

The Senate

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Standing  
Committee for the  
Scrutiny of Delegated  
Legislation

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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.<sup>1</sup> 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

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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 108 disallowable legislative instruments registered on the Federal Register of Legislation between 29 May 2020 and 18 June 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 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.

## Competition and Consumer (Industry Codes—Dairy) Regulations 2019

<b>FRL No.</b>	<a href="#">F2019L01610</a> <sup>1</sup>
<b>Purpose</b>	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).
<b>Authorising legislation</b>	<i>Competition and Consumer Act 2010</i>
<b>Portfolio</b>	Treasury
<b>Disallowance</b>	15 sitting days after tabling (tabled in the Senate on 4 February 2020). Notice of motion to disallow given on 14 May 2020.

### Overview

1.3 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).

1.4 The committee has engaged repeatedly with the minister in relation to this instrument via written correspondence and a private briefing, as detailed below. In addition to the scrutiny concerns raised with the minister, the committee drew the instrument to the attention of the Senate and the Senate Rural and Regional Affairs

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

and Transport Legislation Committee on the basis that it appears to implement significant elements of a regulatory scheme, as per standing order 23(4).<sup>2</sup>

## Scrutiny concerns

### ***Unclear drafting;*<sup>3</sup> *significant penalties*<sup>4</sup>**

1.5 Senate standing order 23(3)(j) requires the committee to scrutinise each legislative instrument as to whether it contains matters more appropriate for parliamentary enactment. This includes where an instrument imposes significant penalties. In addition, since December 2019, Senate standing order 23(3)(e) has required the committee to scrutinise each legislative instrument as to whether its drafting is defective or unclear. This is the first opportunity that the committee has had to scrutinise an industry code against this new scrutiny principle.

1.6 Subsection 11(1) of the instrument provides that a processor:

must at all times deal with farmers in good faith, within the meaning of the unwritten law as it exists from time to time, in relation to the supply of milk.

1.7 Subsection 11(2) imposes a mirror obligation on farmers in relation to their dealings with processors. 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.

1.8 Subsection 11(4) provides a non-exhaustive list of factors which 'may' be taken into account in determining whether a processor or farmer has acted in good faith. However, subsection 11(5) of the instrument clarifies that this list does not limit subsections 11(1) and 11(2).

1.9 As a legislative scrutiny committee, the committee does not express a view as to the policy merits or otherwise of this provision. However, as a matter of technical scrutiny, the committee's longstanding view is that offences and civil penalty provisions should be drafted with sufficient clarity to enable persons and entities to understand their obligations and the consequences of non-compliance. This is consistent with fundamental rule of law principles.

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2 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 2 of 2020* (12 February 2020), p. 3.

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

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

## **Actions to date**

### ***Initial correspondence***

1.10 Between February and April 2020 the committee wrote twice to the minister to seek his initial advice about the committee's scrutiny concerns.

1.11 The committee's first letter to the minister on 13 February 2020 outlined its concerns that breach of the insufficiently defined good faith provision may give rise to civil penalties and requested the minister's advice as to whether the instrument could be amended to ensure that the scope of the civil penalty provisions is limited by terms defined in written law.<sup>5</sup> In doing so, the committee stated its view that offences and civil penalty provisions should be drafted with sufficient clarity to enable persons and entities to understand their obligations and the consequences of non-compliance.

1.12 In his response of 24 February 2020 the minister advised that defining good faith would undermine the instrument's objectives and purpose, and would be inconsistent with similar industry codes.<sup>6</sup> He further explained that the non-exhaustive list of factors which may be considered in determining what constitutes good faith provides guidance as to the scope of the relevant provisions whilst allowing for consistency with the common law as it evolves.

1.13 On 3 April 2020 the committee sought the minister's further advice as to why it was considered necessary and appropriate to impose civil penalties for non-compliance with a term undefined in the written law when other industry codes have aimed to promote honest and fair dealings with other parties without recourse to civil penalty provisions.<sup>7</sup> Further, the committee explained that consistency with other laws (including other industry codes) is not, of itself, a sufficient justification for undermining the rule of law principle of legal certainty.

1.14 The minister's response, dated 17 April 2020, reiterated the minister's view of the policy merits of applying civil penalties to good faith provisions not rigidly defined in the instrument. In particular, the minister noted that the way good faith is drafted in the instrument allows for effective enforcement of the dairy code and allows for the application of the code to evolve with the common law. The minister explained that in addition to the Dairy Code prescribed by this instrument, the Horticulture and Franchise Codes also contain civil penalties for breaches of good faith provisions.

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

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

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

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

### ***Private briefing***

1.16 On 21 May 2020 the committee wrote to the minister to request a private briefing with relevant departmental officials to address the committee's unresolved scrutiny concerns in relation to the instrument.

1.17 The committee subsequently met with officials from the Department of Agriculture, Water and Environment, and the Treasury, on 12 June 2020. Later that day the committee wrote to the minister with a list of questions arising from the private briefing. Among other matters, the committee requested the minister's advice as to 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.

1.18 The minister responded to the questions arising from the committee's private briefing in a letter dated 18 June 2020. The minister reiterated his view that the good faith provisions in the instrument are appropriate. In this regard, the minister noted that he considers the list of factors in subsection 11(4), which was developed in consultation with industry stakeholders, provides sufficient guidance as to the meaning of 'good faith'. The minister further advised that expressly defining the circumstances in which the civil penalty provisions apply would unduly restrict those provisions, and risk permitting conduct that may not be considered to be in good faith by evolving common law standards.

1.19 The minister also suggested that the committee may wish to seek further information from the Attorney-General and the Treasurer.

### ***Subsequent correspondence***

1.20 On 22 July 2020 the committee sent a request for further advice to the minister, the Attorney-General and the Treasurer ('the Ministers'). The committee reiterated its concerns that a significant penalty may be imposed on a farmer or processor if they breach the obligations to deal with each other in good faith 'within the meaning of the unwritten law as in force from time to time'. The committee restated its view was that this obligation remains unclear and subsection 11(4) of the instrument does not provide the clarity and certainty required of civil penalty and offence provisions. The committee reiterated its concerns that the factors in subsection 11(4) are non-exhaustive and the provision itself is non-binding.

