

From the desk of Dara Macdonald, Research Fellow

---

25 June 2020

Committee Secretary  
Senate Scrutiny of Delegated Legislation Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Email: [sldc.sen@aph.gov.au](mailto:sldc.sen@aph.gov.au)

Dear Committee Secretary

**Submission to the inquiry into the exemption of delegated legislation from parliamentary oversight**

The Institute of Public Affairs (IPA) welcomes the opportunity to provide the attached research report, *Bypassing Democracy*, as a submission to the Senate Standing Committee for the Scrutiny of Delegated Legislation's (the **Senate Committee**) inquiry into the exemption of delegated legislation from parliamentary oversight. The report explains how the Commonwealth government's response to the coronavirus pandemic has exposed the extent to which the parliament has abdicated its important oversight role and has allowed the government to avoid accountability and scrutiny for the laws it makes.

IPA research has found that between 18 March 2020 and 11 June 2020 a total of 171 pieces of delegated legislation were put into force to respond to COVID-19. Of these, 40 pieces of delegated legislation were exempt from the Senate Committee's disallowance powers.

The power to disallow laws made by the executive branch of government, such as Ministers and senior departmental and agency bureaucrats (known as delegated legislation) is a powerful mechanism for parliamentarians to ensure legislation is consistent with the rule of law and the rights and liberties of Australians are protected. The volume of delegated legislation exempt from parliamentary scrutiny reveals a deeper vulnerability to our liberties. A weakening of parliamentary oversight has led to a reduction in scrutiny of and transparency over law-making. This has concomitantly removed an important check and balance on the exercise of government power, intervention, and authority, leaving the Australian's rights and liberties exposed to government overreach.

There is no positive case for providing an exemption for delegated legislation on the basis that such delegated legislation was made in response to an emergency. The argument that the absence of an exemption would undermine the government's response to an emergency fails to understand how the disallowance process works in practice. Just because an instrument could be disallowed does not mean that disallowance is an inevitability. In the case of a genuine emergency—such as the COVID-19 pandemic—the Senate Committee has the discretion to factor relevant circumstances, such as speed of implementation, into its review of any delegated legislation and give it the appropriate weight when making a disallowance decision. The requirement to act swiftly in response to an emergency is not hampered by the requirement to answer questions about the response after the fact.

The requirement to act expediently in an emergency may make review prior to implementation impossible, but there is no reason why measures taken during an emergency should not be allowed to be examined retrospectively, particularly if they are still in force after the threat subsides.

The exemptions to parliamentary oversight are not limited to emergency requirements. Section 44 of the *Legislation Act 2003* (Cth) provides potentially limitless scope to the kinds of delegated legislation which could be exempted from the parliament's disallowance process. This undermines the parliament's role in scrutinising government actions and enabled the executive to circumvent the democratic process. The Commonwealth parliament's legal and constitutional authority to exempt delegated legislation from disallowance is not in question. But it is an authority parliament should refuse to exercise.

### **Recommendations**

The Commonwealth parliament has a responsibility to reassert itself as a check on the executive by removing all exemptions to disallowance for delegated legislation.

1. Consequently, the IPA recommends the removal of all provisions written into Commonwealth legislation that allow for delegated legislation to be exempt from disallowance by the Commonwealth parliament.

Additionally the IPA recommends three specific changes to improve parliamentary accountability and transparency.

2. Remove section 44(1) of the *Legislation Act 2003* (Cth) so that the legislative instruments of intergovernmental bodies, such as the Australian Competition and Consumer Commission, are not longer exempt from disallowance by the Commonwealth parliament.
3. Remove section 44(2)(b) of the *Legislation Act 2003* (Cth) so that Ministers can no longer make regulations which exempt other legislative instruments from disallowance by the Commonwealth parliament.
4. Reduce the volume and frequency of delegated legislation so that it can be adequately and efficiently scrutinised by the parliament.

I thank the Senate Committee for the opportunity to provide this submission. The IPA would be happy to assist further in any way that the committee considers appropriate as it deliberates on this important topic.

**Dara Macdonald**

Research Fellow

Institute of Public Affairs

Encl.



# **Bypassing Democracy: A report on the exemption of delegated legislation from parliamentary oversight**

**Dara Macdonald, Research Fellow**

**Morgan Begg, Research Fellow**

**June 2020**

## **Contents**

Introduction.....	3
Delegated legislation created in response to COVID-19 .....	5
Scrutiny of Delegated Legislation.....	7
Overview of delegated legislation .....	7
How the Senate Committee scrutinises delegated legislation .....	8
Exemptions to Scrutiny: A circumvention of democracy.....	9
Recommendations.....	11
Appendix 1.....	12

## Introduction

Questioning and challenging the policies and actions of ministers and senior bureaucrats is fundamental to parliament's role in holding the government to account. While the Commonwealth parliament can practice oversight of the government in numerous ways, the power to veto laws made by ministers and agencies is a powerful mechanism for parliamentarians to ensure legislation is consistent with the rule of law and the rights and liberties of Australians are protected.

One of the main parliamentary oversight mechanisms is the power to disallow laws made by the executive branch of the government, including ministers and senior departmental and agency officials. This power is exercised by the Senate Standing Committee for the Scrutiny of Delegated Legislation (the Senate Committee). The Senate Committee can issue a "notice of motion of disallowance" which repeals a piece of delegated legislation or delegated legislative instrument to and also restricts the minister from introducing the same piece of delegated legislation for a period of six months without Senate approval.

The Commonwealth government's response to the COVID-19 pandemic has revealed the extent to which the parliament has abdicated its important oversight role and has allowed the government to avoid accountability and scrutiny for the laws it makes. Between 18 March 2020 and 11 June 2020, a total of 171 pieces of delegated legislation were made in response to COVID-19. Of these, 40 pieces of delegated legislation were exempt from disallowance by the parliament.

The volume of delegated legislation exempt from parliamentary scrutiny reveals a deeper vulnerability to our liberties. A weakening of parliamentary oversight has led to a reduction in scrutiny of and transparency over law-making. This has concomitantly removed an important check and balance on the exercise of government power, intervention, and authority, leaving the Australian's rights and liberties exposed to government overreach.

There is no positive case for providing an exemption for delegated legislation on the basis that such delegated legislation was made in response to an emergency. The argument that the absence of an exemption would undermine the government's response to an emergency fails to understand how the disallowance process works in practice. Just because an instrument could be disallowed does not mean that disallowance is an inevitability. In the case of a genuine emergency—such as the COVID-19 pandemic—the Senate Committee has the discretion to factor relevant circumstances, such as speed of implementation, into its review of any delegated legislation and give it the appropriate weight when making a disallowance decision. The requirement to act swiftly in response to an emergency is not hampered by the requirement to answer questions about the response after the fact.

The requirement to act expediently in an emergency may make review prior to implementation impossible, but there is no reason why measures taken during an emergency should not be allowed to be examined retrospectively, particularly if they are still in force after the threat subsides.

The power to disallow delegated legislation is a powerful mechanism to impose accountability and transparency on government actions. However, the parliament has abdicated part of its role in holding ministers accountable for their actions by allowing a range of delegated legislation to be exempt from the Senate Committee's disallowance process. Separate Acts of Parliament make provision for the delegated legislation it authorises to be exempt from disallowance, while section 44 of the *Legislation Act 2003* (Cth) (*Legislation Act*) provides numerous grounds on which certain

kinds of delegated legislation can be exempted from the parliament's disallowance process. This has undermined parliament's role in scrutinising executive actions and enabled the executive to circumvent the democratic process.

The parliament's legal and constitutional authority to exempt delegated legislation from disallowance is not in question. It is however an authority that the parliament should refuse to exercise. The parliament has a responsibility to reassert itself as a check on the executive by removing all exemptions to disallowance for delegated legislation.

1. Consequently, this report recommends the removal of all provisions in Commonwealth legislation that allow for delegated legislation to be exempt from disallowance by the Commonwealth parliament.

Additionally this report recommends the following three specific changes to improve parliamentary accountability and transparency.

2. Remove section 44(1) of the *Legislation Act* so that the legislative instruments of intergovernmental bodies, such as the Australian Competition and Consumer Commission, are no longer exempt from disallowance by the Commonwealth parliament.
3. Remove section 44(2)(b) of the *Legislation Act* so that ministers can no longer make regulations which exempt other legislative instruments from disallowance by the Commonwealth parliament.
4. Reduce the volume and frequency of delegated legislation so that it can be adequately and efficiently scrutinised by the parliament.

## Delegated legislation created in response to COVID-19

On 18 March 2020 the Governor-General declared a biosecurity emergency in response to the outbreak of the novel coronavirus in Australia. Between 18 March and 11 June, 171 pieces of delegated legislation were created in response to the outbreak. These included 24 regulations made under the *Biosecurity Act 2015* (*Biosecurity Act*) that are directly related to the declaration of a biosecurity emergency. An additional 147 pieces of delegated legislation was also created for various other aspects of the COVID-19 response such as appropriation of finance to the Department of Health. Of the 171 pieces of delegated legislation that have been flagged by the Senate Committee as having been created in response to the pandemic, 40 are exempt from disallowance (see Appendix 1 for full list of exempt delegated legislation).

Instruments that were not able to be scrutinised by the Senate Committee were in relation to the following matters:

- Changing trade tariffs and duties for medical equipment.
- Designating quarantine or ‘Health Response Zones’.
- Changes to student visas and other temporary migration visas.
- Appropriation of funds to the Department of Health.
- The declaration of biosecurity emergency and subsequent extensions of the emergency period.
- Regulation of cruise ships entering and leaving Australia.
- Scheduling of Hydroxychloroquine and Salbutamol in the *Therapeutic Goods Act 1989* (Cth).
- Restrictions on entering and leaving Australia including a travel ban and exit requirements when travelling to certain destinations.
- Restrictions on people entering remote communities except for ‘essential’ activities.
- Regulations on trading such as preventing airport shops from operating.
- Regulations on possession and use of equipment required to limit spread of COVID-19 including prevention of ‘price gouging’.
- Changes to public sector operations including deferring wage increases for workers and between department transfers.
- The implementation and regulation of the COVIDSafe phone application including use of the data.

Each piece of delegated legislation which was exempt from Senate disallowance was made exempt under section 44(2) of the *Legislation Act*. This section provides that legislation which authorises the executive to make delegated legislation can also exempt that delegated legislation from the disallowance processes outlined in section 42 of the *Legislation Act*.

The most significant exemption is the one found in the *Biosecurity Act*. This emergency was declared and extended until 17 September 2020 as per the section 477(1) of the *Biosecurity Act*. Section 477(2) of the *Biosecurity Act* states that any legislative instrument made due to the emergency declared by way of section 477(1) cannot be subject to disallowance, and therefore puts all delegated legislation made under section 477(1) beyond the purview of Senate Committee scrutiny and disallowance process. Of the 40 pieces of delegated legislation that has been created in response to COVID-19 and exempt from disallowance, 24 are due to section 477(2) of the *Biosecurity Act*.

Section 75(7) of the *Public Governance, Performance and Accountability Act 2013* (Cth) also contains an exemption from disallowance. It applies to any instrument made pursuant to section 75(2), which allows for:

The Finance Minister may determine that the operation of one or more Schedules to one or more Appropriation Acts is modified in a specified way. The modification must be related to the transfer of function.<sup>1</sup>

Determinations such as transfers between the departments due to COVID-19 have been exempt from disallowance on this basis. This provision is not limited to emergency requirements and can be used to make delegated legislation at any time and is not disallowable by the Senate Committee.

