



## Delegated Legislation Monitor Tabling Statement

Wednesday 21 June 2023

I rise to speak to the tabling of the Senate Standing Committee for the Scrutiny of Delegated Legislation's *Delegated Legislation Monitor 7 of 2023* today, and *Delegated Legislation Monitor 6 of 2023*, which the committee presented out of session on 2 June 2023.

Delegated Legislation Monitor 7 reports on the committee's consideration of **108** legislative instruments registered between 16 May 2023 and 31 May 2023. Delegated Legislation Monitor 6 reported on the committee's consideration of **107** legislative instruments registered between 17 April 2023 and 15 May 2023.

I would like to draw the Chamber's attention to three instruments in the Treasury portfolio. The committee most recently commented on these instruments in Monitor 6. These instruments are of particular concern to the committee because they create ongoing exemptions to primary legislation.

These instruments are the Corporations Amendment (Design and Distribution Obligations—Income Management Regimes) Regulations 2023, the Corporations Amendment (Litigation Funding) Regulations 2022 and the Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022.

These instruments contain ongoing exemptions to primary legislation, via the Corporations Regulations 2001, which has been exempt from the sunseting regime

since 2017. Further, the Rationalising ASIC Regulations have the effect of moving exemptions that were previously time limited, into regulations that operate indefinitely.

The committee has long been concerned about delegated legislation that modifies or creates ongoing exemptions to primary legislation. It is the committee's view that such measures should be set out in the primary legislation itself. However, when these measures are in delegated legislation, they should be time limited, in order to facilitate regular parliamentary scrutiny and so that they do not operate as de facto amendments to primary legislation. The committee's guidelines state that generally, such measures should cease to operate no more than **three years** after they commence, to ensure appropriate parliamentary oversight.

The committee has been engaged in extensive, ongoing correspondence in relation to these instruments, and detailed its concerns in previous delegated legislation monitors. Despite this extensive engagement, including holding two private briefings with the Assistant Treasurer and his Department, the committee's scrutiny concerns have not been allayed.

In Delegated Legislation Monitor 6, the committee again wrote to the Assistant Treasurer about this issue. The committee sought advice about whether the Corporations Regulations 2001 could be subject to the usual 10-year sunset period. Alternatively, the committee asked whether the specific measures introduced by these instruments could be subject to a 10-year sunset period. The committee considers this to be a significant attempt to resolve this longstanding issue.

Noting the disallowance period is fast approaching for two of the three instruments being considered, the committee expresses its disappointment that its scrutiny

concerns have not yet been adequately addressed, and will continue to pursue this issue over the coming weeks.

In light of this, I would like to reiterate the importance of timely responses by Ministers and departments. The committee aims to resolve its scrutiny concerns prior to the disallowance of the relevant instrument. This can be difficult when responses are not provided within the timeframes requested, affecting the committee's scrutiny process.

On behalf of the committee I would also like to take this opportunity to note the assistance Associate Professor Andrew Edgar has provided the committee since 2018 when he was engaged as the committee's legal adviser. His knowledge and guidance has been invaluable, and we wish him all the best in his future endeavours as he moves on to take up other opportunities.

With these comments, I commend the committee's *Delegated Legislation Monitor 7 of 2023* to the Senate.