



13 September 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.

Please refer to the [Scrutiny Digests](#) and [Delegated Legislation Monitors](#) for the committees' full and formal comments on these matters.

Scrutiny of Bills Committee

[Scrutiny Digest 4 of 2022](#) reports on the Scrutiny of Bills Committee's consideration of **39** bills which were introduced into the Parliament or restored to the *Notice Paper* between 26 July and 4 August 2022.

Key scrutiny issues: Bills ([Scrutiny Digest 4 of 2022](#))

Aged Care Amendment (Implementing Care Reform) Bill 2022

- Significant matters in delegated legislation; broad discretionary power: the committee is seeking advice on provisions which allow a legislative instrument to provide for exemptions to requirements imposed by the bill, with very limited information on the face of the bill as to the circumstances in which an exemption may be granted or the conditions which may apply to the exemption.

Aged Care and Other Legislation Amendment (Royal Commission Response) Bill 2022

- Broad delegation of administrative powers: the committee welcomes provisions in the bill which set a limit on the categories of people to whom the Secretary's functions and powers may be delegated.
- Significant matters in delegated legislation; privacy: the committee reiterates its concerns about provisions which allow most of the detail of a new Code of Conduct to be set out within a legislative instrument, rather than the bill. The committee also has concerns about provisions which allow delegated legislation to determine which matters may be included on a public register with few protections in the bill for individuals' private information.
- Broad discretionary power; significant penalties: the committee reiterates its scrutiny concerns regarding a broad discretionary power conferred on the Aged Care Safety and

Quality Commissioner to impose conditions on banning orders with no guidance on the face of the bill as to how or when the power should be exercised.

- Reversal of the evidential burden of proof: the committee reiterates its scrutiny concerns that the inclusion of an offence-specific defence relating to the disclosure of information inappropriately imposes an evidential burden on the defendant.
- Immunity from civil or criminal liability: the committee reiterates its scrutiny concerns that the bill inappropriately provides immunity from civil and criminal liability in circumstances involving vulnerable people.

Other bills commented on ([Scrutiny Digest 4 of 2022](#))

- **Defence, Veterans' and Families' Acute Support Package Bill 2022**: the committee is seeking advice regarding provisions in the bill which allow for the broad delegation of administrative powers.
- **Health Legislation Amendment (Medicare Compliance and Other Measures) Bill 2022**: the committee is seeking advice regarding the inclusion of provisions which reverse the evidential burden of proof.
- **Narcotic Drugs (Licence Charges) Amendment Bill 2022**: the committee draws to the attention of the Senate the appropriateness of setting charges within delegated legislation.
- **Public Sector Superannuation Salary Legislation Amendment Bill 2022**: the committee notes the retrospective commencement and effect of the bill.

Scrutiny of Delegated Legislation Committee

[Delegated Legislation Monitor 5 of 2022](#) reports on the Scrutiny of Delegated Legislation Committee's consideration of **656** disallowable legislative instruments and **169** instruments exempt from disallowance registered on the Federal Register of Legislation between 26 February and 26 July 2022. The committee is also continuing to engage with ministers in relation to **8** instruments registered outside this period.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 5 of 2022](#))

Australian Renewable Energy Agency Amendment (Powering Australia) Regulations 2022 [F2022L01004]

- Compliance with authorising legislation: the committee is seeking advice as to how the additional functions of the Australian Renewable Energy Agency (ARENA) prescribed by the instrument fall within the scope of the *Australian Renewable Energy Agency Act 2011*.
- Consultation with persons affected: the committee is also seeking advice as to the extent of consultation undertaken in making the instrument.

Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet's Portfolio Measures No. 2) Regulations 2022 [F2022L00240]

- Adequacy of explanatory materials; parliamentary oversight: the committee is seeking further information about the Australian Future Leaders Program prescribed by the instrument, including the status of the entity or entities to which funding is to be provided, the status of that funding and the availability of relevant eligibility criteria.

Air Navigation (Aircraft Noise) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01768]

- Automated decision-making; clarity of drafting: the committee is seeking further advice as to the scope of automated decision-making provided for by the instrument, including whether the instrument can be amended to clarify the circumstances in which applicants may request assessments by departmental officers.

Financial Sector Reform (Hayne Royal Commission Response) (Hawking of Financial Products) Regulations 2021 [F2021L01080]

- Exemptions from the operation of primary legislation; parliamentary oversight: the committee is seeking further advice as to whether the exemptions to primary legislation made by the instrument can cease to operate three years after they commence to promote appropriate parliamentary oversight.

Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee **gave** notice of motions to disallow the following instruments on 7 September 2022:

- Air Navigation (Aircraft Noise) Amendment (2021 Measures No. 1) Regulations 2021 [F2021L01768]
- Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 2) [F2021L01658]
- Financial Framework (Supplementary Powers) Amendment (Health Measures No. 9) Regulations 2021 [F2021L01823]
- Financial Framework (Supplementary Powers) Amendment (Home Affairs Measures No. 4) Regulations 2021 [F2021L01824]
- Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet Measures No. 11) Regulations 2021 [F2021L01825]
- Industry Research and Development (Underwriting New Generation Investments Program) Instrument 2021 [F2021L01708]

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

Senate Scrutiny of Bills Committee

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