



11 March 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 4 of 2021](#))

### Family Assistance Legislation Amendment (Early Childhood Education and Care Coronavirus Response and Other Measures) Bill 2021

- Significant matters in delegated legislation: the committee is seeking advice as to why it is considered necessary and appropriate to leave significant matters to delegated legislation.
- Retrospective validation: the committee is seeking advice as to why retrospective validation is being sought in relation to provisions of the Child Care Subsidy Minister's Rules 2017.
- Broad delegation of administrative powers: the committee is seeking advice as to why it is necessary to allow the secretary's powers to be delegated to officials at any level.

### Industrial Chemicals Environmental Management (Register) Bill 2020

- Significant matters in non-disallowable delegated legislation: the committee leaves to the Senate as a whole the appropriateness of leaving matters which are significant to the operation of the legislative scheme established by the bill to delegated legislation which is exempt from parliamentary disallowance and sunseting.

### Regulatory Powers (Standardisation Reform) Bill 2020

- Privacy; coercive powers: the committee leaves to the Senate as a whole the appropriateness of expanding the application of the monitoring powers in the *Regulatory Powers (Standard Provisions) Act 2014* to allow them to be exercised in relation to 'a matter'.
- Use of force: the committee leaves to the Senate as a whole the appropriateness of conferring powers to use force against things on any 'other person' assisting an

authorised person in circumstances where there is no legislative guidance requiring such persons to have appropriate expertise and training.

### **Treasury Laws Amendment (Your Future, Your Super) Bill 2021**

- Significant matters in delegated legislation and retrospective application: the committee is seeking advice as to why it is considered necessary and appropriate to leave a number of significant matters to delegated legislation, including requirements for a fund to be a stapled fund for an employee, the operation of the proposed annual performance assessments scheme, and the content of offences and civil penalties. The committee is also seeking advice about potential retrospective application and the inclusion of information in the explanatory memorandum to the bill.

### **Key scrutiny issues: Legislative instruments** (Delegated Legislation Monitor 4 of 2021)

#### **ASIC Corporations – various instruments [F2020L00962] [F2020L01045] [F2020L01064] [F2020L01066] [F2020L01069] [F2020L01199] [F2020L01261] [F2020L01259]**

- Modification to primary legislation/parliamentary oversight: the committee resolved to withdraw six of eight notices of motion to disallow ASIC instruments on the basis of the Treasurer's undertaking to engage with the committee to resolve the committee's scrutiny concerns in relation to legislative instruments across the Treasury portfolio, and resolved to retain the remaining two notices of motion to disallow while awaiting further advice from the Treasurer.

### **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 25 February 2021, 430 legislative instruments have been made, of which 17.2% are exempt from disallowance and scrutiny by the committee.

### **Other bills commented on** (Scrutiny Digest 4 of 2021)

- **Appropriation Bill (No. 3) 2021-2021 and Appropriation Bill (No. 4) 2021-2021**: the committee draws the Senate's attention to the proposal to disregard any amounts that may be determined by the Finance Minister under the Advance to the Finance Minister provisions in Appropriation Acts No. 1 and No. 2.
- **Industrial Chemicals Environmental Management (Register) Charge (Customs) Bill 2020; Industrial Chemicals Environmental Management (Register) Charge (Excise) Bill 2020; Industrial Chemicals Environmental Management (Register) Charge (General) Bill 2020**: the committee leaves to the Senate as a whole the appropriateness of allowing the rate of charges in relation to the scheduling of industrial chemicals to be set in delegated legislation.

## Other legislative instruments commented on ([Delegated Legislation Monitor 4 of 2021](#))

- The Scrutiny of Delegated Legislation Committee considered 8 disallowable legislative instruments registered on the Federal Register of Legislation between 8 and 9 December 2020. The committee is continuing to engage with ministers and agencies in relation to 11 instruments, and has concluded its consideration of 9 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 Scrutiny of Delegated Legislation Committee **withdrew** notices of motion to disallow the following instruments in the sitting week commencing 22 February 2021:

- ASIC Corporations (Amendment) Instrument 2020/721 [F2020L01064]
- Part 3 of the ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962]
- ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778 [F2020L01069]
- ASIC Corporations (IPO Communications) Instrument 2020/722 [F2020L01066]
- ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045]
- ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734 [F2020L01199]
- Disability (Access to Premises – Buildings) Amendment Standards 2020 [F2020L01245]
- Industry Research and Development (Supporting Agricultural Shows and Field Days Program) Instrument 2020 [F2020L01401]
- Legislation (Deferral of Sunsetting—Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination) Certificate 2020 [F2020L01301]
- Radiocommunications (Police Forces – Disruption of Unmanned Aircraft) Exemption Determination 2020 [F2020L01296]
- Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028].

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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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