

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

Monitor 14 of 2020

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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 19 disallowable legislative instruments registered on the Federal Register of Legislation between 28 September 2020 and 29 September 2020.

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

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

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

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

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

Chapter 1

Instruments raising significant scrutiny concerns

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

1.2 Where necessary, the committee may place a notice of motion to disallow an instrument contained in this chapter to emphasise its scrutiny concerns and to provide the Senate with additional time to consider the instrument with the benefit of the committee's comments. 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). Notice of motion to disallow given on 6 October 2020.

Overview

1.3 The instrument amends the Australian Postal Corporation (Performance Standards) Regulations 2019 to implement several 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/>.

1.4 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

1.5 The committee's technical scrutiny concerns about this instrument are detailed in *Delegated Legislation Monitor 10 of 2020*.³ The concerns focus on 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. The committee considered that consultation should be undertaken in relation to the instrument particularly given the significance of the measures and the broad scope of people and entities likely to be affected by the changes.

Actions to date

Initial correspondence

1.6 In June and July 2020, the committee wrote to the minister to seek his advice about the committee's scrutiny concerns.⁴ This correspondence is detailed in *Delegated Legislation Monitor 10 of 2020*. In summary, the minister advised that:

- the government consulted closely with Australia Post and that Australia Post regularly engages with its workforce and their representatives;
- the minister met with union representatives 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;
- the instrument will be reviewed later in 2020 to assess whether the measures are required until their specified end date of 30 June 2021; and
- 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.

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

3 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 10 of 2020*, pp. 1–4.

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

Subsequent correspondence

1.7 In *Delegated Legislation Monitor 10 of 2020*, the committee requested that the minister provide it 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. The committee placed a notice of motion to disallow the instrument and noted that the information provided by the minister in relation to future consultation on the instrument would inform the committee's consideration of whether to withdraw the notice of motion.

1.8 In a letter dated 6 October 2020, the minister advised that consultation on the instrument had commenced. The correspondence noted that the minister had written to representatives of the Australia Post workforce, Licenced Post Office franchises, large and small businesses, and the print industry to seek advice on the impacts of the temporary changes, whether those changes should remain in place until 30 June 2021, and the impact should the changes end earlier than planned.

1.9 The response further noted that the Senate Environment and Communications Legislation Committee tabled a report on 25 August 2020, recommending against the disallowance of the instrument. The minister also advised that the Communications, Electrical and Plumbing Union no longer harbours concerns about the changes. Finally, the minister explained that the government will respond to this report and to the two minority reports later this year and that he will provide the committee with a copy of the response at that time.

1.10 While noting the minister's detailed advice, the committee remained concerned to ensure that adequate consultation was being undertaken in relation to the measures implemented by the instrument. Accordingly, on 12 November 2020, the committee requested that the minister provide it with a further update on the progress of the consultation process, including any issues raised during the consultation, and any outcomes or action taken as a result of the consultation.

1.11 The minister responded in a letter dated 3 December 2020, advising that he has received 18 representations during the course of the consultation. The minister also noted that Australia Post has now begun consulting with consumers on the temporary changes and will provide the results of surveys to the government. In addition to considering the views of stakeholders, the minister further advised that the government is reviewing:

- letter and parcel volumes and delivery speeds, including whether Australia Post has met its prescribed performance standards under the relief;
- the impact on the Australia Post workforce; and
- other dependencies, such as developments in the aviation sector.

1.12 The minister undertook to advise the committee of the outcomes of the review when it has concluded.

Committee comment

1.13 The committee thanks the minister for this advice and for his constructive engagement with the committee on this issue.

1.14 In light of the minister's advice that consultation with a wide range of relevant stakeholders and consumers has commenced, and the minister's undertaking to advise the committee of the outcomes of the ongoing review of the temporary arrangements, the committee has concluded its examination of the instrument and resolved to withdraw the notice of motion to disallow the instrument.

Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020

FRL No.	F2020L00702 ⁵
Purpose	To repeal amendments made by the Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020, to remove a temporary modification of the access period for a proposed variation of an enterprise agreement from seven days to one day.
Authorising legislation	<i>Fair Work Act 2009</i>
Portfolio	Attorney-General's
Disallowance	15 sitting days after tabling (tabled in the Senate on 16 June 2020). Notice of motion to disallow given on 10 November 2020.