1.21 The committee noted the policy rationale provided for the good faith provisions in the instrument but again requested that the minister amend subsection 11(4) to specify factors which must be taken into account when determining a party's good faith, in light of its ongoing scrutiny concerns. The

committee also expressed broader concerns about the systemic use of undefined good faith provisions in industry codes.

1.22 The Ministers responded in a joint letter dated 18 August 2020 which reiterated their view that the provision as drafted is fit for purpose. The Ministers stated that to modify the provision by including an exhaustive list of factors to be considered may create uncertainty and narrow the protections provided. They also explained that they consider the principle of good faith to have a well understood common law meaning, and that providing additional detail in an instrument may create the potential for uncertainty where common law concepts diverge from the concepts used in statute.

1.23 The Ministers provided numerous examples of primary legislation which impose civil or criminal penalties for breaches of good faith provisions. The Ministers also cited subsection 84A(3) of the National Consumer Credit Protection Regulations 2010 and subsection 26(2) of the Air Services Regulations 2019 as examples of good faith provisions in delegated legislation. The committee considers, however, that the examples of delegated legislation provided can be distinguished from section 11 of the instrument in nature and scope. For example, subsection 84A(3) of the National Consumer Credit Protection Regulations 2010 specifies that the market value of a reverse mortgaged property is not to be reduced as a result of the sale not being conducted in good faith, which, unlike this instrument, does not impose obligations on parties.

1.24 The committee does not express a view as to the examples of good faith obligations in primary legislation cited by the Ministers, as this falls beyond the scope of the committee's role and is a matter for Parliament itself to consider in enacting legislation. In addition, the committee considers that the existence of similar provisions in existing legislation does not, of itself, justify the continuation of a particular drafting approach in future legislation.

### **Committee comment**

1.25 In the absence of an undertaking by the Ministers to amend the instrument, the committee remains concerned that the civil penalty provisions in section 11 of the instrument lack the clarity necessary to enable persons and entities to understand their obligations and the consequences of non-compliance. In particular, the committee considers that it is important for farmers on the ground to be able to understand their rights and obligations by reading the text on the face of the instrument, without the need to also understand nebulous common law concepts of good faith. Whilst the Ministers have provided a number of policy justifications for this approach, the Senate requires this committee to identify, and where necessary report on such technical scrutiny concerns in performing its technical legislative scrutiny role under standing order 23.

1.26 More broadly, the committee considers that the examples provided by the Ministers of good faith obligations in other Commonwealth laws raise 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. Such concerns extend beyond the scope of this committee to the extent that they relate to primary legislation and matters of policy, rather than technical legislative scrutiny.

**1.27 Noting that the instrument raises complex, systemic issues relevant to both delegated and primary legislation, the committee requests 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.**

**1.28 The Attorney-General's response will assist the committee in determining whether to withdraw the notice of motion to disallow the instrument, placed by the Chair on 14 May 2020, which must be considered by the Senate by 3 September 2020.**

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

<b>FRL No.</b>	<a href="#">F2020L00572</a> <sup>1</sup>
<b>Purpose</b>	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.
<b>Authorising legislation</b>	<i>Coronavirus Economic Response Package Omnibus Act 2020</i>
<b>Portfolio</b>	Social Services
<b>Disallowance</b>	15 sitting days after tabling (tabled in the Senate on 10 June 2020).

## Overview

1.29 Section 123UF and Part 3D of the *Social Security (Administration) Act 1999* (the Administration Act) respectively establish the Cape York Welfare Reform Income Management measure and the cashless debit card trials. Under the Administration Act, the measures were due to sunset on 30 June 2020;<sup>2</sup> however, the instrument provides that the measures now continue to operate until 31 December 2020.

1.30 The explanatory statement to the instrument states that a bill is currently before the Senate which proposes to extend the end date for existing cashless debit card trial areas from 30 June 2020 to 30 June 2021 and to establish an end date for the cashless debit card trial in the Cape York region of 31 December 2021.<sup>3</sup> However, due to the revision of parliamentary sittings in response to the COVID-19 pandemic, the explanatory statement advised that the bill would not pass before the 30 June 2020 sunset date set out in the Administration Act.<sup>4</sup> The instrument is intended to avoid circumstances where a participant ceases to be on income management or the cashless debit card for a brief period of time while awaiting the consideration of primary legislation.<sup>5</sup>

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

2 *Social Security (Administration) Act 1999*, paragraphs 123UF(1)(g), 123UF(2)(h) and 124PF(1)(b).

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

4 The explanatory statement was tabled in the Senate on 10 June 2020.

5 Explanatory statement, p. 1.

## Comments by the Scrutiny of Bills Committee

1.31 In its *Scrutiny Digest 7 of 2020*, the Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) drew the enabling provision under which the instrument was made to the attention of this committee. The Scrutiny of Bills Committee noted that sunset clauses in primary legislation are important safeguards which facilitate increased parliamentary oversight of extraordinary measures and emphasised that such clauses should not be extended without a thorough review and the presentation of compelling evidence to the Parliament. The Scrutiny of Bills Committee also noted that the scheduling of a greater number of sitting days than was envisaged at the time the enabling provision was passed means that it is not clear that the Parliament lacks the time to debate and, if appropriate, pass primary legislation to extend the operation of provisions due to sunset.<sup>6</sup>

### Scrutiny concerns

#### ***Modification of primary legislation;<sup>7</sup> parliamentary oversight – deferral of sunset<sup>8</sup>***

1.32 Senate standing order 23(3)(j) requires the committee to scrutinise each legislative instrument as to whether it contains matters more appropriate for parliamentary enactment. In addition, Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any other ground relating to the technical scrutiny of delegated legislation. This includes where an instrument appears to limit appropriate parliamentary oversight.

#### ***Committee view<sup>9</sup>***

1.33 In June 2020, the committee sought the minister's advice as to why it was considered necessary and appropriate to extend the operation of the Cape York income management measure and cashless debit card trials by delegated legislation, rather than primary legislation, particularly in light of the Senate's agreement to meet for a greater number of sitting days than was envisaged at the time the instrument was made on 17 April 2020. The committee also sought the minister's advice as to the appropriateness of bringing forward consideration of the Income Management to Cashless Debit Card Transition Bill.

