

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.

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

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>1</sup>

### **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>2</sup>

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

2 *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).



## 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>3</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>4</sup>

## General information

The Federal Register of Legislation should be consulted for the text of instruments, explanatory statements, and associated information.<sup>5</sup>

The Senate Disallowable Instruments List provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.<sup>6</sup>

The Disallowance Alert records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.<sup>7</sup>

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3 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).

4 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).

5 See Australian Government, Federal Register of Legislation, [www.legislation.gov.au](http://www.legislation.gov.au).

6 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).

7 *Disallowance Alert 2022*, [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Disallowance\\_Alert](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Disallowance_Alert).

## **Instruments considered in this monitor**

The committee examined 186 legislative instruments registered on the Federal Register of Legislation between 11 December 2021 and 14 January 2022. This included 153 disallowable instruments and 33 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 This chapter is divided into two parts. Part 1 deals with instruments subject to disallowance and Part 2 deals with instruments which are exempt from disallowance.

## Part 1

### Disallowable instruments raising significant scrutiny issues

1.3 This part details those instruments subject to disallowance which raise particularly significant scrutiny concerns. Where necessary, the committee may give a notice of motion to disallow an instrument contained in Part 1 to emphasise its scrutiny concerns or to provide the Senate and the committee with additional time to consider the instrument while it is still subject to disallowance.

### Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021

<b>FRL No.</b>	<a href="#">F2021L01080</a> <sup>1</sup>
<b>Purpose</b>	To amend the Corporations Regulations 2001 to partially implement recommendations 3.4 and 4.1 of the Financial Services Royal Commission in relation to the hawking of financial products.
<b>Authorising legislation</b>	<i>Corporations Act 2001</i>
<b>Portfolio</b>	Treasury
<b>Disallowance</b>	A disallowance notice was given on 22/11/2021

#### Overview

1.4 The Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080] ('the Regulations') in conjunction with Schedule 5 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* (the Act), amends the Corporations Regulations 2001 (the Corporation Regulations) to implement recommendations 3.4 and 4.1 of the Financial Services Royal Commission in relation to the hawking of financial products.

1.5 Schedule 5 to the Act provides that a person cannot offer to sell or issue a financial product to a consumer if the offer is made in the course of, or because of, unsolicited contact with the consumer. The Regulations insert exemptions to the prohibition under Schedule 5 in circumstances where a consumer is expected to have enough knowledge to adequately assess the suitability of the product or where another part of the law already provides a consumer with adequate protection from being hawked a financial product. The exemptions appear intended to remain in

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

force for an unspecified period of time as the Corporations Regulations are not subject to sunseting.

## **Scrutiny concerns**

### ***Exemptions from the operation of primary legislation***

#### ***Parliamentary oversight***

1.6 Senate standing order 23(3)(l) requires the committee to consider whether an instrument contains continuing exemptions to the operation of primary legislation. In addition, Senate standing order 23(3)(m) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes whether an instrument limits parliamentary oversight.

1.7 The committee's longstanding scrutiny view is that provisions which amend or modify the operation of primary legislation, or exempt persons or entities from the operation of primary legislation, should be included in primary rather than delegated legislation. If the provisions are in delegated legislation, the instrument should operate no longer than strictly necessary. The committee considers that in most cases, this means the instrument should cease to operate no more than three years after it commences to ensure a minimum degree of regular parliamentary oversight. This view was clearly set out in the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight, tabled in the Senate on 16 March 2021 (see pages 120-121).

1.8 In addition, as per the committee's guidelines, the committee considers that the explanatory statement should indicate whether there is any intention to conduct a review of the relevant provisions to determine if they remain necessary and appropriate, including whether it is appropriate to include the provisions in delegated legislation.

1.9 The explanatory statement to the Regulations does not address the reason these exemptions are provided for in delegated, rather than primary, legislation. In addition, the explanatory statement does not appear to address why it is appropriate for the exemptions to continue in force for an unspecified period of time.

## **Actions to date**

### ***Initial correspondence***

1.10 In its initial letter to the Treasurer of 30 September 2021,<sup>2</sup> the committee requested the Treasurer's advice as to:

- the use delegated legislation to introduce the exemptions;
- whether the Regulations could cease to have effect after three years; and

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2 Copies of committee correspondence and ministerial responses are available on the committee's [website](#).

- whether there was any intention to conduct a review of the Regulations to determine if they remain necessary and appropriate, including the appropriateness of their inclusion in delegated legislation.

1.11 The Treasurer's first response of 22 October 2021 explained that due to the specific nature of the exemptions, and the fact that they do not apply to all persons who are offering to sell or issue financial products, it is necessary and appropriate for the exemptions to be contained in delegated legislation.

1.12 The Treasurer advised that it would "not be appropriate for the provisions to cease to have effect after three years, as they are made under a specifically delegated power rather than a general exemption or modification power." Further, the Treasurer noted that if the Regulations ceased to operate, the hawking prohibitions contained in the Act would no longer apply only to situations where there is a risk of consumer harm.

1.13 The Treasurer also advised that the Australian Law Reform Commission (ALRC) had undertaken to conduct a review of the potential reframing and restructuring of Chapter 7 of the Corporations Act. The Treasurer advised that he expected the framing and structure of the Regulations, including whether it is appropriate for these provisions to be included in delegated legislation, will be considered as part this process.

#### ***Further correspondence***

1.14 The committee responded to the Treasurer's first letter on 25 November 2021 to request further information as to:

- whether the Regulations could cease to operate three years after they commence, noting that this would allow sufficient time for the findings of the ALRC's review of the Corporations Act to be finalised and considered prior to the cessation of the provisions; and
- if the measures are intended to be in force for a longer term, whether the exemptions can be included in primary legislation.

1.15 In his second response of 10 December 2021, the Treasurer reiterated his view that it was not appropriate for the exemptions to cease after three years as they give effect to the policy intention that the hawking prohibitions should only apply in situations where there is a risk of consumer harm. The Treasurer also noted that it was not appropriate for the exemptions to cease after three years because of the significant commercial risks and compliance costs to business.

1.16 The Treasurer also confirmed his view that it is appropriate for the exemptions to be included in the Corporations Regulations. Specifically, this was because the exemptions relate to the sale or offer of specific financial products, and in his view, applied to a niche and defined group.

### ***Recent correspondence***

1.17 The committee responded to the Treasurer's second letter on 25 January 2022 to request further information as to:

- how the exemptions applied to a 'niche and defined group' when it appeared the exemptions in s 7.8.21A are in their totality quite broad in application;
- noting the Treasurer's previous response emphasised the importance of providing certainty to business, whether the exemptions can be included in primary legislation; and
- should the Treasurer maintain his view that the exemptions should not be included in primary legislation, whether the Regulations could cease to have effect after five years, as opposed to the previously suggested three years.

1.18 In his third response of 7 February 2022, the Treasurer again reiterated his view that each of the exemptions related to the sale or offer of specific financial products, and as such apply to a niche and defined group, rather than to all persons who make offers to sell or issue financial products. In contrast, the Treasurer advised the prohibition against hawking itself is broad and applies to all financial products. Therefore, as each of the exemptions apply to a niche or defined group, the exemptions are an appropriate use of the regulations making power under section 992A of the Corporations Act.

1.19 The Treasurer also reiterated his view that it was appropriate for the exemptions to be included in the Corporations Regulations, rather than the Corporations Act and it would be inappropriate for these exemptions to be subject to a period of self-repeal.

### **Committee comment**

1.20 The committee thanks the Treasurer for his engagement with the committee in relation to the Regulations. However, the committee retains significant concerns regarding the Regulations.

1.21 As the committee has been unable to resolve these technical scrutiny concerns with the Treasurer, the committee has resolved to draw its concerns to the attention of the Senate. The committee's comments with regard to these unresolved concerns are outlined below.

### ***Exemptions from the operation of primary legislation***

#### ***Parliamentary oversight***

1.22 While the committee acknowledges the Treasurer's view that it is important to provide certainty for business, the committee considers it would be more appropriate to provide for these continuing exemptions to the prohibition on hawking of financial products through primary legislation. As the committee noted in the final report of its inquiry into the exemption of delegated legislation from parliamentary oversight, the committee considers that certainty for business can be best provided by incorporating exemptions or modifications onto the face of the

primary legislation.<sup>3</sup> The power in paragraph 992A(2)(c) of the Corporations Act to prescribe exemptions would remain available to quickly respond to new and different financial products as required.

1.23 The committee's scrutiny concerns in this instance are heightened by the fact that the exemptions will remain in force until they are repealed or amended as the Corporations Regulations are exempt from sunseting.

1.24 The committee also remains of the view that the exemptions set out in the instrument do not appear to apply only in limited circumstances or to a 'niche and defined group'. For example, paragraph 7.8.21A(a) sets out a broad exemption from the prohibition on hawking financial products for 'an offer for the issue or sale of listed securities or an interest in a listed managed investment scheme that is made by telephone by a financial services licensee'. In addition, the committee considers that the ten exemptions in regulation 7.8.21A of the Regulations appear, in their totality, to be broad and far reaching.

**1.25 In light of the comments above, the committee draws the attention of the Senate to the committee's significant scrutiny concerns in relation to providing for continuing exemptions from the prohibition on hawking of financial products through the Regulations. The committee considers that these exemptions should instead be provided for in primary legislation or, at a minimum, the exemptions set out in the Regulations should cease to operate after five years to provide the Parliament with an opportunity to review and scrutinise the exemptions if they are remade.**

**1.26 Noting the significance of its technical scrutiny concerns, the committee recommends that the Senate disallow the Regulations.**

**1.27 On 22 November 2021, the committee gave a notice of motion to disallow the Regulations. As the committee retains significant scrutiny concerns in relation to the Regulations, the committee has resolved not to withdraw the notice of motion to disallow the Regulations to provide the Senate with additional time to consider the Regulations and the committee's recommendation that they be disallowed.**

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3 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Inquiry into the exemption of delegated legislation from parliamentary oversight: Final report*, 16 March 2021, p. 121.



## Part 2

### Exempt instruments raising significant scrutiny issues

1.28 This part details those instruments exempt from disallowance which raise particularly significant scrutiny concerns in relation to the appropriateness of their exemption from disallowance under Senate standing order 23(4A). Where necessary, the committee additionally raises scrutiny concerns in relation to its scrutiny principles set out in Senate standing order 23(3)(3).

### Australian Renewable Energy Agency (General Funding Strategy) Determination 2021

<b>FRL No.</b>	<a href="#">F2021L01191</a> <sup>4</sup>
<b>Purpose</b>	This instrument enacts the Australian Renewable Energy Agency's General Funding Strategy for the 2021/22 – 2023/24 financial years as a legislative instrument. It also repeals the Australian Renewable Energy Agency (General Funding Strategy) Determination 2019.
<b>Authorising legislation</b>	<i>Australian Renewable Energy Agency Act 2011</i>
<b>Portfolio</b>	Industry, Science, Energy and Resources
<b>Source of exemption</b>	Subsection 20(2) of the <i>Australian Renewable Energy Agency Act 2011</i>

#### Overview

1.29 The Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191] (the instrument) sets out the general funding strategy (GFS) for the Australian Renewable Energy Agency (the ARENA) for the 2021/22 – 2023/24 financial years.

#### Scrutiny concerns

##### *Exemption from disallowance*

1.30 Senate standing order 23(4A) empowers the committee to scrutinise delegated legislation that is exempt from disallowance against the scrutiny principles set out in standing order 23. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

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

1.31 The committee's scrutiny concerns in relation to this instrument's exemption from disallowance are set out in detail in *Delegated Legislation Monitor 15 of 2021*, which were brought to the attention of the minister by letter on 21 October 2021.

### ***Compliance with authorising legislation***

1.32 The committee also raised concerns about the instrument's compliance with its enabling Act, the *Australian Renewable Energy Agency Act 2011* (ARENA Act). The committee's scrutiny concerns in this regard are also set out in detail in *Delegated Legislation Monitor 15 of 2021*. In summary, the committee raised concerns that the instrument is made beyond the powers of the ARENA Act.

### **Correspondence and committee comment**

1.33 The minister responded to the committee's concerns in a letter dated 9 February 2022. The minister disagreed with the committee's position that this instrument is inappropriately exempt from disallowance, stating:

It would be inappropriate for the Parliament to now seek a power of disallowance over the GFS. The Parliament does not routinely claim powers of disallowance over the strategic planning documents of other statutory entities, so it is not clear why this would be appropriate in the case of ARENA. Opening up the GFS to disallowance would infringe upon ARENA's independence, create ongoing uncertainty as to ARENA's strategic direction, and dampen market confidence by creating a risk that ARENA's funding decisions might be subject at any time to unexpected Parliamentary interference. Disallowance could also impede ARENA's ability to implement the Act because of the limitations imposed by section 10.

1.34 While noting this advice, the committee remains concerned that these substantive measures are exempt from parliamentary disallowance.

1.35 The general financial strategy guides the provision of financial assistance by the ARENA. This means that the instrument guides the way Commonwealth money will be spent. As outlined in *Delegated Legislation Monitor 15 of 2021*, the committee is firmly of the view that it is the role of Parliament to scrutinise government expenditure and that therefore this instrument should be subject to disallowance.

1.36 The minister also indicated that a range of other accountability mechanisms apply to the measures in this instrument, including that the ARENA requires the minister's permission for grants over \$50 million, and that the minister may comment on the ARENA's annual work plan before finalisation. While recognising these accountability mechanisms, the committee is primarily concerned with ensuring that Parliament, not the government, has the ability to appropriately scrutinise the expenditure of the ARENA, and does not consider these mechanisms facilitate appropriate parliamentary scrutiny.

1.37 The minister also advised that he had already made clear his view that the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] (and therefore the instrument) are made in compliance with their authorising legislation.

1.38 The committee considers that the role of disallowance in relation to this instrument is of particular importance given the committee's concerns about the expansion of the ARENA's remit by delegated legislation to empower the ARENA to foster low emissions technologies. As noted in *Delegated Legislation Monitor 14 of 2021*, the committee is of that view that this expansion goes beyond the objects of the ARENA Act. The Parliament's supervisory role over delegated legislation is especially important in light of any potential validity concerns.

**1.39 Noting the above, the committee considers that it is inappropriate for this instrument to be exempt from disallowance. The committee therefore draws this instrument to the Senate as it sets out significant matters relating to the expenditure of public money by the ARENA without the opportunity for appropriate parliamentary oversight through the disallowance process.**

# Northern Australia Infrastructure Facility Investment Mandate Direction 2021

<b>FRL No.</b>	<a href="#">F2021L00942</a> <sup>5</sup>
<b>Purpose</b>	This instrument is a direction to the Northern Australia Infrastructure Facility's Board in relation to the performance of the functions of the Facility.
<b>Authorising legislation</b>	<i>Northern Australia Infrastructure Facility Act 2016</i>
<b>Portfolio</b>	Infrastructure, Transport, Regional Development and Communications
<b>Source of exemption</b>	Table item 2 of section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015

## Overview

1.40 The Northern Australia Infrastructure Facility (the Facility) provides financial assistance to States, Territories and other entities to develop economic infrastructure in Northern Australia.

1.41 The Northern Australia Infrastructure Facility Investment Mandate Direction 2021 (the instrument) provides an investment mandate to the Facility to guide the functions of the Facility and how it invests.

## Scrutiny concerns

### *Exemption from disallowance*

1.42 Senate standing order 23(4A) empowers the committee to scrutinise delegated legislation that is exempt from disallowance against the scrutiny principles set out in standing order 23. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

1.43 The committee's scrutiny concerns in relation to this instrument's exemption from disallowance were first set out in detail in *Delegated Legislation Monitor 14 of 2021*.

## Initial correspondence

1.44 The minister wrote to the committee on 14 October 2021 in response to the scrutiny concerns set out in *Delegated Legislation Monitor 14 of 2021*.

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

1.45 The minister advised that the exemption ‘provides certainty for NAIF project proponents who invest significant time and resources to demonstrate eligibility for NAIF financial assistance’.

1.46 The minister also advised that oversight of the NAIF’s investment activities were strengthened in 2021 with the addition of the Finance Minister as a jointly responsible minister. Further, the minister advised there are safeguards in the *Northern Australia Infrastructure Facility Act 2016* (the NAIF Act) to prevent ministers from ‘issuing an investment mandate that seeks to influence or affect the investment of funds in particular projects or to particular cohorts.’

1.47 In relation to the exemption from disallowance, the minister advised that it would not have been possible to delay commencement of the instrument until a potential disallowance period expired, as this would have negatively impacted on the NAIF’s operations and prevented it from being able to provide financial assistance until early August 2021.

1.48 Finally, the minister advised that it is a requirement of the NAIF Act that a statutory review of the NAIF be conducted after 30 June 2024 and suggested that ‘an evaluation of the potential impacts of making the Investment Mandate disallowable could be considered as part of this review.’

1.49 The committee set out its response to the minister's advice in *Delegated Legislation Monitor 16 of 2021*. In particular, the committee requested that the minister make an undertaking to the committee that the 2024 statutory review will give consideration to the appropriateness of the exemption from disallowance of instruments made under subsection 9(1) of the NAIF Act, with specific regard given to the committee’s final report of the inquiry into the exemption of delegated legislation from parliamentary oversight.<sup>6</sup> The committee also requested that the minister amend the explanatory statement to the instrument to set out the information provided in the minister’s letter of 14 October 2021 in relation to the justification for the instrument’s exemption from disallowance.

### **Recent correspondence**

1.50 The minister responded to the committee in a letter received on 8 February 2022. The minister made an undertaking that the 2024 statutory review of the NAIF Act would consider whether it is appropriate for the NAIF's investment mandate to be exempt from disallowance.

1.51 However, the minister did not agree to the committee's request to amend the explanatory statement to the instrument to set out the information provided in the letter of 14 October 2021 in relation to the justification for the instrument’s exemption from disallowance. The minister advised that he considers it is

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6 Senate Standing Committee for the Scrutiny of Delegated Legislation, [Final report of the inquiry into the exemption of delegated legislation from parliamentary oversight](#), 16 March 2021.

unnecessary to do so, given that the exemption from disallowance is permitted by the enabling legislation and the *Legislation Act 2003*.

### **Committee view**

1.52 The committee welcomes the minister's undertaking that the 2024 statutory review will consider whether it is appropriate for NAIF's investment mandate to be exempt from disallowance.

1.53 While noting the minister's advice in relation to the explanatory statement, the committee reiterates its view that at a minimum, all explanatory statements to exempt instruments should identify the source of the exemption and justify why the exemption is appropriate in the specific context of the instrument. The committee does not consider general statements identifying that an exemption is provided under the Legislation (Exemptions and Other Matters) Regulation 2015 is sufficient. The committee considers that the inclusion of this information in explanatory statements helps to improve parliamentary oversight over delegated legislation made by the executive.

**1.54 The committee considers that, in the future, explanatory statements to instruments that are exempt from disallowance must set out in detail the exceptional circumstances that are said to justify the exemption in accordance with the committee's guidelines.<sup>7</sup> The committee will continue to closely scrutinise such instruments and their accompanying explanatory statements under standing order 23(4) into the future.**

**1.55 The committee welcomes the minister's undertaking that the 2024 statutory review of the *Northern Australia Infrastructure Facility Act 2016* will consider whether it is appropriate for the NAIF's investment mandate to be exempt from disallowance. In the meantime, the committee draws this instrument to the attention of the Senate as it sets out significant matters relating to the operation of the NAIF, including eligibility criteria for the provision of financial assistance, without the opportunity for appropriate parliamentary oversight through the disallowance process.**

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7 Senate Standing Committee for the Scrutiny of Delegated Legislation, Guideline on standing order 23(4): instruments exempt from disallowance, February 2022, available at [https://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Guidelines](https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Guidelines).

## Various instruments made under the *Biosecurity Act 2015*

<b>FRL No.</b>	<a href="#">F2021L01758</a> ; <a href="#">F2021L01807</a> ; <a href="#">F2021L01863</a> ; <a href="#">F2021L01864</a> ; <a href="#">F2021L01885</a> ; <a href="#">F2021L01894</a> ; <a href="#">F2022L00001</a> ; <a href="#">F2022L00019</a> <sup>8</sup>
<b>Purpose</b>	Various purposes
<b>Authorising legislation</b>	<i>Biosecurity Act 2015</i>
<b>Portfolio</b>	<b>Health:</b> F2021L01758; F2021L01863, F2021L01885 and F2022L00019 <b>Agriculture, Water and the Environment:</b> F2021L01807; F2021L01864, F2021L01894 and F2022L00001
<b>Source of exemption</b>	Subsections 174(5), 395(4), 398(2), 477(2) and 524A(4) of the <i>Biosecurity Act 2015</i>

### Overview

1.56 Subsection 477(1) of the *Biosecurity Act 2015* (the Biosecurity Act) empowers the minister to determine emergency requirements during a human biosecurity emergency period. The Biosecurity (Emergency Requirements—High Risk Country Travel Pause) Amendment Determination (No. 1) 2021 [F2021L01758], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2021 [F2021L01863] and the Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2021 [F2021L01885] were made in response to the COVID-19 pandemic and relate to a range of measures, including extending the 'high risk' country travel pause until 15 December 2021 and preventing persons from travelling to and from certain remote communities in the Northern Territory. The Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (COVID-19 Rapid Antigen Tests) Determination 2022 [F2022L00019] prohibits price gouging in relation to COVID-19 rapid antigen test kits and, subject to exemptions, prohibits the export of COVID-19 rapid antigen test kits during the human biosecurity emergency period.

1.57 Subsection 174(1) of the Biosecurity Act empowers the Director of Biosecurity and the Director of Human Biosecurity to jointly determine that specified classes of goods must not be brought or imported into Australian territory unless specified conditions (including conditions for administrative purposes) are complied with. The Biosecurity (Conditionally Non-prohibited Goods) Amendment (Khapra Beetle) Determination 2021 [F2021L01807] amends the Biosecurity (Conditionally

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<sup>8</sup> Accessible on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

Non-prohibited Goods) Determination 2021 to provide additional alternative conditions for goods posing biosecurity risks associated with khapra beetle.

1.58 Subsection 395(1) of the Biosecurity Act provides that the Director of Biosecurity may determine that a specified area in Australian territory is a biosecurity activity zone. The Biosecurity (Biosecurity Activity Zones) Determination 2021 [F2021L01894] determines that the part of 135 Donnybrook Road Mickleham, Victoria that is used as the post entry quarantine facility is a biosecurity activity zone.

1.59 Section 398 of Biosecurity Act provides that the Director of Biosecurity must revoke a biosecurity activity zone determination if they are satisfied that it is no longer necessary for powers to be exercised in, or in relation to, the zone in accordance with section 399 of the Act. The Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021 [F2022L00001] repeals the Biosecurity (Biosecurity Activity Zones) Determination 2016.

1.60 Subsection 524A(1) of the Biosecurity Act provides that the Director of Biosecurity may make a determination listing goods, or classes of goods, for the purposes of section 524 of the Act relating to infringement notices. The Biosecurity (2022 Infringement Notices) Determination 2021 [F2021L01864] lists the goods, and classes of goods, that the Director of Biosecurity is satisfied have a high level of biosecurity risk associated with them, which will attract different penalty units under the Biosecurity Regulation 2016.

1.61 These instruments are exempt from disallowance by subsections 174(5), 395(4), 398(2), 477(2) and 524A(4) of the Biosecurity Act.

## Scrutiny concerns

### ***Exemption from disallowance***<sup>9</sup>

1.62 The committee has on numerous occasions set out its significant scrutiny concerns in relation to legislative instruments made under the Biosecurity Act which are exempt from disallowance.<sup>10</sup> The committee's broader concerns about the exemption from disallowance of emergency legislative instruments are set out in

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9 Scrutiny principle: Senate standing order 23(3)(4A).

10 See Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 14 of 2021*, 29 September 2021, pp. 14–21; Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 16 of 2021*, 25 November 2021, pp. 3–10; Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 1 of 2022*, 25 January 2022, pp. 6–9; and Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 2 of 2022*, 9 February 2022, pp. 2–7. Accessible at: [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).



detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight.<sup>11</sup>

1.63 It remains the committee's view that emergency delegated legislation should be subject to appropriate parliamentary oversight, with limited exemptions from disallowance. Where an instrument is exempt from disallowance, the committee expects that a detailed justification will be included in the explanatory statement.

1.64 As the committee has previously emphasised, this approach upholds the Parliament's constitutional role as the primary institution responsible for making law and scrutinising possible encroachments on personal rights and liberties.

