



29 January 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 1 of 2021](#))

Aged Care Legislation Amendment (Serious Incident Response Scheme and Other Measures) Bill 2020:

- Significant matters in delegated legislation: the committee leaves to the Senate as a whole the appropriateness of leaving significant matters relating to the management of reportable aged care incidents, and management by the Aged Care Commissioner of reportable aged care incidents to delegated legislation.

Australian Immunisation Register Amendment (Reporting) Bill 2020

- Privacy / significant matters in delegated legislation: the committee is seeking advice as to why it is considered necessary and appropriate to leave the scope of mandatory reporting obligations in relation to vaccinations to delegated legislation.

Migration and Citizenship Legislation Amendment (Strengthening Information Provisions) Bill 2020

- Adequacy of judicial review / significant matters in delegated legislation: the committee is seeking advice in relation to provisions of the bill which would allow courts to rely on secret information in judicial review proceedings.
- Parliamentary scrutiny: the committee has requested that the bill be amended to omit a proposed prohibition on the production or giving of confidential gazetted agency information to 'a parliament or parliamentary committee'.
- Evidentiary certificates / natural justice: the committee is seeking advice in relation to the appropriateness of allowing for the issuing of evidentiary certificates and provisions which exclude or limit the rules of natural justice.

Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 1 of 2021*)

Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020 [F2020L01296]

- *Compliance with authorising legislation*: the committee is seeking advice as to the legislative authority under which the instrument exempts third party contractors from the operation of primary legislation to allow them to deploy counter-drone devices.

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 29 January 2021, 421 legislative instruments have been made, of which 17.3% are exempt from disallowance and scrutiny by the committee.

Other bills commented on (*Scrutiny Digest 1 of 2021*)

- **Counter-Terrorism Legislation Amendment (High-Risk Terrorist Offenders) Bill 2020**: the committee reiterates its position that it would be appropriate to amend the bill, or at least the explanatory memorandum to the bill, to provide high-level guidance that the court-only evidence provisions in the bill may only be used in exceptional circumstances.
- **Data Availability and Transparency Bill 2020**: the committee is seeking advice in relation to privacy safeguards, the inclusion of significant matters in delegated legislation, and proposed significant penalties.
- **Designs Amendment (Advisory Council on Intellectual Property Response) Bill 2020**: the committee thanks the minister for indicating that she will arrange for an addendum to the explanatory memorandum to be tabled explaining why it is appropriate to specify that determinations of formal requirements for applications are not legislative instruments.
- **Export Control Amendment (Miscellaneous Measures) Bill 2020**: the committee requests that information provided by the minister in relation to allowing delegated legislation to modify primary legislation and the incorporation of external materials be included in an addendum to the explanatory memorandum.
- **Financial Sector Reform (Hayne Royal Commission Response No. 2) Bill 2020**: the committee is seeking advice in relation to proposed significant penalties and the inclusion of significant matters in delegated legislation.
- **Regulatory Powers (Standardisation Reform) Bill 2020**: the committee is seeking advice in relation to privacy and coercive powers, strict liability offences, use of force, and the broad delegation of investigatory powers.
- **Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020**: the committee is seeking advice in relation to the authorisation of coercive powers, the use of coercive powers without a warrant, the impact of the proposed new warrant schemes on innocent third parties, the use and destruction of information obtained through warrant processes, evidentiary certificates, and the broad delegation of administrative powers.

- **Treasury Laws Amendment (2020 Measures No. 4) Bill 2020:** the committee requests that information provided by the minister in relation to allowing delegated legislation to modify primary legislation be included in an addendum to the explanatory memorandum.
- **Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020:** the committee is seeking advice in relation to the inclusion of significant matters in delegated legislation (including allowing delegated legislation to specify which digital platforms must participate in the proposed Bargaining Code), and whether the bill can be amended to provide that the report of the review of the scheme be tabled in the Parliament.

Other legislative instruments commented on ([*Delegated Legislation Monitor 1 of 2021*](#))

- The Scrutiny of Delegated Legislation committee considered 47 disallowable legislative instruments registered on the Federal Register of Legislation between 30 September and 13 October 2020. The committee is continuing to engage with ministers and agencies in relation to 13 instruments, and has concluded its consideration of 20 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 has resolved to **place** notices of motion to disallow the following instruments on 2 February 2021:

- ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199];
- ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 [F2020L01261];
- ASIC Credit (Notice Requirements for Unlicensed Carried Over Instrument Lenders) Instrument 2020/834 [F2020L01259]; and
- Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245].

The Senate Scrutiny of Delegated Legislation Committee has resolved to **withdraw** notices of motion to disallow the following instruments in the sitting week commencing 2 February 2021:

- Australian Prudential Regulation Authority (confidentiality) determination No. 1 of 2020 [F2020L00945]
- Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994]

For any comments or questions, please contact:
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