

The Senate

Standing
Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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Introduction

The Senate Standing Committee for the Scrutiny of Delegated Legislation, formerly the Senate Standing Committee on Regulations and Ordinances, was established in 1932. The role of the committee is to examine the technical qualities of all 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) in the case of an instrument exempt from sunset, it is appropriate for the instrument to be exempt from sunset;
- (l) in the case of an instrument that amends or modifies the operation of primary legislation, or exempts persons or entities from the operation of primary legislation, the instrument is in force only for as long as is strictly necessary; and
- (m) it complies with any other ground relating to the technical scrutiny of delegated legislation that the committee considers appropriate.

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

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

Nature of the committee's scrutiny

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

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

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

The committee's work is supported by the processes for the registration, tabling and disallowance of legislative instruments under the *Legislation Act 2003*.¹

Publications

The committee's usual practice is to table a report, the *Delegated Legislation Monitor*, each Senate sitting week. The monitor provides an overview of the committee's scrutiny of legislative instruments for the prescribed period. Legislative instruments detailed in the monitor are also listed in the 'Index of instruments' on the committee's website.²

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

2 *Index of instruments*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Index.

Ministerial correspondence

The committee undertakes formal correspondence with ministers in order to resolve more significant scrutiny concerns. Ministerial correspondence is published on the committee's website.³

Agency correspondence

The committee undertakes informal correspondence with agencies via its secretariat to gather information about potential scrutiny concerns. This correspondence assists the committee in deciding whether it is necessary to seek further advice from the relevant minister about those concerns. Agency correspondence is not published; however, a record of the instrument, scrutiny issue and status of the correspondence is included in Appendix A (new matters), Appendix B (ongoing matters) and Appendix C (concluded matters) in the monitor.

Guidelines

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

General information

The Federal Register of Legislation should be consulted for the text of instruments, explanatory statements, and associated information.⁵

The Senate Disallowable Instruments List provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.⁶

The Disallowance Alert records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.⁷

3 See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

4 See https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Guidelines.

5 See Australian Government, Federal Register of Legislation, www.legislation.gov.au.

6 Parliament of Australia, *Senate Disallowable Instruments List*, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/Senate_Disallowable_Instruments_List.

7 *Disallowance Alert 2021*, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Disallowance_Alert_2021.

Instruments considered in this monitor

The committee examined 161 legislative instruments registered on the Federal Register of Legislation between 23 October 2021 and 26 November 2021. This included 135 disallowable instruments and 26 instruments exempt from disallowance.

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

Chapter 1

Instruments raising significant scrutiny concerns

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

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

Part 1

Disallowable instruments raising significant scrutiny issues

1.1 There are no disallowable instruments raising significant scrutiny concerns for inclusion in this part of the Monitor.

Part 2

Exempt instruments raising significant scrutiny issues

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

Advance to the Finance Minister Determinations

FRL No.	F2021L01581 ; F2021L01771 ; F2021L01795 ; F2022L00028 ¹
Purpose	<p>F2021L01581: to determine that the departmental item for Outcome 2 for the Department of Finance is increased by \$218 million.</p> <p>F2021L01771: to determine that the administered item for Outcome 1 for the National Recovery and Resilience Agency is increased by \$66 million.</p> <p>F2021L01795: to determine that the departmental item for Outcome 2 for the Department of Finance is increased by \$403 million.</p> <p>F2022L00028: to determine that the administered item for Outcome 1 for the National Recovery and Resilience Agency is increased by \$920 million.</p>
Authorising legislation	<p><i>Appropriation Act (No. 1) 2021-2022</i> (F2022L00028)</p> <p><i>Appropriation Act (No. 2) 2021-2022</i> (F2021L01581, F2021L01771 and F2021L01795)</p>
Portfolio	Department of Finance
Source of exemption	<p>Subsection 10(4) of <i>Appropriation Act (No. 1) 2021-2022</i></p> <p>Subsection 12(4) of <i>Appropriation Act (No. 2) 2021-2022</i></p>

Overview

1.4 The Advance to the Finance Minister (AFM) is a provision in the annual Appropriation Acts which enables the Finance Minister to provide additional appropriation to agencies throughout the financial year. An AFM may only be issued by the Finance Minister if satisfied that there is an urgent need for expenditure that is either not provided for or has been insufficiently provided for in the existing

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

appropriations of the agency. The additional appropriation is provided by means of a determination that is exempt from disallowance by the Parliament.²

1.5 Section 10 of *Appropriation Act (No. 1) 2021-2022* permits the Finance Minister, by non-disallowable legislative instrument, to effectively amend Schedule 1 to the Act to make provision for urgent expenditure up to a total limit of \$2 billion. Section 12 of *Appropriation Act (No. 2) 2021-2022* similarly permits the Finance Minister, by non-disallowable legislative instrument, to effectively amend Schedule 2 to that Act to make provision for certain urgent expenditure up to a total limit of \$3 billion.

1.6 Advance to the Finance Minister Determination (No. 1 of 2021-2022) [F2021L01581] provides additional funding of \$218 million to the Department of Finance to support the construction of Centres for National Resilience at Mickleham in Victoria, Pinkenba in Queensland and Bullsbrook in Western Australia to provide additional quarantine capacity for international travellers to Australia in light of the COVID-19 pandemic. A second allocation to support this construction was made by Advance to the Finance Minister Determination (No. 3 of 2021-2022) [F2021L01795], which provides a further \$403 million.

1.7 Advance to the Finance Minister Determination (No. 2 of 2021-2022) [F2021L01771] provides additional funding of \$66 million to the National Recovery and Resilience Agency to support the extension of the availability of the Pandemic Leave Disaster Payment until 30 June 2022. This figure is expanded by Advance to the Finance Minister Determination (No. 4 of 2021-2022) [F2022L00028], which provides a further \$920 million.

1.8 The instruments are exempt from disallowance under subsection 10(4) of *Appropriation Act (No. 1) 2021-2022* and subsection 12(4) of *Appropriation Act (No. 2) 2021-2022*, as applicable.

Scrutiny concerns

Exemption from disallowance

1.9 Under standing order 23(4A) the committee will scrutinise instruments exempt from disallowance to determine whether the exemption is appropriate.

1.10 At a minimum, the committee expects all explanatory statements to exempt instruments to identify the source of the exemption and to justify why the exemption is appropriate in the context of the instrument. The committee's scrutiny concerns under standing order 23(4A) will be heightened where an instrument also engages the committee's scrutiny concerns under principles (a) to (m) of standing order 23.

