Senator the Hon Marise Payne
Minister for Foreign Affairs
Minister for Women

27 JUL 2021

MC21-004503

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 17 June 2021, regarding your consideration of the Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 (the Rules).

You have requested advice as to whether the instrument can be amended to provide that it be repealed within five years from commencement.

As advised previously, the Rules will be subject to my regular review to ensure they reflect the intention of the Act and to support the effective administration of the Foreign Arrangements Scheme. In addition, the three-year statutory review required by section 63A of the Act will ensure timely and appropriate parliamentary scrutiny of the Rules.

The Department of Foreign Affairs and Trade has sought the advice of the Attorney-General's Department (AGD) as the portfolio agency responsible for the *Legislation Act 2003* (Legislation Act). AGD have advised that as a matter of good legislative practice, the default ten-year sunset period set out in the Legislation Act should be maintained unless there are clear policy reasons justifying a shorter sunset period.

Given this and the legislated three-year review, in my view, there are insufficient clear policy reasons to justify a shorter sunset period. As set out in my earlier letters of 31 March 2021 and 7 May 2021, the Rules represent an appropriate exercise of my decision-making powers under the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act).

I am, therefore, of the view that the Rules do not require amendment to necessitate repeal within five years from commencement.

Thank you, once again, for your interest in the Rules. I would also like to thank you for your strong engagement on the Committee that inquired into the Bill.

Yours sincerely

MARISE PAYNE

Senator the Hon Amanda Stoker
Assistant Minister to the Attorney-General
Assistant Minister for Industrial Relations
Assistant Minister for Women

MS21-000744

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

Thank you for your letter of 24 June 2021 regarding the concerns of the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Committee) about Schedules 2-4 of the *Bankruptcy Regulations 2021* (the Regulations). I appreciate the time you have taken to bring these matters to my attention.

In the letter, the Committee has requested my advice about:

- why it would not be appropriate to provide for a three-year repeal date for the provisions of the Regulations which modify the operation of the *Bankruptcy Act 1966* (the Bankruptcy Act); and the *Fringe Benefits Tax Assessment Act 1986* (the FBTA Act) and
- whether a targeted review can be undertaken of the legislative framework underpinning the regulation of Australia's personal insolvency system which specifically addresses the appropriate balance between including measures on the face of the primary legislation and the regulations.

Noting the Committee's continuing concerns about Schedules 2-4 of the Regulations, the Government will undertake a targeted review with a view to addressing the Committee's concerns regarding Schedules 2-4 of the Regulations amending or modifying primary legislation. The targeted review will:

- assess whether the modifying provisions currently prescribed in Schedules 2-4 of the Regulations are more appropriately contained within primary legislation, and
- should this be the case, identify the appropriate legislative vehicle through which any appropriate changes can be progressed.

The targeted review will commence in 2022 with the Government informing the Committee of its outcome by 1 April 2023, which is two years after the commencement of Schedules 2-4 of the Regulations. A 2022 commencement of the targeted review is influenced by the Government's current priorities relating to the personal insolvency system.

As the Committee may be aware, the Government undertook public consultation in the first half of 2021 into the personal insolvency system and the impacts of COVID-19. As I'm sure the Committee would agree, work associated with ensuring policy settings respond appropriately to current challenges facing Australians is of paramount importance.

It is the Government's view that the approach outlined above removes the need to provide a three year repeal date for Schedule 2-4 of the Regulations. The timeframe of the targeted review will enable the Government to progress any necessary amendments to the Bankruptcy Act in a timely manner which accords with the Committee's wishes. Given the current environment associated with COVID-19 and the possibility of future reforms responding to the pandemic, the Government is of the view that applying a three year repeal date to Schedules 2-4 of the Regulations would place unnecessary uncertainty and pressure on the personal insolvency system.

Thank you again for bringing your concerns to the Government's attention. I trust this information is of assistance to the Committee.

Yours sincerely

Senator the Hon Amanda Stoker

The Hon David Littleproud MP

Minister for Agriculture and Northern Australia
Deputy Leader of the Nationals
Federal Member for Maranoa

Ref: MS21-001174

13 JUL 2021

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

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

Dear Senator

I refer to your letter of 17 June 2021 in which you advise that the Senate Standing Committee for the Scrutiny of Delegated Legislation is seeking advice regarding the Export Control (Wood and Woodchips) Rules 2021 (Rules).