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6 Scrutiny principle: Senate standing order 23(3)(j).

7 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.

8 Scrutiny principle: Senate standing order 23(3)(k).

9 The committee requested the Treasurer's advice in two letters dated 21 May 2020 and 18 June 2020. Copies of the letters are available on the committee's website at [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/index-of-instruments/2020/F-J/F2020L00435.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/F-J/F2020L00435.pdf).

1.34 The committee's request for advice is based on its longstanding scrutiny view that significant measures should be enacted via primary legislation to ensure appropriate levels of parliamentary oversight. The committee's scrutiny concerns are heightened in this instance as the instrument extends the sunset date for the measures set by the Parliament in primary legislation. In light of these serious scrutiny concerns, the committee considers that it is necessary and appropriate for the Parliament to be provided with an opportunity to consider and scrutinise the extension of the income management and cashless debit card trial measures at the earliest available opportunity.

### ***Minister's view***<sup>10</sup>

1.35 In correspondence with the committee the minister advised that it was appropriate to extend the end date for the cashless debit card trials and income management in the Cape York region by six months by delegated legislation to provide greater certainty to stakeholders and participants. The minister also advised that the Income Management to Cashless Debit Card Transition Bill 'will be scheduled for consideration as early as is practical'.

### **Committee comment**

1.36 The committee is grateful to the minister for the information that she has provided to the committee in its consideration of the instrument. In particular, the committee welcomes the minister's advice that the Income Management to Cashless Debit Card Transition Bill will be scheduled for consideration as early as is practical. However, the committee notes that the bill has not yet been scheduled for debate.

1.37 The committee acknowledges the unique circumstances of the COVID-19 pandemic and the minister's advice that the extension of the sunset dates for the income management and cashless debit card trial measures by delegated legislation was necessary to provide certainty to stakeholders and participants at the time the instrument was made. However, noting the Senate's return to a more regular sitting schedule since that time, the committee considers that there is no longer a clear justification for this significant matter to be included in delegated legislation. Certainty can now be provided through the consideration and passage (or otherwise) of the primary legislation.

1.38 Extensions of the income management and cashless debit card trial measures have previously been made through primary, rather than delegated, legislation. Noting the significance of these measures, the committee strongly considers that such an approach is necessary and appropriate.

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10 The minister responded to the committee in letters dated 3 June 2020 and 26 June 2020. Copies of the letters are available on the committee's website at [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/index-of-instruments/2020/F-J/F2020L00435.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/F-J/F2020L00435.pdf).

**1.39** The committee draws the attention of the Senate to the use of delegated legislation to extend the sunset dates for the cashless debit card trials and income management in the Cape York region from 30 June 2020 to 31 December 2020 in circumstances where previous extensions of these measures have appropriately been made through primary legislation. From a scrutiny perspective, the committee strongly considers that it is necessary and appropriate for the Parliament to be provided with an opportunity to consider and scrutinise the extension of the end dates for these measures at the earliest available opportunity, rather than leaving this significant matter to be determined in delegated legislation for an extended period of time.

**1.40** Accordingly, the committee requests the minister's urgent advice as to whether the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019 can be scheduled for debate in the Senate during the current sitting fortnight (that is, by 3 September 2020).

**1.41** If the bill is not listed for debate in the next sitting week, the committee has 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.

# Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020

<b>FRL No.</b>	<a href="#">F2020L00435</a> <sup>1</sup>
<b>Purpose</b>	To amend the monetary value thresholds for particular significant actions and notifiable actions which are specified in the Foreign Acquisitions and Takeovers Regulation 2015 to nil. This requires a greater number of investments by foreign persons in Australia to be notified to the Treasurer for review to ensure they are not contrary to the national interest.
<b>Authorising legislation</b>	<i>Foreign Acquisitions and Takeovers Act 1975</i>
<b>Portfolio</b>	Treasury
<b>Disallowance</b>	15 sitting days after tabling (tabled in the Senate on 12 May 2020).

## Overview

1.42 The instrument amends the Foreign Acquisitions and Takeovers Regulation 2015 to set the monetary thresholds for particular significant actions and notifiable actions to nil. In effect, this means that the majority of actions relating to the acquisition of interests in Australian business or land require notification to the Treasurer under the *Foreign Acquisitions and Takeovers Act 1975* (Foreign Acquisitions Act). Under the Foreign Acquisitions Act, the Treasurer may impose conditions on significant actions,<sup>2</sup> and may refuse to allow an action to proceed if it is deemed contrary to the national interest.<sup>3</sup>

1.43 The explanatory statement to the instrument explains that this measure is necessary to safeguard the national interest during the COVID-19 pandemic, which is placing intense pressure on the Australian economy and Australian businesses. It also states that the measure is 'intended to be in place for the duration of the Coronavirus crisis';<sup>4</sup> however, neither the explanatory statement nor the instrument itself specifies a date by which the measures will cease.

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

2 *Foreign Acquisitions and Takeovers Act 1975*, section 74.

3 *Foreign Acquisitions and Takeovers Act 1975*, section 67.

4 Explanatory statement, p. 1.

## Scrutiny concerns

### ***Parliamentary oversight – time-limited legislation***<sup>5</sup>

1.44 Senate standing order 23(3)(k) requires the committee to scrutinise each legislative instrument as to whether it complies with any ground relating to the technical scrutiny of delegated legislation. This includes where an instrument appears to limit parliamentary oversight of significant policy measures made in times of emergency without appropriate time limits.

### ***Committee view***<sup>6</sup>

1.45 In May and June 2020 the committee sought the Treasurer's advice as to the length of time for which it is intended the measures enacted by the instrument will remain in force, and whether the instrument could be amended to specify an end date. The committee's requests for advice stem from its scrutiny view that instruments implementing significant COVID-19 response measures should specify a date by which they will cease. The committee sent a letter to all ministers to this effect at the beginning of the pandemic<sup>7</sup> and notes that other instruments which implement temporary measures in response to COVID-19 generally specify a period for which the measures will apply.