2 For a list of AFMs see <https://www.finance.gov.au/publications/advance-to-the-finance-minister>.

Committee comment

1.11 The exemption of AFM determinations from disallowance in times of emergency was considered by the committee in its inquiry into the exemption of delegated legislation from parliamentary oversight. In particular, the interim report commented on the extraordinary amount of additional public funds that were made available under the AFM provisions to combat the COVID-19 pandemic, which had increased from \$675 million to \$40 billion.³

1.12 In the final report of the inquiry the committee also raised concerns about the use of AFMs more generally. When Parliament passes the enabling provisions for the making of AFM determinations, a constraint is imposed by providing that the power to make a determination can only be exercised 'if the Finance Minister is satisfied that there is an urgent need for expenditure'. However, a decision of the High Court in 2017 has watered down this constraint to the point where it is of no substantive effect.⁴ The committee considers that the exemption of AFM determinations from disallowance leaves the Parliament with little recourse when the delegated power is used contrary to the expressed intent of the Parliament.

1.13 The committee notes the Finance Minister's advice, set out in his letter to the committee of 10 March 2021, in which he outlines a number of reasons as to why AFM determinations should not be subject to disallowance. The committee is not persuaded that providing for AFM determinations to be disallowable would delay otherwise urgent expenditure or would fundamentally frustrate the operation of the AFM mechanism. In this regard, the committee notes that additional funds would become available for urgent expenditure immediately after the relevant AFM determination was registered on the Federal Register of Legislation. Until such time as a disallowance motion was passed by either House, funds could be validly spent under the AFM.

1.14 The committee acknowledges concerns that disallowance of an AFM could leave entities short of the funds that they need to carry out expenditure unrelated to the purposes of the AFM. Nevertheless, the committee maintains its view set out in the interim and final inquiry reports. If the AFM is used for a genuine emergency situation, the likelihood of it subsequently being disallowed would be virtually non-existent, and not sufficient to justify an exemption from disallowance. The potential for disallowance would simply operate to ensure that the AFM is only utilised in genuinely urgently circumstances, as intended by the Parliament.

3 Senate Standing Committee for the Scrutiny of Delegated Legislation, [interim report of the inquiry into the exemption of delegated legislation from parliamentary oversight](#), 2 December 2020, 4.78. As noted above, the limit in the most recent Appropriation Bills was \$5 billion in total.

4 *Wilkie v Commonwealth* (2017) 263 CLR 487. See Anne Twomey, 'A tale of two cases: Wilkie v Commonwealth and Re Canavan', *Australian Law Journal*, vol. 92, no. 1, 2018, pp. 17–21.

1.15 In this regard, the committee notes that senators and members, as elected representatives, would be made aware of any impact that disallowance would have and would consider such matters as part of their deliberations and their accountability to their electors. The committee considers that the disallowance process is an opportunity to work in a constructive manner with the executive to enhance delegated legislation to ensure that it operates and functions within the boundaries placed upon it by the Parliament.

1.16 The committee acknowledges and welcomes the transparency and accountability mechanisms announced by the former Finance Minister in relation to the extraordinary COVID-19 AFM provisions.⁵ Although the committee has been concerned that these mechanisms are not enshrined in legislation, the committee welcomes the Finance Minister's indication that these transparency measures will be continuing practices.⁶

1.17 In his letter of 10 March 2021, the Finance Minister also noted that other accountability mechanisms may be utilised by parliamentarians should they wish to signal disagreement with an AFM, including member's or senator's statements, general business motions, urgency motions, matters of public importance and adjournment speeches. While acknowledging the value and importance of these general accountability mechanisms, as well as the specific AFM mechanisms described above, the committee considers that our system of representative democracy also requires elected representatives to have an opportunity to scrutinise and, if necessary, repeal executive-made law.

1.18 The committee therefore draws these instruments to the attention of the Senate as they effectively amend the relevant Appropriation Acts to increase the amount of funds available to:

- **the National Recovery and Resilience Agency by a total of \$986 million, for the provision of the Pandemic Leave Disaster Payment; and**
- **the Department of Finance by a total of \$621 million, to support the construction of quarantine facilities known as Centres for National Resilience**

without the opportunity for appropriate parliamentary oversight through the disallowance process.

5 These mechanisms include issuing a media release each week an AFM is allocated and seeking the concurrence of the Shadow Finance Minister, on behalf of the Opposition, for any proposed allocation of an AFM over \$1 billion. The committee acknowledges that the agreement of the Shadow Finance Minister was sought, and received, prior to the making of Advance to the Finance Minister Determination (No. 4 of 2021-2022) [F2022L00028].

6 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 8 of 2021*, pp 8-11 and *Scrutiny Digest 13 of 2021*, pp 20-21.

1.19 The committee also reiterates its recommendation, as set out in the final report of the inquiry into the exemption of delegated legislation from parliamentary oversight, that future Advance to the Finance Minister determinations be disallowable legislative instruments.

Various instruments made under the *Biosecurity Act 2015*

FRL No.	F2021L01462 ; F2021L01463 ; F2021L01484 ; F2021L01555 ; F2021L01572 ; F2021L01578 ; F2021L01586 ⁷
Purpose	Various purposes responding to the COVID-19 pandemic
Authorising legislation	<i>Biosecurity Act 2015</i>
Portfolio	Health
Source of exemption	Subsections 44(3), 51(4) and 477(2) of the <i>Biosecurity Act 2015</i>

Overview

1.20 Subsections 44(2), 51(2) and 477(1) of the *Biosecurity Act 2015* (the Biosecurity Act) empower the minister to determine entry requirements, preventative biosecurity measures and emergency requirements during a human biosecurity emergency period, respectively. These seven instruments were made under the Biosecurity Act in response to the COVID-19 pandemic and introduce a range of measures, including specifying the requirements to travel in and out of Australian territories, and measures to prevent persons from entering or leaving designated remote areas in the Northern Territory.⁸

1.21 These instruments are exempt from disallowance by subsections 44(3), 51(4) and 477(2) of the Biosecurity Act.

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

8 Biosecurity Legislation Amendment (Incoming International Flights) Determination 2021 [F2021L01462], Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 2) Determination 2021 [F2021L01463], Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2021 [F2021L01484], Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Repeal Determination 2021 [F2021L01555], Biosecurity (Emergency Requirements—Remote Communities) Determination 2021 [F2021L01572], Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 1) Determination 2021 [F2021L01578] and Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2021 [F2021L01586].

