

The Senate

Standing
Committee on
Regulations and
Ordinances

Delegated Legislation Monitor

Monitor 8 of 2019

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Introduction

Terms of reference

The Senate Standing Committee on Regulations and Ordinances (the committee) was established in 1932. The role of the committee is to examine the technical qualities of all disallowable instruments of delegated legislation and decide whether they comply with the committee's non-partisan scrutiny principles, which focus on statutory requirements, the protection of individual rights and liberties, and ensuring appropriate parliamentary oversight.

Senate Standing Order 23(3) requires the committee to scrutinise each instrument referred to it to ensure:

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- (d) that it does not contain matter more appropriate for parliamentary enactment.

Nature of the committee's scrutiny

The committee's scrutiny principles capture a wide variety of issues which relate primarily to technical legislative scrutiny. The committee does not examine or consider the policy merits of delegated legislation. In cases where an instrument is considered not to comply with the committee's scrutiny principles, the committee's usual approach is to correspond with the responsible minister or relevant agency seeking further explanation or clarification of the matter at issue, or seeking an undertaking for specific action to address the committee's concern. The committee's work is supported by the processes for the registration, tabling and disallowance of legislative instruments under the *Legislation Act 2003*.¹

Publications

The committee's usual practice is to table a report, the *Delegated Legislation Monitor* (the monitor), each sitting week of the Senate. The monitor provides an overview of the committee's scrutiny of disallowable legislative instruments for the preceding period. Disallowable legislative instruments detailed in the monitor are also listed in the 'Index of instruments' on the committee's website.²

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 Regulations and Ordinances Committee, *Index of instruments*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Index.

Ministerial correspondence

Correspondence relating to matters raised by the committee is published on the committee's website.³

Agency correspondence

The committee undertakes informal correspondence with relevant agencies via the committee secretariat to gather information about potential scrutiny concerns, in order to assist the committee to decide whether it is necessary to seek further advice from the relevant minister about those issues. This correspondence is not published; however, a record of the instrument, scrutiny issue and status of the correspondence is included in Appendix A (ongoing matters) and Appendix B (concluded matters) in the monitor.

Guidelines

Guidelines referred to by the committee are published on the committee's website.⁴

General information

The Federal Register of Legislation should be consulted for the text of instruments, explanatory statements, and associated information.⁵ The Senate Disallowable Instruments List provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.⁶ The Disallowance Alert records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.⁷

Instruments considered in this monitor

The committee examined 103 disallowable legislative instruments registered on the Federal Register of Legislation between 18 September 2019 and 16 October 2019. 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.

3 See www.aph.gov.au/regords_monitor.

4 See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Guidelines.

5 See Australian Government, Federal Register of Legislation, 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.

7 Regulations and Ordinances Committee, *Disallowance Alert 2019*, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Alerts.

Chapter 1

Committee comments

1.1 This chapter details the instruments in relation to which the committee holds the most significant scrutiny concerns, and has resolved to place a notice of motion to disallow the instrument to emphasise those concerns and to provide the Senate with additional time to consider the instrument with the benefit of the committee's comments. Where appropriate, this chapter also details the committee's reasons for withdrawing notices of motion to disallow such instruments.

1.2 Copies of any relevant correspondence are available on the committee's website.¹

Immigration (Guardianship of Children) Regulations 2018

FRL No.	F2018L01708 ²
Purpose	To provide for a range of matters relating to the custodianship of non-citizen minors in Australia, including: duties and obligations applying to custodians, state governments, state authorities and other persons; placement and transfer of non-citizen minors; and the application of state child welfare laws.
Authorising legislation	<i>Immigration (Guardianship of Children) Act 1946</i>
Portfolio	Home Affairs
Disallowance	15 sitting days after tabling (tabled in the Senate on 12 February 2019). Notice of motion to disallow placed on 1 August 2019. ³

1 See www.aph.gov.au/regords_monitor.

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

3 Notice given by the Chair of the committee. See *Disallowance Alert 2019*: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Alerts.

