



1 August 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 4 of 2019](#))

Treasury Laws Amendment (Consumer Data Right) Bill 2019

- **No-invalidity clauses**: the committee is seeking advice on the rationale for including a number of no-invalidity clauses in relation to consultation requirements in the bill.
- **Delegated legislation not subject to disallowance**: the committee is seeking advice as to why potentially significant matters are included in instruments not subject to disallowance.
- **Reversal of evidential burden of proof**: the committee is seeking advice regarding an offence that reverses the evidential burden of proof.
- **Incorporation of external materials**: the committee is seeking advice regarding whether incorporated standards will be made freely accessible.
- **Broad discretionary power**: the committee is seeking advice regarding why persons can be exempted from the relevant scheme by either the ACCC or the regulations.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 4 of 2019](#))

Following correspondence with relevant ministers, the committee retains strong concerns that the below instruments raise significant scrutiny issues that should be drawn to the attention of the Senate. The committee's views are supported by expert legal advice.

Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]

- **Significant matters in delegated legislation**: the instrument includes a number of significant matters with the potential to affect the rights and liberties of non-citizen children. The committee considers that such significant matters should be set out in primary legislation, rather than delegated legislation or non-legislative policy guidance.

Water Amendment (Murray Darling Basin Agreement—Basin Salinity Management) Regulations 2018 [F2018L01674]

- ***Incorporation***: the instrument appears to incorporate external documents as in force from time to time, without legal authority to incorporate documents in this manner. Consequently, the committee has serious scrutiny concerns that the instrument does not accord with the legal requirements for making delegated legislation.

The committee has resolved to place notices of motions to disallow these instruments, to emphasise the committee's concerns and to provide the Senate with additional time to consider these matters. Further information is available in the [Chair's tabling statement](#).

Other bills commented on ([Scrutiny Digest 4 of 2019](#))

- **Aged Care Quality and Safety Commission Amendment (Worker Screening Database) Bill 2019**: the committee leaves to the Senate the appropriateness of including a broad discretionary power to disclose sensitive personal information.
- **Appropriation Bill (No. 1) 2019-2020**: the committee draws to the Senate's attention the apparent misclassification of expenditure in a bill that is unamendable by the Senate and the appropriateness of allowing the Finance Minister to expend further money via a non-disallowable instrument.
- **Appropriation Bill (No. 2) 2019-2020**: the committee draws to the Senate's attention the appropriateness of allowing ministers to determine conditions for payments to the states and territories and the setting of debit limits for grant programs well above the expected level of expenditure.
- **Combatting Child Sexual Exploitation Legislation Amendment Bill 2019**: the committee is seeking advice on the application of significant penalties from the day of Royal Assent and the reversal of both the evidential and legal burden of proof.
- **Great Australian Bight Environment Protection Bill 2019**: the committee leaves to the Senate the appropriateness of allowing any person to exercise coercive monitoring and investigation powers without legislative guidance as to appropriate skills or training required of them.
- **National Sports Tribunal Bill 2019**: the committee is seeking advice regarding an offence that reverses the evidential burden of proof.
- **Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019**: the committee is seeking advice regarding the potential impact of applying amendments retrospectively.

Other legislative instruments commented on ([Delegated Legislation Monitor 4 of 2019](#))

- The Regulations and Ordinances committee considered 78 legislative instruments registered on the Federal Register of Legislation between 22 May and 20 June 2019. The committee is continuing to engage with ministers and agencies in relation to 57 instruments, and has concluded its consideration of 24 instruments.

- All legislative instruments subject to a notice of motion to disallow in either House of Parliament are listed in the [Disallowance Alert](#).

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:

Laura Sweeney, Acting Secretary
Senate Scrutiny of Bills Committee
02 6277 3050 | scrutiny.sen@aph.gov.au
Regulations and Ordinances Committee
02 6277 3066 | regords.sen@aph.gov.au