



17 June 2021

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

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

CC: legislation@dfat.gov.au

Dear Minister,

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

Thank you for your response of 7 May 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 16 June 2021 and has resolved to seek your further advice about the issues outlined below.

Matters more appropriate for parliamentary enactment
Clarity of drafting

You advised that section 50 of the *Legislation Act 2003* (the Legislation Act) provides that a 10-year sunset period applies to legislative instruments unless a different duration is provided for under the enabling legislation. You advised that the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act) would need to be amended in order to provide for this instrument to sunset in five years.

You also advised that the three-year review of the Act under section 63A will provide an opportunity to consider whether the measures in the instrument would be more appropriate for primary legislation, and that this review removes the need to amend the Act to provide for a shorter duration of the instrument.

The committee's view is that the sunset regime in the Legislation Act does not require an amendment to any enabling Act for instruments made under that enabling Act to cease in less than 10 years from commencement. It would be possible to apply a shorter duration to this instrument than the existing 10-year sunset period by amending the instrument itself to provide for a new repeal date. Changes to the Act are not required for this. In my letter of 14 April 2021, the committee requested that the instrument be amended to provide that it 'sunsets' after five years. In practice, the committee is requesting that the instrument be amended so that it is repealed within five years of commencement.

In light of this, the committee is of the view that there is nothing in the Act or the Legislation Act which prevents the instrument from being amended to specify that it is repealed within five years of commencement. In this context, the committee regularly scrutinises instruments which include a self-repeal provision.¹ While we note your advice that the review of the Act under section 63A will provide an opportunity to consider whether the measures in the instrument would be more appropriate for primary legislation, the committee's view is that a five year duration is the most appropriate mechanism for ensuring timely parliamentary scrutiny of the measures set out in this instrument and whether the measures remain suitable for inclusion in delegated, as opposed to primary, legislation.

The committee therefore requests your further advice as to whether the instrument can be amended to provide that it is repealed within five years from commencement.

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 therefore 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 July 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 ongoing assistance with this matter.

Yours sincerely,

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

¹ See, for example, ASIC Corporations (Licence Conditions—Treatment of Lease Assets) Instrument 2021/229 [F2021L00500].



17 June 2021

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

Via email: DLOTaylor@environment.gov.au

CC: legislation@environment.gov.au

Dear Minister,

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

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.

Compliance with authorising legislation

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

The instrument amends the Australian Renewable Energy Agency Regulation 2016 to allow the Australian Renewable Energy Agency (the ARENA) to provide financial assistance in relation to the following programs announced in the 2020-21 Budget:

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

The instrument is made under the *Australian Renewable Energy Agency Act 2011* (the Act). Section 74 of the Act provides the Governor-General with the power to make regulations under the Act. Section 8 prescribes the functions of the ARENA. These functions relate to research and development of renewable energy technologies.

Paragraph 8(f) provides that further functions can be prescribed via regulations made under the Act. The explanatory statement to the instrument notes that the legislated functions of the ARENA are limited to supporting renewable energy technologies and that the instrument "provides ARENA with the necessary authority to deliver any non-renewable elements of the programs, supporting emissions reductions through broader clean energy technologies such as energy efficiency and non-renewable low-emission technologies."

From a scrutiny perspective, the committee is concerned that the instrument is expanding the remit of the ARENA beyond what was envisaged by Parliament when the Act was passed. The committee notes that the object of the Act is to improve the competitiveness and supply of renewable energy in Australia. The committee further notes that there is nothing in the explanatory memorandum to the bill preceding the Act to suggest that it was contemplated that the ARENA would have the ability to foster anything other than renewable energy technologies.

The committee's view is that statutory provisions must be read in context¹ and that the terminology used in section 8 to provide the ARENA's functions in relation to renewable energy indicates there are limits on the power to prescribe further functions by regulation. In addition, the committee considers that in general, delegated legislation can fill out the detail of an Act but cannot extend it. Where the power to extend the operation of an Act is claimed, it would need to be clear that the enabling provision is a Henry VIII power. In this instance, it does not appear to the committee that this is the case.

In light of the above, the committee would appreciate your advice as to how sections 8 and 74 of the Australian Renewable Energy Agency Act 2011 authorise regulations to extend the jurisdiction of the Australian Renewable Energy Agency to include functions that relate to the non-renewable elements of the above programs, noting that section 8 and the object of the Act appear to limit such functions to those relating to renewable energy.

Significant matters in delegated legislation

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

As a matter of technical scrutiny, the committee is required to scrutinise each legislative instrument as to whether it contains matters more appropriate for parliamentary enactment.

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

In this regard, the explanatory statement does not indicate why it is considered necessary and appropriate to leave these matters to delegated legislation, rather than primary 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 expand the remit of the Australian Renewable Energy Agency to include non-renewable energy technologies.

Consultation with persons affected

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

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

1 As per *Project Blue Sky v Australian Broadcasting Authority* [1998] HCA 28, para [69].

The committee therefore expects explanatory statements to instruments to provide details of any consultation undertaken with persons likely to be affected by the instrument. If no consultation was undertaken with persons likely to be affected, the committee expects the explanatory statement to explain why no such consultation was undertaken.

In this instance, the explanatory statement to the instrument states that exposure drafts of the instrument were circulated for consultation with government stakeholders including the Department of Finance, the Department of Prime Minister and Cabinet, and the ARENA. The explanatory statement further explains that "public consultation was not necessary, as the Regulations only addresses machinery issues relating to the administration of announced Government programs. ARENA will undertake appropriate consultation on the implementation of the programs consistent with its statutory framework and responsibilities."

While noting this explanation, the committee considers that the measures provided for in the instrument are more than machinery in nature, given that they substantially expand the jurisdiction of the ARENA to invest public funds. As such, from a scrutiny perspective, it is the committee's view that stakeholders and experts should have been consulted in relation to the instrument.

The committee would therefore appreciate your advice as to whether any consultation was undertaken in relation to the instrument with relevant stakeholders and experts outside of government and, if not, further detail on how the measures in the instrument can be considered machinery in nature.

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 July 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



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**Senate Standing Committee for the
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17 June 2021

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: tsrdlos@treasury.gov.au

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

Dear Treasurer,

Competition and Consumer (Consumer Data Right) Amendment Rules (No. 3) 2020 [F2020L01688]

Thank you for your response of 27 May 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 16 June 2021. On the basis of your advice and the Australian Competition and Consumer Commission's undertaking to lodge a replacement explanatory statement, the committee has concluded its examination of the instrument. The committee has also resolved to withdraw the notice of motion to disallow the instrument.

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

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 June 2021

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

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

CC: DLO-MO@agriculture.gov.au

Dear Minister,

Export Control (Wood and Woodchips) Rules 2021 [F2021L00318]

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.

Conferral of discretionary powers

Senate standing order 23(3)(c) requires the committee to scrutinise each instrument as to whether it makes rights, liberties, obligations or interests unduly dependent on insufficiently defined administrative powers. This includes where instruments confer discretionary powers on a person.

The instrument prescribes that exported Australian wood and woodchips must be sourced in accordance with the *Environment Protection and Biodiversity Conservation Act 1999* and State requirements.

Part 3 of the instrument provides for the Minister's powers in relation to the approval, amendment and revocation of State codes of practice. A code of practice is "the practices adopted in that State for the establishment, management and harvesting of all plantations in that State, whether or not those practices are contained in a single document". Approvals and revocations of State codes of practice under sections 2-7, 2-9 and 2-12 are by notifiable instrument. In addition, section 2-10 provides that the Minister may require a State to amend an approved code of practice. Once the code is so amended, the Minister must approve the amended code of practice by notifiable instrument.

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

In this regard, the committee notes that the instrument requires the Minister to have regard to the findings of a scientific assessment of a State code of practice when determining whether to

approve or revoke the code. The scientific assessment is prepared under the direction of the Secretary and based on the national plantation principles. However, the explanatory statement does not provide any further detail as to how a scientific assessment will be assessed in making such determinations.

Moreover, the committee notes that no guidance is provided in the instrument or the explanatory statement in relation to section 2-10 and the matters that the Minister must have regard to in requiring a State to amend its code of practice.

Additionally, the explanatory statement does not justify why it is necessary for the Minister to have such powers in relation to State codes of practice. The committee therefore considers that these provisions confer broad discretionary powers on the Minister which are not sufficiently justified in the explanatory statement.