1.65 The explanatory statements for the Biosecurity (Biosecurity Activity Zones) Determination 2021 [F2021L01894], the Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021 [F2022L00001], the Biosecurity (2022 Infringement Notices) Determination 2021 [F2021L01864] and the Biosecurity (Conditionally Non-prohibited Goods) Amendment (Khapra Beetle) Determination 2021 [F2021L01807] provide that they are appropriately exempt from disallowance because the decision to make these determinations relies on technical, operational and scientifically-based evidence, and in some instances, the judgement of the Director of Biosecurity.

1.66 The committee does not consider that scientific or technical decisions should be exempt from disallowance on that basis alone. Notwithstanding that fact that it is rare for a decision to be *purely* scientific or technical, without any other considerations required, it is unclear to the committee why parliamentarians would be incapable of taking into account scientific and technical evidence when considering the appropriateness of an instrument.

1.67 As the Senate Standing Committee for the Scrutiny of Bills has noted, parliamentarians have access to considerable specialist expertise and parliamentarians regularly deal with legal, scientific and technical complexity while undertaking their law-making functions. In addition, parliamentarians are accountable to their electors in relation to how they exercise their law making functions, including the power to disallow a legislative instrument and any resulting outcomes that flow from that disallowance.<sup>12</sup>

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11 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Exemption of delegated legislation from parliamentary oversight: Interim Report*, 2 December 2020. Accessible at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Exemptfromoversight/Interim\\_report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Interim_report).

12 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2022*, 4 February 2022, p. 80. In relation to instruments made under section 524A of the Biosecurity Act such as the Biosecurity (2022 Infringement Notices) Determination 2021 [F2021L01864], see also Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 10 of 2020*, 26 August 2020, pp. 3–5.

1.68 The committee agrees that disallowance of an instrument that is well-supported by scientific and technical evidence is unlikely. The mere fact that a decision may be based on scientific and technical grounds is not, of itself, a sufficient justification for an exemption from the usual disallowance process.

1.69 The remaining four instruments made under the Biosecurity Act during this period are the Biosecurity (Emergency Requirements—High Risk Country Travel Pause) Amendment Determination (No. 1) 2021 [F2021L01758], the Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2021 [F2021L01863], the Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2021 [F2021L01885] and the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (COVID-19 Rapid Antigen Tests) Determination 2022 [F2022L00019].

1.70 These instruments introduce significant measures which impact the public, including temporarily imposing requirements to travel and preventing entry into Australian territory, restricting the movement of people in and out of certain remote communities in the Northern Territory, effectively 'locking down' identified areas, and imposing restrictions on the sale and export of COVID-19 rapid antigen test kits. The justification provided for the exemption from disallowance of these instruments remains the same—that the risk of disallowance would inhibit the Commonwealth's ability to act urgently on public health advice to manage a human biosecurity risk that could threaten or harm human health, as it would create uncertainty as to whether the instrument might be disallowed.<sup>13</sup>

1.71 As set out in the committee's previous Delegated Legislation Monitors, the committee does not accept the need to act urgently or to avoid potential uncertainty on their own to be an adequate justification for the exemption of delegated legislation from parliamentary oversight. In particular, the committee notes that the disallowance procedure would not inhibit the immediate commencement of the instruments. In this regard, the committee does not consider that making a legislative instrument subject to disallowance would, of itself, prevent the government from taking immediate and decisive action in response to a significant emergency.

1.72 The committee considers the disallowance process to be an opportunity to work in a constructive manner with the executive to enhance delegated legislation to ensure that it operates and functions within the boundaries placed upon it by the Parliament. In relation to these instruments, which impose significant requirements

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13 In addition, for the Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2021 [F2021L01863] and the Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2021 [F2021L01885], the justification for the exemption also indicates that the risk of disallowance is more significant as the 'remote communities are made up of Aboriginal and Torres Strait Islander peoples who are at a high risk of adverse human health outcomes as a result of exposure to a listed human disease'.

on the Australian public, the committee considers that the disallowance process is necessary to facilitate appropriate debate and scrutiny of the use of emergency powers and would operate to ensure that such powers are not misused.

1.73 The committee appreciates that during an emergency it is necessary for governments to take urgent and decisive action. However, Parliament must also have effective oversight of these critical decisions and retain the ability to scrutinise the actions of governments.

1.74 The committee notes that to date, the government has failed to substantively engage with the committee's significant concerns and continues to make instruments under the Biosecurity Act which are exempt from disallowance and fails to provide an adequate explanation for why it is necessary to do so.

1.75 Further, the committee is deeply concerned that the government has advised that it does not support any of the committee's recommendations in relation to providing for the disallowance of instruments made under the Biosecurity Act as set out in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight. Of the 18 recommendations in the interim report, the committee regrets that the government only agreed to one.

1.76 The committee will continue to rigorously pursue this matter in accordance with the mandate provided by the Senate when it agreed to amend standing order 23 to allow the committee to consider exempt instruments and report on instruments made the Biosecurity Act which are exempt from disallowance.

**1.77 In light of the above, the committee reiterates its view that amendments should be made to:**

- **section 174 of the Biosecurity Act to provide that any future determinations of 'conditionally non-prohibited goods' that must not be brought into Australia unless specified conditions are complied with will be subject to disallowance;**
- **sections 395 and 398 of the Biosecurity Act to provide that any future biosecurity activity zone determinations and revocations of those determinations will be subject to disallowance;**
- **section 477 of the Biosecurity Act to provide that any future determinations specifying emergency requirements during human biosecurity emergencies will be subject to disallowance; and**
- **section 524A of the Biosecurity Act to provide that any future determinations listing goods for the purposes of infringement notices will be subject to disallowance.**

1.78 If the government is not amenable to moving such amendments, the committee intends to move its own amendments to the Biosecurity Amendment (Enhanced Risk Management) Bill 2021 which is currently before the Parliament, to

ensure that future legislative instruments made under the Biosecurity Act are subject to disallowance.<sup>14</sup>

**1.79** Additionally, the committee will continue to draw legislative instruments made under the Biosecurity Act which are exempt from disallowance to the attention of the Senate in future Delegated Legislation Monitors, as necessary.

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14 The committee's proposed amendments to the bill were circulated in the Senate on 2 December 2021, see [sheet 1475](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=r6776) available at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bid=r6776](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=r6776).

## 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>

Instrument	Purpose	Portfolio committee
<b>Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021 [F2021L01855]</b>	To introduce new thematic listing criteria to enable the Minister for Foreign Affairs to list persons and entities for the purposes of applying targeted financial sanctions and travel bans.	Senate Foreign Affairs, Defence and Trade Legislation Committee
<b>Carbon Credits (Carbon Farming Initiative—Electricity Generation from Landfill Gas) Methodology Determination 2021 [F2021L01254]<sup>2</sup></b>	<p>To set out the methodology to earn carbon credits for emissions reductions achieved from the capture and combustion of landfill gas generated from decomposing waste.</p> <p>The Determination credits emissions reductions achieved through the destruction of methane from decomposing waste at a landfill site where the landfill operator intends to generate electricity. Organic waste produces methane when decomposing under anaerobic conditions, such as in landfill. Methane is a greenhouse gas 28 times more potent than carbon dioxide over a 100-year period. Capturing and combusting waste methane converts the methane into carbon dioxide, reducing net emissions from landfills. The Determination covers landfill projects that intend to generate electricity from combusting landfill gas, either exclusively or in conjunction with flaring.</p>	Senate Environment and Communications Legislation Committee

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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.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Matters\\_of\\_interest\\_to\\_the\\_Senate](https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Matters_of_interest_to_the_Senate).

