SENATOR THE HON JANE HUME
ASSISTANT MINISTER FOR SUPERANNUATION,
FINANCIAL SERVICES AND FINANCIAL TECHNOLOGY

Ref: MS20-001218

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

Thank you for your letter on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) regarding the *ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486* [F2020L00618] and the *ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487* [F2020L00623] (the Instruments).

In that letter, the Committee sought my advice as to:

- why it was considered necessary and appropriate to use delegated legislation, rather than primary legislation to defer the commencement of the new design and distribution obligations regime and mortgage broker obligations regime; and
- the appropriateness of amending the commencement dates of relevant provisions of the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* and the *Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020* to give effect to the measures set out in the instruments in primary legislation.

In preparing this response, I have sought advice from the Australian Securities and Investments Commission (ASIC), which has been incorporated into this response. I consider that it was necessary and appropriate for ASIC to use delegated legislation to defer the commencement of these regimes, and that it would not be necessary or appropriate to give effect to the measures set out in the instruments in primary legislation.

On 8 May 2020, the Treasurer announced changes to the commencement of certain reforms arising from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (the Royal Commission) due to the significant effects of the Coronavirus.

However, the laws containing the design and distribution obligations (DDOs) and the best interest duty and remuneration reforms for mortgage brokers (mortgage broker reforms) had passed Parliament, but were yet to take effect. Having consulted with industry on draft guidance on both

Parliament House Canberra ACT 2600 Australia
Telephone: 61 2 6277 3123 | Facsimile: 61 2 6277 5782

reforms, as well as with the Treasurer and the Treasury, ASIC concluded that the rationale for the Treasurer's announcement was also relevant to these two reforms. In particular, ASIC concluded that a deferral would be justifiable to enable the financial services industry to focus their efforts on planning for the recovery and supporting their customers and their staff during the Coronavirus pandemic.

The feedback ASIC had previously received from industry aligned with their assessment that having any deferral of commencement dates for DDOs or the mortgage broker reforms in place as soon as possible would be particularly advantageous, as it would provide greater certainty in terms of industry's resource management during the Coronavirus pandemic.

To that end, ASIC notes:

- the mortgage broker reforms were to commence on 1 July 2020, and until such time primary legislation amending that date received Royal Assent, the mortgage broking industry would have had to continue to prepare to comply from 1 July. The Coronavirus restrictions were making it particularly difficult for credit licensees to appropriately train mortgage brokers, and to make systems changes needed to comply with the reforms; and

- although the DDOs were to commence on 5 April 2021, the reforms are particularly significant and the feedback received from the industry was that they require a substantial amount of work to implement. Many of the new obligations will be owed by product issuers, who have had to dedicate additional resources to (for example) respond to consumer requests for hardship or early access to superannuation due to the Coronavirus. Given the scale of the disruption and the need to adjust existing staff workloads, it was particularly important to have certainty about any adjustment to the commencement of these reforms.

For both reforms, without prompt action, industry would have had to continue to prepare to comply by the existing legislated start dates. ASIC concluded that it was necessary and appropriate to use their exemption powers to effectively defer the commencement dates of these reforms, as that enabled a rapid response to the issues raised.

ASIC also concluded that using their exemption powers in this way was broadly consistent not only with recent Government decisions about reforms relating to the Royal Commission, but also other ASIC uses of power in response to significant disruptions to financial markets and/or the financial services sector.

I trust this information will be of assistance to you.

Yours sincerely

[redacted]

Senator the Hon Jane Hume

SENATOR THE HON JANE HUME
ASSISTANT MINISTER FOR SUPERANNUATION, FINANCIAL SERVICES AND FINANCIAL TECHNOLOGY

Ref: MS20-001028

11 JUN 2020

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Suite S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

I am writing in response to your letter of 21 May 2020, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation, requesting further information relating to:

- the *ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198*; and
- the *ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199* (the Foreign Financial Service Providers Instruments).

The Committee has requested further detailed advice as to whether these instruments could be amended to specify that they cease to operate three years after they commence. I have raised the Committee's concerns with the Australian Securities and Investments Commission (ASIC), and their advice has been incorporated into the following response.

Instruments to commence/become mandatory on 1 April 2022

The Foreign Financial Service Providers Instruments form a new regulatory framework for FFSPs. These instruments will replace existing ASIC instruments (*ASIC Corporations (Repeal and Transitional) Instrument 2016/396* and *ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182*) that provide licensing relief to Foreign Financial Service Providers (FFSPs) providing financial services to wholesale clients in Australia since 2003.

Compliance with the Foreign Financial Service Providers Instruments does not become mandatory until 1 April 2022. ASIC has provided a two-year transitional period for FFSPs to transition to the new regulatory framework. This is provided for through the *ASIC Corporations (Amendment) Instrument 2020/200*. As, for the past 17 years, FFSPs have been operating in Australia through licensing relief provided in the existing ASIC instruments.

If the Foreign Financial Service Providers Instruments were to cease operation on 31 March 2023, the majority of FFSPs would have only had one full year of operating in Australia under the new regulatory framework. FFSPs, their legal representatives and industry associations have engaged in an extensive

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Telephone: 61 2 6277 3123 | Facsimile: 61 2 6277 5782

consultation process, involving three opportunities to provide feedback on the proposals over the last three years, expending time and resources to engage in that process. To review the Foreign Financial Service Providers Instruments one year into its operations will create undue regulatory burden for industry and for ASIC, and introduce regulatory uncertainty for FFSPs and for Australian investors.

The policy of the relief is to assist Australian investors to have access to financial services provided by FFSPs and this is an important benefit for Australian users of FFSP services such as Australian fund managers and superannuation funds.

Extensive consultation over three years on the new framework for ASIC's oversight of FFSPs

As a result of market regulatory developments since the relief was first granted in 2003 and a number of ongoing international and domestic reviews affecting the cross-border provision of financial services, ASIC commenced a review of the relief framework. This review involved three major rounds of public consultation about the operation of the relief that had been in place since 2003 and its policy proposals. The consultation occurred across a period of three years and involved significant engagement with FFSPs, their legal representatives and industry associations. This extensive engagement over such a long period of time would be undermined if the Foreign Financial Service Providers Instruments were to cease operating after three years.

In September 2016, ASIC published Consultation Paper 268 seeking feedback on its proposal to repeal the limited connection relief (*ASIC Class Order 03/824*) as the law now provides extensive relief for services involving derivatives and foreign exchange contracts. Industry argued that the new provision was not a complete replacement of the limited connection relief as the limited connection relief covered a broader range of financial services and products. In 2017, ASIC extended the limited connection relief to allow time for ASIC to conduct a comprehensive review of the relief framework for FFSPs: see Instrument 2017/182.

In July 2018, ASIC published Consultation Paper 301 seeking feedback on its proposals to repeal the sufficient equivalence relief (*ASIC Corporations (Repeal and Transitional) Instrument 2016/396*) and the limited connection relief (*ASIC Corporations (Foreign Financial Services Providers—Limited Connection) Instrument 2017/182*) and implement a modified Australian Financial Service (AFS) licensing regime for FFSPs.

ASIC considered that entities that carry on a financial services business in Australia should be required to hold an AFS licence and be subject to fundamental conduct obligations in the *Corporations Act 2001* (the Corporations Act). The foreign AFS licensing regime ensures ASIC will have the full range of supervisory and enforcement tools to allow it to more adequately and effectively monitor and supervise the conduct of FFSPs in Australia.

ASIC's relief (*ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198*) recognised that there is potential duplicative regulatory burden that may arise from FFSPs complying with two sufficiently equivalent regulatory regimes. ASIC was prepared to exempt FFSPs from some requirements in the Corporations Act where the FFSPs' compliance with the requirements of its home jurisdiction would achieve similar outcomes to compliance with the Australian requirements e.g. financial reporting requirements, client money provisions. Introducing the foreign AFS licensing regime also brings ASIC into step with the regulatory approaches adopted by its major peer regulators for equivalent types of financial services providers.

In relation to the limited connection relief, ASIC has observed that some FFSPs have taken a broad interpretation of the operation of the relief. However, having regard to the licensing exemptions available in subsections 911A(2A) to (2E) of the Corporations Act and taking into account the feedback to ASIC's Consultation Paper 301 on FFSPs, ASIC considered some relief to facilitate access by some types of Australian professional investors to funds management-related financial services provided by FFSPs was necessary. This consultation paper can be found on ASIC's website.

In July 2019, ASIC published Consultation Paper 315 proposing a narrower form of the limited connection relief available to FFSPs that provide funds management type financial services. Taking into account the feedback, ASIC has provided relief for entities that being required to hold an AFS licence for funds-

management related activities subject to some conditions that would allow ASIC to adequately monitor and supervise the FFSP's activities in Australia (*ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199*).

ASIC also provided a two-year transitional period consistent with the transition period it was providing for the foreign AFS licensing regime. This would allow industry time to review their business structures and make arrangements to ensure they can comply with the new requirements. To require the Foreign Financial Service Providers Instruments to be reviewed within three years would undermine the transitional arrangements that were introduced to allow a less disruptive move to the new arrangements.

ASIC needs flexibility to respond if developments or a problem emerges in the relevant overseas market or arrangements under the relief. However, ASIC advises that they do not anticipate any developments in the next 3 years that would cause it to review the Foreign Financial Service Providers Instruments, particularly in view of the two-year transitional period it is providing. ASIC will monitor the operation of the instruments continuously and respond if necessary. ASIC also notes that under the *Legislation Act 2003* all legislative instruments sunset after 10 years which is considered the appropriate period of time to prevent the persistence of antiquated or unnecessary legislative instruments.

Given the work involved in commencing a review of sunsetting legislative instruments, ASIC considers 10 years to be the appropriate sunsetting period. This view was most recently affirmed in the 2017 Review of the Sunsetting Framework under the *Legislation Act 2003*.

Implications of disallowance on FFSPs and Australian investors

ASIC has advised that the Foreign Financial Service Providers Instruments facilitates the provision of financial services to Australian wholesale clients, including financial services that may not otherwise be available from Australian service providers.

Therefore, ASIC considers that disallowance of the Foreign Financial Service Providers Instruments would mean that for FFSPs that are regulated by a sufficiently equivalent jurisdiction (e.g. UK, Canada, US), these FFSPs will be required to apply for and hold a standard AFS licence, and comply with all the requirements of Chapter 7 of the Corporations Act. ASIC has advised that compliance with the Australian requirements may in some cases conflict with the requirements of the FFSP's home jurisdiction, for example, client money provisions. In such a case, ASIC has advised that it anticipates it will be required to provide relief to these FFSPs, which will result in an inconsistent approach to the regulation of FFSPs adding further costs and complexity to industry and ASIC. Through ASIC's extensive consultation with industry, it identified that the cost of complying with two sets of obligations may result in many FFSPs considering it is no longer economic to provide the relevant financial service to Australian wholesale clients.

For FFSPs that are engaging in inducing conduct, these FFSPs would only be required to hold a standard AFS licence. This would be irrespective of whether the FFSP eventually provides the financial service to the person in Australia. ASIC considers the regulatory burden outweighs the benefit of requiring these types of FFSPs to hold an AFS licence. Industry have indicated that many FFSPs may retreat from the Australian market if they were required to hold an AFS licence to engage in inducing conduct to detriment of Australian investors. Australian investors, particularly our superannuation funds require access to a diverse range of financial products and services, which may only be available from FFSPs.

I trust this information will be of assistance to you.

Yours sincerely

[redacted]

Senator the Hon Jane Hume

THE HON PETER DUTTON MP
MINISTER FOR HOME AFFAIRS

Ref No: MS20-000997

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

Dear Chair

Thank you for your letter of 21 May 2020 regarding the *Australian Crime Commission Establishment Regulations 2020* (the 2020 Regulations) and the power to vary or revoke non-publication directions under section 6 of the 2020 Regulations.

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) has requested further advice as to the characteristics of a decision made under section 6 of the 2020 Regulations which would justify excluding merits review under the Administrative Review Council's guidance document on merits review (ARC Guide). Please find additional information in response to the Committee's request below.

Background

The *Australian Crime Commission Establishment Act 2002* (ACCE Act) commenced on 1 January 2003 and amended the *National Crime Authority Act 1984* (NCA Act) and a number of other Commonwealth Acts to replace the National Crime Authority (NCA), the Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments with the Australian Crime Commission (ACC) (which is now known as the Australian Criminal Intelligence Commission (ACIC)). The Australian Crime Commission Establishment (Transitional Provisions) Regulations 2003 (the 2003 Regulations) were made shortly after the commencement of the ACCE Act and prescribed certain matters of a transitional nature, that were not provided for by the ACCE Act.

The 2003 Regulations, included among other things, the power for the Chief Executive Officer (CEO) of the ACC to vary or revoke a non-publication direction made under the NCA Act. This provision was included to ensure that a clear lawful basis existed for the CEO of the ACC to vary or revoke non-publication directions in force, as necessary, and with due consideration of the implications of the direction and any variation a direction upon affected persons, in the same way as the Chair of the NCA had previously done. The provisions in the 2003 Regulations also mirrored the manner in which non-publication directions were varied or revoked under the *Australian Crime Commission Act 2002* (ACC Act), ensuring consistency between NCA Act and ACC Act non-publication directions. Amendments to the ACC Act made in 2015 modified the rules applying to ACC Act non-publication directions, now called Examiner Confidentiality Directions, but retained the personal safety criterion.

The 2020 Regulations remade the power to vary or revoke a non-publication direction made under the NCA Act from the 2003 Regulations, which sunsetted on 1 April 2020. The 2020 Regulations did not create any new powers, but merely replaced the existing transitional provision which was due to sunset. This provision is also consistent with the power to vary or revoke a non-publication direction that was previously in place under the NCA Act and substantially consistent with the power to vary or revoke an Examiner Confidentiality Direction under the current ACC Act, all of which provided a discretion for the CEO to vary or revoke a non-publication direction in substantially the same circumstances, without a merits review process, for reasons given below.

Nature of non-publication directions

Section 6 of the 2020 Regulations enables the CEO of the ACC to vary or revoke a non-publication direction that was given by the NCA or a hearing officer under subsections 25(9) or 25A(12) of the NCA Act, and which was in force immediately before the commencement of the section.

A non-publication direction was made by the NCA or a hearing officer when it was necessary to ensure the protection of the evidence given or the identity of any witness. The NCA or a hearing officer was required to make an order under subsections 25(9) or 25A(12) respectively if failure to do so might prejudice the safety or reputation of a person, or prejudice the fair trial of a person who had been, or may be, charged with an offence. These directions prohibited the publication of evidence given at an NCA hearing and the publication of information, that may identify that a person has given, or may give, evidence at such a hearing.

Subsection 6(3) of the 2020 Regulations provides that the CEO must not vary or revoke a non-publication direction if to do so might prejudice the safety or reputation of a person, or the fair trial of a person who has been or may be charged with an offence. Subsection 6(3) is intended to provide protection to the interests of individuals whose safety, reputation, or right to a fair trial might otherwise be prejudiced by a variation or revocation.

Committee concerns

I understand the Committee considers that given the CEO must not vary or revoke a non-publication direction if to do so might prejudice the safety of a person, these decisions relate directly to the security of a person and should therefore be subject to merits review. I can advise that the decision to vary or revoke a non-publication direction is not solely a decision that relates to the security of a person but is more importantly one of a law enforcement nature as referred to in the ARC Guide. Decisions to vary or revoke a non-publication direction ensure that the ACIC can continue to effectively fulfil its statutory functions in relation to conducting investigations or operations into serious and organised crime. The references in subsection 6(3) of the 2020 Regulations relating to the safety of a person are factors that the CEO must give consideration to when making the decision.

I note the Committee's reference to an example in the ARC Guide suggesting where a merits review would be appropriate, relates to a decision regarding a person being placed in a witness protection program as a basis for suggesting that a merits review may be appropriate for section 6 of the 2020 Regulations. I do not consider this example in the ARC Guide to be analogous to section 6 of the 2020 Regulations, as it is inherently and solely a decision about the security of a person, whereas the decision to vary or revoke a non-publication order is a decision about another matter that incidentally affects the security of a person. The decision would typically be made in the course of carrying out an investigation, or to enable or assist another law enforcement agency or investigative body in carrying out an investigation but may also be varied or revoked for other purposes, including for example Royal Commissions and coronial inquiries. For example, the CEO may decide to vary a non-publication direction to allow evidence given in a hearing to be disclosed to a police force for the purpose of furthering a criminal investigation by that police force. Accordingly, it was not previously, and would now not be, appropriate for such decisions to be subject to merits review as this would affect and could jeopardise current and future law enforcement investigations.

Many witnesses and targets from the NCA era are still alive, and in some cases are still active in criminal enterprises. As such, there have been instances in recent years where material from hearings has been relevant in investigations, Court proceedings or commissions of inquiry. If provision for merits review of such decisions was available, both the investigation of possible breaches and the subsequent enforcement of the law could be jeopardised as it would hinder the ACIC's ability to carry out its functions as a law enforcement and intelligence agency, and may inadvertently provide an avenue for persons to stall or potentially obstruct criminal investigations. Furthermore, notwithstanding the protections which are offered in some circumstances in administrative review processes (for example, the discretion of the Administrative Appeals Tribunal to order a hearing be held in private), the availability of merits review for these decisions could compromise the safety of some individuals as the review process itself may disclose the fact that individuals have been the subject of evidence at a hearing.

Given the highly sensitive nature of the information involved, it is appropriate to rely on the current mechanism in the 2020 Regulations for the protection of safety of individuals concerned, so as not to interfere with ongoing investigations. The existing structure, in which the CEO is prohibited by law from varying or revoking a non-publication direction where the personal safety of a person might be impacted, as well as the availability of judicial review, provides a more appropriate protection for personal safety in those cases where safety is an issue.

If the 2020 Regulations were amended to include provision for merits review in relation to a decision to vary or revoke a non-publication direction, this would create two significantly different regimes for the ACIC with regards to historical non-publication directions under the NCA Act and present day Examiner Confidentiality Directions under the ACC Act, despite the fact that they are in actual fact two legislative provisions for exercising what is for all intents and purposes, the same power.

If the 2020 Regulations were to be disallowed, the ACIC would no longer have a clear lawful basis to vary or revoke a non-publication direction made under the NCA Act, which would potentially prevent the disclosure of intelligence or evidence gained through hearings under the NCA Act for current or future investigations. This could mean that investigations and prosecutions of serious and organised crimes would be hampered, or at worst case, discontinued for lack of evidence.

I trust the above information is of assistance to the Committee. The relevant advisor in my office is Matt Stock, who can be contacted on 02 6277 7860.

Yours sincerely

[redacted]

PETER DUTTON 11/06/20

PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Communications,
Cyber Safety and the Arts

MC20-005829

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

Dear Senator

I refer to your letter of 11 June 2020, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee), regarding the Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 (the Amending Regulations).

The Committee sought further information on the consultations undertaken on the above amending regulations.

The Morrison Government is committed to supporting Australia Post to provide important postal services to all Australians.

The Government takes the need for consultation seriously. In the circumstances, it was – and remains – critical and responsible for the Government to provide Australia Post with urgent, temporary regulatory relief to allow it to manage its workforce, protect its people, control costs and still deliver the services Australian's need.

With many Australians working and learning from home due to the COVID-19 pandemic, Australia Post has experienced a significant surge in demand for parcel deliveries. Letter volumes are also in long term decline, with this trend accelerated by the impact of the pandemic.

Reduced aviation capacity, and movement and social distancing restrictions required to respond to the pandemic, have also had a significant impact on Australia Post's operations.

In response to a request from Australia Post to help it meet customer needs during COVID-19 by redeploying employees underutilised in letter delivery to its booming parcel delivery operation, the Government agreed to temporarily adjust elements of the Australian Postal Corporation (Performance Standards) Regulations 2019.

Under the changes, Australia Post has announced plans to retrain around 2,000 posties who were previously dedicated to handling and delivering letters, a shrinking market, and to redeploy them into roles supporting parcel delivery. To further support the growing parcels operations, around 600 new roles are also being created.

Level 2, 280 Pacific Highway, Lindfield NSW 2070 • T 02 9465 3950
P O Box 6022 Parliament House, Canberra ACT 2600 • T 02 6277 7480
paul.fletcher.mp@aph.gov.au • www.paulfletcher.com.au

Australia Post continues to serve Australians with regular deliveries of letters and parcels to their home or business. Importantly, the delivery frequency of regular mail in regional, rural and remote Australia has not changed, and those customers with a PO Box will continue to receive their letters daily.

The Government consulted closely with Australia Post in developing the temporary arrangements so that they are targeted and reflect the current operating environment. Given the urgency and unprecedented circumstances, broader public consultation was not possible.

Australia Post also regularly engages with its workforce and their representatives about operational matters and will continue to do so. The Government has been advised that there will be no forced redundancies or reductions in take-home pay due to the new temporary arrangements. The Minister also personally met with union representatives on 27 April to explain the Government's rationale for the regulatory relief and to directly address their concerns.

Reflecting the unprecedented circumstances, the Government made the changes time limited, they are in effect until 30 June 2021. The effect of these temporary arrangements will be assessed before the end of the year to determine if it is necessary for them to stay in place for the full period. Any extension of the temporary relief measures would only be implemented after consultations with all relevant parties have been undertaken, and it would also be subject to a new disallowance period enabling Parliamentary oversight, as is appropriate.

Thank you for raising this matter with me. I trust this information addresses the Committee's concerns.

Yours sincerely

[redacted]

Paul Fletcher

27/6/2020

PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Communications,
Cyber Safety and the Arts

MC20-008814

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

Dear Senator Fierravanti-Wells

I refer to your letter of 22 July 2020, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee), regarding the Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 (the Amending Regulations).

The Committee sought further information on the consultations undertaken in drafting the Amending Regulations and plans for further consultation.

The Morrison Government consulted closely with Australia Post in drafting the Amending Regulations. As previously advised, I also met with Mr Shane Murphy, National President of the Communication Workers Union / Communications Electrical Plumbing Union (CEPU) on 27 April, at which time we discussed the temporary regulatory relief. Given the urgency, the Government did not consult with other groups in drafting the Amending Regulations.

From the start of the pandemic, I understand that Australia Post consulted with its workers, major customers and post office licensees on the operational impacts of COVID-19 on the business, and the steps it was taking to maintain postal services. Australia Post also consulted with its international peers – overseas designated postal operators in countries where the pandemic was further progressed.

I note that in its evidence to the Environment and Communications Legislation Committee inquiry – *The future of Australia Post's service delivery* (the Inquiry), Australia Post noted that on 21 April 2020 it advised Mr Greg Raynor, Divisional Secretary, Communications Division of the CEPU of the Government's decision to make the Amending Regulations. In his evidence, Mr Raynor confirmed that Australia Post provided specific details in writing later that day.

Ms Angela Cramp, Executive Director of the Licenced Post Office Group, advised the Inquiry that she was made aware on 6 April 2020 by Ms Christine Holgate, CEO of Australia Post that Australia Post had written to the Government seeking regulatory relief.

Level 2, 280 Pacific Highway, Lindfield NSW 2070 • T 02 9465 3950
P O Box 6022 Parliament House, Canberra ACT 2600 • T 02 6277 7480
paul.fletcher.mp@aph.gov.au • www.paulfletcher.com.au

Concerns were raised by Ms Lorraine Cassin Assistant National Secretary, Print and Packaging Membership Area, Australia Manufacturing Workers Union, that Australia Post did not consult with the print industry prior to the announcement of the temporary relief. Australia Post advised that following the announcement, it worked closely with bulk mailers, like the print industry, to establish an alternative priority timetable for bulk mail items. I note that the Real Media Collective's submission to the Inquiry supports the temporary changes

The Amending Regulations end on 30 June 2021 and will be reviewed later this year to determine if they remain in place for the full period. The Government review will examine:

- letter and parcel volumes and delivery speeds, including whether Australia Post has met its prescribed performance standards under the relief;
- community and business feedback to determine whether Australia Post is meeting the needs of the community and businesses during the COVID-19 pandemic;
- the impact on the Australia Post workforce; and
- other dependencies, such as developments in the aviation sector.

The Government will consider the views of stakeholders as part of the review, including the Australia Post workforce, Licenced Post Office franchisees, large and small businesses, and the print industry. I will write directly to representatives of these sectors seeking their views.

Australia Post will continue to consult over the coming months with both the community and businesses on the temporary changes and report to the Government on the responses received.

The Committee has also asked for advice on the nature of consultation that will be undertaken in relation to plans to extend the duration of the instrument or the measures it contains. The Government has no plan to extend the temporary regulatory relief. As a general comment, any extension of the temporary relief measures would only be implemented after consultations with all relevant parties have been undertaken, and it would also be subject to a new disallowance period enabling parliamentary oversight, as is appropriate.

The Committee has also asked whether the exemption granted by the Prime Minister from the need to complete a regulatory impact analysis for measures made in response to COVID-19 influenced the type, nature and scope of consultation undertaken in relation to the instrument. The amount of consultation that was possible was influenced by the unprecedented circumstances caused by COVID-19.

Thank you for raising this matter with me. I trust this information satisfies the Committee's concerns.

Yours sincerely

[redacted]

Paul Fletcher

30/ 7/ 2020

The Hon Dan Tehan MP
Minister for Education

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7350

Our Ref: MC20-019684

- 8 JUL 2020

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 Concetta,

Thank you for your 18 June 2020 letter on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee), regarding the *Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules* 2020 (Amendment Rules).

I note the Committee requested information on the following:

> **'...appreciate your advice as to why it was considered necessary and appropriate to set out certain conditions for receiving business continuity payments in the *Early Childhood Education and Care Relief Package Payment Conditions* document, rather than including those conditions in the instrument itself.'**

My advice in response to the Committee's request is as follows.

In its response to the Secretariat of the Committee on 27 May 2020, the Department of Education, Skills and Employment outlined a number of reasons as to why these requirements are listed in the Early Childhood Education and Care Relief Package Payment Conditions document (the Conditions), rather than in the *Child Care Subsidy Minister's Rules 2017* as amended by the Amendment Rules, in order to best support the early childhood education and care (ECEC) sector during the COVID-19 pandemic.

I agree with the department's reponse that including this information in the Conditions provided much-needed flexibility to respond to the dynamic needs of the ECEC sector in a rapidly changing environment adversely affecting the sector and the Australian families who rely on it. The arrangements, which are within existing legislation and authority, allowed the Australian Government's ECEC Relief Package arrangements to complement other Government support, particularly the Jobkeeper Payment.

The department's advice to me anticipated there would be amendments to the ECEC Relief Package arising from sector data and feedback, also noting that the Government announced a planned review point for the Package one month into its implementation. Furthermore, setting out the requirements in the Conditions, as opposed to legislative rules, allowed child care providers to clearly understand their obligations for receiving Business Continuity Payments as well as their opportunities to receive additional support through the Exceptional Circumstance Supplementary Payment process, in a format that was familiar, accessible and easily understood.

In response to the Committee's concern that including relevant conditions in the Conditions document will permit said conditions to be changed without any form of Parliamentary oversight, I accept that there was no opportunity for Parliament to review the requirements for the business contintuity payments under the ECEC Relief Package during the delivery of that Package.

Nevertheless, I can confirm that the Relief Package was created within existing legislative and policy authority parameters. As mentioned previously, the ECEC Relief Package was a rapid response by the Government to avoid the collapse of the ECEC sector, as advised by sector representatives and data available to the Government on the number of mass withdrawals of children from child care due to the impact of COVID-19. The Conditions have been varied during the operation of the Relief Package to incorporate greater support to services as particular circumstances and stressors have become apparent following ongoing feedback and the findings of the review. The Conditions document has also been updated to reflect emerging sector needs in line with broader policy authority.

For the Committee's information, I have approved the following changes to the Conditions document since that document was first published on 6 April 2020.

- inclusion of conditions for providers ineligibile to receive JobKeeper payments and for Family Day Care and In Home Care services with eductors that required an Australian Business Number to access Jobkeeper to access supplementary payments (30 April 2020)
- inclusion of a provision for a 20 per cent supplementary payment to In Home Care services and supplementary payments for services who employ in excess of 30 per cent of staff who are ineligible to receive JobKeeper (21 May 2020).

I will also be making some further administrative changes to the Conditions document to complement the Government's announcement of the extension to the duration of the Relief Package and allow for additional business continuity payments available to child care providers for the extended period.

Each version of the Conditions has also included a number of clarifications and corrections that assist child care providers to better understand and comply with their obligations under the Relief Package. The major updates to the Conditions document have been made to further support the child care sector by expanded the provider eligibility criteria to access Exceptional Circumstances Supplementary Payments.

Changes to the Conditions document have been beneficial in nature and have not restricted or reduced support provided to the sector through the Relief Package.

Finally, as the Committee would be aware, the Government has announced that the ECEC Relief Package will end on 12 July 2020, and the usual payment of Child Care Subsidy will resume from Monday 13 July. The Government is also introducing a transition payment arrangement that will provide supplementary financial support to the ECEC sector until late September. The transition payments will be administered as a grants program, rather than payments under the family assistance law.

Consequently, supplementary payments of business continuity payments under the Package will cease shortly, and hence the conditions and requirements relating to them will also cease to have effect (except insofar as they continue to relate to payments already made). Given that there is no ongoing need for the Conditions beyond 12 July 2020, I would not propose to amend the Minister's Rules, retrospectively, to include the Conditions.

Thank you for raising the Senate Standing Committee for the Scrutiny of Delegated Legislation concerns. I trust this information is of assistance.

Yours sincerely

[redacted]

DAN TEHAN

The Hon Josh Frydenberg MP
Treasurer

The Hon David Littleproud MP
Minister for Agriculture, Drought and Emergency Management

The Hon Christian Porter MP
Attorney-General
Minister for Industrial Relations

Ref: MS20-001572

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

Thank you for your letter on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) regarding the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019* [F2019L01610] (the Instrument).

In that letter, the Committee sought the advice of the Minister for Agriculture, Drought and Emergency Management, as to whether subsection 11(4) of the Instrument could be amended to specify that the list of factors 'must' be taken into account in determining whether a processor or farmer has acted in "good faith" for the purposes of subsections 11(1) and (2).

We consider that the current approach, namely the inclusion of a non-exhaustive list of factors, is appropriate. The Instrument provides a sufficient level of guidance in relation to factors that may be attributed to a party meeting their "good faith" obligations. Restricting the court to specified matters may risk divergence from "good faith" principles, and create uncertainty about the use of the phrase in other legislation. Therefore, it is arguable whether attempts to more tightly define the meaning of "good faith" in the Instrument would increase certainty for farmers and processors. In addition to this, an exhaustive list risks narrowing the provision, and ultimately therefore, the protection that the provisions are actually intended to provide.

The Committee also sought the advice of the Treasurer and the Attorney-General in relation to the matters outlined in the Committee's letter, including whether urgent consideration can be given to improving the clarity of drafting of "good faith" obligations in all Commonwealth delegated legislation, particularly where a penalty may be imposed for a breach of those obligations.

As outlined in Minister Littleproud's letter dated 18 June 2020, the phrase "good faith" has a well-understood common law meaning, both in criminal and civil contexts, and both as elements of an offence or civil penalty and as defences to offences and civil penalties.

We consider that adding more detail to legislation, as suggested by the Committee, risks unnecessarily increasing the complexity and length of legislation. This is particularly the case if the Committee's underlying assumption is that other well-understood common law concepts are also 'unclear' and may require greater detail to be set out in an Act or instrument. Further, providing additional detail in an Act or instrument risks common law concepts diverging from the concepts as used in statute, creating the potential for further uncertainty.

Examples of where there is a "good faith" element in delegated legislation include subregulation 84A(3) of the *National Consumer Credit Protection Regulations 2010* and subsection 26(2) of the *Air Services Regulations 2019*.

Examples of where a "good faith" element is used in imposing positive obligations on people in civil and criminal contexts include sections 181 and 184 of the *Corporations Act 2001*, subsections 286(1) and 290A(1) of the *Fair Work (Registered Organisations) Act 2009*, subsection 631(2) of the *Biosecurity Act 2015* and subsection 417(2) of the *Export Control Act 2020*. Examples of where the expression is used in civil and criminal defences include section 265-20 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, subsection 25(3) of the *Corporations Act 2001*, and sections 71.15, 80.3, 82.10, 475.1A and subsections 122.5(5A), 273.9(5), 474.6(7), 474.24(4) of the Criminal Code.

Therefore, we consider that it remains appropriate that well-understood common law concepts like "good faith" continue to be elements of, or included as defences to, civil penalties and offences, without limitation, alteration or elaboration.

The Office of Parliamentary Counsel has been consulted in the preparation of this response and also supports this view.

Yours sincerely

[redacted]

THE HON JOSH FRYDENBERG MP

18 / 08 / 2020

[redacted]

THE HON CHRISTIAN PORTER MP

18 / 08 / 2020

[redacted]

THE HON DAVID LITTLEPROUD MP

18 / 08 / 2020

The Hon. David Littleproud MP

Minister for Agriculture, Drought and Emergency Management
Deputy Leader of the Nationals
Federal Member for Maranoa

Ref: MC20-004054

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

18 JUN 2020

Dear Senator Fierravanti-Wells

Thank you for your correspondence of 12 June 2020 seeking advice about several matters arising from the Senate Standing Committee for the Scrutiny of Delegated Legislation's (the Committee) meeting last week with senior departmental officials about the Competition and Consumer (Industry Codes–Dairy) Regulations 2019 (Dairy Code) or (the Instrument).

The Committee has sought advice about six questions related to the Dairy Code. I have sought advice from the Department of Agriculture, Water and the Environment, who have provided responses to these questions below, in addition to the information included in previous responses to the Committee. With the exception of question two, which falls primarily within the agriculture portfolio, answers to the other questions include additional material relating to questions of legal policy following consultation with the Attorney-General's Department and The Treasury. Given the widespread use of common law defined terms throughout legislation, legislative instruments, codes and various forms of guidance and therefore the potentially significant and wider ramifications of the matter being considered, the Committee may wish to seek a response from the Treasurer and Attorney-General.

Question 1
Why is it considered necessary and appropriate to require farmers and processors to act in accordance with a term ('good faith') that is undefined and requires judicial interpretation and application?

Question 4
Could the instrument be amended to remove the general requirement that farmers and processors deal with each other in 'good faith within the meaning of the unwritten law' and instead provide that a farmer of processor has acted in good faith if they have complied with the specific factors set out in paragraphs 11(4)(a)-(h) of the instrument?

Question 5
Could the instrument be amended to remove the general requirement that farmers and processors deal with each other in 'good faith within the meaning of the unwritten law' and instead provide a definition of good faith by drawing on the guidance issued by the Australian Competition and Consumer Commission at www.accc.gov.au/business/industry-codes/dairy-code-of-conduct/good-faith-under-the-dairy-code?

The Dairy Code requires all processors and farmers act in good faith towards the other party. It is the only obligation in the code that applies to all farmers and processors regardless of their size. Good faith is an important obligation to include in the Dairy Code as many of the interactions that occur between farmers and processors cannot all be reduced to terms recorded in an agreement or covered explicitly in the Dairy Code. As such the conduct between the parties will need to be measured at times by broader principles of trust, cooperation and fairness – referred to broadly as acting in 'good faith'. Good faith particularly benefits dairy farmers by preventing forms of opportunistic conduct by processors.

During consultations on the Code, stakeholders were supportive of this obligation and associated penalties for breaches.

As you are aware, an obligation for the parties to an agreement to act in good faith has developed through the common law. This allows a party to the agreement to sue the other party for breach of contract if they believe the other party has not acted in good faith. The inclusion of good faith obligations in Codes fulfils a similar function by providing the regulator, the Australian Competition and Consumer Commission (ACCC), with the ability to take action for a breach of good faith within the meaning of the common law, such as where the aggrieved party submits a complaint to the ACCC.

The Dairy Code provides a list of factors that may be taken into account in determining if a party is acting in good faith. This provides a significant level of guidance in the written law for farmers and processors to understand their obligations. Good faith is an otherwise known concept within contract law and has been defined by the court. By contrast, codifying an exhaustive definition of good faith would lead to a range of disadvantages. For example, this would:

- introduce a bespoke definition of good faith in the Dairy Code, which may diverge from good faith principles established at the common law (and other industry codes);
- limit the good faith obligation to a set of behaviours that are foreseen and codified at the time of drafting, leaving scope for parties to find loopholes to circumvent meeting their obligations;
- create a parallel version of good faith that may confuse participants in an industry or cause them to believe that their common law rights have been displaced by the statutory definition.
- need to be updated regularly in order to minimise divergence from the parallel common law version of good faith (which would continue to evolve and have effect through contracts); and
- create confusion in terms of having different definitions in different industries, depending on when a code was implemented or last updated.

Good faith is not capable of a one size fits all meaning. It is arguable whether attempts to tightly define the meaning of good faith in the Dairy Code will increase certainty for farmers and processors. For example, if a new codified version of good faith is introduced it may need to be tested in court and require further judicial interpretation before it can be properly established in law and understood by the industry. This could take many years, during which time developments at common law on this principle may have also moved on.

The Committee has inquired whether the instrument could be amended to define good faith, potentially through reference to the matters that are referenced in the instrument or the guidance material issued by the ACCC. The guidance issued by the ACCC has been already been developed based on both common law principles as to what good faith encompasses and the specific factors set out in sections 11(4)(a) – (h) of the Dairy Code. This guidance is well publicised and easily accessible to farmers and processors alike and accordingly, there would be no need for farmers or processors to refer to Court judgements to understand the concept generally.

Both the instrument and guidance from the ACCC note the contextual consideration and circumstances that are needed to assess whether good faith has occurred. Additionally, some of the concepts incorporated in the factors listed at paragraphs 11(4)(a)- (h) and in the ACCC guidance are themselves also qualitative concepts 'undefined in the written law' – such as whether or not a party has acted 'reasonably', so this approach may not serve to provide any greater level of certainty. Further legal advice and consideration would be required to determine if adding consideration of the circumstances or contextual events (which by their nature are unable to be defined) to a specified list of actions would be beneficial or appropriate.

In practice, any offence or contravention that engages qualitative concepts such as 'good faith' or 'reasonableness' is imposing a penalty by reference to a term that is defined in the common law. This reflects the complementary operation of statute and common law, where judicial consideration provides guidance on, and to some extent determines, the practical operation and application of a provision.

If the Dairy Code included a specified definition it may be seen to encourage farmers or processors to seek to find ways around the defined requirements to gain advantage in their conduct with the other. Such an approach may embolden lawyers to argue to define the new terminology in the context of the dairy code, separate from any agreement or understanding that occurs in the ordinary meaning of terms that have been established in contract law. This would run counter to the intent of the Dairy Code which is to foster positive commercial interactions. A new definition of good faith may also result in a new set of jurisprudence for the terms in the Dairy Code. This would result in a level of confusion about what a dairy farmer's (or processor's) obligation would be depending on if the party believed that the Dairy Code or the requirements of broader contract law applied. This uncertainty would be increased where a business was party to more than one code – which may see it with a defined set of obligations under the Dairy Code that differ to those under the Competition and Consumer (Industry Codes– Food and Grocery) Regulation 2015 which differ again from its obligations arising to other parties to act in good faith in its other contracts.

I also draw to the attention of the Committee, that the *Competition and Consumer Act 2010*, the enabling legislation for industry codes, makes note in several clauses that conduct for particular matters is to occur in good faith. However, this Act, passed by Parliament, does not provide any further specificity of what that conduct constitutes.

Question 2

What consultation was undertaken in relation to the meaning of 'good faith' as set out in section 11 of the instrument, and the attachment of civil penalties for failure to act in 'good faith' as defined in the instrument? In particular could you please outline the consultation undertaken:

- *with farmers or their representatives; and*
- *within government, including with the Attorney-General's Department, the Treasury and the Office of Parliamentary Counsel.*

The department undertook consultation on the dairy code in three rounds of public consultation between 31 October to 28 November 2018, 15 January to 15 February 2019 and 28 October to 22 November 2019. The department sought feedback during this time through a range of initiatives, including 18 public consultation meetings held in all dairy regions, multiple meetings with industry representative bodies including the Australian Dairy Farmers and State Dairy Farming Organisations, three tele-town hall meetings, as well as emails and calls from dairy farmers and other industry members.
At the start of each round of consultation, a document was released to support that round's consultation. In each of the three rounds, feedback on whether to include good faith and penalties was sought.

During consultation, most farmers believed good faith provisions should be included and that penalties for breaches were needed. Farmers believed breaches of good faith should have the largest penalty and that penalties should be properly scaled for larger processors to dissuade bad behaviour. Based on feedback in the third round of consultation (in response to the Exposure Draft of the Dairy Code), primarily from State Dairy Farming Organisations, the instrument's Good Faith provisions were applied to all processing businesses, with penalties scaled for larger businesses.

A full list of the locations and dates of these meetings, including the documents prepared for each round of consultation is available at the department's website at https://haveyoursay.agriculture.gov.au/dairy-code-conduct.

The department worked in consultation with the Treasury to develop the Dairy Code, including sharing feedback received about the Dairy Code from stakeholders. The Attorney-General's department was engaged as part of supporting government decision making processes. The Office of Parliamentary Council prepared the Instrument based on the provided drafting instructions (approved by the former Minister for Agriculture and Water Resources, Senator the Hon. Bridget McKenzie).

Question 3

Could you please provide the committee with details of any relevant cases where the meaning of 'good faith' in an industry code has been considered?

Two cases are brought to your attention from 2019, in which the Federal Court considered the meaning of 'good faith' as contained in section 6(1) of the Franchising Code. Section 6(1) is drafted in similar terms to section 11 of the Dairy Code. Section 6(1) provides:
"Each party to a franchise agreement must act towards another party with good faith, within the meaning of the unwritten law from time to time, in respect of any matter arising under or in relation to:
(a) the agreement; and
(b) this code"

Geowash Pty Ltd

Australian Competition and Consumer Commission (ACCC) v Geowash Pty Ltd (Subject to a Deed of Company Arrangement) (No 3) [2019] FCA 72, handed down on 8 February 2019, involved consideration of the obligation to act towards another party "in good faith" under the Franchising Code of Conduct.

The Court considered the issue of whether a franchisor who deals with franchisees in a manner that disregards the terms of the franchise agreement concerning when money is required and how it is to be applied (in particular in respect of establishment and fit-out costs) conforms to the requirement under clause 6(1) of the Code to act towards the franchisee 'with good faith, within the meaning of the unwritten law from time to time'.
The Court found the conduct of Geowash to have been in breach of clause 6(1) of the Franchising Code. In the Geowash case Justice Colvin was able to provide a clear summary of the current state of the unwritten law as to the meaning of good faith for the purposes of cl 6(1) of the Franchising Code, as at the date of that case (8 February 2019).

Ultra Tune Australia Pty Ltd

ACCC v Ultra Tune Australia Pty Ltd [2019] FCA 12, handed down in January 2019, in which Ultra Tune Australia Pty Ltd (Ultra Tune) was ordered to pay a pecuniary penalty of over $2.6 million for breaching the Franchising Code of Conduct 2014 and sections 18 and 29(1) the Australian Consumer Law (ACL). Justice Bromwich in that case found that obligation of good faith is one that requires a franchisor to:
not use the powers and opportunities available to it to the detriment of a franchisee in the absence of any objective legitimate interest in doing so; and must co-operate to the extent possible with a franchisee or potential franchisee, providing that such co-operation is not to the detriment of the franchisor.

The good faith obligations were also taken to require 'consideration by the franchisor of the position and interests of the franchisee'. Justice Bromwich found that Ultra Tune had failed to meet the standards required by the Franchising Code of Conduct's good faith clauses by making numerous misleading statements and failing to provide all relevant information in a timely and accurate manner.

The Treasurer would be the relevant minister for any broader discussion of good faith provisions included in Industry Codes generally.

Question 6

To what extent would the meaning of 'good faith' be developed through mediation and arbitration proceedings, noting that such proceedings are generally subject to confidentiality requirements?

As mediation and arbitration proceedings do not create legal precedent, the common law jurisprudence in relation to the meaning of good faith is not expected to be developed through the alternative dispute resolution mechanisms of the Dairy Code.

I trust this information is useful for the Committee.

Thank you for raising this matter.

Yours sincerely

[redacted]

DAVID LITTLEPROUD MP

cc. The Treasurer, The Hon. Josh Frydenberg MP
cc The Attorney-General, The Hon Christian Porter MP

Senator the Hon Anne Ruston

Minister for Families and Social Services
Senator for South Australia
Manager of Government Business in the Senate

Ref: MB20-000587

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~~ Concetta

Thank you for your letter of 11 June 2020 on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation regarding the Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020 (the Determination).

The Committee has requested further information regarding the Determination.

Extension via delegated legislation rather than primary legislation
Schedule 16 of the *Coronavirus Economic Response Package Omnibus Act 2020* (Economic Response Act) enacted a mechanism to extend the operation of provisions in primary legislation and legislative instruments due to sunset on or before 15 October 2020. This mechanism ensures that there no gaps in our laws while Parliament's attention is focused on high priority and urgent measures arising from the COVID-19 pandemic.

The Determination made in exercise of this power extends the end date for the Cashless Debit Card trial in all existing sites and Income Management in the Cape York region from 30 June 2020 to 31 December 2020. This determination ensured these measures and the support associated with their implementation did not cease on 30 June 2020.

Implementing this extension by instrument rather than primary legislation was an appropriate and proportionate exercise of the power to ensure certainty was provided to stakeholders and participants and that Parliament could focus on responding to the unprecedented circumstances presented by the COVID-19 pandemic.

Extension for six months as opposed to a shorter period
The Economic Response Act provides that the new date implemented by instruments made in exercise of this power should be no longer than six months after the original sunset date.

Extending the operation of the Cashless Debit Card in all existing sites and Income Management in the Cape York region for a period of six months provides greater certainty to stakeholders and participants.

Suite MG.60, Parliament House, Canberra ACT 2600 Tel: 02 6277 7560 Email: minister@dss.gov.au

The six-month extension is also essential as amendments proposed by Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 to transition Income Management in the Cape York region are proposed to commence three months after the Act receives Royal Assent. This commencement provision is reflective of system and procurement lead times, as well as ensuring the appropriate services are in place to support transitioning participants.

In determining the appropriate extension period, the Family Responsibilities Commission (FRC) was consulted in relation to the operation of Income Management in the Cape York region. The FRC advised that it supported the extension until 31 December 2020, as implemented by this Determination. Consultation was also undertaken in existing Cashless Debit Card sites with stakeholders and other community members.

On this basis, the extension for six months, as opposed to a shorter period, is considered appropriate, especially in light of the uncertainty presented by COVID-19.

Bringing forward the Bill at the earliest available opportunity
The priority for the Parliament remains legislation to support the response to the COVID-19 pandemic. However, the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 is currently before the Senate and will be scheduled for consideration as early as is practical.

I trust this information is of assistance to the Committee.

Yours sincerely

[redacted]

Anne Ruston

29 / 6 / 2020

SENATOR THE HON LINDA REYNOLDS CSC
MINISTER FOR DEFENCE
SENATOR FOR WESTERN AUSTRALIA

MS20-001406

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

Dear Chair Connie

I refer to your letter dated 18 June 2020 concerning the Defence Amendment (2020 Measures No. 1) Regulations 2020. As the Chair of the Senate Standing Committee for the Scrutiny of Delegated Legislation, you requested advice as to whether and, if so, when, the Defence Regulation 2016 will be amended to insert a note clarifying that the common law requirements of procedural fairness apply to termination decisions made under section 24 of the Defence Regulation 2016.

Given the Committee's concerns about procedural fairness requirements, the Department will proceed to amend the Defence Regulation 2016 as soon as practicable, by inserting a note to make it absolutely clear that the common law requirements of procedural fairness will continue to apply to termination decisions made under section 24 of the Defence Regulation 2016.

The Department has engaged the Office of Parliamentary Counsel to commence the drafting of the proposed amendment.

Thank you for bringing the matter to my attention.

Yours sincerely

[redacted]

Linda Reynolds

The Hon Christian Porter MP
Attorney-General
Minister for Industrial Relations
Leader of the House

MC20-015850

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600
sdlc.sen@aph.gov.au

Dear ~~Senator Fierravanti-Wells~~ Concetta

Thank you for your letter of 21 May 2020 on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) concerning the *Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020* (the Regulations).

As you are aware, the Regulations temporarily reduce the minimum period during which employees have access to a copy of a proposed variation to an enterprise agreement, and by which they must be notified about the vote, from seven calendar days to one calendar day. This notice period operates as a minimum period prior to a vote on a proposed variation.

The Committee has sought my advice in relation to why it was necessary and appropriate to include the measure in delegated legislation, as well as further information on the consultation undertaken regarding the Regulations.

When the economic effects of the COVID-19 pandemic became clear, urgent industry wide award changes were made by the Fair Work Commission (FWC) within days of applications for variations being made. The timely benefits that flowed from those changes did not extend to those employers and employees covered by enterprise agreements, and I considered it important that those covered by enterprise agreements were also not subject to unnecessary delays in making variations.

It was clear that this temporary measure would give employers and their employees flexibility to respond more rapidly, by agreement, to urgent workplace issues in the COVID-19 pandemic. The change is temporary (operating for a six month period); could be implemented expeditiously by specific regulation as provided for in the Act; and at the time these Regulations were made Parliament was not sitting and future sitting dates were unknown.

Statutory safeguards for employees include that the FWC must be satisfied when approving a variation that the employees have genuinely agreed to the variation; that the employer has taken all reasonable steps to explain the terms of the variation and their effect to employees (provided in an appropriate manner taking into account the employees' particular circumstances and needs); and that the agreement as varied passes the Better Off Overall Test and does not contravene the National Employment Standards.

As you note, senior officials from referring states and territories were informed about the Regulations and sent a copy before the Regulations were made.

The Government's approach throughout the COVID-19 pandemic has been to work together with business and employee representatives (such as the ACTU) to remove barriers and implement sensible measures to save jobs and keep employees safe.

As a result of my consultation with the ACTU, I committed to closely monitor the operation of the Regulations to ensure they are operating effectively and without misuse.

In that regard, I note that the Regulations complement the strong cooperation that has already taken place between employers and unions to support sensible amendments to awards.

Yours sincerely

[redacted]

The Hon Christian Porter MP
Attorney-General
Minister for Industrial Relations
Leader of the House

SENATOR THE HON JANE HUME
ASSISTANT MINISTER FOR SUPERANNUATION, FINANCIAL SERVICES AND FINANCIAL TECHNOLOGY

Ref: MS20-001028

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Suite S1.111
Parliament House
CANBERRA ACT 2600

11 JUN 2020

Dear Senator Fierravanti-Wells

I am writing to you in response to your letter dated 21 May 2020, on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation, requesting further information in relation to the *Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020* [F2020L00328] (the Determination).

The Committee has requested more information in relation to the following:

- whether international standard 3166 (ISO 3166), international standard 17442 (ISO 17442), and the associated online databases, are incorporated by the instrument; and if not, why not; and
- if the advice is that either the standards or the associated online databases are incorporated, where the standards may be accessed or viewed free of charge, the manner in which the standards and/or the online databases are incorporated and if it is intended to incorporate either the standards or the online databases as in force from time to time, the power in the enabling legislation or other Commonwealth law that is relied on to incorporate the documents in this manner.

In responding to the Committee's concerns, I have sought advice from the Australian Prudential Regulation Authority (APRA). In APRA's view, the international standards are not incorporated by reference into the Determination as they are not relevant to understanding the terms of the instruments.

APRA also considers that the associated online databases are not incorporated by reference into the Determination as the databases are only modes for the reporting entities to obtain the information they need to complete the reporting forms.

The Determination revokes the *Financial Sector (Collection of Data) (reporting standard) determination No. 41 of 2018* (the 2018 Determination), and replaces the previous version of ARS 221.0 made under the 2018 reporting standard, with the current reporting standard. Under subsection 13(2) of the *Financial Sector (Collection of Data) Act 2001,* a reporting standard may include matters relating to (among other things) the forms of reporting documents and the information to be contained in reporting documents.

