



15 March 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.

Revised guidelines

The Scrutiny of Delegated Legislation Committee has now published a [2nd edition of its Guidelines](#).

The committee has prepared these guidelines to assist people working with the committee as to the committee's role and expectations. The revised guidelines reflect changes to standing order 23 following the [adoption](#) by the Senate of the recommendations in the [final report](#) of the committee's inquiry into the exemption of delegated legislation from parliamentary oversight.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 3 of 2022](#))

Australian Renewable Energy Agency (General Funding Strategy) Determination 2021 [F2021L01191]

- [Exemption from disallowance](#): the committee drew this instrument to the attention of the Senate noting that:
 - it sets out significant matters relating to the expenditure of public money by the Australian Renewable Energy Agency without the opportunity for appropriate parliamentary oversight through the disallowance process; and
 - the committee considers that is inappropriate for the instrument to be exempt from disallowance.
- A separate notice of motion to disallow the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043] is scheduled to be considered by the Senate on the next day of sitting, 29 March 2022.

Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 11) Regulations 2021 [F2021L01825]

- Matters more appropriate for parliamentary enactment: the committee is seeking advice from the minister as to why it is considered necessary and appropriate to use delegated legislation, rather than primary legislation, to provide for the Territories Stolen Generations Redress Scheme (the Scheme).
- Parliamentary oversight: the committee is seeking advice from the minister as to why crucial aspects of the Scheme, including the eligibility criteria, evidentiary requirements and the maximum payment that may be provided to survivors, have not at least been provided for in delegated legislation subject to disallowance by the Parliament.
- Delegation of administrative powers and functions: the committee is seeking advice from the minister as to who will exercise the power to make decisions under the Scheme and whether any safeguards or limitations apply to the exercise of these powers.
- Privacy: the committee is seeking advice from the minister as to the nature, scope and extent of personal information that may be collected under the Scheme and whether any safeguards apply to protect this information.
- Availability of independent merits review: the committee is seeking advice from the minister as to whether independent merits review can be provided for decisions made under the Scheme.

Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021

- Exemptions from the operation of primary legislation/parliamentary oversight: the committee retains significant scrutiny concerns in relation to providing for continuing exemptions from the prohibition on hawking of financial products through delegated legislation. Due to its significant technical scrutiny concerns, the committee recommends that the Senate disallow this instrument.

Northern Australia Infrastructure Facility Investment Mandate Direction 2021 [F2021L00942]

- Exemption from disallowance: the committee drew this instrument to the attention of the Senate noting that it sets out significant matters relating to the operation of the Northern Australia Infrastructure Facility, including eligibility criteria for the provision of financial assistance, without the opportunity for appropriate parliamentary oversight through the disallowance process.

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 3 March 2022, 675 legislative instruments have been made, of which 19.3% are exempt from disallowance.

Other legislative instruments commented on ([Delegated Legislation Monitor 3 of 2022](#))

The Scrutiny of Delegated Legislation Committee considered 153 disallowable legislative instruments and 33 instruments exempt from disallowance registered on the Federal Register of Legislation between 11 December 2021 and 14 January 2022. The committee is continuing to engage with ministers and agencies in relation to 14 instruments and has concluded its consideration of 48 instruments.

This document contains a very brief summary of some 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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