



Senator the Hon Simon Birmingham

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

REF: MC21-003641

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

Dear ~~Senator Polley~~ *Helen,*

The Senate Scrutiny of Bills Committee (the Committee) recently sought my advice regarding items identified in Scrutiny Digest 16 of 2021 on the Appropriation Bills (Nos. 1 and 2) 2021-2022. My response to the Committee is attached.

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

Yours sincerely

Simon Birmingham

☞ November 2021

Response from the Minister for Finance – Senator the Hon Simon Birmingham to matters raised in Scrutiny Digest 16 of 2021

Request for Advice from the Committee	Proposed Response to the Committee
Measures Published as 'not for publication' ('nfp')	
<p>Page 50 - Para 2.50</p> <p>The committee therefore requests the minister's advice as to whether future Department of Finance guides on preparing portfolio budget statements can include guidance that:</p> <ul style="list-style-type: none"> • as a default, the full amount of funding allocated to each Budget measure should be published within the statements; • any decision not to publish the total amount for a Budget measure must be weighed against the significance of abrogating Parliament's fundamental scrutiny role over the appropriation of money from the Consolidated Revenue Fund; and • where a measure is marked as 'nfp', at least a high-level explanation should be included within the Portfolio Budget Statements (PBS) for why this is appropriate. 	<p>The Department of Finance will update its guidance to entities on the preparation of the PBS to reflect the Committee's comments.</p>
<p>Page 51 – Para 2.51</p> <p>The committee also requests the minister's further advice as to:</p> <ul style="list-style-type: none"> • why it is not possible to provide at least a high-level indication of the amount of funding allocated to a 'nfp' measure; and • the rationale for not publishing the full amount of funding in relation to the Rum Jungle Rehabilitation project or the Independent Review into Commonwealth Parliamentary Workplaces. 	<p>This general issue has been addressed twice already by the Minister for Finance in correspondence on 3 August 2021 and 9 September 2021.</p> <p>Identifying an indicative amount in relation to measures marked 'nfp' would risk potentially misrepresenting the amount of funding that the Government is prepared to spend or receive. This could unduly influence potential suppliers when responding to a tender request, diminishing the capacity of the Commonwealth to achieve a value for money outcome.</p> <p>As an example, if the Government disclosed an amount greater than what it was prepared to pay, there is a risk that tenderers might increase their bids accordingly. Where these responses exceeded available funding, the Government would be forced to choose between diverting funding from other priorities or discontinuing the tender process, wasting</p>

Request for Advice from the Committee	Proposed Response to the Committee
	<p>its own resources and those of tenderers. This would be an unsatisfactory outcome.</p> <p>Alternatively, if the Government disclosed an amount less than what it was prepared to fund, there is a likelihood that tenderers might not bid due to the project being considered uneconomical or the expectations of the Commonwealth being considered unrealistic.</p> <p>Funding for the Rum Jungle Rehabilitation project and the Independent Review into Commonwealth Parliamentary Workplaces was disclosed as 'nfp' due to commercial sensitivities associated with these projects.</p> <p>Further to the questions, the committee may note that while their report identifies the term 'nfp' appearing 229 times in the 2021-22 Budget Paper 2, those entries relate to only 18 measures in that Budget classified in this way. A word count is not a useful indicator, because Budget Paper 2 uses that abbreviation up to 11 times for each measure (every measure has its own narrative description plus a financial table covering the current financial year and the forward estimate years and the same data entries are repeated in a summary table). Some measures also are listed against more than one agency, where there are shared administrative responsibilities. It remains the case that nfp entries are only used for a very small number of Budget measures and that will continue to be the case.</p>



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

MC21-007416

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

Dear Chair *Helen*

Thank you for your correspondence of 17 September 2021, regarding the Charter of the United Nations Amendment Bill 2021.

You have sought further information regarding the recent amendment to the *Charter of the United Nations Act 1945* (COTUNA) to require that counter-terrorism financing sanction listings under Part 4 of COTUNA (CT listings) be made by legislative instrument.

As advised in my letter of 2 September 2021, the Department of Foreign Affairs and Trade (the Department) keeps Australia's sanctions regimes under review to ensure they are fit for purpose. As part of this review process, the Department sought advice on the legislative status of CT listings, noting that such listings have both administrative and legislative characteristics.

Following receipt of advice on 17 March 2021, the Department took action to amend COTUNA to put beyond doubt the enforceability of CT listings. The amendments to COTUNA, which provide that CT listings are to be made by legislative instrument, align with the process by which listings are made under the *Autonomous Sanctions Regulations 2011*.

The amendments do not substantively change the operation of Australia's UN counter-terrorism sanctions framework, nor create any new rights or obligations. Rather, they provide that CT listings, once made, will be registered on the Federal Register of Legislation as legislative instruments, rather than published as Commonwealth Gazette Notices. This change is designed to better reflect the mixed character of these listings as both administrative and legislative in nature. It was not the result of any question as to the legality or validity of Australia's counter-terrorism listings, now or previously.

It is a widely accepted principle that the law be clear, known and enforced, and that all persons are subject to and accountable to the law. The transitional measures incorporated into COTUNA ensure that past enforcement action cannot be challenged *solely* on the grounds that listings were

not registered on the Federal Register of Legislation. This protects the integrity and efficacy of Australia's UN counter-terrorism sanctions framework by putting beyond doubt the enforceability of validly made listings that have always been readily accessible to the public.

I trust this additional information assists the Committee in concluding consideration of this matter.

Yours sincerely

MARISE PAYNE

19 OCT 2021