

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

Monitor 11 of 2021

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Introduction

The Senate Standing Committee for the Scrutiny of Delegated Legislation, formerly the Senate Standing Committee on Regulations and Ordinances, was established in 1932. 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 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*.¹

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.²

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.³

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

Guidelines

Guidelines relating to the committee's scrutiny principles are published on the committee's website.⁴

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

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

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

General information

The Federal Register of Legislation should be consulted for the text of instruments, explanatory statements, and associated information.⁵

The Senate Disallowable Instruments List provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.⁶

The Disallowance Alert records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.⁷

Instruments considered in this monitor

The committee examined 139 disallowable legislative instruments registered on the Federal Register of Legislation between 22 May 2021 and 18 June 2021.

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.

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

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

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

7 *Disallowance Alert 2021*, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Disallowance_Alert_2021.

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.

Australia's Foreign Relations (State and Territory Arrangements) Rules 2020

FRL No.	F2020L01569 ¹
Purpose	To prescribe matters required or permitted by the <i>Australia's Foreign Relations (State and Territory Arrangements) Act 2020</i> including exempt arrangements, additional information to be included in the Public Register and information State/Territory entities must include in a notice to the Minister.
Authorising legislation	<i>Australia's Foreign Relations (State and Territory Arrangements) Act 2020</i>
Portfolio	Foreign Affairs and Trade
Disallowance	15 sitting days after tabling (tabled in the Senate on 10 December 2020). Notice of motion to disallow placed on 11 May 2021. ²

Overview

1.3 The *Australia's Foreign Relations (State and Territory Arrangements) Act 2020* (the Act) established the Foreign Arrangements Scheme (the Scheme) which commenced on 10 December 2020. The purpose of the Scheme is to ensure that arrangements between state or territory governments (and their entities) and

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 2021* at https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Disallowance_Alert_2021.

foreign entities do not adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy. The Scheme provides for states and territories and their entities to notify or seek approval from the Minister for Foreign Affairs if they propose to negotiate, or enter, or have entered a foreign arrangement. It creates obligations in respect of both future arrangements and existing arrangements. It also deals with subsidiary arrangements entered into for the purposes of implementing a foreign arrangement.³

- 1.4 This instrument prescribes the following matters for the purposes of the Act:
- exempt arrangements;
 - additional information to be included in the Public Register; and
 - information State and Territory entities must include in a notice to the minister.

Scrutiny concerns

Matters more appropriate for parliamentary enactment⁴

Clarity of drafting⁵

1.5 Senate standing order 23(3)(j) requires the committee to consider whether an instrument contains matters more appropriate for parliamentary enactment, which should be included in primary, rather than delegated, legislation. This includes instruments which provide exemptions to primary legislation. In addition, Senate standing order 23(3)(e) requires the committee to scrutinise each instrument as to whether its drafting is defective or unclear.

1.6 Section 5 of the instrument provides that certain arrangements are exempt from the notification and approval provisions of the Act. Specifically, section 5 establishes a definition of an 'exempt arrangement' for the purposes of section 4 of the Act. Appearing in numerous sections of the Act, the definition of an 'exempt arrangement' appears to be a significant element of the Act.

1.7 The committee is concerned that the instrument deals with significant matters that go to the scope of the Scheme as a whole. This concern is heightened by the fact that a number of concepts within the definition in section 5 appear to have a wide interpretation.

1.8 The committee generally considers that the scope of regulatory schemes should be clearly defined and be set out on the face of the primary legislation. Where significant details as to the scope of a scheme are nevertheless included in delegated

3 Department of Foreign Affairs and Trade, *Foreign Arrangements Scheme*, <https://www.foreignarrangements.gov.au/>.

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

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

legislation, the committee considers that such matters should be subject to regular parliamentary scrutiny. In this instance, the instrument is subject to a regular ten-year sunset period.

