



20 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](#).

**Please note that this edition of *Scrutiny News* relates only to the work of the Senate Scrutiny of Bills Committee, as the Senate Scrutiny of Delegated Legislation Committee did not meet in the week beginning 13 April.**

## Key scrutiny issues: Bills ([Scrutiny Digest 5 of 2020](#))

### Assistance for Severely Affected Regions (Special Appropriation) (Coronavirus Economic Response Package) Bill 2020

- Broad discretionary powers: the committee is seeking advice as to how senators and others will be able to scrutinise the payments that are made, or have been made, under the bill and the terms and conditions attached to those payments.
- Significant matters in delegated legislation: the committee draws the inclusion of a broad power to make delegated legislation setting out the circumstances in which public money may be spent to the attention of the Senate Standing Committee for the Scrutiny of Delegated Legislation and the Senate Select Committee on COVID-19.

### Australian Business Growth Fund (Coronavirus Economic Response Package) Bill 2020

- Parliamentary scrutiny: the committee is seeking advice regarding how the fund will operate, its governance arrangements and the matters to be included in delegated legislation made under the bill.

### Coronavirus Economic Response Package Omnibus Bill 2020

- Henry VIII clauses—modification of primary legislation by delegated legislation: the committee is seeking advice regarding the circumstances in which it is envisaged that powers to amend the Corporations Act and the social security law by delegated legislation are likely to be used.

- Delegation of legislative power: the committee is seeking advice regarding why it is necessary and appropriate to provide the minister with broad discretionary powers to alter or extend the operation of supplement payments in the *Social Security Act 1991*.
- Deferral of sunseting: the committee is seeking advice regarding what criteria ministers will consider before determining whether it is appropriate to defer the sunseting of Acts and legislative instruments.

### **Guarantee of Lending to Small and Medium Enterprises (Coronavirus Economic Response Package) Bill 2020**

- Significant matters in delegated legislation: the committee considers that the matters that are to be provided for in the delegated legislation to be made under the bill are central to the operation of the guarantee scheme and should therefore have been included in primary legislation.

### **Structured Finance Support (Coronavirus Economic Response Package) Bill 2020**

- Parliamentary scrutiny: the committee is seeking advice regarding how the \$15 billion fund will operate, why certain determinations made under the bill are not subject to disallowance, and the types of matters that will be included in the delegated legislation made under the bill.

### **Supply Bill (No. 2) 2020-2021**

- Parliamentary scrutiny: the committee leaves to the Senate as a whole the appropriateness of allowing the Finance Minister to determine the purposes for which up to \$40 billion in additional funds may be allocated in legislative instruments not subject to disallowance, particularly in circumstances where the purposes for which the additional funds may be allocated are not limited on the face of the bills to COVID-19 response measures.

### **Telecommunications Legislation Amendment (International Production Orders) Bill 2020**

- Trespass on personal rights and liberties: the committee is seeking a range of advice regarding whether there are appropriate safeguards in place to limit potential trespass on a person's rights and liberties.
- Delegation of administrative powers—applications for international production orders: the committee is seeking advice regarding why it is necessary and appropriate to allow a broad range of persons (including any member of the Australian Federal Police or any officer of a police force of a State) to make an application for an international production order.
- No-invalidity clause: the committee is seeking advice regarding the rationale for including a no-invalidity clause.
- Delegation of administrative powers—functions of the Ombudsman: the committee is seeking advice regarding why it is necessary to allow most of the Ombudsman's powers and functions to be delegated to APS employees at any level.

- *Immunity from liability*: the committee is seeking advice regarding why it is necessary to provide the Ombudsman, an inspecting officer, or a person acting under an inspecting officer's direction or authority with immunity from liability.
- *Evidentiary certificates*: the committee is seeking advice regarding whether the bill can be amended to provide that certain evidentiary certificates will be prima facie evidence rather than conclusive evidence of the matters stated in the certificate.
- *Trespass on personal rights and liberties*: the committee is seeking advice regarding why it is considered necessary and appropriate to allow information held in Australia to be accessed by foreign governments in circumstances where existing legislative protections for the accessing of information have been removed and no safeguards are provided on the face of the bill.

### Other bills commented on ([Scrutiny Digest 5 of 2020](#))

- **Appropriation (Coronavirus Economic Response Package) Bill (No. 1) 2019-2020**: the committee draws the apparent inappropriate classification of certain new coronavirus economic response measures as ordinary annual services of the government to the attention of senators.
- **Appropriation (Coronavirus Economic Response Package) Bill (No. 2) 2019-2020**: the committee draws information regarding the recent use of Advance to the Finance Minister provisions to allocate an additional \$1.2 billion in funding to the Department of Health to the attention of senators.

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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 Scrutiny of Delegated Legislation Committee (Chair: Senator the Hon Concetta Fierravanti-Wells and Deputy Chair: Senator the Hon Kim Carr).

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