

The Senate

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Standing  
Committee for the  
Scrutiny of Delegated  
Legislation

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Delegated Legislation Monitor

Monitor 2 of 2020

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Senator Raff Ciccone	Victoria, ALP
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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.<sup>1</sup> The role of the committee is to examine the technical qualities of all legislative instruments subject to disallowance, disapproval or affirmative resolution of the Senate, 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

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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](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*.<sup>2</sup>

### **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.<sup>3</sup>

### **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.<sup>4</sup>

### **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;

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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](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](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.<sup>5</sup>

## **General information**

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

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

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

## **Instruments considered in this monitor**

The committee examined 141 disallowable legislative instruments registered on the Federal Register of Legislation between 4 December 2019 and 16 January 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.

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5 See [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Guidelines](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](http://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](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](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.

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

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<sup>1</sup> See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).



## Chapter 2

### Matters of interest to the Senate

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

2.2 This chapter identifies the instruments which the committee has resolved to draw to the attention of the Senate and the relevant legislation committee under standing order 23(4), with the exception of instruments which specify Commonwealth expenditure, which are listed in Chapter 3.<sup>1</sup>

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Instrument	Purpose	Portfolio committee
<b>Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]</b>	To establish a mandatory Dairy Code of Conduct that sets out a regulatory scheme for enforceable minimum standards of conduct for business practices between dairy farmers and processors of milk.	Senate Rural and Regional Affairs and Transport Legislation Committee

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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](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.<sup>1</sup>

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.<sup>2</sup>

3.3 This chapter identifies the expenditure specified in legislative instruments registered between 4 December 2019 and 16 January 2020.

3.4 The committee has resolved to write to 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.

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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](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Scrutiny_of_Commonwealth_expenditure).

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
<b>Financial Framework (Supplementary Powers) Amendment (Agriculture Measures No. 2) Regulations 2019 [F2019L01638]</b>	Promoting Sustainable Fisheries and Combating Illegal, Unreported and Unregulated Fishing in Southeast Asia and Pacific Islands	\$14.4 million over four years from 2019-20.	The Promoting Sustainable Fisheries and Combating Illegal, Unreported and Unregulated Fishing in Southeast Asia and Pacific Islands Program will provide technical assistance to Southeast Asian countries to promote sustainable fisheries and increase their capacity to counter illegal, unreported and unregulated fishing.	Senate Rural and Regional Affairs and Transport Legislation Committee
	Fisheries Habitat Restoration (FHR) Program	\$8 million over four years from 2019-20.	The FHR Program will provide funding to organisations, which may include non-government organisations, fishing clubs and local land care groups, to deliver fisheries habitat restoration projects.	Senate Rural and Regional Affairs and Transport Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Education Measures No. 5) Regulations 2019 [F2019L01639]</b>	Grant to News Corp—Online Spelling Bee	\$345,240 one-off grant in 2019-20.	Funding will be provided to News Corp Australia Pty Limited to undertake a website build for <i>Kids News: the PM's Spelling Bee</i> .	Senate Education and Employment Legislation Committee
	Future Leaders Program	\$7.5 million over two years from 2020-21.	Under the Future Leaders Program funding will be provided to Teach For Australia to train high achieving teachers and high quality school leaders in rural, remote or disadvantaged schools.	Senate Education and Employment Legislation Committee
	Rural Inspire Program	\$2 million over three years from 2019-20.	Under the Rural Aspire Program funding will be provided to Country Education Partnership to provide support to Year 11 students in rural and remote schools.	Senate Education and Employment Legislation Committee

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
	Online tertiary learning repository (TLR) services	\$2.5 million over four years from 2019-20.	The TLR will be a centralised, digital platform that will provide higher education students with details of their achievements while undertaking an Australian Qualifications Framework qualification.	Senate Education and Employment Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Employment, Skills, Small and Family Business Measures No. 5) Regulations 2019 [F2019L01637]</b>	Commonwealth Scholarships Program for Young Australians	\$8.2 million over three years from 2019-20.	The Commonwealth Scholarships Program for Young Australians will provide around 400 scholarships to eligible VET students in ten regions with above average levels of youth unemployment (Grafton, Gosford, Alice Springs, Maryborough, Townsville, Port Pirie, Burnie, Shepparton, Wanneroo and Armadale). The scholarships will be available to students studying a course which leads to an eligible occupation in areas of current skill shortage and in growth industries.	Senate Education and Employment Legislation Committee
	Harvest Trail Service— Collaborating with Industry	\$1 million over two years from 2020-21.	Under this program horticulture and agriculture industry peak bodies will be invited to submit ideas aimed at promoting seasonal work opportunities to local job seekers and encouraging growers to hire Australian job seekers.	Senate Education and Employment Legislation Committee

