

The Senate

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Committee for the
Scrutiny of Delegated
Legislation

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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 14 May and 23 May 2024	38
Instruments in this period exempt from disallowance	8
Chapter 1: New and ongoing matters	
New legislative instruments commented on in report	0
Ongoing legislative instruments commented on in report	1
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	5
Legislative instruments of which the committee has concluded its examination following receipt of agency response	0
Chapter 4: Undertakings	
New undertakings made by ministers or agencies to address the committee's scrutiny concerns	2
Undertakings which the committee was made aware had been implemented during this period	2
Outstanding undertakings	46
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>	1
Levying 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)	2
Instruments that do not meet the committee's expectations regarding exemptions from sunseting under standing order 23(3)(k)	2

² This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Report snapshot, *Delegated Legislation Monitor 7 of 2024*; [2024] AUSStaCSDLM 68.

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).

New matters

1.2 The committee has not identified significant technical scrutiny concerns in relation to any instruments registered during the reporting period.

Ongoing matters

1.3 The committee requests further information from relevant ministers about its significant technical scrutiny concerns in relation to the instruments listed below.

Jervis Bay Territory Rural Fires Rules 2024¹

FRL No.	F2024L00347
Purpose	The purpose of the instrument is to make rules as permitted by the Jervis Bay Territory Rural Fires Ordinance 2014 to provide effective and efficient fire management services to the Jervis Bay Territory. The instrument replaces the Jervis Bay Territory Rural Fires Rule 2014 which sunsets on 1 October 2024.
Authorising legislation	<i>Jervis Bay Territory Rural Fires Ordinance 2014</i>
Portfolio	Infrastructure, Transport, Regional Development, Communications and the Arts
Disallowance	15 sitting days after tabling (tabled in the Senate on 21 March 2024). Notice of motion to disallow must be given by 12 August 2024.

Overview

1.4 The Jervis Bay Territory Rural Fires Rules 2024 (the instrument) is made under subsection 98(1) of the Jervis Bay Territory Rural Fires Ordinance 2014 (the Ordinance), to provide fire management services to the Jervis Bay Territory (JBT). The Ordinance provides the legislative framework for fire management services to the JBT. It establishes the JBT Rural Fire Service (RFS), the JBT Fire Management

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Jervis Bay Territory Rural Fires Rules 2024, *Delegated Legislation Monitor 7 of 2024*; [2024] AUSStaCSDLM 69.

Committee and deals with other matters relating to bushfire prevention, such as preparation of JBT Bush Fire Management Plans and issuing of notices and fire permits.

1.5 Subsection 98(1) of the Ordinance enables the minister to make rules in relation to the issuing of fire permits, the classification of substances as combustible, the operation of committees, the service of notices or directions under the Ordinance, the conduct and discipline of members of the RFS, and the operations of rural fire brigades.

1.6 The committee first raised scrutiny concerns with this instrument on 17 May 2024 in *Delegated Legislation Monitor 5 of 2024*,² and the minister provided a response dated 26 June 2024.

1.7 As the committee retains scrutiny concerns about the below matters, it has resolved to raise them with the Minister for Regional Development, Local Government and Territories.

Scrutiny concerns

Conferral of discretionary powers;³ adequacy of explanatory materials⁴

1.8 In *Delegated Legislation Monitor 5 of 2024*, the committee raised concerns as the instrument contains a number of broad discretionary provisions, but neither the instrument nor its explanatory statement provided an adequate explanation of the factors that may be considered in exercising the discretions.

1.9 The committee sought the minister's advice as to why it was considered necessary and appropriate for the minister to have broad discretionary powers under the instrument, referencing in particular subsections 7(2),⁵ 7(4),⁶ and 9(2).⁷

1.10 The committee also sought further detail regarding the factors the minister must take into account in determining that a person is not, or is no longer, a 'fit and proper person' under subsections 7(2) and 9(2), and the weight given to each of these factors. Specifically, under paragraph 9(2)(e), the minister may remove a person's name from a brigade register if the person is, in the minister's opinion, no longer a 'fit and proper person' to be a member of the rural fire brigade.

² Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 5 of 2024](#) (17 May 2024), pp. 3-9.

³ Senate standing order 23(3)(c).

⁴ Senate standing order 23(3)(g).

⁵ Subsection 7(2) of the instrument enables the minister to refuse to list a person's name on a brigade register if, 'in the Minister's opinion', the person is not a 'fit and proper person' to be a member.

