



6 September 2023

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 10 of 2023 reports on the committee's consideration of **8** bills which were introduced into the Parliament during recent sitting weeks as well as amendments introduced in relation to **4** bills. It also contains the committee's comments on ministerial responses in relation to **7** bills.

Key scrutiny issues: Bills (*Scrutiny Digest 10 of 2023*)

Counter-Terrorism and Other Legislation Amendment Bill 2023

- ***Coercive powers, broad discretionary powers and deferral of sunseting:*** the committee expects the explanatory memorandum for any bill deferring a sunseting date for extraordinary or emergency measures to address why that deferral is necessary and appropriate, particularly where the relevant measures trespass in significant ways on personal rights and liberties and where the sunseting date has repeatedly been extended. As such, the committee is seeking the Attorney-General's advice as to why it is considered necessary and appropriate to extend the operation of broad coercive powers by a further three years by deferring the sunseting of these measures.
- ***Procedural fairness:*** the committee is seeking the Attorney-General's detailed advice as to whether the bill can be amended to require a person be told of their right to make a complaint as soon as it is practicable to do so in circumstances of urgency.

Other bills commented on (*Scrutiny Digest 10 of 2023*)

- **Electoral Legislation Amendment (Restoring Trust) Bill 2023:** this private member's bill may raise scrutiny concerns in relation to significant penalties in primary legislation and reversal of the evidential burden of proof.
- **Legalising Cannabis Bill 2023:** this private senator's bill may raise scrutiny concerns in relation to significant penalties in primary legislation and significant matters in delegated legislation.
- **Members of Parliament (Staff) Amendment Bill 2023:** the committee is seeking the minister's advice as to the necessity and appropriateness of delegating the functions and powers of a parliamentarian to another person, who these delegations may be made to and whether the person is expected to hold specific or relevant experience, qualifications or training.
- **Parliamentary Workplace Support Service Bill 2023:** the committee is seeking the minister's advice as to the nature of personal information that may be shared between the PWSS and Commonwealth entities, when this disclosure is expected to be reasonably necessary and what level of harm to an individual is sufficient to prevent disclosure.

Scrutiny of Delegated Legislation Committee

Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 9 of 2023*)

National Anti-Corruption Commission Regulations 2023 [F2023L00759]

- Conferral of discretionary powers; adequacy of explanatory materials: The committee has requested the minister's advice as to what factors the relevant decision-maker must consider when exercising their discretion under several provisions of the instrument that appear to confer broad discretionary powers on the Attorney-General and 'approving officials.'
- Availability of independent merits review; adequacy of explanatory materials: the committee has requested the minister's advice as to whether decisions made under subsections 6(7) and 7(8) (in Part 2) of the instrument are subject to independent merits review and, if not, what characteristics of those decisions justify the exclusion of independent merits review. Additionally, advice is requested as to what characteristics of the decisions in Part 4 of the instrument justify the exclusion of independent merits review.

Australian National University (Governance) Statute 2023 [F2023L00867]

- Delegation of administrative powers and functions; adequacy of explanatory materials: The committee has requested the minister's advice as to why it is considered necessary and appropriate to provide for such broad delegation of powers and functions in the instrument. Additionally, the committee has queried whether the persons to whom the various powers and functions can be delegated to can be identified, as well as the skills and experience they will need to exercise their powers, and whether any other safeguards apply.

- No-invalidity clauses: the committee has requested the minister's advice as why it is necessary and appropriate to include specific no-invalidity clauses in the instrument, noting the impact this may have on the ability of affected persons to seek review of actions and decisions made under the instrument.

Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee **gave** 1 notice of motion to disallow the *National Anti-Corruption Commission Regulations 2023* on 4 September 2023.

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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