



19 February 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 3 of 2021](#))

### Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2020

- *Significant matters in delegated legislation—digital platforms*: the committee leaves to the Senate the appropriateness of leaving the determination of which digital platforms must participate in the News Media and Digital Platforms Mandatory Bargaining Code to delegated legislation.
- *Significant matters in delegated legislation—general*: the committee leaves to the Senate the appropriateness of including in the bill a range of powers to prescribe matters in delegated legislation, including provisions which enable delegated legislation to modify the operation of primary legislation.
- *Parliamentary scrutiny—tabling*: the committee suggests that it would be appropriate to amend proposed section 52ZZS of the bill to provide that the minister must table the report of the statutory review of the operation of the News Media and Digital Platforms Mandatory Bargaining Code in the Parliament.

## Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 3 of 2021](#))

### Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506]

- *Matters more appropriate for parliamentary enactment*: the committee is seeking advice as to why it is considered necessary and appropriate to significantly expand the jurisdiction of the Australian Commission for Law Enforcement Integrity to four additional Commonwealth government agencies via delegated, rather than primary, legislation.

## 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 18 February 2021, 425 legislative instruments have been made, of which 17.4% are exempt from disallowance and scrutiny by the committee.

## Other bills commented on ([Scrutiny Digest 3 of 2021](#))

- **Australian Immunisation Register Amendment (Reporting) Bill 2020:** the committee reiterated scrutiny concerns regarding leaving the scope of mandatory reporting obligations in relation to vaccinations to delegated legislation.
- **Data Availability and Transparency Bill 2020:** the committee received information about privacy, significant matters in delegated legislation, broad delegation of investigatory powers, and a reverse evidential burden of proof, and is seeking further advice in relation to privacy and significant matters in delegated legislation.
- **Financial Sector Reform (Hayne Royal Commission Response No. 2) Bill 2020:** the committee received information in relation to significant penalties and significant matters in delegated legislation.
- **National Emergency Declaration Bill 2020:** the committee received information about broad discretionary power, exemption from disallowance and significant matters in delegated legislation and reiterates its request for advice in relation to the power for delegated legislation to modify primary legislation and tabling of reports in Parliament.
- **National Emergency Declaration (Consequential Amendments) Bill 2020:** the committee received information about privacy and exclusion from tabling and reiterates its request for advice in relation to significant matters in non-disallowable instruments.
- **Social Services and Other Legislation Amendment (Student Assistance and Other Measures) Bill 2021:** the committee is seeking advice as to why it is considered necessary and appropriate for legislative instruments to be included in the new definition of 'social security law'.

## Other legislative instruments commented on ([Delegated Legislation Monitor 3 of 2021](#))

- The Regulations and Ordinances committee considered 79 disallowable legislative instruments registered on the Federal Register of Legislation between 18 November 2020 and 7 December 2020. The committee is continuing to engage with ministers and agencies in relation to 19 instruments, and has concluded its consideration of 14 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

The Senate Scrutiny of Delegated Legislation Committee resolved to **place** notices of motions to disallow the following instruments:

- Law Enforcement Integrity Commissioner Amendment (Law Enforcement Agencies) Regulations 2020 [F2020L01506] (notice to be given on 23 February 2021); and
- Taxation Administration (Remedial Power – Seasonal Labour Mobility Program) Determination 2020 [F2020L01474] (notice to be given on 22 February 2021).

On 18 February 2021, the Chair of the Senate Scrutiny of Delegated Legislation Committee gave notice of her intention to **withdraw** notices of motions to disallow the following instruments on 22 February 2021:

- Legislation (Deferral of Sunsetting—Telecommunications Universal Service Obligation (Standard Telephone Service—Requirements and Circumstances) Determination) Certificate 2020 [F2020L01301]; and
- Veterans' Affairs (Treatment Principles – Rehabilitation in the Home and Other Amendments) Determination 2020 [F2020L01028].

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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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