

The Senate

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Committee for the
Scrutiny of Delegated
Legislation

Delegated Legislation Monitor

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PO Box 6100
Parliament House
Canberra ACT 2600
Ph: 02 6277 3066
Email: sdlc.sen@aph.gov.au
Website: http://www.aph.gov.au/senate_sdlc

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Membership of the committee

Current members

Senator Deborah O'Neill (Chair)	New South Wales, ALP
Senator the Hon Linda Reynolds CSC (Deputy Chair)	Western Australia, LP
Senator Catryna Bilyk	Tasmania, ALP
Senator David Pocock	Australian Capital Territory, IND
Senator Louise Pratt	Western Australia, ALP
Senator Paul Scarr	Queensland, LP

Secretariat

Hannah Dibley, Committee Secretary
Nicole Maslaris, Principal Research Officer
Nidhi Venkatesan, Senior Research Officer
Parabhjot Saini, Legislative Research Officer

Committee legal adviser

Professor Lorne Neudorf

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Acknowledgment

The committee notes with profound sadness the passing of Senator Linda White who served as Chair of the committee between 3 August 2022 and 29 February 2024.

The committee pays tribute to the outstanding leadership provided by Senator White to the committee during Senator White's tenure as Chair.

Committee members, along with the committee's secretariat and legal adviser, extend their deep condolences to Senator White's family and friends.

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.

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

Guidelines

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

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 18 January and 18 February 2024	82
Instruments in this period exempt from disallowance	9
Chapter 1: New and ongoing matters	
New legislative instruments commented on in report	0
Ongoing legislative instruments commented on in report	0
Chapter 2: Concluded matters	
Legislative instruments of which the committee has concluded its examination following receipt of ministerial response	1
Chapter 3: Agency engagement	
New legislative instruments where the committee engaged with the relevant agency via its secretariat	6
Legislative instruments of which the committee has concluded its examination following receipt of agency response	0
Chapter 4: Undertakings	
New undertakings made by ministers or agencies to address the committee's scrutiny concerns	0
Undertakings which the committee was made aware had been implemented during this period	0
Outstanding undertakings	52
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>	1
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)	1
Instruments that do not meet the committee's expectations regarding exemptions from sunseting under standing order 23(3)(k)	3

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).

1.2 The committee has resolved not to raise significant technical scrutiny concerns in relation to any instruments registered in this period or to request further information from relevant ministers about its technical scrutiny concerns in relation to any instruments.

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).

Migration Amendment (Biosecurity Contravention) Regulations 2023¹

FRL No.	F2023L01443
Purpose	This instrument amends the Migration Regulations 1994 to expand the grounds for the cancellation of visas where the Minister reasonably believes that the visa holder has contravened provisions under the <i>Biosecurity Act 2015</i> .
Authorising legislation	<i>Migration Act 1958</i>
Portfolio	Home Affairs
Disallowance	15 sitting days after tabling (tabled in the Senate on 6 November 2023). Committee gave notice of motion to disallow on 5 December 2023.

Overview

2.2 The Migration Amendment (Biosecurity Contravention) Regulations 2023 (the instrument) amends the Migration Regulations 1994 (the Migration Regulations) to expand the grounds for the cancellation of certain temporary visas in paragraph 2.43(1)(s) to include where the Minister for Immigration, Citizenship and Multicultural Affairs or the minister's delegate reasonably believes a visa holder has contravened subsection 186A(1) of the *Biosecurity Act 2015* (the Biosecurity Act).²

¹ This entry can be cited as: Senate Standing Committee for the Scrutiny of Delegated Legislation, Migration Amendment (Biosecurity Contravention) Regulations 2023, *Delegated Legislation Monitor 3 of 2024*; [2024] AUSStaCSDLIM 12.

² Subsection 186A(1) makes it an offence for a person to bring or import conditionally non-prohibited goods into Australian territory where a condition in relation to the goods specified in a determination in force has not been complied with and the goods are concealed for the purpose of preventing them from being found or their true nature being determined, by a biosecurity official.

2.3 The committee raised concerns with the instrument in *Delegated Legislation Monitor 14 of 2023*, on 17 November 2023.³ The minister responded on 19 January 2024,⁴ to which the committee reiterated its concerns in *Delegated Legislation Monitor 2 of 2024* on 28 February 2024.⁵ The minister responded to these concerns on 15 March 2024.⁶

Scrutiny concerns

*Adequacy of consultation*⁷

2.4 The instrument's explanatory statement provides that consultation was undertaken with the Department of Agriculture, Fisheries and Forestry (DAFF).⁸ Noting the significant impact this instrument could have on a range of visa-holders, including individuals holding visitor, student, working holiday and temporary work visas, the committee queried why members of the public, including visa holders, relevant peak bodies or other experts were not consulted. In *Delegated Legislation Monitor 14 of 2023*, the committee requested the minister's advice as to what consultation was undertaken, and if none, what was the justification for the lack of consultation.⁹ In his response of 19 January 2024, the minister advised that consultation other than with DAFF was not considered necessary as Australia's biosecurity requirements and the potential for visa cancellation at the border for biosecurity breaches is well understood by international travellers, industry stakeholders and relevant peak bodies.¹⁰

2.5 Accordingly, in *Delegated Legislation Monitor 2 of 2024*, the committee requested the minister's advice as to whether consultation can now be undertaken with members of the public, peak bodies and industry stakeholders who are likely to be affected and, whether following this consultation, the minister will consider whether it is appropriate for this additional ground for visa cancellation to remain in force, or if further amendments are required to address feedback provided. The committee also requested the minister's advice regarding the expected impact of the instrument on each class of visa that is affected by the instrument, taking into account

³ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 14 of 2023](#) (17 November 2023) pp. 2-4.

⁴ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation (19 January 2024) pp. 1-4.

⁵ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 2 of 2024](#) (28 February 2024) pp. 6-10.

⁶ This correspondence was tabled with this Monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

⁷ Senate standing order 23(3)(d).

⁸ Explanatory statement, p. 2.

⁹ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 14 of 2023](#) (17 November 2023) pp. 2-4.

¹⁰ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation (19 January 2024) pp. 1-4.

the varying biosecurity risks and risk profiles associated with visa holders of each class of affected visa.¹¹

*Minister's response*¹²

2.6 In his response of 15 March, the minister provided further background to the instrument by advising that the Migration Regulations have allowed for visa cancellations since 2019 for a number of contraventions of the Biosecurity Act, including failing to answer questions about goods, failing to comply with directions in relation to the movement of goods and providing false or misleading information or documents. The minister advised that following the amendment of the Biosecurity Act to include the offence under section 186A, the Migration Regulations were amended to include consequences consistent with other offences under the Biosecurity Act for which visa cancellation is possible.

2.7 The minister also provided further advice as to the nature of the offence under section 186A of the Biosecurity Act and noted that it is intended to capture behaviour that represents a serious contravention of the Biosecurity Act that could lead to biosecurity risks not being able to be appropriately managed. The minister advised that in order to reflect the seriousness of this offence, a high penalty of 1200 penalty units is applicable. Further, the minister advised that the grounds for visa cancellation inserted by this instrument would only arise where there is a reasonable belief that the visa holder has *deliberately concealed* conditionally non-prohibited goods in order to bring or import them into Australian territory.

2.8 In relation to consultation, the minister advised that it is not feasible or appropriate to engage in broader public consultation in this instance for the following reasons. The minister advised that temporary visa holders are not an easily identifiable group and, with the exception of students, are not represented by peak bodies, as well as the difficulty of targeting consultations at specific sub-groups of temporary visa holders. The minister also advised that as the measures only impact those who deliberately flout Australia's biosecurity laws, it is not possible to identify which sub-groups might be more or less affected by the amendments made by this instrument and it is unclear how potential offenders may be identified so their views may be sought.

2.9 Finally, the minister advised that the amendments introduced by this instrument are not expected to increase the total number of likely visa cancellations, but rather, will ensure that temporary visa holders who commit this more serious offence will face the same migration consequences as those who commit lesser offences.

¹¹ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 2 of 2024](#) (28 February 2024) pp. 6-9.

¹² This correspondence was tabled with this monitor and will be accessible via the [Delegated Legislation Monitors](#) page on the committee's website.

Committee view

2.10 The committee thanks the minister for this advice and welcomes the additional context provided.

2.11 The committee notes the minister's advice that the contravention only occurs by deliberate concealment and is intended to capture people purposefully flouting biosecurity requirements. The committee also notes the minister's advice that temporary visa holders are not an easily identifiable group, and consequently, it is not possible to identify potential offenders in this instance or subgroups of temporary visa holders who are more or less affected by these amendments. Finally, the committee acknowledges that these amendments are intended for consistency with other contraventions of the Biosecurity Act which may result in visa cancellations.

2.12 While the committee notes the minister's advice that, in this instance, broad public consultation is not feasible, the committee nonetheless considers that this instrument alters the operation of the law and may significantly impact the visa holders listed in paragraph 2.43(1)(s) of the Migration Regulations, particularly those temporary visa holders who may already reside in Australia.

2.13 The committee reiterates its expectation that consultation is undertaken with affected persons before an instrument is made. Notably, the committee continues to expect that if consultation is not undertaken with affected persons, that the reasons for not consulting such persons are set out in the explanatory statement to the instrument. The explanatory statement to this instrument does not include such explanation.

2.14 In light of the above, the committee is not requesting the minister's further advice in relation to this matter and concludes its examination of the instrument in relation to this issue.

2.15 However, the committee strongly recommends that the minister amends the explanatory statement to include the explanation why consultation was not undertaken with affected persons in this case, as outlined by the minister in this correspondence.

Availability of independent merits review¹³

2.16 As noted above, the instrument expands the grounds for the cancellation of certain temporary visas where the minister or a delegate reasonably believes that the visa holder has contravened provisions of the Biosecurity Act.

2.17 In response to the committee's earlier concerns, the minister clarified in his response of 19 January 2024 that Australian Border Force Officers had been delegated this power to cancel visas and that these visa cancellations would only be undertaken by ABF officers who have completed comprehensive training and have been assessed

¹³ Senate standing order 23(3)(i).

as competent to undertake this work.¹⁴ The minister further advised that merits review is not available in relation to this decision because of section 338 of the Migration Act, which provides that a decision to cancel a visa in immigration clearance, such as this one, is not subject to merits review.

2.18 Noting the committee's usual expectations in relation to the exclusion of merits review, in *Delegated Legislation Monitor 2 of 2024*,¹⁵ the committee requested the minister's further justification as to why it is not considered appropriate to provide for independent merits review in relation to this decision with reference to the Administrative Review Council's guidance document, *What decisions should be subject to merits review?*¹⁶

*Minister's response*¹⁷

2.19 In his response, the minister advised that a decision to cancel a visa is only made after consideration of the full circumstances of the case and after affording natural justice to the visa holder, which allows the visa holder an opportunity to provide reasons as to why their visa should not be cancelled. The minister advised that the delegate will, in considering the visa cancellation, take into account various matters, including the purpose of the visa holder's travel to or stay in Australia, the degree of hardship that may be caused if the visa is cancelled and the circumstances in which the ground for cancellation arose.

2.20 The minister advised that, in this instance, visa cancellation will occur in immigration clearance and that it has been a long-held view of successive Australian governments that non-citizens subject to adverse visa decisions in immigration clearance are not provided with access to merits review as certainty of visa status is essential when managing non-citizens at the border. The minister also advised that a non-citizen may seek judicial review of the decision to cancel their visa.

2.21 Finally, the minister advised that paragraph 338(3)(b) of the Migration Act expressly precludes a decision to cancel a visa to a person who is in immigration clearance from being merits reviewable. As merits review is limited by the Migration Act, the minister advised it is not open for delegated legislation to provide otherwise.

Committee view

2.22 The committee thanks the minister for this advice. The committee notes that natural justice will be afforded to visa holders and that the decision to cancel a visa is

¹⁴ See [correspondence](#) to the Senate Standing Committee for the Scrutiny of Delegated Legislation (19 January 2024) pp. 1-4.

¹⁵ Senate Standing Committee for the Scrutiny of Delegated Legislation [Delegated Legislation Monitor 2 of 2024](#) (28 February 2024) pp. 9-10.

¹⁶ Administrative Review Council, [What Decisions Should be Subject to Merits Review?](#) (1999).

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

only made after full consideration of the circumstances of the case. However, the committee does not consider that this justifies the exclusion of merits review as it is a fundamental rule of common law that when a decision is made that will deprive a person of some right or interest, that person is 'entitled to know the case made against him and to be given an opportunity of replying to it'.¹⁸ Similarly, the committee considers that in the ordinary course of any matter, the decision-maker should fully consider the circumstances of the case and doing so does not justify the exclusion of merits review.

2.23 While the committee notes that judicial review is also available to an affected visa holder, the committee does not consider that this is an equivalent or alternate process to merits review and its applicability does not justify the exclusion of merits review. Additionally, judicial review is also applicable regardless, by the operation of section 75(v) of the Constitution.

2.24 The committee reiterates the expectation set out in the committee's guidelines that where an instrument empowers a decision-maker to make discretionary decisions which have the capacity affect rights liberties, obligations or interests, those decisions should ordinarily be subject to independent merits review. If merits review is not available, the committee expects that the explanatory statement to the instrument set out the justification for the exclusion of the decision from merits review with reference to the Administrative Review Council's guidance document, *What decisions should be subject to merits review?*¹⁹

2.25 The committee, however, acknowledges that, in this instance, the availability of merits review is limited by paragraph 338(3)(b) of the Migration Act and that certainty of visa status is essential when managing non-citizens in immigration clearance.

2.26 The committee notes once more the minister's advice that visa cancellations will only be undertaken by comprehensively trained Australian Border Force Officers who have been assessed as competent to undertake this work. Noting the significance of visa cancellation, the committee considers appropriate training to be a minimum safeguard on the exercise of such a discretionary power that is not subject to independent merits review.

2.27 In light of the above, the committee is not requesting the minister's further advice in relation to this matter and concludes its examination of the instrument in relation to this issue.

2.28 The committee has also resolved to withdraw its notice of motion to disallow this instrument.

¹⁸ *Kioa v West* (1985) 159 CLR 550, 582 (Mason J).

¹⁹ Administrative Review Council, [What Decisions Should be Subject to Merits Review?](#) (1999).

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

CASA EX01/24 — Flight Crew Medical Status (Class 5 Medical Self-declaration) Exemption 2024 [F2024L00136]

Financial Sector (Collection of Data) (reporting standard) determination No. 1 of 2024 [F2024L00144]

Financial Sector (Collection of Data) (reporting standard) determination No. 2 of 2024 [F2024L00145]

Federal Financial Relations (General Purpose Financial Assistance—2023-24 Payment No. 8) Determination 2024 [F2024L00178]

Federal Financial Relations (National Partnership Payments—2023-24 Payment No. 8) Determination 2024 [F2024L00141]

National Occupational Respiratory Disease Registry Rules 2024 [F2024L00148]

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

Concluded matters

3.4 In this reporting period, the committee has not concluded its consideration of any instruments after engagement with relevant agencies via its secretariat.²

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 in this reporting period. No new undertakings were made or implemented in the reporting period.

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

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

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

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
Industry Research and Development (Silicon Quantum Computing Support Program) Instrument 2024 [F2024L00109]	Up to \$250, 000 for 2023/24 through to 2026/27	Silicon Quantum Computing Support 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.

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](#).

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?
Radiocommunications (Receiver Licence Tax) Amendment Determination 2024 (No. 1) [F2024L00158]	No

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
Biosecurity (First Point of Entry—Sydney Kingsford Smith Airport) Amendment (2024 Measures No. 1) Determination 2024 [F2024L00172]	Paragraph 228(b) of the <i>Biosecurity Act 2015</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

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.

registration. Sunsetting 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 sunsetting to permit appropriate parliamentary scrutiny and oversight unless there are exceptional circumstances and any claim that circumstances justify exemption from sunsetting 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 sunsetting, 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 sunsetting, this section identifies instruments which do not satisfy the committee's expectations regarding the appropriateness of their exemption from sunsetting.

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

- is exempt from sunsetting under one of the broad classes of exemptions in section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015;⁸
- is exempt from sunsetting 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;

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](#).

⁸ Items 1 to 7 of section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015 exempt the following classes of instruments from sunsetting: 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.

- 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 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
Charter of the United Nations (Listed Persons and Entities) Amendment (No. 1) Instrument 2024 [F2024L00098]	Section 11 of the Legislation (Exemptions and Other Matters) Regulation 2015
Federal Financial Relations (General Purpose Financial Assistance—2023-24 Payment No. 8) Determination 2024 [F2024L00178]	Subsection 54(1) of the <i>Legislation Act 2003</i>
Federal Financial Relations (National Partnership Payments—2023-24 Payment No. 8) Determination 2024 [F2024L00141]	Subsection 54(1) of the <i>Legislation Act 2003</i>

Senator Deborah O'Neill
Chair

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.