



2 December 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](#).

Please note that this edition of Scrutiny News relates only to the work of the Senate Scrutiny of Bills Committee.

Key scrutiny issues: Bills ([Scrutiny Digest 18 of 2021](#))

Appropriation Bill (No. 1) 2021-2022

Appropriation Bill (No. 2) 2021-2022

- *Parliamentary scrutiny*: the committee welcomes the Finance Minister's undertaking to update future guidance documents on the portfolio budget papers to reflect the committee's scrutiny concerns in relation to Budget measures for which at least some of the total funding amount is marked as 'not for publication'.

Religious Discrimination Bill 2021

Religious Discrimination (Consequential Amendments) Bill 2021

- *Significant matters in delegated legislation*: the committee is seeking advice on provisions which leave to delegated legislation:
 - the details of publicly available policies which are relevant to determining whether a religious body's conduct is taken to be discrimination;
 - the prescription of state or territory laws which a religious educational institution is taken not to contravene where the relevant conduct gives preference to a particular religious belief or activity; and
 - the prescription of Commonwealth, state or territory laws for which a general exception to the prohibition on discrimination does not apply. Where a law is not prescribed, an act done in direct compliance with that law will be taken not to be discrimination.

- *Broad discretionary power*: the committee is seeking advice on provisions which provide the Commission with a broad discretionary power to grant, vary and revoke exemptions to the religious discrimination framework and which grant to the minister a broad discretionary power to vary and revoke such exemptions.
- *Broad delegation of administrative power*: the committee leaves to the Senate the appropriateness of provisions which allow the Australian Human Rights Commission to delegate all or any of its functions or powers to the Religious Discrimination Commissioner, a member of the staff of the Commission, or any other person or body of persons.
- *Immunity from civil actions*: the committee is seeking advice on provisions which provide that the Australian Human Rights Commission, the Religious Discrimination Commissioner, or another member of the Commission is not liable to an action or other proceeding for damages in relation to the performance or exercise, in good faith, of their functions or powers.
- *Reversal of the evidential burden of proof*: the committee is seeking advice on a provision which reverses the evidential burden of proof in relation to an offence for disclosing information.

Other bills commented on ([Scrutiny Digest 18 of 2021](#))

- **Australian Federal Integrity Commission Bill 2021 and Australian Federal Integrity Commission Bill 2021 (No. 2)**: the committee leaves to the Senate the appropriateness of provisions which provide coercive powers, impact on the right to a fair hearing, impact on the privilege against self-incrimination, impact on legal professional privilege, provide for the use of evidentiary certificates, reverse the evidential burden of proof, impose strict liability offences, and provide immunity from civil liability.
- **Charter of the United Nations Amendment Bill 2021**: The committee received information in relation to the retrospective validation of counter-terrorism financial sanctions listings.
- **Customs Amendment (Controlled Trials) Bill 2021**: the committee is seeking advice in relation to the inclusion of significant matters in delegated legislation.
- **Electoral Legislation Amendment (Candidate Eligibility) Bill 2021**: the committee leaves to the Senate the appropriateness of provisions which may impact on an individual's right to privacy.
- **Migration Amendment (Protecting Migrant Workers) Bill 2021**: the committee is seeking advice in relation to provisions which limit the usual requirements of the natural justice hearing rule.
- **Migration Amendment (Strengthening the Character Test) Bill 2021**: the committee leaves to the Senate the appropriateness of provisions which confer a broad discretionary power to refuse or cancel a visa and which may impact on an individual's rights and liberties.

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