

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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Introduction

The Senate Standing Committee on Regulations and Ordinances (the committee) was established in 1932. The committee's name was changed on 4 December 2019 to the Senate Standing Committee for the Scrutiny of Delegated Legislation.¹ The role of the committee is to examine the technical qualities of all disallowable legislative instruments, and to decide whether they comply with the committee's non-partisan scrutiny principles.

Terms of reference

The committee's scrutiny principles are set out in Senate standing order 23(3) which requires the committee to scrutinise each instrument as to whether:

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

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

1 On 27 November 2019, the Senate agreed to amend standing orders 23 and 25(2)(a), with effect from 4 December 2019. For further information, see https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Changes_to_committee_standing_orders.

the instrument on the ground that it raises significant issues, or otherwise gives rise to issues that are likely to be of interest to the Senate.

Nature of the committee's scrutiny

The committee's work may be broadly described as technical legislative scrutiny. In this regard, the committee does not examine the policy merits of delegated legislation. However, if the committee determines that an instrument raises significant issues, it may write to the relevant legislation committee to alert that committee to the instrument, or otherwise draw the instrument to the attention of the Senate.

Where an instrument does not appear to comply with the committee's technical scrutiny principles, the committee's usual approach is to correspond with the responsible minister or relevant agency to seek further explanation or clarification of the matter at issue. The committee may also seek an undertaking for specific action to address its scrutiny concerns.

The committee's work is supported by the processes for the registration, tabling and disallowance of legislative instruments under the *Legislation Act 2003*.²

Publications

The committee's usual practice is to table a report, the *Delegated Legislation Monitor*, each Senate sitting week. The monitor provides an overview of the committee's scrutiny of disallowable legislative instruments for the preceding period. Disallowable legislative instruments detailed in the monitor are also listed in the 'Index of instruments' on the committee's website.³

Ministerial correspondence

The committee undertakes formal correspondence with ministers in order to resolve more significant scrutiny concerns. Ministerial correspondence is published on the committee's website.⁴

Agency correspondence

The committee undertakes informal correspondence with agencies via its secretariat to gather information about potential scrutiny concerns. This correspondence assists the committee in deciding whether it is necessary to seek further advice from the relevant minister about those concerns. Agency correspondence is not published;

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

3 *Index of instruments*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Index.

4 See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

however, a record of the instrument, scrutiny issue and status of the correspondence is included in Appendix A (ongoing matters) and Appendix B (concluded matters) in the monitor.

Guidelines

Guidelines relating to the committee's scrutiny principles are published on the committee's website.⁵

General information

The Federal Register of Legislation should be consulted for the text of instruments, explanatory statements, and associated information.⁶

The Senate Disallowable Instruments List provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.⁷

The Disallowance Alert records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.⁸

Instruments considered in this monitor

The committee examined five disallowable legislative instruments registered on the Federal Register of Legislation on 28 May 2020.

This monitor identifies the instruments registered in this period about which the committee has or had scrutiny concerns. It also identifies instruments registered before this period in relation to which the committee is continuing to engage with the relevant minister or agency, or has concluded its examination.

5 See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Guidelines.

6 See Australian Government, Federal Register of Legislation, www.legislation.gov.au.

7 Parliament of Australia, *Senate Disallowable Instruments List*, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/Senate_Disallowable_Instruments_List.

8 *Disallowance Alert 2020*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Alerts.

Chapter 1

Instruments raising significant scrutiny concerns

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

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

National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019)

FRL No.	F2019L01542 ¹
Purpose	To make special arrangements to establish a pilot to increase the supply of naloxone to persons who are at risk of an opioid overdose or who are likely to be able to assist such persons.
Authorising legislation	<i>National Health Act 1953</i>
Portfolio	Health
Disallowance	15 sitting days after tabling (tabled in the Senate on 4 December 2019). Notice of motion to disallow given on 12 May 2020. ²

Overview

1.3 The instrument creates a special arrangement to support the establishment of a PBS-subsidised pilot program to supply naloxone to persons in New South Wales, Western Australia and South Australia who are at risk of an opioid overdose, and persons who are likely to be able to assist such persons.³ The instrument empowers the Secretary to make a number of decisions for the purposes of the program. These

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

2 Notice given by the Chair of the committee. See *Disallowance Alert 2020*: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Alerts.

3 Explanatory statement, p. 1.

include making payments to medical practitioners, pharmacists and other suppliers for the supply of medicines, and determining the amounts of those payments.⁴

1.4 The committee takes this opportunity to emphasise that, as a technical scrutiny committee, the committee does not consider the policy merits of the instruments that come before it for consideration. However, under the standing orders of the Senate, the committee is required to assess each instrument against its technical scrutiny principles and, where the committee forms the view that an instrument does not comply with these principles, it may recommend disallowance of the instrument to the Senate.

1.5 Subsection 25(1) of the instrument provides that the Secretary may, in writing, authorise persons having suitable qualifications and experience to perform any of the Secretary's functions, or exercise any of the Secretary's powers, under the instrument on the Secretary's behalf. Subsection 25(2) clarifies that such authorisations may be in the form of a contract entered into by the Secretary on behalf of the Commonwealth. Subsection 25(3) provides that authorised persons must comply with any directions of the Secretary in performing the Secretary's functions or exercising the Secretary's powers.

1.6 The instrument was made under section 100 of the *National Health Act 1953* (National Health Act) by the Deputy Secretary, Health Financing Group, as delegate of the Minister for Health.

1.7 Subsection 100(1) of National Health Act empowers the minister to 'make special arrangements for, or in relation to, providing that an adequate supply of pharmaceutical benefits will be available' to certain persons specified in paragraphs 100(1)(a) to (c). Subsection 100(3) provides that Part VII of the Act, and legislative instruments made for the purposes of that Part, have effect subject to a special arrangement made under subsection 100(1).

1.8 On 12 May 2020, the committee placed a protective notice of motion to disallow the instrument to provide additional time for the minister to respond to its concerns, outlined below.

Compliance with authorising legislation⁵

1.9 Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements.

Interpretation of section 100 of the National Health Act

1.10 As noted above, section 100 of the National Health Act provides that the minister may make special arrangements relating to providing to an adequate supply

4 Section 22.

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

of pharmaceutical benefits. However, that section does not expressly provide for the authorisation of persons to administer those arrangements, nor does it empower the Secretary to authorise persons to exercise the Secretary's powers and functions. Consequently, it is unclear to the committee that section 100 of the National Health Act would permit the Secretary to authorise persons to exercise the Secretary's functions and powers under section 25 of the instrument.

1.11 The committee has requested advice from the minister in relation to this matter on three occasions.⁶ The committee has also requested that the minister pursue amendments to the National Health Act to expressly provide for the authorisation of private third parties to perform the functions and exercise the powers of the Secretary under the instrument.

1.12 In response, the minister has advised that he is satisfied that section 25 of the instrument is lawfully made, in accordance with subsections 100(1) and 100(3) of the National Health Act. In this respect, the minister has asserted that the power for the Secretary to authorise persons to exercise the Secretary's functions and powers falls within the scope of the minister's power to 'make arrangements for, or in relation to...[the] adequate supply of pharmaceutical benefits'. On this basis, the minister has also advised that he considers it unnecessary to amend the National Health Act as requested by the committee.

1.13 The minister has also advised that the explanatory material relating to section 100 of the National Health Act demonstrates that the Parliament clearly intended section 100 to providing for the funding of medicines outside the normal operation of the Pharmaceutical Benefits Scheme (PBS)—including arrangements such as those in the present instrument.

1.14 While the committee appreciates the minister's advice, the committee remains concerned that section 100 of the National Health Act does not appear to provide sufficient legal authority for section 25 of the instrument. The committee considers that the authorisation of private third parties to exercise the functions and powers of a public office-holder is a significant matter that requires *express* authority in primary legislation.

