

The Senate

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Standing  
Committee on  
Regulations and  
Ordinances

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Delegated Legislation Monitor

Monitor 6 of 2019

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# Membership of the committee

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Senator Raff Ciccone	Victoria, ALP
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Senator Nita Green	Queensland, ALP
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# Introduction

## Terms of reference

The Senate Standing Committee on Regulations and Ordinances (the committee) was established in 1932. The role of the committee is to examine the technical qualities of all disallowable instruments of delegated legislation and decide whether they comply with the committee's non-partisan scrutiny principles, which focus on statutory requirements, the protection of individual rights and liberties, and ensuring appropriate parliamentary oversight.

Senate Standing Order 23(3) requires the committee to scrutinise each instrument referred to it to ensure:

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- (d) that it does not contain matter more appropriate for parliamentary enactment.

## Nature of the committee's scrutiny

The committee's scrutiny principles capture a wide variety of issues which relate primarily to technical legislative scrutiny. The committee does not examine or consider the policy merits of delegated legislation. In cases where an instrument is considered not to comply with the committee's scrutiny principles, the committee's usual approach is to correspond with the responsible minister or relevant agency seeking further explanation or clarification of the matter at issue, or seeking an undertaking for specific action to address the committee's concern. The committee's work is supported by the processes for the registration, tabling and disallowance of legislative instruments under the *Legislation Act 2003*.<sup>1</sup>

## Publications

The committee's usual practice is to table a report, the *Delegated Legislation Monitor* (the monitor), each sitting week of the Senate. 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>2</sup>

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

2 Regulations and Ordinances Committee, *Index of instruments*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Index).

## Ministerial correspondence

Correspondence relating to matters raised by the committee is published on the committee's website.<sup>3</sup>

## Agency correspondence

The committee undertakes informal correspondence with relevant agencies via the committee secretariat to gather information about potential scrutiny concerns, in order to assist the committee to decide whether it is necessary to seek further advice from the relevant minister about those issues. This correspondence is not published; 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 referred to by the committee are published on the committee's website.<sup>4</sup>

## General information

The Federal Register of Legislation should be consulted for the text of instruments, explanatory statements, and associated information.<sup>5</sup> The Senate Disallowable Instruments List provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.<sup>6</sup> The Disallowance Alert records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.<sup>7</sup>

## Instruments considered in this monitor

The committee examined 68 disallowable legislative instruments registered on the Federal Register of Legislation between 9 August 2019 and 28 August 2019. 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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3 See [www.aph.gov.au/regords\\_monitor](http://www.aph.gov.au/regords_monitor).

4 See [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Guidelines](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Guidelines).

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

6 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).

7 Regulations and Ordinances Committee, *Disallowance Alert 2019*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Alerts](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Alerts).



# Chapter 1

## Committee comments

1.1 This chapter details the instruments in relation to which the committee holds the most significant scrutiny concerns, and has resolved to place a notice of motion to disallow the instrument to emphasise those concerns and to provide the Senate with additional time to consider the instrument with the benefit of the committee's comments. Where appropriate, this chapter also details the committee's reasons for withdrawing notices of motion to disallow such instruments.

1.2 Copies of any relevant correspondence are available on the committee's website.<sup>1</sup>

### **Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018**

<b>FRL No.</b>	<a href="#">F2018L01674</a> <sup>2</sup>
<b>Purpose</b>	To amend the <i>Water Act 2007</i> to formalise the commitments of contracting governments to the Murray-Darling Basin Agreement, alter powers of the Murray-Darling Basin Authority and add a new review process for the <i>Basin Salinity Management 2030</i> strategy.
<b>Authorising legislation</b>	<i>Water Act 2007</i>
<b>Portfolio</b>	Agriculture
<b>Disallowance</b>	15 sitting days after tabling (tabled in the Senate on 12 February 2019). Notice of motion to disallow placed on 1 August 2019. <sup>3</sup>

1 See [www.aph.gov.au/regords\\_monitor](http://www.aph.gov.au/regords_monitor).

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

3 Notice given by the chair of the committee. See *Disallowance Alert 2019*: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Alerts](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Alerts).

