



Delegated Legislation Monitor 2 of 2021

Tabling Statement

Thursday, 4 February 2021

I rise to speak to the tabling of the Scrutiny of Delegated Legislation Committee's *Delegated Legislation Monitor 2 of 2021*.

In particular, I would like to draw the chamber's attention to the committee's comments regarding five legislative instruments made by the Australian Securities and Investments Commission. These instruments address a range of subject matters within ASIC's portfolio, by providing for exemptions from, and modifications to, certain provisions of the *Corporations Act 2001* and other Acts of Parliament.

While they alter the operation of primary legislation made by this Parliament, these instruments appear to be intended to remain in force for substantial periods of time – ranging from five to 10 years. This contravenes the committee's longstanding expectation that instruments 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. The committee considers that a shorter sunset period is essential to ensure that there is a minimum degree of regular parliamentary oversight of such instruments.

Since October last year, the committee has been corresponding with both the Treasurer and the Assistant Minister for Superannuation, Financial Services and Financial Technology to resolve its scrutiny concerns regarding each these instruments. The committee has also lodged notices of motion to disallow each of the instruments in order to provide it with additional time to resolve its scrutiny concerns.

The committee considers that these instruments raise broader, systemic concerns about the application of ASIC's exemption and modification powers. Accordingly, in December the committee drew the systemic concerns to the attention of the Treasurer.

Since then, the Treasurer has continued to engage constructively with the committee in recognition of the importance of parliamentary oversight of such a measure. Most recently, the Treasurer formulated a list of principles which he considers should be taken into account by ASIC when determining the duration of instruments which provide for exemptions or modifications to primary legislation.

O behalf of the committee, can I thank the Treasurer for his ongoing and considered engagement with the committee in relation to this systemic issue. However, this chamber has tasked the committee to ensure that all disallowable delegated legislation is subject to rigorous and consistent scrutiny against the principles set out in standing order 23. These are the parameters that have long underpinned the work of our committee. To scrutinise ASIC instruments in the manner proposed by the Treasurer would represent a significant departure from the committee's longstanding practice in interpreting these scrutiny principles. This has resulted in a consistent and clear approach. Indeed, it would open up the prospect of other proposals from other ministers in other departments for their own sets of principles. It would also mean that the committee holds instruments made by ASIC to a different standard to all other disallowable delegated legislation. The committee will not do this. The committee has therefore requested that each of the five ASIC instruments be amended to limit their duration. This is to ensure that the Parliament is given a regular opportunity to review and scrutinise modifications or exemptions to primary legislation that it has enacted.

The committee has resolved not to withdraw the notices of motion to disallow the instruments to highlight the significance of its scrutiny concerns. The Treasurer's response to the committee's request will inform the committee's consideration of whether to withdraw its notices of motion to disallow these instruments. These scrutiny concerns go beyond these five instruments and the committee takes this opportunity to ask all ministers and law makers to keep these systemic concerns in mind in the future.

With these comments, I commend the committee's *Delegated Legislation Monitor 2 of 2021* to the Senate.