1.15 In this respect, the committee notes that neither the terms of section 100 of the National Health Act, nor any relevant explanatory materials, expressly indicate that Parliament intended section 100 to support the authorisation of private third parties to exercise the powers and functions of a departmental secretary. By contrast, other sections of the National Health Act set out a clear framework for the authorisation of private third parties to exercise the powers and functions of certain

6 The committee requested the minister's advice in three letters dated 13 February, 3 April and 21 May 2020. Copies of these letters, and the minister's responses, are available on the committee's website. See: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Index/2020/K_O.

public officials.⁷ The committee notes that the approach taken in these sections of the National Health Act is consistent with the standard approach taken across the Commonwealth to the delegation to, and authorisation of, third parties to perform the functions and exercise the powers of public officials using primary legislation.

Consistency with other special arrangements

1.16 In scrutinising the instrument, the committee has also considered the approach taken in other special arrangements made under section 100 of the National Health Act to enabling private third parties to undertake certain actions 'in relation to' the provision of an adequate supply of pharmaceutical benefits to certain persons. In this regard, none of the other special arrangements considered by the committee appear to broadly authorise qualified private third parties to perform all of the functions and exercise all of the powers of a public official under that arrangement.

1.17 The special arrangements which require private third parties to perform specified functions or exercise specified powers can be grouped into two categories. Special arrangements in the first category only appear to concern private third parties that are approved and authorised under the National Health Act,⁸ such as 'approved hospital authorities' and 'approved pharmacists'.⁹

1.18 Special arrangements in the second category only appear to provide for the approval of private third parties where they meet prescribed conditions, rather than any form of authorisation to exercise a public officer's powers or perform their functions. Once approved, these private third parties can be supplied with pharmaceutical benefits by other third parties approved and authorised under the National Health Act. For example, the National Health (Remote Area Aboriginal Health Services Program) Special Arrangement 2017 (PB 107 of 2017) (Remote Area Aboriginal Health Services instrument) sets out a framework for the approval of Aboriginal health services to be supplied with pharmaceutical benefits by 'approved pharmacists' and 'approved hospital authorities', which are approved under section 90 and 94 of the National Health Act.

1.19 Subsection 9(2) of the Remote Area Aboriginal Health Services instrument sets out the conditions of which the Secretary must be satisfied before it approves an Aboriginal health service. The explanatory statement to that instrument helpfully clarifies that the Secretary's decision to approve Aboriginal health services under the instrument is not subject to independent merits review, as the Secretary has no

7 See, for example, National Health Act, sections 84AAB, 84AAF, and 84AAJ. Those sections, respectively, provide for the authorisation of optometrists, eligible midwives and eligible nurse practitioners.

8 National Health Act 1953, see for example, subsection 84(1).

9 See, for example, National Health (Botulinum Toxin Program) Special Arrangement 2015 (PB 87 of 2015).

discretion to refuse an approved applicant if they meet the conditions set out in subsection 9(2) are satisfied.

1.20 In the committee's view, the instrument does not appear to be consistent with the approach taken in the two categories of special arrangements outlined above, which also require certain actions to be performed by private third parties.

1.21 In light of committee's persistent scrutiny concern about the source of legal authority for section 25 of the instrument, the committee requests the minister's advice as to:

- **why it was considered necessary to authorise suitably qualified and experienced persons to perform all of the functions and exercise all of the powers of the Secretary, when this approach does not appear to have been used in other special arrangements made under section 100 of the National Health Act which also require certain actions to be performed by private third parties; and**
- **whether the department obtained external legal advice on the source of legal authority for section 25 of the instrument, and, if so, whether the committee may be provided with that advice.**

Availability of independent merits review and accountability safeguards¹⁰

1.22 Senate standing order 23(3)(i) requires the committee to scrutinise each legislative instrument as to whether it fails to provide for the independent review of decisions affecting rights, liberties, obligations or interests. In addition, Senate standing order 23(3)(k) requires the committee to consider whether a legislative instrument raises any other technical scrutiny matter. The committee interprets this to include whether the measures in the instrument are subject to appropriate accountability safeguards.

1.23 The committee remains most concerned about the source of legal authority for section 25 of the instrument. However, as a technical scrutiny matter, the committee is also concerned to ensure that, where a private third party is lawfully authorised to exercise certain powers and perform certain functions of a public official, the decision to authorise that third party, and the actions of that authorised party, are subject to appropriate accountability safeguards. These include the availability of independent review of the decision to authorise the third party and any decisions made by the third party, and the application of privacy and freedom information laws as though the third party were a public official.

1.24 In correspondence with the committee, the minister has indicated his openness to instructing his department to pursue amendments to section 25 'to clarify the role of third party administrators, or to provide additional oversight' of the third party administrators' activities by his department.

10 Senate Standing Order 23(3)(i); Senate Standing Order 23(3)(k).

1.25 The minister has also outlined the activities that third party administrators undertake pursuant to an authorisation under section 25 of the instrument. These include providing a software solution to:

- enable approved suppliers to make claims for payment of naloxone provided to designate persons;
- collect data used to evaluate the pilot program; and
- provide regular reports on the pilot to the department.

1.26 The minister has also noted that the powers and functions which a third party is authorised to exercise 'do not involve any discretionary decision-making', such that independent merits review of decisions by the third party may not be necessary or appropriate. However, it remains unclear to the committee whether the Secretary's decision to authorise a third party to exercise the Secretary's functions and powers is subject to independent review. In this regard, the committee notes that other provisions of the National Health Act provide for the independent merits review of decisions to authorise certain private individuals, including midwives, nurse practitioners and optometrists, to exercise powers and perform functions of public officials.¹¹ It is also unclear to the committee whether the administrator is subject to the privacy and freedom of information laws that attach to the Secretary.

1.27 The committee appreciates the minister's engagement on this matter. However, in light of the matters outlined above, the committee would also welcome the minister's advice as to:

- **the availability of merits review of the Secretary's decision to authorise third parties to exercise the Secretary's powers and perform the Secretary's functions; and**
- **the application of the *Privacy Act 1988* and *Freedom of Information Act 1982* to third parties purportedly authorised by the Secretary under section 25 of the instrument.**

11 See, for example, National Health Act, subsections 105AB(2) and (3).

Chapter 2

Matters of interest to the Senate

2.1 Senate standing order 23(4) requires the committee to scrutinise each instrument to determine whether the Senate's attention should be drawn to it on the ground that it raises significant issues, or otherwise gives rise to issues that are likely to be of interest to the Senate.

2.2 This chapter identifies the instruments which the committee has resolved to draw to the attention of the Senate and the relevant legislation committee under standing order 23(4), with the exception of instruments which specify significant executive expenditure, which are listed in Chapter 3.¹

2.3 The committee did not identify any instruments registered on 28 May 2020 as raising any significant issues, or otherwise giving rise to issues that are likely to be of interest to the Senate.

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

Chapter 3

Scrutiny of Commonwealth expenditure

3.1 The *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act) and the *Industry Research and Development Act 1986* (IRD Act) authorise the Commonwealth to spend public money on grants and programs specified in instruments made under those Acts. Consequently, the specification of expenditure in an instrument made under these Acts effectively authorises the Commonwealth to spend public moneys on the relevant grant or program. The scrutiny of such instruments is a key aspect of parliamentary scrutiny and control of Commonwealth expenditure.¹

3.2 To facilitate such scrutiny, this chapter draws the Senate's attention to the nature and extent of Commonwealth expenditure that is authorised by the FF(SP) Act and the IRD Act and specified in delegated legislation made under those Acts.²

3.3 The committee did not identify any instruments registered on 28 May 2020 as authorising Commonwealth expenditure through the FF(SP) Act or IRD Act.

1 For further information see the committee's guideline on [Scrutiny of Commonwealth expenditure](#) and Chapter 7 of the report of the committee's inquiry, [Parliamentary scrutiny of delegated legislation](#).

2 Details of all instruments which specify Commonwealth expenditure are published on the committee's website: https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Scrutiny_of_Commonwealth_expenditure.

Appendix A

Ongoing matters

The committee engages with relevant ministers and agencies to attempt to resolve its concerns about scrutiny issues raised by disallowable legislative instruments. This appendix documents the committee's ongoing scrutiny concerns.

