



18 March 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 (Amendment) Instrument 2020/1064 [F2020L01571]

ASIC Corporations (Amendment) Instrument 2020/1065 [F2020L01572]

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 seeks your advice in relation to these matters.

***Matters more appropriate for parliamentary enactment
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 rather than delegated legislation). This may include instruments which provide exemptions to primary 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.

ASIC Corporations (Amendment) Instrument 2020/1064 (the Timeshare Instrument) amends existing obligations and imposes new obligations on licensees who are responsible entities of time-sharing schemes and their associates, and provides conditional relief from the managed investment, licensing and product disclosure provisions of the *Corporations Act 2001* (Corporations Act). ASIC Corporations (Amendment) Instrument 2020/1065 (the Fees and Costs Instrument) introduces modified fees and costs disclosure requirements tailored to the different types of time-sharing schemes.

The Timeshare Instrument makes a range of modifications to the operation of the Corporations Act by amending ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 and ASIC Class Order [CO 13/760]. The Fees and Costs Instrument amends ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 to provide transitional exemptions from the ongoing disclosure of material changes and significant events requirements in subsection 1017B(1) of the Corporations

Act. In this instance, the explanatory statement to the instruments explains that "since 1993, ASIC has provided technical relief from certain licensing, managed investment and product disclosure provisions, and modified the Act in some circumstances." The explanatory statement also explains that these measure are not in the primary legislation as they are complex and detailed and therefore more suited to delegated legislation, and that "time-sharing schemes are unable to operate as they do currently without relief from various provisions of the Act".

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 and that legislative power delegated to the executive by the parliament is not abused.

The committee's views in this regard, including in relation to ASIC instruments, are set out in its final report of its inquiry into the exemption of delegated legislation from parliamentary oversight.¹ In that report the committee notes that it considers that a three year timeframe for such instruments is appropriate as it allows ASIC to rapidly address issues in relation to the operation of primary legislation, while providing a significant period of time while the instrument is in force to consider whether the modification or exemption provided by the instrument will be required for a longer period. If it is determined that a modification or exemption is required for a longer period, the committee considers that certainty for industry and the market can be best provided by incorporating the modification or exemption onto the face of the primary legislation.

In this context, while the Timeshare Instrument repeals in May 2021, the measures it inserts into ASIC Corporations (Time-sharing Schemes) Instrument 2017/272 will not cease until that instrument repeals on 1 April 2027. The committee also notes that modifications to the time-sharing scheme will have been in force via delegated legislation from 1993 until 2027, a period of 34 years. From a scrutiny perspective, this instrument represents a substantive and particularly egregious contravention of the committee's guidelines. The committee considers that these modifications clearly operate as de facto amendments to the Corporations Act, and in fact appear to be intended to do so.

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

The fact that the operation of primary law has been modified in this manner since 1993 is, in the committee's view, a long-running misuse of the legislative power that Parliament has delegated to ASIC. The committee welcomes your commitment to addressing the committee's systemic scrutiny concerns about ASIC instruments which provide for modifications to and exemptions from primary legislation and looks forward to discussing the Timeshare Instrument as a key example of the committee's significant scrutiny concerns about ASIC's use of their delegated legislative power.

This systemic issue is of deep concern to the committee, and the committee considers that this ongoing engagement is integral to the committee's role in providing oversight of delegated legislation on behalf of the Senate.

¹ Senate Standing Committee for the Scrutiny of Delegated Legislation, Final report: Exemption of delegated legislation from parliamentary oversight, March 2021
<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Final_report>.

The committee therefore requests your advice as to:

- why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation, to amend the time-sharing scheme arrangements of the *Corporations Act 2001*, noting that these modifications to the Corporations Act have been in force since 1993;
- whether the instruments can be amended to provide that the measures cease within three years after commencement; and
- whether there is any intention to conduct a review of the relevant provisions to determine if they remain necessary and appropriate, including whether it is appropriate to include the provisions in delegated legislation.

The committee also notes your ongoing engagement in relation to the committee's scrutiny concerns about parliamentary oversight of ASIC instruments and anticipates that this instrument will be further considered as part of this ongoing engagement.

Availability of independent merits review

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

Section 7A of the Timeshare Instrument modifies the operation of Part 5C.3 of the Corporations Act to provide that a responsible entity of a registered time-sharing scheme may determine whether a member of the scheme who has made a hardship application to withdraw meets the hardship criteria in subsection 601GA(1C). If a responsible entity considers that the hardship criteria are met, and the scheme's constitution contains provisions to the effect of paragraphs 601GA(1A)(b)–(l) and provides the responsible entity with a discretion to decide whether to allow or refuse withdrawal requests, then the responsible entity has the discretion to determine whether the member may withdraw from the scheme. Subsection 601GAH(2) requires that the responsible entity must act reasonably in exercising this discretion.

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. However, neither the instrument nor the explanatory statement to the instrument provides information as to whether independent merits review is available for these discretionary hardship decisions.

The committee notes that responsible entities of time-sharing schemes are public companies which hold an Australia financial services license authorising the management of managed investment schemes, as per section 601FA of the Act. While review by the Administrative Appeals Tribunal may not be appropriate as these are not administrative decisions of government officials, the committee nevertheless considers that some form of review should be available, such as internal or external dispute resolution.

The committee therefore requests your advice as to whether review is available for hardship withdrawal decisions made by responsible entities of a registered time-sharing scheme.

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

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **1 April 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



18 March 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 (Design and Distribution Obligations—Exchange Traded Products) Instrument 2020/1090 [F2020L01600]

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.

***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 rather than delegated legislation). This may include instruments which provide exemptions and modifications to primary legislation. Senate standing order 23(3)(k) requires the committee to examine each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This include whether any instrument may exclude or limit parliamentary oversight.

The instrument modifies the application of the design and distribution obligations under Part 7.8A of the *Corporations Act 2001* (the Corporations Act) to issuers and distributors of exchange traded products. The instrument does this by modifying the operation of, omitting, and substituting a range of sections, subsections and paragraphs in Part 7.8A of the Corporations Act.

The committee notes that the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (the 2019 Act) will insert Part 7.8A, sections 994A-994Q, into the Corporations Act from 5 April 2021. Of these provisions, the instrument modifies the operation of sections 994B, 994C, 994D, 994E and 994F in relation to exchange traded products. The committee also notes that, as a result of the ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486 [F2020L00618], all regulated persons, and any other person who is required to make a target market determination, are exempt from all provisions of Part 7.8A until the end of 4 October 2021.

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 any modification instrument to comprehensively justify the nature and scope of the relevant modifications. In this instance, the explanatory statement generally explains that Parliament provided ASIC with the power to modify the operation of the Act as it applies to a specified class of financial product. However, the explanatory statement does not explicitly address why this is necessary in the context of this instrument, nor does it address why it is necessary to modify the operation of these provisions prior to their commencement.

The committee has significant concerns that ASIC is modifying the operation of provisions of primary legislation via delegated legislation prior to the commencement of those provisions. The 2019 Act was considered and passed recently by Parliament, and it is the committee's strong view that the modifications set out in the instrument should have been included on the face of the bill as it was being considered by the Parliament.

The committee's scrutiny concerns are heightened noting that standard sunseting applies to the instrument, meaning that it may remain in force for 10 years. The explanatory statement explains that this is required as early sunseting may create uncertainty about compliance and burden the industry, and that ASIC will monitor the operation of the instrument. 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.

The committee's views in this regard, including in relation to ASIC instruments, are set out in its final report of its inquiry into the exemption of delegated legislation from parliamentary oversight.¹ In the report the committee notes that it considers that a three year timeframe for such instruments is appropriate as it allows ASIC to rapidly address issues in relation to the operation of primary legislation, while providing a significant period of time while the instrument is in force to consider whether the modification or exemption provided by the instrument will be required for a longer period. If it is determined that a modification or exemption is required for a longer period, the committee considers that certainty for industry and the market can be best provided by incorporating the modification or exemption onto the face of the primary legislation.

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

The committee welcomes your commitment to addressing the committee's significant scrutiny concerns about ASIC instruments which provide for modifications to and exemptions from primary legislation. This systemic issue is of deep concern to the committee, and the committee considers that this ongoing engagement is integral to the committee's role in providing oversight of delegated legislation on behalf of the Senate.

¹ Senate Standing Committee for the Scrutiny of Delegated Legislation, Final report: Exemption of delegated legislation from parliamentary oversight, March 2021
<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Final_report>.

The committee therefore requests your advice as to:

- why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation, to modify the design and distribution obligations of issuers and distributors of exchange traded products under the *Corporations Act 2001*, including why it is necessary and appropriate to do so prior to the commencement of the modified provisions;
- whether the instrument can be amended to provide that the measures cease within three years after they practically commence for those affected by the instrument; and
- whether there is any intention to conduct a review of the relevant provisions to determine if they remain necessary and appropriate, including whether it is appropriate to include the provisions in delegated legislation.

The committee also notes your ongoing engagement in relation to the committee's scrutiny concerns about parliamentary oversight of ASIC instruments and anticipates that this instrument will be further considered as part of this ongoing engagement.

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

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **1 April 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

18 March 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 Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261]

ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259]

Thank you for your response of 15 March 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 17 March 2021, and has concluded its examination of the instruments, on the basis of your advice that you will request your department to consider pursuing amendments to the primary legislation in response to the committee's scrutiny concerns about parliamentary oversight.

The committee welcomes your invitation to the committee to meet with your office, the Treasury and the Australian Securities and Investments Commission (ASIC) in relation to the committee's ongoing systemic scrutiny concerns about ASIC instruments which modify the operation of primary law. This systemic issue is of deep concern to the committee, and the committee considers that this ongoing engagement is integral to the committee's role in providing oversight of delegated legislation on behalf of the Senate.

In this regard, I request that the relevant officials please liaise with the committee secretariat to arrange a mutually convenient time to meet in the sitting fortnight beginning **Tuesday, 15 June 2021**.

In light of this, earlier today the committee withdrew the disallowance notices in place on the 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*.

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



18 March 2021

Senator the Hon Marise Payne
Minister for Foreign Affairs
Parliament House
CANBERRA ACT 2600

Via email: foreign.minister@dfat.gov.au

Dear Minister,

Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]

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.

Matters more appropriate for parliamentary enactment

Clarity of drafting

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 included in primary, rather than delegated, legislation). This includes instruments which provide exemptions to primary legislation. In addition, Senate standing order 23(3)(e) requires the committee to scrutinise each instrument as to whether its drafting is defective or unclear.