1.46 In this instance, although the explanatory statement indicates that the measures are intended to be temporary, the committee remains concerned that the instrument itself does not specify an end date to the measures. In the committee's view, an end date is necessary to ensure an appropriate level of regular parliamentary oversight, and to guard against the risk that temporary measures enacted in response to COVID-19 become an ongoing part of the law without appropriate parliamentary scrutiny and debate.

1.47 In light of these scrutiny concerns the committee considers that it would be appropriate to amend the instrument to specify a date on which the measures cease.

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5 Scrutiny principle: Senate standing order 23(3)(k).

6 The committee requested the Treasurer's advice in two letters dated 21 May 2020 and 18 June 2020. Copies of the letters are available on the committee's website at [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/index-of-instruments/2020/F-J/F2020L00435.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/F-J/F2020L00435.pdf).

7 Senate Standing Committee for the Scrutiny of Delegated Legislation, 'Senate committee to continue to scrutinise delegated legislation, including COVID-19 related legislation', Media Release, 1 April 2020. See [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Scrutiny\\_of\\_COVID-19\\_instruments/Media\\_statement](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Scrutiny_of_COVID-19_instruments/Media_statement).

### ***Treasurer's view***<sup>8</sup>

1.48 In correspondence with the committee the Treasurer advised that he considers the instrument necessary as COVID-19 has increased the risk of foreign investment in Australia occurring in ways contrary to the national interest. The Treasurer also advised that he considers it appropriate for the instrument to remain in force for an unspecified period of time in light of the continuing uncertainty about the duration of the COVID-19 pandemic. He further advised that if the COVID-19 pandemic continues beyond any specified end date a new instrument would be required to protect the national interest.

1.49 In his most recent correspondence to the committee, the Treasurer advised that significant reforms are planned for Australia's foreign investment review framework and that these reforms are scheduled to commence on 1 January 2021. As part of these reforms certain aspects of the temporary COVID-19 measures, which include the instrument, will be replaced and others will return to pre-COVID-19 settings.

### **Committee comment**

1.50 The committee is grateful to the Treasurer for the information he has provided to the committee in its consideration of the instrument. Nevertheless, the committee remains concerned that the instrument does not specify an end date and that this limits parliamentary oversight of this significant measure.

1.51 The possibility that the instrument may be modified or replaced as part of planned reforms to Australia's foreign investment review framework, which are scheduled to commence on 1 January 2021, reinforces the committee's view that specifying an end date for the measures would not inhibit the government from responding flexibly to the economic impact of the COVID-19 pandemic.

1.52 The committee acknowledges the Treasurer's advice that that the COVID-19 pandemic is creating unprecedented challenges for the Australian economy which may necessitate changes to the foreign acquisition regime. However, as a technical scrutiny matter, the committee reiterates that significant measures implemented in response to COVID-19 should be time-limited to guard against the risk of such measures becoming an ongoing part of the law without appropriate parliamentary scrutiny and debate.

**1.53 The committee draws the attention of the Senate to the lack of a specified end date for the significant temporary measures contained in the Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020. From a**

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8 The minister responded to the committee in letters dated 3 June 2020 and 26 June 2020. Copies of the letters are available on the committee's website at [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/index-of-instruments/2020/F-J/F2020L00435.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/F-J/F2020L00435.pdf).

scrutiny perspective, the committee considers that it would be appropriate to amend the instrument to specify a date on which the temporary measures cease to operate. However, the committee notes that the Treasurer has advised the committee on two occasions that he does not propose to amend the instrument.

**1.54** Accordingly, the committee recommends that the Senate disallow the instrument and has therefore resolved to give a notice of motion to disallow the instrument on 1 September 2020 for consideration and debate in the Senate 15 sitting days after that date. If there are any further developments in relation to this matter the committee may reconsider its recommendation and will report to the Senate in a future Delegated Legislation Monitor.

# National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019)

<b>FRL No.</b>	<a href="#">F2019L01542</a> <sup>1</sup>
<b>Purpose</b>	To make special arrangements to establish a pilot to increase the supply of naloxone to persons who are at risk of an opioid overdose or who are likely to be able to assist such persons.
<b>Authorising legislation</b>	<i>National Health Act 1953</i>
<b>Portfolio</b>	Health
<b>Disallowance</b>	15 sitting days after tabling (tabled in the Senate on 4 December 2019). Notice of motion to disallow given on 12 May 2020. <sup>2</sup>

## Overview

1.55 The instrument creates a special arrangement to support the establishment of a PBS subsidised pilot program to supply naloxone to people in New South Wales, Western Australia and South Australia who are at risk of an opioid overdose, and to persons who are likely to be able to assist such persons.<sup>3</sup>

1.56 The instrument was made under section 100 of the *National Health Act 1953* (National Health Act) by the Deputy Secretary, Health Financing Group, as a delegate of the Minister for Health.

1.57 Subsection 100(1) of the National Health Act empowers the minister to 'make special arrangements for, or in relation to, providing that an adequate supply of pharmaceutical benefits will be available' to certain persons specified in paragraphs (a) to (c). Subsection 100(3) provides that Part VII of the Act, and legislative instruments made for the purposes of that Part, have effect subject to a special arrangement made under subsection 100(1).

1.58 On 12 May 2020 the committee placed a protective notice of motion to disallow the instrument to provide additional time for the minister to respond to its scrutiny concerns.

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

2 Notice given by the Chair of the committee. See *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).

3 Explanatory statement, p.1.

## Scrutiny concerns

1.59 The committee's scrutiny concerns centre on section 25 of the instrument. Subsection 25(1) provides that:

The Secretary may, in writing, authorise persons having suitable qualifications and experience to perform any of the Secretary's functions, or exercise any of the Secretary's powers, under this instrument on behalf of the Secretary.

1.60 Subsection 25(2) of the instrument clarifies that an authorisation under subsection 25(1) may be in the form of a contract entered into by the Secretary on the Commonwealth's behalf. Subsection 25(3) provides that authorised persons must comply with any directions of the Secretary in performing the Secretary's functions or exercising the Secretary's powers.

