

The Senate

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Standing  
Committee for the  
Scrutiny of Delegated  
Legislation

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Delegated Legislation Monitor

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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.

On 16 June 2021 the Senate adopted three recommendations of the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight that were directed to the Senate. As a result, from 1 July 2021, the standing orders of the Senate were amended to add two new scrutiny principles to the committee's terms of reference. In addition, the standing orders were amended to allow the committee to consider instruments which are exempt from disallowance.<sup>1</sup>

## 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

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1 See [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Changes\\_to\\_committee\\_standing\\_orders](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Changes_to_committee_standing_orders)

- (k) in the case of an instrument exempt from sunseting, it is appropriate for the instrument to be exempt from sunseting;
- (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.

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 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) 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. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

### **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 reports on instruments which are exempt from disallowance, including whether they meet the committee's expectations under standing order 23, in Part 2 of Chapter 1 and in Chapter 4 of the *Delegated Legislation Monitor*.

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

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

## 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 legislative instruments for the prescribed period. Legislative instruments detailed in the monitor are also listed in the 'Index of instruments' on the committee's website.<sup>3</sup>

## 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.<sup>4</sup>

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

## Guidelines

Guidelines relating to the committee's scrutiny principles are published on the committee's website.<sup>5</sup>

## General information

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

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

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

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3 *Index of instruments*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Index](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](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor).

5 See [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Guidelines](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](http://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](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/Senate_Disallowable_Instruments_List).

## **Instruments considered in this monitor**

The committee examined 73 legislative instruments registered on the Federal Register of Legislation between 2 October 2021 and 22 October 2021. This included 62 disallowable instruments and 11 instruments exempt from disallowance.

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.

# 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.

1.3 The committee is currently seeking to resolve all outstanding scrutiny concerns by correspondence with the relevant minister or agency. Copies of relevant correspondence are available on the committee's website.<sup>1</sup>

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1 See [www.aph.gov.au/senate\\_sd/c](http://www.aph.gov.au/senate_sd/c).



## 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.<sup>1</sup>

2.3 There are no instruments which the committee has resolved to draw to the attention of the Senate and the relevant legislation committee under standing order 23(4) in this *Delegated Legislation Monitor*.

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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](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.<sup>1</sup>

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.<sup>2</sup>

3.3 The tables below outline the expenditure specified in legislative instruments registered between 2 October 2021 and 22 October 2021.

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

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

2 Details of all instruments which specify Commonwealth expenditure are published on the committee's website: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Scrutiny\\_of\\_Commonwealth\\_expenditure](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Scrutiny_of_Commonwealth_expenditure).

<b>Instrument</b>	<b>Grant/ Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 [F2021L01430]</b>	COVID-19 Vaccine Claims Scheme	Not specified	This instrument establishes legislative authority for government spending on the COVID-19 Vaccine Claims Scheme, which will provide compensation for individuals who suffer loss or injury as a result of being vaccinated against COVID-19.	Senate Community Affairs Legislation Committee  Senate Select Committee on COVID-19
<b>Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 9) Regulations 2021 [F2021L01434]</b>	COVID-19 Disaster Payment	For the first full week after a state or territory has reached 80 per cent vaccination of its adult population, individuals not on income support will receive a flat rate of \$450 if they have lost at least 8 hours of work. Those on income support will receive \$100 for that week.  For the second full week after a state or territory has reached 80 per cent vaccination of its adult population, individuals not on income support will receive a flat rate of \$320 payment (in line with JobSeeker Payment). Those on income support will not be eligible for the payment for this week.	This instrument enables the government to make up to two further COVID-19 disaster payments to individuals who were eligible for the payment at the time their state or territory reached 80 per cent vaccination but then are no longer eligible.	Senate Finance and Public Administration Legislation Committee  Senate Select Committee on COVID-19
<b>Industry Research and Development (Port Kembla Gas Generator Investment Development Grant Program) Instrument 2021 [F2021L01386]</b>	Port Kembla Gas Generator Investment Development Grant Program	\$30 million	The program will provide a grant of up to \$30 million to Australian Industrial Power Pty Ltd to support early works on the Port Kembla gas generator project.	Senate Environment and Communications Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
<b>Industry Research and Development (Supply Chain Resilience Initiative Program) Instrument 2021 [F2021L01456]</b>	Supply Chain Resilience Initiative	\$107.2 million over four years from 2020-21	Funding will be provided to incentivise business to invest in capabilities to address vulnerabilities in supply chains for critical products. The program aims to achieve its purpose by incentivising Australian businesses to financially invest in the development and implementation of long term sustainable solutions that address vulnerabilities in supply chains for critical products or inputs identified in the Government’s Sovereign Manufacturing Capability Plans.	Senate Economics Legislation Committee



