

The Senate

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Standing  
Committee for the  
Scrutiny of Delegated  
Legislation

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Delegated Legislation Monitor

Monitor 5 of 2021

17 March 2021

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ISSN: 2652-4139 (print)

ISSN: 2652-4147 (online)

This document was prepared by the Senate Standing Committee for the Scrutiny of Delegated Legislation and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

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Senator Raff Ciccone	Victoria, ALP
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## Introduction

The Senate Standing Committee on Regulations and Ordinances (the committee) was established in 1932. The committee's name was changed on 4 December 2019 to the Senate Standing Committee for the Scrutiny of Delegated Legislation.<sup>1</sup> The role of the committee is to examine the technical qualities of all disallowable legislative instruments, and to decide whether they comply with the committee's non-partisan scrutiny principles.

### Terms of reference

The committee's scrutiny principles are set out in Senate standing order 23(3) which requires the committee to scrutinise each instrument as to whether:

- (a) it is in accordance with its enabling Act and otherwise complies with all legislative requirements;
- (b) it appears to be supported by a constitutional head of legislative power and is otherwise constitutionally valid;
- (c) it makes rights, liberties, obligations or interests unduly dependent on insufficiently defined administrative powers;
- (d) those likely to be affected by the instrument were adequately consulted in relation to it;
- (e) its drafting is defective or unclear;
- (f) it, and any document it incorporates, may be freely accessed and used;
- (g) the accompanying explanatory material provides sufficient information to gain a clear understanding of the instrument;
- (h) it trespasses unduly on personal rights and liberties;
- (i) it unduly excludes, limits or fails to provide for independent review of decisions affecting rights, liberties, obligations or interests;
- (j) it contains matters more appropriate for parliamentary enactment; and
- (k) it complies with any other ground relating to the technical scrutiny of delegated legislation that the committee considers appropriate.

Senate standing order 23(4) also requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to

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1 On 27 November 2019, the Senate agreed to amend standing orders 23 and 25(2)(a), with effect from 4 December 2019. For further information, see [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Changes\\_to\\_committee\\_standing\\_orders](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Changes_to_committee_standing_orders).

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.

### **Nature of the committee's scrutiny**

The committee's work may be broadly described as technical legislative scrutiny. In this regard, the committee does not examine the policy merits of delegated legislation. However, if the committee determines that an instrument raises significant issues, it may write to the relevant legislation committee to alert that committee to the instrument, or otherwise draw the instrument to the attention of the Senate.

Where an instrument does not appear to comply with the committee's technical scrutiny principles, the committee's usual approach is to correspond with the responsible minister or relevant agency to seek further explanation or clarification of the matter at issue. The committee may also seek an undertaking for specific action to address its scrutiny concerns.

The committee's work is supported by the processes for the registration, tabling and disallowance of legislative instruments under the *Legislation Act 2003*.<sup>2</sup>

### **Publications**

The committee's usual practice is to table a report, the *Delegated Legislation Monitor*, each Senate sitting week. The monitor provides an overview of the committee's scrutiny of disallowable legislative instruments for the preceding period. Disallowable legislative instruments detailed in the monitor are also listed in the 'Index of instruments' on the committee's website.<sup>3</sup>

### **Ministerial correspondence**

The committee undertakes formal correspondence with ministers in order to resolve more significant scrutiny concerns. Ministerial correspondence is published on the committee's website.<sup>4</sup>

### **Agency correspondence**

The committee undertakes informal correspondence with agencies via its secretariat to gather information about potential scrutiny concerns. This correspondence assists the committee in deciding whether it is necessary to seek further advice from the relevant minister about those concerns. Agency correspondence is not published;

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2 For further information on the disallowance process and the work of the committee see *Oggers' Australian Senate Practice*, 14th Edition (2016), Chapter 15.

3 *Index of instruments*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Index).

4 See [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).

however, a record of the instrument, scrutiny issue and status of the correspondence is included in Appendix A (new matters), Appendix B (ongoing matters) and Appendix C (concluded matters) in the monitor.

## **Guidelines**

Guidelines relating to the committee's scrutiny principles are published on the committee's website.<sup>5</sup>

## **General information**

The Federal Register of Legislation should be consulted for the text of instruments, explanatory statements, and associated information.<sup>6</sup>

The Senate Disallowable Instruments List provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.<sup>7</sup>

The Disallowance Alert records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.<sup>8</sup>

## **Instruments considered in this monitor**

The committee examined 100 disallowable legislative instruments registered on the Federal Register of Legislation between 10 and 21 December 2020.

This monitor identifies the instruments registered in this period about which the committee has or had scrutiny concerns. It also identifies instruments registered before this period in relation to which the committee is continuing to engage with the relevant minister or agency, or has concluded its examination.

