

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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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 (new matters), Appendix B (ongoing matters) and Appendix C (concluded matters) in the monitor.

Guidelines

Guidelines relating to the committee's scrutiny principles are published on the committee's website.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 153 disallowable legislative instruments registered on the Federal Register of Legislation between 10 April 2021 and 21 May 2021.

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 2021*, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Disallowance_Alert_2021.

Chapter 1

Instruments raising significant scrutiny concerns

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

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

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

1 Details of all instruments which the committee has resolved to draw to the attention of the Senate under standing order 23(4) are published on the committee's website: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Matters_of_interest_to_the_Senate.

Instrument	Purpose	Portfolio committee
Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]	<p>The <i>Australian Charities and Not-for-profits Commission Act 2012</i> (the Act) provides for the registration and regulation of charities by the Australian Charities and Not-for-profits Commission (ACNC). An entity is entitled to registration under the Act if it meets specified requirements, including the requirement to comply with the governance standards set out in the Australian Charities and Not-for-profits Commission Regulation 2013. Registration under the Act is a necessary precondition for access to a range of exemptions, benefits, and concessions, including certain Commonwealth tax concessions.</p> <p>Governance standard 3 currently provides that registered entities must not engage in conduct that may be dealt with as an indictable offence under an Australian law or by way of a civil penalty of 60 penalty units or more. These regulations provide that an entity may not be entitled to be registered or remain registered under the Act if:</p> <ul style="list-style-type: none"> • the entity engages in conduct that may be dealt with as a relevant kind of summary offence under an Australian law; or • the entity fails to maintain reasonable internal control procedures to ensure its resources are not used to actively promote another entity's acts or omissions that may be dealt with as an indictable offence, a relevant kind of summary offence, or a civil penalty of 60 penalty units or more. <p>Examples of the kinds of summary offences that are covered include:</p> <ul style="list-style-type: none"> • trespass to land or premises (including buildings, vehicles etc.); • vandalism; • theft of personal property; • common assault; and • threatening violence against an individual. <p><i>Case study:</i></p> <p>A registered entity exists to relieve poverty in Australia and internationally. As part of its activities, it occasionally advocates against the outsourcing of labour from domestic manufacturers to overseas manufacturers. The registered entity organises an event to trespass onto the property of an Australian company that outsources its labour overseas. The registered entity has failed to comply with the new requirement by engaging in conduct that may be dealt with as a summary offence relating to entering or remaining on real property. [See explanatory statement, p. 5]</p>	Senate Economics Legislation Committee

Instrument	Purpose	Portfolio committee
Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]	<p>To set the requirements that a higher education provider must meet, and continue to meet, in order to be registered by the Tertiary Education Quality and Standards Agency (TEQSA) to operate in Australia. They provide the basis for the regulation of Australian higher education providers by TEQSA. The Threshold Standards ensure that the barrier to entry into the higher education sector is set sufficiently high to underpin and protect the quality and reputation of the sector as a whole.</p> <p>The Threshold Standards also serve other broader purposes in Australian higher education including:</p> <ul style="list-style-type: none"> • an articulation of the expectations for provision of higher education in Australia as: <ul style="list-style-type: none"> ○ a guide to the quality of educational experiences that students should expect ○ a reference for international comparisons of the provision of higher education ○ a reference for other interested parties; and • a model framework which higher education providers can themselves apply for the internal monitoring, quality assurance and quality improvement of their higher education activities. 	Senate Education and Employment Legislation Committee
Therapeutic Goods (Exempt Monographs) Determination 2021 [F2021L00594]	<p>The Order is intended to address concerns held by medical practitioners and pharmacists about the lack of information and controls regarding unregistered nicotine vaping products by establishing minimum safety and quality requirements for unregistered nicotine vaping products with a view to:</p>	Senate Community Affairs Legislation Committee
Therapeutic Goods (Standard for Nicotine Vaping Products) (TGO 110) Order 2021 [F2021L00595]	<ul style="list-style-type: none"> • ensuring that health care practitioners and consumers have access to accurate information about the content of these products; • ensuring that substances with known, demonstrable inhalation risks are not used as ingredients in these products; and • minimising the risk of, and risks associated with, accidental exposure to or ingestion of these products, particularly by children, given the toxicity of nicotine. <p>The Order achieves these objectives by specifying a range of labelling, packaging, ingredient, nicotine content (or concentration) and record-keeping requirements. Most notably, these include:</p> <ul style="list-style-type: none"> • requiring disclosure of an ingredients list, the nicotine concentration and specific safety warnings on or attached to the container or primary package (including by way of over-stickering) or supplied with the product (including in an information sheet); 	Senate Community Affairs Legislation Committee

