



6 August 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 3 August 2020.**

## Key scrutiny issues: Bills ([Scrutiny Digest 9 of 2020](#))

### Australian Security Intelligence Organisation Amendment Bill 2020

- *Trespass on personal rights and liberties*: the committee leaves to the Senate whether there are appropriate safeguards in place to limit potential trespass on a person's rights and liberties.
- *Significant matters in non-disallowable delegated legislation*: the committee considers that proposed subsection 34AF(5) of the bill should be amended to provide that the statement of procedures for questioning is subject to parliamentary disallowance.
- *Significant matters in delegated legislation*: the committee considers that provisions prohibiting or regulating lawyers' access to information for proceedings relating to a questioning warrant, or at least high-level guidance in this regard, should be set out on the face of the primary legislation.
- *Reversal of the evidential burden of proof*: the committee considers that it may be appropriate for the bill to be amended to incorporate the matters outlined in proposed subsections 34GD(4) and (9) as elements of the relevant offence.
- *Broad discretionary power*: the committee considers that proposed section 34JE should be amended to provide that the Attorney-General's guidelines relating to the provision of financial assistance are legislative instruments subject to parliamentary disallowance.
- *Trespass on personal rights and liberties—use of tracking devices*: the committee leaves to the Senate the appropriateness of allowing tracking devices to be approved for use by

ASIO through an internal authorisation process. The committee considers that amendments should be made to the bill to facilitate parliamentary oversight and to improve safeguards in relation to oral authorisations.

### **Other bills commented on** ([Scrutiny Digest 9 of 2020](#))

- **Biosecurity Amendment (Traveller Declarations and Other Measures) Bill 2020:** the committee is seeking advice on whether the bill can be amended so that certain legislative instruments are subject to the usual parliamentary disallowance process.
- **Commonwealth Electoral Amendment (Banning Dirty Donations) Bill 2020:** the committee leaves to the Senate the appropriateness of excluding decisions from merits review.
- **National Disability Insurance Scheme Amendment (Strengthening Banning Orders) Bill 2020:** the committee is seeking advice as to whether the bill can be amended to provide further guidance in relation to the use of the Commissioner's banning powers, and leaves to the Senate the appropriateness of allowing details about what information can be included on a publicly available register to be set out in delegated legislation.
- **Payment Times Reporting Bill 2020:** the committee leaves to the Senate the appropriateness of allowing external material to be incorporated into the law, and allowing 'other persons' to assist with the exercise of investigatory powers. The committee is also seeking advice as to whether the definition of 'small business' can be included on the face of the bill.
- **Primary Industries (Customs) Charges Amendment (Dairy Cattle Export Charge) Bill 2020:** the committee leaves to the Senate the appropriateness of allowing the rate of the dairy cattle export charge to be set out in delegated legislation, without specifying a fixed maximum charge on the face of the primary legislation.
- **Privacy Amendment (Public Health Contact Information) Bill 2020:** the committee commented on the inclusion of significant penalties in the bill, the clarity of certain definitions and an offence in the bill, and the tabling and publication of reports.
- **Veterans' Affairs Legislation Amendment (Supporting the Wellbeing of Veterans and Their Families) Bill 2020:** the committee leaves to the Senate the appropriateness of leaving significant matters to delegated legislation and allowing documents to be incorporated into the law as in force from time to time.

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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).

For any comments or questions, please contact:

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