

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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Contents

Membership of the committee	iii
Introduction.....	vii
<i>Report snapshot</i>	<i>xi</i>
Part I—Technical legislative scrutiny	1
Chapter 1 : New and ongoing matters	3
Chapter 2 : Concluded matters	5
Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024	5
Chapter 3 : Agency engagement	11
<i>New matters</i>	<i>11</i>
<i>Concluded matters</i>	<i>12</i>
Chapter 4 : Undertakings	13
<i>New undertakings</i>	<i>13</i>
<i>Implemented undertakings</i>	<i>14</i>
<i>Outstanding undertakings</i>	<i>15</i>
Part II—Matters of interest to the Senate	19
Chapter 5 Expenditure and taxation in delegated legislation	21
<i>Commonwealth expenditure</i>	<i>21</i>
Chapter 6 : Exemptions from disallowance and sunseting	23
<i>Exemptions from disallowance</i>	<i>23</i>
<i>Exemptions from sunseting</i>	<i>25</i>

Introduction

The Senate Standing Committee for the Scrutiny of Delegated Legislation, formerly the Senate Standing Committee on Regulations and Ordinances, was established in 1932. The role of the committee is to examine the technical qualities of all legislative instruments, and to decide whether they comply with the committee's non-partisan scrutiny principles or otherwise give rise to matters of interest to the Senate.

The *Delegated Legislation Monitor* (the Monitor) details the committee's views in relation to its technical scrutiny of legislative instruments registered on the Federal Register of Legislation. Part I of the Monitor details the committee's scrutiny concerns arising under the technical scrutiny principles set out in Senate standing order 23(3), extracted below. Part II of the Monitor details matters which the committee has resolved to draw to the attention of the Senate under standing order 23(4).

Committee information

Terms of reference

The committee's technical 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;
- (k) in the case of an instrument exempt from sunset, it is appropriate for the instrument to be exempt from sunset;

- (l) in the case of an instrument that amends or modifies the operation of primary legislation, or exempts persons or entities from the operation of primary legislation, the instrument is in force only for as long as is strictly necessary; and
- (m) it complies with any other ground relating to the technical scrutiny of delegated legislation that the committee considers appropriate.

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

Senate standing order 23(4A) further provides that the committee may, for the purpose of reporting on its terms of reference, consider instruments made under the authority of Acts of the Parliament that are not subject to disallowance. The committee may also consider whether it is appropriate for such instruments to be exempt from disallowance.

Nature of the committee's scrutiny

Technical legislative scrutiny

The committee operates on a non-partisan basis to scrutinise delegated legislation made by the executive branch of government against its technical scrutiny principles.

Resolving minor technical scrutiny concerns

After scrutinising a legislative instrument, the committee may initially engage in informal correspondence with agencies via its secretariat to gather information or seek clarification to identify and resolve minor technical scrutiny concerns. This engagement with agencies 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; however, the relevant instruments are listed on the committee's website and in Chapter 3 of the Monitor.

Resolving significant technical scrutiny concerns

Where the committee considers that an instrument raises significant technical scrutiny concerns, it details its concerns in Part I of the Monitor for the benefit of the Senate in its oversight of delegated law-making powers. The committee generally seeks a formal response from the relevant minister in relation to concerns set out in this Part; however, in some circumstances the committee may report its scrutiny concerns to the Senate without seeking further information from the minister.

Undertakings

As a result of raising its scrutiny concerns with the relevant minister or agency, the committee may seek an undertaking for specific action to address its scrutiny concerns. The committee summarises outstanding and implemented undertakings in

Chapter 4 of the Monitor. The committee will record relevant undertakings on the [Index of Undertakings](#) on its website.

Matters of interest to the Senate

The committee does not scrutinise the policy merits of delegated legislation. If the committee determines that an instrument raises significant issues, or otherwise gives rise to issues likely to be of interest to the Senate under standing order 23(4), it may draw these instruments to the attention of the Senate in Part II of the Monitor.

Disallowance process¹

The disallowance process is one of the key mechanisms by which Parliament exercises control over delegated legislation. The conditions for the disallowance process are set out in the *Legislation Act 2003* and are reflected in Senate standing order 78.

The committee will give a 'protective' notice of motion to disallow an instrument where it is unable to conclude its consideration of an instrument before the original disallowance period expires. In addition, the committee may give such a notice where the committee requires an undertaking to be implemented before it can conclude its consideration of the instrument. The committee will usually withdraw a 'protective' notice when it receives a satisfactory response to its scrutiny concerns or confirmation that any outstanding undertakings have been implemented.

The committee may also give a notice of motion to disallow an instrument where it considers that the instrument raises significant and unresolved scrutiny concerns, and the committee has therefore resolved to recommend to the Senate that the instrument be disallowed. In these circumstances, the committee will detail its significant scrutiny concerns in Chapter 1 of the Monitor.

