

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 2022*, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Disallowance_Alert.

Instruments considered in this monitor

The committee examined 130 legislative instruments registered on the Federal Register of Legislation between 15 January 2022 and 18 February 2022. This included 100 disallowable instruments and 30 instruments exempt from disallowance.

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

Chapter 1

Instruments raising significant scrutiny concerns

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

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

Part 1

Disallowable instruments raising significant scrutiny issues

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

Part 2

Exempt instruments raising significant scrutiny issues

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

Various instruments made under the *Biosecurity Act 2015*

FRL No.	F2022L00029 ; F2022L00041 ; F2022L00058 ; F2022L00059 ; F2022L00060 ; F2022L00073 ; F2022L00104 ; F2022L00132 ; F2022L00149 ¹
Purpose	Various purposes
Authorising legislation	<i>Biosecurity Act 2015</i>
Portfolio	Health
Source of exemption	Subsections 44(3), 51(4), 476(2) and 477(2) of the <i>Biosecurity Act 2015</i>

Overview

1.5 Sections 475 and 476 of the *Biosecurity Act 2015* (Biosecurity Act) allow the Governor-General to declare that a human biosecurity emergency exists and to extend the emergency period for further periods of up to three months if the Health Minister is satisfied of certain criteria. During a human biosecurity emergency period, the Health Minister may determine emergency requirements or give directions deemed necessary to prevent or control the entry, emergence, establishment or spread of the relevant disease in Australian territory. On 11 February 2022, the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 1) Instrument 2022 [F2022L00132] was made to extend the emergency period, for a further two months until 17 April 2022.

1.6 Subsections 44(2), 51(2) and 477(1) of the Biosecurity Act empower the minister determine entry requirements, preventative biosecurity measures, and emergency requirements during a human biosecurity emergency period.

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

1.7 The Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 1) 2022 [F2022L00029], Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022 [F2022L00041], Biosecurity (Preventative Biosecurity Measures—Incoming International Flights) Determination 2022 [F2022L00058], Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022 [F2022L00059], Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Amendment (No. 1) Determination 2022 [F2022L00060], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2022 [F2022L00073], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2022 [F2022L00104], and Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022 [F2022L00149], were made under the Biosecurity Act in response to the COVID-19 pandemic and introduce a range of measures, including determining travel requirements such as mask and negative test requirements for international flights, and preventing persons from entering and leaving identified remote communities in the Northern Territory.

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

Scrutiny concerns

Exemption from disallowance²

1.9 The committee has on numerous occasions set out its significant scrutiny concerns in relation to legislative instruments made under the Biosecurity Act which are exempt from disallowance.³ The committee's broader concerns about the exemption from disallowance of emergency legislative instruments are set out in

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

3 See Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 14 of 2021*, 29 September 2021, pp. 14–21; Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 16 of 2021*, 25 November 2021, pp. 3–10; Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 1 of 2022*, 25 January 2022, pp. 6–9; Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 2 of 2022*, 9 February 2022, pp. 2–7; and Senate Standing Committee for the Scrutiny of Delegated Legislation, *Delegated Legislation Monitor 3 of 2022*, 10 March 2022, pp. 13–18. Accessible at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor.

detail in the interim report of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight.⁴

1.10 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.

1.11 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.

1.12 The Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 1) Instrument 2022 [F2022L00132] extends the human biosecurity emergency period for a further two months to 17 April 2022. The exemption from disallowance in relation to this instrument is particularly concerning as it means that any determinations of emergency requirements made under section 477 of the Biosecurity Act that are still currently in effect will continue to apply for the duration of the extended human biosecurity emergency period (unless revoked earlier). Further, additional determinations may be made during the period, which are also not subject to disallowance by Parliament. The committee's concerns are heightened as there is no limitation on the number of times that the emergency period may be further extended without parliamentary oversight.

1.13 The remaining eight instruments made under the Biosecurity Act during this period introduce significant measures which impact the public, including temporarily imposing requirements to travel such as mask and negative test requirements for international flights and restricting the movement of people in and out of certain remote communities in the Northern Territory.⁵

4 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.

5 Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 1) 2022 [F2022L00029], Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022 [F2022L00041], Biosecurity (Preventative Biosecurity Measures—Incoming International Flights) Determination 2022 [F2022L00058], Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022 [F2022L00059], Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Amendment (No. 1) Determination 2022 [F2022L00060], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2022 [F2022L00073], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2022 [F2022L00104], and Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022 [F2022L00149].

1.14 The justification provided for the exemption from disallowance of these instruments is that the risk of disallowance would inhibit the Commonwealth's ability to act urgently on public health advice to manage a human biosecurity risk that could threaten or harm human health, as it would create uncertainty as to whether the instrument might be disallowed.⁶

1.15 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.

1.16 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.

1.17 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.

1.18 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.

1.19 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

6 In addition, for the Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 1) 2022 [F2022L00029], Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022 [F2022L00041], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2022 [F2022L00073], Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2022 [F2022L00104], and Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022 [F2022L00149] 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'.

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.

1.20 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.

1.21 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 future determinations specifying entry requirements will be subject to disallowance;**
- **section 51 of the Biosecurity Act to provide that any future determinations specifying preventative biosecurity measures 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 future determinations specifying emergency requirements during human biosecurity emergencies will be subject to disallowance.**

1.22 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.⁷

1.23 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.

7 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

Instrument	Purpose	Portfolio committee
List of Threatened Species Amendment (Phascolarctos cinereus (combined populations of Queensland, New South Wales and the Australian Capital Territory) (280)) Instrument 2022 [F2022L00131]	To transfer the combined koala populations of Queensland, New South Wales and the Australian Capital Territory from the Vulnerable category on the list of threatened species to the Endangered category.	Senate Environment and Communications Legislation Committee
Online Safety (Basic Online Safety Expectations) Determination 2022 [F2022L00062]	<p>To set out basic online safety expectations for social media services, relevant electronic services and designated internet services. Providers of these services are expected to take steps to meet the expectations included in the determination.</p> <p>The determination specifies expectations regarding:</p> <ul style="list-style-type: none">• safe use;• the taking of reasonable steps to minimise the provision certain material and to prevent access by children to class 2 material;• reporting and complaints mechanisms;• making information on terms of use and policies accessible;• record keeping; and• dealings with the eSafety Commissioner.	Senate Environment and Communications Legislation Committee

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
Online Safety (Restricted Access Systems) Declaration 2022 [F2022L00032]	<p>To specify an access-control system for 'relevant class 2 material' online by setting out the minimum requirements such a system must satisfy.</p> <p>Relevant class 2 material includes content that is unsuitable for a minor to see because it depicts:</p> <ul style="list-style-type: none"> • realistically simulated sexual activity between adults; • high impact nudity; • high impact violence; • high impact drug use; and • high impact language. <p>The declaration requires that an access control system must:</p> <ul style="list-style-type: none"> • require an application for access to the material, and a declaration from the applicant that they are at least 18 years of age; • provide warnings as to the nature of the material; • provide safety information for parents and guardians on how to control access to the material; • incorporate reasonable steps to confirm that an applicant is at least 18 years of age; and • limit access to the content unless certain steps are complied with, including that age has been verified. 	Senate Environment and Communications Legislation Committee
Telecommunications (Interception and Access) Amendment (International Production Orders) Regulations 2022 [F2022L00111]	<p>To give effect in domestic law to the Agreement between the Government of Australia and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime.</p> <p>The effect of designating the Agreement is to allow Australian law enforcement and national security agencies to ask communications service providers in the United States to provide content or data to investigate or prosecute serious offences in Australia, and to allow United States law enforcement and security agencies to similarly request access to content or data held by Australian-based communication service providers to investigate or prosecute crimes in the United States.</p>	Senate Legal and Constitutional Affairs Legislation Committee

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 15 January 2022 and 18 February 2022.

