



24 November 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 16 November 2020.**

## Key scrutiny issues: Bills ([Scrutiny Digest 16 of 2020](#))

### Foreign Investment Reform (Protecting Australia's National Security) Bill 2020

- Significant matters in delegated legislation: the committee is seeking advice as to why it is considered necessary and appropriate for the bill to provide for a range of significant matters to be left to delegated legislation, including the definitions of national security business and land, and matters relating to exemption certificates and disclosures of information.
- Broad discretionary power: the committee is seeking advice as to why it is considered necessary and appropriate for the bill to provide a broad discretionary power to the Treasurer and delegates to issue directions and interim directions.
- Adequacy of parliamentary oversight; privacy: the committee is seeking advice as to why it is considered necessary and appropriate to allow protected information to be provided to foreign governments, and whether relevant international agreements can be tabled in the Parliament.
- Merits review: the committee is seeking advice as to why it is considered necessary and appropriate for the bill to provide for measures which may restrict an applicant's right to a fair hearing before the Administrative Appeals Tribunal.
- Retrospective application: the committee is seeking advice on whether matters in the bill which apply retrospectively will have a detrimental impact on individual rights and liberties.

- *Broad delegation of powers*: the committee is seeking advice as to why it is considered necessary and appropriate for the bill to provide that the registrar may delegate certain powers and functions to a broad class of persons.
- *Significant penalties*: the committee is seeking advice as to why it is considered necessary and appropriate for the bill to provide for significant penalties including imprisonment for up to 10 years and civil penalties of up to 2.5 million penalty units.

### **Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020**

- *Significant matters in delegated legislation*: the committee leaves to the Senate the appropriateness of leaving the standards making up the Higher Education Standards Framework, and matters relating to how the quality of research undertaken by higher education providers will be assessed, to delegated legislation.

### **Other bills commented on ([Scrutiny Digest 16 of 2020](#))**

- **Australian Federal Integrity Commission Bill 2020**: the committee leaves to the Senate the appropriateness of allowing persons other than police officers to execute search warrants, and the abrogation of legal professional privilege.
- **Commonwealth Parliamentary Standards Bill 2020**: the committee draws senators' attention to comments made in *Scrutiny Digest 1 of 2019* on a similar bill.
- **Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020**: the committee is seeking the Treasurer's advice as to whether guidance in relation to the method of calculation of taxes can be set out on the face of the bill.
- **Treasury Laws Amendment (2020 Measures No. 4) Bill 2020**: the committee is seeking the Assistant Treasurer's advice on a provision which would allow delegated legislation to modify the operation of primary legislation.
- **Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020**: the committee is seeking the Attorney-General's advice as to whether the bill can be amended to provide that court-only evidence may only be used in exceptional circumstances.
- **Crimes Legislation Amendment (Economic Disruption) Bill 2020**: the committee leaves to the Senate the appropriateness of significant penalties, the reversal of the legal burden of proof, and the limitation of parliamentary scrutiny of section 96 grants to the states.
- **Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020**: the committee leaves to the Senate the appropriateness of permitting the ACMA to use computer programs for any decision, powers or obligations it has under the *Radiocommunications Act 1992*.

For any comments or questions, please contact:  
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