



AUSTRALIAN
SENATE

Senate Standing Committee for the
Scrutiny of Delegated Legislation

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

11 June 2020

Senator the Hon Anne Ruston
Minister for Social Services
Parliament House
Canberra 2600 ACT

Via email: Senator.Ruston@aph.gov.au

cc: dlos@dss.gov.au

Dear Minister,

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]

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

Matters more appropriate for parliamentary enactment

Parliamentary oversight

Senate standing order 23(3)(j) requires the committee to examine each legislative instrument as to whether it contains matters more appropriate for parliamentary enactment (matters that should be included in primary rather than delegated legislation). In addition, standing order 23(3)(k) requires the committee to examine each instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes where an instrument may limit parliamentary oversight.

Section 123UF and Part 3D of the *Social Security (Administration) Act 1999* (Administration Act) respectively establish the Cape York Welfare Reform Income Management measure (Cape York measure) and the Cashless Debit Card (CDC) trials. Persons subject to these income management arrangements may have social security benefits 'quarantined', with quarantined funds restricted to the purchase of particular items. Under the Administration Act, the arrangements were due to sunset on 30 June 2020. However the instrument provides that the arrangements now continue to operate until 31 December 2020.

The measures in the instrument constitute a significant extension of the existing income management arrangements. The committee's longstanding scrutiny view is that such significant measures should be enacted via primary legislation to ensure appropriate levels of parliamentary oversight, unless the explanatory statement provides a sound justification for using delegated legislation.

The explanatory statement to the instrument notes that the Social Security (Administration) Amendment (Income Management to Cashless Debit Card) Bill 2019 (2019 Bill)—which is currently before the Parliament—proposes to extend the operation of existing CDC trial sites for a further year, and to transition persons subject to the Cape York measure to the CDC. However, due to the revision of parliamentary sittings in response to COVID-19, the 2019 Bill will not pass the Parliament before the expiry of the existing income management arrangements. The explanatory statement suggests that the instrument is intended to avoid circumstances where a participant ceases to be subject to income management while awaiting the passage of primary legislation.

The committee appreciates that COVID-19 is creating unprecedented challenges; however, the committee is concerned that using delegated legislation to extend the operation of the CDC trial and the Cape York measure limits parliamentary consideration of these income management arrangements, including whether the arrangements are functioning effectively. From a scrutiny perspective, the committee does not consider administrative certainty to be sufficient justification for extending the operation of the income management regime by delegated legislation. In this respect, the committee notes that the previous extension of the CDC trials and the Cape York measure was enacted by primary legislation, and that other economic and social policy measures in response to COVID-19 have been appropriately enacted through primary legislation.

In addition, the Parliament has recently agreed to a revised sitting calendar, which provides for a greater number of sitting days than was envisaged at the time the instrument was made on 17 April 2020. In light of this, it is not clear that the Parliament would lack the time to debate and, if appropriate, pass primary legislation which extends or modifies the operation of income management arrangements before 30 June 2020, or at least by the end of August 2020. Consequently, it is not clear why it is necessary for the instrument to extend the operation of the CDC trials and the Cape York measure to 31 December 2020.

Finally, the committee notes that the Senate Standing Committee for the Scrutiny of Bills, in its consideration of the provision under which this instrument was made, noted that sunset clauses in primary legislation are important safeguards which facilitate increased parliamentary oversight of extraordinary measures. That committee emphasised that such clauses should not be extended without a thorough review and the presentation of compelling evidence to the Parliament.

With regard to the matters outlined above, the committee requests your detailed advice as to:

- **why it was considered necessary and appropriate to extend the operation of the Cashless Debit Card trials and the Cape York Welfare Reform Income Management measure by delegated legislation, rather than primary legislation;**

- why it was considered necessary and appropriate to extend the operation of those income management arrangements for the full six months permitted under the *Coronavirus Economic Response Package Omnibus Act 2020*, as opposed to a shorter period; and
- the appropriateness of bringing forward consideration of the Social Security (Administration) Amendment (Income Management to Cashless Debit Card) Bill 2019 to provide the Parliament with the opportunity to consider and scrutinise the extension of the income management arrangements at the earliest available opportunity.

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.

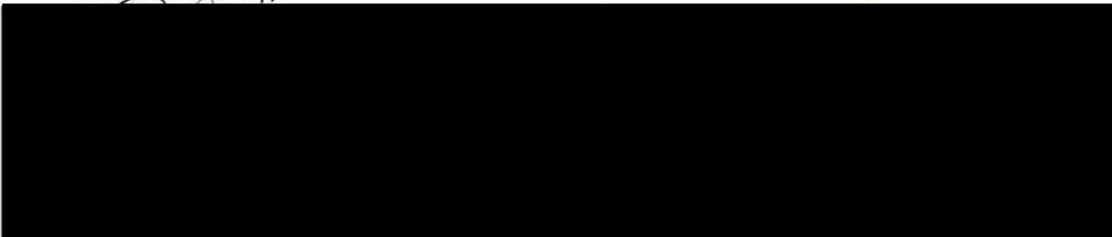
Noting this, and to facilitate the committee's consideration of the matters above, the committee would appreciate your response by **25 June 2020**.

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



Senator the Hon Anne Ruston

**Minister for Families and Social Services
Senator for South Australia
Manager of Government Business in the Senate**

Ref: MB20-000587

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear Senator  ~~Fierravanti-Wells~~

Thank you for your letter of 11 June 2020 on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation regarding the Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020 (the Determination).

The Committee has requested further information regarding the Determination.

Extension via delegated legislation rather than primary legislation

Schedule 16 of the *Coronavirus Economic Response Package Omnibus Act 2020* (Economic Response Act) enacted a mechanism to extend the operation of provisions in primary legislation and legislative instruments due to sunset on or before 15 October 2020. This mechanism ensures that there are no gaps in our laws while Parliament's attention is focused on high priority and urgent measures arising from the COVID-19 pandemic.

The Determination made in exercise of this power extends the end date for the Cashless Debit Card trial in all existing sites and Income Management in the Cape York region from 30 June 2020 to 31 December 2020. This determination ensured these measures and the support associated with their implementation did not cease on 30 June 2020.

Implementing this extension by instrument rather than primary legislation was an appropriate and proportionate exercise of the power to ensure certainty was provided to stakeholders and participants and that Parliament could focus on responding to the unprecedented circumstances presented by the COVID-19 pandemic.

Extension for six months as opposed to a shorter period

The Economic Response Act provides that the new date implemented by instruments made in exercise of this power should be no longer than six months after the original sunset date.

Extending the operation of the Cashless Debit Card in all existing sites and Income Management in the Cape York region for a period of six months provides greater certainty to stakeholders and participants.

The six-month extension is also essential as amendments proposed by Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 to transition Income Management in the Cape York region are proposed to commence three months after the Act receives Royal Assent. This commencement provision is reflective of system and procurement lead times, as well as ensuring the appropriate services are in place to support transitioning participants.

In determining the appropriate extension period, the Family Responsibilities Commission (FRC) was consulted in relation to the operation of Income Management in the Cape York region. The FRC advised that it supported the extension until 31 December 2020, as implemented by this Determination. Consultation was also undertaken in existing Cashless Debit Card sites with stakeholders and other community members.

On this basis, the extension for six months, as opposed to a shorter period, is considered appropriate, especially in light of the uncertainty presented by COVID-19.

Bringing forward the Bill at the earliest available opportunity

The priority for the Parliament remains legislation to support the response to the COVID-19 pandemic. However, the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 is currently before the Senate and will be scheduled for consideration as early as is practical.

I trust this information is of assistance to the Committee.

Yours sincerely



Anne Ruston

29/6/2020



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

26 August 2020

Senator the Hon Anne Ruston
Minister for Families and Social Services
Parliament House
CANBERRA ACT 2600

Via email: Senator.Ruston@aph.gov.au

CC: dlos@dss.gov.au


Dear Minister,

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]

Thank you for your response of 29 June 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee), in relation to the above instrument, and for your willingness to engage constructively with the committee on this matter.

The committee considered your response at its private meeting on 26 August 2020. Whilst noting your advice, the committee remains concerned that the instrument raises significant scrutiny concerns that should be brought to the attention of the Senate and has resolved to seek your further urgent advice.

Modification of primary legislation

Parliamentary oversight – deferral of sunsetting

The committee welcomes your advice that the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 will be scheduled for consideration as early as is practical. However, the committee notes that the bill has not yet been scheduled for debate.

The committee acknowledges the unique circumstances of the COVID 19 pandemic and your advice that the extension of the sunset dates for the income management and cashless debit card trial measures by delegated legislation was necessary to provide certainty to stakeholders and participants at the time the instrument was made. However, noting the Senate's return to a more regular sitting schedule since that time, the committee considers that there is no longer a clear justification for this significant matter to be included in delegated legislation. Certainty can now be provided through the consideration and passage (or otherwise) of the primary legislation.

Extensions of the income management and cashless debit card trial measures have previously been made through primary, rather than delegated, legislation. Noting the significance of these measures, the committee strongly considers that such an approach is necessary and appropriate.

The committee therefore strongly considers that it is necessary and appropriate for the Parliament to be provided with an opportunity to consider and scrutinise the extension of the end dates for these measures at the earliest available opportunity, rather than leaving this significant matter to be determined in delegated legislation for an extended period of time.

Accordingly, the committee requests your urgent advice as to whether the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 can be scheduled for debate in the Senate during the current sitting fortnight (that is, by 3 September 2020).

Please note that, if the bill is not listed for debate in the next sitting week, the committee has resolved to give a notice of motion to disallow the instrument on 31 August 2020 for consideration and debate in the Senate on 3 September 2020.

Full details of the committee's scrutiny concerns will be detailed in Chapter 1 of its *Delegated Legislation Monitor 9 of 2020*, which will be made available on the committee's website after tabling on 27 August 2020 at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor

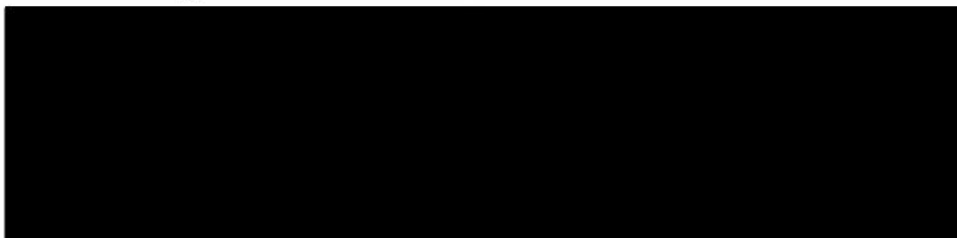
The committee intends to consider and report on this urgent matter in its next Delegated Legislation Monitor, which is due to be presented to the Senate on 2 September 2020. The committee would therefore appreciate your response by **31 August 2020**.

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



Senator the Hon Anne Ruston

**Minister for Families and Social Services
Senator for South Australia
Manager of Government Business in the Senate**

Ref: MB20-000954

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

Thank you for your letter of 26 August 2020 on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation regarding the Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020 (the Determination) and the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (the Bill).

The extension of the operation of the Cashless Debit Card in all existing sites and Income Management in the Cape York region, Queensland, for six months under the Determination has provided certainty to stakeholders and participants. Without this extension, participants would have experienced significant disruption to their financial arrangements, such as scheduled payments and transfers, at a time when access to on-the-ground support is limited due to travel restrictions and social distancing requirements.

As outlined in my letter of 29 June 2020, consultation was undertaken on the Determination including with the Family Responsibilities Commission in relation to the operation of Income Management in the Cape York region and in existing Cashless Debit Card sites with stakeholders and other community members.

The Committee has requested further information regarding whether the Bill can be scheduled for debate in the Senate during the current sitting fortnight.

The priority for the Parliament remains legislation to support the response to the COVID-19 pandemic. However, the Bill is currently before the Senate and will be scheduled for consideration as early as is practical.

Should the Committee seek to have the Determination disallowed and this motion is agreed to, there would be immediate and potentially serious impacts on around 13,000 program participants. Long-standing financial arrangements put in place by participants would be invalidated, leading to declined payments for scheduled bill repayments and rental transfers. If the Bill is subsequently passed, the cessation and subsequent reapplication of restrictions on participants within a short period of time is likely to create difficulties and confusion for participants.

