction 2021 [F2021L00942]	<p>This instrument is a direction to the Northern Australia Infrastructure Facility (NAIF) Board in relation to the performance of the functions of the Facility.</p> <p>In particular, the instrument enhances the impact of the Facility in line with recommendations made by the 2020 Statutory Review of the NAIF, including</p>	Exempt from disallowance

Instrument	Purpose	Last day to lodge disallowance notice
	expanding eligibility for NAIF financial assistance to include elements associated with the development of a project (such as purchase of plant and equipment), facilitating on-lending arrangements to support smaller projects, and removing the prohibition on the Commonwealth assuming the majority of risk in any project. The instrument provides a clear framework on the use of higher-risk instruments such as derivatives and equity investments. It also provides some clarifications as to how the Facility should consider whether a project delivers public benefit.	

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, where applicable, the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate.

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

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

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

Yours sincerely,

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



30 September 2021

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

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

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

Dear Chair,

Matters of interest to the Senate—overseas travel ban

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 instrument appears to contain significant policy matters relating to the overseas travel ban for persons who ordinarily reside in another country, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 [F2021L01068]	This instrument removes the automatic exemption from the overseas travel ban for persons who ordinarily reside in another country and replaces it with a discretionary exemption.	Exempt from disallowance

Should your committee decide to further examine the above instrument, I note that the table above identifies, where applicable, the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate. The committee has also drawn this instrument to the attention of the Senate Community Affairs Legislation Committee.

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



30 September 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

Senator the Hon Bridget McKenzie, Minister for Regionalisation,
Regional Communications and Regional Education
minister.mckenzie@infrastructure.gov.au

Department of Finance
FFSPRegs@finance.gov.au

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—Regional
Decentralisation Agenda—Securing Raw Materials Program**

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 Regional Decentralisation Agenda—Securing Raw Materials 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 (Regional Decentralisation Agenda—Securing Raw Materials Program) Instrument 2021 [F2021L00973]	Regional Decentralisation Agenda—Securing Raw Materials Program	\$35 million from 2021-22	<p>The program provides funding for businesses to do one or more of the following activities:</p> <ul style="list-style-type: none"> • relocate to regional areas; • establish new operations, branches or outposts in regional areas; • partner with regional universities or research organisations to conduct research and development in relation to locally sourced raw materials; • commercialise the outcomes of that research and development; • establish new facilities in regional areas to extract, process, use or otherwise add value to locally sourced raw materials. <p>Eligible activities within the projects include research into, and development of, new or improved raw materials, methods of processing raw materials, technologies to produce raw materials or methods of growing raw materials, or new uses for existing raw materials. They can also be proof of concept of the outcomes of research or commercialising the outcomes of research.</p> <p>Grants will be a minimum of \$250,000 up to a maximum of \$5 million. The grant amount may be up to 50 per cent of eligible project costs.</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



30 September 2021

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

Via email: dlosukkar@treasury.gov.au
CC: minister.sukkar@treasury.gov.au

Dear Assistant Treasurer,

Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

At a minimum, the committee expects all explanatory statements to exempt instruments to identify the source of the exemption and to substantively justify why the exemption is appropriate in the specific context of the instrument.

In addition, even where a substantive explanation is provided, an instrument may not meet the committee's expectations under standing order 23(4A). This may be because the committee considers that the explanation does not meet the Senate's requirement that exemptions should only be made in exceptional circumstances and will only be justified in rare cases. This requirement is set out in Senate resolution 53B, agreed to on 16 June 2021.

The committee has identified the following instruments in your portfolio which do not meet the committee's expectations under standing order 23(4A):

- Consumer Goods (Projectile Toys) Amendment Safety Standard 2021 [F2021L01065]
- Consumer Goods (Self-balancing Scooters) Amendment Safety Standard 2021 [F2021L00937]
- Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 1) Determination 2021 [F2021L01001]
- Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 1) Determination 2021 [F2021L00955]
- Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 2) Determination 2021 [F2021L01075].

These instruments are being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc.

In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage, however the explanatory statements to these instruments should be amended as a matter of best practice. In addition, all future explanatory statements to exempt instruments should include substantive justifications for why the exemption is appropriate in the specific context of the instrument. This is in recognition of the important role that explanatory statements play in facilitating parliamentary scrutiny of legislative instruments.

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*.

Should you have any questions please contact the committee's secretariat on (02) 6277 3066, or by email at 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



30 September 2021

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

Via email: dlo@communications.gov.au

Dear Minister,

Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

At a minimum, the committee expects all explanatory statements to exempt instruments to identify the source of the exemption and to substantively justify why the exemption is appropriate in the specific context of the instrument.

In addition, even where a substantive explanation is provided, an instrument may not meet the committee's expectations under standing order 23(4A). This may be because the committee considers that the explanation does not meet the Senate's requirement that exemptions should only be made in exceptional circumstances and will only be justified in rare cases. This requirement is set out in Senate resolution 53B, agreed to on 16 June 2021.

The committee has identified the following instrument in your portfolio which does not meet the committee's expectations under standing order 23(4A):

- Radiocommunications (Spectrum Licence Limits—850/900 MHz Band) Direction 2021 [F2021L01088].

This instrument is being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc.

In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage, however the explanatory statement to the instrument should be amended as a matter of best practice. In addition, all future explanatory statements to exempt instruments should include substantive justifications for why the exemption is appropriate in the specific context of the instrument. This is in recognition of the important role that explanatory statements play in facilitating parliamentary scrutiny of legislative instruments.

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*.

Should you have any questions please contact the committee's secretariat on (02) 6277 3066, or by email at 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



30 September 2021

The Hon Alan Tudge MP
Minister for Education and Youth
Parliament House
CANBERRA ACT 2600

Via email: minister@education.gov.au

CC: dlo@education.gov.au; DLO.Tudge@dese.gov.au

Professor Brian P. Schmidt AC FAA FRS, Vice-Chancellor and President,
Australian National University
vc@anu.edu.au; director.ovc@anu.edu.au

Dear Minister,

Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

At a minimum, the committee expects all explanatory statements to exempt instruments to identify the source of the exemption and to substantively justify why the exemption is appropriate in the specific context of the instrument.

In addition, even where a substantive explanation is provided, an instrument may not meet the committee's expectations under standing order 23(4A). This may be because the committee considers that the explanation does not meet the Senate's requirement that exemptions should only be made in exceptional circumstances and will only be justified in rare cases. This requirement is set out in Senate resolution 53B, agreed to on 16 June 2021.

The committee has identified the following instruments in your portfolio which do not meet the committee's expectations under standing order 23(4A):

- Academic Integrity Rule 2021 [F2021L00997]
- Appeals Rule 2021 [F2021L00999]
- Discipline Rule 2021 [F2021L00998]
- Linkage Program Grant Guidelines (2021 edition) [F2021L01008]
- Research Awards Rule 2021 [F2021L00996].

These instruments are being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc.

In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage, however the explanatory statements to these instruments should be amended as a matter of best practice. In addition, all future explanatory statements to exempt instruments should include substantive justifications for why the exemption is appropriate in the specific context of the instrument. This is in recognition of the important role that explanatory statements play in facilitating parliamentary scrutiny of legislative instruments.

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*.

Should you have any questions please contact the committee's secretariat on (02) 6277 3066, or by email at 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



30 September 2021

Senator the Hon Bridget McKenzie
Minister for Emergency Management and National Recovery and Resilience
Parliament House
CANBERRA ACT 2600

Via email: minister.mckenzie@infrastructure.gov.au

CC: senator.mckenzie@aph.gov.au

Dear Minister,

Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

At a minimum, the committee expects all explanatory statements to exempt instruments to identify the source of the exemption and to substantively justify why the exemption is appropriate in the specific context of the instrument.

In addition, even where a substantive explanation is provided, an instrument may not meet the committee's expectations under standing order 23(4A). This may be because the committee considers that the explanation does not meet the Senate's requirement that exemptions should only be made in exceptional circumstances and will only be justified in rare cases. This requirement is set out in Senate resolution 53B, agreed to on 16 June 2021.

The committee has identified the following instrument in your portfolio which does not meet the committee's expectations under standing order 23(4A):

- Social Security (Australian Government Disaster Recovery Payment—Victorian storms and floods) Determination 2021 (No. 7) [F2021L00960].

This instrument is being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc.

In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage, however the explanatory statement to the instrument should be amended as a matter of best practice. In addition, all future explanatory statements to exempt instruments should include substantive justifications for why the exemption is appropriate in the specific context of the instrument. This is in recognition of the important role that explanatory statements play in facilitating parliamentary scrutiny of legislative instruments.

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*.

Should you have any questions please contact the committee's secretariat on (02) 6277 3066, or by email at 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



30 September 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,

Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

At a minimum, the committee expects all explanatory statements to exempt instruments to identify the source of the exemption and to substantively justify why the exemption is appropriate in the specific context of the instrument.

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The committee has identified the following instruments in your portfolio which do not meet the committee's expectations under standing order 23(4A):

- Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2020-2021 (No. 5) [F2021L01015]
- Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2019-2020 (No. 12) [F2021L01016].

These instruments are being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc.

In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage, however the explanatory statements to these instruments should be amended as a matter of best practice. In addition, all future explanatory statements

to exempt instruments should include substantive justifications for why the exemption is appropriate in the specific context of the instrument. This is in recognition of the important role that explanatory statements play in facilitating parliamentary scrutiny of legislative instruments.

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*.

Should you have any questions please contact the committee's secretariat on (02) 6277 3066, or by email at 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**



30 September 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

Dear Minister,

Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

At a minimum, the committee expects all explanatory statements to exempt instruments to identify the source of the exemption and to substantively justify why the exemption is appropriate in the specific context of the instrument.

In addition, even where a substantive explanation is provided, an instrument may not meet the committee's expectations under standing order 23(4A). This may be because the committee considers that the explanation does not meet the Senate's requirement that exemptions should only be made in exceptional circumstances and will only be justified in rare cases. This requirement is set out in Senate resolution 53B, agreed to on 16 June 2021.

The committee has identified the following instruments in your portfolio which do not meet the committee's expectations under standing order 23(4A):

- Australia New Zealand Food Standards Code — Schedule 20 – Maximum residue limits Variation Instrument No. APVMA 4, 2021 [F2021L00976]
- Food Standards (Application A1193 – Irradiation as a phytosanitary measure for all fresh fruit and vegetables) Variation [F2021L00983]
- Food Standards (Application A1206 – Subtilisin from GM *Bacillus licheniformis* as a processing aid (enzyme)) Variation [F2021L00984]
- Food Standards (Application A1207 – Rebaudioside M as Steviol Glycoside) Variation [F2021L00985]
- Food Standards (Application A1216 – Food derived from herbicide-tolerant canola line MON94100) Variation [F2021L00986].

These instruments are being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 14 of 2021*, available on the committee's website at www.aph.gov.au/senate_sdlc.

In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage, however the explanatory statements to these instruments should be amended as a matter of best practice. In addition, all future explanatory statements to exempt instruments should include substantive justifications for why the exemption is appropriate in the specific context of the instrument. This is in recognition of the important role that explanatory statements play in facilitating parliamentary scrutiny of legislative instruments.

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*.

Should you have any questions please contact the committee's secretariat on (02) 6277 3066, or by email at 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**