The committee therefore requests your advice as to:

- **whether the explanatory statement to the instrument can be amended to provide further guidance and detail as to the process and factors that will be considered in making a decision to approve a State code of practice under subsection 2-7(1), approve an amended code of practice under subsection 2-9(2) and revoke a code of practice under subsection 2-12(1); and**
- **whether the instrument can be amended to include at least high-level guidance in relation to the circumstances in which a minister may require a State to amend its approved code of practice under section 2-10.**

Parliamentary oversight

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

As noted above, approvals and revocations of State codes of practice under sections 2-7, 2-9, 2-10 and 2-12 are by notifiable instrument. The committee is concerned that the instrument provides the power for a Commonwealth minister to make determinations in relation to State codes of practice via notifiable instrument, which is excluded from parliamentary scrutiny. The committee notes that, in contrast to legislative instruments, notifiable instruments are not subject tabling, disallowance, sunseting, or scrutiny by this committee.

The committee addressed the issue of the use of notifiable instruments in its 2020-2021 inquiry into exemptions from parliamentary oversight.

The committee therefore requests your advice as to whether the instrument can be amended to provide that approvals and revocations of State codes of practice under sections 2-7, 2-9, 2-10 and 2-12 are to be by legislative instrument, rather than notifiable 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. 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 July 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



8 June 2021

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

Via email: attorney@ag.gov.au

CC: DLO@ag.gov.au

Dear Attorney-General,

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

Thank you for your letter of 2 June 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above regulations.

As you are aware, the committee has previously emphasised its significant concern that delegated legislation is being used to substantially expand the jurisdiction of the Australian Commission for Law Enforcement Integrity and effectively broaden the application of its investigative powers.

The committee acknowledges your advice that it is the government's intention to introduce the Commonwealth Integrity Commission (CIC) bills into the Parliament in 2021 and for the CIC to commence operations six months after the date of Royal Assent.

The committee also welcomes your advice that the committee's suggestion that the regulations sunset after three years is reasonable and that you will write to the Prime Minister to seek his approval to undertake the necessary amendments as soon as possible. Your constructive engagement on this matter is greatly appreciated.

The committee requests your further advice as to whether the Prime Minister has approved amending the regulations as soon as possible. Noting that the disallowance period for the regulations expires on 23 June 2021, the committee requests this advice by **15 June 2021**.

As the committee is not yet in a position to conclude its consideration of the regulations, the committee has resolved to retain the disallowance notice currently in place on the regulations. The committee will further consider its position in relation to the disallowance notice once it has had the opportunity to consider your further advice.

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 again for your ongoing assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Senate Standing Committee for the Scrutiny of Delegated Legislation



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17 June 2021

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

Via email: attorney@ag.gov.au

CC: DLO@ag.gov.au

Dear Attorney-General,

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

Thank you for your response of 16 June 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 16 June 2021.

The committee welcomes your advice that the Assistant Minister to the Prime Minister and Cabinet has agreed to your proposed amendments to the regulations which would ensure that provisions relating to the inclusion of four new government agencies to the jurisdiction of the Australian Commission for Law Enforcement Integrity will sunset by 2024. On the basis of your undertaking to amend the regulations in this manner the committee has concluded its examination of the instrument and has resolved to withdraw its notice of motion to disallow the instrument.

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

Thank you again for your ongoing and constructive assistance with this matter.

Yours sincerely,

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



17 June 2021

Senator the Hon Amanda Stoker
Assistant Minister to the Attorney-General
Parliament House
CANBERRA ACT 2600

Via email: AMO.DLO@ag.gov.au

CC: The Hon Paul Fletcher MP, Minister for Communications, Urban Infrastructure,
Cities and the Arts, dlo@communications.gov.au

Dear Assistant Minister,

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

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.

Adequacy of consultation

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

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

The committee therefore expects explanatory statements to instruments to provide details of any consultation undertaken with persons likely to be affected by the instrument. If no consultation was undertaken with persons likely to be affected, the committee expects explanatory statement to justify why no such consultation was undertaken.

This instrument aligns the sunset dates for four instruments to 1 October 2023 in order to keep the instruments in operation until a thematic review is conducted. The four instruments subject to the sunset-altering instrument (the CSG instruments) are:

1. Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011 (the CSG Benchmarks Instrument) [original sunset date: 1 October 2021]

2. Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1) (the CSG Amendment Standard) [original sunset date: 1 October 2021]
3. Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011 (the CSG RKR) [original sunset date: 1 October 2021]
4. Telecommunications (Customer Service Guarantee) Standard 2011 (the CSG Standard) [original sunset date: 1 April 2021]

In this instance, the explanatory statement to the instrument states that the then Minister of Communications, Cyber Safety and the Arts and the Chair of ACMA, who jointly prepared and approved the sunset-altering application to the Attorney-General, had regard to relevant consultation undertaken over a number of years.

