

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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| | |
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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.

1 For further information on the disallowance process and the work of the committee see *Odgers' 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.

Guidelines

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

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 60 disallowable legislative instruments registered on the Federal Register of Legislation between 26 and 30 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 necessary, the committee may place a notice of motion to disallow an instrument contained in this chapter to emphasise its scrutiny concerns and to provide the Senate with additional time to consider the instrument with the benefit of the committee's comments. Accordingly, where appropriate, this chapter also details the committee's reasons for withdrawing notices of motion to disallow such instruments.

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

1 See www.aph.gov.au/senate_sd/c.

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 |
|---|--|--|
| Aged Care Legislation Amendment (Royal Commission Response No. 1) Principles 2021 [F2021L00923] | To set out requirements for the use of restrictive practices in relation to aged care recipients in residential aged care. The amendments are in response to the recommendations of the Royal Commission into Aged Care Quality and Safety and the Independent Review of the Legislative Provisions Governing the Use of Restraint in Residential Aged Care. | Senate Community Affairs Legislation Committee |
| Australian Immunisation Register Amendment (National Immunisation Program Vaccines) Rules 2021 [F2021L00925] | To mandate that vaccination providers must report the administration of National Immunisation Program vaccines to the Australian Immunisation Register. Prior to the commencement of the instrument only COVID-19 and influenza vaccinations were reported to the Register. | Senate Community Affairs Legislation Committee |

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

Chapter 3

Scrutiny of Commonwealth expenditure

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

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

3.3 The tables below outline the expenditure specified in legislative instruments registered between 26 and 30 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.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Scrutiny_of_Commonwealth_expenditure.

| Instrument | Grant/ Program | Amount | Description | Portfolio committee |
|--|---------------------------------|---|--|---|
| Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 3) Regulations 2021 [F2021L00862] | Agriculture Stewardship Package | \$32.1 million over four years from 2021-22 | Funding will be provided for additional activities under the Agriculture Stewardship Package, which helps farmers improve on-farm land management practices. The additional components aim to test the concept of buying and selling biodiversity improvement services from farmers, and how the Commonwealth can leverage growing interest in biodiversity outcomes from private investors. Over time, the aim is to create a credible market mechanism that improves biodiversity and creates new income opportunities for farmers. Key deliverables include trialling the Enhancing Remnant Vegetation Pilot, implementing the Australian Farm Biodiversity Certification Scheme, and developing a biodiversity trading platform to link buyers and sellers of biodiversity services. | Senate Rural and Regional Affairs and Transport Legislation Committee |
| | Blue Carbon Ecosystems | \$30.6 million over four years from 2021-22 | Funding will be provided to support projects in regional Australia and in foreign countries that relate to restoring coastal ecosystems and demonstrating environmental economic accounting, and international events and partnerships relating to blue carbon and rainforests. Blue carbon is the carbon sequestered and stored in coastal and marine ecosystems. The program will fund Australian organisations to deliver on-the-ground coastal ecosystem restoration projects (for example, in relation to mangroves, tidal marshes and seagrasses) in at least four selected sites in regional Australia. On-the-ground projects for at least four selected sites in developing countries overseas will also be funded under the program. | Senate Environment and Communications Legislation Committee |

| Instrument | Grant/ Program | Amount | Description | Portfolio committee |
|-------------------|--|---|---|---|
| | Australian Farm Data Code | \$0.5 million over three years from 2021-22 | Funding will be provided for a one-off, ad hoc grant to modify, expand, implement and raise awareness of the Australian Farm Data Code. The expanded Code will support increased producer and service provider awareness of how farm data can be stored, managed and shared and instil greater confidence by end users to adopt digital technologies. | Senate Rural and Regional Affairs and Transport Legislation Committee |
| | AgCAREERSTART | \$5.1 million over two years from 2021-22 | Funding will be provided to an industry-led consortium to develop and pilot a program that provides school leavers the opportunity to work in agriculture by undertaking a structured and supported gap year placement at a farm and relevant training. | Senate Rural and Regional Affairs and Transport Legislation Committee |
| | AgUP | \$7.3 million over four years from 2021-22 | Funding will be provided for a grants program for industry-led initiatives that provide opportunities for upskilling and career progression in the agriculture industry. | Senate Rural and Regional Affairs and Transport Legislation Committee |
| | Modern Workforce Management and Planning Practices Project | Approximately \$1.0 million over two years from 2021-22 | Funding will be provided to support the development of educational materials for agricultural employers on workforce management and planning practices. These materials will help agricultural employers adjust to disruptions and challenges in the labour market and improve the industry's image and reputation. | Senate Rural and Regional Affairs and Transport Legislation Committee |

