



5 August 2021

Senator the Hon Amanda Stoker
Assistant Minister to the Attorney-General
Parliament House
CANBERRA ACT 2600

Via email: AMO.DLO@ag.gov.au

Dear Assistant Minister,

Bankruptcy Regulations 2021 [F2021L00261]

Thank you for your response of 26 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 its private meeting on 4 August 2021 and has resolved to seek your further advice about the issues outlined below.

Modifications to primary legislation

Parliamentary oversight

The committee welcomes your undertaking that the government will conduct a targeted review to assess whether the modifying provisions currently prescribed in Schedules 2–4 of the instrument are more appropriately contained in primary legislation, and if so, the appropriate legislative vehicle through which changes can be progressed. You have advised this review will commence in 2022 and have undertaken to advise the committee of the outcome of this review by 1 April 2023. The committee looks forward to being notified about the outcome the review and will record this undertaking in the committee's Delegated Legislation Monitors.

You have also advised that it would not be appropriate to provide a three year real date for Schedules 2–4 of the instrument as this will place unnecessary uncertainty and pressure on the personal insolvency system. For this reason, you propose not to amend the instrument to repeal in three years.

While the committee appreciates your undertaking to conduct this review regarding appropriateness of these provisions, it retains significant scrutiny concerns about the duration of these provisions in this instrument which modify the operation of the *Fringe Benefits Tax Assessment Act 1986* (FBTA Act) and the *Bankruptcy Act 1996* (Bankruptcy Act).

While the committee acknowledges your concern about creating unnecessary uncertainty in the personal insolvency system, the committee considers that this can be addressed by ensuring these long-term provisions which modify the operation of primary legislation are contained in primary legislation, rather than delegated legislation, as soon as practicable.

As advised in my letter of 24 June 2021, on 16 June 2021 the Senate resolved to amend standing order 23 to reinforce the committee's scrutiny principles regarding delegated legislation which amends or modifies the operation of primary legislation. The committee therefore intends to rigorously pursue this type of scrutiny concern in accordance with the mandate provided by the Senate.

For these reasons, the committee requests your further advice regarding whether the instrument can be amended to provide for a five year repeal date for the provisions of the instrument which modify the operation of the FBTA Act and the Bankruptcy Act. The committee notes that this would allow time for the targeted review to be completed and any resulting amendments to legislation to be progressed prior to the repeal of the modifying provisions.

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 August 2021, the committee intends to give a notice of 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 **19 August 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