Instrument	Purpose	Portfolio committee
	<ul style="list-style-type: none"> • prohibiting the use of active ingredients other than nicotine and eight specific ingredients with known, demonstrable inhalation risks; • specifying that the nicotine concentration of these products must not exceed 100 mg/mL (base form concentration or equivalent base form concentration); • requiring nicotine concentration or content to be within +/- 10% of that stated on or attached to the product, or its container or primary package, or in information provided with the product; • requiring products to have child-resistant packaging; and • requiring those responsible for import, export or manufacture for the purpose of supply, of these products to maintain records demonstrating conformance with the Order. 	
	<p>The Determination complements the Order by providing that those products covered by the Order need not also conform to the default standards that might otherwise apply to them. This is because the Order represents an acceptable standard for the safety and quality of unregistered nicotine vaping products in Australia. The default standards, however, will continue to apply to any nicotine vaping product that may be registered in the Australian Register of Therapeutic Goods.</p>	

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 tables below outline the expenditure specified in legislative instruments registered between 10 April 2021 and 21 May 2021.

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

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.

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 2) Regulations 2021 [F2021L00574]	Underwater Cultural Heritage Program	\$510,000 per year through three-year service level agreements	To provide grants of financial assistance to each state and the Northern Territory to protect and conserve Australia's underwater cultural heritage. The protected underwater cultural heritage includes shipwrecks, sunken aircraft and other submerged sites, along with individual artefacts associated with these sites.	Senate Environment and Communications Legislation Committee
	Indigenous Rangers Biosecurity Program	\$25.3 million over three years from 2020-21	To support increased economic opportunities for Indigenous persons, entities and communities through activities that enhance biosecurity outcomes in northern Australia.	Senate Rural and Regional Affairs and Transport Legislation Committee
	Indigenous Rangers Coastal Clean-Ups Project	Up to \$14.8 million over four years from 2020-21	To facilitate economic opportunities for Aboriginal and Torres Strait Islander peoples by increasing the capacity and number of Indigenous rangers engaged in coastal clean-ups in northern Australia, with a focus on the Gulf of Carpentaria; target marine plastic pollution; and promote Australia's Indigenous peoples' ongoing stewardship of land and water	Senate Environment and Communications Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2021 [F2021L00576]	Grant to Odyssey House NSW	\$1.5 million in 2020-21	To provide funding to Odyssey House NSW to assist with the development of a new facility by the construction of buildings at Eagle Vale, New South Wales, for the expansion of the Parent's and Children's Program to provide treatment and support services for drug and alcohol use.	Senate Community Affairs Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 1) Regulations 2021 [F2021L00576]	National Memorial for Victims and Survivors of Institutional Child Sexual Abuse	\$6.7 million over four years from 2020-21	To provide for the establishment of the National Memorial for Victims and Survivors of Institutional Child Sexual Abuse. This will include support to hold a ceremony to announce the design and future site of the National Memorial, hold a commemorative ceremony to mark the opening of the National Memorial, assist key stakeholders to attend the ceremonies, and establish and maintain a commemorative and educative website to complement the National Memorial.	Senate Community Affairs Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 1) Regulations 2021 [F2021L00575]	South Asia Regional Training and Technical Assistance Centre	\$2.5 million over five years from 2021-22	To assist South Asian countries to design and implement policies that promote economic growth and reduce poverty.	Senate Economics Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Veterans' Affairs Measures No. 1) Regulations 2021 [F2021L00578]	Grant to The Royal Australian and New Zealand College of Psychiatrists	\$5.5 million over four years from 2020-21	To provide funding to The Royal Australian and New Zealand College of Psychiatrists for military and veteran mental health psychiatry training positions to increase the availability of mental health support services for defence force members and veterans and their families. The objective of the training program is to strengthen the psychiatry workforce capability and improve access to psychiatrists with specialised training in military and veteran mental health.	Senate Foreign Affairs, Defence and Trade Legislation Committee
Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567]	Beetaloo Cooperative Drilling Program	\$50 million	The purpose of the Program is to encourage and facilitate accelerated gas exploration in the Beetaloo sub-basin through the provision of grants. The Program will support the development of the Northern Territory gas industry while building on the Australian Government's commitment to unlocking gas supply and contributing to gas security across Australia.	Senate Economics Legislation Committee