---

<sup>1</sup> *Public Governance, Performance and Accountability Act 2013* (Cth) s 75(2).



## Scrutiny of Delegated Legislation

### Overview of delegated legislation

The parliament has the power to draft legislation. Those drafting and passing legislation are tasked with the job of ensuring legislation is aligned with community expectations, and that it is not shortsighted or could be applied unjustly. The parliament can authorise the executive to make specific legislation or regulations known as “delegated legislation.” Empowering the executive to make delegated legislation is a practical exercise as it allows for problems with legislation and how it is enforced to be resolved to ensure that the spirit of the legislation is maintained. At the Commonwealth level delegated legislation is made either under the authorisation of acts of parliament or otherwise in accordance with the *Legislation Act*.

There is no provision in the Australian Constitution empowering the executive to make delegated legislation. Delegated legislation is a feature of the Westminster system, on which the Australia Commonwealth parliament is based. Henry VIII was the first monarch to empower subordinates to make delegated legislation as it would be recognised today. The most striking of which is Statute of Proclamations in 1539 which empowered Henry VIII, with the advice of his Council:

to set forth proclamations under such penalties and pains and of such sort as to His Majesty and his said Council should seem necessary and requisite, the said proclamations to be obeyed, observed and kept as though they were made by Act of Parliament unless the King's Highness dispense with any of them under his great seal.<sup>2</sup>

The power of the executive to make delegated legislation has been upheld through decisions of the High Court of Australia, most significantly *Baxter v Ah Way* (1909) 8 CLR 626. In that case the High Court reasoned that:

the legislature would be an ineffective instrument for making laws if it only dealt with the circumstances existing at the date of the measure. The aim of all legislatures is to project their minds as far as possible into the future, and to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specifically for all cases, and, therefore, legislation from the very earliest times, and particularly in more modern times, has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied.<sup>3</sup>

The main justification for delegated legislation is that parliament when drafting legislation cannot see the specific circumstances which it will apply to and therefore it is practical if those administering the law can pass regulations in order to direct its application. Another rationalisation includes the fact that it is not subject to parliamentary processes and therefore can be made rapidly in the instance of an emergency.

The volume and diversity of delegated legislation has expanded significantly between 1970 and the 1990s. In 1970 the executive could create ordinances, regulations and by-laws. By the 1990s the number of kinds of delegated legislative instruments the executive could make had increased to over 100 and includes documents such as guidelines and principles.<sup>4</sup> IPA research published in June

---

<sup>2</sup> Stephen Bourke, ‘Subordinate Rule Making - An Historical Perspective’ (1991) 2 *Admin Review* 8.

<sup>3</sup> *Baxter v Ah Way* (1909) 8 CLR 626.

<sup>4</sup> Odgers, J. R, Harry Evans and Rosemary Laing (eds), *Odgers’ Australian Senate practice* (Commonwealth of Australia, 14th ed, 2016) 429-460.

2019 revealed that just five Commonwealth agencies were responsible for creating 19,011 pages of delegated legislative instruments in force at that time.<sup>5</sup> This measure is only a snapshot of the total volume of delegated legislation which is currently in force.

The most significant issue with delegated legislation is that it lacks democratic oversight. Historically, parliamentary control of executive law-making was mostly confined to the legislation that delegated the power. Aside from some ad hoc efforts by the Senate to disallow delegated legislation there was an absence of formal scrutiny and disallowance procedures. Growing concerns about the capacity of the parliament to provide oversight of executive actions led to the establishment of the Standing Committee on Regulations and Ordinances in 1932 to scrutinise regulations and ordinances. In 1979 the powers of the Senate Committee were expanded to cover all instruments made under the delegated authority of an Act of Parliament. Most recently on 27 November 2019 an inquiry into the functioning of the committee resulted in the committee being renamed the Senate Standing Committee on the Scrutiny of Delegated Legislation. Among other things the Senate Standing Orders were amended so that the scope of the committee was expanded further by automatically referring all legislative instruments which were subject to disallowance, disapproval or affirmative resolution to the committee, and brought proposed legislative instruments within the scope of the committee's scrutiny.

### **How the Senate Committee scrutinises delegated legislation**

Section 42 of the *Legislation Act* codifies the right of the House of Representatives and the Senate to disallow legislative instruments, including delegated legislation. In practice this responsibility is carried out by the Senate, which has defined its disallowance procedure in Senate Standing Orders 23 (SO 23).<sup>6</sup>

The Senate Committee is assisted by a legal adviser that identifies delegated legislation that should be reviewed. When delegated legislation is made it is tabled in both Houses of Parliament, whereupon the Senate Committee must within 15 sitting days scrutinise the instrument and determine whether to give notice of a motion to disallow the instrument. The Senate Committee has developed four main principles for disallowing delegated legislation. These principles encompass:

- all aspects of legal conformity, including under the Constitution, the authorising Act and any other applicable legislation (such as the *Acts Interpretation Act 1901* and *Legislation Act 2003*);
- all constitutional, common law and statutorily based rights, including those relating to criminal process rights, penalties, retrospectivity and personal privacy;
- the full range of natural justice and due process considerations around administrative decision making, including objective decision making criteria; the giving of reasons for decisions; rights of judicial and merits review; and appeal decisions;
- all circumstances in which the use of delegated rather than primary legislation may be regarded as improperly circumventing the full legislative process, including instruments

---

<sup>5</sup> Kurt Wallace, *Regulatory Dark Matter: How Unaccountable Regulators Subvert Democracy by Imposing Red Tape Without Transparency* (IPA Research Report, June 2019) 11.

<sup>6</sup> The reason that this function has been exercised by the Senate rather than the House of Representatives appears to have been expressed by Labor MP Maurice Blackburn in 1930. In evidence given to a Select Committee investigating into the need for a standing committee to scrutinise regulations and ordinances, Mr Blackburn explained that because the Government of the day relies on the votes in the House of Representatives, a proposal to disallow delegated legislation in the lower house would be seen as a de facto vote of confidence in the minister and undermine its ability to effectively scrutinise ministers. See Odgers, Ch 15.

anticipating matters contained in bills and broad exemptions operating as de facto amendments to primary legislation.<sup>7</sup>

The 2019 reform to the Senate Committee amended the criteria for disallowing legislative instruments. The criteria defined in SO 23(3) requires the Senate Committee to scrutinise legislative instruments as to whether:

- (a) it is in accordance with its enabling Act and otherwise complies with all legislative requirements;
- (b) it appears to be supported by a constitutional head of legislative power and is otherwise constitutionally valid;
- (c) it makes rights, liberties, obligations or interests unduly dependent on insufficiently defined administrative powers;
- (d) those likely to be affected by the instrument were adequately consulted in relation to it;
- (e) its drafting is defective or unclear;
- (f) it, and any document it incorporates, may be freely accessed and used;
- (g) the accompanying explanatory material provides sufficient information to gain a clear understanding of the instrument;
- (h) it trespasses unduly on personal rights and liberties;
- (i) it unduly excludes, limits or fails to provide for independent review of decisions affecting rights, liberties, obligations or interests;
- (j) it contains matters more appropriate for parliamentary enactment; and
- (k) it complies with any other ground relating to the technical scrutiny of delegated legislation that the committee considers appropriate.<sup>8</sup>

### **Exemptions to Scrutiny: A circumvention of democracy**

Only delegated legislation that is disallowable is referred to the Senate Committee. The two methods of exemption from disallowance are defined under section 44 of the *Legislation Act*. While the method under section 44(1) is limited to specific kinds of legislative instruments, the cumulative effect of the exemption method in section 44(2) is nebulous and potentially unrestrained in number.

#### *Section 44(1)*

The first method to exempt delegated legislation from disallowance is found in section 44(1) of the *Legislation Act* provides an exemption as follows:

(1) Section 42 does not apply in relation to a legislative instrument, or a provision of a legislative instrument if the enabling legislation for the instrument (not being the *Corporations Act 2001*):

- (a) facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States or Territories; and
- (b) authorises the instrument to be made by the body or for the purposes of the body or scheme;

unless the instrument is a regulation, or the enabling legislation or some other Act has the effect that the instrument is disallowable.<sup>9</sup>

---

<sup>7</sup> Odgers, J. R, Harry Evans and Rosemary Laing (eds), above n 4, 436.

<sup>8</sup> Commonwealth, *Standing Orders*, Senate, standing order 23.

<sup>9</sup> *Legislation Act 2003* (Cth) s 44.

This provision prevents the disallowance of any instrument that establishes or is made by a body that involves multiple states and the commonwealth. Examples of schemes include National Classification Scheme, which rates movies, TV shows, music and video games based on content, and the Australian Competition and Consumer Commission which creates a nationally applicable consumer regime. Schemes are usually created to harmonise legislation between different states, particularly where the area of law is a state issue (both the classification of content and consumer laws historically have been left to the individual states to regulate). The rationale for exempting these types of arrangements is because the Commonwealth government should not have the right to unilaterally disallow a multilateral instrument.

The rationale for this exception seems sound, but it also gives rise to one of the major problems with these types of intergovernmental schemes, that of over regulation combined with limited oversight. Intergovernmental schemes produce regulations that can significantly impact people including making understanding the law difficult as it is too complex and voluminous. The Australia Consumer and Competition Commission alone has in place 44,160 pages of regulation that is exempt from scrutiny. These types of regulation have been referred to as ‘regulatory dark matter’. The economic impacts of regulatory dark matter have been shown to be severe as it “stunts competition. Smaller businesses are less able to keep up with the ever growing body of regulatory activity, which undermines their ability to compete against larger incumbent businesses.”<sup>10</sup>

#### *Section 44(2)*

The second reason to exempt delegated legislation from disallowance is found in section 44(2) of the Legislation Act. When originally introduced in 2003 section 44(2) contained a table with an exhaustive list of types of instruments that are exempted from disallowance (except in cases where a “instrument or provision is subject to disallowance under its enabling legislation or by means of some other Act”).<sup>11</sup> Section 44 was amended in 2015 to remove the exhaustive list and replace it with section 42(2)(a) and (b):

- (2) Section 42 does not apply in relation to a legislative instrument, or a provision of a legislative instrument, if:
- (a) an Act declares, or has the effect, that section 42 does not apply in relation to the instrument or provision; or
  - (b) the legislative instrument is prescribed by regulation for the purposes of this paragraph.

Section 44(2)(a) applies where a piece of legislation enables delegated legislation to be made, but provides within the same piece of legislation that the disallowance process under section 42 of the *Legislation Act* does not apply. Section 44(2)(b) applies where the regulation has been created which has the intention of prescribing classes or types of delegated legislation to be exempt from the disallowance process under section 42 of the Legislation Act. For instance, when introduced the *Legislation (Exemptions and Other Matters) Regulation 2015* listed 33 specific kinds of legislative instruments as well as four classes of legislative instruments, including any instrument which is a direction given by a minister to a person, as exempt from disallowance under section 42 of the *Legislation Act*. Empowering the executive to exempt itself from disallowance is a dangerous abdication of parliament’s responsibility to supervise and scrutinise the use of delegated authority.

---

<sup>10</sup> Kurt Wallace, above n 5, 4.

<sup>11</sup> *Legislative Instruments Act 2003* (Cth) s 44(2) as enacted in 2003.

