

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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Introduction

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

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

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

1 See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Changes_to_committee_standing_orders.

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

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

Senate standing order 23(4A) provides that the committee may, for the purpose of reporting on its terms of reference, consider instruments made under the authority of Acts of the Parliament that are not subject to disallowance. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

Nature of the committee's scrutiny

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

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

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

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

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

Publications

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

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.

5 See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Guidelines. The committee is currently updating the Guidelines to reflect the changes to standing order 23, which came into effect on 1 July 2021.

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.

Instruments considered in this monitor

The committee examined 136 legislative instruments registered on the Federal Register of Legislation between 14 August 2021 and 10 September 2021. This included 123 disallowable instruments and 13 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 There are no disallowable instruments raising significant scrutiny issues for inclusion in this Part of the Monitor.

Part 2

Exempt instruments raising significant scrutiny issues

1.4 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

FRL No.	[F2021L01191] ¹
Purpose	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.
Authorising legislation	<i>Australian Renewable Energy Agency Act 2011</i>
Portfolio	Industry, Science, Energy and Resources
Source of exemption	Subsection 20(2) of the <i>Australian Renewable Energy Agency Act 2011</i>

Overview

1.5 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

1.6 Senate standing order 23(4A) empowers the committee to scrutinise delegated legislation that is exempt from disallowance against all 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 Accessible on the Federal Register of Legislation at <https://www.legislation.gov.au/>.

1.7 At a minimum, the committee expects all explanatory statements to exempt instruments to identify the source of the exemption and justify why the exemption is appropriate in the specific context of the instrument.

1.8 The explanatory statement to the instrument indicates that the instrument is exempt from disallowance under subsection 20(2) of the *Australian Renewable Energy Agency Act 2011* (the ARENA Act). The explanatory statement further explains:

Under subsection 20(2) of the Act this instrument is not subject to disallowance. This reflects both the independence of ARENA in developing the GFS and the similarities of the GFS to government directions to statutory bodies which are also not subject to disallowance. As the provision of assistance by ARENA must be in accordance with the GFS under s 10 of the Act, disallowance of some or all of the strategy could impede the ability for ARENA to independently perform its statutory functions.²

1.9 It is the committee's view that there are limited acceptable circumstances in which delegated legislation made by the executive should be exempt from parliamentary scrutiny.

1.10 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. In its final report of the inquiry into the exemption of delegated legislation from parliamentary oversight (the final report), the committee highlighted specific concerns in relation to the use of framework laws which leave crucial details regarding how public money will be spent or invested to delegated legislation which is exempt from disallowance.³

1.11 Noting the above, the committee's clear view is that it is inappropriate for this instrument to be exempt from disallowance. This accords with the Senate's requirement that that exemptions should only be made in exceptional circumstances and will only be justified in rare cases.⁴ The classification of this instrument as exempt from disallowance prevents parliamentary oversight of how public money will be invested by the ARENA.

2 Explanatory statement, pp 1-2.

3 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, pp. 32-3, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Final_report.

4 *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/.

1.12 In addition, the committee does not consider the fact that the ARENA is a statutory agency in any way means that its general financial strategy should not be subject to parliamentary scrutiny. Generally, statutory agencies are subject to parliamentary scrutiny, and it is not clear to the committee why this instance should be distinguished. The explanatory statement to the instrument does not provide any further explanation as to why this should be the case.

1.13 The committee also notes that the explanatory statement indicates that the exemption from disallowance is appropriate in this instance due to the similarities between the instrument and government directions to statutory bodies, which is a category for exemption from disallowance under table item 2 in section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015. However, even if this similarity were to be accepted, the committee does not accept that directions from ministers to statutory bodies should be exempt from disallowance. In the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight, the committee recommended that this category of exemption from disallowance should be abolished.⁵

1.14 In light of the above, the committee requests the minister's more detailed advice as to why it is considered necessary and appropriate for the instrument to be exempt from disallowance.

Compliance with authorising legislation

1.15 Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act.

1.16 The instrument is made under subsection 20(2) of the ARENA Act, which provides that a general funding strategy (GFS) may be made by non-disallowable legislative instrument.

1.17 Clauses 2–4 of Schedule 1 to the instrument set out the ARENA's objectives and its focus on providing financial assistance to support priority low emissions technologies. In this regard, the explanatory statement to the instrument explains:

...the GFS investment priorities have also been updated to acknowledge ARENA's functions have been expanded through the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 (the Regulations) to enable ARENA to provide financial assistance in relation to priority low emissions technologies, with a focus on the five priority low emissions technologies and the corresponding

5 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, p. 101, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Final_report.

stretch goals identified in the Government's first Low Emissions Technology Statement (LETS).⁶

1.18 The committee has previously raised significant scrutiny concerns about the expansion of the ARENA's remit by delegated legislation to empower the ARENA to foster low emissions technologies which go beyond the objects of the ARENA Act. This expansion was attempted in the Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590], which was disallowed by the Senate on 22 June 2021. Subsequently, the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] was registered on the Federal Register of Legislation. The committee's concerns in relation to both regulations are outlined in detail in *Delegated Legislation Monitor 12 of 2021* and *Delegated Legislation Monitor 14 of 2021*.

