

The Senate

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Standing Committee for the  
Scrutiny of Bills

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Annual report 2023

May 2024

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# MEMBERSHIP OF THE COMMITTEE

Senator Dean Smith (Chair) (1.08.2022 – present)	LP, Western Australia
Senator Raff Ciccone (Deputy Chair) (28.07.2022 – present)	ALP, Victoria
Senator Nick McKim (26.07.2022 – present)	AG, Tasmania
Senator Paul Scarr (1.08.2022 – present)	LP, Queensland
Senator Tony Sheldon (28.07.2022 – present)	ALP, New South Wales
Senator Jess Walsh (28.07.2022 – present)	ALP, Victoria

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# Chapter 1

## Introduction

- 1.1 Since 1981 the Senate Standing Committee for the Scrutiny of Bills has scrutinised all bills against a set of non-partisan accountability standards to assist the Parliament in undertaking its legislative function. These standards focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary scrutiny. The scope of the committee's scrutiny function is formally defined by Senate standing order 24, which requires the committee to scrutinise each bill introduced into the Parliament, or to scrutinise Acts of the Parliament, to determine whether they:
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
  - (iv) inappropriately delegate legislative powers; or
  - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- 1.2 The work of the committee may be broadly described as an assessment of bills against a set of non-partisan accountability standards that focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary scrutiny.

### **Overview of the annual report**

- 1.3 This annual report provides a summary of the committee's work for the period from 1 January to 31 December 2023. The annual report is set out in four chapters:
- Chapter 1 is an introduction to the report;
  - Chapter 2 discusses the committee's mode of operation, publications and resources;
  - Chapter 3 sets out statistics relating to the committee's work in 2023; and
  - Chapter 4 provides case studies of bills scrutinised by the committee in 2023, including outcomes achieved by the committee.



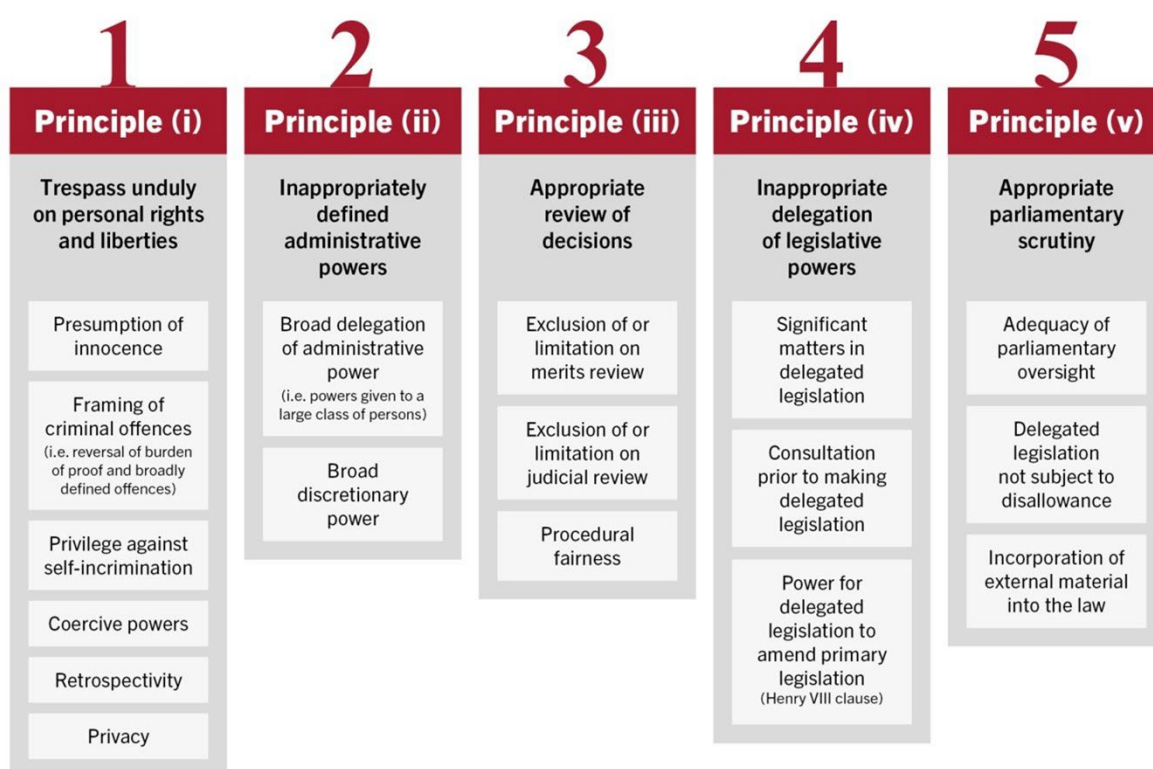


# Chapter 2

## The committee's mode of operation

- 2.1 The committee examines all bills that come before the Parliament against the five principles set out in Senate standing order 24(1)(a), and usually meets each sitting week to consider them. On occasion, the committee will also meet between sittings.
- 2.2 The committee's long-standing approach is that it operates on a non-partisan, apolitical and consensual basis to consider whether a bill complies with the five scrutiny principles. In addition, while the committee provides its views on a bill's level of compliance with the principles outlined in standing order 24(1)(a), it is ultimately a matter for the Senate itself to decide whether a bill should be passed or amended.
- 2.3 Some of the long-standing matters of concern identified by the committee are included in the diagram below.
- 2.4 The committee's usual process for undertaking its work is shaped by the process for the passage of bills through the Parliament. The committee aims to report to the Senate prior to the Senate's detailed consideration of bills so that its views can be taken into account before passage.

**Figure 2.1 Summary of standing order 24 and examples of issues considered under each principle**



- 2.5 The committee's usual process for undertaking its work is shaped by the process for the passage of bills through the Parliament. The committee aims to report to the Senate prior to the Senate's detailed consideration of bills so that its views can be taken into account before passage.

**Figure 2.2 Committee's Work Flow**



- 2.6 More information about the committee's practices can be found on the committee's website and in the *Consolidated Guidelines, 2nd edition*.

### Interaction with other legislative scrutiny committees

- 2.7 The Scrutiny of Bills Committee is one of three legislative scrutiny committees in the Commonwealth Parliament. The work of the three committees is complementary in many respects. The committee therefore monitors the work of the two other legislative scrutiny committees—the Senate Scrutiny of Delegated Legislation Committee and the Parliamentary Joint Committee on Human Rights—and, where appropriate, considers relevant matters raised by these committees or refers matters to them.
- 2.8 The committee regularly draws certain matters to the attention of the Scrutiny of Delegated Legislation Committee, including provisions of bills which authorise a significant delegation of legislative power or seek to modify the usual disallowance processes for legislative instruments. In 2023, the committee drew 14 bills to the attention of the Scrutiny of Delegated Legislation

Committee. When the committee draws such provisions to the attention of the Scrutiny of Delegated Legislation Committee, that committee will consider the Scrutiny of Bills Committee's comments as part of their examination of any legislative instruments made under the relevant authorising provision.

- 2.9 The committee will continue to work closely with the Scrutiny of Delegated Legislation Committee and the Parliamentary Joint Committee on Human Rights where appropriate in the future.

### **Committee publications and resources**

#### **Scrutiny Digest**

- 2.10 Since 2017, the committee has published its scrutiny comments in a document known as the *Scrutiny Digest*.
- 2.11 Chapter 1 of the *Scrutiny Digest* comprises the committee's initial comments on bills and amendments, identified by reference to the committee's scrutiny principles. Chapter 2 comprises the committee's comments on responses received from ministers. Chapter 3 draws attention to bills that establish or amend standing appropriations or establish, amend or continue in existence special accounts.
- 2.12 The *Scrutiny Digest* is generally published on the Wednesday of each sitting week, although on occasion the committee will report at other times, including between sittings.

#### **Scrutiny News**

- 2.13 The committee secretariat prepares a brief *Scrutiny News* publication each sitting week which highlights comments drawn from material in the committee's *Scrutiny Digest*, with a particular focus on information that may be useful when bills are debated and to raise awareness about the committee's scrutiny principles.
- 2.14 Highlights from the Senate Scrutiny of Delegated Legislation Committee's *Delegated Legislation Monitor* are also included in *Scrutiny News*.

#### **Guidelines**

- 2.15 In July 2022 the committee published a second edition of guidelines setting out the committee's expectations in relation to its technical scrutiny principles. The committee's guidelines are regularly reviewed by the committee's secretariat and will be updated as appropriate.

#### **Index of bills**

- 2.16 The Index of Bills is an alphabetical list of all bills that the committee has considered during a calendar year.

**Acknowledgements**

- 2.17 The committee wishes to acknowledge the work and assistance of the secretariat, and the external legal adviser, Professor Leighton McDonald.
- 5.19 The committee also wishes to acknowledge the assistance of ministers and other proposers of bills, and departments and agencies during the reporting period. Their responsiveness to the committee is critical to the legislative process as it ensures that the committee can perform its scrutiny function effectively.

