

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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Introduction

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

Terms of reference

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

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

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

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

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

Nature of the committee's scrutiny

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

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

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

Publications

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

Ministerial correspondence

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

Agency correspondence

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

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

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

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

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

Guidelines

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

General information

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

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

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

Instruments considered in this monitor

The committee examined 155 disallowable legislative instruments registered on the Federal Register of Legislation between 19 June 2020 and 22 July 2020.

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

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

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

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

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

Chapter 1

Instruments raising significant scrutiny concerns

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.

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

Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020

FRL No.	F2020L00579 ¹
Purpose	To amend the Australian Postal Corporation (Performance Standards) Regulations 2019 to temporarily change performance standards for the delivery of letters and to provide an exemption from retail outlet requirements.
Authorising legislation	<i>Australian Postal Corporation Act 1989</i>
Portfolio	Infrastructure, Transport, Regional Development and Communications
Disallowance	15 sitting days after tabling (tabled in the Senate on 10 June 2020).

Overview

1.1 The instrument amends the Australian Postal Corporation (Performance Standards) Regulations 2019 to implement a number of temporary changes to performance standards for the delivery of letters, and to temporarily exempt Australia Post from its retail outlet obligations. These changes aim to respond to the challenges faced by Australia Post during the COVID-19 pandemic and are time limited to 30 June 2021.

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

1.2 The instrument has also been subject to scrutiny by the Senate Environment and Communications Legislation Committee. In addition, two notices of motion to disallow the instrument have been given in the Senate and one has been given in the House of Representatives.

Scrutiny concerns

Consultation with persons affected²

1.3 Senate standing order 23(3)(d) requires the committee to scrutinise each instrument as to whether persons likely to be affected by the instrument were adequately consulted in relation to it. This principle is informed by subsection 17(2) of the *Legislation Act 2003* which provides that, in assessing whether appropriate consultation has taken place in making the instrument, the rule-maker may have regard to the extent to which persons likely to be affected by the instrument had an adequate opportunity to comment on its proposed content.

1.4 The explanatory statement to the instrument notes that Australia Post was consulted in the development of the instrument. However, the committee has scrutiny concerns about the lack of consultation with persons and entities likely to be affected by the measures in the instrument, including employees of Australia Post and their representatives, and persons and entities that regularly utilise postal services.

Actions to date

1.5 The committee wrote to the minister in June and July of this year to seek further advice on the nature and scope of consultation undertaken in relation to the instrument.³

Initial correspondence

1.6 The committee's initial letter on 11 June 2020 requested the minister's detailed advice as to whether persons and entities likely to be affected by the instrument, including Australia Post employees and their representatives, were consulted before the instrument was made. The minister's response of 27 June 2020 explained that the Government consulted closely with Australia Post and that Australia Post regularly engages with its workforce and their representatives. The minister also stated that he met with union representatives on 27 April 2020 to explain the rationale for the measures and to discuss concerns, but no further public consultation on the instrument was undertaken due to the urgent and unprecedented COVID-19 pandemic circumstances.

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

3 Copies of the letter are available on the committee's [website](#).

Recent correspondence

1.7 The committee responded to the minister's letter on the 22 July 2020 to request further details about this consultation. The committee's decision to seek further advice was informed by evidence provided to the Senate Environment and Communications Legislation Committee in a public hearing held on 8 July 2020. The committee considered that information presented at the hearing included differing accounts of the type, scope and nature of consultation that was undertaken with persons likely to be affected by the instrument. The committee also sought the minister's advice on any further consultation that may be undertaken in relation to the measures, noting that it is intended that the measures will remain in force until at least 30 June 2021, and on consultation on any plans to extend the instrument beyond 30 June 2021.

1.8 The minister's response of 30 July 2020 confirmed the following additional details which arose during the hearing of the Senate Environment and Communications Legislation Committee on 8 July:

- the minister discussed the measures in the draft instrument with Mr Shane Murphy, the national president of the Communication Workers Union/Communications Electrical Plumbing Union (CEPU) on 27 April 2020;
- Australia Post advised Mr Greg Raynor, the divisional secretary of the communications division of the CEPU of the Government's decision to make the instrument on 21 April 2020;
- Ms Christine Holgate, chief executive officer of Australia Post, advised Ms Angela Cramp, the executive director of the Licenced Post Office Group, on 6 April 2020, that Australia Post had written to the Government for regulatory relief;
- Ms Lorraine Cassin, the assistant national secretary of the print and packaging membership area of the Australian Manufacturing Workers Union, raised concerns Australia Post did not consult with the print industry prior to announcing the measures;
- Australia Post advised that it worked with bulk mailers including the print industry after the measures were announced, to create alternative timetables for priority bulk mail; and
- the Real Media Collective's submission to the inquiry confirmed their support of the measures.

1.9 In his 30 July 2020 response the minister also explained that the instrument will be reviewed later in 2020 to assess whether the measures are required until their specified end date of 30 June 2021. The minister set out the factors that the review will consider, including letter and parcel volume and delivery speeds,

Australia Post performance standards, community and business feedback on the measures, impact of the measures on the workforce of Australia Post, and other dependencies. This is in addition to ongoing consultation with the community and business over the coming months.

1.10 The minister confirmed that the Government has no plans to extend the measures in the instrument beyond 30 June 2021, and that generally any such extension would only be implemented after consultation with all relevant parties.

