

The Senate

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Standing  
Committee for the  
Scrutiny of Delegated  
Legislation

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Delegated Legislation Monitor

Monitor 7 of 2020

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## Introduction

The Senate Standing Committee on Regulations and Ordinances (the committee) was established in 1932. The committee's name was changed on 4 December 2019 to the Senate Standing Committee for the Scrutiny of Delegated Legislation.<sup>1</sup> The role of the committee is to examine the technical qualities of all disallowable legislative instruments, and to decide whether they comply with the committee's non-partisan scrutiny principles.

### Terms of reference

The committee's scrutiny principles are set out in Senate standing order 23(3) which requires the committee to scrutinise each instrument as to whether:

- (a) it is in accordance with its enabling Act and otherwise complies with all legislative requirements;
- (b) it appears to be supported by a constitutional head of legislative power and is otherwise constitutionally valid;
- (c) it makes rights, liberties, obligations or interests unduly dependent on insufficiently defined administrative powers;
- (d) those likely to be affected by the instrument were adequately consulted in relation to it;
- (e) its drafting is defective or unclear;
- (f) it, and any document it incorporates, may be freely accessed and used;
- (g) the accompanying explanatory material provides sufficient information to gain a clear understanding of the instrument;
- (h) it trespasses unduly on personal rights and liberties;
- (i) it unduly excludes, limits or fails to provide for independent review of decisions affecting rights, liberties, obligations or interests;
- (j) it contains matters more appropriate for parliamentary enactment; and
- (k) it complies with any other ground relating to the technical scrutiny of delegated legislation that the committee considers appropriate.

Senate standing order 23(4) also requires the committee to scrutinise each instrument to determine whether the attention of the Senate should be drawn to

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1 On 27 November 2019, the Senate agreed to amend standing orders 23 and 25(2)(a), with effect from 4 December 2019. For further information, see [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Changes\\_to\\_committee\\_standing\\_orders](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Changes_to_committee_standing_orders).

the instrument on the ground that it raises significant issues, or otherwise gives rise to issues that are likely to be of interest to the Senate.

### **Nature of the committee's scrutiny**

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

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

The committee's work is supported by the processes for the registration, tabling and disallowance of legislative instruments under the *Legislation Act 2003*.<sup>2</sup>

### **Publications**

The committee's usual practice is to table a report, the *Delegated Legislation Monitor*, each Senate sitting week. The monitor provides an overview of the committee's scrutiny of disallowable legislative instruments for the preceding period. Disallowable legislative instruments detailed in the monitor are also listed in the 'Index of instruments' on the committee's website.<sup>3</sup>

### **Ministerial correspondence**

The committee undertakes formal correspondence with ministers in order to resolve more significant scrutiny concerns. Ministerial correspondence is published on the committee's website.<sup>4</sup>

### **Agency correspondence**

The committee undertakes informal correspondence with agencies via its secretariat to gather information about potential scrutiny concerns. This correspondence assists the committee in deciding whether it is necessary to seek further advice from the relevant minister about those concerns. Agency correspondence is not published;

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

3 *Index of instruments*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Index).

4 See [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Monitor](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Monitor).



however, a record of the instrument, scrutiny issue and status of the correspondence is included in Appendix A (ongoing matters) and Appendix B (concluded matters) in the monitor.

## **Guidelines**

Guidelines relating to the committee's scrutiny principles are published on the committee's website.<sup>5</sup>

## **General information**

The Federal Register of Legislation should be consulted for the text of instruments, explanatory statements, and associated information.<sup>6</sup>

The Senate Disallowable Instruments List provides a listing of tabled instruments for which disallowance motions may be moved in the Senate.<sup>7</sup>

The Disallowance Alert records all notices of motion for the disallowance of instruments, and their progress and eventual outcome.<sup>8</sup>

## **Instruments considered in this monitor**

The committee examined 134 disallowable legislative instruments registered on the Federal Register of Legislation between 23 April and 27 May 2020.

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

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5 See [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Guidelines](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Guidelines).

6 See Australian Government, Federal Register of Legislation, [www.legislation.gov.au](http://www.legislation.gov.au).

7 Parliament of Australia, *Senate Disallowable Instruments List*, [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/leginstruments/Senate\\_Disallowable\\_Instruments\\_List](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/leginstruments/Senate_Disallowable_Instruments_List).

