



14 July 2021

Senator the Hon Simon Birmingham
Minister for Finance
Parliament House
Canberra 2600 ACT

Via email: financeminister@finance.gov.au

CC: DLO-Finance@finance.gov.au

Dear Minister,

Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses all disallowable legislative instruments against scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument, and the committee seeks your advice in relation to this matter.

Matters more appropriate for parliamentary enactment

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment, which should be included in primary, rather than delegated, legislation. In addition, Senate standing order 23(3)(k) requires the committee to consider whether an instrument complies with any other ground relating to the technical scrutiny of delegated legislation, including whether it is subject to sufficient parliamentary oversight.

The instrument amends the Financial Framework (Supplementary Powers) Regulations 1997 (FFSP Regulations) to include item 470 which establishes legislative authority for government spending of over \$1.4 billion on the Commonwealth Disability Support for Older Australians (DSOA) Program.

The DSOA Program provides funding for disability services to individual older people with a disability who are ineligible for the National Disability Insurance Scheme (NDIS). The explanatory statement to the instrument states that the DSOA Program is intended to deliver improved parity with the NDIS and a more client-centred program through:

- funding for disability services being better aligned with market pricing and nationally consistent across states and territories;
- moving all clients to individual support packages to refocus service delivery on individual client needs; and

- meeting the Commonwealth's commitment to continue supporting the DSOA clients with complex needs to live at home or in a supported accommodation and to access increased support as their needs change.

By authorising government spending on the DSOA Program, the instrument deals with significant matters relating to Commonwealth disability support policy; however there is no detail as to how the program will operate on the face of the instrument.

The committee further understands that there is currently no other delegated legislation or primary legislation supporting or regulating the DSOA Program beyond table item 470 in Part 4 of Schedule 1AB to the FFSP Regulations.

Noting that the DSOA Program appears to be a significant element of Commonwealth disability support policy, the committee would appreciate your advice as to:

- **why it is considered necessary and appropriate to provide for the DSOA program through regulations, rather than primary legislation; and**
- **whether consideration was given to establishing the DSOA program in primary legislation.**

The committee's expectation is to receive a response in time for it to consider and report on the instrument while it is still subject to disallowance. If the committee has not concluded its consideration of an instrument before the expiry of the 15th sitting day after the instrument has been tabled in the Senate, the committee may give notice of a motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider information received.

Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **28 July 2021**.

Finally, please note that, in the interests of transparency, this correspondence and your response will be published on the committee's website.

If you have any questions or concerns, please contact the committee's secretariat on (02) 6277 3066, or by email to sdlc.sen@aph.gov.au.

Thank you for your assistance with this matter.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation