

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

Monitor 13 of 2020

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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.¹ 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

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.

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*.²

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.³

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.⁴

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;

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.

4 See 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 (ongoing matters) and Appendix B (concluded matters) in the monitor.

Guidelines

Guidelines relating to the committee's scrutiny principles are published on the committee's website.⁵

General information

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

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

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

Instruments considered in this monitor

The committee examined 47 disallowable legislative instruments registered on the Federal Register of Legislation between 18 September 2020 and 25 September 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.

5 See 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.

7 Parliament of Australia, *Senate Disallowable Instruments List*, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/Senate_Disallowable_Instruments_List.

8 *Disallowance Alert 2020*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Alerts.

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.

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020

FRL No.	F2020L00572 ¹
Purpose	To extend the end date for the Cashless Debit Card trial in all existing sites and income management in the Cape York region from 30 June 2020 to 31 December 2020.
Authorising legislation	<i>Coronavirus Economic Response Package Omnibus Act 2020</i>
Portfolio	Social Services
Disallowance	15 sitting days after tabling (tabled in the Senate on 10 June 2020). Notice of motion to disallow given on 31 August 2020.

Overview

1.3 The instrument extends the operation of section 123UF and Part 3D of the *Social Security (Administration) Act 1999* (the Administration Act) from 30 June 2020, when the provisions were due to sunset, until 31 December 2020. This has the effect

1 Accessible on the Federal Register of Legislation at <https://www.legislation.gov.au/Details/F2020L00572>.

of extending the Cape York Welfare Reform Income Management measure and the cashless debit card trials for an additional six months.

1.4 Extensions to these measures have previously been made by primary legislation, rather than delegated legislation.² In this instance, the bill to extend the sunset dates was agreed to by the House of Representatives on 27 November 2019. It was then introduced into the Senate on 2 December 2019.³ However, the explanatory statement to the instrument explains that the revision of the parliamentary sittings in response to the COVID-19 pandemic prevented the bill from being considered before the measures expired on 30 June 2020 in accordance with the Administration Act.

Scrutiny concerns

Modification of primary legislation;⁴ parliamentary oversight – deferral of sunset⁵

1.5 The committee first drew its significant scrutiny concerns about this instrument to the attention of the Senate in *Delegated Legislation Monitor 9 of 2020* (Monitor 9 of 2020),⁶ after seeking advice from the minister.⁷ In summary, the committee was concerned that the instrument contains a matter more appropriate for parliamentary enactment, and the practical need to include the matter in delegated legislation has now been mitigated by Parliament's return to a regular sitting pattern. In these circumstances, the committee considers that it necessary and appropriate that Parliament has the opportunity to consider the matter in primary legislation at the earliest available opportunity.

2 See, for example, the *Social Security (Administration) Amendment (Income Management and Cashless Welfare) Act 2019*.

3 *Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019*.

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

5 Scrutiny principle: Senate standing order 23(3)(k).

6 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 9 of 2020*, pp. 7–10.

7 The committee requested the minister's advice in a letter dated 11 June 2020. A copy of the letter is available on the committee's website at https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/A-E/F2020L00572.pdf.

Actions to date

Initial correspondence

1.6 In June 2020, the committee sought the minister's advice about the appropriateness of continuing to rely on delegated legislation to extend the Cape York Welfare Reform Income Management measure and the cashless debit card trials for an additional six months, now that the Parliament has returned to a regular sitting pattern. The minister's advice is detailed in Monitor 9 of 2020.⁸ In summary, the minister emphasised the importance of implementing the measure via delegated legislation to provide greater certainty to stakeholders and advised that the relevant bill would be 'scheduled for consideration as early as is practical'.

1.7 Noting that the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (Income Management to Cashless Debit Card Transition Bill) was not listed for debate in the sitting week following the committee's initial correspondence, the committee drew its concerns to the attention of the Senate in Monitor 9 of 2020,⁹ and requested the minister's urgent advice as to whether the bill could be scheduled for debate in the Senate before 3 September 2020. The committee also lodged a notice of motion to disallow the instrument on 31 August 2020, for consideration and debate in the Senate on 3 September 2020, should the bill not be listed for debate before that time.

1.8 In response to the committee's comments, the minister advised that it has always been the government's intention that the bill be considered as soon as practicable; however, a number of factors prevented it from being scheduled for debate in the relevant sitting fortnight.¹⁰ Noting this advice, the committee resolved to postpone consideration of the notice of motion to disallow the instrument until 8 October 2020. The committee subsequently provided the Senate with an update on its progress in resolving the issue with the minister in *Delegated Legislation Monitor 10 of 2020* (Monitor 10 of 2020).¹¹

8 The minister responded to the committee on 29 June 2020. A copy of the letter is available on the committee's website at https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/A-E/F2020L00572.pdf.

9 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 9 of 2020*, pp. 7–10.

10 The minister responded to the committee on 6 October 2020. A copy of the letter is available on the committee's website at https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/A-E/F2020L00572.pdf.

11 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 10 of 2020*, pp. 11-14.

Subsequent correspondence

1.9 The minister responded to the committee's comments in Monitor 10 of 2020 on 6 October 2020.¹² The minister advised that a new bill—the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 (Continuation of Cashless Welfare Bill)—would be introduced into the House of Representatives in the October sitting week which would, if passed, support the operation of the Cashless Debit Card as an ongoing measure and make amendments currently provided for in the Income Management to Cashless Debit Card Transition Bill.

1.10 On the basis of this advice, the committee resolved to postpone the notice of motion to disallow the instrument until 12 November 2020. The committee noted that it would withdraw the notice of motion if the new bill was agreed to by the Senate prior to 7 December 2020.

1.11 On 11 November 2020, the committee resolved to further postpone the notice of motion until 7 December 2020. The committee's decision was informed by the fact that appropriate parliamentary scrutiny of the new bill was ongoing, including scrutiny by the Senate Community Affairs Legislation Committee. The committee subsequently wrote to the minister to advise her of this postponement and to seek her advice as to whether the new bill could be scheduled for debate in the Senate in the sitting week beginning 30 November 2020.

1.12 The minister responded in a letter dated 26 November 2020. The minister advised that debate on the Continuation of Cashless Welfare Bill had commenced in the House of Representatives on 12 November, and that it is expected that the debate will conclude early in the sitting week of 30 November to enable the Senate to consider the bill in the final sitting period of the year. The minister further noted that, if the bill is not considered and passed by both Houses before the end of this year, the Cashless Debit Card and Income Management in Cape York will cease.

Committee comment

1.13 The committee thanks the minister for this advice and for her constructive engagement with the committee on this issue.

1.14 The committee notes that the Continuation of Cashless Welfare Bill is tentatively scheduled for debate in the Senate in the current sitting week.

1.15 The committee also notes that the instrument only provides authority for the extension of the cashless debit card scheme until 31 December 2020. As such, the

12 Copies of the letters are available on the committee's website at https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/A-E/F2020L00572.pdf.

Continuation of Cashless Welfare Bill must be considered and passed by the Parliament prior to the end of this year if the scheme is to continue.

1.16 In light of the fact that the imminent debate on the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 will provide an opportunity for the Parliament to consider the proposed continuation of the cashless debit card scheme, the committee has concluded its examination of the instrument and resolved to withdraw the notice of motion to disallow the instrument.

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 3.¹

Instrument	Purpose	Portfolio committee
Aged Care Legislation Amendment (Subsidies—COVID-19 Support Supplement and Workforce Continuity Funding Measures No. 2) Instrument 2020 [F2020L01183]	To prescribe a second COVID-19 support supplement payment, which is payable for each day in June 2020 that a care recipient was being provided residential care by their approved provider, and continue, from 1 September 2020, the temporary increases to the viability supplement and to the homeless supplement which had ended on 31 August 2020.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19
Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules (No. 2) 2020 [F2020L01200]	To give certain entities or classes of entities an alternative basis on which they may satisfy the actual decline in turnover test or the decline in turnover test to be eligible for JobKeeper payments. This will ensure that entities in certain classes will still be eligible to receive assistance through JobKeeper payments where their particular circumstances are not specifically accounted for in the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020.	Senate Economics Legislation Committee Senate Select Committee on COVID-19

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.apf.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Matters_of_interest_to_the_Senate.

Instrument	Purpose	Portfolio committee
Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 [F2020L01194]	To modify the <i>Corporations Act 2001</i> to enable meetings to be run electronically and to enable electronic signatures to be used, to relieve companies from problems they face due to COVID-19.	Senate Economics Legislation Committee Senate Select Committee on COVID-19
Corporations (Coronavirus Economic Response) Determination (No. 4) 2020 [F2020L01206]	To modify the operation of certain civil penalty provisions in the <i>Corporations Act 2001</i> to establish a temporary test based on a disclosing entity or its officers' knowledge, recklessness or negligence with respect to whether certain information would have a material effect on the price or value of its enhanced disclosure securities and therefore should be disclosed.	Senate Economics Legislation Committee Senate Select Committee on COVID-19
Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Mortgage Brokers) Regulations 2020 [F2020L01189]	To address conflicted remuneration for mortgage brokers, as per Recommendation 1.3 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, including by setting out what is conflicted remuneration and circumstances in which conflicted remuneration must not be accepted or given.	Senate Economics Legislation Committee
Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020 [F2020L01177]	To provide for the amount of annual titles administration levy imposed on a cross-boundary greenhouse gas assessment permit.	N/A

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.¹

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.²

3.3 The committee did not identify any instruments registered between 18 September 2020 and 25 September 2020 which authorised Commonwealth expenditure pursuant to the FF(SP) Act or IRD Act.

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.

Appendix A

Ongoing 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 ongoing scrutiny concerns.

Ministerial engagement

4.2 The committee is engaging 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.¹

Instrument	Issue	Status
ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]	Principle (j) exemptions from primary legislation	Seeking advice from the assistant minister.
ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	
ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Seeking advice from the assistant minister.
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Seeking advice from the assistant minister. Notice of motion to disallow placed on 01/12/2020.
ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Seeking advice from the Treasurer.

¹ See www.aph.gov.au/senate_sdlc.

Instrument	Issue	Status
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Seeking further advice from the assistant minister. Notice of motion to disallow placed on 30/11/2020.
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]	Principle (d) adequacy of consultation	Seeking further advice from the minister. Notice of motion to disallow placed on 06/10/2020.
Australian Prudential Regulation Authority (confidentiality) determination No.1 of 2020 [F2020L00945]	Principle (a) compliance with authorising legislation—compliance with legislative preconditions	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 30/11/2020.
Coronavirus Economic Response Package (Deferral of Sunsetting—ASIO Special Powers Relating to Terrorism Offences) Determination 2020 [F2020L01134]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Seeking advice from the minister.
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020 [F2020L01165]	Principle (j) matters more appropriate for parliamentary enactment	Committee considering response from the Treasurer.
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Committee considering response from the minister.
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]	Principle (i) availability of independent merits review Principle (j) significant matters in delegated legislation Principle (k) parliamentary oversight Principle (d) consultation with persons affected	Seeking further advice from the minister. Notice of motion to disallow placed on 30/11/2020.
Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Mortgage Brokers) Regulations 2020 [F2020L01189]	Principle (j) significant matters in delegated legislation	Seeking advice from the Treasurer.

Instrument	Issue	Status
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	Principle (f) instrument subject to copyright	Seeking advice from the minister. Notice of motion to disallow placed on 30/11/2020.
Social Security (Administration) – various instruments [F2020L01221] [F2020L01223] [F2020L01224] [F2020L01225] [F2020L01226]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation Principle (c) broad discretionary power Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the minister.
Social Security (Coronavirus Economic Response— 2020 Measures No. 14) Determination 2020 [F2020L01093]	Principle (d) consultation with persons affected Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Committee considering response from the minister.
Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2019 [F2020L01141]	Principle (a) compliance with <i>Legislation Act 2003</i> - registration of instrument Principle (c) scope of administrative powers	Seeking advice from the minister.
Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020 [F2020L01061]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Committee considering response from the minister.
Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028]	Principle (i) availability of independent merits review	Committee considering response from the minister. Notice of motion to disallow placed on 30/11/2020.

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
Age Discrimination Regulations 2020 [F2020L01138]	Principle (g) adequacy of explanatory materials Principle (j) exemptions from primary legislation	Seeking further advice from the agency.
CASA EX132/20 — Licensing, and Operator Training and Checking (Extensions of Time Due to COVID-19) Exemptions Amendment Instrument 2020 (No. 3) [F2020L01202]	Principle (a) compliance with authorising legislation – compliance with legislative preconditions; and Principle (d) consultation with persons affected	Seeking advice from the agency.
Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020 [F2020L01172]	Principle (i) availability of independent merits review	Seeking further advice from the agency.
Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 [F2020L01194]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation Principle (g) adequacy of explanatory materials	Seeking advice from the agency.
Health Insurance (Approvals for Eligible Collection Centres) Principles 2020 [F2020L01179]	Principle (d) consultation with persons affected Principle (i) availability of independent merits review	Seeking advice from the agency.
National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020 (PB 99 of 2020) [F2020L01208]	Principle (d) consultation with persons affected	Seeking advice from the agency.
Private Health Insurance (Complaints Levy) Rules 2020 [F2020L01195]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Seeking advice from the agency.

Appendix B

Concluded matters

5.1 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

5.2 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.¹

Instrument	Issue	Status
Continence Aids Payment Scheme 2020 [F2020L00758]	Principle (i) availability of independent merits review	Concluded following response from the minister on 24/11/2020. The Minister for Aged Care and Senior Australians undertook to amend the instrument in response to the committee's scrutiny concerns.
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight – deferral of sunseting	Concluded following response from the minister on 26/11/2020.
Corporations (Coronavirus Economic Response) Determination (No. 4) 2020 [F2020L01206]	Principle (j) matters more appropriate for parliamentary enactment	Concluded following consideration by the committee.
Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020 [F2020L01177]	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Concluded following response from the Assistant Treasurer on 25/11/2020. The Assistant Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.

¹ See www.aph.gov.au/senate_sd/c.

Agency engagement

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

Instrument	Issue	Status
<p>Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]</p> <p>Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]</p>	<p>Principle (a) compliance with <i>Legislation Act 2003</i> – consultation</p>	<p>Concluded following response from agency on 16/11/2020.</p> <p>The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<p>Disability Care Load Assessment (Child) Determination 2020 [F2020L01025]</p>	<p>Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation</p> <p>Principle (f) incorporated materials freely accessible</p> <p>Principle (i) availability of independent merits review</p>	<p>Concluded following response from agency on 18/11/2020.</p> <p>The Department of Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<p>Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020 [F2020L01058]</p>	<p>Principle (h) privacy</p>	<p>Concluded following response from agency on 27/11/2020.</p> <p>The Australian Electoral Commission undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<p>National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020 [F2020L01055]</p>	<p>Principle (a) compliance with <i>Legislation Act 2003</i> – consultation</p>	<p>Concluded following response from agency on 12/11/2020.</p> <p>The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>

Appendix C

Undertakings

6.1 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

6.2 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
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the Water Act 2007 in response to the committee's scrutiny concerns.	11/09/2019
Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]	The Assistant Minister for Finance, Charities and Electoral Matters undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2019
	The Assistant Minister for Finance, Charities and Electoral Matters undertook to progress amendments to primary legislation in response to the committee's scrutiny concerns.	17/03/2020
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]	The Department of Veterans' Affairs undertook to amend the Repatriation Pharmaceutical Benefits Scheme [F2013L02009] and the MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012] to correct drafting errors.	28/01/2020

Instrument	Undertaking	Date of Undertaking
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 [F2019L01641]	The Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	14/02/2020
Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]	The Minister for Agriculture, Drought and Emergency Management undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/06/2020
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00645]	The Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/07/2020
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	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
Amendment to the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 (EC145) [F2020L00889]	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.	09/10/2020
Industrial Chemicals Charges (Customs) Regulations 2020 [F2020L00795] Industrial Chemicals Charges (General) Regulations 2020 [F2020L00797] Industrial Chemicals Charges (Excise) Regulations 2020 [F2020L00799]	The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	12/10/2020
Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020 [F2020L00878]	The Department of Defence undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/10/2020
Higher Education (Designated Courses of Study) Specification 2020 [F2020L00924]	The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/10/2020
Manual of Standards Part 173 Amendment Instrument 2020 (No. 1) [F2020L01078]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	22/10/2020

Instrument	Undertaking	Date of Undertaking
Continence Aids Payment Scheme 2020 [F2020L00758]	The Minister for Aged Care and Senior Australians undertook to amend the instrument in response to the committee's scrutiny concerns.	28/10/2020
National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020 [F2020L01055]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/11/2020
Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/11/2020
Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]		
Disability Care Load Assessment (Child) Determination 2020 [F2020L01025]	The Department of Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/11/2020
Continence Aids Payment Scheme 2020 [F2020L00758]	The Minister for Aged Care and Senior Australians undertook to amend the instrument in response to the committee's scrutiny concerns. 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.	24/11/2020
Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]	The Assistant Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	25/11/2020
Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020 [F2020L01058]	The Australian Electoral Commission undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27/11/2020
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]	The Attorney-General undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27/11/2020

Implemented undertakings

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

Instrument	Undertaking	Date implemented
CASA EX92/20 — Materials Flammability Airworthiness Standards (Medical Isolation Transportation Devices) Instrument 2020 [F2020L00796]	The Department of Infrastructure, Transport, Regional Development and Communications amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2020

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.

Instrument	FRL No	Page
Age Discrimination Regulations 2020 [F2020L01138]	F2020L01138	14
Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020	F2020L01077	16, 19
Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020	F2020L01076	16, 19
Aged Care Legislation Amendment (Subsidies—COVID-19 Support Supplement and Workforce Continuity Funding Measures No. 2) Instrument 2020*	F2020L01183	7
Amendment to the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 (EC145)	F2020L00889	18
ASIC Corporations (Amendment) Instrument 2020/721	F2020L01064	11
ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778	F2020L01069	11
ASIC Corporations (IPO Communications) Instrument 2020/722	F2020L01066	11
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787	F2020L01045	11
ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734*	F2020L01199	11
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98	F2020L00962	12
Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020	F2020L00878	18

Instrument	FRL No	Page
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020	F2020L00579	12
Australian Prudential Regulation Authority (confidentiality) determination No.1 of 2020	F2020L00945	12
Biosecurity Amendment (International Mail Fee) Regulations 2020	F2020L00576	18
CASA EX132/20 — Licensing, and Operator Training and Checking (Extensions of Time Due to COVID-19) Exemptions Amendment Instrument 2020 (No. 3)*	F2020L01202	14
CASA EX92/20 — Materials Flammability Airworthiness Standards (Medical Isolation Transportation Devices) Instrument 2020	F2020L00796	20
Competition and Consumer (Industry Codes—Dairy) Regulations 2019	F2019L01610	18
Continence Aids Payment Scheme 2020	F2020L00758	19
Coronavirus Economic Response Package (Deferral of Sunsetting—ASIO Special Powers Relating to Terrorism Offences) Determination 2020	F2020L01134	12
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020	F2020L00572	1, 15
Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules (No. 2) 2020*	F2020L01200	7
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020	F2020L01165	12
Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020	F2020L01172	14
Corporations (Coronavirus Economic Response) Determination (No. 3) 2020*	F2020L01194	14
Corporations (Coronavirus Economic Response) Determination (No. 4) 2020*	F2020L01206	8, 15
Disability Care Load Assessment (Child) Determination 2020	F2020L01025	16, 19

Instrument	FRL No	Page
Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020	F2020L01058	16, 19
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020	F2020L00702	12, 19
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020	F2020L00994	12
Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Mortgage Brokers) Regulations 2020*	F2020L01189	8, 12
Health Insurance (Approvals for Eligible Collection Centres) Principles 2020*	F2020L01179	14
Higher Education (Designated Courses of Study) Specification 2020	F2020L00924	18
Industrial Chemicals Charges (Customs) Regulations 2020	F2020L00795	18
Industrial Chemicals Charges (Excise) Regulations 2020	F2020L00799	18
Industrial Chemicals Charges (General) Regulations 2020	F2020L00797	18
Manual of Standards Part 173 Amendment Instrument 2020 (No. 1)	F2020L01078	18
National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020 (PB 99 of 2020)*	F2020L01208	14
National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020	F2020L01055	16
Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020*	F2020L01177	8
Private Health Insurance (Complaints Levy) Rules 2020*	F2020L01195	14
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020	F2020L01031	13
Social Security (Administration) (Classes of Exempt Welfare Payment Recipients) Specification 2020*	F2020L01223	13

Instrument	FRL No	Page
Social Security (Administration) (Declared child protection State or Territory – Northern Territory) Determination 2020*	F2020L01224	13
Social Security (Administration) (Declared voluntary income management area – Northern Territory) Determination 2020*	F2020L01221	13
Social Security (Administration) (Deductible portion – section 123XPA) Specification 2020*	F2020L01226	13
Social Security (Administration) (Exempt Welfare Payment Recipients – Principal Carers of a Child) (Indications of Financial Vulnerability) Principles 2020*	F2020L01225	13
Social Security (Coronavirus Economic Response—2020 Measures No. 14) Determination 2020	F2020L01093	13
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020	F2020L00645	18
Taxation Administration (Private Ancillary Fund) Guidelines 2019	F2019L01227	17
Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020	F2020L01079	15, 19
Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2019	F2020L01141	13
Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020	F2020L01061	13
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019	F2019L01641	18
Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020	F2020L01028	13
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019	F2019L01387	17

Instrument	FRL No	Page
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	F2018L01674	17

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