



5 May 2021

Senator Sarah Hanson-Young
Chair
Senate Environment and Communications References Committee
Parliament House
CANBERRA ACT 2600

Via email: ec.sen@aph.gov.au

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

Dear Chair,

Australia Post inquiry

I am writing, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee), in relation to the Senate Environment and Communications References Committee's inquiry into Australia Post.

The committee assesses delegated legislation against a set of scrutiny principles that focus on compliance with statutory requirements, the protection of individual rights and liberties, and principles of parliamentary oversight.

The committee takes a keen interest in delegated legislation related to Australia Post, as it impacts on the lives of Australians every day. I note, in particular, the committee's recent engagement with the Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579], which was also the subject of inquiry by the Senate Environment and Communications Legislation Committee.¹

In the context of your committee's current inquiry into Australia Post, the committee is aware that there has been a lack of clarity as to whether a direction was given to the Board of Australia Post by the Minister for Communications, Urban Infrastructure, Cities and the Arts (the Minister), in relation to the former Chief Executive Officer (CEO) of Australia Post.

¹ The committee's engagement in relation to this instrument can be viewed on the [Index of Instruments](#) page on the committee's website.

In this regard, the committee notes that the Prime Minister, the Hon Scott Morrison MP, stated in the House of Representatives on 22 October 2020 that "the chief executive has been instructed to stand aside".²

In addition, the Chair of Australia Post, Mr Lucio Di Bartolomeo, gave evidence to your committee confirming that the minister had asked him to stand the former CEO aside, however, that he had not taken this as a direction.³

Noting this lack of clarity, and the fact that some ministerial directions are disallowable and would therefore be subject to the committee's scrutiny, the committee undertook to ascertain whether a ministerial direction had been given. The committee notes that if a formal direction had been given by the Minister, it would have been given to the Board of Australia Post by the Minister under section 49 of the *Australian Postal Corporation Act 1989* (the Act).

The committee's research into this matter confirms that it does not appear that any formal direction under section 49 of the Act was given by the Minister to Australia Post on 22 October 2020. In addition, it appears that no ministerial directions under section 49 of the Act have been given to the Board of Australia Post in the past ten years.

As a legislative scrutiny committee, the committee considers that if a direction was given by the Minister to the Board of Australia Post it would be appropriate to do so under section 49 of the Act, which provides for parliamentary scrutiny by requiring the tabling of such directions in both Houses of the Parliament.

The committee notes that this matter raises a broader issue relating to directions by a Minister to a person or body. While not all ministerial directions will be of a legislative character, if a direction made under section 49 of the Act was of legislative character it would be classified as a legislative instrument under subsection 8(4) of the *Legislation Act 2003*. It would therefore be subject to the provisions of that Act relating to legislative instruments. However, even if a ministerial direction made under section 49 of the Act was classified as a legislative instrument, it would not be subject to disallowance due to the operation of section 9 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (LEOM Regulation).⁴

I take this opportunity to draw to your attention the committee's final report into the exemption of delegated legislation from parliamentary oversight which recommended that the broad exemption from disallowance that currently exists for ministerial directions to a person or body should be repealed.⁵

Finally, I can confirm that the committee has no concerns should your committee wish to publish this correspondence.

² *House of Representatives Hansard*, 22 October 2020, p. 7985.

³ *Committee Hansard*, 13 April 2021, pp. 37–38, 41.

⁴ The LEOM Regulation provides, among other things, that 'an instrument that is a direction by a Minister to any person or body' is not subject to disallowance.

⁵ See Recommendation 2, Senate Standing Committee for the Scrutiny of Delegated Legislation, *Inquiry into the exemption of delegated legislation from parliamentary oversight*, [Final report](#), 16 March 2021, p. xi.

Should you have any questions, please do not hesitate to 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