



31 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](#).

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 26 August 2020, 269 legislative instruments have been made, of which 17% are exempt from disallowance and scrutiny by the committee.

Highlights

Following [changes](#) to Senate standing order 23 in December 2019, the Scrutiny of Delegated Legislation Committee held its first ever [public hearing](#) on 27 August 2020, to inform its [inquiry](#) into the exemption of delegated legislation from parliamentary oversight. Two additional hearings will be held on 31 August and 3 September 2020. They may be viewed via livestream [here](#).

Key scrutiny issues: Bills ([Scrutiny Digest 10 of 2020](#))

Biosecurity Amendment (Traveller Declarations and Other Measures) Bill 2020

- [Delegated legislation not subject to disallowance](#): the committee draws the Senate's attention to a provision of the bill which provides that certain determinations relating to infringement notice amounts are exempt from disallowance.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 9 of 2020](#))

Competition and Consumer (Industry Codes—Dairy) Regulations 2019 [F2019L01610]

- [Clarity of drafting; significant penalties in delegated legislation](#): the committee draws the Senate's attention to its significant scrutiny concerns about the unclear drafting of the requirement to act in good faith in the Dairy Code, noting that failure to comply with this

requirement attracts significant civil penalties, and requests that the Attorney-General refer the issue of the codification of good faith obligations in Commonwealth legislation to the Australian Law Reform Commission.

Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 **[\[F2020L00435\]](#)**

- *Parliamentary oversight*: the committee draws the Senate's attention to its significant scrutiny concerns about the lack of a specified end date for the substantial measures in this instrument and its intention to move a disallowance motion if the matter cannot be resolved.

National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019) **[\[F2019L01542\]](#)**

- *Compliance with authorising legislation; availability of accountability safeguards*: the committee has concluded its examination of the instrument and given notice of its intention to withdraw the notice of motion to disallow the instrument in light of amendments made by the minister in response to the committee's scrutiny concerns about the powers, functions and oversight of third party administrators.

Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 **[\[F2020L00572\]](#)**

- *Modification of primary legislation; parliamentary oversight*: the committee draws the Senate's attention to the use of delegated legislation to extend the sunset dates for the cashless debit card trials in circumstances where previous extensions have appropriately been made through primary legislation, and its intention to move a disallowance motion if primary legislation to extend the sunset dates is not urgently scheduled for debate.

Other bills commented on ([Scrutiny Digest 10 of 2020](#))

- **National Disability Insurance Scheme Amendment (Strengthening Banning Orders) Bill 2020**: the committee welcomes the minister's advice that an addendum to the explanatory memorandum for the bill will be tabled.
- **Payment Times Reporting Bill 2020**: the committee welcomes the minister's advice that amendments to the bill will be made to address the committee's scrutiny concerns about leaving the definition of 'small business' to delegated legislation and that additional information will be included in the explanatory memorandum.

Other legislative instruments commented on ([Delegated Legislation Monitor 9 of 2020](#))

- The Senate Scrutiny of Delegated Legislation Committee considered 108 disallowable legislative instruments registered on the Federal Register of Legislation between 29 May 2020 and 18 June 2020. The committee is continuing to engage with ministers and agencies in relation to 8 instruments, and has concluded its consideration of 26 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 Wednesday 26 August 2020, the Senate Scrutiny of Delegated Legislation Committee resolved to **place** notices of motions to disallow the following instruments:

- ASIC Corporations (Foreign Financial Services Providers—Foreign AFS Licensees) Instrument 2020/198 [F2020L00237]
- ASIC Corporations (Foreign Financial Services Providers—Funds Management Financial Services) Instrument 2020/199 [F2020L00238]
- Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]
- Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 [F2020L00435]

At its private meeting on Wednesday 26 August 2020, the Senate Scrutiny of Delegated Legislation Committee resolved to **withdraw** notices of motions to disallow the following instruments:

- Defence Amendment (2020 Measures No. 1) Regulations 2020 [F2020L00120]
- Higher Education Provider Amendment (Tuition Protection and Other Measures) Guidelines 2019 [F2019L01699]
- National Health (Take Home Naloxone Pilot) Special Arrangement 2019 (PB 97 of 2019) [F2019L01542]

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

Scrutiny of Delegated Legislation Committee

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