Committee comment

1.11 The committee is grateful to the minister for the information he has provided to the committee in its consideration of the instrument to date. In particular, the committee acknowledges the minister's advice that the instrument will be reviewed later in 2020 to assess whether the measures are required until their specified end date of 30 June 2021.

1.12 However, from a scrutiny perspective, the committee remains concerned about the adequacy of consultation undertaken in relation to this instrument, particularly in light of the significance of the measures and the broad scope of people and entities likely to be affected by the changes.

1.13 In light of this, the committee requests that it be provided with updates as to the progress of future consultation on the instrument, including details of who has been consulted, any issues raised during the consultation, and any outcomes or action taken as a result of the consultation.

1.14 As the committee retains scrutiny concerns in relation to this instrument, the committee has resolved to give a notice of motion to disallow the instrument on 6 October 2020 for consideration and debate in the Senate 15 sitting days after that date. The information provided by the minister in relation to future consultation on the instrument will inform the committee's consideration of whether to withdraw the notice of motion to disallow the instrument.

Competition and Consumer (Industry Codes—Dairy) Regulations 2019

FRL No.	F2019L01610 ⁴
Purpose	To prescribe a mandatory Dairy Code of Conduct to set enforceable minimum standards of conduct for business practices between dairy farmers and processors of milk (including a retailer where they are the first purchaser of milk).
Authorising legislation	<i>Competition and Consumer Act 2010</i>
Portfolio	Treasury
Disallowance	15 sitting days after tabling (tabled in the Senate on 4 February 2020). Notice of motion to disallow given on 14 May 2020.

Overview

1.15 The instrument prescribes a Dairy Code of Conduct (Dairy Code), a mandatory code which sets enforceable minimum standards of conduct for business practices between dairy farmers and corporations that purchase and sell milk (processors).

1.16 The committee has engaged extensively with the government in relation to its scrutiny concerns about this instrument, summarised below. Most recently, the committee drew its serious scrutiny concerns about the instrument to the attention of the Senate in *Delegated Legislation Monitor 9 of 2020* (Monitor 9 of 2020). This entry summarises the committee's most recent engagement with the government about this instrument since Monitor 9 of 2020 was tabled, and details the committee's concluding comments.

Scrutiny concerns

***Unclear drafting;*⁵ *significant penalties*⁶**

1.17 The committee's technical scrutiny concerns about this instrument are detailed in Monitor 9 of 2020. The concerns focus on section 11 of the instrument, which imposes an obligation on processors and farmers to act in good faith in the supply of milk 'within the meaning of the unwritten law as it exists from time to time'. The section provides a non-exhaustive list of factors which 'may' be taken into

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

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

6 Scrutiny principle: Senate Standing Order 23(3)(h).

account in determining whether a processor or farmer has acted in good faith, but no further guidance as to the meaning of the term. Failure to comply with the good faith obligations attracts significant civil penalties.⁷

1.18 The committee considers that the imposition of significant penalties for non-compliance with a term undefined by the written law raises significant technical scrutiny concerns under Senate standing orders 23(3)(e), clarity of drafting and 23(3)(j), significant penalties in delegated legislation.⁸

Actions to date

Initial correspondence

1.19 Between February and April 2020 the committee twice wrote to the minister to seek his advice about the committee's scrutiny concerns, and, in particular, the appropriateness of amending section 11 to provide further guidance as to the meaning of good faith.⁹ This correspondence is detailed in Monitor 9 of 2020. In summary, the minister provided the following reasons in support of the original drafting of section 11 of the instrument:

- defining good faith would undermine the instrument's objective and purpose;
- defining good faith would create inconsistencies with other industry codes which also impose civil penalties for failing to act in good faith within the meaning of the unwritten law from time to time;¹⁰
- the current approach enables the application of the Dairy Code to evolve with the common law; and
- the non-exhaustive list of factors which may be considered in determining whether a processor farmer has acted in good faith provides appropriate guidance about the scope of good faith whilst enabling consistency with the common law as it develops.

7 Failure to comply with these obligations attracts a civil penalty of 100 penalty units (\$22 200) for processors which are small business entities, 300 penalty units (\$66 600) for other processors, and 100 penalty units (\$22 200) for farmers.

8 Senate standing orders 23(3)(e) and 23(3)(h).

9 Copies of the letters are available on the [committee's website](#).

10 The minister noted that the Competition and Consumer (Industry Codes—Horticulture) Regulations 2017 [F2017L00302] (section 8) and the Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (section 6) [F2020C00511] impose civil penalties for failure to deal in good faith within the meaning of the unwritten law as incorporated from time to time.

1.20 On 14 May 2020 the committee placed a 'protective' notice of motion to disallow the instrument to provide additional time for the committee to further consider the instrument while it was still subject to disallowance.

Private briefing

1.21 The committee subsequently sought and undertook a private briefing with representatives from the Department of Agriculture, Water and Environment, and the Treasury, on 12 June 2020, to discuss its ongoing scrutiny concerns. Pursuant to the briefing, the committee sought further advice from the minister about a range of matters, including whether the instrument could be amended to provide that a farmer or processor acted in good faith if they complied with the specific factors set out in paragraphs 11(4)(a)-(h) of the instrument.

