

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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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 93 disallowable legislative instruments registered on the Federal Register of Legislation between 20 and 30 March 2021.

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

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.

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

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

Chapter 2

Matters of interest to the Senate

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

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

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

Instrument	Purpose	Portfolio committee
<p>Aged Care Legislation Amendment (Aged Care Recipient Classification) Principles 2021 [F2021L00357]</p>	<p>The <i>Aged Care Amendment (Classification of Care Recipients) Act 2020</i> provides the Secretary with the power to classify a care recipient for respite or non-respite care, according to the level of care the care recipient needs relative to the needs of other care recipients, in certain circumstances.</p> <p>The purpose of this instrument is to:</p> <ul style="list-style-type: none"> • set out legislative provisions relating to the requirement for approved providers to allow delegates of the Secretary access to an aged care service to assess the care needs of care recipients; • set out the procedures that the Secretary (or their delegate) must follow to classify a care recipient; • set out the classification levels and how a care recipient may be assessed and classified into each class, as well as specifying the circumstances in which a care recipient's care needs are taken to have changed significantly for the purposes of reclassification of a care recipient; and • set out the criteria for persons to whom the Secretary's assessment powers may be delegated. <p>A computer program will be used to assist the Secretary to classify a care recipient into the appropriate class.</p>	<p>Senate Community Affairs Legislation Committee</p>
<p>Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Ukraine) Amendment (No. 1) Instrument 2021 [F2021L00366]</p>	<p>To amend the Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Ukraine) List 2014 to designate one person and four entities for targeted financial sanctions, and declare the person for the purposes of a travel ban.</p>	<p>n/a</p>

Instrument	Purpose	Portfolio committee
<p>Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Amendment Rules 2021 [F2021L00320]</p>	<p>To amend the definition of 'SME entity' for the purposes of which businesses will be eligible to apply for loans under the SME Recovery Loan Scheme. The amendments mean that the definition of a small to medium entity includes entities whose annual turnover is likely to be less than \$250 million in the current financial year or where the entity's annual turnover was less than \$250 million in one of the previous two financial years.</p> <p>This is the second time the turnover limit for the SME Recovery Loan Scheme has been increased. The original turnover limit, in force from April to November 2020, was \$50 million. From November 2020 until the making of this instrument in March 2021 the turnover limit was \$120 million.</p>	<p>Senate Select Committee on COVID-19</p> <p>Senate Economics Legislation Committee</p>

Chapter 3

Scrutiny of Commonwealth expenditure

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

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

3.3 The tables below outline the expenditure specified in legislative instruments registered between 20 and 30 March 2021

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

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

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

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 1) Regulations 2021 [F2021L00288]	Murray-Darling Healthy Rivers Program	\$24.5 million over two years from 2020-21	To provide grants to support community-based environmental projects that improve the health and ecological condition of rivers and wetlands in the Murray-Darling Basin.	Senate Rural and Regional Affairs and Transport Legislation Committee
	Immediate Assistance Fund	\$10.1 million over three years from 2020-21	To provide financial assistance to state and territory governments and industry to improve Australia's capacity to respond to an exotic plant or animal, pest or disease incursion.	Senate Rural and Regional Affairs and Transport Legislation Committee
	Great Artesian Basin Lynn Brake Scholarship Grant Program	Annual grant of \$20,000 over four years from 2021-22 subject to budget being approved for each financial year	To provide scholarships to students to support research related to the Great Artesian Basin.	Senate Rural and Regional Affairs and Transport Legislation Committee
	Lake Eyre Basin Justin Costelloe Scholarship Grant Program	Annual grant of \$20,000 over four years from 2021-22 subject to budget being approved for each financial year	To provide scholarships to students to support research and understanding related to the Lake Eyre Basin Agreement Area.	Senate Rural and Regional Affairs and Transport Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2021 [F2021L00291]	Grants to The Smith Family	\$38.2 million over four years from 2020-21	A grant to The Smith Family to provide financial and other support to disadvantaged primary and high school students and their families aimed at increasing the students' long-term participation in education, including attendance at, and completion of, school, and expanding their opportunities for work and training post-school.	Senate Education and Employment Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
	Grant to Anti-Defamation Commission Incorporated– National Holocaust Education Digital Platform	\$3 million over four years from 2020-21	A grant to Anti-Defamation Commission Incorporated to create, promote and maintain the National Holocaust Education Digital Platform, including educational resources for the platform, and provide training to education professionals to use the platform and resources.	Senate Education and Employment Legislation Committee
	Grant to Islamic Museum of Australia	\$3 million over four years from 2020-21	A grant to Islamic Museum of Australia to support an upgrade and expansion of their existing online education program to service all Australian schools, including virtual tours, 3D videos and an upgrade of galleries to a digital platform.	Senate Education and Employment Legislation Committee
	Early Learning STEM Australia	\$5.7 million over five years from 2020-21	To fund measures that are aimed at engaging children in science, technology, engineering and mathematics (STEM) in the preschool and primary school years, including: <ul style="list-style-type: none"> • developing and delivering online content, through the use of telecommunication services, for STEM education to preschool and primary school students; and • providing training to early childhood educators and primary school teachers. 	Senate Education and Employment Legislation Committee
	Flexible Literacy Remote Primary Schools Program	\$5.8 million over four years from 2020-21	To fund training for teachers at remote primary schools to enable them to adopt explicit instruction teaching methods in relation to literacy, numeracy and science to improve the skills and knowledge of students in remote locations (particularly	Senate Education and Employment Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			Aboriginal and Torres Strait Islander students) in the areas of literacy, numeracy and science.	
	Holocaust Memorial Week	\$30,000 in 2020-21	<p>To support the Australian Education Working Group within the International Holocaust Remembrance Alliance to promote Holocaust education during Holocaust Memorial Week by developing and delivering online educational resources, and undertaking related activities, including the following:</p> <ul style="list-style-type: none"> • creating, promoting and maintaining an online platform to distribute those resources to schools; • conducting a social media campaign to promote use of the online platform; and • evaluating the use by schools of the educational resources delivered through the online platform. 	Senate Education and Employment Legislation Committee
	Emerging Priorities Program	\$25 million over five years from 2020-21	<p>To provide funding to improve educational outcomes or to support career development (or both) for school students, including by:</p> <ul style="list-style-type: none"> • supporting school attendance and completion; • addressing health issues of school students, teachers and school leaders, including mental health issues; • providing professional development for school leaders and teachers directed at 	Senate Education and Employment Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<p>improving educational outcomes;</p> <ul style="list-style-type: none"> • providing online or face-to-face educational resources for school leaders, teachers, students and parents to support the teaching and learning of school students; • providing career training, guidance and advice to school students; and • researching, analysing and addressing the impacts of unexpected events, including the COVID-19 pandemic, on educational outcomes for school students. 	
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]	Commonwealth Disability Support for Older Australians Program	\$1,447.8 million	<p>The Commonwealth Disability Support for Older Australians (DSOA) Program provides funding for disability services to individual older people with a disability who are ineligible for the National Disability Insurance Scheme (NDIS).</p> <p>The purpose of the DSOA Program is to deliver improved parity with the NDIS and a more client-centred program through:</p> <ul style="list-style-type: none"> • funding for disability services being better aligned with market pricing and nationally consistent across states and territories; • moving all clients to Individual Support Packages to refocus service delivery on individual client needs; and 	Senate Community Affairs Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<ul style="list-style-type: none"> meeting the Commonwealth's commitment to continue supporting the DSOA clients with complex needs to live at home or in a supported accommodation and to access increased support as their needs change. 	
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2021 [F2021L00287]	National Collecting Institutions Touring and Outreach Program	\$4.0 million over four years from 2020-21	The Program provides financial assistance to national collecting institutions and organisations to develop and tour exhibitions within Australia and overseas, and to bring cultural material and works from international collections to Australia for exhibition.	Senate Environment and Communications Legislation Committee
	Australian Government International Exhibitions Insurance Program	\$9.7 million over four years from 2020-21	The Program provides financial assistance to cultural institutions and organisations to obtain insurance in relation to exhibitions in Australia of cultural material and works from international collections.	Senate Environment and Communications Legislation Committee
	Indigenous Repatriation Program	\$3.2 million over four years from 2020-21	The Program provides financial assistance to museums and cultural institutions in Australia to facilitate the return of Indigenous Australian ancestral remains and secret sacred objects to their community of origin, and provide culturally appropriate care of, and access to, Indigenous Australian ancestral remains and secret sacred objects.	Senate Environment and Communications Legislation Committee
	Arts and Cultural Development Program – Arts Training Organisations	\$91.8 million over four years from 2020-21	The Program provides financial assistance to national performing arts organisations for the training of young Australian performing artists.	Senate Environment and Communications Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
	Australian 5G Innovation Initiative	\$22.1 million over three years from 2020-21	The Initiative provides financial support to facilitate and encourage the deployment and use of the fifth generation of mobile telecommunications technology used for wireless communication.	Senate Environment and Communications Legislation Committee

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation

