



5 December 2019

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 10 of 2019](#))

Australian Crime Commission Amendment (Special Operations and Special Investigations) Bill 2019

- **Broad discretionary powers**: the committee is seeking advice on why the ACC Board has been provided with broad discretionary powers to authorise special operations or special investigations.
- **No-invalidity clause**: the committee is seeking advice as to why it is necessary or appropriate to include a no-invalidity clause in relation to actions required by the ACC Board.
- **Retrospective validation**: the committee is seeking advice regarding the retrospective validation of determinations by the ACC Board and the exercise of powers under the *Australian Crime Commission Act 2002*.

Interactive Gambling Amendment (National Self-exclusion Register) Bill 2019

- **Reversal of the evidential burden of proof**: the committee is seeking advice regarding the use of a number of offence-specific defences, which reverse the evidential burden of proof.
- **Computerised decision making**: the committee is seeking advice on the use of computerised decision-making and whether consideration has been given to including guidance on the face of the bill as to the types of administrative actions (for example, complex or discretionary decisions) that must be taken by a person rather than by a computer.
- **Significant matters in delegated legislation**: the committee is seeking advice as to why the operation of a complaints process is being left to delegated legislation and whether judicial review and independent merits review will be available.
- **Tabling of documents in Parliament**: the committee is seeking advice as to whether the bill can be amended to provide that the evaluation report is tabled in Parliament.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 10 of 2019](#))

ASIC Corporations (Whistleblower Policies) Instrument 2019/1146

- **Indefinite exemption**: the committee is seeking the minister's advice as to why it is considered necessary and appropriate to use delegated legislation to provide an indefinite exemption to certain public companies from the requirement to have a whistleblower protection policy under subsection 1317A(1) of the *Corporations Act 2001*.

Telecommunications (Protecting Australians from Terrorist or Violent Criminal Material) Direction (No. 1) 2019

- **Incorporation**: the committee is seeking the eSafety Commissioner's advice as to how the explanatory statement to the instrument conforms with paragraph 15J(2)(c) of the *Legislation Act 2003*, which requires an explanatory statement to indicate how any document incorporated by reference into the instrument may be obtained.

Other bills commented on ([Scrutiny Digest 10 of 2019](#))

- **Agricultural and Veterinary Chemicals Legislation Amendment (Australian Pesticides and Veterinary Medicines Authority Board and Other Improvements) Bill 2019**: the committee welcomes the minister's advice that the government intends to amend the bill to prescribe additional safeguards around the use of computerised decision-making.
- **Anti-Money Laundering and Counter-Terrorism Financing and Other Legislation Amendment Bill 2019**: the committee received advice on the use of offence-specific defences that reverse the evidential burden of proof.
- **Australian Sports Anti-Doping Authority Amendment (Enhancing Australia's Anti-Doping Capability) Bill 2019**: the committee received advice regarding lowering the threshold for the giving of disclosure notices.
- **Australian Sports Anti-Doping Authority Amendment (Sports Integrity Australia) Bill 2019**: the committee leaves to the Senate the appropriateness of making Sports Integrity Australia an enforcement body for the purposes of the *Privacy Act 1988*.
- **Education Legislation Amendment (2019 Measures No. 1) Bill 2019**: the committee received advice regarding the use of offence-specific defences that reverse the evidential burden of proof.
- **Financial Sector Reform (Hayne Royal Commission Response – Protecting Consumers) Bill 2019**: the committee is seeking advice on why the meaning of conflicted remuneration and the circumstances in which it is banned is being left to delegated legislation.
- **Medical and Midwife Indemnity Legislation Amendment Bill 2019**: the committee received advice on the use of computerised decision-making, the inclusion of offence-specific defences that reverse the evidential burden of proof and allowing the regulations to modify the operation of the primary legislation.
- **Migration Amendment (Regulation of Migration Agents) Bill 2019**: the committee is seeking advice on the inclusion of a strict liability offence and the broad delegation of administrative powers.

- **Native Title Legislation Amendment Bill 2019:** the committee received advice regarding the retrospective validation of native title agreements.
- **Student Identifiers Amendment (Enhanced Student Permissions) Bill 2019:** the committee is seeking advice on why significant matters have been left to delegated legislation and why certain decisions will not be subject to independent merits review.
- **Telecommunications Legislation Amendment (Competition and Consumer) Bill 2019:** the committee leaves to the Senate the appropriateness of the allowing the Minister to make determinations which could impact the tax base via delegated legislation.
- **Telecommunications Legislation Amendment (Regional Broadband Scheme) Charge Bill 2019:** the committee leaves to the Senate the appropriateness of the allowing the Minister to alter the rate of a tax via delegated legislation.
- **Trade Support Loans Amendment (Improving Administration) Bill 2019:** the committee is seeking advice regarding why the circumstances in which the amounts of later trade support loan instalments may be reduced has been left to delegated legislation.
- **Transport Security Amendment (Serious Crime) Bill 2019:** the committee leaves to the Senate the appropriateness of leaving the requirements relating to access to aviation and maritime transport zones to delegated legislation, including the ability to set penalties.

Other legislative instruments commented on ([Delegated Legislation Monitor 10 of 2019](#))

- The Senate Scrutiny of Delegated Legislation committee considered 63 disallowable legislative instruments registered on the Federal Register of Legislation between 1 November 2019 and 20 November 2019. The committee is continuing to engage with ministers and agencies in relation to 11 instruments, and has concluded its consideration of 6 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

At its private meeting on Wednesday 4 December 2019, the Senate Scrutiny of Delegated Legislation Committee resolved to **place** notices of motions to disallow the following instruments:

- Broadcasting Services (Transmitter Access) Regulations 2019 [F2019L01248]
- Taxation Administration (Private Ancillary Fund) Guidelines 2019 [F2019L01227]

The committee did not resolve to **withdraw** any notices of motions to disallow instruments.

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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