



**THE HON RICHARD MARLES MP
DEPUTY PRIME MINISTER
MINISTER FOR DEFENCE**

Senator Dean Smith
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
Canberra ACT 2600

Dear Chair

Thank you for your correspondence of 19 October 2023 concerning the *Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023*.

The Senate Scrutiny of Bills Committee sought information from me in response to the following questions:

- (i) whether it would be possible for the reasons for the decision made under proposed section 115E to be disclosed where the Minister's reasonable belief as to the individual change in circumstances relates to considerations which are personal or unique to the person, rather than national security or international relations;
- (ii) why it is necessary and appropriate for proposed subsection 115K(7) to provide that the Minister is taken to have affirmed a reviewable decision if the Minister does not give the applicant written notice of a decision to affirm, vary or revoke the reviewable decision within 90 days; and
- (iii) what consideration was given to the impact of proposed subsection 115K(7) on an individual's procedural fairness rights.

In relation to question (i), the notice requirements under subsections 115E(4) and (5) apply to both mandatory cancellation under subsection 115E(1) and discretionary cancellation under subsection 115E(3). This means that written notice must be provided to the individual of the cancellation of the authorisation as soon as reasonably practicable, and the notice must include reasons for the decision, the date of its effect and information about the individual's review rights.

The reasons provided to an individual may vary on a case-by-case basis. As set out in

paragraph 179 of the Explanatory Memorandum, reasons for cancellation may be due to a change in circumstances, whether that be in relation to the foreign work restricted individual, other individual, the relevant foreign country or other relevant circumstances. It would be possible for the reasons for the decision made under proposed section 115E to be disclosed where the reasons pertain to personal or unique factors relating to the individual.

In relation to questions (ii) and (iii), subsection 115K(7) is a standard 'deeming' provision, which is commonly used to ensure that an affected individual's review rights arise after an appropriate period of time, so that any review is not unreasonably delayed by the inaction of a decision maker. An example of this type of deeming provision is section 54D of the *Freedom of Information Act 1982*, which allows an applicant to seek external review by the Information Commissioner, if they have not received a decision from the agency within 30 days.

Thank you for bringing these matters to my attention and I trust this information is of assistance to the Committee.

Yours sincerely

RICHARD MARLES

8/12/23



The Hon Amanda Rishworth MP

Minister for Social Services

Senator Dean Smith
Chair
Senate Scrutiny of Bills Committee
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scrutiny.sen@aph.gov.au

Dear Senator

Dean

I write in relation to the Senate Scrutiny of Bills Committee's (the Committee) request for further information about issues identified in relation to the Disability Services Inclusion Bill 2023 (the Bill).

The Committee also wrote to me on 19 October 2023 seeking further information about the Bill, and a detailed response was provided to you on 2 November 2023.

Following my response, the Committee made the below requests.

The Committee requested that the Bill be amended to explicitly include a requirement that an accrediting authority have appropriate internal controls and complaints processes under subclause 25(1).

An amendment to this effect was moved and passed by the Senate on 17 November 2023.

The Committee requested that an addendum to the explanatory memorandum containing the key information provided by the Minister in relation to the availability of independent merits review be tabled in the Parliament as soon as practicable.

An addendum to the explanatory memorandum dealing with the availability of independent merits review was tabled in the Senate on 17 November 2023.

I note that you requested a response by 30 November 2023, or earlier if the Bill was due to be considered in the Senate before that time. As the Bill was considered and passed by the Senate on 17 November 2023, the day after I received your request, I was not able to provide a response prior to debate occurring.

Despite this, I trust that the actions taken prior to the passage of the Bill satisfy the Committee's requests.

Yours sincerely

Amanda Rishworth MP

12/7/2023



The Hon Amanda Rishworth MP

Minister for Social Services

Senator Dean Smith
Chair
Senate Scrutiny of Bills Committee
scrutiny.sen@aph.gov.au

Dear Senator

Dean

Thank you for your email dated 30 November 2023, concerning the Senate Scrutiny of Bills Committee's (the Committee) request for information about issues identified in the National Redress Scheme for Institutional Child Sexual Abuse Amendment Bill 2023 (the Bill).

The Bill aims to improve the National Redress Scheme (the Scheme) by enhancing access to redress, enabling fairer outcomes for survivors, and strengthening Scheme processes. The changes were agreed with all state and territory governments as Scheme partners, and form a key part of the Australian Government's Final Response to the independent Second Year Review. More specifically, the proposed changes to the Scheme's protected information provisions will increase transparency and strengthen processes related to some applicants, institutions, and child safety.

I have addressed your requests for information in turn below.

Why it is considered appropriate that instruments made under proposed subsection 96A(8) are not legislative instruments

Proposed section 96A gives the Operator a discretionary power to disclose protected information about a redress applicant to a public trustee (or similar entity) in relation to financial management orders. Such information can only be disclosed for specified purposes and to specified people.

To provide further protection to redress applicants, proposed subsection 96A(6) allows the Operator to impose conditions to be complied with in relation to protected information disclosed under proposed section 96A.

An instrument made under subsection 96A(6) does not fall within the definition of a legislative instrument under the *Legislation Act 2003* because it does not determine or alter the content of the law. Instead, it applies the law to a particular case, being a specific disclosure of protected information.

As instruments made under proposed subsection 96A(6) will apply only to a specific disclosure of protected information, not to information disclosures more broadly, instruments made under proposed subsection 96A(6) are not legislative in nature. It is therefore not appropriate for proposed subsection 96A(8) to provide that instruments made under proposed subsection 96A(6) are legislative instruments.

Whether the bill could be amended to provide that these instruments are legislative instruments to ensure that they are subject to appropriate parliamentary oversight.

An instrument made under subsection 96A(6) is not legislative in nature. Given this, it is not appropriate to amend the Bill as suggested above.

Further, instruments made under proposed subsection 96A(6) may contain the personal information of redress applicants. It would be a significant breach of their privacy for such instruments to be subject to publication and parliamentary oversight.

I trust that the above will be of assistance in the Committee's consideration of the Bill.

Yours sincerely

Amanda Rishworth MP

11 / 12 2023



**SENATOR THE HON MURRAY WATT
MINISTER FOR AGRICULTURE, FISHERIES AND FORESTRY
MINISTER FOR EMERGENCY MANAGEMENT**

Senator Dean Smith
Chair
Standing Committee for the Scrutiny of Bills
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Dear Senator *Dean*

**Primary Industries Levies and Charges Collection Bill 2023 (Collection Bill)
Primary Industries Levies and Charges Disbursement Bill 2023 (Disbursement Bill)**

Thank you for your correspondence of 30 November 2023 on behalf of the Senate Scrutiny of Bills Committee (the Committee) in relation to the Collection and Disbursement Bills. I am writing to respond to the issues identified by the Committee in the Committee's *Scrutiny Digest 15 of 2023*.

I appreciate the time the Committee has taken to consider both Bills and the Government's response to the *Scrutiny Digest 13 of 2023*, which was provided to the Committee on 20 November 2023.

I have considered the Committee's request for further advice about these Bills and my detailed response is enclosed.

I note the Committee's requests at paragraphs 2.49, 2.85 and 2.107 of *Scrutiny Digest 15 of 2023* for an addendum to the relevant explanatory memorandum to be tabled in Parliament as soon as practicable. I intend to provide key information requested by the Committee in the explanatory memoranda to address these requests as soon as practicable.

I also understand that my officials have confirmed with the Committee's Secretariat that the reference in paragraph 2.49 to 'vicarious liability' is an error and should instead refer to 'the broad delegation of administrative powers' information referred to above that paragraph.

I would like to thank the Committee for bringing these matters to my attention. I trust that the information provided above will support the Committee in its consideration of these Bills.

Yours sincerely

MURRAY WATT

13 / 12 / 2023

Enc

Attachment: Supplementary Response to the Senate Standing Committee for Scrutiny of Bills – Collection and Disbursement Bills

Primary Industries Levies and Charges Collection Bill 2023 (Collection Bill)

Instruments not subject to an appropriate level of parliamentary oversight

The Committee has requested further advice as to why it is necessary for subclause 59(4) to specifically authorise rules made under the Collection Bill to empower the Minister or Secretary to make further instruments.

The agricultural levy system is a long-standing partnership between industry and the Australian Government to facilitate industry investment in strategic activities. Modernising the agricultural levies legislation is an opportunity to maintain this important industry-government partnership, while making improvements to the legislation that supports it.

A review of the legislation found it is ineffective in meeting industries' needs now and into the future. Improving the flexibility of the legislation to better support industries' needs is one of the key objectives of modernising this legislative framework. Another is ensuring the efficient and effective administration of the levy system.

The levy system in its current form has been in place since 1989. The purpose of enabling delegated legislation to empower further instruments to be made, is to provide the Minister or Secretary with the flexibility necessary for administering the system into the future.

I note that while the Collection Rules are still being developed, an exposure draft was published on 1 May 2023. That draft included a rule providing for the Secretary to make approved forms by written instrument. Examples of approved forms in the draft rules included those for lodging levy returns and applying for an exemption to allow less frequent lodgement of returns. These are some examples of the administrative matters I have in mind that may require the rules to provide (in this case) the Secretary with a power to make written instruments.

Acknowledging the Committee's views that the power to make certain instruments should be included on the face of the Bill, I reiterate my previous advice that the making of the proposed Collection Rules would be overseen by the Parliament. Any rule made under subclause 59(4) which, in turn, conferred on the Minister or Secretary a power to make a legislative instrument, a notifiable instrument or other written instrument would itself be subject to parliamentary scrutiny and disallowance.

Primary Industries Levies and Charges Disbursement Bill 2023 (Disbursement Bill)

Instruments not subject to an appropriate level of parliamentary oversight

The Committee has requested further advice as to why it is necessary for subclause 90(2) to specifically authorise rules made under the Disbursement Bill to empower the Minister or Secretary to make further instruments.

Noting my reasons outlined above regarding the equivalent provision in the Collection Bill, similar and consistent flexibility is also required to ensure the efficient and effective administration of the Disbursement Bill. My advice regarding subclause 90(2) of the Disbursement Bill would therefore be substantially the same as that I have provided for the Collection Bill.



The Hon Tony Burke MP
Minister for Employment and Workplace Relations
Minister for the Arts
Leader of the House

Senator Dean Smith
Chair
Senate Scrutiny of Bills Committee
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By email: scrutiny.sen@aph.gov.au

Dear Chair

Thank you for your correspondence of 8 December 2023 regarding the Senate Standing Committee for the Scrutiny of Bills' further consideration of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (the Bill).

I appreciate the time the Committee has taken to consider the Bill and the Government's response dated 28 November 2023 to the *Scrutiny Digest 13 of 2023*.

I note the Committee's request at paragraphs 2.18, 2.59 and 2.73 for an addendum to the explanatory memorandum to be tabled in Parliament as soon as practicable. The Government intends to provide the information requested by the Committee at paragraphs 2.59 and 2.73, relating to measures now contained in the Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023, in an explanatory memorandum to be tabled when that Bill is debated in the Senate in the Autumn 2024 sittings.

The Committee's request at paragraph 2.18 relates to a measure contained in the Bill which passed both houses of Parliament on 7 December 2023 and received Royal Assent on 14 December 2023, and therefore further explanatory material is not appropriate in the circumstances. I am grateful to the Committee for bringing this matter to my attention.

Yours sincerely _____

TONY BURKE

21/12/2023