



Delegated Legislation Monitor Tabling Statement

Wednesday 26 October 2022

I rise to speak to the tabling of the Senate Standing Committee for the Scrutiny of Delegated Legislation's *Delegated Legislation Monitor 7 of 2022*.

This Monitor includes 77 disallowable legislative instruments and 20 instruments exempt from disallowance. It also details the committee's ongoing consideration of instruments registered in previous periods, and concludes its engagement with the relevant minister in relation to five instruments.

I would first like to draw the chamber's attention to the committee's comments on two instruments in relation to which it has sought the responsible ministers' further advice.

The Anti-Money Laundering and Counter Terrorism Financing Rules Amendment Instrument 2021 (No. 2) amends the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* by specifying conditions that, if met, will exempt an interest in a litigation funding scheme from that Act. Further, the instrument is exempt from sunseting. Consequently, the exemptions will remain in place indefinitely, unless later amended.

The committee has been engaging with the Attorney-General about these issues, as its longstanding view is that delegated legislation should not be used to create exemptions to primary legislation and, where it is absolutely necessary to do so, the relevant exemptions should be time-limited, so as to facilitate regular parliamentary scrutiny. In response to the committee's concerns, the Attorney-General advised of his view that it is appropriate to include the exemptions in delegated legislation, to ensure greater flexibility to make, amend and repeal exemptions as needed. He further advised that there is no intention to time limit this exemption, in order to maintain regulatory certainty for industry, noting the exemptions will be subject to an ongoing review process.

While noting this advice, the committee reiterates its longstanding view on this issue and, accordingly, is seeking further advice from the Attorney-General as to whether the provisions can be time-limited to a period of five years. Such a time limit would appear to address the immediate regulatory gap and enable time to consider future legislative amendments, while ensuring parliamentary oversight.

The second instrument I would like to speak to is the Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2022. This instrument requires a written report of a review

into the operation of Part 5A of the industry code regulation to be provided to the relevant Minister by June 2024. However, the instrument does not require this report to be tabled in Parliament. In response to the committee's scrutiny concerns regarding the limitations this creates to parliamentary oversight, the minister justified the absence of a requirement to table the report by citing the review's operational focus, and the fact this is consistent with the approach taken for other industry codes. Further, she advised that Parliament will be able to scrutinise the new provisions resulting from the review when the code sunsets. While noting this advice, the committee considers that the measures included in this instrument follow recommendations made by the Parliamentary Joint Committee on Corporations and Financial Services, which indicates the significance of this issue. Accordingly, the committee emphasises the importance of facilitating *formal* parliamentary oversight over significant matters and therefore is reiterating its request to the minister that the instrument be amended to include a requirement for the report to be tabled in Parliament.

Finally, I would like to draw the chamber's attention to the Biosecurity Amendment (Strengthening Biosecurity) Bill 2022, which was introduced into the Senate on 28 September 2022. This Bill amends the

Biosecurity Act 2015, including to introduce three new provisions which are exempt from disallowance, some of which may trespass on personal rights and liberties.

In this regard, both this committee and the Senate Standing Committee for the Scrutiny of Bills have consistently raised scrutiny concerns about the exemption of delegated legislation from disallowance and its impact on parliamentary oversight. The committee has written extensively on this issue, including in its 2020 Inquiry into the exemption of delegated legislation from parliamentary oversight and in its delegated legislation monitors since then.

The disallowance process is the primary mechanism by which Parliament maintains oversight and control of laws made by the executive through delegated powers. In the previous Parliament, both committees raised concerns about the exemption from disallowance provisions in the *Biosecurity Act*, specifically because many of these instruments have had significant implications for personal rights and liberties such as, regarding the COVID-19 pandemic, to restrict freedom of movement and to prevent Australian citizens from returning home.

For this reason, the committee has resolved to write to the Minister for Agriculture, Fisheries and Forestry and the Minister for Health and Aged Care

asking that the Bill be amended to remove the exemptions from disallowance to facilitate appropriate parliamentary scrutiny over these matters.

With these comments, I commend the committee's *Delegated Legislation Monitor 7 of 2022*.