Whether a code of practice for the state would satisfactorily or substantially protect environmental and heritage values would depend on the findings of a scientific assessment of the code of practice based on the National Plantation Principles. The principles, endorsed by the Australian Government and all states and territories, set the framework for a consistent and scientific basis for sound plantation management. The specific factors included in the scientific assessment are those outlined in the principles: environmental care; safety; planning; access; establishment and maintenance; timber harvesting; forest protection; and providing for monitoring and review.

Similar considerations apply when the minister approves a state code of practice as amended under subsection 2-9(2) of the Rules. In such cases, the minister is required to be satisfied that subsection 2-7(3) or 2-7(4) are met. These considerations are also relevant when the minister decides to revoke the approval of a state code of practice under subsection 2-12(1) of the Rules, where the minister reasonably believes that the code of practice does not, or will not, satisfactorily protect environmental and heritage values in the state.

I consider that it is appropriate for the Explanatory Statement to include further detail regarding the decision-making process of the minister, such as the consideration of the recommendations of the scientific assessment made against the principles. I will request the Secretary of the Department of Agriculture, Water and the Environment make arrangements for changes to the Explanatory Statement to be made to incorporate the further guidance and detail.

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It is my strong preference that the Rules not be amended to include high-level guidance in relation to the circumstances in which a minister may require a state to amend its approved code of practice under section 2-10. If an unforeseen circumstance arises in the future, guidance included in the Rules may restrict the minister's authority to require an approved code of practice to be amended. An example of when the minister may require a state to amend its approved code of practice, is in instances where the code does not adequately address the elements of the National Plantation Principles.

It is also my strong preference that the Rules not be amended to provide that the approvals and revocations of state codes of practice are made by legislative instrument rather than by notifiable instrument. I consider that this would introduce delays in what is already a lengthy process of scientific assessment of a code of practice and would generate unnecessary uncertainty for Australia's plantation sector. The Preamble of the National Plantation Principles notes that provided that social and environmental objectives are met, governments will keep regulations to a minimum. Each code of practice is subject to a scientific assessment to determine whether or not it meets the aims of the National Plantation Principles. I consider that the ministerial decision, taking the scientific assessment into account, is sufficient. This is the process that has been in effect since December 1996 when amendments were made to the previous regulations made under the old export control framework – the Export Control (Unprocessed Wood) Regulations.

I thank the committee for their consideration of the Rules to better regulate Australia's wood exports.

Yours sincerely

DAVID LITTLEPROUD MP

cc: Assistant Minister for Forestry and Fisheries, Senator the Hon Jonathon Duniam

Senator the Hon Simon Birmingham

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

REF: MS21-000711

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the
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Parliament House
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Connie,

Dear Senator Fierravanti-Wells

I refer to your letter dated 14 July 2021 regarding the *Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 2) Regulations 2021* (the Infrastructure Regulations).

I agree to the Committee's request that the explanatory statement to the Infrastructure Regulations be amended to include funding information for the Tourism Aviation Network Support program. The replacement explanatory statement will be published on the Federal Register of Legislation shortly. My department will advise the Committee secretariat when the replacement explanatory statement is published.

I trust this advice will assist the Committee with its consideration and reporting on the Infrastructure Regulations.

I have copied this letter to the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development.

Yours sincerely

Simon Birmingham

20 July 2021

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HIGH COURT OF AUSTRALIA

Parkes Place
CANBERRA ACT 2600

Chief Executive &
Principal Registrar

12 July 2021

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

BY EMAIL: sdlc.sen@aph.gov.au

Dear Senator Fierravanti-Wells,

I refer to your letter of 24 June 2021 relating to the *High Court of Australia (Building and Precincts – Regulating the Conduct of Persons) Directions 2021* ("the Directions"), on which the Committee seeks advice about the scope and operation of clauses 5(i) and (xii) of the Directions.

Those clauses provide a person shall not:

(i) behave in a disorderly or offensive manner within the building or the precincts
(xii) light any fire or deposit any litter or create any nuisance within the building or the precincts.