Publications

Delegated Legislation Monitor

The committee's usual practice is to table its [Delegated Legislation Monitor](#) each Senate sitting week. Legislative instruments detailed in the Monitor are also listed in the [Index of Instruments](#) on the committee's website.

Scrutiny News

[Scrutiny News](#) is a brief newsletter summarising significant matters arising in the Monitor, as well as in the reports of the Senate Standing Committee for the Scrutiny of Bills. Past editions, and information about subscribing to the mailing list, are available on the Scrutiny of Bills Committee's website.

¹ For further information on the disallowance process see [Odgers' Australian Senate Practice](#) and [Guide to Senate Procedure No. 19 - Disallowance](#).

Guidelines

[Guidelines](#) relating to the committee's scrutiny principles are published on the committee's website.

Other resources

Ministerial responses to the committee's concerns can be accessed on the committee's website through either the [Delegated Legislation Monitors](#) webpage or the [Index of Instruments](#).

The [Federal Register of Legislation](#) should be consulted for the text of instruments, explanatory statements, and associated information.

The [Senate Disallowable Instruments List](#) provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.

The [Disallowance Alert](#) records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.

Report snapshot²

Scrutiny period	
Legislative instruments registered on the Federal Register of Legislation between 23 July and 15 August 2024	69
Instruments in this period exempt from disallowance	12
Chapter 1: New and ongoing matters	
New legislative instruments commented on in report	0
Ongoing legislative instruments commented on in report	0
Chapter 2: Concluded matters	
Legislative instruments of which the committee has concluded its examination following receipt of ministerial response	1
Chapter 3: Agency engagement	
New legislative instruments where the committee engaged with the relevant agency via its secretariat	15
Legislative instruments of which the committee has concluded its examination following receipt of agency response	5
Chapter 4: Undertakings	
New undertakings made by ministers or agencies to address the committee's scrutiny concerns	7
Undertakings which the committee was made aware had been implemented during this period	4
Outstanding undertakings	21
Chapter 5: Scrutiny of Commonwealth expenditure	
Advance to the Finance Minister determinations	0
Instruments specifying Commonwealth expenditure under the <i>Financial Framework (Supplementary Powers) Act 1997</i> and the <i>Industry Research and Development Act 1986</i>	5
Levy of taxation in delegated legislation	0
Chapter 6: Exemptions from disallowance and sunseting	
Instruments that do not meet the committee's expectations regarding exemptions from disallowance under standing order 23(4A)	8
Instruments that do not meet the committee's expectations regarding exemptions from sunseting under standing order 23(3)(k)	11

² This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Report snapshot, *Delegated Legislation Monitor 11 of 2024*; [2024] AUSStaCSDLM 102.

Part I—Technical legislative scrutiny

Chapter 1

New and ongoing matters

1.1 This Chapter details the committee's significant new and ongoing scrutiny concerns in legislative instruments relating to the committee's technical legislative scrutiny principles in Senate standing order 23(3).

1.2 The committee resolved not to raise significant technical scrutiny concerns in relation to any instrument registered in this period or to request further information from relevant ministers about its technical scrutiny concerns in relation to ongoing matters.

Chapter 2

Concluded matters

2.1 This Chapter details the committee's concluding comments on significant technical scrutiny issues in legislative instruments relating to the committee's principles in Senate standing order 23(3).

Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024¹

FRL No.	F2024L00491
Purpose	The purpose of the instrument is to regulate mixed waste paper and cardboard that is exported from Australia. The instrument imposes requirements that, from 1 October 2024, exporters hold a waste paper and cardboard export licence and make an export declaration for each consignment of regulated waste paper and cardboard that is to be exported.
Authorising legislation	<i>Recycling and Waste Reduction Act 2020</i>
Portfolio	Department of Climate Change, Energy, the Environment and Water
Disallowance	15 sitting days after tabling (tabled in the Senate on 14 May 2024). Committee gave notice of motion to disallow on 19 August 2024.

Overview

2.2 The Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024 (the instrument) regulate the export of mixed waste paper and cardboard from Australia. The instrument imposes requirements that, from 1 October 2024, exporters hold a waste paper and cardboard export licence and make an export declaration for each consignment of regulated waste paper and cardboard that is to be exported.

2.3 The instrument also provides for mandatory and non-mandatory matters which the minister must or may have regard to in determining whether to grant, renew, vary, suspend or revoke an export licence, imposing conditions for an export licence, and deciding whether to give a direction to the holder of an export licence.

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024, *Delegated Legislation Monitor 11 of 2024*; [2024] AUSStaCSDLM 103.

The instrument also imposes obligations on licence holders, including requirements for record-keeping and notifying the minister of certain events.

2.4 The committee first raised scrutiny concerns with this instrument on 26 June 2024, in *Delegated Legislation Monitor 6 of 2024*,² and the minister provided a response dated 13 August 2024.³ The committee raised further concerns on 21 August 2024 in *Delegated Legislation Monitor 9 of 2024*,⁴ to which the minister provided a response on 10 September 2024.⁵

Scrutiny concerns

Conferral of discretionary powers;⁶ adequacy of explanatory materials⁷

2.5 In *Delegated Legislation Monitors 6 and 9 of 2024*,⁸ the committee sought the minister's advice about the broad, discretionary power in subsection 21(3) of the instrument.

2.6 Under section 21 of the instrument, a fee charged for a waste paper and cardboard export licence, renewal or variation is taken to have been paid if the minister has accepted an undertaking to pay that fee. Under subsection 21(3), the minister must not accept such an undertaking unless the minister has considered a number of factors including 'any other matter' they consider relevant.

2.7 As neither the instrument nor its explanatory statement defines 'any other matter' or provides guidance on the types of matters that may be considered relevant, the committee sought the minister's advice about what factors may be taken into account by the minister, whether examples could be provided and whether there were any safeguards or limitations on this broad discretion.⁹

2.8 The minister's initial response advised that the matters to be taken into account under this provision go to the applicant's financial position, their ability to pay the liability in accordance with the undertaking and that the discretion to consider 'any

² Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 6 of 2024](#) (26 June 2024), pp. 3-9.

³ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation.

⁴ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 9 of 2024](#) (21 August 2024), pp. 3-12.

⁵ This correspondence was tabled with this monitor and will be available via the [Delegated Legislation Monitors](#) page on the committee's website.

⁶ Senate standing order 23(3)(c).

⁷ Senate standing order 23(3)(g).

⁸ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 6 of 2024](#) (26 June 2024), pp. 4-5; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 9 of 2024](#) (21 August 2024), pp. 4-6.

⁹ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 6 of 2024](#) (26 June 2024), pp. 4-5.

other matter' is constrained by principles of administrative law and statutory interpretation enabling only relevant considerations to be taken into account. However, the committee noted that these are general principles of administrative law applying to all discretionary decisions under legislation and do not provide clarity around the discretion, nor operate as adequate safeguards on the exercise of the broad powers. The minister also advised that other relevant factors under this provision may be unique to an individual case and are not easily identifiable or appropriate for inclusion in the instrument.

2.9 While noting this, the committee considered that the reference to the applicant's financial position appeared to simply restate the contents of subsection 21(3), and that a detailed explanation or guidance in the explanatory statement as to the kinds of matters that might be relevant would give users of the law guidance as to their rights and obligations under the discretionary provision.

2.10 Accordingly, the committee sought the minister's further advice as to whether substantive guidance could be provided in relation to the factors that can be taken into account in determining 'any other matters' under subsection 21(3) of the instrument and/or specific examples of what these matters may include.

Minister's response¹⁰

2.11 In her correspondence of 10 September 2024, the minister restated her previous advice that the criteria under subsection 21(3) go to a person's ability to pay their liability and that the factors to be considered may be unique to an individual case.

2.12 However, the minister also provided the following examples of some matters that may be relevant under subsection 21(3):

- the amount of the outstanding liability;
- the reason the liability has not been paid;
- the person's financial history under the *Recycling and Waste Reduction Act 2020*, including whether they have previously had outstanding liabilities or have made or complied with a payment undertaking;
- the purpose of the export operations to which the application relates and whether those operations are in the public or national interest;
- any written policy of the Australian Government in relation to the treatment of outstanding liabilities;
- Australia's international obligations; and
- Australia's relations with the importing country.

¹⁰ This correspondence was tabled with this monitor and will be available via the [Delegated Legislation Monitors](#) page on the committee's website.

2.13 The minister gave an undertaking to amend the instrument's explanatory statement to include the information provided in this response and, where relevant, in her previous response.

Committee view

2.14 The committee thanks the minister for her engagement on this matter and for providing examples of relevant matters for the purpose of 'any other matter' the minister may consider relevant under subsection 21(3) of the instrument. The committee also welcomes the minister's undertaking to amend the explanatory statement with this information.

2.15 The committee acknowledges the minister's advice that this provision enables other factors to be considered which may be unique to individual cases, and are not easily identifiable or appropriate to set out in the rules. The committee notes that it does not expect an exhaustive list of factors or considerations to be included in explanatory materials, but does consider that the inclusion of the examples of relevant matters provided by the minister will provide users of the law with some level of substantive guidance as to the content of the law, and therefore give some guidance as to their rights and obligations under this discretionary provision.

2.16 In light of the minister's advice about the relevant matters that may be taken into account in determining 'any other matters' under subsection 21(3) of the instrument and the minister's undertaking to amend the explanatory statement, the committee concludes its examination of the instrument in relation to this issue.

Privacy¹¹

2.17 Section 19 of the instrument sets out record-keeping requirements applying to the holder of a waste paper and cardboard export licence. Specifically, subsection 19(1) requires the holder of a waste paper and cardboard export licence to make and retain the following records:

- the export declaration made for each consignment of regulated waste paper and cardboard, evidence supporting the matters stated in the declaration, and photographs of the paper and cardboard in the consignment and of the consignment once packed for export;
- a copy of the receipt for payment for the consignment issued by the holder to the importer or end user of the consignment; and
- each other document, made by the holder or that comes into their possession, that is relevant to showing whether they have or are complying with the relevant requirements of the Act.

¹¹ Senate standing order 23(3)(h).

2.18 Subsection 19(2) of the instrument requires these records to be retained for at least 5 years, beginning on the day the record is made by the licence holder or comes into the licence holder's possession.

2.19 In *Delegated Legislation Monitor 6 of 2024*,¹² the committee sought the minister's advice about the nature and scope of any personal information collected under the instrument and applicable safeguards.

2.20 The minister previously confirmed that, although it was not anticipated that personal information other than a licence holder's name and personal contact details would be required to be retained under section 19, it was possible that some other personal information may be inadvertently retained and audited or required to be provided to the minister. Further, where a licence holder was an individual, the Australian Privacy Principles in the *Privacy Act 1988* (the Privacy Act) would apply to any personal information collected under section 19 and any information collected under the Act must be managed consistently with the Department's Privacy Policy.

2.21 In *Delegated Legislation Monitor 9 of 2024*,¹³ the committee noted that inclusion of this information in the instrument's explanatory statement would be helpful, particularly given the potential impact on the rights of individuals and the committee's expectations regarding privacy protections. Therefore, the committee sought the minister's additional advice as to whether the instrument's explanatory statement could be amended to include the detail provided by the minister regarding the nature, scope, and safeguards applying to personal information collected under the instrument.

*Minister's response*¹⁴

2.22 In response to the committee's request for advice, the minister gave an undertaking to amend the explanatory statement to include the details she had previously provided regarding the nature and scope of personal information that may be collected under the instrument and applicable privacy protections, including application of the Privacy Act.

Committee view

2.23 The committee welcomes the minister's undertaking to amend the explanatory statement to include the information provided in the minister's response regarding the nature, scope and privacy protections applying to personal information collected under the instrument.

¹² Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 6 of 2024](#) (26 June 2024), pp. 7-8.

¹³ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 9 of 2024](#) (21 August 2024), pp. 9-10.

¹⁴ This correspondence was tabled with this monitor and will be available via the [Delegated Legislation Monitors](#) page on the committee's website.

2.24 In light of the minister's undertaking to amend the explanatory statement, the committee concludes its examination of this issue.

2.25 In addition, the committee concludes its examination of the instrument and has resolved to withdraw the notice of motion to disallow the instrument.

Chapter 3

Agency engagement¹

3.1 As part of its technical scrutiny of legislative instruments, the committee may engage with relevant agencies via its secretariat to gather information or seek clarification to resolve minor technical scrutiny concerns. While this correspondence is confidential, the committee lists the relevant instruments on its website and provides a statistical overview of the relevant scrutiny issues raised in its Annual Reports. The committee reports on matters which cannot be satisfactorily resolved via engagement with the relevant agency in Chapter 1 of the Monitor.

3.2 Some instruments may be listed as both 'new' and 'concluded', where the committee via its secretariat has both raised and resolved concerns with the relevant agency in the period covered by the Monitor.

New matters

3.3 The committee commenced engaging with the relevant agency via its secretariat about the following instruments.² Engagement on instruments marked with an asterisk was on an advice only basis.

Instrument

CASA EX46/24 – Amendment of CASA EX82/21 – Instrument 2024 (No. 1) [F2024L00979]*

CASA EX47/24 – Amendment of CASA EX86/21 – Instrument 2024 (No. 1) [F2024L00980]*

Discovery Program Grant Guidelines – Fellowships (2024 edition) [F2024L00972]

Discovery Program Grant Guidelines (2024 edition): Discovery Indigenous [F2024L00976]

Discovery Program Grant Guidelines (2024 edition): Discovery Projects [F2024L00974]

Industry Fellowships Program (IFP) Grant Guidelines (2024 edition) [F2024L00975]

Linkage Program Grant Guidelines (2024 edition) ARC Centres of Excellence [F2024L00971]

Linkage Program Grant Guidelines (2024 edition) Industrial Transformation Research Program (ITRP)
Industrial Transformation Research Hubs Industrial Transformation Training Centres [F2024L00977]

Linkage Program Grant Guidelines (2024 edition): Linkage Projects [F2024L00969]

Linkage Program Grant Guidelines (2024 edition, second edition): Linkage Infrastructure, Equipment and Facilities [F2024L00978]

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Agency engagement, *Delegated Legislation Monitor 11 of 2024*; [2024] AUSStaCSDLM 104.

² For further details, see the [Index of Instruments](#) page on the committee's website.

