

# Monitor 15 of 2021 - Committee correspondence

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21 October 2021

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

via email: [angus.taylor@energy.gov.au](mailto:angus.taylor@energy.gov.au)

cc: [dlotaylor@industry.gov.au](mailto:dlotaylor@industry.gov.au); [legislation@industry.gov.au](mailto:legislation@industry.gov.au)

Dear Minister,

**Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191]**

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 15 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://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 **4 November 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](mailto: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 2

### Exempt instruments raising significant scrutiny issues

1.4 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)(3).

### Australian Renewable Energy Agency (General Funding Strategy) Determination 2021

<b>FRL No.</b>	<a href="#">[F2021L01191]</a> <sup>1</sup>
<b>Purpose</b>	This instrument enacts the Australian Renewable Energy Agency's General Funding Strategy for the 2021/22 – 2023/24 financial years as a legislative instrument. It also repeals the Australian Renewable Energy Agency (General Funding Strategy) Determination 2019.
<b>Authorising legislation</b>	<i>Australian Renewable Energy Agency Act 2011</i>
<b>Portfolio</b>	Industry, Science, Energy and Resources
<b>Source of exemption</b>	Subsection 20(2) of the <i>Australian Renewable Energy Agency Act 2011</i>

#### Overview

1.5 The Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191] (the instrument) sets out the general funding strategy (GFS) for the Australian Renewable Energy Agency (the ARENA) for the 2021/22 – 2023/24 financial years.

#### Scrutiny concerns

##### *Exemption from disallowance*

1.6 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.

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

1.7 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.

1.8 The explanatory statement to the instrument indicates that the instrument is exempt from disallowance under subsection 20(2) of the *Australian Renewable Energy Agency Act 2011* (the ARENA Act). The explanatory statement further explains:

Under subsection 20(2) of the Act this instrument is not subject to disallowance. This reflects both the independence of ARENA in developing the GFS and the similarities of the GFS to government directions to statutory bodies which are also not subject to disallowance. As the provision of assistance by ARENA must be in accordance with the GFS under s 10 of the Act, disallowance of some or all of the strategy could impede the ability for ARENA to independently perform its statutory functions.<sup>2</sup>

1.9 It is the committee's view that there are limited acceptable circumstances in which delegated legislation made by the executive should be exempt from parliamentary scrutiny.

1.10 The general financial strategy guides the provision of financial assistance by the ARENA. This means that the instrument guides the way Commonwealth money will be spent. 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.<sup>3</sup>

1.11 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.<sup>4</sup> The classification of this instrument as exempt from disallowance prevents parliamentary oversight of how public money will be invested by the ARENA.

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2 Explanatory statement, pp 1-2.

3 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](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Final_report).

4 *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/](https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/Resolutions_expressing_opinions_of_the_Senate/).

1.12 In addition, the committee does not consider the fact that the ARENA is a statutory agency in any way means that its general financial strategy should not be subject to parliamentary scrutiny. Generally, statutory agencies are subject to parliamentary scrutiny, and it is not clear to the committee why this instance should be distinguished. The explanatory statement to the instrument does not provide any further explanation as to why this should be the case.

1.13 The committee also notes that the explanatory statement indicates that the exemption from disallowance is appropriate in this instance due to the similarities between the instrument and government directions to statutory bodies, which is a category for exemption from disallowance under table item 2 in section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015. However, even if this similarity were to be accepted, the committee does not accept that directions from ministers to statutory bodies should be exempt from disallowance. In the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight, the committee recommended that this category of exemption from disallowance should be abolished.<sup>5</sup>

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

#### ***Compliance with authorising legislation***

1.15 Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act.

1.16 The instrument is made under subsection 20(2) of the ARENA Act, which provides that a general funding strategy (GFS) may be made by non-disallowable legislative instrument.

1.17 Clauses 2–4 of Schedule 1 to the instrument set out the ARENA's objectives and its focus on providing financial assistance to support priority low emissions technologies. In this regard, the explanatory statement to the instrument explains:

...the GFS investment priorities have also been updated to acknowledge ARENA's functions have been expanded through the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 (the Regulations) to enable ARENA to provide financial assistance in relation to priority low emissions technologies, with a focus on the five priority low emissions technologies and the corresponding

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5 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. 101, available at [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Exemptfromoversight/Final\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Final_report).

stretch goals identified in the Government's first Low Emissions Technology Statement (LETS).<sup>6</sup>

1.18 The committee has previously raised significant scrutiny concerns about the expansion of the ARENA's remit by delegated legislation to empower the ARENA to foster low emissions technologies which go beyond the objects of the ARENA Act. This expansion was attempted in the Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590], which was disallowed by the Senate on 22 June 2021. Subsequently, the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] was registered on the Federal Register of Legislation. The committee's concerns in relation to both regulations are outlined in detail in *Delegated Legislation Monitor 12 of 2021* and *Delegated Legislation Monitor 14 of 2021*.