Significant matters in delegated legislation⁴

1.3 The committee initially scrutinised the instrument in *Delegated Legislation Monitor 1 of 2019*. In correspondence with the minister, the committee noted that the instrument has the effect of prescribing the grounds on which a non-citizen child may become the ward of the minister, and as such could be said to affect the rights and interests of non-citizen children in a significant way. The committee therefore requested the minister's advice as to why significant matters relating to the circumstances in which a non-citizen child may become the ward of the minister should be included in delegated legislation, rather than primary legislation.⁵

1.4 In response to the committee's request, the minister advised that the key grounds to be met before the minister may make a guardianship order in relation to a non-citizen child are set out in section 4AA of the *Immigration (Guardianship of Children) Act 1946* (Guardianship of Children Act), and that any principles prescribed for the purposes of section 4AA must be consistent with, and must not affect the rights and interests of children in a manner contrary to, that section.⁶

1.5 While noting this advice, the committee reiterated its concerns that the broad discretionary power to issue a guardianship order does not appear to be governed by any other specific criteria. Rather, it is left to the regulations to prescribe principles to be observed in considering whether or not an order should be made. In this respect, the committee observed that the instrument appears to be the mechanism by which broad criteria must be satisfied before a guardianship order (which may affect the rights and interests of non-citizen children in a significant manner) may be made.

1.6 The committee therefore sought the minister's advice as to whether consideration had been given to amending the Guardianship of Children Act to ensure that specific criteria setting out the basis on which a non-citizen child may become the ward of the minister are included on the face of the Act, rather than left to delegated legislation.⁷

1.7 In correspondence with the committee, the minister noted that the use of a legislative instrument to prescribe the principles to be considered in exercising the power in section 4AA facilitates closer regulation of the power, whilst promoting

4 Scrutiny principle: Senate Standing Order 23(3)(d).

5 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation Monitor 1 of 2019*, pp. 46-47.

6 The minister responded to the committee's comments in a letter dated 15 August 2019. A copy of the letter is available on the committee's website: see relevant correspondence relating to *Delegated Legislation Monitor 2 of 2019* available at www.aph.gov.au/regords_monitor.

7 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation Monitor 2 of 2019*, pp. 54-57.

flexibility for the principles to be updated to account for changed circumstances. The minister also provided advice about the practical operation of the principles, noting, for example, that only a small proportion of children become wards of the minister as a result of a direction made under section 4AA of the Act.

1.8 The minister concluded that, having turned his mind to the concerns raised by the committee, he remained of the view that the current legislative scheme is effective and appropriate. On this basis, he confirmed that consideration had not been given to amending the Act in the manner described by the committee.⁸

1.9 While noting the minister's advice, the committee remained concerned that the instrument includes a number of significant matters with the potential to affect the rights and liberties of non-citizen children. As outlined in previous comments, the committee's consistent view is that significant policy matters, and matters affecting fundamental rights and liberties, should be set out in primary legislation.

1.10 The committee therefore drew the attention of the Senate to the inclusion of significant matters, which may affect the rights and liberties of non-citizen children, in delegated legislation, rather than primary legislation.⁹

1.11 The committee also resolved to place a notice of motion to disallow the instrument, to emphasise the committee's scrutiny concerns and to provide the Senate with additional time to consider the instrument with the benefit of the committee's comments. The notice was placed on 1 August 2019.

Private briefing

1.12 On 24 September 2019, the minister wrote to the committee to suggest an in-person briefing with senior officers of the Department of Home Affairs (the department). The committee accepted the minister's offer and met privately with officers on 14 October 2019. The minister subsequently provided the committee with a written summary of the briefing, and answers to the questions taken on notice by the department.¹⁰

1.13 The minister's summary reiterated that directions under section 4AA of the Act, to which section 6 of the present instrument applies, is only used in exceptional circumstances (three times in the past five years), and only on the grounds that it would be in the interests of the non-citizen minor.

8 The minister responded to the committee's comments in a letter dated 23 July 2019. A copy of the letter is available on the committee's website: see relevant correspondence relating to *Delegated Legislation Monitor 4 of 2019*, available at www.aph.gov.au/regords_monitor.

9 Senate Standing Committee on Regulations and Ordinances, *Delegated Legislation Monitor 4 of 2019*, pp. 1-6.

10 Correspondence relating to the briefing, including answers to questions taken on notice, is available on the committee's website: see relevant correspondence relating to *Delegated Legislation Monitor 8 of 2019*, available at www.aph.gov.au/regords_monitor.

1.14 The summary also emphasised that the regulations are rights-promoting, and clarified that they were drafted in very similar terms to the Immigration (Guardianship of Children) Regulations 2001 (2001 regulations) because no significant problem had been identified with the operation of the 2001 regulations in their 17 years of operation.

1.15 The answers to the questions on notice provided the committee with additional information about the history of the instrument and, in particular, the inclusion of paragraph 6(b)(iv) in the present instrument, which provides that a direction to make a non-citizen child a ward of the minister must not be given unless the direction is necessary 'for any other reason that the Minister, or a delegate of the Minister who is giving the direction, considers to be in the interests of the person'.

Committee request for review

1.16 The committee considered that the information provided by the department in the private briefing and subsequent answers to questions on notice assisted it in its consideration of the scrutiny issues raised by the instrument. However, the committee remained concerned that, in making the instrument, insufficient consideration had been given to whether it was appropriate to set out the relevant principles in primary legislation, rather than delegated legislation, notwithstanding the broad regulation-making powers in the Guardianship of Children Act.

1.17 The committee's ongoing scrutiny concerns were exacerbated by the apparent lack of consultation in making both the present instrument and the 2001 regulations, on which the present instrument is based.

1.18 In the interests of addressing the committee's scrutiny concerns without recourse to disallowance, the committee wrote to the minister on 30 October 2019 to request that he give consideration to conducting a review of the instrument and the regulation-making powers in the Guardianship of Children Act, with a particular focus on:

- whether the matters provided for in the regulations have the potential to affect personal rights and liberties or other significant matters, such that they are matters more appropriate for parliamentary enactment;
- whether the manner in which the regulations are drafted is consistent with the intention of the enabling Act; and
- the views of interested or affected parties about the matters listed above (for example, relevant child protection authorities).¹¹

11 The committee's correspondence is available on the committee's website: see relevant correspondence relating to *Delegated Legislation Monitor 8 of 2019*, available at www.aph.gov.au/regords_monitor.

Ministerial response

1.19 In response to the committee's request, the minister confirmed that the department will conduct a review of the regulations, and the regulation-making powers in the Guardianship of Children Act, with consideration of the particular matters of interested identified by the committee.¹²

Committee comment

1.20 The committee thanks the minister for this response. The committee welcomes the minister's undertaking to review the regulations and the regulation-making powers in the Immigration of Guardianship of Children Act, in response to the committee's scrutiny concerns.

1.21 In light of the minister's undertaking, the committee has resolved to withdraw the notice of motion to disallow the instrument. The committee will also monitor the undertaking to ensure that it is implemented.

1.22 Finally, the committee thanks the minister and the department for their constructive engagement with the committee's scrutiny concerns. In the committee's view, the satisfactory resolution of this matter provides a valuable model for how ministers and agencies can engage with the committee in the future, to ensure that delegated legislation is made in a manner which complies with the principles of parliamentary oversight.

12 The minister responded to the committee's comments in a letter dated 7 November 2019. A copy of the letter is available on the committee's website: see relevant correspondence relating to *Delegated Legislation Monitor 2 of 2019*, available at www.aph.gov.au/regords_monitor.

Appendix A

Ongoing matters

2.1 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 ongoing scrutiny concerns.

Ministerial engagement

2.2 The committee is engaging with the relevant minister about the scrutiny issues raised by the instruments listed below.

Instrument	Issue	Status
ASIC Corporations (Unclaimed Superannuation—Former Temporary Residents) Instrument 2019/873 [F2019L01213]	Principle (d) continuing exemption	Seeking advice from the assistant minister.
Broadcasting Services (Transmitter Access) Regulations 2019 [F2019L01248]	Principle (b) personal rights and liberties (privilege against self-incrimination) Principle (d) significant matters in delegated legislation	Seeking advice from the minister.
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]	Principle (d) continuing exemption	Awaiting implementation of ministerial undertaking to amend the Civil Aviation Safety Regulations 1998 in 2020, made on 07/11/2019.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Cities and Regional Development Measures No. 1) Regulations 2019 [F2019L01344]	Principle (a) constitutional validity	Seeking advice from the minister.
Financial Sector (Collection of Data) (reporting standard) determination No. 30 of 2019 [F2019L01196]	Principle (c) merits review	Seeking advice from the assistant minister.
Quality of Care Amendment (Minimising Use of Restraints) Principles 2019 [F2019L00511]	Principle (b) personal rights and liberties Principle (d) significant matters in delegated legislation	Drawing to the attention of the Senate. Chair placed a notice of motion to disallow the instrument on 16/09/2019.