## Incorporation<sup>4</sup>

1.3 The committee initially scrutinised this instrument in [Delegated Legislation Monitor 1 of 2019](#). The committee noted that the instrument appears to incorporate Basin Salinity Management (BSM) procedures.<sup>5</sup> However, neither the instrument nor its explanatory statement appeared to indicate the manner in which the principles are incorporated, or where they may be accessed free of charge. The committee therefore sought the minister's advice in relation to these matters.<sup>6</sup>

1.4 In response to the committee's request, the minister circulated a replacement explanatory statement, including additional information regarding the BSM procedures. The committee considered that document in [Delegated Legislation Monitor 2 of 2019](#).

1.5 The replacement explanatory statement noted that references to the BSM procedures refer to the procedures as in force from time to time, and that the procedures may be freely accessed on the website of the Murray-Darling Basin Authority. However, it also stated that the BSM procedures are not incorporated by the instrument, but rather by the Murray-Darling Basin Agreement (Agreement) in Schedule 1 to the *Water Act 2007* (Water Act). It asserted that, as a consequence, the restrictions in the *Legislation Act 2003* (Legislation Act) on incorporating documents as in force from time to time do not apply.

1.6 While noting this additional information, the committee remained concerned that the instrument does incorporate the BSM procedures. The committee therefore requested the minister's advice as to:

- why it is considered that the instrument does not incorporate the BSM procedures; and
- if the advice is that the procedures are incorporated, the power relied on to incorporate the BSM procedures as in force from time to time.<sup>7</sup>

1.7 The committee considered the advice provided by the Assistant Secretary, Murray-Darling Basin Policy Branch, in [Delegated Legislation Monitor 4 of 2019](#).<sup>8</sup>

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4 Scrutiny principle: Senate Standing Order 23(3)(a).

5 The explanatory statement (p. 2) explains that some functions 'are to be carried out in accordance with BSM procedures made by the Basin Officials Committee'. The explanatory statement also lists the provisions to which this applies.

6 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation Monitor 1 of 2019*, pp. 68-70.

7 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation Monitor 2 of 2019*, pp. 65-69.

8 The Assistant Secretary, Murray-Darling Basin Policy Branch responded on the minister's behalf as, at the time, the Parliament was prorogued for the 2019 Federal election.

1.8 The Assistant Secretary reiterated that the BSM procedures are not incorporated by the instrument, but rather by the Agreement. He also advised that if the view is taken that the instrument does incorporate the procedures, sections 18C and 256 of the Water Act provide authority to incorporate the procedures as in force from time to time. The Assistant Secretary further advised that if the restrictions in the Legislation Act on incorporating documents as in force from time to time were to apply, this would prevent the Ministerial Council from making amendments to the Agreement which incorporate documents as in force from time to time.

1.9 While noting this advice, the committee remained of the view that the instrument does incorporate the BSM procedures. Further, the committee did not consider that sections 18C and 256 of the Water Act provided sufficient authority to incorporate the procedures as in force from time to time. In light of these matters, and noting that it may be necessary for the Ministerial Council to make amendments to the Agreement that incorporate documents as in force from time to time, the committee considered that it may be appropriate to amend the Water Act to expressly authorise the incorporation of documents in this manner.

1.10 The committee therefore drew the attention of the Senate to the apparent incorporation into the instrument of the BSM procedures, as those procedures exist from time to time, in the absence of authority in the enabling legislation to incorporate documents in this manner.<sup>9</sup>

1.11 The committee also resolved to place a notice of motion to disallow the instrument, to emphasise the committee's scrutiny concerns and to provide the Senate with additional time to consider the instrument with the benefit of the committee's comments. The notice was placed on 1 August 2019.

### ***Minister's additional advice***

1.12 The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management wrote to the committee on 11 September 2019, to provide additional advice in relation to the instrument.

1.13 The minister advised:

I thank the Committee for their consideration of the Amendment Regulations and for raising its concerns about the Agreement Regulations reflecting amendments to the Murray-Darling Basin Agreement (Agreement) that include provisions that incorporate the Basin Salinity Management (BSM) Procedures from time to time. I also note that the Committee considers that it may be appropriate to amend the *Water Act 2007* (Cth) to expressly authorise the incorporation of such documents from time to time. While I maintain the strong view that the Amendment Regulations can reflect amendments to the Agreement which incorporate

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9 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation Monitor 4 of 2019*, pp. 7-13.

the BSM Procedures from time to time, I acknowledge the integral role the Committee has in conducting scrutiny and promoting transparency and accountability in relation to subordinate legislation made by the Australian Government.

