



24 June 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 Delegated Legislation Committee tabled its [Annual Report 2020](#) on 23 June. The Annual Report provides an overview of the committee's work, highlighting the most significant scrutiny issues that the committee identified in 2020.

In 2020, the committee examined 1,194 disallowable legislative instruments in 14 Delegated Legislation Monitors. Approximately 20 per cent of these instruments raised technical scrutiny concerns.

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 guideline on its approach to applying [scrutiny principle \(i\)—undue trespass on personal rights and liberties](#).

The committee will publish guidelines for scrutiny principles (ii) and (iii) as they are finalised. Guidelines for scrutiny principles (iv) and (v), along with the new guideline for scrutiny principle (i), can be found on the [committee website](#).

Key scrutiny issues: Bills ([Scrutiny Digest 9 of 2021](#))

COVID-19 Disaster Payment (Funding Arrangements) Bill 2021

- [Parliamentary scrutiny and significant matters in delegated legislation](#): the committee is seeking advice as to why it is necessary and appropriate to leave significant details of the COVID-19 Disaster Payment, including eligibility requirements and the amount of the payment, to delegated legislation and non-legislative guidelines.

- The committee is also seeking advice as to whether the bill can be amended to provide more guidance regarding both the scope of the payment and the associated annual reporting obligations on the face of the primary legislation.

Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 9 of 2021*)

Paid Parental Leave Rules 2021 [F2021L00384]

- *Privacy and parliamentary oversight*: the committee is seeking advice as to how the instrument affects privacy of individuals and whether this can be explained in the statement of compatibility, and whether the instrument can be amended to cease within three years as the measures modify the operation of primary law.

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 17 June 2021, 494 legislative instruments have been made, of which 17.4 per cent are exempt from disallowance.

Other bills commented on (*Scrutiny Digest 9 of 2021*)

- **Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Bill 2021**: the committee leaves to the Senate the appropriateness of including significant matters in delegated legislation, namely, a broad discretionary power to determine when restrictive practices can be used in an aged care setting.
- **Fuel Security Bill 2021**: the committee received information in relation to the inclusion of significant matters in delegated legislation, including fee-making powers in delegated legislation.
- **Major Sporting Events (Indicia and Images) Protection and Other Legislation Bill 2021**: the committee is seeking advice in relation to the inclusion of significant matters in delegated legislation.
- **Tertiary Education Quality and Standards Agency (Charges) Bill 2021**: the committee leaves to the Senate the appropriateness of providing a broad discretionary power to provide for exemptions in delegated legislation.
- **Tertiary Education Quality and Standards Agency Amendment (Cost Recovery) Bill 2021**: the committee leaves to the Senate the appropriateness of leaving key aspects of the operation of the proposed Registered Higher Education Provider Charge to delegated legislation.
- **Treasury Laws Amendment (COVID-19 Economic Response) Bill 2021**: the committee leaves to the Senate the appropriateness of amending the *Taxation Administration Act 1953* to include a new defence for which the defendant bears an evidential burden of proof.

Other legislative instruments commented on ([Delegated Legislation Monitor 9 of 2021](#))

- The Scrutiny of Delegated Legislation committee considered 53 disallowable legislative instruments registered on the Federal Register of Legislation between 31 March 2021 and 9 April 2021. The committee is continuing to engage with ministers and agencies in relation to 29 instruments, and has concluded its consideration of 5 instruments.
- All legislative instruments subject to a notice of motion for disallowance in either House of Parliament are listed in the [Disallowance Alert](#).

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:

Glenn Ryall, Secretary

Senate Scrutiny of Bills Committee

02 6277 3050 | scrutiny.sen@aph.gov.au

Senate Scrutiny of Delegated Legislation Committee

02 6277 3066 | sdlc.sen@aph.gov.au