

The Senate

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Standing  
Committee on  
Regulations and  
Ordinances

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Delegated Legislation Monitor

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# Membership of the committee

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# Contents

<b>Membership of the committee .....</b>	<b>iii</b>
<b>Introduction.....</b>	<b>vii</b>
<b>Chapter 1 - Committee comments .....</b>	<b>1</b>
Quality of Care Amendment (Minimising Use of Restraints) Principles 2019 .....	1
<b>Appendix A - Ongoing matters .....</b>	<b>7</b>
Ministerial engagement .....	7
Agency engagement .....	8
<b>Appendix B - Concluded matters.....</b>	<b>9</b>
Ministerial engagement .....	9
Agency engagement .....	10
<b>Appendix C - Undertakings.....</b>	<b>13</b>
Outstanding undertakings .....	13
Implemented undertakings .....	16
<b>Appendix D - Instruments specifying Commonwealth expenditure .....</b>	<b>19</b>
<b>List of instruments in current monitor .....</b>	<b>21</b>



# Introduction

## Terms of reference

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

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

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

## Nature of the committee's scrutiny

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

## Publications

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

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

2 Regulations and Ordinances Committee, *Index of instruments*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Index).

## Ministerial correspondence

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

## Agency correspondence

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

## Guidelines

Guidelines referred to by the committee are published on the committee's website.<sup>4</sup>

## General information

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

## Instruments considered in this monitor

The committee examined 75 disallowable legislative instruments registered on the Federal Register of Legislation between 29 August 2019 and 17 September 2019. This monitor identifies the instruments registered in this period about which the committee has or had scrutiny concerns. It also identifies instruments registered before this period in relation to which the committee is continuing to engage with the relevant minister or agency, or has concluded its examination.

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3 See [www.aph.gov.au/regords\\_monitor](http://www.aph.gov.au/regords_monitor).

4 See [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Guidelines](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Guidelines).

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

6 Parliament of Australia, *Senate Disallowable Instruments List*, [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/leginstruments/Senate\\_Disallowable\\_Instruments\\_List](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/Senate_Disallowable_Instruments_List).

7 Regulations and Ordinances Committee, *Disallowance Alert 2019*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Alerts](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Alerts).

# Chapter 1

## Committee comments

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

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

## Quality of Care Amendment (Minimising Use of Restraints) Principles 2019

<b>FRL No.</b>	<a href="#">F2019L00511</a> <sup>2</sup>
<b>Purpose</b>	To amend the Quality of Care Principles 2014, to limit the use of chemical and physical restraint by approved aged care providers of residential care and short-term restorative care.
<b>Authorising legislation</b>	<i>Aged Care Act 1997</i>
<b>Portfolio</b>	Health
<b>Disallowance</b>	15 sitting days after tabling (tabled in the Senate on 2 July 2019). Notice of motion to disallow placed on 16 September 2019. <sup>3</sup>

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1 See [www.aph.gov.au/regords\\_monitor](http://www.aph.gov.au/regords_monitor).

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

3 Notice given by the Chair of the committee. See *Disallowance Alert 2019*: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Alerts](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Alerts).

## Personal rights and liberties<sup>4</sup>

### Significant matters in delegated legislation<sup>5</sup>

1.3 Senate standing order 23(3)(b) requires the committee to ensure that instruments do not trespass unduly on personal rights and liberties. In addition, Senate standing order 23(3)(d) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment (that is, matters that should be enacted via primary rather than delegated legislation).

1.4 The instrument amends the Quality of Care Principles 2014,<sup>6</sup> to limit the use of chemical and physical restraints by approved providers of residential aged care and short-term restorative care.<sup>7</sup>

### *Initial consideration*

1.5 The committee initially included the instrument in [Delegated Legislation Monitor 3 of 2019](#). In correspondence with the minister, the committee noted that the instrument appeared to permit the use of physical and chemical restraints on aged care consumers in certain circumstances (that is, where the conditions in the instrument are met), and the use of such restraints may have a significant impact on personal rights and liberties.

1.6 The committee generally considers that matters with a significant impact on rights and liberties are more appropriately enacted via primary legislation rather than delegated legislation. In this respect, the committee noted that in other jurisdictions the circumstances in which restraints may be used are set out in primary legislation.<sup>8</sup>

1.7 The committee therefore requested the minister's detailed advice as to why it was considered necessary and appropriate to prescribe the circumstances in which physical and chemical restraints may be used by delegated legislation rather than primary legislation.<sup>9</sup>

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

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

6 [F2019C00205].

7 Subsections 15F(1) and 15G(1) of the instrument. Subsections 15F(2) and 15G(2) set out procedures that must be followed by an approved provider where a chemical or physical restraint is used.

8 For example, section 140 of the *Disability Act 2006* (Vic).

9 The committee's correspondence in relation to this matter is available online at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Monitor](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Monitor).

### **Further consideration**

1.8 The committee considered the minister's response in [Delegated Legislation Monitor 5 of 2019](#). In summary, the minister advised that the instrument does not authorise the use of physical and chemical restraints, but rather imposes restrictions on the use of such restraints in the aged care setting, in addition to the restrictions that are imposed by other laws (for example, state and territory legislation and the common law). The minister advised that the instrument would therefore not have a significant negative impact on rights and liberties. The minister also advised that including the restrictions in delegated legislation allows for detailed regulation of the use of restraints, and provides flexibility for restrictions to be adjusted to address emerging issues and reflect best practice.

1.9 While noting this advice, the committee reiterated that it will generally have scrutiny concerns where matters with a significant impact on personal rights and liberties are enacted via delegated legislation, irrespective of whether the impact is positive or negative. The committee also noted that the instrument is the mechanism by which specific criteria must be satisfied before physical and chemical restraints may be used in the aged care setting, and raised concerns that including the criteria in delegated legislation creates a risk that the criteria could be watered down or removed without full parliamentary oversight. In light of these matters, the committee expressed the view that it may be appropriate for at least the core principles governing the use of restraints in the aged care setting to be set out in primary legislation.

1.10 The committee therefore requested the minister's further advice as to whether consideration had been given to setting out the core principles governing the use of restraints in the aged care setting in primary legislation. The committee also requested the minister's advice as to why this approach has not been taken, noting the additional parliamentary scrutiny that attaches to primary legislation.<sup>10</sup>

### **Minister's further response<sup>11</sup>**

1.11 The Minister for Aged Care and Senior Australians advised:

#### **Quality and safety in aged care relies on a suite of legislative reforms**

As the use of physical and chemical restraint is a quality of care issue, the Australian Government made the decision to set out this matter in the Quality of Care Principles. However, this Instrument is just one component

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10 The committee's correspondence in relation to this matter is available online at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Monitor](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Monitor).

11 The minister responded to the committee's comments in a letter dated 26 September 2019. A copy of the letter is available on the committee's website: see correspondence relating to *Delegated Legislation Monitor 7 of 2019*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regulations\\_and\\_Ordinances/Monitor](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regulations_and_Ordinances/Monitor).

of a suite of reforms aimed at improving the quality and safety of aged care. To implement these improvements in a timely manner in line with community expectations, the vast majority have been included in delegated legislation.

For example, the Department of Health has worked with stakeholders to develop a single set of Aged Care Quality Standards (Standards) and a single Charter of Aged Care Rights (Charter). Previously, there were different sets of the Standards and Charter for different types of aged care. Along with the Instrument, the new single Standards and Charter also came into effect on 1 July 2019. Importantly, I note that like the new restraints measures, these changes were also introduced through amendments to delegated legislation, namely the Quality of Care Principles and the User Rights Principles 2014 respectively.

The new Standards and the new Charter both have a substantial (positive) impact on personal rights. Under the Charter, care recipients have the right to be treated with dignity and respect, to personal privacy and to live without abuse and neglect. Of direct relevance to this letter, I note the Standards, for the first time, introduce a requirement for service providers to have in place a clinical governance framework that includes minimising the use of restraint.

The new regulatory arrangements relating to the use of physical and chemical restraint were intended to complement the new Standards and Charter. All were introduced through amendments to delegated legislation and all commencing on the same date.