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5 See [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Guidelines](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Guidelines).

6 See Australian Government, Federal Register of Legislation, [www.legislation.gov.au](http://www.legislation.gov.au).

7 Parliament of Australia, *Senate Disallowable Instruments List*, [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/leginstruments/Senate\\_Disallowable\\_Instruments\\_List](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/Senate_Disallowable_Instruments_List).

8 *Disallowance Alert 2021*, [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Disallowance\\_Alert\\_2021](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Disallowance_Alert_2021).



# Chapter 1

## Instruments raising significant scrutiny concerns

1.1 This chapter details the instruments which raise significant scrutiny concerns in relation to which the committee is seeking further information from the relevant minister or of which the committee has concluded its examination.

1.2 Where necessary, the committee may place a notice of motion to disallow an instrument contained in this chapter to emphasise its scrutiny concerns and to provide the Senate with additional time to consider the instrument with the benefit of the committee's comments. Accordingly, where appropriate, this chapter also details the committee's reasons for withdrawing notices of motion to disallow such instruments.

1.3 The committee is currently seeking to resolve all outstanding scrutiny concerns by correspondence with the relevant minister or agency. Copies of relevant correspondence are available on the committee's website.<sup>1</sup>

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1 See [www.aph.gov.au/senate\\_sd/c](http://www.aph.gov.au/senate_sd/c).



## Chapter 2

### Matters of interest to the Senate

2.1 Senate standing order 23(4) requires the committee to scrutinise each instrument to determine whether the Senate's attention should be drawn to it on the ground that it raises significant issues, or otherwise gives rise to issues that are likely to be of interest to the Senate.

2.2 This chapter identifies the instruments which the committee has resolved to draw to the attention of the Senate and the relevant legislation committee under standing order 23(4), with the exception of instruments which specify significant executive expenditure, which are listed in Chapter 3.<sup>1</sup>

Instrument	Purpose	Portfolio committee
<b>Australia's Foreign Relations (State and Territory Arrangements) Rules 2020</b> [F2020L01569]	To prescribe matters required or permitted by the <i>Australia's Foreign Relations (State and Territory Arrangements) Act 2020</i> including exempt arrangements, additional information to be included in the Public Register and information State/Territory entities must include in a notice to the Minister.	Senate Foreign Affairs, Defence and Trade Legislation Committee
<b>Child Care Subsidy Amendment (Coronavirus Response Measures No. 8) Minister's Rules 2020</b> [F2020L01634]	To give effect to measures supporting child care providers and families in response to the COVID-19 pandemic and strengthen compliance.	Senate Education and Employment Legislation Committee
<b>Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020</b> [F2020L01654]	To amend the Corporations Regulations 2001 and the Corporations (Fees) Regulations 2001 to enable the debt restructuring and simplified liquidation regimes established by the <i>Corporations Amendment (Corporate Insolvency Reforms) Act 2020</i> , including modification of certain fees and consequential amendments.	Senate Economics Legislation Committee

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1 Details of all instruments which the committee has resolved to draw to the attention of the Senate under standing order 23(4) are published on the committee's website: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Matters\\_of\\_interest\\_to\\_the\\_Senate](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Matters_of_interest_to_the_Senate).

Instrument	Purpose	Portfolio committee
<b>Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2020 [F2020L01619]</b>	To decrease the levy amount applicable to licences and units held in the Torres Strait Prawn Fishery.	n/a
<b>Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 [F2020L01648]</b>	To set out the fees payable for particular actions or notices given or issued under the <i>Foreign Acquisitions and Takeovers Act 1975</i> .	Senate Economics Legislation Committee
<b>Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 [F2020L01568]</b>	To amend the Foreign Acquisitions and Takeovers Regulation 2015 to give further effect to the foreign investment reforms, including building upon the new national security test, strengthening the integrity of the foreign investment framework, making a number of technical changes, reintroducing the monetary thresholds, and streamlining the processing of less sensitive types of investment.	Senate Economics Legislation Committee

## Chapter 3

### Scrutiny of Commonwealth expenditure

3.1 The *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act) and the *Industry Research and Development Act 1986* (IRD Act) authorise the Commonwealth to spend public money on grants and programs specified in instruments made under those Acts. Consequently, the specification of expenditure in an instrument made under these Acts effectively authorises the Commonwealth to spend public moneys on the relevant grant or program. The scrutiny of such instruments is a key aspect of parliamentary scrutiny and control of Commonwealth expenditure.<sup>1</sup>

3.2 To facilitate such scrutiny, this chapter draws the Senate's attention to the nature and extent of Commonwealth expenditure that is authorised by the FF(SP) Act and the IRD Act and specified in delegated legislation made under those Acts.<sup>2</sup>

3.3 The tables below outline the expenditure specified in legislative instruments registered between 10 and 21 December 2020.

3.4 The committee has resolved to write to the relevant legislation committees to alert those committees to the expenditure listed below that falls within their area of portfolio responsibility. The committee does so under standing order 23(4) which requires the committee to scrutinise each instrument to determine whether the Senate's attention should be drawn to it on the ground that it raises significant issues, or otherwise gives rise to issues that are likely to be of interest to the Senate.

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1 For further information see the committee's guideline on [Scrutiny of Commonwealth expenditure](#) and Chapter 7 of the report of the committee's inquiry, [Parliamentary scrutiny of delegated legislation](#).

2 Details of all instruments which specify Commonwealth expenditure are published on the committee's website: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Scrutiny\\_of\\_Commonwealth\\_expenditure](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Scrutiny_of_Commonwealth_expenditure).

Instrument	Grant/ Program	Amount	Description	Portfolio committee
<b>Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 7) Regulations 2020 [F2020L01574]</b>	Restoring native aquatic animals in the Murray-Darling Basin and providing employment for Indigenous Australians	\$10 million over four years from 2020-21	<p>To support the restoration of native aquatic species and natural habitat in the Murray-Darling Basin and to provide employment for Indigenous Australians, including by:</p> <ul style="list-style-type: none"> <li>• establishing a hatchery, grow-out facility and drought recovery centre for native aquatic species, with integrated commercial operations, in Menindee;</li> <li>• establishing a hatchery and grow-out facility for native aquatic species, with integrated commercial operations, in St George;</li> <li>• restoring the natural habitat of native aquatic species; and</li> <li>• conducting research activities in relation to native aquatic species.</li> </ul>	Senate Rural and Regional Affairs and Transport Legislation Committee
	Reef Builder—the coastal communities recovery project	\$20 million in 2020-21	To support measures to rebuild and prevent the extinction of shellfish reefs along the Australian coastline.	Senate Environment and Communications Legislation Committee
	Murray-Darling Basin Water Information Platform	\$5.4 million over four years from 2020-21	<p>To establish and maintain an online water information platform relating to the Murray-Darling Basin to provide information about matters such as the following:</p> <ul style="list-style-type: none"> <li>• water availability, allocations, use and trade;</li> <li>• water planning, policies and programs;</li> <li>• water levels in storages and in-stream flow rates;</li> <li>• water resource management and planning arrangements;</li> <li>• environmental watering events; and</li> <li>• water markets and trading.</li> </ul>	Senate Rural and Regional Affairs and Transport Legislation Committee

<b>Instrument</b>	<b>Grant/ Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
	National Forest Industries Plan— Online Resources	\$0.5 million in 2020-21	To support the growth of Australia’s renewable timber and wood-fibre industry through developing online guidance material and advice for: <ul style="list-style-type: none"> <li>• persons engaging in farm forestry and private native forestry; and</li> <li>• forest resources managers of Indigenous-owned or Indigenous-managed land.</li> </ul>	Senate Rural and Regional Affairs and Transport Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2020 [F2020L01564]</b>	Joint Strike Fighter Industry Support Program— Sustainment Grants	\$4 million over four years from 2020-21	To further Australia’s defence capability and preparedness through the acquisition and sustainment of the F-35 Joint Strike Fighter, by funding defence sector enterprises to develop and implement their maintenance and repair capability for components used in the F-35 Joint Strike Fighter.	Senate Foreign Affairs, Defence and Trade Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 8) Regulations 2020 [F2020L01585]</b>	National Microcredentials Marketplace	\$4.3 million over three years from 2020-21	To establish and operate the National Microcredentials Marketplace, a nationally consistent online platform for students to compare short courses against higher education provider offerings and credit point values.	Senate Education and Employment Legislation Committee
	Tertiary Access Payment for Outer Regional and Remote School Leavers	\$177.8 million over four years from 2020-21	To encourage and assist students from outer regional and remote areas of Australia to access tertiary study by providing one-off payments of up to \$5,000 to eligible students who relocate to commence tertiary study in the year immediately following their completion of the final year of secondary school.	Senate Education and Employment Legislation Committee

<b>Instrument</b>	<b>Grant/ Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
	Pacific Labour Mobility: Safeguarding Welfare of Workers (Community Connections)	\$1 million over three years from 2020-21	To support the welfare of participants in the Seasonal Worker Program by building connections between the program participants and their local Australian communities.	Senate Education and Employment Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2020 [F2020L01587]</b>	Home Care Transition Fund	\$5.3 million over two years from 2020-21	To provide financial assistance to Commonwealth funded home care providers who are insolvent, or at imminent risk of becoming insolvent or bankrupt, as a result of the change from pre-service delivery payments to post-service delivery payments by the Commonwealth.	Senate Community Affairs Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 6) Regulations 2020 [F2020L01589]</b>	National Action Plan to Combat Modern Slavery	\$10.6 million over five years from 2020-21	To provide funding to support the implementation of Australia's National Action Plan to Combat Modern Slavery 2020-25 (the National Action Plan), including funding to do the following: <ul style="list-style-type: none"> <li>• undertake activities to equip Australian businesses to manage supply chain risks, including by developing and maintaining the online Modern Slavery Statements Register;</li> <li>• review the <i>Modern Slavery Act 2018</i>;</li> <li>• provide multi-year grant opportunities to fund: <ul style="list-style-type: none"> <li>○ projects to combat modern slavery; or</li> <li>○ the development of supply chain resilience of Australian businesses; or</li> <li>○ new research to support evidence-based modern slavery policy;</li> </ul> </li> <li>• develop and deliver targeted training to government officials;</li> <li>• undertake activities to</li> </ul>	Senate Legal and Constitutional Affairs Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<p>strengthen bilateral and multilateral cooperation to combat modern slavery in the Indo-Pacific Region;</p> <ul style="list-style-type: none"> <li>• establish multi-sector networks in the States and Territories to enhance law enforcement capability, and bolster resources, dedicated to detecting and deterring modern slavery;</li> <li>• develop and maintain a website with information and resources about modern slavery, in multiple languages;</li> <li>• develop, translate and distribute information and resources for modern slavery victims, multicultural groups and the broader community to understand modern slavery, deter perpetrators and refer cases;</li> <li>• develop and deliver national and targeted campaigns to raise community awareness of modern slavery, including the indicators of modern slavery and avenues to report modern slavery offences;</li> <li>• engage with modern slavery victims to seek and receive feedback on existing and new, legal and policy, responses to modern slavery; and</li> <li>• commission the Australian Institute of Criminology to monitor and evaluate the National Action Plan.</li> </ul>	

<b>Instrument</b>	<b>Grant/ Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
<b>Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 2) Regulations 2020 [F2020L01573]</b>	Powering Communities Program	\$12 million over three years from 2020-21	<p>To provide funding to support community organisations to reduce energy use, improve energy productivity and deliver carbon abatement, including through:</p> <ul style="list-style-type: none"> <li>• upgrading equipment to reduce energy use;</li> <li>• undertaking energy management activities and assessments, such as energy systems assessments and feasibility studies;</li> <li>• investing in energy monitoring and management systems; and</li> <li>• investing in on-site renewable energy and solar-connected batteries.</li> </ul>	Senate Environment and Communications Legislation Committee
	Building Energy Efficiency Program	\$39.1 million over five years from 2020-21	<p>To support activities that reduce energy use, improve energy productivity and deliver carbon abatement in buildings, including through:</p> <ul style="list-style-type: none"> <li>• developing and providing information relating to building energy efficiency, including energy related requirements of the National Construction Code;</li> <li>• developing and providing information about, and assessing, the energy efficiency of heating, ventilation and air conditioning systems in buildings; and</li> <li>• developing and providing tools and ratings for the energy performance of buildings.</li> </ul>	Senate Environment and Communications Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
	Technology Co-Investment Fund	\$20.1 million over six years from 2020-21	<p>To provide funding for activities that reduce energy use, improve energy productivity and deliver carbon abatement in the industrial, transport and agricultural sectors, including through:</p> <ul style="list-style-type: none"> <li>• industrial and energy productivity benchmarking, including in manufacturing and construction;</li> <li>• improving transport fuel efficiency, including for freight;</li> <li>• increasing soil carbon; and</li> <li>• reducing livestock emissions.</li> </ul>	Senate Environment and Communications Legislation Committee
	Hydrogen Export Hub Program	\$73.9 million over six years from 2019-20	<p>To support the development of hydrogen production, hydrogen demand and hydrogen export supply chains, including through:</p> <ul style="list-style-type: none"> <li>• funding research and development activities relevant to hydrogen technologies, hydrogen industry expansion and export supply chains;</li> <li>• international and domestic collaboration on hydrogen export supply chains and hub development;</li> <li>• supporting projects for the production, use, transformation, storage, transport or export of hydrogen and hydrogen feedstocks or derivatives;</li> <li>• supporting activities to increase the supply of, and demand for, hydrogen; and</li> <li>• undertaking and supporting activities to improve the regulation or safety of hydrogen production, use, transformation, storage, transport or export.</li> </ul>	Senate Environment and Communications Legislation Committee