1.61 Between February and July 2020 the committee engaged with the minister to seek advice on a range of scrutiny concerns it identified with this section.<sup>4</sup> The committee was primarily concerned with whether section 25 of the instrument was authorised by section 100 of the National Health Act and whether there are appropriate accountability safeguards over the actions of third party administrators.

1.62 The committee thanks the minister and senior departmental officials for their constructive engagement with the committee on these matters.

### ***Compliance with authorising legislation***<sup>5</sup>

1.63 Senate standing order 23(3)(a) requires the committee to scrutinise each instrument as to whether it is in accordance with its enabling Act and otherwise complies with all legislative requirements.

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4 The committee's scrutiny concerns and the minister's responses are outlined in the committee's correspondence with the minister. Copies of the letters are available on the committee's website. See: [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf). A summary of the concerns the committee raised previously can also be found in Chapter 1 of *Delegated Legislation Monitor 8 of 2020*. 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).

5 Scrutiny principle: Senate standing order 23(3)(a).

### *Committee view*<sup>6</sup>

1.64 Between February and July 2020 the committee sought the minister's advice as to the source of legal authority for section 25 of the instrument. The committee's requests for advice stemmed from the view that the authorisation of private third parties to perform the functions and exercise the powers of a public office holder is a significant matter that requires express authority in primary legislation. In correspondence with the minister the committee noted that neither the terms of subsection 100(1) of the National Health Act, nor the relevant explanatory materials, indicated that Parliament intended that provision to support the authorisation of private third parties to perform the powers and functions of a departmental secretary in making special arrangements.

1.65 In correspondence with the minister the committee considered the approach taken in other special arrangements made under section 100 of the National Health Act to enabling private third parties to undertake certain actions 'in relation to' the provision of an adequate supply of pharmaceutical benefits to certain persons. In this regard, the committee noted that none of the other special arrangements considered by the committee appear to broadly authorise qualified private third parties to perform all the functions and exercise all of the powers of a public official under that arrangement.

### *Minister's view*<sup>7</sup>

1.66 In correspondence with the committee the minister confirmed that he has received legal advice on section 25 and remains of the view that the section is compliant with section 100 of the National Health Act. The minister reiterated that the relevant authorisation falls within the scope of the minister's power to 'make arrangements for, or in relation to providing that an adequate supply of pharmaceutical benefits will be available to persons'.

1.67 The minister distinguished the examples of other special arrangements made under section 100 of the National Health Act provided by the committee from the current instrument. The minister considers that the committee's examples of special arrangements provide for powers and functions of a different nature to those in the instrument.

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6 The committee requested the minister's advice in five letters dated 13 February, 3 April, 21 May 2020, 18 June 2020 and 22 July 2020. Copies of the letters are available on the committee's website at [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf).

7 The minister responded to the committee in five letters dated 3 March, 24 April, 5 June, 3 July and 31 July 2020. Copies of the letters are available on the committee's website at [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf).

### ***Availability of accountability safeguards<sup>8</sup>***

1.68 Senate standing order 23(3)(k) requires the committee to consider whether a legislative instrument raises any other technical scrutiny matter. The committee interprets this to include whether the measures in the instrument are subject to appropriate accountability safeguards. This scrutiny principle supplements standing order 23(3)(h) which requires the committee to consider whether an instrument trespasses unduly on personal rights and liberties, and standing order 23(3)(i), which requires the committee to consider whether a legislative instrument unduly excludes, limits, or fails to provide for independent review.

### ***Committee view<sup>9</sup>***

1.69 The committee sought the minister's advice as to whether amendments could be made to subsection 25(1) and subsection 25(3) to provide safeguards and limitations on the exercise of delegated power by third party administrators. The committee subsequently requested that the minister amend subsection 25(1) of the instrument to expressly state the particular powers and functions which the Secretary may authorise the third party to perform or exercise under the instrument. The committee also requested that the minister amend subsection 25(3) to give the department greater control and oversight of the actions of the third party administrator by providing that the actions of the third party administrator require the express approval of the Secretary or their delegate. Noting that the proposed amendment to subsection 25(3) may add additional administrative steps in the process of making a claim and potentially delay payments, the committee advised it would be satisfied in the alternative if subsection 25(3) is instead amended to provide for internal review by the department of decisions of third party administrators.

### ***Minister's view<sup>10</sup>***

1.70 In previous correspondence with the committee the minister outlined the activities that private third party administrators undertake pursuant to their purported authorisation under section 25 of the instrument. These include providing a software solution to:

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8 Scrutiny principle: Senate standing order 23(3)(k).

9 The committee requested the minister's advice in five letters dated 13 February, 3 April, 21 May 2020, 18 June 2020 and 22 July 2020. Copies of the letters are available on the committee's website at [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf).

10 The minister responded to the committee in five letters dated 3 March, 24 April, 5 June, 3 July and 31 July 2020. Copies of the letters are available on the committee's website at [https://www.aph.gov.au/-/media/Committees/Senate/committee/regord\\_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf](https://www.aph.gov.au/-/media/Committees/Senate/committee/regord_ctte/index-of-instruments/2020/K-O/F2019L01542.pdf).

- enable approved suppliers to make claims for payment of naloxone provided to designated persons;
- collect data used to evaluate the pilot program; and
- provide regular reports on the pilot to the department.

1.71 Whilst reiterating his view that the current arrangement 'is legally sound and reasonable as a matter of policy' the minister indicated his openness to instructing the department to pursue amendments to section 25. These amendments would be 'to clarify the role of third party administrators', or 'to provide additional oversight' of the third party administrators' activities by the department.

1.72 In his most recent correspondence to the committee, the minister agreed to amend the instrument to address the committee's scrutiny concerns about the role of third party administrators, whilst again reiterating his view on the lawfulness of section 25. The minister explained that he will instruct his department to:

- amend subsection 25(1) of the instrument to expressly define the powers and functions which the Secretary may authorise the third party administrator to perform; and
- amend subsection 25(3) of the instrument to provide for internal review of decisions of third party administrators by the department.

### **Committee comment**

1.73 As a matter of principle, the committee remains of the view that the authorisation of private third parties to perform the functions and exercise the powers of a public office holder is a significant matter that requires express authority in primary legislation.