| Instrument | Grant/ Program | Amount | Description | Portfolio committee |
|--|-------------------------------------|--|--|--|
| Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2021 [F2021L00864] | Home Care Workforce Support Program | \$91.8 million over two years from 2021-22 | <p>The program will provide support to attract, train and retain an additional 13,000 future aged care workers, and increase the skills of the aged care workforce. Grant funding will be provided to organisations or consortia for activities to support the growth of the home care workforce by assisting home care service providers to attract, train and retain new personal care workers in their local area, in each state and territory. These activities could include screening candidates to determine suitability for work in the home care sector, supporting students to complete work placements in the aged care sector, developing peer support networks for new personal care workers, and supporting existing workers to build supervisory skills.</p> <p>The program is part of the \$452.2 million package to address immediate priorities in the aged care sector in response to the Final Report from the Royal Commission into Aged Care Quality and Safety.</p> | Senate Community Affairs Legislation Committee |

| Instrument | Grant/ Program | Amount | Description | Portfolio committee |
|--|---|---|---|--|
| Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 1) Regulations 2021 [F2021L00860] | Black Summer Bushfire Recovery Grants Program | \$280 million over three years from 2021-22 | <p>The Black Summer Bushfire Recovery Program will provide grants to community organisations and bushfire-affected local government areas (LGAs) and communities for economic, social and infrastructure projects that have benefit for the community. This grant funding aims to support the short to medium-term recovery needs of communities affected by the 2019-20 bushfires, and initiatives to increase the resilience of such communities against future bushfires.</p> <p>Grants will be provided through an open competitive funding round, with grant amounts to range from \$20,000 to \$10 million for projects across LGAs that were declared natural disasters as a result of the 2019-20 bushfires. These LGAs are located in Queensland, New South Wales, Australian Capital Territory, Victoria, South Australia and Tasmania.</p> | Senate Finance and Public Administration 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 26 and 30 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 |
|--|---|---|
| Aged Care Legislation Amendment (Royal Commission Response No.1) Principles 2021 [F2021L00923] | Principle (c) conferral of discretionary powers Principle (e) clarity of drafting Principle (j) matters more appropriate for parliamentary enactment Principle (j) significant impact on personal rights and liberties | Seeking advice from the minister. |
| Legislation (Exemptions and Other Matters) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00859] | Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight – exemption from disallowance Principle (k) parliamentary oversight – exemption from sunseting | Seeking advice from the Attorney-General. |

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

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 |
|--|---|---------------------------------|
| Education Services for Overseas Students (Exempt Courses) Instrument 2021 [F2021L00877] | Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation | Seeking advice from the agency. |
| Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2021 [F2021L00864] | Principle (c) delegation of administrative powers and functions | Seeking advice from the agency. |

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 | Committee considering response. |
| | Principle (k) parliamentary oversight | Notice of motion to disallow placed on 04/08/2021. |
| Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863] | Principle (b) implied freedom of political communication | Seeking further advice from the Assistant Treasurer. |
| | Principle (c) conferral of discretionary powers | |
| | Principle (e) clarity of drafting | |
| Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] | Principle (a) compliance with authorising legislation | Seeking advice from the minister. |
| | Principle (a) compliance with <i>Legislation Act 2003</i> - same in substance | |
| | Principle (j) significant matters in delegated legislation | |
| Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590] | Principle (a) compliance with authorising legislation | Seeking further advice from the minister. |
| | Principle (d) consultation with persons affected | |
| | Principle (j) significant matters in delegated legislation | |

¹ See www.aph.gov.au/senate_sdlc.

| Instrument | Issue | Status |
|--|---|---|
| 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. Notice of motion to disallow placed on 25/08/2021. |
| Charter of the United Nations Lists [F2021L00626] [F2021L00627] [F2021L00628] [F2021L00631] [F2021L00632] [F2021L00633] [F2021L00634] [F2021L00635] [F2021L00636] [F2021L00637] [F2021L00638] [F2021L00639] [F2021L00640] [F2021L00641] [F2021L00642] [F2021L00643] [F2021L00644] [F2021L00645] [F2021L00647] [F2021L00648] [F2021L00649] | Principle (a) compliance with <i>Legislation Act 2003</i> - registration of instruments Principle (g) adequacy of explanatory materials | Seeking further advice from the minister. Notices of motion to disallow placed on 24/08/2021. |
| 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. Notice of motion to disallow placed on 11/08/2021. |
| 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. Notice of motion to disallow placed on 11/08/2021. |
| 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. Notice of motion to disallow placed on 24/08/2021. |
| 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. Notice of motion to disallow placed on 24/08/2021. |
| 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. Notice of motion to disallow placed on 11/08/2021. |