### **Ability to respond in an agile and flexible manner**

The Committee notes that other jurisdictions, such as Victoria, set out the core principles governing the use of restrictive practices in primary rather than delegated legislation. While this approach may provide an additional layer of scrutiny, it can increase the time for new measures to come into force. For example, the development of Victoria's Disability Act 2006 commenced with the release of a discussion paper in 2003. Following significant public consultation, it received Royal Assent on 16 May 2006.

In contrast, the use of delegated legislation allows the Government to act promptly to protect vulnerable, older Australians. The ability to make disallowable amendments to Principles under the Act also provides an opportunity to monitor the response of the aged care sector, conduct an evaluation of the reform, and make consequent refinements as necessary.

### **Scrutiny of the Instrument**

The Instrument has been subject to parliamentary and public oversight.

Departmental officials appeared at a public hearing led by the Parliamentary Joint Committee on Human Rights, and later provided responses to questions on notice. Copies of the Hansard and the Department's responses are available at: [www.aph.gov.au/Parliamentary](http://www.aph.gov.au/Parliamentary)

Business/Committees/Joint/Human Rights. The Department also engaged with the Senate Standing Committee on Regulations and Ordinances. Again, this correspondence will be available online.

In this instance, the Instrument also had an additional layer of scrutiny through the Royal Commission into Aged Care Quality and Safety. Departmental officials appeared as witnesses and provided statements that clarify various issues related to the development and operation of the Instrument.

In my view, while the Committee advises the Instrument does include significant matters, the need to act in a swift and agile manner to protect vulnerable, older Australians is best achieved by setting out these matters in delegated legislation.

### ***Committee comment***

1.12 The committee thanks the minister for this response, and notes the minister's advice that the instrument is only one component of a suite of reforms aimed at improving the quality and safety of aged care, which will have a substantial positive impact on personal rights. The committee also notes the advice that the vast majority of these reforms have been included in delegated legislation, to ensure that they can be implemented in a timely manner in line with community expectations.

1.13 The committee further notes the minister's advice that the use of delegated legislation allows the government to act promptly to protect vulnerable older Australians, and allows for refinements to the regulatory framework for aged care services based on the response of the aged care sector. The minister further advised that setting out core principles governing the use of restraints in primary legislation may increase the time for new measures to take effect.

1.14 The committee acknowledges that the majority of reforms to the regulatory framework for aged care services have been enacted by delegated legislation. However, it does not generally consider consistency with existing regulatory approaches to be sufficient justification for including matters with a potentially significant impact on personal rights and liberties in delegated legislation. Indeed, the fact that the majority of the aged care reforms have been enacted via delegated legislation may provide further justification for enacting at least the core principles for the use of restraints by primary legislation subject to full parliamentary oversight.

1.15 The committee also notes that the use of delegated legislation may allow the government to act promptly in the interests of vulnerable persons, and to refine the regulatory framework for aged care services in line with community expectations. However, as noted in the committee's previous comments, this approach may also allow restrictions on the use of restraints to be watered down or removed without full parliamentary oversight. The committee emphasises that full parliamentary consideration can facilitate greater consultation with vulnerable persons affected, and other subject matter experts. In addition, the committee does not generally

consider administrative efficiency to be sufficient justification for including significant matters in delegated legislation.

1.16 Finally, the committee appreciates that the instrument has been subject to an inquiry by the Parliamentary Joint Committee on Human Rights (PJCHR) and was considered during the Royal Commission into Aged Care Quality and Safety. However, the committee notes that the PJCHR inquiry was concerned with whether the measures in the instrument are compatible with international human rights law, while the Royal Commission was concerned with the broader matter of the quality of aged care services in Australia. The committee does not consider engagement with these inquiry processes to be an adequate substitute for the scrutiny inherent in enacting the measures in an Act of Parliament, nor a justification for including the measures in delegated legislation.

**1.17 The committee has concluded its examination of the instrument. However, the committee draws the attention of the Senate to the inclusion of significant matters, which may affect the personal rights and liberties of aged care consumers, in delegated legislation. The committee considers that such significant matters are more appropriate for enactment in primary legislation.**

**1.18 The committee placed a notice of motion to disallow the instrument on 16 September 2019. The committee has resolved to keep this notice in place, to emphasise the committee's scrutiny concerns and to provide the Senate with additional time to consider the matter.**

# Appendix A

## Ongoing matters

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

### Ministerial engagement

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

Instrument	Issue	Status
<b>Air Services Regulations 2019 [F2019L00371]</b>	Principle (b) privacy Principle (b) reversal of evidential burden of proof Principle (b) immunity from liability Principle (d) significant matters in delegated legislation	Awaiting implementation of ministerial undertaking to amend instrument made on 21/08/2019, in response to the committee's concerns about immunity from liability.
<b>ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700 [F2019L01185]</b>	Principle (d) continuing exemption	Seeking advice from the minister.
<b>CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]</b>	Principle (d) continuing exemption	Seeking advice from the minister.
<b>Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]</b>	Principle (d) significant matters in delegated legislation	Chair placed a notice of motion to disallow the instrument on 01/08/2019.
<b>Quality of Care Amendment (Minimising Use of Restraints) Principles 2019 [F2019L00511]</b>	Principle (b) personal rights and liberties Principle (d) significant matters in delegated legislation	Drawing to the attention of the Senate. Chair placed a notice of motion to disallow the instrument on 16/09/2019.
<b>Road Vehicle Standards Rules 2018 [F2019L00198]</b>	Principle (a) incorporation	Awaiting implementation of ministerial undertaking to amend instrument, made on 12/08/2019.
<b>Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019 [F2019L01159]</b>	Principle (a) incorporation	Seeking advice from the minister.

## Agency engagement

2.3 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.

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<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>ASIC Corporations (Amendment) Instrument 2019/784 [F2019L01206]</b>	Principle (d) continuing exemption	Seeking advice from the agency.
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 30 of 2019 [F2019L01196]</b>	Principle (c) merits review	Seeking advice from the agency.

## Appendix B

### Concluded matters

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

#### Ministerial engagement

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

Instrument	Issue	Status
<b>Agriculture and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2019 [F2019L00357]</b>	Principle (a) unclear basis for determining fees  Principle (a) incorporation  Principle (d) significant matters in delegated legislation	Concluded following response from the minister on 09/10/2019.  The minister undertook to amend the explanatory statement to the instrument. The undertaking was implemented on 15/10/2019.
<b>Customs (Prohibited Imports) Amendment (Collecting Tobacco Duties) Regulations 2019 [F2019L00352]</b>	Principle (a) broad delegation of power  Principle (c) merits review	Concluded following response from the assistant minister on 18/09/2019.
<b>Health Insurance (Diagnostic Imaging Services Table) Regulations 2019 [F2019L00563]</b>	Principle (c) merits review	Concluded following the implementation of the minister's undertaking to amend the instrument. The amending instrument was registered on 24/09/2019.
<b>Migration Amendment (New Skilled Regional Visas) Regulations 2019 [F2019L00578]</b>	Principle (a) imposition of fees (taxation)  Principle (c) merits review  Principle (d) significant matters in delegated legislation	Concluded following response from the minister on 30/09/2019.

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<sup>1</sup> See [www.aph.gov.au/regords\\_monitor](http://www.aph.gov.au/regords_monitor).

## Agency engagement

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

Instrument	Issue	Status
<b>Aboriginal and Torres Strait Islander Heritage Protection Amendment (Bellwood Sacred Site) Declaration 2019 [F2019L01139]</b>	Principle (a) effect of drafting error	Concluded following response from the agency on 04/10/2019.
<b>Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019 [F2019L01105]</b>	Principle (a) incorporation	Concluded following response from the agency on 19/09/2019. The agency undertook to amend the explanatory statement to the instrument.
<b>Amendment of List of Exempt Native Specimens – Commonwealth Eastern Tuna and Billfish Fishery and Commission for the Conservation of Antarctic Marine Living Resources Ross Sea Exploratory Toothfish Fishery, August 2019 [F2019L01078]</b>	Principle (a) in accordance with statute	Concluded following response from the agency on 19/09/2019. The agency undertook to amend the explanatory statement to the instrument.
<b>ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 [F2019L01114]</b>	Principle (d) significant matters in delegated legislation	Concluded following response from the agency on 19/09/2019. The agency undertook to amend the explanatory statement to the instrument. The undertaking was implemented on 26/09/2019.
<b>CASA EX86/19 – Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2019 [F2019L01138]</b>	Principle (c) merits review	Concluded following response from the agency on 02/10/2019.
<b>Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2019 [F2019L01156]</b>	Principle (c) merits review	Concluded following response from the agency on 02/10/2019. The agency undertook to amend the explanatory statement to the instrument.
<b>Financial Transaction Reports Regulations 2019 [F2019L01173]</b>	Principle (b) retrospective effect	Concluded following response from the agency on 08/10/2019.