Section 5 of Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 (the instrument) provides that certain arrangements are exempt from the notification and approval provisions of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act). Specifically, section 5 establishes a definition of an 'exempt arrangement' for the purposes of section 4 of the Act. Appearing in numerous sections of the Act, the definition of an 'exempt arrangement' appears to be a significant element of the Act.

The committee is concerned that the instrument deals with significant matters that go to the scope of the scheme as a whole. The committee's scrutiny concerns are heightened in this instance given that the regulations were discussed in detail with your department at a public hearing of the Senate Foreign Affairs, Defence and Trade Legislation Committee's inquiry into the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020.¹ At the hearing I

¹ Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, 13 October 2020, pp. 64–92. Accessed at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/AustForeignRelations2020/Public_Hearings.

advised your department that any delegated legislation made under the Act would receive very close consideration by the committee.

Noting this, the committee is particularly concerned that the explanatory statement does not indicate why it is considered necessary and appropriate to leave this significant matter to delegated legislation, rather than including the scope of 'exempt arrangements' on the face of the primary legislation.

In addition, the definition of an exempt arrangement contains terms which appear to have a wide interpretation. For example, the definition states at paragraph 5(1)(b) that exempt arrangements include 'foreign arrangements solely dealing with minor administrative or logistical matters (including, for example, flights, accommodation, submitting paperwork or visa applications or the timing of conferences or conference sessions)'. In the committee's view, while the example in paragraph 5(1)(b) provides some assistance in clarifying what 'minor administrative or logistical matters' may be, it remains the case that there is considerable uncertainty as to the scope of this term.

Further, the definition states at paragraph 5(2)(c) that a variation of an arrangement is an exempt arrangement if 'the variation is a minor variation that does not alter the substance of the arrangement (including, for example, a variation that alters the number of students involved in a student exchange under an arrangement from 6 to 5)'. The committee again considers that this broad definition leaves scope for uncertainty as to the type of variations that will be considered minor variations.

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

- **why it is considered necessary and appropriate to establish the definition of an 'exempt arrangement' via delegated legislation, rather than primary legislation; and**
- **whether the definition of an 'exempt arrangement' can instead be included in primary legislation.**

If it is considered that it would be inappropriate to include the definition in primary legislation, the committee requests that further clarity be provided on the face of the instrument or, at a minimum, in the explanatory statement in relation to the scope of the elements of the definition noted above.

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

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **1 April 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



18 March 2021

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

Via email: alan.tudge.mp@aph.gov.au

CC: DLO.Tudge@dese.gov.au

Dear Minister,

Commonwealth Grant Scheme Guidelines 2020 [F2020L01609]

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.

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 (that is, matters that should be included in primary, rather than delegated, legislation).

Section 10 of the instrument sets out 'national priorities' in relation to the provision of higher education for the purposes of paragraph 30-20(b) of the *Higher Education Support Act 2003*. This has the effect of setting out priority areas for the purpose of national higher education policy.

From a scrutiny perspective, the committee generally considers that significant matters, such as setting out significant elements of national higher education policy, are more appropriately enacted via primary legislation. Where significant matters are nevertheless left to delegated legislation, the committee would expect a sound justification for the use of delegated legislation to be provided in the explanatory statement. In this instance, the committee notes that the explanatory statement to the instrument does not provide any information as to why it is considered necessary and appropriate to leave these matters to delegated legislation.

In light of the above, the committee requests your advice as to why it is considered necessary and appropriate to set out national priorities in relation to the provision of higher education via delegated, rather than primary, legislation.

Compliance with Legislation Act 2003 – incorporation

Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements. This includes the requirements prescribed by paragraph 15J(2)(c) of the *Legislation*

Act 2003 (Legislation Act), which provides that the explanatory statement to an instrument must contain a description of any incorporated documents and indicate how they may be obtained.

In this instance, the instrument makes reference to certain Field of Education codes set out in the Australian Bureau of Statistics' *Australian Standard Classification of Education*. However, neither the instrument nor the explanatory statement indicates whether the document is incorporated by reference and, if so, the manner of incorporation (that is, whether it is incorporated at a particular time or as in force from time to time) and where it may be obtained.

The committee therefore requests your advice as to whether the Australian Bureau of Statistics' *Australian Standard Classification of Education* is incorporated by reference and if so, the manner in which the document is incorporated and where it may be accessed free of 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. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **1 April 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



18 March 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,

Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]

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.

Exemptions from and modification to 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 rather than delegated legislation). This may include instruments which provide continuing exemptions to primary 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 instrument amends the Corporations Regulations 2001 and the Corporations (Fees) Regulations 2001 to enable the debt restructuring and simplified liquidation regimes established by the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020*.

Section 5.5.04 and subsection 5.5.08(4) modify the operation of the *Corporations Act 2001* (the Corporations Act). Section 5.5.04 provides for circumstances in which a transaction in a simplified liquidation process is not voidable under subsection 588FE(2) of the Corporations Act. Subsection 5.5.08(4) modifies the operation of paragraph 533(1)(d) of the Corporations Act when it appears to a liquidator during the simplified liquidation process that one or more circumstances in paragraphs 533(1)(a), (b) or (c) existed.

The committee has long been concerned with provisions in delegated legislation which modify or exempt persons from 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 any modification instrument to comprehensively justify the nature and

scope of the relevant modifications. In this regard, the committee notes that the explanatory statement does not explain why it was considered necessary and appropriate to address this matter in delegated legislation, rather than primary legislation.

In addition, it is unclear from the instrument and the explanatory statement whether any time limits apply to the modifications made to the Corporations Act by these provisions. 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. The committee's views in this regard are set out in its final report of its inquiry into the exemption of delegated legislation from parliamentary oversight.¹

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

The committee therefore requests your advice as to:

- **why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation to modify the operation of the *Corporations Act 2001*;**
- **how long the measures in section 5.5.04 and subsection 5.5.08(4) are intended to remain in force, and, if they are intended to remain in force for longer than three years, whether the instrument can be amended to provide that they cease within three years of commencement; and**
- **whether there is any intention to conduct a review of the relevant provisions to determine if they remain necessary and appropriate, including whether it is appropriate to include the provisions in delegated legislation.**

Clarity of drafting

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

Subsection 5.3B.25(3) provides that a person commits an offence if they give, or agree or offer to give, to an affected creditor any valuable consideration with the intention of securing the affected creditor's acceptance or non-acceptance of the restructuring plan. Subsection 5.3B.25(4) provides that the offence in subsection 5.3B.25(3) is an offence of strict liability.

Under general principles of criminal law, fault is required to be proved before a person can be found guilty of a criminal offence (ensuring that criminal liability is imposed only on persons who are sufficiently aware of what they are doing and the consequences it may have). The application of strict liability removes the requirement for the prosecution to prove the defendant's fault. In such cases, an offence will be made out if it can be proven that the defendant engaged in certain conduct, without the prosecution having to prove that the defendant intended this, or was reckless or negligent.

¹ Senate Standing Committee for the Scrutiny of Delegated Legislation, Final report: Exemption of delegated legislation from parliamentary oversight, March 2021
<https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Final_report>.

Noting that the purpose of strict liability is to remove the requirement for the prosecution to prove the defendant's fault, the committee requests your advice as to how strict liability can apply to this offence in circumstances where paragraph 5.3B.25(3)(b) appears to explicitly apply the fault element of intention to the offence.

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

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **1 April 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



18 March 2021

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

Via email: DLO-Duniam@agriculture.gov.au

Dear Assistant Minister,

Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2020 [F2020L01619]

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

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 instrument amends the Fisheries Levy (Torres Strait Prawn Fishery) Regulation 2016 in order to set the levy amount applicable to licences and units held in the Torres Strait Prawn Fishery for the 2020-21 financial year. The explanatory statement to the instrument notes that levy rates are determined annually in line with the Australian Fisheries Management Authority's budgeting process and cost recovery implementation statement.

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 5 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.

Yours sincerely,

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



18 March 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,

Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 [F2020L01648]

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

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 instrument repeals and replaces the Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 and sets out the fees payable for particular actions or notices given or issued under the *Foreign Acquisitions and Takeovers Act 1975*. The explanatory statement notes that the Act establishes a framework which imposes, as taxes, fees for the review foreign investment applications.

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.

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 5 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.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



18 March 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,

**Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020
[F2020L01568]**

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.

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 (that is, matters that should be included in primary, rather than delegated, legislation).

The instrument sets out a number of definitions for the purpose of the foreign investment framework. For example, item 6 of Schedule 1 to the instrument amends the Foreign Acquisitions and Takeovers Regulation 2015 (principal instrument) to insert new definitions for 'national security business' and 'national security land'. In addition, item 25 of Schedule 1 to the instrument amends the principal instrument to set out certain exemptions to the definitions of 'notifiable national security actions' and 'reviewable national security actions'.

These definitions appear to relate to significant elements of the foreign investment regime, including certain criminal offences punishable by up to 10 years imprisonment under Part 5 of the *Foreign Acquisitions and Takeovers Act 1975* (the Act).

The committee generally considers that significant matters, such as setting out key definitions which relate to core elements the foreign investment framework and which are relevant to the imposition of significant custodial penalties, are more appropriately enacted via primary legislation. Where significant matters are nevertheless left to delegated legislation, the committee would expect a sound justification for the use of delegated legislation to be provided in the explanatory statement. In this instance, the explanatory statement does not appear to provide any information as to the appropriateness of including these matters in delegated legislation.

In light of the above, the committee requests your advice as to why it is considered necessary and appropriate to set out key definitions relating to the foreign investment framework in delegated, rather than primary, legislation.

Modification of primary legislation

Exemption from primary legislation

Parliamentary oversight

As noted above, 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 rather than delegated legislation). This may include instruments which provide exemptions to primary 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.

Item 18 of Schedule 4 to the instrument inserts new section 62 into the principal instrument. New section 62 modifies the operation of the Act to specify that it applies as if section 12 of the Act were omitted. In addition, item 1 of Schedule 5 to the instrument also inserts new section 41B into the principal instrument to provide for exemptions to sections 98C, 98D and 98E of the Act in relation to the requirement to notify after no objection notification or exemption certificate is given.

Provisions of delegated legislation 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 for the use of delegated legislation is provided. In this instance, the explanatory statement does not appear to include any information about the appropriateness of including these exemptions and modifications in delegated legislation.

In addition, the committee is concerned that these measures appear to be intended to remain in force for at least five years (until the principal 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 this, from a scrutiny perspective, the committee considers that, if it is not proposed to set out the exemptions and modifications on the face of the primary legislation, the instrument should at least be amended to specify that it ceases to operate three years after it commences. If it becomes necessary to extend the operation of the exemptions and modifications, the committee considers that this should be done by amending the primary legislation or via a subsequent legislative instrument that is subject to disallowance and parliamentary scrutiny.

The committee therefore requests your advice as to:

- **why it is considered necessary and appropriate to provide for the exemptions and modifications to the operation of the *Foreign Acquisitions and Takeovers Act 1975* in delegated, rather than primary, legislation; and**
- **if it is not proposed to set out these exemptions and modifications on the face of the primary legislation, whether the instrument could be amended to specify that the exemptions and modifications cease to operate after three years.**

Compliance with Legislation Act 2003 - incorporation

Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements. This includes the requirements prescribed by paragraph 15J(2)(c) of the *Legislation Act 2003*, which provides that the explanatory statement to an instrument must contain a description of any incorporated documents and indicate how they may be obtained.

In this instance, the instrument appears to incorporate the Australian System of National Accounts (cat. 5204.0). However, neither the instrument nor the explanatory statement indicates whether the document is incorporated by reference and, if so, the manner of incorporation (that is, whether it is incorporated at a particular time or as in force from time to time) and where it may be obtained.

The committee therefore requests your advice as to whether the Australian System of National Accounts (cat. 5204.0) is incorporated by reference and if so, the manner in which the document is incorporated and where it may be accessed free of 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. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **1 April 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



18 March 2021

The Hon Christian Porter MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Via email: Christian.Porter.MP@aph.gov.au
CC: attorney@ag.gov.au; DLO@ag.gov.au

Dear Attorney-General,

Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]

Thank you for your response of 26 February 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 17 March 2021 and has resolved to seek your further advice about the issues outlined below.

Matters more appropriate for parliamentary enactment

In your response, you advised that the expansion of the jurisdiction of the Australian Commission for Law Enforcement Integrity (ACLEI) is appropriate to include in delegated legislation as this provides for greater flexibility to respond to the way agencies evolve and corruption risks emerge. You further advised that such expansions were foreshadowed at the time the *Law Enforcement Integrity Commission Act 2006* was considered by the Parliament and other expansions have previously been made via delegated legislation.

While noting your advice, the committee does not consider flexibility or consistency with past practice to be sufficient justifications for the inclusion of such matters in delegated legislation.

Your response also notes that the expansion of ACLEI's jurisdiction is a key component of the government's commitment to establishing the Commonwealth Integrity Commission (CIC). You advised that the second phase of this process will involve establishing, via primary legislation, the CIC, which will subsume ACLEI and cover the remainder of the public sector.

The committee retains significant concerns about ensuring that the Parliament has appropriate opportunity to consider the issue of significantly expanding the jurisdiction of a Commonwealth integrity body and therefore broadening the application of its investigative powers. In this regard, I note that the committee has drawn this instrument to the attention of the Senate in accordance with Senate standing order 23(4). Additionally, the committee has drawn the instrument to the attention of the Senate Legal and Constitutional Affairs Legislation Committee and the Joint Committee on the Australian Commission for Law Enforcement Integrity.

In light of your advice that future steps to establishing the CIC are intended to be included in primary legislation, it is unclear to the committee why the expansion of ACLEI's jurisdiction was not similarly included in primary legislation as part of a first phase of that process.

Despite the instrument significantly expanding ACLEI's operation and the application of its investigative powers, the explanatory statement does not explain the practical effect and scope of this jurisdictional expansion. It remains unclear how many additional officials will be subject to these powers as a consequence of the instrument, and the committee considers this information is essential for the Senate to be aware of when assessing whether such measures are appropriate for delegated legislation.

The committee therefore requests your further advice as to:

- **whether consideration was given to including the significant expansion of ACLEI's jurisdiction in primary legislation as a first phase of the government's plans for a Commonwealth Integrity Commission and, if not, why not; and**
- **what the practical effect and scope of expanding ACLEI's jurisdiction will entail, including:**
 - **how many officials were subject to ACLEI's jurisdiction prior to the commencement of the instrument; and**
 - **how many additional officials will now be subject to ACLEI's investigatory powers as a consequence 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. The committee gave notice of a motion to disallow the instrument on 23 February 2021 as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **1 April 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



17 March 2021

The Hon Nola Marino MP
Assistant Minister for Regional Development and Territories
Parliament House
CANBERRA ACT 2600

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

CC: rob.terrell@infrastructure.gov.au

Dear Assistant Minister,

Norfolk Island Employment Rules 2020 [F2020L01536]

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.

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.

Section 10 of the instrument requires employers to keep records of employee first-aid training, employment-related injuries, and information provided to the minister in relation to the death or permanent incapacitation of an employee.

The explanatory statement explains that this information is not generally covered by the *Privacy Act 1988* and is exempt from the Australian privacy principles. Further, the instrument does not appear to provide for any safeguards in relation to the collection, use and disclosure of personal information under section 10 of the instrument.

From a technical scrutiny perspective, the committee is concerned to ensure that personal information collected by any third party, including employers, is subject to appropriate privacy safeguards.

In light of the above, the committee requests your advice as to whether any safeguards apply to protect the privacy of personal information provided and recorded under section 10 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 17 March 2021, the committee has resolved to give notice of a motion to disallow the instrument today 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 **1 April 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



18 March 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
Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]	To amend the Corporations Regulations 2001 and the Corporations (Fees) Regulations 2001 to enable the debt restructuring and simplified liquidation regimes established by the <i>Corporations Amendment (Corporate Insolvency Reforms) Act 2020</i> , including modification of certain fees and consequential amendments.	11/05/2021
Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 [F2020L01648]	To set out the fees payable for particular actions or notices given or issued under the <i>Foreign Acquisitions and Takeovers Act 1975</i> .	11/05/2021

Instrument	Purpose	Last day to lodge disallowance notice
Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 [F2020L01568]	To amend the Foreign Acquisitions and Takeovers Regulation 2015 to give further effect to the foreign investment reforms, including building upon the new national security test, strengthening the integrity of the foreign investment framework, making a number of technical changes, reintroducing the monetary thresholds, and streamlining the processing of less sensitive types of investment.	11/05/2021

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 any 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



18 March 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 and Youth,
alan.tudge.mp@aph.gov.au

Dear Chair,

Matters of interest to the Senate—child care subsidy

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 the child care subsidy, 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
Child Care Subsidy Amendment (Coronavirus Response Measures No. 8) Minister's Rules 2020 [F2020L01634]	To give effect to measures supporting child care providers and families in response to the COVID-19 pandemic and strengthen compliance.	11/05/2021

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



18 March 2021

Senator the Hon Eric Abetz

Chair

Senate Foreign Affairs, Defence and Trade Legislation Committee

Parliament House

CANBERRA ACT 2600

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

cc: Senator the Hon Marise Payne, Minister for Foreign Affairs,
foreign.minister@dfat.gov.au

Dear Chair,

Matters of interest to the Senate—Commonwealth oversight of state and territory arrangements

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.

The committee notes that the following instrument appears to contain significant policy matters relating to the new legislative scheme for Commonwealth oversight of arrangements between State or Territory governments and foreign governments. The committee has therefore 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
Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]	To prescribe matters required or permitted by the <i>Australia's Foreign Relations (State and Territory Arrangements) Act 2020</i> including exempt arrangements, additional information to be included in the Public Register and information State/Territory entities must include in a notice to the Minister.	11/05/2021

As you would recall, significant concerns were raised in relation to the scope of delegated legislative power under the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020 at the public hearing of the Foreign Affairs, Defence and Trade Legislation Committee's inquiry into the bill.¹

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

¹ Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, 13 October 2020, pp. 64–92. Accessed at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/AustForeignRelations2020/Public_Hearings.



18 March 2021

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

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

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

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

Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—Home Care Transition Fund

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 Home Care Transition Fund. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

Instrument	Grant/ Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2020 [F2020L01587]	Home Care Transition Fund	\$5.3 million over two years from 2020-21	To provide financial assistance to Commonwealth funded home care providers who are insolvent, or at imminent risk of becoming insolvent or bankrupt, as a result of the change from pre-service delivery payments to post-service delivery payments by the Commonwealth.

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 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



18 March 2021

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

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

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

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

The Hon Karen Andrews MP, Minister for Industry, Science and Technology,
industrydlo@industry.gov.au

The Hon Keith Pitt MP, Minister for Resources, Water and Northern Australia,
minister.pitt@industry.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 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 in Attachment A 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 11 May 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 (Treasury Measures No. 3) Regulations 2020 [F2020L01575]	Motor Vehicle Service and Repair Information Sharing— Online Resources	\$0.25 million in 2020-21	To provide funding to support the development and online delivery of a portal and resources to facilitate access to information about motor vehicle service and repair. Access to this information will assist: <ul style="list-style-type: none"> • motor vehicle repairers to service and repair motor vehicles; and • registered training organisations to carry out training in the service and repair of motor vehicles.
Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 4) Regulations 2020 [F2020L01578]	Online toolkit to promote the financial capability of young Australians	\$10 million over two years from 2020-21	To enhance the financial capability of young Australians by funding the development and delivery of online content that: <ul style="list-style-type: none"> • assists young Australians to manage money, including by improving their understanding of superannuation, taxation, insurance, budgeting and credit; and • assists parents and other adults to explain to young Australians how to manage money, including by assisting parents and other adults to explain superannuation, taxation, insurance, budgeting and credit to young Australians.
Industry Research and Development (Digital Directors Program) Instrument 2020 [F2020L01554]	Digital Directors Program	Not specified	The program provides funding to the Australian Institute of Company Directors for: <ul style="list-style-type: none"> • the development of a training package to help directors and other leaders of Australian organisations improve their digital literacy and digital investment decision-making; • the promotion of a target for the number of directors on the board of an Australian business with a digital (STEM) background by the end of 2030; and • monitoring and reporting on the progress of ASX 200 companies towards meeting that target.