Further, the explanatory statement explains that the Department of Infrastructure, Transport, Regional Development and Communications canvassed a thematic review of the CSG Instruments with Telstra, as the CSG has the greatest impact on Telstra, and Telstra did not raise 'any significant concerns'. The explanatory statement advises that broader consultation was considered unnecessary.

However, Optus wrote to the committee on 4 June 2021 to express concern that affected stakeholders were not consulted about this sunset-altering instrument. Although I understand that Optus provided a copy of this correspondence to you, a copy is also attached to this letter for your information.

Noting the importance of ensuring that those likely to be affected by an instrument are adequately consulted in relation to it, the committee would appreciate your advice as to whether:

- **any consultation was undertaken in relation to this instrument with affected stakeholders other than Telstra, and if not**
- **the reason broader consultation with other affected parties was considered unnecessary given the instrument provides a significant extension of two years or more to four instruments of significance to the telecommunications industry.**

Parliamentary oversight - sunseting

Senate standing order 23(3)(k) requires the committee to consider whether an instrument complies with any other ground relating to the technical scrutiny of delegated legislation. This includes where an instrument defers the application of the sunseting provisions in section 50 of the *Legislation Act 2003* (Legislation Act).

Section 50 of the Legislation Act provides that all legislative instruments registered on the Federal Register of Legislation after 1 January 2005 are automatically repealed ten years after registration. The committee considers that this sunseting framework provides an important opportunity for Parliament to maintain effective and regular oversight of delegated legislative powers, and, in particular, ensure that the content of legislative instruments remains current and lawful.

The committee therefore expects that instruments which defer the sunseting date of another instrument should provide a thorough justification for doing so in the explanatory statement. The committee addressed the importance of the sunseting regime to parliamentary oversight of

delegated legislation in its 2020-2021 inquiry into the exemption of delegated legislation from parliamentary oversight.¹

In this regard, the committee notes that the explanatory statement advises that all four instruments will now sunset on 1 October 2023 (instead of 1 April 2021 or 1 October 2021) to allow for a thematic review of the CSG instruments.

The committee notes that the Attorney-General's Department's Guide to Managing Sunsetting for Legislative Instruments (July 2020) provides that agencies should begin preparing for sunsetting at least 18 months prior to the sunset date to plan for and conduct any reviews relating to the relevant instruments. It is unclear from the explanatory statement when the decision to conduct a thematic review was made, when it will commence, and when it is expected to be completed.

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

- **when the decision was made to conduct a thematic review of the CSG instruments, and the reason this review was not commenced earlier prior to the instruments' original sunset dates;**
- **when this review will commence; and**
- **the likely timeframe for this review to be completed.**

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 July 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

1 Senate Standing Committee for the Scrutiny of Delegated Legislation, Inquiry into the exemption of delegated legislation from parliamentary oversight, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight.



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17 June 2021

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

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

CC: rezana.berman@health.gov.au

Dear Minister,

National Health (Data-matching) Principles 2020 [F2021L00006]

Thank you for your response of 28 May 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 16 June 2021. On the basis of your advice, the committee has concluded its examination of the instrument. The committee has also resolved to withdraw the notice of motion to disallow the instrument.

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

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 June 2021

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

Via email: dlo@communications.gov.au

Dear Minister,

Radiocommunications (Spectrum Access Charges – 20 GHz and 30 GHz Bands) Determination 2021 [F2021L00230]

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

Parliamentary oversight

Senate standing order 23(3)(k) requires the committee to consider whether an instrument complies with any other ground relating to the technical scrutiny of delegated legislation. This includes in relation to the sunset dates of instruments. The committee's expectations in relation to this scrutiny principle are set out in [guidelines](#) available on the committee's website.

Section 4 of the instrument provides that the instrument is repealed at the end of 26 April 2036, that is, in 15 years' time.

However, noting that no exemption from sunseting exists for this instrument under section 54 of the *Legislation Act 2003* or under the *Legislation (Exemptions and Other Matters) Regulation 2015*, the instrument is subject to the sunseting provisions of the *Legislation Act*, and is therefore due to sunset on 1 April 2031.

It appears therefore that section 4 of the instrument may be invalid because it is inconsistent with the sunseting provisions of the *Legislation Act* which provide that instruments are repealed ten years after registration (see *Legislation Act*, subsection 50(1)).