1.22 In his response of 18 June 2020, the minister reiterated his view that the non-exhaustive list in subsection 11(4) provides sufficient guidance as to the meaning of good faith, and limiting the relevant factors might unduly restrict the provisions in a manner inconsistent with the evolving common law understanding of good faith. The minister also suggested that the committee may wish to seek further information from the Attorney-General and the Treasurer.

Correspondence with the minister, Attorney-General and Treasurer

1.23 In correspondence to the minister, Attorney-General and Treasurer (the ministers) of 22 July 2020, the committee set out its ongoing technical scrutiny concerns about the instrument. This correspondence is detailed in Monitor 9 of 2020.¹¹ In summary, the committee restated its view was that the scope of the obligation to act in good faith remains unclear and subsection 11(4) of the instrument does not provide the clarity and certainty required of civil penalty provisions. The committee also expressed broader concerns about the systemic use of undefined good faith provisions in industry codes.

1.24 In light of the committee's ongoing concerns, the committee requested the minister's advice as to whether subsection 11(4) could be amended to require certain factors to be taken into account in assessing whether processors or farmers have acted in good faith. In addition, the committee asked the Treasurer and Attorney-General to give comprehensive advice on the committee's scrutiny concerns about the instrument, and, more broadly, whether urgent consideration could be given to improving the clarity of drafting of good faith obligations in all Commonwealth delegated legislation.

11 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 9 of 2020*, pp. 1-6. A copy of the letter is also available on the [committee's website](#).

1.25 The ministers' joint response of 18 August 2020 is detailed in Monitor 9 of 2020.¹² In summary, the ministers reiterated their view that section 11 is fit for purpose, and expressed concern that prescribing a mandatory list of factors to be considered in assessing good faith could create potential uncertainty where common law concepts evolve and diverge from that prescribed by statute. The ministers also cited several examples of other provisions in both primary and delegated legislation which impose civil or criminal penalties for breaches of good faith provisions.

Subsequent correspondence

1.26 The committee set out its response to the ministers' correspondence in Monitor 9 of 2020.¹³ In the absence of an undertaking by the ministers to amend the instrument, the committee reiterated its concerns that the civil penalty provisions in section 11 of the instrument lack the clarity necessary to enable persons and entities, particularly farmers, to understand their obligations and the consequences of non-compliance.

1.27 The committee also addressed the examples provided by the ministers of similar provisions in other legislation. As a technical matter, the committee noted that primary legislation falls outside the scope of the committee's role prescribed by Senate standing order 23. From a scrutiny perspective, the committee reiterated its longstanding view that the existence of similar provisions in other legislation does not, of itself, justify the continuation of such an approach, where it raises significant technical scrutiny concerns. The committee also expressed concern that the ministers' examples provide evidence of a more complex and systemic issue in which regulatory flexibility is pursued via the imposition of broadly drafted good faith provisions at the expense of legal clarity and certainty.

1.28 Noting that the instrument raises an example of a more complex, systemic issue relevant to both delegated and primary legislation, the committee requested that the Attorney-General refer the codification of good faith obligations in Commonwealth legislation to the Australian Law Reform Commission for inquiry, with particular reference to:

- the importance of balancing legal clarity and certainty with regulatory flexibility; and
- how potential divergence between common law concepts of good faith and concepts used in statute could be resolved without compromising legal clarity and certainty.

12 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 9 of 2020*, pp. 1-6. A copy of the letter is also available on the [committee's website](#).

13 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 9 of 2020*, pp. 1-6.

1.29 The Attorney-General responded to the committee's request on 31 August 2020.¹⁴ The Attorney-General agreed that the issue of good faith obligations in Commonwealth legislation 'is a matter which should be subject to further inquiry, subject to settling appropriate terms of reference'. As a practical matter, noting that the drafting of good faith obligations raises complex, systemic issues, the Attorney-General explained that the scope of the inquiry will need be carefully examined, and 'such consideration necessarily takes time'. Accordingly, whilst agreeing that the matter 'warrants inquiry', the Attorney-General advised that the he does not anticipate that he will be able to commence an inquiry by the date nominated by the committee.

1.30 In the interim, the Attorney-General encouraged the committee to withdraw the disallowance motion, on the basis that:

disallowance of the Dairy Code could risk creating precisely the lack of clarity over the obligations of farmers and processors on the ground that your request seeks to avoid.

Committee comment

1.31 The committee strongly welcomes the Attorney-General's acknowledgment that the issue of good faith obligations in Commonwealth legislation is a complex and systemic matter which warrants further inquiry.

1.32 As a practical matter, the committee notes the Attorney-General's advice that, given the complexity of the matters involved and the consequent need to carefully consider the scope of such an inquiry, he does not anticipate it will be possible to commence the inquiry before the disallowance period for the Dairy Code is due to expire.

1.33 In considering this instrument, the committee has been exclusively concerned to ensure that it accords with the technical legislative scrutiny principles set out in Senate standing order 23(3). Since December 2019, these principles have expressly included clarity of drafting.¹⁵ In this regard, the committee has been particularly concerned about section 11 of the instrument, which imposes significant civil penalties on farmers and processors for failing to act in accordance with a term which is undefined in the written law, 'good faith'. As a matter of principle, the committee strongly considers that civil and criminal penalty provisions should be drafted with sufficient clarity to enable persons and entities to understand their obligations and the consequences of non-compliance.