The Committee has sought:

"advice in relation to:

- the factors that are taken into account in determining whether an individual has acted in an 'offensive and disorderly' manner or created 'any nuisance';
- examples of the type of conduct that is proscribed by these provisions;
- whether events such as celebrations or peaceful protests within the High Court precincts would fall within the meaning of either paragraph 5(i) or 5(xii); and
- further details about who makes these determinations in practice."

Factors that would be taken into account in determining whether an individual has acted in an offensive or disorderly manner or had created any nuisance

Factors that would be taken into account would be:

- whether the behaviour was impeding access to the Court building or the Registry for litigants, practitioners, visitors to the Court, staff and Justices;
- whether the behaviour had the potential to cause harm to any person in the building or in the precinct;
- whether the behaviour interrupted Court proceedings;
- whether the behaviour had the potential to cause damage to the building or its surrounds;

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- whether the behaviour was abusive to visitors, staff, guards or members of the public.

I note that in the year ended 30 June 2019 the Court had approximately 70,000 visitors including approximately 35,000 school children. The Court has also been the venue for regular free public concerts. (These were suspended during the COVID pandemic.)

Examples of the type of conduct that is proscribed by these provisions

Examples based on past incidents would be:

- yelling at or harassing visiting school children while exiting their tour bus;
- making physical threats to a Court staff member;
- setting fire to items and leaving them adjacent to the Court's doors;
- attempting to climb the exterior of the building;
- smashing the exterior glass of the building;
- entering a secure area of the building by running through a gate that had been opened to admit an authorised vehicle;
- attempting to intercept cars entering the secure carpark to speak with the occupants;
- climbing scaffolding.

Whether events such as celebrations or peaceful protests within the High Court precincts would fall within the meaning of either paragraph 5(i) or 5(xii)

The Committee has expressed concern that 'celebrations or peaceful protests within the precincts may potentially be caught within the broad scope of these provisions, and notes that the High Court has a distinguished history of such events taking place in its precinct". I note that similar provisions have been in previous iterations of the High Court precincts directions since 1983.

The holding of a celebration or a protest which did not impede access to the building or the Registry, did not impact on Court proceedings or on people needing to conduct business with the Court and did not damage the building, would not be likely to come within either of these clauses.

Further details about who makes these determinations in practice

The determinations are usually made in practice by the Court's Marshal or the Court's Chief Executive and Principal Registrar (CEPR). These determinations are made in the context of the immediate management a particular situation or incident.

Turning from the Committee's questions, more generally I would note that the terms "behave in an offensive or disorderly manner" and "nuisance" are words of ordinary meaning and are common in summary offences legislation (where they are not ordinarily defined).[1] They have been considered by a number of authorities[2].

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[1] Variations of the phraseology in the Directions are common in every jurisdiction in Australia (*Summary Offences Act 1953* (SA), s 7(1)(a) (behave 'in a disorderly or offensive manner'); *Summary Offences Act 2005* (Qld), s 6(1) (general offence of 'public nuisance' which includes 'behaving in an offensive way'); *Crimes Act 1900* (ACT), s 392 ('offensive behaviour'); *Police Offences Act 1935* (Tas), s 13(1)(a) (offence of 'public annoyance' which includes behaving in an 'offensive … manner'); *Criminal Code Act 1913*(WA), s 74A(1) (behaving in a 'disorderly manner' and an 'offensive manner'); *Summary Offences Act 1923* (NT), s 47(a) (offensive conduct including 'offensive behaviour').

[2] In relation to "offensive behaviour" see *Densley v Mertin,* [1943] SASR 144 at 145 per Napier CJ; *R v Smith* [1974] 2 NSWLR 586 at 589 per Street CJ ("behaves in an offensive manner" means behaviour of the character generally described within the third of the Oxford English Dictionary's meanings, that is to say, offensive in the sense of giving, or of a nature to give, offence; displeasing; annoying; insulting"). In relation

It is not possible to iterate all the types of conduct that are proscribed by those clauses. The Directions, in particular, enable the CEPR, or a person authorised by them, to act immediately when persons present a danger or threat to members of the public, practitioners, litigants, staff and Justices in the High Court building and precinct. I also note that the AFP have a presence at the High Court and would ordinarily be the first to intervene in instances of what appeared to be criminal conduct.

