

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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Introduction

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

Terms of reference

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

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

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

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

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

Nature of the committee's scrutiny

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

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

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

Publications

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

Ministerial correspondence

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

Agency correspondence

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

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

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

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

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

Guidelines

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

General information

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

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

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

Instruments considered in this monitor

The committee examined 85 disallowable legislative instruments registered on the Federal Register of Legislation between 23 July 2020 and 18 August 2020.

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

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

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

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

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

Chapter 1

Instruments raising significant scrutiny concerns

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

1.2 Where the committee has significant unresolved scrutiny concerns about an instrument contained in this chapter, the committee may give a notice of motion to disallow it, subject to any further developments between the time that the notice is given and the time the notice is scheduled for debate in the Senate. Accordingly, where appropriate, this chapter also details the committee's reasons for withdrawing notices of motion to disallow such instruments.

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

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

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 relevant Senate and joint committees under standing order 23(4), with the exception of instruments which specify significant executive expenditure, which are listed in Chapter 3.¹

Instrument	Purpose	Portfolio committee
ASIC Corporations (Amendment) Instrument 2020/635 [F2020L01020]	To give relief to financial counselling agencies that provide financial counselling to small businesses, from the requirement to hold an Australian financial services licence when providing advice on particular financial products.	Senate Economics Legislation Committee
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]	To set out new standards and requirements for the internal dispute resolution (IDR) procedures of financial firms, specify requirements for written reasons for decisions about complaints, clarify that financial firms must comply with their IDR procedures, and modify the definition of 'small business' in relation to IDR in Chapter 7 of the <i>Corporations Act 2001</i> so it aligns with the definition of 'small business' in the Rules of the Australian Financial Complaints Authority in relation to external dispute resolution.	Senate Economics Legislation Committee
Autonomous Sanctions Legislation Amendment (Syria and Proliferation of Weapons of Mass Destruction) Instrument 2020 [F2020L01019]	To continue the designations and/or declarations of 54 persons and entities who the Foreign Minister is satisfied meet the criteria for the continuation of targeted financial sanctions and travel bans under the Autonomous Sanctions Regulations 2011, and in some instances updates the biodata for some designated persons and entities.	Senate Foreign Affairs, Defence and Trade Legislation Committee

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

Instrument	Purpose	Portfolio committee
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020 [F2020L01021]	To extend the scope of the JobKeeper scheme so that it also benefits employers of more recently engaged employees by providing a new employment reference date of 1 July 2020 for employees to be eligible for the scheme.	Senate Economics Legislation Committee Senate Select Committee on COVID-19
Corporations Amendment (Litigation Funding) Regulations 2020 [F2020L00942]	To amend the Corporations Regulations 2001 to bring litigation funders under the managed investment scheme and Australian Financial Services License regimes to ensure that they are subject to greater regulatory oversight and accountability. The instrument also removes exemptions from anti-hawking provisions and product disclosure requirements for litigation funders.	Senate Economics Legislation Committee Parliamentary Joint Committee on Corporations and Financial Services
Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020 [F2020L00960]	To determine various matters relevant to the calculation of the risk rated premium component and special tuition protection component of the HELP Tuition Protection Levy for the 2020 calendar year.	N/A
International Organisations (Privileges and Immunities—Square Kilometre Array Observatory) Regulations 2020 [F2020L00950]	To give legal effect to Australia's obligations in providing privileges and immunities to the Square Kilometre Array Observatory and relevant categories of persons, pursuant to the Convention Establishing the Square Kilometre Array Observatory.	Senate Foreign Affairs, Defence and Trade Legislation Committee
Social Security (Coronavirus Economic Response—2020 Measures No. 12) Determination 2020 [F2020L01010]	To modify section 204A of the <i>Social Security (Administration) Act 1999</i> to provide for additional purposes for which the Secretary of the Department of Social Services can use JobKeeper information provided to the Secretary by the Commissioner of Taxation.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19

Instrument	Purpose	Portfolio committee
Social Security (Coronavirus Economic Response—2020 Measures No. 13) Determination 2020 [F2020L00980]	To ensure that a social security recipient who is currently subject to a nil rate period under subsection 23(4A) of the <i>Social Security Act 1991</i> , or who commence a nil rate period before 16 November 2020, will be taken to be receiving a social security payment at a rate of nil until at least 16 November 2020. This will allow the person to retain access to certain benefits, such as concession cards, for a longer period.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19
VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020 [F2020L00961]	To determine various matters relevant to the calculation of the risk rated premium component and special tuition protection component of the VSL Tuition Protection Levy for the 2020 calendar year.	N/A

Chapter 3

Scrutiny of Commonwealth expenditure

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

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

3.3 The tables below outline the expenditure specified in legislative instruments registered between 23 July 2020 and 18 August 2020.

