



AUSTRALIAN
SENATE

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

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

4 February 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: tsrdlos@treasury.gov.au
CC: committeescrutiny@treasury.gov.au

Dear Treasurer,

**ASIC Corporations – various instruments [F2020L00962] [F2020L01045] [F2020L01064]
[F2020L01066] [F2020L01069]**

Thank you for your response of 28 January 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 3 February 2021. Whilst noting your advice, the committee remains concerned that these five instruments raise significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's scrutiny concerns are detailed in Chapter 1 of its *Delegated Legislation Monitor 2 of 2021*, available on the committee's website at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

As set out in the Monitor, the committee welcomes your constructive engagement in relation to the committee's scrutiny of these instruments. However, the committee remains of the view that each of the five ASIC instruments should be amended to limit their duration to that previously suggested by the committee.

The committee has already given protective notices of motion to disallow each of the five instruments to provide the Senate with sufficient time to consider the committee's scrutiny concerns. The committee has resolved not to withdraw these notices of motion in order to highlight the significance of its concerns.

Your response to the committee's request for further advice in relation to the instruments, as set out in the Monitor, will inform the committee's consideration of whether to withdraw the notices of motion to disallow these instruments.

To facilitate the committee's timely consideration of these matters and noting that the disallowance period for the ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962] expires on 22 February 2021, the committee would appreciate your response by **11 February 2021**.

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

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

Yours sincerely,

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



4 February 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: Josh.Frydenberg.MP@aph.gov.au

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

Dear Treasurer,

Competition and Consumer (Class Exemption—Collective Bargaining) Determination 2020 [F2020L01334]

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

Modification of primary legislation

Parliamentary oversight

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

The Competition and Consumer (Class Exemption—Collective Bargaining) Determination 2020 (the instrument) provides a class exemption for small businesses to allow them to engage in collective bargaining, by exempting eligible businesses from the operation of sections 45AF, 45AG, 45AJ, 45AK and 45 of the *Competition and Consumer Act 2010* (the Act). The exemptions from the Act apply to businesses with less than \$10 million annual turnover who are part of the collective bargaining group, as well as franchisees or fuel retailers negotiating with their respective franchisors or fuel wholesalers, regardless of their annual turnover. The instrument will cease on 30 June 2030 and is exempt from sunseting by subsection 54(1) of the *Legislation Act 2003*.

Provisions that modify or exempt persons or entities from the operation of primary legislation may limit parliamentary oversight and may subvert the appropriate relationship between Parliament and the executive. The committee considers that such measures should ordinarily be included in primary legislation unless a sound justification is provided for the use of delegated legislation. In

this instance, the explanatory statement to the instrument does not justify why it is necessary and appropriate for these exemptions to be set out in delegated legislation.

The committee is also concerned that these measures appear to be intended to remain in force for 10 years, until the instrument self-ceases on 30 June 2030. The committee's longstanding view is that provisions which modify or exempt persons or entities from the operation of primary legislation should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight.

In light of this, from a scrutiny perspective, the committee considers that the instrument should be amended to specify that it ceases to operate three years after commencement. If it becomes necessary to extend the operation of these provisions, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

The committee would therefore appreciate your advice as to:

- **why it is considered necessary and appropriate for the exemptions set out in the instrument to be provided for in delegated legislation rather than primary legislation; and**
- **whether the instrument could be amended to specify that it ceases to operate three years after commencement, or if not, why not.**

Independent merits review

Senate standing order 23(3)(i) requires the committee to examine each legislative instrument as to whether it unduly excludes, limits or fails to provide for independent review of decisions affecting rights, liberties, obligations or interests.

Section 12 of the instrument provides that the Australian Competition and Consumer Commission (the ACCC) may determine whether the class exemption applies in relation to certain initial contracts. However, while the explanatory statement makes references to the 'Tribunal' it is unclear from the explanatory materials whether decisions made under the instrument, including those made under section 12, are subject to independent merits review.

Where an instrument empowers a decision-maker to make discretionary decisions with the capacity to affect rights, liberties, obligations or interests, the committee ordinarily expects that those decisions should be subject to independent merits review.