Paragraphs 5 to 7 of the Determination require authorised deposit-taking institutions and, where applicable, their authorised non-operating holding companies to provide the information required in Reporting Form ARF 221.0 or ARF 221.1. These reporting forms capture information about the reporting entity's large exposure to individual counterparties or groups of connected counterparties.

Parliament House Canberra ACT 2600 Australia
Telephone: 61 2 6277 3123 | Facsimile: 61 2 6277 5782

APRA advises that in order to assist the reporting entities to report accurately and consistently, the reporting standards include Instruction Guides designed to assist in completing the reporting forms. In the specific instructions of the instruction guides to both reporting forms, the reporting entities are required to report the Legal Entity Identifier in the reporting form, and to state "N/A" if the entity does not have a Legal Entity Identifier.

In the Definitions section of the Determination, the Legal Entity Identifier is defined as the 20-digit code issued by a Local Operating Unit in accordance with ISO 17442. The definition notes that the Legal Entity Identifier is available on a free online searchable database at https://search.gleif.org/#/search/. The Specific Instructions of the instruction guide to ARF 221.0 also require locally incorporated reporting entities to report the counterparty country of the government-related entity for each exposure.

In the Definitions section of the Determination, counterparty country is defined as the country where the counterparty is domiciled. As such, the reporting entities are required to report the English name of the relevant country as assigned by the ISO 3166 Maintenance Agency to a country code defined under ISO 3166. The definition notes that the ISO 3166 Maintenance Agency maintains a free online browsing platform (OBP) setting out the names of countries and their corresponding codes, available at www.iso.org/obp/ui/#search/code/.

The references to the ISO standards and the associated databases appeared in the 2018 reporting standard and the wording has not been changed in the reporting standard except to update a hyperlink. The references to the ISO standards were considered by the Committee in Delegated Legislation Monitors 11 and 13 of 2018, in relation to the 2018 Determination. As suggested by the Committee in Delegated Legislation Monitor 13 of 2018, APRA has included the information provided by the Treasurer to the Committee in relation to the 2018 Determination in the explanatory statement to the Determination.

APRA considers that ISO 17442 is not incorporated by reference into the reporting standard as the Legal Entity Identifiers are not contained in ISO 17442, and the contents of ISO 17442 are not relevant to understanding the terms of the reporting standard. Similarly, ISO 3166 is not incorporated by reference into the reporting standard as the reporting entities are not expected to refer to the standard in order to determine the English names of the countries. In APRA's view, these codes are the equivalent of postcodes or Australian Company Numbers (ACN); they simply serve as internationally recognised identifiers. If it were accepted that requiring entities to provide these codes was an incorporation by reference of the databases that contain them then it would follow that the requirement in delegated legislation to provide an ACN would be incorporation by reference of the Australian Securities and Investments Commission's Register of Companies.

As noted in the explanatory statement to the Determination, APRA has included the link to the online searchable database and the OBP to assist the reporting entities to locate information about Legal Entity Identifiers and counterparty countries. However, the reporting entities are not required to use the online searchable database, and are not precluded from obtaining information about the Legal Entity Identifiers directly from the counterparties or other sources. Similarly, as noted in the explanatory statement, information about the country names is available on the OBP or by purchasing the Country Codes Collection.

According to information on the International Organization for Standardization's website, the ISO 3166 Maintenance Agency provides the downloadable Country Codes Collection in 3 different formats (.xml, .csv and .xls) with update notifications for a fee at www.iso.org/obp/ui/#search. APRA considers that the online searchable database and OBP are not incorporated by reference into the instruments as the reporting entities are not precluded from obtaining the Legal Entity Identifiers and country names through other modes.

I trust this information will be of assistance to you.

Yours sincerely

[redacted]

Senator the Hon Jane Hume

THE HON JOSH FRYDENBERG MP
TREASURER

Ref: MS20-001236

Senator the Hon Concetta Fierravanti-Wells
Chair
Suite S1.111
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

Thank you for your letter on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) regarding the *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020* [F2020L00435] (the Regulations).

In that letter, the Committee sought my further advice as to Parliamentary oversight of the Regulations. The Committee previously raised this issue with me in a letter dated 21 May 2020, to which I responded by letter dated 3 June 2020.

I note that the Committee considers it appropriate that the Regulations be amended to specify a date when the Regulations will cease to apply, as the Committee considers that the Regulations make a significant change to the foreign acquisitions and takeovers regime.

As outlined in the Explanatory Statement to the Regulations, and in my previous letter, the significant impact of the Coronavirus on the Australian economy has increased the risk of foreign investment in Australia occurring in ways contrary to the national interest. The Regulations address the risk by amending the monetary value thresholds for particular significant actions and notifiable actions to nil, an action expressly contemplated by paragraph 55(1)(a) of the *Foreign Acquisitions and Takeovers Act 1975*.

Given the continuing uncertainty surrounding the Coronavirus pandemic and its ongoing economic effects, it is appropriate that the Regulations remain in force throughout this time. To this end, it is appropriate that the Regulations do not specify a period of application.

I note the Committee's comment regarding the re-drafting and re-approval of the Regulations, but consider that such matters are not the motivation for excluding a specified period of application from the Regulations. Rather, the uncertainty as to when the Coronavirus pandemic will abate and the need to have these measures in place protecting the national interest are the considerations underpinning this decision.

On 5 June 2020, I announced significant reforms to Australia's foreign investment review framework. Announcing the reforms, I said the intention is for a seamless transition from the temporary Coronavirus measures, which include the Regulations, to the reforms measures, which

are scheduled to commence on 1 January 2021. While certain aspects of the temporary measures will be replaced by the reform measures, other aspects will return to pre-Coronavirus settings. As part of the development of the new framework, consideration will be given to the most appropriate way to reverse the effect of the Regulations and, where necessary, replace them with the provisions of the new framework. However, given the current uncertainties about the duration of the Coronavirus pandemic, I consider it is currently too early to specify an end-date for the application of the Regulations.

Thank you for bringing your concerns to my attention.

Yours sincerely

[redacted]

THE HON JOSH FRYDENBERG MP

26 / 6 /2020

The Hon Dan Tehan MP
Minister for Education

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7350

Our Ref: MS20-001150

05 JUN 2020

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

Dear Senator Concetta,

Thank you for your response letter of 21 May 2020 regarding the Senate Standing Committee for the Scrutiny of Delegated Legislation's (the Committee) further assessment of the Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019 (the Instrument). I appreciate the time you have taken to seek further advice and bring this matter again to my attention.

I note the Committee's ongoing concerns that, unlike strictly automatic or mandatory decisions, the relevant decisions in relation to the HELP tuition protection levy require the decision-maker to exercise some discretion, albeit minor, and that the availability of internal review under the *Higher Education Provider Guidelines 2012* (the Guidelines), as amended by the Instrument, indicates that there is some scope for disagreement about the relevant data.

I also acknowledge the Committee's view that independent merits review should be made available, and that you have sought advice as to "whether the instrument could be amended to provide for independent merits review of decisions made under new sections 2.10.25 to 2.10.35 of the Higher Education Provider Guidelines 2020".

After further consideration of the matter, and in line with the Committee's advice, I have made the Higher Education Provider Amendment (AAT Review) Guidelines 2020 under section 238-10 of the *Higher Education Support Act 2003*. This amendment instrument has amended the Guidelines to provide for the availability of independent merits review by the Administrative Appeals Tribunal of a review decision made by the HELP Tuition Protection Director in relation to the HELP tuition protection levy under section 2.10.30 of the Guidelines.

I understand that the Committee gave notice of a motion on 14 May 2020 to disallow the Instrument to allow additional time for the Committee to consider the Instrument. I trust the action that I have undertaken in amending the Guidelines to provide for independent merits review, addresses the Committee's concerns. Therefore, on that basis, I kindly request that the Committee undertakes to have the notice of motion to disallow the Instrument withdrawn.

I have enclosed for the Committee's information a copy of the *Higher Education Provider Amendment (AAT Review) Guidelines 2020*.

Thank you again for raising this matter with me. I trust this information is of assistance.

Yours sincerely

[redacted]

DAN TEHAN

Higher Education Provider Amendment (AAT Review) Guidelines 2020

I, Dan Tehan, Minister for Education, make the following guidelines.

Dated 05 JUN 2020

[redacted]

Dan Tehan
Minister for Education

Contents

1 Name

This instrument is the *Higher Education Provider Amendment (AAT Review) Guidelines 2020.*

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
1. The whole of this instrument	*The day after this instrument is registered.*	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 238-10 of the *Higher Education Support Act 2003.*

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Higher Education Provider Guidelines 2012

1 After section 2.10.35

Insert:

Administrative Appeals Tribunal review

2.10.40 An application may be made to the Administrative Appeals Tribunal for the review of a decision that has been affirmed, varied or set aside under section 2.10.30.

2 Section 2.10.40

Omit "2.10.40", substitute "2.10.45".

3 Section 2.15.1

Omit "sections 166-10 and 166-15", substitute "sections 166-15 and 166-20".

The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the Public Service and Cabinet

Ref No: MC20-026341

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
sdlc.sen@aph.gov.au

03 JUL 2020

Dear Chair

Thank you for your letter of 18 June 2020 from the Senate Standing Committee for the Scrutiny of Delegated Legislation (Committee), concerning the *National Health (Take Home Naloxone Pilot) Special Arrangement 2019* (Instrument).

The purpose of this letter is to respond to your further questions about s 25 of the Instrument.

Approach to the design of the Instrument
You have asked why it was considered necessary to give the Secretary the power in s 25 of the Instrument to authorise a third party administrator to perform the functions and exercise the powers of the Secretary under the Instrument.

I have explained the background and purpose of s 25 of the Instrument in my previous correspondence to the Committee. In particular, I have said that my Department considered it necessary to authorise a third party to perform administrative processes under the Instrument – such as managing claims, processing payments, collecting data and reporting information – because my Department does not have the current resource capacity or IT systems or infrastructure to perform these administrative processes. I have also said that I consider that authorising a third party administrator to perform these routine and limited administrative functions is reasonable as a matter of policy, and would not represent an inappropriate conferral of powers and functions on a third party.

Your letter identified some other examples of special arrangements made under s 100 of the *National Health Act 1953* (NHA) which provide for third parties to perform certain activities, and which set out specific conditions that must be satisfied before third parties can be approved to perform those activities.

The examples you have given appear to relate to approvals for third parties to exercise powers and perform functions of a different nature than what is authorised under s 25 of the Instrument.

For example, you identified that the *National Health (Remote Area Aboriginal Health Service Program) Special Arrangement 2017* (Remote Area Aboriginal Health Service instrument) provides that the Secretary may approve an Aboriginal health service for the purposes of that instrument. An approved Aboriginal health service may obtain certain pharmaceutical supplies from an approved pharmacist or an approved hospital authority for provision to patients in accordance with state and territory legislation.

In contrast, the powers and functions that a third party administrator may be authorised to perform under s 25 of the Instrument do not involve the supply of pharmaceuticals by the administrator to patients. Instead, they relate to the performance of administrative processes, which I explained in further detail in my letter of 4 June 2020. Given this, s 25 of the Instrument is not directly comparable to the provisions relating to approvals under the Remote Area Aboriginal Health Service instrument (nor is it comparable to the other examples you identified, for the same reasons).

You also cite ss 84AAF, 84AAJ and 84AAB as provisions of the NHA, which are consistent with the standard approach to the authorisation of third parties to exercise powers of public officials.

These provisions respectively deal with applications for eligible health professionals to become authorised midwives, nurse practitioners and authorised optometrists in accordance with the specified criteria.

Authorised midwives, nurse practitioners and authorised optometrists are not 'public officials' (i.e. officers of the Commonwealth); they have authority as PBS Prescribers to prescribe drugs to their patients for the purposes of the supply of pharmaceutical benefits in accordance with Part VII of the NHA.

Legal advice

You have asked whether the Department obtained external legal advice on the source of legislative authority for s 25 of the Instrument, and whether I can provide a copy of that advice to you.

I confirm that the Department obtained external legal advice on the source of legislative authority for s 25 of the Instrument.

I have explained the reasons why I consider s 100 of the NHA to provide legal authority for s 25 of the Instrument in our previous correspondence and consider that release of the Department's legal advice to the Committee would be contrary to accepted and long-standing practice.

Availability of merits review

You have asked whether the Secretary's decision under s 25 of the Instrument is subject to independent merits review.

I understand that neither the NHA nor the Instrument provide for merits review in relation to a decision by the Secretary under s 25 of the Instrument, although judicial review of the Secretary's decision could be sought in accordance with general administrative law principles.

Application of the FOI Act and Privacy Act

You have asked whether the *Freedom of Information Act 1982* (FOI Act) and the *Privacy Act 1988* (Privacy Act) apply to the third party administrator.

FOI Act

I understand that the third party administrator is not directly subject to the FOI Act. However, I note that s 6C of the FOI Act requires my Department to take contractual measures to ensure that the Department receives a document from a 'contracted service provider' if:

- the Department receives an FOI request for access to the document
- the document relates to the performance of a 'Commonwealth contract', and
- the document is created by, or is in the possession of, the contracted service provider.

The third party administrator is a contracted service provider. My Department's contract with the third party administrator is consistent with this requirement.

Privacy Act

I note that s 95B of the Privacy Act requires my Department, when entering into a Commonwealth contract, to take contractual measures to ensure that a contracted service provider for the contract does not do an act, or engage in a practice, that would breach an Australian Privacy Principle (APP) if done or engaged in by the Department. My Department's contract with the third party administrator is consistent with this requirement.

I also note that the third party administrator, Australian Healthcare Associates, is an organisation which is itself subject to the obligations, which apply to APP entities under the Privacy Act.

Next steps

As I mentioned in my previous letter, my Department would be open to the possibility of amending s 25 of the Instrument to address the Committee's concerns about the role of third party administrators. I reiterate that my Department would welcome any specific suggestions from the Committee in this regard.

Yours sincerely

Greg Hunt

The Hon Greg Hunt MP
Minister for Health
Minister Assisting the Prime Minister for the Public Service and Cabinet

Ref No: MC20-030215

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
PO Box 6100
Parliament House
CANBERRA ACT 2600

31 JUL 2020

Dear Chair

I refer to your letter of 22 July 2020 from the Senate Standing Committee for the Scrutiny of Delegated Legislation (Committee), concerning the *National Health (Take Home Naloxone Pilot) Special Arrangement 2019* (Instrument).

While I remain of the view that ss 100(1) and 100(3) of the *National Health Act 1953* provides legal authority for section 25 of the Instrument, to address your concerns about the role of third party administrators under section 25, I will instruct my Department to amend the Instrument as follows:

- amend subsection 25(1) to expressly state the particular powers and functions which the Secretary may authorise the third party to perform or exercise under the Instrument
- amend subsection 25(3) to provide for internal review by the Department of decisions of third party administrators.

I note that the Committee has resolved to withdraw the notice of motion to disallow the Instrument following registration of the amending Instrument on the Federal Register of Legislation. Registration of an amending Instrument will occur prior to 1 September 2020.

Thank you for the Committee's assistance in working with my Department to resolve this matter.

Yours sincerely

[redacted]

Greg Hunt

The Hon Dan Tehan MP
Minister for Education

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7350

Our Ref: MS20-002031

21 JUL 2020

Senator the Hon Concetta Fierravanti-Wells
Chair
Standing Committee for the Scrutiny of Delegated Legislation
sdlc.sen@aph.gov.au

Dear Senator Fierravanti-Wells Concetta,

Thank you for your letter of 11 June 2020 regarding Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020 [F2020L00549]. In the letter, the Committee sought my advice as to the appropriateness of amending the instrument to provide for independent merits review of decisions to waive or refund fees.

In my earlier letter of 27 June 2020, I indicated that the Tertiary Education Quality and Standards Agency (TEQSA) was carefully considering the matters you have raised and that, once I received TEQSA's advice, I would provide the Committee with a substantive response.

Following further consideration of this issue, TEQSA has advised that it will amend the instrument to provide for merits review in relation to waiver and refund decisions under the instrument. I have asked TEQSA to provide the Committee with a copy of the amendment instrument once it has been made.

Thank you for raising this matter with me.

Yours sincerely

[redacted]

DAN TEHAN

The Hon Dan Tehan MP
Minister for Education

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7350

Our Ref: MC20-018650

27 June 2020

Senator the Hon Concetta Fierravanti-Wells
Chair
Standing Committee for the Scrutiny of Delegated Legislation
sdlc.sen@aph.gov.au

Dear Senator Fierravanti-Wells

Thank you for your letter of 11 June 2020 regarding the Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020 [F2020L00549]. I appreciate the time you have taken to bring this matter to my attention.

The Tertiary Education Quality and Standards Agency (TEQSA) is carefully considering the matters you have raised. In particular, the question of any amendment to provide for merits review requires consultation between TEQSA and the Attorney-General's Department (AGD), in accordance with the *Legal Services Directions 2017*. TEQSA is currently consulting with the AGD. Once I have received TEQSA's advice, I will provide the Committee with a further substantive response.

I note your indication that the Committee may give notice of a motion to disallow the instrument as a precautionary measure to provide time for the committee to consider information received, and I will ensure that a substantive response is provided as soon as possible.

Thank you for raising this matter with me.

Yours sincerely

[redacted]

DAN TEHAN