



18 March 2021

Senator the Hon Marise Payne  
Minister for Foreign Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [foreign.minister@dfat.gov.au](mailto:foreign.minister@dfat.gov.au)

Dear Minister,

### **Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]**

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 these matters.

#### ***Matters more appropriate for parliamentary enactment***

##### ***Clarity of drafting***

Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be included in primary, rather than delegated, legislation). This includes instruments which provide exemptions to primary legislation. In addition, Senate standing order 23(3)(e) requires the committee to scrutinise each instrument as to whether its drafting is defective or unclear.

Section 5 of Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 (the instrument) provides that certain arrangements are exempt from the notification and approval provisions of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act). Specifically, section 5 establishes a definition of an 'exempt arrangement' for the purposes of section 4 of the Act. Appearing in numerous sections of the Act, the definition of an 'exempt arrangement' appears to be a significant element of the Act.

The committee is concerned that the instrument deals with significant matters that go to the scope of the scheme as a whole. The committee's scrutiny concerns are heightened in this instance given that the regulations were discussed in detail with your department at a public hearing of the Senate Foreign Affairs, Defence and Trade Legislation Committee's inquiry into the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020.<sup>1</sup> At the hearing I advised

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<sup>1</sup> Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, 13 October 2020, pp. 64–92. Accessed at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/AustForeignRelations2020/Public\\_Hearings](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/AustForeignRelations2020/Public_Hearings).

your department that any delegated legislation made under the Act would receive very close consideration by the committee.

Noting this, the committee is particularly concerned that the explanatory statement does not indicate why it is considered necessary and appropriate to leave this significant matter to delegated legislation, rather than including the scope of 'exempt arrangements' on the face of the primary legislation.

In addition, the definition of an exempt arrangement contains terms which appear to have a wide interpretation. For example, the definition states at paragraph 5(1)(b) that exempt arrangements include 'foreign arrangements solely dealing with minor administrative or logistical matters (including, for example, flights, accommodation, submitting paperwork or visa applications or the timing of conferences or conference sessions)'. In the committee's view, while the example in paragraph 5(1)(b) provides some assistance in clarifying what 'minor administrative or logistical matters' may be, it remains the case that there is considerable uncertainty as to the scope of this term.

Further, the definition states at paragraph 5(2)(c) that a variation of an arrangement is an exempt arrangement if 'the variation is a minor variation that does not alter the substance of the arrangement (including, for example, a variation that alters the number of students involved in a student exchange under an arrangement from 6 to 5)'. The committee again considers that this broad definition leaves scope for uncertainty as to the type of variations that will be considered minor variations.

**In light of these matters, the committee requests your advice as to:**

- **why it is considered necessary and appropriate to establish the definition of an 'exempt arrangement' via delegated legislation, rather than primary legislation; and**
- **whether the definition of an 'exempt arrangement' can instead be included in primary legislation.**

**If it is considered that it would be inappropriate to include the definition in primary legislation, the committee requests that further clarity be provided on the face of the instrument or, at a minimum, in the explanatory statement in relation to the scope of the elements of the definition noted above.**

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 **1 April 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](mailto: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 Marise Payne**  
**Minister for Foreign Affairs**  
**Minister for Women**

MC21-001753

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 23 March 2021 regarding your consideration of Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 (the Rules) and, in that context, the power to exempt arrangements from the notification provisions set out in the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act).

You have requested advice as to:

- why it is considered necessary and appropriate to establish the definition of an 'exempt arrangement' via delegated legislation, rather than primary legislation; and
- whether the definition of an 'exempt arrangement' can instead be included in primary legislation.

You have also suggested that, if it is inappropriate to define exempt arrangement in primary legislation, further clarity should be provided on exempt arrangements prescribed by the Rules either on the face of the instrument or in the explanatory statement.

As you have observed, the Act empowers the Minister for Foreign Affairs to make rules exempting arrangements from the notification and approval provisions of the Act. Section 54 enables the Minister to make rules prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Further, section 4 of the Act defines an 'exempt arrangement' as an arrangement of a kind that is prescribed by the rules.

There are several reasons why I am of the view that the power to specify exempt arrangements should remain within the rules.