The committee understands that it is intended that the instrument would only self-repeal in accordance with its own section 4, that is on 26 April 2036, if it eventuated that the ordinary sunseting mechanism currently provided by section 50 of the *Legislation Act* did not apply for some reason. It is unclear to the committee in what circumstances the ordinary sunseting mechanism of the *Legislation Act* would not apply to this instrument.

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

- the validity of section 4 of the instrument;
- the circumstances in which the ordinary sunseting mechanism of the Legislation Act would not apply to this instrument; and
- why it is considered necessary that the instrument contain a repeal date that is later than the sunseting date to which it is subject.

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 July 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 June 2021

The Hon Ken Wyatt AM MP
Minister for Indigenous Australians
Parliament House
CANBERRA ACT 2600

Via email: DLOwyatt@pmc.gov.au

Dear Minister,

Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021 [F2021L00292]

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.

The committee has corresponded informally with the National Indigenous Australians Agency in relation to this instrument and thanks the agency for its ongoing assistance and engagement with the committee's concerns. The committee now seeks your advice in relation to the below issues which remain unresolved.

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.

This instrument amends the Corporations (Aboriginal and Torres Strait Islander) Regulations 2017, the Native Title (Indigenous Land Use Agreements) Regulations 1999 and the Native Title (Prescribed Bodies Corporate) Regulations 1999 in relation to the requirements for prescribed bodies corporate to consult and obtain consent in relation to certain decisions and the making of compensation applications.

Sub-regulation 9(5) of the instrument provides that "the body corporate may collect (within the meaning of the *Privacy Act 1988*) personal information (within the meaning of that Act) about common law holders or persons who claim to be entitled to compensation for the purposes of preparing a certificate." The explanatory statement provides examples of personal information in this context, including 'health information'.

The committee understands that sub-regulation 9(5) is included to allow prescribed body corporates to collect information for the purposes of preparing a 'certificate in relation to consultation and consent' (regulation 9 certificate) without needing to obtain the consent of the individuals named in it. This includes personal and sensitive information, as defined in the Privacy Act, including health information about a person and information about a person's race.

The committee understands that some of the body corporates collecting this information for regulation 9 certificates are Australian Privacy Principles (APP) entities which are regulated by the Privacy Act. However, the committee understands that not all relevant body corporates are APP

entities and it is unclear what, if any, safeguards apply to their collection and use of personal and sensitive information under this instrument.

It is also unclear to the committee who, or which entities, can access regulation 9 certificates which contain personal and/or sensitive information about individuals, given that item 53 of Schedule 1 to the instrument provides that common law holders, or a person who has a 'substantial interest' in the decision to which the certificate relates is entitled to access it.

The committee's view is that provisions which enable the collection, use and disclosure of personal information may trespass on an individual's right to privacy, and should generally be included in primary legislation, rather than delegated legislation. Where an instrument nevertheless contains such provisions, the committee expects that the explanatory statement should clearly explain the nature and scope of the provisions.

The explanatory statement should also address the nature and extent of the information that may be disclosed and the persons or entities to whom disclosure is permitted. The committee also expects the explanatory statement to justify why the provisions are necessary and appropriate, and what safeguards are in place to protect this personal information, and whether these safeguards are in law or policy. Explanatory statements should also indicate whether the safeguards in the *Privacy Act 1988* apply, particularly when only some of the entities are APP entities.

In light of the above, we would appreciate your advice as to:

- **who, or which entities, information collected under this instrument can be disclosed to;**
- **what safeguards apply to the collection and disclosure of personal and sensitive information under this instrument by body corporates that are not APP entities; and**
- **given the sensitive nature of the information authorised to be collected and disclosed under this instrument, whether consideration was given to including additional privacy safeguards on the face 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. 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 July 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 June 2021

Senator the Hon Anne Ruston
Minister for Families and Social Services
Parliament House
CANBERRA ACT 2600

Via email: dlos@dss.gov.au

Dear Minister,

Student Assistance Regulations 2021 [F2021L00201]

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.

The committee has corresponded informally with your department in relation to this instrument and thanks the department for its ongoing assistance and engagement with the committee's concerns. The committee now seeks your advice in relation to the below issues which remain unresolved.

Parliamentary oversight

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

Sections 5, 6, 13, 16, 19 and 20 of the instrument appear to incorporate the ABSTUDY Policy Manual and sections 5, 24, 25, 27 and 28 of the instrument appear to incorporate the Assistance for Isolated Children Scheme Guidelines. It appears from the explanatory statement that these documents are incorporated as existing from time to time.

The committee has scrutiny concerns that incorporation of these documents in this manner, which are used to define key terms and concepts in the instrument, raises the prospect of changes being made to the law in the absence of parliamentary scrutiny. In this context, the committee notes these are departmental policy documents that can be easily changed. The committee does not consider that a desire for flexibility or more streamlined regulations is, of itself, an appropriate justification for leaving the definition of key terms and concepts to documents that are incorporated as existing from time to time.

The committee's scrutiny concerns are heightened in this instance as the terms that are defined by reference to these policy documents are used in prescribing an event for the purposes of subsection 48(1) of the *Student Assistance Act 1973* (the Act). Failure to notify the department within 14 days of the happening of such an event could result in a penalty of 12 months imprisonment, in accordance with subsection 49(1) of the Act.

In light of these scrutiny concerns, the committee requests your advice as to why it is considered necessary and appropriate to define key terms and concepts by reference to documents that are not subject to parliamentary scrutiny, as opposed to defining these terms and concepts on the face of the instrument.

Clarity of drafting and legal certainty

Senate standing order 23(3)(e) requires the committee to scrutinise each instrument as to whether its drafting is defective or unclear. Senate standing order 23(3)(k) requires the committee to scrutinise each instrument on other technical scrutiny grounds including whether an instrument provides legal certainty.

The committee is typically concerned with instruments which are not drafted clearly to the extent that this affects the meaning or interpretation of the instrument. Instruments and their explanatory statements should be clear and intelligible to all persons interested in or affected by them, not only those with particular knowledge or expertise. Key terms should be clearly defined to remove any potential confusion or misunderstanding.

The instrument prescribes events for the purposes of the obligation to notify happening of certain events in subsection 48(1) of the Act.

Paragraphs 14(1)(c), 16(1)(d) and 16(1)(e) prescribe as an event the situation where a person 'becomes aware' that something is 'likely' to occur. Similarly, subsections 19(3), 19(4) and 27(3) prescribe events where a person becomes 'aware' something is 'reasonably likely' to occur. In addition, subsection 19(5) provides that an ABSTUDY payee is taken to be aware of something if he or she 'ought reasonably to know of it'.

Each phrase appears to have a subjective character and neither the instrument nor the explanatory statement provides guidance for interpretation or meaning.

In addition, paragraph 26(a) prescribes as an event when certain payments become 'receivable' in respect of the student. Although 'receivable' is defined in section 5, the explanatory statement does not address the implications of the specified payments being receivable by a student who is not aware of that fact.

From a scrutiny perspective, the lack of clarity in relation to the interpretation of the above provisions is particularly concerning as section 49 of the Act provides that it is an offence to contravene subsection 48(1). This offence is subject to a maximum penalty of imprisonment for 12 months.

The committee is concerned that these provisions are not sufficiently clear and do not provide certainty in relation to ascertaining when an event has occurred and when an affected person will be required to report its occurrence. Persons affected by instruments should be afforded certainty of the requirements of when they must report under the law.

The committee would therefore appreciate your advice as to whether the instrument can be amended to prescribe the events in more certain terms, so that a person who is subject to these requirements may clearly understand when they are required to report under the Act.

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 July 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

17 June 2021

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

Via email: dlo@communications.gov.au

Dear Minister,

**Telecommunications (Fibre-ready Facilities — Exempt Real Estate Development Projects)
Instrument 2021 [F2021L00105]**

Thank you for your response of 25 May 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 16 June 2021. On the basis of your undertaking to amend the instrument to provide that it will cease three years after commencement, the committee has concluded its examination of the instrument. The committee has also resolved to withdraw the notice of motion to disallow the instrument.

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

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 June 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—Commonwealth Disability Support for Older Australians Program

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

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]	Commonwealth Disability Support for Older Australians Program	\$1,447.8 million	<p>The Commonwealth Disability Support for Older Australians (DSOA) Program provides funding for disability services to individual older people with a disability who are ineligible for the National Disability Insurance Scheme (NDIS).</p> <p>The purpose of the DSOA Program is to deliver improved parity with the NDIS and a more client-centred program through:</p> <ul style="list-style-type: none"> • funding for disability services being better aligned with market pricing and nationally consistent across states and territories; • moving all clients to Individual Support Packages to refocus service delivery on individual client needs; and • meeting the Commonwealth's commitment to continue supporting the DSOA clients with complex needs to live at home or in a supported accommodation and to access increased support as their needs change.

