



4 April 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](#).

## Disallowance of the Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021

On 28 March 2022, the above regulations were taken to have been disallowed by the Senate on the basis of a notice of motion to disallow given by the Chair of the Scrutiny of Delegated Legislation Committee.

In [Delegated Legislation Monitor 14 of 2021](#) the committee recommended that the Senate disallow the regulations in light of unresolved scrutiny concerns relating to the inclusion of significant matters in delegated legislation and the compliance of the regulations with its authorising legislation.

### Key scrutiny issues: Bills ([Scrutiny Digest 3 of 2022](#))

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

Broad delegation of administrative powers: the committee considers that the bill should be amended to require that an agency head, when making a delegation relating to emergency authorisations, must be satisfied that the person has the appropriate training, qualifications or experience to appropriately exercise the delegated power, function or duty.

### Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 4 of 2022](#))

#### Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 2) [F2021L01658]

- Exemption from sunseting/exemption from the operation of primary legislation: the committee:

- requested that future explanatory statements to instruments exempt from sunseting contain a detailed justification for the exemption; and
- reiterated its request for advice from the minister as to why it is considered necessary and appropriate to use delegated legislation (rather than primary legislation) to set out an exemption from the operation of the Anti-Money Laundering and Counter-Terrorism Financing regime.

## 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 24 March 2022, 691 legislative instruments have been made, of which 19.5% are exempt from disallowance.

## Other bills commented on ([Scrutiny Digest 3 of 2022](#))

- **Brisbane Airport Curfew and Demand Management Bill 2022:** the committee leaves to the Senate the appropriateness of exempting ministerial determinations from disallowance and making certain persons immune from liability.
- **Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021:** the committee drew provisions which leave significant matters to delegated legislation, including provisions which allow delegated legislation to modify the operation of the primary legislation, to the attention of the Scrutiny of Delegated Legislation Committee.
- **Criminal Code Amendment (Firearms Trafficking) Bill 2022:** the committee requested that an addendum to the explanatory memorandum be tabled setting out the rationale for including significant penalties in the bill.
- **Electoral Legislation Amendment (Voter Identification) Bill 2022:** the committee leaves to the Senate the appropriateness of requiring persons to provide identification when voting in Commonwealth elections.
- **Security Legislation Amendment (Critical Infrastructure Protection) Bill 2022:** the committee leaves to the Senate the appropriateness of leaving a number of significant elements of the proposed enhanced regulatory framework for Australian critical infrastructure assets to delegated legislation.
- **Social Media (Protecting Australians from Censorship) Bill 2022:** the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof and conferring immunity from civil liability in certain circumstances.

## Other legislative instruments commented on ([Delegated Legislation Monitor 4 of 2022](#))

- The Scrutiny of Delegated Legislation Committee considered 100 disallowable legislative instruments and 30 instruments exempt from disallowance registered on the Federal Register of Legislation between 15 January 2022 and 18 February 2022. The committee is continuing to engage with ministers and agencies in relation to 38 instruments and has concluded its consideration of 25 instruments.

## Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee **gave** notice of motions to disallow the following instruments on 30 March 2022:

- Competition and Consumer Amendment (Consumer Data Right) Regulations 2021 [F2021L01617];
- Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2021 [F2021L01561]; and
- Telecommunications (Interception and Access) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01622].

The Scrutiny of Delegated Legislation Committee **withdrew** notices of motions to disallow the following instruments on 28 March 2022:

- Aged Care Legislation Amendment (Royal Commission Response No. 1) Principles 2021 [F2021L00923]; and
- Great Barrier Reef Marine Park Amendment (No-Anchoring Areas) Regulations 2021 [F2021L00843].

The Scrutiny of Delegated Legislation Committee also **withdrew** notices of motions to disallow the following instruments on 30 March 2022:

- Australian Citizenship (special residence requirement) Instrument (LIN 21/069) 2021 [F2021L01422]; and
- 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](#).

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