2 This instrument was registered on 10 September 2021.

Instrument	Purpose	Portfolio committee
<b>Electronic Transactions Amendment Regulations 2021 [F2022L00021]</b>	<p>To remove 33 exemptions to the operation of the <i>Electronic Transactions Act 1999</i>. Removing the exemptions from the operation of the Act for particular provisions of Commonwealth law enables, but does not compel or mandate, the use of electronic communications by business and individuals in their dealings with government.</p> <p>The regulations also facilitate both paper-based and electronic processes for postal voters outside Australia to securely self-certify their postal vote certificate by providing official documented evidence of identity where they are unable to find an authorised witness.</p>	Senate Legal and Constitutional Affairs Legislation Committee

## 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 11 December 2021 and 14 January 2022.

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.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Scrutiny\\_of\\_Commonwealth\\_expenditure](https://www.apf.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 (Agriculture, Water and the Environment Measures No. 5) Regulations 2021 [F2021L01822]</b>	Online measures to improve price transparency in perishable goods industries	\$5.4 million over four years from 2021-22	Funding will be provided for research and development corporations and industry representative bodies to support the development and implementation of online measures to improve price transparency in perishable goods industries.	Senate Rural and Regional Affairs and Transport Legislation Committee
	Agricultural innovation hubs program	\$21.7 million over two years from 2021-22	Funding will be provided for the establishment, development and operation of agricultural innovation hubs that support innovation in the agricultural, aquaculture, fishery and forestry industries.	Senate Rural and Regional Affairs and Transport Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 3) Regulations 2021 [F2021L01798]</b>	Schools Pathways Program	\$2.8 million over two years from 2020-21	Funding will be provided to: <ul style="list-style-type: none"> <li>• provide linkages, and enhance work and career pathways, for students into the Australian defence industry and address specific skills gaps in defence industry capability; and</li> <li>• expand the pool of skilled workers from which the Australian defence industry can recruit (including by supporting studies, experiences and educational endeavours in science, technology, engineering and mathematics for students).</li> </ul>	Senate Foreign Affairs Defence and Trade Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 5) Regulations 2021 [F2021L01799]</b>	Grants to improve apprenticeships	\$10.5 million over three years from 2021-22 (for a pilot to be conducted by South Australia and New South Wales)	Funding will be provided for grants to the States and Territories to enable them to develop, test and implement measures directed at allowing apprenticeships to be completed more quickly.	Senate Education and Employment Legislation Committee



<b>Instrument</b>	<b>Grant/ Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
	Tertiary Access Payment for Regional and Remote School Leavers	\$175 million over four years from 2021-22 (including administration costs)	Funding will be provided for the Tertiary Access Payment to eligible school leavers from regional and remote areas of Australia who need to relocate to access tertiary study, with eligibility for the payment extended to include students from inner regional areas in addition to outer regional areas and remote areas, and payment rates differentiated based on remoteness from major cities.	Senate Education and Employment Legislation Committee
	School Leavers Information Service	\$10.5 million over two years from 2021-22	Funding will be provided for: <ul style="list-style-type: none"> <li>• information, advice and referral services to support young people to make informed decisions about their career or to transition to further learning or employment; and</li> <li>• trial supporting job seekers aged 25 years and over through telephone and online services to make informed decisions about their career or to transition to further learning or employment.</li> </ul>	Senate Education and Employment Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 8) Regulations 2021 [F2021L01834]</b>	Grant to the Australian Olympic Committee Inc.	\$2.1 million in 2021-22	Funding will be provided for the costs associated with the completion of mandatory quarantine by the Australian Olympic Team (including athletes and officials) on their return to Australia following their participation in the Tokyo 2020 Olympic Games.	Senate Community Affairs Legislation Committee

<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. 9) Regulations 2021 [F2021L01823]</b>	mRNA vaccines and treatments	Not specified	Funding will be provided to support the development and maintenance of Australia's onshore capability to manufacture mRNA (Messenger Ribonucleic Acid) products. The capability will be initially founded through a partnership with one or more suppliers. The partnership is expected to be underpinned by agreements commencing in 2021-22 that would establish a population-scale mRNA manufacturing capability and guarantee the supply of locally manufactured mRNA vaccines, including COVID-19 vaccines, as well as provide future pandemic readiness.	Senate Community Affairs Legislation Committee  Senate Select Committee on COVID-19
<b>Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2021 [F2021L01824]</b>	Community Refugee Integration and Settlement Pilot	\$8.6 million over four years from 2021-22	Funding will be provided for a pilot which aims to test whether Australia can achieve strong integration outcomes through a community-supported settlement model that provides a dedicated settlement pathway to refugees and humanitarian entrants to Australia.	Senate Legal and Constitutional Affairs Legislation Committee
	Economic Pathways to Refugee Integration	\$24.6 million over three years from 2021-22	Funding will be provided to support organisations to implement initiatives that lift the rate of refugee and humanitarian entrants' economic participation, including initiatives which help refugees and humanitarian entrants to: <ul style="list-style-type: none"> <li>• concurrently build English language abilities and vocational skills in areas of workforce shortage; or</li> <li>• start their own businesses; or</li> <li>• relocate to areas of workforce shortage in regional Australia; or</li> <li>• directly access a role with a large employer.</li> </ul>	Senate Legal and Constitutional Affairs Legislation Committee

<b>Instrument</b>	<b>Grant/ Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
	Assisted Passage Program	\$132.7 million over four years from 2021-22	Funding will be provided for health screening, assisted passage and related pre-departure costs of people approved for entry to Australia under the refugee component of the offshore Humanitarian Program.	Senate Legal and Constitutional Affairs Legislation Committee
	National Cybercrime Capability Fund	\$30.9 million over three years from 2021-22 (initial funding)	Funding will be provided to Commonwealth, State and Territory agencies to improve Australia's cybercrime law enforcement capabilities, including for: <ul style="list-style-type: none"> <li>• training to enhance cybercrime investigative skills; and</li> <li>• measures to support the sharing of cybercrime intelligence between the Commonwealth and the States and Territories; and</li> <li>• improved support for victims of cybercrime.</li> </ul>	Senate Legal and Constitutional Affairs Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 6) Regulations 2021 [F2021L01800]</b>	National Intermodal Corporation Limited	Not specified	Funding will be provided to facilitate the development and operation of intermodal freight terminals.	Senate Rural and Regional Affairs and Transport Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 11) Regulations 2021 [F2021L01825]</b>	Preparing Australian Communities Program— Projects of Local Significance	\$150 million over four years from 2021-22	Funding will be provided for grants to support eligible entities to deliver eligible projects of local significance to help reduce the risks and impacts of natural disasters under the Preparing Australian Communities Program.	Senate Finance and Public Administration Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
	Territories Stolen Generations Redress Scheme	\$378.6 million over five years from 2021-22	<p>Funding will be provided for the establishment and maintenance of the Territories Stolen Generations Redress Scheme to provide benefits and promote healing in relation to removals that took place in the Northern Territory prior to self-government, the Australian Capital Territory prior to self-government or the Jervis Bay Territory, including by:</p> <ul style="list-style-type: none"> <li>• making payments to recognise the harm caused by removals and facilitate healing;</li> <li>• providing direct personal responses;</li> <li>• providing legal, financial, counselling and other advisory and support services in relation to the scheme; and</li> <li>• engaging independent persons to assess applications or perform other roles under the scheme.</li> </ul>	Senate Finance and Public Administration Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 5) Regulations 2021 [F2021L01826]</b>	Market Information for Care and Support Providers	\$2.4 million over two years from 2021-22	<p>Funding will be provided for the establishment and maintenance of a website to make market demand and supply information available to the care and support sector, including providers of one or more of the following services:</p> <ul style="list-style-type: none"> <li>• disability care and support services;</li> <li>• care and support services for veterans; and</li> <li>• aged care and support services.</li> </ul>	Senate Community Affairs 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 11 December 2021 and 14 January 2022. 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>Australian National University (Residential Colleges Affiliation) Statute 2021 [F2021L01835]</b>	Education, Skills and Employment
<b>Automatic Mutual Recognition (South Australia) (Temporary Exemptions - Group 1 - Various) Declaration 2021 [F2021L01861]</b>	Industry, Science, Energy and Resources
<b>Automatic Mutual Recognition (South Australia) (Temporary Exemptions - Group 2 - Various) Declaration 2021 [F2021L01860]</b>	Industry, Science, Energy and Resources
<b>Automatic Mutual Recognition (Tasmania) (Temporary Exemption—Various) Declaration 2021 [F2021L01874]</b>	Industry, Science, Energy and Resources
<b>Automatic Mutual Recognition (Victoria) (Notification Requirement—Building, Plumbing, Architecture and Land Surveying industries) Determination 2021 [F2021L01877]</b>	Industry, Science, Energy and Resources
<b>Automatic Mutual Recognition (Victoria) (Notification Requirement—Environmental Auditors and Electrical Workers) Determination 2021 [F2021L01792]</b>	Industry, Science, Energy and Resources
<b>Automatic Mutual Recognition (Victoria) (Notification Requirement—Various) Determination 2021 (No. 2) [F2021L01846]</b>	Industry, Science, Energy and Resources
<b>Automatic Mutual Recognition (Victoria) (Temporary Exemption – Various) Declaration 2021 Amendment (Architects; Building Practitioners; Surveyors; Environmental Auditors) [F2021L01865]</b>	Industry, Science, Energy and Resources
<b>Automatic Mutual Recognition (Victoria) (Temporary Exemption – Various) Declaration 2021 Amendment (Real Estate Agents; Agents’ Representatives; Professional Engineers) [F2021L01866]</b>	Industry, Science, Energy and Resources
<b>Biosecurity (2022 Infringement Notices) Determination 2021 [F2021L01864]</b>	Agriculture, Water and the Environment
<b>Biosecurity (Biosecurity Activity Zones) Determination 2021 [F2021L01894]</b>	Agriculture, Water and the Environment
<b>Biosecurity (Biosecurity Activity Zones) Repeal Determination 2021 [F2022L00001]</b>	Agriculture, Water and the Environment
<b>Biosecurity (Conditionally Non-prohibited Goods) Amendment (Khapra Beetle) Determination 2021 [F2021L01807]</b>	Agriculture, Water and the Environment