The committee would therefore appreciate your advice as to:

- **whether any decisions made under the instrument, including under section 12, are subject to independent merits review;**
- **if so, the scope of independent merits review provided for decision made under the instrument; and**
- **if no independent merits review is available for decisions made under the instrument, why not.**

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

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **18 February 2021**.

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

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

Thank you for your assistance with this matter.

Yours sincerely,

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



4 February 2021

The Hon Justice William Alstergren
Chief Justice, Family Court of Australia
Chief Judge, Federal Circuit Court of Australia
GPO Box 9991
MELBOURNE VIC 3001

Via email: Associate.ChiefJudgeAlstergren@federalcircuitcourt.gov.au
CC: The Hon Christian Porter MP, Attorney-General
attorney@ag.gov.au; DLO@ag.gov.au

Dear Chief Justice,

**Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020
[F2020L01361]**

**Federal Circuit Court Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020
[F2020L01362]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable 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 has resolved to request your advice in relation to these matters.

Compliance with legislative requirements

Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements. These include the requirements prescribed by the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act) in relation to statements of compatibility with human rights, and the requirements of an instrument's enabling legislation.

The Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01361] and the Federal Circuit Court Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01362] (the instruments) facilitate the use of consistent Notices of Child Abuse, Family Violence or Risk in the Family Court of Australia and the Federal Circuit Court.

The explanatory statement to each instrument explains that the instruments are rules of court and that paragraph 8(8)(d) of the *Legislation Act 2003* (the Legislation Act) provides that rules of court are not legislative instruments for the purposes of that Act. As a result of this, each explanatory statement suggests that the requirements of the Human Rights Act in relation to the inclusion of a statement of compatibility with human rights do not apply to the instruments.

However, the committee notes that subsection 123(2) of the *Family Law Act 1975* provides that the Legislation Act applies to Rules of the Family Court as if a reference to a legislative instrument were a reference to a rule of court, including section 42 of the Legislation Act in relation to disallowance. Subsection 81(3) of the *Federal Circuit Court of Australia Act 1999* provides for the same in relation to Rules of the Federal Circuit Court. A note to subsection 8(8) of the Legislation Act confirms that rules of court may, despite the general provisions of that subsection, be registered under the Legislation Act and may be otherwise treated as if they were legislative instruments by their enabling legislation.

The committee notes that the requirement for a statement of compatibility with human rights arises from section 9 of the Human Rights Act, which provides that a statement of compatibility must be prepared in relation to a legislative instrument to which section 42 (disallowance) of the Legislation Act applies. The committee is therefore of the view that, due to the operation of subsection 123(2) of the *Family Law Act 1975* and subsection 81(3) of the *Federal Circuit Court of Australia Act 1999*, it appears that a statement of compatibility with human rights is required for both instruments.

In light of the above, the committee would appreciate your advice as to whether, as a result of their enabling legislation, each instrument is required to comply with the requirements of the *Human Rights (Parliamentary Scrutiny) Act 2011* and therefore be accompanied by a statement of compatibility with human rights.

Retrospective effect

Senate standing order 23(3)(h) requires the committee to scrutinise each instrument as to whether it trespasses unduly on personal rights and liberties.

Both instruments appear to provide for the retrospective application of specified provisions of each instrument. Rules 27.10, 27.11 and 27.12 of the Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01361] set out transitional provisions in relation to rules 2.02, 2.04B and subrule 2.04D(1), respectively. Rules 47.02, 47.03, 47.04, and 47.06 of the Federal Circuit Court Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 set out transitional provisions in relation to rules 22A.02, 22A.03, 22A.04 and 22A.07, respectively.

Where an instrument may have a retrospective effect or application the committee considers that the explanatory statement should explain whether the retrospective effect or application may disadvantage any person. In this regard, the committee notes that neither explanatory statement addresses whether the relevant instrument may apply retrospectively nor whether any such retrospective application may disadvantage any person.

In light of the above, the committee would appreciate your advice as to whether the instruments may apply retrospectively and, if so, whether this retrospective application would disadvantage any person.