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 2022 [F2022L00108]	Taskforce for Nature-related Financial Disclosures	Up to US\$500,000 over two years from 2021-22	Funding will be provided to support the Taskforce for Nature-related Financial Disclosures (TNFD) to develop and deliver an international risk management and disclosure framework for organisations to report and act on nature-related risks and opportunities. The TNFD is developing a framework to help corporates and financial institutions assess, value and manage their impacts and dependencies on nature. The TNFD's overarching objective is to support a shift in global financial flows away from nature-negative outcomes and towards nature-positive outcomes.	Senate Environment and Communications Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2022 [F2022L00109]	Innovation Development Fund (ELICOS)	\$9.4 million in 2021-22	Funding will be provided to support eligible providers of an English Language Intensive Course for Overseas Students to deliver services to overseas students, including by: <ul style="list-style-type: none"> • diversifying into online and offshore delivery; • investing in infrastructure, staff expertise and the marketing and promotion of education services to prepare for the return of onshore international students; and • designing curriculums and innovative digital teaching solutions. 	Senate Education and Employment Legislation Committee
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 1) Regulations 2022 [F2022L00110]	Northern Australia Business and Community Growth Program	\$80 million over three years from 2021-22	Funding will be provided to support the economic development and diversification of Northern Australia by providing grant opportunities to community organisations and other eligible entities to support business growth, improve social and economic infrastructure, increase community amenity and liveability, and deliver employment outcomes in Northern Australia.	Senate Rural and Regional Affairs and Transport Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 1) Regulations 2022 [F2022L00037]	Coronavirus economic response—pandemic leave disaster payments (continuation)	Total amount of spending authorised is uncertain	<p>Funding will be provided for pandemic payments for eligible individuals unable to earn income because they have tested positive for COVID-19, or are a close contact of someone who has tested positive for COVID-19 (consistent with the definition of a close contact agreed by the National Cabinet), or are required to care for someone who has tested positive for COVID-19 or who is a close contact.</p> <p>Effective from 18 January 2022, pandemic payments will be scaled based on the number of hours of work the individual has lost or expects to lose during an isolation period of up to seven days:</p> <ul style="list-style-type: none"> • individuals who have lost or expect to lose 20 hours of work or more will continue to be eligible for a pandemic payment of \$750; and • individuals who have lost or expect to lose at least a day of work or up to 20 hours will be eligible for a pandemic payment of \$450. <p>A financial hardship test will also be introduced with individuals who have available funds of \$10,000 or more ineligible for pandemic payments.</p>	Senate Finance and Public Administration Legislation Committee Senate Select Committee on COVID-19
Industry Research and Development (Consumer Data Right—AEMO Concessional Loan Program) Instrument 2022 [F2022L00044]	Consumer Data Right—AEMO Concessional Loan Program	\$6.153 million	Funding will be provided to facilitate a loan that will allow the Australian Energy Market Operator (AEMO) to upgrade its systems and procedures, so that it can make its relevant data available in a form that can be shared with consumers via the internet, in accordance with the Consumer Data Right provisions in the <i>Competition and Consumer Act 2010</i> .	Senate Economics Legislation Committee

Instrument	Grant/ Program	Amount	Description	Portfolio committee
Industry Research and Development (Golden Beach Gas Storage Acceleration Program) Instrument 2022 [F2022L00156]	Golden Beach Gas Storage Acceleration Program	Up to \$32 million	<p>Funding will be provided for a short-term loan of up to \$32 million to GB Energy (VIC) Pty Limited, the proponent of the Golden Beach project, to ensure the project has access to the funds required to stay on track and progress early works ahead of a final investment decision.</p> <p>The proposed Golden Beach gas storage project includes development of the Golden Beach gas field and associated storage infrastructure to increase the supply of gas to the east coast market. It is anticipated that after two years of gas production the project will convert to a natural gas storage facility to assist in addressing fluctuations in gas demand.</p>	Senate Environment and Communications Legislation Committee

Chapter 4

Scrutiny of instruments exempt from disallowance

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

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

4.3 The committee has considered all legislative instruments which are exempt from disallowance registered on the Federal Register of Legislation between 15 January 2022 and 18 February 2022. 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 No instruments exempt from disallowance meet the committee's expectations under standing order 23(4A) for this period.