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 August 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



17 June 2021

Senator 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

The Hon Alan Tudge MP, Minister for Education and Youth,
DLO.Tudge@dese.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 at 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 engages standing order 23(4), and accordingly has resolved to draw it 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 instrument, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 11 August 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

Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2021 [F2021L00291]

Grant/Program	Amount	Description
Grants to The Smith Family	\$38.2 million over four years from 2020-21	A grant to The Smith Family to provide financial and other support to disadvantaged primary and high school students and their families aimed at increasing the students' long-term participation in education, including attendance at, and completion of, school, and expanding their opportunities for work and training post-school.
Grant to Anti-Defamation Commission Incorporated—National Holocaust Education Digital Platform	\$3 million over four years from 2020-21	A grant to Anti-Defamation Commission Incorporated to create, promote and maintain the National Holocaust Education Digital Platform, including educational resources for the platform, and provide training to education professionals to use the platform and resources.
Grant to Islamic Museum of Australia	\$3 million over four years from 2020-21	A grant to Islamic Museum of Australia to support an upgrade and expansion of their existing online education program to service all Australian schools, including virtual tours, 3D videos and an upgrade of galleries to a digital platform.
Early Learning STEM Australia	\$5.7 million over five years from 2020-21	To fund measures that are aimed at engaging children in science, technology, engineering and mathematics (STEM) in the preschool and primary school years, including: <ul style="list-style-type: none">• developing and delivering online content, through the use of telecommunication services, for STEM education to preschool and primary school students; and• providing training to early childhood educators and primary school teachers.
Flexible Literacy Remote Primary Schools Program	\$5.8 million over four years from 2020-21	To fund training for teachers at remote primary schools to enable them to adopt explicit instruction teaching methods in relation to literacy, numeracy and science to improve the skills and knowledge of students in remote locations (particularly Aboriginal and Torres Strait Islander students) in the areas of literacy, numeracy and science.
Holocaust Memorial Week	\$30,000 in 2020-21	To support the Australian Education Working Group within the International Holocaust Remembrance Alliance to promote Holocaust education during Holocaust Memorial Week by developing and delivering online educational resources, and undertaking related activities, including the following: <ul style="list-style-type: none">• creating, promoting and maintaining an online platform to distribute those resources to schools;• conducting a social media campaign to promote use of the online platform; and• evaluating the use by schools of the educational resources delivered through the online platform.

Grant/Program	Amount	Description
Emerging Priorities Program	\$25 million over five years from 2020-21	<p>To provide funding to improve educational outcomes or to support career development (or both) for school students, including by:</p> <ul style="list-style-type: none">• supporting school attendance and completion;• addressing health issues of school students, teachers and school leaders, including mental health issues;• providing professional development for school leaders and teachers directed at improving educational outcomes;• providing online or face-to-face educational resources for school leaders, teachers, students and parents to support the teaching and learning of school students;• providing career training, guidance and advice to school students; and• researching, analysing and addressing the impacts of unexpected events, including the COVID-19 pandemic, on educational outcomes for school students.



17 June 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 Paul Fletcher MP, Minister for Communications,
Urban Infrastructure, Cities and the Arts,
dlo@communications.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 at [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 engages standing order 23(4), and accordingly has resolved to draw it 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 instrument, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 11 August 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

Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2021 [F2021L00287]

Grant/Program	Amount	Description
National Collecting Institutions Touring and Outreach Program	\$4.0 million over four years from 2020-21	The Program provides financial assistance to national collecting institutions and organisations to develop and tour exhibitions within Australia and overseas, and to bring cultural material and works from international collections to Australia for exhibition.
Australian Government International Exhibitions Insurance Program	\$9.7 million over four years from 2020-21	The Program provides financial assistance to cultural institutions and organisations to obtain insurance in relation to exhibitions in Australia of cultural material and works from international collections.
Indigenous Repatriation Program	\$3.2 million over four years from 2020-21	The Program provides financial assistance to museums and cultural institutions in Australia to facilitate the return of Indigenous Australian ancestral remains and secret sacred objects to their community of origin, and provide culturally appropriate care of, and access to, Indigenous Australian ancestral remains and secret sacred objects.
Arts and Cultural Development Program – Arts Training Organisations	\$91.8 million over four years from 2020-21	The Program provides financial assistance to national performing arts organisations for the training of young Australian performing artists.
Australian 5G Innovation Initiative	\$22.1 million over three years from 2020-21	The Initiative provides financial support to facilitate and encourage the deployment and use of the fifth generation of mobile telecommunications technology used for wireless communication.



