

The Senate

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Standing  
Committee for the  
Scrutiny of Delegated  
Legislation

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Delegated Legislation Monitor

Monitor 16 of 2021

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# Contents

<b>Membership of the committee .....</b>	<b>iii</b>
<b>Introduction.....</b>	<b>vii</b>
<b>Chapter 1 – Instruments raising significant scrutiny concerns .....</b>	<b>1</b>
<b>Part 1 – Disallowable instruments raising significant scrutiny issues.....</b>	<b>2</b>
<b>Part 2 - Exempt instruments raising significant scrutiny issues.....</b>	<b>3</b>
Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 [F2021L01068] .....	3
Northern Australia Infrastructure Facility Investment Mandate Direction 2021 [F2021L00942] .....	11
<b>Chapter 2 – Matters of interest to the Senate .....</b>	<b>15</b>
<b>Chapter 3 – Scrutiny of Commonwealth expenditure.....</b>	<b>17</b>
<b>Chapter 4 – Scrutiny of instruments exempt from disallowance .....</b>	<b>21</b>
Instruments which meet the committee's expectations .....	21
Instruments which do not meet the committee's expectations .....	22
<b>Appendix A - New matters .....</b>	<b>25</b>
Ministerial engagement .....	25
Agency engagement .....	25
<b>Appendix B - Ongoing matters .....</b>	<b>29</b>
Ministerial engagement .....	29
Agency engagement .....	31
<b>Appendix C - Concluded matters .....</b>	<b>33</b>
Ministerial engagement .....	33
Agency engagement .....	35
<b>Appendix D - Undertakings .....</b>	<b>39</b>
Outstanding undertakings.....	39
Implemented undertakings .....	45



# 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 legislative instruments, and to decide whether they comply with the committee's non-partisan scrutiny principles.

On 16 June 2021 the Senate adopted three recommendations of the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight that were directed to the Senate. As a result, from 1 July 2021, the standing orders of the Senate were amended to add two new scrutiny principles to the committee's terms of reference. In addition, the standing orders were amended to allow the committee to consider instruments which are exempt from disallowance.<sup>1</sup>

## 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

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1 See [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Changes\\_to\\_committee\\_standing\\_orders](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Changes_to_committee_standing_orders)

- (k) in the case of an instrument exempt from sunseting, it is appropriate for the instrument to be exempt from sunseting;
- (l) in the case of an instrument that amends or modifies the operation of primary legislation, or exempts persons or entities from the operation of primary legislation, the instrument is in force only for as long as is strictly necessary; and
- (m) 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.

Senate standing order 23(4A) provides that the committee may, for the purpose of reporting on its terms of reference, consider instruments made under the authority of Acts of the Parliament that are not subject to disallowance. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

### **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 reports on instruments which are exempt from disallowance, including whether they meet the committee's expectations under standing order 23, in Part 2 of Chapter 1 and in Chapter 4 of the *Delegated Legislation Monitor*.

The committee's work is supported by the processes for the registration, tabling and disallowance of legislative instruments under the *Legislation Act 2003*.<sup>2</sup>

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

## **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 legislative instruments for the prescribed period. Legislative instruments detailed in the monitor are also listed in the 'Index of instruments' on the committee's website.<sup>3</sup>

## **Ministerial correspondence**

The committee undertakes formal correspondence with ministers in order to resolve more significant scrutiny concerns. Ministerial correspondence is published on the committee's website.<sup>4</sup>

## **Agency correspondence**

The committee undertakes informal correspondence with agencies via its secretariat to gather information about potential scrutiny concerns. This correspondence assists the committee in deciding whether it is necessary to seek further advice from the relevant minister about those concerns. Agency correspondence is not published; 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.<sup>5</sup>

## **General information**

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

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

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

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3 *Index of instruments*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Index).

4 See [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Monitor](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor).

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

6 See Australian Government, Federal Register of Legislation, [www.legislation.gov.au](http://www.legislation.gov.au).

7 Parliament of Australia, *Senate Disallowable Instruments List*, [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/leginstruments/Senate\\_Disallowable\\_Instruments\\_List](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/Senate_Disallowable_Instruments_List).

## **Instruments considered in this monitor**

The committee examined 131 legislative instruments registered on the Federal Register of Legislation between 11 September 2021 and 1 October 2021. This included 110 disallowable instruments and 21 instruments exempt from disallowance.

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.

# **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 This chapter is divided into two parts. Part 1 deals with instruments subject to disallowance and Part 2 deals with instruments which are exempt from disallowance.

## **Part 1**

### **Disallowable instruments raising significant scrutiny issues**

1.3 There are no disallowable instruments raising significant scrutiny issues for inclusion in this Part of the Monitor.

## Part 2

### Exempt instruments raising significant scrutiny issues

1.4 This Part details those instruments exempt from disallowance which raise particularly significant scrutiny concerns in relation to the appropriateness of their exemption from disallowance under Senate standing order 23(4A). Where necessary, the committee additionally raises scrutiny concerns in relation to its scrutiny principles set out in Senate standing order 23(3)(3).

### Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021

<b>FRL No.</b>	<a href="#">[F2021L01068]</a> <sup>1</sup>
<b>Purpose</b>	To amend the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020 to remove the automatic exemption for a person who ordinarily resides in another country and replace it with a discretionary exemption and make consequential amendments to the Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2020.
<b>Authorising legislation</b>	<i>Biosecurity Act 2015</i>
<b>Portfolio</b>	Health
<b>Source of exemption</b>	Subsection 477(2) of the <i>Biosecurity Act 2015</i>

#### Overview

1.5 Subsection 477(1) of the *Biosecurity Act 2015* (Biosecurity Act) empowers the minister to make emergency requirements to prevent or control the spread of a listed human disease within Australia or to another country. The Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020 (principal instrument) specifies such emergency requirements restricting overseas travel by Australian citizens or permanent residents and sets out some exemptions for certain classes of individuals.

1.6 The Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 (the instrument) amended the principal instrument to remove the automatic exemption for persons who ordinarily reside in another

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

country from the overseas travel ban. This has the effect of preventing such persons from travelling overseas unless another general exemption under section 6 of the principal instrument applies to them or they are granted an exemption due to exceptional circumstances by the Australian Border Force Commissioner or an Australian Border Force employee under subsection 7(1) of the principal instrument.

1.7 On 27 October 2021, the Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 2) Determination 2021 [F2021L01463] (second determination) was registered on the Federal Register of Legislation.<sup>2</sup>

1.8 This second determination further amended the principal instrument to include an automatic exemption for fully vaccinated Australian citizens and permanent residents to depart Australian territory, provided they meet the specified criteria. The second determination also removed the need for exemptions to be made in writing where a person is unable to be vaccinated for medical reasons or for those under 12 years of age at the time that their scheduled flight is due to depart.

### **Scrutiny concerns**

1.9 The committee's detailed scrutiny concerns in relation to this instrument are set out in Chapter 1 of *Delegated Legislation Monitor 14 of 2021*.<sup>3</sup>

1.10 In summary, the committee raised concerns in relation to the following scrutiny matters:

- Freedom of movement;
- Conferral of discretionary powers;
- Consultation with experts and persons affected by the instrument
- Exemption from disallowance;
- Matters more appropriate for parliamentary enactment; and
- Modification of the operation of primary legislation.

### **Correspondence**

1.11 The Minister responded to the committee on 19 October 2021. A summary of the Minister's response in relation to each matter raised in *Delegated Legislation Monitor 14 of 2021* is set out below.

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2 This instrument is due to be considered by the committee in *Delegated Legislation Monitor 1 of 2022*.

3 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 14 of 2021*, 29 September 2021, pp. 14–21. Accessible at: [https://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Monitor](https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor)

### ***Freedom of movement***

1.12 In relation to the committee's concerns that the instrument may trespass unduly on personal rights and liberties, including the freedom of movement, the minister advised that he must be satisfied that the requirement is no more intrusive than is required in the circumstances.

1.13 The minister also expressed that the amendment to the principal instrument was necessary to reduce the risk of bringing overseas-acquired cases of COVID-19 into Australia until such a time that the vaccination rates allow for the reopening of Australia's borders, as outlined in the National Plan.

1.14 The minister did not address the committee's request in relation to what the expected impact of the measures implemented by the instrument would be on the freedom of movement of Australian citizens and permanent residents who ordinarily reside in another country, including the number of individuals who may be affected by the instrument.

### ***Conferral of discretionary powers***

1.15 In addressing the committee's comments about the conferral of discretionary powers provided for under subsection 7(1) of the principal instrument, the minister's response provided a link to the Department of Home Affairs website which sets out directives in relation to the outward travel restrictions that currently apply.

1.16 This advice indicates that an authorised officer of the Department of Home Affairs or the Australian Border Force can determine whether people are in an exempt category or can grant an individual exemption in order for the person to depart Australia. It also specifies the minimum classification level for decision-makers in specified situations.

1.17 Further, the advice states that determinations should be made with reference to a reasonable standard of evidence in the circumstances; and that it is up to the decision-maker to determine the appropriate level of evidence required.

1.18 This directive appears to have been updated since the minister's response was initially provided to the committee.

### ***Consultation with experts and persons affected by the instrument***

1.19 The minister's response explained that consultation is undertaken with relevant stakeholders when circumstances permit. The minister justified the lack of consultation on instruments of this type highlighting that consultation beyond government is not always possible where there is an immediate need to give effect to public health measures.

1.20 The minister's advised that the automatic exemption was in place for sufficient time:

Given the length of time that the automatic exemption operated (over 18 months), sufficient time was provided for persons falling into this category wishing to return to their usual place of residence, to do so.

1.21 The minister did not directly address consultation in relation to this particular instrument, as requested in the committee's *Delegated Legislation Monitor 14 of 2021*.

### ***Exemption from disallowance***

#### ***Matters more appropriate for parliamentary enactment***

#### ***Modification of the operation of primary legislation***

1.22 The minister's response acknowledged the important role that the parliamentary disallowance process plays in ensuring oversight of Commonwealth law. It also acknowledged the committee's concern that the human biosecurity emergency powers are not subject to disallowance.

1.23 In justifying the exemption from disallowance of instruments made under the Biosecurity Act generally, the minister explained:

Subjecting these determinations to disallowance would undermine the decision-making and risk management processes. The possibility of disallowance would create considerable uncertainty for government, industry and individuals. Disallowance would also undermine the urgent response required to effectively manage emerging biosecurity risks. It is necessary and appropriate that these instruments be exempt from disallowance and not vulnerable to political considerations.

1.24 The minister also advised that the Biosecurity Act allows the government to quickly respond to emerging and continuing human biosecurity threats.

1.25 In relation to this instrument, the minister's response clarified that at the time of amendment, the severe and immediate threat to human health from COVID-19 was evident in the increasing global cases and that the government was particularly concerned with managing the capacity within, and preventing transmission from, hotel quarantine.

1.26 The minister's response also set out the accountability mechanisms applying to the government's actions under the Biosecurity Act, including Senate Estimates and the Senate Select Committee on COVID-19, as well as the specific legal tests which must be met in order for an emergency determination to be made.

1.27 More broadly, the minister suggested that the Biosecurity Act was passed following 'extensive community consultation and robust debate' in the Parliament.

1.28 The minister's response did not address several aspects of the committee's concerns set out in *Delegated Legislation Monitor 14 of 2021*, including why it is considered necessary and appropriate for the emergency requirements outlined in the instrument to override any Australian law.

1.29 Finally, the minister stated that he does not consider it necessary to amend the Act or the current explanatory statement, in any instances requested by the committee, as he considers that the exemptions from the disallowance process for emergency determinations are appropriately justified. The minister did note, however, that he would ask the department to take the committee's views into consideration when making any further changes to these instruments.

### **Committee view**

1.30 The committee considers that the minister's response is inadequate as it does not address significant elements of the requests for information made in relation to this instrument, in particular, in relation to freedom of movement and the conferral of discretionary powers. The committee considers that information about the directive relating to outward travel restrictions should have been included in the explanatory statement to the instrument.

1.31 In relation to consultation, the committee considers the minister's response appears contradictory. On the one hand, the minister has advised that persons likely to be affected by the instrument had 18 months to return to their usual place of residence, should they wish to do so. On the other hand, the minister has advised generally that there was not sufficient time to consult because of the immediate need to give effect to these public health measures. It appears to the committee that there was sufficient time available for consultation on this instrument.

1.32 Nevertheless, the committee's most significant concern remains the instrument's status as exempt from disallowance; a concern which is augmented by the fact that the instrument applies despite any provision of any other Australian law.

1.33 In relation to these concerns, the committee highlights the minister's statement that the Biosecurity Act was passed following 'extensive community consultation and robust debate' in the Parliament. The committee does not agree with this statement. While the bill for the Biosecurity Act was the subject of inquiry by the Senate Rural and Regional Affairs and Transport Legislation Committee, it was only debated for approximately five hours in each of the Houses of Parliament. In addition, the focus of this debate was not related to those human biosecurity emergency provisions which are now rightly the subject of significant scrutiny.

1.34 As noted in *Delegated Legislation Monitor 14 of 2021*, the committee has long been concerned with provisions in delegated legislation which modify or override primary legislation. The committee considers that, at a minimum, such provisions should be soundly justified in the explanatory statement. In this instance, the explanatory statement does not appear to explain why it is necessary and appropriate to allow the relevant requirements to override any Australian law, and the minister has not provided any further information in this regard.

1.35 Further, the committee's longstanding view is that instruments which modify or override primary legislation should be time limited to ensure a minimum degree

of regular parliamentary oversight. The committee considers that limiting the duration of emergency delegated legislation is particularly necessary to guard against the risk that temporary extraordinary measures enacted in response to the emergency become an ongoing part of the law without appropriate parliamentary scrutiny.

1.36 The committee notes the minister's explanation as to why he considers it appropriate that the instrument is exempt from disallowance, however, the committee does not agree that the possibility of disallowance would create considerable uncertainty for government, industry and individuals, nor would it undermine the decision-making and risk management processes. In this regard, the committee notes that Senators, as elected representatives, would be well aware of any impact that disallowance would have and would consider such matters as part of their deliberations. The committee considers that the possibility that the Senate would disallow an instrument that would put at risk human health (or undermine Australia's agriculture sector) is so remote as to be fanciful.

1.37 Instead, the committee considers that the disallowance process is an opportunity to work in a constructive manner with the executive to enhance delegated legislation to ensure that it operates and functions within the boundaries placed upon it by the Parliament. In relation to this instrument, and others made under the Biosecurity Act, the committee considers that the disallowance process is apt to facilitate appropriate debate and scrutiny of the use of emergency powers and would operate to ensure that such powers are not misused.

1.38 The committee appreciates that during an emergency it is necessary for governments to take urgent and decisive action. However, Parliament must also have effective oversight of these critical decisions and retain the ability to scrutinise the actions of governments.

1.39 In undertaking its scrutiny, the committee assesses delegated legislation against a set of non-partisan scrutiny principles agreed to unanimously by the Senate that focus on compliance with statutory requirements, the protection of individual rights and liberties, and principles of parliamentary oversight. The committee does not concern itself with political considerations in carrying out this critical mandate bestowed on it by the Senate.

1.40 The committee also reiterates that the disallowance procedure would not inhibit the immediate commencement of the instrument. The need to act urgently or potential uncertainty are equally not an adequate justification for the exemption of delegated legislation from parliamentary oversight. In this regard, the committee does not consider that making a legislative instrument subject to disallowance would prevent the government from taking immediate and decisive action in response to a significant emergency. The committee's views on the exemption of emergency related delegated legislation from disallowance have been well documented. In its interim report, tabled in December 2020, the committee found that such instruments should not be exempt from disallowance on the basis that:

- the disallowable status of delegated legislation does not impede the immediate commencement and enforceability of an instrument (that is, it does not prevent the government from acting quickly and decisively);
- the instances of the disallowance procedure resulting in disallowance by the Parliament is very low;
- COVID-19 delegated legislation in comparable overseas jurisdictions has largely been subject to a parliamentary scrutiny procedure;
- arguments against making delegated legislation disallowable must be balanced with the need to ensure adequate checks and balances on the limitation of the personal rights and liberties of individuals; and
- our system of representative democracy requires elected representatives to have an opportunity to scrutinise and, if necessary, repeal executive-made law.<sup>4</sup>

1.41 The committee notes that the government response to the interim report has now been tabled in the Senate, nearly 12 months after the report was tabled in December 2020.

1.42 The committee notes that of the 18 recommendations made in the interim report, the government has only agreed with one recommendation—related to the importance of parliamentary sittings in facilitating parliamentary oversight of delegated legislation in times of emergency.

1.43 The committee is deeply concerned that the government has advised that it does not support any of the committee's recommendations related to providing that instruments made under the Biosecurity Act be made subject to disallowance.

1.44 As noted previously, the committee intends to rigorously pursue this matter in accordance with the mandate provided by the Senate when on 16 June 2021 it agreed to amend standing order 23 to allow the committee to consider exempt instruments. At this time the Senate also resolved:

- that delegated legislation should be subject to disallowance and sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances; and
- any claim that circumstances justify exemption from disallowance and sunseting will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases.<sup>5</sup>

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4 Senate Standing Committee for the Scrutiny of Delegated Legislation, [Exemption of delegated legislation from parliamentary oversight: Interim Report](#), December 2020, pp. 61-63.

5 *Senate resolution 53B: Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021, [https://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Senate\\_chamber\\_documents/standingorders/d00/Resolutions\\_expressing\\_opinions\\_of\\_the\\_Senate/](https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/Resolutions_expressing_opinions_of_the_Senate/).

**1.45** In light of the above, the committee maintains and reiterates its view that amendments should be made to the Biosecurity Amendment (Enhanced Risk Management) Bill 2021 to:

- amend section 476 of the Biosecurity Act to provide that any future variations to extend a human biosecurity emergency period will be subject to disallowance; and
- amend section 477 of the Biosecurity Act to provide that any determinations setting out emergency requirements in the future will be subject to disallowance.

**1.46** The committee notes that if the government is not amenable to moving such amendments it may consider moving its own amendments to the bill.

# Northern Australia Infrastructure Facility Investment Mandate Direction 2021

<b>FRL No.</b>	<a href="#">[F2021L00942]</a> <sup>6</sup>
<b>Purpose</b>	To provide a direction to the Northern Australia Infrastructure Facility's Board in relation to the performance of the functions of the Facility.
<b>Authorising legislation</b>	<i>Northern Australia Infrastructure Facility Act 2016</i>
<b>Portfolio</b>	Infrastructure, Transport, Regional Development and Communications
<b>Source of exemption</b>	Item 2 of section 9 of Legislation (Exemptions and Other Matters) Regulation 2015

## Overview

1.47 The Northern Australia Infrastructure Facility (the NAIF) provides financial assistance to States, Territories and other entities to develop economic infrastructure in Northern Australia.

1.48 The Northern Australia Infrastructure Facility Investment Mandate Direction 2021 (the instrument) provides an investment mandate to the Facility to guide the functions of the Facility and how it invests.

## Scrutiny concerns

### *Exemption from disallowance*

1.49 The committee's detailed scrutiny concerns in relation to this instrument's exemption from disallowance are set out in Chapter 1 of *Delegated Legislation Monitor 14 of 2021*.

1.50 In summary, the committee raised concerns that the explanatory statement to the instrument does not justify why it is appropriate for this ministerial direction to be exempt from parliamentary disallowance. The committee considers that instruments which guide how public money will be spent or invested must be accorded parliamentary oversight by being subject to disallowance.

## Recent correspondence

1.51 The minister wrote to the committee on 14 October 2021 in response to the concerns set out in *Delegated Legislation Monitor 14 of 2021*.

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

1.52 The minister advised that the investment mandate has been exempt from disallowance since the establishment of the NAIF in 2016. The minister explained that the exemption ‘provides certainty for NAIF project proponents who invest significant time and resources to demonstrate eligibility for NAIF financial assistance’, and explained that the parties with which NAIF operates are subject to commercial timeframes which do not align with the parliamentary sitting calendar.

1.53 The minister also advised that oversight of the NAIF’s investment activities has been strengthened in 2021 with the addition of the Finance Minister as a jointly responsible minister. Further, the minister advised there are safeguards in the *Northern Australia Infrastructure Facility Act 2016* (the NAIF Act) to prevent ministers from ‘issuing an investment mandate that seeks to influence or affect the investment of funds in particular projects or to particular cohorts.’

1.54 In relation to the exemption from disallowance, the minister advised that it would not be possible to delay commencement of the instrument until a potential disallowance period expired, as this would have negatively impacted on the NAIF’s operations and prevented it from being able to provide financial assistance until early August 2021.

1.55 Finally, the minister advised that it is a requirement of the NAIF Act that a statutory review of the NAIF be conducted as soon as possible after 30 June 2024, and the minister suggested that ‘an evaluation of the potential impacts of making the Investment Mandate disallowable could be considered as part of this review.’

### **Committee view**

1.56 The committee thanks the minister for his detailed advice. The committee welcomes the minister’s advice on the additional oversight measures in place for this instrument including the joint ministerial responsibility and the safeguards in the NAIF Act. However, the committee is not persuaded that these oversight measures, or the potential for some level of uncertainty, negate the need for effective parliamentary oversight. In this respect, the committee maintains its view that instruments which guide how public money will be spent or invested must be accorded parliamentary oversight by being subject to disallowance.

1.57 In relation to the 2024 review of the Act, the committee welcomes the minister’s suggestion that such a review could evaluate whether instruments made under subsection 9(1) of the Act are appropriate to be exempt from parliamentary disallowance.

**1.58 In light of the above, the committee requests the minister’s further advice as to:**

- **whether an undertaking can be made to the committee that the 2024 statutory review will give consideration to the appropriateness of the exemption from disallowance of instruments made under subsection 9(1) of the *Northern Australia Infrastructure Facility Act 2016*, with specific**

regard given to the committee's final report of the inquiry into the exemption of delegated legislation from parliamentary oversight; and

- whether the explanatory statement to the instrument can be amended to set out the information provided in the minister's letter of 14 October 2021 in relation to the justification for the instrument's exemption from disallowance.



## Chapter 2

### Matters of interest to the Senate

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

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

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Instrument	Purpose	Portfolio committee
<b>Carbon Credits (Carbon Farming Initiative—Carbon Capture and Storage) Methodology Determination 2021 [F2021L01379]</b>	To set out the detailed rules for implementing and monitoring offsets projects that capture greenhouse gases, transport those gases and inject them into geological formations for permanent storage, preventing the captured emissions from being released into the atmosphere.	Senate Environment and Communications Legislation Committee

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1 Details of all instruments which the committee has resolved to draw to the attention of the Senate under standing order 23(4) are published on the committee's website: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Matters\\_of\\_interest\\_to\\_the\\_Senate](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Matters_of_interest_to_the_Senate).



## Chapter 3

### Scrutiny of Commonwealth expenditure

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

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

3.3 The tables below outline the expenditure specified in legislative instruments registered between 11 September 2021 and 1 October 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.

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

2 Details of all instruments which specify Commonwealth expenditure are published on the committee's website: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Scrutiny\\_of\\_Commonwealth\\_expenditure](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Scrutiny_of_Commonwealth_expenditure).

<b>Instrument</b>	<b>Grant/ Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
<b>Industry Research and Development (Daintree Microgrid Program) Instrument 2021 [F2021L01305]</b>	Daintree Microgrid Program	\$18.75 million over three years	Funding will be provided to support the deployment of a renewable energy microgrid (including hydrogen) in and around Cape Tribulation, Diwan, and Cow Bay in the Daintree region of northern Queensland. The program aims to improve the affordability, reliability and security of energy supply in the community, deploy a priority emerging technology and drive down emissions.	Senate Environment and Communications Legislation Committee
<b>Industry Research and Development (Digital Atlas of Australia Program) Instrument 2021 [F2021L01298]</b>	Digital Atlas of Australia Program	\$40.2 million over four years	Funding will be provided to Geoscience Australia for the development and maintenance of a Digital Atlas of Australia. The three-dimensional Digital Atlas of Australia's geography will bring together government data on people, the economy, employment, infrastructure, health, land and the environment into a single national data asset—making better use of Australia's over 90,000 open datasets to create a secure, dynamic, location-based and collaborative public data platform.	Senate Economics Legislation Committee
<b>Industry Research and Development (Refinery Upgrades Program) Instrument 2021 [F2021L01258]</b>	Refinery Upgrades Program	Funding will be provided through two rounds: <ul style="list-style-type: none"> <li>• Desulfurisation grants: \$250 million</li> <li>• Enabling Euro 6d Equivalent Fuels grants: \$52 million, plus any unspent funds from the desulfurisation grants round</li> </ul>	Funding will be provided to support upgrades at domestic refineries to assure the domestic production and supply of better quality fuel, and allow for the earlier introduction of ultra-low sulfur gasoline from 2027 to 2024.  Funding will be available to the entities with ownership of the Lytton refinery in Queensland and the Geelong refinery in Victoria to undertake planning and infrastructure upgrades. Activities that may be funded through the program include: <ul style="list-style-type: none"> <li>• planning, design and engineering;</li> </ul>	Senate Environment and Communications Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<ul style="list-style-type: none"> <li>• site preparation activities directly related to the project;</li> <li>• upgrading infrastructure; and</li> <li>• designing, buying, constructing, installing and/or commissioning of infrastructure including plant and equipment.</li> </ul>	
<b>Industry Research and Development (Supporting Critical Transmission Infrastructure Program) Instrument 2021 [F2021L01312]</b>	Supporting Critical Transmission Infrastructure Program	Not specified	<p>Funding will be provided to support electricity transmission projects that have potential to benefit electricity price, reliability and/or security outcomes.</p> <p>This includes the following projects that may be supported initially:</p> <ul style="list-style-type: none"> <li>• HumeLink (which will increase the capacity of the southern NSW transmission system)</li> <li>• VNI West (which will link New South Wales to Victoria)</li> <li>• Project EnergyConnect (which will link South Australia to New South Wales) and</li> <li>• Mariner Link (which will provide a second link between Tasmania and Victoria).</li> </ul>	Senate Environment and Communications Legislation Committee



## Chapter 4

### Scrutiny of instruments exempt from disallowance

4.1 Senate standing order 23(4A) provides that the committee may, for the purpose of reporting on its terms of reference, consider instruments made under the authority of Acts of the Parliament that are not subject to disallowance. For such instruments the committee may also consider whether it is appropriate for the instrument to be exempt from disallowance.

4.2 This chapter identifies the instruments exempt from disallowance which the committee has resolved to draw to the attention of the Senate and the relevant minister under standing order 23(4A), in relation to the appropriateness of their exemption from disallowance.

4.3 The committee has considered all legislative instruments which are exempt from disallowance registered on the Federal Register of Legislation between 11 September 2021 and 1 October 2021. The sections below identify those instruments which meet or do not meet the committee's expectations under standing order 23(4A).

4.4 The instruments may not meet the committee's expectations because:

- the explanatory statement accompanying the instrument does not contain a sufficient explanation for why the instrument is exempt from disallowance and therefore the committee has not been able to assess whether it is appropriate for the instrument to be exempt from disallowance; or
- a substantive explanation for exemption is provided but the committee considers that the explanation does not meet the Senate's requirement that exemptions should only be made in exceptional circumstances and will only be justified in rare cases.<sup>1</sup>

#### ***Instruments which meet the committee's expectations***

4.5 No instruments exempt from disallowance meet the committee's expectations under standing order 23(4A) for this period.

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1 *Senate resolution 53B: Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021, [https://www.aph.gov.au/Parliamentary\\_Business/Chamber\\_documents/Senate\\_chamber\\_documents/standingorders/d00/Resolutions\\_expressing\\_opinions\\_of\\_the\\_Senate/](https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/Resolutions_expressing_opinions_of_the_Senate/).

***Instruments which do not meet the committee's expectations***

4.6 The following instruments do not meet the committee's expectations under standing order 23(4A).

Instrument	Portfolio
<b>Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 3) Determination 2021 [F2021L01262]</b>	Treasury
<b>Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 4) Determination 2021 [F2021L01380]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 13 of 2021 [F2021L01292]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 14 of 2021 [F2021L01291]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 15 of 2021 [F2021L01287]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 16 of 2021 [F2021L01284]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 17 of 2021 [F2021L01288]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 18 of 2021 [F2021L01289]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 19 of 2021 [F2021L01293]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 20 of 2021 [F2021L01282]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 21 of 2021 [F2021L01280]</b>	Treasury
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 22 of 2021 [F2021L01285]</b>	Treasury
<b>Legislation (Deferral of Sunsetting—Guide to the Assessment of the Degree of Permanent Impairment Instruments) Certificate 2021 [F2021L01344]</b>	Attorney-General's
<b>Legislation (Deferral of Sunsetting—National Recovery Plan for Threatened Albatrosses and Giant Petrels 2011-2016) Certificate 2021 [F2021L01362]</b>	Attorney-General's
<b>Legislation (Deferral of Sunsetting—Product Stewardship (Oil) Instruments) Certificate 2021 [F2021L01373]</b>	Attorney-General's

<b>Instrument</b>	<b>Portfolio</b>
<b>Linkage Program Grant Guidelines (2021 edition) Variation No.1 [F2021L01376]</b>	Education, Skills and Employment
<b>Linkage Program Grant Guidelines ARC Centres of Excellence commencing in 2023 Variation No.1 [F2021L01361]</b>	Education, Skills and Employment
<b>Migration (arrangements for Visitor (Class FA) visa applications) Instrument (LIN 21/056) 2021 [F2021L01339]</b>	Home Affairs
<b>Poisons Standard October 2021 [F2021L01345]</b>	Health
<b>Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2020-2021 (No. 6) [F2021L01338]</b>	Finance
<b>Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2021-2022 (No. 1) [F2021L01337]</b>	Finance

**Senator the Hon Concetta Fierravanti-Wells**

**Chair**

**Senate Standing Committee for the Scrutiny of Delegated Legislation**



# Appendix A

## New matters

5.1 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 legislative instruments registered on the Federal Register of Legislation between 11 September 2021 and 1 October 2021.

### Ministerial engagement

5.2 The committee is not currently engaging with ministers regarding potential scrutiny issues raised by the instruments registered on the Federal Register of Legislation between 11 September 2021 and 1 October 2021.

### Agency engagement

5.3 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
<b>Australian Securities and Investments Commission Amendment (Deferred Sales Model) Regulations 2021 [F2021L01279]</b>	Principle (l) exemption from the operation of primary legislation Principle (m) parliamentary oversight	Committee secretariat considering response.
<b>CASA EX112/21 — Implementation of DAMPs (Provision of Safety-Sensitive Aviation Activities by Non-DAMP Organisations) Instrument 2021 [F2021L01342]</b>	Principle (h) privacy	Concluded following response from the agency on 04/11/2021.
<b>Defence Honours and Awards Appeals Tribunal Procedural Rules 2021 [F2021L01318]</b>	Principle (a) compliance with the <i>Legislation Act 2003</i> —consultation	Concluded following response from the agency on 04/11/2021. The Department of Defence undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Human Services (Centrelink) Regulations 2021 [F2021L01359]</b>	Principle (d) adequacy of consultation	Concluded following response from the agency on 04/11/2021.
<b>Industry Research and Development (Daintree Microgrid Program) Instrument 2021 [F2021L01305]</b>	Principle (d) consultation on specific instrument	Seeking further advice from the agency.

Instrument	Issue	Status
<b>Industry Research and Development (Supporting Critical Transmission Infrastructure Program) Instrument 2021 [F2021L01312]</b>	Principle (m) parliamentary oversight	Committee secretariat considering response.
<b>Migration Amendment (Australian Agriculture Workers) Regulations 2021 [F2021L01366]</b>	Principle (e) clarity of drafting	Committee secretariat considering response.
<b>National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 2) Determination 2021 [F2021L01296]</b>	Principle (a) compliance with the <i>Legislation Act 2003</i> —consultation	Concluded following response from the agency on 02/11/2021.  The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Part 60 Manual of Standards Amendment Instrument 2021 (No. 1) [F2021L01303]</b>	Principle (e) clarity of drafting Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 12/11/2021.  The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Remuneration Tribunal Amendment Determination (No. 5) 2021 [F2021L01336]</b>	Principle (h) retrospective commencement	Concluded following response from the agency on 03/11/2021.  The Remuneration Tribunal undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Student Identifiers (VET Exemptions) Instrument 2021 [F2021L01365]</b>	Principle (l) exemption from the operation of primary legislation Principle (m) parliamentary oversight	Concluded following response from the agency on 04/11/2021.
<b>Sydney Harbour Federation Trust Regulations 2021 [F2021L01255]</b>	Principle (e) clarity of drafting Principle (h) reverse evidential burden of proof	Committee secretariat considering response.
<b>Therapeutic Goods (Standard for Human Cell and Tissue Products—Donor Screening Requirements) (TGO 108) Order 2021 [F2021L01326]</b>	Principle (e) clarity of drafting Principle (h) privacy	Committee secretariat considering response.

Instrument	Issue	Status
<b>Therapeutic Goods (Standards for Biologicals—General and Specific Requirements) (TGO 109) Order 2021 [F2021L01332]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (f) incorporated materials freely accessible Principle (h) privacy Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 04/11/2021.  The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Therapeutic Goods Amendment (Therapeutic Goods Advertising Code) Instrument (No. 5) 2021 [F2021L01317]</b>	Principle (a) compliance with the <i>Legislation Act 2003</i> —consultation	Concluded following response from the agency on 03/11/2021.  The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Veterans' Entitlements (Point Cook Firefighters) Determination 2021 [F2021L01265]</b>	Principle (g) adequacy of explanatory materials	Committee secretariat considering response.



## Appendix B

### Ongoing matters

6.1 This appendix documents the committee's ongoing scrutiny concerns in relation to matters raised in previous *Delegated Legislation Monitors*. Instruments registered before 1 July 2021 have been marked with an asterisk and will continue to be scrutinised under the committee's previous scrutiny principles until they are concluded.<sup>1</sup>

#### Ministerial engagement

6.2 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.<sup>2</sup>

Instrument	Issue	Status
<b>Aged Care Legislation Amendment (Royal Commission Response No.1) Principles 2021 [F2021L00923]*</b>	Principle (c) conferral of discretionary powers	Seeking further advice from the minister.
	Principle (e) clarity of drafting	Notice of motion to disallow placed on 18/10/2021.
	Principle (j) matters more appropriate for parliamentary enactment	
	Principle (j) significant impact on personal rights and liberties	
<b>Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]*</b>	Principle (b) implied freedom of political communication	Notice of motion to disallow placed on 18/10/2021. The committee drew this instrument to the attention of the Senate and recommended disallowing the instrument in <i>Delegated Legislation Monitor 14 of 2021</i> .
	Principle (c) conferral of discretionary powers	
	Principle (e) clarity of drafting	

1 On 16 June 2021 the Senate adopted three recommendations of the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight that were directed to the Senate. As a result, from 1 July 2021, the standing orders of the Senate were amended to add two new scrutiny principles to the committee's terms of reference. In addition, the standing orders were amended to allow the committee to consider instruments which are exempt from disallowance.

2 See [www.aph.gov.au/senate\\_sdlic](http://www.aph.gov.au/senate_sdlic).

Instrument	Issue	Status
<b>Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191]</b>	<p>Standing order 23(4A) exemption from disallowance</p> <p>Principle (a) compliance with authorising legislation</p>	Seeking advice from the minister.
<b>Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043]*</b>	<p>Principle (a) compliance with authorising legislation</p> <p>Principle (a) compliance with <i>Legislation Act 2003</i>—same in substance</p> <p>Principle (j) significant matters in delegated legislation</p>	Notice of motion to disallow placed on 18/10/2021. The committee drew this instrument to the attention of the Senate and recommended disallowing the instrument in <i>Delegated Legislation Monitor 14 of 2021</i> .
<b>Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021 [F2021L01232]</b>	Standing order 23(4A) exemption from disallowance	Seeking advice from the minister.
<b>Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080]</b>	<p>Principle (l) exemption from the operation of primary legislation</p> <p>Principle (m) parliamentary oversight</p>	<p>Seeking further advice from the Treasurer.</p> <p>Notice of motion to disallow placed on 22/11/2021.</p>
<b>Great Barrier Reef Marine Park Amendment (No-Anchoring Areas) Regulations 2021 [F2021L00843]*</b>	<p>Principle (a) compliance with <i>Legislation Act 2003</i></p> <p>Principle (m) parliamentary oversight</p>	<p>Seeking further advice from the minister.</p> <p>Notice of motion to disallow placed on 18/10/2021.</p>
<b>Legislation (Exemptions and Other Matters) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L00859]*</b>	<p>Principle (j) matters more appropriate for parliamentary enactment</p> <p>Principle (k) parliamentary oversight—exemption from disallowance</p> <p>Principle (k) parliamentary oversight—exemption from sunseting</p>	<p>Committee considering response.</p> <p>Notice of motion to disallow placed on 18/10/2021.</p>
<b>Northern Australia Infrastructure Facility Investment Mandate Direction 2021 [F2021L00942]</b>	Standing order 23(4A) exemption from disallowance	Seeking further advice from the minister.

Instrument	Issue	Status
<b>Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Declaration 2021 [F2021L01157]</b>	Principle (h) privacy Principle (l) exemption from the operation of primary legislation	Committee considering response.
<b>Taxation Administration (Data Sharing—Relevant COVID-19 Business Support Program) Amendment Declaration (No. 1) 2021 [F2021L01237]</b>	Principle (m) parliamentary oversight	

### Agency engagement

6.3 The committee is not currently engaging with agencies via its secretariat to seek further information in relation to matters raised in earlier *Delegated Legislation Monitors*.



## Appendix C

### Concluded matters

7.1 This appendix records the instruments in relation to which the committee has concluded its inquiries, following correspondence with the relevant minister or agency. Instruments registered before 1 July 2021 have been marked with an asterisk and will continue to be scrutinised under the committee's previous scrutiny principles until they are concluded.<sup>1</sup>

#### Ministerial engagement

7.2 The committee has concluded its examination of the instruments listed below following correspondence with the relevant minister. Copies of the ministerial correspondence are available on the committee's website.<sup>2</sup>

Instrument	Issue	Status
<b>Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 [F2021L01068]</b>	Standing order 23(4A) exemption from disallowance  Principle (c) conferral of discretionary powers  Principle (d) adequacy of consultation  Principle (h) freedom of movement  Principle (j) matters more appropriate for parliamentary enactment  Principle (l) modification of the operation of primary legislation	Concluded following response from the minister on 19/10/2021. <sup>3</sup>

1 On 16 June 2021 the Senate adopted three recommendations of the final report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight that were directed to the Senate. As a result, from 1 July 2021, the standing orders of the Senate were amended to add two new scrutiny principles to the committee's terms of reference. In addition, the standing orders were amended to allow the committee to consider instruments which are exempt from disallowance.

2 See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

3 Details of the committee's concerns regarding the Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 [F2021L01068] are highlighted in Chapter 1 of this Monitor.

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Civil Dispute Resolution Regulations 2021 [F2021L01031]</b>	Principle (l) exemption from the operation of primary legislation Principle (m) parliamentary oversight	Concluded following response from the minister on 14/10/2021. The Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.
<b>Education Services for Overseas Students (Exempt Courses) Instrument 2021 [F2021L00877]*</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Concluded following response from the minister on 13/10/2021. The Minister for Education and Youth undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567]*</b>	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Concluded following response from the minister on 04/11/2021.
<b>Industry Research and Development (Boosting Australia's Diesel Storage Program) Instrument 2021 [F2021L00610]*</b>	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Concluded following response from the minister on 04/11/2021.
<b>Industry Research and Development (Carbon Capture, Use and Storage Development Program) Instrument 2021 [F2021L00547]*</b>	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Concluded following response from the minister on 04/11/2021.
<b>Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument 2021 [F2021L00536]*</b>	Principle (g) adequacy of explanatory materials Principle (k) parliamentary oversight	Concluded following response from the minister on 04/11/2021.
<b>Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]*</b>	Principle (g) adequacy of explanatory materials Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight	Concluded following response from the minister on 04/11/2021. The Minister for Industry, Energy and Emissions Reduction undertook to amend the instrument in response to the committee's scrutiny concerns.
<b>Industry Research and Development (Regional Decentralisation Agenda—Securing Raw Materials Program) Instrument 2021 [F2021L00973]</b>	Principle (b) constitutional validity Principle (g) adequacy of explanatory materials Principle (m) parliamentary oversight	Concluded following response from the minister on 25/10/2021.

Instrument	Issue	Status
<b>Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030]</b>	Principle (h) procedural fairness	Concluded following response from the minister on 11/11/2021.  The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs undertook to amend the instrument in response to the committee's scrutiny concerns.
<b>Telecommunications (Statutory Infrastructure Providers— Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651]*</b>	Principle (j) exemptions from primary legislation  Principle (k) parliamentary oversight	Concluded following response from the minister on 29/10/2021.  The Minister for Communications, Urban Infrastructure and the Arts amended the explanatory statement to the instrument and undertook to amend the instrument pending consultation with stakeholders in response to the committee's scrutiny concerns.

## Agency engagement

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

Instrument	Issue	Status
<b>Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021 [F2021L01133]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> — incorporation  Principle (i) availability of independent merits review	Concluded following response from the agency on 08/11/2021.  The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>CASA EX102/21 — DAMP Requirements for Maintenance Organisations Outside Australian Territory Exemption 2021 [F2021L01208]</b>	Principle (h) privacy	Concluded following response from the agency on 01/10/2021.
<b>CASA EX112/21 — Implementation of DAMPs (Provision of Safety-Sensitive Aviation Activities by Non-DAMP Organisations) Instrument 2021 [F2021L01342]</b>	Principle (h) privacy	Concluded following response from the agency on 04/11/2021.

Instrument	Issue	Status
<b>Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2021 [F2021L01233]</b>	Principle (i) availability of independent merits review	Concluded following response from the agency on 04/11/2021.  The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Defence (Individual Benefits) Determination 2021 (No. 4) [F2021L01180]</b>	Principle (i) availability of independent merits review	Concluded following response from the agency on 12/11/2021.  The Department of Defence amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Defence Honours and Awards Appeals Tribunal Procedural Rules 2021 [F2021L01318]</b>	Principle (a) compliance with the <i>Legislation Act 2003</i> —consultation	Concluded following response from the agency on 04/11/2021.  The Department of Defence undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 2) Regulations 2021 [F2021L01156]</b>	Principle (c) delegation of administrative powers and functions  Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 14/10/2021.  The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2021 [F2021L01144]</b>	Principle (c) delegation of administrative powers and functions  Principle (m) disclosure of funding information	Concluded following response from the agency on 15/10/2021.  The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2021 [F2021L01146]</b>	Principle (c) delegation of administrative powers and functions  Principle (m) parliamentary oversight	Concluded following response from the agency on 15/10/2021.  The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2021 [F2021L01141]</b>	Principle (c) delegation of administrative powers and functions  Principle (m) parliamentary oversight	Concluded following response from the agency on 15/10/2021.  The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) Regulations 2021 [F2021L01142]</b>	Principle (c) delegation of administrative powers and functions	Concluded following response from the agency on 18/10/2021.  The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Human Services (Centrelink) Regulations 2021 [F2021L01359]</b>	Principle (d) adequacy of consultation	Concluded following response from the agency on 04/11/2021.
<b>Macquarie Island Toothfish Fishery (Total Allowable Catch) Determination 2021 [F2021L01152]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —consultation	Concluded following response from the agency on 20/10/2021.  The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>National Health (Pharmaceutical Benefits Scheme-Exempt items - Section 84AH) Amendment Determination 2021 (No. 3) [F2021L01222]</b>	Principle (a) compliance with authorising legislation	Concluded following response from the agency on 15/10/2021.  The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 2) Determination 2021 [F2021L01296]</b>	Principle (a) compliance with the <i>Legislation Act 2003</i> —consultation	Concluded following response from the agency on 02/11/2021.  The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>National Health (Weighted average disclosed price – October 2021 reduction day) Amendment Determination 2021 [F2021L01195]</b>	Principle (h) personal rights and liberties	Concluded following response from the agency on 15/10/2021.
<b>Part 60 Manual of Standards Amendment Instrument 2021 (No. 1) [F2021L01303]</b>	Principle (e) clarity of drafting Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 12/11/2021.  The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.

Instrument	Issue	Status
<b>Remuneration Tribunal Amendment Determination (No. 5) 2021 [F2021L01336]</b>	Principle (h) retrospective commencement	<p>Concluded following response from the agency on 03/11/2021.</p> <p>The Remuneration Tribunal undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<b>Student Identifiers (VET Exemptions) Instrument 2021 [F2021L01365]</b>	Principle (l) exemption from the operation of primary legislation  Principle (m) parliamentary oversight	<p>Concluded following response from the agency on 04/11/2021.</p>
<b>Therapeutic Goods (Standards for Biologicals—General and Specific Requirements) (TGO 109) Order 2021 [F2021L01332]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation  Principle (f) incorporated materials freely accessible  Principle (h) privacy  Principle (g) adequacy of explanatory materials	<p>Concluded following response from the agency on 04/11/2021.</p> <p>The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<b>Therapeutic Goods Amendment (Therapeutic Goods Advertising Code) Instrument (No. 5) 2021 [F2021L01317]</b>	Principle (a) compliance with the <i>Legislation Act 2003</i> —consultation	<p>Concluded following response from the agency on 03/11/2021.</p> <p>The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<b>Transport Safety Investigation Regulations 2021 [F2021L01248]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	<p>Concluded following response from the agency on 13/10/2021.</p> <p>The Australian Transport Safety Bureau amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>
<b>Transport Security Legislation Amendment (Serious Crime) Regulations 2021 [F2021L01145]</b>	Principle (c) conferral of discretionary powers  Principal (h) privacy  Principle (h) reverse evidential burden of proof  Principle (i) availability of independent merits review	<p>Concluded following response from the agency on 17/11/2021.</p> <p>The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>

# Appendix D

## Undertakings

8.1 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

8.2 The following table records undertakings that remain outstanding, from oldest to newest. The committee draws these undertakings to the attention of the Senate.

Instrument	Undertaking	Date of Undertaking
<b>Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]</b>	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
<b>Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]</b>	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
<b>Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]</b>	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
<b>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]</b>	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
<b>Treasury portfolio – various instruments</b>	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

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]</b>	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
<b>Industry Research and Development (Digital Directors Program) Instrument 2020 [F2020L01554]</b>	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
<b>Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]</b>	The Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	09/04/2021
<b>Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020 [F2020L01614]</b>	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
<b>Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2021 [F2021L00178]</b>	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
<b>Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]</b>	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	21/05/2021
<b>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 10) 2021 [F2021L00305]</b>	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
<b>Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]</b>	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	08/06/2021
<b>Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]</b>	The Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	16/06/2021
<b>Income Tax Assessment (1997 Act) Regulations 2021 [F2021L00206]</b>	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

Instrument	Undertaking	Date of Undertaking
<b>Export Control Rules 2021 - various instruments [F2021L00312] [F2021L00317] [F2021L00334] [F2021L00304] [F2021L00315] [F2021L00310] [F2021L00308] [F2021L00313]</b>	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
<b>Student Assistance Regulations 2021 [F2021L00201]</b>	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
<b>CASA 30/21 – Required Communication Performance and Required Surveillance Performance (RCP 240 and RSP 180) Capability Declarations – Direction 2021 [F2021L00504]</b>	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
<b>Export Control (Wood and Woodchips) Rules 2021 [F2021L00318]</b>	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
<b>Bankruptcy Regulations 2021 [F2021L00261]</b>	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
<b>Paid Parental Leave Rules 2021 [F2021L00384]</b>	The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.  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.	30/07/2021
<b>ASIC Market Integrity Rules (Capital) 2021 [F2021L00765]</b>	The Department of the Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	04/08/2021
<b>Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]</b>	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

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Higher Education Provider Approval No 1 of 2021 [F2021L00747]</b>	The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns.  The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/08/2021
<b>Recycling and Waste Reduction (Product Stewardship—Televisions and Computers) Rules 2021 [F2021L00624]</b>	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
<b>Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021 [F2021L00848]</b>	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
<b>Road Vehicle Standards (Model Reports—Compliance with Standards) Determination 2021 [F2021L00838]</b>	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
<b>Bankruptcy Regulations 2021 [F2021L00261]</b>	The Assistant Minister to the Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	17/08/2021
<b>Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00697]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/08/2021
<b>Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2021 [F2021L00823]</b> <b>Road Vehicle Standards (Verification of Road Vehicles) Determination 2021 [F2021L00850]</b>	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
<b>Veterans' Entitlements (Counselling) Extended Eligibility Determination 2021 [F2021L00804]</b>	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
<b>Aged Care Legislation Amendment (Care Recipients and Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00981]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/09/2021

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Higher Education Provider Approval No 2 of 2021 [F2021L00965]</b>	The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns.  The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/09/2021
<b>Agricultural and Veterinary Chemicals Code (Conditions of Approval or Registration) Order 2021 [F2021L01044]</b>	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.	21/09/2021
<b>Medical and Midwife Indemnity Legislation Amendment (Run-off Claims) Rules 2021 [F2021L00950]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	24/09/2021
<b>Aged Care Legislation Amendment (Vaccination Information) Principles 2021 [F2021L01236]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/10/2021
<b>Education Services for Overseas Students (Exempt Courses) Instrument 2021 [F2021L00877]</b>	The Minister for Education and Youth undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/10/2021
<b>Civil Dispute Resolution Regulations 2021 [F2021L01031]</b>	The Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	14/10/2021
<b>Macquarie Island Toothfish Fishery (Total Allowable Catch) Determination 2021 [F2021L01152]</b>	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.	20/10/2021
<b>Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651]</b>	The Minister for Communications, Urban Infrastructure and the Arts amended the explanatory statement to the instrument and undertook to amend the instrument pending consultation with stakeholders in response to the committee's scrutiny concerns.	20/10/2021
<b>Remuneration Tribunal Amendment Determination (No. 5) 2021 [F2021L01336]</b>	The Remuneration Tribunal undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/11/2021
<b>Therapeutic Goods Amendment (Therapeutic Goods Advertising Code) Instrument (No. 5) 2021 [F2021L01317]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/11/2021

Instrument	Undertaking	Date of Undertaking
<b>Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister’s Rules 2021 [F2021L01233]</b>	The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Defence Honours and Awards Appeals Tribunal Procedural Rules 2021 [F2021L01318]</b>	The Department of Defence undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]</b>	The Minister for Industry, Energy and Emissions Reduction undertook to amend the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Therapeutic Goods (Standards for Biologicals—General and Specific Requirements) (TGO 109) Order 2021 [F2021L01332]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021 [F2021L01133]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/11/2021
<b>Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030]</b>	The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs undertook to amend the instrument in response to the committee's scrutiny concerns.	11/11/2021
<b>Part 60 Manual of Standards Amendment Instrument 2021 (No. 1) [F2021L01303]</b>	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/11/2021

## Implemented undertakings

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

Instrument	Undertaking	Date implemented
<b>National Health (Pharmaceutical Benefits) (Pharmacist Substitution of Medicines without Prescription during Shortages) Amendment (No. 2) Determination 2021 [F2021L01296]</b>	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/10/2021
<b>National Health (Pharmaceutical Benefits Scheme-Exempt items - Section 84AH) Amendment Determination 2021 (No. 3) [F2021L01222]</b>	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/10/2021
<b>High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021 [F2021L00391]</b>	The Chief Executive and Principal Registrar of the High Court of Australia amended the instrument in response to the committee's scrutiny concerns.	22/10/2021
<b>Financial Sector Reform (Hayne Royal Commission Response—Breach Reporting and Remediation) Regulations 2021 [F2021L01072]</b>	The Department of the Treasury amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	28/10/2021
<b>Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021 [F2021L00243]</b>	The Department of Agriculture, Water and the Environment amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	02/11/2021
<b>Defence (Individual Benefits) Determination 2021 (No. 4) [F2021L01180]</b>	The Department of Defence amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/11/2021
<b>Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651]</b>	The Minister for Communications, Urban Infrastructure and the Arts amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2021
<b>Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021 [F2021L00277]</b>	The Minister for Communications, Urban Infrastructure, Cities and the Arts amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	14/11/2021
<b>Transport Safety Investigation Regulations 2021 [F2021L01248]</b>	The Australian Transport Safety Bureau amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	14/11/2021

<b>Instrument</b>	<b>Undertaking</b>	<b>Date implemented</b>
<b>Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 2) Regulations 2021 [F2021L01156]</b>	The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/11/2021
<b>Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2021 [F2021L01144]</b>	The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/11/2021
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2021 [F2021L01146]</b>	The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/11/2021
<b>Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 4) Regulations 2021 [F2021L01141]</b>	The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/11/2021
<b>Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) Regulations 2021 [F2021L01142]</b>	The Department of Finance amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/11/2021
<b>Transport Security Legislation Amendment (Serious Crime) Regulations 2021 [F2021L01145]</b>	The Department of Home Affairs amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	17/11/2021