<b>Instrument</b>	<b>Grant/ Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
<b>Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 3) Regulations 2020 [F2020L01575]</b>	Motor Vehicle Service and Repair Information Sharing—Online Resources	\$0.25 million in 2020-21	To provide funding to support the development and online delivery of a portal and resources to facilitate access to information about motor vehicle service and repair. Access to this information will assist: <ul style="list-style-type: none"> <li>• motor vehicle repairers to service and repair motor vehicles; and</li> <li>• registered training organisations to carry out training in the service and repair of motor vehicles.</li> </ul>	Senate Economics Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 4) Regulations 2020 [F2020L01578]</b>	Online toolkit to promote the financial capability of young Australians	\$10 million over two years from 2020-21	To enhance the financial capability of young Australians by funding the development and delivery of online content that: <ul style="list-style-type: none"> <li>• assists young Australians to manage money, including by improving their understanding of superannuation, taxation, insurance, budgeting and credit; and</li> <li>• assists parents and other adults to explain to young Australians how to manage money, including by assisting parents and other adults to explain superannuation, taxation, insurance, budgeting and credit to young Australians.</li> </ul>	Senate Economics Legislation Committee
<b>Industry Research and Development (COVID-19 Consumer Travel Support Program) Instrument 2020 [F2020L01594]</b>	COVID-19 Consumer Travel Support Program	\$128 million in 2020-21	To alleviate the negative economic impacts of COVID-19 on the travel industry by providing immediate, short-term financial support to travel agents, and tour arrangement service providers, that qualify for the jobkeeper scheme.	Senate Foreign Affairs, Defence and Trade Legislation Committee

<b>Instrument</b>	<b>Grant/ Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
<b>Industry Research and Development (Digital Directors Program) Instrument 2020 [F2020L01554]</b>	Digital Directors Program	Not specified	<p>The program provides funding to the Australian Institute of Company Directors for:</p> <ul style="list-style-type: none"> <li>• the development of a training package to help directors and other leaders of Australian organisations improve their digital literacy and digital investment decision-making;</li> <li>• the promotion of a target for the number of directors on the board of an Australian business with a digital (STEM) background by the end of 2030; and</li> <li>• monitoring and reporting on the progress of ASX 200 companies towards meeting that target.</li> </ul>	Senate Economics Legislation Committee
<b>Industry Research and Development (Ferretti International Whyalla Steel Processing and Galvanising Plant Program) Instrument 2020 [F2020L01618]</b>	Ferretti International Whyalla Steel Processing and Galvanising Plant Program	\$15 million in 2020-21	To provide funding to Ferretti International Ottoway Pty Ltd to support the upgrade of its steel processing and galvanising plant in Whyalla, South Australia, including to support the manufacture of electricity transmission towers.	Senate Economics Legislation Committee
<b>Industry Research and Development (Moon to Mars Program) Instrument 2020 [F2020L01558]</b>	Moon to Mars Program	\$150 million over five years from 2020-21	<p>The program provides the following:</p> <ul style="list-style-type: none"> <li>• funding to Australian businesses and organisations for the development or enhancement of products, capabilities or services that have the capacity to contribute to NASA exploration programs to the Moon, Mars or other celestial bodies;</li> <li>• funding to Australian businesses and organisations for the development or enhancement of: <ul style="list-style-type: none"> <li>○ products, capabilities or services that could be sold into international space supply chains and markets; and</li> </ul> </li> </ul>	Senate Economics Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<ul style="list-style-type: none"> <li>○ prototypes of products, capabilities or services that could be sold into international space supply chains and markets if successfully commercialised;</li> <li>● funding to Australian businesses and organisations, or foreign businesses or organisations, or both, to be used by those businesses and organisations in ways that will facilitate participation by Australian businesses and organisations in international space supply chains and markets;</li> <li>● funding for other initiatives to facilitate participation by Australian businesses and organisations in international space supply chains and markets.</li> </ul>	
<b>Industry Research and Development (Northern Endeavour Temporary Operations Program) Amendment Instrument 2020 [F2020L01611]</b>	Northern Endeavour Temporary Operations Program	\$75.4 million over two years from 2019-20	To expand the scope of the Northern Endeavour Temporary Operations Program to include the disconnection, removal and disposal of the Northern Endeavour floating production storage and offtake facility and the decommissioning and remediation of the Laminaria-Corallina oil fields.	Senate Economics Legislation Committee

# Appendix A

## New matters

4.1 The committee engages with relevant ministers and agencies to attempt to resolve its concerns about scrutiny issues raised by disallowable legislative instruments. This appendix documents the committee's new scrutiny concerns in relation to disallowable legislative instruments registered on the Federal Register of Legislation between 10 and 21 December 2021.