Instrument	Issue	Status
Social Security (Reasonable Excuse – Student Payments) Determination 2019 [F2019L01287]	Principle (d) significant matters in delegated legislation	Seeking advice from the minister.
Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]	Principle (a) consultation Principle (c) merits review	Seeking advice from the assistant minister.
Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019 [F2019L01159]	Principle (a) incorporation	Seeking advice from the minister.

Agency engagement

2.3 The committee engages with the relevant agencies via its secretariat to seek further information about potential scrutiny concerns raised by the instruments. There are currently no instruments in relation to which the committee is seeking further information from agencies.

Appendix B

Concluded matters

3.1 This appendix records the instruments in relation to which the committee has concluded its inquiries, following correspondence with the relevant minister or agency. Copies of the relevant ministerial correspondence are available on the committee's website.¹

Ministerial engagement

3.2 The committee has concluded its examination of the instruments listed below following correspondence with the relevant minister.

Instrument	Issue	Status
Air Services Regulations 2019 [F2019L00371]	Principle (b) privacy Principle (b) reversal of evidential burden of proof Principle (b) immunity from liability Principle (d) significant matters in delegated legislation	Concluded following the implementation of the minister's undertaking to amend the instrument. The amending instrument was registered on 05/11/2019.
ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700 [F2019L01185]	Principle (d) continuing exemption	Concluded following response from the assistant minister on 07/11/2019. The assistant minister undertook to amend the explanatory statement to the instrument.
Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]	Principle (d) significant matters in delegated legislation	Concluded following response from the minister on 08/11/2019. The minister undertook to conduct a review of the instrument and the regulation-making powers in the <i>Immigration (Guardianship of Children) Act 1946</i> .

1 See www.aph.gov.au/regords_monitor.

Instrument	Issue	Status
Road Vehicle Standards Rules 2018 [F2019L00198]	Principle (a) incorporation	Concluded following the implementation of the minister's undertaking to amend the instrument. The amending instrument was registered on 05/11/2019.
Seafarers Rehabilitation and Compensation Levy Amendment Regulations 2019 [F2019L01247]	Principle (d) levying of taxation in delegated legislation	Drawing to the attention of the minister.

Agency engagement

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

Instrument	Issue	Status
ASIC Corporations (Amendment) Instrument 2019/784 [F2019L01206]	Principle (d) continuing exemption	Concluded following response from the agency on 16/10/2019. The agency undertook to amend the explanatory statement to the instrument.
Australian Transaction Reports and Analysis Centre Industry Contribution Determination 2019 (No. 1) [F2019L01306]	Principle (a) consultation	Concluded following response from the agency on 29/10/2019. The agency undertook to amend the explanatory statement to the instrument.
Imported Food Control (Recordkeeping) Determination 2019 [F2019L01294]	Principle (a) consultation	Concluded following responses from the agency on 28/10/2019 and 04/11/2019. The agency undertook to amend the explanatory statement to the instrument.
National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2019 [F2019L01368]	Principle (a) incorporation	Concluded following response from the agency on 06/11/2019. The agency undertook to amend the explanatory statement to the instrument.
National Greenhouse and Energy Reporting Amendment (2019 Measures No. 1) Regulations 2019 [F2019L01349]	Principle (b) privacy	Concluded following response from the agency on 06/11/2019.
National Museum of Australia Regulations 2019 [F2019L01273]	Principle (b) privacy	Concluded following response from the agency on 01/11/2019. The agency undertook to amend the explanatory statement to the instrument.
Other Grants Guidelines (Education) Amendment (No.1) 2019 [F2019L01333]	Principle (a) drafting Principle (b) privacy	Concluded following response from the agency on 06/11/2019. The agency undertook to amend the instrument and the explanatory statement to the amending instrument.

Instrument	Issue	Status
Royal Commissions Regulations 2019 [F2019L01224]	Principle (b) privacy	Concluded following response from the agency on 31/10/2019.
Telecommunications (Consumer Protection and Service Standards) (National Relay Service Rules) Determination 2019 [F2019L01303]	Principle (b) privacy	Concluded following response from the agency on 29/10/2019.

Appendix C

Undertakings

4.1 From time to time, a minister or agency may make an undertaking to address the committee's 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 meeting.

Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2018 (No. 10) [F2018L01646]	The Minister for Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	10/04/2019
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 1) (PB 3 of 2019) [F2019L00081]	The Minister for Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/06/2019
Aged Care Single Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019 [F2019L00515]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	16/07/2019
Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019 [F2019L00490]	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	16/07/2019
Hearing Services Program (Voucher) Instrument 2019 [F2019L00969]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	23/08/2019
Quality of Care Amendment (Minimising Use of Restraints) Principles 2019 [F2019L00511]	The Minister for Aged Care and Senior Australians undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	23/08/2019

Instrument	Undertaking	Date of Undertaking
Crimes Legislation Amendment (2019 Measures No. 1) Regulations 2019 [F2019L01004]	The Attorney-General's Department undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	03/09/2019
Telecommunications (Carrier Licence Exemption - Trial Network Units) Determination 2019 [F2019L00317] Telecommunications (Carrier Licence Exemption – Supply of Carriage Services to Visitors) Determination 2019 [F2019L00318]	The Department of Communications and the Arts undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	03/09/2019
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the <i>Water Act 2007</i> in response to the committee's concerns.	11/09/2019.
Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019 [F2019L01105]	The Australian Pesticides and Veterinary Medicines Authority undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/09/2019
Amendment of List of Exempt Native Specimens – Commonwealth Eastern Tuna and Billfish Fishery and Commission for the Conservation of Antarctic Marine Living Resources Ross Sea Exploratory Toothfish Fishery, August 2019 [F2019L01078]	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/09/2019
Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination 2019 [F2019L01066]	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/09/2019
Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019 [F2019L01067]	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/09/2019
Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2019 [F2019L01156]	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	02/10/2019
Agriculture and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2019 [F2019L00357]	The Department of Agriculture undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	09/10/2019

Instrument	Undertaking	Date of Undertaking
ASIC Corporations (Amendment) Instrument 2019/784 [F2019L01206]	The Australian Securities and Investment Corporation undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	16/10/2019
Australian Transaction Reports and Analysis Centre Industry Contribution Determination 2019 (No. 1) [F2019L01306]	The Australian Transaction Reports and Analysis Centre undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	29/10/2019
National Museum of Australia Regulations 2019 [F2019L01273]	The Department of Communications and the Arts undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	01/11/2019
Imported Food Control (Recordkeeping) Determination 2019 [F2019L01294]	The Department of Agriculture undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	04/11/2019
National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2019 [F2019L01368]	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	06/11/2019
Other Grants Guidelines (Education) Amendment (No.1) 2019 [F2019L01333]	The Department of Education undertook to amend the instrument and the explanatory statement to the amending instrument in response to the committee's concerns.	06/11/2019
ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700 [F2019L01185]	The Assistant Minister for Superannuation, Financial Services and Financial Technology undertook to amend the explanatory statement to the amending instrument in response to the committee's concerns.	07/11/2019
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]	The Minister for Infrastructure, Transport and Regional Development undertook to amend the Civil Aviation Safety Regulations 1998 in 2020 in response to the committee's concerns.	07/11/2019
Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]	The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs undertook to conduct a review of the instrument and the regulation-making powers in the <i>Immigration (Guardianship of Children) Act 1946</i> in response to the committee's concerns.	08/11/2019

Implemented undertakings

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

Instrument	Undertaking	Date implemented
Air Services Regulations 2019 [F2019L00371]	The Minister for Infrastructure, Transport and Regional Development undertook to amend the instrument in response to the committee's concerns.	07/11/2019
CASA EX86/19 – Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2019 [F2019L01138]	The Department of Infrastructure, Transport, Cities and Regional Development undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	31/10/2019
Migration (LIN 19/188: Arrangement for Approval and Variation of Approval for a Temporary Parent Sponsor) Instrument 2019 [F2019L01015]	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	18/10/2019
Migration Amendment (Visa Application Charges) Regulations 2019 [F2019L00932]	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	21/10/2019
National Greenhouse and Energy Reporting (Measurement) Amendment (2019 Update) Determination 2019 [F2019L00938]	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	18/10/2019
National Health (Pharmaceutical Benefits) Amendment (Electronic Prescriptions) Regulations 2019 [F2019L01072]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	31/10/2019
Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Methyl Bromide, Fire Protection and Other Measures) Regulations 2018 [F2018L01730]	The Minister for the Environment undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	23/10/2019
Private Health Insurance (Data Provision) Amendment Rules 2019 [F2019L00817] Private Health Insurance (Health Insurance Business) Amendment Rules 2019 [F2019L00815]	The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	04/11/2019
Road Vehicle Standards Rules 2018 [F2019L00198]	The Minister for Infrastructure, Transport and Regional Development undertook to amend the instrument in response to the committee's concerns.	07/11/2019