1.19 In summary, the committee is concerned that the instruments expand the remit of the ARENA beyond what was envisaged by Parliament when the Act was passed. The committee has similar concerns in relation to this current funding instrument, noting that all three instruments are made under the ARENA Act, the object of which is to improve the competitiveness and supply of renewable energy in Australia. As the instrument sets out funding strategies to support the development of low emissions technology, it is the committee's view that the measures in the instrument may go beyond the power of its authorising legislation.

1.20 As set out in *Delegated Legislation Monitor 14 of 2021*, the purpose of the ARENA Act is made clear in the title of the Act itself, and in section 3 which sets out the objects of the Act. Section 15AA of the *Acts Interpretation Act 1901* provides that in interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation. In this regard, the committee's position is that the interpretation that would best achieve the purpose or object of the Act is one that limits the functions of the ARENA to investing in renewable energy technologies.

1.21 In light of the Senate's disallowance of the Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590], and the committee's recommendation that the subsequent Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] also be disallowed, the committee draws its scrutiny concerns in relation to this instrument's compliance with its authorising legislation to the attention of senators.

6 Explanatory statement, p. 1.

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021

FRL No.	[F2021L01232] ⁷
Purpose	To amend the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020 to extend the human biosecurity emergency period for a further 3 months until 17 December 2021.
Authorising legislation	<i>Biosecurity Act 2015</i>
Portfolio	Health
Source of exemption	Subsection 476(2) of the <i>Biosecurity Act 2015</i>

Overview

1.22 Sections 475 and 476 of the *Biosecurity Act 2015* (Biosecurity Act) allow the Governor-General to declare that a human biosecurity emergency exists and to extend the emergency period for further three month periods if the Health Minister is satisfied of certain criteria. On 18 March 2020 the Governor-General declared that a human biosecurity emergency exists regarding COVID-19 for a period of three months until 17 June 2020. The human biosecurity emergency period has subsequently been extended five times between June 2020 and June 2021.

1.23 This instrument varies the human biosecurity emergency declaration to extend the emergency period a sixth consecutive time, for a further 3 months until 17 December 2021.

1.24 During a human biosecurity emergency period, the Health Minister may determine emergency requirements or give directions deemed necessary to prevent or control the entry, emergence, establishment or spread of the relevant disease in Australian territory.

Scrutiny concerns

Exemption from disallowance

1.25 Senate standing order 23(4A) empowers the committee to scrutinise delegated legislation that is exempt from disallowance against all 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.

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

1.26 This instrument is made under subsection 476(1) of the Biosecurity Act. Subsection 476(2) of the Biosecurity Act provides that instruments made under subsection 476(1), which extend the human biosecurity emergency period, are not subject to disallowance by the Parliament.

1.27 The explanatory statement to the instrument explains that the reason for this exemption from disallowance is to ensure that the government is able to take the urgent action necessary to manage a nationally significant threat or harm to Australia's human health. Further, it explains that the risk of disallowance would inhibit the government's ability to act urgently on public health advice to manage a human biosecurity risk as it would create uncertainty as to whether the instrument might be disallowed.⁸

1.28 The committee has raised significant concerns about the exemption of legislative instruments from disallowance by the Parliament, with particular regard to exempt instruments made under the Biosecurity Act. These concerns are set out in detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight.⁹ In this report, the committee recommended that declarations of human biosecurity emergency periods and associated extensions made under sections 475 and 476 of the Biosecurity Act be subject to disallowance.

1.29 Noting this, and the fact that the human biosecurity emergency period for COVID-19 has now been extended on six occasions, the committee considers that the explanation in the explanatory statement is not a sufficient justification as to why this instrument is exempt from parliamentary oversight.

1.30 The exemption from disallowance in relation to this instrument is particularly concerning as it means that any determinations of emergency requirements made under section 477 of the Biosecurity Act that are still currently in effect will continue to apply for the duration of the extended human biosecurity emergency period (unless revoked earlier). Further, additional determinations may be made during the period, which are also not subject to disallowance by Parliament.

1.31 The committee notes that instruments that have previously been made under section 477 of the Biosecurity Act have had significant impacts on the personal rights and liberties of individuals, including travel restrictions impacting Australian citizens and permanent residents, which is discussed in detail in *Delegated Legislation Monitor 14 of 2021*.¹⁰ The committee's concerns are heightened as there is no

8 Explanatory statement, p. 2.

9 Senate Standing Committee for the Scrutiny of Delegated Legislation, [Exemption of delegated legislation from parliamentary oversight: Interim Report](#) (December 2020).

10 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 14 of 2021*

limitation on the number of times that the emergency period may be further extended without parliamentary oversight.

1.32 Emergency delegated legislation should be subject to appropriate parliamentary oversight. Continuing to make instruments under section 476 of the Biosecurity Act which are exempt from disallowance inhibits the Parliament's constitutional role as the primary institution responsible for making law and scrutinising possible encroachments on personal rights and liberties. Given the significant and ongoing impact of the human biosecurity emergency period on the personal rights and liberties of individuals, the committee considers the exemption from disallowance of instruments extending the period undermines Parliament's ability to fulfil its rights-assessing and rights-protecting responsibilities with respect to delegated legislation.