Please note that 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. Noting that the 15th sitting day after both instruments were tabled in the Senate is 15 February 2021, the committee has resolved to give notices of motion to disallow the instruments on that day as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **18 February 2021**.

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

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

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



4 February 2021

The Hon David Littleproud MP
Minister for Agriculture, Drought and Emergency Management
Parliament House
CANBERRA ACT 2600

Via email: minister.littleproud@agriculture.gov.au

CC: DLO-MO@agriculture.gov.au

Dear Minister,

Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 [F2020L01401]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Parliamentary oversight

Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 (the instrument) prescribes the Supporting Agricultural Shows and Field Days Program (the Program) to provide agricultural show societies and organisers of field days with reimbursements for shows cancelled due to COVID-19.

The Program will be eligibility based, and the explanatory statement explains that the applications will be assessed against eligibility criteria in two stages. The explanatory statement further explains that the eligibility criteria for accessing the program will be set out in the program guidelines, to be available on the Department's website.

The committee considers that details relating to the operation of measures prescribed by an instrument, including at least broad details in relation eligibility criteria for grants, should be set out in the explanatory statement to an instrument so that such details are available to be scrutinised by the Parliament.

In light of the above, the committee requests your advice as to whether the explanatory statement to the instrument could be amended to include further details about the operation of the Program, including at least broad details in relation to the eligibility criteria for grants under the Program.

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

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **18 February 2021**.

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

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

Thank you for your assistance with this matter.

Yours sincerely,

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



4 February 2021

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

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

CC: rezana.berman@health.gov.au

Dear Minister,

Narcotic Drugs (Licence Charges) Amendment (Cannabis-Related Manufacture Licences) Regulations 2020 [F2020L01327]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument.

Levying of taxation in delegated legislation
Matters of interest to the Senate

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary legislation rather than delegated legislation). This includes whether an instrument imposes a tax or levy. In addition, Senate 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.

The Narcotic Drugs (Licence Charges) Amendment (Cannabis-Related Manufacture Licences) Regulations 2020 (the instrument) is made under the Narcotic Drugs (Licence Charges) Act 2016 (the Act) and amends the Narcotic Drugs (Licence Charges) Regulation 2016 to extend cannabis licence charges to holders of manufacture licenses. The explanatory statement to the instrument justifies that this levy should be extended to cannabis-related manufacture licenses and permits to ensure adequate cost recovery for the Department of Health's work in administering the scheme.

The committee considers that one of the most fundamental functions of the Parliament is to levy taxation. In this regard, the committee's consistent scrutiny view is that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax. In this instance, it does not appear there is a cap on the face of the Act as to the amount of tax that may be imposed, which compounds the committee's scrutiny concerns in relation to this tax due to the limited parliamentary oversight afforded to it.

As the levying of taxation in delegated legislation is a systemic technical scrutiny matter, the committee has resolved draw these instruments to the attention of the Senate in its *Delegated Legislation Monitor 2 of 2021*. However, the committee is not seeking any further information or advice from you in relation to this particular 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*.

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

Thank you for your assistance with this matter.

Yours sincerely,

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



4 February 2021

The Hon Michael McCormack MP
Minister for Infrastructure, Transport and Regional Development
Parliament House
CANBERRA ACT 2600

Via email: dlo.mccormack@infrastructure.gov.au

Dear Minister,

Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Drafting

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

Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402] (the instrument) provides for the operational, procedural and safety risk management standards in relation to aerial work operations for aeroplanes and rotorcraft.

Sections 3.01 and 5.02 appear to be incomplete and use the word 'reserved' to indicate parts of the sections for which the law has not yet been provided for in the instrument. In addition to these specific sections, the word 'reserved' is also used as a placeholder for the entirety of Chapters 10, 19 and 20.

The instrument's explanatory statement explains that section 3.01 is reserved for future use. The explanatory statement also explains that provisions in Chapter 5 are reserved for future safety management systems rules, and that Chapters 10, 19 and 20 are reserved for future provisions that may be required.