1.19 In summary, the committee is concerned that the instruments expand the remit of the ARENA beyond what was envisaged by Parliament when the Act was passed. The committee has similar concerns in relation to this current funding instrument, noting that all three instruments are made under the ARENA Act, the object of which is to improve the competitiveness and supply of renewable energy in Australia. As the instrument sets out funding strategies to support the development of low emissions technology, it is the committee's view that the measures in the instrument may go beyond the power of its authorising legislation.

1.20 As set out in *Delegated Legislation Monitor 14 of 2021*, 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.

**1.21 In light of the Senate's disallowance of the Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590], and the committee's recommendation that the subsequent Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] also be disallowed, the committee draws its scrutiny concerns in relation to this instrument's compliance with its authorising legislation to the attention of senators.**

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6 Explanatory statement, p. 1.



21 October 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](mailto:Minister.Hunt.DLO@health.gov.au)

Dear Minister,

**Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021 [F2021L01232]**

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 15 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://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 the *Biosecurity Act 2015*, in particular failing 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. 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 order to facilitate the committee's timely consideration of the matters outlined in the Monitor the committee requests a response by **4 November 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

# Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021

<b>FRL No.</b>	<a href="#">[F2021L01232]</a> <sup>7</sup>
<b>Purpose</b>	To amend the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020 to extend the human biosecurity emergency period for a further 3 months until 17 December 2021.
<b>Authorising legislation</b>	<i>Biosecurity Act 2015</i>
<b>Portfolio</b>	Health
<b>Source of exemption</b>	Subsection 476(2) of the <i>Biosecurity Act 2015</i>

## Overview

1.22 Sections 475 and 476 of the *Biosecurity Act 2015* (Biosecurity Act) allow the Governor-General to declare that a human biosecurity emergency exists and to extend the emergency period for further three month periods if the Health Minister is satisfied of certain criteria. On 18 March 2020 the Governor-General declared that a human biosecurity emergency exists regarding COVID-19 for a period of three months until 17 June 2020. The human biosecurity emergency period has subsequently been extended five times between June 2020 and June 2021.

1.23 This instrument varies the human biosecurity emergency declaration to extend the emergency period a sixth consecutive time, for a further 3 months until 17 December 2021.

1.24 During a human biosecurity emergency period, the Health Minister may determine emergency requirements or give directions deemed necessary to prevent or control the entry, emergence, establishment or spread of the relevant disease in Australian territory.

## Scrutiny concerns

### *Exemption from disallowance*

1.25 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.

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

1.26 This instrument is made under subsection 476(1) of the Biosecurity Act. Subsection 476(2) of the Biosecurity Act provides that instruments made under subsection 476(1), which extend the human biosecurity emergency period, are not subject to disallowance by the Parliament.

1.27 The explanatory statement to the instrument explains that the reason for this exemption from disallowance is to ensure that the government is able to take the urgent action necessary to manage a nationally significant threat or harm to Australia's human health. Further, it explains that the risk of disallowance would inhibit the government's ability to act urgently on public health advice to manage a human biosecurity risk as it would create uncertainty as to whether the instrument might be disallowed.<sup>8</sup>

1.28 The committee has raised 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.<sup>9</sup> In this report, the committee recommended that declarations of human biosecurity emergency periods and associated extensions made under sections 475 and 476 of the Biosecurity Act be subject to disallowance.

1.29 Noting this, and the fact that the human biosecurity emergency period for COVID-19 has now been extended on six occasions, the committee considers that the explanation in the explanatory statement is not a sufficient justification as to why this instrument is exempt from parliamentary oversight.

1.30 The exemption from disallowance in relation to this instrument is particularly concerning as it means that any determinations of emergency requirements made under section 477 of the Biosecurity Act that are still currently in effect will continue to apply for the duration of the extended human biosecurity emergency period (unless revoked earlier). Further, additional determinations may be made during the period, which are also not subject to disallowance by Parliament.

1.31 The committee notes that instruments that have previously been made under section 477 of the Biosecurity Act have had significant impacts on the personal rights and liberties of individuals, including travel restrictions impacting Australian citizens and permanent residents, which is discussed in detail in *Delegated Legislation Monitor 14 of 2021*.<sup>10</sup> The committee's concerns are heightened as there is no

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8 Explanatory statement, p. 2.

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

10 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 14 of 2021*

limitation on the number of times that the emergency period may be further extended without parliamentary oversight.

1.32 Emergency delegated legislation should be subject to appropriate parliamentary oversight. Continuing to make instruments under section 476 of the Biosecurity Act which are exempt from disallowance inhibits the Parliament's constitutional role as the primary institution responsible for making law and scrutinising possible encroachments on personal rights and liberties. Given the significant and ongoing impact of the human biosecurity emergency period on the personal rights and liberties of individuals, the committee considers the exemption from disallowance of instruments extending the period undermines Parliament's ability to fulfil its rights-assessing and rights-protecting responsibilities with respect to delegated legislation.