Instrument

Ozone Protection and Synthetic Greenhouse Gas Management (Extinguishing Agent Handling Licences—Qualifications and Standards) Determination 2024 [F2024L00945]

Ozone Protection and Synthetic Greenhouse Gas Management (Refrigerant Handling Licences—Qualifications and Standards) Determination 2024 [F2024L00944]

Petroleum Resource Rent Tax Assessment Regulations 2024 [F2024L00964]

Public Governance, Performance and Accountability Amendment (Law Enforcement Agencies) Rules 2024 [F2024L00983]

Veterans' Entitlements (Family Law Affected Income Streams) Principles Amendment (Military Invalidation Payments) Instrument 2024 [F2024L00962]

Concluded matters

3.4 The committee has concluded its consideration of the following instruments after engagement with relevant agencies via its secretariat.³

Instrument

Australian Passports (Fees) Amendment Determination 2024 [F2024L00619]

Australian Prudential Regulation Authority Supervisory Levies Determination 2024 [F2024L00813]

Financial Framework (Supplementary Powers) Amendment (Finance Measures No. 2) Regulations 2024 [F2024L00859]

Native Title (Recognition as Representative Body – Central Land Council) Instrument 2024 [F2024L00699]

Native Title (Recognition as Representative Body – Northern Land Council) Instrument 2024 [F2024L00700]

³ For further details, see the [Index of Instruments](#) page on the committee's website.

Chapter 4

Undertakings¹

4.1 This Chapter identifies the new undertakings that have been made in relation to instruments considered in this report and those that the committee is aware have been implemented as at 13 September 2024.

4.2 The committee expects undertakings to be implemented in a timely manner and to be kept informed on their progress until implemented. This Chapter lists undertakings that are outstanding for more than 90 days as at 13 September 2024.

4.3 A full list of undertakings is published on the *Index of Undertakings* on the committee's website.² Further information about the scrutiny concerns leading to these undertakings can be found through the links published on the *Index of Instruments* available on the committee's website.³

New undertakings

4.4 During this period, the following undertakings were made to address the committee's scrutiny concerns.

Instrument	Undertaking	Date made
Australian Passports (Application Fees) Amendment Determination 2024 [F2024L00618]	The department undertook to progress amendments to the explanatory statement in response to the committee's scrutiny concerns regarding principle (j).	12 September 2024
Australian Prudential Regulation Authority Supervisory Levies Determination 2024 [F2024L00813]	The department undertook to progress amendments to the explanatory statement in response to the committee's scrutiny concerns regarding principle (d).	6 September 2024
Financial Framework (Supplementary Powers) Amendment (Finance Measures No. 2) Regulations 2024 [F2024L00859]	The department undertook to progress amendments to the explanatory statement to the instrument to address the committee's scrutiny concerns under principle (c).	12 September 2024
Native Title (Recognition as Representative Body – Central Land Council) Instrument 2024 [F2024L00699]	The department undertook to progress amendments to the explanatory statement in response to the committee's scrutiny concerns regarding principle (d).	6 September 2024

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Undertakings, *Delegated Legislation Monitor 11 of 2024*; [2024] AUSStaCSDLM 105.

² See the [Index of Undertakings](#) page on the committee's website.

³ See the [Index of Instruments](#) page on the committee's website.

Instrument	Undertaking	Date made
Native Title (Recognition as Representative Body – Northern Land Council) Instrument 2024 [F2024L00700]	The department undertook to progress amendments to the explanatory statement in response to the committee's scrutiny concerns regarding principle (d).	6 September 2024
Private Health Insurance (Medical Devices and Human Tissue Products) Rules (No. 1) 2024 [F2024L00770]	The department undertook to progress amendments to the explanatory statement in response to the committee's scrutiny concerns regarding principles (c) and (i).	9 September 2024
Recycling and Waste Reduction (Export—Waste Paper and Cardboard) Rules 2024 [F2024L00491]	The minister undertook to amend the explanatory statement to address the committee's scrutiny concerns regarding principles (c) and (h).	10 September 2024

Implemented undertakings

4.5 During this period, the following undertakings have been implemented.

Instrument	Undertaking	Date implemented
Environment Protection and Biodiversity Conservation (National Recovery Plan for Leadbeater's Possum (<i>Gymnobelideus leadbeateri</i>)) Instrument 2024 [F2024L00270]	The department undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	10 September 2024
Environment Protection and Biodiversity Conservation (National Recovery Plan for the Swift Parrot (<i>Lathamus discolor</i>)) Instrument 2024 [F2024L00482]	The department undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	10 September 2024
Environment Protection and Biodiversity Conservation (Recovery Plan for the Spiny Rice-flower (<i>Pimelea spinescens</i> subsp. <i>spinescens</i>)) Instrument 2024 [F2024L00346]	The department undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	10 September 2024
Family Law Amendment (Arbitration) Regulations 2024 [F2024L00668]	The department undertook to progress amendments to the explanatory statement in response to the committee's scrutiny concerns regarding principle (d).	13 September 2024