1.74 In this particular instance, noting the purpose and limited duration of the instrument, the committee considers that the amendments to section 25 of the instrument provide the minister and the department with sufficient control and oversight of the actions of the third party administrator to satisfy the committee's scrutiny concerns.

1.75 The committee reiterates its thanks to the minister and senior departmental officers for their constructive engagement with the committee to address its scrutiny concerns.

**1.76 In light of these amendments the committee has resolved to conclude its examination of the instrument and to withdraw its 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.<sup>1</sup>

Instrument	Purpose	Portfolio committee
<b>Radiocommunications (Receiver Licence Tax) Amendment Determination 2020 (No. 2) [F2020L00653]</b>	To amend the Radiocommunications (Receiver Licence Tax) Determination 2015 to reduce most receiver licence taxes by 0.8 per cent.	N/A
<b>Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 2) [F2020L00652]</b>	To amend the Radiocommunications (Transmitter Licence Tax) Determination 2015 to reduce most transmitter licence taxes by 0.8 per cent.	N/A
<b>Social Security (Coronavirus Economic Response—2020 Measures No. 10) Determination 2020 [F2020L00690]</b>	To temporarily modify the <i>Social Security Act 1991</i> to implement measures related to carer payment and carer allowance, former recipients of wife pension, mobility allowance, and pension portability, to prevent detriment to social security recipients resulting from the impacts of COVID-19.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19

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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.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Matters\\_of\\_interest\\_to\\_the\\_Senate](https://www.apf.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 The tables below outline the expenditure specified in legislative instruments registered between 29 May 2020 and 18 June 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.

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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, Water and the Environment Measures No. 3) Regulations 2020 [F2020L00657]</b>	Australia-China Agricultural Regulatory Cooperation Program	\$4.7 million over four years from 2019-20	Funding will be provided to support: <ul style="list-style-type: none"> <li>• collaborative agricultural research programs;</li> <li>• collaboration and engagement on biosecurity and food safety;</li> <li>• bilateral meetings and scientific exchange;</li> <li>• the hosting of international standards meetings; and</li> <li>• cooperation to address non-tariff measures impacting trade in agricultural products.</li> </ul>	Senate Rural and Regional Affairs and Transport Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2020 [F2020L00658]</b>	Grant to QAL Finance	Up to \$8.4 million over two years from 2020-21	Funding will be provided to QAL Finance Pty Ltd to contribute to the costs of re-establishing border services as part of the redevelopment of the terminal at Gold Coast Airport.	Senate Rural and Regional Affairs and Transport Legislation Committee
	Public Interest News Gathering (PING) program	\$50 million over two years from 2019-20	Funding will be provided to media organisations (including print, digital, radio or television) to support and encourage original, high quality public interest journalism.	Senate Environment and Communications Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2020 [F2020L00659]</b>	Perinatal Mental Health and Wellbeing Program	\$43.9 million over seven years from 2018-19	Funding will be provided to organisations to develop and provide perinatal mental health support, promotion and training.	Senate Community Affairs Legislation Committee

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
	Perinatal Mental Health Check	Up to \$16 million over three years from 2020-21	Funding will be provided to establish a national perinatal mental health check, including the delivery of digital perinatal screening infrastructure, training and support for perinatal mental health screening in public hospitals.	Senate Community Affairs Legislation Committee
	Donor Human Milk Bank Service	\$2 million in 2019-20	Funding will be provided to support the ongoing operation and expansion of a coordinated network of donor human milk banks.	Senate Community Affairs Legislation Committee
	Adult Mental Health Centres	\$93.5 million over four years from 2020-21	Funding will be provided for the establishment and operation of Adult Mental Health Centres to assist adults seeking help in times of crisis.	Senate Community Affairs Legislation Committee
<b>Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 3) Regulations 2020 [F2020L00660]</b>	Grant to Anti-Defamation Commission Incorporated — Click Against Hate Program	\$3 million over four years from 2019-20	Funding will be provided to Anti Defamation Commission Incorporated to deliver the Click Against Hate program to participating primary and secondary schools, to equip young people with strategies and skills to combat hate experienced online.	Senate Education and Employment Legislation Committee
	Grant to DemoDAIRY Foundation Limited — Powell Legacy Fund	\$100,000 in 2019-20	Funding will be provided for a grant to support the Powell Legacy Fund initiative to provide scholarships to eligible school students.	Senate Education and Employment Legislation Committee
	Phonics Targeted Assistance Program for Disadvantaged Schools	\$2.8 million over two years from 2020-21	Funding will be provided to assist children to develop phonics and literacy skills through the provision of tailored professional learning resources and placement of curriculum officers or phonics coaches in disadvantaged schools.	Senate Education and Employment 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 (Foreign Affairs and Trade Measures No. 1) Regulations 2020 [F2020L00661]</b>	Support for the Cook Islands	\$8 million over four years from 2020-21	Funding will be provided to support the Cook Islands' continued engagement in Australia-led Pacific regional development programs, including the Pacific Agreement on Closer Economic Relations Plus Implementation Package.	Senate Foreign Affairs, Defence and Trade Legislation Committee
<b>Industry Research and Development (Empowering Business To Go Digital Program) Instrument 2020 [F2020L00731]</b>	Empowering Businesses To Go Digital	One-off grant of \$3 million	Funding will be provided to support a non-government organisation to increase the awareness, and promote the adoption, of digital electronic communications amongst small businesses.	Senate Education and Employment 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.<sup>1</sup>

Instrument	Issue	Status
<b>ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198 [F2020L00237]</b>	Principle (j) exemptions to primary legislation	Seeking further advice from the assistant minister.
<b>ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199 [F2020L00238]</b>	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	'Protective' notice of motion to disallow placed on 27/08/2020.
<b>Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]</b>	Principle (d) consultation with persons affected	Committee considering minister's response.
<b>Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]</b>	Principle (e) clarity of drafting Principle (j) significant penalties in delegated legislation	Seeking further advice from the Attorney-General.  'Protective' notice of motion to disallow placed on 14/05/2020.
<b>Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]</b>	Principle (j) modification of primary legislation Principle (k) parliamentary oversight – deferral of sunsetting	Seeking further advice from the minister.  Notice of motion to disallow may be placed on 31/08/2020.
<b>Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> – consultation	Seeking advice from the minister.

<sup>1</sup> See [www.aph.gov.au/senate\\_sd/c](http://www.aph.gov.au/senate_sd/c).

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 [F2020L00435]</b>	Principle (k) parliamentary oversight	Notice of motion to disallow to be placed on 01/09/2020.

### **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.

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Contingence Aids Payment Scheme 2020 [F2020L00758]</b>	Principle (i) availability of independent merits review	Committee considering response 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>ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486 [F2020L00618]</b>  <b>ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487 [F2020L00623]</b>	Principle (j) exemptions from primary legislation  Principle (k) parliamentary oversight	Concluded following response from the minister on 29/06/2020.
<b>Australian Crime Commission Establishment Regulations 2020 [F2020L00162]</b>	Principle (i) availability of independent merits review	Concluded following response from the minister on 11/06/2020.
<b>Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister's Rules 2020 [F2020L00406]</b>	Principle (e) clarity of drafting  Principle (k) parliamentary oversight	Concluded following response from the minister on 08/07/2020.
<b>Defence Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00120]</b>	Principle (h) procedural fairness	Concluded following response from the minister on 01/07/2020.  'Protective' notice of motion placed on 18/06/2020.  The Minister for Defence undertook to amend the instrument in response to the committee's scrutiny concerns.

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<sup>1</sup> See [www.aph.gov.au/senate\\_sd/c](http://www.aph.gov.au/senate_sd/c).

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020 [F2020L00432]</b>	<p>Principle (d) consultation with persons affected</p> <p>Principle (g) adequacy of explanatory materials</p> <p>Principle (j) modification of primary legislation</p>	Concluded following response from the minister on 09/06/2020.
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020 [F2020L00328]</b>	Principle (f) Incorporated materials freely accessible	Concluded following response from the minister on 11/06/2020.
<b>Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019 [F2019L01699]</b>	Principle (i) availability of independent merits review	<p>Concluded following response from the minister on 05/06/2020.</p> <p>The Minister for Education amended the instrument in response to the committee's scrutiny concerns on 18/06/2020.</p>
<b>National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019) [F2019L01542]</b>	<p>Principle (a) compliance with authorising legislation</p> <p>Principle (k) availability of accountability safeguards</p>	<p>Concluded following response from the minister on 31/07/2020</p> <p>'Protective' notice of motion placed on 12/05/2020.</p> <p>The Minister for Health amended the instrument in response to the committee's scrutiny concerns on 26/08/2020.</p>
<b>Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 2) [F2020L00652]</b>	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
<b>Radiocommunications (Receiver Licence Tax) Amendment Determination 2020 (No. 2) [F2020L00653]</b>		
<b>Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020 [F2020L00549]</b>	Principle (i) availability of independent merits review	<p>Concluded following response from the minister on 21/06/2020.</p> <p>The Minister for Education amended the instrument in response to the committee's scrutiny concerns on 04/08/2020.</p>

## Agency engagement

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

Instrument	Issue	Status
<b>Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2020 [F2020L00571]</b>	Principle (d) consultation with persons affected	Concluded following response from the agency on 08/07/2020.  The Department of Infrastructure, Transport, Regional Development and Communications amended the explanatory statement to the instrument in response to the committee's scrutiny concerns on 16/07/2020.
<b>Amendment of List of Exempt Native Specimens – Queensland Commercial Trawl (Fin Fish) Fishery, May 2020 [F2020L00633]</b>	Principle (a) compliance with authorising legislation	Concluded following response from the agency on 09/07/2020.
<b>Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]</b>	Principle (d) consultation with persons affected	Concluded following response from the agency on 25/06/2020.  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.
<b>Export Control (Animals) Amendment (Australian Standards for the Export of Livestock) Order 2020 [F2020L00689]</b>	Principle (e) clarity of drafting	Concluded following response from the agency on 21/07/2020.
<b>Health Insurance (General Medical Services Table) Regulations (No. 2) 2020 [F2020L00711]</b>	Principle (h) privacy	Concluded following response from the agency on 31/07/2020.
<b>Industrial Chemicals (Fees and Charges) Rules 2020 [F2020L00704]</b>	Principle (f) incorporated materials freely accessible  Principle (i) availability of independent merits review	Concluded following response from the agency on 07/08/2020.  The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 4) (PB 33 of 2020) [F2020L00523]</b>	Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 27/07/2020.  The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 5) (PB 46 of 2020) [F2020L00646]</b>	Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 27/07/2020.  The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 4) (PB 37 of 2020) [F2020L00538]</b>	Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 03/08/2020.  The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Social Security (Coronavirus Economic Response—2020 Measures No. 10) Determination 2020 [F2020L00690]</b>	Principle (i) availability of independent merits review	Concluded following response from the agency on 17/07/2020.
<b>Superannuation Guarantee (Administration) Amendment (Jobkeeper Payment) Regulations 2020 [F2020L00655]</b>	Principle (d) consultation with persons affected  Principle (h) retrospective effect	Concluded following response from the agency on 06/08/2020.
<b>Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00645]</b>	Principle (a) compliance with <i>Legislation Act 2003</i>	Concluded following response from the agency on 06/07/2020.  The Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Therapeutic Goods Legislation Amendment (Fees and Other Measures) Regulations 2020 [F2020L00720]</b>	Principle (j) unclear basis for determining fees	Concluded following response from the agency on 27/07/2020.  The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Therapeutic Goods (Clinical Trial Inspection) Specification 2020 [F2020L00688]</b>	Principle (f) incorporated materials freely accessible  Principle (h) privacy	Concluded following response from the agency on 17/07/2020.  The Department of Health amended the instrument and explanatory statement to the instrument in response to the committee's scrutiny concerns on 13/08/2020.

