



24 March 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](#).

**Please note that this edition of Scrutiny News relates only to the work of the Senate Scrutiny of Bills Committee.**

## Scrutiny of Bills Committee

*Scrutiny Digest 3 of 2023* reports on the committee's consideration of **9** 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 **2** bills.

### Key scrutiny issues: Bills (*Scrutiny Digest 3 of 2023*)

#### Financial Accountability Regime Bill 2023

- ***Broad discretionary power; significant matters in delegated legislation:*** the committee welcomes changes to the bill which provide limits on the exercise of previously broad powers to grant exemptions and allows for a higher degree of scrutiny over a decision to grant an exemption. The committee recommends that future reviews of the Financial Accountability Regime should consider further amendments to ensure exemptions remain appropriate over time and that any conditions attaching to an exemption are applied consistently.
- ***Tabling of documents in Parliament; significant matters in delegated legislation:*** the committee leaves to the Senate the appropriateness of not requiring that an arrangement entered into between ASIC and APRA be tabled in the Parliament, and of leaving details of the arrangement to delegated legislation.
- ***Reversal of the evidential burden of proof:*** the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof in relation to matters that do not appear to be peculiarly within the knowledge of the defendant. The committee also

draws its scrutiny concerns in relation to clause 74 to the attention of the Senate, noting that this clause would allow the elements of a criminal defence to be set out within delegated legislation and that no explanation for this power has been provided.

- *Incorporation of documents as in force from time to time*: the committee leaves to the Senate the appropriateness of allowing for legislative instruments to incorporate external material as in force or existing from time to time.

### **Crimes Amendment (Penalty Unit) Bill 2022**

- *Significant penalties*: the committee continues to have concerns about increasing the amount of a Commonwealth penalty unit by almost 24 percent, noting the limited explanation provided in the explanatory materials for the increase and that the increase will apply in addition to the automatic indexation process. As the bill has passed both Houses of the Parliament, the committee makes no further comment on this matter.

### **Other bills commented on (*Scrutiny Digest 3 of 2023*)**

- **Education Legislation Amendment (Startup Year and Other Measures) Bill 2023**: the committee is seeking advice from the minister in relation to the necessity and appropriateness of not providing independent merits review.
- **Financial Accountability Regime (Consequential Amendments) Bill 2023**: the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof in relation to matters which do not appear to be peculiarly within the knowledge of the defendant.
- **Social Security (Administration) Amendment (Income Management Reform) Bill 2023**: the committee is seeking advice from the minister in relation to the criteria for the entry of participants into the Enhanced Income Management Regime and the necessity and appropriateness of providing delegated legislation making powers.
- **Transparent and Quality Public Appointments Bill 2023**: the committee notes that this private senator's bill may raise scrutiny concerns in relation to immunity from civil liability.
- **Treasury Laws Amendment (Consumer Data Right) Bill 2022**: the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof, providing for civil and criminal immunity from liability in circumstances where the necessity and appropriateness of the immunity in the consumer data right scheme has not been explained, and providing a broad power to grant exemptions from the operation of the consumer data right scheme.