



18 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 16 June 2020, 183 legislative instruments have been made, of which 19.1% are exempt from disallowance and scrutiny by the committee.
- In its most recent [Scrutiny Digest](#), the Scrutiny of Bills Committee reported on two COVID-19 related bills—the Coronavirus Economic Support and Recovery (No-one Left Behind) Bill 2020 and the Privacy Amendment (Public Health Contact Information) Bill 2020.

## Key scrutiny issues: Bills ([Scrutiny Digest 8 of 2020](#))

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

- Trespass on personal rights and liberties—general: the committee has suggested various amendments to the bill in relation to safeguards designed to limit potential trespass on a person's rights and liberties.
- Delegation of administrative powers—applications for international production orders: the committee considers that the bill should be amended to require that agency heads are satisfied that persons applying for IPOs possess appropriate skills, training and expertise.
- Trespass on personal rights and liberties—access to information by foreign governments: the committee considers the bill has the potential to significantly trespass on personal rights and liberties where access to information may be given to foreign jurisdictions whose governance structures are not underpinned by respect for the rule of law and the

separation of powers, and has suggested amendments to provide for further safeguards in this regard.

- *Parliamentary scrutiny*: the committee considers that the bill should be amended to provide that regulations specifying the name of designated international agreements do not come into effect until they have been approved by each House of the Parliament.

### **Key scrutiny issues: Legislative instruments** (*Delegated Legislation Monitor 8 of 2020*)

#### **Technical scrutiny matters**

- **ASIC Corporations (Amendment) Instrument 2020/290** [[F2020L00376](#)]; **ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355** [[F2020L00425](#)]; and **ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289** [[F2020L00377](#)]:
  - *Parliamentary oversight*: the committee thanks the assistant minister and ASIC for amending these instruments so that they cease to operate six months after they commence in response to the committee's scrutiny concerns that the instruments would have allowed temporary COVID-19 relief measures to remain in force for an unspecified period.
- **National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019)** [[F2019L01542](#)]:
  - *Compliance with authorising legislation*: the committee is seeking further advice about the source of legal authority for the power to authorise any person with suitable qualifications and experience to perform all of the secretary's functions and exercise all of the secretary's powers under the instrument, noting that such an authorisation would require express authority in primary legislation, consistent with other sections of the National Health Act and Commonwealth legislation.
  - *Availability of independent review and accountability safeguards*: the committee would welcome the minister's advice as to the availability of independent merits review of decisions to authorise third parties to perform the secretary's powers and exercise the secretary's functions, and whether the actions of authorised third parties are subject to appropriate accountability safeguards.

### **Other bills commented on** (*Scrutiny Digest 8 of 2020*)

- **Coronavirus Economic Support and Recovery (No-one Left Behind) Bill 2020**: the committee leaves to the Senate as a whole the appropriateness of leaving significant matters to delegated legislation.
- **Green New Deal (Quit Coal and Renew Australia) Bill 2020**: the committee leaves to the Senate as a whole the appropriateness of including a strict liability offence in the bill.

- **Interactive Gambling Amendment (Banning Social Casinos and Other Measures) Bill 2020:** the committee leaves to the Senate as a whole the appropriateness of leaving significant matters to delegated legislation.
- **National Disability Insurance Scheme Amendment (Strengthening Banning Orders) Bill 2020:** the committee is seeking advice regarding the inclusion of broad discretionary powers in the bill and leaving significant matters to delegated legislation.
- **Privacy Amendment (Public Health Contact Information) Bill 2020:** the committee is seeking advice regarding the inclusion of significant penalties, safeguards designed to protect the privacy of users of the COVIDSafe app, and the tabling of and publication of reports.
- **Treasury Laws Amendment (2020 Measures No. 3) Bill 2020:** the committee leaves to the Senate as a whole the appropriateness of limiting parliamentary scrutiny of Australia's future commitments to the International Monetary Fund.

### Other legislative instruments commented on ([Delegated Legislation Monitor 8 of 2020](#))

- The Senate Scrutiny of Delegated Legislation Committee considered 5 disallowable legislative instruments registered on the Federal Register of Legislation on 28 May 2020. The committee is continuing to engage with ministers and agencies in relation to 20 instruments, and has concluded its consideration of 4 instruments.
- All legislative instruments subject to a notice of motion for disallowance in either House of the Parliament are listed in the [Disallowance Alert](#).

### Notices of motion to disallow

At its private meeting on 17 June 2020, the Senate Scrutiny of Delegated Legislation Committee resolved to **place** a notice of motion to disallow the following instrument:

- Defence Amendment (2020 Measures No. 1) Regulations 2020 [[F2020L00120](#)]

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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).

For any comments or questions, please contact:

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