⁶ Subsection 7(4) provides that a person's listing on a brigade register is subject to 'such conditions as may be imposed by the Minister'.

⁷ Subsection 9(2) enables the minister to remove the name of a person from a brigade register.

1.11 The committee also requested the minister's advice regarding the factors the minister may take into account in deciding whether to impose any conditions on a person's listing on a brigade register under subsection 7(4) and what such conditions are likely to include.

Minister's response⁸

1.12 In her response of 26 June 2024, the minister advised it is necessary and appropriate for the minister to have broad discretionary powers to assess initial and ongoing suitability of applicants. The minister noted that the discretionary powers under the instrument are identical to those conferred on the New South Wales (NSW) minister. The minister noted that emergency situations can be fluid and unpredictable, and accordingly RFS members hold a set of powers to respond. Consequently, given the significance of these powers, it is considered appropriate and proportionate for the minister to have broad discretion in determining the ongoing suitability of JBT RFS members. The minister further advised that the conditions the minister may take into account in determining individual suitability are difficult to exhaustively define, necessitating the broad discretion to consider all relevant matters.

1.13 In relation to factors taken into account in determining that a person is not, or is no longer, a 'fit and proper person', the minister's response included criteria that forms the basis of the NSW RFS applicant assessment, including criminal history and working with children checks, which are detailed in Service Standard 2.1.6 Volunteer Membership Applications. The minister noted that the broad discretionary powers in the instrument necessarily extend beyond the NSW criteria for assessing a 'fit and proper person' for the purpose of preserving the integrity of the JBT RFS in an unforeseen circumstance.

1.14 The minister also advised that conditions imposed on a brigade register listing under subsection 7(4) may be made on the basis of physical limitations or health conditions that may impact a person's ability to safely fulfill fundamental requirements of certain roles. The minister provided examples of conditions ordinarily imposed, including that a person not attend an incident scene or not attend certain types of incidents. The minister also provided a specific example where a member has asthma and therefore may have a condition imposed on their listing to not attend a bushfire incident where smoke could endanger their health, providing an alternative where the member could be assigned to operational administrative duties.

1.15 The minister further noted that persons applying to join the JBT RFS are informed of the potential for conditions to be imposed on their brigade register listing through the Service Standard 2.1.6 Volunteer Membership Applications and associated application forms and processes.

⁸ This correspondence was tabled with this monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Committee view

1.16 The committee thanks the minister for the useful information provided in relation to factors that may be considered by the minister under subsections 7(2) and 9(2) by reference to the NSW applicant assessment criteria, as detailed in Service Standard 2.1.6 Volunteer Membership Applications. The committee acknowledges the need for coordination with related NSW legislation to ensure uniformity between the NSW and JBT fire services. Nonetheless, this justification alone is insufficient to meet the committee's expectations under its scrutiny principles. It remains unclear to the committee why it is considered necessary and appropriate for the minister to have broad discretionary powers under subsections 7(2) and 9(2) and how the discretion may operate in practice to determine that a person is not, or is longer, a 'fit and proper person'.

1.17 The committee also thanks the minister for the examples provided of conditions ordinarily imposed on a brigade register listing under subsection 7(4), which the committee understands typically relates to physical limitations or health conditions. The committee considers this information, including the example of a member with asthma, would be useful to include in the explanatory statement to demonstrate how the discretion may operate in practice.

1.18 In light of the above, the committee requests the minister's advice as to whether further justification can be provided about why it is considered necessary and appropriate for the minister to have broad discretionary powers under subsections 7(2) and 9(2) and whether an example can be provided.

1.19 The committee further requests the minister's advice as to whether the explanatory statement can be amended to include the information provided by the minister in relation to the justification for prescribing broad discretionary powers, and relevant factors and examples in exercising the discretions under subsection 7(4) of the instrument.

Compliance with the Legislation Act 2003 – incorporation;⁹ incorporated materials freely accessible;¹⁰ adequacy of explanatory materials¹¹

1.20 The instrument makes provision in relation to 'Service Standards' and 'relevant Service Standards'; however, it was unclear to the committee whether and which specific standards may have been incorporated by reference, or where they may be freely accessed and used. In *Delegated Legislation Monitor 5 of 2024*, the committee noted several provisions referred to the 'Service Standards' including:

- under subsection 6(3), members must consider 'any relevant Service Standards' to determine whether to amend a rural fire brigade constitution;

⁹ Senate standing order 23(3)(a).

¹⁰ Senate standing order 23(3)(f).

¹¹ Senate standing order 23(3)(g).

- under subsection 8(2), the minister may remove a person's name from the register if, at the end of their probationary period, they have not achieved a 'satisfactory level of competency required by the Service Standards';
- under paragraph 11(1)(c), it is a breach of discipline if a member fails to comply with 'the Service Standards' and, under paragraph 11(3)(a), the appropriate disciplinary authority may take disciplinary action if 'an alleged breach of discipline is dealt with in accordance with the procedure set out in the Service Standards';
- under paragraph 11(5)(b), 'appropriate disciplinary authority' is defined with reference to 'the procedure set out in the Service Standards'; and
- under subsection 13(2), written reports of relevant fires, incidents or emergencies must be given to the minister within the time required by, and include any matters required to be covered by, the Service Standards.

1.21 The explanatory statement to the instrument indicates that, in practice, the Service Standards that apply to NSW RFS members apply to JBT RFS members. The committee noted that while section 11 of the Ordinance appears to enable the incorporation of written Service Standards into the instrument, it remained unclear whether the Service Standards applying to the NSW RFS standards were formally incorporated into the instrument.

1.22 The committee sought the minister's advice on whether the Service Standards defined under the Ordinance have been incorporated into the instrument and, if so, which specific Standard or Standards are incorporated in relation to subsection 6(3), subsection 8(2), section 11 and subsection 13(2). In addition, the committee sought the minister's advice as to whether the instrument's explanatory statement could be amended to specify the specific Standards that have been incorporated under each of the aforementioned provisions, their manner of incorporation and where they can be freely accessed and used.

Minister's response¹²

1.23 In her response, the minister clarified that specific Service Standards have not been incorporated into the instrument. The minister noted that under the arrangement between the Commonwealth and the NSW RFS for fire management in the JBT, NSW RFS Service Standards are used as operational policies of the JBT RFS. The minister provided a link to the NSW RFS website where a comprehensive set of Service Standards, Policies and Operational Protocols are provided and regularly reviewed and updated.

1.24 The minister advised that amending the explanatory statement to include information about the location of Service Standards would be unlikely to assist as the

¹² This correspondence was tabled with this monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Service Standards are not incorporated, may frequently change, are published on a non-Commonwealth website, are in the nature of internal use and not of general community application, and will be well-known and readily accessible by members of a Rural Fire Brigade to whom the Service Standards apply.

1.25 As requested by the committee, the response provided a list of the relevant Service Standards for subsection 6(3), subsection 8(2), section 11 and subsection 13(2) of the instrument:

- in determining whether to amend a rural fire brigade constitution under subsection 6(3), members must consider Service Standard 2.1.2 Brigade Constitution;
- in relation to removing a person's name from a brigade register at the end of the probationary period where the person has not achieved a satisfactory level of competency required by a Service Standard under paragraph 8(2)(a), the relevant Service Standard is Service Standard 2.1.6 Volunteer Membership Applications;
- if a member fails to comply with any Service Standard, they commit a breach of discipline under subsection 11(c); and
- Service Standard 3.1.3 Incident Reporting and 1.1.14 Personal Information and Privacy prescribe the time limit for providing an incident report to the minister under subsection 13(2) and the matters required to be covered.

1.26 The minister further advised that the NSW RFS may make new Service Standards from time to time, and in order to facilitate new and updated Service Standards over time, references to particular Service Standards or internet addresses are not included in the instrument or its explanatory statement. The minister notes all volunteers managed by the NSW RFS, including JBT brigade members, are made aware of the Service Standards and where to freely access them (on the NSW RFS website or through the brigade) in the course of their application, induction training and throughout their period of service.

Committee view

1.27 The committee thanks the minister for confirming that the applicable Service Standards are not incorporated into the instrument. The committee welcomes the minister's advice that the Service Standards applicable to the instrument are freely available on the NSW RFS website and provided as a matter of process to volunteers, including JBT brigades. The committee also thanks the minister for providing the specific Service Standards applicable to subsection 6(3), subsection 8(2), section 11 and subsection 13(2) of the instrument.