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination 2019 [F2019L01066]</b>	Principle (a) incorporation	Concluded following response from the agency on 19/09/2019.  The agency undertook to amend the explanatory statement to the instrument.
<b>Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019 [F2019L01067]</b>	Principle (a) incorporation	Concluded following response from the agency on 19/09/2019.  The agency undertook to amend the explanatory statement to the instrument.
<b>National Health (Pharmaceutical Benefits) Amendment (Electronic Prescriptions) Regulations 2019 [F2019L01072]</b>	Principle (b) privacy	Concluded following response from the agency on 02/10/2019.  The agency undertook to amend the explanatory statement to the instrument.
<b>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2019 (No. 8) (PB 66 of 2019) [F2019L01129]</b>	Principle (a) incorporation	Concluded following response from the agency on 02/10/2019.
<b>Private Health Insurance (Prostheses) Amendment Rules (No. 6) 2019 [F2019L01117]</b>	Principle (a) effect of drafting error	Concluded following response from the agency on 11/10/2019.
<b>Space (Launches and Returns) (General) Rules 2019 [F2019L01118]</b>	Principle (d) significant matters in delegated legislation	Concluded following response from the agency on 04/10/2019.



# Appendix C

## Undertakings

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

### Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
<b>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2018 (No. 10) [F2018L01646]</b>	The Minister for Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	10/04/2019
<b>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 1) (PB 3 of 2019) [F2019L00081]</b>	The Minister for Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/06/2019
<b>Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Methyl Bromide, Fire Protection and Other Measures) Regulations 2018 [F2018L01730]</b>	The Minister for the Environment undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	15/07/2019
<b>Aged Care Single Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019 [F2019L00515]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	16/07/2019
<b>Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019 [F2019L00490]</b>	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	16/07/2019
<b>Road Vehicle Standards Rules 2018 [F2019L00198]</b>	The Minister for Infrastructure, Transport and Regional Development undertook to amend the instrument in response to the committee's concerns.	12/08/2019

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Air Services Regulations 2019 [F2019L00371]</b>	The Minister for Infrastructure, Transport and Regional Development undertook to amend the instrument in response to the committee's concerns.	21/08/2019
<b>Private Health Insurance (Data Provision) Amendment Rules 2019 [F2019L00817]</b> <b>Private Health Insurance (Health Insurance Business) Amendment Rules 2019 [F2019L00815]</b>	The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	21/08/2019
<b>Hearing Services Program (Voucher) Instrument 2019 [F2019L00969]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	23/08/2019
<b>Quality of Care Amendment (Minimising Use of Restraints) Principles 2019 [F2019L00511]</b>	The Minister for Aged Care and Senior Australians undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	23/08/2019
<b>Migration Amendment (Visa Application Charges) Regulations 2019 [F2019L00932]</b>	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	30/08/2019
<b>Crimes Legislation Amendment (2019 Measures No. 1) Regulations 2019 [F2019L01004]</b>	The Attorney-General's Department undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	03/09/2019
<b>Migration (LIN 19/188: Arrangement for Approval and Variation of Approval for a Temporary Parent Sponsor) Instrument 2019 [F2019L01015]</b>	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	03/09/2019
<b>Telecommunications (Carrier Licence Exemption - Trial Network Units) Determination 2019 [F2019L00317]</b> <b>Telecommunications (Carrier Licence Exemption – Supply of Carriage Services to Visitors) Determination 2019 [F2019L00318]</b>	The Department of Communications and the Arts undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	03/09/2019
<b>Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]</b>	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the <i>Water Act 2007</i> in response to the committee's concerns.	11/09/2019.