# 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>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>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>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
	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
<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 Repatriation Pharmaceutical Benefits Scheme [F2013L02009] and the MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012] to correct drafting errors.	28/01/2020
<b>Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 [F2019L01641]</b>	The Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	14/02/2020

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019 [F2019L01564]</b>	The Minister for Agriculture, Drought and Emergency Management undertook to amend the instrument in response to the committee's scrutiny concerns.	14/05/2020
<b>Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]</b>	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
<b>Defence Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00120]</b>	The Minister for Defence undertook to amend the instrument in response to the committee's scrutiny concerns.	01/07/2020
<b>Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00645]</b>	The Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/07/2020
<b>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 4) (PB 33 of 2020) [F2020L00523]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27/07/2020
<b>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 5) (PB 46 of 2020) [F2020L00646]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27/07/2020
<b>Therapeutic Goods Legislation Amendment (Fees and Other Measures) Regulations 2020 [F2020L00720]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27/07/2020
<b>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 4) (PB 37 of 2020) [F2020L00538]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/08/2020
<b>Industrial Chemicals (Fees and Charges) Rules 2020 [F2020L00704]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/08/2020

## 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
<b>CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020 [F2020L00436]</b>	The Department of Infrastructure, Transport, Regional Development and Communications amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/05/2020
<b>Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020 [F2020L00233]</b>	The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	17/06/2020
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2020 [F2020L00392]</b>	The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	17/06/2020
<b>Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019 [F2019L01699]</b>	The Minister for Education amended the instrument in response to the committee's scrutiny concerns.	18/06/2020
<b>Military Rehabilitation and Compensation Regulations 2020 [F2020L00297]</b>	The Department of Veterans' Affairs amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/07/2020
<b>Health Insurance (Bonded Medical Program) Rule 2020 [F2019L01513]</b>	The Department of Health amended the instrument in response to the committee's scrutiny concerns.	15/07/2020
<b>Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2020 [F2020L00571]</b>	The Department of Infrastructure, Transport, Regional Development and Communications amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/07/2020
<b>Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020 [F2020L00549]</b>	The Minister for Education amended the instrument in response to the committee's scrutiny concerns.	04/08/2020
<b>ASIC Corporations (Amendment) Instrument 2019/784 [F2019L01206]</b>	The Australian Securities and Investment Corporation amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	10/08/2020
<b>Therapeutic Goods (Clinical Trial Inspection) Specification 2020 [F2020L00688]</b>	The Department of Health amended the instrument and explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/08/2020

Instrument	Undertaking	Date implemented
<b>National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019) [F2019L01542]</b>	The Minister for Health amended the instrument in response to the committee's scrutiny concerns.	26/08/2020

## 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
Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2020	[F2020L00571]	31, 35
Amendment of List of Exempt Native Specimens – Queensland Commercial Trawl (Fin Fish) Fishery, May 2020*	[F2020L00633]	31
ASIC Corporations (Amendment) Instrument 2019/784	[F2019L01206]	35
ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486	[F2020L00618]	29
ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198	[F2020L00237]	27
ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199	[F2020L00238]	27
ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487	[F2020L00623]	29
Australian Crime Commission Establishment Regulations 2020	[F2020L00162]	29
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020	[F2020L00579]	27
Biosecurity Amendment (International Mail Fee) Regulations 2020	[F2020L00576]	31, 34
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019	[F2019L01132]	33
CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020	[F2020L00436]	35
Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister’s Rules 2020	[F2020L00406]	29
Competition and Consumer (Industry Codes—Dairy) Regulations 2019	[F2019L01610]	1, 27

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Continence Aids Payment Scheme 2020*	[F2020L00758]	28
Coronavirus Economic Response Package (Deferral of Sunsetting— Income Management and Cashless Welfare Arrangements) Determination 2020	[F2020L00572]	7, 27
Defence Amendment (2020 Measures No. 1) Regulations 2020	[F2020L00120]	29, 34
Export Control (Animals) Amendment (Australian Standards for the Export of Livestock) Order 2020*	[F2020L00689]	31
Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019	[F2019L01564]	34
Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020*	[F2020L00702]	27
Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020	[F2020L00432]	30
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 3) Regulations 2020*	[F2020L00657]	24
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 3) Regulations 2020*	[F2020L00660]	25
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020	[F2020L00233]	35
Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 1) Regulations 2020*	[F2020L00661]	26
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2020*	[F2020L00659]	24
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2020	[F2020L00392]	35
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2020*	[F2020L00658]	24

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020	[F2020L00328]	30
Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020	[F2020L00435]	11, 27
Health Insurance (Bonded Medical Program) Rule 2020	[F2019L01513]	35
Health Insurance (General Medical Services Table) Regulations (No. 2) 2020*	[F2020L00711]	31
Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019	[F2019L01699]	30, 35
Industrial Chemicals (Fees and Charges) Rules 2020*	[F2020L00704]	31, 34
Industry Research and Development (Empowering Business To Go Digital Program) Instrument 2020*	[F2020L00731]	26
Military Rehabilitation and Compensation Regulations 2020	[F2020L00297]	35
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 5) (PB 46 of 2020)	[F2020L00646]	32, 34
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 4) (PB 37 of 2020)	[F2020L00538]	32, 34
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 4) (PB 33 of 2020)	[F2020L00523]	31, 34
National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019)	[F2019L01542]	15, 30, 36
Radiocommunications (Receiver Licence Tax) Amendment Determination 2020 (No. 2)*	[F2020L00653]	21, 30
Radiocommunications (Transmitter Licence Tax) Amendment Determination 2020 (No. 2)*	[F2020L00652]	21, 30
Social Security (Coronavirus Economic Response—2020 Measures No. 10) Determination 2020*	[F2020L00690]	21, 32
Superannuation Guarantee (Administration) Amendment (Jobkeeper Payment) Regulations 2020*	[F2020L00655]	32

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020*	[F2020L00645]	32, 34
Taxation Administration (Private Ancillary Fund) Guidelines 2019	[F2019L01227]	33
Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020	[F2020L00549]	30, 35
Therapeutic Goods (Clinical Trial Inspection) Specification 2020*	[F2020L00688]	32, 35
Therapeutic Goods Legislation Amendment (Fees and Other Measures) Regulations 2020*	[F2020L00720]	32, 34
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019	[F2019L01641]	33
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019	[F2019L01387]	33
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018	[F2018L01674]	33

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