1.34 In correspondence with the ministers, the committee has been alerted to several examples of similarly drafted provisions in both delegated and primary

14 A copy of the Attorney-General's letter is available on the [committee's website](#).

15 Senate standing order 23(3)(e).

legislation.¹⁶ As detailed in *Delegated Legislation Monitor 9 of 2020*, these examples raise broader, systemic concerns about the pursuit of regulatory flexibility via the imposition of broadly drafted good faith provisions at the expense of legal clarity and certainty. Noting that section 11 of the instrument is just one example of this much broader and complex matter, the committee considers that the disallowance of section 11 in isolation would not address this systemic issue.

1.35 Instead, the committee considers that this issue would be most appropriately addressed by way of a broader inquiry into the drafting of good faith obligations in Commonwealth legislation, and consideration by the Australian Competition and Consumer Commission as part of its ongoing inquiry into bargaining power in supply chains for perishable products.

1.36 Accordingly, the committee has resolved to withdraw its notice of motion to disallow the instrument, and instead pursue this complex and systemic technical scrutiny matter by:

- **monitoring the Attorney-General's undertaking to conduct an inquiry into good faith obligations in Commonwealth legislation and liaising with the Attorney-General regarding the terms of reference; and**
- **requesting that the Australian Competition and Consumer Commission consider this matter as part of its ongoing inquiry into bargaining power in supply chains for perishable products.**

1.37 On this basis, the committee has concluded its examination of the instrument.

16 See, in particular, the examples cited by the ministers in their letter of 18 August 2020, available on the [committee's website](#).

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020

FRL No.	F2020L00572 ¹⁷
Purpose	To extend the end date for the Cashless Debit Card trial in all existing sites and income management in the Cape York region from 30 June 2020 to 31 December 2020.
Authorising legislation	<i>Coronavirus Economic Response Package Omnibus Act 2020</i>
Portfolio	Social Services
Disallowance	15 sitting days after tabling (tabled in the Senate on 10 June 2020).

Overview

1.38 The instrument extends the operation of section 123UF and Part 3D of the *Social Security (Administration) Act 1999* (the Administration Act) from 30 June 2020, when the provisions were due to sunset, until 31 December 2020. This has the effect of extending the Cape York Welfare Reform Income Management measure and the cashless debit card trials for an additional six months.

1.39 Extensions to these measures have previously been made by primary legislation, rather than delegated legislation.¹⁸ In this instance, the bill to extend the sunset dates was agreed to by the House of Representatives on 27 November 2019. It was then introduced into the Senate on 2 December 2019.¹⁹ However, the explanatory statement to the instrument explains that the revision of the parliamentary sittings in response to the COVID-19 pandemic prevented the bill from being considered before the measures expired on 30 June 2020 in accordance with the Administration Act.

1.40 The committee first drew its serious scrutiny concerns about this instrument to the attention of the Senate in *Delegated Legislation Monitor 9 of 2020* (Monitor 9 of 2020),²⁰ after seeking advice from the minister.²¹ This entry provides an update on

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

18 See, for example, the *Social Security (Administration) Amendment (Income Management and Cashless Welfare) Act 2019*.

19 Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 (Income Management to Cashless Debit Card Transition Bill).

20 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 9 of 2020*, pp. 7–10.

the committee's most recent engagement with the minister about this matter since Monitor 9 of 2020 was tabled.

Scrutiny concerns

Modification of primary legislation;²² parliamentary oversight – deferral of sunseting²³

1.41 The committee's scrutiny concerns about the instrument are detailed in Monitor 9 of 2020.²⁴ In summary, the committee remains concerned that the instrument contains a matter more appropriate for parliamentary enactment, and the practical need to include the matter in delegated legislation has now been mitigated by Parliament's return to a regular sitting pattern. In these circumstances, the committee considers that it necessary and appropriate that Parliament has the opportunity to consider the matter in primary legislation at the earliest available opportunity.

Actions to date

Initial correspondence

1.42 As noted above, in June 2020 the committee sought the minister's advice about the appropriateness of continuing to rely on delegated legislation to extend the Cape York Welfare Reform Income Management measure and the cashless debit card trials for an additional six months, now that the Parliament has returned to a regular sitting pattern. The minister's advice is detailed in Monitor 9 of 2020.²⁵ In summary, the minister emphasised the importance of implementing the measure via delegated legislation to provide greater certainty to stakeholders and advised that the relevant bill would be 'scheduled for consideration as early as is practical'.

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- 21 The committee requested the minister's advice in a letter dated 11 June 2020. A copy of the letter is available on the committee's website at https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/A-E/F2020L00572.pdf.
 - 22 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 5 of 2020* (17 April 2020), pp. 15–16; Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2020* (10 June 2020), pp. 40–43.
 - 23 Scrutiny principle: Senate standing order 23(3)(k).
 - 24 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 9 of 2020*, pp. 7–10.
 - 25 The minister responded to the committee on 29 June 2020. A copy of the letter is available on the committee's website at https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/A-E/F2020L00572.pdf.

Subsequent correspondence

1.43 Noting that the Income Management to Cashless Debit Card Transition Bill was not listed for debate in the next sitting week following the committee's initial correspondence, the committee drew its concerns to the attention of the Senate in Monitor 9 of 2020²⁶ and requested the minister's urgent advice as to whether the bill could be scheduled for debate in the Senate before 3 September 2020.

