



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

13 February 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: Josh.Frydenberg.MP@aph.gov.au

CC: tsrdlos@aph.gov.au, committeescrutiny@treasury.gov.au

Dear Treasurer,

**Corporations Amendment (Design and Distribution Obligations) Regulations 2019
[F2019L01626]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice about this matter.

Matters more appropriate for parliamentary enactment

The explanatory statement to the instrument explains that the purpose of the instrument is to enhance the design and distribution obligations (DDO) regime 'by altering the products and persons in relation to which the DDO regime applies'. For example, item 2 of Schedule 1 to the instrument amends the *Corporations Regulations 2001* to exempt employers from the regime where the employer is complying with certain superannuation guarantee obligations.

The DDO regime is due to be inserted into the *Corporations Act 2001* when Schedule 1 to the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* (amending Act) commences on 5 April 2021. Noting that the provisions to which the exemptions apply are not due to commence until April 2021, it is unclear to the committee why it was considered necessary and appropriate to use delegated legislation to create exemptions to those provisions, instead of including them directly in the amending Act.

The committee would therefore appreciate your advice as to why it was considered necessary and appropriate to include the exemptions in delegated legislation rather than

primary legislation, noting that the provisions to which the exemptions apply are yet to commence.

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

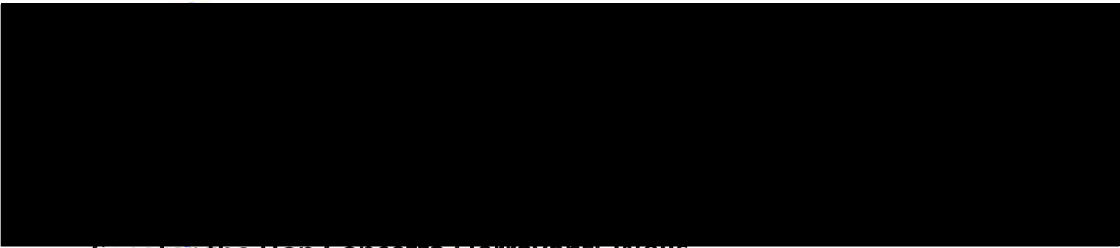
Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **27 February 2020**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,



Senator the Hon Concetta Ferravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation



THE HON JOSH FRYDENBERG MP
TREASURER

Ref: MS20-000361

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear Senator ~~Fierravanti-Wells~~ *Connie*,

I am writing to in response to your letter of 13 February 2020 regarding the *Corporations Amendment (Design and Distribution Obligations) Regulations 2019* [F2019L01626] (the Regulations).

In that letter, the Committee requested my advice as to why it was considered necessary and appropriate to include the exemptions to the design and distribution obligations in delegated legislation rather than primary legislation. The committee noted that the provisions to which the exemptions apply are yet to commence.

The use of delegated legislation reflects the broad scope of the financial products and arrangements in relation to which the design and distribution obligations in the primary law apply, namely financial products within the meaning of the *Corporations Act 2001* and additional financial products within the meaning of the *Australian Securities and Investments Commission Act 2001*. Given the breadth of the coverage of the design and distribution obligations, the number and technical nature of financial products within its scope, and the variety of ways in which those products are distributed, it is desirable that limits to and expansions of the regime in relation to specific types of products may be effected by delegated legislation. Accordingly, I consider it appropriate that the exemptions in the Regulations are contained in delegated legislation.

Further, significant consultation was undertaken in developing the Regulations to ensure they operate as intended and properly reflect the technical nature of the financial products they are intended to cover as they exist in the market today.

As the explanatory statement notes, public consultation was undertaken on an earlier version of the Regulations, from 23 October 2018 to 13 November 2018. Eleven submissions were received from consumer groups, industry groups and financial services entities.

Public consultation was also undertaken on a revised version of the Regulations reflecting the Parliamentary amendments incorporated into the final Act, from 12 September 2019 to 11 October 2019. Seventeen submissions were received from consumer groups, industry groups and financial services entities on the revised version of the Regulations. Public consultation was also undertaken on the primary legislation.

As the committee notes, the provisions are yet to commence. However, it was considered desirable that the Regulations were settled well in advance of the commencement date of the design and distribution obligations, given the need for industry to develop processes and systems to ensure compliance with the new obligations.

Thank you for bringing your concerns to my attention.

Yours sincerely



THE HON JOSH FRYDENBERG MP

28/2

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3 April 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
CANBERRA ACT 2600

Via email: Josh.Frydenberg.MP@aph.gov.au

CC: tsrdlos@aph.gov.au; committeescrutiny@treasury.gov.au

Dear Treasurer,

**Corporations Amendment (Design and Distribution Obligations) Regulations 2019
[F2019L01626]**

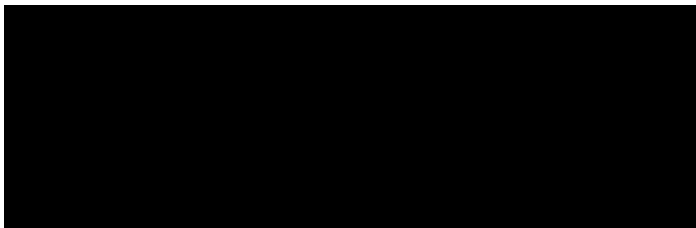
Thank you for your response of 28 February 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 1 April 2020. On the basis of your advice, the committee has concluded its examination of the instrument.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

Thank you for your assistance with this matter.

Yours sincerely,



Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation