



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

MC21-005604

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 14 July 2021, regarding the disallowance status of various instruments (together, the Instruments) made under Part 4 of the *Charter of the United Nations Act 1945* (the Act).

You have asked why the explanatory statements for the Instruments stated they were not subject to disallowance. At the time of tabling, the Department of Foreign Affairs and Trade (DFAT) acted on advice from the Attorney-General's Department that the instruments were not subject to disallowance, noting that the instruments give effect to Australia's obligations under international law. However, the Attorney-General's Department has subsequently reconsidered the application of section 44(1) of the *Legislation Act 2003* (Legislation Act) in relation to legislative instruments made under Part 4 of the Act and has advised that such instruments are subject to disallowance. I have instructed my Department to prepare replacement explanatory statements for the Instruments to remove reference to the instruments not being subject to disallowance. All future instruments made under section 15 of the Act will be tabled in Parliament as disallowable instruments.

You queried a difference in wording used in the explanatory statement for instruments made under the *Charter of the United Nations Act 1945* and the explanatory statement to instruments made under the *Charter of the United Nations (Anti-Terrorism Measures) Regulations 2001*. I confirm the language in the former is a typographical error. The sentence should read:

However, in accordance with subsection subsection 12(2) of the Legislation Act (the Act), to the extent that it disadvantages or imposes liabilities on a person, a listing instrument only applies in relation to a person (other than the Commonwealth or an authority of the Commonwealth) once registered on the Federal Register of Legislation.

This will also be corrected in the replacement explanatory statements.

All counter-terrorism financial sanctions listings (CT listings) included in the Instruments registered on the Federal Register of Legislation on 26 May 2021 have been validly made in accordance with the requirements of the Act. CT listing decisions have administrative qualities and have historically been treated as administrative decisions. However, as they also have legislative characteristics, they were registered on the Federal Register of Legislation to put beyond doubt the enforceability of these listings.

I trust the information provided will assist you in concluding your consideration of the Instruments.

Yours sincerely



MARISE PAYNE