Actions to date

1.9 The committee wrote to the minister in March, April and June of this year to seek further advice regarding these significant scrutiny concerns.⁶

Initial correspondence

1.10 The committee's initial letter on 18 March 2021 requested the minister's advice about why it is considered necessary and appropriate to establish the definition of an 'exempt arrangement' via delegated legislation, rather than primary legislation and whether this definition could be included in primary legislation. The committee also asked if it would be inappropriate to include the definition in primary legislation, that further clarity be provided on the face of the instrument or, at a minimum, in the explanatory statement in relation to the scope of the elements of the definition.

1.11 The minister's response of 31 March 2021 advised that she considers it is appropriate to include the definition of exempt arrangement in delegated arrangement to allow flexibility and reduce regulatory burden. The minister further advised that the instrument and the explanatory statement 'remain appropriate', however, undertook to keep this instrument under regular review and update the committee.

1.12 The committee again wrote to the minister on 14 April 2021, requesting that the instrument be amended to provide for self-repeal in 5 years, rather than 10 years, to allow more frequent parliamentary oversight. Further, the committee asked whether an upcoming statutory review under section 63A of the Act would include consideration of the appropriateness of these measures in delegated legislation

1.13 The minister responded on 7 May 2021, advising that the review under section 63A of the Act is an appropriate mechanism for the instrument to be considered, including whether it is appropriate for the significant matters prescribed in the instrument to be included in primary legislation. However, the minister also advised that a default ten year period for sunset applies to this instrument and a shorter period could not be provided without amendments to the enabling legislation. In addition, amending the Act to provide a shorter period would create uncertainty for those impacted by the instrument. On 11 May 2021, the committee gave a notice of motion to disallow the instrument as a precautionary measure to allow additional time for the committee to consider the minister's response.

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

1.14 On 17 June 2021, the committee again wrote to the minister, setting out the committee's view that the sunseting regime in the *Legislation Act 2003* (the Legislation Act) does not require an amendment to the enabling legislation for instruments to cease in less than ten years from the time of commencement. On this basis, the committee again requested that the instrument be amended to repeal in five years from the date of commencement, to allow sufficient time for the review to be conducted while ensuring timely parliamentary scrutiny of the measures set out in the instrument and the suitability of their inclusion in delegated as opposed to primary legislation.

Recent correspondence

1.15 On 27 July 2021, the minister responded to the committee's letter of 17 June 2021. In this correspondence, the minister advised that the Department of Foreign Affairs and Trade (department) had sought the advice of the Attorney-General's Department (AGD) in relation to the sunseting regime set out in the Legislation Act. AGD advised that the default ten-year sunset period set out in the Legislation Act should be maintained unless there are clear policy reasons justifying a shorter sunset period. The minister stated that there are insufficient clear policy reasons to justify a shorter sunseting period for this instrument.

1.16 The minister also reiterated her previous advice that the instrument will be subject to her regular review to ensure that it reflects the intention of the Act and supports the effective administration of the Scheme. Further, the minister assured the committee that the three-year statutory review of the Act, required by section 63A of the Act, will ensure timely and appropriate parliamentary scrutiny of the instrument.

Committee comment

1.17 The committee thanks the minister for her ongoing engagement in relation to this instrument. In particular, the committee welcomes the minister's advice that the statutory review of the Act under section 63A will provide an opportunity to consider whether the measures in the instrument would be more appropriate for primary legislation.

1.18 However, the committee remains concerned that the instrument deals with significant matters that go to the scope of the Foreign Arrangements Scheme as a whole and that it appears that it is intended to remain in force for ten years. As noted above, the committee's consistent scrutiny view is that the scope of a regulatory scheme should be clearly defined and be set out on the face of the primary legislation. This is due to the additional level of parliamentary scrutiny attached to the legislative process for primary legislation. Where significant details as to the scope of a scheme are nevertheless included in delegated legislation, the committee considers that such matters should be subject to regular parliamentary scrutiny.