1.28 However, the committee retains concerns in relation to accessibility of the Service Standards. Noting that the Service Standards are integral to the operation of the instrument and referenced numerous times in the explanatory statement to the

instrument, as well as throughout the minister's response, the committee considers it essential that the source of the Service Standards is readily identified and accessible in the explanatory statement.

1.29 The committee acknowledges the minister's reasoning that amending the explanatory statement to indicate where the Service Standards can be located is unlikely to assist future readers, however, the committee notes that a reference to the Service Standards in the explanatory statement can be appropriately contextualised to account for changes to the materials, such as stating that the link to the Service Standards is correct at the time of publication of the explanatory statement and is subject to change. The committee further notes that this approach is commonplace for instruments which incorporate documents from time to time. The committee also notes that, while the Service Standards are published on a non-Commonwealth website, this does not preclude including a link to the relevant website, and that there are precedents where this is required. It is the committee's view that specifying the applicable Service Standards and including a link to the relevant website would assist readers to understand the law.

1.30 In light of the above, the committee requests the minister's advice as to whether the explanatory statement can be amended to specify the applicable Service Standards relevant to the instrument, as referenced throughout the minister's correspondence, and include a link to the set of Service Standards on the New South Wales Rural Fire Service website.

Privacy¹³

1.31 Section 13 of the instrument provides that if a rural fire brigade attends a fire, incident or other emergency, the officer in charge must ensure that the minister receives a written report on the fire, incident or emergency. Section 21 of the instrument requires the minister to keep a register of the name of each member of the RFS who is given a commendation or award for long service, bravery or other forms of meritorious service and details of the commendation or award. The committee initially raised scrutiny concerns as the explanatory statement to the instrument does not explain the nature and scope of information that may be collected in a report under section 13, including whether it might contain personal information. The explanatory statement also does not explain whether and how any personal information collected under sections 13 or 21 may be used or disclosed, or whether there are any safeguards in place to protect the use, collection or disclosure of such personal information.

1.32 The committee sought the minister's advice as to the nature and scope of the information that may be collected, used or disclosed under section 13 of the instrument and whether this is likely to include personal information. The committee also requested advice on any safeguards that apply to protect any personal

¹³ Senate standing order 23(3)(h).

information collected, used or disclosed under either section 13 or section 21 of the instrument and whether these are set out in law or policy, including whether the *Privacy Act 1988* (Privacy Act) applies.

*Minister's response*¹⁴

1.33 The minister advised that templates are provided to brigades for the purpose of documenting incidents under section 13 and contain fields to capture particular information including:

- firefighting appliance particulars;
- appliance crew members' names;
- names of members who attended in private vehicles; and
- names of members who remained at the station.

1.34 The minister further advised that section 13 reports may include personal information such as the names of fire service members and the name and contact details of an informant where an incident is reported through Triple Zero. In this case, the RFS' operational call centre would collect the informant's details.

1.35 The response listed three privacy-specific Service Standards that prescribe how the NSW RFS, and therefore the JBT RFS, collect, handle, retain, disclose, assess and use personal information:

- 1.1.14 Personal Information and Privacy;
- 1.1.14A Privacy Management Plan; and
- 1.1.14B Data Breach Response Plan.

1.36 The minister also advised that the Privacy Act applies, including for information collected to maintain the register of bravery awards under section 21 of the instrument, as the minister, the department and the JBT RFS are 'agencies' for the purposes of the Privacy Act, and noted that further legislative safeguards apply including the Australian Privacy Principles.

Committee view

1.37 The committee thanks the minister for her advice indicating that personal information collected for the purpose of documenting incidents under section 13 of the instrument is limited to the names and contact details of individuals, and that the Privacy Act applies to personal information collected under sections 13 and 21 of the instrument.

1.38 The committee notes the minister's advice that personal information is handled consistently with privacy-specific Service Standards. The committee considers this

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

information would be useful to include in the explanatory statement to the instrument.

1.39 In light of the above, the committee requests the minister's advice as to whether the explanatory statement can be amended to include the information provided in the minister's response in relation to:

- **the nature and scope of the information that may be collected, used or disclosed, particularly in relation to personal information; and**
- **the application of the Privacy Act and other safeguards to personal information collected, used or disclosed under sections 13 and 21 of the instrument.**

Procedural fairness¹⁵; clarity of drafting;¹⁶ adequacy of explanatory materials¹⁷

1.40 Section 11 enables the 'appropriate disciplinary authority' to take disciplinary action, as set out in subsection 11(4), if a member of a rural fire brigade commits a breach of discipline on the grounds set out in subsection 11(1). One of these grounds (paragraph 11(1)(b)) relates to a member who is 'negligent, careless, inefficient or incompetent' in the discharge of their duties. Subsection 12(1) requires that, before taking disciplinary action, the appropriate disciplinary authority investigates the alleged breach of discipline and gives the member at least 14 days' notice of their findings and proposed disciplinary action. Subsection 12(2) enables the member to appeal within 14 days of receiving the notice.

1.41 The committee raised concerns with the limited 14-day time frame for making an appeal and the lack of clarity in both the instrument and explanatory statement relating to whether the member has an adequate opportunity to state their case prior to the appropriate disciplinary authority making a decision to take disciplinary action. As the explanatory statement failed to address whether procedural fairness was provided for in relation to disciplinary decisions under section 11, the committee sought the minister's advice on the availability of procedural fairness, or justification for its exclusion. The committee also sought clarification on the meaning of the terms 'careless' and 'inefficient under paragraph 11(b) of the instrument and whether the explanatory statement can be amended to define these terms.

Minister's response¹⁸

1.42 In her response, the minister advised that procedural fairness applies in relation to disciplinary decisions under section 11. The minister noted that disciplinary action under section 11 would be undertaken by the NSW RFS pursuant to the operating

¹⁵ Senate standing order 23(3)(h).

¹⁶ Senate standing order 23(3)(e).

¹⁷ Senate standing order 23(3)(g).

¹⁸ This correspondence was tabled with this monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

procedures detailed in Service Standard 1.1.2 Discipline, which is accompanied by a guide on natural justice. The minister advised that the procedural fairness afforded by Service Standard 1.1.2 Discipline and related procedures and guides enable the member to have a hearing before the decision is made that is appropriate to the circumstances, full disclosure before the decision, a reasonable opportunity for the member to respond, genuine consideration of a submission made by the member, an opportunity to appeal and the avoidance of actual or apprehended bias.

1.43 The minister advised that the terms ‘careless’ and ‘inefficient’ are not further defined by the instrument, its enabling Ordinance or any Service Standards, and are read with their ordinary meanings. The minister further advised that amending the instrument or explanatory statement to clarify the meanings of these terms may unintentionally change their ordinary and well-understood meaning. Further, the minister noted NSW arrangements governing NSW rural fire brigades do not further define these terms and accordingly, from an operational perspective, it would not be desirable to have inconsistent definitions for disciplinary purposes between the NSW RFS and JBT RFS and to avoid any practical injustice through inconsistent treatment of NSW and JBT members.

Committee view

1.44 The committee thanks the minister for confirming procedural fairness is provided for in relation to decisions to take disciplinary action under section 11 of the instrument. The committee reiterates the importance of enabling individuals to understand the law to which they are subject, particularly where disciplinary action may affect individual rights, obligations or interests. Even though natural justice forms part of the disciplinary process by application of common law, the committee considers it is important that the explanatory statement to the instrument include the information provided in relation to procedural fairness to provide clarity for readers.

1.45 The committee notes the minister’s advice that the terms ‘careless’ and ‘inefficient’ under paragraph 11(1)(b) of the instrument are read with their ordinary meaning, but retains concerns about how the terms are applied to disciplinary actions. While acknowledging the importance of coordination and uniformity with related NSW legislation, it remains unclear to the committee how the terms ‘careless’ and ‘inefficient’ would be interpreted in practice. It is also unclear to the committee what conduct these terms are intended to capture and how that conduct may be outside the scope of conduct that is ‘negligent’ or ‘incompetent’, which are terms already included in paragraph 11(1)(b) and have clear legal meaning. The committee considers it would be useful to provide examples of situations where a JBT RFS member may be deemed ‘careless’ or ‘inefficient’ for the purposes of disciplinary action, noting that such examples are not intended to limit or define the meaning of the terms, but be provided for illustrative purposes.

1.46 In light of the above, the committee requests the minister's advice as to whether the explanatory statement to the instrument can be amended to include information provided by the minister on the provision of procedural fairness in relation to decisions to take disciplinary action under section 11 of the instrument.