1.33 The committee is deeply concerned that the government has failed to substantively engage with the committee's significant concerns in relation to instruments made under the Biosecurity Act, in particular failing to consider the significance of its concerns in relation to the continued extension of the human biosecurity emergency period without any form of parliamentary oversight. The committee intends 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.

1.34 The committee also takes this opportunity to again express its significant concern that the government has not yet responded to the interim report which was tabled in the Senate on 2 December 2020.

1.35 In light of the above, the committee requests the minister's detailed advice as to why it is considered necessary and appropriate for the instrument to be exempt from disallowance. The advice should specifically address the considerations as to why it is appropriate for emergency related delegated legislation to be subject to disallowance outlined at paragraphs 4.48 to 4.54 of the committee's interim report of its inquiry into the exemption of delegated legislation from parliamentary oversight.¹¹

1.36 The committee also reiterates its strong view, expressed in *Delegated Legislation Monitor 14 of 2021*, that amendments should be moved to the Biosecurity Amendment (Enhanced Risk Management) Bill 2021 to amend section 476 of the Biosecurity Act to provide that any future variations to extend a human biosecurity emergency period will be subject to disallowance.

11 Senate Standing Committee for the Scrutiny of Delegated Legislation, [Exemption of delegated legislation from parliamentary oversight: Interim Report](#) (December 2020).

Chapter 2

Matters of interest to the Senate

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

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

Instrument	Purpose	Portfolio committee
Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021 [F2021L01133]	To support changes to the arrangements for paying home care subsidies to approved providers, including setting out the basis on which home care subsidy is paid and the amount of the subsidy (incorporating the basic subsidy amount, viability supplement, dementia and cognition supplement, veterans' supplement and top-up supplement).	Senate Community Affairs Legislation Committee
Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2021 [F2021L01233]	To provide for the making of business continuity payments, called COVID-19 viability support payments, to approved child care providers affected by the COVID-19 pandemic. Under the instrument, providers who meet the eligibility criteria will receive COVID-19 viability support payments at certain times. These include where the provider's service is in a COVID-19 hotspot of more than 28 days, or where the provider's service is in a COVID-19 hotspot of more than 7 days, and there are restrictions on whether children can attend care.	Senate Education and Employment Legislation Committee Senate Select Committee on COVID-19

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

Chapter 3

Scrutiny of Commonwealth expenditure

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

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

3.3 The tables below outline the expenditure specified in legislative instruments registered between 14 August 2021 and 10 September 2021.

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

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 (Agriculture, Water and the Environment Measures No. 4) Regulations 2021 [F2021L01140]	Indigenous Protected Areas	\$11.6 million over two years from 2021-22	<p>The objective of the program is to increase the area of Sea Country in Indigenous Protected Areas (IPAs) to strengthen protection of marine biodiversity, while creating employment and economic opportunities for Indigenous Australians. IPAs are areas of land or land and sea managed by traditional owners through voluntary agreements with the Commonwealth Government to protect biodiversity and cultural values.</p> <p>Only eight IPAs currently include Sea Country.</p> <p>Funding will be provided to incorporate Sea Country in IPAs in nine locations through expanding existing terrestrial IPAs and creating new IPAs. Grants will support consultation with Indigenous traditional owners and other stakeholders, management planning, on-ground management, and the creation of over 30 direct jobs primarily for Indigenous Australians in remote communities.</p>	Senate Environment and Communications Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 2) Regulations 2021 [F2021L01156]	Expensive Commonwealth Criminal Cases Fund	\$43.7 million over four years from 2021-22	<p>Funding will be provided to state and territory legal aid commissions (LACs) for costs incurred in defending clients in serious, expensive Commonwealth criminal matters (such as drug importation, people smuggling, terrorism, fraud and slavery). The scope of the Fund is being expanded to provide support to LACs to represent convicted offenders in post-sentence order matters, such as Control Orders, Continuing Detention Orders and Extended Supervision Orders.</p>	Senate Legal and Constitutional Affairs Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2021 [F2021L01144]	Afghanistan Inquiry Legal Assistance Scheme	Not specified	Funding will be provided for legal assistance to current and former serving members of the Australian Defence Force in relation to investigations or proceedings for criminal offences that arise out of the Inspector-General of the Australian Defence Force's Afghanistan Inquiry.	Senate Legal and Constitutional Affairs Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 3) Regulations 2021 [F2021L01147]	Literacy and Numeracy Test for Initial Teacher Education	\$4 million over four years from 2021-22, with subsequent ongoing funding of \$1.0 million per year from 2025-26	Funding will be provided to support the Literacy and Numeracy Test for Initial Teacher Education program. In particular, this instrument supports the expansion of the program to include delivery through a paper-based form to eligible candidates.	Senate Education and Employment Legislation Committee
	Civics and Citizenship Education Initiatives	\$0.4 million in 2021-22	Funding will be provided to support the establishment of a pilot program to expand the National Schools Constitutional Convention (NSCC) initiative to year 9 and 10 students.	Senate Education and Employment Legislation Committee
	Mid-Career Checkpoint	\$73.4 million over three years from 2021-22	Funding will be provided to expand the Mid-Career Checkpoint program, which provides career guidance and training to assist persons to return to work or remain in work. In particular, the program seeks to support women's workforce participation and economic security through providing free professional skills and career advice.	Senate Education and Employment Legislation Committee
	Local Jobs—COVID-19 Recovery	\$213.5 million over four years from 2021-22	Funding will be provided for the expansion of the Local Jobs—COVID-19 Recovery program to support local organisations and stakeholders to develop and implement tailored approaches to accelerate re-skilling, upskilling and employment of job seekers in all 51 Employment Regions.	Senate Education and Employment Legislation Committee Senate Select Committee on COVID-19

