



25 August 2021

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](#).

Key scrutiny issues: Bills ([Scrutiny Digest 13 of 2021](#))

Charter of the United Nations Amendment Bill 2021

- **Retrospective validation**: the committee is seeking advice in relation to provisions which retrospectively validate counter-terrorism financial sanctions listings made under the *Charter of the United Nations Act 1945* and any actions made, or purportedly made, in relation to those listings. This includes seeking advice about when and how the department became aware that it would be necessary to register the listings on the Federal Register of Legislation to ensure their enforceability.

Electoral Legislation Amendment (Electoral Offences and Preventing Multiple Voting) Bill 2021

- **Broad discretionary power**: the committee is seeking advice as to whether the bill can be amended to include at least high level guidance in relation to a broad discretionary power conferred on the Electoral Commissioner to declare electors as 'designated electors' when the Commissioner reasonably suspects that the elector has voted multiple times. A 'designated elector' may only vote by postal vote, pre-poll declaration vote, absent vote, or provisional vote and not by ordinary vote or ordinary pre-poll vote.

Electoral Legislation Amendment (Party Registration Integrity) Bill 2021

- **Administrative power not defined with sufficient precision**: the committee is seeking advice as to whether the bill can be amended to more appropriately define the scope of the power for the Electoral Commission to refuse an application for registration of a political party if the party name is 'frivolous or vexatious'.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 13 of 2021](#))

Aged Care Legislation Amendment (Royal Commission Response No. 1) Principles 2021 [F2021L00923]

- significant impact on personal rights and liberties/matters more appropriate for parliamentary enactment: the committee is seeking advice as to the appropriateness of regulating the use of restrictive practices in residential aged care through delegated legislation.
- conferral of discretionary powers/clarity of drafting: the committee is seeking advice as to what constitutes an 'emergency' for the purposes of disapplying certain requirements on the use of restrictive practices. In addition, the committee is seeking advice as to the meaning of a requirement that use of a restrictive practice is 'not inconsistent with' in with the Charter of Aged Care Rights.

Bankruptcy Regulations 2021 [F2021L00261]

- modifications to primary legislation/parliamentary oversight: the committee welcomed the assistant minister's undertaking to amend the instrument to provide that Schedules 2–4 will repeal within five years from the commencement of the instrument.

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 19 August 2021, 546 legislative instruments have been made, of which 16.66% are exempt from disallowance and scrutiny by the committee.

Other bills commented on ([Scrutiny Digest 13 of 2021](#))

- **Appropriation Bill (No. 1) 2021-2022 and Appropriation Bill (No. 2) 2021-2022**: the committee thanks the Finance Minister for his proposal to include details of the transparency measures applying to Advance to the Finance Minister provisions in explanatory memoranda to future appropriation bills. The committee is seeking further advice in relation to measures marked as 'not for publication' in portfolio budget statements and parliamentary scrutiny of debit limits.
- **COVID-19 Disaster Payment (Funding Arrangements) Bill 2021**: the committee welcomed advice that the government intends to introduce primary legislation to support the COVID-19 Disaster Payment, but expressed its continuing concerns in relation to the inclusion of significant matters in delegated legislation.
- **Defence Legislation Amendment (Discipline Reform) Bill 2021**: the committee is seeking advice in relation to the inclusion of significant matters in delegated legislation, provisions which reverse the evidential burden of proof and offences that are broadly construed.
- **Offshore Petroleum and Greenhouse Gas Storage Amendment (Titles Administration and Other Measures) Bill 2021**: the committee expressed its concerns in relation to

provisions which allow for fees to be prescribed in delegated legislation, without any guidance on the face of the bill as to how these fees will be calculated.

- **Ransomware Payments Bill 2021:** the committee leaves to the Senate the appropriateness of provisions which reverse the evidential burden of proof.
- **Treasury Laws Amendments (2021 Measures No. 6) Bill 2021:** the committee is seeking advice in relation to provisions which leave significant matters to delegated legislation and provisions which retrospectively validate industry codes prescribed under the *Competition and Consumer Act 2010*.

Other legislative instruments commented on ([Delegated Legislation Monitor 13 of 2021](#))

- The Delegated Legislation committee considered 60 disallowable legislative instruments registered on the Federal Register of Legislation between 26 and 30 June 2021. The committee is continuing to engage with ministers and agencies in relation to 22 instruments, and has concluded its consideration of 11 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 **gave** notices of motion to disallow the following instruments on 24 August 2021:

- 21 listings instruments made under Part 4 of the *Charter of the United Nations Act 1945*
- Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567]
- Industry Research and Development (Boosting Australia's Diesel Storage Program) Instrument 2021 [F2021L00610]
- Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651].

The Senate Scrutiny of Delegated Legislation Committee also **gave** a notice of motion to disallow the following instrument on 25 August 2021:

- Aviation Transport Security Amendment (Screening Information) Regulations 2021 [F2021L00736].

The Senate Scrutiny of Delegated Legislation Committee gave notice of its intention to **withdraw** the notice of motion to disallow the following instrument on 25 August 2021:

- Bankruptcy Regulations 2021 [F2021L00261].

For any comments or questions, please contact:
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