1.33 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 the Biosecurity Act, in particular failing 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. 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.

1.34 The committee also takes this opportunity to again 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.

**1.35 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. The advice should specifically address the considerations as to why it is appropriate for emergency related delegated legislation to be subject to disallowance outlined at paragraphs 4.48 to 4.54 of the committee's interim report of its inquiry into the exemption of delegated legislation from parliamentary oversight.<sup>11</sup>**

**1.36 The committee also reiterates its strong view, expressed in *Delegated Legislation Monitor 14 of 2021*, that amendments should be moved 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.**

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



21 October 2021

The Hon Alex Hawke MP  
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [dlo.immi@homeaffairs.gov.au](mailto:dlo.immi@homeaffairs.gov.au)

Dear Minister,

**Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030]**

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.

***Procedural fairness***

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 whether the instrument abrogates procedural fairness.

The instrument provides that work performed by Working Holiday Maker Visa holders for certain listed employers cannot count towards eligibility for a subsequent Working Holiday Maker Visa. The excluded employers will be listed by the minister in a separate legislative instrument.

The common law right to procedural fairness is underpinned by the fair hearing rule and the rule against bias. The fair hearing rule requires a person who is adversely affected by a decision to be given an adequate opportunity to put their case before the decision is made. Where an instrument limits or denies the right to procedural fairness, the committee expects the explanatory statement to provide a comprehensive justification for the relevant exclusion or limitation.

The explanatory statement notes that employers “will be provided with an opportunity to make submissions prior to listing in a legislative instrument, in accordance with the principles of procedural fairness”. The committee understands from informal correspondence that your department’s position is that policy guidance and common law procedural fairness provides adequate protection in this regard.

However, the committee’s view is that procedural fairness would be better protected if the instrument itself provides that employers may make submissions prior to being listed in a legislative instrument, as opposed to the explanatory statement. It appears to the committee from the inclusion of this safeguard in the explanatory statement that your department intends to provide procedural fairness protections to excluded employers, and that therefore these protections could be enshrined in law. The committee considers that including these protections in the instrument itself is particularly important noting the uncertainty surrounding what

procedural fairness requirements apply to the making of a legislative instrument (as opposed to a purely administrative decision).

**The committee would therefore appreciate your advice as to:**

- **whether the instrument can be amended to provide an opportunity for affected employers and businesses to make submissions prior to being listed as an excluded employer; and**
- **how common law procedural fairness will apply to the listing of excluded employers in future legislative instruments.**

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. As advised in my letter of 30 September 2021, the committee therefore gave 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 timely consideration of the matters above, the committee would appreciate your response by **4 November 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](mailto: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**



21 October 2021

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Via email: [tsrdlos@treasury.gov.au](mailto:tsrdlos@treasury.gov.au)  
CC: [committeescrutiny@treasury.gov.au](mailto:committeescrutiny@treasury.gov.au)

Dear Treasurer,

**Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Declaration 2021 [F2021L01157]**

**Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Amendment Declaration (No. 1) 2021 [F2021L01237]**

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 instruments, 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 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.

The instruments list programs that have been declared relevant COVID-19 business support programs by the Minister, to enable the Commissioner of Taxation to share protected data the Australian Taxation Office holds with relevant Australian government agencies that administer the programs. The instruments have the effect of creating an exemption from section 355-25 in Schedule 1 to the *Taxation Administration Act 1953* (the Act). Further, the instruments appear to be subject to a 10-year sunset period.

The committee's longstanding view is that provisions which 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.

In addition, noting that these instruments appear to relate to programs which provide temporary relief to businesses in response to the effects of the COVID-19 pandemic, it appears that a shorter duration would be more appropriate. From a scrutiny perspective, the committee considers that the instruments should be amended to specify they cease to operate three years after commencement. If it becomes necessary to extend the operation of these provisions, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

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.

**The committee therefore requests your advice as to:**

- **whether the Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Declaration 2021 can be amended to provide that it ceases 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.**

### ***Privacy***

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 right to privacy.

As noted above, the effect of a program being declared a COVID-19 business support program is to create an exception to section 355-25 in Schedule 1 to the Act, thereby enabling a taxation officer to share protected information for the purpose of administering the declared program without committing an offence.

The committee's view is that provisions which enable the collection, use and disclosure of personal information may trespass on an individual's right to privacy, and should generally be included in primary legislation, rather than delegated legislation. Where an instrument nevertheless contains such provisions, the committee expects that the explanatory statement should explain the nature and scope of the provisions. The explanatory statement should also address the nature and extent of the information that may be disclosed and the persons or entities to whom disclosure is permitted. The committee also expects the explanatory statement to justify why the provisions are necessary and appropriate, and what safeguards are in place to protect this personal information, and whether these safeguards are in law or policy. Explanatory statements should also indicate whether the safeguards in the *Privacy Act 1988* apply.

