



29 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 5 of 2022](#) reports on the committee's consideration of 17 bills and three amendments which were introduced into the Parliament between 5 and 8 September 2022. It also contains the committee's comments on a recent ministerial response in relation to one bill.

Key scrutiny issues: Bills ([Scrutiny Digest 5 of 2022](#))

Aged Care Amendment (Implementing Care Reform) Bill 2022

- ***Significant matters in delegated legislation:*** The committee welcomes government amendments to the bill which address scrutiny concerns previously raised by the committee regarding a broad power to grant exemptions via delegated legislation, with 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. These amendments provide guidance in relation to the exemption power, including by clarifying factors that an exemption may relate to and providing that exemptions will lapse after a period of 12 months.

Counter Terrorism Legislation Amendment (AFP Powers and Other Matters) Bill 2022

- ***Coercive powers/deferral of sunset:*** the committee is seeking advice from the minister on the appropriateness of extending the operation of broad coercive powers in circumstances where the sunset date has been repeatedly extended and no justification for the extension has been provided within the explanatory materials. The committee reiterates its concerns that these broad coercive powers substantially depart from traditional approaches to criminal law, for example, by allowing a person to be taken into custody for up to 48 hours without a charge being placed.

Other bills commented on ([Scrutiny Digest 5 of 2022](#))

- **Atomic Energy Amendment (Mine Rehabilitation and Closure) Bill 2022:** the committee is seeking advice regarding the availability of independent merits review and the incorporation of external materials as existing from time to time.
- **Defence, Veterans' and Families' Acute Support Package Bill 2022:** the committee received advice about provisions in the bill which allow for the broad delegation of administrative powers. The committee has requested that the explanatory memorandum be updated to include this information and leave to the Senate the appropriateness of these provisions.
- **Emergency Response Fund Amendment (Disaster Ready Fund) Bill 2022:** the committee is seeking advice regarding the appropriateness of allowing the ministers to adjust the maximum amount that may be debited from the Disaster Ready Fund via delegated legislation and the tabling of documents in Parliament. The committee has asked whether the bill can be amended to address these scrutiny concerns.
- **Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2022 [No. 1 and 2]:** the committee notes that these private members' and senators' bills may raise scrutiny concerns in relation to provisions that reverse the evidential burden of proof.
- **Financial Sector Reform Bill 2022:** the committee is seeking advice on the inclusion of broad discretionary powers, significant matters in delegated legislation and the reversal of the evidential burden of proof, including whether the bill can be amended to address these scrutiny concerns.
- **Financial Accountability Regime Bill 2022:** the committee is seeking advice regarding the inclusion of broad discretionary powers, significant matters in delegated legislation and non-legislative instruments, the tabling of documents relating to the administration of the bill in Parliament, the reversal of the evidential burden of proof, and the incorporation of materials as existing from time to time. The committee has asked whether the bill can be amended to address several of these scrutiny concerns.
- **Treasury Law Amendment (2022 Measures No. 3) Bill 2022:** the committee is seeking advice on the appropriateness of leaving matters relating to the scope and operation of the new supplementary performance test for faith-based superannuation products to delegated legislation, provisions which reverse the evidential burden of proof and the availability of independent merits review.
- **High Speed Rail Authority Bill 2022:** the committee is seeking advice on provisions that enable the minister to give non-disallowable directions to the High Speed Rail Authority, including whether the bill can be amended to place limits on how this power may be exercised and to make the directions disallowable.
- **Parliamentary Privileges Amendment (Royal Commission Response) Bill 2022:** the committee notes that this private senators' bill may raise scrutiny concerns in relation to the abrogation of parliamentary privilege.

Scrutiny of Delegated Legislation Committee

Delegated Legislation Monitor 6 of 2022 reports on the Scrutiny of Delegated Legislation Committee's consideration of **120** disallowable legislative instruments and **18** instruments exempt from disallowance registered on the Federal Register of Legislation between 27 July and 31 August 2022. The committee is also continuing to engage with ministers in relation to **15** instruments registered outside this period.

Key scrutiny issues: Legislative instruments (Delegated Legislation Monitor 6 of 2022)

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

- Compliance with authorising legislation: the committee concludes its examination of this matter, in light of amendments to the ARENA Act which provide further clarity regarding the legislative basis of these regulations and the minister's advice as to the connection between energy efficiency technologies and renewable energy.
- Consultation with persons affected: the committee concludes its examination of this matter, after considering the further information provided by the minister as to the additional briefings and consultations undertaken in relation to the instrument.

Bankruptcy Amendment (Service of Documents) Regulations 2022 [F2022L00528]

- Modification of operation of primary legislation; parliamentary oversight: the committee is seeking advice as to the scope of the exemption to consent requirements for electronic service of documents as created by this instrument, including whether the exemption applies in relation to bankruptcy notices.
- Compliance with authorising legislation: the committee is seeking advice as to the source of authority relied upon to create the relevant exemption.

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

- Matters more appropriate for parliamentary enactment; privacy: the committee draws to the Senate's attention the inclusion of spending to establish and maintain the Territories Stolen Generations Redress Scheme in delegated legislation and concludes its examination in relation to privacy concerns.
- Parliamentary oversight; availability of independent merits review; delegation of administrative powers and functions: the committee is seeking further information from the minister about certain documents relevant to the scheme and the availability of independent review. The committee is also seeking the minister's undertaking to update the explanatory statement with further information about the scheme eligibility criteria and the delegation of administrative powers and functions.

Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee **gave** notice of motions to disallow the following instruments on 26 September 2022:

- Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2022 [F2022L00357];
- Financial Framework (Supplementary Powers) Amendment (Prime Minister and Cabinet's Portfolio Measures No. 2) Regulations 2022 [F2022L00240]; and
- Telecommunications (Fibre-Ready Facilities in Real Estate Development Projects and Other Matters) Instrument 2022 [F2022L00328].

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

For any comments or questions, please contact:

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