



15 February 2022

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 set out in 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 Delegated Legislation Committee.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 2 of 2022](#))

Various instruments made under the *Biosecurity Act 2015* [F2021L01620] [F2021L01621] [F2021L01698] [F2021L01718] [F2021L01757]

- *Exemption from disallowance*: the committee reiterates its view that the *Biosecurity Act 2015* should be amended to provide that instruments made under the Act in the future will be subject to disallowance by the Parliament. If the government is not amenable to moving such amendments, the committee intends to move its own amendments to the Biosecurity Amendment (Enhanced Risk Management) Bill 2021 which is currently before the Parliament.

Industry Research and Development (Underwriting New Generation Investments Program) Instrument 2021 [F2021L01708]

- *Parliamentary oversight*: the committee is seeking advice from the minister as to:
 - the amount of funding that is authorised to be spent on eligible projects under the Underwriting New Generation Investments Program by this instrument; and
 - why it is considered necessary and appropriate to provide authority for spending on the Program by delegated legislation, when the Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020 is currently before the Parliament.

Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 [F2021L01430]

The committee is seeking further advice from the minister on the following matters:

- *Matters more appropriate for parliamentary enactment*: why there was insufficient time for the COVID-19 Vaccine Claims Scheme (the Scheme) to be established by primary legislation and whether at least high-level parameters in relation to the scope of the Scheme can now be set out in primary legislation.
- *Parliamentary oversight—executive expenditure*: whether at least a high-level indication as to the total amount of funding that is expected to be expended on the Scheme can be provided.
- *Parliamentary oversight—scope of the Scheme*: whether the detailed content of the Scheme, such as the list of conditions for which a claim may be (or may not be) payable, could at least be set out in disallowable delegated legislation.
- *Availability of independent review*: whether an alternative form of independent review to that of review by the Administrative Appeals Tribunal could be provided for in relation to decisions made under the Scheme.
- *Scope of administrative powers*: whether safeguards and limitations on the exercise of discretionary powers under the Scheme can be set out in disallowable delegated 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 10 February 2022, 658 legislative instruments have been made, of which 18.7% are exempt from disallowance.

Other legislative instruments commented on ([Delegated Legislation Monitor 2 of 2022](#))

- The Scrutiny of Delegated Legislation Committee considered 128 disallowable legislative instruments and 10 instruments exempt from disallowance registered on the Federal Register of Legislation between 27 November 2021 and 10 December 2021. The committee is continuing to engage with ministers and agencies in relation to 48 instruments and has concluded its consideration of 38 instruments.

Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee **gave** notice of motions to disallow the following instruments on 10 February 2022:

- Australian Citizenship (special residence requirement) Instrument (LIN 21/069) 2021 [F2021L01422]
- Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2021 [F2021L01392]
- Financial Framework (Supplementary Powers) Amendment (Health Measures No. 6) Regulations 2021 [F2021L01430]

- Industry Research and Development (Supporting Critical Transmission Infrastructure Program) Instrument 2021 [F2021L01312]
- Therapeutic Goods (Standard for Human Cell and Tissue Products—Donor Screening Requirements) (TGO 108) Order 2021 [F2021L01326].

All legislative instruments subject to a notice of motion for disallowance in either House of the Parliament are listed in the [Disallowance Alert](#).

This document contains a brief summary of recent comments made by 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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