3.4 The committee has resolved to write to relevant Senate committees to alert those committees to the expenditure listed below that falls within their area of portfolio or subject matter 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.

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

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

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]	Coronavirus economic response— pandemic leave disaster payments	Total amount of spending authorised is not specified.	Funding will be provided for a pandemic leave disaster payments program. Under the program, pandemic payments of \$1500 will be available to eligible individuals who are unable to earn income while under a direction to self-isolate or quarantine as a result of COVID-19.	Senate Legal and Constitutional Affairs Legislation Committee Senate Select Committee on COVID-19
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 6) Regulations 2020 [F2020L00944]	Local Roads and Community Infrastructure Program	\$500 million over two years from 2020-21	Funding will be provided to local councils and other bodies who are responsible for the provision of local community services and infrastructure to support construction and maintenance of, and improvements to, priority local road and community infrastructure projects across Australia. The program aims to support recovery from the adverse effects of the national crisis resulting from COVID-19.	Senate Rural and Regional Affairs and Transport Legislation Committee Senate Select Committee on COVID-19
Industry Research and Development (Advancing Research and Development for Critical Minerals Program) Instrument 2020 [F2020L00949]	Advancing Research and Development for Critical Minerals Program	\$4.5 million	Funding will be provided to Geoscience Australia, the Commonwealth Scientific and Industrial Research Organisation and the Australian Nuclear Science and Technology Organisation to undertake eligible scientific research and development projects to help grow Australia's critical minerals sector.	Senate Economics Legislation Committee

Appendix A

Ongoing matters

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

Ministerial engagement

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

Instrument	Issue	Status
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Seeking advice from the assistant minister.
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]	Principle (d) consultation with persons affected	Seeking further advice from the minister Notice of motion to disallow placed on 06/10/2020.
Continence Aids Payment Scheme 2020 [F2020L00758]	Principle (i) availability of independent merits review	Seeking advice from the minister.
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight – deferral of sunsetting	Seeking further advice from the minister. Notice of motion to disallow the instrument placed on 31/08/2020.
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Seeking further advice from the minister.

¹ See www.aph.gov.au/senate_sdlc.

Instrument	Issue	Status
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]	Principle (d) consultation with persons affected Principle (i) availability of independent merits review Principle (j) significant matters in delegated legislation Principle (k) parliamentary oversight	Seeking advice from the minister.
Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 [F2020L00435]	Principle (k) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 01/09/2020.
Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020 [F2020L00870]	Principle (c) delegation of administrative powers and functions Principle (h) immunity from civil liability	Seeking further advice from the assistant minister.
Public Governance, Performance and Accountability Amendment (2020 Measures No. 3) Rules 2020 [F2020L00782]	Principle (j) significant matters in delegated legislation Principle (k) availability of accountability safeguards	Seeking further advice from the minister.
Therapeutic Goods Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00946]	Principle (j) element of offence specified in delegated legislation	Seeking advice from the minister.

Agency engagement

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

Instrument	Issue	Status
Amendment to the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 (EC145) [F2020L00889]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Seeking further advice from the agency.