8 *Disallowance Alert 2020*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Alerts](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Alerts).



# Chapter 1

## Instruments raising significant scrutiny concerns

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

1.2 Where necessary, the committee may place a notice of motion to disallow an instrument contained in this chapter to emphasise its scrutiny concerns and to provide the Senate with additional time to consider the instrument with the benefit of the committee's comments. Accordingly, where appropriate, this chapter also details the committee's reasons for withdrawing notices of motion to disallow such instruments.

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

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1 See [www.aph.gov.au/senate\\_sd/c](http://www.aph.gov.au/senate_sd/c).



## Chapter 2

### Matters of interest to the Senate

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

2.2 This chapter identifies the instruments which the committee has resolved to draw to the attention of the Senate and relevant Senate committees under standing order 23(4), with the exception of instruments which specify significant executive expenditure, which are listed in Chapter 3.<sup>1</sup>

Instrument	Purpose	Portfolio committee
<b>Aged Care Legislation Amendment (Subsidies—COVID-19 Support) Instrument 2020 [F2020L00615]</b>	To prescribe a COVID-19 support supplement which is payable to approved providers of residential care and flexible care. The \$205 million funding package is aimed at covering the additional costs of caring for the health and wellbeing of aged care recipients during the COVID-19 pandemic.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19
<b>ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486 [F2020L00618]</b>	To defer the commencement of new design and distribution obligations by six months so that they will now apply from 5 October 2021 (rather than 5 April 2021). The design and distribution obligations are intended to assist consumers to obtain appropriate financial products by requiring issuers and distributors to have a customer-centric approach to designing, marketing and distributing financial products.	Senate Economics Legislation Committee Senate Select Committee on COVID-19
<b>ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487 [F2020L00623]</b>	To defer the commencement of new mortgage broker obligations by six months so that they will now apply from 1 January 2021 (rather than 1 July 2020). The new mortgage broker obligations include a duty to act in the best interests of the consumer in relation to credit assistance, a requirement to prioritise consumers' interests when providing credit assistance, and a ban on conflicted remuneration.	Senate Economics Legislation Committee Senate Select Committee on COVID-19

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1 Details of all instruments which the committee has resolved to draw to the attention of the Senate under standing order 23(4) are published on the committee's website: [https://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Matters\\_of\\_interest\\_to\\_the\\_Senate](https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Matters_of_interest_to_the_Senate).

Instrument	Purpose	Portfolio committee
<b>Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]</b>	To extend the end date for the Cashless Debit Card trial in all existing sites and income management in the Cape York region from 30 June 2020 to 31 December 2020.	Senate Economics Legislation Committee Senate Select Committee on COVID-19
<b>Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020 [F2020L00461]</b>	To give certain entities or classes of entities an alternative basis on which they may satisfy the decline in turnover test to be eligible for JobKeeper payments.	Senate Economics Legislation Committee Senate Select Committee on COVID-19
<b>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020 [F2020L00546]</b>	To amend the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 to adjust some elements of the scheme, and expand access to the scheme in some areas.	Senate Economics Legislation Committee Senate Select Committee on COVID-19
<b>Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 3) 2020 [F2020L00605]</b>	To amend the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 to provide that the 6 month turnover test period applying to universities is limited to only those universities that are Table A providers within the meaning of <i>Higher Education Support Act 2003</i> . Table B providers will be permitted to assess their eligibility based on a monthly or quarterly test period similar to other entities.	Senate Economics Legislation Committee Senate Select Committee on COVID-19
<b>Corporations (Coronavirus Economic Response) Determination (No. 2) 2020 [F2020L00611]</b>	To modify the operation of certain civil penalty provisions in the <i>Corporations Act 2001</i> to establish a temporary test based on a disclosing entity or its officers' knowledge, recklessness or negligence with respect to whether certain information would have a material effect on the price or value of its enhanced disclosure securities and therefore should be disclosed.	Senate Economics Legislation Committee Senate Select Committee on COVID-19
<b>Social Security (Coronavirus Economic Response—2020 Measures No. 4) Determination 2020 [F2020L00474]</b>	To modify the <i>Social Security Act 1991</i> in relation to the partner income reduction rate for jobseeker payment by reducing it from 60 per cent to 25 per cent of the person's partner income excess.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19