I am not aware of any prosecutions having taken place for the failure to follow a direction made under s 19(2) of the *High Court of Australia Act 1979* (Cth).

Please do not hesitate to contact me should the Committee wish for further assistance.

Yours sincerely

Philippa Lynch
Chief Executive & Principal Registrar

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to "disorderly behaviour", see *Barrington v Austin* [1939] SASR 130 at 132 ('any substantial breach of decorum which tends to disturb the peace or to interfere with the comfort of other people, who may be in, or in the vicinity of, the street or public place"). The question of whether something is offensive is if it is "calculated to wound the feelings, or arouse anger, resentment, disgust or outrage in the mind of a reasonable man" (*Inglis v Fish* [1961] VR 607 at 611 per Pape J.) The term 'nuisance' is well-known at common law. See *R v Clifford* [1980] 1 NSWLR 314 at 318, per Reynolds JA in context of s 23(1) of the *Prisons Act 1952* (NSW) offence of committing a nuisance as being "an act not warranted by law, if the effect is to endanger the life, healthy, property, morals or comfort of the public".

PARLIAMENT OF AUSTRALIA • HOUSE OF REPRESENTATIVES

PAUL FLETCHER MP

Federal Member for Bradfield
Minister for Communications,
Urban Infrastructure,
Cities & the Arts

MC21-004914

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

Dear Chair

Thank you for your letter of 17 June 2021 to Senator the Hon Amanda Stoker Assistant Minister to the Attorney-General seeking advice on the *Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021* (the Declaration).

As the issues you have raised go to the detail of consultation undertaken, broader policy matters and timing of a future thematic review, Assistant Minister Stoker has asked that I respond in consultation with the Australian Communications and Media Authority (ACMA).

The Declaration aligns the sunsetting dates of the following instruments (together, the CSG Instruments) to 1 October 2023 in order to keep the instruments in operation until a thematic review is conducted. These are the:

(a) Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011 (the CSG Benchmarks Instrument);
(b) Telecommunications (Customer Service Guarantee) Amendment Standard 2011 (No. 1) (the CSG Amendment Standard);
(c) Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011 (the CSG RKRs); and
(d) Telecommunications (Customer Service Guarantee) Standard 2011 (the CSG Standard).

I am the relevant rule-maker for the purposes of Section 6 of the *Legislation Act 2003* (the Legislation Act) for the CSG Benchmarks Instrument. The ACMA is the relevant rule maker for the CSG Amendment Standard, the CSG RKRs, and the CSG Standard.

Section 51A of the Legislation Act provides that an alignment of sunsetting dates of two or more instruments can occur where these will be subject to a single review (often referred to as a 'thematic review'), and that aligning the sunsetting dates will facilitate the undertaking of the review or the implementation of a review's findings. Broadly, I would note that alignment of sunsetting dates can offer policy synergies and efficiency benefits both to Government and to stakeholders by allowing related instruments to be considered as a whole.

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Adequacy of consultation and broader policy matters

I note the Committee has sought information on whether consultation was undertaken in relation to the Declaration with affected stakeholders other than Telstra, and if not, the reason broader consultation with other affected parties was considered unnecessary given the Declaration provides a significant extension of two years or more to four instruments of significance to the telecommunications industry.

The Explanatory Statement (ES) for the Declaration sets out that focused consultation occurred with Telstra prior to the Declaration being made, and the reason for this was the CSG has the greatest impact on Telstra as the Universal Service Provider. Where Telstra provides standard telephone services (STS) under the Universal Service Obligation (USO), it must generally meet the connection, repair and appointment keeping timeframes set out in the CSG standard, or pay compensation. In contrast, other providers have no statutory requirement to provide STS, and where they do, they may seek full or partial waivers from the CSG obligations.

The ES also sets out that prior to the making of the Declaration, the Department of Infrastructure, Transport, Regional Development and Communications (the Department) also confirmed with the Australian Communications Consumer Action Network (ACCAN) its support for continuation of the CSG instruments pending further review. ACCAN is Australia's peak body for consumer representation in communications.

