



25 November 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 7 of 2022](#) reports on the committee's consideration of 20 bills which were introduced into the Parliament during recent sitting weeks as well as amendments introduced in relation to 9 bills. It also contains the committee's comments on ministerial responses in relation to 5 bills.

### Key scrutiny issues: Bills ([Scrutiny Digest 7 of 2022](#))

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

The committee raised scrutiny concerns in relation to the following matters in [Scrutiny Digest 6 of 2022](#) and has now received the minister's response.

- **Exemption from disallowance**: the committee requests an addendum to the explanatory memorandum and leaves to the Senate the appropriateness of new exemption from disallowance provisions. The committee reiterates its view that the bill should be amended to provide that instruments made under the *Biosecurity Act 2015* will be subject to the usual parliamentary disallowance process. The committee will continue to consider options to address its scrutiny concerns in relation to the exemption from disallowance provisions in both the bill and the Act.
- **Broad discretionary power to make grants of financial assistance to the states**: the committee leaves to the Senate the appropriateness of including a broad discretionary power in the bill to make grants of financial assistance to the states without any information as to what the terms and conditions of those grants will be, or any requirement to table an agreement about the terms and conditions.

- *Availability of merits review*: the committee received advice in relation to compensation decisions which are not subject to merits review. The committee has asked whether the bill can be amended to address this scrutiny concern.

### Other bills commented on ([Scrutiny Digest 7 of 2022](#))

- **Aboriginal Land Grant (Jervis Bay Territory) Amendment (Strengthening Land and Governance Provisions) Bill 2022**: the committee is seeking advice on the inclusion of a no invalidity clause and provisions which allow for the broad delegation of administrative functions or powers.
- **Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022**: the committee is seeking advice on provisions in the bill which allow for retrospective application, broad discretionary powers, the broad delegation of administrative powers and the incorporation of external materials as existing from time to time. The committee has asked whether the bill can be amended to address several of these scrutiny concerns.
- **Appropriation Bill (No. 1) 2022-2023 and Appropriation Bill (No. 2) 2022-2023**: the committee is seeking advice on provisions which allow the Finance Minister to allocate up to \$6 billion to entities via non-disallowance legislative instrument. The committee also welcomes transparency measures implemented by the Finance Minister in response to the committee's scrutiny concerns and leaves to the Senate the appropriateness of the classification of certain items as 'ordinary annual services of the government', the adequacy of explanations in relation to measures for which the total allocation of resources is not published, and the inclusion of a broad discretionary power to make grants of financial assistance to the states.
- **Australian Crime Commission Amendment (Special Operations and Special Investigations) Bill 2022**: the committee leaves to the Senate the appropriateness of Australian Crime Commission Board's broad discretionary power to authorise special operations or investigations, noting that such authorisations permit the exercise of significant coercive powers.
- **Broadcasting Services Amendment (Community Radio) Bill 2022**: the committee is seeking advice on the availability of merits review.
- **Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022**: the committee is seeking advice on the inclusion of broad discretionary powers, significant matters in delegated legislation, the appropriateness of exempting a statement of principles made by the Fair Work Commission from disallowance and provisions in the bill which allow for broad delegation of administrative functions and powers and confer immunity from civil liability. The committee has asked whether the bill can be amended to address several of these scrutiny concerns.
- **Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022**: the committee is seeking advice on the availability of merits review, the inclusion of broad

discretionary powers and the reversal of the evidential burden of proof, including whether the bill can be amended to address some of these scrutiny concerns.

- **Atomic Energy Amendment (Mine Rehabilitation and Closure) Bill 2022:** the committee leaves to the Senate the appropriateness of not providing for external merits review and the inclusion of a power to incorporate external materials as in force from time to time.
- **Emergency Response Fund Amendment (Disaster Ready Fund) Bill 2022:** the committee welcomes the minister's undertaking that the explanatory statement for a legislative instrument which adjusts the maximum disbursement amount that may be debited from the Disaster Ready Fund Special Account will include certain information, such as relevant factors considered and a summary of the Future Fund Board's advice.
- **Maritime Legislation Amendment Bill 2022:** the committee welcomes the detailed information provided by the minister in relation to the inclusion of a provision which reverses the evidential burden and requests an addendum to the explanatory memorandum which would include this information. The committee leaves to the Senate the appropriateness of including a strict liability offence which significantly exceeds the recommended threshold in the bill.
- **Offshore Electricity Infrastructure Legislation Amendment Bill 2022:** the committee welcomes the detailed information provided by the minister in relation to the inclusion of a strict liability offence and requests an addendum to the explanatory memorandum which would include this information. The committee leaves to the Senate the appropriateness of including a penalty for this offence which significantly exceeds the recommended threshold in the bill.

## Scrutiny of Delegated Legislation Committee

[\*Delegated Legislation Monitor 8 of 2022\*](#) reports on the Scrutiny of Delegated Legislation Committee's consideration of **77** disallowable legislative instruments and **9** instruments exempt from disallowance registered on the Federal Register of Legislation between 24 September and 7 October 2022.

### **Key scrutiny issues: Legislative instruments** ([\*Delegated Legislation Monitor 8 of 2022\*](#))

#### **Telecommunications (Interception and Access) (Communications Access Co-Ordinator) Instrument 2022 (No. 2) [F2022L01321]**

*Delegation of administrative powers and functions; adequacy of explanatory materials:* the committee seeks the Attorney-General's advice as to the delegation of discretionary powers under sections 187B(2), 187K, 192 and 203 of the *Telecommunications (Interception and Access) Act 1979* and whether the instrument can be amended to require the exercise of the most significant of these powers to be limited to Senior Executive Service (SES) level officers.

## Competition and Consumer Amendment (Consumer Data Right) Regulations 2021 [F2021L01617]

- Exemption from the operation of primary legislation; exemption from sunseting: following further advice provided by the Assistant Treasurer, the committee requests that the instrument be amended to allow the usual sunseting regime to apply in relation to these measures, to allow a minimum level of parliamentary oversight.

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

- Exemption from the operation of primary legislation: the committee concludes its examination of the instrument in light of the Attorney-General's further advice and undertaking to amend the instrument such that the exemptions to primary legislation cease within five years of their commencement.

### Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee gave notice of its intention to **withdraw** notices of motions to disallow the following instruments on 23 November 2022:

- Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2021 (No. 2) [F2021L01658]
- Financial Framework (Supplementary Powers) Amendment (Attorney-General's Portfolio Measures No. 1) Regulations 2022 [F2022L00357]

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:  
Matthew Kowaluk (A/g)  
Senate Scrutiny of Bills Committee  
02 6277 3050 | [scrutiny.sen@aph.gov.au](mailto:scrutiny.sen@aph.gov.au)  
Anika Khwaja, Secretary (A/g)  
Senate Scrutiny of Delegated Legislation Committee  
02 6277 3066 | [sdlc.sen@aph.gov.au](mailto:sdlc.sen@aph.gov.au)