

# Monitor 17 of 2021 - Committee correspondence

## Correspondence relating to appendices

### Appendix A - New matters

Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 [F2021L01430] .....	1
Industry Research and Development (Supporting Critical Transmission Infrastructure Program) Instrument 2021 [F2021L01312] .....	7

### Appendix C - Concluded matters

Legislation (Exemptions and Other Matters) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00859] .....	9
Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Declaration 2021 [F2021L01157] and Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Amendment Declaration (No. 1) 2021 [F2021L01237] .....	11

## Correspondence relating to chapters 3–4

### Chapter 3 – Scrutiny of Commonwealth expenditure

Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 [F2021L01430] .....	13, 17
Industry Research and Development (Supply Chain Resilience Initiative Program) Instrument 2021 [F2021L01456] .....	15
Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 9) Regulations 2021 [F2021L01434] .....	17, 19
Industry Research and Development (Port Kembla Gas Generator Investment Development Grant Program) Instrument 2021 [F2021L01386] .....	21

### Chapter 4 – Scrutiny of instruments exempt from disallowance

Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 4) Determination 2021 [F2021L01443] .....	23
Social Security (Australian Government Disaster Recovery Payment—Victorian storms and floods) Determination 2021 (No. 8) [F2021L01429] .....	25

Remuneration Tribunal (Members of Parliament) Amendment Determination (No. 1) 2021 [F2021L01446] .....	27
<i>Correspondence from the Special Minister of State regarding [F2021L01446] .....</i>	<i>29</i>
<i>Correspondence from the committee to the Special Minister of State regarding [F2021L01446] .....</i>	<i>33</i>
Australia New Zealand Food Standards Code — Schedule 20 – Maximum residue limits Variation Instrument No. APVMA 6, 2021 [F2021L01426] .....	35
Food Standards (Application A1218 – $\beta$ -Galactosidase from <i>Bacillus subtilis</i> (Enzyme)) Variation [F2021L01436] .....	35
Food Standards (Application A1214 – Nicotinamide riboside chloride as Vitamin B3 in FSMP) Variation [F2021L01431] .....	35
Superannuation Guarantee (Administration) – Stapled Fund – Guidelines for the Reduction of an Employer’s Individual Superannuation Guarantee Shortfall for Late Contributions Due to Non-acceptance by Notified Stapled Fund Determination 2021 [F2021L01451] .....	37
Superannuation Guarantee (Administration) – Choice of Fund – Written Guidelines for the Reduction of an Increase in an Employer’s Individual Superannuation Guarantee Shortfall Determination 2021 [F2021L01453] .....	37



6 December 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)

The Hon Greg Hunt MP, Minister for Health and Aged Care,  
[Minister.Hunt.DLO@health.gov.au](mailto:Minister.Hunt.DLO@health.gov.au)

Dear Minister,

**Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 [F2021L01430]**

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.

***Delegation of administrative powers and functions***

***Conferral of discretionary powers***

Senate standing order 23(3)(c) requires the committee to scrutinise each instrument as to whether it makes rights, liberties, obligations or interests unduly dependent on insufficiently defined administrative powers. This includes where administrative powers and functions are delegated under the instrument.

The Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 (the Regulations) amend Schedule 1AB to the Principal Regulations to establish legislative authority for government spending on the COVID-19 Vaccine Claims Scheme (the Scheme), which will provide compensation for individuals who suffer moderate to significant injury as a result of being vaccinated against COVID-19.

The committee notes the Regulations fail to specify even high-level eligibility criteria or evidentiary requirements to receive compensation under the Scheme or any details about how the amount of compensation will be determined. The explanatory statement indicates these matters will be determined by guidelines that will be developed by the department, which are not legislative instruments and are not subject to parliamentary oversight. The explanatory statement also provides that claims will be assessed 'according to Scheme criteria and, for more significant or complex claims (including for death associated with the COVID-19 vaccines), by an independent expert panel which will provide recommendations about whether compensation should be paid and, if so, the amount'.

Further, the power to make these decisions and recommendations appear to be delegated to Services Australia's staff or a panel of independent experts, but it is unclear from the Regulations or the explanatory statement which officers the claims will be assessed and decided by, who may be on the panel of independent experts (other than that they may have 'legal backgrounds', or what qualifications and experience they may need to do make these assessments.

Where an instrument delegates administrative powers or functions, the committee expects that the explanatory statement will address the purpose and scope of the delegation, including why it is considered necessary to delegate these powers or functions. The explanatory statement should also identify who will be exercising the powers or functions and whether they possess the appropriate qualifications and skills, and the nature and source of any limitations and safeguards and whether they are contained in law or policy.

In addition, where an instrument delegates administrative powers or functions to a member of the Australian Public Service, the committee expects that the delegation will be limited to members of the Senior Executive Service (SES) or equivalent. Consequently, the explanatory statement should provide a thorough justification for any delegation of powers to officers below the SES level.

On this issue, the committee notes the explanatory statement emphasises the complexity of the decisions as a justification for why there ought not be any independent merits review to decisions under the scheme stating: 'decisions on the availability of compensation would typically involve the evaluation of complex competing facts and policies. They would rely on in-depth departmental advice and recommendations from relevant medical and legal experts and bodies', indicating that the delegate would require a level of seniority.

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

- **who will exercise the power to make decisions and recommendations under the COVID-19 Vaccine Claims Scheme, including whether those persons will be required to have the appropriate skills, qualifications and experience to exercise the powers, and for Australian Public Service decision makers, whether there is a requirement for these decision makers to be limited to members of the SES; and**
- **whether any safeguards or limitations apply to the exercise of these powers, and whether these safeguards are contained in law or policy.**

### ***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.

The committee notes that as part of an application for compensation, it appears applicants would need to provide personal information, including medical information. However, there are no privacy safeguards outlined in the Regulations nor is any commentary provided on this issue in the explanatory statement.

The explanatory statement also provides that if Services Australia or the assessment panel determines that there is evidence of potential negligence by a health practitioner associated with the administration of the vaccine, they may recommend that the decision maker refer information to the Australian Health Practitioner Regulation Agency (AHPRA) for review of their conduct. Again, it is unclear what privacy protections will be in place for the information contained in the referral and whether it will be provided to AHPRA with the patient's consent.

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 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 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.

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

- **the nature, scope and extent of personal information that may be collected under the Scheme;**
- **who, or which entities, this information can be disclosed to; and**
- **whether any statutory or other safeguards apply to protect this personal information more broadly, including whether the *Privacy Act 1988* applies.**

### ***Availability of independent merits review***

Senate standing order 23(3)(i) requires the committee to consider whether an instrument unduly excludes, limits or fails to provide for the independent review of decisions affecting rights, obligations or interests.

The committee notes the Regulations do not provide for independent merits review of a claim for compensation. While the explanatory statement states that internal review or review by the Ombudsman is available, the committee does not consider that these review mechanisms are a sufficient alternative to independent merits review of what the explanatory statement acknowledges to be complex decisions.

The explanatory statement provides the following justification as to why independent merits review is not available, with reference to the Administrative Review Council's guide, *What decisions should be subject to merit review?*:

Noting the review process available as detailed above, funding decisions made in connection with the Scheme are not considered suitable for independent merits review, as these are financial decisions with a significant public interest element.

It is unclear to the committee how decisions to compensate individuals for medical harm are 'financial decisions with a significant public interest element'. The decisions referred to at paragraph 4.34 of the Administrative Review Council's guide appear to be policy decisions, for example where 'rapid action to restore or maintain investor confidence in the market' is needed. However, the decisions in this case relate to individual applications for compensation within the scheme authorised by the Regulations.

Separately, the explanatory statement also states:

Additionally, decisions on the availability of compensation would typically involve the evaluation of complex competing facts and policies. They would rely on in-depth departmental advice and recommendations from relevant medical and legal expert bodies.

The committee's concerns regarding the absence of merits review is heightened by such statements in the explanatory statement, which emphasise the complexity of the individual claims that will require assessment under the Scheme.

**The committee therefore requests your advice as to whether independent merits review can be provided for decisions made under the Scheme, and if not, a detailed explanation of why independent merits review is not appropriate.**

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

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment, which should be included in primary, rather than delegated legislation.