1.19 The committee considers that in the system of representative and responsible government established by the Constitution there are often important scrutiny reasons for providing for shorter sunseting of instruments made by the executive under legislative power delegated by the Parliament. Therefore, the committee does not agree that it always good legislative practice to apply the default sunseting period unless there are clear policy reasons to justify a shorter sunseting period.

1.20 Indeed, the committee regularly scrutinises instruments which include a self-repeal provision.⁷

1.21 In this case, the committee considers that there are clear scrutiny reasons that justify a shorter sunseting period in relation to this instrument. Specifically, the committee is concerned that section 5 of the instrument, which establishes the definition of 'exempt arrangement', includes broad concepts which leave scope for significant uncertainty as to the meaning of the definition. In addition to the fact that the instrument sets out significant details as to the scope of the Scheme as a whole, this lack of clarity is a clear reason to justify a shorter sunseting period.

1.22 While the committee's consistent view is that instruments such as this should self-repeal after three years, the committee has acknowledged that a five-year repeal date may be more appropriate in this instance in order to allow sufficient time for the statutory review of the Act under section 63A to be conducted and any recommendations arising to be implemented.

1.23 It remains the committee's view that a five-year duration is the most appropriate mechanism for ensuring timely parliamentary scrutiny of the measures set out in this instrument.

1.24 The committee scrutiny concerns are heightened in relation to this particular instrument, given that the regulations were discussed in detail with the department at a public hearing of the Senate Foreign Affairs, Defence and Trade Legislation Committee's inquiry into the Australia's Foreign Relations (State and Territory Arrangements) Bill 2020.⁸ Further, on 16 June 2021 the Senate resolved to amend standing order 23 to reinforce the committee's scrutiny principles regarding delegated legislation which amends or modifies the operation of primary legislation. The committee therefore intends to rigorously pursue this type of scrutiny concern in accordance with the mandate provided by the Senate.

7 See, for example, ASIC Corporations (Licence Conditions—Treatment of Lease Assets) Instrument 2021/229 [F2021L00500].

8 Senate Foreign Affairs, Defence and Trade Legislation Committee, *Committee Hansard*, 13 October 2020, pp. 64–92. Accessed at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/AustForeignRelations2020/Public_Hearings.

1.25 In light of the above, the committee reiterates its request that the instrument be amended so that it repeals five years from commencement.

1.26 As the committee retains significant scrutiny concerns in relation to this instrument, the committee has resolved not to withdraw its notice of motion to disallow the instrument at this time. Based on the current sitting calendar, the disallowance motion must be considered by the Senate by 11 August 2021 or the instrument will be deemed to have been disallowed under subsection 42(2) of the *Legislation Act 2003*.

Chapter 2

Matters of interest to the Senate

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

2.2 This chapter identifies the instruments which the committee has resolved to draw to the attention of the Senate and the relevant legislation committee under standing order 23(4), with the exception of instruments which specify significant executive expenditure, which are listed in Chapter 3.¹

Instrument	Purpose	Portfolio committee
Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021 [F2021L00690]	To increase annual licence charges payable by Commonwealth entities that deal with radiation equipment and material, or undertake certain activities in relation to radiation facilities and nuclear installations, by an indexation amount of 2 per cent.	n/a
Fuel Tax (Road User Charge) Determination 2021 [F2021L00689]	<p>Heavy vehicles with a gross vehicle mass of more than 4.5 tonnes and used on public roads for business purposes are charged to recover that part of the road construction and maintenance costs that are attributable to heavy vehicles. A portion of the costs are recovered by states and territories through heavy vehicle registration charges and a portion by the Commonwealth through the fuel-based road user charge.</p> <p>This determination sets the new rate of the road user charge at 26.4 cents per litre of taxable fuel. (The rate was previously 25.8 cents per litre of taxable fuel.)</p>	Senate Rural and Regional Affairs and Transport Legislation Committee
Narcotic Drugs (Licence Charges) Amendment (Charge Amounts and Other Measures) Regulations 2021 [F2021L00752]	To amend the Narcotic Drugs (Licence Charges) Regulation 2016 to increase the annual charge set out in those regulations for the financial year 2021-22. The increase applies to the annual charges applying to medicinal cannabis licences, cannabis research licences and cannabis-related manufacture licences.	n/a

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

Instrument	Purpose	Portfolio committee
Primary Industries (Excise) Levies Amendment (Laying Chickens) Regulations 2021 [F2021L00674]	To increase the Emergency Animal Disease Response levy on laying chickens from nil to 1.1 cents per laying chicken.	n/a
Radiocommunications (Receiver Licence Tax) Amendment Determination 2021 (No. 2) [F2021L00679] Radiocommunications (Transmitter Licence Tax) Amendment Determination 2021 (No. 2) [F2021L00680]	To set out the different amounts of receiver and transmitter licence tax that is payable by licensees of particular receiver and transmitter licences.	n/a
Therapeutic Goods (Charges) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00694]	To amend the Therapeutic Goods (Charges) Regulations 2018 to increase the annual charges set out in those regulations for most products by 1.05 per cent for the financial year 2021-22. The increase applies to annual charges relating to the registration, listing or inclusion of therapeutic goods in the Australian Register of Therapeutic Goods. This encompasses registered goods (including provisionally registered medicines), listed goods, biologicals and medical devices.	n/a

Chapter 3

Scrutiny of Commonwealth expenditure

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

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

3.3 The tables below outline the expenditure specified in legislative instruments registered between 21 May 2021 and 18 June 2021.

3.4 The committee has resolved to write to the relevant legislation committees to alert those committees to the expenditure listed below that falls within their area of portfolio responsibility. The committee does so under standing order 23(4) which requires the committee to scrutinise each instrument to determine whether the Senate's attention should be drawn to it on the ground that it raises significant issues, or otherwise gives rise to issues that are likely to be of interest to the Senate.

1 For further information see the committee's guideline on [Scrutiny of Commonwealth expenditure](#) and Chapter 7 of the report of the committee's inquiry, [Parliamentary scrutiny of delegated legislation](#).

2 Details of all instruments which specify Commonwealth expenditure are published on the committee's website: https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Scrutiny_of_Commonwealth_expenditure.

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No.2) Regulations 2021 [F2021L00698]	COVID-19 Disaster Payment	The rate of payment is currently set at: <ul style="list-style-type: none"> • \$750 per week for people who were engaged in paid employment of more than 20 hours per week; • \$450 per week for people who were engaged in paid employment of less than 20 hours per week; and • \$200 per week for people in receipt of an eligible income support payment. 	The payment is intended to assist eligible workers who are unable to earn their usual income as a result of health restrictions (public health orders) imposed by state or territory governments, where the Commonwealth Chief Medical Officer has determined the location to be a COVID-19 hotspot for the purposes of Commonwealth support. The payment will be available when restrictions have remained in place for longer than one week and, other than annual leave, the individual does not have available leave entitlements to cover the period of the restrictions.	Senate Select Committee on COVID-19 Senate Legal and Constitutional Affairs Legislation Committee
Industry Research and Development (Boosting Australia's Diesel Storage Program) Instrument 2021 [F2021L00610]	Boosting Australia's Diesel Storage Program	\$200 million	The program will provide \$200 million to increase Australia's fuel security by providing matched funding to industry to construct new diesel storage. This will assist industry in meeting the increased diesel levels under the minimum stockholding obligation. The program will support industry by providing up to 50 per cent of their capital expenditure costs, through a grant, for the construction of the new diesel storage.	Senate Environment and Communications Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Industry Research and Development (Support for an Australian Fashion Certification Trade Mark Program) Instrument 2021 [F2021L00692]	Support for an Australian Fashion Certification Trade Mark Program	\$0.95 million over two years from 2020-21	<p>The Program provides funding to the Australian Fashion Council Limited to undertake the design, development and delivery of an Australian fashion certification trade mark to support its objectives to promote and nurture the success of Australian fashion and textile companies and ensure competitiveness domestically and internationally.</p> <p>The design and development of the trade mark will likely include the development of creative concepts and determination of the rules of use and registration. The delivery of the trade mark will likely include administering the trade mark, approving businesses for its use and implementing an awareness campaign.</p>	Senate Economics Legislation Committee

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation

Appendix A

New matters

4.1 The committee engages with relevant ministers and agencies to attempt to resolve its concerns about scrutiny issues raised by disallowable legislative instruments. This appendix documents the committee's new scrutiny concerns in relation to disallowable legislative instruments registered on the Federal Register of Legislation between 22 May 2021 and 18 June 2021.

Ministerial engagement

4.2 The committee is writing to the relevant minister about the scrutiny issues raised by the instruments listed below for the first time. Copies of the ministerial correspondence are available on the committee's website.¹

Instrument	Issue	Status
Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021 [F2021L00690]	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the minister.
Aviation Transport Security Amendment (Screening Information) Regulations 2021 [F2021L00736]	Principle (c) conferral of discretionary powers Principle (h) strict liability Principle (j) significant penalties in delegated legislation	Seeking advice from the minister.
Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567]	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Seeking advice from the minister.
Industry Research and Development (Boosting Australia's Diesel Storage Program) Instrument 2021 [F2021L00610]	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Seeking advice from the minister.
Industry Research and Development (Carbon Capture, Use and Storage Development Program) Instrument 2021 [F2021L00547]	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Seeking advice from the minister.

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

Instrument	Issue	Status
Industry Research and Development (Growing Australia’s Cyber Skills Program) Instrument 2021 [F2021L00536]	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Seeking advice from the minister.
Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]	Principle (g) adequacy of explanatory materials Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight	Seeking advice from the minister.
Narcotic Drugs (Licence Charges) Amendment (Charge Amounts and Other Measures) Regulations 2021 [F2021L00752] Therapeutic Goods (Charges) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00694]	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the minister.
Primary Industries (Excise) Levies Amendment (Laying Chickens) Regulations 2021 [F2021L00674]	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the minister.
Radiocommunications (Receiver Licence Tax) Amendment Determination 2021 (No. 2) [F2021L00679] Radiocommunications (Transmitter Licence Tax) Amendment Determination 2021 (No. 2) [F2021L00680]	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the minister.
Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651]	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Seeking advice from the minister.

Agency engagement

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

Instrument	Issue	Status
Aged Care Legislation Amendment (Requirements for Staff Members and Volunteers) Instrument 2021 [F2021L00758]	Principle (e) clarity of drafting	Committee secretariat considering response.
Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00697]	Principle (h) privacy	Seeking further advice from the agency.
Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 1) [F2021L00759]	Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation Principle (e) clarity of drafting Principle (g) adequacy of explanatory materials	Committee secretariat considering response.
ASIC Market Integrity Rules (Capital) 2021 [F2021L00765]	Principle (c) conferral of discretionary powers Principle (i) availability of independent merits review	Seeking advice from the agency.
Aviation Transport Security (Screening Officer Requirements) Determination 2021 [F2021L00738] Maritime Transport Security (Screening Officer Requirements) Determination 2021 [F2021L00740]	Principle (c) conferral of discretionary powers	Committee secretariat considering response.
Health Insurance Legislation Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00681]	Principle (a) compliance with the <i>Legislation Act 2003</i> - incorporation	Committee secretariat considering response.
Higher Education Provider Approval No 1 of 2021 [F2021L00747]	Principle (g) adequacy of explanatory materials	Committee secretariat considering response.
Migration Amendment (Subclass 189 Visas) Regulations 2021 [F2021L00668]	Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 23/07/2021. The Department of Home Affairs amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.

Instrument	Issue	Status
National Greenhouse and Energy Reporting (Measurement) Amendment (2021 Update) Determination 2021 [F2021L00771]	Principle (f) access and use	Committee secretariat considering response.
Radiocommunications (Class Licence) Amendment Instrument 2021 (No.1) [F2021L00734]	Principle (e) clarity of drafting	Committee secretariat considering response.
Radiocommunications (Conditions of Frequency Assignment Certificates - Apparatus Licences) Determination 2021 [F2021L00755]	Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation Principle (k) legal certainty	Committee secretariat considering response.
Radiocommunications Accreditation (General) Rules 2021 [F2021L00748]	Principle (i) availability of independent merits review	Committee secretariat considering response.
Radiocommunications Equipment (General) Rules 2021 [F2021L00661]	Principle (c) scope of administrative powers Principle (e) clarity of drafting Principle (h) privacy	Concluded following response from the agency on 21/07/2021. The Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Recycling and Waste Reduction (Product Stewardship—Televisions and Computers) Rules 2021 [F2021L00624]	Principle (f) incorporation of copyrighted material	Committee secretariat considering response.

Appendix B

Ongoing matters

5.1 This appendix documents the committee's ongoing scrutiny concerns in relation to matters previously raised in earlier *Delegated Legislation Monitors*.

Ministerial engagement

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

Instrument	Issue	Status
Aged Care Legislation Amendment (Serious Incident Response Scheme) Instrument 2021 [F2021L00222]	Principle (j) significant matters in delegated legislation Principle (k) parliamentary oversight	Committee considering response. Notice of motion to disallow placed on 04/08/2021.
Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]	Principle (e) clarity of drafting Principle (j) matters more appropriate for parliamentary enactment	Seeking further advice from the minister. Notice of motion to disallow placed on 11/05/2021.
Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]	Principle (b) implied freedom of political communication Principle (c) conferral of discretionary powers Principle (e) clarity of drafting	Committee considering response.
Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590]	Principle (a) compliance with authorising legislation Principle (d) consultation with persons affected Principle (j) significant matters in delegated legislation	Committee considering response.

¹ See www.aph.gov.au/senate_sdlc.

Instrument	Issue	Status
Bankruptcy Regulations 2021 [F2021L00261]	Principle (j) modifications to primary legislation Principle (k) parliamentary oversight	Seeking further advice from the Assistant Minister to the Attorney-General.
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]	Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight	Committee considering response.
High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021 [F2021L00391]	Principle (c) conferral of discretionary powers Principle (e) clarity of drafting Principle (g) adequacy of explanatory materials	Seeking further advice from the Chief Executive and Principal Registrar of the High Court of Australia.
Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021 [F2021L00277]	Principle (d) adequacy of consultation Principle (k) parliamentary oversight - sunseting	Seeking further advice from the Assistant Minister to the Attorney-General.
Paid Parental Leave Rules 2021 [F2021L00384]	Principle (e) clarity of drafting Principle (g) adequacy of explanatory materials Principle (h) privacy Principle (j) modifications to primary legislation Principle (k) parliamentary oversight	Committee considering response.

Agency engagement

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

Instrument	Issue	Status
Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]	Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation	Committee secretariat considering response.
Inspector-General of the Australian Defence Force Amendment Regulations 2021 [F2021L00591]	Principle (a) compliance with <i>Legislation Act 2003</i> - retrospective application Principle (h) privacy	Committee secretariat considering response. The Department of Defence undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Therapeutic Goods Legislation Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00450]	Principle (f) incorporated materials freely accessible	Committee secretariat considering response.
Vehicle Standard (Australian Design Rule) Amendment Instrument 2021 (No.1) [F2021L00570]	Principle (a) compliance with authorising legislation Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Seeking further advice from the agency.

Appendix C

Concluded matters

6.1 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

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

Instrument	Issue	Status
Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Regulations 2021 [F2021L00690]	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
Export Control (Wood and Woodchips) Rules 2021 [F2021L00318]	Principle (c) conferral of discretionary powers Principle (k) parliamentary oversight	Concluded following response from the minister on 13/07/2021. The Minister for Agriculture and Northern Australia undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 2) Regulations 2021 [F2021L00409]	Principle (k) parliamentary oversight	Concluded following response from the minister on 20/07/2021. The Minister for Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Narcotic Drugs (Licence Charges) Amendment (Charge Amounts and Other Measures) Regulations 2021 [F2021L00752]	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
Therapeutic Goods (Charges) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00694]		

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

Instrument	Issue	Status
Primary Industries (Excise) Levies Amendment (Laying Chickens) Regulations 2021 [F2021L00674]	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
Radiocommunications (Receiver Licence Tax) Amendment Determination 2021 (No. 2) [F2021L00679]	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
Radiocommunications (Transmitter Licence Tax) Amendment Determination 2021 (No. 2) [F2021L00680]		

Agency engagement

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

Instrument	Issue	Status
Aged Care Legislation Amendment (Aged Care Recipient Classification) Principles 2021 [F2021L00357]	Principle (c) delegation of administrative powers and functions	Concluded following response from the agency on 12/07/2021. The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns
Banking Executive Accountability Regime (Size of an Authorised Deposit-taking Institution) Determination 2021 [F2021L00425]	Principle (a) compliance with the <i>Legislation Act 2003</i> - incorporation	Concluded following response from the agency on 21/07/2021.
Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No.1) [F2021L00543]	Principle (a) compliance with authorising legislation	Concluded following response from the agency on 14/07/2021. The Australian Communications and Media Authority undertook to amend the instrument in response to the committee's scrutiny concerns.
Greenhouse and Energy Minimum Standards (Authorisation Requirements for Testing GEMS Products) Instrument 2021 [F2021L00569]	Principle (d) consultation on specific instrument Principle (d) consultation with persons affected	Concluded following response from the agency on 14/07/2021.

Instrument	Issue	Status
Industry Research and Development (National Agricultural Innovation Agenda Program) Instrument 2021 [F2021L00561]	Principle (c) conferral of discretionary powers Principle (k) parliamentary oversight	Concluded following response from the agency on 15/07/2021.
Migration Amendment (Subclass 189 Visas) Regulations 2021 [F2021L00668]	Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 23/07/2021. The Department of Home Affairs amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Norfolk Island Applied Laws Amendment (Suspension) Ordinance 2021 [F2021L00587]	Principle (a) compliance with <i>Legislation Act 2003</i> - consultation	Concluded following response from the agency on 12/07/2021. The Department of Infrastructure, Transport, Regional Development and Communications amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Radiocommunications Equipment (General) Rules 2021 [F2021L00661]	Principle (c) scope of administrative powers Principle (e) clarity of drafting Principle (h) privacy	Concluded following response from the agency on 21/07/2021. The Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.

Appendix D

Undertakings

7.1 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

7.2 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
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	The Attorney-General undertook to commence an inquiry into good faith obligations in Commonwealth legislation in response to the committee's scrutiny concerns.	31/08/2020
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	The Minister for the Environment advised that the Reserve Bank of Australia undertook to amend the instrument in response to the committee's scrutiny concerns.	01/12/2020
Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]	The Assistant Minister to the Attorney-General undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/02/2021
Amendment of List of Exempt Native Specimens – Commission for the Conservation of Antarctic Marine Living Resources Exploratory Fisheries in Statistical Divisions 58.4.1 and 58.4.2 (the East Antarctica Fishery) and Statistical Subareas 88.1 and 88.2 (the Ross Sea Fishery), November 2020 [F2020L01484]	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.	15/02/2021
Treasury portfolio – various instruments	The Treasurer undertook to continue to engage with the committee in good faith to seek a resolution to the committee's systemic concerns regarding the duration of instruments which provide for exemptions or modifications to primary legislation.	18/02/2021

Instrument	Undertaking	Date of Undertaking
Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]	The Department of Agriculture, Water Resources and the Environment undertook to revoke the instrument in response to the committee's scrutiny concerns.	16/03/2021
Industry Research and Development (Digital Directors Program) Instrument 2020 [F2020L01554]	The Department of Industry, Science, Energy and Resources undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/04/2021
Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]	The Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	09/04/2021
Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020 [F2020L01614]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	20/04/2021
Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2021 [F2021L00178]	The Greenhouse and Energy Minimum Standards Regulator undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/05/2021
CASA EX16/21 — CASR Subpart 99.B DAMP Requirements for Foreign Air Transport AOC Holders Exemption 2021 [F2021L00149]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	10/05/2021
Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	21/05/2021
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 10) 2021 [F2021L00305]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/06/2021
Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021 [F2021L00243]	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.	04/06/2021
Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	08/06/2021
Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]	The Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	16/06/2021

Instrument	Undertaking	Date of Undertaking
Income Tax Assessment (1997 Act) Regulations 2021 [F2021L00206]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/06/2021
Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021 [F2021L00412]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	24/06/2021
Road Vehicle Standards Amendment (2021 Measures No. 1) Rules 2021 [F2021L00376]	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/06/2021
Radiocommunications (Spectrum Access Charges – 20 GHz and 30 GHz Bands) Determination 2021 [F2021L00230]	The Minister for Communications, Urban Infrastructure, Cities and the Arts advised that the Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	30/06/2021
Export Control Rules 2021 - various instruments [F2021L00312] [F2021L00317] [F2021L00334] [F2021L00304] [F2021L00315] [F2021L00310] [F2021L00308] [F2021L00313]	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	02/07/2021
Student Assistance Regulations 2021 [F2021L00201]	The Minister for Families and Social Services undertook to amend the instrument in response to the committee's scrutiny concerns. The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/07/2021
CASA 30/21 – Required Communication Performance and Required Surveillance Performance (RCP 240 and RSP 180) Capability Declarations – Direction 2021 [F2021L00504]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/07/2021
Aged Care Legislation Amendment (Aged Care Recipient Classification) Principles 2021 [F2021L00357]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/07/2021

Instrument	Undertaking	Date of Undertaking
Export Control (Wood and Woodchips) Rules 2021 [F2021L00318]	The Minister for Agriculture and Northern Australia undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/07/2021
Broadcasting Services (Parental Lock) Amendment Technical Standard 2021 (No.1) [F2021L00543]	The Australian Communications and Media Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	14/07/2021
Inspector-General of the Australian Defence Force Amendment Regulations 2021 [F2021L00591]	The Department of Defence undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/07/2021
Radiocommunications Equipment (General) Rules 2021 [F2021L00661]	The Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/07/2021
Bankruptcy Regulations 2021 [F2021L00261]	The Assistant Minister to the Attorney-General undertook to advise the committee of the outcome of the government's targeted review of the appropriateness of modifying provisions currently prescribed in the instrument.	26/07/2021

Implemented undertakings

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

Instrument	Undertaking	Date implemented
Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005 Amendment 11 [F2021L00063]	The Department of Infrastructure, Transport, Regional Development and Communications amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/07/2021
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 2) Regulations 2021 [F2021L00409]	The Minister for Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/07/2021
Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 [F2020L01568]	The Treasurer amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27/07/2021
Migration Amendment (Subclass 189 Visas) Regulations 2021 [F2021L00668]	The Department of Home Affairs amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	28/07/2021
Commonwealth Grant Scheme Guidelines 2020 [F2020L01609]	The Minister for Education and Youth amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	30/07/2021
Norfolk Island Applied Laws Amendment (Suspension) Ordinance 2021 [F2021L00587]	The Department of Infrastructure, Transport, Regional Development and Communications amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/08/2021