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<p>The program consists of four elements:</p> <ul style="list-style-type: none"> • Employment Facilitators; • Local Jobs and Skills Taskforces; • Local Recovery Funds; and • National Priority Fund. 	
	Digital Skills Cadetship Trial	\$10.7 million over three years from 2021-22	<p>Funding will be provided to assist cadets to undertake vocational education and training in digital skills, including education and training provided by employers, and assist cadets with future employment opportunities. The objective of the Trial is to deliver digital skills in a more flexible and timely manner than is available through current training options. The Trial will include up to four industry-led cadetship pilots to develop new and innovative pathways to increase the number of Australians with high level digital skills. Cadets will each undertake a cadetship that is expected to take around four to six months. The cadetships may then lead to employment or further training for the cadet. The cadetships will be driven by employer demand for skills in emerging and high technology digital fields, which may include (but are not limited to) cybersecurity, advanced manufacturing, data analytics, game design and animation.</p>	Senate Education and Employment Legislation Committee
	Career Revive Initiative Expansion	\$2.6 million over three years from 2021-22	<p>Funding will be provided to support up to 60 medium to large businesses to develop an employer action plan to address barriers to women's full and equal participation in the employer's workforce, and to promote such full and equal participation.</p>	Senate Education and Employment Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2021 [F2021L01146]	Adult Mental Health Centres and Telephone Referral Service	\$487.2 million over four years from 2021-22	Funding will be provided to support the establishment of eight new adult mental health centres and 24 satellites embedded within existing primary care settings, and provides ongoing funding for the trial of eight adult mental health centres announced in the 2019-20 Budget. The initiative will also establish a centralised intake and assessment phone service staffed by mental health professionals to provide clinical assessment of mental health needs and promote consistent triage that enables people to access the most appropriate services to meet their needs.	Senate Community Affairs Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2021 [F2021L01141]	Provision of safety net television services	\$42.4 million over three years from 2021-22	<p>Funding will be provided to support the provision of safety net television services, which enable all areas of Australia to access free-to-air entertainment and news programs. A safety net television service is a platform/service that provides commercial and national free-to-air television to viewers unable to access terrestrial television transmission. Since the switchover to digital television, the Viewer Access Satellite Television (VAST) service has provided a safety net service via direct to home satellite transmission.</p> <p>The provision of free-to-air television services using terrestrial transmission (broadcasting towers) is a commercial decision for the broadcasters. Due to Australia's large landmass and sparse population density, it is not economically viable to provide households in many areas of Australia with access to free-to-air television services through terrestrial</p>	Senate Environment and Communications Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			transmission sites. Government funding supports the provision of a safety net television service for areas where terrestrial television transmission is not available. More than 250,000 premises, primarily in regional and remote Australia, rely on a VAST direct to home service for access to news and entertainment broadcasts.	
	Peri-Urban Mobile Program	\$16.4 million over three years from 2021-22	Funding will be provided to mobile network operators and infrastructure providers to deploy new mobile phone infrastructure to improve mobile connectivity in bushfire prone areas along the fringe of Australia's major cities. The peri-urban fringe is where the bush meets the edges of the suburbs, creating bushfire risks for those living and working in those areas. Peri-urban areas have particular bushfire risk because they are on the interface of the built-up and bush areas. Areas of concern include the Blue Mountains, northern parts of Sydney, the Perth Hills, and north of Melbourne.	Senate Environment and Communications Legislation Committee
	Culture, Heritage and Arts Regional Tourism Program	\$3.3 million in 2021-22	Funding will be provided to assist community cultural, heritage and arts organisations in regional Australia, including museums, galleries and historical societies, to recover from the adverse effects of the COVID-19 pandemic and promote domestic tourism into regional and remote parts of Australia. The program will make \$3 million available in 2021-22 for grants of up to \$3,000 to support these organisations to continue to offer appealing cultural tourism experiences to visitors, which in turn will promote visitation and local expenditure.	Senate Environment and Communications Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) Regulations 2021 [F2021L01142]	Outcomes Measurement Initiative— Navigation Tool	\$3.2 million in 2021-22	Funding will be provided to develop, build and maintain an online navigation tool for social impact organisations to access information about social impact investing. Social impact organisations are broadly characterised as organisations that operate intentionally to resolve social problems, improve communities and provide people with access to employment and training. In particular, the project will facilitate the establishment of a web-based search engine to make it easier for social impact organisations, intermediaries and investors to search and draw on the growing suite of international and domestic tools, resources, case studies and research on outcomes and impact measurement.	Senate Community Affairs Legislation Committee
	Children and Family Intensive Support	\$10 million per annum from 2021-22	Funding will be provided for an early intervention, intensive community-based family support service offered to highly vulnerable families living in selected communities in the Northern Territory (NT) and the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands, South Australia. Children and Family Intensive Support (CaFIS) will have a footprint in six regions in the NT and the APY Lands, with specific locations identified as part of the grant selection process. CaFIS will replace the Intensive Family Support Service.	Senate Community Affairs Legislation Committee
	Individual Placement and Support	\$70.1 million over four years from 2021-22	Funding will be provided to improve the employment and education outcomes of people with mental illness through services at headspace sites that focus on the individual needs of people with mental illness who are seeking to enter, or remain in, employment or	Senate Community Affairs Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			education, including services that integrate vocational assistance with clinical support and non-vocational assistance. The program forms part of the government's broader Youth Employment Strategy aimed at tackling the problem of high youth unemployment.	
	Digital Work and Study Service	\$5.6 million over four years from 2021-22	Funding will be provided to improve the employment and education outcomes of young people with mental illness by providing work and study support online and by telephone and text message, integrated with clinical support and non-vocational assistance.	Senate Community Affairs Legislation Committee
	Birth of a Child project	Approximately \$17.5 million over two years from 2020-21	<p>Funding will be provided for online platforms that will facilitate the collection and sharing of data for the purpose of enabling access to Commonwealth, State and Territory services by a parent of, or a person with responsibility for, a newborn child. The project aims to simplify a range of health and administrative activities for families and reduce the need for birth mothers to provide the same information to multiple government agencies on multiple occasions. With the birth mother's consent, Services Australia will receive birth information from participating hospitals for the purpose of:</p> <ul style="list-style-type: none"> • enabling pre-fill of Medicare and Centrelink records; • providing relevant information to state and territory births, deaths and marriages registries to complete birth registration; and 	Senate Community Affairs Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<ul style="list-style-type: none"> establishing an effective model for cross-agency and cross-jurisdictional collaboration, delivery of pilot programs and a potential national rollout for the project. 	
Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 2) Regulations 2021 [F2021L01143]	Grant to Superannuation Consumers' Centre Ltd (known as Super Consumers Australia)	\$1.6 million over two years from 2021-22	<p>A grant of \$1.6 million will be provided to Super Consumers Australia (SCA) to support the organisation's continued representation of the interests of superannuation members in superannuation-related policy debates by:</p> <ul style="list-style-type: none"> engaging with government, regulators and industry on policy issues affecting superannuation members; leveraging existing research and in-house research to support their position; and ensuring that the interests of superannuation members are voiced in public discourse. <p>SCA will also be expected to conduct research and analysis on superannuation-related issues affecting superannuation members including:</p> <ul style="list-style-type: none"> development of an evidence base supporting member outcomes; investigating and developing case studies of the issues that members face; and analysis of superannuation funds' performance, fees and insurance. 	Senate Economics Legislation Committee