At the time the Act was drafted, certain entities were exempted from the operation of the Act by their exclusion from the relevant definitions of 'State/Territory entity' or 'foreign entity'. Therefore, arrangements by State and Territory 'hospitals' or by 'corporations that operate on a commercial basis' are excluded from the Foreign Arrangements Scheme. This is the means by which arrangements considered appropriate to be more permanently excluded from the Scheme were exempted; that is, through the primary legislation.

An 'exempt arrangement' as defined in section 4 of the Act, was envisaged as a more flexible means of excluding arrangements where appropriate and necessary to ensure the effective administration of the Act. Specifically, it was intended to reduce the regulatory burden of the Act where it is subsequently determined by the Minister that there is low foreign policy risk, or where arrangements must be entered in urgent circumstances. The Revised Explanatory Memorandum to the Act provides information about exempt arrangements (at paragraphs 100-104). This includes that exempt arrangements are excluded from provisions of the Act requiring the notification and approval of arrangements. Importantly (and distinct from arrangements involving State and Territory 'hospitals' or 'corporations that operate on a commercial basis'), the Minister retains the power to make declarations or decisions in respect of exempt arrangements should the Minister become aware of those arrangements other than through their notification.

The legislation should position the Government to reduce the administrative burden on State/Territory entities in situations where the Minister determines there is low foreign policy risk. This is a new Act which, for the first time, will provide the Federal Government with full visibility of the arrangements with foreign governments (or foreign universities that lack institutional autonomy from their government) entered by States and Territories, Australian public universities and local governments. Once I have received and considered the initial stocktake of pre-existing arrangements entered by those entities, and obligations in respect of prospective arrangements are well underway, the Government will be better placed to judge whether categories of arrangements pose less foreign policy risk and may be exempted so as to reduce the administrative burden of the Act. Retaining the power to exempt arrangements through the rules allows for this. However, arrangements exempted by the rules remain subject to the Minister's declaration and decision-making powers under the Act.

Some categories of arrangements which I have already prescribed as exempt, such as those relating to sharing of information or resources for the management of an emergency in Australia which has been declared by the Commonwealth, or a State or Territory, are time-critical and in the public interest. I have judged that these arrangements are less likely to pose a risk from a foreign relations or foreign policy perspective, and to require their notification—and, if a core prospective arrangement, their approval—could unduly delay these arrangements and hinder beneficial State or Territory activity.

I have also exempted from notification arrangements that solely deal with minor administrative and logistical matters and minor variations that do not alter the substance of an arrangement. These exemptions responded to State/Territory entity feedback that it would be administratively burdensome for State/Territory entities to notify me of these types of arrangements. I have assessed that such arrangements are relatively inconsequential, and less likely to pose a risk from a foreign relations or foreign policy perspective. The exemption is deliberately drafted to enable flexible application to arrangements that differ in nature, purpose and participants. It is intended that State/Territory entities consider the application of this exemption on a case-by-case basis,

and consult with the Department of Foreign Affairs and Trade should there be a question as to whether the exemption applies.

Further, exemptions may be necessary to respond to changing foreign policy risk, including the power to exempt arrangements in the rules provides the necessary flexibility to respond to such changes.

The Rules and their accompanying explanatory statement remain appropriate in their description, and justification, of the relevant exempt arrangements. I appreciate the Committee's desire to provide as much specificity as possible, and will keep the rules, and explanatory statement under regular review, and will be happy to ensure my officials provide relevant updates to your committee.

Thank you, once again, for your interest in the Rules. I would also like to thank you for your strong engagement on the Committee that inquired into the Bill.

Yours sincerely

**MARISE PAYNE**

31 MAR 2021



14 April 2021

Senator the Hon Marise Payne  
Minister for Foreign Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [foreign.minister@dfat.gov.au](mailto:foreign.minister@dfat.gov.au)

  
Dear Minister,

**Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]**

Thank you for your response of 30 March 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instruments. The committee considered your response at its private meeting on 13 April 2021 and has resolved to seek your further advice about the issues outlined below.

