

The Senate

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Standing  
Committee for the  
Scrutiny of Delegated  
Legislation

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Delegated Legislation Monitor

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Senator Raff Ciccone	Victoria, ALP
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Senator Nita Green	Queensland, ALP
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# Introduction

The Senate Standing Committee on Regulations and Ordinances (the committee) was established in 1932. The committee's name was changed on 4 December 2019 to the Senate Standing Committee for the Scrutiny of Delegated Legislation.<sup>1</sup> The role of the committee is to examine the technical qualities of all disallowable legislative instruments, and to decide whether they comply with the committee's non-partisan scrutiny principles.

## Terms of reference

The committee's scrutiny principles are set out in Senate standing order 23(3) which requires the committee to scrutinise each instrument as to whether:

- (a) it is in accordance with its enabling Act and otherwise complies with all legislative requirements;
- (b) it appears to be supported by a constitutional head of legislative power and is otherwise constitutionally valid;
- (c) it makes rights, liberties, obligations or interests unduly dependent on insufficiently defined administrative powers;
- (d) those likely to be affected by the instrument were adequately consulted in relation to it;
- (e) its drafting is defective or unclear;
- (f) it, and any document it incorporates, may be freely accessed and used;
- (g) the accompanying explanatory material provides sufficient information to gain a clear understanding of the instrument;
- (h) it trespasses unduly on personal rights and liberties;
- (i) it unduly excludes, limits or fails to provide for independent review of decisions affecting rights, liberties, obligations or interests;
- (j) it contains matters more appropriate for parliamentary enactment; and
- (k) it complies with any other ground relating to the technical scrutiny of delegated legislation that the committee considers appropriate.

Senate standing order 23(4) also requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to

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1 On 27 November 2019, the Senate agreed to amend standing orders 23 and 25(2)(a), with effect from 4 December 2019. For further information, see [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Changes\\_to\\_committee\\_standing\\_orders](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Changes_to_committee_standing_orders).

the instrument on the ground that it raises significant issues, or otherwise gives rise to issues that are likely to be of interest to the Senate.

### **Nature of the committee's scrutiny**

The committee's work may be broadly described as technical legislative scrutiny. In this regard, the committee does not examine the policy merits of delegated legislation. However, if the committee determines that an instrument raises significant issues, it may write to the relevant legislation committee to alert that committee to the instrument, or otherwise draw the instrument to the attention of the Senate.

Where an instrument does not appear to comply with the committee's technical scrutiny principles, the committee's usual approach is to correspond with the responsible minister or relevant agency to seek further explanation or clarification of the matter at issue. The committee may also seek an undertaking for specific action to address its scrutiny concerns.

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

### **Publications**

The committee's usual practice is to table a report, the *Delegated Legislation Monitor*, each Senate sitting week. The monitor provides an overview of the committee's scrutiny of disallowable legislative instruments for the preceding period. Disallowable legislative instruments detailed in the monitor are also listed in the 'Index of instruments' on the committee's website.<sup>3</sup>

### **Ministerial correspondence**

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

### **Agency correspondence**

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

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

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

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

however, a record of the instrument, scrutiny issue and status of the correspondence is included in Appendix A (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>

## **Instruments considered in this monitor**

The committee examined 79 disallowable legislative instruments registered on the Federal Register of Legislation between 18 November 2020 and 7 December 2020.

This monitor identifies the instruments registered in this period about which the committee has or had scrutiny concerns. It also identifies instruments registered before this period in relation to which the committee is continuing to engage with the relevant minister or agency, or has concluded its examination.

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

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

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

8 *Disallowance Alert 2021*, [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Disallowance\\_Alert\\_2021](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Disallowance_Alert_2021).



# Chapter 1

## **Instruments raising significant scrutiny concerns**

1.1 This chapter details the instruments which raise significant scrutiny concerns in relation to which the committee is seeking further information from the relevant minister or of which the committee has concluded its examination.

1.2 Where necessary, the committee may place a notice of motion to disallow an instrument contained in this chapter to emphasise its scrutiny concerns and to provide the Senate with additional time to consider the instrument with the benefit of the committee's comments. Accordingly, where appropriate, this chapter also details the committee's reasons for withdrawing notices of motion to disallow such instruments.

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

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



## Chapter 2

### Matters of interest to the Senate

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

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

Instrument	Purpose	Portfolio committee
<b>Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People's Republic of Korea) Amendment (No. 1) Instrument 2020 [F2020L01529]</b>	To amend the Autonomous Sanctions (Designated Persons and Entities – Democratic People's Republic of Korea) List 2012 to update the information for some of the designated persons and entities. The purpose of a designation is to subject the designated person or entity to targeted financial sanctions.	Senate Foreign Affairs, Defence and Trade Legislation Committee
<b>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 9) 2020 [F2020L01534]</b>	To establish the JobMaker scheme and specify details about the scheme, including: <ul style="list-style-type: none"><li>• the start and end date of the scheme;</li><li>• when an employer or business is entitled to a payment;</li><li>• the amount and timing of a payment; and</li><li>• other matters relevant to the administration of the payment.</li></ul>	Senate Economics 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).

Instrument	Purpose	Portfolio committee
<b>Fishing Levy Amendment (2020-2021 Levy Amounts) Regulations 2020 [F2020L01542]</b>	To set the amounts of levy payable in respect of fishing concessions for the purpose of section 6 of the <i>Fishing Levy Act 1991</i> and set the levy amounts for the 15 Commonwealth fisheries that have leviable concessions.	n/a
<b>Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]</b>	To expand the jurisdiction of the Australian Commission for Law Enforcement Integrity to include four additional Commonwealth government agencies - the Australian Competition and Consumer Commission, Australian Prudential Regulation Authority, Australian Securities and Investments Commission, and Australian Taxation Office.	Senate Legal and Constitutional Affairs Legislation Committee  Joint Committee on the Australian Commission for Law Enforcement Integrity
<b>Migration Amendment (Biosecurity Contraventions) Regulations 2020 [F2020L01488]</b>	To prescribe additional visa subclasses that may be cancelled if the visa holder is in Australia, and has not been immigration cleared, and a decision-maker (a delegate of the minister) reasonably believes that the visa holder has contravened subsection 126(2), 128(2), 532(1) or 533(1) of the <i>Biosecurity Act 2015</i> . The regulations give decision-makers a discretion to cancel temporary work visas and student visas at the point of arrival in cases where there has been an attempt to deceive a Biosecurity officer about the presence of prohibited items in the person's luggage or possessions.	Senate Legal and Constitutional Affairs Legislation Committee
<b>Payment Times Reporting Rules 2020 [F2020L01472]</b>	To set out details of the Payment Times Reporting Scheme (the Scheme) as established by the <i>Payment Times Reporting Act 2020</i> . Under the Scheme, large businesses who meet the income threshold of over \$100 million in annual total income will be required to publicly report on the payment terms and practices for their small business suppliers.	Senate Education and Employment Legislation Committee

Instrument	Purpose	Portfolio committee
<b>Primary Industries (Customs) Charges Amendment (Dairy Cattle) Regulations 2020 [F2020L01530]</b>	To prescribe the amount of the charge per head on the export of dairy cattle.	n/a
<b>Primary Industries (Customs) Charges Amendment (Farmed Prawns and Macadamias) Regulations 2020 [F2020L01539]</b>	To decrease the Emergency Plant Pest Response charge on macadamia nuts from 0.2 cents per kilogram of dried kernels of macadamia nut to nil, and decrease, for one year, the white spot disease repayment charge on farmed prawns from 3.01 cents per kilogram of farmed prawns, before reverting to 3.01 cents per kilogram on 1 January 2022.	n/a
<b>Primary Industries (Excise) Levies Amendment (Dried Fruits, Farmed Prawns, Forest Growers and Macadamias) Regulations 2020 [F2020L01540]</b>	To impose a Plant Health Australia levy on dried vine fruits at \$1.00 per tonne, decrease the Emergency Plant Pest Response (EPPR) levy on plantation logs from 0.5 cents per cubic metre of the log to nil, decrease the EPPR levy on macadamia nuts from 0.2 cents per kilogram to nil, and decrease, for one year, the white spot disease repayment levy on farmed prawns from 3.01 cents per kilogram of farmed prawns, before reverting to 3.01 cents per kilogram on 1 January 2022.	n/a



## Chapter 3

### Scrutiny of Commonwealth expenditure

3.1 The *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act) and the *Industry Research and Development Act 1986* (IRD Act) authorise the Commonwealth to spend public money on grants and programs specified in instruments made under those Acts. Consequently, the specification of expenditure in an instrument made under these Acts effectively authorises the Commonwealth to spend public moneys on the relevant grant or program. The scrutiny of such instruments is a key aspect of parliamentary scrutiny and control of Commonwealth expenditure.<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 18 November 2020 and 7 December 2020.

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

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

2 Details of all instruments which specify Commonwealth expenditure are published on the committee's website: [https://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Scrutiny\\_of\\_Commonwealth\\_expenditure](https://www.apf.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 (Boosting Female Founders Initiative Program) Instrument 2020 [F2020L01467]</b>	Boosting Female Founders Initiative Program	\$54 million over five years from 2020–21 to 2024–25	Funding will be provided through a combination of co-funded grants to women-owned and led startup businesses to undertake projects that scale the business, and procurements which provide women entrepreneurs with access to expert mentoring and advice. The Program supports women entrepreneurs to overcome disadvantages they face in getting access to finance and support to grow their startups.	Senate Economics Legislation Committee
<b>Industry Research and Development (Cyber Security Business Connect and Protect Program) Instrument 2020 [F2020L01438]</b>	Cyber Security Business Connect and Protect Program	\$8.3 million over two years from 2020-21	Funding will be provided to support projects that raise the awareness of cyber security risks among small and medium enterprises (SMEs), promote action to address these risks, and support and uplift the capability of SMEs to meet best practice in cyber security.	Senate Economics Legislation Committee
<b>Industry Research and Development (Digital Readiness Assessment Tool Program) Instrument 2020 [F2020L01439]</b>	Digital Readiness Assessment Tool Program	\$2.4 million in 2020-21	Funding will be provided to develop and operate an online tool that will help businesses self-assess their digital maturity and provide them with direction and pathways to existing government programs and resources to pursue their digital transformation. The purpose of the Program is to accelerate the adoption of digital technologies by Australian businesses and drive long-term growth and business resilience by providing businesses with information about how they compare against their peers or frontier firms, as well as practical pathways for businesses to improve their digital maturity to reach their business goals.	Senate Economics Legislation Committee

Instrument	Grant/Program	Amount	Description	Portfolio committee
<b>Industry Research and Development (Digital Skills Finder Platform Program) Instrument 2020 [F2020L01463]</b>	Digital Skills Finder Platform Program	\$2.5 million in 2020-21	Funding will be provided to Balance Internet Pty Ltd in order to enable Balance Internet to further develop and operate the Digital Skills Finder Platform (the Platform). Once fully developed, the Platform will be an online portal that aggregates links to free and paid private sector digital skills training for individuals and small and medium enterprises seeking to learn how to use software and digital tools.	Senate Economics Legislation Committee



# Appendix A

## New matters

4.1 The committee engages with relevant ministers and agencies to attempt to resolve its concerns about scrutiny issues raised by disallowable legislative instruments. This appendix documents the committee's new scrutiny concerns in relation to disallowable legislative instruments registered on the Federal Register of Legislation between 18 November 2020 and 7 December 2020.

### Ministerial engagement

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

Instrument	Issue	Status
<b>Fishing Levy Amendment (2020-2021 Levy Amounts) Regulations 2020 [F2020L01542]</b>	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the minister.
<b>Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]</b>	Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the Attorney-General.
<b>Primary Industries (Customs) Charges Amendment (Farmed Prawns and Macadamias) Regulations 2020 [F2020L01539]</b>	Principle (j) levying of taxation in delegated legislation	Drawing to the attention of the minister.
<b>Primary Industries (Customs) Charges Amendment (Dairy Cattle) Regulations 2020 [F2020L01530]</b>		
<b>Primary Industries (Excise) Levies Amendment (Dried Fruits, Farmed Prawns, Forest Growers and Macadamias) Regulations 2020 [F2020L01540]</b>		
<b>Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020 [F2020L01474]</b>	Principle (j) modification of primary legislation	Seeking advice from the Treasurer.

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

## Agency engagement

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

Instrument	Issue	Status
<b>A New Tax System (Australian Business Number) Regulations 2020 [F2020L01498]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Concluded following response from the agency on 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>	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation  Principle (f) access and use	Concluded following response from the agency on 15/02/2021.  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>Migration Amendment (Biosecurity Contraventions) Regulations 2020 [F2020L01488]</b>	Principle (d) consultation with persons affected	Concluded following response from the agency on 12/02/2021.
<b>Norfolk Island Employment Rules 2020 [F2020L01536]</b>	Principle (i) availability of merits review  Principle (h) privacy	Seeking advice from the agency.
<b>Other Grants Guidelines (Education) Amendment (Women in STEM) 2020 [F2020L01515]</b>	Principle (d) consultation on specific instrument	Concluded following response from the agency on 12/02/2021.

Instrument	Issue	Status
<b>Part 91 (General Operating and Flight Rules) Manual of Standards 2020 [F2020L01514]</b>	Principle (e) clarity of drafting	Concluded following response from the agency on 11/02/2021.  The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
<b>Payment Times Reporting Rules 2020 [F2020L01472]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation  Principle (f) access and use	Concluded following response from the agency on 12/02/2021.
<b>Social Security (Qualifying Agricultural Work) Determination 2020 [F2020L01500]</b>	Principle (d) consultation with persons affected	Concluded following response from the agency on 11/02/2021.
<b>Treasury Laws Amendment (Miscellaneous Amendments) Instrument 2020 [F2020L01485]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> - consultation  Principle (d) adequacy of consultation  Principle (g) adequacy of explanatory materials  Principle (a) compliance with the <i>Legislation Act 2003</i>	Concluded following response from the agency on 11/02/2021.



## Appendix B

### Ongoing matters

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

#### Ministerial engagement

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

Instrument	Issue	Status
<b>ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]</b>	Principle (j) exemptions from primary legislation	Seeking further advice from the Treasurer.
<b>ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]</b>	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Notice of motion to disallow placed on 07/12/2020.
<b>ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]</b>	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 07/12/2020.
<b>ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]</b>	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 01/12/2020.
<b>ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199]</b>	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 02/02/2021.

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

Instrument	Issue	Status
<b>ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]</b>	Principle (j) modification of primary legislation  Principle (k) parliamentary oversight	Seeking further advice from the Treasurer.  Notice of motion to disallow placed on 30/11/2020.
<b>ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261]</b>	Principle (j) exemption from primary legislation	Seeking advice from the Treasurer.  Notice of motion to disallow placed on 02/02/2021.
<b>ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259]</b>	Principle (c) conferral of discretionary powers  Principle (j) modification to the operation of primary legislation  Principle (j) significant penalties  Principle (k) parliamentary oversight	Seeking advice from the Treasurer.  Notice of motion to disallow placed on 02/02/2021.
<b>Competition and Consumer (Class Exemption—Collective Bargaining) Determination 2020 [F2020L01334]</b>	Principle (i) availability of independent merits review  Principle (j) modification of primary legislation  Principle (k) parliamentary oversight	Seeking advice from the Treasurer.  Notice of motion to disallow placed on 15/02/2021.
<b>Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation  Principle (f) incorporated materials freely accessible	Committee considering response.  Notice of motion to disallow placed on 02/02/2021.
<b>Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01361]</b>  <b>Federal Circuit Court Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01362]</b>	Principle (a) compliance with authorising legislation – compliance with legislative requirements	Seeking further advice from the Chief Justice of the Family Court of Australia.  Notice of motion to disallow placed on 15/02/2021.

Instrument	Issue	Status
<b>Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 [F2020L01401]</b>	Principle (k) parliamentary oversight	Seeking advice from the minister.  Notice of motion to disallow placed on 15/02/2021.
<b>Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402]</b>	Principle (e) drafting	Seeking advice from the minister.  Notice of motion to disallow placed on 15/02/2021.
<b>Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020 [F2020L01296]</b>	Principle (a) compliance with authorising legislation  Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the minister.  Notice of motion to disallow placed on 15/02/2021.
<b>Tax Agent Services (Specified BAS Services No. 2) Instrument 2020 [F2020L01406]</b>	Principle (a) compliance with authorising legislation  Principle (j) modification of primary legislation  Principle (k) parliamentary oversight	Seeking advice from the Treasurer.  Notice of motion to disallow placed on 15/02/2021.

## Agency engagement

5.3 The committee is not currently engaging with agencies via its secretariat to seek further information about potential scrutiny concerns raised by any instruments.



## Appendix C

### Concluded matters

6.1 This appendix records the instruments in relation to which the committee has concluded its inquiries, following correspondence with the relevant minister or agency.

#### Ministerial engagement

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

Instrument	Issue	Status
<b>Fishing Levy Amendment (2020-2021 Levy Amounts) Regulations 2020 [F2020L01542]</b>	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
<b>Legislation (Deferral of Sunsetting—Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination) Certificate 2020 [F2020L01301]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> – sunsetting  Principle (d) consultation with persons affected  Principle (g) adequacy of explanatory materials	Concluded following response from minister on 04/02/2021  Notice of motion to disallow placed on 15/02/2021.
<b>Primary Industries (Customs) Charges Amendment (Farmed Prawns and Macadamias) Regulations 2020 [F2020L01539]</b>	Principle (j) levying of taxation in delegated legislation	Concluded following consideration by the committee.
<b>Primary Industries (Customs) Charges Amendment (Dairy Cattle) Regulations 2020 [F2020L01530]</b>		
<b>Primary Industries (Excise) Levies Amendment (Dried Fruits, Farmed Prawns, Forest Growers and Macadamias) Regulations 2020 [F2020L01540]</b>		

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

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028]</b>	Principle (i) availability of independent merits review Principle (h) privacy	Concluded following response from minister on 15/02/2021. Notice of motion to disallow placed on 30/11/2020. The Minister for Veterans' Affairs revoked the instrument in response to the committee's scrutiny concerns.

## Agency engagement

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

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>A New Tax System (Australian Business Number) Regulations 2020 [F2020L01498]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation	Concluded following response from the agency on 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>	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) access and use	Concluded following response from the agency on 15/02/2021. 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>Migration Amendment (Biosecurity Contraventions) Regulations 2020 [F2020L01488]</b>	Principle (d) consultation with persons affected	Concluded following response from the agency on 12/02/2021.
<b>Other Grants Guidelines (Education) Amendment (Women in STEM) 2020 [F2020L01515]</b>	Principle (d) consultation on specific instrument	Concluded following response from the agency on 12/02/2021.
<b>Part 91 (General Operating and Flight Rules) Manual of Standards 2020 [F2020L01514]</b>	Principle (e) clarity of drafting	Concluded following response from the agency on 11/02/2021. 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>Payment Times Reporting Rules 2020 [F2020L01472]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation  Principle (f) access and use	Concluded following response from the agency on 12/02/2021.
<b>Social Security (Qualifying Agricultural Work) Determination 2020 [F2020L01500]</b>	Principle (d) consultation with persons affected	Concluded following response from the agency on 11/02/2021.
<b>Treasury Laws Amendment (Miscellaneous Amendments) Instrument 2020 [F2020L01485]</b>	Principle (a) compliance with <i>Legislation Act 2003</i> - consultation  Principle (d) adequacy of consultation  Principle (g) adequacy of explanatory materials  Principle (a) compliance with the <i>Legislation Act 2003</i>	Concluded following response from the agency on 11/02/2021.



## Appendix D

### Undertakings

7.1 From time to time, a minister or agency may make an undertaking to address the committee's scrutiny concerns. These may include, for example, an undertaking to amend a legislative instrument or an explanatory statement, or to review an Act or a departmental practice. The committee expects that, when a minister or agency has made an undertaking, it will be implemented in a timely manner. Accordingly, this appendix records outstanding ministerial and agency undertakings, and the undertakings implemented since the committee's last *Delegated Legislation Monitor*.

#### Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
<b>Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]</b>	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the <i>Water Act 2007</i> in response to the committee's scrutiny concerns.	11/09/2019
<b>Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]</b>	The Department of Veterans' Affairs undertook to amend the Repatriation Pharmaceutical Benefits Scheme [F2013L02009] and the MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012] to correct drafting errors.	28/01/2020
<b>Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]</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.	25/06/2020
<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

Instrument	Undertaking	Date of Undertaking
<b>National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020 [F2020L01055]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/11/2020
<b>Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]</b>	The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	16/11/2020
<b>Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]</b>		
<b>Continence Aids Payment Scheme 2020 [F2020L00758]</b>	The Minister for Aged Care and Senior Australians undertook to progress amendments to the <i>National Health Act 1953</i> in response to the committee's scrutiny concerns.	24/11/2020
<b>Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]</b>	The Assistant Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	25/11/2020
<b>Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020 [F2020L01058]</b>	The Australian Electoral Commission undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27/11/2020
<b>Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]</b>	The Minister for Finance undertook to amend item 434 in Part 4 of Schedule 1AB to the Financial Framework (Supplementary Powers) Regulations 1997 in response to the committee's scrutiny concerns.  The Minister for Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	01/12/2020
<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>Australian Postal Corporation (Performance Standards) Amendment</b>	The Minister for Communications, Cyber Safety and the Arts undertook to advise the	03/12/2020

Instrument	Undertaking	Date of Undertaking
<b>(2020 Measures No. 1) Regulations 2020 [F2020L00579]</b>	committee of the outcomes of the government's review of the effect of the temporary arrangements set out in the instrument.	
<b>Age Discrimination Regulations 2020 [F2020L01138]</b>	The Attorney-General's Department undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/12/2020
<b>Private Health Insurance (Complaints Levy) Rules 2020 [F2020L01195]</b>	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	15/01/2021
<b>Part 91 (General Operating and Flight Rules) Manual of Standards 2020 [F2020L01514]</b>	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/02/2021
<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

## Implemented undertakings

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

Instrument	Undertaking	Date implemented
<b>Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020 [F2020L01061]</b>	The Minister for Communications, Urban Infrastructure, Cities and the Arts amended the instrument in response to the committee's scrutiny concerns.	20/01/2021
<b>Industrial Chemicals Charges (Customs) Regulations 2020 [F2020L00795]</b> <b>Industrial Chemicals Charges (General) Regulations 2020 [F2020L00797]</b> <b>Industrial Chemicals Charges (Excise) Regulations 2020 [F2020L00799]</b>	The Department of Health amended the explanatory statements to the instruments in response to the committee's scrutiny concerns.	08/02/2021
<b>Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028]</b>	The Minister for Veterans' Affairs revoked the instrument in response to the committee's scrutiny concerns.	12/02/2021

## List of instruments in current monitor

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A New Tax System (Australian Business Number) Regulations 2020 [F2020L01498]	12; 20
Age Discrimination Regulations 2020 [F2020L01138]	25
Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]	24
Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]	24
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]	12; 20; 25
ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]	15
ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]	15
ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]	15
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]	15
ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199]	15
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]	16
ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261]	16
ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259]	16
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]	25

<b>Instrument</b>	<b>Page</b>
Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 1) Instrument 2020 [F2020L01529]	3
Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]	23
Competition and Consumer (Class Exemption—Collective Bargaining) Determination 2020 [F2020L01334]	16
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	23
Contenance Aids Payment Scheme 2020 [F2020L00758]	24
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 9) 2020 [F2020L01534]	3
Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]	16; 25
Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020 [F2020L01058]	24
Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01361]	16
Federal Circuit Court Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01362]	16
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]	24
Fishing Levy Amendment (2020-2021 Levy Amounts) Regulations 2020 [F2020L01542]	4; 11
Industrial Chemicals Charges (Customs) Regulations 2020 [F2020L00795]	26
Industrial Chemicals Charges (Excise) Regulations 2020 [F2020L00799]	26
Industrial Chemicals Charges (General) Regulations 2020 [F2020L00797]	26
Industry Research and Development (Boosting Female Founders Initiative Program) Instrument 2020 [F2020L01467]	8
Industry Research and Development (Cyber Security Business Connect and Protect Program) Instrument 2020 [F2020L01438]	8

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Industry Research and Development (Digital Readiness Assessment Tool Program) Instrument 2020 [F2020L01439]	8
Industry Research and Development (Digital Skills Finder Platform Program) Instrument 2020 [F2020L01463]	9
Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 [F2020L01401]	17
Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]	4; 11
Migration Amendment (Biosecurity Contraventions) Regulations 2020 [F2020L01488]	4; 12; 20
National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020 [F2020L01055]	24
Norfolk Island Employment Rules 2020 [F2020L01536]	12
Other Grants Guidelines (Education) Amendment (Women in STEM) 2020 [F2020L01515]	12; 20
Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402]	17
Part 91 (General Operating and Flight Rules) Manual of Standards 2020 [F2020L01514]	13; 20; 25
Payment Times Reporting Rules 2020 [F2020L01472]	4; 13; 21
Primary Industries (Customs) Charges Amendment (Dairy Cattle) Regulations 2020 [F2020L01530]	5; 11
Primary Industries (Customs) Charges Amendment (Farmed Prawns and Macadamias) Regulations 2020 [F2020L01539]	5; 11
Primary Industries (Excise) Levies Amendment (Dried Fruits, Farmed Prawns, Forest Growers and Macadamias) Regulations 2020 [F2020L01540]	5; 11
Private Health Insurance (Complaints Levy) Rules 2020 [F2020L01195]	25
Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020 [F2020L01296]	17

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Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	24
Social Security (Qualifying Agricultural Work) Determination 2020 [F2020L01500]	13; 21
Tax Agent Services (Specified BAS Services No. 2) Instrument 2020 [F2020L01406]	17
Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]	24
Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020 [F2020L01474]	11
Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020 [F2020L01061]	26
Treasury Laws Amendment (Miscellaneous Amendments) Instrument 2020 [F2020L01485]	13; 21
Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028]	26
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]	23
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	23

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