



Senator the Hon Simon Birmingham

Minister for Finance
Leader of the Government in the Senate
Senator for South Australia

REF: MC21-001835

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Parliament House
Canberra ACT 2600

Dear ~~Senator Polley~~ *Helen,*

The Senate Scrutiny of Bills Committee recently sought my advice regarding items identified in Scrutiny Digest 8 of 2021 on the Appropriation Bills (Nos. 1 and 2) 2021-2022. My response to the Committee is attached.

In relation to the Advance to the Finance Minister, I note that particular transparency approaches, that were introduced following the onset of the COVID-19 pandemic, began as undertakings between the Government and the Opposition. For future Appropriation Bills, additional information will be added to the Explanatory Memoranda to give clarity about the relevant transparency measures applying to Determinations issued under the Advance to the Finance Minister provisions and to make clear that these will be continuing practices. This additional information will better reflect my view that these undertakings about public reporting are also to the Parliament as a whole.

I trust this advice will assist the Committee in its deliberations.

Yours sincerely

Simon Birmingham

3 August 2021

Response from the Minister for Finance – Senator the Hon Simon Birmingham to matters raised in Scrutiny Digest 8 of 2021

Request for Advice from the Committee	Proposed Response to the Committee
Advance to the Finance Minister (AFM)	
<p>Para 1.31 – page 11</p> <p>Will the additional transparency measures put in place in 2020 continue with regard to AFM Determinations made under the 2021-22 Appropriation Acts?</p>	<p>Yes. The transparency measures have worked well and will apply to allocations from the Advance to Finance Minister provisions in the 2021-22 Appropriation Acts.</p>
<p>Can information about AFM transparency measures be included in the explanatory materials (i.e. memoranda) accompanying future appropriation bills?</p>	<p>Yes. Detail on the transparency measures applying to Advance to the Finance Minister provisions will be included in the Explanatory Memoranda to future Appropriation Bills. Particular transparency approaches that were introduced following the onset of the COVID-19 pandemic began as undertakings between the Government and the Opposition. The new information that will be added to the Explanatory Memorandum will give clarity that relevant transparency measures are appropriately considered as undertakings to the Parliament and will be continuing practices.</p>
Measures showing 'nfp' in Budget Paper No. 2 and Portfolio Budget Statements	
<p>Para 1.36 – page 12</p> <p>Are any measures with 'nfp' in Budget Paper No. 2 and Portfolio Budget Statements included in the summary of appropriations at clause 6 of 2021-22 Appropriation Bills 1 and 2?</p>	<p>Yes, items are included in the summary of appropriations at clause 6 of Appropriations Bills (Nos. 1 and 2) 2021-2022.</p>
<p>If so, is it necessary and appropriate to ask Parliament to pass the 2021-22 Appropriation Bills 1 and 2 without clear information on the amounts to be appropriated under each individual measure?</p>	<p>It is longstanding practice to identify measures in Budget Paper No. 2 as 'not for publication' where disclosure of amounts would be prejudicial to national security, legal sensitivities or for commercial-in-confidence reasons. The relevant Appropriation Act introduced with the Budget will reflect the amount for such a measure within an outcome against the particular agency responsible for its delivery.</p> <p>It is necessary to include amounts in the Appropriation Bills to ensure agencies are resourced to implement these measures. Excluding these items from the Bills could result in funding not being available until the next set of Appropriation Bills commenced. Due to the biannual timing of the</p>

Request for Advice from the Committee	Proposed Response to the Committee
	Appropriation Bills, this could result in many months passing between a specific event and funding being available.
Debit Limits	
<p>Para 1.52 – page 16</p> <p>What is the level of expected expenditure in 2021-22 under the grants programs specified at clause 13 of 2021-22 Appropriation Bill 2?</p>	<p>Details of expenditure for this item is shown in the Department of the Treasury’s Portfolio Budget Statements (PBS) for the 2021-22 Budget. The estimated expenditure levels under these programs were:</p> <ul style="list-style-type: none"> • <i>General purpose financial assistance</i>: \$2.7 billion, compared with the debit limit of \$5.0 billion <ul style="list-style-type: none"> ○ See page 29 of the PBS – this figure is the sum of all items listed under the COAG Reform Fund in Program 1.4 • <i>National partnership payments</i>: \$17.1 billion, compared with the debit limit of \$25.0 billion <ul style="list-style-type: none"> ○ See pages 33-41 of the PBS – Table 2.2. <p>These debit limits are set higher to ensure the Government has appropriate provisions in place to fund existing undertakings to the states, new programs that may be required between estimates updates, and to respond to major unexpected events such as large-scale natural disasters. Generally the debit limits are set for the financial year in Appropriation Bill No. 2, with no further updates throughout the financial year. If necessary these limits can be reset in Appropriation Bill No. 4 through the Additional Estimates process.</p>
<p>Can future explanatory memoranda accompanying appropriation bills containing debit limits include this information to assist in ensuring meaningful parliamentary oversight of the debit limits for these grant programs?</p>	<p>Additional information about the expected level of expenditure against debit limits can be included in the Explanatory Memoranda to future Appropriation Bills where appropriate.</p>



Senator the Hon Bridget McKenzie

Minister for Emergency Management and National Recovery and Resilience
Minister for Regionalisation, Regional Communications and Regional Education
Leader of the Nationals in the Senate
Senator for Victoria

Ref No: MS21-000547

Senator Helen Polley
Chair
Senate Standing Committee for the Scrutiny of Bills
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Dear Senator

Helen

Thank you for your correspondence on behalf of the Senate Standing Committee for the Scrutiny of Bills concerning the *COVID-19 Disaster Payment (Funding Arrangements) Bill 2021*. I have responded to the issues raised in the Committee's Scrutiny Digest (Number 9), dated 23 June 2021, below. My apologies for the delay in replying.

