



DEPARTMENT  
OF THE SENATE

# Scrutiny NEWS

Scrutiny of Bills Committee

Scrutiny of Delegated Legislation Committee

15 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 11 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 **3** bills.

### Key scrutiny issues: Bills (*Scrutiny Digest 11 of 2023*)

#### **Social Security Amendment (Australian Government Disaster Recovery Payment) Bill 2023**

- *Instruments not subject to an appropriate level of parliamentary oversight*: the committee is seeking advice on why it is considered appropriate that instruments made under proposed subsection 1061K(3A) are notifiable instruments, and whether the bill could be amended to provide that these instruments are legislative instruments.

#### **Other bills commented on (*Scrutiny Digest 11 of 2023*)**

- **Electoral Legislation Amendment (Fairer Contracts and Grants) Bill 2023**: This private senator's bill may raise scrutiny concerns in relation to significant penalties in primary legislation.

## Scrutiny of Delegated Legislation Committee

### Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 10 of 2023*)

#### Australian Education Regulations 2023

- *Broad discretionary powers and coercive powers*: the committee is seeking the minister's advice as to factors that must be taken into account in exercising broad discretionary powers under the instrument and whether broad terms under the relevant provisions can be defined. The committee is also seeking advice about the nature and scope of discretionary and coercive powers; and whether there are any safeguards such as review mechanisms applicable to the relevant powers.
- *Privacy*: the committee is seeking the minister's advice regarding the collection, use and disclosure of personal information under the instrument, and whether any statutory safeguards apply, including the *Privacy Act 1988*.
- *Availability of independent merits review*: the committee is seeking the minister's advice as to whether decisions under the instrument are exempt from independent merits review and the justification for any such exemptions.

#### Competition and Consumer (Gas Market Code Regulations 2023)

- *Significant penalties in delegated legislation*: the committee is seeking the minister's advice as to the justification for inclusion of numerous significant penalties in delegated, rather than primary, legislation.
- *Availability of independent merits review, judicial review and no-invalidity clauses*: the committee is seeking the minister's advice as to the availability of independent merits review of decisions under the instrument and whether no-invalidity clauses in the instrument are necessary and appropriate, as well as whether there are any safeguards in place.
- *Strict liability offences*: the committee is seeking the minister's advice as to whether the offence provisions in the instrument are strict liability offences and, if so, whether such provisions are necessary and appropriate.
- *Privacy, conferral of discretionary powers and adequacy of explanatory materials*: the committee is seeking the minister's advice about a number of provisions raising privacy concerns, including whether there are any applicable statutory safeguards on personal information that may be collected, and factors to be taken into account in relation to one such provision that includes a discretionary power.
- *Matters more appropriate for parliamentary enactment*: as the instrument provides for matters the committee generally considers more appropriate for inclusion in primary legislation, the committee is drawing the instrument to the Senate's attention.

#### Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023

- *Availability of independent merits review*: the committee is seeking the minister's advice about decisions under the instrument that are excluded from merits review, and the justification for any such exclusions.
- *Availability of judicial review*: the instrument contains no-invalidity clauses regarding time limits for making decisions under the instrument. Accordingly, the committee is seeking the minister's advice as to whether these clauses are necessary and appropriate for inclusion in delegated legislation and the likelihood of time limits for making the relevant decisions being exceeded.
- *Strict liability and significant penalties*: the committee is seeking the minister's advice as to whether it is necessary and appropriate to include significant penalties in delegated legislation, and the justification for these significant penalties.
- *Legal certainty and clarity of drafting*: the committee is seeking the minister's advice regarding the calculation of, and caps on, fees that can be charged under the instrument, as well as whether such fees are subject to independent review.

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

The Scrutiny of Delegated Legislation Committee gave notice of motion to disallow the following instruments on 14 September 2023:

- Australian Education Regulations 2023 [F2023L01020]
- Insurance Exemption Determination No. 1 of 2023 [F2023L00971]
- Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool Program) Guidelines 2023 [F2023L00983]
- Competition and Consumer (Gas Market Code) Regulations 2023 [F2023L00994]
- Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023 [F2023L00998].

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