1.44 In addition, given the seriousness of the committee's scrutiny concerns, the committee resolved to give a notice of motion to disallow the instrument on 31 August 2020, for consideration and debate in the Senate on 3 September 2020, should the bill not be listed for debate before that time.

1.45 The minister responded to the committee's comments in Monitor 9 of 2020 on 31 August 2020 to reiterate that the bill will be 'scheduled for consideration as early as is practical' and emphasise there may be serious policy consequences if the instrument were to be disallowed.

1.46 The minister provided a supplementary response on 1 September 2020 to advise that, while it has always been the government's intention that the bill be considered as soon as practicable, a number of factors prevent it from being scheduled for debate in the current sitting fortnight.

1.47 In particular, the minister noted that, as the Parliament's current priority is legislation to support the response to COVID-19, the government's ability to draft amendments to the bill has been impinged. The minister further noted that the inability to undertake the requisite consultation in relation to the bill has impacted its scheduling. Lastly, the minister advised that she has been in conversation with the Opposition and the crossbench to ensure that they are fully informed about the impacts of the bill prior to it being considered.

Committee comment

1.48 As a technical scrutiny matter, the committee remains concerned about the inclusion of significant matters in delegated legislation, rather than primary legislation, particularly noting that Parliament has returned to a regular sitting pattern. In this regard, the committee reiterates that the bill should be considered by the Senate as soon as practicable.

1.49 However, noting that the minister has provided some compelling reasons as to why the bill has not yet been considered by the Senate, the committee understands that it is not possible for the bill to be scheduled during the current sitting fortnight.

26 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 9 of 2020*, pp. 7–10.

1.50 On the basis of the minister's advice, the committee has resolved to postpone consideration of the notice of motion to disallow the instrument until 8 October 2020.

1.51 The committee requests that the minister provide an update prior to the October sitting week about progress made towards the scheduling of the bill for debate in the Senate to enable the committee to consider whether the disallowance motion should be further postponed.

1.52 If there are any further developments in relation to this matter the committee will report to the Senate in a future Delegated Legislation Monitor.

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
Child Care Subsidy Amendment (Coronavirus Response Measures No. 4) Minister's Rules 2020 [F2020L00802]	To amend the Child Care Subsidy Minister's Rules 2017 to introduce a number of new measures to support approved child care providers and individuals with children in care during the COVID-19 pandemic.	Senate Education and Employment Legislation Committee Senate Select Committee on COVID-19
Child Care Subsidy Amendment (Coronavirus Response Measures No. 5) Minister's Rules 2020 [F2020L00930]	To amend the Child Care Subsidy Minister's Rules 2017 to support approved child care providers and individuals with children in care by adding a rule that permits approved providers to waive their fees for child care services in areas subject to Stage 3 or higher "stay at home" restrictions in response to the COVID-19 pandemic.	Senate Education and Employment Legislation Committee Senate Select Committee on COVID-19
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 5) 2020 [F2020L00884]	To amend the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 so that approved child care providers are not entitled to JobKeeper payments for certain employees or for a business participant following the government's decision to extend separate support to the child care sector.	Senate Economics 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.

Instrument	Purpose	Portfolio committee
Narcotic Drugs (Licence Charges) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00901]	To amend the Narcotic Drugs (Licence Charges) Regulation 2016 to update licence charges for medicinal cannabis and cannabis research licences.	N/A
Paid Parental Leave Amendment (Flexibility Measures) Rules 2020 [F2020L00837]	To amend the Paid Parental Leave Rules 2010 to set out the eligibility criteria for parental leave pay for days in a person's initial continuous 12 week paid parental leave period and for a person's flexible paid parental leave days.	Senate Community Affairs Legislation Committee
Public Governance, Performance and Accountability Amendment (Grant Rules for Corporate Commonwealth Entities) Rules 2020 [F2020L00923]	To amend the Public Governance, Performance and Accountability Rule 2014 to prescribe mandatory advising, decision-making and reporting requirements that apply when a minister is involved in the making of a corporate Commonwealth entity grant. The instrument implements recommendation no. 4 of the 2019-20 Auditor-General Report No. 23: <i>Award of Funding under the Community Sport Infrastructure Program</i> .	Senate Finance and Public Administration Legislation Committee Senate Select Committee on Administration of Sports Grants
Social Security (Coronavirus Economic Response—2020 Measures No. 11) Determination 2020 [F2020L00765]	To modify provisions of the <i>Social Security Act 1991</i> and the <i>Social Security (Administration) Act 1999</i> to extend qualification for income support payments and concessions, where a recipient would otherwise cease to qualify due to a change in their or their partner's employment income.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19

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 19 June 2020 and 22 July 2020.