In this regard, the explanatory statements to the instruments specify that the Australian government agency receiving the protected information must only use the information for the purposes for which it was disclosed. They also note that the Act provides offences relating to the misuse of disclosed information. However, there is no further information in the explanatory statements or statements of compatibility relating to how the instruments engage the right to privacy.

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

- **the nature, scope and extent of information that may be shared or disclosed under the instruments; and**
- **whether any additional statutory safeguards apply to protect this information, including whether the *Privacy Act 1988* applies.**

The committee's expectation is to receive a response in time for it to consider and report on the instruments while they are still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15<sup>th</sup> 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 timely consideration of the matters above, the committee would appreciate your response by **4 November 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](mailto: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**



21 October 2021

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

Via email: [attorney@ag.gov.au](mailto:attorney@ag.gov.au)

CC: [DLO@ag.gov.au](mailto:DLO@ag.gov.au)

Dear Attorney-General,

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

Thank you for your response of 15 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 20 October 2021 and has resolved to seek your further advice about the issues outlined below.

***Matters more appropriate for parliamentary enactment***

***Parliamentary oversight – exemption from disallowance***

Thank you for your advice about the purpose and operation of instructions given under subsections 7(3) and 7(4) of the Air Services Regulations 2019 (Air Services Regulations), and their exemption from disallowance by the instrument.

The committee understands that as these instructions are technical in nature they are appropriately contained in delegated legislation. Regarding their exemption from disallowance, you have advised this is to avoid adversely impacting on the orderly management of the aviation industry, noting the disallowance process could create uncertainty for commercial aircraft operators, providers of air traffic services and aviation regulators.

As you are aware, the committee has long been concerned about instruments being exempt from disallowance. This concern is heightened when the exemption itself is also contained in delegated legislation. As the committee stated in the final report of its inquiry into the exemption of delegated legislation from parliamentary oversight, its longstanding view on instruments that are exempt from disallowance is that the exemption, at the very least, should be contained in the instrument's enabling Act to enable full parliamentary scrutiny of the proposed exemption. It is unsatisfactory that the committee's detailed scrutiny concerns and recommendations in this report about the inappropriateness of most existing exemptions from disallowance appear to have been wholly disregarded in the making of this instrument.

It therefore remains unclear to the committee why it is necessary and appropriate for instructions given under subsections 7(3) and 7(4) of the Air Services Regulations to be exempt from

disallowance, and, moreover, why it is appropriate to provide for the exemption through the Legislation (Exemptions and Other Matters) Regulation 2015 (LEOM Regulation), rather than on the face of the enabling Act. The committee does not consider that a level of uncertainty that may accompany parliamentary scrutiny is a sufficient reason to exempt an instrument from the disallowance process.

**The committee therefore requests your further advice as to:**

- **why it is considered necessary and appropriate for instructions given under subsections 7(3) and 7(4) of the Air Services Regulations to be exempt from disallowance and, in particular, how providing that these instructions are subject to the usual disallowance process would adversely impact on the orderly management of the aviation industry; and**
- **if the exemption from disallowance is to be retained, whether the exemption can at least be provided for in primary legislation, rather than in the Legislation (Exemptions and Other Matters) Regulation 2015, to allow for full parliamentary scrutiny and consideration of the exemption.**

***Matters more appropriate for parliamentary enactment***

***Parliamentary oversights – exemption from sunseting***

Thank you for your further advice about the continuing of exemptions from sunseting in relation to statements of procedures made under section 34AF of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) and standards made under section 12 of the *Road Vehicle Standards Act 2018* (Road Vehicle Standards Act).

Regarding the exemption from sunseting in relation to statements of procedures under the ASIO Act, the committee appreciates your detailed advice about the reason this exemption is necessary and appropriate. In particular, the committee notes that these statements are subject to a statutory review process and that the enabling provision to make a statement of procedures will cease to have effect on 7 September 2025. The committee notes your advice that in these circumstances, it would not be appropriate for the statements of procedures to be subject to a separate sunseting arrangement outside of this legislated arrangement. On the basis of this advice, the committee has concluded its consideration of this issue.

Regarding the exemption from sunseting applied to standards made under the Road Vehicle Standards Act, you have advised that the exemption is necessary and appropriate to ensure the standards remain effective to regulate the ongoing roadworthiness of vehicles throughout their useful life. Additionally, you have advised that rather than repealing standards, they are kept on the register of legislation so that State and Territory regulators can use them to ensure vehicles continue to comply with the standards that were in force when they were first supplied to the market, and as a means to grandfather the requirements that apply to existing vehicle models.

While noting this advice, it remains unclear to the committee why the standards must be exempt from sunseting. If a standard is required to continue after the ordinary 10 year period, it may be re-made. Further, as noted in my earlier letter, it is the committee's view that exemptions from sunseting should be contained in the relevant enabling Act and not in the LEOM Regulation.