Instrument	Issue	Status
Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020 [F2020L00878]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation Principle (d) consultation with persons affected	Seeking further advice from the agency.
Australian Prudential Regulation Authority (confidentiality) determination No.1 of 2020 [F2020L00945]	Principle (a) compliance with legislative requirements Principle (a) compliance with <i>Legislation Act 2003</i> – retrospective application Principle (d) adequacy of consultation Principle (h) privacy	Seeking advice from the agency.
CASA 39/20 — Drug and Alcohol Testing by CASA under Subpart 99.C of CASR Instrument 2020 [F2020L00983]	Principle (d) consultation on specific instrument Principle (f) incorporated materials freely accessible Principle (g) adequacy of explanatory materials Principle (h) privacy Principle (i) availability of independent review	Seeking advice from the agency.
CASA ADCX 008/20 - Repeal of Airworthiness Directives AD/ELECT/23 and AD/ELECT/65 [F2020L00991]	Principle (d) consultation with persons affected	Seeking advice from the agency.
Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020 [F2020L00895]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Seeking further advice from the agency.
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020 [F2020L01021]	Principle (d) consultation with persons affected	Seeking advice from the agency.
Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020 [F2020L01003]	Principle (a) compliance with <i>Legislation Act 2003</i> - consultation Principle (d) consultation with persons affected	Seeking advice from the agency.
Customs (Prohibited Imports) Amendment (Vaporiser Nicotine) Repeal Regulations 2020 [F2020L00860]	Principle (d) consultation with persons affected	Committee considering response from the agency.

Instrument	Issue	Status
Disability Care Load Assessment (Child) Determination 2020 [F2020L01025]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible Principle (i) availability of independent merits review	Seeking advice from the agency.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2020 [F2020L00818]	Principle (d) consultation with persons affected	Seeking further advice from the agency.
Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2020 [F2020L01014]	Principle (f) incorporated materials freely accessible Principle (f) instruments subject to copyright	Seeking advice from the agency.
Health Insurance (Section 3C Pathology Services – COVID-19) Amendment (No. 5) Determination 2020 [F2020L00981]	Principle (e) drafting error	Seeking advice from the agency.
Higher Education (Designated Courses of Study) Specification 2020 [F2020L00924]	Principle (d) consultation with persons affected	Seeking further advice from the agency.
Industrial Chemicals Charges (Customs) Regulations 2020 [F2020L00795] Industrial Chemicals Charges (General) Regulations 2020 [F2020L00797] Industrial Chemicals Charges (Excise) Regulations 2020 [F2020L00799]	Principle (j) unclear basis for determining fees	Seeking further advice from the agency.
Industry Research and Development (Advancing Research and Development for Critical Minerals Program) Instrument 2020 [F2020L00949]	Principle (d) consultation with persons affected	Seeking advice from the agency.
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 6) (PB 55 of 2020) [F2020L00841] National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2020 (No. 6) (PB 60 of 2020) [F2020L00852]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Seeking further advice from the agency.
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	Principle (f) instrument subject to copyright	Seeking advice from the agency.
Sport Integrity Australia Amendment (Enhancing Australia’s Anti-Doping Capability) Regulations 2020 [F2020L00953]	Principle (h) privacy	Seeking advice from the agency.

Instrument	Issue	Status
Therapeutic Goods (Standard for Faecal Microbiota Transplant Products) (TGO 105) Order 2020 [F2020L01011]	Principle (h) privacy	Seeking advice from the agency.
Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028]	Principle (i) availability of independent merits review Principle (h) privacy	Seeking advice from the agency.

Appendix B

Concluded matters

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

Ministerial engagement

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

Instrument	Issue	Status
ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198 [F2020L00237]	Principle (j) exemptions to primary legislation	Concluded following response from the assistant minister on 07/09/2020.
ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199 [F2020L00238]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	'Protective' notice of motion to disallow placed on 27/08/2020.
Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020 [F2020L00960]	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020 [F2020L00907]	Principle (j) modification of primary legislation	Concluded following response from the Assistant Treasurer on 28/09/2020.
VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020 [F2020L00961]	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.

¹ See www.aph.gov.au/senate_sdlc.

Agency engagement

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

Instrument	Issue	Status
ASIC Corporations (Approval of Variation of March 2020 Banking Code of Practice) Instrument 2020/602 [F2020L00854]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from agency on 08/09/2020.
CASA EX92/20 — Materials Flammability Airworthiness Standards (Medical Isolation Transportation Devices) Instrument 2020 [F2020L00796]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Concluded following response from agency on 09/09/2020. The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
CASA EX98/20 — Design of Temporary Modifications or Repairs (Special Flight Permit) Instrument 2020 [F2020L00766]	Principle (i) availability of independent review	Concluded following responses from agency on 08/09/2020 and 09/09/2020.
Child Care Subsidy Amendment (Coronavirus Response Measures No. 5) Minister's Rules 2020 [F2020L00930]	Principle (f) incorporated materials freely accessible Principle (h) retrospective commencement	Concluded following response from agency on 09/09/2020. The Department of Education Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2020 [F2020L00934]	Principle (i) availability of independent merits review	Concluded following response from agency on 09/09/2020.
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 6) 2020 [F2020L00921]	Principle (d) consultation with persons affected	Concluded following response from agency on 09/09/2020.
National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020 [F2020L00769]	Principle (i) availability of independent merits review	Concluded following response from agency on 09/09/2020.
Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020 [F2020L00926]	Principle (h) reverse evidential burden of proof	Concluded following response from agency on 07/09/2020.

Instrument	Issue	Status
Social Security (Coronavirus Economic Response—2020 Measures No. 11) Determination 2020 [F2020L00765]	Principle (i) availability of independent merits review	Concluded following response from agency on 08/09/2020.
Superannuation Guarantee (Administration) Amendment (Aged Care Retention Bonus) Regulations 2020 [F2020L00859]	Principle (d) consultation with persons affected	Concluded following response from agency on 08/09/2020.

Appendix C

Undertakings

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

Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the <i>Water Act 2007</i> in response to the committee's scrutiny concerns.	11/09/2019
Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]	The Assistant Minister for Finance, Charities and Electoral Matters undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2019
	The Assistant Minister for Finance, Charities and Electoral Matters undertook to progress amendments to primary legislation in response to the committee's scrutiny concerns.	17/03/2020
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]	The Department of Veterans' Affairs undertook to amend the Repatriation Pharmaceutical Benefits Scheme [F2013L02009] and the MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012] to correct drafting errors.	28/01/2020
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 [F2019L01641]	The Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	14/02/2020

Instrument	Undertaking	Date of Undertaking
Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019 [F2019L01564]	The Minister for Agriculture, Drought and Emergency Management undertook to amend the instrument in response to the committee's scrutiny concerns.	14/05/2020
Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]	The Minister for Agriculture, Drought and Emergency Management undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/06/2020
Defence Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00120]	The Minister for Defence undertook to amend the instrument in response to the committee's scrutiny concerns.	01/07/2020
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00645]	The Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/07/2020
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	The Attorney-General undertook to commence an inquiry into good faith obligations in Commonwealth legislation in response to the committee's scrutiny concerns.	31/08/2020
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 6) (PB 55 of 2020) [F2020L00841] National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2020 (No. 6) (PB 60 of 2020) [F2020L00852]	The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	07/09/2020
CASA EX92/20 — Materials Flammability Airworthiness Standards (Medical Isolation Transportation Devices) Instrument 2020 [F2020L00796]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/09/2020
Child Care Subsidy Amendment (Coronavirus Response Measures No. 5) Minister's Rules 2020 [F2020L00930]	The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/09/2020

Implemented undertakings

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

Instrument	Undertaking	Date implemented
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]	The Minister for Infrastructure, Transport and Regional Development amended the Civil Aviation Safety Regulations 1998 in response to the committee's scrutiny concerns.	21/08/2020
Industrial Chemicals (Fees and Charges) Rules 2020 [F2020L00704]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/09/2020

List of instruments in current monitor

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

Instrument	Page
Amendment to the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 (EC145) [F2020L00889]	10
ASIC Corporations (Amendment) Instrument 2020/635 [F2020L01020]*	3
ASIC Corporations (Approval of Variation of March 2020 Banking Code of Practice) Instrument 2020/602 [F2020L00854]	16
ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198 [F2020L00237]	15
ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199 [F2020L00238]	15
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]*	3; 9
Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020 [F2020L00878]	11
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]	9
Australian Prudential Regulation Authority (confidentiality) determination No.1 of 2020 [F2020L00945]*	11
Autonomous Sanctions Legislation Amendment (Syria and Proliferation of Weapons of Mass Destruction) Instrument 2020 [F2020L01019]*	3
Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]	20
CASA 39/20 — Drug and Alcohol Testing by CASA under Subpart 99.C of CASR Instrument 2020 [F2020L00983]*	11
CASA ADCX 008/20 - Repeal of Airworthiness Directives AD/ELECT/23 and AD/ELECT/65 [F2020L00991]*	11
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]	21
CASA EX92/20 — Materials Flammability Airworthiness Standards (Medical Isolation Transportation Devices) Instrument 2020 [F2020L00796]	16; 20

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CASA EX98/20 — Design of Temporary Modifications or Repairs (Special Flight Permit) Instrument 2020 [F2020L00766]	16
Child Care Subsidy Amendment (Coronavirus Response Measures No. 5) Minister’s Rules 2020 [F2020L00930]	16; 20
Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2020 [F2020L00934]	16
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	20
Continence Aids Payment Scheme 2020 [F2020L00758]*	9
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]	9
Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020 [F2020L00895]	11
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 7) 2020 [F2020L01021]*	4; 11
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 6) 2020 [F2020L00921]	16
Corporations Amendment (Litigation Funding) Regulations 2020 [F2020L00942]*	4
Criminal Code and Customs Legislation Amendment (Precursors and Drugs) Regulations 2020 [F2020L01003]*	11
Customs (Prohibited Imports) Amendment (Vaporiser Nicotine) Repeal Regulations 2020 [F2020L00860]	11
Defence Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00120]	20
Disability Care Load Assessment (Child) Determination 2020 [F2020L01025]*	12
Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019 [F2019L01564]	20
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]	9
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]*	8; 10

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Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 6) Regulations 2020 [F2020L00944]	8
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2020 [F2020L00818]	12
Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 [F2020L00435]	10
Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2020 [F2020L01014]*	12
Health Insurance (Section 3C Pathology Services – COVID-19) Amendment (No. 5) Determination 2020 [F2020L00981]*	12
Higher Education (Designated Courses of Study) Specification 2020 [F2020L00924]	12
Higher Education Support (HELP Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020 [F2020L00960]*	4; 15
Industrial Chemicals (Fees and Charges) Rules 2020 [F2020L00704]	21
Industrial Chemicals Charges (Customs) Regulations 2020 [F2020L00795]	12
Industrial Chemicals Charges (General) Regulations 2020 [F2020L00797]	12
Industrial Chemicals Charges (Excise) Regulations 2020 [F2020L00799]	12
Industry Research and Development (Advancing Research and Development for Critical Minerals Program) Instrument 2020 [F2020L00949]*	8; 12
International Organisations (Privileges and Immunities—Square Kilometre Array Observatory) Regulations 2020 [F2020L00950]*	4
National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020 [F2020L00769]	16
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 6) (PB 55 of 2020) [F2020L00841]	12; 20
National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2020 (No. 6) (PB 60 of 2020) [F2020L00852]	12; 20
Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020 [F2020L00926]	16

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Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020 [F2020L00870]	10
Public Governance, Performance and Accountability Amendment (2020 Measures No. 3) Rules 2020 [F2020L00782]	10
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]*	12
Social Security (Coronavirus Economic Response—2020 Measures No. 11) Determination 2020 [F2020L00765]	17
Social Security (Coronavirus Economic Response—2020 Measures No. 12) Determination 2020 [F2020L01010]*	4
Social Security (Coronavirus Economic Response—2020 Measures No. 13) Determination 2020 [F2020L00980]*	5
Sport Integrity Australia Amendment (Enhancing Australia’s Anti-Doping Capability) Regulations 2020 [F2020L00953]*	12
Superannuation Guarantee (Administration) Amendment (Aged Care Retention Bonus) Regulations 2020 [F2020L00859]	17
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00645]	20
Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]	19
Therapeutic Goods (Standard for Faecal Microbiota Transplant Products) (TGO 105) Order 2020 [F2020L01011]*	13
Therapeutic Goods Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00946]*	10
Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020 [F2020L00907]	15
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 [F2019L01641]	19
VET Student Loans (VSL Tuition Protection Levy) (Risk Rated Premium and Special Tuition Protection Components) Determination 2020 [F2020L00961]*	5; 15
Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028]*	13
Veterans’ Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]	19

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Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	19

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