The Determination also supports the local decision making that underpins the Income Management model in the Cape York region. Without the Determination in place, the Income Management component of the joint Commonwealth and Queensland Government Cape York Welfare Reform measure, delivered through the Families Responsibilities Commission (FRC) (a Queensland Government statutory authority), would cease and the operations of the FRC would be substantially disrupted. The FRC has been jointly funded by the Commonwealth and Queensland Governments since 2008.

I trust this information demonstrates the necessity of the Determination and the Government's commitment to consider the Bill as early as is practical.

Yours sincerely



Anne Ruston

31 / 8 / 2020



Senator the Hon Anne Ruston

**Minister for Families and Social Services
Senator for South Australia
Manager of Government Business in the Senate**

Ref: MB20-000954

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear  ~~Senator Fierravanti-Wells~~

Thank you for your further consideration to my response of 31 August 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation regarding the Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020 (the Determination) and the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (the Bill).

It has always been the Government's intention to consider the Bill as early as is practical. However, a number of factors have contributed to the current timing in considering the Bill. The priority for the Parliament remains legislation to support the response to the COVID-19 pandemic. Further, Parliamentary drafting resources have been focused on COVID-specific legislation, which has impinged the ability to draft Government amendments to the current Bill.

While consultation with stakeholders, including the Family Responsibilities Commission, took place in relation to the appropriate length of the extension period, the inability to undertake further consultation with the more than 23,000 impacted participants, many in remote Australia, and other stakeholders due to travel restrictions and community closures has impacted the timing of considering this Bill.

Finally, I have been in conversations with Labor and the crossbench to provide necessary information about the Bill and the Cashless Debit Card program more broadly to ensure they are fully informed on the impacts of the Bill.

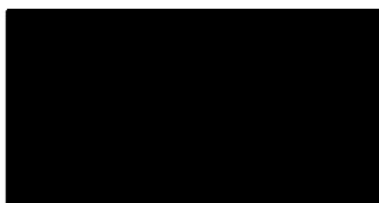
The Government is committed to completing consultations and having drafting completed in time for reintroduction in the Budget sitting period. I also seek the usual 15 sitting days before the disallowance motion lodged on 31 August 2020 is considered.

The extension of the operation of the Cashless Debit Card in all existing sites and Income Management in the Cape York region, Queensland, for six months under the Determination has provided certainty to stakeholders and participants. Without this extension, participants would have experienced significant disruption to their financial arrangements, such as scheduled payments and transfers, at a time when access to on-the-ground support is limited due to travel restrictions and social distancing requirements.

Should the Committee seek to have the Determination disallowed and this motion is agreed to, there would be immediate and potentially serious impacts on program participants. Long-standing financial arrangements put in place by participants would be invalidated, leading to declined payments for scheduled bill repayments and rental transfers. If the Bill is subsequently passed, the cessation and subsequent reapplication of restrictions on participants within a short period of time is likely to create difficulties and confusion for participants.

I trust this information demonstrates the necessity of the Determination and the Government's commitment to consider the Bill as early as is practical.

Yours sincerely



✓ Anne Ruston

1 / 9 / 2020



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

3 September 2020

Senator the Hon Anne Ruston
Minister for Families and Social Services
Parliament House
CANBERRA ACT 2600

Via email: Senator.Ruston@aph.gov.au

CC: dlos@dss.gov.au

Dear Minister,

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]

Thank you for your responses of 31 August and 1 September 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your responses at its private meetings on 1 and 2 September 2020. The committee's unresolved scrutiny concerns are detailed in Chapter 1 of its *Delegated Legislation Monitor 10 of 2020*, available on the committee's website at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

In summary, the committee remains concerned about the inclusion of significant matters in delegated legislation, rather than primary legislation, particularly noting that Parliament has returned to a regular sitting pattern. In this regard, the committee reiterates that the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 should be considered by the Senate as soon as practicable.

However, noting that you have provided some compelling reasons as to why the bill has not yet been considered by the Senate, the committee understands that it is not possible for the bill to be scheduled during the current sitting fortnight. Accordingly, the committee has resolved to postpone consideration of the notice of motion to disallow the instrument until 8 October 2020.

The committee requests that you provide an update prior to the October sitting week about progress made towards the scheduling of the bill for debate in the Senate to enable the committee to consider whether the disallowance motion should be further postponed.

I note that if there are any further developments in relation to this matter the committee will report to the Senate in a future Delegated Legislation Monitor.

In the interests of transparency, I also note that this correspondence will be published on the committee's website and recorded in the Delegated Legislation Monitor.

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

Yours sincerely,



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



Senator the Hon Anne Ruston

**Minister for Families and Social Services
Senator for South Australia
Manager of Government Business in the Senate**

Ref: MB20-900037

Senator the Hon Concetta Fierravanti-Wells
Chair Senate Standing Committee
for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600


Dear Senator

Thank you for your letter of 3 September 2020 on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation requesting an update on the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (the Bill).

As outlined in my letter of 1 September 2020, the Morrison Government remains committed to scheduling legislation to extend the operation of the Cashless Debit Card (CDC) for debate as soon as practicable.

The 2020-21 Budget confirms the Government's commitment to the CDC and announces funding to support its operation as an ongoing measure. To support the Parliament to fully consider this new measure, a new Bill incorporating the 2020-21 Budget measure as well as amendments currently provided for in the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019, (which passed through the House of Representatives on 27 November 2019) will be introduced in the House this week.

The new Bill will provide an opportunity for Parliament to debate the ongoing operation of the CDC. I therefore ask that consideration of the disallowance motion for the Coronavirus Economic Response Package (Deferral of Sunset – Income Management and Cashless Welfare Arrangements) Determination 2020 (the Determination) be postponed or the motion be withdrawn.

Pending Parliament's consideration of the new Bill, the extension to the operation of the Cashless Debit Card and Income Management in the Cape York region of Queensland for six months under the Determination continues to provide certainty to stakeholders and participants. Without this extension, participants would have experienced significant disruption to their financial arrangements, such as scheduled payments and transfers, at a time where access to on-the-ground support can be challenging for participants due to travel restrictions and social distancing requirements.

If the Determination is disallowed, there would be immediate and potentially serious impacts on around 13,000 CDC participants. Longstanding financial arrangements put in place by participants would be invalidated, leading to declined payments for scheduled payments (including rent payments).

Furthermore, if legislation to extend the CDC is subsequently passed, the cessation and subsequent reapplication of restrictions on participants within a short period of time is likely to create difficulties and confusion for participants.

I encourage the Committee to speak to stakeholders to better understand the impact on participants and communities before pressing for disallowance of the Determination.

I trust this information demonstrates the Government's commitment to consider the Bill as early as is practicable and the impact of a potential disallowance of the Determination.

Yours sincerely

Anne Ruston

6/10/2020



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

8 October 2020

Senator the Hon Anne Ruston
Minister for Families and Social Services
Parliament House
CANBERRA ACT 2600

Via email: Senator.Ruston@aph.gov.au
CC: dlos@dss.gov.au

Dear Minister,

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]

Thank you for your response of 6 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.


The committee considered your response at its private meeting on 7 October 2020. The committee noted your advice that the government intends to introduce a new bill into the House of Representatives this week which would, if passed, support the operation of the Cashless Debit Card as an ongoing measure and make amendments currently provided for in the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019.

On the basis of your advice, the committee resolved to postpone the notice of motion to disallow the instrument to 12 November 2020, with a view to withdrawing the notice of motion after the new bill is agreed to by the Senate. If the new bill is not passed by the Senate the committee will consider whether to proceed with the disallowance notice at that time. I note that, based on the current sitting pattern, the notice of motion to disallow the instrument must be resolved by 7 December 2020 or the instrument will be deemed to have been disallowed.

In the interests of transparency, I note that your response and this correspondence 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 at sdlc.sen@aph.gov.au.