Instrument	Purpose	Portfolio committee
<b>Social Security (Coronavirus Economic Response—2020 Measures No. 5) Determination 2020 [F2020L00509]</b>	To modify the <i>Social Security (Administration) Act 1999</i> to facilitate the provision of information (including tax file number information) by the Commissioner of Taxation to the Secretary of the Department of Social Services in matters related to the administration of the JobKeeper payment.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19
<b>Social Security (Coronavirus Economic Response—2020 Measures No. 6) Determination 2020 [F2020L00475]</b>	To provide for recipients of widow allowance, partner allowance and special benefit under the <i>Social Security Act 1991</i> to receive the COVID-19 supplement from 27 April 2020.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19
<b>Social Security (Coronavirus Economic Response—2020 Measures No. 7) Determination 2020 [F2020L00545]</b>	To vary the <i>Social Security Act 1991</i> to remove the liquid assets test waiting period and seasonal work preclusion period for social security claimants who had already served a part of such period prior to 25 March 2020, and for people who claim during certain specified periods.	Senate Community Affairs Legislation Committee Senate Select Committee on COVID-19





## Chapter 3

### Scrutiny of Commonwealth expenditure

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

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

3.3 The tables below outline the expenditure specified in legislative instruments registered between 23 April and 27 May 2020.

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

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

2 Details of all instruments which specify Commonwealth expenditure are published on the committee's website: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Scrutiny\\_of\\_Delegated\\_Legislation/Scrutiny\\_of\\_Commonwealth\\_expenditure](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Scrutiny_of_Delegated_Legislation/Scrutiny_of_Commonwealth_expenditure).

<b>Instrument</b>	<b>Grant/Program</b>	<b>Amount</b>	<b>Description</b>	<b>Portfolio committee</b>
<b>Industry Research and Development (Access to Bushfire Construction Standards Program) Instrument 2020 [F2020L00476]</b>	Access to Bushfire Construction Standards Program	Funding will be provided to Standards Australia to ensure that Australian Standard AS 3959:2018, <i>Construction of buildings in bushfire-prone areas</i> , is made available to the public online and free of charge.	Up to \$132,000 in 2019-20	Senate Economics Legislation Committee
<b>Industry Research and Development (Hinkler Regional Deal Agricultural Technology Facility Program) Instrument 2020 [F2020L00472]</b>	Hinkler Regional Deal Agricultural Technology Facility Program	Funding will be provided to Central Queensland University to establish an agricultural technology facility in the Bundaberg local government area, and for such a facility to undertake activities including conducting academic research, gathering data, supporting commercial innovation, and applying technological and other methods to improve agricultural productivity for farms in the area.	Up to \$5 million in 2019-20	Senate Rural and Regional Affairs and Transport Legislation Committee
<b>Industry Research and Development (Maker Projects—Community STEM Engagement Grants Program) Instrument 2020 [F2020L00554]</b>	Community STEM Engagement Grants Program	Funding will be provided to make grants to organisations to deliver initiatives to improve the skills of people under 18 years of age in the areas of science, technology, engineering and mathematics, including through hands-on learning.	Up to \$1 million per year from 2019-20	Senate Economics Legislation Committee

Instrument	Grant/Program	Amount	Description	Portfolio committee
<b>Industry Research and Development (National Communications Campaign to Support Small Business Program) Instrument 2020 [F2020L00607]</b>	National Communications Campaign to Support Small Business	Funding will be provided to an appropriate industry association to develop and implement a national communication campaign to support small businesses through the impacts of the COVID-19 crisis by encouraging Australians to buy and spend locally.	\$5 million in 2019-20 and 2020-21	Senate Education and Employment Legislation Committee
<b>Industry Research and Development (Strengthening Business—Business Advice for Recovery and Resilience Program) Instrument 2020 [F2020L00573]</b>	Business Advice for Recovery and Resilience Program	Funding will be provided for the engagement of 21 new business advisers to work with community recovery hubs and mobile services, to provide business advice to businesses affected by the bushfire emergency.	\$12.8 million	Senate Economics Legislation Committee



# Appendix A

## Ongoing matters

The committee engages with relevant ministers and agencies to attempt to resolve its concerns about scrutiny issues raised by disallowable legislative instruments. This appendix documents the committee's ongoing scrutiny concerns.

### Ministerial engagement

4.1 The committee is engaging with the relevant minister about the scrutiny issues raised by the instruments listed below. Copies of the ministerial correspondence are available on the committee's website.<sup>1</sup>

Instrument	Issue	Status
<b>ASIC Corporations (Amendment) Instrument 2020/290 [F2020L00376]</b>	Principle (j) exemptions to primary legislation	Seeking advice from the assistant minister.
<b>ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355 [F2020L00425]</b>	Principle (k) parliamentary oversight	
<b>ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289 [F2020L00377]</b>		
<b>ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486 [F2020L00618]</b>	Principle (j) exemptions to primary legislation	Seeking advice from the assistant minister.
<b>ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487 [F2020L00623]</b>	Principle (k) parliamentary oversight	
<b>ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198 [F2020L00237]</b>	Principle (j) exemptions to primary legislation	Seeking advice from the assistant minister.
<b>ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199 [F2020L00238]</b>	Principle (k) parliamentary oversight	
<b>Australian Crime Commission Establishment Regulations 2020 [F2020L00162]</b>	Principle (i) availability of independent review	Seeking advice from the minister.
<b>Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00579]</b>	Principle (d) adequacy of consultation	Seeking advice from the minister.

<sup>1</sup> See [www.aph.gov.au/senate\\_sdlc](http://www.aph.gov.au/senate_sdlc).

<b>Instrument</b>	<b>Issue</b>	<b>Status</b>
<b>Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]</b>	Principle (e) unclear drafting Principle (j) significant penalties	Seeking private briefing with senior departmental officials. 'Protective' notice of motion to disallow was placed on 14/05/2020.
<b>Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]</b>	Principle (j) matters more appropriate for parliamentary enactment Principle (k) parliamentary oversight	Seeking advice from the minister.
<b>Defence Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00120]</b>	Principle (h) procedural fairness	Seeking advice from the minister.
<b>Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020 [F2020L00432]</b>	Principle (d) adequacy of consultation Principle (g) adequacy of explanatory materials Principle (j) matters more appropriate for parliamentary enactment	Seeking advice from the minister.
<b>Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020 [F2020L00328]</b>	Principle (f) incorporation of documents	Seeking advice from the assistant minister.
<b>Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 [F2020L00435]</b>	Principle (h) retrospective application Principle (k) parliamentary oversight	Seeking advice from the treasurer.
<b>Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019 [F2019L01699]</b>	Principle (i) availability of independent review	Seeking further advice from the minister. 'Protective' notice of motion to disallow was placed on 14/05/2020.
<b>National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019) [F2019L01542]</b>	Principle (a) compliance with authorising legislation	Seeking further advice from the minister. 'Protective' notice of motion to disallow was placed on 12/05/2020.
<b>National Rental Affordability Scheme Regulations 2020 [F2020L00282]</b>	Principle (i) availability of independent review Principle (h) privacy	Seeking advice from the minister.

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Instrument	Issue	Status
<b>Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020 [F2020L00549]</b>	Principle (i) availability of independent review	Seeking advice from the minister.

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## Agency engagement

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

Instrument	Issue	Status
<b>Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2020 [F2020L00571]</b>	Principle (d) adequacy of consultation	Seeking advice from the agency.
<b>Biosecurity Amendment (International Mail Fee) Regulations 2020 [F2020L00576]</b>	Principle (d) adequacy of consultation	Seeking advice from the agency.
<b>CASA EX60/20 – CRS and SM CRS Document to Cover Specialist Maintenance by a Class D AMO – Instrument 2020 [F2020L00616]</b>	Principle (f) incorporation of documents Principle (i) availability of independent review	Seeking advice from the agency.
<b>Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister’s Rules 2020 [F2020L00406]</b>	Principle (e) clarity of drafting Principle (i) availability of independent review Principle (k) parliamentary oversight	Seeking advice from the agency.
<b>Fisheries Management (E-monitoring Small Pelagic Fishery) Direction 2020 [F2020L00473]</b>	Principle (i) availability of independent review	Seeking advice from the agency.
<b>National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 4) (PB 33 of 2020) [F2020L00523]</b>	Principle (f) incorporation of documents	Seeking advice from the agency.
<b>National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 4) (PB 37 of 2020) [F2020L00538]</b>	Principle (f) incorporation of documents	Seeking advice from the agency.



## Appendix B

### Concluded matters

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

#### Ministerial engagement

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

Instrument	Issue	Status
<b>Corporations (Coronavirus Economic Response) Determination (No. 2) 2020 [F2020L00611]</b>	Principle (j) matters more appropriate for parliamentary enactment	Concluded following advice only correspondence to the Treasurer.

#### Agency engagement

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

Instrument	Issue	Status
<b>CASA EX71/20 — Display of Markings (Sailplanes) Exemption 2020 [F2020L00516]</b>	Principle (k) continuing exemption	Concluded following response from the agency on 27/05/2020.
<b>Health Insurance (Poly Implant Prosthese MRI) Determination 2020 [F2020L00513]</b>	Principle (d) adequacy of consultation	Concluded following advice only correspondence to the agency.

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<sup>1</sup> See [www.aph.gov.au/senate\\_sd/c](http://www.aph.gov.au/senate_sd/c).



## Appendix C

### Undertakings

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

#### Outstanding undertakings

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

Instrument	Undertaking	Date of Undertaking
<b>Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]</b>	The Minister for Water Resources, Drought, Rural Finance, Natural Disaster and Emergency Management undertook to progress amendments to the Water Act 2007 in response to the committee's scrutiny concerns.	11/09/2019
<b>ASIC Corporations (Amendment) Instrument 2019/784 [F2019L01206]</b>	The Australian Securities and Investment Corporation undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	16/10/2019
<b>CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]</b>	The Minister for Infrastructure, Transport and Regional Development undertook to amend the Civil Aviation Safety Regulations 1998 in 2020 in response to the committee's scrutiny concerns.	07/11/2019
<b>Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]</b>	The Assistant Minister for Finance, Charities and Electoral Matters undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	03/12/2019
	The Assistant Minister for Finance, Charities and Electoral Matters undertook to progress amendments to primary legislation in response to the committee's scrutiny concerns.	17/03/2020

<b>Instrument</b>	<b>Undertaking</b>	<b>Date of Undertaking</b>
<b>Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019 [F2019L01387]</b>	The Department of Veterans' Affairs undertook to amend the Repatriation Pharmaceutical Benefits Scheme [F2013L02009] and the MRCA Pharmaceutical Benefits Scheme (No. MRCC 44/2013) [F2013L02012] to correct drafting errors.	28/01/2020
<b>Health Insurance (Bonded Medical Program) Rule 2020 [F2019L01513]</b>	The Department of Health undertook to amend the instrument in response to the committee's scrutiny concerns.	15/01/2020
<b>Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019 [F2019L01641]</b>	The Treasury undertook to amend the instrument in response to the committee's scrutiny concerns.	14/02/2020
<b>Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020 [F2020L00233]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	04/05/2020
<b>Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2020 [F2020L00392]</b>	The Department of Finance undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	06/05/2020
<b>CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020 [F2020L00436]</b>	The Department of Infrastructure, Transport, Regional Development and Communications undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	08/05/2020
<b>Military Rehabilitation and Compensation Regulations 2020 [F2020L00297]</b>	The Department of Veterans' Affairs undertook to amend the explanatory statement to the instrument in response to the committee's scrutiny concerns.	11/05/2020
<b>Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019 [F2019L01564]</b>	The Minister for Agriculture, Drought and Emergency Management undertook to amend the instrument in response to the committee's scrutiny concerns.	14/05/2020

### **Implemented undertakings**

6.3 No undertakings have been implemented since the committee's last *Delegated Legislation Monitor*.



## List of instruments in current monitor

Note: Instruments listed with an asterisk (\*) following the instrument name were raised for the first time in this Delegated legislation monitor.

Instrument	FRL No	Page
Aged Care Legislation Amendment (Subsidies—COVID-19 Support) Instrument 2020*	[F2020L00615]	3
Air Navigation (Exemption for Commercial Non-Scheduled Flights) Amendment Determination 2020*	[F2020L00571]	14
ASIC Corporations (Amendment) Instrument 2019/784	[F2019L01206]	17
ASIC Corporations (Amendment) Instrument 2020/290	[F2020L00376]	11
ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355	[F2020L00425]	11
ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486*	[F2020L00618]	3, 11
ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198	[F2020L00237]	11
ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199	[F2020L00238]	11
ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289	[F2020L00377]	11
ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487*	[F2020L00623]	3, 11
Australian Crime Commission Establishment Regulations 2020	[F2020L00162]	11
Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020	[F2020L00579]	11
Biosecurity Amendment (International Mail Fee) Regulations 2020*	[F2020L00576]	14
CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019	[F2019L01132]	17
CASA EX55/20 — Maintenance on Limited Category and Experimental Aircraft Exemption 2020	[F2020L00436]	18

<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
CASA EX60/20 – CRS and SM CRS Document to Cover Specialist Maintenance by a Class D AMO – Instrument 2020*	[F2020L00616]	14
CASA EX71/20 — Display of Markings (Sailplanes) Exemption 2020*	[F2020L00516]	15
Child Care Subsidy Amendment (Coronavirus Response Measures No. 2) Minister’s Rules 2020	[F2020L00406]	14
Competition and Consumer (Industry Codes—Dairy) Regulations 2019	[F2019L01610]	12
Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020*	[F2020L00572]	4, 12
Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020*	[F2020L00461]	4
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020*	[F2020L00546]	4
Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 3) 2020*	[F2020L00605]	4
Corporations (Coronavirus Economic Response) Determination (No. 2) 2020*	[F2020L00611]	5, 15
Defence Amendment (2020 Measures No. 1) Regulations 2020	[F2020L00120]	12
Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019	[F2019L01564]	18
Fair Work Amendment (Variation of Enterprise Agreements) Regulations 2020	[F2020L00432]	12
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 1) Regulations 2020	[F2020L00233]	18
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 2) Regulations 2020	[F2020L00392]	18
Financial Sector (Collection of Data) (reporting standard) determination No. 3 of 2020	[F2020L00328]	12
Fisheries Management (E-monitoring Small Pelagic Fishery) Direction 2020*	[F2020L00473]	14



<b>Instrument</b>	<b>FRL No</b>	<b>Page</b>
Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020	[F2020L00435]	12
Health Insurance (Bonded Medical Program) Rule 2020	[F2019L01513]	18
Health Insurance (Poly Implant Prosthese MRI) Determination 2020*	[F2020L00513]	15
Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019	[F2019L01699]	12
Industry Research and Development (Access to Bushfire Construction Standards Program) Instrument 2020*	[F2020L00476]	8
Industry Research and Development (Hinkler Regional Deal Agricultural Technology Facility Program) Instrument 2020*	[F2020L00472]	8
Industry Research and Development (Maker Projects—Community STEM Engagement Grants Program) Instrument 2020*	[F2020L00554]	8
Industry Research and Development (National Communications Campaign to Support Small Business Program) Instrument 2020*	[F2020L00607]	9
Industry Research and Development (Strengthening Business—Business Advice for Recovery and Resilience Program) Instrument 2020*	[F2020L00573]	9
Military Rehabilitation and Compensation Regulations 2020	[F2020L00297]	18
National Health (Highly specialised drugs program) Special Arrangement Amendment Instrument 2020 (No. 4) (PB 37 of 2020)*	[F2020L00538]	14
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2020 (No. 4) (PB 33 of 2020)*	[F2020L00523]	14
National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019)	[F2019L01542]	12
National Rental Affordability Scheme Regulations 2020	[F2020L00282]	12
Social Security (Coronavirus Economic Response—2020 Measures No. 4) Determination 2020*	[F2020L00474]	4
Social Security (Coronavirus Economic Response—2020 Measures No. 5) Determination 2020*	[F2020L00509]	5

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Social Security (Coronavirus Economic Response—2020 Measures No. 7) Determination 2020*	[F2020L00545]	5
Taxation Administration (Private Ancillary Fund) Guidelines 2019	[F2019L01227]	17
Tertiary Education Quality and Standards Agency Determination of Fees No. 1 of 2020	[F2020L00549]	13
Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2019	[F2019L01641]	18
Veterans' Affairs Pharmaceutical Benefits Schemes (Electronic Prescriptions and Active Ingredient Prescribing) Amendment Instrument 2019	[F2019L01387]	18
Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018	[F2018L01674]	17

**Senator the Hon Concetta Fierravanti-Wells**  
**Chair**  
**Senate Standing Committee for the Scrutiny of Delegated Legislation**