1.47 The committee requests the minister's further advice as to whether examples can be provided of a situation in which a Jervis Bay Territory Rural Fire Service member may be deemed 'careless' or 'inefficient' for the purposes of disciplinary action under paragraph 11(1)(b) of the instrument.

1.48 In addition, the committee has resolved to place a 'protective' notice of motion to disallow the instrument to provide it with additional time consider these 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).

Biosecurity (Electronic Decisions) Determination 2023¹

FRL No.	F2023L01672
Purpose	The instrument provides the relevant provisions of the <i>Biosecurity Act 2015</i> under which a decision may be made by the operation of a computer program and the classes of persons that may use a computer program under an arrangement made under subsection 541A(1) of the Act, and the conditions of that use.
Authorising legislation	<i>Biosecurity Act 2015</i>
Portfolio	Agriculture, Fisheries and Forestry
Disallowance	15 sitting days after tabling (tabled in the Senate on 6 February 2024). Committee gave notice to disallow on 15 May 2024.

Overview

2.2 Subsection 541A(1) of the *Biosecurity Act 2015* (the Act) provides that the Director of Biosecurity may arrange for the use, under their control, of computer programs for any purposes for which a biosecurity officer may make a decision under a 'relevant provision' of the Act as specified in a determination made under subsection 541A(2), as authorised by subsection 541A(1).

2.3 The Biosecurity (Electronic Decisions) Determination 2023 (the instrument) is made under subsection 541A(2) of the Act and authorises (in subsection 5(1)) the Director of Biosecurity to arrange for a computer program to make decisions under four provisions of the Act. Those provisions enable a biosecurity officer to require a person whom a biosecurity officer 'suspects on reasonable grounds' has information, custody or control of documents in relation to an aircraft or vessel that is the subject of a pre-arrival report or in relation to a conveyance that is subject to a biosecurity

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Biosecurity (Electronic Decisions) Determination 2023, *Delegated Legislation Monitor 7 of 2024*; [2024] AUSStaCSDLML 70.

control,² to answer questions or provide information, in writing, in relation to the relevant aircraft, vessel or conveyance. The instrument also specifies classes of persons that may use an authorised computer program for such a decision and sets out conditions on the use of such a computer program.

2.4 The committee first raised scrutiny concerns with the instrument on 7 February 2024 in *Delegated Legislation Monitor 1 of 2024*,³ and the minister provided a response dated 21 March 2024.⁴ The committee raised further concerns on 28 March 2024 in *Delegated Legislation Monitor 4 of 2024*,⁵ to which the minister provided a response dated 26 April 2024.⁶ As the committee retained scrutiny concerns, it sought the minister's further advice on 17 May in *Delegated Legislation Monitor 5 of 2024*.⁷ The minister provided a response on 25 June 2024.⁸

Scrutiny concerns

Automated decision-making;⁹ conferral of discretionary powers¹⁰

2.5 In *Delegated Legislation Monitors 1, 4 and 5 of 2024*,¹¹ the committee raised concerns as the instrument facilitates an automated decision-making process for discretionary decisions by determining, in subsection 5(1), four provisions of the Act under which decisions may be made by the operation of a computer program.

2.6 The committee initially sought the minister's advice about the operation of a number of provisions of the Act that were identified as safeguards in the explanatory statement to the instrument, including in relation to the factors considered in

² See subsections 195(2), 195(3), 200(1) and 201(1) of the Act.

³ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 1 of 2024](#) (7 February 2024) pp. 9-15.

⁴ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation (28 March 2024) p. 3-7.

⁵ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 4 of 2024](#) (28 March 2024) pp. 21-29.

⁶ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation (17 May 2024) p. 1-3.

⁷ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 5 of 2024](#) (17 May 2024) pp. 18-23.

⁸ This correspondence was tabled with this monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

⁹ Senate standing order 23(3)(m).

¹⁰ Senate standing order 23(3)(c).

¹¹ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 1 of 2024](#) (7 February 2024) pp. 9-15; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 4 of 2024](#) (28 March 2024) pp. 21-29; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 5 of 2024](#) (17 May 2024) pp. 18-23;

exercising discretion under subsections 541A(3),¹² 541A(4)¹³ and 541A(7)¹⁴ of the Act and whether consideration had been given to the *Commonwealth Ombudsman's Automated Decision-making Better Practice Guide* (the Ombudsman's Guide).¹⁵

2.7 In the minister's response of 21 March 2024,¹⁶ he advised how the Director of Biosecurity has taken 'reasonable steps' to ensure decisions made by a computer program were based on grounds on which a biosecurity officer could have made the decision. The minister also advised on how business rules operate to determine, among other matters, rule parameters and safeguards for the rules, and provided two examples to illustrate technical and scientific information that may be included in business rules. The minister advised further on safeguards in relation to users of the computer program, including tracing and reporting on users' access and action. The minister also confirmed that the business rules, departmental policy and instructional material were designed with consideration of the Ombudsman's Guide.