Scrutiny concerns

Exemption from disallowance⁹

1.22 The committee has set out its significant scrutiny concerns in relation to legislative instruments made under the Biosecurity Act which are exempt from disallowance in detail in Chapter 1 of *Delegated Legislation Monitor 14 of 2021*¹⁰ and *Delegated Legislation Monitor 16 of 2021*.¹¹ The committee's broader concerns about the exemption from disallowance of emergency legislative instruments are set out in detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight.¹²

1.23 It remains the committee's view that emergency delegated legislation should be subject to appropriate parliamentary oversight, with limited exemptions from disallowance. Where an instrument is exempt from disallowance, the committee expects that a detailed justification will be included in the explanatory statement.

1.24 As the committee has previously emphasised, this approach upholds the Parliament's constitutional role as the primary institution responsible for making law and scrutinising possible encroachments on personal rights and liberties.

1.25 These seven instruments made under the Biosecurity Act introduce significant measures which impact the public, including temporarily imposing stringent requirements to travel and restricting the movement of people in and out of certain remote communities in the Northern Territory, effectively 'locking down' identified areas. The justification provided for the exemption from disallowance remains the same for each instrument—that the risk of disallowance would inhibit the Commonwealth's ability to act urgently on public health advice to manage a

9 Scrutiny principle: Senate standing order 23(3)(4A).

10 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 14 of 2021*, 29 September 2021, pp. 14–21. Accessible at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

11 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 16 of 2021*, 25 November 2021, pp. 3–10. Accessible at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

12 Senate Standing Committee for the Scrutiny of Delegated Legislation, *Exemption of delegated legislation from parliamentary oversight: Interim Report*, 2 December 2020. Accessible at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Exemptfromoversight/Interim_report.

human biosecurity risk that could threaten or harm human health, as it would create uncertainty as to whether the instrument might be disallowed.¹³

1.26 As set out in the committee's previous Delegated Legislation Monitors, the committee does not accept the need to act urgently or to avoid potential uncertainty on their own to be an adequate justification for the exemption of delegated legislation from parliamentary oversight. In particular, the committee notes that the disallowance procedure would not inhibit the immediate commencement of the instruments. In this regard, the committee does not consider that making a legislative instrument subject to disallowance would, of itself, prevent the government from taking immediate and decisive action in response to a significant emergency.

1.27 The committee considers the disallowance process to be an opportunity to work in a constructive manner with the executive to enhance delegated legislation to ensure that it operates and functions within the boundaries placed upon it by the Parliament. In relation to these instruments, which impose significant requirements on the Australian public, the committee considers that the disallowance process is necessary to facilitate appropriate debate and scrutiny of the use of emergency powers and would operate to ensure that such powers are not misused.

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

1.29 The committee notes that to date, the government has failed to substantively engage with the committee's significant concerns and continues to make instruments under the Biosecurity Act which are exempt from disallowance and fails to provide an adequate explanation for why it is necessary to do so.

1.30 Further, the committee is deeply concerned that the government has advised that it does not support any of the committee's recommendations in relation to providing for the disallowance of instruments made under the Biosecurity Act as set out in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight. Of the 18 recommendations in the interim report, the committee regrets that the government only agreed to one.

13 In addition, for the Biosecurity (Emergency Requirements—Remote Communities) Determination 2021 [F2021L01572] and the Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 1) Determination 2021 [F2021L01578], the justification for the exemption also indicates that the risk of disallowance is more significant as the 'remote communities are made up of Aboriginal and Torres Strait Islander peoples who are at a high risk of adverse human health outcomes as a result of exposure to a listed human disease'.

1.31 The committee will continue to rigorously pursue this matter in accordance with the mandate provided by the Senate when it agreed to amend standing order 23 to allow the committee to consider exempt instruments and report on instruments made the Biosecurity Act which are exempt from disallowance.

1.32 In light of the above, the committee reiterates its view that amendments should be made to:

- **section 44 of the Biosecurity Act to provide that any determinations setting out entry requirements in the future will be subject to disallowance;**
- **section 51 of the Biosecurity Act to provide that any determinations setting out preventative biosecurity measures in the future will be subject to disallowance;**
- **section 476 of the Biosecurity Act to provide that any future variations to extend a human biosecurity emergency period will be subject to disallowance; and**
- **section 477 of the Biosecurity Act to provide that any determinations setting out emergency requirements in the future will be subject to disallowance.**

1.33 If the government is not amenable to moving such amendments, the committee intends to move its own amendments to the Biosecurity Amendment (Enhanced Risk Management) Bill 2021 which is currently before the Parliament, to ensure that future legislative instruments made under the Biosecurity Act are subject to disallowance.¹⁴

1.34 Additionally, the committee will continue to draw legislative instruments made under the Biosecurity Act which are exempt from disallowance to the attention of the Senate in future Delegated Legislation Monitors, as necessary.

14 The committee's proposed amendments to the bill were circulated in the Senate on 2 December 2021, see [sheet 1475](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6776) available at: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6776.

