



21 September 2020

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](#).

Please note that this edition of *Scrutiny News* relates only to the work of the Senate Scrutiny of Bills Committee, as the Senate Scrutiny of Delegated Legislation Committee did not meet in the week beginning 14 September 2020.

Key scrutiny issues: Bills ([Scrutiny Digest 12 of 2020](#))

National Commissioner for Defence and Veteran Suicide Prevention Bill 2020

- Significant criminal penalties: the committee is seeking advice as to the justification for the maximum penalties imposed by the offences in Part 4 of the bill.
- Reversal of the evidential burden of proof: the committee is seeking advice regarding the use of a number of offence-specific defences.
- Legal professional privilege: the committee is seeking advice on the rationale for abrogating legal professional privilege.
- Privilege against self-incrimination: the committee is seeking advice as to why it is proposed to abrogate the privilege against self-incrimination without also providing a derivative use immunity.

Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020

- Delegated legislation not subject to disallowance: the committee is seeking advice regarding the use of notifiable instruments, which are not subject to parliamentary disallowance.
- Computerised decision-making: the committee is seeking advice regarding why it is considered necessary and appropriate to permit the AMCA to arrange for the use of computer programs for *any* decisions, powers or obligations it has under the *Radiocommunications Act 1992*.

- *Broad delegation of investigatory powers*: the committee is seeking advice regarding why it is necessary to confer monitoring and investigatory powers on any 'other person' to assist an authorised person.
- *Significant matters in delegated legislation*: the committee is seeking advice regarding leaving the details of the operation of a scheme to manage the operation, supply and possession of equipment to delegated legislation.
- *Broad delegation of administrative powers*: the committee is seeking advice regarding the delegation of the power to make decisions of an administrative character and the power to charge fees to persons who hold a specified accreditation.
- *Broad delegation of legislative power*: the committee is seeking advice regarding why it is proposed to confer on the ACMA the broad power to exempt acts and persons from the application of the law.

Recycling and Waste Reduction Bill 2020

- *Significant matters in delegated legislation*: the committee leaves to the Senate the appropriateness of leaving significant elements of the proposed new recycling and waste reduction legislative framework to be determined in delegated legislation.
- *Reversal of the evidential burden of proof*: the committee is seeking advice regarding the use of a number of offence-specific defences.
- *Strict liability*: the committee is seeking advice regarding whether the bill can be amended to provide that an offence in clause 81 is not one of strict liability.
- *Broad delegation of investigatory powers*: the committee is seeking advice regarding why it is necessary to confer monitoring and investigatory powers on any 'other person' to assist an authorised person.
- *Delegated legislation not subject to disallowance*: the committee is seeking advice regarding why certain determinations relating to training and qualification requirements are not legislative instruments subject to parliamentary disallowance.
- *Immunity from civil liability*: the committee is seeking advice regarding why it is considered appropriate to provide the Commonwealth and a number of protected persons with immunity from civil liability.
- *Computerised decision-making*: the committee is seeking advice regarding why it is appropriate to permit the secretary to arrange for the use of computer programs for any decision made under the bill.
- *Incorporation of external materials*: the committee is seeking advice regarding the type of documents that it is envisaged may be applied, adopted or incorporated by reference into the law and whether they will be freely available.

Recycling and Waste Reduction Charges (Customs) Bill 2020

Recycling and Waste Reduction Charges (Excise) Bill 2020

Recycling and Waste Reduction Charges (General) Bill 2020

- Significant matters in delegated legislation: the committee leaves to the Senate the appropriateness of allowing charges in relation to the export of regulated waste material to be set in delegated legislation.

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).

For any comments or questions, please contact:
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