



14 November 2019

Introduction

This newsletter highlights key aspects of the work of the Senate Scrutiny of Bills Committee and the Senate Regulations and Ordinances Committee. It has a particular focus on information that may be useful while bills are under consideration and legislative instruments are subject to disallowance, and seeks to raise awareness about the committees' scrutiny principles (see Senate Standing Orders 23 and 24).

For more detail and discussion of these matters see the committees' [Scrutiny Digests](#) and [Delegated legislation monitors](#).

Key scrutiny issues: Bills ([Scrutiny Digest 8 of 2019](#))

Medical and Midwife Indemnity Legislation Amendment Bill 2019

- Computerised decision-making: the committee is seeking further advice about amending the bill to limit the types of decisions that can be made by computers.
- Broad delegation of legislative power: the committee leaves to the Senate the appropriateness of allowing regulations to modify the operation of the primary legislation.

Australian Citizenship Amendment (Citizenship Cessation) Bill 2019

- Broad discretionary powers and trespass on personal rights and liberties: the committee leaves to the Senate the appropriateness of expanding the minister's discretionary powers to determine that a person ceases to be an Australian citizen.
- Merits review: the committee leaves to the Senate the appropriateness of not making decisions under the bill subject to independent merits review.
- Significant matters in delegated legislation: the committee leaves to the Senate the appropriateness of leaving the declaration of a terrorist organisation to delegated legislation.
- Procedural fairness: the committee leaves to the Senate the appropriateness of not requiring the minister to provide natural justice when making a determination to cease a person's citizenship.
- Judicial review: the committee leaves to the Senate the adequacy of judicial oversight of factual determinations upon which cessation of citizenship decisions are made.

- *Retrospective application*: the committee leaves to the Senate the appropriateness of allowing the power to remove citizenship to be enlivened based on conduct engaged in or convictions made up to 16 years ago.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 8 of 2019](#))

Quality of Care Amendment (Minimising Use of Restraints) Principles 2019 [F2019L00511]

- On Tuesday 12 November 2019, the Senate Regulations and Ordinances Committee held a private briefing with the Minister for Aged Care and Senior Australians, Senator the Hon Richard Colbeck, and senior officers from the Department of Health, to discuss the committee's significant scrutiny concerns relating to the Quality of Care Amendment (Minimising Use of Restraints) Principles 2019.

Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]

- *Significant matters in delegated legislation*: the instrument addresses matters with the potential to affect the rights and liberties of non-citizen children. Following extensive engagement with the committee, the minister has undertaken to conduct a review of the instrument and the regulation-making powers in the *Immigration (Guardianship of Children) Act 1946*, focusing on the committee's scrutiny concerns. On this basis, the committee has resolved to withdraw the notice of motion to disallow the instrument.

Other bills commented on ([Scrutiny Digest 8 of 2019](#))

- **Aged Care Legislation Amendment (New Commissioner Functions) Bill 2019**: the committee is seeking advice regarding the safeguards in place for the use of force by officers and broad delegations of investigatory and administrative powers.
- **Agricultural and Veterinary Chemicals Legislation Amendment (Australian Pesticides and Veterinary Medicines Authority Board and Other Improvements) Bill 2019**: the committee is seeking further advice about amending the bill to limit the types of decisions that can be made by computers.
- **Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019**: the committee is seeking advice on the use of offence-specific defences that reverse the evidential burden of proof.
- **Australian Sports Anti-Doping Authority Amendment (Enhancing Australia's Anti-Doping Capability) Bill 2019**: the committee is seeking advice regarding lowering the threshold for the giving of disclosure notices.
- **Australian Sports Anti-Doping Authority Amendment (Sports Integrity Australia) Bill 2019**: the committee is seeking advice regarding immunity from civil liability and the appropriateness of making Sports Integrity Australia an enforcement body for the purposes of the *Privacy Act 1988*.
- **Coal Prohibition (Quit Coal) Bill 2019**: the committee reiterates its comments made in [Scrutiny Digest 2 of 2019](#).
- **Communications Legislation Amendment (Deregulation and Other Measures) Bill 2019**: the committee is seeking advice on the potential removal of parliamentary oversight of the

scheme for the numbering of carriage services and broad delegations of administrative powers.