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 2020 [F2020L00816]	National Environmental Science Program	\$149 million over seven years from 2020-21	Funding will be provided for Phase 2 of the National Environmental Science Program to support applied environmental science through four multi-disciplinary research hubs.	Senate Environment and Communications Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 3) Regulations 2020 [F2020L00781]	Multicultural Community Amenities Grants in the Northern Territory	Up to \$2 million in 2020-21	Funding will be provided to multicultural community organisations to undertake activities in the Northern Territory to support social and economic participation.	Senate Legal and Constitutional Affairs Legislation Committee
	Disaster Risk Reduction Package	\$26.1 million over five years from 2019-20	Funding will be provided for national initiatives that reduce the risk, and limit the impact, of disasters associated with natural hazards on Australian communities and economies.	Senate Legal and Constitutional Affairs Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 1) Regulations 2020 [F2020L00817]	National Radioactive Waste Management Facility New Community Benefit Program	\$4 million over two years from 2020-21	Funding will be provided to support the participation of the communities of Lyndhurst, Napandee and Wallerberdina in the selection process for the potential establishment and operation of the National Radioactive Waste Management Facility.	Senate Economics Legislation Committee

Instrument	Grant/Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2020 [F2020L00818]	Telecommunications Emergency Resilience Package	\$37.1 million over two years from 2020-21	Funding will be provided for initiatives to improve telecommunications capacity and resilience during bushfires and other natural disasters.	Senate Environment and Communications Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations 2020 [F2020L00792]	Grants to University of Technology Sydney for Anti-Slavery Australia—Complex Violence Intervention (Forced Marriage) Project	\$400,000 in 2020-21	Funding will be provided to Anti-Slavery Australia to support the development of an online forum, community engagement strategy, national champions program and training for community workers.	Senate Community Affairs Legislation Committee
	National Centre for the Prevention of Child Sexual Abuse	\$22.5 million over five years from 2020-21	Funding will be provided for the establishment and ongoing costs of the National Centre for the Prevention of Child Sexual Abuse to raise community awareness and reduce stigma about child sexual abuse, increase practitioners' knowledge and competence in responding to victims and survivors, and develop better service models and interventions.	Senate Community Affairs Legislation Committee
Industry Research and Development (Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville Program) Instrument 2020 [F2020L00772]	Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville Program	Up to \$4 million	Funding will be provided to Shine Energy Pty Ltd to support a feasibility study into the viability of a new high-efficiency, low-emissions coal-fired power plant in Collinsville, Queensland.	Senate Environment and Communications Legislation Committee

Instrument	Grant/Program	Amount	Description	Portfolio committee
Industry Research and Development (Environmental Education Centres Program) Instrument 2020 [F2020L00771]	Environmental Education Centres Program	\$50 million	Funding will be provided to: <ul style="list-style-type: none"> • Murdoch University to establish the Harry Butler Environmental Education Centre to develop and promote understanding of the positive relationship between economic development and environmental sustainability; and • the University of Melbourne to establish the National Centre for Coasts, Environment and Climate to foster research and education focused on the coastal environment, climate change, science, history and culture, the arts and community engagement. 	Senate Environment and Communications Legislation Committee
Industry Research and Development (Pre-feasibility Study on a Proposed Pumped Hydro-electric Power Plant in Central Queensland Program) Instrument 2020 [F2020L00774]	Pre-feasibility Study on a Proposed Pumped Hydro-electric Power Plant in Central Queensland Program	\$2 million	Funding will be provided to Blue Hydro Project Pty Ltd to undertake a pre-feasibility study into the viability of a new pumped hydro-electric power plant in central Queensland.	Senate Environment and Communications Legislation Committee

Appendix A

Ongoing matters

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

Ministerial engagement

4.1 The committee is engaging with the relevant minister about the scrutiny issues raised by the instruments listed below. The list below also includes instruments on which a current notice of motion to disallow is in place following engagement with the relevant minister. Copies of the ministerial correspondence are available on the committee's website.¹

Instrument	Issue	Status
ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198 [F2020L00237]	Principle (j) exemptions to primary legislation	Seeking further advice from the assistant minister.
ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199 [F2020L00238]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	'Protective' notice of motion to disallow placed on 27/08/2020.
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]	Principle (d) consultation with persons affected	Seeking further advice from the minister. Notice of motion to disallow to be placed on 06/10/2020.
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight – deferral of sunseting	Seeking further advice from the minister. Notice of motion to disallow placed on 31/08/2020.
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Seeking advice from the minister.
Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 [F2020L00435]	Principle (k) parliamentary oversight	Notice of motion to disallow placed on 01/09/2020.

¹ See www.aph.gov.au/senate_sd/c.

Instrument	Issue	Status
Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020 [F2020L00870]	<p>Principle (c) delegation of administrative powers and functions</p> <p>Principle (h) evidentiary certificates</p> <p>Principle (h) immunity from liability</p> <p>Principle (i) availability of independent merits review</p> <p>Principle (j) significant penalties in delegated legislation</p> <p>Principle (j) significant matters in delegated legislation</p> <p>Principle (k) availability of accountability safeguards</p>	Seeking advice from the assistant minister.
Public Governance, Performance and Accountability Amendment (2020 Measures No. 3) Rules 2020 [F2020L00782]	Principle (j) significant matters in delegated legislation	Seeking advice from the minister.
Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020 [F2020L00907]	Principle (j) modification of primary legislation	Seeking advice from the Assistant Treasurer.

Agency engagement

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

Instrument	Issue	Status
Amendment to the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 (EC145) [F2020L00889]	<p>Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation</p> <p>Principle (f) incorporated materials freely accessible</p>	Seeking advice from the agency.
ASIC Corporations (Approval of Variation of March 2020 Banking Code of Practice) Instrument 2020/602 [F2020L00854]	<p>Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation</p> <p>Principle (f) incorporated materials freely accessible</p>	Seeking advice from the agency.
Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020 [F2020L00878]	<p>Principle (a) compliance with <i>Legislation Act 2003</i> – consultation</p> <p>Principle (d) consultation with persons affected</p>	Seeking advice from the agency.

