



4 December 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](#).

Highlights

On 2 December 2020, the Scrutiny of Delegated Legislation Committee tabled the interim report of its inquiry into the exemption of delegated legislation from parliamentary oversight. The interim report makes 18 recommendations to increase parliamentary oversight of delegated legislation made in times of emergency. A copy of the [interim report](#), the [Chair's tabling statement](#) and an accompanying [media release](#) are available via the [inquiry homepage](#).

Key scrutiny issues: Bills ([Scrutiny Digest 17 of 2020](#))

Aged Care Amendment (Aged Care Recipient Classification) Bill 2020:

- [Significant matters in delegated legislation](#): the committee leaves to the Senate the appropriateness of leaving significant matters, such as the assessment and classification of aged care recipients, to delegated legislation.
- [Broad delegation of administrative power](#): the committee leaves to the Senate the appropriateness of the broad delegation of the secretary's powers and functions to assess aged care recipients.
- [Computerised decision-making](#): the committee leaves to the Senate the appropriateness of permitting the use of computer programs for making decisions on the classification of aged care recipients.
- [Privacy](#): the committee would welcome amendments to the bill to address the committee's scrutiny concerns regarding the use and disclosure of personal information.

Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020:

- *Significant matters in delegated legislation*: the committee leaves to the Senate the appropriateness of providing that decision-making principles for exiting the cashless debit card program may be set out in delegated legislation.
- *Significant matters in non-disallowable instruments*: the committee leaves to the Senate the appropriateness of providing that the definition of 'Cape York area', the exclusion of areas from the cashless debit card program, and variations to the restricted portion of social security benefits may be set out in notifiable instruments which are not subject to parliamentary disallowance.
- *Privacy*: the committee leaves to the Senate the appropriateness of allowing the sharing of information about cashless debit card program participants and extending the secretary's power to require information and documents.

Social Services and Other Legislation Amendment (Extension of Coronavirus Support) Bill 2020:

- *Significant matters in delegated legislation*: the committee is seeking advice as to why it is considered necessary and appropriate to allow delegated legislation to modify primary legislation, particularly in circumstances where regular parliamentary sittings have recommenced.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 13 of 2020](#))

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

- *Modification of primary legislation; parliamentary oversight*: the committee has concluded its examination of the instrument and resolved to withdraw the notice of motion to disallow the instrument, in light of the fact that the imminent debate on the Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 will provide an opportunity for the Parliament to consider the proposed continuation of the cashless debit card program.

Other bills commented on ([Scrutiny Digest 17 of 2020](#))

- **Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 2) Bill 2020**: the committee leaves to the Senate the appropriateness of allowing delegated legislation to modify any Act or instrument.
- **Appropriation Bill (No. 1) 2020-2021**: the committee welcomes the minister's advice that additional transparency measures will continue in relation to Advance to the Finance Minister determinations made under the bill, but leaves to the Senate the appropriateness of the limits on parliamentary scrutiny of such determinations.
- **Climate Change (National Framework for Adaptation and Mitigation) Bill 2020**: the committee leaves to the Senate the appropriateness of the bill providing for an emissions reduction plan to be made other than by disallowable legislative instrument.

- **Corporations Amendment (Corporate Insolvency Reforms) Bill 2020:** the committee is seeking advice as to the appropriateness of reversing the evidential burden of proof, strict liability offences, and of leaving significant matters to delegated legislation.
- **Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020:** the committee reiterated its view that the core elements of the new JobMaker Hiring Credit Scheme should be set out in primary legislation.
- **Export Control Amendment (Miscellaneous Measures) Bill 2020:** the committee is seeking advice on access to merits review and the incorporation of external documents.
- **Export Market Development Grants Legislation Amendment Bill 2020:** the committee leaves to the Senate the appropriateness of the broad delegation of administrative power to officers at any level.
- **Financial Sector Reform (Hayne Royal Commission Response) Bill 2020:** the committee is seeking advice in relation to leaving significant matters to delegated legislation (including non-disallowable delegated legislation) and privacy.
- **National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020:** the committee leaves to the Senate the appropriateness of allowing protected names and symbols relevant to the commission of a strict liability offence to be set out in delegated legislation.
- **Territories Legislation Amendment Bill 2020:** the committee is seeking further advice as to whether the bill can be amended to provide for consultation with the Australian Information Commissioner, and leaves to the Senate the appropriateness of allowing regulations to set out which laws will be in force on Norfolk Island.

Other legislative instruments commented on ([Delegated Legislation Monitor 13 of 2020](#))

- The Scrutiny of Delegated Legislation committee considered 47 disallowable legislative instruments registered on the Federal Register of Legislation between 18 September 2020 and 25 September 2020. The committee is continuing to engage with ministers and agencies in relation to 30 instruments, and has concluded its consideration of 10 instruments.
- All legislative instruments subject to a notice of motion for disallowance in either House of Parliament are listed in the [Disallowance Alert](#).

Notices of motion to disallow

The Senate Scrutiny of Delegated Legislation Committee resolved to **place** notices of motions to disallow the following instruments on 7 December 2020:

- ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]
- ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]
- ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]

- Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020 [F2020L01061]

On 3 December 2020, the Senate Scrutiny of Delegated Legislation Committee **withdrew** notices of motions to disallow the following instruments:

- Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]
- Contingency Aids Payment Scheme 2020 [F2020L00758]

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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