In response to the Committee's considerations, at a future appropriate opportunity I will seek to consult Basin States regarding the introduction of legislative amendments to the *Water Act 2007* (Cth) to remove any doubt about this issue. The amendments involve the referred provisions of the Water Act which require the agreement of the Basin States. This is my commitment as I respect the role of the Committee to ensure all Government regulations are robust, and particularly given the technical nature of the Amendment Regulations.

In light of this commitment, I request that the Committee reconsider the disallowance motion to ensure minimal disruption to Basin States and the Murray-Darling Basin Authority in their management of salinity in the Murray-Darling Basin.

The Murray-Darling Basin Authority and Basin governments have a long and successful history of working together to manage salinity. It is important that the Basin salinity program continue to be implemented using the best available information and in a collaborative way. The BSM Procedures have been agreed by all Basin water ministers through the Murray-Darling Basin Ministerial Council. To not continue the use of the BSM Procedures would be a backward step to the management of salinity in the Basin that would increase costs and increase uncertainty about future salinity risks.

### ***Committee comment***

1.14 The committee thanks the minister for this additional advice. The committee welcomes the minister's undertaking to progress amendments to the Water Act to remove doubt as to whether the BSM procedures may be incorporated as in force from time to time. The committee acknowledges that any such amendments will require the agreement of the Murray-Darling Basin States.

1.15 The committee also notes the minister's advice that it is important that the Basin salinity program continues to be implemented using the best available information, and that the discontinuation of the BSM procedures would be a backward step in the management of salinity in the Basin that would increase costs and increase uncertainty about future salinity risks.

**1.16 In light of the minister's undertaking to progress amendments to the Water Act to address the committee's concerns, the committee has resolved to withdraw the notice of motion to disallow the instrument. The committee will monitor this undertaking to ensure that it is implemented.**

# Appendix A

## Ongoing matters

2.1 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

2.2 The committee is engaging with the relevant minister about the scrutiny issues raised by the instruments listed below.

Instrument	Issue	Status
<b>Agriculture and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2019 [F2019L00357]</b>	Principle (a) unclear basis for determining fees  Principle (a) incorporation  Principle (d) significant matters in delegated legislation	Seeking further advice from the minister in relation to the basis for determining fees and incorporation.
<b>Air Services Regulations 2019 [F2019L00371]</b>	Principle (b) privacy  Principle (b) reversal of evidential burden of proof  Principle (b) immunity from liability  Principle (d) significant matters in delegated legislation	Awaiting implementation of ministerial undertaking to amend instrument, made on 21/08/2019, in response to committee's concerns about immunity from liability.
<b>Customs (Prohibited Imports) Amendment (Collecting Tobacco Duties) Regulations 2019 [F2019L00352]</b>	Principle (a) broad delegation of power  Principle (c) merits review	Seeking further advice from the minister.
<b>Health Insurance (Diagnostic Imaging Services Table) Regulations 2019 [F2019L00563]</b>	Principle (c) merits review	Awaiting implementation of ministerial undertaking to amend instrument, made on 22/08/2019.
<b>Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]</b>	Principle (d) significant matters in delegated legislation	Chair placed a notice of motion to disallow the instrument on 01/08/2019.

Instrument	Issue	Status
<b>Migration Amendment (New Skilled Regional Visas) Regulations 2019 [F2019L00578]</b>	Principle (a) imposition of fees (taxation) Principle (c) merits review Principle (d) significant matters in delegated legislation	Seeking further advice from the minister in relation to merits review.
<b>Quality of Care Amendment (Minimising Use of Restraints) Principles 2019 [F2019L00511]</b>	Principle (b) personal rights and liberties Principle (d) significant matters in delegated legislation	Seeking further advice from the minister.
<b>Road Vehicle Standards Rules 2018 [F2019L00198]</b>	Principle (a) incorporation	Awaiting implementation of ministerial undertaking to amend instrument, made on 12/08/2019.

## Agency engagement

2.3 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>Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019 [F2019L01105]</b>	Principle (a) incorporation	Seeking advice from the agency.
<b>Amendment of List of Exempt Native Specimens – Commonwealth Eastern Tuna and Billfish Fishery and Commission for the Conservation of Antarctic Marine Living Resources Ross Sea Exploratory Toothfish Fishery, August 2019 [F2019L01078]</b>	Principle (a) in accordance with statute	Seeking advice from the agency.
<b>ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 [F2019L01114]</b>	Principle (d) significant matters in delegated legislation	Seeking advice from the agency.
<b>Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination 2019 [F2019L01066]</b>	Principle (a) incorporation	Seeking advice from the agency.
<b>Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019 [F2019L01067]</b>	Principle (a) incorporation	Seeking advice from the agency.
<b>National Health (Pharmaceutical Benefits) Amendment (Electronic Prescriptions) Regulations 2019 [F2019L01072]</b>	Principle (b) privacy	Seeking advice from the agency.
<b>Private Health Insurance (Prostheses) Amendment Rules (No. 6) 2019 [F2019L01117]</b>	Principle (a) drafting	Seeking advice from the agency.





## Appendix B

### Concluded matters

3.1 This appendix records the instruments in relation to which the committee has concluded its inquiries, following correspondence with the relevant minister or agency. Copies of the relevant correspondence are available on the committee's website.<sup>1</sup>

#### Ministerial engagement

3.2 The committee has concluded its examination of the instruments listed below following correspondence with the relevant minister.

Instrument	Issue	Status
<b>Migration (Fast Track Applicant Class – Temporary Protection and Safe Haven Enterprise Visas) Instrument 2019 [F2019L00506]</b>	Principle (d) significant matters in delegated legislation	Concluded following response from the minister on 14/08/2019.
<b>Southern and Eastern Scalefish and Shark Fishery (Closures Variation) Direction 2019 [F2019L00650]</b>	Principle (a) subdelegation	Concluded following the implementation of the agency's undertaking to revoke the instrument on 17/09/2019.
<b>Underwater Cultural Heritage Rules 2018 [F2019L00096]</b>	Principle (a) incorporation	Concluded following response from the minister on 15/08/2019.
<b>Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]</b>	Principle (a) incorporation	Concluded following response from the minister on 11/09/2019.  The minister undertook to progress amendments to the <i>Water Act 2007</i> .

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1 See [www.aph.gov.au/regords\\_monitor](http://www.aph.gov.au/regords_monitor).

## Agency engagement

3.3 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>Australian Hearing Services Regulations 2019 [F2019L00976]</b>	Principle (a) unclear basis for determining fees Principle (c) merits review	Concluded following responses from the agency on 02/09/2019 and 10/09/2019.
<b>Civil Aviation Order 40.7 Amendment Instrument 2019 (No. 1) [F2019L01062]</b>	Principle (b) retrospective effect	Concluded following response from the agency on 17/09/2019.
<b>Civil Aviation Order 48.1 Instrument 2019 [F2019L01070]</b>	Principle (c) merits review	Concluded following response from the agency on 17/09/2019.  The agency undertook to amend the explanatory statement to the instrument. The undertaking was implemented on 17/09/2019.
<b>Civil Aviation Order 82.7 Amendment Instrument 2019 (No. 1) [F2019L01063]</b>	Principle (c) merits review	Concluded following response from the agency on 17/09/2019.  The agency undertook to amend the explanatory statement to the instrument. The undertaking was implemented on 17/09/2019.
<b>Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft—Registration and Accreditation) Regulations 2019 [F2019L01027]</b>	Principle (b) reversal of evidential burden of proof Principle (b) retrospectivity Principle (c) merits review	Concluded following response from the agency on 10/09/2019.
<b>Statement of Principles concerning malignant neoplasm of the bladder (Reasonable Hypothesis) (No. 83 of 2019) [F2019L01096]</b>  <b>Statement of Principles concerning malignant neoplasm of the bladder (Balance of Probabilities) (No. 84 of 2019) [F2019L01097]</b>	Principle (a) incorporation	Concluded following response from the agency on 13/09/2019.  The agency undertook to amend the explanatory statements to the instruments. The undertakings were implemented on 17/09/2019.

# Appendix C

## Undertakings

4.1 From time to time, a minister or agency may make an undertaking to address the committee's 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 meeting.

### Outstanding undertakings

4.2 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>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2018 (No. 10) [F2018L01646]</b>	The Minister for Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	10/04/2019
<b>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 1) (PB 3 of 2019) [F2019L00081]</b>	The Minister for Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/06/2019
<b>Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Methyl Bromide, Fire Protection and Other Measures) Regulations 2018 [F2018L01730]</b>	The Minister for the Environment undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	15/07/2019
<b>Aged Care Single Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019 [F2019L00515]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	16/07/2019
<b>Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019 [F2019L00490]</b>	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	16/07/2019
<b>Fuel Quality Standards Regulations 2019 [F2019L00560]</b>	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	17/07/2019

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Fuel Quality Standards (Automotive Diesel) Determination 2019 [F2019L00456]</b> <b>Fuel Quality Standards (Petrol) Determination 2019 [F2019L00455]</b>	The Department of the Environment and Energy undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	18/07/2019
<b>Taxation Administration – Single Touch Payroll – Exemption for Employers Having a Seasonal Workforce (Repeal) [F2019L00458]</b>	The Australian Taxation Office undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	18/07/2019
<b>Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019 [F2019L00320]</b>	The Attorney-General's Department undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	26/07/2019
<b>Financial sector (Collection of Data) (reporting standard) determinations – various instruments [F2019L00730] [F2019L00731] [F2019L00738] [F2019L00739] [F2019L00766] [F2019L00769] [F2019L00754] [F2019L00756] [F2019L00780] [F2019L00782] [F2019L00733] [F2019L00735]</b>	The Australian Prudential Regulation Authority undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	31/07/2019
<b>Health Insurance (Diagnostic Imaging Services Table) Regulations 2019 [F2019L00563]</b>	The Minister for Health undertook to amend the instrument in response to the committee's concerns.	22/08/2019
<b>Various prudential standards [F2019L00621] [F2019L00624] [F2019L00625] [F2019L00631] [F2019L00632] [F2019L00643] [F2019L00646] [F2019L00648] [F2019L00649] [F2019L00656] [F2019L00659] [F2019L00662] [F2019L00669]</b>	The Australian Prudential Regulation Authority undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	07/08/2019
<b>Road Vehicle Standards Rules 2018 [F2019L00198]</b>	The Minister for Infrastructure, Transport and Regional Development undertook to amend the instrument in response to the committee's concerns.	12/08/2019
<b>Private Health Insurance (Data Provision) Amendment Rules 2019 [F2019L00817]</b> <b>Private Health Insurance (Health Insurance Business) Amendment Rules 2019 [F2019L00815]</b>	The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	21/08/2019

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Hearing Services Program (Voucher) Instrument 2019 [F2019L00969]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	23/08/2019
<b>Quality of Care Amendment (Minimising Use of Restraints) Principles 2019 [F2019L00511]</b>	The Minister for Aged Care and Senior Australians undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	23/08/2019
<b>Insurance (prudential standard) determinations – various instruments [F2019L00873] [F2019L00874] [F2019L00869] [F2019L00875]</b>	The Australian Prudential Regulation Authority undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	27/08/2019
<b>Migration Amendment (Visa Application Charges) Regulations 2019 [F2019L00932]</b>	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	30/08/2019
<b>Crimes Legislation Amendment (2019 Measures No. 1) Regulations 2019 [F2019L01004]</b>	The Attorney-General's Department undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	03/09/2019
<b>Migration (LIN 19/188: Arrangement for Approval and Variation of Approval for a Temporary Parent Sponsor) Instrument 2019 [F2019L01015]</b>	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	03/09/2019
<b>Telecommunications (Carrier Licence Exemption - Trial Network Units) Determination 2019 [F2019L00317]</b> <b>Telecommunications (Carrier Licence Exemption – Supply of Carriage Services to Visitors) Determination 2019 [F2019L00318]</b>	The Department of Communications and the Arts undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	03/09/2019
<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 concerns.	11/09/2019.
<b>Treatment Benefits (Special Access) (Claims, Applications and Lodgements Procedures) Determination 2019 [F2019L00825]</b>	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	13/09/2019

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Instrument	Undertaking	Date of Undertaking
<b>Veterans' Affairs (Treatment Principles – Electric Mobility Aids and Other Measures) Amendment Instrument 2019 [F2019L00678]</b>	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	13/09/2019

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## Implemented undertakings

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

Instrument	Undertaking	Date implemented
<b>Aged Care Legislation Amendment (Quality Indicator Program) Principles 2019 [F2019L00849]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	13/09/2019
<b>Civil Aviation Order 48.1 Instrument 2019 [F2019L01070]</b>	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	17/09/2019
<b>Civil Aviation Order 82.7 Amendment Instrument 2019 (No. 1) [F2019L01063]</b>	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	17/09/2019
<b>Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2019 [F2019L00347]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	16/09/2019
<b>Financial Framework (Supplementary Powers) Amendment (Treasury Portfolio Measures No. 1) Regulations 2019 [F2019L00566]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	16/09/2019
<b>Health Insurance (Diagnostic Imaging Services Table) Regulations 2019 [F2019L00563]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	17/09/2019
<b>Health Insurance (Section 19AB Exemptions Guidelines) Determination 2019 [F2019L00941]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	23/08/2019
<b>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2019 (No. 4) (PB 28 of 2019) [F2019L00663]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	07/08/2019
<b>Social Security (Administration) (Trial of Cashless Welfare Arrangements) (Declinable Transactions and Welfare Restricted Bank Account) Determination 2019 [F2019L00911]</b>	The Department of Social Services undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	09/09/2019

Instrument	Undertaking	Date implemented
<b>Southern and Eastern Scalefish and Shark Fishery (Closures Variation) Direction 2019 [F2019L00650]</b>	The Australian Fisheries Management Authority undertook to revoke the instrument in response to the committee's concerns.	17/09/2019
<b>Statement of Principles concerning malignant neoplasm of the bladder (Reasonable Hypothesis) (No. 83 of 2019) [F2019L01096]</b>	The Repatriation Medical Authority undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	17/09/2019
<b>Statement of Principles concerning malignant neoplasm of the bladder (Balance of Probabilities) (No. 84 of 2019) [F2019L01097]</b>		



## Appendix D

### Instruments specifying Commonwealth expenditure

5.1 The *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act) and the *Industry Research and Development Act 1986* (Industry Act) authorise the Commonwealth to spend public money on policies, programs and schemes specified in instruments made under those Acts. The scrutiny of such instruments is a key aspect of parliamentary scrutiny and control of Commonwealth expenditure.<sup>1</sup>

5.2 To facilitate such scrutiny, this Appendix draws the Senate's attention to the nature and extent of Commonwealth expenditure that is specified by delegated legislation.

5.3 The table below lists the expenditure specified by legislative instruments registered between 9 August and 28 August 2019.

Instrument	Program	Amount
<b>Financial Framework (Supplementary Powers) Amendment (Communications and the Arts Measures No. 3) Regulations 2019 [F2019L01055]</b>	Prime Minister's Literary Awards and Prize for Australian History	\$2.6 million for the Literary Awards and the History Prize over 4 years from 2018-2019.
<b>Financial Framework (Supplementary Powers) Amendment (Education Measures No. 1) Regulations 2019 [F2019L01053]</b>	Grants to The Bell Shakespeare Company Limited	\$1.3 million over four years from 2019-20.
<b>Financial Framework (Supplementary Powers) Amendment (Employment, Skills, Small and Family Business Measures No. 2) Regulations 2019 [F2019L01052]</b>	Skills Organisations	\$41.7 million for 4 years from 2019-20.
<b>Financial Framework (Supplementary Powers) Amendment (Environment and Energy Measures No. 2) Regulations 2019 [F2019L01054]</b>	Energy Efficient Communities Program	\$50 million (one-off grant).

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1 For further information about instruments specifying Commonwealth expenditure see Chapter 7 of the report of the committee's inquiry, [Parliamentary scrutiny of delegated legislation](#).

<b>Instrument</b>	<b>Program</b>	<b>Amount</b>
	Australian Heritage Grants Program	\$5.3 million per year from 2018-19. <sup>2</sup>
	Communities Environment Program	\$22.65 million in 2019-20.
	Environment Restoration Fund	\$100 million over four years from 2019-20. <sup>3</sup>
<b>Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 2) Regulations 2019 [F2019L01050]</b>	Prevention of Financial Abuse of Women	\$2 million for 3 years from 2019-20.
<b>Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) Regulations 2019 [F2019L01051]</b>	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability - advocacy and other support services.	\$148.8 million for 3 years from 2019-20.
<b>Industry Research and Development (Ferretti International Whyalla Transmission Towers Manufacturing Feasibility Study Program) Instrument 2019 [F2019L01081]</b>	Ferretti International Whyalla Transmission Towers Manufacturing Feasibility Study Program	\$0.6 million (one-off grant).

2 See <https://www.environment.gov.au/heritage/grants-and-funding/australian-heritage-grants>.

3 See <https://www.environment.gov.au/environment-restoration-fund>.

## List of instruments in current monitor

Instrument	FRL No	Page
Aged Care Single Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019	F2019L00515	11
Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019	F2019L01105	7
Agriculture and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2019	F2019L00357	5
Air Services Regulations 2019	F2019L00371	5
Amendment of List of Exempt Native Specimens – Commonwealth Eastern Tuna and Billfish Fishery and Commission for the Conservation of Antarctic Marine Living Resources Ross Sea Exploratory Toothfish Fishery, August 2019	F2019L01078	7
ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547	F2019L01114	7
Australian Hearing Services Regulations 2019	F2019L00976	10
Banking, Insurance, Life Insurance and Health Insurance (prudential standard) determination No.1 of 2019	F2019L00669	12
Banking, Insurance, Life Insurance and Health Insurance (prudential standard) determination No. 2 of 2019	F2019L00662	12
Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019	F2019L00320	12
Civil Aviation Order 40.7 Amendment Instrument 2019 (No. 1)	F2019L01062	10
Civil Aviation Order 48.1 Instrument 2019	F2019L01070	10, 15
Civil Aviation Order 82.7 Amendment Instrument 2019 (No. 1)	F2019L01063	10, 15
Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft—Registration and Accreditation) Regulations 2019	F2019L01027	10
Crimes Legislation Amendment (2019 Measures No. 1) Regulations 2019	F2019L01004	13
Customs (Prohibited Imports) Amendment (Collecting Tobacco Duties) Regulations 2019	F2019L00352	5
Financial Framework (Supplementary Powers) Amendment (Communications and the Arts Measures No. 3) Regulations 2019	F2019L01055	17
Financial Framework (Supplementary Powers) Amendment (Education and Training Measures No. 2) Regulations 2019	F2019L00347	15
Financial Framework (Supplementary Powers) Amendment (Education Measures No. 1) Regulations 2019	F2019L01053	17
Financial Framework (Supplementary Powers) Amendment (Employment, Skills, Small and Family Business Measures No. 2) Regulations 2019	F2019L01052	17

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Financial Framework (Supplementary Powers) Amendment (Environment and Energy Measures No. 2) Regulations 2019	F2019L01054	17
Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 2) Regulations 2019	F2019L01050	18
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) Regulations 2019	F2019L01051	18
Financial Framework (Supplementary Powers) Amendment (Treasury Portfolio Measures No. 1) Regulations 2019	F2019L00566	15
Financial Sector (Collection of Data) (reporting standard) determination No. 10 of 2019	F2019L00730	12
Financial Sector (Collection of Data) (reporting standard) determination No. 11 of 2019	F2019L00731	12
Financial Sector (Collection of Data) (reporting standard) determination No. 12 of 2019	F2019L00738	12
Financial Sector (Collection of Data) (reporting standard) determination No. 13 of 2019	F2019L00739	12
Financial Sector (Collection of Data) (reporting standard) determination No. 14 of 2019	F2019L00766	12
Financial Sector (Collection of Data) (reporting standard) determination No. 15 of 2019	F2019L00769	12
Financial Sector (Collection of Data) (reporting standard) determination No. 16 of 2019	F2019L00754	12
Financial Sector (Collection of Data) (reporting standard) determination No. 17 of 2019	F2019L00756	12
Financial Sector (Collection of Data) (reporting standard) determination No. 18 of 2019	F2019L00780	12
Financial Sector (Collection of Data) (reporting standard) determination No. 19 of 2019	F2019L00782	12
Financial Sector (Collection of Data) (reporting standard) determination No. 20 of 2019	F2019L00733	12
Financial Sector (Collection of Data) (reporting standard) determination No. 21 of 2019	F2019L00735	12
Fuel Quality Standards (Automotive Diesel) Determination 2019	F2019L00456	12
Fuel Quality Standards (Petrol) Determination 2019	F2019L00455	12
Fuel Quality Standards Regulations 2019	F2019L00560	11
Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019	F2019L00490	11
Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination 2019	F2019L01066	7
Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019	F2019L01067	7

