



Tabling Statement

Delegated Legislation Monitor 8 of 2021

Wednesday, 16 June 2021

I rise to speak to the tabling of the Scrutiny of Delegated Legislation Committee's *Delegated Legislation Monitor 8 of 2021*. I would like to take this opportunity to draw the chamber's attention to the committee's scrutiny concerns regarding the Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021.

The instrument amends the principal ARENA Regulations to allow ARENA to invest in non-renewable energy technologies. The committee is concerned that this instrument expands the remit of ARENA beyond what was envisaged by Parliament when the Act was passed and may therefore be beyond the scope of its enabling Act.

It is the view of the committee that there is nothing in the explanatory memorandum to the bill preceding the Act to suggest that it was ever contemplated that ARENA would have the ability to foster anything other than renewable energy technologies. The introduction of these significant changes to the role of this agency via delegated legislation instead of primary legislation is of significant scrutiny concern to the committee. As a result, the committee will write to Minister Taylor about these scrutiny concerns. I will update the chamber about progress in relation to resolving this important matter in due course.

Concerningly, this is not the only instrument the committee has scrutinised recently which significantly expands an entity's jurisdiction and powers. Earlier this year I advised the chamber of the committee's concerns regarding the Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020. This instrument significantly expands the jurisdiction and therefore the investigative powers of the Australian Commission for Law Enforcement Integrity to include the ACCC, APRA, ASIC and the ATO.

I am pleased to advise that today the Attorney-General has made an undertaking to amend this instrument so that it will repeal in three years. The committee welcomes this undertaking which will provide an opportunity for this significant expansion of ACLEI's jurisdiction to be set out in standalone primary legislation prior to the sunset date in 2024, or at least in a further regulation which would provide an opportunity for further parliamentary consideration of this significant measure.

I would also like to advise the chamber about significant progress that has been made in relation to the committee's ongoing scrutiny concerns regarding delegated legislation in the Treasury portfolio which modifies the operation of primary legislation—in some cases for over 10 years. I thank the Treasurer for his continued good faith engagement on this issue with the committee.

I am pleased to advise that last month, the Treasurer made a number of undertakings to the committee to ensure that explanatory materials for instruments which modify the operation of primary legislation will, in the future, include the information and justifications required by the committee.

The Treasurer also undertook to consider the duration of these instruments, including whether shorter timeframes can be applied, and to consider whether amendments to the primary legislation can be made instead. In this regard, the Treasurer has already indicated that an expansion to the types of services that BAS agents may provide and exemptions for employee share schemes will be moved from delegated to primary legislation.

Further, the Treasurer advised the committee that his office and department will continue to engage with all of the agencies in his portfolio, including the regulators, to ensure the committee's concerns are addressed, before instruments are made. The committee looks forward to continuing to work with the Treasurer to address these scrutiny issues over the longer term.

With these comments, I commend the committee's *Delegated Legislation Monitor 8 of 2021* to the Senate.