The committee is concerned that the Regulations seek to establish authority for a significant, nationwide vaccine claims scheme in delegated legislation. The explanatory statement does not provide any justification as to why it is considered necessary and appropriate for such a significant scheme, particularly one that deals with assessing individual claims for compensation, to be established via delegated legislation, rather than primary legislation.

**The committee therefore requests your advice as to whether the Scheme can be established via primary legislation, and if not, a detailed explanation of why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation, to establish the Scheme.**

### ***Parliamentary oversight***

Senate standing order 23(3)(m) requires the committee to consider whether an instrument complies with any other ground relating to the technical scrutiny of delegated legislation, including whether it is subject to sufficient parliamentary oversight.

The explanatory statement outlines that compensation is available for claimants who can substantiate a loss over \$5,000 caused by the vaccine or its administration. However, neither the Regulations nor the explanatory statement specify the total amount of Commonwealth funding that is being provided for in relation to the program. The committee understands that expenditure under the Regulations will be demand-driven; however, it still expects that at least some guidance in relation to the amount of funds expected to be expended under the Scheme will be available during the disallowance period to allow appropriate parliamentary oversight.

The committee notes that the scrutiny of instruments made under the *Financial Framework (Supplementary Powers) Act 1997* is a key aspect of parliamentary scrutiny and control of Commonwealth expenditure. In this regard, the committee is concerned that the non-disclosure of the funding amount may inhibit Parliament's capacity to effectively scrutinise such instruments.

**The committee therefore requests your advice as to whether at least a high-level indication as to the total amount of funding that is expected to be expended on the Scheme can be provided to the Parliament while the Regulations are still subject to disallowance, noting the importance of effective parliamentary oversight of executive expenditure.**

### ***Parliamentary oversight***

The committee has further scrutiny concerns in relation to parliamentary oversight of this significant scheme. In this regard the committee notes that the Regulations do not specify key elements of the Scheme, including the eligibility criteria, evidentiary requirements, or at least an inclusive list of conditions for which compensation may be sought. The explanatory statement provides that this information will be published as guidance material on the Services Australia website and that a list of clinical conditions for which a causal link to vaccination with a COVID-19 vaccine will be maintained by the Department of Health. However, this information is not detailed in the Regulations, and it is unclear if the list of conditions will be made publicly available.

The explanatory statement is also silent on why such significant aspects of the Scheme will be determined by guidelines and materials that are not legislative instruments and therefore not subject to parliamentary scrutiny, which is of significant concern to the committee.

The lack of detail in relation to the scope of the Scheme is emphasised by the failure of the Regulations to clarify:

- whether there is a cap on the amount of compensation that may be paid under the Scheme;
- how far the scope of eligibility to claim for compensation extends (for example, were someone to die from the effects of a COVID-19 vaccine, it is unclear whether another party, such as a dependent family member would be eligible to claim compensation); and
- whether a person receiving compensation under the Scheme would still be able to pursue compensation through alternate pathways.

The committee's scrutiny concerns in relation to the lack of detail provided to the Parliament in relation to the scope of the Scheme is further highlighted by the announcement of the Minister for Health and Aged Care on 24 November 2021 that the claim threshold for access to the Scheme will be reduced from \$5,000 (as detailed in the explanatory statement tabled in the Parliament) to \$1,000. The committee is concerned that a significant change to the claim threshold can be implemented through a change to materials that are not subject to parliamentary scrutiny, particularly noting that the explanatory statement registered on 14 October 2021 states that a \$5,000 threshold is appropriate as it would mean that the Scheme will not cover common, less significant, side effects such as fatigue or injection site pain, as these would be more appropriately managed through existing health programs.

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

- **why crucial aspects of the Scheme, including the eligibility criteria, evidentiary requirements, the process for making a claim and the list of conditions for which a claim may be (or may not be) payable will be determined by guidelines and materials that are not legislative instruments subject to disallowance by the Parliament;**
- **whether there is a cap on the amount of compensation that can be provided under the Scheme;**
- **further details about who is eligible for compensation under the Scheme, including whether family members or others who are financially dependent on those harmed or who have died after being vaccinated, are eligible for compensation under the Scheme;**
- **whether a person who receives compensation through the Scheme will be barred from bringing a common law action for damages or pursuing any other alternate pathways to obtain compensation;**
- **whether a person could apply for compensation under the Scheme after having received compensation through any other insurance schemes, such as accident or sickness insurance;**
- **the justification for why the above matters should not be subject to parliamentary scrutiny; and**
- **whether a replacement explanatory statement will be registered to reflect the reduced claim threshold of \$1,000.**