## Recommendations

### **Recommendation 1: Remove provisions from Commonwealth legislation that allow for delegated legislation to be exempt from disallowance by the Commonwealth parliament**

The power to disallow delegated legislation is a powerful mechanism to impose accountability and transparency on government actions. However the parliament has abdicated part of its role in holding ministers accountable for their actions by allowing a range of delegated legislation to be exempt from the Senate Committee's disallowance process. The parliament has a responsibility to reassert itself as a check on the executive by removing all exemptions to disallowance for delegated legislation.

In the absence of this general prohibition on the circumvention of disallowance, this report recommends the following specific changes to improve parliamentary accountability and transparency.

### **Recommendation 2: Remove section 44(1) of the *Legislation Act* so that the legislative instruments of intergovernmental bodies are no longer exempt from disallowance by the Commonwealth parliament**

Remove section 44(1) of the *Legislation Act* so that the legislative instruments of intergovernmental bodies, such as the Australian Competition and Consumer Commission, are no longer exempt from disallowance by the Commonwealth parliament. If there is an objection to this process due to the multilateral nature of these schemes, a joint committee or process to scrutinise these instruments would be another method of ensuring that these bodies are democratically accountable for their decisions.

### **Recommendation 3: Remove section 44(2)(b) of the *Legislation Act* so that ministers can no longer make regulations which exempt other legislative instruments from disallowance by the Commonwealth parliament**

Section 44(2)(b) of the *Legislation Act* allows the executive to make regulations which affect whether other kinds of legislative instruments are disallowable by the parliament. Empowering the executive to exempt itself from disallowance is a dangerous abdication of parliament's responsibility to supervise and scrutinise the use of delegated authority.

### **Recommendation 4: Reduce the volume and frequency of delegated legislation**

The volume of delegated legislation, and the frequency with which it is passed, should be reduced so that it can be adequately scrutinised by the parliament. Delegated legislation should be kept to a minimum, and those instruments that are necessary should be clear, concise, and effective.

## Appendix 1

Delegated Legislation made in response to COVID-19 as at 11 June 2020 which were exempt from disallowance under section 42 of the *Legislation Act* and were not considered by the Senate Committee.

Instrument	Commencement date	Purpose of instrument
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 5) Determination 2020	12/06/2020	Amends remote communities restrictions.
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 4) Determination 2020	05/06/2020	Amends remote communities restrictions.
Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2019-2020 (No. 6)	27/05/2020	Inter-department transfers and other matters.
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 3) Determination 2020	Sections 1 to 4 and Schedule 1 commence on 24/05/2020. Schedule 2 commences on 05/06/2020.	Amends remote communities restrictions.
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Amendment Determination (No. 2) 2020	21/05/2020	Amends cruise ship requirements.
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension) Instrument 2020	15/05/2020	Extends biosecurity emergency.
Biosecurity Repeal (Human Health Response Zone) (Swissotel Sydney) Determination 2020	30/04/2020	Repeal of use of hotel for quarantine (health response zone).
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Public Health Contact Information) Determination 2020	11.59 pm by legal time in the ACT on 25/04/2020.	COVIDSafe App and data regulation.
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment (No. 2) Determination 2020	24/04/2020	Amends remote communities restrictions.
Public Service (Terms and Conditions of Employment) (General wage increase deferrals during the COVID-19 pandemic) Determination 2020	14/04/2020	Defers wage increases for public sector workers.
Advance to the Finance Minister Determination (No. 4 of 2019-2020)	09/04/2020	Appropriation of funds to the Department of Health
Advance to the Finance Minister Determination (No. 5 of 2019-2020)	09/04/2020	Appropriation of funds to the Department of Health
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Amendment Determination (No. 1) 2020	08/04/2020	Amends remote communities restrictions.
Migration (LIN 20/122: COVID-19 Pandemic event for Subclass 408 (Temporary Activity) visa and visa application charge for Temporary Activity (Class GG) visa) Instrument 2020	04/04/2020	Visa changes for temporary migrants who are unable to depart Australia due to COVID-19.
Advance to the Finance Minister Determination (No. 3 of 2019-2020)	03/04/2020	Appropriation of funds to the Department of Health
Poisons Standard Amendment (Hydroxychloroquine) Instrument 2020	03/04/2020	Amends Hydroxychloroquine scheduling.
Biosecurity (Exit Requirements) Amendment (Nauru) Determination 2020	02/04/2020	Exit requirements for travelling to Nauru.
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Essential Goods) Determination 2020	31/03/2020	Regulates 'price gouging' and possession and use of equipment required to limit spread of COVID-19.
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Determination 2020	11:59 pm AEDT on 29/03/2020	Prevents retail outlets at airports from trading.