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 tables below outline the expenditure specified in legislative instruments registered between 23 October 2021 and 26 November 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 (Education, Skills and Employment Measures No. 4) Regulations 2021 [F2021L01494]	Grant to MultiLit Pty Limited	\$8 million over four years from 2021-22	Funding will be provided for a grant to MultiLit Pty Limited to provide phonics-based programs to support literacy outcomes for students, particularly Aboriginal and Torres Strait Islander students.	Senate Education and Employment Legislation Committee
	Grant to Together for Humanity Foundation Limited	\$8.1 million over four years from 2021-22	Funding will be provided for a grant to Together for Humanity Foundation Limited to deliver the Inclusion for Connected Youth and Communities Initiative, which includes intercultural solutions, programs and resources for students, teachers and school communities and related research.	Senate Education and Employment Legislation Committee
	Explicit Instruction Teaching Program	\$9.9 million over four years from 2021-22.	Funding will be provided to support training for teachers at educationally disadvantaged primary schools to enable them to adopt explicit instruction teaching methods in relation to literacy, numeracy and science to improve skills and knowledge, particularly Aboriginal and Torres Strait Islander students.	Senate Education and Employment Legislation Committee
	Online Formative Assessment Initiative	The initiative is one of eight national policy initiatives under the National School Reform Agreement (NSRA) with \$35 million over two years from 2021-22 allocated for the NSRA initiatives	Funding will be provided to facilitate access to online teaching resources, tools, student assessments, professional learning and other support for teachers.	Senate Education and Employment Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
	School Partnerships to Improve Educational Outcomes for Indigenous Students in Remote Schools	\$25.9 million over four years from 2021-22	Funding will be provided for school partnerships to improve educational outcomes for Indigenous students in remote schools.	Senate Education and Employment Legislation Committee
	Migrant Skills Incentives	\$19.7 million over three years from 2021-22	Funding will be provided for incentives to increase the number of skilled migrants who can contribute to the Australian workforce at an appropriate skill level, by funding the development, promotion and provision of skills assessment, employability assessments and skills training.	Senate Education and Employment Legislation Committee
	Skills for Education and Employment Program	\$512.5 million over four years from 2021-22	Funding will be provided for language, literacy, numeracy and digital skills training to eligible job seekers to assist their prospects for further education and employment opportunities.	Senate Education and Employment Legislation Committee
	VET system improvements	\$292.5 million over four years from 2021-22	Funding will be provided for improvements to the vocational education and training system, including new industry engagement arrangements.	Senate Education and Employment Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 7) Regulations 2021 [F2021L01500]	Safeguarding the Integrity of Australian Sport—Australia’s international anti-doping commitments	\$1.8 million over two years from 2021-22	Funding will be provided for Australia’s contributions to the Oceania Regional Anti-Doping Organisation, the United Nations Educational, Scientific and Cultural Organization Fund for the Elimination of Doping in Sport and the World Anti-Doping Agency to fulfil Australia’s international anti-doping commitments.	Senate Community Affairs Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 1) Regulations 2021 [F2021L01495]	International Climate Action	\$103.9 million in total, comprising: <ul style="list-style-type: none"> • \$59.9 million over five years from 2021-22; and • \$44 million over ten years from 2021-22 	Funding will be provided to: <ul style="list-style-type: none"> • establish a high-integrity carbon offset scheme in the Indo-Pacific (the scheme) (\$59.9 million); and • establish a larger number of partnerships under the scheme, with a focus on building capacity to meet Paris Agreement-era emissions reporting and transparency standards (\$44 million). 	Senate Environment and Communications Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2021 [F2021L01507]	Emerging Aviation Technologies Partnerships Program	\$32.6 million over two years from 2021-22	Funding will be provided to deliver measures to encourage and enable the development and deployment of emerging aviation technologies (such as electric engines, drones, and electric vertical take-off and landing vehicles) to enhance the competitiveness, efficiency and reliability of Australian aviation, including by expanding employment in the aviation sector; improving supply chain and market efficiency; and improving connections with regional and remote, including Indigenous, communities.	Senate Rural and Regional Affairs and Transport Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 8) Regulations 2021 [F2021L01499]	Initiatives addressing child sexual abuse, such as those under the National Strategy to Prevent and Respond to Child Sexual Abuse	\$146 million over four years from 2021-22 (initial funding)	Funding will be provided to: <ul style="list-style-type: none"> • expand the role of the National Office for Child Safety to deliver the National Strategy to Prevent and Respond to Child Sexual Abuse; • build child safe cultures through awareness raising and education campaigns; 	Senate Finance and Public Administration Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<ul style="list-style-type: none"> • improve support services for victims and survivors of child sexual abuse; • establish a national support service for non-offending family members of child sexual abuse offenders; • enhance national approaches to supporting children with harmful sexual behaviours; • prevent first-time and recurring child sexual abuse offending; • enhance and expand legal assistance services for victims and survivors of child sexual abuse; and • strengthen regional policy, legislative and operational responses to counter child sexual abuse. 	
Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 10) Regulations 2021 [F2021L01609]	Australia Day Celebrations	\$26.7 million in 2021-22	Funding will be provided to the National Australia Day Council Limited to deliver a grants program that supports Australia Day events (up to \$16.9 million in 2021-22) and a communications campaign to promote Australia Day (\$9.8 million in 2021-22 for the 2022 Australia Day campaign).	Senate Finance and Public Administration Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 4) Regulations 2021 [F2021L01498]	Care and Support Workforce National Campaign	\$13.3 million in 2021-22 for the campaign and \$9.8 million over two years from 2021-22 for the campaign extension	Funding will be provided for a communications campaign to increase public awareness of the employment opportunities available in the care and support sector, including in aged care, disability support and veterans' care.	Senate Community Affairs Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
	Cashless welfare support services	\$47.5 million over four years from 2021-22	<p>Funding will be provided to support to Cashless Debit Card participants, including:</p> <ul style="list-style-type: none"> • access to services to address family violence and substance abuse including drug and alcohol and rehabilitation; • job readiness programs, training, education and employment-related services and support; • mental health services via providing training assessments for people with mental illness and treatment, rehabilitation and case management services; • support services to families with children aged 18 years and under to promote safety and wellbeing of those children; • targeted youth activities, mentoring programs, community engagement and participation; • financial capability building services, financial counselling and digital literacy; and • community level infrastructure and digital connectivity. 	Senate Community Affairs Legislation Committee
	National early childhood program for children with disability or developmental concerns	\$17.9 million over four years from 2021-22	<p>Funding will be provided to facilitate a range of disability specific information, linkages, workshops and community supports for young children aged 0 to 8 years with disability or developmental concerns, including by funding measures to:</p>	Senate Community Affairs Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<ul style="list-style-type: none"> • enable parents and carers to access information about their child’s development and early capacity-building supports; or • help prepare children with disability or developmental concerns for school and other learning environments; or • develop the skills and confidence of parents and carers to support their child’s learning and development and connect with services. 	
Industry Research and Development (Carbon Capture, Use and Storage Hubs and Technologies Program) Instrument 2021 [F2021L01593]	Carbon Capture, Use and Storage Hubs and Technologies Program	\$250 million	<p>Funding will be provided to support:</p> <ul style="list-style-type: none"> • research, development and commercialisation of projects and technologies for: <ul style="list-style-type: none"> ○ the capture of carbon dioxide for subsequent use or storage; and ○ the use or storage of carbon dioxide; • the identification of suitable locations for the storage of carbon dioxide; and • the design and construction of shared infrastructure for the transport and storage of carbon dioxide. 	Senate Environment and Communications Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Industry Research and Development (Northern Australia Development Program) Instrument 2021 [F2021L01508]	Northern Australia Development Program	\$111.9 million over five years from 2021-22	Funding will be provided for: <ul style="list-style-type: none"> • Northern Australia Business Development Grants: This element will provide grant funding to northern Australia Small to Medium Enterprises (SMEs), including Indigenous organisations, to take the next step to diversify or grow their business. This may involve grants for activities such as acquiring infrastructure and assets, feasibility studies, business planning and marketing activities. • Northern Australia Industry Transformation Grants: This element will provide grant funding to medium to large businesses aiming to establish a new industry or significantly grow the value of an existing industry and contribute to transformational change in a northern Australian region. • Strengthening Northern Australia Business Advisory Services: This will provide eligible northern Australian businesses who apply for grants through the Program with access to support from an expert facilitator, and / or workshops to build long term resilience and business strength. Funding will be provided to the Department in a direct allocation to deliver this element of the Program through the established frameworks of the Department of Industry, Science, Energy 	Senate Economics Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<p>and Resources. The service will connect SMEs with the capabilities and networks they need to grow. It will be provided through a network of independent business experts, who work closely with clients to determine the businesses needs and how best to achieve them in the short, medium and long term.</p> <ul style="list-style-type: none"> • 	
Industry Research and Development (Soil Program) Instrument 2021 [F2021L01509]	Soil Program	\$96.7 million	<p>Funding will be provided to improve the understanding of Australia’s soil condition and how to better manage it, assess the impact of land management practices on soil and assist farmers to improve their productivity and profitability, including by:</p> <ul style="list-style-type: none"> • supporting researchers to conduct research relating to soil science by providing funding through Soil Science Challenge Grants (\$20 million); • supporting the development and implementation of an accreditation program for soil practitioners and education resources relevant to the accreditation program, by providing funding to the Australian Society of Soil Science Incorporated (also known as Soil Science Australia) (up to \$1 million); • encouraging soil data owners to share soil data by providing payments (\$21.3 million); and 	Senate Rural and Regional Affairs and Transport Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
			<ul style="list-style-type: none"> enabling the collection of soil samples, including by land managers, and accredited laboratories to test the soil samples, analyse the test results and provide the data obtained from the testing and analysis to the Commonwealth (\$54.4 million). 	
Industry Research and Development (Supporting Agricultural Showmen and Women Program) Instrument 2021 [F2021L01558]	Supporting Agricultural Showmen and Women Program	\$4.3 million in 2021-22 (initial funding)	Funding will be provided to: <ul style="list-style-type: none"> the Victorian Showmen’s Guild to pay rental costs and ground administration fees charged by Australian agricultural show societies for the participation of travelling show businesses in agricultural shows; and Australian agricultural show guilds to pay for the guild fees of travelling show businesses. 	Senate Rural and Regional Affairs and Transport Legislation Committee