## Chapter 4

### Scrutiny of instruments exempt from disallowance

4.1 Senate standing order 23(4A) 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. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

4.2 This chapter identifies the instruments exempt from disallowance which the committee has resolved to draw to the attention of the Senate and the relevant minister under standing order 23(4A), in relation to the appropriateness of their exemption from disallowance.

4.3 The committee has considered all legislative instruments which are exempt from disallowance registered on the Federal Register of Legislation between 2 October 2021 and 22 October 2021. The sections below identify those instruments which meet or do not meet the committee's expectations under standing order 23(4A).

4.4 The instruments may not meet the committee's expectations because:

- the explanatory statement accompanying the instrument does not contain a sufficient explanation for why the instrument is exempt from disallowance and therefore the committee has not been able to assess whether it is appropriate for the instrument to be exempt from disallowance; or
- a substantive explanation for exemption is provided but the committee considers that the explanation does not meet the Senate's requirement that exemptions should only be made in exceptional circumstances and will only be justified in rare cases.<sup>1</sup>

#### ***Instruments which meet the committee's expectations***

4.5 No instruments exempt from disallowance meet the committee's expectations under standing order 23(4A) for this period.

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1 *Senate resolution 53B: Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021, [https://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Senate\\_chamber\\_documents/standingorders/d00/Resolutions\\_expressing\\_opinions\\_of\\_the\\_Senate/](https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/Resolutions_expressing_opinions_of_the_Senate/).

### ***Instruments which do not meet the committee's expectations***

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

<b>Instrument</b>	<b>Portfolio</b>
<b>Australia New Zealand Food Standards Code — Schedule 20 – Maximum residue limits Variation Instrument No. APVMA 6, 2021 [F2021L01426]</b>	Health
<b>Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 4) Determination 2021 [F2021L01443]</b>	Treasury
<b>Food Standards (Application A1214 – Nicotinamide riboside chloride as Vitamin B3 in FSMP) Variation [F2021L01431]</b>	Health
<b>Food Standards (Application A1218 – <math>\beta</math>-Galactosidase from <i>Bacillus subtilis</i> (Enzyme)) Variation [F2021L01436]</b>	Health
<b>Mutual Recognition (Automatic Deemed Registration Temporary Exemption for Auctioneers – Northern Territory) Declaration 2021 [F2021L01419]</b>	Industry, Science, Energy and Resources
<b>Mutual Recognition (Notification Requirement for Agents – Northern Territory) Determination 2021 [F2021L01417]</b>	Industry, Science, Energy and Resources
<b>Mutual Recognition (Notification Requirement for Veterinarians – Northern Territory) Determination 2021 [F2021L01416]</b>	Industry, Science, Energy and Resources
<b>Remuneration Tribunal (Members of Parliament) Amendment Determination (No. 1) 2021 [F2021L01446]</b>	Finance
<b>Social Security (Australian Government Disaster Recovery Payment—Victorian storms and floods) Determination 2021 (No. 8) [F2021L01429]</b>	Home Affairs
<b>Superannuation Guarantee (Administration) – Choice of Fund – Written Guidelines for the Reduction of an Increase in an Employer’s Individual Superannuation Guarantee Shortfall Determination 2021 [F2021L01453]</b>	Treasury
<b>Superannuation Guarantee (Administration) – Stapled Fund – Guidelines for the Reduction of an Employer’s Individual Superannuation Guarantee Shortfall for Late Contributions Due to Non-acceptance by Notified Stapled Fund Determination 2021 [F2021L01451]</b>	Treasury