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Veterans' Affairs (Treatment Principles – Electric Mobility Aids and Other Measures) Amendment Instrument 2019 [F2019L00678]</b>	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	13/09/2019
<b>Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019 [F2019L01105]</b>	The Australian Pesticides and Veterinary Medicines Authority undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/09/2019
<b>Amendment of List of Exempt Native Specimens – Commonwealth Eastern Tuna and Billfish Fishery and Commission for the Conservation of Antarctic Marine Living Resources Ross Sea Exploratory Toothfish Fishery, August 2019 [F2019L01078]</b>	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/09/2019
<b>Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination 2019 [F2019L01066]</b>	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/09/2019
<b>Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019 [F2019L01067]</b>	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	19/09/2019
<b>Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2019 [F2019L01156]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	02/10/2019
<b>National Health (Pharmaceutical Benefits) Amendment (Electronic Prescriptions) Regulations 2019 [F2019L01072]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	02/10/2019

## Implemented undertakings

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

Instrument	Undertaking	Date implemented
<b>Agriculture and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2019 [F2019L00357]</b>	The Minister for Agriculture undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	15/10/2019
<b>ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 [F2019L01114]</b>	The Department of the Treasury undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	26/09/2019
<b>Australian Hearing Services Regulations 2019 [F2019L00976]</b>	The Department of Human Services undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	10/10/2019
<b>Financial sector (Collection of Data) (reporting standard) determinations – various instruments [F2019L00730] [F2019L00731] [F2019L00738] [F2019L00739] [F2019L00766] [F2019L00769] [F2019L00754] [F2019L00756] [F2019L00780] [F2019L00782] [F2019L00733] [F2019L00735]</b>	The Australian Prudential Regulation Authority undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	20/09/2019
<b>Fuel Quality Standards Regulations 2019 [F2019L00560]</b>	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	30/09/2019
<b>Fuel Quality Standards (Automotive Diesel) Determination 2019 [F2019L00456]</b>	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	30/09/2019
<b>Fuel Quality Standards (Petrol) Determination 2019 [F2019L00455]</b>	The Department of the Environment and Energy undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	27/09/2019
<b>Health Insurance (Diagnostic Imaging Services Table) Regulations 2019 [F2019L00563]</b>	The Minister for Health undertook to amend the instrument in response to the committee's concerns.	24/09/2019
<b>Insurance (prudential standard) determinations – various instruments [F2019L00873] [F2019L00874] [F2019L00869] [F2019L00875]</b>	The Australian Prudential Regulation Authority undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	20/09/2019

<b>Instrument</b>	<b>Undertaking</b>	<b>Date implemented</b>
<b>National Greenhouse and Energy Reporting (Measurement) Amendment (2019 Update) Determination 2019 [F2019L00938]</b>	The Department of the Environment and Energy undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	15/10/2019
<b>Public Works Committee Legislation Amendment (2019 Measures No. 1) Regulations 2019 [F2019L00340]</b>	The Minister for Finance undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	14/10/2019
<b>Taxation Administration – Single Touch Payroll – Exemption for Employers Having a Seasonal Workforce (Repeal) [F2019L00458]</b>	The Australian Taxation Office undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	02/10/2019
<b>Treatment Benefits (Special Access) (Claims, Applications and Lodgements Procedures) Determination 2019 [F2019L00825]</b>	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	27/09/2019
<b>Various prudential standards [F2019L00621] [F2019L00624] [F2019L00625] [F2019L00631] [F2019L00632] [F2019L00643] [F2019L00646] [F2019L00648] [F2019L00649] [F2019L00656] [F2019L00659] [F2019L00662] [F2019L00669]</b>	The Australian Prudential Regulation Authority undertook to amend the explanatory statements to the instruments in response to the committee's concerns.	20/09/2019



## Appendix D

### Instruments specifying Commonwealth expenditure

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

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

5.3 The table below lists the expenditure specified by legislative instruments registered between 29 August and 17 September 2019.

Instrument	Program	Amount
<b>Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2019 [F2019L01156]</b>	Destination Australia Program	\$93 million over four years from 2019-20
<b>Financial Framework (Supplementary Powers) Amendment (Employment, Skills, Small and Family Business Measures No. 3) Regulations 2019 [F2019L01157]</b>	Foundation Skills for Your Future Program Incentives for Australian Apprenticeships	\$62.4 million over four years from 2019-20 \$1,809.5 million over four years from 2019-20
<b>Financial Framework (Supplementary Powers) Amendment (Veterans' Affairs Measures No. 1) Regulations 2019 [F2019L01155]</b>	Enhanced Employment Support for Veterans	\$16.2 million over four years from 2019-20

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



## List of instruments in current monitor

Instrument	FRL No	Page
Aboriginal and Torres Strait Islander Heritage Protection Amendment (Bellwood Sacred Site) Declaration 2019	F2019L01139	10
Aged Care Single Legislation Amendment (Single Quality Framework Consequential Amendments and Transitional Provisions) Instrument 2019	F2019L00515	13
Agricultural and Veterinary Chemicals Code (MRL Standard) Instrument 2019	F2019L01105	10, 15
Agriculture and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2019	F2019L00357	9, 16
Air Services Regulations 2019	F2019L00371	7, 14
Amendment of List of Exempt Native Specimens – Commonwealth Eastern Tuna and Billfish Fishery and Commission for the Conservation of Antarctic Marine Living Resources Ross Sea Exploratory Toothfish Fishery, August 2019	F2019L01078	10, 15
ASIC Corporations (Amendment) Instrument 2019/784	F2019L01206	8
ASIC Corporations (Changing Scheme Constitutions) Instrument 2019/700	F2019L01185	7
ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547	F2019L01114	10, 16
Australian Hearing Services Regulations 2019	F2019L00976	16
Banking, Insurance, Life Insurance and Health Insurance (prudential standard) determination No.1 of 2019	F2019L00669	17
Banking, Insurance, Life Insurance and Health Insurance (prudential standard) determination No. 2 of 2019	F2019L00662	17
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019	F2019L01132	7
CASA EX86/19 – Flight of Certain Ultralight Aeroplanes in Class D Airspace (Approved Flight Training Schools) Instrument 2019	F2019L01138	10
Crimes Legislation Amendment (2019 Measures No. 1) Regulations 2019	F2019L01004	14
Customs (Prohibited Imports) Amendment (Collecting Tobacco Duties) Regulations 2019	F2019L00352	9
Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2019	F2019L01156	10, 15, 19

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Financial Framework (Supplementary Powers) Amendment (Employment, Skills, Small and Family Business Measures No. 3) Regulations 2019	F2019L01157	19
Financial Framework (Supplementary Powers) Amendment (Veterans' Affairs Measures No. 1) Regulations 2019	F2019L01155	19
Financial Sector (Collection of Data) (reporting standard) determination No. 30 of 2019	F2019L01196	8
Financial Sector (Collection of Data) (reporting standard) determination No. 10 of 2019	F2019L00730	16
Financial Sector (Collection of Data) (reporting standard) determination No. 11 of 2019	F2019L00731	16
Financial Sector (Collection of Data) (reporting standard) determination No. 12 of 2019	F2019L00738	16
Financial Sector (Collection of Data) (reporting standard) determination No. 13 of 2019	F2019L00739	16
Financial Sector (Collection of Data) (reporting standard) determination No. 14 of 2019	F2019L00766	16
Financial Sector (Collection of Data) (reporting standard) determination No. 15 of 2019	F2019L00769	16
Financial Sector (Collection of Data) (reporting standard) determination No. 16 of 2019	F2019L00754	16
Financial Sector (Collection of Data) (reporting standard) determination No. 17 of 2019	F2019L00756	16
Financial Sector (Collection of Data) (reporting standard) determination No. 18 of 2019	F2019L00780	16
Financial Sector (Collection of Data) (reporting standard) determination No. 19 of 2019	F2019L00782	16
Financial Sector (Collection of Data) (reporting standard) determination No. 20 of 2019	F2019L00733	16
Financial Sector (Collection of Data) (reporting standard) determination No. 21 of 2019	F2019L00735	16
Financial Transaction Reports Regulations 2019	F2019L01173	10
Fuel Quality Standards (Automotive Diesel) Determination 2019	F2019L00456	16
Fuel Quality Standards (Petrol) Determination 2019	F2019L00455	16
Fuel Quality Standards Regulations 2019	F2019L00560	16
Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019	F2019L00490	13
Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination 2019	F2019L01066	11, 15