Yours sincerely,


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



11 June 2020

Senator Wendy Askew
Chair
Senate Community Affairs Legislation Committee
Parliament House
CANBERRA ACT 2600

via email: community.affairs.sen@aph.gov.au

Dear Chair

Matters of interest to the Senate—COVID-19 response instruments

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Since 4 December 2019, standing order 23(4) has required the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instruments appear to contain significant policy matters relating to the Australian Government's response to the COVID-19 pandemic, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw these instruments to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Aged Care Legislation Amendment (Subsidies—COVID-19 Support) Instrument 2020 [F2020L00615]	To prescribe a COVID-19 support supplement which is payable to approved providers of residential care and flexible care. The \$205 million funding package is aimed at covering the additional costs of caring for the health and wellbeing of aged care recipients during the COVID-19 pandemic.	25 August 2020

Instrument	Purpose	Last day to lodge disallowance notice
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]	To extend the end date for the Cashless Debit Card trial in all existing sites and income management in the Cape York region from 30 June 2020 to 31 December 2020.	25 August 2020
Social Security (Coronavirus Economic Response—2020 Measures No. 4) Determination 2020 [F2020L00474]	To modify the <i>Social Security Act 1991</i> in relation to the partner income reduction rate for jobseeker payment by reducing it from 60 per cent to 25 per cent of the person's partner income excess.	12 August 2020
Social Security (Coronavirus Economic Response—2020 Measures No. 5) Determination 2020 [F2020L00509]	To modify the <i>Social Security (Administration) Act 1999</i> to facilitate the provision of information (including tax file number information) by the Commissioner of Taxation to the Secretary of the Department of Social Services in matters related to the administration of the JobKeeper payment.	12 August 2020
Social Security (Coronavirus Economic Response—2020 Measures No. 6) Determination 2020 [F2020L00475]	To provide for recipients of widow allowance, partner allowance and special benefit under the <i>Social Security Act 1991</i> to receive the COVID-19 supplement from 27 April 2020.	12 August 2020
Social Security (Coronavirus Economic Response—2020 Measures No. 7) Determination 2020 [F2020L00545]	To vary the <i>Social Security Act 1991</i> to remove the liquid assets test waiting period and seasonal work preclusion period for social security claimants who had already served a part of such period prior to 25 March 2020, and for people who claim during certain specified periods.	12 August 2020

Should your committee decide to further examine any of these instruments, I note that the table above also identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in relation to each instrument in the Senate.

The text of the instruments, and the accompanying explanatory material for each instrument, is published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

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

Yours sincerely

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



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

11 June 2020

Senator Katy Gallagher
Chair
Senate Select Committee on COVID-19
Parliament House
CANBERRA ACT 2600

via email: covid.sen@aph.gov.au

cc: Senator the Hon Richard Colbeck, Minister for Aged Care and
Senior Australians, Minister.Colbeck.DLO@health.gov.au

The Hon Josh Frydenberg MP, Treasurer,
tsrdlos@treasury.gov.au

Senator the Hon Anne Ruston, Minister for Social Services,
dlos@dss.gov.au

Dear Chair

Matters of interest to the Senate—COVID-19 response instruments

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses all legislative instruments subject to disallowance, disapproval or affirmative resolution by the Senate against the scrutiny principles outlined in Senate standing order 23.

Since 4 December 2019, standing order 23(4) has required the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to the instrument on the ground that it raises significant issues or otherwise gives rise to issues that are likely to be of interest to the Senate. These may include instruments which contain significant policy matters or significant elements of a regulatory scheme, instruments which amend primary legislation, and instruments which have a significant impact on personal rights and liberties.

Noting that the following instruments appear to contain significant policy matters relating to the Australian Government's response to the COVID-19 pandemic, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw these instruments to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
Aged Care Legislation Amendment (Subsidies—COVID-19 Support) Instrument 2020 [F2020L00615]	To prescribe a COVID-19 support supplement which is payable to approved providers of residential care and flexible care. The \$205 million funding package is aimed at covering the additional costs of caring for the health and wellbeing of aged care recipients during the COVID-19 pandemic.	25 August 2020
ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486 [F2020L00618]	To defer the commencement of new design and distribution obligations by six months so that they will now apply from 5 October 2021 (rather than 5 April 2021). The design and distribution obligations are intended to assist consumers to obtain appropriate financial products by requiring issuers and distributors to have a customer-centric approach to designing, marketing and distributing financial products.	25 August 2020
ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487 [F2020L00623]	To defer the commencement of new mortgage broker obligations by six months so that they will now apply from 1 January 2021 (rather than 1 July 2020). The new mortgage broker obligations include a duty to act in the best interests of the consumer in relation to credit assistance, a requirement to prioritise consumers' interests when providing credit assistance, and a ban on conflicted remuneration.	25 August 2020
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]	To extend the end date for the Cashless Debit Card trial in all existing sites and income management in the Cape York region from 30 June 2020 to 31 December 2020.	25 August 2020
Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020 [F2020L00461]	To give certain entities or classes of entities an alternative basis on which they may satisfy the decline in turnover test to be eligible for JobKeeper payments.	12 August 2020
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020 [F2020L00546]	To amend the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 to adjust some elements of the scheme, and expand access to the scheme in some areas.	12 August 2020

Instrument	Purpose	Last day to lodge disallowance notice
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 3) 2020 [F2020L00605]	To amend the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 to provide that the 6 month turnover test period applying to universities is limited to only those universities that are Table A providers within the meaning of <i>Higher Education Support Act 2003</i> . Table B providers will be permitted to assess their eligibility based on a monthly or quarterly test period similar to other entities.	25 August 2020
Corporations (Coronavirus Economic Response) Determination (No. 2) 2020 [F2020L00611]	To modify the operation of certain civil penalty provisions in the <i>Corporations Act 2001</i> to establish a temporary test based on a disclosing entity or its officers' knowledge, recklessness or negligence with respect to whether certain information would have a material effect on the price or value of its enhanced disclosure securities and therefore should be disclosed.	25 August 2020
Social Security (Coronavirus Economic Response—2020 Measures No. 4) Determination 2020 [F2020L00474]	To modify the <i>Social Security Act 1991</i> in relation to the partner income reduction rate for jobseeker payment by reducing it from 60 per cent to 25 per cent of the person's partner income excess.	12 August 2020
Social Security (Coronavirus Economic Response—2020 Measures No. 5) Determination 2020 [F2020L00509]	To modify the <i>Social Security (Administration) Act 1999</i> to facilitate the provision of information (including tax file number information) by the Commissioner of Taxation to the Secretary of the Department of Social Services in matters related to the administration of the JobKeeper payment.	12 August 2020
Social Security (Coronavirus Economic Response—2020 Measures No. 6) Determination 2020 [F2020L00475]	To provide for recipients of widow allowance, partner allowance and special benefit under the <i>Social Security Act 1991</i> to receive the COVID-19 supplement from 27 April 2020.	12 August 2020
Social Security (Coronavirus Economic Response—2020 Measures No. 7) Determination 2020 [F2020L00545]	To vary the <i>Social Security Act 1991</i> to remove the liquid assets test waiting period and seasonal work preclusion period for social security claimants who had already served a part of such period prior to 25 March 2020, and for people who claim during certain specified periods.	12 August 2020

Should your committee decide to further examine any of these instruments, I note that the table above also identifies the last day (based on the current sitting pattern) for lodging a disallowance notice in relation to each instrument in the Senate.

The text of the instruments, and the accompanying explanatory material for each instrument, is published on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Please note that in the interests of transparency this correspondence will be published on the Scrutiny of Delegated Legislation Committee's website.

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

Yours sincerely

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



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

12 November 2020

Senator the Hon Anne Ruston
Minister for Families and Social Services
Parliament House
CANBERRA ACT 2600

Via email: Senator.Ruston@aph.gov.au
CC: dlos@dss.gov.au


Dear Minister,

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]

Thank you again for your response of 6 October 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument. At its private meeting on 11 November 2020 the committee further considered your response.

As advised in my letter of 8 October 2020, the committee has resolved to withdraw the notice of motion to disallow the instrument, contingent on the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (the bill) being agreed to by the Senate.

In light of the fact that parliamentary scrutiny of the bill is ongoing, including by the Community Affairs Legislation Committee, the committee has resolved to further postpone the notice of motion to disallow the instrument to 7 December 2020. I note that, based on the current sitting pattern, the disallowance notice must be resolved by this date or the instrument will be deemed to have been disallowed.

