



Delegated Legislation Monitor 14 of 2020

Tabling Statement

Wednesday 9 December 2020

I rise to speak to the tabling of the Scrutiny of Delegated Legislation Committee's *Delegated Legislation Monitor 14 of 2020*.

I would like to take this opportunity to highlight some of the key issues arising in the Monitor.

Significant technical scrutiny issues

In particular, I draw the chamber's attention to the committee's concluding comments regarding two legislative instruments which raised significant technical scrutiny issues.

The first instrument is the **Australian Postal Corporation (Performance Standards) Amendment (2020 Measures No. 1) Regulations 2020**. This instrument implements several temporary changes to performance standards for the delivery of letters, and temporarily exempts Australia Post from its retail outlet obligations. The changes aim to respond to the challenges faced by Australia Post during the COVID-19 pandemic.

The changes made by the instrument appear to have the potential to affect a broad range of people and entities. These include users of Australia Post's services and Australia Post employees. Despite this, the explanatory statement to the instrument states that only Australia Post itself was consulted in the development of the instrument.

Given the significance of the measures and the broad scope of people and entities likely to be affected by them, the committee asked the minister to provide it with updates on the progress of future consultation. The committee also gave a notice of motion to disallow the instrument on 6 October 2020, with a view to reconsidering the notice once the committee was satisfied that appropriate consultation had been undertaken.

I am pleased to inform the chamber that the minister has since advised the committee that public consultation has commenced with a wide range of stakeholders and consumers. The minister has also undertaken to advise the committee of the outcomes of the ongoing review of the temporary arrangements.

On the basis of the minister's advice and undertaking, the committee has resolved to conclude its examination of the instrument and withdraw the notice of motion to disallow the instrument.

The second instrument I would like to highlight is the **Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020**. This instrument repeals changes that were made to reduce the access period for a proposed variation of an enterprise agreement from seven days to one day

The committee has been corresponding with the Attorney-General since August this year to resolve its technical scrutiny concerns. In summary, the committee was concerned that the explanatory statement to the instrument breached section 15 of the *Legislation Act 2003*. That section requires the explanatory statement to a legislative instrument to describe the consultation undertaken in relation to the instrument, or explain why no consultation was undertaken.

The committee placed a notice of motion to disallow the instrument on 10 November 2020, to provide it with sufficient time to consider the Attorney-General's advice before the disallowance period expired.

The committee subsequently determined that the Attorney-General's advice did not resolve its technical scrutiny concerns about the instrument.

Consequently, the committee drew the instrument to the attention of the Senate in *Delegated Legislation Monitor 12 of 2020*, and resolved to keep the notice of motion to disallow the instrument in place to provide the Senate with additional time to consider the matter.

Since that time, I am pleased to inform the chamber that the Attorney-General has amended to the explanatory statement to the instrument to ensure that it complies with the Legislation Act.

In light of the Attorney's implemented undertaking, the committee has resolved to withdraw the notice of motion to disallow the instrument and concluded its examination of the instrument.

On behalf of the committee, I thank the Minister for Communications, Cyber Safety and the Arts and the Attorney-General for their constructive engagement with the committee to resolve these significant scrutiny issues.

Timely resolution of scrutiny concerns

More generally, I take this opportunity to encourage agencies and ministers to make every effort to resolve the committee's scrutiny concerns as quickly as possible.

The committee is increasingly having to engage in protracted correspondence with departments and ministers to identify and resolve technical scrutiny issues.

For example, **eleven** pieces of correspondence were recently exchanged between the committee, department and minister in the committee's efforts to resolve its scrutiny concerns relating to the availability of independent merits review under the Continence Aids Payment Scheme 2020. In some instances, including this one, the committee has had to lodge protective notices of motion to disallow instruments, to give it sufficient time to resolve its concerns before an instrument's disallowance period expires.

The committee is also concerned about the number and age of outstanding undertakings made by agencies and ministers to address its scrutiny concerns. *Delegated Legislation Monitor 14 of 2020* lists 20 undertakings which have yet to be implemented. Six of these undertakings are six months old or more.

Where the committee concludes its examination of an instrument on the basis of an undertaking by an agency or minister, the committee expects such undertakings to be implemented without delay.

The committee looks forward to continuing to work constructively with agencies and ministers in 2021 to ensure that the law-making powers delegated to the executive are exercised appropriately in accordance with the principles prescribed by the Parliament.

Immediate relevance of interim report on delegated legislation made in times of emergency

Finally, I wish to draw the Senate's attention to the relevance of the committee's recent interim report on parliamentary oversight of delegated legislation made in times of emergency to the National Emergency Declaration Bill 2020, which was introduced in the other place last week.

Many of the features of the National Emergency Declaration Bill are similar to the delegated legislation making powers in the *Biosecurity Act 2015*. In its report, the committee details its serious concerns about the lack of parliamentary oversight of the delegated legislation making powers in the Biosecurity Act, and makes a number of recommendations to address these concerns.

I urge Senators to heed the recommendations of the committee's report, and comments by the Scrutiny of Bills Committee about the bill in its forthcoming Scrutiny Digest, as they consider the terms of the National Emergency Declaration Bill 2020.

With these comments, I commend the committee's *Delegated Legislation Monitor 14 of 2020* to the Senate