Chapter 4

Scrutiny of instruments exempt from disallowance

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

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

4.3 The committee has considered all legislative instruments which are exempt from disallowance registered on the Federal Register of Legislation between 23 October 2021 and 26 November 2021. The sections below identify those instruments which meet or do not meet the committee's expectations under standing order 23(4A).

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

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

Instruments which meet the committee's expectations

4.5 The following instruments meet the committee's expectations under standing order 23(4A).

Instrument	Portfolio
Health Insurance (Extended Medicare Safety Net) Amendment (Indexation) Determination 2021 [F2021L01590]	Health

1 *Senate resolution 53B: Delegated legislation—disallowance and sunseting*, agreed to on 16 June 2021, https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/d00/Resolutions_expressing_opinions_of_the_Senate/.

Instruments which do not meet the committee's expectations

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

Instrument	Portfolio
Advance to the Finance Minister Determination (No. 1 of 2021-2022) [F2021L01581]	Finance
Advance to the Finance Minister Determination (No. 2 of 2021-2022) [F2021L01771]²	Finance
Advance to the Finance Minister Determination (No. 3 of 2021-2022) [F2021L01795]³	Finance
Advance to the Finance Minister Determination (No. 4 of 2021-2022) [F2022L00028]⁴	Finance
Australian Airspace Policy Statement 2021 [F2021L01589]	Infrastructure, Transport, Regional Development and Communications
Australian Medical Research and Innovation Strategy 2021-2026 Determination 2021 [F2021L01522]	Finance
Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 1) Determination 2021 [F2021L01578]	Health
Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2021 [F2021L01586]	Health
Biosecurity (Emergency Requirements—Remote Communities) Determination 2021 [F2021L01572]	Health
Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2021 [F2021L01484]	Health
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Retail Outlets at International Airports) Repeal Determination 2021 [F2021L01555]	Health
Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 2) Determination 2021 [F2021L01463]	Health
Biosecurity Legislation Amendment (Incoming International Flights) Determination 2021 [F2021L01462]	Health
CASA OAR 064/21 — Determination of Airspace and Controlled Aerodromes Etc. (Designated Airspace Handbook) Instrument 2021 [F2021L01618]	Infrastructure, Transport, Regional Development and Communications

2 This instrument was registered on 13 December 2021.

3 This instrument was registered on 16 December 2021.

4 This instrument was registered on 14 January 2022.

Instrument	Portfolio
Discovery Program Grant Guidelines (2021 edition) [F2021L01510]	Education, Skills and Employment
Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 5) Determination 2021 [F2021L01574]	Treasury
Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 5) Determination 2021 [F2021L01515]	Treasury
Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 6) Determination 2021 [F2021L01577]	Treasury
Migration (Arrangements for Protection, Refugee and Humanitarian visas) Amendment Instrument (LIN 21/079) 2021 [F2021L01562]	Home Affairs
Migration (Class of persons—Refugee and Humanitarian (Class XB) visa) Instrument (LIN 21/080) 2021 [F2021L01569]	Home Affairs
Migration (ICC Men's T20 World Cup 2022 and FIFA Women's World Cup 2023—AGEEs) Instrument (LIN 21/049) 2021 [F2021L01550]	Home Affairs
Migration (Income Threshold and Exemptions for Subclass 189 Visa (New Zealand Stream)) Amendment Instrument (LIN 21/048) 2021 [F2021L01544]	Home Affairs
Migration (International trade obligations relating to labour market testing) Determination (LIN 21/075) 2021 [F2021L01505]	Home Affairs
Migration (Priority consideration for certain Visitor (Class FA) visa applications) Instrument (LIN 21/074) 2021 [F2021L01602]	Home Affairs
Migration (VAC refunds for certain Prospective Marriage visas) Amendment Instrument (LIN 21/071) 2021 [F2021L01467]	Home Affairs
Standard No. 1 of 2016 The Setting of Interchange Fees in the Designated Credit Card Schemes and Net Payments to Issuers Variation 2021 [F2021L01573]	Treasury
Standard No. 2 of 2016 The Setting of Interchange Fees in the Designated Debit and Prepaid Card Schemes and Net Payments to Issuers Variation 2021 [F2021L01575]	Treasury
Standard No. 3 of 2016 Scheme Rules Relating to Merchant Pricing for Credit, Debit and Prepaid Card Transactions Variation 2021 [F2021L01576]	Treasury

Senator the Hon Concetta Fierravanti-Wells

Chair

Senate Standing Committee for the Scrutiny of Delegated Legislation

Appendix A

New matters

5.1 The committee engages with relevant ministers and agencies to attempt to resolve its concerns about scrutiny issues raised by disallowable legislative instruments. This appendix documents the committee's new scrutiny concerns in relation to legislative instruments registered on the Federal Register of Legislation between 23 October 2021 and 26 November 2021.

