



3 April 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

Over the coming months it is likely that there will be prolonged periods without parliamentary sittings following the COVID-19 outbreak. The committees will continue to meet during this period to ensure that there is appropriate parliamentary oversight of legislation.

In addition, the Scrutiny of Delegated Legislation Committee has:

- created a [webpage](#) listing all COVID-19 related instruments to promote greater transparency and public oversight;
- released a [media statement](#) detailing the committee's approach to such instruments; and
- written to all ministers and departmental secretaries to advise them of its expectations regarding delegated legislation implementing significant COVID-19 response measures.

Key scrutiny issues: Bills ([Scrutiny Digest 4 of 2020](#))

National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Bill 2020

- ***No-invalidity clause***: the committee leaves to the Senate the appropriateness of expanding an existing no-invalidity clause so that failure of the National VET Regulator to have regard to advice provided by the Advisory Council will not affect the validity of the performance of the Regulator's functions.
- ***Significant matters in delegated legislation***: the committee leaves to the Senate the appropriateness of leaving additional safeguards relating to the disclosure of information to be set out in delegated legislation, particularly in circumstances where there is no requirement that the minister must make the relevant delegated legislation.

Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 4 of 2020*)

Matters of interest to the Senate

- **Census and Statistics Amendment (Statistical Information) Regulations 2020 [F2020L00109]:** the committee draws this instrument to the attention of the Senate and the Senate Economics Legislation Committee, as it appears to contain significant policy matters relating to the collection of statistical information in the 2021 Census.
- **Future Drought Fund (Drought Resilience Funding Plan 2020 to 2024) Determination 2020 [F2020L00117]:** the committee draws this instrument to the attention of the Senate and the Senate Rural and Regional Affairs and Transport Legislation Committee, as it appears to contain significant policy matters relating to the funding principles and strategic priorities for the \$3.9 billion Future Drought Fund.
- **Health Insurance (Extended Medicare Safety Net) Amendment Determination 2020 [F2020L00166]:** the committee draws this instrument to the attention of the Senate as it was subject to affirmative resolution by both Houses of Parliament, rather than the usual disallowance procedure. This was the first instrument subject to affirmative resolution that the committee had the power to scrutinise, following [amendments](#) to Senate standing order 23 which took effect on 4 December 2019.
- **National Health Security (National Notifiable Disease List) Amendment Instrument 2020 [F2020L00111]:** the committee draws the instrument to the attention of the Senate as it appears to contain significant matters concerning the requirements for State and Territory governments to notify the Commonwealth government of cases of COVID-19.

Scrutiny of Commonwealth expenditure

- The committee draws the attention of the Senate and relevant legislation committees to 5 instruments registered between 6 and 26 February 2020, which, in combination with their enabling Acts, authorise the Commonwealth to spend a total of over \$33 million on various grants and programs. These instruments are listed on the committee's [website](#) and in Chapter 3 of *Delegated Legislation Monitor 4 of 2020*.

Technical scrutiny matters

- **Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]:** the committee is seeking further advice as to the appropriateness of imposing significant civil penalties for failing to comply with a phrase which is not defined in the written law when other industry codes do not include such provisions.
- **National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019) [F2019L01542]:** the committee is seeking further advice as to what evidence there is that Parliament intended that section 100 of the *National Health Act 1953* should provide legal authority for the secretary to authorise private third parties to perform all of the secretary's powers and functions in administering special arrangements.
- **Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]:** following extensive engagement with the committee, the assistant minister has

undertaken to progress the development of an amendment to primary legislation that would enable merits review of the relevant decisions within the review framework established by the *Taxation Administration Act 1953*.

Other bills commented on ([Scrutiny Digest 4 of 2020](#))

- **Agriculture Legislation Amendment (Streamlining Administration) Bill 2019:** the committee received information regarding the use of computerised decision-making.
- **Australian Education Amendment (Direct Measure of Income) Bill 2020:** the committee draws the use of delegated legislation to calculate the Commonwealth share of funding for transitioning non-government schools to the attention of the Senate Standing Committee for the Scrutiny of Delegated Legislation.
- **Commonwealth Registers Bill 2019 and Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019:** the committee leaves to the Senate the appropriateness of allowing the use of computer-assisted decision making in circumstances where there is limited guidance on the face of the bill as to the types of decisions that can be made by computers and the use of offence-specific defences which reverse the evidential burden of proof.
- **Family Assistance Legislation Amendment (Improving Assistance for Vulnerable and Disadvantaged Families) Bill 2020:** the committee is seeking advice regarding the proposed retrospective commencement of certain provisions in the bill.
- **Foreign Acquisitions and Takeovers Amendment (Strategic Assets) Bill 2020:** the committee leaves to the Senate the appropriateness of allowing delegated legislation to provide for the establishment and operation of a Foreign Ownership Assessment Board.
- **Health Insurance Amendment (General Practitioners and Quality Assurance) Bill 2020:** the committee is seeking advice as to appropriateness of retrospectively validating declarations made by the minister.
- **Liability for Climate Change Damage (Make the Polluters Pay) Bill 2020:** the committee leaves to the Senate the appropriateness of providing for the bill to commence retrospectively from 1 July 2019.
- **Representation Amendment (6 Regions Per State, 2 Senators Per Region) Bill 2020:** the committee leaves to the Senate the appropriateness of allowing the minister to determine Senate electoral divisions by legislative instrument.
- **Therapeutic Goods Amendment (2020 Measures No. 1) Bill 2020:** the committee leaves to the Senate the appropriateness of allowing the incorporation of external materials as in force from time to time.

Other legislative instruments commented on ([Delegated Legislation Monitor 4 of 2020](#))

- The Scrutiny of Delegated Legislation Committee considered 45 disallowable legislative instruments, and one instrument subject to affirmative resolution by the Senate, registered on the Federal Register of Legislation between 6 and 26 February 2020. The

committee is continuing to engage with ministers and agencies in relation to 10 instruments, and has concluded its consideration of 13 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 1 April 2020, the Senate Scrutiny of Delegated Legislation Committee resolved to **withdraw** a notice of motion to disallow the following instrument:

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

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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