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Health Insurance (Diagnostic Imaging Services Table) Regulations 2019	F2019L00563	5, 12, 15
Health Insurance (prudential standard) determination No. 1 of 2019	F2019L00649	12
Health Insurance (Section 19AB Exemptions Guidelines) Determination 2019	F2019L00941	15
Hearing Services Program (Voucher) Instrument 2019	F2019L00969	13
Immigration (Guardianship of Children) Regulations 2018	F2018L01708	15
Industry Research and Development (Ferretti International Whyalla Transmission Towers Manufacturing Feasibility Study Program) Instrument 2019	F2019L01081	18
Insurance (prudential standard) determination No. 10 of 2019	F2019L00873	13
Insurance (prudential standard) determination No. 11 of 2019	F2019L00869	13
Insurance (prudential standard) determination No. 12 of 2019	F2019L00869	13
Insurance (prudential standard) determination No. 13 of 2019	F2019L00875	13
Life insurance (prudential standard) determination No. 1 of 2019	F2019L00646	12
Migration (Fast Track Applicant Class – Temporary Protection and Safe Haven Enterprise Visas) Instrument 2019	F2019L00506	9
Migration (LIN 19/188: Arrangement for Approval and Variation of Approval for a Temporary Parent Sponsor) Instrument 2019	F2019L01015	13
Migration Amendment (New Skilled Regional Visas) Regulations 2019	F2019L00578	6
Migration Amendment (Visa Application Charges) Regulations 2019	F2019L00932	13
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2018 (No. 10)	F2018L01646	11
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 1) (PB 3 of 2019)	F2019L00081	11
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2019 (No. 4) (PB 28 of 2019)	F2019L00663	15
National Health (Pharmaceutical Benefits) Amendment (Electronic Prescriptions) Regulations 2019	F2019L01072	7
Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Methyl Bromide, Fire Protection and Other Measures) Regulations 2018	F2018L01730	11
Private Health Insurance (Data Provision) Amendment Rules 2019	F2019L00817	12
Private Health Insurance (Health Insurance Business) Amendment Rules 2019	F2019L00815	12
Private Health Insurance (Prostheses) Amendment Rules (No. 6) 2019	F2019L01117	7
Quality of Care Amendment (Minimising Use of Restraints) Principles 2019	F2019L00511	6, 13
Road Vehicle Standards Rules 2018	F2019L00198	6

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Social Security (Administration) (Trial of Cashless Welfare Arrangements) (Declinable Transactions and Welfare Restricted Bank Account) Determination 2019	F2019L00911	15
Southern and Eastern Scalefish and Shark Fishery (Closures Variation) Direction 2019	F2019L00650	9, 16
Statement of Principles concerning malignant neoplasm of the bladder (Reasonable Hypothesis) (No. 83 of 2019)	F2019L01096	10, 16
Statement of Principles concerning malignant neoplasm of the bladder (Balance of Probabilities) (No. 84 of 2019)	F2019L01097	10, 16
Taxation Administration – Single Touch Payroll – Exemption for Employers Having a Seasonal Workforce (Repeal)	F2019L00458	12
Telecommunications (Carrier Licence Exemption - Trial Network Units) Determination 2019	F2019L00317	13
Telecommunications (Carrier Licence Exemption – Supply of Carriage Services to Visitors) Determination 2019	F2019L00318	13
Treatment Benefits (Special Access) (Claims, Applications and Lodgements Procedures) Determination 2019	F2019L00825	13
Underwater Cultural Heritage Rules 2018	F2019L00096	9
Insurance (prudential standard) determination No. 1 of 2019	F2019L00624	12
Insurance (prudential standard) determination No. 2 of 2019	F2019L00625	12
Insurance (prudential standard) determination No. 3 of 2019	F2019L00621	12
Insurance (prudential standard) determination No. 4 of 2019	F2019L00631	12
Insurance (prudential standard) determination No. 5 of 2019	F2019L00632	12
Insurance (prudential standard) determination No. 6 of 2019	F2019L00656	12
Insurance (prudential standard) determination No. 7 of 2019	F2019L00659	12
Insurance (prudential standard) determination No. 8 of 2019	F2019L00648	12
Insurance (prudential standard) determination No. 9 of 2019	F2019L00643	12
Veterans' Affairs (Treatment Principles – Electric Mobility Aids and Other Measures) Amendment Instrument 2019	F2019L00678	14
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018	F2018L01674	1-4, 9, 13

**Senator the Hon Kim Carr**  
**Acting Chair**  
**Senate Standing Committee on Regulations and Ordinances**