Instrument	Grant/ Program	Amount	Description
Industry Research and Development (Ferretti International Whyalla Steel Processing and Galvanising Plant Program) Instrument 2020 [F2020L01618]	Ferretti International Whyalla Steel Processing and Galvanising Plant Program	\$15 million in 2020-21	To provide funding to Ferretti International Ottoway Pty Ltd to support the upgrade of its steel processing and galvanising plant in Whyalla, South Australia, including to support the manufacture of electricity transmission towers.
Industry Research and Development (Moon to Mars Program) Instrument 2020 [F2020L01558]	Moon to Mars Program	\$150 million over five years from 2020-21	<p>The program provides the following:</p> <ul style="list-style-type: none"> • funding to Australian businesses and organisations for the development or enhancement of products, capabilities or services that have the capacity to contribute to NASA exploration programs to the Moon, Mars or other celestial bodies; • funding to Australian businesses and organisations for the development or enhancement of: <ul style="list-style-type: none"> ○ products, capabilities or services that could be sold into international space supply chains and markets; and ○ prototypes of products, capabilities or services that could be sold into international space supply chains and markets if successfully commercialised; • funding to Australian businesses and organisations, or foreign businesses or organisations, or both, to be used by those businesses and organisations in ways that will facilitate participation by Australian businesses and organisations in international space supply chains and markets; and • funding for other initiatives to facilitate participation by Australian businesses and organisations in international space supply chains and markets.
Industry Research and Development (Northern Endeavour Temporary Operations Program) Amendment Instrument 2020 [F2020L01611]	Northern Endeavour Temporary Operations Program	\$75.4 million over two years from 2019-20	To expand the scope of the Northern Endeavour Temporary Operations Program to include the disconnection, removal and disposal of the Northern Endeavour floating production storage and offtake facility and the decommissioning and remediation of the Laminaria-Corallina oil fields.



18 March 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,
DLO-Finance@finance.gov.au

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

The Hon Alan Tudge MP, Minister for Education and Youth,
alan.tudge.mp@aph.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 (Education, Skills and Employment Measures No. 8) Regulations 2020 [F2020L01585]	National Microcredentials Marketplace	\$4.3 million over three years from 2020-21	To establish and operate the National Microcredentials Marketplace, a nationally consistent online platform for students to compare short courses against higher education provider offerings and credit point values.

Instrument	Grant/ Program	Amount	Description
	Tertiary Access Payment for Outer Regional and Remote School Leavers	\$177.8 million over four years from 2020-21	To encourage and assist students from outer regional and remote areas of Australia to access tertiary study by providing one-off payments of up to \$5,000 to eligible students who relocate to commence tertiary study in the year immediately following their completion of the final year of secondary school.
	Pacific Labour Mobility: Safeguarding Welfare of Workers (Community Connections)	\$1 million over three years from 2020-21	To support the welfare of participants in the Seasonal Worker Program by building connections between the program participants and their local Australian communities.

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 11 May 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



18 March 2021

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

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

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

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

The Hon Angus Taylor MP, Minister for Energy and Emissions Reduction,
DLOTaylor@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 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 in Attachment A 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 11 May 2021.

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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 (Agriculture, Water and the Environment Measures No. 7) Regulations 2020 [F2020L01574]	Reef Builder—the coastal communities recovery project	\$20 million in 2020-21	To support measures to rebuild and prevent the extinction of shellfish reefs along the Australian coastline.
Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 2) Regulations 2020 [F2020L01573]	Powering Communities Program	\$12 million over three years from 2020-21	To provide funding to support community organisations to reduce energy use, improve energy productivity and deliver carbon abatement, including through: <ul style="list-style-type: none"> • upgrading equipment to reduce energy use; • undertaking energy management activities and assessments, such as energy systems assessments and feasibility studies; • investing in energy monitoring and management systems; and • investing in on-site renewable energy and solar-connected batteries.
	Building Energy Efficiency Program	\$39.1 million over five years from 2020-21	To support activities that reduce energy use, improve energy productivity and deliver carbon abatement in buildings, including through: <ul style="list-style-type: none"> • developing and providing information relating to building energy efficiency, including energy related requirements of the National Construction Code; • developing and providing information about, and assessing, the energy efficiency of heating, ventilation and air conditioning systems in buildings; and • developing and providing tools and ratings for the energy performance of buildings.

Instrument	Grant/ Program	Amount	Description
	Technology Co-Investment Fund	\$20.1 million over six years from 2020-21	<p>To provide funding for activities that reduce energy use, improve energy productivity and deliver carbon abatement in the industrial, transport and agricultural sectors, including through:</p> <ul style="list-style-type: none"> • industrial and energy productivity benchmarking, including in manufacturing and construction; • improving transport fuel efficiency, including for freight; • increasing soil carbon; and • reducing livestock emissions.
	Hydrogen Export Hub Program	\$73.9 million over six years from 2019-20	<p>To support the development of hydrogen production, hydrogen demand and hydrogen export supply chains, including through:</p> <ul style="list-style-type: none"> • funding research and development activities relevant to hydrogen technologies, hydrogen industry expansion and export supply chains; • international and domestic collaboration on hydrogen export supply chains and hub development; • supporting projects for the production, use, transformation, storage, transport or export of hydrogen and hydrogen feedstocks or derivatives; • supporting activities to increase the supply of, and demand for, hydrogen; and • undertaking and supporting activities to improve the regulation or safety of hydrogen production, use, transformation, storage, transport or export.



18 March 2021

Senator the Hon Eric Abetz
Chair
Senate Foreign Affairs, Defence and Trade Legislation Committee
Parliament House
CANBERRA ACT 2600

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

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

The Hon Dan Tehan MP, Minister for Trade, Tourism and Investment,
minister.trade@dfat.gov.au

Senator the Hon Linda Reynolds CSC, Minister for Defence,
parliamentary.business@defence.gov.au

The Hon Karen Andrews MP, Minister for Industry, Science and Technology,
industrydlo@industry.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 (Defence Measures No. 1) Regulations 2020 [F2020L01564]	Joint Strike Fighter Industry Support Program— Sustainment Grants	\$4 million over four years from 2020-21	To further Australia's defence capability and preparedness through the acquisition and sustainment of the F-35 Joint Strike Fighter, by funding defence sector enterprises to develop and implement their maintenance and repair capability for components used in the F-35 Joint Strike Fighter.

Instrument	Grant/Program	Amount	Description
Industry Research and Development (COVID-19 Consumer Travel Support Program) Instrument 2020 [F2020L01594]	COVID-19 Consumer Travel Support Program	\$128 million in 2020-21	To alleviate the negative economic impacts of COVID-19 on the travel industry by providing immediate, short-term financial support to travel agents, and tour arrangement service providers, that qualify for the jobkeeper scheme.

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 11 May 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



18 March 2021

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

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

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

The Hon Peter Dutton MP, Minister for Home Affairs, dlo@homeaffairs.gov.au
Department of Finance, FFSPRegs@finance.gov.au

Dear Chair,

Legislative instruments specifying Commonwealth expenditure—National Action Plan to Combat Modern Slavery

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 Attachment A, in combination with its enabling Act, authorises the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed in Attachment A 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 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 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

Attachment A

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 6) Regulations 2020 [F2020L01589]	National Action Plan to Combat Modern Slavery	\$10.6 million over five years from 2020-21	<p>To provide funding to support the implementation of Australia's National Action Plan to Combat Modern Slavery 2020-25 (the National Action Plan), including funding to do the following:</p> <ul style="list-style-type: none"> • undertake activities to equip Australian businesses to manage supply chain risks, including by developing and maintaining the online Modern Slavery Statements Register; • review the <i>Modern Slavery Act 2018</i>; • provide multi-year grant opportunities to fund: <ul style="list-style-type: none"> ○ projects to combat modern slavery; or ○ the development of supply chain resilience of Australian businesses; or ○ new research to support evidence-based modern slavery policy; • develop and deliver targeted training to government officials; • undertake activities to strengthen bilateral and multilateral cooperation to combat modern slavery in the Indo-Pacific Region; • establish multi-sector networks in the States and Territories to enhance law enforcement capability, and bolster resources, dedicated to detecting and deterring modern slavery; • develop and maintain a website with information and resources about modern slavery, in multiple languages; • develop, translate and distribute information and resources for modern slavery victims, multicultural groups and the broader community to understand modern slavery, deter perpetrators and refer cases;

Instrument	Grant/Program	Amount	Description
			<ul style="list-style-type: none">• develop and deliver national and targeted campaigns to raise community awareness of modern slavery, including the indicators of modern slavery and avenues to report modern slavery offences;• engage with modern slavery victims to seek and receive feedback on existing and new, legal and policy, responses to modern slavery; and• commission the Australian Institute of Criminology to monitor and evaluate the National Action Plan.



18 March 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,
DLO-Finance@finance.gov.au

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

Senator the Hon Jonathon Duniam, Assistant Minister for Forestry and
Fisheries, DLO-Duniam@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 instrument listed in Attachment A, in combination with its enabling Act, authorises the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed in Attachment A 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 11 May 2021.

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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 (Agriculture, Water and the Environment Measures No. 7) Regulations 2020 [F2020L01574]	Restoring native aquatic animals in the Murray-Darling Basin and providing employment for Indigenous Australians	\$10 million over four years from 2020-21	<p>To support the restoration of native aquatic species and natural habitat in the Murray-Darling Basin and to provide employment for Indigenous Australians, including by:</p> <ul style="list-style-type: none"> • establishing a hatchery, grow-out facility and drought recovery centre for native aquatic species, with integrated commercial operations, in Menindee; • establishing a hatchery and grow-out facility for native aquatic species, with integrated commercial operations, in St George; • restoring the natural habitat of native aquatic species; and • conducting research activities in relation to native aquatic species.
	Murray-Darling Basin Water Information Platform	\$5.4 million over four years from 2020-21	<p>To establish and maintain an online water information platform relating to the Murray-Darling Basin to provide information about matters such as the following:</p> <ul style="list-style-type: none"> • water availability, allocations, use and trade; • water planning, policies and programs; • water levels in storages and in-stream flow rates; • water resource management and planning arrangements; • environmental watering events; and • water markets and trading.

Instrument	Grant/Program	Amount	Description
	National Forest Industries Plan—Online Resources	\$0.5 million in 2020-21	<p data-bbox="1023 300 1390 456">To support the growth of Australia’s renewable timber and wood-fibre industry through developing online guidance material and advice for:</p> <ul data-bbox="1046 483 1374 689" style="list-style-type: none"><li data-bbox="1046 483 1374 577">• persons engaging in farm forestry and private native forestry; and<li data-bbox="1046 600 1374 689">• forest resources managers of Indigenous-owned or Indigenous-managed land.