Instrument	Undertaking	Date implemented
Veterans' Affairs (Treatment Principles – Electric Mobility Aids and Other Measures) Amendment Instrument 2019 [F2019L00678]	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	31/10/2019

Appendix D

Instruments specifying Commonwealth expenditure

5.1 The *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act) and the *Industry Research and Development Act 1986* (Industry Act) authorise the Commonwealth to spend public money on policies, programs and schemes specified in instruments made under those Acts. The scrutiny of such instruments is a key aspect of parliamentary scrutiny and control of Commonwealth expenditure.¹

5.2 To facilitate such scrutiny, this Appendix draws the Senate's attention to the nature and extent of Commonwealth expenditure that is specified by delegated legislation.

5.3 The table below lists the expenditure specified by legislative instruments registered between 18 September and 16 October 2019.

Instrument	Program	Amount
Industry Research and Development (Regional and Remote Communities Reliability Fund Program) Instrument 2019 [F2019L01305]	Regional and Remote Communities Reliability Fund Program	\$50.4 million between 2019-20 and 2023-24.
Financial Framework (Supplementary Powers) Amendment (Agriculture Measures No. 1) Regulations 2019 [F2019L01340]	Regional Agricultural Show Development Grants Program	\$20 million over two years from 2019-20.
	Agriculture Stewardship Package	\$34 million over four years from 2019-20.
	Educating Kids About Agriculture	\$10 million over three years from 2019-20.
	National Farm Safety Education Fund	\$3.5 million over four years from 2019-20.
	Grants to Dairy Australia Limited	\$0.5 million over two years from 2020-21.
	Grants to Australian Dairy Farmers' Limited	\$1.01 million over two years from 2019-20.
	Package Assisting Small Exporters	\$6.1 million over four years from 2019-20.
	Starting Farm Cooperatives	\$3 million over two years from 2019-20.

1 For further information about instruments specifying Commonwealth expenditure see Chapter 7 of the report of the committee's inquiry, [Parliamentary scrutiny of delegated legislation](#).

Instrument	Program	Amount
Financial Framework (Supplementary Powers) Amendment (Communications and the Arts Measures No. 4) Regulations 2019 [F2019L01341]	International Cultural Diplomacy Arts Fund	4.8 million over four years from 2019-2020.
Financial Framework (Supplementary Powers) Amendment (Education Measures No. 3) Regulations 2019 [F2019L01342]	Research, tools and strategies to boost Aboriginal and Torres Strait Islander languages education	\$565,000 over three years from 2019-20
Financial Framework (Supplementary Powers) Amendment (Employment, Skills, Small and Family Business Measures No. 4) Regulations 2019 [F2019L01343]	Industry Training Hubs	\$41.7 million over four years from 2019-20.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Cities and Regional Development Measures No. 1) Regulations 2019 [F2019L01344]	Grants to improve road safety in Australia	15.3 million over four years from 2019-20.
Financial Framework (Supplementary Powers) Amendment (Veterans' Affairs Measures No. 2) Regulations 2019 [F2019L01346]	Veterans' Wellbeing Centres Program	\$30 million over three years from 2019-20.