The ES also indicates that in making the application for the alignment, that the Chair of ACMA and I both had regard to relevant consultation undertaken over a number of years. The decision to defer the sunsetting of the CSG instruments is part of a broader policy reform process that has been underway for some time and is ongoing. This includes several interrelated parts including reform of the USO, implementation of the statutory infrastructure provider (SIP) regime and the reform of legacy safeguards like the CSG.

The Government has been undertaking extensive consultation with industry and the community on these broader policy reforms since at least 2015. In addition to two regional telecommunications reviews in 2015 and 2018 and a review of the USO by the Productivity Commission in 2016-17, the then Department of Communications and the Arts did further work on USO reform in 2018 and the Government initiated the Consumer Safeguards Review in 2018. The report of Part B of the Consumer Safeguards Review, published in December 2019, goes directly to the future of the CSG. In light of all this work the Government is confident it has a solid understanding of the view of industry and the wider community on the CSG and its interrelationship with other consumer safeguards.

The Government has been clear on its policy position as a result of this work. In December 2018, it confirmed it was introducing a new Universal Service Guarantee (USG) for broadband as well as voice, which would be supported by the new SIP regime and incorporate the existing USO. It indicated the USO would remain in place in its existing form as an important consumer safeguard, particularly for rural and remote consumers, until there was a robust and proven alternative.

As noted in the ES for the Declaration, the CSG is an important adjunct to the USO, providing the timeframes and performance benchmarks for connection and repair of voice telephone services. It is also an important consumer protection in its own right.

It is also important to note that a Ministerial Direction to the ACMA, the Telecommunications (Customer Service Guarantee) Direction (No. 1) 2011, which is pivotal to the CSG, is not subject to sunsetting, and as such would have required the ACMA to have kept a CSG standard in place beyond its nominal sunset date.

However, the Government has also indicated it is committed to looking for better ways to deliver the USG and to put in place a more forward looking consumer safeguards regime, which was subsequently reflected in the Part B report.

While this wider reform work is taking time, there is progress. The SIP regime commenced from 2020 and the Government is currently considering stakeholder feedback in response to its consultation on draft standards, rules and benchmarks for SIPs. However, until these wider reforms are more advanced, the Government considers legacy measures, including the CSG, must remain in place to maintain consumer protections. Again, this is canvassed in the ES.

Timing of a future thematic review

I note that the Committee has sought information on:

- when the decision was made to conduct a thematic review of the CSG instruments, and the reason this review was not commenced earlier prior to the instruments' original sunset dates;
- when this review will commence; and
- the likely timeframe for this review to be completed.

A review of the individual instruments was not undertaken in advance of the original sunset dates, given the significant consultation over a number of years on the CSG and related policy matters, such as the USO, as described above. The level of consultation undertaken was similar, if not greater, to what would otherwise occur through a thematic review.

Another relevant factor was the impact of COVID-19. Due to both national and localised lockdowns, the telecommunications industry was under significant operational pressures for large parts of 2020. This would have impacted on industry's capacity to engage in a further earlier review. Moreover, due to COVID-19 consumers were, and continue to be, more and more dependent on basic connectivity and the protection offered by the CSG. In light of this, the decision to seek an alignment of sunsetting dates was agreed in late 2020.

As the Committee is aware, the Declaration means the four CSG instruments must be collectively reviewed no later than 1 October 2023. As noted above, the thematic review will also need to consider the existing Ministerial CSG Direction, which is not subject to sunsetting. The thematic review will allow the views of all stakeholders about the CSG to be fully explored, including providing an opportunity for industry and other stakeholders to raise any specific operational issues about the CSG not previously surfaced.

The ACMA Chair and I are keen for the review to take place as soon as practical. The review will be most productive if implementation of the SIP regime is further advanced, and so the exact timing for a review will need to take this into account. Given the likely range of stakeholder views and the need to consider four related instruments, public consultation as part of the review is anticipated to take around six months to complete. As such, if it cannot be started sooner, the review will need to start no later than late 2022 or early 2023.

Thank you for bringing the Committee's concerns to my attention, and I trust this information is of assistance.

A copy of this letter has been provided to the Assistant Minister to the Attorney-General, Senator the Hon Amanda Stoker and the Chair of the Australian Communications and Media Authority (ACMA), Ms Nerida O'Loughlin PSM, for their information.

Yours sincerely

Paul Fletcher

16 / 7 / 2021