Instrument	Portfolio
Biosecurity (Emergency Requirements—High Risk Country Travel Pause) Amendment Determination (No. 1) 2021 [F2021L01758]	Health
Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2021 [F2021L01863]	Health
Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2021 [F2021L01885]	Health
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (COVID-19 Rapid Antigen Tests) Determination 2022 [F2022L00019]	Health
Consumer Goods (Portable Non-aerosol Fire Extinguishers) Safety Standard 2021 [F2021L01844]	Treasury
Customs By-law No. 2100221 [F2021L01781]	Home Affairs
Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 6) Determination 2021 [F2021L01818]	Treasury
Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 8) Determination 2021 [F2021L01898]	Treasury
Federal Financial Relations (National Specific Purpose Payments for 2020-21) Determination 2021 [F2021L01785]	Treasury
Food Standards (Application A1178 – Method AOAC 2017.16 as a new method of analysis for total dietary fibre) Variation [F2022L00027]	Health
Income Tax: Alternative method for calculating the tax free component and taxable component of a superannuation benefit paid during the 2021–22 financial year for recipients of certain pensions under the Defence Force Retirement and Death Benefits Act 1973 and the Trust Deed referred to in section 4 of the Military Superannuation and Benefits Act 1991 [F2022L00004]	Treasury
Migration (Arrangements for Work and Holiday (Subclass 462) Visa Applications) Amendment Instrument (LIN 21/085) 2021 [F2021L01830]	Home Affairs
Migration (Class of persons for Visitor (Class FA) visa nil VAC) Amendment Instrument (LIN 21/097) 2021 (No. 2) [F2021L01773]	Home Affairs
Migration (Payment of visa application charges and fees in foreign currencies) Instrument (LIN 22/001) 2022 [F2021L01829]	Home Affairs

Instrument	Portfolio
Migration (Places and currencies for paying of fees) Instrument (LIN 22/002) 2022 [F2021L01819]	Home Affairs
Mutual Recognition (Automatic Deemed Registration Notification—South Australia) Determination 2021 [F2021L01859]	Industry, Science, Energy and Resources
Social Security (Australian Government Disaster Recovery Payment—Queensland floods) Determination 2022 (No. 1) [F2022L00023]	Home Affairs

**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 11 December 2021 and 14 January 2022.

### 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>Air Navigation (Aircraft Noise) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01768]</b>	Principle (m) automated decision-making	Seeking advice from the minister.
<b>Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021 [F2021L01855]</b>	Principle (c) scope of administrative powers Principle (e) clarity of drafting Principle (h) personal rights and liberties Principle (h) procedural fairness Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the minister.
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 9) Regulations 2021 [F2021L01823]</b>	Principle (j) matters more appropriate for parliamentary enactment Principle (m) parliamentary oversight	Seeking advice from the minister.
<b>Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2021 [F2021L01824]</b>	Principle (e) clarity of drafting	Seeking advice from the minister.

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

Instrument	Issue	Status
<b>Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 11) Regulations 2021 [F2021L01825]</b>	Principle (c) delegation of administrative powers and functions Principle (i) availability of independent merits review Principle (h) privacy Principle (j) matters more appropriate for parliamentary enactment Principle (m) parliamentary oversight	Seeking advice from the minister.
<b>Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2021 [F2022L00020]</b>	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the Senate.
<b>Telecommunications (Interception and Access) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01622]</b>	Principle (a) compliance with authorising legislation	Seeking advice from the minister.
<b>Various instruments made under the <i>Biosecurity Act 2015</i> [F2021L01758] [F2021L01807] [F2021L01863] [F2021L01864] [F2021L01885] [F2021L01894] [F2022L00001] [F2022L00019]</b>	Standing order 23(4A) exemption from disallowance	Drawing to the attention of the Senate. <sup>2</sup>

## 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>Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 3) [F2021L01759]</b>	Principle (h) privacy Principle (k) exemption from sunseting	Concluded following response from the agency on 21/02/2022.
<b>Carbon Credits (Carbon Farming Initiative—Industrial and Commercial Emissions Reduction) Methodology Determination 2021 [F2021L01789]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (f) incorporated materials freely accessible	Seeking advice from the agency.

<sup>2</sup> See Chapter 1 for further details.

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>CASA 114/21 — Exclusion from the Operation of Airworthiness Directives FAA AD 2021-23-12 and FAA AD 2021-23-13 Instrument 2021 [F2021L01909]</b>	Principle (k) exemption from sunseting	Committee secretariat considering response.
<b>CASA EX163/21 — The Corryong Hang Gliding Cup Instrument 2021 [F2021L01889]</b>	Principle (a) compliance with Legislation Act 2003— incorporation	Committee secretariat considering response.
<b>Comptroller (Operational Safety) Directions 2021 [F2021L01886]</b> <b>Comptroller-General of Customs (Operational Safety) Directions 2021 [F2021L01887]</b>	Principle (f) incorporated materials freely accessible	Seeking advice from the agency.
<b>Corporations (Fees) Amendment (Relevant Providers) Regulations 2021 [F2021L01804]</b>	Principle (j) levying of taxation in delegated legislation	Concluded following response from the agency on 24/02/2022.
<b>Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021 [F2021L01761]</b>	Principle (k) exemption from sunseting	Concluded following response from the agency on 22/02/2022.  The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Fair Work (Norfolk Island) Amendment (Queensland Public Sector Employees) Rules 2021 [F2021L01872]</b>	Principle (k) exemption from sunseting	Seeking advice from the agency.
<b>Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 6) Regulations 2021 [F2021L01800]</b>	Principle (m) disclosure of funding information	Seeking advice from the agency.
<b>Financial Sector Reform Amendment (Hayne Royal Commission Response— Better Advice) Regulations 2021 [F2021L01854]</b>	Principle (e) clarity of drafting  Principle (k) exemption from sunseting	Committee secretariat considering response.
<b>Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021 [F2021L01843]</b>	Principle (k) exemption from sunseting	Committee secretariat considering response.
<b>Health Insurance (Quality Assurance Activity – Australian Vigilance and Surveillance System for Organ Donation for Transplantation) Declaration 2021 [F2021L01783]</b>	Principle (e) clarity of drafting	Seeking further advice from the agency.

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Health Insurance Legislation Amendment (2021 Measures No. 4) Regulations 2021 [F2021L01812]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation  Principle (f) incorporation of copyrighted material	Seeking further advice from the agency.
<b>Illegal Logging Prohibition Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01794]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Concluded following response from the agency on 23/02/2022.
<b>Public Governance, Performance and Accountability (Financial Reporting) Amendment (2021 Measures No. 2) Rules 2021 [F2021L01788]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation  Principle (f) access and use	Concluded following response from the agency on 24/02/2022.
<b>Remuneration Tribunal Amendment Determination (No. 7) 2021 [F2021L01851]</b>	Principle (k) exemption from sunseting	Concluded following correspondence with the agency.  The Remuneration Tribunal undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021 [F2021L01828]</b>	Principle (f) access and use  Principle (h) privacy	Seeking advice from the agency.
<b>Superannuation Amendment (PSS Trust Deed) Instrument 2021 (No. 2) [F2021L01779]</b>	Principle (k) exemption from sunseting	Concluded following response from the agency on 22/02/2022.
<b>Trade Support Loans Legislation Amendment Instrument 2021 [F2021L01905]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation  Principle (a) compliance with <i>Legislation Act 2003</i> —manner of incorporation	Seeking advice from the agency.
<b>Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulations 2021 [F2021L01847]</b>	Principle (k) exemption from sunseting	Committee secretariat considering response.
<b>Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations 2021 [F2021L01841]</b>	Principle (d) adequacy of consultation  Principle (k) exemption from sunseting	Committee secretariat considering response.

