



26 November 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 set out in 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 17 of 2021](#))

Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021

- Significant matters in delegated legislation: the committee is seeking advice on whether the bill can be amended to include an inclusive list of persons who can provide informed consent in relation to the use of restrictive practices (rather than leaving this matter entirely to delegated legislation).
- Significant matters in delegated legislation: the committee leaves to the Senate the appropriateness of leaving the making of a Code of Conduct for approved providers and aged care workers to delegated legislation.

Biosecurity Amendment (Enhanced Risk Management) Bill 2021

- Coercive powers: the committee considers that it would be appropriate to include high-level guidance in relation to mandatory examinations and the collection of body samples on the face of the bill, and to amend the bill to require that information about human biosecurity group directions be included in the department's annual report.
- Broad discretionary power/grants to the states under section 96 of the Constitution: the committee leaves to the Senate the appropriateness of conferring a broad power to make grants for dealing with risks posed by diseases or pests in circumstances where there is limited guidance as to how the power is to be exercised on the face of the bill.

Electoral Legislation Amendment (Assurance of Senate Counting) Bill 2021

- Tabling of documents: the committee is seeking advice on whether the bill can be amended to require that reports and statements relating to the assessment of counting software used at Senate elections are tabled in the Parliament.

Electoral Legislation Amendment (Contingency Measures) Bill 2021

- Henry VIII clause: the committee leaves to the Senate the appropriateness of the proposed power to modify electoral law by delegated legislation.
- Significant matters in delegated legislation: the committee is seeking advice on the appropriateness of providing the minister with a broad discretionary power to add legislation to the definition of Commonwealth emergency law by delegated legislation.

Electoral Legislation Amendment (Voter Integrity) Bill 2021

- Trespass on personal rights and liberties: the committee leaves to the Senate the appropriateness of requiring persons to provide identification when voting in Commonwealth elections.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 16 of 2021](#))

Biosecurity (Human Coronavirus with Pandemic Potential) Amendment (No. 1) Determination 2021 [F2021L01068]

- Exemption from disallowance: the committee considers that instruments extending a human biosecurity emergency period or setting out emergency requirements (such as the overseas travel ban) should be subject to disallowance.

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

- Clarity of drafting; conferral of discretionary powers: the committee is seeking advice as to whether the instrument could be amended to clarify the meaning of the term 'emergency' and whether the implications of amending the *Aged Care Act 1997* and the instrument to require consistency with the Charter of Aged Care Rights can be considered as a matter of urgency.

Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080]

- Parliamentary oversight: the committee is seeking advice as to whether the Corporations Regulations 2001 can be amended to provide that the exceptions set out in the instrument cease to operate three years after they commence.

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 18 November 2021, 599 legislative instruments have been made, of which 16.7% are exempt from disallowance.

Other bills commented on ([Scrutiny Digest 17 of 2021](#))

- **Coal Prohibition (Quit Coal) Bill 2021**: the committee reiterates its scrutiny concerns raised in relation to a previous version of the bill.
- **Corporations Amendment (Improving Outcomes for Litigation Funding Participants) Bill 2021**: the committee leaves to the Senate the appropriateness of allowing

regulations to modify the operation of the fair and reasonable test set out in the primary legislation.

- **Corporations Amendment (Meetings and Documents) Bill 2021:** the committee leaves to the Senate the appropriateness of allowing regulations to modify the operation of the primary legislation.
- **Financial Accountability Regime Bill 2021:** the committee is seeking advice on the inclusion of broad discretionary powers, the tabling of documents in Parliament, no-invalidity clauses, the reversal of the evidential burden of proof, immunity from liability and the incorporation of materials as in force from time to time.
- **Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021:** the committee is seeking advice regarding the inclusion of provisions which reverse the evidential burden of proof.
- **Health Legislation Amendment (Medicare Compliance and Other Measures) Bill 2021:** the committee is seeking advice regarding the inclusion of provisions which reverse the evidential burden of proof.
- **National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021:** the committee is seeking advice on the appropriateness of leaving key details in relation to the implementation of the Participant Service Guarantee to delegated legislation.
- **National Health Amendment (Enhancing the Pharmaceutical Benefits Scheme) Bill 2021:** the committee is seeking advice on the appropriateness of providing the minister with a broad discretionary power to apply statutory price reductions and amend minimum stockholding obligations.
- **Offshore Electricity Infrastructure Bill 2021:** the committee is seeking advice in relation to the reversal of the legal burden of proof and the exclusion of merits review. The committee leaves to the Senate the appropriateness of the reversal of the evidential burden of proof, strict liability offences, exemptions from disallowance, and the tabling of documents in Parliament.
- **Offshore Electricity Infrastructure (Regulatory Levies) Bill 2021:** the committee leaves to the Senate the appropriateness of the inclusion of significant elements of the proposed offshore electricity infrastructure levy in delegated legislation.
- **Offshore Electricity Infrastructure (Consequential Amendments) Bill 2021:** the committee leaves to the Senate the appropriateness of inserting additional elements into existing strict liability offences which are subject to penalties that are inconsistent with the *Guide to Framing Commonwealth Offences*.
- **Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021:** the committee is seeking advice on whether the bill can be amended to clarify that an instrument will not take effect in circumstances where there is an unresolved motion to disallow the instrument.

- **Telstra Corporation and Other Legislation Amendment Bill 2021:** the committee is seeking advice on the appropriateness of leaving certain matters to delegated legislation.
- **Veterans' Affairs Legislation Amendment (Exempting Disability Payments from Income Testing and Other Measures) Bill 2021:** the committee is seeking advice on the appropriateness of leaving certain matters to delegated legislation.

Other legislative instruments commented on (*Delegated Legislation Monitor 16 of 2021*)

- The Scrutiny of Delegated Legislation Committee considered 110 disallowable legislative instruments and 21 instruments exempt from disallowance registered on the Federal Register of Legislation between 11 September 2021 and 1 October 2021. The committee is continuing to engage with ministers and agencies in relation to 18 instruments and has concluded its consideration of 34 instruments.

Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee **gave** a notice of motion to disallow the following instrument on 22 November 2021:

- Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080]

The Scrutiny of Delegated Legislation Committee **withdrew** notices of motions to disallow the following instruments on 23 and 25 November 2021:

- Civil Dispute Resolution Regulations 2021 [F2021L01031]
- Education Services for Overseas Students (Exempt Courses) Instrument 2021 [F2021L00877]
- Industry Research and Development (Beetaloo Cooperative Drilling Program) Instrument 2021 [F2021L00567]
- Industry Research and Development (Boosting Australia's Diesel Storage Program) Instrument 2021 [F2021L00610]
- Industry Research and Development (Growing Australia's Cyber Skills Program) Instrument 2021 [F2021L00536]
- Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]
- Industry Research and Development (Regional Decentralisation Agenda—Securing Raw Materials Program) Instrument 2021 [F2021L00973]
- Migration Amendment (Subclass 417 and 462 Visas) Regulations 2021 [F2021L01030]
- Telecommunications (Statutory Infrastructure Providers—Circumstances for Exceptions to Connection and Supply Obligations) Determination 2021 [F2021L00651]

All legislative instruments subject to a notice of motion for disallowance in either House of the Parliament are listed in the [Disallowance Alert](#).

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).

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