

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

Monitor 4 of 2021

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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.¹ 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

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.

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*.²

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.³

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.⁴

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;

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.

4 See 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.⁵

General information

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

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

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

Instruments considered in this monitor

The committee examined 8 disallowable legislative instruments registered on the Federal Register of Legislation between 8 and 9 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.

5 See 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.

7 Parliament of Australia, *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.

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.

ASIC Corporations – various instruments

[F2020L00962] [F2020L01045] [F2020L01064]

[F2020L01066] [F2020L01069] [F2020L01199]

[F2020L01261] and [F2020L01259]

FRL No.	F2020L00962; F2020L01045; F2020L01064; F2020L01066; F2020L01069; F2020L01199; F2020L01261; and F2020L01259 ¹
Purpose	A description of the purpose of each instrument is set out under the heading 'Summary of instruments' beginning on page 2.
Authorising legislation	<i>Various</i>
Portfolio	Treasury
Disallowance	15 sitting days after tabling. Notice of motion to disallow ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962] given on 30 November 2020; ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045] given on 1 December 2020; and ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064], ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066] and ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069] given on 7 December 2020; ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199], ASIC Credit (Electronic

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

Precontractual Disclosure) Instrument 2020/835 [F2020L01261] (EPD Instrument) and ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259] (COI Instrument) given on 2 February 2021.

Overview

1.3 Since October 2020 the committee has been engaging with the Treasurer and the Assistant Minister for Superannuation, Financial Services and the Digital Economy (Assistant Minister) in relation to scrutiny concerns identified in the following eight instruments administered by the Australian Securities and Investments Commission (ASIC):

- ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064] (Amendment Instrument);
- ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066] (IPO Instrument);
- ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069] (Hardship Instrument);
- ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045] (Litigation Instrument);
- ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962] (IDR Instrument);
- ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199] (Stub Equity Instrument);
- ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261] (EPD Instrument); and
- ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259] (COI Lenders Instrument).

1.4 These instruments are examples of the systemic issues that the committee is encountering in its scrutiny of delegated legislation made by ASIC. In this regard, the committee's scrutiny concerns are not limited to just these eight instruments.

Summary of instruments

1.5 The Amendment Instrument and the IPO Instrument implement measures aimed at reducing the costs for issuers undertaking an initial public offer by providing for exemptions from, and modifying the operation of, certain provisions of Chapters 6, 6A, 6C and 6D of the *Corporations Act 2001* (the Corporations Act).

1.6 The Hardship Instrument exempts responsible entities of registered managed investment schemes from certain provisions in Chapter 5C of the Corporations Act to allow members suffering hardship to make withdrawals while the scheme is frozen.

1.7 The Litigation Instrument exempts responsible entities of litigation funding schemes from certain provisions in Chapter 7 and Chapter 5C of the Corporations Act to facilitate the new regulatory framework for litigation funding schemes.

1.8 The IDR Instrument provides new ASIC standards and requirements for internal dispute resolution procedures for financial firms.

1.9 The Stub Equity Instrument prevents offers of stub equity in proprietary companies to retail investors and limits the circumstances in which mandatory custodial arrangements can be used by modifying Chapters 6 and 6D of the Corporations Act.

1.10 The EPD Instrument allows credit licensees and representatives to give pre-contractual disclosure to consumers in the same electronic manner that applies to other credit disclosure documents.

1.11 The COI Lenders Instrument requires carried over instrument lenders to continue notifying ASIC if they become unlicensed.

Scrutiny concerns

Exemptions from and modifications to primary legislation²

Parliamentary oversight³

1.12 The committee's technical scrutiny concerns about the systemic issues that these instruments raise are detailed in *Delegated Legislation Monitor 2 of 2021*.⁴ The committee's concerns focus on the fact that the measures in each of these instruments modify or exempt persons or entities from the operation of primary legislation, and the instruments appear intended to remain in force for five to 10 years. Provisions that modify or exempt persons or entities from the operation of primary legislation may limit parliamentary oversight and may subvert the appropriate relationship between Parliament and the executive. The committee considers that such measures should ordinarily be included in primary legislation, unless a sound justification for the use of delegated legislation is provided.

1.13 The committee's longstanding view is that provisions which modify or exempt persons or entities from the operation of primary legislation should cease to operate within three years after commencement. This is to ensure a minimum degree of regular parliamentary oversight.

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

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

4 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 2 of 2021*, pp. 1–7.

Correspondence with the Treasurer

Monitor 2 of 2021

1.14 The committee responded to the Treasurer's letter of 28 January 2021 in Chapter 1 of *Delegated Legislation Monitor 2 of 2021*. The Treasurer had written to the committee in response to the committee's ongoing requests for advice as to whether five of the ASIC instruments could be amended to limit their duration to three years from the date of commencement.⁵ Details of this correspondence and the committee's response are set out in Chapter 1 of *Delegated Legislation Monitor 2 of 2021*.⁶

1.15 On 4 February 2021, the committee wrote to the Treasurer to draw his attention to these concerns and requested that the Amendment) Instrument, IPO Instrument, Hardship Instrument, and Litigation Instrument be amended to specify that they cease three years after commencement.

1.16 In relation to the IDR Instrument, the committee requested that the instrument be amended to cease five years after it was registered on the Federal Register of Legislation.

1.17 The committee retained its notices of motion to disallow in relation to each of the five ASIC instruments pending further advice from the Treasurer to resolve its scrutiny concerns.

Recent correspondence

1.18 No response was received by the Treasurer in time for the committee's private meeting on 17 February 2021. The Chair therefore drew the Senate's attention to the committee's ongoing scrutiny concerns, and concerns about the lack of timely response, in her tabling statement for *Delegated Legislation Monitor 3 of 2021*.

1.19 The Treasurer then responded to the committee on 18 February 2021. His response recognised the importance of Treasury instruments being consistent with the committee's scrutiny principles and reiterated that the government shares the committee's concerns in relation to the importance of parliamentary oversight of legislative instruments.

5 Chapter 1 of *Delegated Legislation Monitor 2 of 2021* addressed five of the eight ASIC instruments: ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]; ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]; ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]; ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]; and ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962].

6 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 2 of 2021*, pp. 1–7. Copies of the previous correspondence between the Treasurer, the Assistant Minister and the committee from October 2020 onwards are published on the committee's [website](#).

1.20 The Treasurer's comments in this response also incorporated the Stub Equity, EPD and COI Lenders instruments. The committee had raised these three instruments separately with the Treasurer, in relation to the systemic concerns about parliamentary oversight in each instrument, and other scrutiny issues. The committee raised similar concerns with the Treasurer that the Stub Equity instrument modifies the operation of primary legislation and was intended to remain in force for ten years.

1.21 The committee also raised concerns that the EPD Instrument, while it will be repealed three years after commencement, preserves the effect of ASIC Class Order [CO 10/1230], the effect of which is that these exemptions from primary legislation have therefore been enacted by delegated legislation for at least ten years, which will be extended to up to 13 years by the instrument.

1.22 In relation to the COI Lenders Instrument, while the committee is raising similar concerns in relation to parliamentary oversight, it is also raising additional substantive scrutiny issues.⁷ The committee is concerned that this instrument provides for civil and criminal penalties, as such measures are more appropriate for primary legislation, and confers discretionary powers which provide ASIC with the broad discretion to determine matters of relevance to an offence carrying significant civil and criminal penalties.⁸

1.23 The Treasurer proposed that the committee withdraw its notices of motion to disallow the IDR Instrument and the Litigation Instrument, whose disallowance periods expired on 22 and 23 February 2021, respectively. The Treasurer also advised that ASIC would amend the Litigation Instrument to provide that it will cease five years after commencement.

1.24 The Treasurer also undertook to engage in further good faith discussions with the committee following the tabling of the committee's final report of its inquiry into the exemption of delegated legislation from parliamentary oversight to find a longer-term solution to resolve the committee's scrutiny concerns. These discussions would address the eight ASIC instruments listed at paragraph 1.3 above, in addition to legislative instruments across the Treasury portfolio more broadly.

Committee comment

Concluded scrutiny of instruments

1.25 The committee thanks the Treasurer for this response and appreciates his recognition of the importance of parliamentary oversight of legislative instruments in his portfolio.

1.26 The committee reiterates its longstanding view that provisions that modify or exempt persons or entities from the operation of primary legislation may limit parliamentary oversight and may subvert the appropriate relationship between

7 See the committee's correspondence to the Treasurer dated 22 January 2021 for more detail.

8 See the committee's correspondence to the Treasurer dated 22 January 2021 for more detail.

Parliament and the executive. The committee considers that such measures should ordinarily be time limited to cease three years after commencement, unless a sound justification is provided.

1.27 The committee has been tasked by the Senate to ensure that principles of parliamentary propriety are upheld. In this regard, the committee reiterates that its scrutiny principles, set out in Senate standing order 23, must take precedence over any alternative guidance material and ASIC instruments must be scrutinised to the same standard as all other disallowable delegated legislation. This is a role the committee has been performing since 1932 and it is the committee's responsibility to ensure that the Senate is well-informed in relation to scrutiny issues in executive-made law.

1.28 The committee welcomes the Senate's re-endorsement on 23 February 2021 of the importance of the committee's role in this regard and the need for the constructive and timely engagement of ministers and agencies on the technical scrutiny concerns raised by the committee.⁹ In this context, the committee reiterates its concern about the delay in the provision of the Treasurer's response to the committee's most recent correspondence, and notes that this lack of timely engagement is not confined to the Treasury portfolio.

1.29 In relation to the substantive content of the response, the committee welcomes the Treasurer's undertaking to engage with the committee to resolve its scrutiny concerns in relation to legislative instruments across the Treasury portfolio, including the eight ASIC instruments reported on in this Monitor. As part of this engagement, consideration will also be given to the appropriateness of the current sunset period for these eight ASIC instruments. The committee considers that the approach developed as a result of this engagement may serve as a model for addressing the committee's scrutiny concerns about instruments which modify, or exempt persons and entities from, the operation of primary legislation in other portfolios in the future.

1.30 The committee notes that in response to its scrutiny concerns, on 19 February 2021 the Litigation Instrument was amended to provide that it ceases five years after commencement. The committee considers that this amendment is a positive indication that the Treasurer and ASIC will continue to engage with the committee to resolve its systemic concerns about the application of ASIC's modification and exemption powers more broadly.

1.31 In addition, noting that this is a systemic issue relating to parliamentary oversight, the committee will examine this issue in the final report of its inquiry into the exemption of delegated legislation from parliamentary oversight.

9 *Journals of the Senate*, 23 February 2021, pp. 3146–3147.

1.32 In light of the Treasurer's undertaking outlined above, and the amendment of Litigation Funding Schemes instrument to reduce its duration, the committee has concluded its examination of six of the eight instruments.

1.33 Accordingly, the committee has resolved to withdraw its notices of motion to disallow the following ASIC instruments, on the basis of the Treasurer's undertaking to engage with the committee to resolve the committee's scrutiny concerns in relation to legislative instruments across the Treasury portfolio:

- ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064] (Amendment Instrument);
- ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066] (IPO Instrument);
- ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069] (Hardship Instrument);
- ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045] (Litigation Instrument);
- ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962] (IDR Instrument); and
- ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199] (Stub Equity Instrument).

Ongoing scrutiny of instruments

1.34 However, the committee notes that it has not received a substantive response in relation to the specific scrutiny concerns raised with the Treasurer in relation to the COI Lenders instrument and the EPD instrument on 22 January 2021. While some aspects of the committee's scrutiny concerns about these two instruments have been addressed by the Treasurer's most recent correspondence, the committee considers that the remaining scrutiny concerns must be resolved before it can conclude its examination of the instruments. The committee is concerned that it has not yet received responses to these scrutiny concerns. The lack of timely engagement by the Treasurer on these issues has prevented the committee from resolving these issues.

1.35 The committee therefore again requests the Treasurer's advice as to whether the government intends to pursue the changes to primary legislation necessary to replace the exemptions provided for by the ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261], noting that these measures have been in force via delegated legislation since 2011.

1.36 In addition, as the Treasurer has not yet responded to the committee's additional substantive scrutiny concerns in relation to the ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259], the committee again requests the Treasurer's advice as to:

- why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation, to continue to preserve the effect of

item 39A of Schedule 2 to the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*;

- **why it is considered necessary and appropriate to include civil and criminal penalties in delegated legislation, and whether the Attorney-General was consulted in relation to the inclusion of custodial penalties, in accordance with the *Attorney-General's Department's Guide to Framing Commonwealth Offences*; and**
- **whether any further limits apply, in legislation or policy, to constrain the scope of ASIC's power under paragraph 19A(2)(j) of the instrument to determine what information must be included in a notice lodged with ASIC under subsection 19A(2).**

1.37 The Treasurer's response to these ongoing scrutiny concerns will assist the committee in determining whether to withdraw the disallowance notices currently in place on the ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261] and ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259].

Chapter 2

Matters of interest to the Senate

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

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

2.3 There are no instruments which the committee has resolved to draw to the attention of the Senate and the relevant legislation committee under standing order 23(4) in this *Delegated Legislation Monitor*.

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

Chapter 3

Scrutiny of Commonwealth expenditure

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

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

3.3 The committee did not identify any instruments registered between 8 and 9 December 2020 which authorised Commonwealth expenditure pursuant to the FF(SP) Act or IRD Act.

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.

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 8 and 9 December 2020.

Ministerial engagement

4.2 The committee is not currently engaging with ministers regarding potential scrutiny issues raised by the instruments registered on the Federal Register of Legislation between 8 and 9 December 2020.

Agency engagement

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

Instrument	Issue	Status
Montague Island Lighthouse Heritage Management Plan 2020 [F2020L01547]	Principle (f) instrument subject to copyright	Seeking advice from the agency.

Appendix B

Ongoing matters

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

Ministerial engagement

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

Instrument	Issue	Status
ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261]	Principle (j) exemption from primary legislation	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 02/02/2021.
ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259]	Principle (c) conferral of discretionary powers Principle (j) modification to the operation of primary legislation Principle (j) significant penalties Principle (k) parliamentary oversight	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 02/02/2021.
Competition and Consumer (Class Exemption—Collective Bargaining) Determination 2020 [F2020L01334]	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.

¹ See www.aph.gov.au/senate_sdlc.

Instrument	Issue	Status
<p>Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01361]</p> <p>Federal Circuit Court Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01362]</p>	<p>Principle (a) compliance with authorising legislation – compliance with legislative requirements</p>	<p>Seeking further advice from the Chief Justice of the Family Court of Australia.</p> <p>Notice of motion to disallow placed on 15/02/2021.</p>
<p>Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]</p>	<p>Principle (j) matters more appropriate for parliamentary enactment</p>	<p>Seeking advice from the Attorney-General.</p> <p>Notice of motion to disallow placed on 23/02/2021.</p>
<p>Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402]</p>	<p>Principle (e) drafting</p>	<p>Seeking advice from the minister.</p> <p>Notice of motion to disallow placed on 15/02/2021.</p>
<p>Tax Agent Services (Specified BAS Services No. 2) Instrument 2020 [F2020L01406]</p>	<p>Principle (a) compliance with authorising legislation</p> <p>Principle (j) modification of primary legislation</p> <p>Principle (k) parliamentary oversight</p>	<p>Seeking advice from the Treasurer.</p> <p>Notice of motion to disallow placed on 15/02/2021.</p>
<p>Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020 [F2020L01474]</p>	<p>Principle (j) modification of primary legislation</p>	<p>Seeking advice from the Treasurer.</p> <p>Notice of motion to disallow placed on 22/02/2021.</p>

Agency engagement

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

Instrument	Issue	Status
Norfolk Island Employment Rules 2020 [F2020L01536]	Principle (i) availability of merits review Principle (h) privacy	Committee considering response.

Appendix C

Concluded matters

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

Ministerial engagement

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

Instrument	Issue	Status
ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]	Principle (j) exemptions from primary legislation	Concluded following response from Treasurer on 18/02/2021.
ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Notice of motion to disallow placed on 07/12/2020.
ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Concluded following response from Treasurer on 18/02/2021. Notice of motion to disallow placed on 07/12/2020.
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]	Principle (j) exemptions from primary legislation Principle (k) parliamentary oversight	Concluded following response from Treasurer on 18/02/2021. Notice of motion to disallow placed on 01/12/2020. The Treasurer amended the instrument in response to the committee's scrutiny concerns.
ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199]	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.

¹ See www.aph.gov.au/senate_sdlc.

Instrument	Issue	Status
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]	Principle (j) modification of primary legislation Principle (k) parliamentary oversight	Concluded following response from Treasurer on 18/02/2021. Notice of motion to disallow placed on 30/11/2020.
Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]	Principle (a) compliance with <i>Legislation Act 2003</i> – incorporation Principle (f) incorporated materials freely accessible	Concluded following response from assistant minister on 11/02/2021. Notice of motion to disallow placed on 02/02/2021. The assistant minister to the Attorney-General undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 [F2020L01401]	Principle (k) parliamentary oversight	Concluded following response from minister on 17/02/2021. Notice of motion to disallow placed on 15/02/2021. The minister amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020 [F2020L01296]	Principle (a) compliance with authorising legislation Principle (j) matters more appropriate for parliamentary enactment	Concluded following response from minister on 15/02/2021. Notice of motion to disallow placed on 15/02/2021. The Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.

Agency engagement

6.3 The committee has not concluded its examination of any instruments following informal correspondence with the relevant agencies via its secretariat.

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
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]	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
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]	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
Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]	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
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	The Attorney-General undertook to commence an inquiry into good faith obligations in Commonwealth legislation in response to the committee's scrutiny concerns.	31/08/2020

Instrument	Undertaking	Date of Undertaking
National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020 [F2020L01055]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/11/2020
Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01076]	The Department of Health undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	16/11/2020
Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020 [F2020L01077]		
Continence Aids Payment Scheme 2020 [F2020L00758]	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
Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020 [F2020L01079]	The Assistant Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	25/11/2020
Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020 [F2020L01058]	The Australian Electoral Commission undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	27/11/2020
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]	The Minister for Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	01/12/2020
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031]	The Minister for the Environment advised that the Reserve Bank of Australia undertook to amend the instrument in response to the committee's scrutiny concerns.	01/12/2020
Age Discrimination Regulations 2020 [F2020L01138]	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

Instrument	Undertaking	Date of Undertaking
Private Health Insurance (Complaints Levy) Rules 2020 [F2020L01195]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	15/01/2021
Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]	The Assistant Minister to the Attorney-General undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/02/2021
Amendment of List of Exempt Native Specimens – Commission for the Conservation of Antarctic Marine Living Resources Exploratory Fisheries in Statistical Divisions 58.4.1 and 58.4.2 (the East Antarctica Fishery) and Statistical Subareas 88.1 and 88.2 (the Ross Sea Fishery), November 2020 [F2020L01484]	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	15/02/2021
Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020 [F2020L01296]	The Australian Communications and Media Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	15/02/2021
ASIC Corporations – various instruments [F2020L00962] [F2020L01045] [F2020L01064] [F2020L01066] [F2020L01069] [F2020L01199] [F2020L01261] and [F2020L01259]	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

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
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]	The Minister for Communications, Cyber Safety and the Arts advised the committee of the outcomes of the government's review of the effect of the temporary arrangements set out in the instrument.	16/02/2021
Part 91 (General Operating and Flight Rules) Manual of Standards 2020 [F2020L01514]	The Civil Aviation Safety Authority amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/02/2021
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]	The Australian Securities and Investments Commission amended the instrument in response to the committee's scrutiny concerns.	19/02/2020
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]	The Minister for Finance amended item 434 in Part 4 of Schedule 1AB to the Financial Framework (Supplementary Powers) Regulations 1997 in response to the committee's scrutiny concerns.	19/02/2021
Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 [F2020L01401]	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.	23/02/2021

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Instrument	FRL No	Page
Age Discrimination Regulations 2020	F2020L01138	22
Aged Care (Subsidy, Fees and Payments) Amendment (Cessation of Temporary Funding Increases) Determination 2020	F2020L01077	22
Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (Cessation of Temporary Funding Increases) Determination 2020	F2020L01076	22
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	23
ASIC Corporations (Amendment) Instrument 2020/721	F2020L01064	19, 23
ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778	F2020L01069	19, 23
ASIC Corporations (IPO Communications) Instrument 2020/722	F2020L01066	19, 23
ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787	F2020L01045	1, 19, 23, 24
ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734	F2020L01199	19, 23
ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98	F2020L00962	20, 23
ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835	F2020L01261	1, 15, 23
ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834	F2020L01259	1, 15, 23
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020	F2020L00579	23
Biosecurity Amendment (International Mail Fee) Regulations 2020	F2020L00576	21

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Competition and Consumer (Class Exemption—Collective Bargaining) Determination 2020	F2020L01334	15
Competition and Consumer (Industry Codes—Dairy) Regulations 2019	F2019L01610	21
Continence Aids Payment Scheme 2020	F2020L00758	22
Disability (Access to Premises – Buildings) Amendment Standards 2020	F2020L01245	20, 23
Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020	F2020L01058	22
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	22, 24
Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020	F2020L01401	20, 24
Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020	F2020L01506	16
Montague Island Lighthouse Heritage Management Plan 2020	F2020L01547	13
National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020	F2020L01055	22
Norfolk Island Employment Rules 2020	F2020L01536	17
Part 138 (Aerial Work Operations) Manual of Standards 2020	F2020L01402	16
Part 91 (General Operating and Flight Rules) Manual of Standards 2020	F2020L01514	24
Private Health Insurance (Complaints Levy) Rules 2020	F2020L01195	23

Instrument	FRL No	Page
Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020	F2020L01296	20, 23
Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020	F2020L01031	22
Tax Agent Services (Specified BAS Services No. 2) Instrument 2020	F2020L01406	16
Taxation Administration (Remedial Power – Certificate for GST-free supplies of Cars for Disabled People) Determination 2020	F2020L01079	22
Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020	F2020L01474	16
Veterans’ Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019	F2019L01387	21
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018	F2018L01674	21

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