



22 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 Bills Committee.

Key scrutiny issues: Bills ([Scrutiny Digest 2 of 2022](#))

Appropriation Bill (No. 3) 2021-2022 and Appropriation Bill (No. 4) 2021-2022

- ***Parliamentary scrutiny***: the committee leaves to the Senate the appropriateness of:
 - the classification of items in the appropriation bills as 'ordinary annual services of the government';
 - a provision which would make available an additional \$1.8 billion for expenditure via non-disallowable legislative instrument;
 - parliamentary oversight of grants to the States under section 96 of the Constitution; and
 - setting the debit limit for national partnership payments at an amount that appears to be well above the expected level of expenditure.
- ***Parliamentary scrutiny***: the committee welcomes the following transparency measures implemented by the Finance Minister in response to the committee's scrutiny concerns:
 - including additional information about Advance to the Finance Minister provisions and debit limits within the explanatory memoranda to the appropriation bills; and
 - updating the Department of Finance *Guide to Preparing the 2022-23 Portfolio Budget Statements* to include a new requirement that a high-level explanation must be included within a portfolio budget statement to describe why a measure has been reported as 'not for publication'.

Criminal Code Amendment (Firearms Trafficking) Bill 2022

- Significant penalties: the committee is seeking advice from the minister on provisions which double the existing penalty imposed in relation to certain firearms trafficking offences.
- Mandatory minimum sentences: the committee leaves to the Senate the appropriateness of provisions which impose mandatory minimum sentences of five years imprisonment for aggravated offences for firearms trafficking.

National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Bill 2021

- Broad delegation of administrative powers: the committee is seeking advice from the minister regarding the level of staff members who, in practice, it is expected will be delegated the power to give emergency authorisations and whether amendments could be made to the bill to limit delegation powers.
- Tabling of documents: the committee leaves to the Senate the appropriateness of not providing that privacy rules, which regulate the communication and retention of intelligence information concerning Australian persons, are tabled in the Parliament.

Religious Discrimination Bill 2021

- Significant matters in delegated legislation—publicly available policies: the committee welcomes government amendments which set out further detail within the bill as to what is required to be included within a publicly available policy.
- Significant matters in delegated legislation—overriding state or territory laws in relation to employment by religious educational institutions and statements of belief: the committee leaves to the Senate the appropriateness of leaving the following matters to delegated legislation:
 - the prescription of which state and territory laws relating to employment by religious educational institutions will be overridden by Commonwealth law; and
 - the prescription of additional Commonwealth, state and territory laws for which the making of a statement of belief will not constitute discrimination.
- Broad discretionary power: The committee welcomes government amendments which remove the minister's power to vary or revoke exemptions and which increase transparency measures applying to the making of an exemption decision. The committee otherwise leaves to the Senate the appropriateness of providing the Australian Human Rights Commission with a broad power to grant or vary exemptions to the bill, with no restrictions on the ability of the Commission to renew an exemption indefinitely.

Telecommunications (Interception and Access) Amendment (Corrective Services Authorities) Bill 2022

- Broad discretionary powers: the committee is seeking advice from the minister regarding the appropriateness of providing the minister with a broad discretionary power to declare that a state corrective services agency is an enforcement agency for the purpose of the *Telecommunications (Interception and Access) Act 1979*.

Other bills commented on ([Scrutiny Digest 2 of 2022](#))

- **Agriculture Biodiversity Stewardship Market Bill 2021:** the committee is seeking advice in relation to the inclusion of significant matters in delegated legislation, the incorporation of external materials as in force from time to time, provisions which confer a broad immunity from civil liability, a provision which exempts ministerial directions from disallowance, the broad delegation of administrative powers and the inclusion of no-invalidity clauses.
- **Animal Health Australia and Plant Health Australia Funding Legislation Amendment Bill 2021:** the committee requested that the explanatory memorandum be updated to set out information in relation to the inclusion of matters relating to the Plant Health Australia levy and the Emergency Plant Pest Response levy within non-legislative instruments that are not subject to parliamentary scrutiny.
- **Appropriation (Coronavirus Response) Bill (No. 1) 2021-2022 and Appropriation (Coronavirus Response) Bill (No. 2) 2021-2022:** the committee leaves to the Senate the appropriateness of provisions which allow the Finance Minister to determine the specific purposes for which up to \$5 billion in additional funds may be allocated in legislative instruments not subject to disallowance.
- **Australian Radioactive Waste Agency Bill 2022:** the committee is seeking advice from the minister in relation to the exemption of ministerial directions given to the Australian Radioactive Waste Agency from the usual disallowance process.
- **Crimes Legislation Amendment (Ransomware Action Plan) Bill 2022:** the committee is seeking advice from the minister in relation to provisions which reverse the evidential burden of proof and the inclusion of significant matters in delegated legislation.
- **Education Legislation Amendment (2022 Measures No. 1) Bill 2022:** the committee is seeking advice from the minister in relation to the inclusion of significant matters in delegated legislation.
- **Financial Accountability Regime Bill 2021:** the committee leaves to the Senate the appropriateness of provisions which provide broad discretionary powers to grant exemptions, leave significant matters to delegated legislation, do not provide for significant documents to be tabled in Parliament, reverse the evidential burden of proof, and allow for the incorporation of external materials as existing from time to time.
- **Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill 2021:** the committee leaves to the Senate as a whole the appropriateness of provisions which reverse the evidential burden of proof.
- **Health Legislation Amendment (Medicare Compliance and Other Measures) Bill 2021:** the committee requested that the explanatory memorandum be updated to include information in relation to the reversal of the evidential burden of proof.
- **Higher Education Support Amendment (Australia's Economic Accelerator) Bill 2022:** the committee is seeking advice from the minister in relation to provisions which

reverse the evidential burden of proof and which require a research commercialisation strategy and an investment plan for the Australia's Economic Accelerator Advisory Board to be set out within non-legislative instruments which are not subject to parliamentary disallowance.

- **Offshore Petroleum (Laminaria and Corallina Decommissioning Cost Recovery Levy) Bill 2021:** the committee is seeking further advice from the Treasurer as to whether the bill can be amended to clarify that an instrument will not take effect in circumstances where there is an unresolved motion to disallow the instrument.
- **Ozone Protection and Synthetic Greenhouse Gas Management Amendment (Miscellaneous Measures) Bill 2021:** the committee leaves to the Senate the appropriateness of provisions which leave significant matters to delegated legislation, provide for the incorporation of external materials as in force from time to time and of several no-invalidity clauses.
- **Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022:** the committee is seeking advice from the minister in relation to the inclusion of significant matters in delegated legislation. The committee leaves to the Senate the appropriateness of provisions which abrogate the privilege against self-incrimination in circumstances where no derivative use immunity is provided.
- **Social Media (Anti-Trolling) Bill 2022:** the committee is seeking advice from the minister in relation to the inclusion of significant matters in delegated legislation.
- **Transport Security Amendment (Critical Infrastructure) Bill 2022:** the committee is seeking advice from the minister in relation to provisions which reverse the evidential burden of proof and provisions which confer an immunity from criminal and civil liability.
- **Treasury Laws Amendment (Streamlining and Improving Economic Outcomes for Australians) Bill 2022:** the committee is seeking advice from the minister in relation to the inclusion of significant matters in delegated legislation.

This document contains a brief summary of some recent comments made by the Senate Scrutiny of Bills Committee (Chair: Senator Helen Polley and Deputy Chair: Senator Dean Smith).

For any comments or questions, please contact:

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Senate Scrutiny of Bills Committee

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