The committee is particularly concerned that the use of the placeholder 'reserved' in sections 3.01 and 5.02 may create uncertainty about the law, and notes that the explanatory statement does not adequately address why it is necessary for the content of these sections to be completed at an unspecified later date.

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

- **why it is considered necessary and appropriate for the substantive terms of the law in sections 3.01 and 5.02 to be provided at a later, unspecified date;**

- **why it is considered necessary and appropriate for Chapters 10, 19 and 20 of the instrument to be reserved in case they are needed for future provisions, and**
- **whether a clearer explanation for the approach can be set out in notes to the relevant provisions of the instrument.**

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

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **18 February 2021**.

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

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

Thank you for your assistance with this matter.

Yours sincerely,

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



4 February 2021

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

Via email: dlo@communications.gov.au

Dear Minister,

**Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 3)
[F2020L01337]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument.

***Levying of taxation in delegated legislation
Matters of interest to the Senate***

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary legislation rather than delegated legislation). This includes whether an instrument imposes a tax or levy. In addition, Senate 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.

The Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 3) (the instrument) amends the Radiocommunications (Transmitter Licence Tax) Determination 2015 to provide for the rate of tax in relation to area-wide transmitter licences. The instrument is made under subsection 7(1) of the Radiocommunications (Transmitter Licence Tax) Act 1983 (the Act) which empowers the Australian Media and Communications Authority (ACMA) to set the amount of tax in relation to transmitter licences. However, the explanatory statement does not justify why it is considered necessary and appropriate for rate of this tax to be left to be determined in delegated legislation.

The committee considers that one of the most fundamental functions of the Parliament is to levy taxation. In this regard, the committee's consistent scrutiny view is that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax. In this instance, it does not appear there is a cap on the face of the Act as to the amount of tax that may be imposed, which compounds the committee's scrutiny concerns in relation to this tax due to the limited parliamentary oversight afforded to it.

As the levying of taxation in delegated legislation is a systemic technical scrutiny matter, the committee has resolved draw these instruments to the attention of the Senate in its *Delegated Legislation Monitor 2 of 2021*, however the committee is not seeking any further information or advice from you in relation to this particular instrument. As a matter of best practice for the future, the committee considers that explanatory statements to instruments which set the rate of a tax should set out why it is considered necessary and appropriate to set the rate of a tax in delegated legislation, as opposed to specifying such matters in primary legislation.

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

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

Thank you for your assistance with this matter.

Yours sincerely,

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



4 February 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: tsrdlos@treasury.gov.au
CC: committeescrutiny@treasury.gov.au; chris.reside@treasury.gov.au

Dear Treasurer,

Tax Agent Services (Specified BAS Services No. 2) Instrument 2020 [F2020L01406]

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

Modification of primary legislation

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary legislation rather than delegated legislation). In addition, Senate standing order 23(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes where an instrument enacts significant policy measures or appears to limit parliamentary oversight.

The Tax Agent Services (Specified BAS Services No. 2) Instrument 2020 [F2020L01406] (the instrument) specifies that certain services are business activity statement services (BAS services) for the purposes of the definition of a 'BAS service' in section 90-10 of the *Tax Agent Services Act 2009*. This enables BAS agents to lawfully provide the following services without being a registered taxation agent:

- a service under the *Superannuation Guarantee (Administration) Act 1992* to the extent that the service relates to a payroll function or payments to contractors;
- a service under the *Superannuation Guarantee Charge Act 1992*;
- a service under Part 3B of the *Superannuation Industry (Supervision) Act 1993*;
- a service under Part 5-30 in Schedule 1 to the *Tax Administration Act 1953*;
- a service under sections 202CD and 202CF of the *Income Tax Assessment Act 1936*; or
- a service under section 9 of the *A New Tax System (Australian Business Number) Act 1999*.

The committee has long been concerned with provisions in delegated legislation which modify the operation of primary legislation, particularly where those modifications appear to substantially depart from the original provision. The committee therefore expects the explanatory statement to such instruments to comprehensively justify the nature and scope of the relevant modifications.

In this regard, the committee notes that the explanatory statement explains that there is a need for ongoing flexibility for the Tax Practitioners Board to determine what is considered a BAS service. While acknowledging the need for flexibility it remains unclear why it was considered necessary and appropriate to address these matters in delegated legislation considering the significant policy changes that the instrument provides.

The committee is also concerned that these modifications to the operation of primary legislation appear to be intended to remain in force for at least 10 years (until the instrument sunsets under the *Legislation Act 2003*). The committee's longstanding view is that provisions which modify or exempt persons or entities from the operation of primary legislation should cease to operate no more than three years after they commence. This is to ensure a minimum degree of regular parliamentary oversight.

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

- **why it is considered necessary and appropriate for the measures in the instrument to be provided for in delegated legislation, noting that they make substantial policy changes which appear more appropriate for parliamentary enactment; and**
- **whether the instrument can be amended to specify that it will cease to operate three years after commencement.**

Compliance with authorising legislation

Senate standing order 23(3)(a) requires the committee to scrutinise each legislative instrument as to whether it accords with its enabling Act and otherwise complies with all legislative requirements.

The instrument is made under subsection 90-10(1A) of the *Tax Agent Services Act 2009* (the Act) and, as noted above, expands the scope of a BAS service as defined by the Act. However, the explanatory statement does not identify the legislative power by which the definition of a BAS service may be extended to matters which may not be included or closely related to the concept of a BAS service as set out in the Act.

In the committee's view it is unclear that services related to the superannuation guarantee charge are within the concept of a 'BAS service', and therefore, without further explanation, the committee considers that the legislative authority for making the instrument is unclear.

In light of this, the committee requests your advice as to whether, and if so, how, subsection 90-10(1A) of the *Tax Agent Services Act 2009* enables the definition of a 'BAS service' to be extended to services related to the superannuation guarantee charge.

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

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **18 February 2021**.

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

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

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



AUSTRALIAN
SENATE

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

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

4 February 2021

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

Via email: dlo@communications.gov.au

Dear Minister,

**Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020
[F2020L01061]**

Thank you for your response of 14 January 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 3 February 2021. On the basis of your advice, the committee has concluded its examination of the instrument.

The committee welcomes the Australian Competition and Consumer Commission's undertaking to amend the instrument to specify it ceases after 5 years of operation. In light of this undertaking, the committee has resolved to withdraw the disallowance notice in place on the instrument.

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

Thank you for your assistance with this matter.

Yours sincerely,

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



4 February 2021

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

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

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

The instruments listed in **Attachment A**, in combination with their enabling Acts, authorise the Commonwealth to spend public money on the identified grants or programs, including a package of support for Australia's thalidomide survivors. This initiative addresses a number of the recommendations of the final report of the Community Affairs References Committee inquiry into Support for Australia's Thalidomide Survivors, presented on 22 March 2019.

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.

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 any 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 15 February 2021.

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

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

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

Yours sincerely,

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

Attachment A

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 5) Regulations 2020 [F2020L01312]	Support for Australia's Thalidomide Survivors	\$44.9 million over four years from 2020-21	<p>Funding will be provided for measures under the support package, including:</p> <ul style="list-style-type: none"> • one-off lump sum payment scaled according to level of disability; • an Extraordinary Assistance Fund to support activities of daily living which are adversely affected due to the nature of disability or impaired functional capacity, such as home and vehicle modifications; • a Health Care Assistance Fund to provide reimbursement of out-of-pocket health care expenses required as a result of the thalidomide related injuries; • annual payments scaled according to level of disability; • to third party organisations to administer payments and to establish a national disability support service to identify and coordinate specific thalidomide support services for the survivors; and • a national site of recognition for thalidomide survivors and their families in the form of a public memorial to be located within the Parliamentary Triangle in Canberra. <p>The support package addresses a number of the recommendations of the final report of the Senate Community Affairs References Committee inquiry into Support for Australia's Thalidomide Survivors, presented on 22 March 2019.</p>

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 4) Regulations 2020 [F2020L01314]	Disability Royal Commission and Other Support Services	\$117 million over three years from 2019-20	Funding will be provided for the Disability Royal Commission and other support services for people with disability who have experienced violence, abuse, neglect or exploitation (and others affected by this ill- treatment).
	Seniors Connected— Village Hubs	\$4.7 million over four years from 2020-21	Funding will be provided for the Village Hubs initiative under the Seniors Connected Program, which supports the establishment and operation of community-based organisations (Village Hubs) offering social, physical and other activities or opportunities to older Australians living in their community.



