



10 February 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 1 of 2023](#) reports on the committee's consideration of **27** bills which were introduced into the Parliament during recent sitting weeks as well as amendments introduced in relation to **5** bills. It also contains the committee's comments on ministerial responses in relation to **9** bills.

Key scrutiny issues: Bills

Framework Bills

For three bills, the committee made comment in relation to significant matters being left to delegated legislation through the inclusion of 'framework provisions'. Framework provisions contain only the broad principles of a legislative scheme and rely on delegated legislation to determine the scheme's scope and operation. Where a bill uses framework provisions the committee expects a comprehensive justification for this approach to be included within the explanatory memorandum.

Customs Legislation Amendment (Controlled Trials and Other Measures) Bill 2022

- [Significant matters in delegated legislation](#): the bill leaves almost all the information relating to the scope and operation of the new Customs time-limited trial scheme to delegated legislation.
- [Other matters](#): the committee is seeking advice in relation to legislative instruments which are not subject to parliamentary disallowance.

Safeguard Mechanism (Crediting) Amendment Bill 2022

- [Significant matters in delegated legislation](#): the bill leaves much of the information relating to the scope and operation of the amended Safeguard Mechanism framework to

delegated legislation, including many of the details relating to the issuing of the new Safeguard Mechanism Credits and the value of a Credit.

Treasury Laws Amendment (Energy Price Relief Plan) Bill 2022

- Significant matters in delegated legislation: the committee considers that substantial elements of the scope and operation of the new gas market scheme has been left to delegated legislation, including the definition of 'gas market participant'.
- Other matters: The committee also raised concerns in relation to a broad discretionary power to provide grants to the states in circumstances in which the amount that may be included within a grant is contained within a non-disallowable legislative instrument.

Other bills commented on

- **Aboriginal Land Grant (Jervis Bay Territory) Amendment (Strengthening Land and Governance Provisions) Bill 2022**: the committee welcomes the minister's undertaking to table an addendum to the explanatory memorandum and to amend the bill to address concerns in relation to the broad delegation of administrative powers.
- **Appropriation Bill (No. 1) 2022-2023 and Appropriation Bill (No. 2) 2022-2023**: the committee suggests that when appropriation bills are being proposed in the future, consideration be given to providing clear and explicit guidance on the face of the bill in relation to any key terms that are intended to limit the circumstances in which allocations may be made.
- **Biosecurity Amendment (Strengthening Biosecurity) Bill 2022**: the committee continues to have concerns in relation to the lack of provision for independent merits review. As the bill has passed both Houses of the Parliament, the committee makes no further comment.
- **Broadcasting Services Amendment (Community Radio) Bill 2022**: the committee continues to have concerns in relation to the lack of provision for independent merits review. As the bill has passed both Houses of the Parliament, the committee makes no further comment.
- **Commonwealth Electoral Amendment (Stop the Lies) 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.
- **COVID-19 Vaccination Status (Prevention of Discrimination) 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.
- **Crimes Amendment (Penalty Unit) Bill 2022**: the committee is seeking advice on increasing the amount of a Commonwealth penalty unit by almost 24 percent.
- **Export Control Amendment (Streamlining Administrative Processes) Bill 2022**: the committee is seeking advice on provisions which introduce new rule-making powers and provisions which reverse the evidential burden of proof.