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. 5 of 2021-2022) [F2022L00129]	Finance
Australia New Zealand Food Standards Code — Schedule 20 – Maximum residue limits Variation Instrument No. APVMA 1, 2022 [F2022L00142]	Health
Automatic Mutual Recognition (Victoria) (Notification Requirement—Health) Determination 2022 [F2022L00079]	Industry, Science, Energy and Resources
Biosecurity (Emergency Requirements—Remote Communities) Amendment (No. 2) Determination 2022 [F2022L00149]	Health
Biosecurity (Emergency Requirements—Remote Communities) Amendment Determination (No. 1) 2022 [F2022L00041]	Health
Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 1) 2022 [F2022L00029]	Health
Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 2) 2022 [F2022L00073]	Health
Biosecurity (Emergency Requirements—Remote Communities) Determination (No. 3) 2022 [F2022L00104]	Health
Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2022 [F2022L00059]	Health
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements—Incoming International Flights) Amendment (No. 1) Determination 2022 [F2022L00060]	Health
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 1) Instrument 2022 [F2022L00132]	Health
Biosecurity (Preventative Biosecurity Measures—Incoming International Flights) Determination 2022 [F2022L00058]	Health
Competition and Consumer (Price Monitoring—General Insurance Policies) Direction 2022 [F2022L00030]	Treasury
Environment Protection and Biodiversity Conservation (2022 conservation theme for prioritising nominations of threatened species, threatened ecological communities and key threatening processes) Determination 2022 [F2022L00136]	Agriculture, Water and the Environment
Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 7) Determination 2022 [F2022L00043]	Treasury

Instrument	Portfolio
Federal Financial Relations (General Purpose Financial Assistance—2021-22 Payment No. 8) Determination 2022 [F2022L00150]	Treasury
Federal Financial Relations (National Partnership Payments—2021-22 Payment No. 9) Determination 2022 [F2022L00102]	Treasury
Food Standards (Application A1190 – 2'-FL in infant formula and other products) Variation [F2022L00038]	Health
Food Standards (Application A1211 – Maltogenic alpha-amylase enzyme from GM Bacillus licheniformis) Variation [F2022L00039]	Health
Legislation (Deferral of Sunsetting—Clean Energy (Consequential Amendments) Regulation) Certificate 2022 [F2022L00099]	Attorney-General's
Legislation (Deferral of Sunsetting—Family Law Instruments) Certificate 2022 [F2022L00096]	Attorney-General's
Legislation (Deferral of Sunsetting—Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011) Certificate 2022 [F2022L00127]	Attorney-General's
Migration (Refund of Visa Application Charge) Amendment Instrument (LIN 22/027) 2022 [F2022L00057]	Home Affairs
National Housing Finance and Investment Corporation Investment Mandate Amendment (More Opportunities) Direction 2022 [F2022L00054]	Treasury
Poisons Standard February 2022 [F2022L00074]	Health
Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2021-2022 (No. 3) [F2022L00042]	Finance
Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2021-2022 (No. 4) [F2022L00075]	Finance
Roads to Recovery List 2019 Variation Instrument No. 2022/1 [F2022L00153]	Infrastructure, Transport, Regional Development and Communications

Instrument**Portfolio**

**Social Security (Australian Government Disaster Recovery Payment—
Queensland floods) Determination 2022 (No. 2) [F2022L00119]**

Prime Minister and Cabinet

**Statement of Expectations for the Board of the Civil Aviation Safety
Authority for the period 31 January 2022 to 30 June 2023
[F2022L00061]**

Infrastructure, Transport,
Regional Development and
Communications

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 15 January 2022 and 18 February 2022.

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
ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66 [F2022L00145]	Principle (l) amendment of the operation of primary legislation Principle (m) parliamentary oversight	Drawing to the attention of the Senate.
Various instruments made under the Biosecurity Act 2015 [F2022L00029] [F2022L00041] [F2022L00058] [F2022L00059] [F2022L00060] [F2022L00073] [F2022L00104] [F2022L00132] [F2022L00149]	Standing order 23(4A) exemption from disallowance	Drawing to the attention of the Senate. ²
Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (No. 1) [F2022L00083]	Principle (j) levying of taxes in delegated legislation	Drawing to the attention of the Senate.