Exemption of delegated legislation from parliamentary oversight  
Submission 16

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Amendment Determination (No. 1) 2020	27/03/2020	Amends cruise ship requirements.
Prime Minister's direction under subsection 21(1) – 2020 (No. 1)	26/03/2020	
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020	11.59 pm AEDT on 26/03/2020	Restricts people from entering remote communities except for 'essential' activities.
Biosecurity (Exit Requirements) Determination 2020	5:39 pm AEDT on 26/03/2020.	Exit requirements for persons travelling to pacific islands.
Biosecurity (Human Health Response Zone) (Swissotel Sydney) Determination 2020	25/03/2020	Use of hotel for quarantine (health response zone).
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020	12:00 pm on 25/03/2020.	Overseas travel ban
Poisons Standard Amendment (Hydroxychloroquine and Salbutamol) Instrument 2020	24/03/2020	Schedules Hydroxychloroquine and Salbutamol in the Therapeutic Goods Act 1989.
Biosecurity Repeal (Human Health Response Zones) Determination 2020	20/03/2020	Repeals determinations designating the Health Response Zones
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020	18/03/2020	Regulates cruise ships entering and leaving Australia.
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020	18/03/2020	Declaration of Biosecurity emergency
Advance to the Finance Minister Determination (No. 2 of 2019-2020)	09/03/2020	Appropriation of funds to the Department of Health
Advance to the Finance Minister Determination (No. 1 of 2019-2020)	04/03/2020	Appropriation of funds to the Department of Health
Migration (LIN 20/046: Arrangements for Visitor (Class FA) Visa Applications) Instrument 2020	25/02/2020	Changes to visitor visas
Migration (LIN 20/046: Arrangements for Visitor (Class FA) Visa Applications) Instrument 2020	25/02/2020	Changes to visitor visas
Migration (LIN 20/045: Class of persons for Visitor (Class FA) visa applications) Instrument 2020	25/02/2020	Changes to visitor visas
Migration (LIN 20/102: Arrangements for Student (Temporary) (Class TU) visa applications) Instrument 2020	25/02/2020	Changes to student visas.
Biosecurity (Human Health Response Zone) (Howard Springs Accommodation Village) Determination 2020	08/02/2020	Use of Howard Springs Accommodation Village as a health response zone.
Biosecurity (Human Health Response Zone) (Royal Australian Air Force Base Learmonth) Determination 2020	03/02/2020	Use of Royal Australian Air Force Base Learmonth as a health response zone.
Biosecurity (Human Health Response Zone) (North West Point Immigration Detention Centre) Determination 2020	03/02/2020	Use of Christmas Island detention centre as a health response zone.
Customs By-law No. 2019608	01/02/2020	Includes equipment for limiting the spread of COVID-19 in Item 57 of Schedule 4 to the Customs Tariff Act 1995 which allows for concessional rates of duty.
Biosecurity (Listed Human Diseases) Amendment Determination 2020	21/01/2020	Amends the Biosecurity (Listed Human Diseases) Determination 2016 to include "human coronavirus with pandemic potential"