- **Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022:** the committee continues to have concerns in relation to the inclusion of significant matters in delegated legislation and legislative instruments that are not subject to disallowance. As the bill has passed both Houses of the Parliament, the committee makes no further comment.
- **Fuel and Vehicle Standards Legislation Amendment (Reducing Vehicle Pollution) Bill 2022:** the committee notes that this private member's bill may raise scrutiny concerns in relation to provisions that incorporate external material as in force from time to time.
- **Higher Education Support Amendment (Australia's Economic Accelerator) Bill 2022:** the committee is seeking advice on the tabling of documents in Parliament and provisions that reverse the evidential burden of proof.
- **Inspector-General of Intelligence and Security and Other Legislation Amendment (Modernisation) Bill 2022:** the committee is seeking advice on provisions which abrogate the privilege against self-incrimination and provide for the broad delegation of powers. The committee also leaves to the Senate the appropriateness of provisions which reverse the evidential burden of proof.
- **National Reconstruction Fund Corporation Bill 2022:** the committee is seeking advice on provisions which provide a broad power to make grants of financial assistance to the states and territories and to credit funds to the new Corporation, allow for delegated legislation to be made which is exempt from disallowance and provide for the broad delegation of powers.
- **Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022:** the committee continues to have concerns in relation to the lack of provision for independent merits review and provisions which reverse the evidential burden of proof. As the bill has passed both Houses of the Parliament, the committee makes no further comment.
- **Private Health Insurance Legislation Amendment (Medical Device and Human Tissue Product List and Cost Recovery) Bill 2022:** the committee is seeking advice as to whether the bill could be amended to provide for a list of considerations or limitations in relation to broad discretionary powers.
- **Public Interest Disclosure Amendment (Review) Bill 2022:** the committee is seeking advice on provisions which reverse the evidential burden of proof, broadly delegate powers and provide immunity from civil and criminal liability.
- **Referendum (Machinery Provisions) Amendment Bill 2022:** the committee is seeking advice on provisions which reverse the evidential burden of proof, allow delegated legislation to modify the operation of primary legislation and provide for broad discretionary powers.
- **Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022:** the committee welcomes the minister's undertaking to update the explanatory materials and seeks further advice as to whether

the bill can be amended to explicitly limit who may receive certain information and define the term 'affairs or personal particulars'.

- **Therapeutic Goods Amendment (2022 Measures No. 1) Bill 2022:** the committee is seeking advice on provisions which reverse the evidential burden of proof, exclude procedural fairness and incorporate external material as in force from time to time in delegated legislation. The committee leaves to the Senate the imposition of strict liability offences with high penalties.
- **Treasury Laws Amendment (Consumer Data Right) Bill 2022:** the committee is seeking advice on provisions which reverse the evidential burden of proof, incorporate external material as in force from time to time in delegated legislation, provide immunity from civil and criminal liability and provide a broad discretionary power to grant exemptions from the operation of the scheme.
- **Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022:** the committee is seeking advice on provisions which apply retrospectively and whether any persons may be adversely affected.
- **Work Health and Safety Amendment Bill 2022:** the committee is seeking advice on provisions which add negligence as an additional fault element to an offence and which reverse the evidential burden of proof.

Scrutiny of Delegated Legislation Committee

[Delegated Legislation Monitor 1 of 2023](#) reports on the Scrutiny of Delegated Legislation Committee's consideration of **62** disallowable legislative instruments and **14** instruments exempt from disallowance registered on the Federal Register of Legislation between 1 January and 31 January 2023.

Key scrutiny issues: Legislative instruments

Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022 [F2022L01457]

- Conferral of discretionary powers; adequacy of explanatory materials: The committee is seeking the minister's advice as to whether the actions the Commissioner may take can be specifically defined in the instrument, the factors they must consider when exercising their powers, and how their investigative powers relate to the complaint mechanisms under the *Aged Care Quality and Safety Commission Act 2018*. The committee is also seeking information about relevant safeguards or limitations that apply.

Notices of motion to disallow

On 8 February 2023, the Scrutiny of Delegated Legislation Committee **withdrew** the notice of motion to disallow the following instruments:

- Australian Capital Territory National Land (Lakes) Ordinance 2022 [F2022L00468]

- Competition and Consumer (Industry Codes—Franchising) Amendment (Franchise Disclosure Register) Regulations 2022 [F2022L00471] and the
- Competition and Consumer Amendment (Consumer Data Right) Regulations 2021 [F2021L01617].

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