



13 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](#).

Highlights

[Delegated Legislation Monitor 2 of 2020](#) contains the first instruments scrutinised by the Scrutiny of Delegated Legislation Committee under amended [Senate standing order 23](#). In light of the [amendments](#) to the standing orders, the committee has:

- published [guidelines](#) on its website to assist ministers and agencies to meet the committee's expectations under the revised standing orders; and
- restructured the *Delegated Legislation Monitor* and committee website to clearly identify [matters of interest to the Senate](#) and [instruments specifying Commonwealth expenditure](#).

Key scrutiny issues: Bills ([Scrutiny Digest 2 of 2020](#))

Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020

- *Merits review*: the committee is seeking advice on whether decisions made under the bill will be subject to merits review and, if not, the rationale for not providing for such review.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 2 of 2020](#))

Matters of interest to the Senate

- The committee draws the **Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]** to the attention of the Senate and the Senate Rural and Regional Affairs and Transport Legislation Committee, noting that it contains significant elements of a regulatory scheme. This instrument is listed on the committee [website](#) and in Chapter 2 of [Delegated Legislation Monitor 2 of 2020](#).

Scrutiny of Commonwealth expenditure

- The committee draws the attention of the Senate and relevant Senate legislation committees to 10 instruments which, in combination with their enabling Acts, authorise the Commonwealth to spend a total of over \$300 million on various grants and programs. These instruments are listed on the committee [website](#) and in Chapter 3 of [Delegated Legislation Monitor 2 of 2020](#).

Technical scrutiny matters

- **Competition and Consumer Amendment (Australian-made Complementary Medicines) Regulations 2019 [F2019L01627]**: the committee is seeking the minister's advice as to why it is necessary and appropriate to use delegated legislation to lower the threshold for manufacturers of complementary medicines to make 'made in Australia' claims.
- **Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]**: the committee is seeking the minister's advice as to why the instrument does not require reports of reviews of the instrument to be tabled in Parliament or published online, and why it is necessary and appropriate to impose significant civil penalties for failing to comply with a phrase which is not defined in the written law.
- **Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019 [F2019L01564]**: the committee is seeking the minister's advice as to why it is necessary and appropriate to provide for automated decision-making for discretionary decisions to be made under the instrument.
- **Financial Framework (Supplementary Powers) Amendment (Health Measures No. 3) Regulations 2019 [F2019L01642]**: the committee is seeking the minister's advice in relation to the amount of funding that is expected to be expended on a grant to the administrator of the DP Jones Nursing Home, noting that the explanatory statement does not disclose this information.
- **National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019) [F2019L01542]**: the committee is seeking the minister's advice as to the justification and source of legal authority for enabling the secretary to authorise third parties to exercise all of the secretary's powers and functions under the instrument.

Other bills commented on ([Scrutiny Digest 2 of 2020](#))

- **Commonwealth Electoral Amendment (Donation Reform and Other Measures) Bill 2020**: the committee leaves to the Senate the appropriateness of leaving key aspects of the proposed AEC Disclosure Portal to delegated legislation and the conferring of monitoring and investigation powers on any 'other persons'.

Other legislative instruments commented on ([Delegated Legislation Monitor 2 of 2020](#))

- The Scrutiny of Delegated Legislation Committee considered 141 disallowable legislative instruments registered on the Federal Register of Legislation between 4 December 2019

and 16 January 2020. The committee is continuing to engage with ministers and agencies in relation to 26 instruments, and has concluded its consideration of 3 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 12 February 2020, the Senate Scrutiny of Delegated Legislation Committee resolved to **place** a notice of motion to disallow the following instrument:

- Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Rules 2019 [[F2019L01494](#)]

In addition, the committee resolved to **withdraw** notices of motions to disallow the following instruments:

- Broadcasting Services (Transmitter Access) Regulations 2019 [[F2019L01248](#)]; and
- CASA EX101/19 — Helicopter Aerial Application Endorsements Exemption 2019 [[F2019L01132](#)].

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:

Glenn Ryall, Secretary

Senate Scrutiny of Bills Committee

02 6277 3050 | scrutiny.sen@aph.gov.au

Scrutiny of Delegated Legislation Committee

02 6277 3066 | sdlc.sen@aph.gov.au