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

as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's timely consideration of the matters above, the committee would appreciate your response by **20 December 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**



2 December 2021

The Hon Angus Taylor MP  
Minister for Industry, 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); [IndustryDLO@industry.gov.au](mailto:IndustryDLO@industry.gov.au);  
[Legislation@industry.gov.au](mailto:Legislation@industry.gov.au)

Dear Minister,

**Industry Research and Development (Supporting Critical Transmission Infrastructure Program)  
Instrument 2021 [F2021L01312]**

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.

***Parliamentary oversight***

Senate standing order 23(3)(m) requires the committee to consider whether an instrument complies with any other ground relating to the technical scrutiny of delegated legislation. This includes where an instrument fails to disclose the amount of Commonwealth funding for instruments specifying programs made under the *Industry Research and Development Act 1986*.

The instrument establishes legislative authority for government spending for the Supporting Critical Transmission Infrastructure Program, to provide financial support for electricity transmission projects that have potential electricity price, reliability or security benefits. However, neither the instrument nor its explanatory statement specifies the amount of Commonwealth funding that is being provided for in relation to the program.

The committee understands from informal correspondence with the department that funding for any expenditure under the program would need to be sought through the Budget process and, as such, will form part (where relevant) of the Appropriation Bills. Further, the committee understands that when an individual project qualifies for support, the amount of support it receives will become publicly available.

However, the committee remains concerned that the total funding prescribed for this program, or even an estimated amount of funding, is not indicated in the instrument or explanatory statement.

The committee notes that the scrutiny of instruments made under the *Industry Research and Development Act 1986* is a key aspect of parliamentary scrutiny and control of Commonwealth expenditure. In this regard, the committee is concerned that the non-disclosure of the funding amount may inhibit Parliament's capacity to effectively scrutinise such instruments.

**The committee therefore requests your advice as to whether at least a high-level indication as to the total amount of funding that is expected to be expended on the Supporting Critical Transmission Infrastructure Program can be provided to the Parliament while the instrument is still subject to disallowance, noting the importance of effective parliamentary oversight of executive expenditure.**

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

Noting this, and to facilitate the committee's timely consideration of the matters above, the committee would appreciate your response by **16 December 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**



2 December 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 10 November 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 24 November 2021.

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

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

Thank you for your further 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 acknowledges your detailed advice regarding the technical nature of these instruments.

The committee also acknowledges your further advice about the standards made under section 12 of the *Road Vehicle Standards Act 2018*, and their exemption from sunseting by the instrument.

On the basis of this advice, the committee has decided to conclude its examination of this particular instrument and has resolved to withdraw its notice of motion to disallow the instrument, noting that the issues raised by the committee are systemic and it would be appropriate for them to be considered at a broader level.

While the committee has concluded its examination of this instrument, I take this opportunity to emphasise that the committee retains significant, long-standing concerns about the current scope of exemptions from disallowance and sunseting and the fact that they are often contained in delegated legislation rather than primary legislation. This view is detailed in the interim and final reports of the committee's recent inquiry into the exemption of delegated legislation from parliamentary oversight and has been drawn to the attention of the Senate in the committee's delegated legislation monitors on numerous occasions this year.

Noting the committee's significant technical scrutiny concerns about this matter, the committee intends to provide a detailed submission about these issues to the 2021-22 Review of the *Legislation Act 2003*.

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**



2 December 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]**

Thank you for your response of 12 November 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instruments.

The committee considered your response at its private meeting on 1 December 2021.

The committee notes your advice that you consider a timeframe of five years would ensure that taxation officers can share the protected information with the relevant State and Territory agencies administering the relevant programs for the specified purposes over a reasonable period, especially in circumstances where extended compliance activities may occur.

The committee welcomes your undertaking to amend the principal Declaration so that it repeals five years from commencement and looks forward to the amendment being made at the earliest opportunity.

