

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 or otherwise give rise to matters of interest to the Senate.

The *Delegated Legislation Monitor* (the Monitor) details the committee's views in relation to its technical scrutiny of legislative instruments registered on the Federal Register of Legislation. Part I of the Monitor details the committee's scrutiny concerns arising under the technical scrutiny principles set out in Senate standing order 23(3), extracted below. Part II of the Monitor details matters which the committee has resolved to draw to the attention of the Senate under standing order 23(4).

Committee information

Terms of reference

The committee's technical 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;
- (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.

Additionally, Senate standing order 23(4) 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) further 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. The committee may also consider whether it is appropriate for such instruments to be exempt from disallowance.

Nature of the committee's scrutiny

Technical legislative scrutiny

The committee operates on a non-partisan basis to scrutinise delegated legislation made by the executive branch of government against its technical scrutiny principles.

Resolving minor technical scrutiny concerns

After scrutinising a legislative instrument, the committee may initially engage in informal correspondence with agencies via its secretariat to gather information or seek clarification to identify and resolve minor technical scrutiny concerns. This engagement with agencies 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, the relevant instruments are listed on the committee's website and in Chapter 3 of the Monitor.

Resolving significant technical scrutiny concerns

Where the committee considers that an instrument raises significant technical scrutiny concerns, it details its concerns in Part I of the Monitor for the benefit of the Senate in its oversight of delegated law-making powers. The committee generally seeks a formal response from the relevant minister in relation to concerns set out in this Part; however, in some circumstances the committee may report its scrutiny concerns to the Senate without seeking further information from the minister.

Undertakings

As a result of raising its scrutiny concerns with the relevant minister or agency, the committee may seek an undertaking for specific action to address its scrutiny concerns. The committee summarises outstanding and implemented undertakings in Chapter 4 of the Monitor. The committee will record relevant undertakings on the [Index of Undertakings](#) on its website.

Matters of interest to the Senate

The committee does not scrutinise the policy merits of delegated legislation. If the committee determines that an instrument raises significant issues, or otherwise gives rise to issues likely to be of interest to the Senate under standing order 23(4), it may draw these instruments to the attention of the Senate in Part II of the Monitor.

Disallowance process¹

The disallowance process is one of the key mechanisms by which Parliament exercises control over delegated legislation. The conditions for the disallowance process are set out in the *Legislation Act 2003* and are reflected in Senate standing order 78.

The committee will give a 'protective' notice of motion to disallow an instrument where it is unable to conclude its consideration of an instrument before the original disallowance period expires. In addition, the committee may give such a notice where the committee requires an undertaking to be implemented before it can conclude its consideration of the instrument. The committee will usually withdraw a 'protective' notice when it receives a satisfactory response to its scrutiny concerns or confirmation that any outstanding undertakings have been implemented.

The committee may also give a notice of motion to disallow an instrument where it considers that the instrument raises significant and unresolved scrutiny concerns, and the committee has therefore resolved to recommend to the Senate that the instrument be disallowed. In these circumstances, the committee will detail its significant scrutiny concerns in Chapter 1 of the Monitor.

Publications

Delegated Legislation Monitor

The committee's usual practice is to table its [Delegated Legislation Monitor](#) each Senate sitting week. Legislative instruments detailed in the Monitor are also listed in the [Index of Instruments](#) on the committee's website.

Scrutiny News

[Scrutiny News](#) is a brief newsletter summarising significant matters arising in the Monitor, as well as in the reports of the Senate Standing Committee for the Scrutiny of Bills. Past editions, and information about subscribing to the mailing list, are available on the Scrutiny of Bills Committee's website.

Guidelines

[Guidelines](#) relating to the committee's scrutiny principles are published on the committee's website.

¹ For further information on the disallowance process see [Odgers' Australian Senate Practice](#) and [Guide to Senate Procedure No. 19 - Disallowance](#).

Other resources

Ministerial responses to the committee's concerns can be accessed on the committee's website through either the [Delegated Legislation Monitors](#) webpage or the [Index of Instruments](#).

The [Federal Register of Legislation](#) should be consulted for the text of instruments, explanatory statements, and associated information.

The [Senate Disallowable Instruments List](#) provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.

The [Disallowance Alert](#) records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.

Report snapshot

Scrutiny period	
Legislative instruments registered on the Federal Register of Legislation between 19 September and 30 October 2023	175
Instruments in this period exempt from disallowance	23
Chapter 1: New and ongoing matters	
New legislative instruments commented on in report	0
Ongoing legislative instruments commented on in report	2
Chapter 2: Concluded matters	
Legislative instruments of which the committee has concluded its examination following receipt of ministerial response	4
Chapter 3: Agency engagement	
New legislative instruments where the committee engaged with the relevant agency via its secretariat	10
Legislative instruments of which the committee has concluded its examination following receipt of agency response	3
Chapter 4: Undertakings	
New undertakings made by ministers or agencies to address the committee's scrutiny concerns	3
Undertakings which the committee was made aware had been implemented during this period	4
Chapter 5: Scrutiny of Commonwealth expenditure	
Advance to the Finance Minister determinations	0
Instruments specifying Commonwealth expenditure under the <i>Financial Framework (Supplementary Powers) Act 1997</i> and the <i>Industry Research and Development Act 1986</i>	9
Levying of taxation in delegated legislation	1
Chapter 6: Exemptions from disallowance and sunseting	
Instruments that do not meet the committee's expectations regarding exemptions from disallowance under standing order 23(4A)	9
Instruments that do not meet the committee's expectations regarding exemptions from sunseting under standing order 23(3)(k)	13

Part I—Technical legislative scrutiny

Chapter 1

New and ongoing matters

1.1 This Chapter details the committee's significant new and ongoing scrutiny concerns in legislative instruments relating to the committee's technical legislative scrutiny principles in Senate standing order 23(3).

New matters

1.2 The committee has resolved not to raise significant technical scrutiny concerns in relation to any instruments registered within this period.

Ongoing matters

1.3 The committee requests further information from relevant ministers about its significant technical scrutiny concerns in relation to the instruments listed below.

National Portrait Gallery of Australia Regulations 2023¹

FRL No.	F2023L01184
Purpose	To remake the 2013 Regulations, including minor changes to reflect current drafting practice, ensuring the Regulations continue to be fit for purpose and where appropriate, consistent with the powers provided to other National Collecting Institutions.
Authorising legislation	<i>National Portrait Gallery of Australia Act 2012</i>
Portfolio	Infrastructure, Transport, Regional Development, Communications and the Arts
Disallowance	15 sitting days after tabling (tabled in the Senate on 6 September 2023). Notice of motion to disallow must be given by 10 November 2023.

Overview

1.4 The National Portrait Gallery of Australia Regulations 2023 (the instrument) regulate various matters relating to access to, and management of, the National Portrait Gallery of Australia (the Gallery).

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, National Portrait Gallery of Australia Regulations 2023, *Delegated Legislation Monitor 13 of 2023*; [2023] AUSStaCSDLML 121.

1.5 The committee raised scrutiny concerns with the instrument on 9 October 2023 in *Delegated Legislation Monitor 11 of 2023*.² The minister responded on 31 October 2023.³

Scrutiny concerns

*Coercive powers*⁴

1.6 The instrument contains several provisions that appear to empower authorised officers appointed under section 12 to exercise a range of coercive powers. For example, paragraph 12(3)(b) states that an authorised officer may apprehend a person and they may be 'held in the custody of an authorised officer until the person can be taken into the custody of a member of a police force'. Further, subsection 15(2) provides, while exercising their powers of apprehension, an authorised officer may use 'such force as is reasonably necessary'.

1.7 In this regard, the committee requested the minister's advice as to:

- why the provisions are necessary and appropriate, including how the public interest is served by their inclusion in the instrument; and
- further detail about what constitutes 'such force as is reasonably necessary' under section 15 of the instrument; and
- further detail about what qualifications, skills and training an authorised officer should have, and the minimum level of seniority required to be appointed to the role, given the coercive powers they will be empowered to exercise; and
- whether any safeguards or limitations apply to the exercise of powers by an authorised officer, and, if so, whether the safeguards are contained in law or policy.

*Minister's response*⁵

1.8 The minister advised that 'it is in the public interest that the Gallery can appoint authorised officers and that authorised officers are provided appropriate powers to maintain public safety and order to protect the rights of staff and patrons on Gallery premises so that they are able to enjoy and take part in cultural life'.

1.9 In relation to why the provisions are necessary and appropriate, he advised that the powers afforded under section 15 of the instrument are necessary to ensure that

² Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 11 of 2023](#) (9 October 2023) pp. 11-15.

³ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

⁴ Senate standing order 23(3)(h).

⁵ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

'valuable cultural material' such as the Gallery's collection of works of art valued at over \$43.39 million are protected. Further, the minister advised that the powers afforded to authorised officers 'support the Director of the Gallery's duty to ensure the safety and wellbeing of the many and diverse visitors to the Gallery (as a public institution) as well as members of staff'.

1.10 The minister also advised that the relevant provisions are drafted 'to ensure authorised officers act reasonably and in line with public expectations of officers tasked with maintaining the security and safety of a public venue'. This is particularly important, the response advised, due to 'heightened risks' following events such as recent protests at other national cultural institutions such as the National Gallery of Australia and the 2022 sovereign citizen protests in Canberra. Additionally, the response provided that sections 12 and 15 of the instrument are consistent with regulations that support other national cultural institutions such as the National Museum of Australia Regulations 2019 and the National Gallery Regulations 2018.

1.11 Regarding what constitutes 'such force as is reasonably necessary' under section 15 of the instrument, the minister advised this requires 'objective consideration of the particular circumstances of the situation'. In this regard, he explained that authorised officers are 'expected to exercise their powers in accordance with the required training authorised officers undergo and the Gallery's internal policies and procedures under which authorised officers must operate'. Additionally, the response provided that the level of force that is reasonably necessary 'is determined under the general principle that only the minimal physical force necessary to restrain a person (if needed) should be applied'. This principle is reflected in the Gallery's security policies.

1.12 Regarding the qualifications, skills and training an authorised officer should have, and the minimum level of seniority required to be appointed to the role, the minister advised that physical security and security services are contracted by the Gallery through the company Certis. This company undertakes 'appropriate security checks and police checks to ensure that the appointed authorised officers are suitable individuals to undertake the duties'. Further, authorised officers 'report to the Site Security Manager who then reports to the Manager of Facility and Security (APS Executive Level 1). The overarching manager is the Gallery Chief Operating Officer (APS Executive Level 2)'.

1.13 Finally, regarding the limitations and safeguards that apply to the exercise of authorised officer's powers, the minister advised that the following limitations apply:

- before exercising their powers, authorised officers must 'apply an objective test' to determine whether they have reasonable grounds for the belief that exercising the relevant power is necessary;
- the Gallery has training and security policies and a Service Charter in place that authorised officers must have regard to;

- any concerns about an authorised officer's conduct can be raised directly with the Gallery who will investigate using processes set out in the Service Charter; and
- section 28 of the instrument provides that applications can be made to the Administrative Appeals Tribunal for review of an authorised officer's decision under section 13 of the instrument.

Committee view

1.14 The committee thanks the minister for his response to the committee's questions about the operation and scope of coercive powers afforded to authorised officers.

1.15 The committee notes the minister's advice about why the above provisions do not unduly trespass on personal rights and liberties, and how this instrument is consistent with the regulation of other national cultural institutions. In particular, the advice that only the 'minimal physical force necessary to restrain a person' should be used under section 15 was helpful for the committee's understanding of this issue. As such, the committee considers this information would be useful to include in the instrument's explanatory statement.

1.16 The committee also notes the information provided in relation to the contracting of security services through Certis, and the detail provided about the policies and procedures which establish how to manage incidents, including the Gallery's *Protective Security Management Plan 2016* and the *Emergency Planning and Response Procedures Manual*. The committee considers this would also be useful information to include in the instrument's explanatory statement.

1.17 Lastly, the committee thanks the minister for his advice as to the limitations and safeguards that apply to the exercise of authorised officer's powers under the instrument. For clarity, the committee considers it would be appropriate for the explanatory statement to be amended to reflect the additional information provided about the applicable safeguards, in addition to that information that is already in the explanatory statement about this issue.

1.18 In light of the above, the committee requests the minister's advice as to whether the explanatory statement can be amended to:

- **reflect the information provided about the Gallery's incident management policies and procedures; and**
 - **if this update could include, the limitations and safeguards that apply to the exercise of an authorised officer's powers under the instrument, including the principle that 'minimal physical force' should be used when an authorised officer is exercising their powers under section 15.**
-

Conferral of discretionary powers⁶

1.19 The instrument contains several provisions that appear to confer broad discretionary powers on authorised officers. For example, paragraph 13(1)(d) provides authorised officers may prohibit entry of a person to the Gallery, and paragraph 14(1)(c) provides the power for them to direct a person to leave where they have reasonable grounds for believing their conduct will cause offence.

1.20 As the instrument's explanatory statement did not contain guidance on what conduct is likely to fall within the scope of these provisions, or the factors the authorised officer must take into account when exercising these powers, the committee sought the minister's advice as to these matters.

Minister's response⁷

1.21 In his response, the minister advised that authorised officers 'would have regard to the Gallery's Service Charter and security policies and procedures in determining objectively what actions will cause or likely cause offence to members of the public or staff'.

1.22 The minister advised the kind of behaviour that will or will likely cause 'offence' will be determined on a case-by-case basis, depending on the relevant specific circumstances. However, he provided that factors that authorised officers would reasonably consider include:

- the likely consequence that the action will cause harm or risk to the health and safety of another person, staff, or the Gallery collection;
- the extent to which the action will disrupt the usual activities of the Gallery; and
- whether the manner of conduct is likely to offend, insult, humiliate or intimidate those in the public place.

1.23 Additionally, the minister provided examples of conduct that would likely cause 'offence' which included the use of offensive language, antisocial behaviours, vandalism, and threats of physical or inappropriate or undue aggression.

1.24 Finally, in line with the Gallery's internal policies and procedures, the minister advised that offensive behaviour and any action undertaken must be reported to the Gallery's senior management to ensure that these circumstances could be monitored and reviewed as needed.

⁶ Senate standing order 23(3)(c).

⁷ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Committee view

1.25 The committee thanks the minister for his advice as to the factors the authorised officer must take into account when exercising their powers. In order to ensure the scope and operation of these provisions is clear, the committee considers it would be appropriate for the instrument and its explanatory statement to be amended to contain the additional information provided.

1.26 In light of the above the committee requests the minister's advice as to whether the explanatory statement can be amended to include the factors that an authorised officer should consider when determining whether a person's conduct will or is likely to cause offence for the purpose of the instrument's broad discretionary powers.

Strict liability⁸

1.27 Subsection 12(6) of the instrument provides that a person commits a strict liability offence if they cease to be an authorised officer under section 12 of the instrument and do not return their identity card to the Director within 14 days. The penalty for this offence is 1 penalty unit.

1.28 The explanatory statement provides the following justifications for this strict liability provision:

- access to identity cards by individuals who are not appointed authorised officers weakens the security of the Gallery. This could have impacts on public safety, the safety of staff members, and the safety of the national collection; and
- the conduct proscribed by the offence aims to achieve the important public health and safety objective of preventing unauthorised supply of liquor, including to minors.

1.29 The committee considers the inclusion of strict liability provisions to be a serious matter as it can undermine the common law right to be presumed innocent by removing the requirement for the prosecution to prove fault. As such, the committee requested the minister's advice as to why it was necessary and appropriate for subsection 12(6) of the instrument to provide for a strict liability offence in relation to failing to return an identity card within 14 days, with reference to the Attorney-General's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the AGD guide).⁹ Additionally, advice was sought on how this

⁸ Senate standing order 23(3)(h).

⁹ Attorney-General's Department, [Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#).

provision is likely to achieve the 'public health and safety objective of preventing unauthorised supply of liquor'.

*Minister's response*¹⁰

1.30 The minister advised that the strict liability offence in subsection 12(6) is necessary and appropriate for the following reasons:

- to ensure 'effective and specific deterrence against individuals (who are no longer appointed authorised officers) retaining access to identity cards and being capable of holding themselves out as authorised officers';
- to 'safeguard the integrity of the Gallery';
- because the offence contains the defence in subsection 12(7) that enables the defendant to prove they did not commit an offence if they can demonstrate that there was a reasonable possibility that their identity card was lost or destroyed; and
- the offence is not punishable by imprisonment or a fine of more than 60 penalty units (only carrying 1 penalty unit).

1.31 Further, the response advised that the decision to provide for a strict liability offence was made with regard to the AGD guide and this provision was 'drafted to ensure consistency with regulations supporting some other national collecting institutions' such as the National Library of Australia.

1.32 With regard to achieving the 'public health and safety objective of preventing unauthorised supply of liquor', the minister advised that the intention of subsection 12(6) is to ensure 'safe Gallery access and visitation, protection of staff and the Gallery's collection by minimising the opportunity of misuse of identity cards'.

Committee view

1.33 The committee thanks the minister for his response to the committee's questions about this issue. In particular, the committee appreciates the minister's advice about why the strict liability offence is necessary and appropriate in this circumstance. Additionally, the committee notes the minister's advice that subsection 12(6) was drafted to ensure consistency with equivalent provisions in the National Library Regulations 2018 and the National Museum of Australia Regulations 2019.

1.34 However, the committee queries whether references to the 'unauthorised supply of liquor' on page 11 of the explanatory statement is a drafting error, as this does not appear to be a relevant justification for this offence. It is unclear to the committee how an offence relating to the timely return of an identity card is connected to the unauthorised supply of liquor in this case. The explanatory statement in relation to this offence also incorrectly refers to 5 penalty units, rather than the 1

¹⁰ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

penalty unit provided for in the instrument. The committee notes the importance of accurate drafting in relation to documents as important as delegated legislation and their explanatory statements.

1.35 In light of the above, the committee requests the minister's advice as to whether the explanatory statement can be amended to correct the possible drafting error on page 11, to provide the correct penalty unit and the justification provided by the minister in his response.

1.36 The committee has resolved to place a protective notice of motion to disallow the instrument, to provide the committee with more time to consider these matters.

Competition and Consumer (Gas Market Code) Regulations 2023¹¹

FRL No.	F2023L00994
Purpose	Establishes a mandatory code of conduct for the domestic wholesale gas market.
Authorising legislation	<i>Competition and Consumer Act 2010</i>
Portfolio	Climate Change, Energy, the Environment and Water
Disallowance	15 sitting days after tabling (tabled in the Senate on 31 July 2023). Committee gave notice of motion to disallow on 14 September 2023.

Overview

1.37 The Competition and Consumer (Gas Market Code) Regulations 2023 (the instrument) are made under the *Competition and Consumer Act 2010* (the Act) and establish a mandatory code of conduct for the domestic wholesale gas market, pursuant to sections 53L and 172 of the Act. The committee raised scrutiny concerns with the instrument on 13 September 2023, in *Delegated Legislation Monitor 10 of 2023*.¹² The minister responded on 27 September 2023.¹³ As the committee retained scrutiny concerns, it sought the minister's further advice in *Delegated Legislation Monitor 12 of 2023*, on 18 October 2023.¹⁴ The minister responded on 6 November 2023.¹⁵

¹¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Competition and Consumer (Gas Market Code) Regulations 2023, *Delegated Legislation Monitor 13 of 2023*; [2023] AUSStaCSDLM 122.

¹² Senate Standing Committee for the Scrutiny of Delegated Legislation *Delegated Legislation Monitor 10 of 2023* (13 September 2023) pp. 8-13.

¹³ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation Committee (27 September 2023) pp.11-15.

¹⁴ Senate Standing Committee for the Scrutiny of Delegated Legislation *Delegated Legislation Monitor 12 of 2023* (18 October 2023) pp. 3-11.

¹⁵ This correspondence was tabled with the monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Scrutiny concerns

Significant penalties in delegated legislation¹⁶

1.38 The instrument contains several significant penalty provisions that include penalties of up to 1,200 penalty units (currently \$375,600)¹⁷ for individuals and 6,000 penalty units (currently \$1,878,000)¹⁸ for bodies corporate.¹⁹

1.39 In response to the committee's initial concerns, the minister advised on 27 September 2023,²⁰ that the significant penalties are necessary and appropriate for inclusion in delegated legislation because:

- they are consistent with the *Competition and Consumer Act 2010* (the Act) under which the instrument was made;
- they are lower than the maximum amount for pecuniary penalties, set out in the Act;
- they are designed to provide an effective deterrent to breaches of the law, while ensuring a penalty cannot be considered an effective cost of doing business; and
- they align with the maximum penalty for anti-competitive conduct, breaches of the Australian Consumer Law and the consequences for other gas market participants.

1.40 In addition, the minister advised that the Attorney-General's Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the AGD guide)²¹ indicates that it may be appropriate to include offences in delegated legislation where this involves a level of detail that is not appropriate for an Act, or due to the changing nature of the subject matter. In this regard, the offences in the instrument were created to urgently address gas market prices, power imbalances and systemic issues. Further, flexibility was essential to allow adaptation to changing markets and providing technical details in delegated legislation allows stakeholders to participate in the development of any changes, including providing specific penalties.

1.41 However, the committee retained concerns about the inclusion of such significant penalties in delegated legislation, noting that (although below the

¹⁶ Senate standing order 23(3)(j).

¹⁷ See the Crimes (Amount of Penalty Unit) Instrument 2023.

¹⁸ See the Crimes (Amount of Penalty Unit) Instrument 2023.

¹⁹ Sections 10(1), 11, 12, 13, 14(1), 16(1), 17, 18(1), 20(1), 21(1), 24(1), 25(1), 33(1), 34(1), 35(1), 36(1), 36(2), 37(1), 38(1), 39(1), 40(5), 41(1), 41(6), 41(7) and 74(1).

²⁰ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation (27 September 2023) pp.11-15.

²¹ Attorney-General's Department, [Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#).

maximum amount authorised by the Act) they are well above the committee's usual expectations of a maximum of 50 penalty units for individuals and 250 for bodies corporate. The committee's expectations in this regard also align with the AGD guide.²²

1.42 In addition, the committee was unclear how in this case the stated need for flexibility and the inclusion of technical details provided a sufficient justification for including such significant penalties in delegated legislation. Accordingly, the committee requested the minister's advice as to whether the penalties could be moved into primary legislation and, if not, whether further justification could be provided for their inclusion in delegated legislation.

*Minister's response*²³

1.43 In his response, the minister clarified that, where penalty amounts are specifically included in the instrument, the penalty is smaller than that which otherwise applies under the Act. As such, where penalty amounts are not prescribed in the instrument, the maximum penalty amounts will be calculated in accordance with section 76 of the Act.

1.44 Item 7C and 7D of the table in section 76(1A) of the Act set maximum amounts that a court can award for penalties relating to breaches of civil penalty provisions of a gas market instrument. Under item 7C, if the amount of a pecuniary penalty is not specified in a gas market instrument, the default maximum penalty is \$2, 500, 000 for an individual, while the maximum for a body corporate is the greater of:

- \$50 million;
- if the court can determine the value of the benefit obtained, three times the value of that benefit; or
- if the court cannot determine such value, 30 per cent of the body corporate's adjusted turnover during the breach turnover period for the relevant offence, act or omission.

1.45 In addition, the minister advised that the explanatory memorandum to the Treasury Amendment (Energy Price Relief Plan) Bill 2022 (which inserted the above provisions into the Act) explains that such an approach to penalties for gas market instruments is necessary because these instruments are the key mechanism through which the gas market is regulated and the welfare of Australians protected. Further, it is expected that the maximum penalty would only be made available if appropriate; otherwise, a lower penalty will be prescribed in a gas market instrument.

²² Attorney-General's Department, [Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#) p. 44, [3.3].

²³ This correspondence was tabled with the monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Committee view

1.46 The committee thanks the minister for his detailed response. While the committee reiterates its usual expectation regarding the maximum penalty units in delegated legislation, in this case, it welcomes the minister's advice.

1.47 In particular, the committee notes that, due to the relevant provisions of the Act, prescribing the penalties in the instrument has the effect that a lower civil penalty applies than the default maximum amount set out in the Act.

1.48 The committee further notes the minister's advice that the explanatory memorandum to the Treasury Amendment (Energy Price Relief Plan) Bill 2022 provides that the maximum penalty (in the Act) would only be available if appropriate and that, otherwise, the lower penalty will be prescribed in the instrument.

1.49 In light of the above advice, the committee concludes its examination of the instrument in relation to this issue.

Availability of independent merits review;²⁴ availability of judicial review;²⁵ no-invalidity clauses²⁶

1.50 The committee also raised concerns that the instrument contains a number of discretionary decisions, but that its explanatory statement does not confirm whether these are subject to independent merits review. Further, the instrument includes two 'no-invalidity' clauses, that is, clauses which may exclude or limit the availability of judicial review.²⁷

1.51 The minister advised in his correspondence of 27 September 2023 that independent merits review is not available under the instrument, including with reference to the Administrative Review Council's guide, *What decisions should be subject to merits review* (ARC guide),²⁸ which is in line with the committee's usual expectations. However, the committee's expectation is that such justifications are included in an instrument's explanatory statement.

1.52 In addition, the justifications cited for a number of decisions – including under subsections 61(1), 63(1) and 68(1), which relate to conditional ministerial exemptions from gas penalty provisions of the instrument, – was that they may impact on trade and exports, international relations, and the welfare of Australians through regulation

²⁴ Senate standing order 23(3)(i).

²⁵ Senate standing order 23(3)(i)

²⁶ Senate standing order 23(3)(i)

²⁷ See subsections 61(7) and 76(3), which respectively provide that failure to comply with consultation requirements in subsections 61(6) and 76(3) prior to granting a conditional ministerial exemption and undertaking a review of the instrument's operation, do not affect the validity of the exemption or the review.

²⁸ Administrative Review Council, [What decisions should be subject to merits review?](#)

of the gas market. The ARC guide states that this justification applies to decisions 'of the highest consequence to the Government' and 'economic decisions which may possess a sufficiently high political content include decisions of such fundamental significance as determining interest rates, floating the dollar and setting foreign exchange rates'. As such, the committee was unclear how the relevant decisions met that threshold. Accordingly, it requested further justification for excluding decisions on the basis of this exemption and asked whether the instrument's explanatory statement could be amended to include the justification provided for excluding the other decisions under the instrument.

1.53 The minister also advised of safeguards such as requiring at least 14 business days written notice to those who would be subjected to proposed conditions under the instrument. The committee accordingly sought further advice regarding whether the requirement for a 14-business day notice period was a sufficient safeguard, in light of the exclusion of merits review.

1.54 Finally, the no-invalidity clauses provide that failure to comply with consultation requirements prior to granting a conditional ministerial exemption, or a review of the instrument's operation do not affect the validity of either the exemption or review.²⁹

1.55 The minister advised that these clauses are appropriate because the instrument already requires two other ministers to agree prior to granting an exemption or commencing a review. Additionally, thorough consultation is to be balanced against the need for certainty. Despite this, the minister indicated that it is the intention to consult in all but the most urgent circumstances. The committee considered the inclusion of this explanation in the explanatory statement would be helpful and, as such, requested the minister's advice as to whether the explanatory statement could be amended.

*Minister's response*³⁰

1.56 In his response, the minister provided an undertaking to amend the explanatory statement to include the justifications he had provided about the exclusion of merits review for decisions that are preliminary or procedural in nature, as well as the detail on the justification for the no-invalidity clauses.

1.57 The minister also provided further advice as to why the decisions under subsections 61(1), 63(1) and 68(1) of the instrument are policy decisions of a high political content and therefore appropriate for exclusion from merits review on the

²⁹ See subsections 61(7) and 76(3).

³⁰ This correspondence was tabled with the monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

basis of the ARC guide.³¹ The minister advised that such decisions are economically consequential for the east coast gas market and the cost of energy for consumers in that market, ranging from households to industrial gas users. A key objective of the exemptions framework is to incentivise suppliers to commit more gas supply to the east coast to address forecasted supply shortfalls. The scale and market impact of decisions under the instrument are of high political content, based on the considerations involved in making such decisions. For example, a decision to grant an exemption under subsection 61(1) involves the minister's consideration of matters including (see subsection 61(4)):

- the extent to which the exemption would promote a competitive market for regulated gas, the affordability and availability of investment in, and supply and production of regulated gas;
- the effect or expected effect of other related decisions or government policies;
- the impact on trade, exports and international relations; and
- the impact on the economy.

1.58 The minister advised that these considerations contribute to the instrument's objective to incentivise adequate supply and long-term investment of reasonably priced gas in the domestic market. Further, the exemptions framework will allow Australia to deliver on energy supply commitments to trading partners and reduce the risk of triggering the Australian Domestic Gas Security Mechanism. By reducing this risk, Australia will maintain its investments and reputation as a trusted trading partner.

1.59 The minister also advised that suppliers seeking an exemption from the price rules in the instrument would be expected to offer commitments to meet the policy intent and to justify the exemption from the instrument's pricing rules. Decisions in relation to these exemptions and such commitments are expected to be important to address gas supply shortfalls.

1.60 Further, the exemptions framework reflects the importance of providing producers with policy certainty to engage in long term investments. The instrument allows them to enter multi-year commitments with the Commonwealth government, providing certainty around price regulation. Such certainty and the instrument's economic impact may be diminished if relevant decisions are subject to merits review.

1.61 Finally, the minister explained that the 14-business days notice period was considered a sufficient safeguard for the following reasons. The department had engaged in extensive consultation during development of the code of conduct set out

³¹ In summary, subsection 61(1) relates to the granting of a conditional ministerial exemption from gas penalty provisions in the instrument; subsection 63(1) provides for such exemptions to be subject to conditions where the relevant ministers consider this to be appropriate, and subsection 68(1) relates to the variation or revocation of a conditional ministerial exemption.

in the instrument, including both public exposure and consultation with industry. Based on feedback received during the consultation, 14 days was considered sufficient, because it allows almost three calendar weeks for applicants to properly consider the impact of any proposed conditions and decide whether to accept the conditions or withdraw their application for an exemption, variation or revocation. This timeframe strikes an appropriate balance between the rights of applicants and the need for market-sensitive exemptions to be promptly implemented.

Committee view

1.62 The committee welcomes the minister's undertaking to amend the explanatory statement to include the detail provided regarding decisions under the instrument that are preliminary or procedural in nature, as well as the detail on the justification for the no-invalidity clauses.

1.63 The committee also thanks the minister for his detailed advice regarding how certain decisions are policy decisions of a high political content such that they are appropriate for exclusion from merits review under the ARC guide, in line with the committee's usual expectations. However, the committee considers it would be helpful to include this information in the instrument's explanatory statement.

1.64 Finally, the committee thanks the minister for his explanation of how the 14-business day notice period operates as a sufficient safeguard. In particular, the committee notes that this period was considered sufficient following feedback during consultation with both the public and industry. This addresses the committee's scrutiny concerns in this regard.

1.65 In light of the above the committee requests the minister's advice as to whether the instrument's explanatory statement can be amended to include the additional information provided in relation to the exclusion of policy decisions of a high political content.

Privacy;³² conferral of discretionary powers;³³ adequacy of explanatory materials³⁴

1.66 The committee raised concerns regarding provisions providing for the collection, use and/or disclosure of information. In response, the minister advised that in general, information collected and published under the instrument would pertain to business rather than individuals' personal information. However, in limited cases where personal information may be involved, the safeguards in the *Privacy Act 1988* (the Privacy Act) would apply. Additionally, the minister advised that section 75, which

³² Senate standing order 23(3)(h).

³³ Senate standing order 23(3)(c).

³⁴ Senate standing order 23(3)(g).

empowers the minister to request the provision of certain information, does not require individuals to comply with such a request.

1.67 Finally, the committee raised concerns that subsection 43(3) requires the Australian Competition and Consumer Commission (ACCC) to publish certain personal information in a manner considered appropriate with the only limitation that doing so would prejudice a supplier's commercial interests or be 'contrary to the public interest'. In response to the committee's query, the minister advised that while what is contrary to the public interest depends on the circumstances, the ACCC may consider a range of matters. These including whether publication of the information is of a serious concern or benefit to the public, and not merely individuals' interest, as well as whether publication will pose risks to the stability of the economy. The committee considered this would be helpful information for inclusion in the instrument's explanatory statement and accordingly, requested the minister's advice as to whether the explanatory statement could be updated to include this information.

*Minister's response*³⁵

1.68 In his response, the minister gave an undertaking to amend the instrument's explanatory statement to include the additional information above regarding the factors to be considered when determining what is 'contrary to the public interest.'

Committee view

1.69 The committee welcomes the minister's undertaking and considers that it addresses its scrutiny concerns.

1.70 In light of the above the committee concludes its examination of the instrument in relation to this issue.

³⁵ This correspondence was tabled with the monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Chapter 2

Concluded matters

2.1 This Chapter details the committee's concluding comments on significant technical scrutiny issues in legislative instruments relating to the committee's principles in Senate standing order 23(3).

Australian Education Regulations 2023¹

FRL No.	F2023L01020
Purpose	Repeals and remakes the Australian Education Regulations 2013 before the sunset date of 1 October 2023 to ensure current arrangements for Commonwealth financial assistance to schools may continue in substantially the same form. It also makes a small number of minor updates, clarifications and technical amendments.
Authorising legislation	<i>Australian Education Act 2013</i>
Portfolio	Education
Disallowance	15 sitting days after tabling (tabled in the Senate on 31 July 2023). Committee gave notice of motion to disallow on 14 September 2023.

Overview

2.2 The Australian Education Regulations 2023 (the instrument) repeal and remake the Australian Education Regulations 2013, which sunset on 1 October 2023, by operation of subsection 50(1) of the *Legislation Act 2003*.

2.3 On 13 September 2023, the committee raised scrutiny concerns with the minister in *Delegated Legislation Monitor 10 of 2023*.² The minister responded to the committee's request on 4 October 2023.³ The committee retained concerns and, accordingly, sought the minister's further advice on 18 October 2023, in *Delegated*

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Australian Education Regulations 2023, *Delegated Legislation Monitor 13 of 2023*; [2023] AUSStaCSDL M 123.

² Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 10 of 2023](#) (13 September 2023) pp. 3-7.

³ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation on 4 October 2023.

Legislation Monitor 12 of 2023.⁴ The minister responded to this request on 1 November 2023.⁵

Scrutiny concerns

Broad discretionary powers;⁶ coercive powers⁷

Privacy⁸

Availability of independent merits review⁹

Broad discretionary and coercive powers

2.4 The committee initially raised concerns that the instrument contains broad discretionary powers, some of which also appear to be coercive in nature. Specifically, the instrument allows the minister to appoint an 'authorised person' if satisfied that they have suitable qualifications.¹⁰ Once such persons are appointed, the instrument requires them to be allowed 'full and free access' to certain records and premises,¹¹ as well as to be provided with certain information or records requested by the minister or 'authorised persons'.¹²

2.5 On 4 October 2023, the minister provided detailed advice about the factors that may be taken into account in determining whether an 'authorised person' has suitable qualifications or experience, further detail about the nature and scope of the powers allowing them access to premises and records, and additional safeguards on these powers.¹³

Privacy

2.6 The committee also raised privacy concerns about the instrument, as it requires 'full and free access' to any record relating to compliance with the legislative regime or financial information,¹⁴ as well as the provision of information or records, requested by the minister or an 'authorised person'.¹⁵

⁴ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Delegated Legislation Monitor 12 of 2023](#) (18 October 2023) pp. 12-17.

⁵ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

⁶ Senate standing order 23(3)(c).

⁷ Senate standing order 23(3)(h).

⁸ Senate standing order 23(3)(h).

⁹ Senate standing order 23(3)(i).

¹⁰ See section 33.

¹¹ See section 39.

¹² See section 39A.

¹³ See [Delegated Legislation Monitor 12 of 2023](#) (18 October 2023) p. 14 for a summary of this advice.

¹⁴ See section 39(1).

¹⁵ See section 39A.

2.7 In response to the committee's request, the minister advised in his correspondence of 4 October 2023 that, while personal information would generally not be collected, used or disclosed under the instrument, where that does occur, the *Privacy Act 1988* and the Australian Privacy Principles will operate as a safeguard.

Availability of independent merits review

2.8 Finally, the committee raised concerns as the instrument contains a number of discretionary powers, but it was unclear whether the majority of these decisions are subject to independent merits review.

2.9 The minister advised in his correspondence of 4 October 2023 that these decisions were excluded from review, citing justifications in the Administrative Review Council's guide, *What decisions should be subject to independent merits review?*¹⁶ in line with the committee's usual expectations on this matter.

2.10 Based on this response, the committee sought the minister's advice as to whether the instrument's explanatory statement could be amended to include this detail about the above scrutiny issues.

*Minister's response*¹⁷

2.11 In his correspondence of 1 November 2023, the minister advised that for each of the above matters the committee had raised, he undertook to update the explanatory statement to include the information contained in his response of 4 October 2023.

Committee view

2.12 The committee thanks the minister for his advice in relation to the above scrutiny concerns and welcomes his undertaking to amend the explanatory statement.

2.13 In light of the minister's undertaking, the committee concludes its examination of the instrument in relation to each of the above issues.

2.14 In addition, the committee has resolved to withdraw the notice of motion to disallow the instrument.

¹⁶ Administrative Review Council, [What decisions should be subject to independent merits review?](#)

¹⁷ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool Program) Guidelines 2023¹⁸

FRL No.	F2023L00983
Purpose	Amends the Higher Education Support (Other Grants) Guidelines 2022 to assist in ensuring that the full amount of available funding for the National Priorities Pool Program and the Regional Partnerships Project Pool Program can be administered and expended effectively.
Authorising legislation	<i>Higher Education Support Act 2003</i>
Portfolio	Education
Disallowance	15 sitting days after tabling (tabled in the Senate on 31 July 2023). Committee gave notice of motion to disallow on 14 September 2023.

Overview

2.15 The Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool Program) Guidelines 2023 (the instrument) amends the Higher Education Support (Other Grants) Guidelines 2022 to clarify how grants are to be paid under the National Priorities Pool Program and Regional Partnerships Project Pool Program.

2.16 The committee raised concerns about the instrument in *Delegated Legislation Monitor 9 of 2023* on 6 September 2023.¹⁹ The minister provided a response to the committee on 4 October 2023.²⁰ As the committee retained scrutiny concerns, it again

¹⁸ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool Program) Guidelines 2023, *Delegated Legislation Monitor 13 of 2023*; [2023] AUSStaCSDLM 124.

¹⁹ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 9 of 2023](#) (6 September 2023) pp. 2-3.

²⁰ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

raised the instrument in *Delegated Legislation Monitor 12 of 2023* on 18 October 2023.²¹ The minister responded on 1 November 2023.²²

Scrutiny concerns

Conferral of discretionary powers²³

2.17 Item 1 of the instrument repeals section 16 of the Higher Education Support (Other Grants) Guidelines 2022 (the Principal Instrument) and substitutes new section 16. Previously, section 16 provided that grants made under the National Priorities Pool Program in respect of projects were capped at \$6,500,000 for the years 2022-2025. New section 16 does not set out what amount will be spent on the program for each of the grant years.

2.18 This amendment appears to significantly broaden the minister's discretionary power to determine the amount spent on grants under the National Priorities Pool Program through removal of the spending cap in section 16. Further, the instrument's explanatory statement does not provide an explanation as to why the removal of the spending cap is necessary and appropriate. For this reason, the committee had requested the minister's advice as to why it was considered necessary and appropriate to remove the spending cap.

2.19 The minister advised in his response of 4 October 2023 that the removal of the spending cap occurred in response to the reprofiling of uncommitted funds due to the COVID-19 pandemic, which resulted in more funding being available for the National Priorities Pool Program. In this regard, he advised that the removal would 'allow investment of the full amount of funding available in the Program, rather than inadvertently preventing the expenditure of available Program funding'.

2.20 The minister also advised that his power to specify an amount that will be spent on the program under paragraph 41-15(2)(c) of the *Higher Education Support Act 2003* (the Act) is a discretionary one. Further, determinations regarding amounts spent on grants 'continue to be limited by any determination made under 41-45 of the Act, which provides a cap on the total payments able to be made under Part 2-3 of the Act'. In this regard, the Higher Education Support (Maximum Payments for Other Grants) Determination 2020 is currently in force which determines the maximum amounts that can be spent from 2020 to 2024.

2.21 In light of this advice, the committee requested the minister's advice as to whether the explanatory statement could be amended to include further information on the applicable spending caps.

²¹ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 12 of 2023](#) (18 October 2023) pp. 18-20.

²² This correspondence will be tabled with the Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

²³ Senate standing order 23(3)(c).

*Minister's response*²⁴

2.22 In response, the minister undertook to update the explanatory statement to the instrument to include the additional information requested.

Committee view

2.23 The committee welcomes the minister's undertaking to amend the instrument's explanatory statement to include further detail about the applicable spending caps. The committee considers this addresses the scrutiny concern it identified.

2.24 In light of the above, the committee concludes its examination of the instrument.

2.25 In addition, the committee has resolved to withdraw the notice of motion to disallow the instrument.

²⁴ This correspondence will be tabled with the Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Australian National University (Governance) Statute 2023²⁵

FRL No.	F2023L00867
Purpose	Provides governance arrangements for the Australian National University.
Authorising legislation	<i>Australian National University Act 1991</i>
Portfolio	Education
Disallowance	Exempt from disallowance.

Overview

2.26 The Australian National University (Governance) Statute 2023 (the instrument) provides governance arrangements for the Australian National University (ANU). The explanatory statement provides that 'the instrument makes provision for a broad range of matters relevant to the governance of the university, including, for example, the following:

- the organisation of the University
- the functions, powers and proceedings of the Council and its committees
- the composition of the Council, the election of the staff and student members of the Council, and the appointment of other members of the Council
- the Chancellor, Pro-Chancellor, and Vice-Chancellor of the University
- delegations and sub-delegations by the Council, Vice-Chancellor, and other University officials
- rules and orders of the University.'

2.27 The committee raised scrutiny concerns about this instrument in *Delegated Legislation Monitor 9 of 2023* on 6 September 2023.²⁶ A response was prepared by the ANU and provided to the committee by the Minister for Education on 4 October 2023.²⁷ As the committee retained scrutiny concerns, it again raised the instrument in

²⁵ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Australian National University (Governance) Statute 2023, *Delegated Legislation Monitor 13 of 2023*; [2023] AUSStaCSDLM 125.

²⁶ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 9 of 2023](#) (6 September 2023) pp. 4–7.

²⁷ This correspondence was tabled with this monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Delegated Legislation Monitor 12 of 2023 on 18 October 2023.²⁸ The minister responded on 1 November 2023.²⁹

Scrutiny concerns

Delegation of administrative powers and functions;³⁰ adequacy of explanatory materials³¹

2.28 Sections 63–67 of the instrument contain delegation powers that appeared to authorise the University Council or any ANU staff member to delegate any or all their functions to a wide group comprising any person at the university, including students. The committee requested the minister's advice as to:

- why it is considered necessary and appropriate to provide for such a broad delegation of powers or functions in the instrument;
- whether the persons to whom the various powers or functions can be specifically identified, and what skills, qualifications, and experience they will need to exercise those powers or functions; and
- whether any applicable safeguards or limitations, beyond those set out in the instrument, apply to the delegations.

2.29 The response of 4 October 2023 advised that the delegation provisions in the instrument are 'not intended to operate in isolation, but as an integral part of the University's comprehensive Delegations Framework'. Further, the ANU is working to ensure delegations are exercised consistently across the university and, for this reason, is 'progressively removing separate delegation and sub-delegation powers in individual items of university legislation and moving to reliance on general provisions' that can be applied throughout the university.

2.30 The response also indicated that the Delegations Framework covers all delegations of authority within the University. This framework contains a range of safeguards that reflect the ANU's 'position-based organisational structure'. It is designed to ensure all delegations are assigned to a position, rather than an individual, and the exercise of delegated powers is managed in a systemic and transparent way across the organisation. Further, as the ANU follows a merits-based appointment policy it 'would not appoint a person to a position within the University unless it was satisfied that the person had the skills, qualifications and experience required for the position, including the skills, qualifications and experience required to exercise the position's delegations.'

²⁸ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 12 of 2023](#) (18 October 2023) pp. 29–32.

²⁹ This correspondence was tabled with the Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

³⁰ Senate standing order 23(3)(c).

³¹ Senate standing order 23(3)(g).

2.31 The committee welcomed this advice and considered it addressed the scrutiny concern raised. Accordingly, it sought the minister's advice about whether the explanatory statement could be updated to include this detail provided.

*Minister's response*³²

2.32 In the response of 1 November 2023, the minister advised that the ANU has undertaken to update the explanatory statement to the instrument to include the additional information requested.

Committee view

2.33 The committee thanks the minister and ANU for the undertaking to update the explanatory statement to address the scrutiny concern it identified.

2.34 In light of the undertaking to amend the explanatory statement, the committee has concluded its examination of the instrument in relation to this issue.

³² This correspondence was tabled with the Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023³³

FRL No.	F2023L00998
Purpose	Remakes the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 and provides for the regulation of environmental management of petroleum and greenhouse gas activities in offshore areas.
Authorising legislation	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>
Portfolio	Industry, Science and Resources
Disallowance	15 sitting days after tabling (tabled in the Senate on 31 July 2023). Committee gave notice of motion to disallow on 14 September 2023.

Overview

2.35 This instrument is made under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (the Act) and remakes the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009. It provides for the regulation of environmental management of petroleum and greenhouse gas activities in offshore areas.

2.36 On 13 September 2023, the committee raised scrutiny concerns with this instrument in *Delegated Legislation Monitor 10 of 2023*.³⁴ The minister responded to the committee's request for information on 27 September 2023.³⁵ As the committee retained scrutiny concerns, it again raised the instrument in *Delegated Legislation Monitor 12 of 2023* on 18 October 2023.³⁶ The minister responded on 3 November 2023.³⁷

³³ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023, *Delegated Legislation Monitor 13 of 2023*; [2023] AUSStaCSDLML 126.

³⁴ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 10 of 2023](#) (13 September 2023) pp. 14-19.

³⁵ This correspondence is accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

³⁶ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 12 of 2023](#) (18 October 2023) pp. 21-28.

³⁷ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Scrutiny concerns

Availability of judicial review³⁸

2.37 The instrument contains four no-invalidity clauses, which relate to the requirement for the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to make specified decisions within a 30-day time period or, if it is unable to meet this timeframe, no later than the date it advises the titleholder that a decision will be made. The explanatory statement provides that the clauses 'ensures the validity of all decisions is maintained and provides NOPSEMA with the flexibility to make thorough and informed decisions in any circumstances'.

2.38 Noting the seriousness of no-invalidity clauses and their potential impact on limiting judicial review, the committee had sought the minister's advice about why the clauses are necessary and appropriate, and whether there are any safeguards in place.

2.39 The minister advised in her response of 27 September 2023³⁹ that the no-invalidity clauses are required to ensure the validity of NOPSEMA's decisions is maintained and to increase regulatory certainty for titleholders. Further, generally a decision to require extra time beyond the 30-day period is used in conjunction with NOPSEMA providing the titleholder with a reasonable opportunity to modify the offshore project proposal or environment plan after inadequacies have been identified in its written submission. This gives the titleholder the opportunity to address those issues before a final decision is made. Additionally, the relevant provisions provide for the validity of a decision to the extent that NOPSEMA fails to meet the decision-making timeframes and that judicial review of a decision could still be sought on other grounds.

2.40 While noting this advice, the committee retained scrutiny concerns about this issue and sought the minister's further advice about:

- whether the no-invalidity clauses in the instrument can be removed, noting there are existing provisions in the instrument that allow NOPSEMA to extend the time they have to make certain decisions; or
- if this is not possible, a further justification as to the necessity of the no-invalidity clauses.

Minister's response⁴⁰

2.41 The minister further explained that equivalent no-invalidity clauses have been included in offshore environmental management regulations since 1999. The minister acknowledged that while NOPSEMA can extend its own timeframes to make a

³⁸ Senate standing order 23(3)(i).

³⁹ This correspondence is accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

⁴⁰ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

decision, in the unlikely event it fails to meet the decision-making timeframe, the applicant should not be penalised by having the proposal be determined to be invalid. The minister advised that these proposals can relate to multi-million dollar projects, and the titleholder may have already commenced activities based on an approved proposal, so certainty and clarity is essential.

2.42 Finally, while the minister advised that the no-invalidity clauses will have effect on an 'extremely infrequent basis', it is her view that they should remain as a safeguard to ensure the validity of decisions and provide certainty for titleholders.

Committee view

2.43 The committee thanks the minister for her further justification as to why the no-invalidity clauses are necessary and appropriate in this specific circumstance and notes the advice that the clauses act as a safeguard for titleholders who have already commenced approved activities. While the committee reiterates its view that no-invalidity clauses should be used only in exceptional circumstances where there is a compelling justification for excluding judicial review, it notes the minister's justification for the clauses in this case.

2.44 In light of the above, the committee concludes its examination of the instrument in relation to this issue.

Legal certainty;⁴¹ clarity of drafting⁴²

2.45 Sections 57 and 58 of the instrument provide that a fee is payable to NOPSEMA equivalent to the total of the expenses it incurred in considering the relevant proposal, or in assessing the relevant financial assurance arrangements. A note to these sections provides that 'it is expected that NOPSEMA and the person...will agree on the terms of payment of the fee. The invoice will state the terms, whether or not there is an agreement'.

2.46 As these sections appeared to impose an unknown liability on a person or body corporate that submits a proposal for NOPSEMA's consideration, the committee sought the minister's advice regarding the calculation and any cap/limit on the fees, as well as regarding independent or internal review.

2.47 The minister provided detailed response to these questions, including advice that:

- fees will be calculated by multiplying the hourly rate of each NOPSEMA staff member by the number of hours they worked on considering the proposal; and

⁴¹ Senate standing order 23(3)(m).

⁴² Senate standing order 23(3)(e).

- that an internal review process is available should there be a dispute about the fee charged.

2.48 The committee considered that this would be helpful information for inclusion in the instrument's explanatory statement. Accordingly, the committee requested the minister's advice as to whether the explanatory statement could be amended to include this further information.

*Minister's response*⁴³

2.49 In response, the minister made an undertaking to amend the explanatory statement to include the further information requested by the committee.

Committee view

2.50 The committee welcomes the minister's undertaking to amend the instrument's explanatory statement to include further detail about how fees will be calculated and the availability of an internal review process. The committee considers this addresses this scrutiny concern.

2.51 In light of the above, the committee concludes its examination of the instrument in relation to this issue.

2.52 In addition, the committee has resolved to withdraw the notice of motion to disallow the instrument.

⁴³ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Chapter 3

Agency engagement

3.1 As part of its technical scrutiny of legislative instruments, the committee may engage with relevant agencies via its secretariat to gather information or seek clarification to resolve minor technical scrutiny concerns. While this correspondence is confidential, the committee lists the relevant instruments on its website and provides a statistical overview of the relevant scrutiny issues raised in its Annual Reports. The committee reports on matters which cannot be satisfactorily resolved via engagement with the relevant agency in Chapter 1 of the Monitor.

3.2 Some instruments may be listed as both 'new' and 'concluded', where the committee via its secretariat has both raised and resolved concerns with the relevant agency in the period covered by the Monitor.

New matters

3.3 The committee commenced engaging with the relevant agency via its secretariat about the following instruments.¹

Instrument

Financial Framework (Supplementary Powers) Amendment (Employment and Workplace Relations Measures No. 2) Regulations 2023 [F2023L01412]

Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2023 [F2023L01417]

Financial Sector (Collection of Data) (reporting standard) determination No. 130 of 2023 [F2023L01436]

Financial Sector (Collection of Data) (reporting standard) determination No. 131 of 2023 [F2023L01437]

Migration Amendment (Resolution of Status Visa) Regulations 2023 [F2023L01393]

Notice of Intention to Propose Customs Tariff Alterations (No. 4) 2023 [F2023L01283]

Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2023 [F2023L01409]

Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2023-2024 (No. 2) [F2023L01351]

Vehicle Standard (Australian Design Rule 105/00 – Blind Spot Information Systems) 2023 [F2023L01321]

Vehicle Standard (Australian Design Rule 106/00 – Side Underrun Protection) 2023 [F2023L01317]

¹ For further details, see the [Index of Instruments](#) page on the committee's website.

Concluded matters

3.4 The committee has concluded its consideration of the following instruments after engagement with relevant agencies via its secretariat.²

Instrument

Public Governance, Performance and Accountability (Section 75 Transfers) Amendment Determination 2023-2024 (No. 2) [F2023L01351]

Standards for Registered Training Organisations Amendment (Fit and Proper Person) Instrument 2023 [F2023L01182]

Vehicle Standard (Australian Design Rule 106/00 – Side Underrun Protection) 2023 [F2023L01317]

² For further details, see the [Index of Instruments](#) page on the committee's website.

Chapter 4

Undertakings

4.1 This Chapter identifies the new undertakings that have been made in this reporting period and those that the committee is aware have been implemented since the last Monitor.

4.2 A full list of undertakings is published on the *Index of Undertakings* on the committee's website.¹ Further information about the scrutiny concerns leading to these undertakings can be found through the links published on the *Index of Instruments* available on the committee's website.²

New undertakings

4.3 During this period, the following undertakings were made to address the committee's scrutiny concerns.

Instrument	Undertaking	Date made
Social Security (International Agreements) Amendment (Republic of Serbia) Regulations 2023 [F2023L01176]	The Department of Social Services undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25 September 2023
Australian National University (Governance) Statute 2023 [F2023L00867]	The Minister for Education advised that the Australian National University undertook to progress amendments to the instrument and the explanatory statement to address the committee's concerns.	26 September 2023

¹ See the [Index of Undertakings](#) page on the committee's website.

² See the [Index of Instruments](#) page on the committee's website.

Implemented undertakings

4.4 Since the last Monitor was tabled, the following undertakings have been implemented.

Instrument	Undertaking	Date implemented
Social Security (International Agreements) Amendment (Republic of Serbia) Regulations 2023 [F2023L01176]	The Department of Social Services undertook to progress amendments to the explanatory statement to the instrument in response to the committee's scrutiny concerns.	25 September 2023
Aviation Transport Security (Screening Officer Requirements) Determination 2023 [F2023L00962]	The Department of Home Affairs undertook to amend the explanatory statement in response to the committee's scrutiny concerns.	5 October 2023
Radiocommunications (Spectrum Licence Allocation—3.4/3.7 GHz Bands) Determination 2023 [F2023L00865]	The Australian Communications and Media Authority undertook to issue a supplementary explanatory statement with the additional information requested for inclusion.	6 October 2023
Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022 [F2022L01457]	The Minister for Aged Care undertook to amend the instrument in response to the committee's scrutiny concerns.	25 October 2023

Part II—Matters of interest to the Senate

Chapter 5

Expenditure and taxation in delegated legislation

5.1 This Chapter identifies the instruments which the committee has resolved to draw to the attention of the Senate under standing order 23(4) in the interest of promoting appropriate parliamentary scrutiny of Commonwealth expenditure in delegated legislation.¹ This includes expenditure-related instruments and instruments that levy taxation.

Commonwealth expenditure

Instruments specifying expenditure under the Financial Framework (Supplementary Powers) Act 1997 and Industry Research and Development Act 1986

5.2 Instruments made under the *Financial Framework (Supplementary Powers) Act 1997* (the FF(SP) Act) and the *Industry Research and Development Act 1986* (the IRD Act) authorise the Commonwealth to spend public money on grants and programs specified. The committee has resolved to draw these instruments to the Senate's attention under Senate standing order 23(4).²

5.3 The table below lists the expenditure specified in legislative instruments made under the FF(SP) Act and IRD Act registered in the relevant period.

Instrument	Amount	Grant/Program
Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2023 [F2023L01417]	\$7.4 million (including departmental funding) over four years from 2023-24; \$2.1 million per year ongoing	Incoming Overseas Child Abduction Scheme
SDLC-Financial Framework (Supplementary Powers) Amendment (Climate Change, Energy, the Environment and Water Measures No. 4) Regulations 2023 [F2023L01418]	\$611.8 million over eight years from 2022-23 \$200.5 million over four years from 2022-23	Powering the Regions Fund – safeguard transformation scheme Powering the Regions Fund – critical inputs to clean energy industries
Financial Framework (Supplementary Powers) Amendment (Employment and Workplace Relations Measures No. 2) Regulations 2023 [F2023L01412]	\$32.0 million over four years from 2022-23; \$8.0 million per year ongoing	Advice, advocacy and support services for working women program

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](#).

² Details of all instruments which authorise Commonwealth expenditure are published on the [committee's website](#).

Financial Framework (Supplementary Powers) Amendment (Health and Aged Care Measures No. 4) Regulations 2023 [F2023L01353]	\$6.2 million in 2023-24	Grant to The Embrace Collective Ltd
Financial Framework (Supplementary Powers) Amendment (Health and Aged Care Measures No. 5) Regulations 2023 [F2023L01413]	\$6.0 million over three years from 2023-24 \$133.2 million in 2023-24 \$13.4 million in 2023-34	Grant to Royal Children's Hospital Good Friday Appeal Aged Care Work Value Case – historical leave provisions Aged Care Worker COVID-19 Leave Payments
Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 6) Regulations 2023 [F2023L01410]	\$553.6 million in 2023-24 \$2.1 billion over four years from 2023-24	Assisted Passage Program Settlement Support Programs
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development, Communications and the Arts Measures No. 4) Regulations 2023 [F2023L01415]	\$40.4 million over four years from 2023-24; \$9.9 million per year ongoing from 2027-28 \$170,000 in 2023-24 Commercial-in-confidence	Grants to the Bundanon Trust Arrangements to pay directors of the Bundanon Trust Provision of commercial television services over Viewer Access Satellite Television
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 5) Regulations 2023 [F2023L01414]	\$3.5 million over two years from 2022-23 \$3 million in 2023-24	Behaviour Support Training Program Volunteering Awareness Campaign
Industry Research and Development (Industry Growth Program) Instrument 2023 [F2023L01432]	\$340 million over 4 financial years from 2023-2024, including \$287 million in grant funding for startups and innovative small and medium enterprises	Industry Growth Program

Levying of taxation in delegated legislation

5.4 The committee considers that one of the most fundamental functions of the Parliament is to levy taxation. The committee's longstanding view is that it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax (in accordance with Senate standing order 23(3)(j)). Where a tax is imposed in delegated legislation, the committee's concerns are heightened if it is not limited by a cap in the relevant enabling Act.

5.5 As the levying of taxation in delegated legislation is a systemic technical scrutiny matter, the committee has resolved to draw the following instruments to the attention of the Senate under standing order 23(4).

Instrument	Limit on the taxation amount in primary legislation?
Private Health Insurance (Complaints Levy) Rules 2023 [F2023L01272]	Yes

Chapter 6

Exemptions from disallowance and sunseting

6.1 This Chapter lists the instruments which the committee has resolved to draw to the attention of the Senate under standing order 23(4) because they are exempt from disallowance and sunseting and do not satisfy the committee's expectations in relation to the source and appropriateness of the exemptions following the committee's scrutiny under standing orders 23(4A) and 23(3)(k).

Exemptions from disallowance

6.2 On 16 June 2021, the Senate resolved that delegated legislation should be subject to disallowance to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances and any claim that circumstances justify exemption from disallowance will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases.³

6.3 Senate standing order 23(4A) provides that the committee may consider instruments that are not subject to disallowance, including whether it is appropriate for these instruments to be exempt from disallowance. Noting the Senate's concern about the exemption of delegated legislation from disallowance, this section identifies the instruments which do not satisfy the committee's expectations regarding the circumstances of their exemption from disallowance.

6.4 Subject to exceptional circumstances, the committee's expectations will not be met where the instrument:

- is exempt from disallowance under one of the broad classes of exemptions in section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015;⁴
- is exempt from disallowance under the blanket exemption for instruments facilitating the establishment or operation of an intergovernmental body or scheme in section 44(1) of the *Legislation Act 2003*;⁵
- overrides or modifies primary legislation;

³ For further information on the resolutions adopted by the Senate on 16 June 2021, see the committee's website, [Resolutions relating to oversight of delegated legislation](#).

⁴ Items 1 to 4 of section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015 exempt the following classes of instruments from disallowance: instruments requiring the approval of either or both Houses of Parliament; instruments that are directions by a minister to any person or body; instruments (other than a regulation) relating to superannuation; and instruments made under annual Appropriation Acts.

⁵ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Final report](#) (March 2021) pp. 50–53 and 106–107.

- triggers, or is a precondition to, the imposition of custodial penalties or significant pecuniary penalties;
- restricts personal rights and liberties;
- facilitates the expenditure of public money, including Advance to the Finance Minister determinations; or
- otherwise contains a matter requiring parliamentary oversight.

6.5 To assess whether an instrument is appropriately exempt from disallowance, the committee expects that at a minimum, the explanatory statement will contain a statement that provides the source and the exceptional circumstances that justify the exemption from disallowance.

6.6 Further information about the committee's expectations regarding the exemption of delegated legislation from disallowance are contained in the committee's guidelines and the reports of its inquiry into the exemption of delegated legislation from parliamentary oversight.⁶

Instruments which do not meet the committee's expectations

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

Instrument	Source of exemption
Agricultural and Veterinary Chemicals (MRL Standard for Residues of Chemical Products) Amendment Instrument (No. 1) 2023 [F2023L01381]	Section 44(1) of the <i>Legislation Act 2003</i>
Agricultural and Veterinary Chemicals (MRL Standard for Residues of Chemical Products) Instrument 2023 [F2023L01350]	Section 44(1) of the <i>Legislation Act 2003</i>
Direction to the NDIS Quality and Safeguards Commissioner under section 181K of the National Disability Insurance Scheme Act 2013 –No. 1/2023 [F2023L01383]	Section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015
Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment (No. 2) Approval 2023 [F2023L01299]	Section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015

⁶ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Guidelines](#), 2nd edition (February 2022) pp. 47–49; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Interim report](#) (December 2020) pp. 61–72; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Final report](#) (March 2021) pp. 99–123.

Instrument	Source of exemption
Federal Financial Relations (General Purpose Financial Assistance—2023-24 Payment No. 4) Determination 2023 [F2023L01397]	Section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015
Financial Sector (Collection of Data) (reporting standard) determination No. 129 of 2023 [F2023L01339]	Section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015
Food Standards (Application A1245 – Alpha-glucosidase from GM <i>Trichoderma reesei</i> as a processing aid in brewing) Variation [F2023L01402]	Section 44(1) of the <i>Legislation Act 2003</i>
Food Standards (Application A1262 – Food derived from insect-protected corn line MON95275) Variation [F2023L01408]	Section 44(1) of the <i>Legislation Act 2003</i>
Guidelines for the Classification of Computer Games 2023 [F2023L01424]	Section 44(1) of the <i>Legislation Act 2003</i>

Exemptions from sunseting

6.8 Senate standing order 23(3)(k) requires the committee to scrutinise instruments which are exempt from the sunseting provisions of the *Legislation Act 2003* (the Legislation Act), including whether it is appropriate for these instruments to be exempt from sunseting.

6.9 The sunseting framework established under section 50 of the Legislation Act provides that all legislative instruments registered on the Federal Register of Legislation after 1 January 2005 are automatically repealed ten years after registration. Sunseting provides the opportunity for Parliament (as well as ministers and agencies) to ensure that the content of delegated legislation remains appropriate, and for Parliament to maintain effective, regular oversight of delegated powers.

6.10 On 16 June 2021, the Senate resolved that delegated legislation should be subject to sunseting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances and any claim that circumstances justify exemption from sunseting will be subjected to rigorous scrutiny with the expectation that the claim will only be justified in rare cases.⁷

6.11 Where an instrument is exempt from sunseting, Senate standing order 23(3)(k) requires the committee to scrutinise each instrument as to whether the exemption is appropriate. Noting the Senate's concern about the exemption of delegated legislation from sunseting, this section identifies instruments which do not

⁷ For further information on the resolutions adopted by the Senate on 16 June 2021, see the committee's website, [Resolutions relating to oversight of delegated legislation](#).

satisfy the committee's expectations regarding the appropriateness of their exemption from sunseting.

6.12 Subject to exceptional circumstances, the committee's expectations will not be met where the instrument:

- is exempt from sunseting under one of the broad classes of exemptions in section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015;⁸
- is exempt from sunseting under the blanket exemption of instruments facilitating the establishment or operation of an intergovernmental body or scheme in section 54(1) of the *Legislation Act 2003*;⁹
- overrides or modifies primary legislation;
- triggers, or is a precondition to, the imposition of custodial penalties or significant pecuniary penalties;
- restricts personal rights and liberties;
- facilitates the expenditure of public money on an ongoing basis; or
- otherwise contains a matter requiring parliamentary oversight.

6.13 To assess whether an instrument is appropriately exempt from sunseting, the committee expects that at a minimum, the explanatory statement will contain a statement that provides the source and the exceptional circumstances that justify the exemption from sunseting.

6.14 Further information about the committee's expectations about the exemption of delegated legislation from sunseting are contained in the committee's guidelines

⁸ Items 1 to 7 of section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015 exempt the following classes of instruments from sunseting: instruments giving effect to international obligations of Australia; instruments that establish a body having power to enter into contracts; instruments that are directions by a minister to any person or body; instruments which confer power on a self-governing Territory; ordinances made under a power delegated in an Act providing for the government of a non-self-governing Territory; instruments (other than a regulation) relating to superannuation; and instruments made under annual Appropriation Acts.

⁹ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Final report](#) (March 2021) pp. 50–53 and 106–107.

and the reports of its inquiry into the exemption of delegated legislation from parliamentary oversight.¹⁰

Instruments which do not meet the committee's expectations

6.15 Instruments listed below do not meet the committee's expectations under standing order 23(3)(k).

Instrument	Source of exemption
Agricultural and Veterinary Chemicals (MRL Standard for Residues of Chemical Products) Amendment Instrument (No. 1) 2023 [F2023L01381]	Section 54(1) of the <i>Legislation Act 2003</i>
Agricultural and Veterinary Chemicals (MRL Standard for Residues of Chemical Products) Instrument 2023 [F2023L01350]	Section 54(1) of the <i>Legislation Act 2003</i>
Charter of the United Nations (Listed Persons and Entities) Amendment (No. 2) Instrument 2023 [F2023L01372]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Direction to the NDIS Quality and Safeguards Commissioner under section 181K of the National Disability Insurance Scheme Act 2013 –No. 1/2023 [F2023L01383]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Family Law (Superannuation) (Methods and Factors for Valuing Particular Superannuation Interests) Amendment (No. 2) Approval 2023 [F2023L01299]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Federal Financial Relations (General Purpose Financial Assistance—2023-24 Payment No. 4) Determination 2023 [F2023L01397]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Federal Financial Relations (National Partnership Payments—2023-24 Payment No. 4) Determination 2023 [F2023L01365]	Section 54(1) of the <i>Legislation Act 2003</i>
Financial Sector (Collection of Data) (reporting standard) determination No. 129 of 2023 [F2023L01339]	Section 9 of the Legislation (Exemptions and Other Matters) Regulation 2015

¹⁰ Senate Standing Committee for the Scrutiny of Delegated Legislation, [Guidelines](#), 2nd edition (February 2022) pp. 34–35; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Interim report](#) (December 2020) pp. 89–90; Senate Standing Committee for the Scrutiny of Delegated Legislation, [Inquiry into the exemption of delegated legislation from parliamentary oversight: Final report](#) (March 2021) pp. 87–88 and 99–123.

Instrument	Source of exemption
Food Standards (Application A1245 – Alpha-glucosidase from GM <i>Trichoderma reesei</i> as a processing aid in brewing) Variation [F2023L01402]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015 and Section 54(1) of the <i>Legislation Act 2003</i>
Food Standards (Application A1262 – Food derived from insect-protected corn line MON95275) Variation [F2023L01408]	Section 54(1) of the <i>Legislation Act 2003</i>
Guidelines for the Classification of Computer Games 2023 [F2023L01424]	Section 54(1) of the <i>Legislation Act 2003</i>
Nuclear Non-Proliferation (Safeguards) Amendment Regulations 2023 [F2023L01409]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Superannuation (Family Law – Parliamentary Contributory Superannuation Act 1948) Amendment Orders 2023 [F2023L01315]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015

**Senator the Hon Linda Reynolds CSC
Deputy Chair**