Industry Research and Development (Carbon Capture, Use and Storage Development Program) Instrument 2021 [F2021L00547]	Carbon Capture, Use and Storage Development Program	\$50 million	The Program provides \$50 million as part of the Australian Government's commitment to accelerate the deployment of carbon capture, use and storage (CCUS) technologies in Australia towards commercial operations. In particular, the Program provides funding to support pilot projects and pre-commercial activities for the capture of carbon dioxide for subsequent use or storage or the use or storage of carbon dioxide. Key activities the Program seeks to support include:	Senate Environment and Communications Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<ul style="list-style-type: none"> Fostering of pilot CCUS projects or technologies that could expand into a regional CCUS hub in the near future, and bring together a network of multiple greenhouse gas emitters in close proximity for large-scale abatement; Research, development or demonstration projects that use or transform carbon dioxide to create carbon-derived or low-carbon products, including fuels, chemical and building materials; Pre-commercial activities in developing CCUS infrastructure; or Retrofitting of CCUS to new or existing assets to reduce emissions from new or ongoing processes. 	
Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument 2021 [F2021L00536]	Growing Australia's Cyber Skills Program	\$35.2 million over four years from 2020-21	<p>The Program consists of two elements: the Cyber Security Skills Partnership Innovation Fund and the Questacon Cyber Ready Stream.</p> <p>The Cyber Security Skills Partnerships Innovation Fund is a \$26.5 million grants program forming part of the Australian Government's commitment to increase the quality and quantity of cyber security professionals in Australia, including increasing the participation of women in cyber security.</p> <p>The Questacon Cyber Ready Stream includes funding of \$8.7 million for Questacon to deliver the following programs:</p> <ul style="list-style-type: none"> Questacon Cyber Learning Master Academy: a pilot program for in-field STEM teachers; Questacon Cyber Squad: a pilot program for non-STEM and out-of-field teachers; Cyber Program Support: portable resources for family 	Senate Economics Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<p>and student engagement, based on existing Questacon assets including exhibits and maths puzzles;</p> <ul style="list-style-type: none"> • Questacon Cyber STEM Leaders: a national leaders forum and minds in residence program; • National Cyber Design Challenge: a national cyber design challenge for young people aged 8-13. 	
Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]	Modern Manufacturing Initiative Program	\$1.3 billion over four years from 2020-21	<p>The purpose of the Program is to stimulate business investment in the manufacturing sector by addressing barriers to scale and competitiveness for Australian businesses. It aims to build manufacturing capabilities and networks, lift productivity, create jobs, build global competitiveness and boost the export potential of Australian businesses. Funding will be provided through grants on a co-investment basis.</p> <p>Funding is available through three streams:</p> <ul style="list-style-type: none"> • The Manufacturing Collaboration Stream will support manufacturing collaboration at scale. This stream seeks to bring together businesses, researchers and investors, to build business confidence during the current crisis, aid our job recovery, and stimulate much needed investment. • The Manufacturing Translation Stream will support projects that aid the translation of high quality research and ideas into commercial outcomes and support businesses to scale-up and become more competitive and resilient. It will support businesses to adopt new technologies and improve their manufacturing processes to boost productivity and competitiveness. 	Senate Economics Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<ul style="list-style-type: none"> The Manufacturing Integration Stream will target the integration of local businesses with domestic and international firms to facilitate the delivery of products and services into domestic and global value chains. By enhancing integration into domestic and global value chains, businesses can experience increased productivity, innovation, and collaboration, as well as exposure to new technologies, processes and skills. 	
Industry Research and Development (National Agricultural Innovation Agenda Program) Instrument 2021 [F2021L00561]	National Agricultural Innovation Agenda Program	\$1.3 million	<p>The Program initially provides \$1.3 million (GST exclusive) as part of the Australian Government’s commitment to provide funding to Agricultural Innovation Australia Ltd to assist it to undertake its activities in relation to developing research and development investment strategies and funding research and development projects identified by such strategies.</p> <p>The purpose of the Program is to invest in research and development that addresses significant issues affecting a number of agricultural sectors, and that supports increased sustainability, productivity and profitability.</p>	Senate Rural and Regional Affairs and Transport Legislation Committee

Senator the Hon Concetta Fierravanti-Wells
Chair

Appendix A

New matters

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

Ministerial engagement

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

Instrument	Issue	Status
Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]²	Principle (b) implied freedom of political communication Principle (c) conferral of discretionary powers Principle (e) clarity of drafting	Seeking advice from the Assistant Treasurer.
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]	Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight	Seeking advice from the minister.

1 See www.aph.gov.au/senate_sd/c.

2 Note this instrument was registered on 28 June 2021.

Agency engagement

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

Instrument	Issue	Status
Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No.1) [F2021L00543]	Principle (a) compliance with authorising legislation	Seeking advice from the agency.
CASA 30/21 – Required Communication Performance and Required Surveillance Performance (RCP 240 and RSP 180) Capability Declarations – Direction 2021 [F2021L00504]	Principle (a) compliance with <i>Legislation Act 2003</i> - manner of incorporation	Concluded following response from the agency on 09/07/2021. The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Greenhouse and Energy Minimum Standards (Authorisation Requirements for Testing GEMS Products) Instrument 2021 [F2021L00569]	Principle (d) consultation on specific instrument Principle (d) consultation with persons affected	Seeking advice from the agency.
Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]	Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation	Seeking advice from the agency.
Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567]	Principle (c) conferral of discretionary powers Principle (k) parliamentary oversight	Seeking advice from the agency.
Industry Research and Development (Carbon Capture, Use and Storage Development Program) Instrument 2021 [F2021L00547]	Principle (c) conferral of discretionary powers Principle (k) parliamentary oversight	Seeking advice from the agency.
Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument 2021 [F2021L00536]	Principle (c) conferral of discretionary powers Principle (k) parliamentary oversight	Seeking advice from the agency.
Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]	Principle (c) conferral of discretionary powers Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight	Seeking advice from the agency.

Instrument	Issue	Status
Industry Research and Development (National Agricultural Innovation Agenda Program) Instrument 2021 [F2021L00561]	Principle (c) conferral of discretionary powers Principle (k) parliamentary oversight	Seeking advice from the agency.
Inspector-General of the Australian Defence Force Amendment Regulations 2021 [F2021L00591]	Principle (a) compliance with <i>Legislation Act 2003</i> - retrospective application Principle (h) privacy	Seeking advice from the agency.
Norfolk Island Applied Laws Amendment (Suspension) Ordinance 2021 [F2021L00587]	Principle (a) compliance with <i>Legislation Act 2003</i> - consultation	Seeking advice from the agency.
Therapeutic Goods Legislation Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00450]	Principle (f) incorporated materials freely accessible	Seeking advice from the agency.
Vehicle Standard (Australian Design Rule) Amendment Instrument 2021 (No.1) [F2021L00570]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Seeking advice from the agency.

Appendix B

Ongoing matters

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

Ministerial engagement

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

Instrument	Issue	Status
Aged Care Legislation Amendment (Serious Incident Response Scheme) Instrument 2021 [F2021L00222]	Principle (j) significant matters in delegated legislation Principle (k) parliamentary oversight	Seeking further advice from the minister.
Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]	Principle (e) clarity of drafting Principle (j) matters more appropriate for parliamentary enactment	Seeking further advice from the minister. Notice of motion to disallow placed on 11/05/2021.
Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590]²	Principle (a) compliance with authorising legislation Principle (d) consultation with persons affected Principle (j) significant matters in delegated legislation	Seeking advice from the minister.
Bankruptcy Regulations 2021 [F2021L00261]	Principle (j) modifications to primary legislation Principle (k) parliamentary oversight	Seeking further advice from the Assistant Minister to the Attorney-General.

1 See www.aph.gov.au/senate_sdlc.

2 Note this instrument was disallowed in the Senate on 22 June 2021.

Instrument	Issue	Status
Export Control (Wood and Woodchips) Rules 2021 [F2021L00318]	Principle (c) conferral of discretionary powers Principle (k) parliamentary oversight	Seeking advice from the minister.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 2) Regulations 2021 [F2021L00409]	Principle (k) parliamentary oversight	Seeking advice from the minister.
High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021 [F2021L00391]	Principle (c) conferral of discretionary powers Principle (e) clarity of drafting Principle (g) adequacy of explanatory materials	Seeking advice from the Chief Executive and Principal Registrar of the High Court of Australia.
Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021 [F2021L00277]	Principle (d) adequacy of consultation Principle (k) parliamentary oversight - sunseting	Seeking advice from the Assistant Minister to the Attorney-General.
Paid Parental Leave Rules 2021 [F2021L00384]	Principle (e) clarity of drafting Principle (g) adequacy of explanatory materials Principle (h) privacy Principle (j) modifications to primary legislation Principle (k) parliamentary oversight	Seeking advice from the minister.

