



30 April 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](#).

Guidelines

The Senate Scrutiny of Bills Committee is in the process of preparing [guidelines](#) setting out the committee's expectations in relation to its technical scrutiny principles.

The committee has now published the first of these guidelines on its approach to applying [scrutiny principle \(iv\)—inappropriate delegation of legislative powers](#), and will progressively publish guidelines for scrutiny principles (i), (ii), (iii) and (v) as they are finalised.

Key scrutiny issues: Bills ([Scrutiny Digest 6 of 2021](#))

Environment Protection and Biodiversity Conservation Amendment (Standards and Assurance) Bill 2021

- [Exemption from disallowance](#): the committee is seeking further advice as to whether the bill can be amended to increase parliamentary oversight of, and provide certainty in relation to, the first national environmental standards made by the minister under proposed section 65C.
- [Significant matters in delegated legislation](#): the committee leaves to the Senate the appropriateness of leaving several significant matters to delegated legislation, including in relation to information disclosure and requirements to be consistent with the national environmental standards.
- [Tabling of reports](#): the committee leaves to the Senate the appropriateness of not providing for review reports to be tabled in Parliament.

Migration Amendment (Clarifying International Obligations for Removal) Bill 2021

- [Trespass on personal rights and liberties – indefinite detention](#): the committee is seeking advice as to the effectiveness of safeguards contemplated by the bill to ensure that the

immigration detention of persons will not trespass unduly on fundamental personal rights and liberties.

- *Other scrutiny matters*: the committee is also seeking advice in relation to significant matters in delegated legislation and provisions with retrospective effect.

Online Safety Bill 2021

- *Significant matters in delegated legislation*: the committee is seeking further advice in relation to leaving several significant matters to delegated legislation, and whether the bill can be amended to provide at least high-level guidance on the face of the primary legislation in relation to the determination by the eSafety Commissioner of several key terms within delegated legislation.
- *Broad discretionary power*: the committee leaves to the Senate the appropriateness of several provisions providing broad discretionary powers to the eSafety Commissioner for the purposes of regulating online content.
- *Other scrutiny matters left to the Senate as a whole*: the committee leaves to the Senate the appropriateness of several issues in relation to procedural fairness, the inclusion of significant matters in non-disallowable delegated legislation, parliamentary oversight of grants to the states under section 96 of the Constitution, reversing the evidential burden of proof, incorporation of external material into the law, and the delegation of administrative powers.

Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 6 of 2021*)

Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]

- *Matters more appropriate for parliamentary enactment*: the committee is seeking advice as to whether the instrument will be reviewed as part of the statutory review of its enabling Act and whether it could be amended to sunset after 5 years.

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 15 April 2021, 458 legislative instruments have been made, of which 17 per cent are exempt from disallowance and scrutiny by the committee.

Other bills commented on (*Scrutiny Digest 6 of 2021*)

- **Australian Local Power Agency Bill 2021**: The committee leaves to the Senate the appropriateness of setting out the 'general strategy' of the Australian Local Power Agency in a non-disallowable legislative instrument.
- **Biosecurity Amendment (Clarifying Conditionally Non-prohibited Goods) Bill 2021**: the committee is seeking advice in relation to the retrospective validation of determinations purportedly made under subsection 174(1) of the *Biosecurity Act 2015*.

- **Broadcasting Legislation Amendment (2021 Measures No. 1) Bill 2021:** the committee is seeking advice in relation to significant matters in delegated legislation and the incorporation of external materials into law.
- **Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2021:** the committee is seeking advice in relation to an exclusion of the requirement to table reports in Parliament, significant matters in delegated legislation, the interaction of the bill with the right to privacy, and the inclusion of significant penalties in infringement notices.
- **Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 2021:** the committee is seeking advice in relation to significant matters in delegated legislation and retrospective application.
- **Mitochondrial Donation Law Reform (Maeve's Law) Bill 2021:** the committee is seeking advice in relation to significant matters in delegated legislation, the incorporation of external material into the law, and the interaction of the bill with the right to privacy.
- **Mutual Recognition Amendment Bill 2021:** the committee is seeking advice in relation to the appropriateness of leaving significant matters to delegated legislation which is exempt from parliamentary disallowance and effective parliamentary accountability or oversight at either the Commonwealth or state level.
- **Northern Australia Infrastructure Facility Amendment (Extension and Other Measures) Bill 2021:** the committee received information in relation to a grant to the states under section 96 of the Constitution and requested that the explanatory memorandum be updated to include this information. The committee leaves to the Senate the appropriateness of providing the minister with a broad discretionary power to terminate the appointment of a board member.
- **Private Health Insurance Legislation Amendment (Age of Dependents) Bill 2021:** the committee received information in relation to significant matters in delegated legislation, requested that the explanatory memorandum be updated to include this information, and leaves to the Senate the appropriateness of the relevant provisions.
- **Social Services and Other Legislation Amendment (Student Assistance and Other Measures) Bill 2021:** the committee received information in relation to the delegation of legislative powers and requested that the explanatory memorandum be updated to include this information.
- **Sydney Harbour Federation Trust Amendment Bill 2021:** the committee is seeking advice in relation to significant matters in delegated legislation.
- **Treasury Laws Amendment (2020 Measures No. 4) Bill 2021:** the committee welcomes amendments to remove a power to, by legislative instrument, extend the operation of the modification power in Schedule 5 to the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020*. The committee is also seeking advice in relation to the inclusion of significant penalties in delegated legislation.

- **Treasury Laws Amendment (2021 Measures No. 2) Bill 2021:** the committee is seeking advice in relation to significant matters in delegated legislation and broad discretionary power conferred on the minister.
- **Treasury Laws Amendment (Your Future, Your Super) Bill 2021:** the committee received information in relation to significant matters in delegated legislation, requested that the explanatory memorandum be updated to include this information, and leaves to the Senate the appropriateness of the relevant provisions.

Other legislative instruments commented on ([Delegated Legislation Monitor 6 of 2021](#))

- The Senate Scrutiny of Delegated Legislation Committee considered 183 disallowable legislative instruments registered on the Federal Register of Legislation between 22 December 2020 and 25 February 2021. The committee is continuing to engage with ministers and agencies in relation to 32 instruments, and has concluded its consideration of 13 instruments.
- All legislative instruments subject to a notice of motion for disallowance in either House of the Parliament are listed in the [Disallowance Alert](#).

Notices of motion to disallow

The Senate Scrutiny of Delegated Legislation Committee has resolved to **give** notices of motion to disallow the following instruments on 11 May 2021:

- ASIC Corporations (Amendment) Instrument 2020/1064 [F2020L01571]
- ASIC Corporations (Amendment) Instrument 2020/1065 [F2020L01572]
- ASIC Corporations (Design and Distribution Obligations—Exchange Traded Products) Instrument 2020/1090 [F2020L01600]
- Australia’s Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]
- Commonwealth Grant Scheme Guidelines 2020 [F2020L01609]
- Competition and Consumer Amendment (AER Functions) Regulations 2020 [F2020L01606]
- Competition and Consumer (Consumer Data Right) Amendment Rules (No. 3) 2020 [F2020L01688]
- Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]
- Corporations (Stay on Enforcing Certain Rights) Amendment (Corporate Insolvency Reforms) Declaration 2020 [F2020L01682]
- Foreign Investment Reform (Protecting Australia’s National Security) Regulations 2020 [F2020L01568]
- National Health (Data-matching) Principles 2020 [F2021L00006].

The Senate Scrutiny of Delegated Legislation Committee has resolved to give notice of its intention to **withdraw** the notice of motion to disallow the following instrument in the sitting week commencing 11 May 2021:

- Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402].

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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