



**The Hon Michael McCormack MP**

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**Deputy Prime Minister  
Minister for Infrastructure, Transport and Regional Development  
Leader of The Nationals  
Federal Member for Riverina**

Ref: MS19-001909

21 OCT 2019

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee on Regulations and Ordinances  
Parliament House  
CANBERRA ACT 2600

Dear  Chair

Thank you for your letter of 12 September 2019 conveying the Committee's resolution to place a protective notice of motion to disallow the Air Services Regulations 2019 to ensure that the amendment of this instrument to limit immunity from civil liability to Airservices Australia (Airservices) and its employees is completed in a timely manner.

The Air Services Amendment Regulations 2019 has been drafted to replace section 42 of the Air Services Regulations 2019. As you have previously inferred, the current section 42 has the potential to overreach its enabling legislation as specified in section 77 of the *Air Services Act 1995*. This amendment will ensure section 42 provides immunity consistent with section 77 of the Act.

In drafting the amendment, my department undertook extensive consultation with Airservices and the Australian Government Solicitor.

This instrument is scheduled to be considered by the Federal Executive Council on 14 November 2019.

I will write to you again with a further update when the Explanatory Statement has been amended as outlined in my letter to you on 20 August 2019.

I trust this information is of assistance.

Yours sincerely

Michael McCormack

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The Hon Michael McCormack MP  
Parliament House Canberra | (02) 6277 7520 | [minister.mccormack@infrastructure.gov.au](mailto:minister.mccormack@infrastructure.gov.au)  
Suite 2, 11-15 Fitzmaurice Street, Wagga Wagga NSW 2650 |  
[michael.mccormack.mp@aph.gov.au](mailto:michael.mccormack.mp@aph.gov.au)



**SENATOR THE HON JANE HUME**  
**ASSISTANT MINISTER FOR SUPERANNUATION,**  
**FINANCIAL SERVICES AND FINANCIAL TECHNOLOGY**

Ref: MS19-002661

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Regulations and Ordinances Committee  
Suite S1.111  
Parliament House  
CANBERRA ACT 2600

Dear Senator ~~Fierravanti-Wells~~

*Connie*

I am writing in response to your letter on behalf of the Senate Regulations and Ordinances Committee (the Committee) dated 17 October 2019 which requested advice relating to *ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700* [F2019L01185] (Instrument 2019/700).

The Committee has sought advice as to:

- whether modifications to primary legislation are being considered to remove the need for the modifications contained in Instrument 2019/700; and
- if not, why it is considered necessary and appropriate to enact the relevant exemptions by delegated legislation.

The Committee noted that while the explanatory statement explains the purpose of the modifications to section 601GC of the *Corporations Act 2001* (the Act), it does not appear to explain why it is necessary to continue to enact them via delegated legislation. The Committee stated that it expects a sound explanation to be included in the explanatory materials.

**Modifications to primary legislation**

The modifications provided for in Instrument 2019/700 are not being considered for the primary legislation as they provide relief that is of a specific and detailed nature that does not justify being addressed in the primary law. Such modifications that relate to specific relief for responsible entities to change the constitution of a registered scheme (a managed investment scheme registered under section 601EB of the Act) in specific situations are more appropriate for delegated legislation.

Instrument 2019/700 enables responsible entities to change scheme constitutions by providing relief from, or varying, the special resolution requirement under paragraph 601GC(1)(a) of the Act in five alternative scenarios. In broad terms, the instrument provides relief from the special resolution requirement where compliance with the requirement would be impossible or disproportionately burdensome.

The instrument also provides relief from the special resolution requirement in order to accommodate the Australian Passport Rules. In addition, in the case where the responsible entity proposes a change to the

scheme constitution that involves a variation to, or cancellation of, the rights or interests of a specific class of members, the relief has the effect of requiring that the change be approved by a special resolution and specific requirements in the constitution governing a variation or cancellation of class rights.

The use of delegated legislation is appropriate for these modifications as the power to make legislative instruments has been provided to the Australian Securities and Investments Commission (ASIC) to exempt persons from certain provisions of the Act or modify or clarify the operation of those provisions. If the matters in Instrument 2019/700 were to be inserted into the Act, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to specific situations in relation to registered schemes.

As the Committee has noted, Instrument 2019/700 remakes, in substantially the same form, the relief in superseded ASIC Class Order [CO 09/552] *Changing scheme constitutions*, as amended, which was originally made in 2009 and was due to sunset on 1 October 2019.

### **Use of delegated legislation**

The ASIC considered it in the public interest to utilise powers given to it by Parliament to modify the operation of the Act to preserve the effect of [CO 09/552] given that it is relied upon by a large proportion of responsible entities in certain circumstances. ASIC's public consultation in Consultation Paper 320: *'Remaking ASIC class order on changing scheme constitutions: [CO 09/552]'* confirmed that the settings in [CO 09/552] continue to operate effectively, remain fit for purpose and promote the efficient operation of the managed investment industry.

Therefore the ASIC took steps to make Instrument 2019/700 to avoid the uncertainty of allowing the relief in [CO 09/552] to lapse or expire, which would have occurred if action was not taken prior to 1 October 2019.

As the matters contained in Instrument 2019/700 are unlikely to change in the near future, it is appropriate for the instrument to remain in force for the full 10-year period provided under the *Legislation Act 2003*.

As the Committee is aware, Instrument 2019/700 is a disallowable legislative instrument. This affords Parliament a level of scrutiny over the matters contained in it.

### **Contents of the explanatory statement**

While I consider that sufficient information regarding ASIC's use of its modification powers has been provided for in the explanatory statement to Instrument 2019/700, I have nonetheless asked ASIC to amend the explanatory statement to include further details regarding the use of delegated legislation. ASIC has agreed to do so by no later than 30 November 2019.

I trust this information will be of assistance to you.

Yours sincerely

**Senator the Hon Jane Hume**



**The Hon Michael McCormack MP**

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**Deputy Prime Minister  
Minister for Infrastructure, Transport and Regional Development  
Leader of The Nationals  
Federal Member for Riverina**

Ref: MC19-005069

07 NOV 2019

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Standing Committee on Regulations and Ordinances  
Parliament House  
CANBERRA ACT 2600

*Connie*  
Dear Senator

Thank you for the letter of 17 October 2019 from the Senate Standing Committee on Regulation and Ordinances (Committee), regarding concerns identified by Senate standing order 23 relating to the disallowable instrument - Helicopter Aerial Application Endorsements Exemptions 2019 [F2019L01132].

I have sought advice from the Civil Aviation Safety Authority (CASA) regarding concerns raised by the Committee that exemptions made under the disallowable instrument named above would more appropriately be achieved by amendments to the Civil Aviation Safety Regulations 1998 (CASR) in the long term.

I propose to provide a regulation amendment addressing these concerns to the Federal Executive Council for consideration in 2020. The exemption allows helicopter operations to continue without disruption while CASA looks to complete a number of planned amendments to CASR Part 61 – Flight Crew Licensing, which deals with matters arising from the implementation of the licensing suite of regulations identified as needing attention.

Thank you for bringing your concerns to my attention and I trust this is of assistance.

Yours sincerely

Michael McCormack





**THE HON DAVID COLEMAN MP  
MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT  
SERVICES AND MULTICULTURAL AFFAIRS**

Ref No: MS19-003525

Senator the Hon Concetta Fierravanti-Wells (Chair)  
Senate Standing Committee on Regulations and Ordinances  
Suite S1.111  
PARLIAMENT HOUSE  
CANBERRA ACT 2600

Dear Chair

I thank the Senate Standing Committee on Regulations and Ordinances (the committee) for the letter of 30 October 2019 requesting that I consider a review of the *Immigration (Guardianship of Children Regulations) 2018* (the IGOC Regulations) and the regulation-making powers in the *Immigration (Guardianship of Children) Act 1946* (IGOC Act).

I understand that this request is made in the interests of facilitating the committee's consideration of the 2018 IGOC Regulations before the disallowance period expires on 13 November 2019.

In response, I can confirm that the Department of Home Affairs will conduct a review of the regulations, and the regulation-making powers in the IGOC Act.

This review will consider the particular matters of interest identified by the committee, as requested by the Committee.

I look forward to hearing from you in relation to these matters.

Yours sincerely

David Coleman

7 / 11 / 2019



**THE HON DAVID COLEMAN MP  
MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT  
SERVICES AND MULTICULTURAL AFFAIRS**

Ref No: MS19-003320

Senator the Hon Concetta Fierravanti-Wells (Chair)  
Senate Standing Committee on Regulations and Ordinances  
Suite S1.111  
PARLIAMENT HOUSE  
CANBERRA ACT 2600

Dear Chair

I thank the Senate Standing Committee on Regulations and Ordinances (the committee) for making themselves available for a private briefing on 14 October 2019 with senior officers of the Department of Home Affairs in relation to the *Immigration (Guardianship of Children Regulations) 2018* (the IGOC Regulations).

During this private briefing, I understand that the Department undertook to provide the Committee with a response summarising the general matters discussed during the briefing and to respond to the following questions on notice by close of business Monday 21 October 2019.

In response to this request, a summary of the matters discussed is at Attachment A. Responses to the questions on notice are at Attachment B.

I look forward to hearing from you in relation to these matters.

Yours sincerely

David Coleman

21 / 10 / 2019



## Senate Standing Committee on Regulations and Ordinances Questions on Notice to the Department of Home Affairs

*Monday 14 October 2019*

### Questions on Notice

During a private briefing on Monday 14 October 2019, the Department of Home Affairs (the department) undertook to provide the Senate Standing Committee on Regulations and Ordinances (the committee) with a response to the following questions on notice by **close of business Monday 21 October 2019**.

#### *Question on notice no. 1*

What is the history of the regulations made under the *Immigration (Guardianship of Children) Act 1946* since section 4AA was inserted into the Act? Specifically:

- when were the principles governing the exercise of the power in section 4AA originally set out in regulations;
- when did each relevant set of regulations sunset; and
- when did each set of replacement regulations commence?

#### *Question on notice no. 2*

Why was no consultation undertaken in relation to the *Immigration (Guardianship of Children) Regulations 2018*, particularly given the addition of paragraph 6(b)(iv) to section 6 of the regulations?

#### *Question on notice no. 3*

Why was paragraph 6(b)(iv) added to section 6 of the *Immigration (Guardianship of Children) Regulations 2018*, given the explanatory statement notes that the 2001 regulations were 'still fit for purpose'?

### Briefing summary

At the committee's request, the department also undertook to prepare a response from the minister summarising the general matters discussed during the briefing, by close of business **Monday 21 October 2019**. The committee noted that it may publish this correspondence or quote from it in a future report.

**Attachment A – Briefing Summary from private hearing between Senate Standing Committee on Regulations and Ordinances and the Department of Home Affairs.**

On Monday 14 October 2019, Craig Riviere, Assistant Secretary (AS), Child Wellbeing Branch and Heimura Ringi, AS Legislation Branch, provided evidence to the Senate Standing Committee on Regulations and Ordinances (the committee) on the IGOC Regulations during a private hearing. AS Riviere provided an opening statement and both officers fielded questions from the Committee.

AS Riviere and AS Ringi then highlighted the following key points about the operation of the *Immigration (Guardianship of Children) Act 1946* (IGOC Act) and the *Immigration (Guardianship of Children) Regulations 2018* (IGOC Regulations), in particular:

- The principal intent of the IGOC Act is to provide that the Minister is the guardian of certain non-citizen children in Australia ("IGOC Minors")
- The IGOC Regulations provide for a range of matters in relation to the custodianship of IGOC minors, the application of state/territory child welfare laws in relation to IGOC minors; and the principles for directions under s4AA of the Act
- The IGOC Act and IGOC Regulations are beneficial legislation; while they affect non-citizen children, they do not take any rights away. Instead, they promote the protection of human rights under the United Nations Convention on the Rights of the Child
- The 2018 IGOC Regulations were drafted in very similar terms to the 2001 IGOC Regulations because no significant problem had been identified with operation of the 2001 IGOC Regulations over its 17 years of application
- Section 4AA of the IGOC Act gives the Minister a discretionary power to give a written direction, in limited circumstances, that a non-citizen minor shall be the ward of the Minister
- A direction under section 4AA can only be given when a person under the age of 18 years (the non-citizen minor) enters Australia as a non-citizen in the charge of, or for the purpose of living in Australia under the care of, a relative of the person (other than a parent) not less than 21 years of age, where the non-citizen minor intends to become, or is intended to become, a permanent resident of Australia
- In giving a direction under section 4AA, the Minister must be satisfied that it is necessary in the interests of the non-citizen minor to do so and the non-citizen minor's relative must consent to the Minister doing so
- A direction under section 4AA is only used in exceptional circumstances (three times in the past five years), and only on the grounds that it would be in the interests of the non-citizen minor
- The exercise of this power is subject to the preconditions in s4AA and also subject to any principles that may be prescribed under paragraph 12(aa) of the Act. That is, paragraph 12(aa) of the Act provides the authority for the principles prescribed in section 6 of the IGOC Regulations
- In practice, paragraph 6(a) is treated as a precondition to applying paragraph 6(b), in part because the relative must consent to a direction being made to make the non-citizen minor a ward of the Minister, as dictated by subsection 4AA(2)
- While subparagraphs 6(b)(i) to (iii) are written in a way that could be considered prescriptive (noting the opening words of section 6 make clear that they are principles to be observed), subparagraph 6(b)(iv) is not; it facilitates a permissive approach that gives the Minister or his/her delegate wide discretion to consider a broad range of circumstances when considering whether to give a direction, noting the overarching requirements that the direction must be in the non-citizen minor's interests and the non-

citizen minor's relative must consent to the giving of the direction.

**Attachment B – Senate Standing Committee on Regulations and Ordinances  
Questions on Notice to the Department of Home Affairs**

***Question on notice no. 1***

**What is the history of the regulations made under the *Immigration (Guardianship of Children) Act 1946* since section 4AA was inserted into the Act? Specifically:**

- **when were the principles governing the exercise of the power in section 4AA originally set out in regulations;**
- **when did each relevant set of regulations sunset; and**
- **when did each set of replacement regulations commence?**

Section 4AA and paragraph 12(aa) of the *Immigration (Guardianship of Children) Act 1946* (the IGOC Act) were inserted by the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985* on 1 July 1986. Section 11A ('reconsideration and review of certain decisions') was inserted at the same time.

Principles for the purposes of section 4AA of the IGOC Act were first prescribed in the *Immigration (Guardianship of Children) Regulations* (the 1946 Regulations) when regulation 3AA was inserted by the *Immigration (Guardianship of Children) Regulations (Amendment) 1986*, on 1 July 1986:

***IMMIGRATION (GUARDIANSHIP OF CHILDREN) REGULATIONS - REG 3AA  
Prescribed principles for the purposes of section 4AA of the Act***

*3AA. For the purposes of section 4AA of the Act the following principles are prescribed as principles to be observed in considering whether or not to give a direction under that section in relation to a person:*

- (a) a direction shall not be given under the section unless the relationship between the person and the relative of the person referred to in the section has broken down irretrievably;*
- (b) a direction shall not be given under the section unless the direction is necessary to-*
  - (i) protect the person from risk of injury or danger of impairment of health;*
  - (ii) protect the person from moral danger; or*
  - (iii) enable the person to have the benefit of adequate direction and guidance;*
- (c) a direction shall not be given under the section for the principal purpose of creating, or improving, eligibility of the person, or the relative of the person referred to in the section, for financial assistance from the Commonwealth, a State or the Northern Territory.*

The *Immigration (Guardianship of Children) Regulations 2001* (the 2001 Regulations) commenced on 1 November 2001, and at the same time repealed both the 1946 Regulations and the various Statutory Rules that had amended those regulations between 1952 and 1988 (see the repeal provision at regulation 18 of the 2001 Regulations).

The purpose of the 2001 Regulations was to harmonise criminal offence provisions in the 1946 Regulations with Chapter 2 of the *Criminal Code*, as contained in the *Criminal Code Act 1995* (following commencement on 15 December 2001, the *Criminal Code* contains a standard approach to the formulation of criminal offences). The 2001 Regulations ensured that, in applying the *Criminal Code*, offences under the 1946 Regulations continued to have the same meaning and operated in the same way as they did previously.

In particular, the 2001 Regulations inserted a penalty of 1 penalty unit in regulations 8, 9, 10, 11, 12, 13, 14 and 16 to reflect the requirements of the *Criminal Code* that offences should be clear on their face and the applicable penalty should appear at the end of each specific offence. In contrast, the 1946 Regulations had a global offence provision specifying a penalty of \$40 for contravention of, or failure to comply with, the regulations. Regulation 17 of the 2001 Regulations also provided that the *Criminal Code* applied to offences against these regulations.

The 2001 Regulations were amended on 24 March 2012 to remove the offences in all provisions except regulation 14 (which required the custodian to immediately give notice to the Minister, and do anything else in relation to a non-citizen child that the Minister required, if the child absconded, was taken from the custody of the child's custodian, became seriously ill, met with a serious accident or died). Section 13 of the 2018 Regulations remakes regulation 14 of the 2001 Regulations, and is the same in substance.

The 2001 Regulations were based on the 1946 Regulations, and effected no substantive changes except those relating to the application of the *Criminal Code*. In addition, the opportunity was taken to redraft the 1946 Regulations using plain English drafting principles.

Principles for the purposes of section 4AA of the IGOC Act were prescribed under regulation 5 in the 2001 Regulations:

- 5            *Prescribed principles for section 4AA of the Act (Act s 12 (aa))***  
*The following principles must be observed in considering whether or not to give a direction under section 4AA of the Act:*
- (a) a direction must not be given unless the relationship between the person and the relative of the person mentioned in the section has broken down irretrievably;*
  - (b) a direction must not be given unless the direction is necessary to:*
    - (i) protect the person from risk of injury or danger of impairment of health; or*
    - (ii) protect the person from moral danger; or*
    - (iii) enable the person to have the benefit of adequate direction and guidance;*
  - (c) a direction must not be given for the principal purpose of creating, or improving, eligibility of the person, or the relative of the person mentioned in the section, for financial assistance from the Commonwealth or a State.*

The 2001 Regulations were repealed and replaced by the *Immigration (Guardianship of Children) Regulations 2018* (the 2018 Regulations) on 1 October 2019. As set out below, the 2001 Regulations would have sunsetted on 1 October 2019 under the *Legislation Act 2003* (the Legislation Act).

### **Further information about sunseting**

Part 4 of Chapter 3 of the Legislation Act provides for the automatic repeal ('sunseting') of legislative instruments. When a legislative instrument sunsets, it is automatically repealed under section 50 of the Legislation Act.

Subsection 50(2) of the Legislation Act sets out special sunset dates for the significant number of older instruments registered in bulk on 1 January 2005, based on the year those instruments were made.

#### *50 Sunseting*

- (1) This subsection repeals a legislative instrument on the first 1 April or 1 October falling on or*

after the tenth anniversary of registration of the instrument, unless the instrument was registered on 1 January 2005.

- (2) This subsection repeals a legislative instrument on the day worked out using the table if the instrument was registered on 1 January 2005.

<b>Day of repeal of legislative instrument registered on 1 January 2005</b>		
	<b>Year the instrument was made</b>	<b>Day of repeal</b>
1	A year before 1930	1 April 2015
2	A year in the decade starting on 1 January 1930	1 October 2015
3	A year in the decade starting on 1 January 1940	1 April 2016
4	A year in the decade starting on 1 January 1950	1 October 2016
5	A year in the decade starting on 1 January 1960	1 April 2017
6	A year in the decade starting on 1 January 1970	1 October 2017
7	A year in the decade starting on 1 January 1980	1 April 2018
8	1990, 1991, 1992, 1993 or 1994	1 October 2018
9	1995, 1996, 1997, 1998 or 1999	1 April 2019
10	2000, 2001 or 2002	1 October 2019
11	2003 or 2004	1 April 2020

The 2001 Regulations were made under section 12 of the IGOC Act on 29 August 2001, commenced on 1 November 2001, and were registered on the Federal Register of Legislation (the FRL) on commencement of the Legislation Act on 1 January 2005. The effect of subsection 50(2) of the Legislation Act is that legislative instruments made in 2001, and registered on the FRL on 1 January 2005, sunset on 1 October 2019.

In light of subsection 50(2) of the Legislation Act, in 2018 the Department of Home Affairs reviewed the operation of the 2001 Regulations to determine whether they should be remade. The 2018 Regulations were made following this review and were registered on the Federal Register of Legislation on 10 December 2018, with a commencement date of 1 October 2019. On commencement, the 2018 Regulations repealed and replaced the 2001 Regulations, which would otherwise have been repealed on 1 October 2019 by subsection 50(2) of the Legislation Act.

#### **Question on notice no. 2**

**Why was no consultation undertaken in relation to the *Immigration (Guardianship of Children) Regulations 2018* (the IGOC Regulations), particularly given the addition of paragraph 6(b)(iv) to section 6 of the regulations?**

The IGOC Act and IGOC Regulations are beneficial legislation. While they affect non-citizen children, they do not take any rights away; instead, they promote the protection of human rights under the United Nations Convention on the Rights of the Child

A direction under Section 4AA is only used in exceptional circumstances (three times in the past five years), and only on the grounds that it would be in the interests of the non-citizen minor.

As outlined in the explanatory statement to the *Immigration (Guardianship of Children) Regulations 2018* (the 2018 Regulations), no consultation was considered necessary



because the amendments do not substantially alter existing arrangements. This accords with subsection 17(1) of the Legislation Act which requires consultations to be appropriate and reasonably practicable.

In particular, as outlined below, the inclusion of subparagraph 6(b)(iv) in section 6 of the 2018 Regulations is intended to facilitate a more permissive approach to the giving of directions (noting that the Minister must always be satisfied that this is in the interests of the person who is the subject of the direction), and to ensure consistency with the IGOC Act. In these circumstances, consultation was not considered necessary.

### ***Question on notice no. 3***

**Why was paragraph 6(b)(iv) added to section 6 of the *Immigration (Guardianship of Children) Regulations 2018*, given the explanatory statement notes that the 2001 regulations were 'still fit for purpose'?**

Section 4AA of the IGOC Act is enlivened when a person under the age of 18 years (the non-citizen minor) enters Australia as a non-citizen in the charge of, or for the purpose of living in Australia under the care of, a relative of the person (other than a parent) not less than 21 years of age, where the non-citizen minor intends to become, or is intended to become, a permanent resident of Australia. Section 4AA allows the Minister to direct, in writing, that the non-citizen minor shall be the Minister's ward. In doing so, the Minister must be satisfied that giving the direction is in the interests of the non-citizen minor, and that the non-citizen minor's relative consents to the Minister giving the direction.

Paragraph 12(aa) of the IGOC Act provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing principles to be observed in considering whether or not to give a direction under section 4AA of the Act.

Section 6 of the *Immigration (Guardianship of Children) Regulations 2018* remakes regulation 5 of the *Immigration (Guardianship of Children) Regulations 2001*, with the addition of subparagraph 6(b)(iv). This provision was added to the regulations to facilitate consideration of the broadest range of issues to inform the giving of directions (noting that the Minister must always be satisfied that this is in the interests of the non-citizen minor and the non-citizen minor's relative must consent to the giving of the direction), and ensure consistency with the IGOC Act.

It is not considered that the inclusion of subparagraph 6(b)(iv), for these reasons, is inconsistent with the comment in the explanatory statement that the *Immigration (Guardianship of Children) Regulations 2001* were still fit-for-purpose.



**The Hon Michael McCormack MP**

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**Deputy Prime Minister  
Minister for Infrastructure, Transport and Regional Development  
Leader of The Nationals  
Federal Member for Riverina**

Ref: MS19-001976

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee on Regulations and Ordinances  
Parliament House  
CANBERRA ACT 2600

Dear Senator Fierravanti-Wells

I am writing to request that the Senate Standing Committee on Regulations and Ordinances (the Committee) consider withdrawal of the protective notice of motion to disallow the Road Vehicle Standards Rules 2018 (the Rules), moved on 11 September 2019.

I have amended the Rules to remove any doubt that the Rules fully comply with requirements of the Legislation Act 2003. The amending Rules and the Explanatory Statement, both attached, will be registered on the Federal Register of Legislation as the Road Vehicle Standards Amendment (2019 Measures No.1) Rules 2019.

The amendments give effect to the policy intention of the Rules as previously drafted, being to reflect current practice for similar provisions under the *Motor Vehicle Standards Act 1989*. The amendments also ensure that the requirements of the *Legislation Act 2003* are met in relation to the provisions in question.

Sections 50 and 171(2) of the Rules previously referred to “intergovernmental agreements” in a general sense. The Rules, as amended, now refer to provisions of the *Customs Tariff Act 1995*, and to specific intergovernmental agreements, to give effect to the meaning of “intergovernmental agreements” in more specific terms.

The Explanatory Statement sets out the required information, including descriptions of the intergovernmental agreements, the manner in which they are incorporated, and where they may be accessed free of charge. It also sets out how incorporation of the *Customs Tariff Act 1995* and the specific intergovernmental agreements is authorised by subsection 82(6) of the primary legislation, the *Road Vehicle Standards Act 2018*.

I trust this information supports the Committee's consideration of the withdrawal of the notice of motion to disallow the Rules before they are due to be disallowed on 26 November 2019.

Please do not hesitate to contact my Office if we can assist the Committee further in its consideration.

Yours sincerely

Michael McCormack

Enc



**PAUL FLETCHER MP**  
Federal Member for Bradfield  
Minister for Communications,  
Cyber Safety and the Arts

MS19-001026

Senator the Hon Concetta Fierravanti-Wells  
Chair  
Senate Standing Committee on Regulations and Ordinances  
Parliament House  
Canberra ACT 2600

Dear Chair

*Concetta*

Thank you for your letters of 17 and 23 October 2019 concerning the *Telecommunications (Protecting Australians from Terrorist or Violent Material) Direction (No.1) 2019* (the Instrument) and your suggestion that I invite the Committee to receive a private briefing on the issues raised regarding the Instrument.

There would be merit in such a briefing given the sensitivity of the issues involved, and it would be appropriate for this briefing to be provided by the eSafety Commissioner. I would ask that the Committee Secretariat liaise with my office or directly with the eSafety Commissioner's Executive Assistant ) to arrange a mutually convenient time for Committee members and the Commissioner.

I would also ask that the Committee take no further action in relation to the Instrument until the briefing can be provided and the Committee can consider the issues raised.

I have provided a copy of this letter to the eSafety Commissioner.

Yours sincerely

Paul Fletcher

*3/11/2019*