17 June 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 David Littleproud MP, Minister for Agriculture, Drought
and Emergency Management,
DLO-MO@agriculture.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 instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

Instrument	Grant/Program	Amount	Description
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 1) Regulations 2021 [F2021L00288]	Murray-Darling Healthy Rivers Program	\$24.5 million over two years from 2020-21	To provide grants to support community-based environmental projects that improve the health and ecological condition of rivers and wetlands in the Murray-Darling Basin.
	Immediate Assistance Fund	\$10.1 million over three years from 2020-21	To provide financial assistance to state and territory governments and industry to improve Australia's capacity to respond to an exotic plant or animal, pest or disease incursion.
	Great Artesian Basin Lynn Brake Scholarship Grant Program	Annual grant of \$20,000 over four years from 2021-22 subject to budget being approved for each financial year	To provide scholarships to students to support research related to the Great Artesian Basin.
	Lake Eyre Basin Justin Costelloe Scholarship Grant Program	Annual grant of \$20,000 over four years from 2021-22 subject to budget being approved for each financial year	To provide scholarships to students to support research and understanding related to the Lake Eyre Basin Agreement Area.

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 August 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



17 June 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 Richard Colbeck,
Minister for Senior Australians and Aged Care Services,
Minister.Colbeck.DLO@health.gov.au

Dear Chair,

Matters of interest to the Senate—Aged Care Recipient Classification

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 provision of aged care services, 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
Aged Care Legislation Amendment (Aged Care Recipient Classification) Principles 2021 [F2021L00357]	<p>The Aged Care Amendment (Classification of Care Recipients) Act 2020 provides the Secretary with the power to classify a care recipient for respite or non-respite care, according to the level of care the care recipient needs relative to the needs of other care recipients, in certain circumstances.</p> <p>The purpose of this instrument is to:</p> <ul style="list-style-type: none"> • set out legislative provisions relating to the requirement for approved providers to allow delegates of the Secretary access to an aged care service to assess the care needs of care recipients; • set out the procedures that the Secretary (or their delegate) must follow to classify a care recipient; • set out the classification levels and how a care recipient may be assessed and classified into each class, as well as specifying the circumstances in which a care recipient's care needs are taken to have changed significantly for the purposes of reclassification of a care recipient; and • set out the criteria for persons to whom the Secretary's assessment powers may be delegated. <p>A computer program will be used to assist the Secretary to classify a care recipient into the appropriate class.</p>

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 11 August 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



17 June 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; committeescrutiny@treasury.gov.au

Dear Chair,

Matters of interest to the Senate—SME Recovery Loan Scheme

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 SME Recovery Loan Scheme, 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
Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Amendment Rules 2021 [F2021L00320]	<p>The instrument amends the definition of 'SME entity' (Small and Medium Enterprises) for the purposes of which businesses will be eligible to apply for loans under the SME Recovery Loan Scheme. The amendments mean that the definition of a small to medium entity includes entities whose annual turnover is likely to be less than \$250 million in the current financial year or where the entity's annual turnover was less than \$250 million in one of the previous two financial years.</p> <p>This is the second time the turnover limit for the SME Recovery Loan Scheme has been increased. The original turnover limit, in force from April to November 2020, was \$50 million. From November 2020 until the making of this instrument in March 2021 the turnover limit was \$120 million.</p>

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that (based on the current sitting pattern) the time for lodging a disallowance notice in the Senate expires on 11 August 2021.

The committee has also drawn this instrument to the attention of the Senate Select Committee on COVID-19.

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



17 June 2021

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

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

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

Dear Chair,

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

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

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

Noting that the following instrument appears to contain significant policy matters relating to COVID-19 response measures, 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
Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Amendment Rules 2021 [F2021L00320]	<p>The instrument amends the definition of 'SME entity' (Small and Medium Enterprises) for the purposes of which businesses will be eligible to apply for loans under the SME Recovery Loan Scheme. The amendments mean that the definition of a small to medium entity includes entities whose annual turnover is likely to be less than \$250 million in the current financial year or where the entity's annual turnover was less than \$250 million in one of the previous two financial years.</p> <p>This is the second time the turnover limit for the SME Recovery Loan Scheme has been increased. The original turnover limit, in force from April to November 2020, was \$50 million. From November 2020 until the making of this instrument in March 2021 the turnover limit was \$120 million.</p>

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 August 2021.

The committee has also drawn this instrument to the attention of the Senate Economics Legislation Committee.

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

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

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

Yours sincerely,

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