



12 September 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](#).

## Highlights

The Regulations and Ordinances Committee has recently published all of its historical reports, dating from its first report in 1932, on its website under '[Committee reports](#)'.

## Key scrutiny issues: Bills ([Scrutiny Digest 5 of 2019](#))

### Counter-Terrorism Legislation Amendment Bill 2019

- Right to liberty - presumption against bail and parole: the committee is seeking advice regarding the expansion of the presumptions against bail and parole.
- Trespass on rights and liberties – continuing detention orders: the committee is seeking advice regarding the expansion of the continuing detention of high risk terrorist offenders after their sentences for imprisonment have been served.
- Procedural fairness: the committee is seeking advice regarding the limiting of an offender's right to receive a complete copy of an application for a continuing detention order.

### Treasury Laws Amendment (Ending Grandfathered Conflicted Remuneration) Bill 2019

- Significant matters in delegated legislation: the committee is seeking advice regarding why the scheme for the rebate of conflicted remuneration has been left to regulations and whether specific consultation obligations can be included in the legislation.

## Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 5 of 2019](#))

### Incorporation of standards

The Regulations and Ordinances committee notes, with concern, the frequent incorporation of Australian and international standards into delegated legislation, where those standards cannot be freely accessed by people interested in, or affected by, the law. The committee will continue to monitor the ongoing work of the COAG Industry and Skills Council Standards Accessibility Working Group to improve the accessibility of standards incorporated by law.

### Air Services Regulations 2019 [F2019L00371]

- *Immunity for liability*: the committee welcomes the minister's undertaking to amend the instrument to limit immunity for civil liability to Airservices Australia and its employees, and to amend the explanatory statement to include this information.

### Health Insurance (Diagnostic Imaging Services Table) Regulations 2019 [F2019L00563]

- *Merits review*: the committee welcomes the minister's undertaking to amend the instrument to provide for independent merits review.

### Migration Amendment (New Skilled Regional Visas) Regulations 2019 [F2019L00578]

- *Merits review*: the committee is seeking further advice as to the grounds on which decisions relating to the refund of certain charges and fees have been excluded from independent merits review.

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

- *Personal rights and liberties/significant matters in delegated legislation*: the committee is seeking further advice as to whether consideration was given to using primary legislation, rather than delegated legislation, to set out the core principles that govern the use of restrictive practices in residential aged care settings.

## Other bills commented on ([Scrutiny Digest 5 of 2019](#))

- **Australian Security Intelligence Organisation Amendment (Sunsetting of Special Powers Relating to Terrorism Offences) Bill 2019**: the committee received advice regarding the extension of the sunsetting date for ASIO's special powers relating to terrorism.
- **Combatting Child Sexual Exploitation Legislation Amendment Bill 2019**: the committee leaves to the Senate the appropriateness of offences that reverse both the evidential and legal burden of proof.
- **Counter-Terrorism (Temporary Exclusion Orders) Bill 2019**: the committee received advice regarding the inclusion of broad discretionary ministerial powers, the exclusion of judicial review and the removal of the obligation to observe procedural fairness.
- **Criminal Code Amendment (Agricultural Protection) Bill 2019**: the committee leaves to the Senate the appropriateness of offences which reverse the evidential burden of proof.

- **Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019:** the committee leaves to the Senate the appropriateness of including offences of strict liability.
- **Inspector-General of Live Animal Exports Bill 2019:** the committee is seeking advice on why significant matters have been left to delegated legislation, the reversal of the evidential burden of proof for both criminal offences and civil penalties and why there is no requirement for reports to be tabled in Parliament.
- **Migration Amendment (Repairing Medical Transfers) Bill 2019:** the committee leaves to the Senate the appropriateness of extinguishing any right, privilege, obligation or interest accrued under the medical transfer provisions
- **National Integrity Commission Bill 2018 (No. 2):** the committee leaves a number of matters to the Senate, including the appropriateness of a number of broad coercive powers and criminal offence provisions.
- **National Sports Tribunal Bill 2019:** the committee received advice on an offence which reverses the evidential burden of proof.
- **Treasury Laws Amendment (2019 Tax Integrity and Other Measures No. 1) Bill 2019:** the committee leaves to the Senate the appropriateness of applying amendments retrospectively.
- **Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019:** the committee leaves to the Senate the appropriateness of including offences of strict liability.
- **Treasury Laws Amendment (Consumer Data Right) Bill 2019:** the committee received advice regarding the inclusion of no invalidity clauses, delegated legislation not subject to disallowance, the reversal of the evidential burden of proof, incorporated standards and broad powers to exempt persons from the scheme.

### **Other legislative instruments of interest to the committee** (*[Delegated Legislation Monitor 5 of 2019](#)*)

- The Regulations and Ordinances committee considered 182 legislative instruments registered on the Federal Register of Legislation between 21 June and 8 August 2019. The committee is continuing to engage with ministers and agencies in relation to 13 instruments, and has concluded its consideration of 56 instruments.
- All legislative instruments subject to a notice of motion for disallowance in either House of Parliament are listed in the [Disallowance Alert](#).

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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).

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