

# Monitor 4 of 2022 - Committee correspondence

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31 March 2022

The Hon Greg Hunt MP  
Minister for Health and Aged Care  
Parliament House  
CANBERRA ACT 2600

Via email: [Minister.Hunt.DLO@health.gov.au](mailto:Minister.Hunt.DLO@health.gov.au)

CC: [Minister.Littleproud@agriculture.gov.au](mailto:Minister.Littleproud@agriculture.gov.au); [DLO-MO@agriculture.gov.au](mailto:DLO-MO@agriculture.gov.au)

Dear Minister,

**Various instruments made under the *Biosecurity Act 2015*: F2022L00029; F2022L00041; F2022L00058; F2022L00059; F2022L00060; F2022L00132; F2022L00149; F2022L00104; F2022L00073**

The Senate Standing Committee for the Scrutiny of Delegated Legislation assesses legislative instruments against scrutiny principles outlined in Senate standing order 23.

The committee considers that the above instruments raise significant scrutiny concerns that should be brought to the attention of the Senate.

The committee's concluding comments are set out in Chapter 1 of its *Delegated Legislation Monitor 4 of 2022*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc) and **attached** to this letter.

As set out in the Monitor, the committee maintains and reiterates its view that amendments should be made to:

- section 44 of the Biosecurity Act to provide that any future determinations specifying entry requirements will be subject to disallowance;
- section 51 of the Biosecurity Act to provide that any future determinations specifying preventative biosecurity measures will be subject to disallowance;
- section 476 of the Biosecurity Act to provide that any future variations to extend a human biosecurity emergency period will be subject to disallowance; and
- section 477 of the Biosecurity Act to provide that any future determinations specifying emergency requirements during human biosecurity emergencies will be subject to disallowance.

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*.

Should you have any questions 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).

Yours sincerely,

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

## Part 2

### Exempt instruments raising significant scrutiny issues

1.4 This part details those instruments exempt from disallowance which raise particularly significant scrutiny concerns in relation to the appropriateness of their exemption from disallowance under Senate standing order 23(4A). Where necessary, the committee additionally raises scrutiny concerns in relation to its scrutiny principles set out in Senate standing order 23(3)(3).

### Various instruments made under the *Biosecurity Act 2015*

<b>FRL No.</b>	<a href="#">F2022L00029</a> ; <a href="#">F2022L00041</a> ; <a href="#">F2022L00058</a> ; <a href="#">F2022L00059</a> ; <a href="#">F2022L00060</a> ; <a href="#">F2022L00073</a> ; <a href="#">F2022L00104</a> ; <a href="#">F2022L00132</a> ; <a href="#">F2022L00149</a> <sup>1</sup>
<b>Purpose</b>	Various purposes
<b>Authorising legislation</b>	<i>Biosecurity Act 2015</i>
<b>Portfolio</b>	Health
<b>Source of exemption</b>	Subsections 44(3), 51(4), 476(2) and 477(2) of the <i>Biosecurity Act 2015</i>

#### Overview

1.5 Sections 475 and 476 of the *Biosecurity Act 2015* (Biosecurity Act) allow the Governor-General to declare that a human biosecurity emergency exists and to extend the emergency period for further periods of up to three months if the Health Minister is satisfied of certain criteria. During a human biosecurity emergency period, the Health Minister may determine emergency requirements or give directions deemed necessary to prevent or control the entry, emergence, establishment or spread of the relevant disease in Australian territory. On 11 February 2022, the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 1) Instrument 2022 [F2022L00132] was made to extend the emergency period, for a further two months until 17 April 2022.

1.6 Subsections 44(2), 51(2) and 477(1) of the Biosecurity Act empower the minister determine entry requirements, preventative biosecurity measures, and emergency requirements during a human biosecurity emergency period.

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1 Accessible on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

1.7 The Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 1) 2022 [F2022L00029], Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022 [F2022L00041], Biosecurity (Preventative Biosecurity Measures—Incoming International Flights) Determination 2022 [F2022L00058], Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022 [F2022L00059], Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Amendment (No. 1) Determination 2022 [F2022L00060], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2022 [F2022L00073], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2022 [F2022L00104], and Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022 [F2022L00149], were made under the Biosecurity Act in response to the COVID-19 pandemic and introduce a range of measures, including determining travel requirements such as mask and negative test requirements for international flights, and preventing persons from entering and leaving identified remote communities in the Northern Territory.

1.8 These nine instruments are exempt from disallowance by subsections 44(3), 51(4) and 477(2) of the Biosecurity Act.

## **Scrutiny concerns**

### ***Exemption from disallowance***<sup>2</sup>

1.9 The committee has on numerous occasions set out its significant scrutiny concerns in relation to legislative instruments made under the Biosecurity Act which are exempt from disallowance.<sup>3</sup> The committee's broader concerns about the exemption from disallowance of emergency legislative instruments are set out in

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2 Scrutiny principle: Senate standing order 23(3)(4A).

3 See Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 14 of 2021*, 29 September 2021, pp. 14–21; Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 16 of 2021*, 25 November 2021, pp. 3–10; Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 1 of 2022*, 25 January 2022, pp. 6–9; Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 2 of 2022*, 9 February 2022, pp. 2–7; and Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 3 of 2022*, 10 March 2022, pp. 13–18. Accessible at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Monitor](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor).

detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight.<sup>4</sup>

1.10 It remains the committee's view that emergency delegated legislation should be subject to appropriate parliamentary oversight, with limited exemptions from disallowance. Where an instrument is exempt from disallowance, the committee expects that a detailed justification will be included in the explanatory statement.

1.11 As the committee has previously emphasised, this approach upholds the Parliament's constitutional role as the primary institution responsible for making law and scrutinising possible encroachments on personal rights and liberties.

1.12 The Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 1) Instrument 2022 [F2022L00132] extends the human biosecurity emergency period for a further two months to 17 April 2022. The exemption from disallowance in relation to this instrument is particularly concerning as it means that any determinations of emergency requirements made under section 477 of the Biosecurity Act that are still currently in effect will continue to apply for the duration of the extended human biosecurity emergency period (unless revoked earlier). Further, additional determinations may be made during the period, which are also not subject to disallowance by Parliament. The committee's concerns are heightened as there is no limitation on the number of times that the emergency period may be further extended without parliamentary oversight.

1.13 The remaining eight instruments made under the Biosecurity Act during this period introduce significant measures which impact the public, including temporarily imposing requirements to travel such as mask and negative test requirements for international flights and restricting the movement of people in and out of certain remote communities in the Northern Territory.<sup>5</sup>

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4 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Exemption of delegated legislation from parliamentary oversight: Interim Report*, 2 December 2020. Accessible at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Exemptfromoversight/Interim\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Interim_report).

5 Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 1) 2022 [F2022L00029], Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022 [F2022L00041], Biosecurity (Preventative Biosecurity Measures—Incoming International Flights) Determination 2022 [F2022L00058], Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022 [F2022L00059], Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Amendment (No. 1) Determination 2022 [F2022L00060], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2022 [F2022L00073], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2022 [F2022L00104], and Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022 [F2022L00149].

1.14 The justification provided for the exemption from disallowance of these instruments is that the risk of disallowance would inhibit the Commonwealth's ability to act urgently on public health advice to manage a human biosecurity risk that could threaten or harm human health, as it would create uncertainty as to whether the instrument might be disallowed.<sup>6</sup>

1.15 As set out in the committee's previous Delegated Legislation Monitors, the committee does not accept the need to act urgently or to avoid potential uncertainty on their own to be an adequate justification for the exemption of delegated legislation from parliamentary oversight. In particular, the committee notes that the disallowance procedure would not inhibit the immediate commencement of the instruments. In this regard, the committee does not consider that making a legislative instrument subject to disallowance would, of itself, prevent the government from taking immediate and decisive action in response to a significant emergency.

1.16 The committee considers the disallowance process to be an opportunity to work in a constructive manner with the executive to enhance delegated legislation to ensure that it operates and functions within the boundaries placed upon it by the Parliament. In relation to these instruments, which impose significant requirements on the Australian public, the committee considers that the disallowance process is necessary to facilitate appropriate debate and scrutiny of the use of emergency powers and would operate to ensure that such powers are not misused.

1.17 The committee appreciates that during an emergency it is necessary for governments to take urgent and decisive action. However, Parliament must also have effective oversight of these critical decisions and retain the ability to scrutinise the actions of governments.

1.18 The committee notes that to date, the government has failed to substantively engage with the committee's significant concerns and continues to make instruments under the Biosecurity Act which are exempt from disallowance and fails to provide an adequate explanation for why it is necessary to do so.

1.19 Further, the committee is deeply concerned that the government has advised that it does not support any of the committee's recommendations in relation to providing for the disallowance of instruments made under the Biosecurity Act as

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6 In addition, for the Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 1) 2022 [F2022L00029], Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022 [F2022L00041], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2022 [F2022L00073], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2022 [F2022L00104], and Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022 [F2022L00149] the justification for the exemption also indicates that the risk of disallowance is more significant as the 'remote communities are made up of Aboriginal and Torres Strait Islander peoples who are at a high risk of adverse human health outcomes as a result of exposure to a listed human disease'.

set out in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight. Of the 18 recommendations in the interim report, the committee regrets that the government only agreed to one.

1.20 The committee will continue to rigorously pursue this matter in accordance with the mandate provided by the Senate when it agreed to amend standing order 23 to allow the committee to consider exempt instruments and report on instruments made the Biosecurity Act which are exempt from disallowance.

**1.21 In light of the above, the committee reiterates its view that amendments should be made to:**

- **section 44 of the Biosecurity Act to provide that any future determinations specifying entry requirements will be subject to disallowance;**
- **section 51 of the Biosecurity Act to provide that any future determinations specifying preventative biosecurity measures will be subject to disallowance;**
- **section 476 of the Biosecurity Act to provide that any future variations to extend a human biosecurity emergency period will be subject to disallowance; and**
- **section 477 of the Biosecurity Act to provide that any future determinations specifying emergency requirements during human biosecurity emergencies will be subject to disallowance.**

1.22 If the government is not amenable to moving such amendments, the committee intends to move its own amendments to the Biosecurity Amendment (Enhanced Risk Management) Bill 2021 which is currently before the Parliament, to ensure that future legislative instruments made under the Biosecurity Act are subject to disallowance.<sup>7</sup>

1.23 Additionally, the committee will continue to draw legislative instruments made under the Biosecurity Act which are exempt from disallowance to the attention of the Senate in future Delegated Legislation Monitors, as necessary.

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7 The committee's proposed amendments to the bill were circulated in the Senate on 2 December 2021, see [sheet 1475](https://www.apb.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6776) available at: [https://www.apb.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6776](https://www.apb.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6776).



31 March 2022

The Hon Josh Frydenberg MP  
Treasurer  
Parliament House  
CANBERRA ACT 2600

Via email: [tsrdlos@treasury.gov.au](mailto:tsrdlos@treasury.gov.au)

CC: [committeescrutiny@treasury.gov.au](mailto:committeescrutiny@treasury.gov.au)

Dear Treasurer,

**ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66  
[F2022L00145]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses 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.

***Modification of the operation of primary legislation  
Parliamentary oversight***

Senate standing order 23(3)(l) requires the committee to consider whether an instrument contains provisions which amend or modify the operation of primary legislation. In addition, Senate standing order 23(3)(m) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

The instrument modifies the operation of the *Corporations Act 2001* (the Act) to provide an exemption from requirements to provide product disclosure statements at or before the time a quote is given to a retail client for a general insurance product. The explanatory statement explains that this modification facilitates the provision of a product disclosure statement after a quote is provided over the phone due to the practical barriers of providing a simultaneous product disclosure statement.

The committee's longstanding view is that provisions which amend or modify the operation of primary legislation should be included in primary rather than delegated legislation. If the provisions are in delegated legislation, the instrument should operate no longer than strictly necessary.

While, in this instance, the instrument will only be in effect for five years, the explanatory statement notes that the modifications to the Act contained in the instrument have already been in effect for 10 years. As such, the modifications to the operation of primary legislation will potentially be in effect for a total of 15 years. The long-standing nature of these exemptions indicate to the committee that they are likely to be enduring and in fact better suited for inclusion

in the primary legislation. In this regard, the committee considers that certainty for industry can be best provided by setting out exemptions in primary legislation.

However, in light of the fact that the instrument does include a five-year repeal provision and the advice in the explanatory statement that the government will consider making future amendments to the Act as part of a review process before the instrument is repealed in 2027, the committee is not seeking any further information or advice from you in relation to this instrument. The committee does, however, wish to place on the record its scrutiny view that this exemption should, in the future, be set out in the primary legislation.

Please note that in the interests of transparency this correspondence will be published on the 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](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**



31 March 2022

The Hon Paul Fletcher MP  
Minister for Communications, Urban Infrastructure, Cities and the Arts  
Parliament House  
CANBERRA ACT 2600

Via email: [dlo@communications.gov.au](mailto:dlo@communications.gov.au)

Dear Minister,

**Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (No. 1)  
[F2022L00083]**

The Senate Standing Committee for the Scrutiny of Delegated Legislation (the committee) assesses legislative instruments against the scrutiny principles outlined in Senate standing order 23. The committee has identified scrutiny concerns in relation to the above instrument.

***Levying of taxation in delegated legislation***

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 enacted via primary legislation rather than delegated legislation). This includes where an instrument imposes, or sets the rate of, a tax or levy. In addition, Senate standing order 23(4) requires 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.

The instrument sets a rate of tax for new PMTS Class B licenses issued in the 850/900 MHz band.

The committee considers that one of the most fundamental functions of the Parliament is to levy taxation. In this regard, the committee's consistent scrutiny view is that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax. In this instance, it does not appear there is a cap on the face of the Act as to the amount of tax that may be imposed, which compounds the committee's scrutiny concerns in relation to this tax due to the limited parliamentary oversight afforded to it.

As the levying of taxation in delegated legislation is a systemic technical scrutiny matter, the committee has resolved draw this instrument to the attention of the Senate in its *Delegated Legislation Monitor 4 of 2022*. However, the committee is not seeking any further information or advice from you in relation to this particular instrument.

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.

Should you have any questions 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).

Yours sincerely,

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



31 March 2022

The Hon Karen Andrews MP  
Minister for Home Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [dlo@homeaffairs.gov.au](mailto:dlo@homeaffairs.gov.au)

Dear Minister,

**Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 2) [F2021L01658]**

Thank you for your response of 25 February 2022 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 30 March 2022 and has resolved to seek your further advice about the issues outlined below.

***Exemption from sunseting***

Thank you for advising that the instrument should be exempt from sunseting as the periodic repeal of the measures would result in commercial and regulatory uncertainty for the industry. Thank you for also providing AUSTRAC's advice that significant investment is made by industry to maintain compliance with these obligations, such as the development of IT procedures and systems, and these investments would be impacted by regulatory uncertainty.

**The committee would appreciate if explanatory statements to similar instruments made under the *Anti-Money Laundering and Counter- Terrorism Financing Act 2006* in the future could contain a similarly detailed justification for the exemption from sunseting.**

***Exemption from the operation of primary legislation***

The committee notes the advice from AUSTRAC that the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (the Act) authorises exemptions to the Act to be made via delegated legislation. AUSTRAC also advised that the regulation of litigation funding schemes was an unintended consequence of changes made to the *Corporations Regulations 2001* in 2020, and that it would be unworkable for litigation funding schemes to be subject to the regulatory requirements of the Act.

While noting this advice, the committee does not consider that this information resolves the committee's scrutiny concerns in relation to the instrument providing for exemptions from the operation of the Act. That is, the committee does not consider that the existence of powers in primary legislation which provide for amendment or modification by delegated legislation in and of itself to be a sufficient justification for the use of such powers. In addition, noting that the exemption set out in the instrument appears intended to remain in force on an enduring basis, it is unclear why the exemption cannot be set out on the face of the primary legislation. In this regard, the committee

considers that certainty for industry can be best provided by setting out exemptions in primary legislation.

Where delegated legislation exempts persons or entities from the operation of primary legislation, the explanatory statement should indicate why this is considered necessary and appropriate (instead of amending primary legislation). From a scrutiny perspective, the committee does not consider that an adequate justification of the appropriateness of setting out the exemption in delegated legislation has been provided in response to the committee's previous letter.

**The committee therefore reiterates its request for your advice as to why it is considered necessary and appropriate to use delegated legislation (rather than primary legislation) to set out an exemption from the operation of primary legislation in this instance.**

Please note that the committee expects to be in a position to finally 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 will 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 timely consideration of the matters above, the committee would appreciate your response by **14 April 2022**.

Finally, please note that, in the interests of transparency this correspondence and your response will be published on the 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](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**



1 April 2022

Senator Andrew Bragg  
Chair  
Senate Environment and Communications Legislation Committee  
Parliament House  
CANBERRA ACT 2600

via email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Chair,

### Matters of interest to the Senate

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses legislative instruments against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires 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 matters relating to the listing of endangered species and online safety, the committee has determined that the instruments engage standing order 23(4) and accordingly has resolved to draw them to the attention of your committee:

Instrument	Purpose	Last day to lodge disallowance notice
<b>List of Threatened Species Amendment (Phascolarctos cinereus (combined populations of Queensland, New South Wales and the Australian Capital Territory) (280)) Instrument 2022 [F2022L00131]</b>	To transfer the combined koala populations of Queensland, New South Wales and the Australian Capital Territory from the Vulnerable category on the list of threatened species to the Endangered category.	13 <sup>th</sup> sitting day of the new Parliament
<b>Online Safety (Basic Online Safety Expectations) Determination 2022</b>	To set out basic online safety expectations for social media services, relevant electronic services and designated internet services. Providers of these services are expected to take steps to meet the expectations included in the determination.	10 <sup>th</sup> sitting day of the new Parliament

Instrument	Purpose	Last day to lodge disallowance notice
[F2022L00062]	<p>The determination specifies expectations regarding:</p> <ul style="list-style-type: none"> <li>• safe use;</li> <li>• the taking of reasonable steps to minimise the provision certain material and to prevent access by children to class 2 material;</li> <li>• reporting and complaints mechanisms;</li> <li>• making information on terms of use and policies accessible;</li> <li>• record keeping; and</li> <li>• dealings with the eSafety Commissioner.</li> </ul>	
<p><b>Online Safety (Restricted Access Systems) Declaration 2022</b> [F2022L00032]</p>	<p>To specify an access-control system for 'relevant class 2 material' online by setting out the minimum requirements such a system must satisfy.</p> <p>Relevant class 2 material includes content that is unsuitable for a minor to see because it depicts:</p> <ul style="list-style-type: none"> <li>• realistically simulated sexual activity between adults;</li> <li>• high impact nudity;</li> <li>• high impact violence;</li> <li>• high impact drug use; and</li> <li>• high impact language.</li> </ul> <p>The declaration requires that an access control system must:</p> <ul style="list-style-type: none"> <li>• require an application for access to the material, and a declaration from the applicant that they are at least 18 years of age;</li> <li>• provide warnings as to the nature of the material;</li> <li>• provide safety information for parents and guardians on how to control access to the material;</li> <li>• incorporate reasonable steps to confirm that an applicant is at least 18 years of age; and</li> <li>• limit access to the content unless certain steps are complied with, including that age has been verified.</li> </ul>	10 <sup>th</sup> sitting day of the new Parliament

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine any of the above instruments, I note that the table above identifies, where applicable, the last day for lodging a disallowance notice in the Senate.

Further details about the instruments are 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



1 April 2022

Senator the Hon Sarah Henderson  
Chair  
Senate Legal and Constitutional Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600

via email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Chair,

**Matters of interest to the Senate—Telecommunications (Interception and Access) Amendment (International Production Orders) Regulations 2022 [F2022L00111]**

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses legislative instruments against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires 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 instrument appears to contain significant policy matters relating to the sharing of communications data between the United States and Australia, the committee has determined that the instrument engages standing order 23(4) and accordingly has resolved to draw it to the attention of your committee:

<b>Instrument</b>	<b>Purpose</b>	<b>Last day to lodge disallowance notice</b>
<b>Telecommunications (Interception and Access) Amendment (International Production Orders) Regulations 2022 [F2022L00111]</b>	<p>To give effect in domestic law to the Agreement between the Government of Australia and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime.</p> <p>The effect of designating the Agreement is to allow Australian law enforcement and national security agencies to ask communications service providers in the United States to provide content or data to investigate or prosecute serious offences in Australia, and to allow United States law enforcement and</p>	10 <sup>th</sup> sitting day of the new Parliament

Instrument	Purpose	Last day to lodge disallowance notice
	security agencies to similarly request access to content or data held by Australian-based communication service providers to investigate or prosecute crimes in the United States.	

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that the table above identifies, where applicable, the last day for lodging a disallowance notice in the Senate.

Further details about the instrument are 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



1 April 2022

Senator Andrew Bragg

Chair

Senate Environment and Communications Legislation Committee

Parliament House

CANBERRA ACT 2600

via email: [ec.sen@aph.gov.au](mailto:ec.sen@aph.gov.au)

Dear Chair,

### Legislative instruments specifying Commonwealth expenditure

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses legislative instruments against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires 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.

The instruments listed in the table below, in combination with their enabling Acts, authorise the Commonwealth to spend public money on the identified grants or programs. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instruments listed below engage standing order 23(4), and accordingly has resolved to draw them to the attention of your committee:

Instrument	Grant/Program	Amount	Description
<b>Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 1) Regulations 2022 [F2022L00108]</b>	Taskforce for Nature-related Financial Disclosures	Up to US\$500,000 over two years from 2021-22	Funding will be provided to support the Taskforce for Nature-related Financial Disclosures (TNFD) to develop and deliver an international risk management and disclosure framework for organisations to report and act on nature-related risks and opportunities. The TNFD is developing a framework to help corporates and financial institutions assess, value and manage their impacts and dependencies on nature. The TNFD's overarching objective

Instrument	Grant/Program	Amount	Description
<b>Industry Research and Development (Golden Beach Gas Storage Acceleration Program) Instrument 2022 [F2022L00156]</b>	Golden Beach Gas Storage Acceleration Program	Up to \$32 million	<p>is to support a shift in global financial flows away from nature-negative outcomes and towards nature-positive outcomes.</p> <p>Funding will be provided for a short-term loan of up to \$32 million to GB Energy (VIC) Pty Limited, the proponent of the Golden Beach project, to ensure the project has access to the funds required to stay on track and progress early works ahead of a final investment decision.</p> <p>The proposed Golden Beach gas storage project includes development of the Golden Beach gas field and associated storage infrastructure to increase the supply of gas to the east coast market. It is anticipated that after two years of gas production the project will convert to a natural gas storage facility to assist in addressing fluctuations in gas demand.</p>

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine either of the above instruments, I note that the time for lodging a disallowance notice in the Senate expires on the following days:

- Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 1) Regulations 2022 [F2022L00108] – 10<sup>th</sup> sitting day of the new Parliament
- Industry Research and Development (Golden Beach Gas Storage Acceleration Program) Instrument 2022 [F2022L00156] – 13<sup>th</sup> sitting day of the new Parliament

Further details about the instruments are 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



1 April 2022

Senator the Hon Matthew Canavan  
Chair  
Senate Education and Employment Committee  
Parliament House  
CANBERRA ACT 2600

via email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Chair,

### **Legislative instruments specifying Commonwealth expenditure—Innovation Development Fund (ELICOS)**

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses legislative instruments against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires 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.

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on the Innovation Development Fund (ELICOS). The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>
<b>Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2022 [F2022L00109]</b>	Innovation Development Fund (ELICOS)	\$9.4 million in 2021-22	Funding will be provided to support eligible providers of an English Language Intensive Course for Overseas Students to deliver services to overseas students, including by: <ul style="list-style-type: none"><li>• diversifying into online and offshore delivery;</li><li>• investing in infrastructure, staff expertise and the marketing and promotion of education services to prepare for</li></ul>

Instrument	Grant/Program	Amount	Description
			the return of onshore international students; and <ul style="list-style-type: none"> <li>• designing curriculums and innovative digital teaching solutions.</li> </ul>

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that the time for lodging a disallowance notice in the Senate expires of the 10<sup>th</sup> sitting day of the new Parliament.

Further details about the instrument are 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



1 April 2022

Senator Susan McDonald  
Chair  
Senate Rural and Regional Affairs Legislation Committee  
Parliament House  
CANBERRA ACT 2600

via email: [rrat.sen@aph.gov.au](mailto:rrat.sen@aph.gov.au)

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—Northern Australia  
Business and Community Growth Program**

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses legislative instruments against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires 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.

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on the Northern Australia Business and Community Growth Program. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>
<b>Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2022 [F2022L00110]</b>	Northern Australia Business and Community Growth Program	\$80 million over three years from 2021-22	Funding will be provided to support the economic development and diversification of Northern Australia by providing grant opportunities to community organisations and other eligible entities to support business growth, improve social and economic infrastructure, increase community amenity and

Instrument	Grant/Program	Amount	Description
			liveability, and deliver employment outcomes in Northern Australia.

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that the time for lodging a disallowance notice in the Senate expires on the 10<sup>th</sup> sitting day of the new Parliament.

Further details about the instrument are 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



1 April 2022

Senator Claire Chandler  
Chair  
Senate Finance and Public Administration Legislation Committee  
Parliament House  
CANBERRA ACT 2600

via email: [fpa.sen@aph.gov.au](mailto:fpa.sen@aph.gov.au)

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—Pandemic leave disaster payments (continuation)**

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses legislative instruments against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires 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.

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on the Coronavirus economic response—pandemic leave disaster payments (continuation). The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

Instrument	Grant/Program	Amount	Description
<b>Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 1) Regulations 2022 [F2022L00037]</b>	Coronavirus economic response—pandemic leave disaster payments (continuation)	Total amount of spending authorised is uncertain	Funding will be provided for pandemic payments for eligible individuals unable to earn income because they have tested positive for COVID-19, or are a close contact of someone who has tested positive for COVID-19 (consistent with the definition of a close contact agreed by the National Cabinet), or are required to care for someone who has tested positive for

Instrument	Grant/Program	Amount	Description
			<p>COVID-19 or who is a close contact.</p> <p>Effective from 18 January 2022, pandemic payments will be scaled based on the number of hours of work the individual has lost or expects to lose during an isolation period of up to seven days:</p> <ul style="list-style-type: none"> <li>• individuals who have lost or expect to lose 20 hours of work or more will continue to be eligible for a pandemic payment of \$750; and</li> <li>• individuals who have lost or expect to lose at least a day of work or up to 20 hours will be eligible for a pandemic payment of \$450.</li> </ul> <p>A financial hardship test will also be introduced with individuals who have available funds of \$10,000 or more ineligible for pandemic payments.</p>

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that the time for lodging a disallowance notice in the Senate expires on the 10<sup>th</sup> sitting day of the new Parliament.

Further details about the instrument are 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



1 April 2021

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

via email: [covid.sen@aph.gov.au](mailto:covid.sen@aph.gov.au)

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—pandemic leave disaster payments (continuation)**

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses legislative instruments against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires 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.

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on the Coronavirus economic response—pandemic leave disaster payments (continuation). The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

Instrument	Grant/Program	Amount	Description
<b>Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 1) Regulations 2022 [F2022L00037]</b>	Coronavirus economic response—pandemic leave disaster payments (continuation)	Total amount of spending authorised is uncertain	Funding will be provided for pandemic payments for eligible individuals unable to earn income because they have tested positive for COVID-19, or are a close contact of someone who has tested positive for COVID-19 (consistent with the definition of a close contact agreed by the National Cabinet), or are required to care for someone who has tested positive for

Instrument	Grant/Program	Amount	Description
			<p>COVID-19 or who is a close contact.</p> <p>Effective from 18 January 2022, pandemic payments will be scaled based on the number of hours of work the individual has lost or expects to lose during an isolation period of up to seven days:</p> <ul style="list-style-type: none"> <li>• individuals who have lost or expect to lose 20 hours of work or more will continue to be eligible for a pandemic payment of \$750; and</li> <li>• individuals who have lost or expect to lose at least a day of work or up to 20 hours will be eligible for a pandemic payment of \$450.</li> </ul> <p>A financial hardship test will also be introduced with individuals who have available funds of \$10,000 or more ineligible for pandemic payments.</p>

Should your committee decide to further examine the above instrument, I note that the time for lodging a disallowance notice in the Senate expires on the 10<sup>th</sup> sitting day of the new Parliament. The committee has also drawn this instrument to the attention of the Senate Finance and Public Administration Legislation Committee.

Further details about the instrument are 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

**Senator the Hon Concetta Fierravanti-Wells**  
Chair

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



1 April 2022

Senator Paul Scarr  
Chair  
Senate Economics Legislation Committee  
Parliament House  
CANBERRA ACT 2600

via email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Chair,

**Legislative instruments specifying Commonwealth expenditure—AEMO Concessional Loan Program**

I write on behalf of the Senate Standing Committee for the Scrutiny of Delegated Legislation which assesses legislative instruments against the scrutiny principles outlined in Senate standing order 23.

Standing order 23(4) requires 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.

The instrument listed in the table below, in combination with its enabling Act, authorises the Commonwealth to spend public money on the Consumer Data Right—AEMO Concessional Loan Program. The committee considers that the scrutiny of such instruments is an essential aspect of parliamentary scrutiny and control of Commonwealth expenditure. Noting this, the committee has determined that the instrument listed below engages standing order 23(4), and accordingly has resolved to draw it to the attention of your committee:

Instrument	Grant/Program	Amount	Description
<b>Industry Research and Development (Consumer Data Right—AEMO Concessional Loan Program) Instrument 2022 [F2022L00044]</b>	Consumer Data Right—AEMO Concessional Loan Program	\$6.153 million	Funding will be provided to facilitate a loan that will allow the Australian Energy Market Operator (AEMO) to upgrade its systems and procedures, so that it can make its relevant data available in a form that can be shared with consumers via the internet, in accordance with the Consumer Data Right provisions in the <i>Competition and Consumer Act 2010</i> .

I note that under standing order 25(2)(a) your committee is empowered to conduct own-motion inquiries into legislative instruments which relate to the portfolios allocated to your committee, although there is no requirement to do so. Should your committee decide to further examine the above instrument, I note that the time for lodging a disallowance notice in the Senate expires on the 10<sup>th</sup> sitting day of the new Parliament.

Further details about the instrument are 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](mailto:sdlc.sen@aph.gov.au).

Yours sincerely,

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



4 April 2022

The Hon Greg Hunt MP  
Minister for Health and Aged Care  
Parliament House  
CANBERRA ACT 2600

Via email: [Minister.Hunt.DLO@health.gov.au](mailto:Minister.Hunt.DLO@health.gov.au)

Dear Minister,

### Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

The committee considers that exemptions from disallowance are only justified in exceptional circumstances. This is in recognition of the important role that the disallowance process plays in maintaining parliamentary oversight of delegated legislation made by the executive and accords with the view of the Senate that:

- delegated legislation should be subject to disallowance and sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances; and
- any claim that circumstances justify exemption from disallowance and sunseting will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases (see Senate resolution 53B: *Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021).

Please find **attached** a copy of the committee's recently published guideline regarding instruments that are exempt from disallowance. This guideline sets out further details in relation to the committee's expectations under Senate standing order 23(4A).

The committee has identified the following instruments in your portfolio which do not meet these expectations:

- Australia New Zealand Food Standards Code — Schedule 20 – Maximum residue limits Variation Instrument No. APVMA 1, 2022 [F2022L00142]
- Food Standards (Application A1190 – 2'-FL in infant formula and other products) Variation [F2022L00038]
- Food Standards (Application A1211 – Maltogenic alpha-amylase enzyme from GM *Bacillus licheniformis*) Variation [F2022L00039]

- Poisons Standard February 2022 [F2022L00074].

The committee acknowledges that, in some instances, substantive explanations as to why these instruments are exempt from disallowance have been provided, however the committee does not consider that the instruments meet the very high threshold for when an exemption from disallowance is appropriate. These instruments are therefore being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 4 of 2022*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

**In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage.**

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*.

Should you have any questions 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**



4 April 2022

The Hon Michael Sukkar MP  
Assistant Treasurer  
Minister for Housing  
Parliament House  
CANBERRA ACT 2600

Via email: [dlosukkar@treasury.gov.au](mailto:dlosukkar@treasury.gov.au)

CC: [minister.sukkar@treasury.gov.au](mailto:minister.sukkar@treasury.gov.au); [committeescrutiny@treasury.gov.au](mailto:committeescrutiny@treasury.gov.au)

Dear Assistant Treasurer,

### Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

The committee considers that exemptions from disallowance are only justified in exceptional circumstances. This is in recognition of the important role that the disallowance process plays in maintaining parliamentary oversight of delegated legislation made by the executive and accords with the view of the Senate that:

- delegated legislation should be subject to disallowance and sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances; and
- any claim that circumstances justify exemption from disallowance and sunseting will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases (see Senate resolution 53B: *Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021).

Please find **attached** a copy of the committee's recently published guideline regarding instruments that are exempt from disallowance. This guideline sets out further details in relation to the committee's expectations under Senate standing order 23(4A).

The committee has identified the following instruments in your portfolio which do not meet these expectations:

- Competition and Consumer (Price Monitoring—General Insurance Policies) Direction 2022 [F2022L00030]
- Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 7) Determination 2022 [F2022L00043]

- Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 8) Determination 2022 [F2022L00150]
- Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 9) Determination 2022 [F2022L00102]
- National Housing Finance and Investment Corporation Investment Mandate Amendment (More Opportunities) Direction 2022 [F2022L00054].

The committee acknowledges that, in most instances, substantive explanations as to why these instruments are exempt from disallowance have been provided, however the committee does not consider that the instruments meet the very high threshold for when an exemption from disallowance is appropriate. These instruments are therefore being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 4 of 2022*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

**In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage.**

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*.

Should you have any questions 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**



4 April 2022

The Hon Sussan Ley MP  
Minister for the Environment  
Parliament House  
CANBERRA ACT 2600

Via email: [DLOley@environment.gov.au](mailto:DLOley@environment.gov.au)  
CC: [legislation@environment.gov.au](mailto:legislation@environment.gov.au)

Dear Minister,

### Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

The committee considers that exemptions from disallowance are only justified in exceptional circumstances. This is in recognition of the important role that the disallowance process plays in maintaining parliamentary oversight of delegated legislation made by the executive and accords with the view of the Senate that:

- delegated legislation should be subject to disallowance and sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances; and
- any claim that circumstances justify exemption from disallowance and sunseting will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases (see Senate resolution 53B: *Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021).

Please find **attached** a copy of the committee's recently published guideline regarding instruments that are exempt from disallowance. This guideline sets out further details in relation to the committee's expectations under Senate standing order 23(4A).

The committee has identified the following instrument in your portfolio which does not meet these expectations:

- Environment Protection and Biodiversity Conservation (2022 conservation theme for prioritising nominations of threatened species, threatened ecological communities and key threatening processes) Determination 2022 [F2022L00136].

The committee acknowledges that a substantive explanation as to why this instrument is exempt from disallowance has been provided, however the committee does not consider that the instrument meets the very high threshold for when an exemption from disallowance is appropriate.

This instrument is therefore being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 4 of 2022*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

**In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage.**

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*.

Should you have any questions 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**



4 April 2022

Senator the Hon Michaelia Cash  
Attorney-General  
Parliament House  
CANBERRA ACT 2600

Via email: [attorney@ag.gov.au](mailto:attorney@ag.gov.au)

CC: [DLO@ag.gov.au](mailto:DLO@ag.gov.au)

Dear Attorney-General,

### Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

The committee considers that exemptions from disallowance are only justified in exceptional circumstances. This is in recognition of the important role that the disallowance process plays in maintaining parliamentary oversight of delegated legislation made by the executive and accords with the view of the Senate that:

- delegated legislation should be subject to disallowance and sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances; and
- any claim that circumstances justify exemption from disallowance and sunseting will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases (see Senate resolution 53B: *Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021).

Please find **attached** a copy of the committee's recently published guideline regarding instruments that are exempt from disallowance. This guideline sets out further details in relation to the committee's expectations under Senate standing order 23(4A).

The committee has identified the following instruments in your portfolio which do not meet these expectations:

- Legislation (Deferral of Sunseting—Clean Energy (Consequential Amendments) Regulation) Certificate 2022 [F2022L00099]
- Legislation (Deferral of Sunseting—Family Law Instruments) Certificate 2022 [F2022L00096]

- Legislation (Deferral of Sunsetting—Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011) Certificate 2022 [F2022L00127].

The committee acknowledges that substantive explanations as to why these instruments are exempt from disallowance have been provided, however the committee does not consider that the instruments meet the very high threshold for when an exemption from disallowance is appropriate. These instruments are therefore being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 4 of 2022*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

**In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage.**

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*.

Should you have any questions 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**



4 April 2022

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

Via email: [financeminister@finance.gov.au](mailto:financeminister@finance.gov.au)  
CC: [DLO-Finance@finance.gov.au](mailto:DLO-Finance@finance.gov.au); [plc@finance.gov.au](mailto:plc@finance.gov.au)

Dear Minister,

### Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

The committee considers that exemptions from disallowance are only justified in exceptional circumstances. This is in recognition of the important role that the disallowance process plays in maintaining parliamentary oversight of delegated legislation made by the executive and accords with the view of the Senate that:

- delegated legislation should be subject to disallowance and sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances; and
- any claim that circumstances justify exemption from disallowance and sunseting will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases (see Senate resolution 53B: *Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021).

Please find **attached** a copy of the committee's recently published guideline regarding instruments that are exempt from disallowance. This guideline sets out further details in relation to the committee's expectations under Senate standing order 23(4A).

The committee has identified the following instruments in your portfolio which do not meet these expectations:

- Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2021-2022 (No. 3) [F2022L00042]
- Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2021-2022 (No. 4) [F2022L00075].

The committee acknowledges that substantive explanations as to why these instruments are exempt from disallowance have been provided, however the committee does not consider that the instruments meet the very high threshold for when an exemption from disallowance is appropriate. These instruments are therefore being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 4 of 2022*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

**In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage.**

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*.

Should you have any questions 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**



4 April 2022

The Hon Alex Hawke MP  
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs  
Parliament House  
CANBERRA ACT 2600

Via email: [dlo.immi@homeaffairs.gov.au](mailto:dlo.immi@homeaffairs.gov.au)

Dear Minister,

### **Instruments exempt from disallowance**

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

The committee expects explanatory statements to exempt instruments to identify the source of the instrument's exemption from disallowance. This includes identifying the specific provision of the Act or instrument which provides for the exemption (including the relevant table item, where applicable). The committee does not consider general statements identifying that an exemption is provided under the *Legislation Act 2003* or under the *Legislation (Exemptions and Other Matters) Regulation 2015* to be sufficient. In addition, the explanatory statement should set out a substantive justification as to why the exemption from disallowance is considered appropriate.

The committee considers that the inclusion of this information helps to improve parliamentary oversight over delegated legislation made by the executive.

Please find **attached** a copy of the committee's recently published guideline regarding instruments that are exempt from disallowance. This guideline sets out further details in relation to the committee's expectations under Senate standing order 23(4A).

The committee has identified the following instrument in your portfolio which does not meet these expectations:

- Migration (Refund of Visa Application Charge) Amendment Instrument (LIN 22/027) 2022 [F2022L00057].

This instrument is therefore being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 4 of 2022*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

**In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage, however the explanatory statement to the instrument should be amended as a matter of best practice.**

**In addition, all future explanatory statements to exempt instruments should include both details as to the source of the exemption and a substantive justification for why the exemption is considered appropriate in the specific context of the instrument. This is in recognition of the important role that explanatory statements play in facilitating parliamentary scrutiny of legislative instruments.**

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*.

Should you have any questions 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**



4 April 2022

The Hon Barnaby Joyce MP  
Minister for Infrastructure, Transport and Regional Development  
Parliament House  
CANBERRA ACT 2600

Via email: [dlo.joyce@infrastructure.gov.au](mailto:dlo.joyce@infrastructure.gov.au)  
CC: [minister.joyce@infrastructure.gov.au](mailto:minister.joyce@infrastructure.gov.au)

Dear Minister,

### Instruments exempt from disallowance

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

The committee expects explanatory statements to exempt instruments to identify the source of the instrument's exemption from disallowance. This includes identifying the specific provision of the Act or instrument which provides for the exemption (including the relevant table item, where applicable). The committee does not consider general statements identifying that an exemption is provided under the *Legislation Act 2003* or under the *Legislation (Exemptions and Other Matters) Regulation 2015* to be sufficient. In addition, the explanatory statement should set out a substantive justification as to why the exemption from disallowance is considered appropriate.

The committee considers that the inclusion of this information helps to improve parliamentary oversight over delegated legislation made by the executive.

Please find **attached** a copy of the committee's recently published guideline regarding instruments that are exempt from disallowance. This guideline sets out further details in relation to the committee's expectations under Senate standing order 23(4A).

The committee has identified the following instruments in your portfolio which do not meet these expectations:

- Roads to Recovery List 2019 Variation Instrument No. 2022/1 [F2022L00153]
- Statement of Expectations for the Board of the Civil Aviation Safety Authority for the period 31 January 2022 to 30 June 2023 [F2022L00061].

These instruments are therefore being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 4 of 2022*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage, however the explanatory statements to the instruments should be amended as a matter of best practice.

In addition, all future explanatory statements to exempt instruments should include both details as to the source of the exemption and a substantive justification for why the exemption is considered appropriate in the specific context of the instrument. This is in recognition of the important role that explanatory statements play in facilitating parliamentary scrutiny of legislative instruments.

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*.

Should you have any questions 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**



4 April 2022

Senator the Hon Bridget McKenzie  
Minister for Emergency Management and National Recovery and Resilience  
Parliament House  
CANBERRA ACT 2600

Via email: [minister.mckenzie@infrastructure.gov.au](mailto:minister.mckenzie@infrastructure.gov.au)

Dear Minister,

### **Instruments exempt from disallowance**

Under Senate standing order 23(4A) the Standing Committee for the Scrutiny of Delegated Legislation is empowered to scrutinise delegated legislation which is exempt from disallowance. Under this new standing order, the committee scrutinises instruments exempt from disallowance to determine whether the exemption is appropriate.

The committee expects explanatory statements to exempt instruments to identify the source of the instrument's exemption from disallowance. This includes identifying the specific provision of the Act or instrument which provides for the exemption (including the relevant table item, where applicable). The committee does not consider general statements identifying that an exemption is provided under the *Legislation Act 2003* or under the *Legislation (Exemptions and Other Matters) Regulation 2015* to be sufficient. In addition, the explanatory statement should set out a substantive justification as to why the exemption from disallowance is considered appropriate.

The committee considers that the inclusion of this information helps to improve parliamentary oversight over delegated legislation made by the executive.

Please find **attached** a copy of the committee's recently published guideline regarding instruments that are exempt from disallowance. This guideline sets out further details in relation to the committee's expectations under Senate standing order 23(4A).

The committee has identified the following instrument in your portfolio which does not meet these expectations:

- Social Security (Australian Government Disaster Recovery Payment—Queensland floods) Determination 2022 (No. 2) [F2022L00119].

This instrument is therefore being drawn to the attention of the Senate by the committee in Chapter 4 of *Delegated Legislation Monitor 4 of 2022*, available on the committee's website at [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

**In light of the fact that standing order 23(4A) is new, the committee does not request a response to these concerns at this stage, however the explanatory statement to the instrument should be amended as a matter of best practice.**

**In addition, all future explanatory statements to exempt instruments should include both details as to the source of the exemption and a substantive justification for why the exemption is considered appropriate in the specific context of the instrument. This is in recognition of the important role that explanatory statements play in facilitating parliamentary scrutiny of legislative instruments.**

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*.

Should you have any questions 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**