Agency engagement

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

Instrument	Issue	Status
Aged Care Legislation Amendment (Aged Care Recipient Classification) Principles 2021 [F2021L00357]	Principle (c) delegation of administrative powers and functions	Seeking further advice from the agency.
Banking Executive Accountability Regime (Size of an Authorised Deposit-taking Institution) Determination 2021 [F2021L00425]	Principle (a) compliance with the <i>Legislation Act 2003</i> - incorporation	Seeking advice from the agency.

Appendix C

Concluded matters

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

Ministerial engagement

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

Instrument	Issue	Status
Radiocommunications (Spectrum Access Charges – 20 GHz and 30 GHz Bands) Determination 2021 [F2021L00230]	Principle (k) parliamentary oversight	<p>Concluded following response from the minister on 30/06/2021.</p> <p>The Minister for Communications, Urban Infrastructure, Cities and the Arts advised that the Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021 [F2021L00292]	Principle (h) privacy	<p>Concluded following response from the minister on 30/06/2021.</p> <p>The Minister for Indigenous Australians undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
Student Assistance Regulations 2021 [F2021L00201]	<p>Principle (e) clarity of drafting</p> <p>Principle (k) parliamentary oversight</p> <p>Principle (k) legal certainty</p>	<p>Concluded following response from the minister on 07/07/2021.</p> <p>The Minister for Families and Social Services undertook to amend the instrument in response to the committee's scrutiny concerns.</p> <p>The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>

¹ See www.aph.gov.au/senate_sdlc.

Agency engagement

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

Instrument	Issue	Status
CASA 22/21 — Operation of Certain Unmanned Aircraft Directions Amendment Instrument 2021 [F2021L00414]	Principle (d) consultation on specific instrument	Concluded following response from the agency on 24/06/2021.
CASA 30/21 – Required Communication Performance and Required Surveillance Performance (RCP 240 and RSP 180) Capability Declarations – Direction 2021 [F2021L00504]	Principle (a) compliance with <i>Legislation Act 2003</i> - manner of incorporation	Concluded following response from the agency on 09/07/2021. The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Export Control (Eggs and Egg Products) Rules 2021 [F2021L00312]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 02/07/2021. 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.
Export Control (Fish and Fish Products) Rules 2021 [F2021L00317]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 02/07/2021. 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.
Export Control (Meat and Meat Products) Rules 2021 [F2021L00334]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 02/07/2021. 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.
Export Control (Milk and Milk Products) Rules 2021 [F2021L00304]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 02/07/2021. 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.

Instrument	Issue	Status
Export Control (Plants and Plant Products) Rules 2021 [F2021L00315]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 02/07/2021. 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.
Export Control (Poultry Meat and Poultry Meat Products) Rules 2021 [F2021L00310]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 02/07/2021. 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.
Export Control (Rabbit and Ratite Meat and Rabbit and Ratite Meat Products) Rules 2021 [F2021L00308]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 02/07/2021. 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.
Export Control (Wild Game Meat and Wild Game Meat Products) Rules 2021 [F2021L00313]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 02/07/2021. 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.
Income Tax Assessment (1997 Act) Regulations 2021 [F2021L00206]	Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation Principle (g) adequacy of explanatory materials Principle (h) privacy Principle (j) significant penalties in delegated legislation	Concluded following response from the agency on 18/06/2021. The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2021 (No. 3) (PB 22 of 2021) [F2021L00396]	Principle (f) access and use	Concluded following response from the agency on 25/06/2021. The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.

Instrument	Issue	Status
Road Vehicle Standards Amendment (2021 Measures No. 1) Rules 2021 [F2021L00376]	Principle (i) availability of independent merits review	Concluded following response from the agency on 25/06/2021. The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Taxation Administration Amendment (Updating the List of Exchange of Information Countries) Regulations 2021 [F2021L00410]	Principle (h) privacy	Concluded following response from the agency on 23/06/2021.
Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021 [F2021L00412]	Principle (c) conferral of discretionary powers Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 24/06/2021. The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.

Appendix D

Undertakings

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

Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
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
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	The Minister for the Environment advised that the Reserve Bank of Australia undertook to amend the instrument in response to the committee's scrutiny concerns.	01/12/2020
Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]	The Assistant Minister to the Attorney-General undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/02/2021
Amendment of List of Exempt Native Specimens – Commission for the Conservation of Antarctic Marine Living Resources Exploratory Fisheries in Statistical Divisions 58.4.1 and 58.4.2 (the East Antarctica Fishery) and Statistical Subareas 88.1 and 88.2 (the Ross Sea Fishery), November 2020 [F2020L01484]	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.	15/02/2021
Treasury portfolio – various instruments	The Treasurer undertook to continue to engage with the committee in good faith to seek a resolution to the committee's systemic concerns regarding the duration of instruments which provide for exemptions or modifications to primary legislation.	18/02/2021

Instrument	Undertaking	Date of Undertaking
Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]	The Department of Agriculture, Water Resources and the Environment undertook to revoke the instrument in response to the committee's scrutiny concerns.	16/03/2021
Industry Research and Development (Digital Directors Program) Instrument 2020 [F2020L01554]	The Department of Industry, Science, Energy and Resources undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/04/2021
Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]	The Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	09/04/2021
Commonwealth Grant Scheme Guidelines 2020 [F2020L01609]	The Minister for Education and Youth undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/04/2021
Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020 [F2020L01614]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	20/04/2021
Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005 Amendment 11 [F2021L00063]	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	22/04/2021
Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 [F2020L01568]	The Treasurer undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27/04/2021
Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2021 [F2021L00178]	The Greenhouse and Energy Minimum Standards Regulator undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/05/2021
CASA EX16/21 — CASR Subpart 99.B DAMP Requirements for Foreign Air Transport AOC Holders Exemption 2021 [F2021L00149]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	10/05/2021
Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	21/05/2021
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 10) 2021 [F2021L00305]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/06/2021

Instrument	Undertaking	Date of Undertaking
Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021 [F2021L00243]	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.	04/06/2021
Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	08/06/2021
Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]	The Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	16/06/2021
Income Tax Assessment (1997 Act) Regulations 2021 [F2021L00206]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/06/2021
Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021 [F2021L00412]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	24/06/2021
Road Vehicle Standards Amendment (2021 Measures No. 1) Rules 2021 [F2021L00376]	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/06/2021
Radiocommunications (Spectrum Access Charges – 20 GHz and 30 GHz Bands) Determination 2021 [F2021L00230]	The Minister for Communications, Urban Infrastructure, Cities and the Arts advised that the Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	30/06/2021
Export Control Rules 2021 - various instruments [F2021L00312] [F2021L00317] [F2021L00334] [F2021L00304] [F2021L00315] [F2021L00310] [F2021L00308] [F2021L00313]	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	02/07/2021
Student Assistance Regulations 2021 [F2021L00201]	The Minister for Families and Social Services undertook to amend the instrument in response to the committee's scrutiny concerns. The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/07/2021

Instrument	Undertaking	Date of Undertaking
CASA 30/21 – Required Communication Performance and Required Surveillance Performance (RCP 240 and RSP 180) Capability Declarations – Direction 2021 [F2021L00504]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/07/2021

Implemented undertakings

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

Instrument	Undertaking	Date implemented
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2021 (No. 3) (PB 22 of 2021) [F2021L00396]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/06/2021
Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]	The Civil Aviation Safety Authority amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	28/06/2021
ASIC Market Integrity Rules (Securities Markets) Determination 2021/135 [F2021L00193] ASIC Market Integrity Rules (Securities Markets) Repeal Instrument 2021/136 [F2021L00194]	The Australian Securities and Investments Commission amended the explanatory statements to the instruments in response to the committee's scrutiny concerns.	01/07/2021
Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021 [F2021L00292]	The Minister for Indigenous Australians amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	02/07/2021
Telecommunications (Fibre-ready Facilities — Exempt Real Estate Development Projects) Instrument 2021 [F2021L00105]	The Minister for Communications, Urban Infrastructure, Cities and the Arts amended the instrument in response to the committee's scrutiny concerns.	06/07/2021
Competition and Consumer (Consumer Data Right) Amendment Rules (No. 3) 2020 [F2020L01688]	The Australia Competition and Consumer Commission amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/07/2021
Regional Investment Corporation (Agristarter Loans) Amendment Rule 2020 [F2020L01625]	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.	07/07/2021