4 February 2021

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

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

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

Senator Michaelia Cash, Minister for Employment, Skills, Small and
Family Business, minister.cash@jobs.gov.au

The Hon David Littleproud MP, Minister for Agriculture, Drought and
Emergency Management, minister.littleproud@agriculture.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—COVID-19 response measures

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

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

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

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 7) Regulations 2020 [F2020L01360]	Extended New Enterprise Incentive Scheme—COVID 19 response	\$5.7 million over two years from 2020-21	Funding will be provided for the expansion of the New Enterprise Incentive Scheme to provide existing micro business owners impacted by COVID-19 with access to small business assistance services.
Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 [F2020L01401]	Supporting Agricultural Shows and Field Days Program	\$39.025 million in 2020-21	Funding will be provided for reimbursements to agricultural show societies and organisers of field days that cancelled their 2020 show because of COVID-19. In addition, \$100,000 grants will be provided to Agricultural Shows Australia and the Association of Agricultural Field Days of Australasia.
Industry Research and Development (Supporting Small Business to Go Digital Post-COVID-19 Program) Instrument 2020 [F2020L01413]	Supporting Small Business to Go Digital Post-COVID-19 Program	\$7.47 million in 2020–21	Funding will be provided for a ‘Go Digital’ advertising campaign to promote the benefits of digital technology to small business, and to fund the Australian Small Business Advisory Services Program and other Australian Government services directed at supporting small businesses’ digital capability.

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 any 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 (Education, Skills and Employment Measures No. 7) Regulations 2020 [F2020L01360]—15 February 2021
- Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 [F2020L01401]—15 February 2021
- Industry Research and Development (Supporting Small Business to Go Digital Post-COVID-19 Program) Instrument 2020 [F2020L01413]—17 February 2021.

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

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

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

Yours sincerely,

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



4 February 2021

Senator the Hon James McGrath
Chair
Senate Education and Employment Legislation Committee
Parliament House
CANBERRA ACT 2600

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

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

Senator Michaelia Cash, Minister for Employment, Skills, Small and
Family Business, minister.cash@jobs.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

The instruments listed in **Attachment A**, 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.

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 any 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 following dates:

- Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 6) Regulations 2020 [F2020L01310]—15 February 2021
- Industry Research and Development (BusinessBalance Program) Instrument 2020 [F2020L01345]—15 February 2021
- Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 7) Regulations 2020 [F2020L01360]—15 February 2021
- Industry Research and Development (Supporting Small Business to Go Digital Post-COVID-19 Program) Instrument 2020 [F2020L01413]—17 February 2021.

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

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

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

Yours sincerely,

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

Attachment A

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 6) Regulations 2020 [F2020L01310]	PaTH Business Placement Partnerships	\$11.9 million over three years from 2019-20	Funding will be provided to trial the development and delivery, in collaboration with industry and employer groups, of measures to assist young people to find employment, including apprenticeships, traineeships and other work experience opportunities.
	Australian Training Awards	\$1.1 million per financial year, with current funding levels in place until 2023-24	Funding will be provided to the peak, national awards program for the vocational education and training sector.
	National Careers Institute—Digital Platform	\$9.4 million over five years from 2019-20	Funding will be provided for the development of a national website that will provide careers information to support individuals and organisations to access, understand and compare post-compulsory skills development pathways, occupation choices and labour market needs.
	National Training System Commonwealth Own Purpose Expenditure Program	\$107.1 million over three years from 2020-21	Funding will be provided for certain projects and activities under the National Training System Commonwealth Own Purpose Expenditure Program, including statistical and research services provided by the National Centre for Vocational Education Research, the Vocational Education and Training Data Streamlining project, the National Register for Vocational Education and Training (training.gov.au), and the Performance Information for Vocational Education and Training projects.