**The committee therefore requests your further advice as to:**

- **why it is considered necessary and appropriate for standards made under section 12 of the *Road Vehicle Standards Act 2018* to be exempt from the sunseting regime in Part 4 of Chapter 3 of the *Legislation Act 2003* and, in particular, why it would not be possible or**

appropriate to remake any standards that are required to continue after the ordinary 10 year sunset period; and

- whether the exemption from sunset of standards made under section 12 of the *Road Vehicle Standards Act 2018* can be provided for in primary legislation, rather than the *Legislation (Exemptions and Other Matters) Regulation 2015*.

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 18 October 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 timely consideration of the matters above, the committee would appreciate your response by **4 November 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](mailto:sdlc.sen@aph.gov.au).

Thank you for your ongoing assistance with this matter.

Yours sincerely,

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



21 October 2021

The Hon Karen Andrews MP  
Minister for Home Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [dlo@homeaffairs.gov.au](mailto:dlo@homeaffairs.gov.au)

Dear Minister,

**Aviation Transport Security Amendment (Screening Information) Regulations 2021  
[F2021L00736]**

Thank you for your response of 22 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 20 October 2021. On the basis of your advice and undertaking to amend the explanatory statement to address the committee's scrutiny concerns, the committee has concluded its examination of the instrument. In light of this, the committee has resolved to withdraw its 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](mailto: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**



25 October 2021

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

via email: [Community.Affairs.Sen@aph.gov.au](mailto:Community.Affairs.Sen@aph.gov.au)

Dear Chair,

**Matters of interest to the Senate—home care subsidies**

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 arrangements for paying home care subsidies, 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:

<b>Instrument</b>	<b>Purpose</b>	<b>Last day to lodge disallowance notice</b>
<b>Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021 [F2021L01133]</b>	To support changes to the arrangements for paying home care subsidies to approved providers, including setting out the basis on which home care subsidy is paid and the amount of the subsidy (incorporating the basic subsidy amount, viability supplement, dementia and cognition supplement, veterans' supplement and top-up supplement).	25/11/2021

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 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



25 October 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](mailto:eec.sen@aph.gov.au)

Dear Chair,

**Matters of interest to the Senate—subsidies for child care providers**

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 COVID-19 viability support payments to approved child care providers, 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:

<b>Instrument</b>	<b>Purpose</b>	<b>Last day to lodge disallowance notice</b>
<b>Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2021 [F2021L01233]</b>	To provide for the making of business continuity payments, called COVID-19 viability support payments, to approved child care providers affected by the COVID-19 pandemic. Under the instrument, providers who meet the eligibility criteria will receive COVID-19 viability support payments at certain times. These include where the provider's service is in a COVID-19 hotspot of more than 28 days, or where the provider's service is in a COVID-19 hotspot of more than 7 days, and there are restrictions on whether children can attend care.	4 <sup>th</sup> sitting day of 2022

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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



25 October 2021

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

via email: [covid.sen@aph.gov.au](mailto:covid.sen@aph.gov.au)

Dear Chair,

**Matters of interest to the Senate—COVID-19 subsidies for child care providers**

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 COVID-19 viability support payments to approved child care providers, 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:

<b>Instrument</b>	<b>Purpose</b>	<b>Last day to lodge disallowance notice</b>
<b>Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2021 [F2021L01233]</b>	To provide for the making of business continuity payments, called COVID-19 viability support payments, to approved child care providers affected by the COVID-19 pandemic. Under the instrument, providers who meet the eligibility criteria will receive COVID-19 viability support payments at certain times. These include where the provider's service is in a COVID-19 hotspot of more than 28 days, or where the provider's service is in a COVID-19 hotspot of more than 7 days, and there are restrictions on whether children can attend care.	4 <sup>th</sup> sitting day of 2022

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 Education and Employment 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



25 October 2021

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

via email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Dear Chair,

### Legislative instruments specifying Commonwealth expenditure

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 instruments listed in the table below, in combination with their enabling Acts, authorise the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instruments listed below engage standing order 23(4), and accordingly has resolved to draw them to the attention of your committee:

Instrument	Grant/Program	Amount	Description
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2021 [F2021L01146]</b>	Adult Mental Health Centres and Telephone Referral Service	\$487.2 million over four years from 2021-22	Funding will be provided to support the establishment of eight new adult mental health centres and 24 satellites embedded within existing primary care settings, and provides ongoing funding for the trial of eight adult mental health centres announced in the 2019-20 Budget. The initiative will also establish a centralised intake and assessment phone service staffed by mental health professionals to provide clinical assessment of mental health needs and promote consistent triage that enables people to access the most appropriate services to meet their needs.