Chapter 4

Scrutiny of instruments exempt from disallowance

4.1 Senate standing order 23(4A) provides that the committee may, for the purpose of reporting on its terms of reference, consider instruments made under the authority of Acts of the Parliament that are not subject to disallowance. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

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

4.3 The committee has considered all legislative instruments which are exempt from disallowance registered on the Federal Register of Legislation between 14 August 2021 and 10 September 2021. The sections below identify those instruments which meet or do not meet the committee's expectations under standing order 23(4A).

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

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

Instruments which meet the committee's expectations

4.5 The following instrument meets the committee's expectations under standing order 23(4A).

Instrument	Portfolio
Health Insurance (Extended Medicare Safety Net) Amendment (Repetitive Transcranial Magnetic Stimulation Capping) Determination 2021 [F2021L01230]	Health

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/.

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).

Instrument	Portfolio
Australia New Zealand Food Standards Code — Schedule 20 – Maximum residue limits Variation Instrument No. APVMA 5, 2021 [F2021L01235]	Health
Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191]	Industry, Science, Energy and Resources
Biosecurity (Conditionally Non-prohibited Goods) Amendment (Hitchhiker Pests) Determination 2021 [F2021L01251]	Agriculture, Water and the Environment
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021 [F2021L01232]	Health
Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 2) Determination 2021 [F2021L01139]	Treasury
Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 3) Determination 2021 [F2021L01240]	Treasury
Food Standards (Application A1210 – Maltogenic alpha-amylase enzyme from GM <i>Saccharomyces cerevisiae</i>) Variation [F2021L01181]	Health
Food Standards (Proposal M1018 – Maximum Residue Limits (2020)) Variation [F2021L01174]	Health
Migration (Fees for assessment of qualifications and experience) Instrument (LIN 21/023) 2021 [F2021L01203]	Home Affairs
Poisons Standard Amendment (Ivermectin) Instrument 2021 [F2021L01253]	Health
Public Governance, Performance and Accountability (Section 75 Transfers) Determination 2021-2022 [F2021L01207]	Finance
Radiocommunications (Spectrum Licence Allocation – 850/900 MHz Band) Determination 2021 [F2021L01155]	Infrastructure, Transport, Regional Development and Communications

Instrument**Portfolio****Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2021 [F2021L01252]**

Agriculture, Water and the Environment

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 disallowable legislative instruments registered on the Federal Register of Legislation between 14 August 2021 and 10 September 2021.