Overview

1.15 The instrument repeals amendments made by the Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020 (principal instrument). The principal instrument reduced the minimum period in which employees must have access to a copy of a proposed variation of an enterprise agreement, and before which employees must be notified of the details of the vote on the variation, from seven days to one day. The explanatory statement to the principal instrument notes that the measures were intended to be a time-limited change to enable employers and their employees to quickly respond to issues that may arise in response to the COVID-19 pandemic.⁶

Scrutiny concerns

Compliance with Legislation Act 2003 – consultation⁷

1.16 Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it complies with all legislative requirements. This includes the requirements of paragraphs 15J(2)(d) and (e) of the *Legislation Act 2003* (Legislation Act), which provide that the explanatory statement to an instrument must describe the nature of any consultation that was undertaken in relation to the

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

6 Explanatory statement, p. 2.

7 Scrutiny principle: Senate Standing Order 23(3)(a).

instrument or, if no consultation was undertaken, explain why no consultation was undertaken.

1.17 Despite these requirements, the original explanatory statement to the instrument did not provide any information about consultation. Consequently, it did not appear to comply with the technical requirements of paragraphs 15J(2)(d) and (e) of the Legislation Act.

Actions to date

Initial correspondence

1.18 In August and October 2020, the committee wrote to the minister to seek his advice about the committee's scrutiny concerns.⁸ This correspondence is detailed in *Delegated Legislation Monitor 12 of 2020* (Monitor 12 of 2020).⁹ In summary, the minister provided the following advice in response to the committee's scrutiny concerns:

- consultation was undertaken in relation to the principal instrument;
- the government considered it appropriate to bring forward the repeal of the principal instrument taking into account views publicly and privately expressed to the minister by representatives of the union movement and the business community;
- the minister was satisfied that appropriate consultation was undertaken in relation to the instrument; and
- the minister did not consider it necessary to amend the explanatory statement to the instrument as details in relation to the consultation undertaken in respect of the measure, including bringing forward the repeal, is already on the public record.

1.19 The committee placed a notice of motion to disallow the instrument on 10 November 2020 to provide additional time to correspond with the minister in relation to its technical scrutiny concerns.

Subsequent correspondence

1.20 In Monitor 12 of 2020, the committee detailed its outstanding scrutiny concerns regarding the instrument. The committee requested the minister's further advice as to why the explanatory statement to the instrument could not be amended to include the information provided by the minister with regard to consultation to ensure that it complies with the technical requirements of paragraphs 15J(2)(d) and (e) of the Legislation Act. The committee also resolved not to withdraw the

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

9 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 12 of 2020*, pp. 1-3.

notice of motion to disallow the instrument, noting that its scrutiny concerns had not been addressed.

1.21 The minister responded to the committee's comments on 27 November 2020. In his response, the minister undertook to amend the explanatory statement to the instrument to ensure that it contains information regarding consultation. The minister also provided the committee with a copy of the replacement explanatory statement.

Committee comment

1.22 The committee welcomes the minister's undertaking to amend the instrument and thanks the minister for his constructive engagement with the committee on this issue. The committee notes that this undertaking was implemented on 30 November 2020.

1.23 In light of the minister's implemented undertaking to amend the explanatory statement to the instrument, the committee has concluded its examination of the instrument and resolved to withdraw the notice of motion to disallow the instrument.

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

2.3 There are no instruments which the committee has resolved to draw to the attention of the Senate and the relevant legislation committee under standing order 23(4) in this *Delegated Legislation Monitor*.

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

Chapter 3

Scrutiny of Commonwealth expenditure

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

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

3.3 The committee did not identify any instruments registered between 28 September 2020 and 29 September 2020 which authorised Commonwealth expenditure pursuant to the FF(SP) Act or IRD Act.

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.

Appendix A

Ongoing matters

4.1 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

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

Instrument	Issue	Status
ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]	Principle (j) exemptions from primary legislation	Seeking further advice from the Treasurer.
ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Notice of motion to disallow placed on 07/12/2020.
ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 07/12/2020.
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 01/12/2020.
ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Seeking advice from the Treasurer.
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 30/11/2020.

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

Instrument	Issue	Status
Australian Prudential Regulation Authority (confidentiality) determination No.1 of 2020 [F2020L00945]	Principle (a) compliance with authorising legislation—compliance with legislative preconditions	Committee considering response. Notice of motion to disallow placed on 30/11/2020.
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]	Principle (i) availability of independent merits review Principle (j) significant matters in delegated legislation Principle (k) parliamentary oversight Principle (d) consultation with persons affected	Committee considering response. Notice of motion to disallow placed on 30/11/2020.
Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Mortgage Brokers) Regulations 2020 [F2020L01189]	Principle (j) significant matters in delegated legislation	Seeking advice from the Treasurer.
Social Security (Administration) – various instruments [F2020L01221] [F2020L01223] [F2020L01224] [F2020L01225] [F2020L01226]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation Principle (c) broad discretionary power Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the minister.
Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2019 [F2020L01141]	Principle (a) compliance with <i>Legislation Act 2003</i> – registration of instrument Principle (c) scope of administrative powers	Committee considering response.
Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020 [F2020L01061]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 07/12/2020.
Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028]	Principle (i) availability of independent merits review	Seeking further advice from the minister Notice of motion to disallow placed on 30/11/2020.