2.8 In *Delegated Legislation Monitor 4 of 2024*,¹⁷ the committee sought further advice from the minister on whether the explanatory statement could be amended to include the advice provided in relation to these matters. However, it remained unclear to the committee what factors biosecurity officers would take into account in determining whether to substitute an electronic decision under subsection 541A(7) of the Act, and what specific mechanisms were employed to identify errors in the computer program and how and when an audit trail would be generated to identify and rectify errors. The committee therefore requested the minister's further advice on these matters.

2.9 The minister provided a further response on 26 April 2024,¹⁸ advising that his department was in the process of amending the explanatory statement to include the

¹² Subsection 541A(3) of the Act requires the Director of Biosecurity to take reasonable steps to ensure that electronic decisions made by the operation of a computer program under an arrangement made under subsection 541A(1) of the Act are consistent with the objects of the Act.

¹³ Subsection 541A(4) of the Act requires the Director of Biosecurity to take reasonable steps to ensure that an electronic decision is based on grounds on the basis of which a biosecurity officer could have made that decision.

¹⁴ Subsection 541A(7) of the Act enables a biosecurity officer to make a decision in substitution for an electronic decision if satisfied that the electronic decision is not consistent with the objects of the Act or where another decision is more appropriate in the circumstances.

¹⁵ Commonwealth Ombudsman, [Automated Decision-making Better Practice Guide](#) (updated January 2019).

¹⁶ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation (28 March 2024) p. 3-7.

¹⁷ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 4 of 2024](#) (28 March 2024) p. 26.

¹⁸ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation (17 May 2024) p. 1-3.

additional detail requested by the committee in relation to the operation of a number of safeguards. The minister also advised that his department has a mandatory policy related to automated decision-making under section 541A of the Act to ensure appropriate controls, measures and safeguards are in place to satisfy the Director of Biosecurity that the objects of the Act are being met and that computer program decisions conform with best practice principles of lawful administrative decision-making.

2.10 The minister provided further advice regarding a dedicated feedback mechanism for persons affected by decisions made by a computer program, which would trigger a biosecurity officer to identify if the relevant decision is appropriate or if a substituted decision is necessary pursuant to subsection 541A(7) of the Act. The minister also detailed some factors that a biosecurity officer may consider when determining whether to substitute a decision. The response also outlined the department's auditing abilities to test the program's accuracy, including routine reviews. The minister advised that audits may require amending business rules to ensure the accuracy of future decisions. The minister also provided two examples to illustrate that, where an audit and review of an electronic decision identifies an incorrect decision or a system error, a decision may be substituted.

2.11 The committee welcomed the minister's undertaking to update the explanatory statement to the instrument with the details provided in the minister's response of 21 March 2024 and noted the further advice provided in the minister's response of 26 April 2024. The committee requested the minister's further advice as to whether the explanatory statement could be amended to include the additional information provided in the minister's response of 26 April 2024 regarding the following matters:

- the department's policy relating to automated decision-making under section 541A of the Act;
- the department's ability to audit decision-making outcomes made by the computer program, including the routine review and audit process;
- factors that a biosecurity officer may take into account under subsection 541A(7) of the Act; and
- the use of the department's dedicated feedback mechanism.

2.12 The committee also placed a 'protective' notice of motion to disallow the instrument to provide it with additional time to consider these matters.

Minister's response¹⁹

2.13 In his correspondence of 25 June 2024, the minister advised that a replacement explanatory statement to the instrument, including the further detail requested by the

¹⁹ This correspondence was tabled with this monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

committee, was approved by the Director of Biosecurity and registered on the Federal Register of Legislation on 14 June 2024.

Committee view

2.14 The committee thanks the minister for his prompt implementation of the two undertakings made in his correspondence of 26 April 2024 and 25 June 2024, in relation to information provided in the minister's correspondences of 21 March 2024 and 26 April 2024.