Outstanding undertakings

4.6 The following undertakings remain outstanding more than 90 days after they were made.

Instrument	Undertaking	Date made
Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Chapter 21 Amendments) Instrument 2024 [F2024L00088]	The Attorney-General undertook to codify in the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 relevant exemptions intended to be enduring and to time limit those retained in delegated legislation.	20 March 2024
Bankruptcy Amendment (Service of Documents) Regulations 2022 [F2022L00528]	The Attorney-General undertook to amend the principal regulations in response to the committee's scrutiny concerns.	18 October 2022
Bankruptcy Regulations 2021 [F2021L00261]	The Assistant Minister to the Attorney-General undertook to advise the committee of the outcome of the government's targeted review of the appropriateness of modifying provisions currently prescribed in the instrument.	26 July 2021
Bankruptcy Regulations 2021 [F2021L00261]	The Assistant Minister to the Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	17 August 2021
Corporations Amendment (Design and Distribution Obligations—Income Management Regimes) Regulations 2023 [F2023L00193]	The Assistant Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	31 July 2023
Corporations Amendment (Litigation Funding) Regulations 2022 [F2022L01614]	The Assistant Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	31 July 2023
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 9) Regulations 2021 [F2021L01823]	The department undertook to progress amendments to the explanatory statement to disclose the funding information.	19 October 2022
Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080]	The Assistant Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	29 November 2022
Health Insurance (prudential standard) determination No. 2 of 2023 [F2023L00719]	The Department of the Treasury undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27 July 2023

Instrument	Undertaking	Date made
Health Insurance (prudential standard) determination No. 4 of 2023 [F2023L00733]	The Department of the Treasury undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27 July 2023
Health Insurance (prudential standard) determination No. 5 of 2023 [F2023L00734]	The Department of the Treasury undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27 July 2023
Health Insurance (prudential standard) determination No. 6 of 2023 [F2023L00738]	The Department of the Treasury undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27 July 2023
Health Insurance (prudential standard) determination No. 7 of 2023 [F2023L00689]	The Department of the Treasury undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27 July 2023
Health Insurance (prudential standard) determination No. 8 of 2023 [F2023L00691]	The Department of the Treasury undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27 July 2023
Health Insurance (prudential standard) determination No. 9 of 2023 [F2023L00695]	The Department of the Treasury undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27 July 2023
Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]	The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	9 August 2021
National Anti-Corruption Commission Regulations 2023 [F2023L00759]	The Attorney-General undertook to amend the explanatory statement in response to the committee's scrutiny concerns.	16 October 2023
Standards for Registered Training Organisations Amendment (Fit and Proper Person) Instrument 2023 [F2023L01182]	The Department of Employment and Workplace Relations undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	31 October 2023
Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2022 (No. 2) [F2022L01321]	The Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	13 December 2022

Instrument	Undertaking	Date made
Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022 [F2022L01629]	The Assistant Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	31 July 2023
Veterans' Affairs (Treatment Principles – Extend Support Provided Under the Psychiatric Assistance Dog Program) Amendment Determination 2022 [F2022L00921]	The Department of Veterans' Affairs undertook to consider the committee's scrutiny concerns as part of a review of the Act.	7 September 2022

Part II—Matters of interest to the Senate

Chapter 5

Expenditure and taxation in delegated legislation¹

5.1 This Chapter identifies the instruments which the committee has resolved to draw to the attention of the Senate under standing order 23(4) in the interest of promoting appropriate parliamentary scrutiny of Commonwealth expenditure in delegated legislation.² This includes expenditure-related instruments and instruments that levy taxation.

Commonwealth expenditure

Instruments specifying expenditure under the Financial Framework (Supplementary Powers) Act 1997 and Industry Research and Development Act 1986

5.2 Instruments made under the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) and the *Industry Research and Development Act 1986* (the IRD Act) authorise the Commonwealth to spend public money on grants and programs specified. The committee has resolved to draw these instruments to the Senate's attention under Senate standing order 23(4).³

5.3 The table below lists the expenditure specified in legislative instruments made under the FF(SP) Act and IRD Act registered in the relevant period.

Instrument	Amount	Grant/Program
Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 2) Regulations 2024 [F2024L01006]	\$14.0 million over two years from 2024-25	Support to Peacebuilding and Peacekeeping
Financial Framework (Supplementary Powers) Amendment (Education Measures No. 3) Regulations 2024 [F2024L01010]	\$4.0 million over four years from 2024-25	Grant to GO Foundation

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Expenditure and taxation in delegated legislation, *Delegated Legislation Monitor 11 of 2024*; [2024] AUSStaCSDL M 106.

² 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](#).

³ Details of all instruments which authorise Commonwealth expenditure are published on the [committee's website](#).

Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 3) Regulations 2024 [F2024L01005]	\$31.1 million over three years from 2024-25 Forms part of the overall administered funding of \$254.8 million over two years from 2023-24	Return and Reintegration Assistance Program Post removal support
Industry Research and Development (Australia-United States Partnership in Landsat Next Program) Instrument 2024 [F2024L00991]	\$207.4 million over 5 years from 2023-24, and then ongoing funding of \$38.2 million per year	Australia-United States Partnership in Landsat Next Program
Industry Research and Development (First Nations Renewable Hydrogen Engagement Fund Program) Instrument 2024 [F2024L00994]	\$4 million from 2023-25	First Nations Renewable Hydrogen Engagement Fund Program

Chapter 6

Exemptions from disallowance and sunseting¹

6.1 This Chapter lists the instruments which the committee has resolved to draw to the attention of the Senate under standing order 23(4) because they are exempt from disallowance and sunseting and do not satisfy the committee's expectations in relation to the source and appropriateness of the exemptions following the committee's scrutiny under standing orders 23(4A) and 23(3)(k).