The Senate Standing Committee for the Scrutiny of Bills (the Committee) requests the minister's advice as to why it is considered necessary and appropriate to leave the amount of, and the eligibility requirements for, the COVID-19 Disaster Payment to delegated legislation and non-legislative guidelines.

The COVID-19 Disaster Payment (the Payment) was established in recognition that extended periods of public health measures restricting the movement of people (lockdowns) can have serious financial implications for workers who are unable to go to work and earn their usual income. The Payment was to encourage workers to comply with the health orders and prevent them from taking any unnecessary risks as a result of financial stress, thereby controlling the spread of COVID-19.

The Payment was provided in the first instance to Greater Melbourne, which was subject to a two week lockdown in June 2021 due to an outbreak of the Delta variant of COVID-19. Given the need to implement a rapid solution, as well as the absence of a readily available legislative mechanism to make the Payments, placing the authority for making the Payment in delegated legislation was considered the most appropriate mechanism.

It is standard practice for grant programs to set the eligibility criteria in grant guidelines, in accordance with the Commonwealth Grant Rules and Guidelines. The longer that lockdowns are required to contain COVID-19 outbreaks, the greater the economic strain experienced by people in the lockdown areas. In response to the current extended outbreak and resulting lockdown periods, it has been necessary for the Australian Government to increase the

original payment amount to ensure that those subjected to continued lockdown restrictions are supported. The multiple variables associated with the COVID-19 pandemic mean that it is necessary that the payment amount remain flexible and not enshrined in primary legislation.

The Australian Government intends to introduce primary legislation to support the Payment as soon as possible in the spring sitting period. The primary legislation will include the scope and broad eligibility parameters for disaster payments made available in response to pandemics.

The Committee also requests advice as to whether the bill can be amended to include at least high-level guidance regarding the payment and the associated annual reporting obligation on the face of primary legislation.

The *COVID-19 Disaster Payment (Funding Arrangements) Bill 2021 (the Bill)* was introduced urgently to provide for a special appropriation from the Consolidated Revenue Fund to pay eligible claims for the Payment for the 2021-22 financial year. Due to the urgent introduction of this Bill to establish the special appropriation prior to the end of financial year and its scope, the Bill was not considered an appropriate mechanism to provide for the Payment in primary legislation.

As mentioned above, the Government intends introducing primary legislation to support the Payment in the spring sitting period.

Yours sincerely,

Bridget McKenzie

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The Hon Keith Pitt MP

Minister for Resources and Water

MS21-001089

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Dear Senator Polley

I refer to the Committee Secretary's letter, dated 17 June 2021, seeking information in relation to the Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021 (the Bill). I also refer to comments by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee) in its *Scrutiny Digest 8 of 2021* and *Scrutiny Digest 10 of 2021*.

In *Scrutiny Digest 8 of 2021*, the Committee requested advice as to whether the Bill could be amended to provide at least high-level guidance regarding how fees under proposed section 566ZD and proposed subsections 566ZE(1) and (3) will be calculated, including, at a minimum, a provision stating that the fees must not be such as to amount to taxation.

I responded to the Scrutiny Committee by letter dated 24 June 2021. My response states that I do not consider it necessary to amend the Bill to provide statutory guidance as to how fees under proposed sections 566ZD and 566ZE are to be calculated. It also provides reasons for this view.

In *Scrutiny Digest 10 of 2021*, the Scrutiny Committee requested that an addendum to the Explanatory Memorandum to the Bill, containing the key information set out in my response, be tabled in the Parliament as soon as practicable. The Committee also drew its concerns to the attention of senators, and left to the Senate as a whole the appropriateness of allowing regulations to prescribe how fees under proposed sections 566ZD and 566ZE will be calculated, without a provision on the face of the Bill stating that the fees must not amount to taxation.

In making its comments, the Scrutiny Committee noted that certain provisions in the Bill—and the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (OPGGs Act)—specify that fees in delegated legislation must not be such as to amount to taxation, while others do not. The Committee expressed the view that all relevant provisions of the OPGGS Act should specify that fees prescribed in delegated legislation must not be such as to amount to taxation.

In my view, the Explanatory Memorandum to the Bill already makes it clear that fees payable under proposed sections 556ZD and 556ZE will only amount to cost recovery. An addendum to the Explanatory Memorandum, setting out the information provided in my initial response, adds complexity without increasing the Explanatory Memorandum's utility as a point of access to understanding the law or to assist with interpretation. Consequently, I do not propose to table an addendum to the Explanatory Memorandum.

Thank you for bringing the Committee's comments to the Government's attention.

Yours sincerely

Keith Pitt

2/8 / 2021