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019	F2019L01067	11, 15
Health Insurance (Diagnostic Imaging Services Table) Regulations 2019	F2019L00563	9, 16
Health Insurance (prudential standard) determination No. 1 of 2019	F2019L00649	17
Hearing Services Program (Voucher) Instrument 2019	F2019L00969	14
Immigration (Guardianship of Children) Regulations 2018	F2018L01708	7
Insurance (prudential standard) determination No. 1 of 2019	F2019L00624	17
Insurance (prudential standard) determination No. 2 of 2019	F2019L00625	17
Insurance (prudential standard) determination No. 3 of 2019	F2019L00621	17
Insurance (prudential standard) determination No. 4 of 2019	F2019L00631	17
Insurance (prudential standard) determination No. 5 of 2019	F2019L00632	17
Insurance (prudential standard) determination No. 6 of 2019	F2019L00656	17
Insurance (prudential standard) determination No. 7 of 2019	F2019L00659	17
Insurance (prudential standard) determination No. 8 of 2019	F2019L00648	17
Insurance (prudential standard) determination No. 9 of 2019	F2019L00643	17
Insurance (prudential standard) determination No. 10 of 2019	F2019L00873	16
Insurance (prudential standard) determination No. 11 of 2019	F2019L00874	16
Insurance (prudential standard) determination No. 12 of 2019	F2019L00869	16
Insurance (prudential standard) determination No. 13 of 2019	F2019L00875	16
Life insurance (prudential standard) determination No. 1 of 2019	F2019L00646	16
Migration (LIN 19/188: Arrangement for Approval and Variation of Approval for a Temporary Parent Sponsor) Instrument 2019	F2019L01015	14
Migration Amendment (New Skilled Regional Visas) Regulations 2019	F2019L00578	9
Migration Amendment (Visa Application Charges) Regulations 2019	F2019L00932	14
National Greenhouse and Energy Reporting (Measurement) Amendment (2019 Update) Determination 2019	F2019L00938	17
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2018 (No. 10)	F2018L01646	13
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 1) (PB 3 of 2019)	F2019L00081	13
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2019 (No. 8) (PB 66 of 2019)	F2019L01129	11

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
National Health (Pharmaceutical Benefits) Amendment (Electronic Prescriptions) Regulations 2019	F2019L01072	11
Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Methyl Bromide, Fire Protection and Other Measures) Regulations 2018	F2018L01730	13
Private Health Insurance (Data Provision) Amendment Rules 2019	F2019L00817	14
Private Health Insurance (Health Insurance Business) Amendment Rules 2019 []	F2019L00815	14
Private Health Insurance (Prostheses) Amendment Rules (No. 6) 2019	F2019L01117	11
Public Works Committee Legislation Amendment (2019 Measures No. 1) Regulations 2019	F2019L00340	16
Quality of Care Amendment (Minimising Use of Restraints) Principles 2019	F2019L00511	1, 7, 14
Road Vehicle Standards Rules 2018	F2019L00198	7, 13
Space (Launches and Returns) (General) Rules 2019	F2019L01118	11
Taxation Administration – Single Touch Payroll – Exemption for Employers Having a Seasonal Workforce (Repeal)	F2019L00458	17
Telecommunications (Carrier Licence Exemption - Trial Network Units) Determination 2019	F2019L00317	14
Telecommunications (Carrier Licence Exemption – Supply of Carriage Services to Visitors) Determination 2019	F2019L00318	14
Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019	F2019L01159	7
Treatment Benefits (Special Access) (Claims, Applications and Lodgements Procedures) Determination 2019	F2019L00825	17
Veterans' Affairs (Treatment Principles – Electric Mobility Aids and Other Measures) Amendment Instrument 2019	F2019L00678	15
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018	F2018L01674	15

**Senator the Hon Concetta Fierravanti-Wells**

**Chair**

**Senate Standing Committee on Regulations and Ordinances**