Ministerial engagement

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

Instrument	Issue	Status
Advance to the Finance Minister Determinations [F2021L01581] [F2021L01771] [F2021L01795] [F2022L00028]²	Standing order 23(4A) exemption from disallowance	Drawing to the attention of the Senate. ³
Australian Citizenship (special residence requirement) Instrument (LIN 21/069) 2021 [F2021L01422]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Seeking advice from the minister.
Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2021 [F2021L01392]	Principle (j) significant penalties in delegated legislation	Seeking advice from the minister.
Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2021 [F2021L01561]		
Migration Amendment (Humanitarian Response to Events in Afghanistan) Regulations 2021 [F2021L01546]	Principle (m) parliamentary oversight	Seeking advice from the minister.
Therapeutic Goods (Standard for Human Cell and Tissue Products—Donor Screening Requirements) (TGO 108) Order 2021 [F2021L01326]	Principle (e) clarity of drafting	Seeking advice from the minister.

¹ See www.aph.gov.au/senate_sdlc.

² F2021L01771, F2021L01795 and F2022L00028 were registered after 26 November 2021.

³ See Chapter 1 for further details.

Instrument	Issue	Status
Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021 [F2021L01801]⁴	<p>Principle (e) clarity of drafting</p> <p>Principle (j) matters more appropriate for parliamentary enactment</p> <p>Principle (j) significant penalties in delegated legislation</p> <p>Principle (l) modification of the operation of primary legislation</p> <p>Principle (m) parliamentary oversight</p>	Seeking advice from the Treasurer.
Various instruments made under the Biosecurity Act 2015 [F2021L01462] [F2021L01463] [F2021L01484] [F2021L01555] [F2021L01572] [F2021L01578] [F2021L01586]	Standing order 23(4A) exemption from disallowance	Drawing to the attention of the Senate. ⁵

Agency engagement

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

Instrument	Issue	Status
Civil Aviation Order 48.1 Amendment Instrument 2021 (No. 1) [F2021L01610]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Competition and Consumer Amendment (Consumer Data Right) Regulations 2021 [F2021L01617]	<p>Principle (g) adequacy of explanatory materials</p> <p>Principle (h) privacy</p> <p>Principle (k) exemption from sunseting</p> <p>Principle (l) exemption from the operation of primary legislation</p>	Committee secretariat considering response.
Corporations Amendment (Litigation Funding) Regulations 2021 [F2021L01608]	Principle (e) clarity of drafting	Committee secretariat considering response.

⁴ This instrument was registered on 17 December 2021.

⁵ See Chapter 1 for further details.

Instrument	Issue	Status
Customs (Prohibited Imports) Amendment (Commercial Importation of Kava as Food) Regulations 2021 [F2021L01615]	Principle (c) delegation of administrative powers and functions	Committee secretariat considering response.
Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021 [F2021L01503]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (f) incorporated materials freely accessible	Committee secretariat considering response.
Designs Amendment (Advisory Council on Intellectual Property Response) Regulations 2021 [F2021L01552]	Principle (e) clarity of drafting	Seeking further advice from the agency.
Eddystone Point Lighthouse Heritage Management Plan 2021 [F2021L01587]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Committee secretariat considering response.
Fair Work Act 2009 Direction to Inspectors (November 2021) [F2021L01585]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Seeking advice from the agency.
Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 2) Regulations 2021 [F2021L01497]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 4) Regulations 2021 [F2021L01494]	Principle (c) delegation of administrative powers and functions	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Foreign Affairs and Trade Measures No. 1) Regulations 2021 [F2021L01496]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 7) Regulations 2021 [F2021L01500]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 1) Regulations 2021 [F2021L01495]	Principle (c) delegation of administrative powers and functions	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2021 [F2021L01507]	Principle (c) delegation of administrative powers and functions	Committee secretariat considering response.

Instrument	Issue	Status
Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 8) Regulations 2021 [F2021L01499]	Principle (c) delegation of administrative powers and functions	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 10) Regulations 2021 [F2021L01609]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 4) Regulations 2021 [F2021L01498]	Principle (c) delegation of administrative powers and functions	Committee secretariat considering response.
Industry Research and Development (Northern Australia Development Program) Instrument 2021 [F2021L01508]	Principle (c) delegation of administrative powers and functions	Committee secretariat considering response.
Industry Research and Development (Supporting Agricultural Showmen and Women Program) Instrument 2021 [F2021L01558]	Principle (c) delegation of administrative powers and functions	Committee secretariat considering response.
National Consumer Credit Protection Amendment (Small Business Exemption No. 2) Regulations 2021 [F2021L01540]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Reserve HFC Quotas) Regulations 2021 [F2021L01564]	Principle (i) availability of independent merits review	Seeking advice from the agency.
Part 91, Part 133 and Part 138 Manuals of Standards — NVIS Amendments Instrument 2021 (No. 1) [F2021L01591]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Part 138 MOS Amendment Instrument 2021 (No. 1) [F2021L01595]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Radiocommunications (Exemption – Corrective Services NSW) Determination 2021 [F2021L01613]	Principle (a) compliance with authorising legislation	Committee secretariat considering response.
Recycling and Waste Reduction (Export—Waste Tyres) Rules 2021 [F2021L01482]	Principle (i) availability of independent merits review	Seeking further advice from the agency.
Remuneration Tribunal Amendment Determination (No. 6) 2021 [F2021L01607]	Principle (k) exemption from sunseting	Committee secretariat considering response.

Instrument	Issue	Status
Southern Bluefin Tuna Fishery (Undercatch and Overcatch) (2020-2021 Season No. 2) Determination 2021 [F2021L01606]	Principle (g) adequacy of explanatory materials	Committee secretariat considering response.
Telecommunications Code of Practice 2021 [F2021L01524]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (c) conferral of discretionary powers Principle (i) availability of independent merits review Principle (m) legal certainty	Committee secretariat considering response.
Therapeutic Goods Legislation Amendment (2021 Measures No. 3) Regulations 2021 [F2021L01474]	Principle (g) adequacy of explanatory materials Principle (h) privacy	Seeking advice from the agency.
Variation to Licence Area Plan – Albury Radio – 2021 (No. 1) [F2021L01583]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Vehicle Standard (Australian Design Rule 98/00 – Advanced Emergency Braking for Passenger Vehicles and Light Goods Vehicles) 2021 [F2021L01518]	Principle (k) exemption from sunseting	Committee secretariat considering response.
Vehicle Standard (Australian Design Rule 98/01 – Advanced Emergency Braking for Passenger Vehicles and Light Goods Vehicles) 2021 [F2021L01519]	Principle (k) exemption from sunseting	Committee secretariat considering response.

Appendix B

Ongoing matters

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

Ministerial engagement

6.2 The committee is continuing to engage with the relevant minister about the scrutiny issues raised by the instruments listed below. Copies of the ministerial correspondence are available on the committee's website.²

Instrument	Issue	Status
Aged Care Legislation Amendment (Royal Commission Response No.1) Principles 2021 [F2021L00923]*	Principle (c) conferral of discretionary powers	Seeking further advice from the minister.
	Principle (e) clarity of drafting	Notice of motion to disallow placed on 18/10/2021.
	Principle (j) matters more appropriate for parliamentary enactment	
	Principle (j) significant impact on personal rights and liberties	
Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191]	Standing order 23(4A) exemption from disallowance	Seeking advice from the minister.
	Principle (a) compliance with authorising legislation	

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

2 See www.aph.gov.au/senate_sdmc.

Instrument	Issue	Status
Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043]*	Principle (a) compliance with authorising legislation Principle (a) compliance with <i>Legislation Act 2003</i> —same in substance Principle (j) significant matters in delegated legislation	Notice of motion to disallow placed on 18/10/2021. The committee drew this instrument to the attention of the Senate and recommended disallowing the instrument in <i>Delegated Legislation Monitor 14 of 2021</i> .
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021 [F2021L01232]	Standing order 23(4A) exemption from disallowance	Seeking advice from the minister.
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 [F2021L01430]	Principle (c) delegation of administrative powers and functions Principle (c) conferral of discretionary powers Principle (h) privacy Principle (i) availability of independent merits review Principle (j) matters more appropriate for parliamentary enactment Principle (m) parliamentary oversight	Seeking advice from the minister.
Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080]	Principle (l) exemption from the operation of primary legislation Principle (m) parliamentary oversight	Seeking further advice from the Treasurer. Notice of motion to disallow placed on 22/11/2021.
Great Barrier Reef Marine Park Amendment (No-Anchoring Areas) Regulations 2021 [F2021L00843]*	Principle (a) compliance with <i>Legislation Act 2003</i> Principle (m) parliamentary oversight	Seeking further advice from the minister. Notice of motion to disallow placed on 18/10/2021.
Industry Research and Development (Supporting Critical Transmission Infrastructure Program) Instrument 2021 [F2021L01312]	Principle (m) parliamentary oversight	Seeking advice from the minister.
Northern Australia Infrastructure Facility Investment Mandate Direction 2021 [F2021L00942]	Standing order 23(4A) exemption from disallowance	Seeking further advice from the minister.

Agency engagement

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

Instrument	Issue	Status
CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 [F2021L01399]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Committee secretariat considering response.
Minamata Convention on Mercury (Consequential Amendments) Regulations 2021 [F2021L01390]	Principle (a) compliance with <i>Legislation Act 2003</i> —consultation	Committee secretariat considering response.
Recycling and Waste Reduction (Mandatory Product Stewardship—Mercury-added Products) Rules 2021 [F2021L01393]	Principle (i) availability of independent merits review	
Industrial Chemicals (General) Amendment (Minamata Convention on Mercury) Rules 2021 [F2021L01411]		

Appendix C

Concluded matters

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

Ministerial engagement

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

Instrument	Issue	Status
Advance to the Finance Minister Determinations [F2021L01581] [F2021L01771] [F2021L01795] [F2022L00028] ²	Standing order 23(4A) exemption from disallowance	Drawn to the attention of the Senate in Chapter 1 of this <i>Delegated Legislation Monitor</i> .
Various instruments made under the Biosecurity Act 2015 [F2021L01462] [F2021L01463] [F2021L01484] [F2021L01555] [F2021L01572] [F2021L01578] [F2021L01586]	Standing order 23(4A) exemption from disallowance	Drawn to the attention of the Senate in Chapter 1 of this <i>Delegated Legislation Monitor</i> .

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

2 F2021L01771, F2021L01795 and F2022L00028 were registered after 26 November 2021.

Agency engagement

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

Instrument	Issue	Status
ASIC Corporations (Amendment) Instrument 2021/848 [F2021L01425]	Principle (d) consultation with persons affected	Concluded following response from the agency on 03/12/2021. The Australian Securities and Investments Commission undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Industry Research and Development (Daintree Microgrid Program) Instrument 2021 [F2021L01305]	Principle (d) consultation on specific instrument	Concluded following response from the agency on 03/12/2021. The Department of Industry, Science, Energy and Resources undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Migration Amendment (Australian Agriculture Workers) Regulations 2021 [F2021L01366]	Principle (e) clarity of drafting	Concluded following response from the agency on 02/12/2021. The Department of Home Affairs undertook to amend the instrument and the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Safety, Rehabilitation and Compensation (Definition of ACT Employee – COVID-19 Emergency Response Volunteers) Declaration 2021 [F2021L01440]	Principle (i) availability of independent merits review	Concluded following response from the agency on 01/12/2021.
Veterans' Entitlements (Point Cook Firefighters) Determination 2021 [F2021L01265]	Principle (g) adequacy of explanatory materials	Concluded following response from the agency on 03/12/2021. The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.

Appendix D

Undertakings

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

Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]	The Attorney-General undertook to commence an inquiry into good faith obligations in Commonwealth legislation in response to the committee's scrutiny concerns.	31/08/2020
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
Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No. 2) 2020 [F2020L01620]	The Department of Agriculture, Water Resources and the Environment undertook to revoke the instrument in response to the committee's scrutiny concerns.	16/03/2021
Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]	The Treasurer undertook to amend the instrument in response to the committee's scrutiny concerns.	09/04/2021
Part 133 (Australian Air Transport Operations—Rotorcraft) Manual of Standards 2020 [F2020L01614]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	20/04/2021

Instrument	Undertaking	Date of Undertaking
Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	21/05/2021
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 10) 2021 [F2021L00305]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/06/2021
Civil Aviation Legislation Amendment (Flight Operations—Consequential Amendments and Transitional Provisions) Regulations 2021 [F2021L00200]	The Civil Aviation Safety Authority undertook to amend the instrument in response to the committee's scrutiny concerns.	08/06/2021
Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]	The Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	16/06/2021
Income Tax Assessment (1997 Act) Regulations 2021 [F2021L00206]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/06/2021
Export Control Rules 2021 - various instruments [F2021L00312] [F2021L00317] [F2021L00334] [F2021L00304] [F2021L00315] [F2021L00310] [F2021L00308] [F2021L00313]	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	02/07/2021
Student Assistance Regulations 2021 [F2021L00201]	The Minister for Families and Social Services undertook to amend the instrument in response to the committee's scrutiny concerns. The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/07/2021
Export Control (Wood and Woodchips) Rules 2021 [F2021L00318]	The Minister for Agriculture and Northern Australia undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/07/2021
Bankruptcy Regulations 2021 [F2021L00261]	The Assistant Minister to the Attorney-General undertook to advise the committee of the outcome of the government's targeted review of the appropriateness of modifying provisions currently prescribed in the instrument.	26/07/2021

Instrument	Undertaking	Date of Undertaking
Paid Parental Leave Rules 2021 [F2021L00384]	The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	30/07/2021
ASIC Market Integrity Rules (Capital) 2021 [F2021L00765]	The Department of the Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	04/08/2021
Higher Education Standards Framework (Threshold Standards) 2021 [F2021L00488]	The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/08/2021
Higher Education Provider Approval No 1 of 2021 [F2021L00747]	The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns. The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/08/2021
Recycling and Waste Reduction (Product Stewardship—Televisions and Computers) Rules 2021 [F2021L00624]	The Department of Agriculture, Water and the Environment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/08/2021
Treasury Laws Amendment (Miscellaneous and Technical Amendments) Regulations 2021 [F2021L00848]	The Department of the Treasury undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/08/2021
Bankruptcy Regulations 2021 [F2021L00261]	The Assistant Minister to the Attorney-General undertook to amend the instrument in response to the committee's scrutiny concerns.	17/08/2021
Veterans' Entitlements (Counselling) Extended Eligibility Determination 2021 [F2021L00804]	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	23/08/2021
Aged Care Legislation Amendment (Care Recipients and Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00981]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/09/2021

Instrument	Undertaking	Date of Undertaking
Higher Education Provider Approval No 2 of 2021 [F2021L00965]	The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns. The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/09/2021
Aged Care Legislation Amendment (Vaccination Information) Principles 2021 [F2021L01236]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/10/2021
Education Services for Overseas Students (Exempt Courses) Instrument 2021 [F2021L00877]	The Minister for Education and Youth undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	13/10/2021
Defence Honours and Awards Appeals Tribunal Procedural Rules 2021 [F2021L01318]	The Department of Defence undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2021
Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]	The Minister for Industry, Energy and Emissions Reduction undertook to amend the instrument in response to the committee's scrutiny concerns.	04/11/2021
Therapeutic Goods (Standards for Biologicals—General and Specific Requirements) (TGO 109) Order 2021 [F2021L01332]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/11/2021
Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021 [F2021L01133]	The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/11/2021
Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030]	The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs undertook to amend the instrument in response to the committee's scrutiny concerns.	11/11/2021
Part 60 Manual of Standards Amendment Instrument 2021 (No. 1) [F2021L01303]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	12/11/2021

Instrument	Undertaking	Date of Undertaking
Taxation Administration (Data Sharing— Relevant COVID-19 Business Support Program) Declaration 2021 [F2021L01157]	The Treasurer undertook to amend the principal instrument in response to the committee's scrutiny concerns.	12/11/2021
Taxation Administration (Data Sharing— Relevant COVID-19 Business Support Program) Amendment Declaration (No. 1) 2021 [F2021L01237]		
Migration Amendment (Australian Agriculture Workers) Regulations 2021 [F2021L01366]	<p>The Department of Home Affairs undertook to amend the instrument in response to the committee's scrutiny concerns.</p> <p>The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	02/12/2021
ASIC Corporations (Amendment) Instrument 2021/848 [F2021L01425]	The Australian Securities and Investments Commission undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2021
Industry Research and Development (Daintree Microgrid Program) Instrument 2021 [F2021L01305]	The Department of Industry, Science, Energy and Resources undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2021
Veterans' Entitlements (Point Cook Firefighters) Determination 2021 [F2021L01265]	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2021

Implemented undertakings

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

Instrument	Undertaking	Date implemented
Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020 [F2020L01474]	The Assistant Treasurer introduced the Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021 into the House of Representatives which includes amendments to the taxation law in response to the committee's scrutiny concerns (see Part 2 of Schedule 8 to the bill).	25/11/2021
Medical and Midwife Indemnity Legislation Amendment (Run-off Claims) Rules 2021 [F2021L00950]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	01/12/2021
Road Vehicle Standards (Model Reports—Compliance with Standards) Determination 2021 [F2021L00838]	The Department of Infrastructure, Transport, Regional Development and Communications amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2021
Road Vehicle Standards (Limit of Acceptable Damage or Corrosion) Determination 2021 [F2021L00823] Road Vehicle Standards (Verification of Road Vehicles) Determination 2021 [F2021L00850]	The Department of Infrastructure, Transport, Regional Development and Communications amended the explanatory statements to the instruments in response to the committee's scrutiny concerns.	03/12/2021
Aged Care Legislation Amendment (Service Staff Vaccination Recording and Reporting) Principles 2021 [F2021L00697]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/12/2021
Remuneration Tribunal Amendment Determination (No. 5) 2021 [F2021L01336]	The Remuneration Tribunal amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/12/2021
Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651]	The Minister for Communications, Urban Infrastructure and the Arts amended the instrument following consultation with stakeholders in response to the committee's scrutiny concerns.	06/12/2021
Child Care Subsidy Amendment (Coronavirus Response Measures No. 6) Minister's Rules 2021 [F2021L01233]	The Department of Education, Skills and Employment amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/12/2021

Instrument	Undertaking	Date implemented
Macquarie Island Toothfish Fishery (Total Allowable Catch) Determination 2021 [F2021L01152]	The Department of Agriculture, Water and the Environment amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	10/12/2021
Therapeutic Goods Amendment (Therapeutic Goods Advertising Code) Instrument (No. 5) 2021 [F2021L01317]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	14/12/2021
Civil Dispute Resolution Regulations 2021 [F2021L01031]	The Attorney-General amended the instrument in response to the committee's scrutiny concerns.	20/12/2021
Aged Care Legislation Amendment (Improved Home Care Payment Administration) Instrument 2021 [F2021L01133]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	22/12/2021
Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]	The Assistant Minister to the Attorney-General amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	05/01/2022
Australian Securities and Investments Commission Amendment (Deferred Sales Model) Regulations 2021 [F2021L01279]	The Department of the Treasury amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/01/2022