Exemptions from disallowance

6.2 On 16 June 2021, the Senate resolved that delegated legislation should be subject to disallowance to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances and any claim that circumstances justify exemption from disallowance will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases.²

6.3 Senate standing order 23(4A) provides that the committee may consider instruments that are not subject to disallowance, including whether it is appropriate for these instruments to be exempt from disallowance. Noting the Senate's concern about the exemption of delegated legislation from disallowance, this section identifies the instruments which do not satisfy the committee's expectations regarding the circumstances of their exemption from disallowance.

6.4 Subject to exceptional circumstances, the committee's expectations will not be met where the instrument:

- is exempt from disallowance under one of the broad classes of exemptions in section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015;³

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Exemptions from disallowance and sunseting, *Delegated Legislation Monitor 11 of 2024*; [2024] AUSStaCSDL M 107.

² For further information on the resolutions adopted by the Senate on 16 June 2021, see the committee's website, [Resolutions relating to oversight of delegated legislation](#).

³ Items 1 to 4 of section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015 exempt the following classes of instruments from disallowance: instruments requiring the approval of either or both Houses of Parliament; instruments that are directions by a minister to any person or body; instruments (other than a regulation) relating to superannuation; and instruments made under annual Appropriation Acts.

- is exempt from disallowance under the blanket exemption for instruments facilitating the establishment or operation of an intergovernmental body or scheme in section 44(1) of the *Legislation Act 2003*;⁴
- overrides or modifies primary legislation;
- triggers, or is a precondition to, the imposition of custodial penalties or significant pecuniary penalties;
- restricts personal rights and liberties;
- facilitates the expenditure of public money, including Advance to the Finance Minister determinations; or
- otherwise contains a matter requiring parliamentary oversight.

6.5 To assess whether an instrument is appropriately exempt from disallowance, the committee expects that at a minimum, the explanatory statement will contain a statement that provides the source and the exceptional circumstances that justify the exemption from disallowance.

6.6 Further information about the committee's expectations regarding the exemption of delegated legislation from disallowance are contained in the committee's guidelines and the reports of its inquiry into the exemption of delegated legislation from parliamentary oversight.⁵

Instruments which do not meet the committee's expectations

6.7 The following instruments do not meet the committee's expectations under standing order 23(4A):

Instrument	Source of exemption
Australia New Zealand Food Standards Code — Schedule 20 — Maximum residue limits Variation Instrument No. APVMA 3, 2024 [F2024L00946]	Subsection 44(1) of the <i>Legislation Act 2003</i>
Classification (Publications, Films and Computer Games) (Consumer Advice Terms) Determination 2024 [F2024L00923]	Subsection 44(1) of the <i>Legislation Act 2003</i>

⁴ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Final report](#) (March 2021) pp. 50–53 and 106–107.

⁵ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Guidelines](#), 3rd edition (July 2024) pp. 43–45; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Interim report](#) (December 2020) pp. 61–72; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Final report](#) (March 2021) pp. 99–123.

Instrument	Source of exemption
Federal Financial Relations (National Partnership Payments—2024-25 Payment No. 2) Determination 2024 [F2024L00959]	Subsection 44(1) of the <i>Legislation Act 2003</i> Subsection 16(5) of the <i>Federal Financial Relations Act 2009</i>
Food Standards (Application A1261 – Irradiation – Increase in maximum energy level) Variation [F2024L00986]	Subsection 44(1) of the <i>Legislation Act 2003</i>
Food Standards (Application A1281 – Food derived from herbicide-tolerant and insect-protected corn line DP910521) Variation [F2024L00987]	Subsection 44(1) of the <i>Legislation Act 2003</i>
Food Standards (Application A1282 – Subtilisin from GM <i>Bacillus subtilis</i> as a processing aid) Variation [F2024L00988]	Subsection 44(1) of the <i>Legislation Act 2003</i>
Food Standards (Application A1283 – 2'-FL from GM <i>Corynebacterium glutamicum</i> in infant formula products) Variation [F2024L00989]	Subsection 44(1) of the <i>Legislation Act 2003</i>
Superannuation (prudential standard) determination No. 5 of 2024 [F2024L00940]	Section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015

Exemptions from sunseting

6.8 Senate standing order 23(3)(k) requires the committee to scrutinise instruments which are exempt from the sunseting provisions of the *Legislation Act 2003* (the Legislation Act), including whether it is appropriate for these instruments to be exempt from sunseting.