Ministerial engagement

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

Instrument	Issue	Status
Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191]	Standing order 23(4A) exemption from disallowance Principle (a) compliance with authorising legislation	Seeking advice from the minister.
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021 [F2021L01232]	Standing order 23(4A) exemption from disallowance	Seeking advice from the minister.
Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030]	Principle (h) procedural fairness	Seeking advice from the minister. Notice of motion to disallow placed on 18/10/2021.
Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Declaration 2021 [F2021L01157]	Principle (h) privacy Principle (l) exemption from the operation of primary legislation	Seeking advice from the Treasurer.
Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Amendment Declaration (No. 1) 2021 [F2021L01237]	Principle (m) parliamentary oversight	

1 See www.aph.gov.au/senate_sd/c.

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
Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021 [F2021L01133]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (i) availability of independent merits review	Committee secretariat considering response.
Aged Care Legislation Amendment (Vaccination Information) Principles 2021 [F2021L01236]	Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 08/10/2021. The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
CASA EX102/21 — DAMP Requirements for Maintenance Organisations Outside Australian Territory Exemption 2021 [F2021L01208]	Principle (h) privacy	Committee secretariat considering response.
Charter of the United Nations Legislation Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01175]	Principle (i) availability of independent merits review	Concluded following response from the agency on 12/10/2021.
Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2021 [F2021L01233]	Principle (i) availability of independent merits review	Committee secretariat considering response.
Defence (Individual Benefits) Determination 2021 (No. 4) [F2021L01180]	Principle (i) availability of independent merits review	Seeking advice from the agency.
Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 2) Regulations 2021 [F2021L01156]	Principle (c) delegation of administrative powers and functions Principle (g) adequacy of explanatory materials	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2021 [F2021L01144]	Principle (c) delegation of administrative powers and functions Principle (m) disclosure of funding information	Committee secretariat considering response.

Instrument	Issue	Status
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2021 [F2021L01146]	Principle (c) delegation of administrative powers and functions Principle (m) parliamentary oversight	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2021 [F2021L01141]	Principle (c) delegation of administrative powers and functions Principle (m) parliamentary oversight	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) Regulations 2021 [F2021L01142]	Principle (c) delegation of administrative powers and functions	Committee secretariat considering response.
Macquarie Island Toothfish Fishery (Total Allowable Catch) Determination 2021 [F2021L01152]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Committee secretariat considering response.
National Health (Pharmaceutical Benefits Scheme-Exempt items - Section 84AH) Amendment Determination 2021 (No. 3) [F2021L01222]	Principle (a) compliance with authorising legislation	Committee secretariat considering response.
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 1) Determination 2021 [F2021L01138]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Concluded following response from the agency on 07/10/2021. The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
National Health (Weighted average disclosed price – October 2021 reduction day) Amendment Determination 2021 [F2021L01195]	Principle (h) personal rights and liberties	Committee secretariat considering response.
Radiocommunications (Unacceptable Levels of Interference – 850/900 MHz Band) Determination 2021 [F2021L01154]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Concluded following response from the agency on 06/10/2021.
Transport Safety Investigation Regulations 2021 [F2021L01248]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Committee secretariat considering response.

Instrument	Issue	Status
Transport Security Legislation Amendment (Serious Crime) Regulations 2021 [F2021L01145]	Principle (c) conferral of discretionary powers Principal (h) privacy Principle (h) reverse evidential burden of proof Principle (i) availability of independent merits review	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*. 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.¹

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.²

Instrument	Issue	Status
Aged Care Legislation Amendment (Royal Commission Response No.1) Principles 2021 [F2021L00923]*	Principle (c) conferral of discretionary powers	Committee considering response.
	Principle (e) clarity of drafting	Notice of motion to disallow placed on 18/10/2021.
	Principle (j) matters more appropriate for parliamentary enactment	
	Principle (j) significant impact on personal rights and liberties	
Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]*	Principle (b) implied freedom of political communication	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 (c) conferral of discretionary powers	
	Principle (e) clarity of drafting	

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_sdlic.

Instrument	Issue	Status
Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043]*	Principle (a) compliance with authorising legislation Principle (a) compliance with <i>Legislation Act 2003</i> – same in substance Principle (j) significant matters in delegated legislation	Notice of motion to disallow placed on 18/10/2021. The committee drew this instrument to the attention of the Senate and recommended disallowing the instrument in <i>Delegated Legislation Monitor 14 of 2021</i> .
Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 [F2021L01068]	Standing order 23(4A) – exemption from disallowance Principle (c) conferral of discretionary powers Principle (d) adequacy of consultation Principle (h) freedom of movement Principle (j) matters more appropriate for parliamentary enactment Principle (l) modification of the operation of primary legislation	Committee considering response.
Civil Dispute Resolution Regulations 2021 [F2021L01031]	Principle (l) exemption from the operation of primary legislation Principle (m) parliamentary oversight	Committee considering response. Notice of motion to disallow placed on 18/10/2021.
Education Services for Overseas Students (Exempt Courses) Instrument 2021 [F2021L00877]*	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Committee considering response. Notice of motion to disallow placed on 18/10/2021.
Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080]	Principle (l) exemption from the operation of primary legislation Principle (m) parliamentary oversight	Seeking advice from the Treasurer.
Great Barrier Reef Marine Park Amendment (No-Anchoring Areas) Regulations 2021 [F2021L00843]*	Principle (a) compliance with <i>Legislation Act 2003</i> Principle (m) parliamentary oversight	Committee considering response. Notice of motion to disallow placed on 18/10/2021.

Instrument	Issue	Status
Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567]*	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 24/08/2021.
Industry Research and Development (Boosting Australia's Diesel Storage Program) Instrument 2021 [F2021L00610]*	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 24/08/2021.
Industry Research and Development (Carbon Capture, Use and Storage Development Program) Instrument 2021 [F2021L00547]*	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 11/08/2021.
Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument 2021 [F2021L00536]*	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 11/08/2021.
Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]*	Principle (g) adequacy of explanatory materials Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 11/08/2021.
Industry Research and Development (Regional Decentralisation Agenda—Securing Raw Materials Program) Instrument 2021 [F2021L00973]	Principle (b) constitutional validity Principle (g) adequacy of explanatory materials Principle (m) parliamentary oversight	Seeking advice from the minister. Notice of motion to disallow placed on 18/10/2021.
Legislation (Exemptions and Other Matters) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00859]*	Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight – exemption from disallowance Principle (k) parliamentary oversight – exemption from sunseting	Seeking further advice from the minister. Notice of motion to disallow placed on 18/10/2021.

Instrument	Issue	Status
Northern Australia Infrastructure Facility Investment Mandate Direction 2021 [F2021L00942]	Standing order 23(4A) – exemption from disallowance	Committee considering response.
Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651]*	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 24/08/2021.

Agency engagement

6.3 The committee is not currently engaging with agencies via its secretariat to seek further information about potential scrutiny concerns raised by any instruments raised in previous *Delegated Legislation Monitors*.

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.¹

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.²

Instrument	Issue	Status
Aviation Transport Security Amendment (Screening Information) Regulations 2021 [F2021L00736]*	Principle (c) conferral of discretionary powers Principle (h) strict liability Principle (j) significant penalties in delegated legislation	Concluded following response from the minister on 22/09/2021.

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

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

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
Aged Care Legislation Amendment (Vaccination Information) Principles 2021 [F2021L01236]	Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 08/10/2021. The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Agricultural and Veterinary Chemicals Code (Conditions of Approval or Registration) Order 2021 [F2021L01044]	Principle (e) clarity of drafting Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 21/09/2021. 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.
Charter of the United Nations Legislation Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01175]	Principle (i) availability of independent merits review	Concluded following response from the agency on 12/10/2021.
Federal Circuit and Family Court of Australia (Terms and Conditions of Serving Judges) Determination 2021³	Principle (a) compliance with <i>Legislation Act 2003</i> – registration of instrument	Concluded following response from the agency on 17/09/2021.
Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021 [F2021L01072]	Principle (c) scope of administrative powers Principle (h) infringement notices	Concluded following response from the agency on 11/10/2021. The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Medical and Midwife Indemnity Legislation Amendment (Run-off Claims) Rules 2021 [F2021L00950]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Concluded following response from the agency on 24/09/2021. The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.

3 Note this instrument has not been registered on the Federal Register of Legislation.

Instrument	Issue	Status
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 1) Determination 2021 [F2021L01138]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Concluded following response from the agency on 07/10/2021. The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Radiocommunications (Unacceptable Levels of Interference – 850/900 MHz Band) Determination 2021 [F2021L01154]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Concluded following response from the agency on 06/10/2021.
Treasury Laws Amendment (Your Future, Your Super—Addressing Underperformance in Superannuation) Regulations 2021 [F2021L01077]	Principle (c) conferral of discretionary powers Principle (h) retrospective effect Principle (i) availability of independent merits review	Concluded following response from the agency on 23/09/2021.

