



The Hon. David Littleproud MP
Minister for Agriculture, Drought and Emergency Management
Deputy Leader of the Nationals
Federal Member for Maranoa

Ref: MS20-000851

20 AUG 2020

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator

I write in relation to the request for information from the Senate Standing Committee on the Scrutiny of Bills regarding the Biosecurity Amendment (Traveller Declarations and Other Measures) Bill 2020, in its Scrutiny Digest 9 of 2020. The Committee requested advice as to:

- Why it is considered necessary and appropriate for determinations listing goods or classes of goods for the purpose of infringement notice amounts under section 524 to be exempt from disallowance.
- Whether the bill can be amended to omit proposed subsection 524A(4) so that instruments made under proposed subsection 524A(1) are subject to the usual parliamentary disallowance process.

The Bill proposes that a determination listing goods or classes of goods for the purpose of infringement notice amounts under section 524 be exempt from disallowance. The rationale for this is that the determination will reflect scientific evidence and assessment that the goods or classes of goods pose a significant and real threat to Australia's biosecurity.

The identification of kinds of goods or classes of goods posing a high level of biosecurity risk is a technical and scientific decision based on whether the biosecurity risk exists and can better managed with the use of higher infringement notices amounts. This assessment reflects the subject matter and technical expertise.

The determination will be based on the latest scientific and technical information and will need to be adjusted quickly to account for changing information. This will ensure the measures in place are proportionate to the risk and mitigation strategies available. Political considerations may interfere with what should be a strictly technical and scientific decision and could potentially frustrate the risk management process.

To reflect good principles of legislative administration, the determination is limited to having a duration of up to twelve months. This will ensure the determination is reviewed on a regular basis and reflects the current scientific and technical information.

The approach to exemption is consistent with well-established principles for categories of delegated legislation that may be more appropriately considered for exemptions. The 2008 *Review of the Legislative Instruments Act 2003* noted the range of established grounds for exemptions to parliamentary disallowance requirements, including where the rule-making process should or needs to be separated from the political process.

A determination will be well-supported by technical and scientific advice built into the safeguards of this Bill. Suitable safeguards for the appropriate exercise of the power conferred by delegated legislation include:

- clear parameters for the exercise of this power requiring that the Director of Biosecurity must be reasonably satisfied there is a high level of biosecurity risk associated with the goods or the class of goods before listing them in the legislative instrument
- the legislative instrument can only be in force for up to 12 months, ensuring regular review of the goods and classes of goods listed to confirm the assessment of the biosecurity risk these pose
- the proposed amendment to subsection 542(3) to prevent the sub-delegation of the Director of Biosecurity's power to determine a list of goods or class of goods for the purposes of creating this differential infringement notice regime below the level of SES or acting SES employees in the department.

Potential disallowance could have a significant impact on decision-making, the risk management process and the broader management of biosecurity risks.

I thank the Committee for its consideration and comments on this Bill.

Yours sincerely

DAVID LITTLEPROUD MP



The Hon Stuart Robert MP
Minister for the National Disability Insurance Scheme
Minister for Government Services

Ref: MC20-013781

Senator Helen Polley
Chair of Standing Committee for the Scrutiny of Bills
PO Box 6100
Parliament House
CANBERRA ACT 2600


Dear Senator Polley

Thank you for your correspondence of 6 August 2020, regarding the Standing Committee for the Scrutiny of Bills' (the Committee) request for further information in relation to the National Disability Insurance Scheme Amendment (Strengthening Banning Orders) Bill 2020 (the Bill). I appreciate the opportunity to address the issues raised by the Committee as part of its consideration of the Bill, and I provide the following advice:

Whether the Bill can be amended to include additional guidance on the exercise of the banning power on the face of the primary legislation

As noted by the Committee, amending the Bill to provide additional guidance on the exercise of the banning order power risks unintentionally narrowing the circumstances in which the Commissioner of the NDIS Quality and Safeguards Commission (the NDIS Commissioner) may make a banning order. This could lead to further unintended gaps in the application of banning orders and risks challenges to the NDIS Commissioner's decisions.

In response to the Committee's recommendations, I propose to table an addendum to the explanatory memorandum for the Bill explaining how provisions of the National Disability Insurance Scheme Act 2013 (the Act) guide the exercise of powers by the NDIS Commissioner under section 73ZN.

The Bill would expand the categories of persons against whom a banning order could be made under the Act but the Bill does not otherwise propose to amend the Act to alter how banning order decisions are made. In these circumstances, I do not propose to amend the Bill to include additional amendments that would require the NDIS Commissioner to take account of particular matters when exercising powers under section 73ZN.

I trust this information is of assistance to the Committee.

Yours sincerely

Stuart Robert



Senator the Hon Michaelia Cash
Minister for Employment, Skills, Small and Family Business

Reference: MS20-003383

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator

I refer to correspondence dated 6 August 2020 from the Senate Standing Committee for the Scrutiny of Bills (the Committee) seeking further information in relation to the Payment Times Reporting Bill 2020 (the Bill) as part of the Committee's *Scrutiny Digest 9 of 2020*.

The Committee has raised two issues for further response, following my response to the issues raised by the Committee in *Scrutiny Digest 7 of 2020*.

An addendum to the Bill's Explanatory Memorandum

The Committee has previously sought my advice on why an offence-specific defence which reverses the evidential burden of proof is contained in section 46 of the Bill. In paragraph 2.98 of the *Scrutiny Digest 9 of 2020*, the Committee has requested that an addendum to the Explanatory Memorandum containing the key information contained in my response be tabled in the Parliament as soon as practicable.

I thank the Committee for its request and advise that the additional information will be included as part of the Supplementary Explanatory Memorandum to Government amendments being made to the Bill.

The definition of 'small business' and the Bill

At paragraph 2.109 of the *Scrutiny Digest 9 of 2020*, the Committee has requested my advice as to whether the definition of 'small business' set out in section 5 of the draft Payment Times Reporting Rules 2020 (draft Rules) can instead be included on the face of the Bill to ensure appropriate parliamentary oversight of this definition.

I acknowledge the scrutiny view of the Committee that significant matters, such as definitions which are central to the operation of a new regulatory scheme, should be included in primary legislation unless a sound justification for the use of delegated legislation is provided.

I advise the Committee that the definition of 'small business' will be moved from the draft Rules to the primary legislation as part of Government amendments to the Bill. This is intended to provide greater certainty to reporting entities and small business about the scope of businesses that are intended to be captured by the Payment Times Reporting Scheme.

I thank the Committee for its consideration of the Bill and trust this information is of assistance.

Yours sincerely

Senator the Hon Michaelia Cash

20 / 09 / 2020