Instrument	Issue	Status
CASA EX92/20 — Materials Flammability Airworthiness Standards (Medical Isolation Transportation Devices) Instrument 2020 [F2020L00796]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Seeking advice from the agency.
CASA EX98/20 — Design of Temporary Modifications or Repairs (Special Flight Permit) Instrument 2020 [F2020L00766]	Principle (i) availability of independent merits review	Seeking advice from the agency.
Child Care Subsidy Amendment (Coronavirus Response Measures No. 5) Minister’s Rules 2020 [F2020L00930]	Principle (f) incorporated materials freely accessible Principle (h) retrospective commencement	Seeking advice from the agency.
Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2020 [F2020L00934]	Principle (i) availability of independent merits review	Seeking advice from the agency.
Continence Aids Payment Scheme 2020 [F2020L00758]	Principle (i) availability of independent merits review	Committee considering response from the agency.
Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020 [F2020L00895]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Seeking advice from the agency.
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 6) 2020 [F2020L00921]	Principle (d) consultation with persons affected	Seeking advice from the agency.
Customs (Prohibited Imports) Amendment (Vaporiser Nicotine) Repeal Regulations 2020 [F2020L00860]	Principle (d) consultation with persons affected	Seeking advice from the agency.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2020 [F2020L00818]	Principle (d) consultation with persons affected	Seeking advice from the agency.
Higher Education (Designated Courses of Study) Specification 2020 [F2020L00924]	Principle (d) consultation with persons affected	Seeking advice from the agency.
Industrial Chemicals Charges (Customs) Regulations 2020 [F2020L00795]	Principle (j) unclear basis for determining fees	Seeking advice from the agency.
Industrial Chemicals Charges (General) Regulations 2020 [F2020L00797]		
Industrial Chemicals Charges (Excise) Regulations 2020 [F2020L00799]		

Instrument	Issue	Status
National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020 [F2020L00769]	Principle (i) availability of independent merits review	Seeking advice from the agency.
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 6) (PB 55 of 2020) [F2020L00841]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Seeking advice from the agency.
National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2020 (No. 6) (PB 60 of 2020) [F2020L00852]	Principle (f) incorporated materials freely accessible	
Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020 [F2020L00926]	Principle (h) reverse evidential burden of proof	Seeking advice from the agency.
Social Security (Coronavirus Economic Response— 2020 Measures No. 11) Determination 2020 [F2020L00765]	Principle (i) availability of independent merits review	Seeking advice from the agency.
Superannuation Guarantee (Administration) Amendment (Aged Care Retention Bonus) Regulations 2020 [F2020L00859]	Principle (d) consultation with persons affected	Seeking advice from the agency.

Appendix B

Concluded matters

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

Ministerial engagement

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

Instrument	Issue	Status
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	Principle (e) clarity of drafting Principle (j) significant penalties in delegated legislation	Concluded following response from the Attorney-General. The Attorney-General undertook to commence an inquiry into good faith obligations in Commonwealth legislation in response to the committee's scrutiny concerns. 'Protective' notice of motion withdrawn on 02/09/2020.
Narcotic Drugs (Licence Charges) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00901]	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.

Agency engagement

5.3 The committee has not concluded its examination of any instruments following informal correspondence with the relevant agencies via its secretariat.

¹ See www.aph.gov.au/senate_sdlc.

Appendix C

Undertakings

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

Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the <i>Water Act 2007</i> in response to the committee's scrutiny concerns.	11/09/2019
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]	The Minister for Infrastructure, Transport and Regional Development undertook to amend the Civil Aviation Safety Regulations 1998 in 2020 in response to the committee's scrutiny concerns.	07/11/2019
Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]	The Assistant Minister for Finance, Charities and Electoral Matters undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2019
	The Assistant Minister for Finance, Charities and Electoral Matters undertook to progress amendments to primary legislation in response to the committee's scrutiny concerns.	17/03/2020
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]	The Department of Veterans' Affairs undertook to amend the Repatriation Pharmaceutical Benefits Scheme [F2013L02009] and the MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012] to correct drafting errors.	28/01/2020
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 [F2019L01641]	The Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	14/02/2020

Instrument	Undertaking	Date of Undertaking
Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019 [F2019L01564]	The Minister for Agriculture, Drought and Emergency Management undertook to amend the instrument in response to the committee's scrutiny concerns.	14/05/2020
Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]	The Minister for Agriculture, Drought and Emergency Management undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/06/2020
Defence Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00120]	The Minister for Defence undertook to amend the instrument in response to the committee's scrutiny concerns.	01/07/2020
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00645]	The Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/07/2020
Industrial Chemicals (Fees and Charges) Rules 2020 [F2020L00704]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/08/2020
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	The Attorney-General undertook to commence an inquiry into good faith obligations in Commonwealth legislation in response to the committee's scrutiny concerns.	31/08/2020

Implemented undertakings

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

Instrument	Undertaking	Date implemented
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 5) (PB 46 of 2020) [F2020L00646]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	28/08/2020
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 4) (PB 37 of 2020) [F2020L00538]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	28/08/2020
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 4) (PB 33 of 2020) [F2020L00523]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	31/08/2020
Therapeutic Goods Legislation Amendment (Fees and Other Measures) Regulations 2020 [F2020L00720]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	31/08/2020