### Ministerial engagement

4.2 The committee is writing to the relevant minister about the scrutiny issues raised by the instruments listed below for the first time. Copies of the ministerial correspondence are available on the committee's website.<sup>1</sup>

Instrument	Issue	Status
<b>ASIC Corporations (Amendment) Instrument 2020/1064 [F2020L01571]</b> <b>ASIC Corporations (Amendment) Instrument 2020/1065 [F2020L01572]</b>	Principle (j) matters more appropriate for parliamentary enactment  Principle (k) parliamentary oversight  Principle (i) availability of independent merits review	Seeking advice from the Treasurer.
<b>ASIC Corporations (Design and Distribution Obligations—Exchange Traded Products) Instrument 2020/1090 [F2020L01600]</b>	Principle (j) modification of primary legislation  Principle (k) parliamentary oversight	Seeking advice from the Treasurer.
<b>Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]</b>	Principle (j) matters more appropriate for parliamentary enactment  Principle (e) clarity of drafting	Seeking advice from the minister.

1 See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

Instrument	Issue	Status
<b>Commonwealth Grant Scheme Guidelines 2020 [F2020L01609]</b>	Principle (j) matters more appropriate for parliamentary enactment  Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation	Seeking advice from the minister.
<b>Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2020 [F2020L01619]</b>	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the assistant minister.
<b>Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 [F2020L01648]</b>	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the Treasurer.
<b>Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 [F2020L01568]</b>	Principle (j) matters more appropriate for parliamentary enactment  Principle (j) modification of primary legislation  Principle (j) exemption from primary legislation  Principle (k) parliamentary oversight  Principle (a) incorporation	Seeking advice from the Treasurer.
<b>Norfolk Island Employment Rules 2020 [F2020L01536]</b>	Principle (h) privacy	Seeking advice from the assistant minister.  Notice of motion to disallow placed on 17/03/2021.

## Agency engagement

4.3 The committee is engaging with the relevant agencies via its secretariat to seek further information about potential scrutiny concerns raised by the instruments listed below.

Instrument	Issue	Status
<b>Amendment to the list of threatened species made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (234) [F2020L01580]</b>	Principle (a) compliance with authorising legislation – compliance with legislative preconditions	Concluded following response from the agency on 11/03/2021.

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Biosecurity Amendment (Infringement Notices) Regulations 2020 [F2020L01630]</b>	Principle (a) compliance with the <i>Legislation Act 2003</i> – consultation	Seeking advice from the agency.
<b>Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 6) Regulations 2020 [F2020L01589]</b>	Principle (c) broad discretionary power Principle (k) parliamentary oversight	Seeking advice from the agency.
<b>Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]</b>	Principle (e) clarity of drafting	Concluded following response from the agency on 16/03/2020.
<b>Industry Research and Development (Digital Directors Program) Instrument 2020 [F2020L01554]</b>	Principle (k) parliamentary oversight	Committee considering response.
<b>Industry Research and Development (Ferretti International Whyalla Steel Processing and Galvanising Plant Program) Instrument 2020 [F2020L01618]</b>	Principle (d) consultation with persons affected	Seeking advice from the agency.
<b>Migration Amendment (Temporary Graduate Visas) Regulations 2020 [F2020L01639]</b>	Principle (d) adequacy of consultation	Seeking advice from the agency.
<b>Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020 [F2020L01614]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation	Seeking advice from the agency.
<b>Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2020 (No. 1) [F2020L01655]</b>	Principle (f) access and use	Seeking advice from the agency.
<b>Regional Investment Corporation (Agristarter Loans) Amendment Rule 2020 [F2020L01625]</b>	Principle (d) adequacy of consultation	Seeking advice from the agency.
<b>Therapeutic Goods (Medical Devices) Amendment (Vaporisers for Smoking Cessation) Regulations 2020 [F2020L01645]</b>	Principle (c) conferral of discretionary powers Principle (h) privacy Principle (d) consultation on specific instrument	Seeking advice from the agency.
<b>Work Health and Safety Amendment (Hazardous Chemicals) Regulations 2020 [F2020L01593]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation Principle (f) access and use	Seeking advice from the agency.



## Appendix B

### Ongoing matters

5.1 This appendix documents the committee's ongoing scrutiny concerns in relation to matters previously raised in earlier *Delegated Legislation Monitors*.

#### Ministerial engagement

5.2 The committee is continuing to engage with the relevant minister about the scrutiny issues raised by the instruments listed below. Copies of the ministerial correspondence are available on the committee's website.<sup>1</sup>

Instrument	Issue	Status
<b>Competition and Consumer (Class Exemption— Collective Bargaining) Determination 2020 [F2020L01334]</b>	Principle (i) availability of independent merits review  Principle (j) modification of primary legislation  Principle (k) parliamentary oversight	Committee considering response.  Notice of motion to disallow placed on 15/02/2021.
<b>Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01361]</b> <b>Federal Circuit Court Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01362]</b>	Principle (a) compliance with authorising legislation – compliance with legislative requirements	Committee considering response.  Notice of motion to disallow placed on 15/02/2021.
<b>Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]</b>	Principle (j) matters more appropriate for parliamentary enactment	Seeking further advice from the Attorney-General.  Notice of motion to disallow placed on 23/02/2021.
<b>Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402]</b>	Principle (e) drafting	Committee considering response.  Notice of motion to disallow placed on 15/02/2021.

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<sup>1</sup> See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

Instrument	Issue	Status
<b>Tax Agent Services (Specified BAS Services No. 2) Instrument 2020 [F2020L01406]</b>	Principle (a) compliance with authorising legislation Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Committee considering response. Notice of motion to disallow placed on 15/02/2021.
<b>Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020 [F2020L01474]</b>	Principle (j) modification of primary legislation	Seeking advice from the Treasurer. Notice of motion to disallow placed on 22/02/2021.

### Agency engagement

5.3 The committee is not currently engaging with agencies via its secretariat to seek further information about potential scrutiny concerns raised by any instruments.

## Appendix C

### Concluded matters

6.1 This appendix records the instruments in relation to which the committee has concluded its inquiries, following correspondence with the relevant minister or agency.

#### Ministerial engagement

6.2 The committee has concluded its examination of the instruments listed below following correspondence with the relevant minister. Copies of the ministerial correspondence are available on the committee's website.<sup>1</sup>

Instrument	Issue	Status
<b>ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261]</b>	Principle (j) exemption from primary legislation	Concluded following response from the Treasurer on 15/03/2021.  Notice of motion to disallow placed on 02/02/2021.
<b>ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259]</b>	Principle (c) conferral of discretionary powers  Principle (j) modification to the operation of primary legislation  Principle (j) significant penalties  Principle (k) parliamentary oversight	Concluded following response from the Treasurer on 15/03/2021.  Notice of motion to disallow placed on 02/02/2021.
<b>Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2020 [F2020L01619]</b>	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the minister.
<b>Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 [F2020L01648]</b>	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the Treasurer.

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<sup>1</sup> See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

## Agency engagement

6.3 The committee has concluded its examination of the instruments listed below following informal correspondence with the relevant agencies via its secretariat.

Instrument	Issue	Status
<b>Amendment to the list of threatened species made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (234) [F2020L01580]</b>	Principle (a) compliance with authorising legislation – compliance with legislative preconditions	Concluded following response from the agency on 11/03/2021.
<b>Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]</b>	Principle (e) clarity of drafting	Concluded following response from the agency on 16/03/2020.  The Department of Agriculture, Water Resources and the Environment undertook to revoke the instrument in response to the committee’s scrutiny concerns.
<b>Montague Island Lighthouse Heritage Management Plan 2020 [F2020L01547]</b>	Principle (f) instrument subject to copyright	Concluded following response from the agency on 01/03/2021.  The Australian Maritime Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.

# Appendix D

## Undertakings

7.1 From time to time, a minister or agency may make an undertaking to address the committee's scrutiny concerns. These may include, for example, an undertaking to amend a legislative instrument or an explanatory statement, or to review an Act or a departmental practice. The committee expects that, when a minister or agency has made an undertaking, it will be implemented in a timely manner. Accordingly, this appendix records outstanding ministerial and agency undertakings, and the undertakings implemented since the committee's last *Delegated Legislation Monitor*.

### Outstanding undertakings

7.2 The following table records undertakings that remain outstanding, from oldest to newest. The committee draws these undertakings to the attention of the Senate.

Instrument	Undertaking	Date of Undertaking
<b>Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]</b>	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the <i>Water Act 2007</i> in response to the committee's scrutiny concerns.	11/09/2019
<b>Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]</b>	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/06/2020
<b>Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]</b>	The Attorney-General undertook to commence an inquiry into good faith obligations in Commonwealth legislation in response to the committee's scrutiny concerns.	31/08/2020
<b>National Health (Pharmaceutical Benefits Amendment (Active Ingredient Prescribing) Regulations 2020 [F2020L01055]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/11/2020

Instrument	Undertaking	Date of Undertaking
<p><b>Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]</b></p> <p><b>Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]</b></p>	<p>The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.</p>	16/11/2020
<p><b>Continence Aids Payment Scheme 2020 [F2020L00758]</b></p>	<p>The Minister for Aged Care and Senior Australians undertook to progress amendments to the <i>National Health Act 1953</i> in response to the committee's scrutiny concerns.</p>	24/11/2020
<p><b>Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020 [F2020L01058]</b></p>	<p>The Australian Electoral Commission undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	27/11/2020
<p><b>Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]</b></p>	<p>The Minister for the Environment advised that the Reserve Bank of Australia undertook to amend the instrument in response to the committee's scrutiny concerns.</p>	01/12/2020
<p><b>Age Discrimination Regulations 2020 [F2020L01138]</b></p>	<p>The Attorney-General's Department undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	04/12/2020
<p><b>Private Health Insurance (Complaints Levy) Rules 2020 [F2020L01195]</b></p>	<p>The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	15/01/2021
<p><b>Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]</b></p>	<p>The Assistant Minister to the Attorney-General undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	11/02/2021
<p><b>Amendment of List of Exempt Native Specimens – Commission for the Conservation of Antarctic Marine Living Resources Exploratory Fisheries in Statistical Divisions 58.4.1 and 58.4.2 (the East Antarctica Fishery) and Statistical Subareas 88.1 and 88.2 (the Ross Sea Fishery), November 2020 [F2020L01484]</b></p>	<p>The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	15/02/2021

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>ASIC Corporations – various instruments [F2020L00962] [F2020L01045] [F2020L01064] [F2020L01066] [F2020L01069] [F2020L01199] [F2020L01261] and [F2020L01259]</b>	The Treasurer undertook to continue to engage with the committee in good faith to seek a resolution to the committee’s systemic concerns regarding the duration of instruments which provide for exemptions or modifications to primary legislation.	18/02/2021
<b>Montague Island Lighthouse Heritage Management Plan 2020 [F2020L01547]</b>	The Australian Maritime Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	01/03/2021
<b>Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]</b>	The Department of Agriculture, Water Resources and the Environment undertook to revoke the instrument in response to the committee’s scrutiny concerns.	16/03/2021

## Implemented undertakings

7.3 The following table records undertakings that have been implemented since the committee's last *Delegated Legislation Monitor*.

<b>Instrument</b>	<b>Undertaking</b>	<b>Date implemented</b>
<b>Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]</b>	The Minister for Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	19/02/2021
<b>Veterans’ Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]</b>	The Department of Veterans' Affairs amended the Repatriation Pharmaceutical Benefits Scheme [F2013L02009] and the MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012] to correct drafting errors.	22/02/2021
<b>Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020 [F2020L01296]</b>	The Australian Communications and Media Authority amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/03/2021
<b>Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]</b>	The Assistant Treasurer amended the instrument in response to the committee's scrutiny concerns.	11/03/2021



## List of instruments in current monitor

Note: Instruments listed with an asterisk (\*) following the instrument name were raised for the first time in this Delegated legislation monitor.

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Amendment of List of Exempt Native Specimens – Commission for the Conservation of Antarctic Marine Living Resources Exploratory Fisheries in Statistical Divisions 58.4.1 and 58.4.2 (the East Antarctica Fishery) and Statistical Subareas 88.1 and 88.2 (the Ross Sea Fishery), November 2020 [F2020L01484]	24
Amendment to the list of threatened species made under section 178 of the Environment Protection and Biodiversity Conservation Act 1999 (234) [F2020L01580]	16; 22
ASIC Corporations – various instruments [F2020L00962] [F2020L01045] [F2020L01064] [F2020L01066] [F2020L01069] [F2020L01199] [F2020L01261] and [F2020L01259]	25
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Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]	3
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Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2020 [F2020L01587]	8
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Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]	25
Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 2) Regulations 2020 [F2020L01573]	10-11

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Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2020 [F2020L01619]	4; 16; 21
Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]	17; 22; 25
Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 [F2020L01648]	4; 16; 21
Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 [F2020L01568]	4; 16
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Industry Research and Development (Digital Directors Program) Instrument 2020 [F2020L01554]	13; 17
Industry Research and Development (Ferretti International Whyalla Steel Processing and Galvanising Plant Program) Instrument 2020 [F2020L01618]	13; 17
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Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]	19
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Montague Island Lighthouse Heritage Management Plan 2020 [F2020L01547]	22; 25
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Private Health Insurance (Complaints Levy) Rules 2020 [F2020L01195]	24
Radiocommunications (Low Interference Potential Devices) Class Licence Variation 2020 (No. 1) [F2020L01655]	17
Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020 [F2020L01296]	25
Regional Investment Corporation (Agristarter Loans) Amendment Rule 2020 [F2020L01625]	17
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	24
Tax Agent Services (Specified BAS Services No. 2) Instrument 2020 [F2020L01406]	20
Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]	25
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Therapeutic Goods (Medical Devices) Amendment (Vaporisers for Smoking Cessation) Regulations 2020 [F2020L01645]	17
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<b>Instrument</b>	<b>Page</b>
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**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**