



## Delegated Legislation Monitor Tabling Statement

Wednesday 2 August 2023

I rise to speak to the tabling of the Senate Standing Committee for the Scrutiny of Delegated Legislation's *Delegated Legislation Monitor 8 of 2023*.

*Delegated Legislation Monitor 8* reports on the committee's consideration of **196** legislative instruments registered between 1 June and 23 June 2023. This includes **174** disallowable instruments and **22** instruments exempt from disallowance.

I would like to draw the Chamber's attention to three instruments in the Treasury portfolio. These instruments are the Corporations Amendment (Design and Distribution Obligations—Income Management Regimes) Regulations 2023, the Corporations Amendment (Litigation Funding) Regulations 2022 and the Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022.

These instruments insert ongoing exemptions to primary legislation into the Corporations Regulations 2001. Those regulations have been exempt from the sunseting regime since 2017, and therefore operate indefinitely. The committee's concerns are heightened as the Rationalising ASIC Regulations move exemptions that were previously time limited, into those regulations, which operate indefinitely.

It is the committee's long standing view that measures which modify or create ongoing exemptions to primary legislation should be set out in the primary legislation. However, when these measures are in delegated legislation, they should be time

limited, to facilitate regular parliamentary scrutiny and so that they do not operate as de facto amendments to primary legislation.

In *Delegated Legislation Monitor 6*, the committee sought the Assistant Treasurer's advice as to whether the Corporations Regulations – or alternatively whether the specific measures introduced by these three instruments - could be subject to a 10-year sunset period.

I am very pleased to advise the Chamber that on 31 July 2023, the Assistant Treasurer advised the committee that he will seek amendments so that the measures in the three instruments cease after ten years. Based on this advice, the committee resolved to withdraw the notices of motion to disallow these instruments.

I warmly thank the Assistant Treasurer and the Department for their continued engagement with the committee on this matter and for addressing this longstanding scrutiny concern.

As this is a longstanding concern, the committee will continue to raise scrutiny issues with future instruments which contain ongoing exemptions or modifications to primary legislation.

I would also like to draw the Chamber's attention to the Public Service Regulations 2023, which remake a 1999 instrument. The committee previously drew its concerns to the Minister for Finance's attention in two Delegated Legislation Monitors earlier this year. Specifically, the committee sought the minister's further advice about the adequacy of consultation undertaken, and of the adequacy of the explanatory

materials accompanying the instrument. The committee also raised concerns about a number of decisions that were excluded from the review process.

Again, I am pleased to advise that the minister has undertaken to amend the explanatory materials to address the concerns raised by the committee. Further consultation with stakeholders has also commenced as a result of the committee's engagement and the minister provided additional detail and clarity about the specific decisions that were excluded from review. This has addressed the committee's initial scrutiny concerns.

I thank the Minister for Finance for her constructive engagement and for promptly resolving the scrutiny issues brought to her attention.

With these comments, I commend the committee's *Delegated Legislation Monitor 8 of 2023* to the Senate.