Agency engagement

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

Instrument	Issue	Status
Age Discrimination Regulations 2020 [F2020L01138]	Principle (g) adequacy of explanatory materials Principle (j) exemptions from primary legislation	Seeking further advice from the agency.
CASA EX132/20 — Licensing, and Operator Training and Checking (Extensions of Time Due to COVID-19) Exemptions Amendment Instrument 2020 (No. 3) [F2020L01202]	Principle (a) compliance with authorising legislation – compliance with legislative preconditions Principle (d) consultation with persons affected	Seeking advice from the agency.
Civil Aviation Order 95.10 (Exemption from provisions of the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1998 — microlight aeroplanes) Instrument 2020 [F2020L01242]	Principle (f) incorporation – access and use	Seeking advice from the agency.
Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020 [F2020L01172]	Principle (i) availability of independent merits review	Seeking further advice from the agency.
Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 [F2020L01194]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation Principle (g) adequacy of explanatory materials	Seeking advice from the agency.
Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) access and use	Seeking advice from the agency.
Health Insurance (Approvals for Eligible Collection Centres) Principles 2020 [F2020L01179]	Principle (d) consultation with persons affected Principle (i) availability of independent merits review	Seeking advice from the agency.
National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020 (PB 99 of 2020) [F2020L01208]	Principle (d) consultation with persons affected	Seeking advice from the agency.

Instrument	Issue	Status
Private Health Insurance (Complaints Levy) Rules 2020 [F2020L01195]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Seeking advice from the agency.
Public Governance, Performance and Accountability (Relevant Company) Amendment (2020 Measures No. 1) Rules 2020 [F2020L01234]	Principle (d) consultation	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
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]	Principle (d) adequacy of consultation	Concluded following response from the minister on 03/12/2020. The Minister for Communications, Cyber Safety and the Arts undertook to advise the committee of the outcomes of the government's review of the effect of the temporary arrangements set out in the instrument.
Coronavirus Economic Response Package (Deferral of Sunsetting—ASIO Special Powers Relating to Terrorism Offences) Determination 2020 [F2020L01134]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Concluded following response from the minister on 03/12/2020.
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020 [F2020L01165]	Principle (j) matters more appropriate for parliamentary enactment	Concluded following response from the Treasurer on 24/11/2020.
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Concluded following response from the minister on 27/11/2020. The minister amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.

¹ See www.aph.gov.au/senate_sd/c.

Instrument	Issue	Status
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	Principle (f) instrument subject to copyright	Concluded following response from the minister on 01/12/2020. The Minister for the Environment advised that the Reserve Bank of Australia undertook to amend the instrument in response to the committee's scrutiny concerns.
Social Security (Coronavirus Economic Response—2020 Measures No. 14) Determination 2020 [F2020L01093]	Principle (d) consultation with persons affected Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Concluded following response from the minister on 25/11/2020.

Agency engagement

5.3 The committee has not concluded its examination of any instruments in relation to which the committee has sought advice from the relevant agency via its secretariat.

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

Instrument	Undertaking	Date of Undertaking
Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/06/2020
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00645]	The Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/07/2020
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	The Attorney-General undertook to commence an inquiry into good faith obligations in Commonwealth legislation in response to the committee's scrutiny concerns.	31/08/2020
Amendment to the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 (EC145) [F2020L00889]	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/10/2020
Industrial Chemicals Charges (Customs) Regulations 2020 [F2020L00795] Industrial Chemicals Charges (General) Regulations 2020 [F2020L00797] Industrial Chemicals Charges (Excise) Regulations 2020 [F2020L00799]	The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	12/10/2020
Higher Education (Designated Courses of Study) Specification 2020 [F2020L00924]	The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/10/2020
Manual of Standards Part 173 Amendment Instrument 2020 (No. 1) [F2020L01078]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	22/10/2020
Continence Aids Payment Scheme 2020 [F2020L00758]	The Minister for Aged Care and Senior Australians undertook to amend the instrument in response to the committee's scrutiny concerns.	28/10/2020
National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020 [F2020L01055]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/11/2020

Instrument	Undertaking	Date of Undertaking
<p>Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]</p> <p>Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]</p>	<p>The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.</p>	16/11/2020
<p>Disability Care Load Assessment (Child) Determination 2020 [F2020L01025]</p>	<p>The Department of Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	18/11/2020
<p>Continence Aids Payment Scheme 2020 [F2020L00758]</p>	<p>The Minister for Aged Care and Senior Australians undertook to amend the instrument in response to the committee's scrutiny concerns.</p> <p>The Minister for Aged Care and Senior Australians undertook to progress amendments to the <i>National Health Act 1953</i> in response to the committee's scrutiny concerns.</p>	24/11/2020
<p>Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]</p>	<p>The Assistant Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.</p>	25/11/2020
<p>Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020 [F2020L01058]</p>	<p>The Australian Electoral Commission undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	27/11/2020
<p>Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]</p>	<p>The Minister for the Environment advised that the Reserve Bank of Australia undertook to amend the instrument in response to the committee's scrutiny concerns.</p>	01/12/2020
<p>Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]</p>	<p>The Minister for Communications, Cyber Safety and the Arts undertook to advise the committee of the outcomes of the government's review of the effect of the temporary arrangements set out in the instrument.</p>	03/12/2020

Implemented undertakings

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

Instrument	Undertaking	Date implemented
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]	The Attorney-General amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	30/11/2020
Australian Defence Force Superannuation Amendment (Trust Deed—Contributions) Instrument 2020 [F2020L00878]	The Department of Defence amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2020

List of instruments in current monitor

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

Instrument	Page
Age Discrimination Regulations 2020 [F2020L01138]	15
Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]	21
Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]	21
Amendment to the list of threatened ecological communities under section 181 of the Environment Protection and Biodiversity Conservation Act 1999 (EC145) [F2020L00889]	20
ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]	13
ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]	13
ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]	13
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]	13
ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199]	13
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]	13
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]	1-4, 17, 21
Australian Prudential Regulation Authority (confidentiality) determination No.1 of 2020 [F2020L00945]	14

Instrument	Page
Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]	20
CASA EX132/20 — Licensing, and Operator Training and Checking (Extensions of Time Due to COVID-19) Exemptions Amendment Instrument 2020 (No. 3) [F2020L01202]	15
Civil Aviation Order 95.10 (Exemption from provisions of the Civil Aviation Regulations 1988 and the Civil Aviation Safety Regulations 1998 — microlight aeroplanes) Instrument 2020 [F2020L01242]	15
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	20
Continance Aids Payment Scheme 2020 [F2020L00758]	20, 21
Coronavirus Economic Response Package (Deferral of Sunsetting—ASIO Special Powers Relating to Terrorism Offences) Determination 2020 [F2020L01134]	17
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 8) 2020 [F2020L01165]	17
Coronavirus Economic Response Package (Payments and Benefits) Higher Rate Determination 2020 [F2020L01172]	15
Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 [F2020L01194]	15
Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]	15
Disability Care Load Assessment (Child) Determination 2020 [F2020L01025]	21
Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020 [F2020L01058]	21
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]	5-7, 17, 22
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]	14

Instrument	Page
Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers) (Mortgage Brokers) Regulations 2020 [F2020L01189]	14
Health Insurance (Approvals for Eligible Collection Centres) Principles 2020 [F2020L01179]	15
Higher Education (Designated Courses of Study) Specification 2020 [F2020L00924]	20
Industrial Chemicals Charges (Customs) Regulations 2020 [F2020L00795]	20
Industrial Chemicals Charges (Excise) Regulations 2020 [F2020L00799]	20
Industrial Chemicals Charges (General) Regulations 2020 [F2020L00797]	20
Manual of Standards Part 173 Amendment Instrument 2020 (No. 1) [F2020L01078]	20
National Health (Commonwealth Price - Pharmaceutical benefits supplied by private hospitals) Determination 2020 (PB 99 of 2020) [F2020L01208]	15
National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020 [F2020L01055]	20
Private Health Insurance (Complaints Levy) Rules 2020 [F2020L01195]	16
Public Governance, Performance and Accountability (Relevant Company) Amendment (2020 Measures No. 1) Rules 2020 [F2020L01234]	16
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	18, 21
Social Security (Administration) – various instruments [F2020L01221] [F2020L01223] [F2020L01224] [F2020L01225] [F2020L01226]	14
Social Security (Coronavirus Economic Response—2020 Measures No. 14) Determination 2020 [F2020L01093]	18
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00645]	20

Instrument	Page
Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]	19
Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]	21
Telecommunications (Interception and Access) (Communications Access Co-ordinator) Instrument 2019 [F2020L01141]	14
Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020 [F2020L01061]	14
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 [F2019L01641]	19
Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028]	14
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]	19
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	19

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