# Chapter 3

## Work of the committee in 2023

3.1 This chapter provides information about the work of the committee for the period from 1 January to 31 December 2023, including statistical information and the impact of the committee’s work on legislation, explanatory materials and parliamentary consideration of bills.

### Trends

3.2 Each year the committee usually analyses around 200 to 250 bills. The table below sets out the bills scrutinised by the committee from 2019 to 2023.

3.3 The table also outlines statistics in relation to the number of bills and amendments for which the committee had comments.

**Table 3.1 Bills and amendments – 2019 to 2023**

<i>Year</i>	<i>Bills considered</i>	<i>Bills commented on</i>	<i>Amendments considered</i>	<i>Amendments commented on</i>
2019	255	102	39	3
2020	210	101	52	15
2021	223	107	81	36
2022	146	64	41	8
2023	212	105	68	22

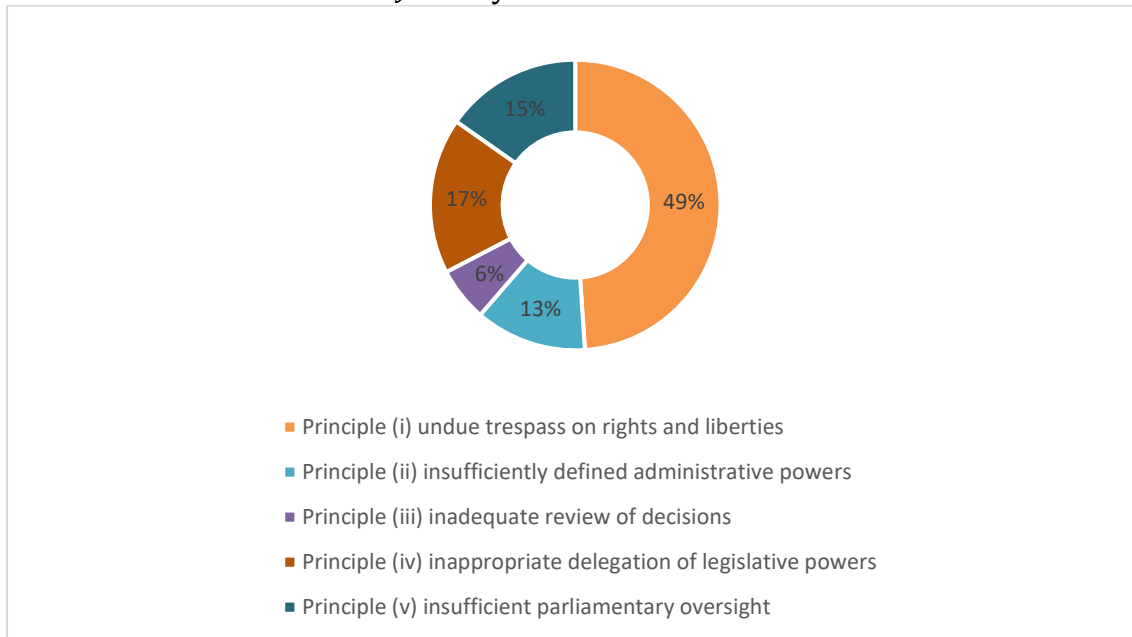
3.4 The number of bills introduced and commented on in 2023 is consistent, on average, with the number of bills introduced and commented on by the committee since 2019.<sup>1</sup> There was an above average number of bills to which amendments were agreed to in 2023.

3.5 The chart below provides a breakdown of the committee’s comments on concerns within bills by the five principles set out in standing order 24(1)(a).

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<sup>1</sup> For commentary on the 2022 figures, see Senate Standing Committee for the Scrutiny of Bills, *Annual Report 2022* (29 November 2023) p. 7.

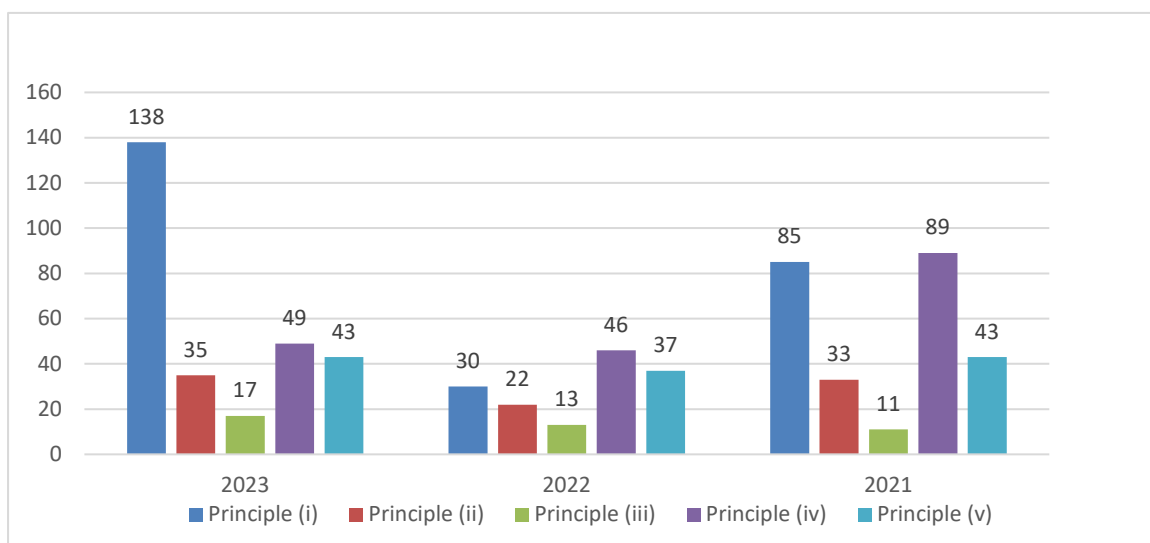
**Figure 3.1 Scrutiny comments on bills by principle under standing order 24(1)(a) – January to December 2023**



- 3.6 The chart shows that the principle which the committee raised most frequently in 2023 was principle (i), relating to undue trespass on rights and liberties (which was raised in 49 per cent of the bills the committee commented on in 2023).
- 3.7 This differs from the data captured for 2022 and 2021, which shows that principle (iv), relating to the inappropriate delegation of legislative power, had been the issue the committee raised most in each period.
- 3.8 The increase in principle (i) scrutiny issues may be explained by a number of bills which raised several concerns relating to undue trespass on rights and liberties.<sup>2</sup>

<sup>2</sup> See, for example, the committee's comments in relation to the Migration Amendment (Bridging Visa Conditions) Bill 2023; Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 (*Scrutiny Digest 15 of 2023*); Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (*Scrutiny Digest 9, 13 and 15 of 2023*).

**Figure 3.2 Scrutiny comments on bills by principle – 2021 to 2023**

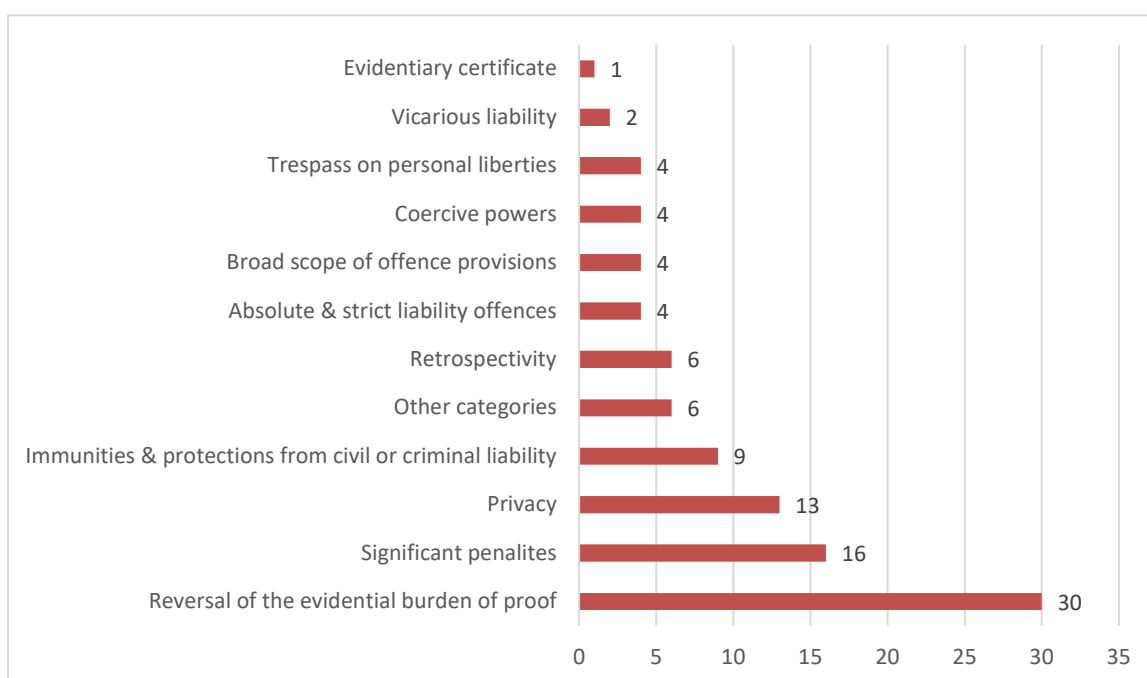


### Breakdown of scrutiny concerns by principle

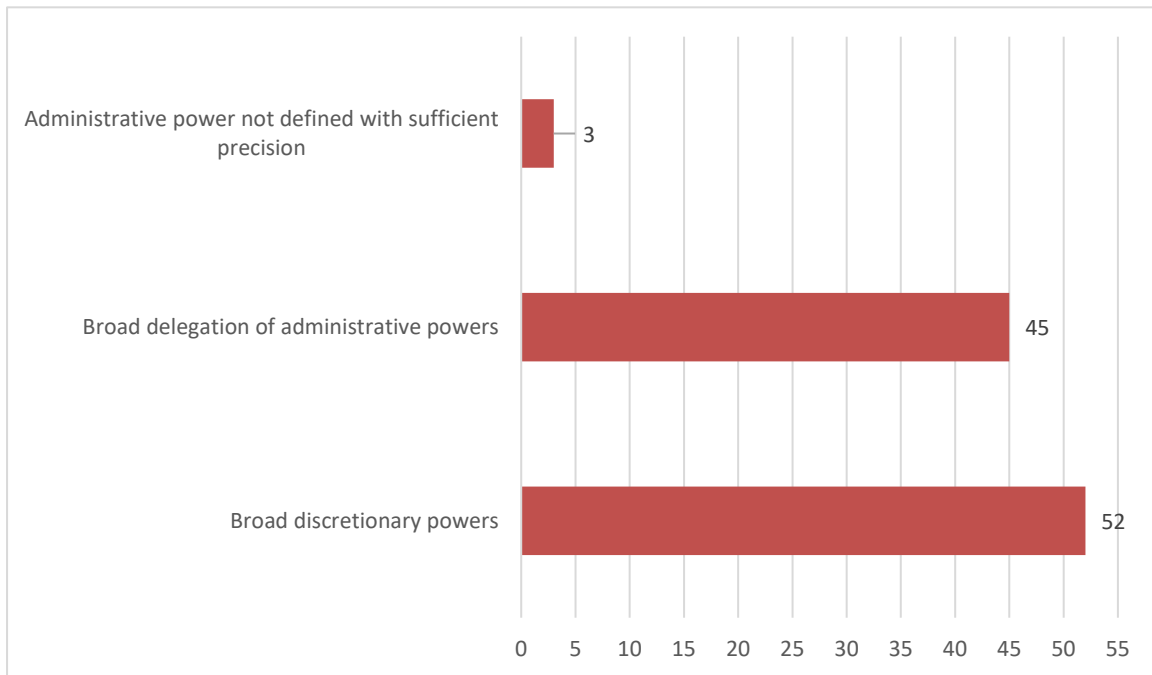
3.9 The following charts provide a breakdown the matters commented on by the committee during 2023, broken down by the particular issue raised.

3.10 Noting that this is the first year that the committee has reported such a breakdown, the committee will closely monitor these figures in future years to determine whether there are any notable trends in legislation raising particular scrutiny concerns.

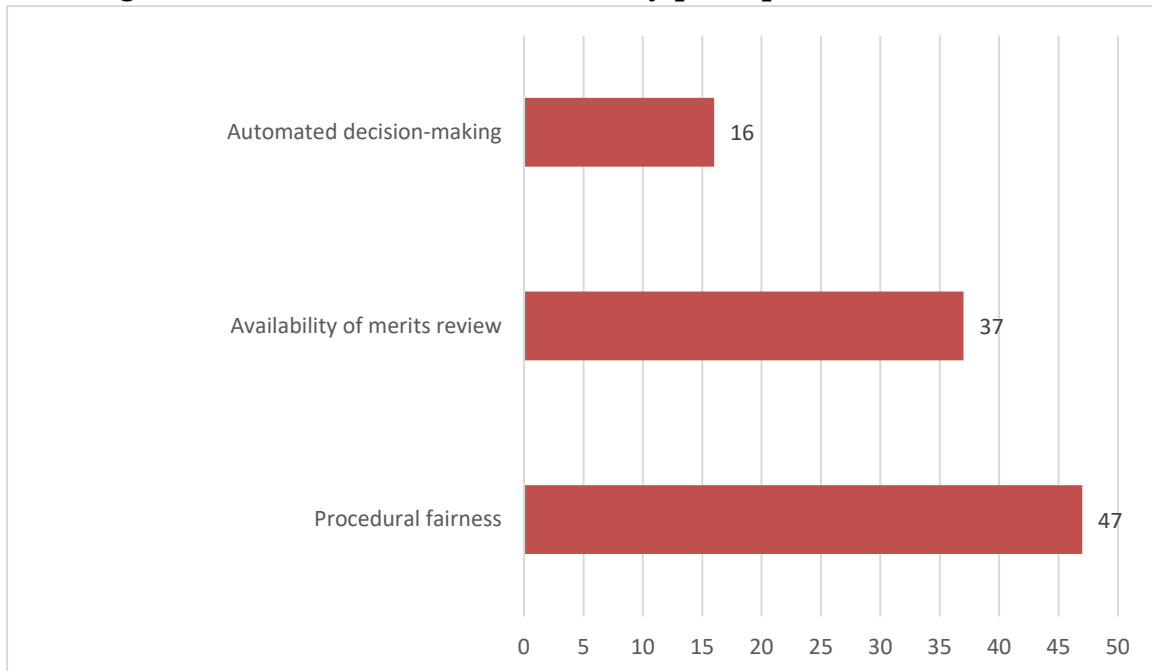
**Figure 3.3 Issues raised under principle (i)\***



\*Figures are rounded to nearest percentage point.

**Figure 3.4 Issues raised under scrutiny principle (ii)\***

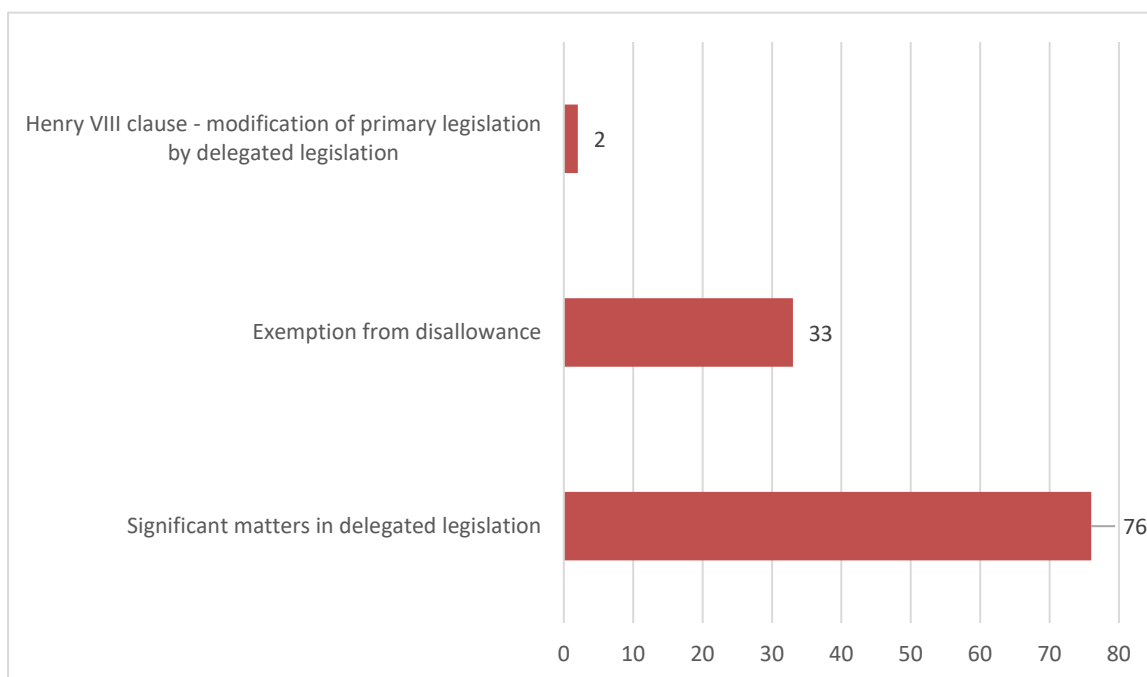
*\*Figures are rounded to nearest percentage point.*

**Figure 3.5 Issues raised under scrutiny principle (iii)\***

*\*Figures are rounded to nearest percentage point.*

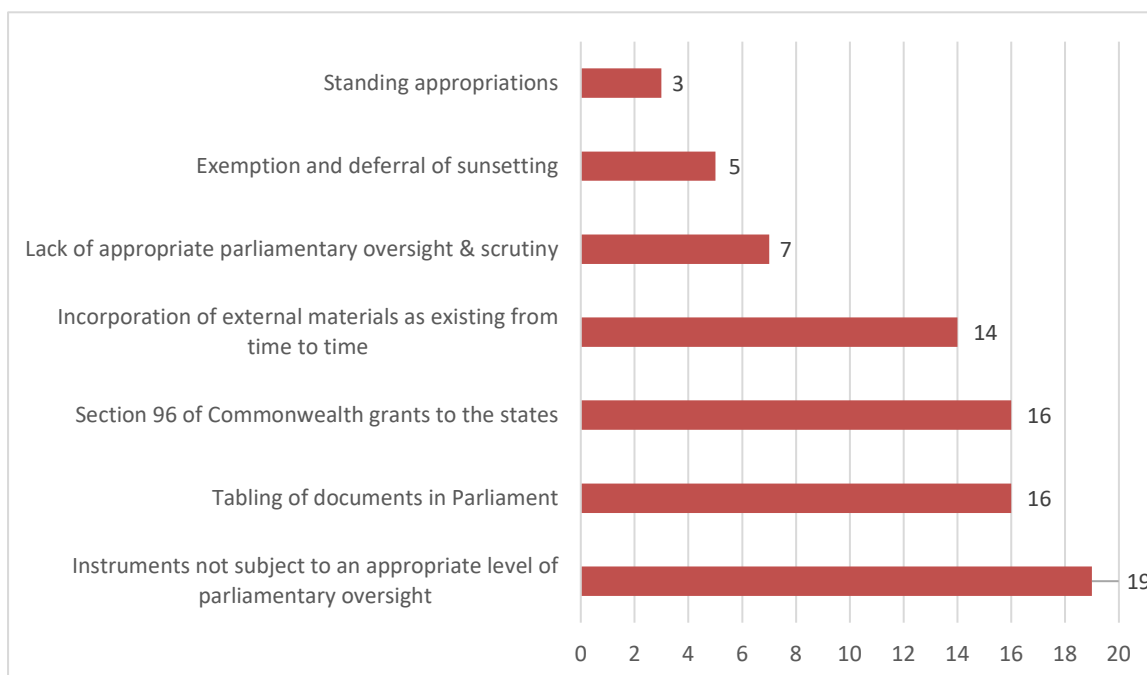


**Figure 3.6 Issues raised under scrutiny principle (iv)\***



*\*Figures are rounded to nearest percentage point.*

**Figure 3.7 Issues raised under scrutiny principle (v)\***



*\*Figures are rounded to nearest percentage point.*

### Impact of the committee's work in 2023

3.11 The work of the committee in scrutinising bills against the five principles outlined above assists and improves parliamentary consideration of legislation in a number of important ways, including:

- more informed consideration of issues in legislation committee reports;

- more informed debate in the Senate and committees; and
- more comprehensive Parliamentary Library Bills Digests.

### **Impact prior to the introduction of bills into the Parliament**

3.12 While difficult to quantify, it is clear that, prior to the introduction of bills into the Parliament, the Scrutiny of Bills Committee has an ‘unseen influence’ on the development of bills through the legislative drafting process. Legislative drafters often refer to the reports and long-standing scrutiny concerns of the committee when they are advising instructing departments and agencies and therefore many provisions that may have been of concern under the committee’s scrutiny principles may not be included in the final text of bills that come before the Parliament.<sup>3</sup>

3.13 Underpinning this ‘unseen influence’ is formal guidance available to agencies and departments as part of the legislative development and drafting process. *The Legislation Handbook*,<sup>4</sup> *Guide to Framing Commonwealth Offences*,<sup>5</sup> and *OPC Drafting Directions*<sup>6</sup> all draw attention to long-standing scrutiny concerns of the committee to ensure that these concerns are considered as part of the legislative drafting process. The long-standing concerns relate to a large number of matters, including:

- exemptions from the disallowance regime;<sup>7</sup>
- retrospectivity;
- absolute and strict liability offences and reversal of the burden of proof;
- entry, search and seizure powers; and
- penalty provisions.

3.14 In relation to the adequacy of explanatory memoranda accompanying bills, OPC Drafting Direction 4.1 advises legislative drafters to:

alert your instructors to any requested provisions that are likely to be of interest to the [Scrutiny of Bills] Committee, and advise your instructors to set out clearly in the explanatory memorandum the reasons for such provisions.<sup>8</sup>

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<sup>3</sup> Dennis Pearce and Stephen Argument, *Delegated legislation in Australia*, 5th ed, 2017, pp. 192–193.

<sup>4</sup> [Legislation Handbook](#), Department of the Prime Minister and Cabinet, February 2017.

<sup>5</sup> Attorney-General’s Department, [Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#), September 2011.

<sup>6</sup> [OPC Drafting Directions Series](#), Office of Parliamentary Counsel.

<sup>7</sup> OPC Drafting Direction 3.8, Subordinate legislation, December 2021, p. 18.

<sup>8</sup> OPC Drafting Direction 4.1, Dealing with instructors, 16 July 2020 p. 3.

- 3.15 In addition, legislative drafters are advised to proactively monitor the committee's Scrutiny Digests to see what comments have been made on bills that they have drafted, and to contact their instructors to provide assistance in preparing the response to the committee.<sup>9</sup>
- 3.16 In December 2023 the First Parliamentary Counsel notified the committee that, in response to engagement with the committee in relation to scrutiny principle (i), OPC reissued Drafting Direction 4.2. The amended drafting direction includes two new requirements for drafters to refer provisions which confer immunity from civil or criminal liability to the Attorney-General's Department.

### **Amendments to legislation**

- 3.17 One of the more significant outcomes of the committee's scrutiny of bills are amendments being made to legislation and explanatory materials in order to address the committee's scrutiny concerns.
- 3.18 For example, the following bills had amendments agreed to in 2023 which addressed scrutiny concerns raised by the committee:
- Private Health Insurance Legislation Amendment (Medical Device and Human Tissue Product List and Cost Recovery) Bill 2022<sup>10</sup>
  - Therapeutic Goods Amendment (2022 Measures No. 1) Bill 2022<sup>11</sup>
  - Nature Repair Market Bill 2023<sup>12</sup>
  - National Reconstruction Fund Corporation Bill 2022<sup>13</sup>
- 3.19 As noted in Chapter 1, when the committee identifies potential scrutiny concerns with a bill, the committee's typical process is to write to the relevant minister and request a response in relation to those concerns. If ministerial responses are not provided within the requested timeframe this can significantly impact the committee's ability to report on its scrutiny concerns while a bill is still before the Parliament. As the minister's response is an important element of the committee's overall consideration of a bill, delays in receiving responses have an impact on the extent to which the outcomes referred to in [3.7] and [3.8] can be achieved.
- 3.20 Table 3.2 below provides statistics relating to the receipt of late responses by the committee. In the committee's *Annual Report 2022*, the committee noted that there had been a marked decrease in the number of responses received by the committee in the 46th Parliament (2019 to 2022) as opposed to the 45th

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<sup>9</sup> OPC Drafting Direction 4.1, Dealing with instructors, 16 July 2020 p. 3.

<sup>10</sup> See *Scrutiny Digest 3 of 2023*.

<sup>11</sup> See *Scrutiny Digest 3 of 2023*.

<sup>12</sup> See *Scrutiny Digest 8 of 2023*.

<sup>13</sup> See *Scrutiny Digest 5 of 2023*.

Parliament (2016-19). Table 3.2 shows an increase in the number of late responses received by the committee in the 47th Parliament, to date, compared to the 46th Parliament. However, the committee notes that it also scrutinised a larger number of bills in 2023 due to the parliamentary recess for a federal election in 2022. While noting that a single data point is not proof of a trend, the committee will closely monitor responsiveness to its scrutiny concerns in the coming years.

**Table 3.2 Statistics on late ministerial responses**

<b>Year</b>	<b>Number of responses requested by the committee</b>	<b>Number of late responses</b>	<b>% of late responses</b>
2016	56	26	46%
2017	101	63	62%
2018	89	35	40%
2019	33	22	52%
2020	76	27	36%
2021	112	30	27%
2022	36	7	19%
2023	87	33	38%

- 3.21 In 2023, the work of the committee resulted in improved explanatory materials being tabled. Explanatory memoranda explain the purpose and effect of the associated bill and the operation of its individual provisions. As such, an explanatory memorandum should demonstrate that the bill's proposed approach is appropriately justified.
- 3.22 The committee regularly requests that additional information be included in explanatory memoranda to ensure that provisions of bills on which the committee has commented are adequately explained. The committee's intention in making such requests is to ensure that such information is readily accessible as a primary resource to aid in the understanding and interpretation of a bill. In this way, enhancements to explanatory memoranda achieved through the engagement of ministers with the committee assist in improving parliamentary scrutiny of legislation. Individual members of the Parliament are better able to meaningfully engage with the legislative process if they have before them sufficient information relating to, and justifications for, legislative provisions at the time the provisions are being considered.

3.23 The committee welcomes the constructive engagement of ministers with the committee in this light in 2023. Examples of improvements to explanatory material include:

- On 21 June 2023, a supplementary explanatory memorandum<sup>14</sup> to the Education Legislation Amendment (Startup Year and Other Measures) Bill 2023 was circulated in the House of Representatives, addressing committee concerns in relation to the provision of independent merits review.
- On 14 September 2023, an addendum to the explanatory memorandum<sup>15</sup> to the National Occupational Respiratory Disease Registry Bill 2023 and the National Occupational Respiratory Disease Registry (Consequential Amendments) Bill 2023 was tabled in the Senate to clarify provisions conveying broad discretionary powers.

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<sup>14</sup> [Supplementary explanatory memorandum](#) to the Education Legislation Amendment (Startup Year and Other Measures) Bill 2023

<sup>15</sup> [Addendum to the explanatory memorandum](#) to the National Occupational Respiratory Disease Registry Bill 2023 and the National Occupational Respiratory Disease Registry (Consequential Amendments) Bill 2023



# Chapter 4

## Case studies

- 4.1 This chapter includes examples of the committee’s work during 2023. The case studies provide examples of the committee’s work to illustrate:
- the committee’s approach to its scrutiny role;
  - the committee’s role in identifying matters of concern as assessed against the scrutiny principles outlined in standing order 24(1)(a) and in obtaining relevant information which informs the legislative process; and
  - the committee’s role in providing the foundation for amendments to provisions and improvements to the content of explanatory material.
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### Case studies

#### Therapeutic Goods Amendment (2022 Measure No. 1) Bill 2022

##### *Initial scrutiny – Digest 1 of 2023*

- 4.2 The Therapeutic Goods Amendment (2022 Measure No. 1) Bill 2022 (the TGA Bill) was introduced in the House of Representatives on 1 December 2022, and was subject to committee consideration in 2023.
- 4.3 The committee considered the bill as part of its initial scrutiny in *Digest 1 of 2023*. The committee raised a number of scrutiny concerns in relation to the bill, including:
- reversal of the evidential burden of proof;
  - strict liability offences;
  - procedural fairness; and
  - incorporation of external materials as existing from time to time.
- 4.4 This case study will examine the committee’s scrutiny and the minister’s engagement in relation to procedural fairness.
- 4.5 The bill sought to provide that the Secretary is not required to observe any requirements of the natural justice hearing rule in relation to releasing information under section 61 of the *Therapeutic Goods Act 1989*.
- 4.6 Section 61 of the Act provides that the Secretary may release certain kinds of information to the public and to various health, regulatory and law enforcement authorities, including for example: notifications concerning therapeutic goods that have been prohibited or severely restricted in Australia; the licensing status of manufacturers of therapeutic goods; contents of reports, conditions on assessment certificates; reported problems and complaints concerning therapeutic goods; investigations of complaints; decisions on registration or

listing; and cases or possible cases of product tampering or counterfeit therapeutic goods.

4.7 Procedural fairness is a fundamental common law right that ensures fair decision-making. Amongst other matters, it includes requiring that people who are adversely affected by a decision are given an adequate opportunity to put their case before the decision is made (known as the 'fair hearing rule'). The fair hearing rule includes not only the right of a person to contest any charges against them but also to test any evidence upon which any allegations are based. Where a bill limits or excludes the right to procedural fairness the committee expects the explanatory memorandum to the bill to address the following matters:

- the nature and scope of the exclusion or limitation; and
- why it is considered necessary and appropriate to restrict a person's right to procedural fairness.

4.8 To justify this the explanatory memorandum to the bill advised that the Therapeutic Goods Administration needs the ability to release critically important safety information and that there may be grave consequences for public health and safety if the information cannot be disclosed urgently.<sup>1</sup> This ability to act with urgency would be, the explanatory memorandum argued, compromised by a requirement to follow the natural justice hearing rule.

4.9 In *Digest 1 of 2023* the committee considered that this explanation does not, of itself, justify such a broad exclusion of the natural justice hearing rule. The committee noted that some of the information that can be released under section 61 may not, in all circumstances, be of such an urgent nature as to justify this exclusion. For example, in cases of potential tampering with therapeutic goods, it may sometimes be more appropriate to seek further information from the manufacturer before release.

4.10 The committee's concerns were heightened in this instance given the breadth of the information that may be released, and the potential effects of such a release on individuals.

4.11 The committee therefore sought advice from the Minister for Health and Aged Care as to why the exclusion of the natural justice hearing rule was necessary, and whether the relevant provision can be redrafted to exclude procedural fairness only for those circumstances where disclosure is truly urgent for public safety reasons.

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<sup>1</sup> Explanatory memorandum to the Therapeutic Goods Amendment (2022 Measure No. 1) Bill 2022, p. 48.



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**Ministerial response – Digest 2 of 2023**

- 4.12 The Minister for Health and Aged care advised that a broad exclusion from procedural fairness is necessary to ensure that all information about the safety, quality and efficacy or performance of therapeutic goods is communicated in a timely way, and to prevent potentially significant consequences of delay on public health.
- 4.13 The minister further advised that providing a requirement to consult third parties would impact information-sharing arrangements with international partners that assist in identifying safety issues with therapeutic goods.
- 4.14 Additionally, the minister advised of numerous practical reasons as to why, in their opinion, procedural fairness could not be provided. For example, the significant volumes of information the TGA releases and the difficulty in considering the scope of procedural fairness obligations that would apply in practice.
- 4.15 In relation to whether the provision could be narrowed to exclude procedural fairness to circumstances where disclosure is required for urgent public safety reasons, the minister advised that a clear formulation for a narrower approach that would not pose safety concerns and that would be workable in practice could not be identified.
- 4.16 The committee noted that, notwithstanding these practical difficulties, it is unclear, in instances where information is released, whether subsequent notice is given to an affected party and whether they are given an opportunity to be heard. It is also not clear what consideration has been given to the impact the exclusion of procedural fairness may have on individuals and what processes the TGA have adopted to minimise this impact.
- 4.17 As such, the committee concluded by drawing its scrutiny concerns to the attention of senators and left to the Senate as a whole the appropriateness of excluding procedural fairness in relation to a decision to release information under section 61 of the *Therapeutic Goods Act 1989*.

**Amendments to the bill – Digest 3 of 2023**

- 4.18 Following the committee's concluding comments, government amendments were agreed by both Houses of the Parliament on 9 March 2023, which provided that the natural justice hearing rule is only excluded when the release of information is in the interests of public health or safety, or the information relates to the safety of one or more therapeutic goods.
- 4.19 While the committee recommended that any exclusion of the natural justice hearing rule be limited to situations of urgent public safety reasons, this was nevertheless a welcome amendment which ensures that, where the information does not relate to public safety, those adversely affected by the decision will have an opportunity to comment before the information is released.

## Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023

### *Initial scrutiny – Digest 9 of 2023*

- 4.20 The Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (the bill) was introduced in the House of Representatives on 14 June 2023.
- 4.21 The measures in the bill raised substantial scrutiny concerns relating to impact on individual rights and liberties. In *Scrutiny Digest 9 of 2023* the committee raised many scrutiny concerns including:
- Broad scope of offence provisions;
  - Freedom of expression;
  - Reversals of the evidential burden of proof;
  - Absolute liability offences;
  - Reversals of the legal burden of proof;
  - Significant penalties in primary legislation; and
  - Exemption of delegated legislation from sunseting.
- 4.22 This case study will examine the committee’s scrutiny and the minister’s engagement in relation to freedom of expression and broad scope of offence provisions.
- 4.23 The bill created offences relating to the use of a carriage service (such as an internet or mobile telephone service) for violent extremist material, including accessing, obtaining, distributing, possessing and controlling such material. Violent extremist material includes, for example, material that describes, depicts, supports or facilitates ‘serious violence’ and is intended to advance a political, religious or ideological cause, and assist, encourage or induce a person to engage in, plan or prepare for an ‘intimidatory act’. The term ‘serious violence’ encompasses a range of actions, including actions that cause serious physical harm or death to a person; cause serious damage to property; or seriously interfere with, disrupt or destroy an electronic system. A maximum penalty of five years imprisonment applies to these offences.
- 4.24 The term ‘violent extremist material’ could conceivably cover a broad range of material. The circumstances in which dealing with violent extremist material would be an offence are also drafted in broad terms. Offence provisions should be drafted with precision and clarity.
- 4.25 In light of the above, the committee requested the Attorney-General’s advice as to:
- whether the bill could be amended to include clarity as to what material is intended to be captured by the term ‘violent extremist material’ so as to constitute the offences under proposed subsections 474.45B(1) and 474.45C(1); and

- whether the bill could be amended to include clarity as to what is meant by ‘accessing’ violent extremist material.

*Ministerial response – Digest 13 of 2023*

- 4.26 The Attorney-General advised that the definition of ‘violent extremist material’ is provided under proposed subsection 474.45A(1). The Attorney-General further advised that the definition of ‘serious violence’ is provided by subsection 100.1(2) of the Criminal Code. Guidance on the intended application of the term ‘violent extremist material’ is provided in the explanatory memorandum.
- 4.27 The Attorney-General undertook to consider amending the bill to address this issue.
- 4.28 The Attorney-General further advised that the Criminal Code defines ‘access’ for the purpose of Part 10.6 of the Criminal Code, in which the new violent extremist material provisions will be located. This definition includes:
- the display of material by a computer or any other output of the material from a computer; or
  - the copying or moving of the material to any place in a computer or to a data storage device; or
  - in the case of material that is a program—the execution of the program.
- 4.29 The committee considered that it would be helpful to include in the explanatory memorandum the definition of ‘access’ under section 473.1 the Criminal Code that is applicable to the offences under Schedule 2 of the bill.
- 4.30 It remained unclear to the committee whether the definition of access provided by the Attorney-General could encompass inadvertently accessing violent extremist material that is displayed on a computer or some other output, such as through social media. The committee queried whether this would result in an individual committing an offence under proposed section 474.45B of the bill.
- 4.31 The committee ultimately queried why the offence in proposed section 474.45B(1) was framed in a way that may capture individuals inadvertently accessing violent extremist material through ordinary carriage service usage.
- 4.32 The committee sought further advice from the Attorney-General as to:
- whether the definition of ‘access’ provided under section 473.1 of the Criminal Code can include inadvertently accessing violent extremist material through the ordinary use of a computer or carriage service; and
  - what, if any, safeguards are in place for persons who contravene proposed subsection 474.45B(1) by inadvertently accessing violent extremist material, including, for example, whether any specific defences are available for a defendant to rely on.

**Ministerial response – Digest 15 of 2023**

- 4.33 The Attorney-General advised that the Government would table an addendum to the explanatory memorandum to include information on the applicable definition of ‘access’.
- 4.34 The Attorney-General further advised that the new offence would not criminalise inadvertent access of violent extremist material because new paragraph 474.45B(2)(b) would provide that the fault element attached to paragraph 474.45B(1)(c) is recklessness. By operation of this fault element, a person who accidentally comes across violent extremist material on the internet without any warning from the context would not be caught by the offence, because they would not have been aware of a substantial risk that the material was violent extremist material.
- 4.35 Further, the Attorney-General advised that section 474.45D sets out the defences that would be available in relation to this offence.
- 4.36 The committee welcomed the undertaking made by the Attorney-General which was completed prior to the bill’s agreement by both Houses.

**Migration Amendment (Bridging Visa Conditions) Bill 2023****Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023**

- 4.37 The Migration Amendment (Bridging Visa Conditions) Bill 2023 (the first bill) was introduced in the House of Representatives on 16 November 2023 and passed that day subject to substantive amendments.
- 4.38 Then, on 27 November 2023, the Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 (the second bill) was introduced in the House of Representatives, seeking to amend provisions of the *Migration Act 1958* as recently amended by the first bill on 16 November 2023. The second bill passed both Houses of the Parliament on 6 December 2023.
- 4.39 The committee reported on the first and second bills concurrently in *Scrutiny Digest 15 of 2023* which was tabled in the Senate on 29 November 2023.
- 4.40 The Migration Bills raised numerous and significant scrutiny concerns including:
- serious trespasses on personal rights and liberties;
  - broad scope of offence provisions;
  - significant penalties;
  - procedural fairness;
  - significant matters in delegated legislation;
  - broad delegation of administrative powers and functions;
  - privacy; and
  - retrospective application.

- 4.41 Such important legislation deserves proper consideration and oversight by the parliament prior to its enactment. The committee was unable to comment on the first bill due to its rapid progression through parliament.
- 4.42 However, the committee was able to comment on the amending second bill prior to its consideration in the House of Representatives. The committee raised many scrutiny concerns in relation to these measures including the significant and substantial trespass on rights and liberties of visa holders. The committee also drew these issues to the attention of Senators in a tabling statement accompanying the Digest.
- 4.43 At time of writing, the committee is awaiting a response from the Minister for Immigration, Citizenship and Multicultural Affairs in relation to the committee's serious scrutiny concerns relating to the bills.



# Appendix 1

## The committee's scrutiny principles in detail

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### Provisions which trespass unduly on personal rights and liberties

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#### Application of criterion set out in standing order 24(1)(a)(i)

1.1 The committee is required to report on whether the provisions of proposed legislation could 'trespass unduly on personal rights and liberties'. For example, a bill might raise issues relating to:

- having a retrospective and adverse effect on those to whom it applies, sometimes from the date of a media announcement (in these instances known as 'legislation by press release');
- offence provisions that are broad in nature and may capture ordinary conduct as a result, particularly when the offence provision contains a custodial penalty;
- providing for immunity from civil or criminal liability, which removes the common law right to bring an action to enforce legal rights;
- abrogating the privilege against self-incrimination (the right people have at common law to avoid incriminating themselves and to remain silent when questioned about an offence in which they were allegedly involved);
- reversing the common law burden of proof (requiring a person to prove their innocence when legal proceedings are taken against them);
- imposing strict or absolute liability as an element of fault for an offence;
- authorising search and seizure without the need to obtain a judicial warrant;
- privacy, including the confidentiality of professional communications with a person's legal advisers; or
- equipping officers with oppressive powers, especially for use against a vulnerable group of people.

1.2 These are categories that have arisen for consideration during most parliaments and are ones with which the committee is very familiar. However, standing order 24(1)(a)(i) may also apply in other circumstances and the committee is alert to identifying any new matters that may be considered inconsistent with the intent of the principle. More detail about matters that give rise to scrutiny concern and examples are discussed below.

### ***Retrospectivity***

1.3 Legislation has retrospective effect when it makes a law apply to an act or omission that took place before the legislation itself was enacted, or to retrospectively validate past actions if there is uncertainty over the lawfulness of those past actions. Criticism of this practice is longstanding. The committee is of the view that retrospective legislation is of concern where it will, or might, have a detrimental effect on people. The committee will comment adversely in these circumstances. Where proposed legislation will have retrospective effect the committee expects that the explanatory memorandum should set out in detail the reasons retrospectivity is sought. The justification should include a statement of whether any person will or might be adversely affected and, if so, the number of people involved and the extent to which their interests are likely to be affected.

**For examples, see the committee's comments concerning the:**

- Migration Amendment (Aggregate Sentences) Bill 2023 (*Scrutiny Digest 2 of 2023*, pp. 9 – 13; (*Scrutiny Digest 9 of 2023*, pp. 39 – 42); and
- Migration Amendment (Strengthening Employer Compliance) Bill 2023 (*Scrutiny Digest 8 of 2023*, pp. 25 – 26).

### ***Broad scope of offence provisions***

1.4 The committee is of the view that any offence provision should be clearly drafted and sufficiently precise to ensure that any person may understand what may constitute an offence. The committee notes that insufficiently defined terms contained within offence provisions may impact on the predictability and guidance capacity of the law, undermining fundamental rule of law principles. This is particularly so when the offence provision contains a custodial penalty.

**For examples, see the committee's comment concerning the:**

- Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (*Scrutiny Digest 9 of 2023*, pp. 1 – 4; *Scrutiny Digest 13 of 2023*, pp. 57 – 60); and
- Work Health and Safety Amendment Bill 2022 (*Scrutiny Digest 1 of 2023*, pp. 69 – 70).

### ***Immunity from civil liability***

1.5 An immunity from civil liability removes any common law right to bring an action to enforce legal rights (for example, a claim of defamation), unless it can be demonstrated that lack of good faith is shown. The committee notes that in the context of judicial review, bad faith is said to imply a lack of an honest or genuine attempt to undertake the task and that it will involve personal attack on the honesty of the decision-maker. As such the courts have taken the position that bad faith can only be shown in very limited circumstances.



- 1.6 The committee expects that if a bill seeks to provide immunity from civil liability, particularly where such immunity could affect individual rights, this should be soundly justified.

**For examples, see the committee's comment concerning the:**

- Inspector-General of Aged Care Bill 2023 (*Scrutiny Digest 4 of 2023*, pp. 10 – 12; *Scrutiny Digest 5 of 2023*, pp. 66 – 68); and
- Intelligence Services Legislation Amendment Bill 2023 (*Scrutiny Digest 8 of 2023*, pp. 17 – 20; *Scrutiny Digest 10 of 2023*, pp. 32 – 34)

***Abrogation of the privilege against self-incrimination***

- 1.7 At common law, a person can decline to answer a question on the ground that their reply might tend to incriminate them. Legislation that interferes with this common law entitlement trespasses on personal rights and liberties and causes the committee considerable concern. However, the committee is also conscious of a government's need to have sufficient information to enable it to properly carry out its duties for the community. The committee accepts that in some circumstances good administration might require access to information that can only be obtained, or can best be obtained, by requiring a person to answer questions even though this means that he or she must provide information showing that he or she may be guilty of an offence.
- 1.8 The committee does not, therefore, see the privilege against self-incrimination as absolute. In considering whether to accept legislation that includes a provision affecting this privilege the committee must be convinced that the public benefit sought will decisively outweigh the resultant harm to the maintenance of civil rights.
- 1.9 One of the factors the committee considers is the subsequent use that may be made of any incriminating disclosures. The committee generally holds to the view that it is relevant to take into account whether the proposed legislation balances the harm of abrogating the privilege by including a prohibition against any direct and indirect uses of the information beyond the purpose for which it is being obtained.
- 1.10 To date the only exception to this that the committee generally finds acceptable is that a forced disclosure should only be available for use in criminal proceedings when they are proceedings for giving false or misleading information in the disclosure the person has been compelled to make. The committee's experience is that the importance of the availability of these use and derivative use immunities are generally understood and they are usually included in bills that seek to abrogate the privilege against self-incrimination. As such, the committee expects that where use *and* derivative use immunity is not provided sufficient justification will be provided as to why not.

**For examples, see the committee’s comments concerning the:**

- 1.11 Inspector-General of Intelligence and Security and Other Legislation Amendment (Modernisation) Bill 2022 (*Scrutiny Digest 1 of 2023*, pp. 16 – 18; *Scrutiny Digest 2 of 2023*, pp. 34 – 36); and
- 1.12 Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (*Scrutiny Digest 13 of 2023*, pp. 10 – 11; *Scrutiny Digest 16 of 2023*, pp. 15 – 16).

***Reversal of the burden of proof***

- 1.13 At common law, it is ordinarily the duty of the prosecution to prove all the elements of an offence; the accused is not required to prove anything. Provisions in some legislation reverse this burden and require the person charged with an offence to prove, or disprove, a matter in order to establish his or her innocence or at least identify evidence that suggests a reasonable possibility that the matter exists or does not exist.
- 1.14 The committee usually comments adversely on a bill that places the burden on an accused person to disprove one or more elements of the offence with which he or she is charged, unless the explanatory memorandum clearly and adequately justifies the rationale for the approach, particularly by reference to the principles outlined in its comments on this issue recorded in the committee’s *Scrutiny Digests* and in the *Commonwealth Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. In this respect, the burden of proof should only be reversed if the relevant matter is peculiarly within the knowledge of the defendant and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.<sup>1</sup>

**For examples, see the committee’s comments concerning the:**

- Public Interest Disclosure Amendment (Review) Bill 2022 (*Scrutiny Digest 2 of 2023*, pp. 49 – 52); and
- Referendum (Machinery Provisions) Amendment Bill 2022 (*Scrutiny Digest 1 of 2023*, pp. 38 – 39; *Scrutiny Digest 2 of 2023*, pp. 58 – 59.)

***Strict and absolute liability offences***

- 1.15 The committee draws the Senate’s attention to provisions that create offences of strict or absolute liability and expects that where a bill creates such an offence the reasons for its imposition will be set out in the explanatory memorandum that accompanies the bill.
- 1.16 An offence is one of **strict liability** where it provides for people to be punished for doing something, or failing to do something, whether or not they have a

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<sup>1</sup> Attorney-General’s Department, *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (September 2011), p. 50.

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guilty intent. A person charged with a strict liability offence is able to invoke a defence of mistake of fact.

- 1.17 An offence of **absolute liability** also provides for people to be punished for doing something, or failing to do something, whether or not they have a guilty intent. However, in the case of absolute liability offences, the defence of mistake of fact is not available.

**For examples, see the committee's comments concerning the:**

- Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (*Scrutiny Digest 9 of 2023*, pp. 5 – 10; *Scrutiny Digest 13 of 2023*, pp. 60 – 64); and
- Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023 (*Scrutiny Digest 8 of 2023*, pp. 6 – 9).

### *Privacy*

- 1.18 Bills which enable the collection, use or disclosure of personal information may trespass on an individual's right to privacy. Where a bill contains provisions for the collection, use or disclose of personal information, the committee expects the explanatory memorandum to the bill to address why it is appropriate for the bill to provide for the collection of personal information; and what safeguards are in place to protect the personal information, and whether these are set out in law or in policy (including whether the *Privacy Act 1988* applies).

**For examples, see the committee's comments concerning the:**

- Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022 (*Scrutiny Digest 1 of 2023*, pp. 106 – 109; *Scrutiny Digest 2 of 2023*, pp. 69 – 71); and
- Identity Verification Services (Consequential Amendments) Bill 2023 (*Scrutiny Digest 12 of 2023*, pp. 24 – 27; *Scrutiny Digest 13 of 2023*, pp. 52 - 56).

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## **Insufficiently defined administrative powers**

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### **Application of criterion set out in standing order 24(1)(a)(ii)**

- 1.19 Legislation may contain provisions which make rights and liberties unduly dependent on insufficiently defined administrative powers. For example, a provision might:
- give administrators ill-defined and/or wide powers; or
  - delegate power to 'a person' without any further qualification as to who that person might be.

### ***Broad discretionary powers***

1.20 Since its establishment in 1981, the committee has drawn the Senate's attention to legislation that gives administrators seemingly ill-defined and wide powers. If a provision that is of interest to the committee is accompanied by a comprehensive explanation of the rationale for the approach in the explanatory memorandum, the committee is able to better understand the proposal and either make no further comment or leave the matter to the consideration of the Senate.

#### **For an example, see the committee's comments concerning the:**

- Private Health Insurance Legislation Amendment (Medical Device and Human Tissue Product List and Cost Recovery) Bill 2022 (*Scrutiny Digest 2 of 2023*, pp. 47 – 48)

### ***Delegation of power to 'a person' or to a wide class of persons***

1.21 The committee consistently draws attention to legislation that allows significant and wide-ranging powers to be delegated to anyone who fits an all-embracing description (such as 'a person') or which allows delegations to a relatively large class of persons with little or no specificity as to appropriate qualifications or attributes. Generally, the committee prefers to see a limit set either on the sorts of powers that might be delegated or on the categories of people to whom those powers might be delegated. The committee's preference is that delegates be confined to the holders of nominated offices or to members of the Senior Executive Service.

1.22 Where delegations are made the committee also expects that an explanation of why they are considered necessary should be included in the explanatory memorandum, especially if the delegation is broad.

#### **For examples, see the committee's comments concerning the:**

- Australian Security Intelligence Organisation Amendment Bill 2023 (*Digest 5 of 2023*, pp. 11 – 13; *Digest 6 of 2023*, pp. 42 – 43); and
- Public Service Amendment Bill 2023 (*Scrutiny Digest 7 of 2023*, pp. 6 – 8; *Scrutiny Digest 8 of 2023*, pp. 71 – 73).

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## **Undue dependence on non-reviewable decisions**

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### **Application of criterion set out in standing order 24(1)(a)(iii)**

1.23 Legislation may contain provisions which make 'rights, liberties or obligations unduly dependent upon non-reviewable decisions'. Relevantly, a bill may:

- exclude review on the merits by an appropriate appeal tribunal;
- exclude judicial review of the legality of a decision;

- provide that reasons need not be given for a decision; or
- fail to provide for people to be notified of their rights of appeal against administrative decisions.

### *Excluding merits and judicial review*

- 1.24 The committee is of the view that, where a decision may have a substantial impact on a person's rights and interests, judicial review should generally be available to ensure that such decisions are lawfully made. Since its establishment, the committee has drawn attention to provisions that explicitly or otherwise exclude or fail to provide for effective judicial review. The committee is also concerned at the inclusion of no invalidity clauses which have the effect that an act done or decision made in breach of a particular statutory requirement or other administrative law norm does not result in the invalidity of that act or decision. These clauses can limit the practical efficacy of judicial review to provide a remedy for legal errors.
- 1.25 The committee also routinely draws attention to bills that seek to deny the opportunity for independent merits review. However, the committee also accepts that there are circumstances in which merits review is not, or may not be, necessary. The committee is assisted when the explanatory memorandum comprehensively and persuasively describes the rationale for the proposed approach.

### **For examples, see the committee's comments concerning the:**

- Australian Security Intelligence Organisation Amendment Bill 2023 (*Scrutiny Digest 5 of 2023*, pp. 1 – 4);
- Crimes and Other Legislation Amendment (Omnibus) Bill 2023 (*Scrutiny Digest 5 of 2023*, pp. 17-19);
- Disability Services and Inclusion Bill 2023 (*Scrutiny Digest 14 of 2023*, pp. 7 – 9).

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## **Inappropriate delegation of legislative power**

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### **Application of criterion set out in standing order 24(1)(a)(iv)**

- 1.26 Legislation often includes the delegation of a power to make laws, giving delegates (usually a member or representative of the Executive Government) the authority to make regulations or other instruments that are not required to be considered and approved by the Parliament before they take effect. The committee's task under this criterion is therefore to draw the Senate's attention to provisions that seek to delegate the Parliament's power inappropriately.

1.27 Examples of provisions that may inappropriately delegate legislative power include those which:

- enable delegated legislation to amend or modify the operation of an Act of the Parliament (often called a ‘Henry VIII’ clause);
- provide for matters which are so important that they should be regulated by the Parliament but are, in fact, to be dealt with by delegated legislation;
- provide that a levy or a charge be set by regulation; or
- give to the executive unfettered control over whether or when an Act passed by the Parliament should come into force.

### *Henry VIII clauses*

1.28 A Henry VIII clause is a provision which authorises the amendment of either the empowering Act, or any other primary legislation, by means of delegated legislation. Since its establishment, the committee has consistently drawn attention to Henry VIII clauses and other provisions which permit delegated legislation to amend or take precedence over primary legislation. A clear and helpful explanation in the explanatory memorandum can allow the committee to leave the matter to the Senate.

**For an example, see the committee’s comments concerning the:**

- Referendum (Machinery Provisions) Amendment Bill 2022 (*Scrutiny Digest 1 of 2023*, pp. 40 – 41; *Scrutiny Digest 2 of 2023*, pp. 59 – 60)

### *Significant matters in delegated legislation*

1.29 The committee also draws attention to provisions that inappropriately delegate legislative power of a kind which ought to be exercised by the Parliament alone. Significant matters should be set out in primary legislation to ensure that the measures are subject to full parliamentary consideration and not simply left to the delegated legislation disallowance process.

**For examples, see the committee’s comments concerning the:**

- Safeguard Mechanism (Crediting) Amendment Bill 2022 (*Scrutiny Digest 1 of 2023*, pp. 45 – 47; *Scrutiny Digest 2 of 2023*, pp. 65 – 68);
- Social Security (Administration) Amendment (Income Management Reform) Bill 2023 (*Scrutiny Digest 3 of 2023*, pp. 17 – 19; *Scrutiny Digest 5 of 2023*, pp. 69 – 71)
- Intelligence Services Legislation Amendment Bill 2023 (*Scrutiny Digest 8 of 2023*, pp. 14 – 16; *Scrutiny Digest 10 of 2023*, pp. 28 – 30).

### *Setting the rate of a ‘levy’ by regulation*

1.30 The committee has also consistently drawn attention to legislation that provides for the rate of a ‘levy’ to be set by regulation, particularly where such a levy may amount to taxation. It is for the Parliament, rather than the makers of delegated legislation, to set a rate of tax.

1.31 The committee recognises, however, that where the rate of a levy needs to be changed frequently and expeditiously this may be better done through amending regulations rather than the enabling statute. Where a compelling case can be made for the rate to be set by delegated legislation, the committee expects that there will be some limits imposed on the exercise of this power. For example, the committee expects the enabling Act to prescribe either a maximum figure above which the relevant regulations cannot fix the levy, or, alternatively, a formula by which such an amount can be calculated. The vice to be avoided is delegating an unfettered power to impose levies or fees.

**For an example, see the committee's comments concerning the:**

- Primary Industries (Services) Levies Bill 2023, Primary Industries (Excise) Levies Bill 2023, Primary Industries (Customs) Charges Bill 2023 (*Scrutiny Digest 13 of 2023*, pp. 18 – 19)

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## **Appropriate parliamentary scrutiny of legislative power**

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### **Application of criterion set out in standing order 24(1)(a)(v)**

1.32 Whenever the Parliament delegates power to legislate, it should properly address the question of how much oversight to maintain over the exercise of that delegated power. Provisions which insufficiently subject the exercise of legislative power to parliamentary scrutiny include those which:

- provide a power to make delegated legislation that is not disallowable by the Parliament;
- provide that legislative instruments to be made under primary legislation may incorporate rules or standards as in force from time to time;
- enable a minister or other person to issue guidelines, directions or similar instruments influencing how powers granted under a law are to be exercised, with no obligation that they be tabled in Parliament or subject to disallowance; or
- provide for the ongoing appropriation of an unspecified amount of money from the Consolidated Revenue Fund.

### ***Delegated legislation not subject to disallowance***

1.33 When a provision of a bill specifies that an instrument is not subject to disallowance the committee expects the explanatory memorandum to set out a full explanation justifying the exceptional circumstances that warrant the need for the exemption.

**For examples, see the committee's comments concerning the:**

- National Reconstruction Fund Corporation Bill 2022 (*Scrutiny Digest 1 of 2023*, pp. 23 – 26; *Scrutiny Digest 2 of 2023*, pp. 41 – 43)
- Nature Repair Market Bill 2023 (*Scrutiny Digest 5 of 2023*, pp. 37 – 38; *Scrutiny Digest 8 of 2023*, pp. 59 - 61)
- Housing Australia Future Fund Bill 2023, Treasury Laws Amendment (Housing Measures No. 1) Bill 2023 (*Scrutiny Digest 2 of 2023*, pp. 1 – 4; *Scrutiny Digest 4 of 2023*, pp. 22 – 24).

***Incorporating material 'as in force from time to time'***

1.34 The *Legislation Act 2003* includes a general rule which allows a legislative instrument, such as a regulation, to adopt or incorporate additional material and give it the force of law. The incorporated material applies in the form in which it exists *at the time of adoption* unless a provision in the relevant Act allows material to be incorporated 'as in force from time to time'. Typical wording included in bills to achieve this outcome provides that the relevant regulations may:

...apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing as in force from time to time.

1.35 Allowing material to be incorporated 'as in force from time to time' is of concern from a scrutiny perspective because it:

- allows a change in legal obligations to be imposed without the Parliament's knowledge and without the opportunity for Parliament to scrutinise the variation;
- can create uncertainty in the law because those affected may not be aware that the law has changed; and
- those obliged to obey the law may have inadequate access to its terms, depending on the nature of the material being incorporated.

1.36 The committee expects that the explanatory memorandum for a bill that includes a provision which seeks to incorporate non-legislative material 'as in force from time to time' will clearly and comprehensively explain the necessity for this approach and indicate how the concerns outlined above will be met.

**For examples, see the committee's comments concerning the:**

- Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (*Scrutiny Digest 13 of 2023*, pp. 11 – 12; *Scrutiny Digest 16 of 2023*, pp. 17)
- Treasury Laws Amendment (Consumer Data Right) Bill 2022 (*Scrutiny Digest 1 of 2023*, pp. 56 – 57; *Scrutiny Digest 3 of 2023*, pp. 29 – 30)
- Disability Services and Inclusion Bill 2023 (*Scrutiny Digest 12 of 2023*, pp. 22 – 23)



*Standing appropriations*

- 1.37 Standing appropriations enable entities to spend money from the Consolidated Revenue Fund on an ongoing basis. Their significance from an accountability perspective is that, once enacted, the expenditure involved does not require regular parliamentary approval and therefore escapes parliamentary control. They are not subject to approval through the standard annual appropriations process.
- 1.38 The committee expects that the explanatory memorandum to a bill establishing a standing appropriation will include an explanation of the reason the standing appropriation was considered necessary and also look to other circumstances such as a cap on the funding or a limitation on the period during which it applies.
- 1.39 The committee reports on its scrutiny of standing appropriations in Chapter 3 of each Scrutiny Digest.**



## Appendix 2

### List of the committee's regular publications during 2023

**Table 2.1**

SCRUTINY DIGEST	DATE TABLED
No. 1	8 February 2023
No. 2	8 March 2023
No. 3	22 March 2023
No. 4	30 March 2023
No. 5	10 May 2023
No. 6	14 June 2023
No. 7	21 June 2023
No. 8	2 August 2023
No. 9	9 August 2023
No. 10	6 September 2023
No. 11	14 September 2023
No. 12	19 October 2023
No. 13	8 November 2023
No. 14	15 November 2023
No. 15	29 November 2023
No. 16	7 December 2023

**Senator Dean Smith**

**Chair**