List of instruments in current monitor

Instrument	FRL No	Page
Aged Care Single Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019	F2019L00515	13
Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019	F2019L01105	14
Agriculture and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2019	F2019L00357	14
Air Services Regulations 2019	F2019L00371	9, 16
Amendment of List of Exempt Native Specimens – Commonwealth Eastern Tuna and Billfish Fishery and Commission for the Conservation of Antarctic Marine Living Resources Ross Sea Exploratory Toothfish Fishery, August 2019	F2019L01078	14
ASIC Corporations (Amendment) Instrument 2019/784	F2019L01206	11, 15
ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700	F2019L01185	9, 15
ASIC Corporations (Unclaimed Superannuation—Former Temporary Residents) Instrument 2019/873	F2019L01213	7
Australian Transaction Reports and Analysis Centre Industry Contribution Determination 2019 (No. 1)	F2019L01306	15
Broadcasting Services (Transmitter Access) Regulations 2019	F2019L01248	7
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019	F2019L01132	7, 15
CASA EX86/19 – Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2019	F2019L01138	16
Crimes Legislation Amendment (2019 Measures No. 1) Regulations 2019	F2019L01004	14
Financial Framework (Supplementary Powers) Amendment (Agriculture Measures No. 1) Regulations 2019	F2019L01340	19
Financial Framework (Supplementary Powers) Amendment (Communications and the Arts Measures No. 4) Regulations 2019	F2019L01341	20
Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2019	F2019L01156	14
Financial Framework (Supplementary Powers) Amendment (Education Measures No. 3) Regulations 2019	F2019L01342	20

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Financial Framework (Supplementary Powers) Amendment (Employment, Skills, Small and Family Business Measures No. 4) Regulations 2019	F2019L01343	20
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Cities and Regional Development Measures No. 1) Regulations 2019	F2019L01344	7, 20
Financial Framework (Supplementary Powers) Amendment (Veterans' Affairs Measures No. 2) Regulations 2019	F2019L01346	20
Financial Sector (Collection of Data) (reporting standard) determination No. 30 of 2019	F2019L01196	7
Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019	F2019L00490	13
Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination 2019	F2019L01066	14
Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019	F2019L01067	14
Hearing Services Program (Voucher) Instrument 2019	F2019L00969	13
Immigration (Guardianship of Children) Regulations 2018	F2018L01708	1-5, 9, 15
Imported Food Control (Recordkeeping) Determination 2019	F2019L01294	11, 15
Industry Research and Development (Regional and Remote Communities Reliability Fund Program) Instrument 2019	F2019L01305	19
Migration (LIN 19/188: Arrangement for Approval and Variation of Approval for a Temporary Parent Sponsor) Instrument 2019	F2019L01015	16
Migration Amendment (Visa Application Charges) Regulations 2019	F2019L00932	16
National Greenhouse and Energy Reporting (Auditor Registration) Instrument 2019	F2019L01368	11, 15
National Greenhouse and Energy Reporting (Measurement) Amendment (2019 Update) Determination 2019	F2019L00938	16
National Greenhouse and Energy Reporting Amendment (2019 Measures No. 1) Regulations 2019	F2019L01349	11
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2018 (No. 10)	F2018L01646	13
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 1) (PB 3 of 2019)	F2019L00081	13
National Health (Pharmaceutical Benefits) Amendment (Electronic Prescriptions) Regulations 2019	F2019L01072	16

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National Museum of Australia Regulations 2019	F2019L01273	11, 15
Other Grants Guidelines (Education) Amendment (No.1) 2019	F2019L01333	11, 15
Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Methyl Bromide, Fire Protection and Other Measures) Regulations 2018	F2018L01730	16
Private Health Insurance (Data Provision) Amendment Rules 2019	F2019L00817	16
Private Health Insurance (Health Insurance Business) Amendment Rules 2019	F2019L00815	16
Quality of Care Amendment (Minimising Use of Restraints) Principles 2019	F2019L00511	7, 13
Road Vehicle Standards Rules 2018	F2019L00198	10, 16
Royal Commissions Regulations 2019	F2019L01224	12
Seafarers Rehabilitation and Compensation Levy Amendment Regulations 2019	F2019L01247	10
Social Security (Reasonable Excuse – Student Payments) Determination 2019	F2019L01287	8
Taxation Administration (Private Ancillary Fund) Guidelines 2019	F2019L01227	8
Telecommunications (Carrier Licence Exemption – Supply of Carriage Services to Visitors) Determination 2019	F2019L00318	14
Telecommunications (Carrier Licence Exemption - Trial Network Units) Determination 2019	F2019L00317	14
Telecommunications (Consumer Protection and Service Standards) (National Relay Service Rules) Determination 2019	F2019L01303	12
Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019	F2019L01159	8
Veterans' Affairs (Treatment Principles – Electric Mobility Aids and Other Measures) Amendment Instrument 2019	F2019L00678	17
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018	F2018L01674	14

**Senator the Hon Concetta Fierravanti-Wells
Chair**

Senate Standing Committee on Regulations and Ordinances