List of instruments in current monitor

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

Instrument	FRL No	Page
Amendment to the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 (EC145) *	[F2020L00889]	22
ASIC Corporations (Approval of Variation of March 2020 Banking Code of Practice) Instrument 2020/602*	[F2020L00854]	22
ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198	[F2020L00237]	21
ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199	[F2020L00238]	21
Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020*	[F2020L00878]	22
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020	[F2020L00579]	1, 21
Biosecurity Amendment (International Mail Fee) Regulations 2020	[F2020L00576]	28
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019	[F2019L01132]	27
CASA EX92/20 — Materials Flammability Airworthiness Standards (Medical Isolation Transportation Devices) Instrument 2020*	[F2020L00796]	23
CASA EX98/20 — Design of Temporary Modifications or Repairs (Special Flight Permit) Instrument 2020*	[F2020L00766]	23
Child Care Subsidy Amendment (Coronavirus Response Measures No. 4) Minister's Rules 2020*	[F2020L00802]	15
Child Care Subsidy Amendment (Coronavirus Response Measures No. 5) Minister's Rules 2020*	[F2020L00930]	15
Child Care Subsidy Amendment (Coronavirus Response Measures No. 5) Minister's Rules 2020*	[F2020L00930]	23
Commonwealth Scholarships Guidelines (Research) Amendment (No. 1) 2020*	[F2020L00934]	23

Instrument	FRL No	Page
Competition and Consumer (Industry Codes—Dairy) Regulations 2019	[F2019L01610]	5, 25, 28
Continence Aids Payment Scheme 2020	[F2020L00758]	23
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020	[F2020L00572]	11, 21
Coronavirus Economic Response Package (Deferral of Sunsetting—Treasury Portfolio Instruments) Determination 2020*	[F2020L00895]	23
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 5) 2020*	[F2020L00884]	15
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 6) 2020*	[F2020L00921]	23
Customs (Prohibited Imports) Amendment (Vaporiser Nicotine) Repeal Regulations 2020*	[F2020L00860]	23
Defence Amendment (2020 Measures No. 1) Regulations 2020	[F2020L00120]	28
Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019	[F2019L01564]	28
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020	[F2020L00702]	21
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 4) Regulations 2020*	[F2020L00816]	18
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 3) Regulations 2020*	[F2020L00781]	18
Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 1) Regulations 2020*	[F2020L00817]	18
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2020*	[F2020L00818]	19, 23
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 2) Regulations 2020*	[F2020L00792]	19
Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020	[F2020L00435]	21
Higher Education (Designated Courses of Study) Specification 2020*	[F2020L00924]	23

Instrument	FRL No	Page
Industrial Chemicals (Fees and Charges) Rules 2020	[F2020L00704]	28
Industrial Chemicals Charges (Customs) Regulations 2020*	[F2020L00795]	23
Industrial Chemicals Charges (Excise) Regulations 2020*	[F2020L00799]	23
Industrial Chemicals Charges (General) Regulations 2020*	[F2020L00797]	23
Industry Research and Development (Bankable Feasibility Study on High-Efficiency Low-Emissions Coal Plant in Collinsville Program) Instrument 2020*	[F2020L00772]	19
Industry Research and Development (Environmental Education Centres Program) Instrument 2020*	[F2020L00771]	20
Industry Research and Development (Pre-feasibility Study on a Proposed Pumped Hydro-electric Power Plant in Central Queensland Program) Instrument 2020*	[F2020L00774]	20
Narcotic Drugs (Licence Charges) Amendment (2020 Measures No. 1) Regulations 2020*	[F2020L00901]	16, 25
National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*	[F2020L00769]	24
National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2020 (No. 6) (PB 60 of 2020) *	[F2020L00852]	24
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 5) (PB 46 of 2020)	[F2020L00646]	29
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 4) (PB 37 of 2020)	[F2020L00538]	29
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 6) (PB 55 of 2020) *	[F2020L00841]	24
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 4) (PB 33 of 2020)	[F2020L00523]	29
Norfolk Island Continued Laws Amendment (Coronavirus Economic Response Measures) Rules 2020*	[F2020L00926]	24
Norfolk Island Continued Laws Amendment (Employment) Ordinance 2020*	[F2020L00870]	22
Paid Parental Leave Amendment (Flexibility Measures) Rules 2020*	[F2020L00837]	16

Instrument	FRL No	Page
Public Governance, Performance and Accountability Amendment (2020 Measures No. 3) Rules 2020*	[F2020L00782]	22
Public Governance, Performance and Accountability Amendment (Grant Rules for Corporate Commonwealth Entities) Rules 2020*	[F2020L00923]	16
Social Security (Coronavirus Economic Response—2020 Measures No. 11) Determination 2020*	[F2020L00765]	16, 24
Social Security (Coronavirus Economic Response—2020 Measures No. 11) Determination 2020* [F2020L00765]	[F2020L00765]	24
Superannuation Guarantee (Administration) Amendment (Aged Care Retention Bonus) Regulations 2020*	[F2020L00859]	24
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020	[F2020L00645]	28
Taxation Administration (Private Ancillary Fund) Guidelines 2019	[F2019L01227]	27
Therapeutic Goods Legislation Amendment (Fees and Other Measures) Regulations 2020	[F2020L00720]	29
Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020*	[F2020L00907]	22
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019	[F2019L01641]	27
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019	[F2019L01387]	27
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018	[F2018L01674]	27

Senator the Hon Concetta Fierravanti-Wells
Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation