



18 May 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](#).

## Annual report

The Senate Scrutiny of Bills Committee tabled its [Annual Report](#) on 12 May. The Annual Report provides an overview of the committee's work in 2020, highlighting some major themes, including the committee's workflow and impact on legislative development.

The committee considered 210 bills in 2020, providing comments on 101 of these bills.

## 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 a second guideline on its approach to applying scrutiny principle (v) – insufficient parliamentary scrutiny.

The committee will progressively publish guidelines for scrutiny principles (i), (ii) and (iii) as they are finalised.

## Key scrutiny issues: Biosecurity Act review ([Scrutiny Digest 7 of 2021](#))

The Senate Scrutiny of Bills Committee has undertaken a review of provisions within the *Biosecurity Act 2015* which exempt instruments made under that Act from disallowance by the Parliament. This review was undertaken following a recommendation of the Senate Scrutiny of Delegated Legislation Committee in its [Interim report: Exemption of delegated legislation from parliamentary oversight](#).

The committee identified 30 provisions which exempt parliamentary disallowance in the Act.

The committee requested the minister's detailed advice as to the exceptional circumstances justifying these exemptions and whether the Act can be amended so that instruments made under it are subject to the usual parliamentary disallowance process.

### **Key scrutiny issues: Bills** ([Scrutiny Digest 7 of 2021](#))

#### **Online Safety Bill 2021:**

- Significant matters in delegated legislation: the committee requested that a more comprehensive addendum to the explanatory memorandum be tabled in the Parliament containing detailed information as to why it is considered necessary and appropriate to leave a broad range of significant matters to delegated legislation. The committee leaves to the Senate the appropriateness of leaving these significant matters to 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.

### **Key scrutiny issues: Legislative instruments** ([Delegated Legislation Monitor 7 of 2021](#))

#### **Aged Care Legislation Amendment (Serious Incident Response Scheme) Instrument 2021 [F2021L00222]**

- Significant matters in delegated legislation/parliamentary oversight: the committee is seeking advice as to why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation, to define the concept of a 'reportable incident' for the purposes of the Serious Incident Response Scheme.

### **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 13 May 2021, 478 legislative instruments have been made, of which 17.4 per cent are exempt from disallowance and scrutiny by the committee.

### **Other bills commented on** ([Scrutiny Digest 7 of 2021](#))

- **Biosecurity Amendment (Clarifying Conditionally Non-prohibited Goods) Bill 2021**: the committee received information in relation to the retrospective validation of determinations purportedly made under subsection 174(1) of the *Biosecurity Act 2015*. The committee expressed its continuing scrutiny concerns, however, made no further comment given the bill had already passed both Houses of the Parliament.
- **Broadcasting Legislation Amendment (2021 Measures No. 1) Bill 2021**: the committee received information in relation to significant matters in delegated legislation and the incorporation of external materials into law. The committee requested that the explanatory memorandum be updated to include this information and leaves to the Senate the appropriateness of including significant matters in delegated legislation.

- **Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2021:** the committee leaves to the Senate the appropriateness of not providing from reports to be tabled in the Parliament, requested that the explanatory memorandum be updated to include information relating to privacy, and requested that more detailed information be provided in relation to the inclusion of significant penalties in infringement notices.
- **Mutual Recognition Amendment Bill 2021:** the committee received information 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. The committee requested that more detailed information be provided in relation to what accountability and oversight measures are available at the state level.
- **Treasury Laws Amendment (2020 Measures No. 4) Bill 2021:** the committee received information in relation to the inclusion of significant penalties in delegated legislation.
- **Treasury Laws Amendment (2021 Measures No. 2) Bill 2021:** the committee received information in relation to significant matters in delegated legislation and broad discretionary power conferred on the minister. The committee 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 7 of 2021*)

- The Scrutiny of Delegated Legislation Committee considered 100 disallowable legislative instruments registered on the Federal Register of Legislation between 26 February 2021 and 19 March 2021. The committee is continuing to engage with ministers and agencies in relation to 19 instruments, and has concluded its consideration of 25 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** a notice of motion to disallow the following instrument on 15 June 2021:

- Telecommunications (Fibre-ready Facilities — Exempt Real Estate Development Projects) Instrument 2021 [F2021L00105].

The Senate Scrutiny of Delegated Legislation Committee **withdrew** notices of motion to disallow the following instruments on 14 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]

- Commonwealth Grant Scheme Guidelines 2020 [F2020L01609]
- Competition and Consumer Amendment (AER Functions) Regulations 2020 [F2020L01606]
- Competition and Consumer (Class Exemption—Collective Bargaining) Determination 2020 [F2020L01334]
- Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020 [F2020L01654]
- Corporations (Stay on Enforcing Certain Rights) Amendment (Corporate Insolvency Reforms) Declaration 2020 [F2020L01682]
- Family Law Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01361]
- Federal Circuit Court Amendment (Notice of Child Abuse, Family Violence or Risk) Rules 2020 [F2020L01362]
- Foreign Investment Reform (Protecting Australia’s National Security) Regulations 2020 [F2020L01568]
- Norfolk Island Employment Rules 2020 [F2020L01536]
- Part 138 (Aerial Work Operations) Manual of Standards 2020 [F2020L01402]
- Tax Agent Services (Specified BAS Services No. 2) Instrument 2020 [F2020L01406]
- Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020 [F2020L01474].

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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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