



27 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 3 of 2020](#))

National Radioactive Waste Management Amendment (Site Specification, Community Fund and Other Measures Bill 2020

- Significant matters in delegated legislation—acquisition of land by the Commonwealth: the committee is seeking advice regarding the acquisition of land via notifiable instrument (which is not subject to parliamentary disallowance), and whether the bill can be amended to specify relevant delegated legislation will not commence until Parliament has had the opportunity to scrutinise it.
- Procedural fairness: the committee is seeking advice regarding the limitation of the operation of the natural justice hearing rule.
- Significant matters in delegated legislation—exclusion of State, Territory and Commonwealth laws: the committee is seeking advice on the use of regulations to exclude the operation of prescribed State, Territory or Commonwealth laws.
- Significant matters in delegated legislation—establishment of community fund: the committee is seeking advice on leaving the establishment and operation of the community fund entity to either delegated legislation or the provisions of a written agreement of which the Parliament may have no oversight.

Transport Security Amendment (Testing and Training) Bill 2019

- Significant matters in delegated legislation: the committee welcomes the minister's advice that the government will propose amendments to the bill to specify that 'test pieces' used by aviation security inspectors must be inert.
- Adequacy of parliamentary oversight: the committee welcomes the minister's advice that the government will propose amendments to the bill to provide that information on

the exercise of an exemption power is to be published in the department's annual report or through another appropriate mechanism.

Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 3 of 2020*)

Scrutiny of Commonwealth expenditure

- The committee draws the attention of the Senate and relevant legislation committees to 3 instruments registered between 17 January and 5 February 2020, which, in combination with their enabling Acts, authorise the Commonwealth to spend a total of over \$48 million on various grants and programs. These instruments are listed on the committee's [website](#) and in Chapter 3 of *Delegated Legislation Monitor 3 of 2020*.

Technical scrutiny matters

- **ASIC Corporations (Hawking-Life Risk Insurance and Consumer Credit Insurance) Instrument 2019/839 [F2019L01570]:** the committee is seeking advice as to why it is necessary to use delegated legislation to modify section 992A of the *Corporations Act 2001*, relating to unsolicited telephone sales of financial products, noting that the modified provision is a criminal offence punishable by six months' imprisonment.
- **National Health (Supplies of out-patient medication) Determination 2019 (No. 2) (PB 110 of 2019) [F2019L01703]:** the committee is seeking advice as to whether the instrument could be amended to address the apparent lack of legal authority for the time to time incorporation of the National Health Reform Agreement.
- **Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]:** the committee is seeking a private briefing with senior departmental officials as to the justification for excluding independent merits review of discretionary decisions.

Other bills commented on (*Scrutiny Digest 3 of 2020*)

- **Commonwealth Registers Bill 2019 and Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019:** the committee is seeking additional advice regarding the reversal of the evidential burden of proof and the appropriateness of amending the bill to limit the use of computerised decision-making.
- **Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019:** the committee received advice regarding amendments to the definition of dishonesty in the Criminal Code.
- **Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2020:** the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof and leaving significant matters to delegated legislation.
- **National Vocational Education and Training Regulator Amendment Bill 2019:** the committee received advice regarding leaving the requirements for audit reports to delegated legislation, the reversal of the evidential burden of proof and exempting ministerial directions from disallowance.

- **National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Bill 2020:** the committee is seeking advice regarding the expansion of a no-invalidity clause and leaving the safeguards for the disclosure of information to delegated legislation.
- **Student Identifiers Amendment (Higher Education) Bill 2019:** the committee leaves to the Senate the appropriateness of leaving privacy safeguards to delegated legislation.
- **Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019:** the committee received advice regarding broad powers to exempt online search providers from injunctions and the reversal of the evidential burden of proof.
- **Treasury Laws Amendment (2020 Measures No. 1) Bill 2020:** the committee leaves to the Senate the appropriateness of applying amendments in the bill retrospectively.
- **Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020:** the committee received advice regarding the availability of merits review.

Other legislative instruments commented on (*Delegated Legislation Monitor 2 of 2020*)

- The Scrutiny of Delegated Legislation Committee considered 43 disallowable legislative instruments registered on the Federal Register of Legislation between 17 January 2020 and 5 February 2020. The committee is continuing to engage with ministers and agencies in relation to 19 instruments, and has concluded its consideration of 15 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 26 February 2020, the Senate Scrutiny of Delegated Legislation Committee resolved to **withdraw** notices of motions to disallow the following instruments:

- Financial Sector (Collection of Data) (reporting standard) determination No. 30 of 2019 [F2019L01196]
- Jervis Bay Territory Rural Fires Amendment (Miscellaneous Measures) Rules 2019 [F2019L01494]

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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