| Instrument | Issue | Status |
|---|--|--|
| Industry Research and Development (Growing Australia’s Cyber Skills Program) Instrument 2021 [F2021L00536] | Principle (g) adequacy of explanatory materials | Seeking advice from the minister. |
| | Principle (k) parliamentary oversight | Notice of motion to disallow placed on 11/08/2021. |
| Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539] | Principle (g) adequacy of explanatory materials | Seeking advice from the minister. |
| | Principle (j) matters more appropriate for parliamentary enactment | Notice of motion to disallow placed on 11/08/2021. |
| | Principle (k) parliamentary oversight | |
| Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021 [F2021L00277] | Principle (d) adequacy of consultation | Committee considering response. |
| | Principle (k) parliamentary oversight - sunseting | Notice of motion to disallow placed on 11/08/2021. |
| Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651] | Principle (j) exemptions from primary legislation | Committee considering response. |
| | Principle (k) parliamentary oversight | Notice of motion to disallow placed on 24/08/2021. |

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 |
|--|---|---|
| Great Barrier Reef Marine Park Amendment (No-Anchoring Areas) Regulations 2021 [F2021L00843] | Principle (k) parliamentary oversight | Seeking further advice from the agency. |
| National Health (Medication Program for Homeless People) Special Arrangement 2021 [F2021L00844] | Principle (i) availability of independent merits review | Committee secretariat considering response. |

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 |
|---|---|---|
| Bankruptcy Regulations 2021 [F2021L00261] | Principle (j) modifications to primary legislation Principle (k) parliamentary oversight | Concluded following response from the minister on 17/08/2021. The Assistant Minister to the Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns. |

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 (Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00697] | Principle (h) privacy | Concluded following response from the agency on 18/08/2021. The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. |
| 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 | Concluded following response from the agency on 12/08/2021. The Australian Transaction Reports and Analysis Centre undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. |

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

| Instrument | Issue | Status |
|---|---|---|
| <p>Aviation Transport Security (Screening Officer Requirements) Determination 2021 [F2021L00738]</p> <p>Maritime Transport Security (Screening Officer Requirements) Determination 2021 [F2021L00740]</p> | <p>Principle (c) conferral of discretionary powers</p> | <p>Concluded following response from the agency on 23/08/2021.</p> <p>The Department of Home Affairs amended the explanatory statements to the instruments in response to the committee's scrutiny concerns.</p> |
| <p>Health Insurance (Section 3C General Medical Services— Transcatheter Mitral Valve Repair) Determination 2021 [F2021L00800]</p> | <p>Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation</p> | <p>Concluded following response from the agency on 11/08/2021.</p> <p>The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p> |
| <p>Higher Education Provider Approval No 1 of 2021 [F2021L00747]</p> | <p>Principle (g) adequacy of explanatory materials</p> | <p>Concluded following response from the agency on 12/08/2021.</p> <p>The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns.</p> <p>The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p> |
| <p>Inspector-General of the Australian Defence Force Amendment Regulations 2021 [F2021L00591]</p> | <p>Principle (a) compliance with <i>Legislation Act 2003</i> - retrospective application</p> <p>Principle (h) privacy</p> | <p>Concluded following response from the agency on 10/08/2021.</p> <p>The Department of Defence undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p> |
| <p>Recycling and Waste Reduction (Product Stewardship—Televisions and Computers) Rules 2021 [F2021L00624]</p> | <p>Principle (f) incorporation of copyrighted material</p> | <p>Concluded following response from the agency on 12/08/2021.</p> <p>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.</p> |
| <p>Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2021 [F2021L00823]</p> <p>Road Vehicle Standards (Verification of Road Vehicles) Determination 2021 [F2021L00850]</p> | <p>Principle (a) compliance with <i>Legislation Act 2003</i> - incorporation</p> | <p>Concluded following response from the agency on 18/08/2021.</p> <p>The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.</p> |

| Instrument | Issue | Status |
|--|---|--|
| Road Vehicle Standards (Model Reports—Compliance with Standards) Determination 2021 [F2021L00838] | Principle (f) incorporated materials freely accessible | Concluded following response from the agency on 16/08/2021. 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. |
| Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021 [F2021L00848] | Principle (d) consultation with persons affected | Concluded following response from the agency on 12/08/2021. The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. |
| Veterans' Entitlements (Counselling) Extended Eligibility Determination 2021 [F2021L00804] | Principle (c) conferral of discretionary powers Principle (e) drafting error Principle (h) retrospective commencement | Concluded following response from the agency on 23/08/2021. The Department of Veterans' Affairs 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 |
| 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 |
| 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 |

| Instrument | Undertaking | Date of Undertaking |
|--|--|----------------------------|
| 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 |
| Health Insurance Legislation Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00681] | The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 26/07/2021 |
| Aged Care Legislation Amendment (Requirements for Staff Members and Volunteers) Instrument 2021 [F2021L00758] | The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 26/07/2021 |
| Radiocommunications (Class Licence) Amendment Instrument 2021 (No.1) [F2021L00734] | The Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 28/07/2021 |
| Radiocommunications (Conditions of Frequency Assignment Certificates - Apparatus Licences) Determination 2021 [F2021L00755] | The Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 28/07/2021 |
| Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 1) [F2021L00759] | The Australian Transaction Reports and Analysis Centre undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 29/07/2021 |
| Paid Parental Leave Rules 2021 [F2021L00384] | <p>The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p> <p>The Minister for Families and Social Services advised that the Office of Parliamentary Counsel would make minor changes to the instrument in response to the committee's scrutiny concerns.</p> | 30/07/2021 |

| Instrument | Undertaking | Date of Undertaking |
|--|---|---------------------|
| Therapeutic Goods Legislation Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00450] | The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 30/07/2021 |
| ASIC Market Integrity Rules (Capital) 2021 [F2021L00765] | The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. The Department of the Treasury undertook to amend the instrument in response to the committee's scrutiny concerns. | 04/08/2021 |
| Vehicle Standard (Australian Design Rule) Amendment Instrument 2021 (No.1) [F2021L00570] | 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. | 04/08/2021 |
| Charter of the United Nations Lists [F2021L00626] [F2021L00627] [F2021L00628] [F2021L00631] [F2021L00632] [F2021L00633] [F2021L00634] [F2021L00635] [F2021L00636] [F2021L00637] [F2021L00638] [F2021L00639] [F2021L00640] [F2021L00641] [F2021L00642] [F2021L00643] [F2021L00644] [F2021L00645] [F2021L00647] [F2021L00648] [F2021L00649] | The Minister for Foreign Affairs undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns. | 06/08/2021 |
| Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488] | The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 09/08/2021 |
| 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. | 10/08/2021 |
| Health Insurance (Section 3C General Medical Services—Transcatheter Mitral Valve Repair) Determination 2021 [F2021L00800] | The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 11/08/2021 |
| Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 1) [F2021L00759] | The Australian Transaction Reports and Analysis Centre undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 12/08/2021 |

| Instrument | Undertaking | Date of Undertaking |
|--|--|----------------------------|
| Higher Education Provider Approval No 1 of 2021 [F2021L00747] | <p>The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns.</p> <p>The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p> | 12/08/2021 |
| Recycling and Waste Reduction (Product Stewardship—Televisions and Computers) Rules 2021 [F2021L00624] | 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. | 12/08/2021 |
| Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021 [F2021L00848] | The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 12/08/2021 |
| Road Vehicle Standards (Model Reports—Compliance with Standards) Determination 2021 [F2021L00838] | 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. | 16/08/2021 |
| Bankruptcy Regulations 2021 [F2021L00261] | The Assistant Minister to the Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns. | 17/08/2021 |
| Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00697] | The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 18/08/2021 |
| Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2021 [F2021L00823] Road Vehicle Standards (Verification of Road Vehicles) Determination 2021 [F2021L00850] | The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns. | 18/08/2021 |
| Veterans' Entitlements (Counselling) Extended Eligibility Determination 2021 [F2021L00804] | The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 23/08/2021 |

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 |
|--|--|-------------------------|
| Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021 [F2021L00412] | The Department of the Treasury amended the explanatory statement to the instrument in response to the committee's scrutiny concerns. | 13/08/2021 |
| Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569] | The Minister for Foreign Affairs amended the instrument in response to the committee's scrutiny concerns. | 16/08/2021 |
| Aviation Transport Security (Screening Officer Requirements) Determination 2021 [F2021L00738] Maritime Transport Security (Screening Officer Requirements) Determination 2021 [F2021L00740] | The Department of Home Affairs amended the explanatory statements to the instruments in response to the committee's scrutiny concerns. | 23/08/2021 |