Instrument	Grant/Program	Amount	Description
<b>Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) Regulations 2021 [F2021L01142]</b>	Outcomes Measurement Initiative—Navigation Tool	\$3.2 million in 2021-22	Funding will be provided to develop, build and maintain an online navigation tool for social impact organisations to access information about social impact investing. Social impact organisations are broadly characterised as organisations that operate intentionally to resolve social problems, improve communities and provide people with access to employment and training. In particular, the project will facilitate the establishment of a web-based search engine to make it easier for social impact organisations, intermediaries and investors to search and draw on the growing suite of international and domestic tools, resources, case studies and research on outcomes and impact measurement.
	Children and Family Intensive Support	\$10 million per annum from 2021-22	Funding will be provided for an early intervention, intensive community-based family support service offered to highly vulnerable families living in selected communities in the Northern Territory (NT) and the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, South Australia. Children and Family Intensive Support (CaFIS) will have a footprint in six regions in the NT and the APY Lands, with specific locations identified as part of the grant selection process. CaFIS will replace the Intensive Family Support Service.
	Individual Placement and Support	\$70.1 million over four years from 2021-22	Funding will be provided to improve the employment and education outcomes of people with mental illness through services at headspace sites that focus on the individual needs of people with mental illness who are seeking to enter, or remain in, employment or education, including services that integrate vocational assistance with clinical support and non-vocational assistance. The program forms part of the government's broader Youth Employment Strategy aimed at tackling the problem of high youth unemployment.

Instrument	Grant/Program	Amount	Description
	Digital Work and Study Service	\$5.6 million over four years from 2021-22	Funding will be provided to improve the employment and education outcomes of young people with mental illness by providing work and study support online and by telephone and text message, integrated with clinical support and non-vocational assistance.
	Birth of a Child project	Approximately \$17.5 million over two years from 2020-21	<p>Funding will be provided for online platforms that will facilitate the collection and sharing of data for the purpose of enabling access to Commonwealth, State and Territory services by a parent of, or a person with responsibility for, a newborn child. The project aims to simplify a range of health and administrative activities for families and reduce the need for birth mothers to provide the same information to multiple government agencies on multiple occasions. With the birth mother's consent, Services Australia will receive birth information from participating hospitals for the purpose of:</p> <ul style="list-style-type: none"> <li>• enabling pre-fill of Medicare and Centrelink records;</li> <li>• providing relevant information to state and territory births, deaths and marriages registries to complete birth registration; and</li> <li>• establishing an effective model for cross-agency and cross-jurisdictional collaboration, delivery of pilot programs and a potential national rollout for the project.</li> </ul>

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

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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



25 October 2021

Senator Paul Scarr  
Chair  
Senate Economics Legislation Committee  
Parliament House  
CANBERRA ACT 2600

via email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—Grant to Superannuation Consumers' Centre Ltd**

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 a grant to Super Consumers Australia. 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
<b>Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 2) Regulations 2021 [F2021L01143]</b>	Grant to Superannuation Consumers' Centre Ltd (known as Super Consumers Australia)	\$1.6 million over two years from 2021-22	A grant of \$1.6 million will be provided to Super Consumers Australia (SCA) to support the organisation's continued representation of the interests of superannuation members in superannuation-related policy debates by: <ul style="list-style-type: none"><li>engaging with government, regulators and industry on policy issues affecting superannuation members;</li><li>leveraging existing research and in-house research to support their</li></ul>

Instrument	Grant/Program	Amount	Description
			<p>position; and</p> <ul style="list-style-type: none"> <li>• ensuring that the interests of superannuation members are voiced in public discourse.</li> </ul> <p>SCA will also be expected to conduct research and analysis on superannuation-related issues affecting superannuation members including:</p> <ul style="list-style-type: none"> <li>• development of an evidence base supporting member outcomes;</li> <li>• investigating and developing case studies of the issues that members face; and</li> <li>• analysis of superannuation funds' performance, fees and insurance.</li> </ul>

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 25 November 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



25 October 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](mailto:eec.sen@aph.gov.au)

Dear Chair,

### Legislative instruments specifying Commonwealth expenditure

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

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

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

Instrument	Grant/Program	Amount	Description
<b>Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 3) Regulations 2021 [F2021L01147]</b>	Literacy and Numeracy Test for Initial Teacher Education	\$4 million over four years from 2021-22, with subsequent ongoing funding of \$1.0 million per year from 2025-26	Funding will be provided to support the Literacy and Numeracy Test for Initial Teacher Education program. In particular, this instrument supports the expansion of the program to include delivery through a paper-based form to eligible candidates.

Instrument	Grant/Program	Amount	Description
	Civics and Citizenship Education Initiatives	\$0.4 million in 2021-22	Funding will be provided to support the establishment of a pilot program to expand the National Schools Constitutional Convention (NSCC) initiative to year 9 and 10 students.
	Mid-Career Checkpoint	\$73.4 million over three years from 2021-22	Funding will be provided to expand the Mid-Career Checkpoint program, which provides career guidance and training to assist persons to return to work or remain in work. In particular, the program seeks to support women's workforce participation and economic security through providing free professional skills and career advice.
	Local Jobs—COVID-19 Recovery	\$213.5 million over four years from 2021-22	<p>Funding will be provided for the expansion of the Local Jobs—COVID-19 Recovery program to support local organisations and stakeholders to develop and implement tailored approaches to accelerate re-skilling, upskilling and employment of job seekers in all 51 Employment Regions. The program consists of four elements:</p> <ul style="list-style-type: none"> <li>• Employment Facilitators;</li> <li>• Local Jobs and Skills Taskforces;</li> <li>• Local Recovery Funds; and</li> <li>• National Priority Fund.</li> </ul>

Instrument	Grant/Program	Amount	Description
	Digital Skills Cadetship Trial	\$10.7 million over three years from 2021-22	Funding will be provided to assist cadets to undertake vocational education and training in digital skills, including education and training provided by employers, and assist cadets with future employment opportunities. The objective of the Trial is to deliver digital skills in a more flexible and timely manner than is available through current training options. The Trial will include up to four industry-led cadetship pilots to develop new and innovative pathways to increase the number of Australians with high level digital skills. Cadets will each undertake a cadetship that is expected to take around four to six months. The cadetships may then lead to employment or further training for the cadet. The cadetships will be driven by employer demand for skills in emerging and high technology digital fields, which may include (but are not limited to) cybersecurity, advanced manufacturing, data analytics, game design and animation.
	Career Revive Initiative Expansion	\$2.6 million over three years from 2021-22	Funding will be provided to support up to 60 medium to large businesses to develop an employer action plan to address barriers to women's full and equal participation in the employer's workforce, and to promote such full and equal participation.

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 25 November 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



25 October 2021

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

via email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Chair,

### Legislative instruments specifying Commonwealth expenditure

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 instruments listed in the table below, in combination with their enabling Acts, authorise the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instruments listed below engage standing order 23(4), and accordingly has resolved to draw them to the attention of your committee:

Instrument	Grant/Program	Amount	Description
<b>Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 4) Regulations 2021 [F2021L01140]</b>	Indigenous Protected Areas	\$11.6 million over two years from 2021-22.	<p>The objective of the program is to increase the area of Sea Country in Indigenous Protected Areas (IPAs) to strengthen protection of marine biodiversity, while creating employment and economic opportunities for Indigenous Australians. IPAs are areas of land or land and sea managed by traditional owners through voluntary agreements with the Commonwealth Government to protect biodiversity and cultural values.</p> <p>Only eight IPAs currently include Sea Country.</p>

Instrument	Grant/Program	Amount	Description
			<p>Funding will be provided to incorporate Sea Country in IPAs in nine locations through expanding existing terrestrial IPAs and creating new IPAs. Grants will support consultation with Indigenous traditional owners and other stakeholders, management planning, on-ground management, and the creation of over 30 direct jobs primarily for Indigenous Australians in remote communities.</p>
<p><b>Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2021 [F2021L01141]</b></p>	<p>Provision of safety net television services</p>	<p>\$42.4 million over three years from 2021-22</p>	<p>Funding will be provided to support the provision of safety net television services, which enable all areas of Australia to access free-to-air entertainment and news programs. A safety net television service is a platform/service that provides commercial and national free-to-air television to viewers unable to access terrestrial television transmission. Since the switchover to digital television, the Viewer Access Satellite Television (VAST) service has provided a safety net service via direct to home satellite transmission.</p> <p>The provision of free-to-air television services using terrestrial transmission (broadcasting towers) is a commercial decision for the broadcasters. Due to Australia's large landmass and sparse population density, it is not economically viable to provide households in many areas of Australia with access to free-to-air television services through terrestrial transmission sites. Government funding supports the provision of a safety net television service for areas where terrestrial television transmission is not available. More than 250,000 premises, primarily in regional and remote Australia, rely on a VAST direct to home service for access to news and entertainment broadcasts.</p>
	<p>Peri-Urban Mobile Program</p>	<p>\$16.4 million over three years from 2021-22</p>	<p>Funding will be provided to mobile network operators and infrastructure providers to deploy new mobile phone infrastructure to improve mobile connectivity in bushfire prone areas along the fringe of Australia's major cities. The peri-urban fringe is where the bush meets the edges of the suburbs, creating bushfire risks for those living and working in those areas. Peri-urban</p>

Instrument	Grant/Program	Amount	Description
			areas have particular bushfire risk because they are on the interface of the built-up and bush areas. Areas of concern include the Blue Mountains, northern parts of Sydney, the Perth Hills, and north of Melbourne.
	Culture, Heritage and Arts Regional Tourism Program	\$3.3 million in 2021-22	Funding will be provided to assist community cultural, heritage and arts organisations in regional Australia, including museums, galleries and historical societies, to recover from the adverse effects of the COVID-19 pandemic and promote domestic tourism into regional and remote parts of Australia. The program will make \$3 million available in 2021-22 for grants of up to \$3,000 to support these organisations to continue to offer appealing cultural tourism experiences to visitors, which in turn will promote visitation and local expenditure.

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

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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



25 October 2021

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

via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Chair,

### Legislative instruments specifying Commonwealth expenditure

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses 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 instruments listed in the table below, in combination with their enabling Acts, authorise the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instruments listed below engage standing order 23(4), and accordingly has resolved to draw them to the attention of your committee:

Instrument	Grant/Program	Amount	Description
<b>Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 2) Regulations 2021 [F2021L01156]</b>	Expensive Commonwealth Criminal Cases Fund	\$43.7 million over four years from 2021-22	Funding will be provided to state and territory legal aid commissions (LACs) for costs incurred in defending clients in serious, expensive Commonwealth criminal matters (such as drug importation, people smuggling, terrorism, fraud and slavery). The scope of the Fund is being expanded to provide support to LACs to represent convicted offenders in post-sentence order matters, such as Control Orders, Continuing Detention Orders and Extended Supervision Orders.

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>
<b>Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2021 [F2021L01144]</b>	Afghanistan Inquiry Legal Assistance Scheme	Not specified	Funding will be provided for legal assistance to current and former serving members of the Australian Defence Force in relation to investigations or proceedings for criminal offences that arise out of the Inspector-General of the Australian Defence Force's Afghanistan Inquiry.

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

- Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 2) Regulations 2021 [F2021L01156]—29 November 2021; and
- Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2021 [F2021L01144]—25 November 2021.

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

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

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

Yours sincerely,

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



25 October 2021

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

via email: [covid.sen@aph.gov.au](mailto:covid.sen@aph.gov.au)

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—Local Jobs—COVID-19 Recovery 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 Local Jobs—COVID-19 Recovery 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
<b>Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 3) Regulations 2021 [F2021L01147]</b>	Local Jobs—COVID-19 Recovery	\$213.5 million over four years from 2021-22	Funding will be provided for the expansion of the Local Jobs—COVID-19 Recovery program to support local organisations and stakeholders to develop and implement tailored approaches to accelerate re-skilling, upskilling and employment of job seekers in all 51 Employment Regions. The program consists of four elements: <ul style="list-style-type: none"><li>• Employment Facilitators;</li></ul>

Instrument	Grant/Program	Amount	Description
			<ul style="list-style-type: none"> <li>• Local Jobs and Skills Taskforces;</li> <li>• Local Recovery Funds; and</li> <li>• National Priority Fund.</li> </ul>

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 25 November 2021. The committee has also drawn this instrument to the attention of the Senate Education and Employment 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



25 October 2021

Senator the Hon Jonathon Duniam  
Assistant Minister for Forestry and Fisheries  
Parliament House  
CANBERRA ACT 2600

Via email: [AssistantMinister.Duniam@agriculture.gov.au](mailto:AssistantMinister.Duniam@agriculture.gov.au)

Dear Assistant 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):

- Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2021 [F2021L01252]

This instrument is being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 15 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://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](mailto: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**



25 October 2021

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

Via email: [dlosukkar@treasury.gov.au](mailto:dlosukkar@treasury.gov.au)  
CC: [minister.sukkar@treasury.gov.au](mailto: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):

- Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 2) Determination 2021 [F2021L01139]
- Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 3) Determination 2021 [F2021L01240]

These instruments are being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 15 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://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](mailto: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**



25 October 2021

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

Via email: [minister.littleproud@agriculture.gov.au](mailto:minister.littleproud@agriculture.gov.au)

CC: [DLO-MO@agriculture.gov.au](mailto:DLO-MO@agriculture.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 5, 2021 [F2021L01235]
- Biosecurity (Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests) Determination 2021 [F2021L01251]

These instruments are being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 15 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://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](mailto: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**



25 October 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](mailto: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 Allocation – 850/900 MHz Band) Determination 2021 [F2021L01155]

This instrument is being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 15 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://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](mailto: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**



25 October 2021

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

Via email: [financeminister@finance.gov.au](mailto:financeminister@finance.gov.au)

CC: [DLO-Finance@finance.gov.au](mailto: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.

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):

- Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2021-2022 [F2021L01207]

This instrument is being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 15 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://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](mailto: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**



25 October 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](mailto: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):

- Food Standards (Application A1210 – Maltogenic alpha-amylase enzyme from GM *Saccharomyces cerevisiae*) Variation [F2021L01181]
- Food Standards (Proposal M1018 – Maximum Residue Limits (2020)) Variation [F2021L01174]
- Poisons Standard Amendment (Ivermectin) Instrument 2021 [F2021L01253]

These instruments are being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 15 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://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](mailto: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**



25 October 2021

The Hon Alex Hawke MP  
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [dlo.immi@homeaffairs.gov.au](mailto:dlo.immi@homeaffairs.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):

- Migration (Fees for assessment of qualifications and experience) Instrument (LIN 21/023) 2021 [F2021L01203]

This instrument is being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 15 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://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](mailto: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**