



Delegated Legislation Monitor 12 of 2020

Tabling Statement

Wednesday 11 November 2020

I rise to speak to the tabling of the Scrutiny of Delegated Legislation Committee's *Delegated Legislation Monitor 12 of 2020*.

In particular, I wish to draw the Senate's attention to two instruments in Chapter 1 of the Monitor which raise significant technical scrutiny concerns.

The first instrument is the **Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020**. This instrument repeals changes that were made to reduce the access period for a proposed variation of an enterprise agreement from seven days to one day.

In the Monitor the committee reports its view that the explanatory statement to the instrument does not currently comply with certain technical requirements of the *Legislation Act 2003*, particularly the requirement that explanatory statements must contain a description of any consultation undertaken in relation to the instrument.

In correspondence with the committee, the Attorney-General has provided the committee with details of the consultation that was undertaken in relation to the instrument and the measures that it repealed. However, the Attorney has so far declined to update the explanatory statement to the instrument to include this information to ensure that it complies with the *Legislation Act*. The Attorney has instead noted that details of the consultation that has been undertaken are already on the public record.

The committee has significant scrutiny concerns about this non-compliance with the mandatory requirements of the Legislation Act. In light of these concerns, the committee is seeking the Attorney's advice as to why the explanatory statement to the instrument cannot be amended to include the information he has provided with regard to consultation.

As the committee retains significant scrutiny concerns in relation to the instrument, the committee has resolved not to withdraw its notice of motion to disallow the instrument in order to provide the Senate and the committee with additional time to consider the instrument. The response provided by the Attorney to the committee's request for further advice will inform the committee's consideration of whether to withdraw the disallowance notice.

The second instrument I wish to highlight is the **Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020**. This instrument amends the Foreign Acquisitions and Takeovers Regulation 2015 to set the monetary thresholds for particular significant actions and notifiable actions to nil. In effect, this means that the majority of actions relating to the acquisition of interests in Australian business or land require notification to the Treasurer under the *Foreign Acquisitions and Takeovers Act 1975*. This measure aims to safeguard the national interest during the COVID-19 pandemic.

The committee considers that this instrument implements a significant COVID-19 response measure and should therefore be time-limited. Despite this, neither the explanatory statement nor the instrument itself specifies a date by which the measures will end.

Given the significance of the measures, the committee asked the Treasurer to amend the instrument to specify a date by which the measures will cease. The committee also gave notice of a motion to disallow the instrument on 1 September 2020.

The Treasurer has since advised that regulations have been made to reinstate the monetary thresholds where a foreign person is renewing a lease over non-sensitive commercial property. In addition, the Treasurer advised that exposure draft regulations have been released which would reinstate the monetary thresholds for other actions from 1 January 2021.

On the basis of the Treasurer's advice which confirms an intention that the measure be time-limited, the committee has resolved to conclude its examination of the instrument and withdraw the notice of motion to disallow the instrument.

With these comments, I commend the committee's *Delegated Legislation Monitor 12 of 2020* to the Senate.