***Matters more appropriate for parliamentary enactment***

***Clarity of drafting***

You have advised that an 'exempt arrangement' as defined in section 4 of the Act was envisaged as a more flexible means of excluding arrangements where appropriate and necessary to ensure the effective administration of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act). Further, you note that the inclusion of the definition of an 'exempt arrangement' in the instrument was intended to reduce the regulatory burden of the Act where it is subsequently determined by the Minister that there is low foreign policy risk, or where arrangements must be entered in urgent circumstances.

In addition, you note that the Revised Explanatory Memorandum to the Act provides further information about exempt arrangements, including that exempt arrangements are excluded from provisions of the Act requiring the notification and approval of arrangements. You also note that the Minister retains the power to make declarations or decisions with respect to exempt arrangements, should the Minister become aware of those arrangements other than through their notification.

The committee notes the Senate's interest in this matter, and therefore welcomes your advice that you intend to keep the instrument and its explanatory statement under regular review. The committee considers that regular review of the instrument is important.

The committee also notes that section 63A of the Act requires that a review of the operation of the Act must be commenced as soon as possible after the third anniversary of the commencement of Parts 2 and 3 of the Act.

In light of this requirement, the committee proposes that including a review of the operation of the instrument as part of the statutory review prescribed under section 63A would assist in ensuring

the instrument is functioning as intended. The committee considers that the review should include consideration of whether significant matters prescribed in the rules would be more appropriate for inclusion on the face of the Act. The committee notes that, in addition to providing an appropriate level of parliamentary scrutiny, including significant matters on the face of the Act would provide increased certainty over the longer term for those entities subject to the Act.

In order to ensure that the measures in the instrument are subject to more frequent parliamentary oversight, the committee considers that a sunset period of 5 years, rather than 10 years, would be appropriate for this instrument. The committee notes that this sunset period would also allow any recommendations of the review of the operation of the instrument to be taken into account in the drafting of the instrument to replace the sunset instrument.

**The committee therefore requests your advice as to:**

- **whether the instrument can be amended to provide that it sunsets after 5 years; and**
- **whether the statutory review of the Act under section 63A will include consideration of the operation of the instrument, including consideration of whether significant matters prescribed in the rules would be more appropriate for inclusion on the face of the Act.**

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. Noting that the 15th sitting day after the instrument was tabled in the Senate is 11 May 2021, the committee has resolved to give a notice of a motion to disallow the instrument on that day 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 April 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](mailto: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 Marise Payne**  
**Minister for Foreign Affairs**  
**Minister for Women**

MC21-002338

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 April 2021 regarding your consideration of the Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 (the Rules).

You have requested advice as to:

- whether the instrument can be amended to provide that it sunsets after five years; and
- whether the statutory review of the Act under section 63A will include consideration of the operation of the instrument, including consideration of whether significant matters prescribed in the rules would be more appropriate for inclusion in the Act.

As you know, section 50 of the *Legislation Act 2003* provides that the sunset period for legislative instruments is set at ten years unless the enabling legislation provides otherwise. As the Act does not prescribe a sunset period for the Rules, the default ten year period applies. In order to provide for a sunset period of five years, the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act) would need to be amended.

However, the three year review of the Act under section 63A provides an appropriate mechanism for the Act, and Rules established under the Act, to be further considered, including whether significant matters prescribed in the Rules would be more appropriate for inclusion in the Act. This will occur before any five or ten year sunset period and, therefore, obviates the need to amend the Act at this time. As part of the three year review, consideration can also be given to amending the Act to include a shorter sunset period than the default ten years.

Implementation of the Act is currently at a critically important stage. Over 1,100 arrangements have been notified to me under the Foreign Arrangements Scheme and I expect many more notifications before 10 June 2021, when pre-existing local government, university and sub-national level arrangements are due. An amendment to the Act at this time could divert resources from implementation of the Scheme, including the notification and assessment of arrangements. This would create uncertainty for States, Territories, public universities and local government, who have so far engaged constructively with the Scheme.

I acknowledge the Committee's view that regular review of the instrument is important. I can assure you that the Rules will be subject to ongoing consideration to ensure they appropriately reflect the intention of the Act and to enable the effective administration of the Scheme. The operation of the Scheme will also be subject to regular parliamentary scrutiny under section 53A of the Act, which requires me to table an annual report on the exercise of my decision-making powers before each House of Parliament. Further, as required by the Senate's Procedural Order of Continuing Effect 9E, this report will also be referred to the Senate Foreign Affairs and Trade Legislation Committee for inquiry and report.

Thank you, once again, for your interest in the Rules. I would also like to thank you for your strong engagement on the Committee that inquired into the Bill.

Yours sincerely

**MARISE PAYNE**

07 MAY 2021



AUSTRALIAN  
SENATE

Senate Standing Committee for the  
Scrutiny of Delegated Legislation  
Parliament House, Canberra ACT 2600  
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17 June 2021

Senator the Hon Marise Payne  
Minister for Foreign Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [foreign.minister@dfat.gov.au](mailto:foreign.minister@dfat.gov.au)

CC: [legislation@dfat.gov.au](mailto:legislation@dfat.gov.au)

Dear Minister,

**Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]**

Thank you for your response of 7 May 2021 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 16 June 2021 and has resolved to seek your further advice about the issues outlined below.

***Matters more appropriate for parliamentary enactment***  
***Clarity of drafting***

You advised that section 50 of the *Legislation Act 2003* (the Legislation Act) provides that a 10-year sunset period applies to legislative instruments unless a different duration is provided for under the enabling legislation. You advised that the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act) would need to be amended in order to provide for this instrument to sunset in five years.

You also advised that the three-year review of the Act under section 63A will provide an opportunity to consider whether the measures in the instrument would be more appropriate for primary legislation, and that this review removes the need to amend the Act to provide for a shorter duration of the instrument.

The committee's view is that the sunset regime in the Legislation Act does not require an amendment to any enabling Act for instruments made under that enabling Act to cease in less than 10 years from commencement. It would be possible to apply a shorter duration to this instrument than the existing 10-year sunset period by amending the instrument itself to provide for a new repeal date. Changes to the Act are not required for this. In my letter of 14 April 2021, the committee requested that the instrument be amended to provide that it 'sunset' after five years. In practice, the committee is requesting that the instrument be amended so that it is repealed within five years of commencement.

In light of this, the committee is of the view that there is nothing in the Act or the Legislation Act which prevents the instrument from being amended to specify that it is repealed within five years of commencement. In this context, the committee regularly scrutinises instruments which include a self-repeal provision.<sup>1</sup> While we note your advice that the review of the Act under section 63A will provide an opportunity to consider whether the measures in the instrument would be more appropriate for primary legislation, the committee's view is that a five year duration is the most appropriate mechanism for ensuring timely parliamentary scrutiny of the measures set out in this instrument and whether the measures remain suitable for inclusion in delegated, as opposed to primary, legislation.

**The committee therefore requests your further advice as to whether the instrument can be amended to provide that it is repealed within five years from commencement.**

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. The committee therefore gave notice of a motion to disallow the instrument on 23 February 2021 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 **1 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](mailto:sdlc.sen@aph.gov.au).

Thank you for your ongoing assistance with this matter.

Yours sincerely,

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

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<sup>1</sup> See, for example, ASIC Corporations (Licence Conditions—Treatment of Lease Assets) Instrument 2021/229 [F2021L00500].



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

27 JUL 2021

MC21-004503

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 17 June 2021, regarding your consideration of the Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 (the Rules).

You have requested advice as to whether the instrument can be amended to provide that it be repealed within five years from commencement.

As advised previously, the Rules will be subject to my regular review to ensure they reflect the intention of the Act and to support the effective administration of the Foreign Arrangements Scheme. In addition, the three-year statutory review required by section 63A of the Act will ensure timely and appropriate parliamentary scrutiny of the Rules.

The Department of Foreign Affairs and Trade has sought the advice of the Attorney-General's Department (AGD) as the portfolio agency responsible for the *Legislation Act 2003* (Legislation Act). AGD have advised that as a matter of good legislative practice, the default ten-year sunset period set out in the Legislation Act should be maintained unless there are clear policy reasons justifying a shorter sunset period.

Given this and the legislated three-year review, in my view, there are insufficient clear policy reasons to justify a shorter sunset period. As set out in my earlier letters of 31 March 2021 and 7 May 2021, the Rules represent an appropriate exercise of my decision-making powers under the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act).

I am, therefore, of the view that the Rules do not require amendment to necessitate repeal within five years from commencement.

Thank you, once again, for your interest in the Rules. I would also like to thank you for your strong engagement on the Committee that inquired into the Bill.

Yours sincerely



**MARISE PAYNE**



AUSTRALIAN  
SENATE

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

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4 August 2021

Senator the Hon Marise Payne  
Minister for Foreign Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [foreign.minister@dfat.gov.au](mailto:foreign.minister@dfat.gov.au)

CC: [legislation@dfat.gov.au](mailto:legislation@dfat.gov.au)

Dear Minister,

**Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]**

Thank you for your response of 27 July 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument.

The committee considered your response at a private meeting earlier today. 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. These scrutiny concerns are detailed in Chapter 1 of *Delegated Legislation Monitor 11 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

The committee has also resolved not to withdraw its notice of motion to disallow the instrument at this time. I note that, based on the current sitting calendar, the disallowance motion must be considered by the Senate by 11 August 2021 or the instrument will be deemed to have been disallowed under subsection 42(2) of the *Legislation Act 2003*.

Noting this, the committee requests your urgent response to the matter outlined in Chapter 1 of *Delegated Legislation Monitor 11 of 2021* by **close of business Friday, 6 August 2021**.

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](mailto: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 Marise Payne**  
**Minister for Foreign Affairs**  
**Minister for Women**

MC21-006118

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 4 August 2021, regarding your consideration of the Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 (the Rules).

You have reiterated the Senate Standing Committee for the Scrutiny of Delegated Legislation's request that the Rules be amended to provide that they repeal within five years from commencement.

In response to the Committee's request, I agree to progress an amendment to the Rules to this effect.

Thank you, once again, for your interest in the Rules.

Yours sincerely

**MARISE PAYNE**

*19 AUG 2021*



AUSTRALIAN  
SENATE

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

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12 August 2021

Senator the Hon Marise Payne  
Minister for Foreign Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [foreign.minister@dfat.gov.au](mailto:foreign.minister@dfat.gov.au)

CC: [legislation@dfat.gov.au](mailto:legislation@dfat.gov.au)

Dear Minister,

**Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]**

Thank you for your response of 10 August 2021 to the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the above instrument.

The committee had initially planned to meet on 9 August 2021 to consider your response to its comments in *Delegated Legislation Monitor 11 of 2021*. However, in light of time the response was finally received the committee considered your response at an extraordinary private meeting on 10 August 2021, which itself needed to be rescheduled to a later time that day.

The committee takes this opportunity to note that it has been corresponding with your office in relation to this instrument since March and draws to your attention the resolution of the Senate of 23 February 2021 concerning the engagement of ministers and agencies with the committee (Senate resolution 53A). This resolution calls on all ministers and agencies to respond to the committee's requests for information in relation to its technical scrutiny concerns within the timeframes set by the committee.

The committee works on a non-partisan basis to resolve its scrutiny concerns and relies on timely and constructive engagement from all ministers and agencies in order to fulfil its mandate.

The committee's concluding views in relation to the instrument are detailed in full in Chapter 1 of its *Delegated Legislation Monitor 12 of 2021*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

The committee reiterates its view that in the system of representative and responsible government established by the Constitution there are often important scrutiny reasons for providing for shorter sunseting of instruments made by the executive under legislative power delegated by the Parliament; and highlights that in this case a shorter sunseting period is considered justified.

The committee also acknowledges your previous advice that the statutory review of the *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* will provide an

opportunity to consider whether the measures in the instrument would be more appropriate for primary legislation, and considers that a five-year repeal will allow sufficient time for any recommendations arising from the review to be implemented.

In light of this, the committee welcomes your undertaking to progress an amendment to the instrument to provide that it repeals within five years from commencement.

I also confirm that the committee withdrew the notice of motion to disallow the instrument on 11 August 2021.

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](mailto:sdlc.sen@aph.gov.au).

Thank you for your ongoing engagement in relation to this matter.

Yours sincerely,

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