



11 June 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](#).

Scrutiny of COVID-19 related legislation

- The Scrutiny of Delegated Legislation Committee has continued to list all delegated legislation made in response to COVID-19 on its [website](#). As of 10 June 2020, 169 legislative instruments have been made, of which 21.3% are exempt from disallowance and scrutiny by the committee.
- In its most recent [Scrutiny Digest](#), the Scrutiny of Bills Committee reported on three COVID-19 related bills.

Key scrutiny issues: Bills ([Scrutiny Digest 7 of 2020](#))

Australian Security Intelligence Organisation Amendment Bill 2020

- Trespass on personal rights and liberties: the committee is seeking advice regarding whether there are appropriate safeguards in place to limit potential trespass on a person's rights and liberties.
- Significant matters in delegated legislation: the committee is seeking advice on the inclusion of significant policy matters in delegated legislation and non-disallowable guidance materials.
- Reversal of the evidential burden of proof: the committee is seeking advice regarding offence-specific defences which reverse the evidential burden of proof.
- Strict liability: the committee is seeking advice regarding the application of strict liability to elements of offences.
- Trespass on personal rights and liberties—use of tracking devices: the committee is seeking advice regarding whether there are appropriate safeguards for the issuing of internal authorisations for the use of tracking devices.

Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020

- Trespass on personal rights and liberties: the committee is seeking advice on the appropriateness of broadly extending the powers for the search and seizure of items in immigration detention facilities.
- Significant matters in delegated legislation: the committee is seeking advice on why it is necessary and appropriate to allow the minister to determine, by legislative instrument, what things are to be prohibited in immigration detention facilities.
- Broad discretionary powers: the committee is seeking advice on why it is necessary and appropriate to provide the minister with broad discretionary powers to require an authorised officer to exercise seizure powers via non-disallowable legislative instrument.
- Delegation of administrative powers: the committee is seeking advice regarding the exercise of coercive powers by 'authorised officers' and their assistants.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 7 of 2020](#))

Matters of interest to the Senate

The Scrutiny of Delegated Legislation Committee draws the following instruments to the attention of the Senate, as they appear to contain significant policy matters relating to the Commonwealth Government's response to the COVID-19 pandemic:

- Aged Care Legislation Amendment (Subsidies—COVID-19 Support) Instrument 2020 [F2020L00615];
- ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486 [F2020L00618];
- ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487 [F2020L00623];
- Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572];
- Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020 [F2020L00461];
- Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 2) 2020 [F2020L00546];
- Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No. 3) 2020 [F2020L00605];
- Corporations (Coronavirus Economic Response) Determination (No. 2) 2020 [F2020L00611];
- Social Security (Coronavirus Economic Response—2020 Measures No. 4) Determination 2020 [F2020L00474];

- **Social Security (Coronavirus Economic Response—2020 Measures No. 5) Determination 2020 [F2020L00509];**
- **Social Security (Coronavirus Economic Response—2020 Measures No. 6) Determination 2020 [F2020L00475];** and
- **Social Security (Coronavirus Economic Response—2020 Measures No. 7) Determination 2020 [F2020L00545].**

A summary of the purpose of each instrument is published on the committee's [website](#) and in Chapter 2 of *Delegated Legislation Monitor 7 of 2020*.

Scrutiny of Commonwealth expenditure

- The committee draws the attention of the Senate and relevant legislation committees to 5 instruments registered between 23 April and 27 May 2020, which, in combination with their enabling Acts, authorise the Commonwealth to spend approximately \$24 million on various grants and programs. These instruments are listed on the committee's [website](#) and in Chapter 3 of *Delegated Legislation Monitor 7 of 2020*.

Technical scrutiny matters

- **ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486 [F2020L00618] and ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487 [F2020L00623]:** the committee is seeking advice as to why it was considered necessary and appropriate to use delegated legislation, rather than primary legislation, to defer the commencement of the new design and distribution obligations regime and mortgage broker obligations regime.
- **Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]:** the committee is seeking advice as to why it was considered necessary and appropriate to use delegated legislation, rather than primary legislation, to extend the operation of the Cashless Debit Card trials and the Cape York Welfare Reform Income Management measure to 31 December 2020.

Other bills commented on ([Scrutiny Digest 7 of 2020](#))

- **Australian Sports Commission Amendment (Ensuring a Level Playing Field) Bill 2020:** the committee leaves to the Senate the appropriateness of exempting determinations from disallowance.
- **Coronavirus Economic Response Package Omnibus Bill 2020:** the committee considers that if the Parliament is sitting changes to primary legislation, including the extension of sunset dates, should be made by introducing a bill for consideration by the Parliament, rather than relying on the use of a Henry VIII clause.
- **Coronavirus Economic Response Package Omnibus (Measures No. 2) Bill 2020:** the committee retains scrutiny concerns about a broad ministerial power to exempt employers from provisions of the bill.

- **Coronavirus Economic Response Package (Payments and Benefits) Bill 2020:** the committee received information about the incorporation of documents as in force from time to time.
- **Payment Times Reporting Bill 2020:** the committee is seeking advice on allowing ‘other persons’ to assist with the exercise of investigatory powers, the reversal of the evidential burden of proof and the incorporation of documents as in force from time to time.
- **Primary Industries (Customs) Charges Amendment (Dairy Cattle Export Charge) Bill 2020:** the committee is seeking advice as to whether a maximum rate of charge that may be imposed on the export of dairy cattle can be included on the face of the bill.
- **Treasury Laws Amendment (2020 Measures No. 2) Bill 2020:** the committee leaves to the Senate the appropriateness of removing the requirement to amend primary legislation to facilitate Australia making additional capital contributions to the International Bank for Reconstruction and Development and the International Finance Corporation of the World Bank Group.
- **Veteran’s Affairs Legislation Amendment (Supporting the Wellbeing of Veterans and Their Families) Bill 2020:** the committee is seeking advice regarding leaving significant matters to delegated legislation and the incorporation of documents as in force from time to time.

Other legislative instruments commented on ([Delegated Legislation Monitor 7 of 2020](#))

- The Senate Scrutiny of Delegated Legislation Committee considered 134 disallowable legislative instruments registered on the Federal Register of Legislation between 23 April and 27 May 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 the Parliament are listed in the [Disallowance Alert](#).

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

Senate Scrutiny of Delegated Legislation Committee

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