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
	Jobs and Education Data Infrastructure (JEDI)	\$28.2 million over four years from 2018-19.	The JEDI program will involve the development of a data engine to bring together multiple sources of traditional and real-time data on skills demand and supply.	Senate Education and Employment Legislation Committee
	National Careers Institute (NCI) Grants Program	\$36.3 million over four years from 2019-20.	The NCI grants program will provide funding for collaborative, locally-based partnerships between careers' stakeholders. Funding may be provided to build career advice capacity in schools, support work experience opportunities, and increase career advisor awareness of new and emerging industries.	Senate Education and Employment Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Environment and Energy Measures No. 3) Regulations 2019 [F2019L01630]</b>	National Product Stewardship Investment Fund (NPSIF)	\$20 million over four years from 2019-20.	The NPSIF will provide grant funding to support the establishment of new product stewardship schemes and improve recycling rates of existing schemes. Examples of product stewardship activities include recovering valuable resources that can be used to make new products.	Senate Environment and Communications Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 2) Regulations 2019 [F2019L01631]</b>	Pacific Secondary School Scholarships (PSSS) Program	\$66 million over four years from 2019-20.	The PSSS program will provide scholarships for education, accommodation and related welfare support to eligible Pacific island students to undertake study in Australian secondary schools.	Senate Foreign Affairs, Defence and Trade Legislation Committee

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2019 [F2019L01640]</b>	Grants for support relating to stillbirth, miscarriage and newborn death	\$1.3 million over two years from 2019-20.	Funding will be provided to SANDS to pilot in-hospital and at-home support services for women and their families after a stillbirth, miscarriage or newborn death at five hospital sites in New South Wales, Victoria, Queensland, Western Australia, and South Australia.	Senate Community Affairs Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2019 [F2019L01642]</b>	Grant to DP Jones Nursing Home	The explanatory statement to the instrument states that 'the funding amount will be commercial-in-confidence, and not suitable for publication'.	Funding will be provided to the administrator of the DP Jones Nursing Home in Murchison, Victoria, to enable the administrator to continue operating the facility while they seek to finalise the sale of the facility to a new provider and to assist with the cost of the sale.	Senate Community Affairs Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 1) Regulations 2019 [F2019L01632]</b>	Community Languages Multicultural Grants Program	\$12.6 million over three years from 2019-20.	The Community Languages Multicultural Grants Program will support not-for-profit community language schools through capacity grants (to help cover operating costs such as teaching materials, staff wages and new educational equipment), and project grants (to develop teaching materials or to run training activities to benefit community language schools).	Senate Legal and Constitutional Affairs Legislation Committee

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
<b>Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Cities and Regional Development Measures No. 2) Regulations 2019 [F2019L01629]</b>	Regional Airports Program	\$100 million over four years from 2019-20.	The Regional Airports Program will provide financial assistance to the owners and operators of regional airports to undertake aviation safety and access work.	Senate Rural and Regional Affairs and Transport Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 6) Regulations 2019 [F2019L01628]</b>	Seniors Connected—Phone Support	Approximately \$1 million per year over four years from 2019-20.	Funding will be provided to Friends for Good to expand their phone support service 'Friend Line' from three days a week to seven days a week in Sydney, Melbourne, Brisbane, Perth and Adelaide.	Senate Community Affairs Legislation Committee

# Appendix A

## Ongoing matters

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

### Ministerial engagement

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

Instrument	Issue	Status
<b>Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules 2019 [F2019L01684]</b>	Principle (c) scope of administrative powers	Seeking advice from the minister.
<b>Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]</b>	Principle (e) unclear drafting Principle (j) significant penalties Principle (k) parliamentary oversight	Seeking advice from the minister.
<b>Competition and Consumer Amendment (Australian-made Complementary Medicines) Regulations 2019 [F2019L01627]</b>	Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the minister.
<b>Corporations Amendment (Design and Distribution Obligations) Regulations 2019 [F2019L01626]</b>	Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the Treasurer.
<b>Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019 [F2019L01564]</b>	Principle (k) automated decision-making	Seeking advice from the minister.
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2019 [F2019L01642]</b>	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Seeking advice from the minister.

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<sup>1</sup> See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

Instrument	Issue	Status
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 30 of 2019 [F2019L01196]</b>	Principle (c) merits review	Seeking further advice from the assistant minister.  'Protective' notice of motion to disallow was placed on 03/12/2019.
<b>Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Rules 2019 [F2019L01494]</b>	Principle (c) merits review	Seeking advice from the assistant minister.
<b>National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019) [F2019L01542]</b>	Principle (a) compliance with authorising legislation  Principle (c) scope of administrative powers	Seeking advice from the minister.
<b>Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]</b>	Principle (a) consultation  Principle (c) merits review	Seeking further advice from the assistant minister.  'Protective' notice of motion was placed on 05/12/2019.
<b>Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019 [F2019L01526]</b>	Principle (d) significant matters in delegated legislation	Seeking advice from the 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
<b>ASIC Corporations (Hawking-Life Risk Insurance and Consumer Credit Insurance) Instrument 2019/839 [F2019L01570]</b>	Principle (g) adequacy of explanatory materials Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the agency.
<b>Aviation Transport Security Amendment (Security Controlled Airports) Regulations 2019 [F2019L01656]</b>	Principle (g) adequacy of explanatory materials Principle (h) privacy Principle (k) parliamentary oversight	Seeking advice from the agency.
<b>Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019 [F2019L01621]</b>	Principle (i) availability of independent review Principle (h) reversal of evidential burden of proof Principle (h) privacy	Seeking advice from the agency.
<b>Export Control (Tariff Rate Quotas) Order 2019 [F2019L01652]</b>	Principle (i) availability of independent review	Seeking advice from the agency.
<b>Financial Framework (Supplementary Powers) Amendment (Environment and Energy Measures No. 3) [Regulations 2019 [F2019L01630]</b>	Principle (b) constitutional validity	Seeking advice from the agency.
<b>Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019 [F2019L01699]</b>	Principle (d) consultation Principle (i) availability of independent review	Seeking advice from the agency.
<b>Marine Order 97 (Marine pollution prevention — air pollution) Amendment Order (No 2) 2019 [F2019L01678]</b>	Principle (e) effect of drafting error	Seeking advice from the agency.
<b>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 12) [F2019L01688]</b>	Principle (g) adequacy of explanatory materials	Seeking advice from the agency.
<b>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2019 (No. 12) (PB 104 of 2019) [F2019L01690]</b>		
<b>National Health (IVF Program) Special Arrangement Amendment Instrument 2019 (No. 2) (PB 108 of 2019) [F2019L01692]</b>		

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>National Health (Supplies of out-patient medication) Determination 2019 (No. 2) (PB 110 of 2019) [F2019L01703]</b>	Principle (a) documents incorporated by reference	Seeking advice from the agency.
<b>Social Security Legislation Amendment (2019 Measures No. 1) Determination 2019 [F2019L01603]</b>	Principle (i) availability of independent review	Seeking advice from the agency.
<b>Superannuation (Unclaimed Money and Lost Members) Regulations 2019 [F2019L01617]</b>	Principle (g) adequacy of explanatory materials	Seeking advice from the agency.
<b>Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 [F2019L01641]</b>	Principle (e) unclear drafting Principle (g) adequacy of explanatory materials Principle (j) exemptions from primary legislation	Seeking advice from the agency.
<b>Taxation Administration (Tax Debt Information Disclosure) Declaration 2019 [F2019L01687]</b>	Principle (j) matters more appropriate for parliamentary enactment	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.<sup>1</sup>

Instrument	Issue	Status
<b>Broadcasting Services (Transmitter Access) Regulations 2019 [F2019L01248]</b>	Principle (b) privilege against self-incrimination  Principle (d) significant matters in delegated legislation	Concluded following response from the minister on 06/02/2020.  The minister undertook to amend the explanatory statement to the instrument.  'Protective' notice of motion to disallow was placed on 05/12/2019.
<b>CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]</b>	Principle (d) continuing exemption	Concluded following response from the minister on 03/02/2020.  The minister undertook to progress amendments the Civil Aviation Safety Regulations 1998 for completion in mid-2020.  'Protective' notice of motion to disallow was placed on 14/11/2019.
<b>Migration Amendment (Subclass 600 and 870 Visas) Regulations 2019 [F2019L01653]</b>	Principle (i) availability of independent review	Concluded following advice from the minister on 12/12/2019.

#### Agency engagement

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

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1 See [www.aph.gov.au/senate\\_sdlc](http://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
<b>Telecommunications (Carrier Licence Exemption - Trial Network Units) Determination 2019 [F2019L00317]</b>  <b>Telecommunications (Carrier Licence Exemption – Supply of Carriage Services to Visitors) Determination 2019 [F2019L00318]</b>	The Department of Communications and the Arts undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	03/09/2019
<b>Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]</b>	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the <i>Water Act 2007</i> in response to the committee's scrutiny concerns.	11/09/2019
<b>Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2019 [F2019L01156]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	02/10/2019
<b>ASIC Corporations (Amendment) Instrument 2019/784 [F2019L01206]</b>	The Australian Securities and Investment Corporation undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/10/2019
<b>National Museum of Australia Regulations 2019 [F2019L01273]</b>	The Department of Communications and the Arts undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	01/11/2019

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]</b>	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
<b>CASA EX70/19 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019 [F2019L01414]</b>	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	27/11/2019
<b>Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]</b>	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
<b>Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019 [F2019L01159]</b>	The eSafety Commissioner undertook to amend the explanatory statement to the instrument in response to the committee's concerns.	17/12/2019
<b>Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]</b>	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	19/12/2019
	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
<b>Telecommunications (Emergency Call Service) Determination 2019 [F2019L01509]</b>	The Australian Communications and Media Authority undertook to amend the instrument and the explanatory statement to the instrument in response to the committee's scrutiny concerns.	23/12/2019
		15/01/2020
<b>Health Insurance (Bonded Medical Program) Rule 2020 [F2019L01513]</b>	The Department of Health undertook to amend the instrument in response to the committee's scrutiny concerns.	15/01/2020
<b>Broadcasting Services (Transmitter Access) Regulations 2019 [F2019L01248]</b>	The Minister for Communications, Cyber Safety and the Arts undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/02/2020

## Implemented undertakings

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

<b>Instrument</b>	<b>Undertaking</b>	<b>Date implemented</b>
<b>Crimes Legislation Amendment (2019 Measures No. 1) Regulations 2019 [F2019L01004]</b>	The Attorney-General's Department amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/02/2020
<b>Hearing Services Program (Voucher) Instrument 2019 [F2019L00969]</b>	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/02/2020
<b>Other Grants Guidelines (Education) Amendment (No.1) 2019 [F2019L01333]</b>	The Minister for Education repealed and replaced the instrument with the Other Grants Guidelines (Education) Amendment (No. 2) 2019 [F2019L01701] in response to the committee's scrutiny concerns.	23/12/2019



## List of instruments in current monitor

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

Instrument	FRL No	Page
*Aged Care Quality and Safety Commission Amendment (Integration of Functions) Rules 2019	[F2019L01684]	11
ASIC Corporations (Amendment) Instrument 2019/784	[F2019L01206]	17
*ASIC Corporations (Hawking-Life Risk Insurance and Consumer Credit Insurance) Instrument 2019/839	[F2019L01570]	12
*Aviation Transport Security Amendment (Security Controlled Airports) Regulations 2019	[F2019L01656]	12
Broadcasting Services (Transmitter Access) Regulations 2019	[F2019L01248]	15, 18
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019	[F2019L01132]	15, 18
CASA EX70/19 — Implementation of Drug and Alcohol Management Plans (Non-DAMP Organisations) Instrument 2019	[F2019L01414]	18
*Civil Aviation Legislation Amendment (Parts 103, 105 and 131) Regulations 2019	[F2019L01621]	13
*Competition and Consumer (Industry Codes—Dairy) Regulations 2019	[F2019L01610]	3, 11
*Competition and Consumer Amendment (Australian-made Complementary Medicines) Regulations 2019	[F2019L01627]	11
*Corporations Amendment (Design and Distribution Obligations) Regulations 2019	[F2019L01626]	11
Crimes Legislation Amendment (2019 Measures No. 1) Regulations 2019	[F2019L01004]	19
Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019	[F2019L01564]	11
*Export Control (Tariff Rate Quotas) Order 2019	[F2019L01652]	13

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
*Financial Framework (Supplementary Powers) Amendment (Agriculture Measures No. 2) Regulations 2019	[F2019L01638]	6
*Financial Framework (Supplementary Powers) Amendment (Education Measures No. 5) Regulations 2019	[F2019L01639]	6-7
Financial Framework (Supplementary Powers) Amendment (Education Measures No. 2) Regulations 2019	[F2019L01156]	17
*Financial Framework (Supplementary Powers) Amendment (Employment, Skills, Small and Family Business Measures No. 5) Regulations 2019	[F2019L01637]	7-8
*Financial Framework (Supplementary Powers) Amendment (Environment and Energy Measures No. 3) Regulations 2019	[F2019L01630]	8, 13
*Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 2) Regulations 2019	[F2019L01631]	8
*Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2019	[F2019L01640]	9
*Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2019	[F2019L01642]	9, 11
*Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 1) Regulations 2019	[F2019L01632]	9
*Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Cities and Regional Development Measures No. 2) Regulations 2019	[F2019L01629]	10
*Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 6) Regulations 2019	[F2019L01628]	10
Financial Sector (Collection of Data) (reporting standard) determination No. 30 of 2019	[F2019L01196]	12
Health Insurance (Bonded Medical Program) Rule 2020	[F2019L01513]	18
Hearing Services Program (Voucher) Instrument 2019	[F2019L00969]	19
*Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019	[F2019L01699]	13
Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Rules 2019	[F2019L01494]	12
*Marine Order 97 (Marine pollution prevention — air pollution) Amendment Order (No 2) 2019	[F2019L01678]	13
Migration Amendment (Subclass 600 and 870 Visas) Regulations 2019	[F2019L01653]	15

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
*National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2019 (No. 12)	[F2019L01688]	13
*National Health (IVF Program) Special Arrangement Amendment Instrument 2019 (No. 2) (PB 108 of 2019)	[F2019L01692]	13
*National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2019 (No. 12) (PB 104 of 2019)	[F2019L01690]	13
*National Health (Supplies of out-patient medication) Determination 2019 (No. 2) (PB 110 of 2019)	[F2019L01703]	14
National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019)	[F2019L01542]	12
National Museum of Australia Regulations 2019	[F2019L01273]	17
Other Grants Guidelines (Education) Amendment (No.1) 2019	[F2019L01333]	19
Quality of Care Amendment (Minimising Use of Restraints) Principles 2019	[F2019L00511]	19
*Social Security Legislation Amendment (2019 Measures No. 1) Determination 2019	[F2019L01603]	13
*Superannuation (Unclaimed Money and Lost Members) Regulations 2019	[F2019L01617]	13
Taxation Administration (Private Ancillary Fund) Guidelines 2019	[F2019L01227]	12, 18
*Taxation Administration (Tax Debt Information Disclosure) Declaration 2019	[F2019L01687]	14
Telecommunications (Carrier Licence Exemption – Supply of Carriage Services to Visitors) Determination 2019	[F2019L00318]	17
Telecommunications (Carrier Licence Exemption - Trial Network Units) Determination 2019	[F2019L00317]	17
Telecommunications (Emergency Call Service) Determination 2019	[F2019L01509]	18
Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019	[F2019L01159]	18
Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Regulations 2019	[F2019L01526]	12
*Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019	[F2019L01641]	13

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<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019	[F2019L01387]	18
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018	[F2018L01674]	17

**Senator the Hon Concetta Fierravanti-Wells  
Chair**