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

2 See Chapter 1 for further details.

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
Agricultural and Veterinary Chemicals Code (Agricultural Active Constituents) Standards 2022 [F2022L00137]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Seeking advice from the agency.
Amendment of List of Exempt Native Specimens – Commonwealth Southern and Eastern Scalefish and Shark Fishery, February 2022 [F2022L00133]	Principle (m) consideration of relevant matters	Seeking advice from the agency.
Australian Public Service Commissioner's Directions 2022 [F2022L00088]	Principle (c) delegation of administrative powers and functions Principle (i) availability of independent merits review Principle (m) legal certainty	Seeking advice from the agency.
Carbon Credits (Carbon Farming Initiative—Animal Effluent Management) Methodology Determination Variation 2022 [F2022L00053]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (e) clarity of drafting Principle (f) incorporated materials freely accessible	Committee secretariat considering response.
Carbon Credits (Carbon Farming Initiative—Tidal Restoration of Blue Carbon Ecosystems) Methodology Determination 2022 [F2022L00046] Carbon Credits (Carbon Farming Initiative—Plantation Forestry) Methodology Determination 2022 [F2022L00047]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Committee secretariat considering response.
CASA EX11/22 — The Corryong Paragliding Open and the Not the NZ PG Open Instrument 2022 [F2022L00134]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Concluded following response from the agency on 22/03/2022.
Consular Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Albania and Lithuania) Determination 2022 [F2022L00105] Diplomatic Privileges and Immunities (Indirect Tax Concession Scheme) Amendment (Albania and Lithuania) Determination 2022 [F2022L00106]	Principle (d) adequacy of consultation Principle (k) exemption from sunseting	Seeking advice from the agency.

Instrument	Issue	Status
Consumer Data Right (Telecommunications Sector) Designation 2022 [F2022L00068]	Principle (e) clarity of drafting	Committee secretariat considering response.
Migration Amendment (Extension of Temporary Graduate and Skilled Regional Provisional Visas) Regulations 2022 [F2022L00151]	Principle (d) adequacy of consultation	Seeking advice from the agency.
Military Rehabilitation and Compensation (Special Assistance) Instrument 2022 [F2022L00122]	Principle (i) availability of independent merits review	Committee secretariat considering response.
Norfolk Island Applied Laws and Service Delivery (Queensland) Amendment Rules 2022 [F2022L00076]	Principle (m) parliamentary oversight	Committee secretariat considering response.
Telecommunications (Interception and Access) (Enforcement Agency—NSW Department of Communities and Justice) Declaration 2022 [F2022L00154]	Principle (a) compliance with authorising legislation Principle (c) delegation of administrative powers and functions Principle (h) privacy	Seeking advice from the agency.
Telecommunications (Interception and Access) Amendment (International Production Orders) Regulations 2022 [F2022L00111]	Principle (d) adequacy of consultation Principle (h) procedural fairness	Seeking advice from the agency.
Therapeutic Goods (Permissible Ingredients) Determination (No. 1) 2022 [F2022L00031]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Seeking advice from the agency.

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*.

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.¹

Instrument	Issue	Status
Air Navigation (Aircraft Noise) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01768]	Principle (m) automated decision-making	Seeking advice from the minister.
Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 2) [F2021L01658]	Principle (k) exemption from sunseting	Seeking further advice from the minister.
	Principle (l) exemption from the operation of primary legislation	
Autonomous Sanctions Amendment (Magnitsky-style and Other Thematic Sanctions) Regulations 2021 [F2021L01855]	Principle (c) scope of administrative powers	Seeking advice from the minister.
	Principle (e) clarity of drafting	
	Principle (h) personal rights and liberties	
	Principle (h) procedural fairness	
Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 3) Instrument 2021 [F2021L01232]	Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the minister.
	Standing order 23(4A) exemption from disallowance	

1 See www.aph.gov.au/senate_sdlc.

Instrument	Issue	Status
<p>Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2021 [F2021L01392]</p> <p>Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2021 [F2021L01561]</p>	<p>Principle (j) significant penalties in delegated legislation</p>	<p>Seeking advice from the Treasurer.</p> <p>Notice of motion to disallow [F2021L01392] placed on 10/02/2022.</p>
<p>Competition and Consumer Amendment (Consumer Data Right) Regulations 2021 [F2021L01617]</p>	<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>	<p>Seeking advice from the Treasurer.</p>
<p>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 [F2021L01430]</p>	<p>Principle (c) delegation of administrative powers and functions</p> <p>Principle (c) conferral of discretionary powers</p> <p>Principle (h) privacy</p> <p>Principle (i) availability of independent merits review</p> <p>Principle (j) matters more appropriate for parliamentary enactment</p> <p>Principle (m) parliamentary oversight</p>	<p>Seeking further advice from the minister.</p> <p>Notice of motion to disallow placed on 10/02/2022.</p>
<p>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 9) Regulations 2021 [F2021L01823]</p>	<p>Principle (j) matters more appropriate for parliamentary enactment</p> <p>Principle (m) parliamentary oversight</p>	<p>Seeking advice from the minister.</p>
<p>Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2021 [F2021L01824]</p>	<p>Principle (e) clarity of drafting</p>	<p>Seeking advice from the minister.</p>

Instrument	Issue	Status
Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 11) Regulations 2021 [F2021L01825]	Principle (c) delegation of administrative powers and functions Principle (i) availability of independent merits review Principle (h) privacy 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	Notice of motion to disallow placed on 22/11/2021. The committee drew this instrument to the attention of the Senate and recommended disallowing the instrument in <i>Delegated Legislation Monitor 3 of 2022</i> .
Industry Research and Development (Supporting Critical Transmission Infrastructure Program) Instrument 2021 [F2021L01312]	Principle (m) parliamentary oversight	Seeking advice from the minister. Notice of motion to disallow placed on 10/02/2022.
Industry Research and Development (Underwriting New Generation Investments Program) Instrument 2021 [F2021L01708]	Principle (j) matters more appropriate for parliamentary enactment Principle (j) significant matters in delegated legislation Principle (m) parliamentary oversight	Seeking advice from the minister.
Telecommunications (Interception and Access) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01622]	Principle (a) compliance with authorising legislation	Committee considering response.
Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021 [F2021L01801]	Principle (e) clarity of drafting Principle (j) matters more appropriate for parliamentary enactment Principle (j) significant penalties in delegated legislation Principle (l) modification of the operation of primary legislation Principle (m) parliamentary oversight	Seeking advice from the Treasurer.

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
Australian Capital Territory National Land (Road Transport) Parking Authority Guidelines 2021 [F2021L01677]	Principle (f) incorporated materials freely accessible	Committee secretariat considering response.
Carbon Credits (Carbon Farming Initiative—Estimation of Soil Organic Carbon Sequestration Using Measurement and Models) Methodology Determination 2021 [F2021L01696]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Seeking further advice from the agency.
Carbon Credits (Carbon Farming Initiative—Industrial and Commercial Emissions Reduction) Methodology Determination 2021 [F2021L01789]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (f) incorporated materials freely accessible	Seeking advice from the agency.
Corporations (Relevant Providers—Education and Training Standards) Determination 2021 [F2021L01714]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (i) availability of independent merits review	Seeking further advice from the agency.
Export Control Legislation Amendment (2021 Measures No. 1) Rules 2021 [F2021L01730]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (c) delegation of administrative powers and functions Principle (e) clarity of drafting Principle (h) privacy	Committee secretariat considering response.
Financial Sector Reform Amendment (Hayne Royal Commission Response—Better Advice) Regulations 2021 [F2021L01854]	Principle (e) clarity of drafting Principle (k) exemption from sunseting	Seeking further advice from the agency.
Renewable Energy (Electricity) Amendment (Small-Scale Renewable Energy Scheme Reforms and Other Measures) Regulations 2021 [F2021L01828]	Principle (f) access and use Principle (h) privacy	Seeking further advice from the agency.

Appendix C

Concluded matters

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

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.²

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	The regulations were disallowed on 28/03/2022. ³
ASIC Corporations (PDS Requirements for General Insurance Quotes) Instrument 2022/66 [F2022L00145]	Principle (l) amendment of the operation of primary legislation Principle (m) parliamentary oversight	Concluded following consideration by the committee.

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

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

3 On 28 March 2022, the regulations were taken to have been disallowed, pursuant to subsection 42(2) of the *Legislation Act 2003* (Cth), as 15 sitting days had elapsed since the notice of motion to disallow the regulations was given.

Instrument	Issue	Status
Various instruments made under the <i>Biosecurity Act 2015</i> [F2022L00029] [F2022L00041] [F2022L00058] [F2022L00059] [F2022L00060] [F2022L00073] [F2022L00104] [F2022L00132] [F2022L00149]	Standing order 23(4A) exemption from disallowance	Drawn to the attention of the Senate in Chapter 1 of this Delegated Legislation Monitor.
Radiocommunications (Transmitter Licence Tax) Amendment Determination 2022 (No. 1) [F2022L00083]	Principle (j) levying of taxes in delegated legislation	Concluded following consideration by the committee.

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
CASA EX11/22 — The Corryong Paragliding Open and the Not the NZ PG Open Instrument 2022 [F2022L00134]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Concluded following response from the agency on 22/03/2022.
CASA EX163/21 — The Corryong Hang Gliding Cup Instrument 2021 [F2021L01889]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation	Concluded following response from the agency on 09/03/2022. The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
CASA 114/21 — Exclusion from the Operation of Airworthiness Directives FAA AD 2021-23-12 and FAA AD 2021-23-13 Instrument 2021 [F2021L01909]	Principle (k) exemption from sunseting	Concluded following response from the agency on 09/03/2022. The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Comptroller (Operational Safety) Directions 2021 [F2021L01886]	Principle (f) incorporated materials freely accessible	Concluded following response from the agency on 11/03/2022.
Comptroller-General of Customs (Operational Safety) Directions 2021 [F2021L01887]		

Instrument	Issue	Status
Fair Work (Norfolk Island) Amendment (Queensland Public Sector Employees) Rules 2021 [F2021L01872]	Principle (k) exemption from sunseting	Concluded following response from the agency on 11/03/2022.
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 6) Regulations 2021 [F2021L01800]	Principle (m) disclosure of funding information	Concluded following response from the agency on 11/03/2022.
Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021 [F2021L01843]	Principle (k) exemption from sunseting	Concluded following response from the agency on 07/03/2022. 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.
Health Insurance (Quality Assurance Activity – Australian Vigilance and Surveillance System for Organ Donation for Transplantation) Declaration 2021 [F2021L01783]	Principle (e) clarity of drafting	Concluded following response from the agency on 24/03/2022. The Department of Health undertook to amend the instrument and the explanatory statement to the instrument in response to the committee's scrutiny concerns.
Health Insurance Legislation Amendment (2021 Measures No. 4) Regulations 2021 [F2021L01812]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (f) incorporation of copyrighted material	Concluded following response from the agency on 15/03/2022. The Department of Health undertook to amend the instrument in response to the committee's scrutiny concerns.
Trade Support Loans Legislation Amendment Instrument 2021 [F2021L01905]	Principle (a) compliance with <i>Legislation Act 2003</i> —incorporation Principle (a) compliance with <i>Legislation Act 2003</i> —manner of incorporation	Concluded following response from the agency on 23/03/2022. The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.

Instrument	Issue	Status
Treasury Laws Amendment (Corporate Insolvency Reforms Consequential Amendments) Regulations 2021 [F2021L01847]	Principle (k) exemption from sunsetting	Concluded following response from the agency on 04/03/2022.
Treasury Laws Amendment (Miscellaneous and Technical Amendments No. 2) Regulations 2021 [F2021L01841]	Principle (d) adequacy of consultation Principle (k) exemption from sunsetting	Concluded following response from the agency on 02/03/2022.

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
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
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

Instrument	Undertaking	Date of Undertaking
Student Assistance Regulations 2021 [F2021L00201]	<p>The Minister for Families and Social Services undertook to amend the instrument in response to the committee's scrutiny concerns.</p> <p>The Minister for Families and Social Services undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	06/07/2021
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
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]	<p>The Department of Education, Skills and Employment undertook to amend the instrument in response to the committee's scrutiny concerns.</p> <p>The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.</p>	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

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
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
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
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]		
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
CASA EX83/21 – Part 121 and Part 91 of CASR – Supplementary Exemptions and Directions Instrument 2021 [F2021L01399]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/01/2022

Instrument	Undertaking	Date of Undertaking
Vehicle Standard (Australian Design Rule 98/00 – Advanced Emergency Braking for Passenger Vehicles and Light Goods Vehicles) 2021 [F2021L01518]	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/01/2022
Vehicle Standard (Australian Design Rule 98/01 – Advanced Emergency Braking for Passenger Vehicles and Light Goods Vehicles) 2021 [F2021L01519]	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	18/01/2022
Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021 [F2021L01503]	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	20/01/2022
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 4) Regulations 2021 [F2021L01494]	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022
Financial Framework (Supplementary Powers) Amendment (Industry, Science, Energy and Resources Measures No. 1) Regulations 2021 [F2021L01495]	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 5) Regulations 2021 [F2021L01507]	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022
Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 8) Regulations 2021 [F2021L01499]	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 4) Regulations 2021 [F2021L01498]	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	21/01/2022
Fair Work Act 2009 Direction to Inspectors (November 2021) [F2021L01585]	The Fair Work Ombudsman undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	28/01/2022
Civil Aviation Order 95.12.1 (Exemptions from CAR and CASR – LSA Gyroplanes and ASRA-compliant Gyroplanes) Instrument 2021 [F2021L01663]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	07/02/2022

Instrument	Undertaking	Date of Undertaking
Various instruments made by the Civil Aviation Safety Authority [F2021L01671] [F2021L01675] [F2021L01679] [F2021L01681] [F2021L01682] [F2021L01683] [F2021L01684] [F2021L01685] [F2021L01687] [F2021L01688] [F2021L01697] [F2021L01680]	The Civil Aviation Safety Authority undertook to amend the explanatory statements to the instruments in response to the committee's scrutiny concerns.	07/02/2022
Comptroller (Warrants) Amendment Directions 2021 [F2021L01657]	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/02/2022
Comptroller-General of Customs (Warrants) Amendment Directions 2021 [F2021L01650]	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/02/2022
Customs (Prohibited Imports) Amendment (Commercial Importation of Kava as Food) Regulations 2021 [F2021L01615]	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/02/2022
Great Barrier Reef Marine Park Amendment (No-Anchoring Areas) Regulations 2021 [F2021L00843]	The Minister for the Environment undertook to amend the principal instrument in response to the committee's scrutiny concerns.	09/02/2022
Customs (Prohibited Imports) Amendment (Firearms and Weapons) Regulations 2021 [F2021L01761]	The Department of Home Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	22/02/2022
Hazardous Waste (Regulation of Exports and Imports) Legislation Amendment Regulations 2021 [F2021L01843]	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.	07/03/2022
CASA EX163/21 — The Corryong Hang Gliding Cup Instrument 2021 [F2021L01889]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/03/2022
CASA 114/21 — Exclusion from the Operation of Airworthiness Directives FAA AD 2021-23-12 and FAA AD 2021-23-13 Instrument 2021 [F2021L01909]	The Civil Aviation Safety Authority undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	09/03/2022
Health Insurance Legislation Amendment (2021 Measures No. 4) Regulations 2021 [F2021L01812]	The Department of Health undertook to amend the instrument in response to the committee's scrutiny concerns.	15/03/2022

Instrument	Undertaking	Date of Undertaking
Trade Support Loans Legislation Amendment Instrument 2021 [F2021L01905]	The Department of Education, Skills and Employment undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	23/03/2022
Health Insurance (Quality Assurance Activity – Australian Vigilance and Surveillance System for Organ Donation for Transplantation) Declaration 2021 [F2021L01783]	The Department of Health undertook to amend the instrument in response to the committee's scrutiny concerns. The Department of Health undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	24/03/2022

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
Therapeutic Goods Legislation Amendment (2021 Measures No. 3) Regulations 2021 [F2021L01474]	The Department of Health amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25/02/2022
Migration Amendment (Australian Agriculture Workers) Regulations 2021 [F2021L01366]	The Department of Home Affairs amended the instrument in response to the committee's scrutiny concerns.	04/03/2022
Migration Amendment (Australian Agriculture Workers) Regulations 2021 [F2021L01366]	The Department of Home Affairs amended the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/03/2022
Remuneration Tribunal Amendment Determination (No. 6) 2021 [F2021L01607]	The Remuneration Tribunal amended the explanatory statements to the instruments in response to the committee's scrutiny concerns.	11/03/2022
Remuneration Tribunal Amendment Determination (No. 7) 2021 [F2021L01851]		