



6 February 2020

Introduction

This newsletter highlights key aspects of the work of the Senate Scrutiny of Bills Committee and the Senate Scrutiny of Delegated Legislation 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 1 of 2020](#))

Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019

- Broad scope of offence provisions: the committee is seeking advice on why it is necessary and appropriate to amend the definition of 'dishonesty' in the Criminal Code, including the range of offences that will be affected and how the changes may impact on defendant's personal rights and liberties.

National Vocational Education and Training Regulator Amendment Bill 2019

- Various matters: the committee is seeking advice regarding why it is necessary and appropriate to leave the content and publication requirements of audit reports to delegated legislation, a provision which reverses the evidential burden of proof, and why certain ministerial determinations will continue to be exempt from disallowance.

Transport Security Amendment (Testing and Training) Bill 2019

- Significant matters in delegated legislation: the committee is seeking advice regarding why it is necessary and appropriate to leave the requirements for aviation security tests to delegated legislation (including the appropriateness of amending the bill to specify that 'test pieces', such as imitation firearms, used by aviation security inspectors must be inert).
- Adequacy of parliamentary oversight: the committee is seeking advice regarding the appropriateness of amending the bill to require that the number of exemptions issued by the Secretary which exempt screening officers from the usual training requirements be reported in the department's annual report.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 1 of 2020](#))

Financial Sector (Collection of Data) (reporting standard) determination No. 30 of 2019 [F2019L01196]

- *Merits review*: the committee is seeking further advice from the assistant minister about the justification for excluding independent merits review of discretionary decisions made under prudential and reporting standards made by the Australia Prudential Regulation Authority.

Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]

- *Merits review*: the committee is seeking further advice from the assistant minister about the justification for excluding independent merits review of discretionary decisions made under the instrument, and why the provision of such review would require amendments to the enabling Act.

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

- *Incorporation*: the committee welcomes the eSafety Commissioner's undertaking to amend the explanatory statement to the instrument to describe the manner in which a document incorporated by the instrument may be accessed, following a private briefing with the committee on 27 November 2019.

Other bills commented on ([Scrutiny Digest 1 of 2020](#))

- **Agriculture Legislation Amendment (Streamlining Administration) Bill 2019**: the committee is seeking advice on the use of computerised decision-making and whether the process will comply with administrative law requirements.
- **Australian Banks (Government Audit) Bill 2019**: the committee leaves to the Senate the appropriateness of allowing authorised officials to exercise potentially coercive powers where there is no requirement that the officials have appropriate training or experience.
- **Australian Crime Commission Amendment (Special Operations and Special Investigations) Bill 2019**: the committee received advice regarding broad discretionary powers, no invalidity-clauses and retrospective validation. The committee continues to have scrutiny concerns regarding the provisions of the bill.
- **Commonwealth Registers Bill 2019 and Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019**: the committee is seeking advice regarding the inclusion of significant matters in delegated legislation, a broad delegation of administrative powers, the use of computerised decision-making, and the reversal of the evidential burden of proof.
- **Export Control Bill 2019**: the committee notes its comments from [Scrutiny Digest 3 of 2018](#) and reiterates its earlier scrutiny view that it would be appropriate for the bill to be amended to remove provisions which declare that certain determinations are not legislative instruments.
- **Fair Work (Registered Organisations) Amendment (Ensuring Integrity No. 2) Bill 2019**: the committee welcomes the removal of strict liability from various offence provisions.

- **Federal Circuit and Family Court of Australia Bill 2019 and Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2019:** the committee draws its comments from [*Scrutiny Digest 12 of 2018*](#) to the attention of senators.
- **Financial Sector Reform(Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Bill 2019:** the committee leaves to the Senate the appropriateness of leaving the meaning of conflicted remuneration and the circumstances in which it is banned to delegated legislation.
- **Interactive Gambling Amendment (National Self-exclusion Register) Bill 2019:** the committee received advice regarding the reversal of the evidential burden of proof, the use of computerised decision-making and leaving the operation of a complaints process to delegated legislation. The committee considers that consideration should be given to amending the Act to require that the evaluation report be tabled in Parliament.
- **Migration Amendment (Regulation of Migration Agents) Bill 2019:** the committee leaves to the Senate the appropriateness of including a strict liability offence and the broad delegation of administrative powers.
- **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*](#).
- **Student Identifiers Amendment (Enhanced Student Permissions) Bill 2019:** the committee received advice on why significant matters have been left to delegated legislation and why certain decisions will not be subject to independent merits review.
- **Student Identifiers Amendment (Higher Education) Bill 2019:** the committee is seeking advice on leaving information disclosure and exemption requirements to delegated legislation and the exclusion of merits review.
- **Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019:** the committee is seeking advice regarding allowing the minister to exempt online search providers from injunctions by delegated legislation and the reversal of the evidential burden of proof.
- **Trade Support Loans Amendment (Improving Administration) Bill 2019:** the committee has received advice regarding why the circumstances in which the amounts of later trade support loan instalments may be reduced has been left to delegated legislation.
- **Treasury Laws Amendment (2019 Measures No. 3) Bill 2019:** the committee leaves to the Senate the appropriateness of applying amendments in the bill retrospectively.
- **Treasury Laws Amendment (Research and Development Tax Incentive) Bill 2019:** the committee draws its comments from [*Scrutiny Digest 13 of 2018*](#) to the attention of senators.

Other legislative instruments commented on ([*Delegated Legislation Monitor 1 of 2020*](#))

- The Senate Scrutiny of Delegated Legislation Committee considered 50 disallowable legislative instruments registered on the Federal Register of Legislation between 21 November 2019 and 3 December 2019. The committee is continuing to engage with ministers and agencies in relation to 7 instruments, and has concluded its consideration of 10 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 5 February 2020, the Senate Scrutiny of Delegated Legislation Committee resolved to **withdraw** the notice of motion to disallow the following instrument:

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

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 Scrutiny of Delegated Legislation 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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