Instrument	Grant/Program	Amount	Description
Industry Research and Development (BusinessBalance Program) Instrument 2020 [F2020L01345]	BusinessBalance Program	\$6.5 million, comprised of a grant to Beyond Blue of up to \$4.26 million and a grant to Deakin University of up to \$2.24 million	<p>Funding will be provided for activities aimed at increasing the number of small business owners taking proactive, preventative and early steps to improve their mental health. Activities that will be supported under the BusinessBalanceProgram include:</p> <ul style="list-style-type: none"> • providing free, accessible and tailored support for small business owners by expanding Beyond Blue’s NewAccess program; and • building the ‘mental health literacy’ of trusted business advisers (such as accountants and financial advisers) by expanding a free accredited professional development program to be delivered online by Deakin University.
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 7) Regulations 2020 [F2020L01360]	Relocation Assistance to Take Up a Job Program	\$17.4 million over two years from 2020-21 for the program, including \$15.4 million for the program modification	Funding will be provided for the temporary modification of the existing Relocation Assistance to Take Up a Job Program to make it available to eligible individuals who relocate to other areas of Australia to take up short-term agricultural work, including for the purpose of addressing labour shortages resulting from COVID-19.
Industry Research and Development (Supporting Small Business to Go Digital Post-COVID-19 Program) Instrument 2020 [F2020L01413]	Supporting Small Business to Go Digital Post-COVID-19 Program	\$7.47 million in 2020–21	Funding will be provided for a ‘Go Digital’ advertising campaign to promote the benefits of digital technology to small business, and to fund the Australian Small Business Advisory Services Program and other Australian Government services directed at supporting small businesses’ digital capability.



4 February 2021

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

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

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

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

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

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 6) Regulations 2020 [F2020L01309]	Tracking Waste Program	\$24.6 million over four years from 2020-21	Funding will be provided for the development and operation of an online platform displaying visualised data relating to waste and including analytical capabilities in order to reveal opportunities to invest in waste collection, recycling and manufacturing.
	Grant for national food waste governance entity	Up to \$4 million over four years from 2020-21	Funding will be provided to establish a national food waste governance entity which will work with industry and researchers to reduce food waste in the supply chain through a voluntary commitment program and to influence behavioural change in business and households.
	Bushfire Recovery for Species and Landscapes—Tranche 2 Emergency Intervention Fund	\$149.7 million over two years from 2020-21	Funding will be provided to support emergency intervention works for threatened species and landscapes affected by the 2019-20 bushfire emergency.
Industry Research and Development (Thermochemical Conversion Technology Trial Facility Program) Instrument 2020 [F2020L01425]	Thermochemical Conversion Technology Trial Facility Program	\$8 million in 2020-21	Funding will be provided to ARI Global Technologies Australasia Pty Ltd to conduct preliminary work and preparations to establish a cost-effective, viable asbestos destruction facility in Australia that complies with all relevant regulatory requirements and addresses key pre-construction planning, issues and risks.

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 any 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 (Agriculture, Water and the Environment Measures No. 6) Regulations 2020 [F2020L01309]—15 February 2021

- Industry Research and Development (Thermochemical Conversion Technology Trial Facility Program) Instrument 2020 [F2020L01425]—22 February 2021.

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

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

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

Yours sincerely,

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



4 February 2021

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

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

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—National identity
crime and cybercrime support service**

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

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

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

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 5) Regulations 2020 [F2020L01313]	National identity crime and cybercrime support service	\$6.1 million over four years from 2020-21	Funding will be provided to third party service providers to assist individuals and businesses that have been affected by cybercrime or had their identity stolen or misused online.

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 15 February 2021.