## 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*.

#### 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>1</sup>

Instrument	Issue	Status
<b>Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 2) [F2021L01658]</b>	Principle (k) exemption from sunseting	Committee considering response.
	Principle (l) exemption from the operation of primary legislation	Notice of motion to disallow placed on 18/10/2021.
<b>Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043]*</b>	Principle (a) compliance with authorising 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> .
	Principle (a) compliance with <i>Legislation Act 2003</i> —same in substance	
	Principle (j) significant matters in delegated legislation	
<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>Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2021 [F2021L01392]</b>	Principle (j) significant penalties in delegated legislation	Seeking advice from the Treasurer.
		Notice of motion to disallow [F2021L01392] placed on 10/02/2022.
<b>Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2021 [F2021L01561]</b>		

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

Instrument	Issue	Status
<b>Competition and Consumer Amendment (Consumer Data Right) Regulations 2021 [F2021L01617]</b>	Principle (g) adequacy of explanatory materials Principle (h) privacy Principle (k) exemption from sunseting Principle (l) exemption from the operation of primary legislation	Seeking advice from the Treasurer.
<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 further advice from the minister. Notice of motion to disallow placed on 10/02/2022.
<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	Drawing to the attention of the Senate. The committee recommends disallowing the instrument. <sup>2</sup> Notice of motion to disallow placed on 22/11/2021.
<b>Industry Research and Development (Supporting Critical Transmission Infrastructure Program) Instrument 2021 [F2021L01312]</b>	Principle (m) parliamentary oversight	Seeking advice from the minister. Notice of motion to disallow placed on 10/02/2022.
<b>Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021 [F2021L01801]</b>	Principle (e) clarity of drafting Principle (j) matters more appropriate for parliamentary enactment Principle (j) significant penalties in delegated legislation Principle (l) modification of the operation of primary legislation Principle (m) parliamentary oversight	Seeking advice from the Treasurer.

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2 See Chapter 1 for further details.

## 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>Australian Capital Territory National Land (Road Transport) Parking Authority Guidelines 2021 [F2021L01677]</b>	Principle (f) incorporated materials freely accessible	Seeking further advice from the agency.
<b>Carbon Credits (Carbon Farming Initiative—Estimation of Soil Organic Carbon Sequestration Using Measurement and Models) Methodology Determination 2021 [F2021L01696]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Seeking advice from the agency.
<b>Corporations (Relevant Providers—Education and Training Standards) Determination 2021 [F2021L01714]</b>	Principle (a) compliance with the <i>Legislation Act 2003</i> —incorporation  Principle (i) availability of independent merits review	Committee secretariat considering response.
<b>Export Control Legislation Amendment (2021 Measures No. 1) Rules 2021 [F2021L01730]</b>	Principle (a) compliance with the <i>Legislation Act 2003</i> —incorporation  Principle (c) delegation of administrative powers and functions  Principle (e) clarity of drafting  Principle (h) privacy	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>Aged Care Legislation Amendment (Royal Commission Response No.1) Principles 2021 [F2021L00923]*</b>	Principle (c) conferral of discretionary powers Principle (e) clarity of drafting Principle (j) matters more appropriate for parliamentary enactment Principle (j) significant impact on personal rights and liberties	Concluded following response from the ministers on 03/03/2022.  The Minister for Health and Aged Care and the Minister for Senior Australians and Aged Care Services amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Australian Citizenship (special residence requirement) Instrument (LIN 21/069) 2021 [F2021L01422]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Concluded following response from the minister on 08/02/2022.
<b>Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191]</b>	Standing order 23(4A) exemption from disallowance  Principle (a) compliance with authorising legislation	Concluded following response from the minister on 09/02/2022.

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\\_sd/c](http://www.aph.gov.au/senate_sd/c).

Instrument	Issue	Status
<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	Concluded following response from the minister on 09/02/2022.  The Minister for the Environment undertook to amend the principal instrument in response to the committee's scrutiny concerns.
<b>Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2021 [F2022L00020]</b>	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
<b>Migration Amendment (Humanitarian Response to Events in Afghanistan) Regulations 2021 [F2021L01546]</b>	Principle (m) parliamentary oversight	Concluded following response from the minister on 08/02/2022.
<b>Northern Australia Infrastructure Facility Investment Mandate Direction 2021 [F2021L00942]</b>	Standing order 23(4A) exemption from disallowance	Concluded following response from the minister received on 08/02/2022.
<b>Therapeutic Goods (Standard for Human Cell and Tissue Products—Donor Screening Requirements) (TGO 108) Order 2021 [F2021L01326]</b>	Principle (e) clarity of drafting	Concluded following response from the minister on 13/02/2022.  The Minister for Health and Aged Care amended the instrument in response to the committee's scrutiny concerns.
<b>Various instruments made under the <i>Biosecurity Act 2015</i> [F2021L01758] [F2021L01807] [F2021L01863] [F2021L01864] [F2021L01885] [F2021L01894] [F2022L00001] [F2022L00019]</b>	Standing order 23(4A) exemption from disallowance	Drawn to the attention of the Senate in Chapter 1 of this <i>Delegated Legislation Monitor</i> .

## 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.

Instrument	Issue	Status
<b>Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 3) [F2021L01759]</b>	Principle (h) privacy Principle (k) exemption from sunseting	Concluded following response from the agency on 21/02/2022.

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR — LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2021 [F2021L01663]</b>	Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 07/02/2022.  The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Comptroller (Warrants) Amendment Directions 2021 [F2021L01657]</b>	Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 08/02/2022  The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Comptroller-General of Customs (Warrants) Amendment Directions 2021 [F2021L01650]</b>	Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 08/02/2022  The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Corporations (Fees) Amendment (Relevant Providers) Regulations 2021 [F2021L01804]</b>	Principle (j) levying of taxation in delegated legislation	Concluded following response from the agency on 24/02/2022.
<b>Customs (Prohibited Imports) Amendment (Commercial Importation of Kava as Food) Regulations 2021 [F2021L01615]</b>	Principle (c) delegation of administrative powers and functions	Concluded following response from the agency on 08/02/2022.  The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021 [F2021L01761]</b>	Principle (k) exemption from sunseting	Concluded following response from the agency on 22/02/2022.  The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021 [F2021L01552]</b>	Principle (e) clarity of drafting	Concluded following response from the agency on 02/02/2022.

Instrument	Issue	Status
<b>Fisheries Management (Logbooks for Fisheries) Determination 2021 [F2021L01676]</b>	<p>Principle (c) conferral of discretionary powers</p> <p>Principle (c) delegation of administrative powers and functions</p> <p>Principle (e) clarity of drafting</p>	<p>Concluded following response from the agency on 24/02/2022.</p> <p>The Department of Agriculture, Water and the Environment amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<b>Illegal Logging Prohibition Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01794]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Concluded following response from the agency on 23/02/2022.
<b>Imported Food Control Legislation Amendment (Risk Foods) Order 2021 [F2021L01659]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Concluded following response from the agency on 04/02/2022.
<b>Narcotic Drugs (Licence Charges) Amendment (Medicinal Cannabis Licences) Regulations 2021 [F2021L01752]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —no statement of compatibility	<p>Concluded following response from the agency on 04/02/2022.</p> <p>The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<b>National Consumer Credit Protection Amendment (Small Business Exemption No. 2) Regulations 2021 [F2021L01540]</b>	Principle (k) exemption from sunseting	Concluded following response from the agency on 11/02/2022.
<b>Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Reserve HFC Quotas) Regulations 2021 [F2021L01564]</b>	Principle (i) availability of independent merits review	Concluded following response from the agency on 23/02/2022.
<b>Public Governance, Performance and Accountability (Financial Reporting) Amendment (2021 Measures No. 2) Rules 2021 [F2021L01788]</b>	<p>Principle (a) compliance with <i>Legislation Act 2003</i>—incorporation</p> <p>Principle (f) access and use</p>	Concluded following response from the agency on 24/02/2022.
<b>Remuneration Tribunal Amendment Determination (No. 7) 2021 [F2021L01851]</b>	Principle (k) exemption from sunseting	<p>Concluded following correspondence with the agency.</p> <p>The Remuneration Tribunal undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<b>Superannuation Amendment (PSS Trust Deed) Instrument 2021 (No. 2) [F2021L01779]</b>	Principle (k) exemption from sunseting	Concluded following response from the agency on 22/02/2022.