The committee also notes your advice in relation to a possible review of the operation of the instruments and in relation to privacy.

On the basis of your advice and your undertaking, the committee has concluded its examination of the instruments.

In light of this, the committee has resolved to withdraw its notice of motion to disallow the Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Declaration 2021 [F2021L01157].

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**



8 December 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—COVID-19 Vaccine Claims Scheme**

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 COVID-19 Vaccine Claims Scheme. 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 (Health Measures No. 6) Regulations 2021 [F2021L01430]</b>	COVID-19 Vaccine Claims Scheme	Not specified	This instrument establishes legislative authority for government spending on the COVID-19 Vaccine Claims Scheme, which will provide compensation for individuals who suffer loss or injury as a result of being vaccinated against COVID-19.

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 29 March 2022.

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**



8 December 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—Supply Chain Resilience Initiative**

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 Supply Chain Resilience Initiative. 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:

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>
<b>Industry Research and Development (Supply Chain Resilience Initiative Program) Instrument 2021 [F2021L01456]</b>	Supply Chain Resilience Initiative	\$107.2 million over four years from 2020-21	Funding will be provided to incentivise business to invest in capabilities to address vulnerabilities in supply chains for critical products. The program aims to achieve its purpose by incentivising Australian businesses to financially invest in the development and implementation of long term sustainable solutions that address vulnerabilities in supply chains for critical products or inputs identified in

Instrument	Grant/Program	Amount	Description
			the Government's Sovereign Manufacturing Capability Plans.

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 11 May 2022.

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**



8 December 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

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. 6) Regulations 2021 [F2021L01430]</b>	COVID-19 Vaccine Claims Scheme	Not specified	This instrument establishes legislative authority for government spending on the COVID-19 Vaccine Claims Scheme, which will provide compensation for individuals who suffer loss or injury as a result of being vaccinated against COVID-19.
<b>Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 9) Regulations</b>	COVID-19 Disaster Payment	For the first full week after a state or territory has reached 80 per cent vaccination of its adult population, individuals not on income support will	This instrument enables the government to make up to two further COVID-19 disaster payments to individuals who were eligible for the payment at the time their state or

Instrument	Grant/Program	Amount	Description
2021 [F2021L01434]		<p>receive a flat rate of \$450 if they have lost at least 8 hours of work. Those on income support will receive \$100 for that week.</p> <p>For the second full week after a state or territory has reached 80 per cent vaccination of its adult population, individuals not on income support will receive a flat rate of \$320 payment (in line with JobSeeker Payment). Those on income support will not be eligible for the payment for this week.</p>	<p>territory reached 80 per cent vaccination but then are no longer eligible.</p>

Should your committee decide to further examine either of the above instruments, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate for both instruments expires on 29 March 2022. The committee has also drawn these instruments to the attention of the Senate Community Affairs Legislation Committee and the Senate Finance and Public Administration Legislation Committee, respectively.

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**



8 December 2021

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

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

Dear Chair,

### **Legislative instrument specifying Commonwealth expenditure—COVID-19 Disaster Payment**

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 COVID-19 Disaster Payment. 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:

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>
<b>Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 9) Regulations 2021 [F2021L01434]</b>	COVID-19 Disaster Payment	For the first full week after a state or territory has reached 80 per cent vaccination of its adult population, individuals not on income support will receive a flat rate of \$450 if they have lost at least 8 hours of work. Those on income support will receive \$100 for that week.  For the second full week after a state or territory has	This instrument enables the government to make up to two further COVID-19 disaster payments to individuals who were eligible for the payment at the time their state or territory reached 80 per cent vaccination but then are no longer eligible.

Instrument	Grant/Program	Amount	Description
			reached 80 per cent vaccination of its adult population, individuals not on income support will receive a flat rate of \$320 payment (in line with JobSeeker Payment). Those on income support will not be eligible for the payment for this week.

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 29 March 2022.

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**



8 December 2021

Senator Andrew Bragg  
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 instrument specifying Commonwealth expenditure—Port Kembla Gas  
Generator Investment Development Grant 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 Port Kembla Gas Generator Investment Development Grant 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:

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>
<b>Industry Research and Development (Port Kembla Gas Generator Investment Development Grant Program) Instrument 2021 [F2021L01386]</b>	Port Kembla Gas Generator Investment Development Grant Program	\$30 million	The program will provide a grant of up to \$30 million to Australian Industrial Power Pty Ltd to support early works on the Port Kembla gas generator project.

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 29 March 2022.

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**



8 December 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, as is the case with the instrument listed below, 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):

- Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 4) Determination 2021 [F2021L01443]

This instrument is being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 17 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.**

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**



8 December 2021

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

Via email: [minister.mckenzie@infrastructure.gov.au](mailto:minister.mckenzie@infrastructure.gov.au)

Dear Minister,

### **Instruments exempt from disallowance**

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

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

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

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

- Social Security (Australian Government Disaster Recovery Payment—Victorian storms and floods) Determination 2021 (No. 8) [F2021L01429]

This instrument is being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 17 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**



8 December 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):

- Remuneration Tribunal (Members of Parliament) Amendment Determination (No. 1) 2021 [F2021L01446]

This instrument is being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 17 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**



THE HON BEN MORTON MP  
MINISTER ASSISTING THE PRIME MINISTER AND CABINET  
THE MINISTER FOR THE PUBLIC SERVICE  
SPECIAL MINISTER OF STATE

Reference: MC22-000003

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee for the Scrutiny of Delegated Legislation  
Parliament House  
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

I refer to your correspondence of 8 December 2021 to Senator the Hon Simon Birmingham, Minister for Finance regarding instruments exempt from disallowance. Senator Birmingham has referred your correspondence to me as the Minister responsible for the Remuneration Tribunal. I sincerely apologise for the delay in responding to you.

Thank you for bringing to my attention Senate standing order 23(4A) which empowers the Standing Committee for the Scrutiny of Delegated Legislation to scrutinise delegated legislation which is exempt from disallowance.

The Remuneration Tribunal (Members of Parliament) Amendment Determination (No. 1) 2021 is exempt from disallowance by virtue of subsection 47(7) of the *Parliamentary Business Resources Act 2017* which provides that determinations of the Remuneration Tribunal made under section 45 of that Act are legislative instruments, but that section 42 (disallowance) of the *Legislation Act 2003* does not apply to them.

This exemption ensures the independence of the Remuneration Tribunal is maintained, particularly in matters which pertain to the remuneration and allowances of Senators and Members of the House of Representatives.

An amended Explanatory Statement is attached and will be published shortly. Please advise if this does not meet the Senate's requirements.

I am assured the Remuneration Tribunal Secretariat will ensure all future explanatory statements will include substantive justification of the appropriateness of an instrument's exemption from disallowance.

Thank you for bringing this matter to my attention.

Yours sincerely

**BEN MORTON**

5/2/2022



## REMUNERATION TRIBUNAL

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### **Replacement Explanatory Statement: Remuneration Tribunal (Members of Parliament) Amendment Determination (No. 1) 2021**

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**This Explanatory Statement replaces the Explanatory Statement registered on 19 October 2021 for Remuneration Tribunal (Members of Parliament) Amendment Determination (No.1) 2021. Paragraphs 7 and 8 clarify the instrument's exemption from disallowance.**

1. The determination is made under the *Parliamentary Business Resources Act 2017* (the PBR Act). Sections 45 and 46 of the PBR Act require the Tribunal to make determinations in relation to various matters for members, and former members, of the Parliament at least once each year.
2. The Tribunal must determine the remuneration to be paid to members, the rates of travel allowances for domestic travel, and the allowances and expenses to be paid to former members. The Tribunal must publish its reasons for making a determination.
3. The Tribunal also has functions under section 35 of the PBR Act relating to travel expenses, travel and motor vehicle allowances and other public resources. The Tribunal must inquire annually into travel expenses and travel allowances for domestic travel (except rates of travel allowances for domestic travel which it determines), and may be asked by the Special Minister of State to inquire into other matters. Regulations must be made or amended in accordance with the Tribunal's recommendations.

#### **Consultation**

##### *Internet and telephone services at private residences*

4. Mr Andrew Wilkie MP, Member for Clark, wrote to the Tribunal on 25 March 2021 requesting the Tribunal modernise the provision of internet and telephone services in its Members of Parliament Determination.
5. The Tribunal wrote to the Hon Simon Birmingham MP, Minister for Finance on 10 August 2021, seeking his views on proposed amendments to its Members of Parliament Determination. Minister Birmingham responded to the Tribunal on 26 September 2021, in support of the proposed amendments.

#### **Retrospectivity**

6. Any retrospective application of this determination is in accordance with subsection 12(2) of the *Legislation Act 2003* as it does not affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) to that person's disadvantage, nor does it impose any liability on such a person.

#### **Exemption from disallowance**

7. Subsection 47(7) of the PBR Act provides that this determination is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to it.

8. Exemption from disallowance is appropriate in the context of this instrument, as it amends the entitlements of Senators and Members of the House of Representatives.

**The power to repeal, rescind and revoke, amend and vary**

9. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**Details of the determination are as follows:**

10. Section 1 specifies the name of the instrument.
11. Section 2 specifies when the instrument commences.
12. Section 3 specifies the authority for the instrument.
13. Section 4 outlines the effect of the instrument specified in a Schedule to the instrument.

**SCHEDULE 1 – AMENDMENTS**

14. Item 1 removes the reference to 'telephone' in section 3.15(a).
15. Item 2 removes the reference to 'fixed internet and telephone' in section 3.15(b).
16. Item 3 removes various references to 'telephone' in section 3.15(c).
17. Item 4 repeals section 3.17 in its entirety and replaces it with a new definition of 'service'.

**Authority:** Section 45  
*Parliamentary Business Resources Act 2017*



11 March 2022

The Hon Ben Morton MP  
Special Minister of State  
Parliament House  
CANBERRA ACT 2600

Via email: [DLO-SMOS@finance.gov.au](mailto:DLO-SMOS@finance.gov.au)

Dear Minister,

**Instruments exempt from disallowance—Remuneration Tribunal (Members of Parliament) Amendment Determination (No. 1) 2021 [F2021L01446]**

Thank you for your letter of 3 February 2022 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument. The committee considered your letter at its private meeting on 9 March 2022.

The committee appreciated receiving the additional information you have provided in relation to the source of the instrument's exemption from disallowance and the rationale for the exemption.

The committee would appreciate if a replacement explanatory statement setting out these details was registered on the Federal Register of Legislation as soon as practicable. In relation to the content of the replacement explanatory statement, I would like to draw to your attention the committee's recently published guideline on instruments exempt from disallowance (**attached**). In particular, please note the committee's expectation that explanatory statements to exempt instruments should set out *in detail* the exceptional circumstances that are said to justify the exemption of the instrument from disallowance.

The committee also welcomes your advice that the Remuneration Tribunal Secretariat will ensure all future explanatory statements will include further detail in relation to an instrument's exemption from disallowance.

On the basis of your advice, the committee has concluded its examination of the above instrument. The committee will examine any future instruments with the benefit of the additional information to be set out in the explanatory statements to those instruments.

In the interests of transparency, I note that this correspondence will be published on the committee's website.

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



8 December 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):

- Australia New Zealand Food Standards Code — Schedule 20 – Maximum residue limits Variation Instrument No. APVMA 6, 2021 [F2021L01426]
- Food Standards (Application A1218 –  $\beta$ -Galactosidase from *Bacillus subtilis* (Enzyme)) Variation [F2021L01436]
- Food Standards (Application A1214 – Nicotinamide riboside chloride as Vitamin B3 in FSMP) Variation [F2021L01431]

These instruments are being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 17 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**



8 December 2021

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Via email: [tsrdlos@treasury.gov.au](mailto:tsrdlos@treasury.gov.au); [Committeescrutiny@treasury.gov.au](mailto:Committeescrutiny@treasury.gov.au)

Dear 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):

- Superannuation Guarantee (Administration) – Choice of Fund – Written Guidelines for the Reduction of an Increase in an Employer's Individual Superannuation Guarantee Shortfall Determination 2021 [F2021L01453]
- Superannuation Guarantee (Administration) – Stapled Fund – Guidelines for the Reduction of an Employer's Individual Superannuation Guarantee Shortfall for Late Contributions Due to Non-acceptance by Notified Stapled Fund Determination 2021 [F2021L01451]

These instruments are being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 17 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**