The committee is next scheduled to meet on 2 December 2020 and will further consider whether to proceed with the disallowance notice at that time. The committee's consideration of its approach to this matter will be informed by the status of the bill in the Senate when the committee meets on 2 December.

Noting this, and the committee's scrutiny view that it is appropriate for the extension or continuation of the cashless debit card measure to be considered by the Parliament at the earliest practicable opportunity, the committee requests your advice as to whether the bill can be scheduled for debate in the Senate in the sitting week beginning 30 November 2020.

To facilitate the committee's consideration of the matters above, the committee would appreciate your response by **19 November 2020**.

In the interests of transparency, I note that your response and this correspondence 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 at sdlc.sen@aph.gov.au.

Yours sincerely,

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation



Senator the Hon Anne Ruston

**Minister for Families and Social Services
Senator for South Australia
Manager of Government Business in the Senate**

Ref: MB20-000954

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation
Parliament House
CANBERRA ACT 2600

Dear  Senator Fierravanti-Wells

Thank you for your letter of 12 November 2020 on behalf of the the Senate Standing Committee for the Scrutiny of Delegated Legislation regarding the Coronavirus Economic Response Package (Deferral of Sunsetting – Income Management and Cashless Welfare Arrangements) Determination 2020 (the Determination) and the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019.

As you know, following the 2020-21 Budget which confirmed the Government's commitment to the Cashless Debit Card (CDC) and announced funding to support its operation as an ongoing measure, a new Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (the Bill) was introduced in the House of Representatives on 8 October 2020. The Senate referred the Bill to the Senate Community Affairs Legislation Committee for inquiry and report. On 17 November 2020, the Committee released its report and recommended that the Bill be passed.

The Morrison Government remains committed to the consideration of this legislation as soon as practicable. On 12 November, debate in relation to this Bill commenced in the House of Representatives and I expect the debate will conclude early in the sitting week of 30 November to enable the Senate to consider the Bill in the final sitting period of the year. In the event the Bill is not considered and passed by both chambers before the end of this year, the Cashless Debit Card and Income Management in Cape York will cease. Income Management participants in the Northern Territory will remain on the BasicsCard.

Given the Bill is currently being considered by the Parliament, I request that the disallowance motion for the determination is withdrawn to ensure the measure is not disallowed on 7 December 2020, one week before the new legislation must otherwise be considered. The debate on the primary Bill will provide the opportunity for parliamentary scrutiny and consideration the disallowance motion has sought.

If the Determination is disallowed and this motion is agreed to, there would be immediate and serious impacts on around 13,000 CDC program participants. Long-standing financial arrangements put in place by participants would be invalidated, leading to declined payments for scheduled payments, including rental payments. If the Bill is subsequently passed, the cessation and subsequent reapplication of restrictions on participants within a short period of time is likely to create difficulties and confusion for participants.

I trust this information demonstrates the Government's commitment to consider the Bill as early as is practical.

Yours sincerely

Anne Ruston

26/11 / 2020



AUSTRALIAN
SENATE

**Senate Standing Committee for the
Scrutiny of Delegated Legislation**

Parliament House, Canberra ACT 2600
02 6277 3066 | sdlc.sen@aph.gov.au
www.aph.gov.au/senate_sdlc

3 December 2020

Senator the Hon Anne Ruston
Minister for Families and Social Services
Parliament House
CANBERRA ACT 2600



Dear Minister,

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]

Thank you for your response of 26 November 2020 to the Senate Standing Committee for the Scrutiny of Delegated Legislation, in relation to the above instrument.

The committee considered your response at its private meeting on 2 December 2020.

In summary, in light of the fact that the imminent debate on the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 will provide an opportunity for the Parliament to consider the proposed continuation of the cashless debit card scheme, the committee has concluded its examination of the instrument and resolved to withdraw the notice of motion to disallow the instrument.

The committee's concluding comments are set out in Chapter 1 of its *Delegated Legislation Monitor 13 of 2020*, available on the committee's website at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

In the interests of transparency, I note that this correspondence will be published on the committee's website and recorded in the *Delegated Legislation Monitor*.

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

Yours sincerely,

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