2.15 The committee welcomes the inclusion of the additional information in the replacement explanatory statement. The committee now considers that the explanatory statement to the instrument provides an example of a best-practice approach to explaining the use of automated decision-making and thanks the minister for his engagement on this instrument.

2.16 In light of the implementation of the minister's undertakings to amend the explanatory statement in relation to the above matters, the committee concludes its examination of the instrument.

2.17 In addition, the committee has also 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.¹ Engagement on instruments marked with an asterisk was on an advice only basis.

Instrument

Corporations and Competition (CS Services) Instrument 2024 [F2024L00537]

Health Insurance (Section 3C Pathology Services – Respiratory Pathogen Testing) Determination 2024 [F2024L00557]

Higher Education Provider Approval (No. 12 of 2006) Amendment Instrument 2024 [F2024L00554]

Mutual Recognition Amendment (Automatic Deemed Registration Notification — Western Australia) Determination 2024 [F2024L00538]

National Land Transport (Roads to Recovery List) Determination 2024 [F2024L00567]

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Agency engagement, *Delegated Legislation Monitor 7 of 2024*; [2024] AUSStaCSDLML 71.

¹ 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 30 June 2024.

4.2 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

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

Instrument	Undertaking	Date made
Defence (Visiting Forces) Amendment (Australia Timor Leste Defence Cooperation Agreement) Regulations 2024 [F2024L00456]	The department has undertaken to progress amendments to the explanatory statement in response to the committee's scrutiny concerns.	24 June 2024
Work Health and Safety (Operation Sovereign Borders) Declaration 2024 [F2024L00425]	The department undertook to progress amendments to the explanatory statement in response to the committee's scrutiny concerns.	21 June 2024

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Undertakings, *Delegated Legislation Monitor 7 of 2024*; [2024] AUSStaCSDLML 72.

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

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

Implemented undertakings

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

Instrument	Undertaking	Date implemented
Australian Education Regulations 2023 [F2023L01020]	The Minister for Education undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25 June 2024
Australian National Audit Office Auditing Standards 2024 [F2024L00057]	The department undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21 June 2024

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
Industry Research and Development (AI Adopt Program) Instrument 2024 [F2024L00562]	Up to \$17 million across 2023-24 to 2026-27	AI Adopt Program

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 7 of 2024*; [2024] AUSStaCSDLM 73.

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](#).

Chapter 6

Exemptions from disallowance and sunseting⁴

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.⁵

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;⁶

⁴ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Exemptions from disallowance and sunseting, *Delegated Legislation Monitor 7 of 2024*; [2024] AUSStaCSDLM 74.

⁵ 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 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 subsection 44(1) of the *Legislation Act 2003*;⁷
- 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.⁸

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
Federal Financial Relations (General Purpose Financial Assistance—2023-24 Payment No. 11) Determination 2024 [F2024L00545]	Subsection 9(5) of the <i>Federal Financial Relations Act 2009</i> Subsection 44(1) of the <i>Legislation Act 2003</i>
Federal Financial Relations (Housing, Homelessness and Housing Affordability Payments for 2022-23) Determination 2024 [F2024L00547]	Subsection 9(5) of the <i>Federal Financial Relations Act 2009</i> Subsection 44(1) of the <i>Legislation Act 2003</i>

⁷ 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.

⁸ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Guidelines](#), 2nd edition (February 2022) pp. 47–49; 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.

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.⁹

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;¹⁰

⁹ 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](#).

¹⁰ 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.

- is exempt from sunseting under the blanket exemption of instruments facilitating the establishment or operation of an intergovernmental body or scheme in subsection 54(1) of the *Legislation Act 2003*;¹¹
- 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 and the reports of its inquiry into the exemption of delegated legislation from parliamentary oversight.¹²

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
Federal Financial Relations (General Purpose Financial Assistance—2023-24 Payment No. 11) Determination 2024 [F2024L00545]	Subsection 54(1) of the <i>Legislation Act 2003</i>
Federal Financial Relations (Housing, Homelessness and Housing Affordability Payments for 2022-23) Determination 2024 [F2024L00547]	Subsection 54(1) of the <i>Legislation Act 2003</i>

¹¹ 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.

¹² Senate Standing Committee for the Scrutiny of Delegated Legislation, [Guidelines](#), 2nd edition (February 2022) pp. 34–35; 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.

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Chair