**Senator the Hon Concetta Fierravanti-Wells**

**Chair**

**Senate Standing Committee for the Scrutiny of Delegated Legislation**

# Appendix A

## New matters

5.1 The committee engages with relevant ministers and agencies to attempt to resolve its concerns about scrutiny issues raised by disallowable legislative instruments. This appendix documents the committee's new scrutiny concerns in relation to legislative instruments registered on the Federal Register of Legislation between 2 October 2021 and 22 October 2021.

### Ministerial engagement

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

Instrument	Issue	Status
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 [F2021L01430]</b>	Principle (c) delegation of administrative powers and functions  Principle (c) conferral of discretionary powers  Principle (h) privacy  Principle (i) availability of independent merits review  Principle (j) matters more appropriate for parliamentary enactment  Principle (m) parliamentary oversight	Seeking advice from the minister.
<b>Industry Research and Development (Supporting Critical Transmission Infrastructure Program) Instrument 2021 [F2021L01312]</b>	Principle (m) parliamentary oversight	Seeking advice from the minister.

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<sup>1</sup> See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

## Agency engagement

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

Instrument	Issue	Status
<b>ASIC Corporations (Amendment) Instrument 2021/848 [F2021L01425]</b>	Principle (d) consultation with persons affected	Seeking advice from the agency.
<b>Australian Citizenship (special residence requirement) Instrument (LIN 21/069) 2021 [F2021L01422]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (d) consultation on specific instrument	Seeking advice from the agency.
<b>CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 [F2021L01399]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Committee secretariat considering response.
<b>Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2021 [F2021L01392]</b>	Principle (j) significant penalties in delegated legislation	Seeking advice from the agency.
<b>Minamata Convention on Mercury (Consequential Amendments) Regulations 2021 [F2021L01390]</b> <b>Recycling and Waste Reduction (Mandatory Product Stewardship—Mercury-added Products) Rules 2021 [F2021L01393]</b> <b>Industrial Chemicals (General) Amendment (Minamata Convention on Mercury) Rules 2021 [F2021L01411]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —consultation Principle (i) availability of independent merits review	Seeking advice from the agency.
<b>Safety, Rehabilitation and Compensation (Definition of ACT Employee – COVID-19 Emergency Response Volunteers) Declaration 2021 [F2021L01440]</b>	Principle (i) availability of independent merits review	Seeking advice from the agency.

## Appendix B

### Ongoing matters

6.1 This appendix documents the committee's ongoing scrutiny concerns in relation to matters raised in previous *Delegated Legislation Monitors*. Instruments registered before 1 July 2021 have been marked with an asterisk and will continue to be scrutinised under the committee's previous scrutiny principles until they are concluded.<sup>1</sup>

#### Ministerial engagement

6.2 The committee is continuing to engage with the relevant minister about the scrutiny issues raised by the instruments listed below. Copies of the ministerial correspondence are available on the committee's website.<sup>2</sup>

Instrument	Issue	Status
<b>Aged Care Legislation Amendment (Royal Commission Response No.1) Principles 2021 [F2021L00923]*</b>	Principle (c) conferral of discretionary powers	Seeking further advice from the minister.
	Principle (e) clarity of drafting	Notice of motion to disallow placed on 18/10/2021.
	Principle (j) matters more appropriate for parliamentary enactment	
	Principle (j) significant impact on personal rights and liberties	
<b>Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191]</b>	Standing order 23(4A) exemption from disallowance	Seeking advice from the minister.
	Principle (a) compliance with authorising legislation	

1 On 16 June 2021 the Senate adopted three recommendations of the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight that were directed to the Senate. As a result, from 1 July 2021, the standing orders of the Senate were amended to add two new scrutiny principles to the committee's terms of reference. In addition, the standing orders were amended to allow the committee to consider instruments which are exempt from disallowance.

2 See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

Instrument	Issue	Status
<b>Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043]*</b>	Principle (a) compliance with authorising legislation Principle (a) compliance with <i>Legislation Act 2003</i> —same in substance Principle (j) significant matters in delegated legislation	Notice of motion to disallow placed on 18/10/2021. The committee drew this instrument to the attention of the Senate and recommended disallowing the instrument in <i>Delegated Legislation Monitor 14 of 2021</i> .
<b>Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021 [F2021L01232]</b>	Standing order 23(4A) exemption from disallowance	Seeking advice from the minister.
<b>Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080]</b>	Principle (l) exemption from the operation of primary legislation Principle (m) parliamentary oversight	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 22/11/2021.
<b>Great Barrier Reef Marine Park Amendment (No-Anchoring Areas) Regulations 2021 [F2021L00843]*</b>	Principle (a) compliance with <i>Legislation Act 2003</i> Principle (m) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 18/10/2021.
<b>Northern Australia Infrastructure Facility Investment Mandate Direction 2021 [F2021L00942]</b>	Standing order 23(4A) exemption from disallowance	Seeking further advice from the minister.

## Agency engagement

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

Instrument	Issue	Status
<b>Industry Research and Development (Daintree Microgrid Program) Instrument 2021 [F2021L01305]</b>	Principle (d) consultation on specific instrument	Seeking further advice from the agency.
<b>Migration Amendment (Australian Agriculture Workers) Regulations 2021 [F2021L01366]</b>	Principle (e) clarity of drafting	Seeking further advice from the agency.

Instrument	Issue	Status
<b>Therapeutic Goods (Standard for Human Cell and Tissue Products— Donor Screening Requirements) (TGO 108) Order 2021 [F2021L01326]</b>	Principle (e) clarity of drafting Principle (h) privacy	Seeking further advice from the agency.
<b>Veterans’ Entitlements (Point Cook Firefighters) Determination 2021 [F2021L01265]</b>	Principle (g) adequacy of explanatory materials	Seeking further advice from the agency.



## Appendix C

### Concluded matters

7.1 This appendix records the instruments in relation to which the committee has concluded its inquiries, following correspondence with the relevant minister or agency. Instruments registered before 1 July 2021 have been marked with an asterisk and will continue to be scrutinised under the committee's previous scrutiny principles until they are concluded.<sup>1</sup>

#### Ministerial engagement

7.2 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.<sup>2</sup>

Instrument	Issue	Status
<b>Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]*</b>	Principle (b) implied freedom of political communication  Principle (c) conferral of discretionary powers  Principle (e) clarity of drafting	Concluded following disallowance by the Senate on 25/11/2021.
<b>Legislation (Exemptions and Other Matters) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00859]*</b>	Principle (j) matters more appropriate for parliamentary enactment  Principle (k) parliamentary oversight—exemption from disallowance  Principle (k) parliamentary oversight—exemption from sunseting	Concluded following response from the Attorney-General on 10/11/2021.

1 On 16 June 2021 the Senate adopted three recommendations of the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight that were directed to the Senate. As a result, from 1 July 2021, the standing orders of the Senate were amended to add two new scrutiny principles to the committee's terms of reference. In addition, the standing orders were amended to allow the committee to consider instruments which are exempt from disallowance.

2 See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Taxation Administration (Data Sharing— Relevant COVID-19 Business Support Program) Declaration 2021 [F2021L01157]</b>	Principle (h) privacy Principle (l) exemption from the operation of primary legislation	Concluded following response from the Treasurer on 12/11/2021.
<b>Taxation Administration (Data Sharing— Relevant COVID-19 Business Support Program) Amendment Declaration (No. 1) 2021 [F2021L01237]</b>	Principle (m) parliamentary oversight	The Treasurer undertook to amend the principal instrument in response to the committee's scrutiny concerns.

## Agency engagement

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

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Australian Securities and Investments Commission Amendment (Deferred Sales Model) Regulations 2021 [F2021L01279]</b>	Principle (l) exemption from the operation of primary legislation Principle (m) parliamentary oversight	Concluded following response from the agency on 18/11/2021. The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Sydney Harbour Federation Trust Regulations 2021 [F2021L01255]</b>	Principle (e) clarity of drafting Principle (h) reverse evidential burden of proof	Concluded following response from the agency on 23/11/2021.

# Appendix D

## Undertakings

8.1 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

8.2 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
<b>Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]</b>	The Attorney-General undertook to commence an inquiry into good faith obligations in Commonwealth legislation in response to the committee's scrutiny concerns.	31/08/2020
<b>Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]</b>	The Assistant Minister to the Attorney-General undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/02/2021
<b>Amendment of List of Exempt Native Specimens – Commission for the Conservation of Antarctic Marine Living Resources Exploratory Fisheries in Statistical Divisions 58.4.1 and 58.4.2 (the East Antarctica Fishery) and Statistical Subareas 88.1 and 88.2 (the Ross Sea Fishery), November 2020 [F2020L01484]</b>	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	15/02/2021
<b>Treasury portfolio – various instruments</b>	The Treasurer undertook to continue to engage with the committee in good faith to seek a resolution to the committee's systemic concerns regarding the duration of instruments which provide for exemptions or modifications to primary legislation.	18/02/2021
<b>Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]</b>	The Department of Agriculture, Water Resources and the Environment undertook to revoke the instrument in response to the committee's scrutiny concerns.	16/03/2021

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]</b>	The Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	09/04/2021
<b>Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020 [F2020L01614]</b>	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	20/04/2021
<b>Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]</b>	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	21/05/2021
<b>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 10) 2021 [F2021L00305]</b>	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/06/2021
<b>Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]</b>	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	08/06/2021
<b>Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]</b>	The Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	16/06/2021
<b>Income Tax Assessment (1997 Act) Regulations 2021 [F2021L00206]</b>	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/06/2021
<b>Export Control Rules 2021 - various instruments [F2021L00312] [F2021L00317] [F2021L00334] [F2021L00304] [F2021L00315] [F2021L00310] [F2021L00308] [F2021L00313]</b>	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	02/07/2021
<b>Student Assistance Regulations 2021 [F2021L00201]</b>	The Minister for Families and Social Services undertook to amend the instrument in response to the committee's scrutiny concerns.  The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/07/2021

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Export Control (Wood and Woodchips) Rules 2021 [F2021L00318]</b>	The Minister for Agriculture and Northern Australia undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/07/2021
<b>Bankruptcy Regulations 2021 [F2021L00261]</b>	The Assistant Minister to the Attorney-General undertook to advise the committee of the outcome of the government's targeted review of the appropriateness of modifying provisions currently prescribed in the instrument.	26/07/2021
<b>Paid Parental Leave Rules 2021 [F2021L00384]</b>	The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	30/07/2021
<b>ASIC Market Integrity Rules (Capital) 2021 [F2021L00765]</b>	The Department of the Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	04/08/2021
<b>Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]</b>	The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/08/2021
<b>Higher Education Provider Approval No 1 of 2021 [F2021L00747]</b>	The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns.  The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/08/2021
<b>Recycling and Waste Reduction (Product Stewardship—Televisions and Computers) Rules 2021 [F2021L00624]</b>	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/08/2021
<b>Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021 [F2021L00848]</b>	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/08/2021
<b>Road Vehicle Standards (Model Reports—Compliance with Standards) Determination 2021 [F2021L00838]</b>	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.	16/08/2021

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Bankruptcy Regulations 2021 [F2021L00261]</b>	The Assistant Minister to the Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	17/08/2021
<b>Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00697]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/08/2021
<b>Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2021 [F2021L00823]</b> <b>Road Vehicle Standards (Verification of Road Vehicles) Determination 2021 [F2021L00850]</b>	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	18/08/2021
<b>Veterans' Entitlements (Counselling) Extended Eligibility Determination 2021 [F2021L00804]</b>	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	23/08/2021
<b>Aged Care Legislation Amendment (Care Recipients and Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00981]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/09/2021
<b>Higher Education Provider Approval No 2 of 2021 [F2021L00965]</b>	The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns.  The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/09/2021
<b>Medical and Midwife Indemnity Legislation Amendment (Run-off Claims) Rules 2021 [F2021L00950]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	24/09/2021
<b>Aged Care Legislation Amendment (Vaccination Information) Principles 2021 [F2021L01236]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/10/2021
<b>Education Services for Overseas Students (Exempt Courses) Instrument 2021 [F2021L00877]</b>	The Minister for Education and Youth undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/10/2021
<b>Macquarie Island Toothfish Fishery (Total Allowable Catch) Determination 2021 [F2021L01152]</b>	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	20/10/2021

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651]</b>	The Minister for Communications, Urban Infrastructure and the Arts amended the explanatory statement to the instrument and undertook to amend the instrument pending consultation with stakeholders in response to the committee's scrutiny concerns.	20/10/2021
<b>Remuneration Tribunal Amendment Determination (No. 5) 2021 [F2021L01336]</b>	The Remuneration Tribunal undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/11/2021
<b>Therapeutic Goods Amendment (Therapeutic Goods Advertising Code) Instrument (No. 5) 2021 [F2021L01317]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/11/2021
<b>Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2021 [F2021L01233]</b>	The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Defence Honours and Awards Appeals Tribunal Procedural Rules 2021 [F2021L01318]</b>	The Department of Defence undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]</b>	The Minister for Industry, Energy and Emissions Reduction undertook to amend the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Therapeutic Goods (Standards for Biologicals—General and Specific Requirements) (TGO 109) Order 2021 [F2021L01332]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021 [F2021L01133]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/11/2021
<b>Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030]</b>	The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs undertook to amend the instrument in response to the committee's scrutiny concerns.	11/11/2021
<b>Part 60 Manual of Standards Amendment Instrument 2021 (No. 1) [F2021L01303]</b>	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/11/2021

Instrument	Undertaking	Date of Undertaking
<b>Taxation Administration (Data Sharing— Relevant COVID-19 Business Support Program) Declaration 2021 [F2021L01157]</b>	The Treasurer undertook to amend the principal instrument in response to the committee's scrutiny concerns.	12/11/2021
<b>Taxation Administration (Data Sharing— Relevant COVID-19 Business Support Program) Amendment Declaration (No. 1) 2021 [F2021L01237]</b>		
<b>Australian Securities and Investments Commission Amendment (Deferred Sales Model) Regulations 2021 [F2021L01279]</b>	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/11/2021

## Implemented undertakings

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

Instrument	Undertaking	Date implemented
<b>Paid Parental Leave Rules 2021 [F2021L00384]</b>	The Office of Parliamentary Counsel made minor changes to the instrument in response to the committee's scrutiny concerns.	22/09/2021
<b>Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]</b>	The Reserve Bank of Australia amended the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2021 [F2021L00178]</b>	The Greenhouse and Energy Minimum Standards Regulator amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	23/11/2021
<b>Industry Research and Development (Digital Directors Program) Instrument 2020 [F2020L01554]</b>	The Department of Industry, Science, Energy and Resources amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/11/2021
<b>Agricultural and Veterinary Chemicals Code (Conditions of Approval or Registration) Order 2021 [F2021L01044]</b>	The Department of Agriculture, Water and the Environment amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	29/11/2021
<b>CASA 30/21 – Required Communication Performance and Required Surveillance Performance (RCP 240 and RSP 180) Capability Declarations – Direction 2021 [F2021L00504]</b>	The Civil Aviation Safety Authority amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	29/11/2021