



17 October 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 Senate Regulations and Ordinances Committee has recently published a [guide](#) to working with the committee for government departments, agencies, and departmental liaison officers.

## Key scrutiny issues: Bills ([Scrutiny Digest 7 of 2019](#))

### Australian Citizenship Amendment (Citizenship Cessation) Bill 2019

- Broad discretionary powers and trespass on personal rights and liberties: the committee is seeking advice as to the necessity and appropriateness of expanding the minister's discretionary powers to determine that a person ceases to be an Australian citizen.
- Merits review: the committee is seeking advice as to why decisions under the bill are not subject to independent merits review.
- Significant matters in delegated legislation: the committee is seeking advice on leaving the declaration of terrorist organisations to delegated legislation.
- Procedural fairness: the committee is seeking advice on the exclusion of procedural fairness requirements when making a determination to cease a person's citizenship.
- Judicial review: the committee is seeking advice on whether there will be adequate judicial oversight of factual determinations upon which cessation of citizenship decisions are made.
- Retrospective application: the committee is seeking advice as to 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.

### Counter-Terrorism Legislation Amendment (2019 Measures No. 1) Bill 2019

- Right to liberty—presumption against bail and parole: the committee leaves to the Senate the appropriateness of broadly expanding the presumptions against bail and parole.

- Trespass on rights and liberties – continuing detention orders: the committee leaves to the Senate the appropriateness of expanding the scheme for the continuing detention of high risk terrorist offenders after their sentences for imprisonment have been served.
- Procedural fairness: the committee leaves to the Senate the appropriateness of limiting an offender's right to receive a complete copy of an application for a continuing detention order.

### **Key scrutiny issues: Legislative instruments** ([Delegated Legislation Monitor 7 of 2019](#))

#### **Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]**

- On 14 October 2019, the Senate Regulations and Ordinances Committee held a private briefing with senior officers of the Department of Home Affairs to discuss the committee's significant scrutiny concerns relating to the Immigration (Guardianship of Children) Regulations 2018.

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

- Significant matters in delegated legislation: The instrument regulates the use of chemical and physical restraints in aged care. Following correspondence with the relevant minister, the committee retains significant concerns about the inclusion of these matters in delegated legislation, rather than primary legislation. The committee has resolved to draw these concerns to the attention of the Senate.

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

- Continuing exemption: the committee is seeking advice as to whether the government proposes to amend the Civil Aviation Safety Regulations 1998 in accordance with an undertaking made to the committee by a former minister; and, if not, why it is considered appropriate to continue the exemptions set out in the instrument.

#### **Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019 [F2019L01159]**

- Incorporation: the committee is seeking advice as to whether the explanatory statement to the instrument could be amended to indicate how an incorporated document may be obtained and, if not, how the explanatory statement satisfies the requirements in paragraph 15J(2)(c) the *Legislation Act 2003*.

### **Other bills commented on** ([Scrutiny Digest 7 of 2019](#))

- **Agricultural and Veterinary Chemicals Legislation Amendment (Australian Pesticides and Veterinary Medicines Authority Board and Other Improvements) Bill 2019**: the committee is seeking advice on the use of computerised decision-making and whether the process will comply with administrative law requirements.
- **Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2019**: the committee leaves to the Senate the appropriateness of requiring the Electoral Commissioner be notified of any gift made to a political party in circumstances where a failure to notify may expose a person to a significant financial penalty.

- **Currency (Restrictions on the Use of Cash) Bill 2019:** the committee is seeking advice on the appropriateness of specifying exceptions to offences in delegated legislation (rather than in the primary legislation), and the inclusion of significant custodial penalties.
- **Education Legislation Amendment (Tuition Protection and Other Measures) Bill 2019:** the committee is seeking advice on the appropriateness of specifying exemptions from the tuition protection scheme in delegated legislation (rather than in primary legislation), allowing the minister to determine which providers the scheme will apply to in non-disallowable instruments, and allowing for the delegation of powers below the Senior Executive Service.
- **Emergency Response Fund Bill 2019:** the committee leaves to the Senate the appropriateness of conferring broad discretionary powers on the minister, leaving significant elements of the scheme to non-disallowable legislative instruments and allowing for broad delegation of administrative powers.
- **Family Assistance Legislation Amendment (Building on the Child Care Package) Bill 2019:** the committee is seeking advice on the appropriateness of leaving significant elements of the scheme to delegated legislation and why merits review will no longer be available for certain decisions.

**Higher Education Support (HELP Tuition Protection Levy) Bill 2019 and VET Student Loans (VSL Tuition Protection Levy) Bill 2019:** the committee leaves to the Senate the appropriateness of allowing core elements of the levies to be determined by delegated legislation.

- **Inspector-General of Live Animal Exports Bill 2019:** the committee received 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.
- **Medical and Midwife Indemnity Legislation Amendment Bill 2019:** the committee is seeking advice on the use of computerised decision-making, the inclusion of offences that reverse the evidential burden of proof and allowing the regulations to modify the operation of the primary legislation.
- **National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019:** the committee reiterates its comments made in *Scrutiny Digest 3 of 2018*.
- **National Housing Finance and Investment Corporation Amendment Bill 2019:** the committee considers that its scrutiny concerns about the bill may have been addressed had the bill been amended to provide that directions made under the bill are subject to the usual parliamentary disallowance process.
- **Protection of the Sea (Prevention of Pollution from Ships) Amendment (Air Pollution) Bill 2019:** the committee is seeking advice on the inclusion of offences that reverse both the evidential and legal burden of proof.
- **Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019:** the committee considers that it may be appropriate for the bill to be

amended to provide that determinations made under the bill are subject to parliamentary disallowance. The committee leaves to the Senate the appropriateness of providing the minister with broad discretionary powers to determine the percentage of 'restricted' income.

### Other legislative instruments commented on (*Delegated Legislation Monitor 7 of 2019*)

- The Regulations and Ordinances committee considered 75 disallowable legislative instruments registered on the Federal Register of Legislation between 29 August 2019 and 17 September 2019. The committee is continuing to engage with ministers and agencies in relation to 9 instruments, and has concluded its consideration of 17 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 16 October 2019, the Senate Regulations and Ordinances Committee resolved to **withdraw** notices of motions to disallow the following instruments:

- Agriculture and Veterinary Chemicals Legislation Amendment (Timeshift Applications and Other Measures) Regulations 2019 [F2019L00357];
- Customs (Prohibited Imports) Amendment (Collecting Tobacco Duties) Regulations 2019 [F2019L00352]
- Health Insurance (Diagnostic Imaging Services Table) Regulations 2019 [F2019L00563]
- Migration Amendment (New Skilled Regional Visas) Regulations 2019 [F2019L00578]

The Senate Regulations and Ordinances Committee did not resolve to **place** notices of motion to disallow any instruments at its private meeting.

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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).

For any comments or questions, please contact:

Mr Glenn Ryall, Secretary

Senate Scrutiny of Bills Committee

02 6277 3050 | [scrutiny.sen@aph.gov.au](mailto:scrutiny.sen@aph.gov.au)

Regulations and Ordinances Committee

02 6277 3066 | [regords.sen@aph.gov.au](mailto:regords.sen@aph.gov.au)