Instrument	Issue	Status
<b>Therapeutic Goods (Therapeutic Goods Advertising Code) Instrument 2021 [F2021L01661]</b>	Principle (e) clarity of drafting	Concluded following response from the agency on 16/02/2022.  The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Therapeutic Goods Legislation Amendment (2021 Measures No. 3) Regulations 2021 [F2021L01474]</b>	Principle (g) adequacy of explanatory materials  Principle (h) privacy	Concluded following response from the agency on 16/02/2022.  The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Various instruments made by the Civil Aviation Safety Authority [F2021L01671] [F2021L01675] [F2021L01679] [F2021L01681] [F2021L01682] [F2021L01683] [F2021L01684] [F2021L01685] [F2021L01687] [F2021L01688] [F2021L01697] [F2021L01680]</b>	Principle (k) exemption from sunseting	Concluded following response from the agency on 07/02/2022.  The Civil Aviation Safety Authority undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.
<b>Vehicle Standard (Australian Design Rule) Amendment Instrument 2021 (No.2) [F2021L01629]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation  Principle (k) exemption from sunseting	Concluded following response from the agency on 18/02/2022.



## 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 the committee is aware remain outstanding, from oldest to newest. The committee draws these undertakings to the attention of the Senate.

Instrument	Undertaking	Date of Undertaking
<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>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>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<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>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>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>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>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



Instrument	Undertaking	Date of Undertaking
<b>Higher Education Provider Approval No 2 of 2021 [F2021L00965]</b>	<p>The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns.</p> <p>The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	16/09/2021
<b>Aged Care Legislation Amendment (Vaccination Information) Principles 2021 [F2021L01236]</b>	<p>The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	08/10/2021
<b>Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]</b>	<p>The Minister for Industry, Energy and Emissions Reduction undertook to amend the instrument in response to the committee's scrutiny concerns.</p>	04/11/2021
<b>Therapeutic Goods (Standards for Biologicals—General and Specific Requirements) (TGO 109) Order 2021 [F2021L01332]</b>	<p>The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	04/11/2021
<b>Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030]</b>	<p>The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs undertook to amend the instrument in response to the committee's scrutiny concerns.</p>	11/11/2021
<b>Part 60 Manual of Standards Amendment Instrument 2021 (No. 1) [F2021L01303]</b>	<p>The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	12/11/2021
<b>Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Declaration 2021 [F2021L01157]</b>  <b>Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Amendment Declaration (No. 1) 2021 [F2021L01237]</b>	<p>The Treasurer undertook to amend the principal instrument in response to the committee's scrutiny concerns.</p>	12/11/2021
<b>Migration Amendment (Australian Agriculture Workers) Regulations 2021 [F2021L01366]</b>	<p>The Department of Home Affairs undertook to amend the instrument in response to the committee's scrutiny concerns.</p> <p>The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	02/12/2021

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Veterans' Entitlements (Point Cook Firefighters) Determination 2021 [F2021L01265]</b>	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2021
<b>CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 [F2021L01399]</b>	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/01/2022
<b>Remuneration Tribunal Amendment Determination (No. 6) 2021 [F2021L01607]</b>	The Remuneration Tribunal undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	17/01/2022
<b>Vehicle Standard (Australian Design Rule 98/00 – Advanced Emergency Braking for Passenger Vehicles and Light Goods Vehicles) 2021 [F2021L01518]</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.	18/01/2022
<b>Vehicle Standard (Australian Design Rule 98/01 – Advanced Emergency Braking for Passenger Vehicles and Light Goods Vehicles) 2021 [F2021L01519]</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.	18/01/2022
<b>Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021 [F2021L01503]</b>	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	20/01/2022
<b>Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 4) Regulations 2021 [F2021L01494]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022
<b>Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 1) Regulations 2021 [F2021L01495]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022
<b>Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2021 [F2021L01507]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022
<b>Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 8) Regulations 2021 [F2021L01499]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 4) Regulations 2021 [F2021L01498]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022
<b>Fair Work Act 2009 Direction to Inspectors (November 2021) [F2021L01585]</b>	The Fair Work Ombudsman undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	28/01/2022
<b>Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR — LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2021 [F2021L01663]</b>	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/02/2022
<b>Various instruments made by the Civil Aviation Safety Authority [F2021L01671] [F2021L01675] [F2021L01679] [F2021L01681][F2021L01682] [F2021L01683] [F2021L01684] [F2021L01685][F2021L01687] [F2021L01688] [F2021L01697] [F2021L01680]</b>	The Civil Aviation Safety Authority undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	07/02/2022
<b>Comptroller (Warrants) Amendment Directions 2021 [F2021L01657]</b>	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/02/2022
<b>Comptroller-General of Customs (Warrants) Amendment Directions 2021 [F2021L01650]</b>	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/02/2022
<b>Customs (Prohibited Imports) Amendment (Commercial Importation of Kava as Food) Regulations 2021 [F2021L01615]</b>	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/02/2022
<b>Great Barrier Reef Marine Park Amendment (No-Anchoring Areas) Regulations 2021 [F2021L00843]</b>	The Minister for the Environment undertook to amend the principal instrument in response to the committee's scrutiny concerns.	09/02/2022
<b>Therapeutic Goods Legislation Amendment (2021 Measures No. 3) Regulations 2021 [F2021L01474]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/02/2022
<b>Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021 [F2021L01761]</b>	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	22/02/2022

## Implemented undertakings

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

Instrument	Undertaking	Date implemented
<b>Aged Care Legislation Amendment (Royal Commission Response No.1) Principles 2021 [F2021L00923]</b>	The Minister for Health and Aged Care and the Minister for Senior Australians and Aged Care Services amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/10/2021
<b>Recycling and Waste Reduction (Mandatory Product Stewardship—Mercury-added Products) Rules 2021 [F2021L01393]</b>	The Department of Agriculture, Water and the Environment amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	15/02/2022
<b>Therapeutic Goods (Standard for Human Cell and Tissue Products—Donor Screening Requirements) (TGO 108) Order 2021 [F2021L01326]</b>	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/02/2022
<b>Income Tax Assessment (1997 Act) Regulations 2021 [F2021L00206]</b>	The Department of the Treasury amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/02/2022
<b>Minamata Convention on Mercury (Consequential Amendments) Regulations 2021 [F2021L01390]</b>	The Department of Agriculture, Water and the Environment amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/02/2022
<b>Industrial Chemicals (General) Amendment (Minamata Convention on Mercury) Rules 2021 [F2021L01411]</b>	The Department of Agriculture, Water and the Environment amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	22/02/2022
<b>Fisheries Management (Logbooks for Fisheries) Determination 2021 [F2021L01676]</b>	The Department of Agriculture, Water and the Environment amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/02/2022
<b>Narcotic Drugs (Licence Charges) Amendment (Medicinal Cannabis Licences) Regulations 2021 [F2021L01752]</b>	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/02/2022
<b>Therapeutic Goods (Therapeutic Goods Advertising Code) Instrument 2021 [F2021L01661]</b>	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/02/2022

Instrument	Undertaking	Date implemented
<b>Radiocommunications (Exemption – Corrective Services NSW) Determination 2021 [F2021L01613]</b>	The Australian Communications and Media Authority amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/03/2022
<b>Variation to Licence Area Plan – Albury Radio – 2021 (No. 1) [F2021L01583]</b>	The Australian Communications and Media Authority amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/03/2022
<b>Therapeutic Goods (Standard for Human Cell and Tissue Products—Donor Screening Requirements) (TGO 108) Order 2021 [F2021L01326]</b>	The Minister for Health and Aged Care amended the instrument in response to the committee's scrutiny concerns.	08/03/2022