



19 October 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 12 October 2020.

Key scrutiny issues: Bills ([Scrutiny Digest 14 of 2020](#))

Australia's Foreign Relations (State and Territory Arrangements) Bill 2020

- **Broad discretionary power**: the committee is seeking advice on the appropriateness of providing the minister with broad discretionary powers under the bill.
- **Broad delegation of legislative powers**: the committee is seeking advice regarding why it is proposed to confer on the minister the broad power to exempt arrangements from the application of the law.
- **Significant matters in delegated legislation**: the committee is seeking advice regarding the appropriateness of allowing delegated legislation to determine the scope of key definitions in the bill.
- **Procedural fairness**: the committee is seeking advice regarding the removal of the requirement to observe any requirements of procedural fairness under the bill.
- **Retrospective application**: the committee is seeking advice on the appropriateness of applying the measures in the bill to agreements that have already entered into force.

Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020

- **Trespass on personal rights and liberties—general comment**: the committee leaves to the Senate the appropriateness of the proposed extended supervision order scheme.
- **Trespass on personal rights and liberties—standard of proof**: the committee is seeking advice regarding whether the bill can be amended to require the court be satisfied to a 'high degree

of probability' (rather than on the 'balance of probabilities') that an offender poses an unacceptable risk.

- ***Procedural fairness***: the committee leaves to the Senate the appropriateness of amendments which may negatively impact an offender's ability to effectively contest an application for an extended supervision order that is made against them.
- ***Expansion of monitoring and surveillance powers***: the committee leaves to the Senate the appropriateness of amendments extending significant monitoring and surveillance powers under a number of Acts to persons subject to an extended supervision order.

Other bills commented on ([Scrutiny Digest 14 of 2020](#))

- **Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020**: the committee leaves to the Senate the appropriateness of excluding decisions made under the bill from judicial review under the Administrative Decisions (Judicial Review) Act.
- **National Commissioner for Defence and Veteran Suicide Prevention Bill 2020**: the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof and allowing the abrogation of both legal professional privilege and the privilege against self-incrimination.
- **Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020**: the committee leaves to the Senate the appropriateness of leaving significant matters to delegated legislation, providing that ministerial policy statements will not be subject to disallowance, and allowing authorised officers to be assisted by persons with no requirement that they have appropriate training. The committee is also seeking further advice regarding whether the bill can be amended to limit the types of decisions that can be made by computers.
- **Recycling and Waste Reduction Bill 2020**: the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof, the inclusion of a strict liability offence, allowing authorised officers to be assisted by persons with no requirement that they have appropriate training, setting out training requirements in notifiable instruments that are not subject to disallowance, allowing the minister to determine decisions suitable for computerised decision-making in delegated legislation and the incorporation of documents where those documents may not be freely available.

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:

Glenn Ryall, Secretary

Senate Scrutiny of Bills Committee

02 6277 3050 | scrutiny.sen@aph.gov.au