6.9 The sunseting framework established under section 50 of the Legislation Act provides that all legislative instruments registered on the Federal Register of Legislation after 1 January 2005 are automatically repealed ten years after registration. Sunseting provides the opportunity for Parliament (as well as ministers and agencies) to ensure that the content of delegated legislation remains appropriate, and for Parliament to maintain effective, regular oversight of delegated powers.

6.10 On 16 June 2021, the Senate resolved that delegated legislation should be subject to sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances and any claim that circumstances justify exemption from sunseting will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases.⁶

⁶ For further information on the resolutions adopted by the Senate on 16 June 2021, see the committee's website, [Resolutions relating to oversight of delegated legislation](#).

6.11 Where an instrument is exempt from sunseting, Senate standing order 23(3)(k) requires the committee to scrutinise each instrument as to whether the exemption is appropriate. Noting the Senate's concern about the exemption of delegated legislation from sunseting, this section identifies instruments which do not satisfy the committee's expectations regarding the appropriateness of their exemption from sunseting.

6.12 Subject to exceptional circumstances, the committee's expectations will not be met where the instrument:

- is exempt from sunseting under one of the broad classes of exemptions in section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015;⁷
- is exempt from sunseting under the blanket exemption of instruments facilitating the establishment or operation of an intergovernmental body or scheme in section 54(1) of the *Legislation Act 2003*;⁸
- overrides or modifies primary legislation;
- triggers, or is a precondition to, the imposition of custodial penalties or significant pecuniary penalties;
- restricts personal rights and liberties;
- facilitates the expenditure of public money on an ongoing basis; or
- otherwise contains a matter requiring parliamentary oversight.

6.13 To assess whether an instrument is appropriately exempt from sunseting, the committee expects that at a minimum, the explanatory statement will contain a statement that provides the source and the exceptional circumstances that justify the exemption from sunseting.

6.14 Further information about the committee's expectations about the exemption of delegated legislation from sunseting are contained in the committee's guidelines

⁷ Items 1 to 7 of section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015 exempt the following classes of instruments from sunseting: instruments giving effect to international obligations of Australia; instruments that establish a body having power to enter into contracts; instruments that are directions by a minister to any person or body; instruments which confer power on a self-governing Territory; ordinances made under a power delegated in an Act providing for the government of a non-self-governing Territory; instruments (other than a regulation) relating to superannuation; and instruments made under annual Appropriation Acts.

⁸ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Final report](#) (March 2021) pp. 50–53 and 106–107.

and the reports of its inquiry into the exemption of delegated legislation from parliamentary oversight.⁹

Instruments which do not meet the committee's expectations

6.15 Instruments listed below do not meet the committee's expectations under standing order 23(3)(k).

Instrument	Source of exemption
Australia New Zealand Food Standards Code — Schedule 20 — Maximum residue limits Variation Instrument No. APVMA 3, 2024 [F2024L00946]	Subsection 54(1) of the <i>Legislation Act 2003</i> Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Classification (Publications, Films and Computer Games) (Consumer Advice Terms) Determination 2024 [F2024L00923]	Subsection 54(1) of the <i>Legislation Act 2003</i>
Customs (International Obligations) Amendment (Australia–Timor-Leste Defence Cooperation Agreement) By Law 2024 [F2024L00958]	Section 54 of the <i>Legislation Act 2003</i> Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Federal Financial Relations (National Partnership Payments—2024-25 Payment No. 2) Determination 2024 [F2024L00959]	Subsection 54(1) of the <i>Legislation Act 2003</i>
Food Standards (Application A1261 – Irradiation – Increase in maximum energy level) Variation [F2024L00986]	Subsection 54(1) of the <i>Legislation Act 2003</i> Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Food Standards (Application A1281 – Food derived from herbicide-tolerant and insect-protected corn line DP910521) Variation [F2024L00987]	Subsection 54(1) of the <i>Legislation Act 2003</i> Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Food Standards (Application A1282 – Subtilisin from GM <i>Bacillus subtilis</i> as a processing aid) Variation [F2024L00988]	Subsection 54(1) of the <i>Legislation Act 2003</i> Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Food Standards (Application A1283 – 2'-FL from GM <i>Corynebacterium glutamicum</i> in infant formula products) Variation [F2024L00989]	Subsection 54(1) of the <i>Legislation Act 2003</i> Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015

⁹ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Guidelines](#), 3rd edition (July 2024) pp. 37-38; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Interim report](#) (December 2020) pp. 89–90; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Final report](#) (March 2021) pp. 87–88 and 99–123.

Instrument	Source of exemption
Ozone Protection and Synthetic Greenhouse Gas Management (Extinguishing Agent Handling Licences—Qualifications and Standards) Determination 2024 [F2024L00945]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Ozone Protection and Synthetic Greenhouse Gas Management (Refrigerant Handling Licences—Qualifications and Standards) Determination 2024 [F2024L00944]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Superannuation (prudential standard) determination No. 5 of 2024 [F2024L00940]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015

Senator Deborah O'Neill
Chair