



Delegated Legislation Monitor No. 8 of 2020

Tabling Statement

Wednesday 17 June 2020

I rise to speak to the tabling of the Scrutiny of Delegated Legislation Committee's *Delegated Legislation Monitor 8 of 2020*.

I would like to take this opportunity to highlight two key matters raised in the Monitor.

The first concerns the committee's scrutiny of the National Health (Take Home Naloxone Pilot) Special Arrangement 2019.

This instrument makes a special arrangement under section 100 of the National Health Act, to support the establishment of a PBS subsidised pilot program to supply naloxone to people who are at risk of an opioid overdose, and persons who are likely to be able to assist such persons.

In doing so, section 25 of the instrument provides that private third parties may be authorised, by contract or other means, to exercise **all** of the departmental secretary's powers and perform **all** of the departmental secretary's functions under the instrument.

The committee considers that the authorisation of private third parties to perform the powers and functions of a departmental secretary is a significant matter that must be expressly authorised on the face of an instrument's enabling Act. In this case, the committee is concerned that the enabling provision of the National Health Act does not provide for such an express authorisation.

The committee is also keen to ensure that appropriate accountability safeguards apply to any actions taken by private third parties in performing the functions and exercising the powers of public officials. For example, it would expect that authorised private third parties are subject to the same privacy and freedom of information laws as public officials.

Following extensive engagement with the Minister for Health, the committee retains significant scrutiny concerns about the instrument. Consequently, the committee has summarised these concerns in Chapter 1 of *Delegated Legislation Monitor 8* and is seeking further advice from the minister, in the hope that this matter can be resolved without recourse to disallowance.

The second issue I would like to highlight is ASIC's recent undertaking to amend three legislative instruments to address the committee's scrutiny concerns.

The instruments exempt or modify the operation of specific provisions of the Corporations Act to introduce relief measures related to financial advice and capital raising during the COVID-19 pandemic.

The explanatory statement indicated that the emergency measures were intended to be temporary. However, the instruments themselves did not specify end dates for the measures.

As a technical scrutiny matter, the committee was concerned that allowing the exemptions to remain in force for an unspecified period undermined Parliament's ability to exercise oversight of the measures, and was contrary to the committee's request to ministers and agencies that COVID-19 measures be time limited.

I am pleased to advise that, in response to the committee's comments, these instruments have now been amended to specify end dates.

On behalf of the committee, I would like to thank the Assistant Minister and ASIC for their constructive engagement with the committee on this matter. This provides an excellent example of how the executive and the committee can work together to ensure that policy objectives are implemented in a way that complies with the fundamental principles of legislative scrutiny and parliamentary oversight.

With these comments, I commend the committee's *Delegated Legislation Monitor 8 of 2020* to the Senate.