



28 October 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](#).

## Scrutiny of Bills Committee

[Scrutiny Digest 6 of 2022](#) reports on the committee's consideration of 16 bills which were introduced into the Parliament between 26 and 28 September 2022 as well as amendments introduced in relation to 4 bills during that period. It also contains the committee's comments on ministerial responses in relation to 8 bills.

### Key scrutiny issues: Bills ([Scrutiny Digest 6 of 2022](#))

#### Biosecurity Amendment (Strengthening Biosecurity) Bill 2022

##### Exemption from disallowance

- The committee has serious and longstanding concerns in relation to exemption from disallowance provisions within the *Biosecurity Act 2015*.
- This bill seeks to amend that Act to confer 3 new instrument-making powers on the Agriculture Minister. Legislative instruments made under each of these new powers will be exempt from disallowance. The committee has requested that these exemption provisions be removed.

##### Broad discretionary power to give grants to the states & availability of merits review

- The committee has also requested the minister's advice in relation to a provision which allows grants of financial assistance to be provided to the states without any information as to what the terms and conditions of those grants will be; and in relation to compensation decisions which are not subject to merits review.

## National Anti-Corruption Commission Bill 2022

### National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022

#### Recommendations for amendment

- The committee has made 6 recommendations that more information be included in the explanatory memorandum for the bills, and a further 9 recommendations that consideration be given to amending specific provisions.
- These recommendations relate to: retrospective application; defences which reverse the evidential burden of proof; provisions which abrogate the privilege against self-incrimination and legal professional privilege; the framing of broad offences where a person 'obstructs' or 'hinders' a NACC staff member, or 'disrupts' a hearing; evidentiary certificates; immunity from civil liability; the disclosure of personal information; the broad delegation of the Commissioner's administrative powers and functions; and the exclusion of certain decisions from judicial review by the Federal Court.

#### Other bills commented on ([Scrutiny Digest 6 of 2022](#))

- **Aged Care Amendment (Implementing Care Reform) Bill 2022:** the committee thanks the minister for moving amendments to the bill which address the committee's scrutiny concerns regarding a broad power to grant exemptions within delegated legislation.
- **Counter Terrorism Legislation Amendment (AFP Powers and Other Matters) Bill 2022:** the committee requests an addendum to the explanatory memorandum and leaves to the Senate the appropriateness of extending, by a further twelve months, the operation of a number of broad coercive powers.
- **Crimes Legislation Amendment (Ransomware Action Plan) Bill 2022:** the committee notes that this private member's bill may raise scrutiny concerns in relation to provisions that reverse the evidential burden of proof, and provisions which allow significant matters to be included in delegated legislation.
- **Emergency Response Fund Amendment (Disaster Ready Fund) Bill 2022:** the committee received advice about provisions in the bill which allow the responsible Ministers to adjust the maximum amount that may be debited from the Disaster Ready Fund via delegated legislation, and in relation to the tabling of advice received from the Future Fund Board in Parliament. The committee has requested further advice from the minister.
- **Financial Accountability Regime Bill 2022:** the committee leaves to the Senate the appropriateness of broad discretionary powers, provisions allowing for the inclusion of 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.
- **Financial Sector Reform Bill 2022:** the committee leaves to the Senate the appropriateness of provisions which include broad discretionary powers, significant matters in delegated legislation and the reversal of the evidential burden of proof.

- **Health Legislation Amendment (Medicare Compliance and Other Measures) Bill 2022:** the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof.
- **High Speed Rail Authority Bill 2022:** the committee leaves to the Senate the appropriateness of exempting certain ministerial directions from disallowance.
- **Maritime Legislation Amendment Bill 2022:** the committee is seeking advice regarding the inclusion of provisions which reverse the evidential burden of proof. The committee leaves to the Senate the appropriateness of including a strict liability offence in the bill.
- **National Energy Transition Authority Bill 2022:** the committee notes that this private senator's bills may raise scrutiny concerns in relation to broad discretionary powers, instruments not subject to an appropriate level of parliamentary oversight, and the tabling of documents in Parliament.
- **Offshore Electricity Infrastructure Legislation Amendment Bill 2022:** the committee is seeking advice regarding the inclusion of a strict liability offence in the bill noting that the amount payable significantly exceeds the recommended threshold of 60 penalty units.
- **Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Bill 2022:** the committee is seeking advice regarding the inclusion of provisions that reverse the evidential burden of proof, significant matters in delegated legislation, incorporation of external material as in force from time to time, and a no-invalidity clause.
- **Treasury Law Amendment (2022 Measures No. 3) Bill 2022:** the committee is seeking further advice regarding the availability of independent merits review.

## Scrutiny of Delegated Legislation Committee

[\*Delegated Legislation Monitor 7 of 2022\*](#) reports on the Scrutiny of Delegated Legislation Committee's consideration of **77** disallowable legislative instruments and **20** instruments exempt from disallowance registered on the Federal Register of Legislation between 1 September and 23 September 2022.

### Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 7 of 2022*)

#### Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument [F2021L01658]

- *Exemption from the operation of primary legislation; exemption from sunseting:* the committee is seeking the minister's further advice as to whether the instrument can be amended such that the exemptions it creates to its enabling legislation, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, will cease within five years of their commencement to enable more frequent parliamentary oversight.

### **Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) 2022 [F2022L00471]**

- Parliamentary oversight – tabling documents: the committee reiterates its request that the instrument be amended to require the report of the review required under section 53J of the *Competition and Consumer Act 2010* to be tabled in Parliament.

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

- Modification of the operation of primary legislation; parliamentary oversight: following advice from the Attorney-General, the committee draws to the Senate’s attention the wide scope of the exemption from consent requirements for electronic service to include bankruptcy documents and creditor’s petitions noting the potentially significant implications for affected individuals.
- Compliance with authorising legislation: the committee concludes its examination of the instrument in relation to compliance with authorising legislation, noting the advice and undertaking made by the Attorney-General to address the committee’s concerns.

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

- Parliamentary oversight; delegation of administrative powers and functions: the committee concludes its examination of the instrument in relation to these issues as the minister has undertaken to amend the explanatory statement.
- Availability of independent merits review: the committee notes the advice provided by the minister in relation to an independent internal review that is available for applicants and concludes its examination of the instrument in relation to this issue.

### **Notices of motion to disallow**

The Scrutiny of Delegated Legislation Committee agreed to **withdraw** notices of motions to disallow the following instruments on 26 October 2022:

- Air Navigation (Aircraft Noise) Amendment (2021 Measures No 21) Regulations 2021 [F2021L01768]
- Bankruptcy Amendment (Service of Documents) Regulations 2022 [F2022L00528]
- Financial Framework (Supplementary Powers) Amendment (Health Measures No. 9) Regulations 2021 [F2021L01823]
- 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](#).

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For any comments or questions, please contact:

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