



12 November 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](#).

## Key scrutiny issues: Bills ([Scrutiny Digest 15 of 2020](#))

### Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020

- Parliamentary scrutiny: the committee is seeking advice on whether the bill can be amended to provide for further scrutiny of Reserve call out orders and directions relating to the provision of Defence assistance in times of emergency, and to clarify that these orders and directions do not authorise the use of force or coercive powers.
- Immunity from civil and criminal liability: the committee is seeking advice on whether the bill can be amended to clarify the scope of the proposed immunity from civil and criminal liability.

### Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020

- Insufficiently defined administrative power: the committee is seeking advice on why it is considered necessary and appropriate to allow any state or territory officer to make a request that the secretary reconsider a determination that a person is not a program participant on health and related grounds.
- Significant matters in delegated legislation: the committee is seeking advice on why it is considered necessary and appropriate to leave the decision-making principles in relation to whether a person may exit the cashless debit card program to delegated legislation.
- Significant matters in non-disallowable instruments: the committee is seeking advice in relation to ministerial determinations of restricted and unrestricted welfare payment amounts, and cashless debit card program areas, which are exempt from disallowance.

- Privacy: the committee is seeking advice on the type of information which may be disclosed about current and prospective program participants and the safeguards that apply.

### **Key scrutiny issues: Legislative instruments** (*Delegated Legislation Monitor 12 of 2020*)

#### **Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]**

- Modification of primary legislation; parliamentary oversight: on 11 November 2020, the committee postponed consideration of its notice of motion to disallow the instrument to 7 December 2020 on the basis that the Parliament is still considering a bill which proposes to support the continued operation of the Cashless Debit Card program.

#### **Fair Work Amendment (Variation of Enterprise Agreements No. 2) Regulations 2020 [F2020L00702]**

- Compliance with Legislation Act 2003—consultation: the committee draws the Senate's attention to the non-compliance of the explanatory statement to the instrument with the technical requirements of the Legislation Act with regard to consultation. The committee has resolved not to withdraw the notice of motion to disallow the instrument and is seeking the minister's advice as to why the explanatory statement to the instrument cannot be amended to include further about consultation.

#### **Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 [F2020L00435]**

- Parliamentary oversight—time-limited legislation: the committee has concluded its examination of the instrument, and withdrawn the notice of motion to disallow the instrument, in light of the Treasurer's advice that regulations have been made to reinstate the monetary thresholds where a foreign person is renewing a lease over non-sensitive commercial property, and that exposure draft regulations have been released which would reinstate the monetary thresholds for other actions from 1 January 2021.

### **Other bills commented on** (*Scrutiny Digest 15 of 2020*)

- **Aged Care Amendment (Aged Care Recipient Classification) Bill 2020**: the committee is seeking advice on the inclusion of significant matters in delegated legislation, the proposed use of computer programs for making decisions on the classification of care recipients, and the disclosure of identifiable personal information.
- **Aged Care Legislation Amendment (Improved Home Care Payment Administration No. 2) Bill 2020**: the committee is seeking advice as to why it is considered necessary and appropriate to allow delegated legislation to modify any Act or instrument and whether the bill can be amended to ensure retrospectivity is not disadvantageous.
- **Appropriation Bill (No. 1) 2020-2021**: the committee draws the Senate's attention to the inappropriate classification of certain items as ordinary annual services, and is seeking advice as to whether additional transparency measures for Advances to the

Finance Minister made under the 2020-2021 supply bills will continue to apply in relation to Advances made under this bill.

- **Appropriation Bill (No. 2) 2020-2021:** the committee leaves to the Senate the appropriateness of allowing the minister to determine the amount, timing, and terms and conditions attaching to payments to states, territories and local governments.
- **Economic Recovery Package (JobMaker Hiring Credit) Amendment Bill 2020:** the committee is seeking advice on why it is considered necessary and appropriate to leave virtually all elements of the JobMaker Hiring Credit Scheme to delegated legislation.
- **Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020:** the committee leaves to the Senate the appropriateness of the bill not requiring documents incorporated into bilateral agreements to be made freely available.
- **Export Market Development Grants Legislation Amendment Bill 2020:** the committee is seeking advice in relation to the broad delegation of administrative powers to officers at any level, why it is considered necessary and appropriate to leave most elements of the export market development grants scheme to delegated legislation, and why merits review is not available for certain decisions made by the CEO.
- **Judges' Pensions Amendment (Pension Not Payable for Misconduct) Bill 2020:** the committee leaves to the Senate the appropriateness of the proposed retrospective application of the bill.
- **National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020:** the committee is seeking advice as to why offence-specific defences which reverse the evidential burden of proof are necessary, why protected names and symbols relevant to a strict liability offence are left to be set out in delegated legislation, and what safeguards will apply in relation to the disclosure of protected information.
- **Territories Legislation Amendment Bill 2020:** the committee is seeking advice in relation to the inclusion of significant matters, including exemptions from the Privacy Act, in delegated legislation. The committee is also seeking advice as to whether the bill can be amended to limit broad delegations of administrative power and include additional protections for the rights of an accused person whose trial is held in a prescribed state or territory, rather than on Norfolk Island.

### **Other legislative instruments commented on ([Delegated Legislation Monitor 12 of 2020](#))**

- The Scrutiny of Delegated Legislation committee considered 124 disallowable legislative instruments registered on the Federal Register of Legislation between 19 August 2020 and 17 September 2020. The committee is continuing to engage with ministers and agencies in relation to 26 instruments, and has concluded its consideration of 37 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 **place** notices of motions to disallow the following instruments:

- ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98 [F2020L00962] (to be placed on 30 November 2020)
- ASIC Corporations (Litigation Funding Schemes) Instrument 2020/787 [F2020L01045] (to be placed on 1 December 2020)
- Australian Prudential Regulation Authority (confidentiality) determination No.1 of 2020 [F2020L00945] (to be placed on 30 November 2020)
- Contingence Aids Payment Scheme 2020 [F2020L00758] (to be placed on 30 November 2020)
- Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2020 [F2020L00994] (to be placed on 30 November 2020)
- Reserve Bank of Australia Head Office, 65 Martin Place, Sydney Heritage Management Plan 2020 [F2020L01031] (to be placed on 30 November 2020)
- Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028] (to be placed on 30 November 2020)

On 11 November 2020, the Senate Scrutiny of Delegated Legislation Committee **postponed** consideration of a notice of motion to disallow the following instrument to 7 December 2020:

- Coronavirus Economic Response Package (Deferral of Sunsetting—Income Management and Cashless Welfare Arrangements) Determination 2020 [F2020L00572]

On 12 November 2020, the Senate Scrutiny of Delegated Legislation Committee **withdrew** a notice of motion to disallow the following instrument:

- Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020 [F2020L00435]

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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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