Ministerial engagement

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

Instrument	Issue	Status
ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486 [F2020L00618]	Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the assistant minister.
ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487 [F2020L00623]	Principle (k) parliamentary oversight	
ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198 [F2020L00237]	Principle (j) exemptions to primary legislation	Committee considering response from the assistant minister.
ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199 [F2020L00238]	Principle (k) parliamentary oversight	
Australian Crime Commission Establishment Regulations 2020 [F2020L00162]	Principle (i) availability of independent review	Committee considering response from the minister.
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]	Principle (d) adequacy of consultation	Seeking advice from the minister.
Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2020 [F2020L00406]	Principle (e) clarity of drafting Principle (k) parliamentary oversight	Seeking advice from the minister.

¹ See www.aph.gov.au/senate_sd/c.

Instrument	Issue	Status
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	Principle (e) unclear drafting Principle (j) significant penalties	Seeking further advice from the minister following a private briefing with senior departmental officials. 'Protective' notice of motion to disallow was placed on 14/05/2020.
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]	Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight	Seeking advice from the minister.
Defence Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00120]	Principle (h) procedural fairness	Seeking further advice from the minister.
Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020 [F2020L00432]	Principle (d) adequacy of consultation Principle (g) adequacy of explanatory materials Principle (j) matters more appropriate for parliamentary enactment	Committee considering response from the minister.
Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020 [F2020L00328]	Principle (f) incorporation of external materials	Committee considering response from the assistant minister.
Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 [F2020L00435]	Principle (k) parliamentary oversight	Seeking further advice from the Treasurer.
Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019 [F2019L01699]	Principle (i) availability of independent review	Seeking further advice from the minister. 'Protective' notice of motion to disallow was placed on 14/05/2020.
National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019) [F2019L01542]	Principle (a) compliance with authorising legislation Principle (i) availability of independent review Principle (k) availability of accountability safeguards	Seeking further advice from the minister. 'Protective' notice of motion to disallow was placed on 12/05/2020.
Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020 [F2020L00549]	Principle (i) availability of independent review	Seeking advice from the minister.

Agency engagement

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

Instrument	Issue	Status
Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2020 [F2020L00571]	Principle (d) adequacy of consultation	Seeking further advice from the agency.
Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]	Principle (d) adequacy of consultation	Seeking further advice from the agency.
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 4) (PB 33 of 2020) [F2020L00523]	Principle (f) incorporation of documents	Seeking advice from the agency.
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 4) (PB 37 of 2020) [F2020L00538]	Principle (f) incorporation of documents	Seeking advice from the agency.

Appendix B

Concluded matters

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

Ministerial engagement

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

Instrument	Issue	Status
ASIC Corporations (Amendment) Instrument 2020/290 [F2020L00376]	Principle (j) exemptions to primary legislation	Concluded following response from the assistant minister on 11/06/2020.
ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355 [F2020L00425]	Principle (k) parliamentary oversight	The Australian Securities and Investments Commission amended the instruments in response to the committee's scrutiny concerns on 12/06/2020.
ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289 [F2020L00377]		
National Rental Affordability Scheme Regulations 2020 [F2020L00282]	Principle (i) availability of independent review Principle (h) privacy	Concluded following response from the minister on 02/06/2020.

¹ See www.aph.gov.au/senate_sdlc.

Agency engagement

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

Instrument	Issue	Status
CASA EX60/20 – CRS and SM CRS Document to Cover Specialist Maintenance by a Class D AMO – Instrument 2020 [F2020L00616]	Principle (f) incorporation of documents Principle (i) availability of independent review	Concluded following response from the agency on 05/06/2020.
Fisheries Management (E-monitoring Small Pelagic Fishery) Direction 2020 [F2020L00473]	Principle (i) availability of independent review	Concluded following response from the agency on 03/06/2020.

Appendix C

Undertakings

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

Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the Water Act 2007 in response to the committee's scrutiny concerns.	11/09/2019
ASIC Corporations (Amendment) Instrument 2019/784 [F2019L01206]	The Australian Securities and Investment Corporation undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/10/2019
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]	The Minister for Infrastructure, Transport and Regional Development undertook to amend the Civil Aviation Safety Regulations 1998 in 2020 in response to the committee's scrutiny concerns.	07/11/2019
Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]	The Assistant Minister for Finance, Charities and Electoral Matters undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2019
	The Assistant Minister for Finance, Charities and Electoral Matters undertook to progress amendments to primary legislation in response to the committee's scrutiny concerns.	17/03/2020

Instrument	Undertaking	Date of Undertaking
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]	The Department of Veterans' Affairs undertook to amend the Repatriation Pharmaceutical Benefits Scheme [F2013L02009] and the MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012] to correct drafting errors.	28/01/2020
Health Insurance (Bonded Medical Program) Rule 2020 [F2019L01513]	The Department of Health undertook to amend the instrument in response to the committee's scrutiny concerns.	15/01/2020
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 [F2019L01641]	The Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	14/02/2020
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020 [F2020L00233]	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/05/2020
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2020 [F2020L00392]	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/05/2020
CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020 [F2020L00436]	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/05/2020
Military Rehabilitation and Compensation Regulations 2020 [F2020L00297]	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/05/2020
Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019 [F2019L01564]	The Minister for Agriculture, Drought and Emergency Management undertook to amend the instrument in response to the committee's scrutiny concerns.	14/05/2020

Implemented undertakings

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

Instrument	Undertaking	Date implemented
ASIC Corporations (Amendment) Instrument 2020/290 [F2020L00376]	The Australian Securities and Investments Commission amended the instruments in response to the committee's scrutiny concerns.	12/06/2020
ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355 [F2020L00425]		
ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289 [F2020L00377]		

List of instruments in current monitor

Note: Instruments listed with an asterisk (*) following the instrument name were raised for the first time in this Delegated legislation monitor.

Instrument	FRL No	Page
Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2020	[F2020L00571]	13
ASIC Corporations (Amendment) Instrument 2019/784	[F2019L01206]	17
ASIC Corporations (Amendment) Instrument 2020/290	[F2020L00376]	15, 19
ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355	[F2020L00425]	15, 19
ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486	[F2020L00618]	11
ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198	[F2020L00237]	11
ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199	[F2020L00238]	11
ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289	[F2020L00377]	15, 19
ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487	[F2020L00623]	11
Australian Crime Commission Establishment Regulations 2020	[F2020L00162]	11
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020	[F2020L00579]	11
Biosecurity Amendment (International Mail Fee) Regulations 2020	[F2020L00576]	13
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019	[F2019L01132]	17
CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020	[F2020L00436]	18

Instrument	FRL No	Page
CASA EX60/20 – CRS and SM CRS Document to Cover Specialist Maintenance by a Class D AMO – Instrument 2020	[F2020L00616]	16
Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister’s Rules 2020	[F2020L00406]	11
Competition and Consumer (Industry Codes—Dairy) Regulations 2019	[F2019L01610]	12
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020	[F2020L00572]	12
Defence Amendment (2020 Measures No. 1) Regulations 2020	[F2020L00120]	12
Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019	[F2019L01564]	18
Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020	[F2020L00432]	12
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020	[F2020L00233]	18
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2020	[F2020L00392]	18
Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020	[F2020L00328]	12
Fisheries Management (E-monitoring Small Pelagic Fishery) Direction 2020	[F2020L00473]	16
Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020	[F2020L00435]	12
Health Insurance (Bonded Medical Program) Rule 2020	[F2019L01513]	18
Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019	[F2019L01699]	12
Military Rehabilitation and Compensation Regulations 2020	[F2020L00297]	18
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 4) (PB 37 of 2020)	[F2020L00538]	13

Instrument	FRL No	Page
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 4) (PB 33 of 2020)	[F2020L00523]	13
National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019)	[F2019L01542]	1, 12
National Rental Affordability Scheme Regulations 2020	[F2020L00282]	15
Taxation Administration (Private Ancillary Fund) Guidelines 2019	[F2019L01227]	17
Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020	[F2020L00549]	12
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019	[F2019L01641]	18
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019	[F2019L01387]	18
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018	[F2018L01674]	17

Senator the Hon Concetta Fierravanti-Wells
Chair
Senate Standing Committee for the Scrutiny of Delegated Legislation