Appendix D

Undertakings

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

Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
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
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	The Minister for the Environment advised that the Reserve Bank of Australia undertook to amend the instrument in response to the committee's scrutiny concerns.	01/12/2020
Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]	The Assistant Minister to the Attorney-General undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/02/2021
Amendment of List of Exempt Native Specimens – Commission for the Conservation of Antarctic Marine Living Resources Exploratory Fisheries in Statistical Divisions 58.4.1 and 58.4.2 (the East Antarctica Fishery) and Statistical Subareas 88.1 and 88.2 (the Ross Sea Fishery), November 2020 [F2020L01484]	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	15/02/2021
Treasury portfolio – various instruments	The Treasurer undertook to continue to engage with the committee in good faith to seek a resolution to the committee's systemic concerns regarding the duration of instruments which provide for exemptions or modifications to primary legislation.	18/02/2021

Instrument	Undertaking	Date of Undertaking
Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]	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
Industry Research and Development (Digital Directors Program) Instrument 2020 [F2020L01554]	The Department of Industry, Science, Energy and Resources undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/04/2021
Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]	The Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	09/04/2021
Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020 [F2020L01614]	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
Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2021 [F2021L00178]	The Greenhouse and Energy Minimum Standards Regulator undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/05/2021
Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	21/05/2021
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 10) 2021 [F2021L00305]	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
Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021 [F2021L00243]	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.	04/06/2021
Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	08/06/2021
Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]	The Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	16/06/2021
Income Tax Assessment (1997 Act) Regulations 2021 [F2021L00206]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/06/2021

Instrument	Undertaking	Date of Undertaking
Export Control Rules 2021 - various instruments [F2021L00312] [F2021L00317] [F2021L00334] [F2021L00304] [F2021L00315] [F2021L00310] [F2021L00308] [F2021L00313]	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	02/07/2021
Student Assistance Regulations 2021 [F2021L00201]	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
CASA 30/21 – Required Communication Performance and Required Surveillance Performance (RCP 240 and RSP 180) Capability Declarations – Direction 2021 [F2021L00504]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/07/2021
Export Control (Wood and Woodchips) Rules 2021 [F2021L00318]	The Minister for Agriculture and Northern Australia undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/07/2021
Bankruptcy Regulations 2021 [F2021L00261]	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
Paid Parental Leave Rules 2021 [F2021L00384]	The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. The Minister for Families and Social Services advised that the Office of Parliamentary Counsel would make minor changes to the instrument in response to the committee's scrutiny concerns.	30/07/2021
ASIC Market Integrity Rules (Capital) 2021 [F2021L00765]	The Department of the Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	04/08/2021
Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]	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

Instrument	Undertaking	Date of Undertaking
Higher Education Provider Approval No 1 of 2021 [F2021L00747]	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
Recycling and Waste Reduction (Product Stewardship—Televisions and Computers) Rules 2021 [F2021L00624]	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
Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021 [F2021L00848]	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
Road Vehicle Standards (Model Reports—Compliance with Standards) Determination 2021 [F2021L00838]	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/08/2021
Bankruptcy Regulations 2021 [F2021L00261]	The Assistant Minister to the Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	17/08/2021
Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00697]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/08/2021
Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2021 [F2021L00823] Road Vehicle Standards (Verification of Road Vehicles) Determination 2021 [F2021L00850]	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	18/08/2021
Veterans' Entitlements (Counselling) Extended Eligibility Determination 2021 [F2021L00804]	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
Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021 [F2021L00277]	The Minister for Communications, Urban Infrastructure, Cities and the Arts undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	24/08/2021

Instrument	Undertaking	Date of Undertaking
Aged Care Legislation Amendment (Care Recipients and Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00981]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/09/2021
High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021 [F2021L00391]	The Chief Executive and Principal Registrar of the High Court of Australia undertook to amend the instrument in response to the committee's scrutiny concerns.	16/09/2021
Higher Education Provider Approval No 2 of 2021 [F2021L00965]	<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
Agricultural and Veterinary Chemicals Code (Conditions of Approval or Registration) Order 2021 [F2021L01044]	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.	21/09/2021
Medical and Midwife Indemnity Legislation Amendment (Run-off Claims) Rules 2021 [F2021L00950]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	24/09/2021
Aged Care Legislation Amendment (Vaccination Information) Principles 2021 [F2021L01236]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/10/2021
Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021 [F2021L01072]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/10/2021

Implemented undertakings

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

Instrument	Undertaking	Date implemented
Health Insurance (Section 3C General Medical Services—Transcatheter Mitral Valve Repair) Determination 2021 [F2021L00800]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	28/09/2021
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]	The Minister for Finance amended the instrument in response to the committee's scrutiny concerns.	30/09/2021
ASIC Market Integrity Rules (Capital) 2021 [F2021L00765]	The Department of the Treasury amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/10/2021
National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 1) Determination 2021 [F2021L01138]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/10/2021
Charter of the United Nations Lists [F2021L00626] [F2021L00627] [F2021L00628] [F2021L00631] [F2021L00632] [F2021L00633] [F2021L00634] [F2021L00635] [F2021L00636] [F2021L00637] [F2021L00638] [F2021L00639] [F2021L00640] [F2021L00641] [F2021L00642] [F2021L00643] [F2021L00644] [F2021L00645] [F2021L00647] [F2021L00648] [F2021L00649]	The Minister for Foreign Affairs amended the explanatory statements to the instruments in response to the committee's scrutiny concerns.	19/10/2021
Therapeutic Goods Legislation Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00450]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	19/10/2021
Therapeutic Goods Legislation Amendment (2021 Measures No. 2) Regulations 2021 [F2021L01032]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	19/10/2021