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

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

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

Yours sincerely,

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



4 February 2021

Senator Susan McDonald

Chair

Senate Rural and Regional Affairs and Transport Legislation Committee

Parliament House

CANBERRA ACT 2600

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

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

The Hon David Littleproud MP, Minister for Agriculture, Drought and
Emergency Management, minister.littleproud@agriculture.gov.au

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure

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

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

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

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 6) Regulations 2020 [F2020L01309]	Financial counselling for small regional businesses affected by drought, bushfires or COVID 19	\$12.8 million over two years from 2019-20	Funding will be provided for the provision of financial counselling services to small regional businesses facing financial hardship due to drought, the 2019-20 bushfires or the COVID-19 pandemic.
Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 [F2020L01401]	Supporting Agricultural Shows and Field Days Program	\$39.025 million in 2020-21	Funding will be provided for reimbursements to agricultural show societies and organisers of field days that cancelled their 2020 show because of COVID-19. In addition, \$100,000 grants will be provided to Agricultural Shows Australia and the Association of Agricultural Field Days of Australasia.

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 15 February 2021.

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

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

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

Yours sincerely,

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



4 February 2021

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

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

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

The Hon Alan Tudge MP, Minister for Education and Youth,
minister@education.gov.au

Dear Chair

Matters of interest to the Senate—COVID-19 response instruments

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

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

Noting that the following instruments appear to contain significant COVID-19 response measures, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw them to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Amendment Rules 2020 [F2020L01429]	To increase the monetary threshold for annual turnover from \$50 million to \$120 million so that an entity is defined for the purposes of the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020 to be an 'SME entity' if the entity has an annual turnover of less than \$120 million.	22/02/2021
Other Grants Guidelines (Research) Amendment (No. 2) 2020 [F2020L01437]	To provide for an additional \$1 billion in Research Support Program funding in response to the impacts of the COVID-19 pandemic on the Australian university sector and to recognise and fund the Australian Academy of Health and Medical Sciences under the Higher Education Research promotion scheme.	22/02/2021

Should your committee decide to further examine either of the above instruments, I note that the table above identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in the Senate. The committee has also drawn these instruments to the attention of the relevant Senate legislation committees.

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

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

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

Yours sincerely

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



4 February 2021

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

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

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

Dear Chair,

Matters of interest to the Senate

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

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

Noting that the following instruments appear to contain significant policy matters, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw them to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
ASIC Corporations (Product Intervention Order—Contracts for Difference) Instrument 2020/986 [F2020L01338]	To impose certain conditions on dealing in over-the-counter contracts for difference (CFDs) in relation to retail clients and prohibit providing inducements to retail clients in relation to CFDs.	15/02/2021

Instrument	Purpose	Last day to lodge disallowance notice
Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Amendment Rules 2020 [F2020L01429]	To increase the monetary threshold for annual turnover from \$50 million to \$120 million so that an entity is defined for the purposes of the Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Act 2020 to be an 'SME entity' if the entity has an annual turnover of less than \$120 million.	22/02/2021

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

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

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

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

Yours sincerely,

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



4 February 2021

Senator the Hon James McGrath
Chair
Senate Education and Employment Legislation Committee
Parliament House
CANBERRA ACT 2600

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

cc: The Hon Alan Tudge MP, Minister for Education,
Minister@education.gov.au

Dear Chair,

Matters of interest to the Senate—Research Support Program funding

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

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

Noting that the following instrument appears to contain significant policy matters relating to Research Support Program funding, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Other Grants Guidelines (Research) Amendment (No. 2) 2020 [F2020L01437]	To provide for an additional \$1 billion in Research Support Program funding in response to the impacts of the COVID-19 pandemic on the Australian university sector and to recognise and fund the Australian Academy of Health and Medical Sciences under the Higher Education Research promotion scheme.	22/02/2021

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

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

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

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

Yours sincerely,

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



4 February 2021

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

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

cc: The Hon Christian Porter MP, Attorney-General
attorney@ag.gov.au

Dear Chair,

Matters of interest to the Senate—Federal Circuit Court fees

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

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

Noting that the following instrument appears to contain significant policy matters relating to Federal Circuit Court fees, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Federal Court and Federal Circuit Court Amendment (Fees) Regulations 2020 [F2020L01416]	To increase the Federal Circuit Court application fee for migration litigants from \$690 to \$3,330, and introduce a partial fee exemption which allows individuals to pay a reduced application fee of \$1,665 where paying the full fee would cause financial hardship.	22/02/2021

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

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

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

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

Yours sincerely,

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