- **Currency (Restrictions on the Use of Cash) Bill 2019:** the committee leaves to the Senate the appropriateness of leaving all of the exceptions to the proposed cash payment limit offences to delegated legislation.
- **Education Legislation Amendment (2019 Measures No. 1) Bill 2019:** the committee is seeking advice on the use of offence-specific defences that reverse the evidential burden of proof.
- **Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019:** the committee leaves to the Senate the appropriateness of specifying exemptions from the tuition protection scheme in delegated legislation and allowing the minister to determine which providers the scheme will apply to in non-disallowable instruments.
- **Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019:** the committee leaves to the Senate the appropriateness of leaving significant elements of the scheme for the provision of subsidies for in-home care to delegated legislation and the removal of merits review for certain decisions.
- **Foreign Acquisitions and Takeovers Fees Imposition Amendment (Near-new Dwelling Interests) Bill 2019:** the committee leaves to the Senate the appropriateness of applying the amendments in the bill retrospectively.
- **Health Legislation Amendment (Data-matching and Other Matters) Bill 2019:** the committee is seeking advice on the appropriateness of leaving data-matching principles to delegated legislation and broad delegations of administrative powers.
- **Higher Education Support (HELP Tuition Protection Levy) Bill 2019 and VET Student Loans (VSL Tuition Protection Levy) Bill 2019:** the committee received advice regarding allowing core elements of the levies to be determined by delegated legislation.
- **National Integrity (Parliamentary Standards) Bill 2019:** the committee reiterates its comments from [*Scrutiny Digest 1 of 2019*](#).
- **Native Title Legislation Amendment Bill 2019:** the committee is seeking advice regarding the retrospective validation of certain native title agreements.
- **Protection of the Sea (Prevention of Pollution from Ships) Amendment (Air Pollution) Bill 2019:** the committee leaves to the Senate the appropriateness of including offences that reverse the evidential and legal burden of proof.
- **Telecommunications (Interception and Access) Amendment (Assistance and Access Amendments Review) Bill 2019:** the committee leaves to the Senate the appropriateness of deferring the deadline for a review report.
- **Transport Security Amendment (Serious Crime) Bill 2019:** the committee is seeking advice regarding leaving the requirements relating to access to aviation and maritime transport zones to delegated legislation, including the ability to set penalties.

- **Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures) Bill 2019:** the committee leaves to the Senate the appropriateness of applying the amendments in the bill retrospectively.

Other legislative instruments commented on (*Delegated Legislation Monitor 8 of 2019*)

- The Regulations and Ordinances committee considered 103 disallowable legislative instruments registered on the Federal Register of Legislation between 18 September 2019 and 16 October 2019. The committee is continuing to engage with ministers and agencies in relation to 9 instruments, and has concluded its consideration of 14 instruments.
- All legislative instruments subject to a notice of motion for disallowance in either House of Parliament are listed in the [Disallowance Alert](#).

Notices of motion to disallow

At its private meeting on Wednesday 13 November 2019, the Senate Regulations and Ordinances Committee resolved to **place** a notice of motion to disallow the following instrument:

- CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [F2019L01132]

Since its private meeting on 16 October 2019, the Senate Regulations and Ordinances Committee resolved to **withdraw** notices of motions to disallow the following instruments:

- Air Services Regulations 2019 [F2019L00371];
- Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]; and
- Road Vehicle Standards Rules 2018 [F2019L00198].

This document contains a very brief summary of some recent comments made by the Senate Scrutiny of Bills Committee (Chair: Senator Helen Polley and Deputy Chair: Senator Dean Smith) and the Senate Regulations and Ordinances Committee (Chair: Senator the Hon Concetta Fierravanti-Wells and Deputy Chair: Senator the Hon Kim Carr).

For any comments or questions, please contact:

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