



31 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](#).

Scrutiny of Bills Committee

Scrutiny Digest 4 of 2023 reports on the committee's consideration of **13** bills which were introduced into the Parliament during recent sitting weeks as well as amendments introduced in relation to **8** bills. It also contains the committee's comments on ministerial responses in relation to **4** bills.

Key scrutiny issues: Bills (*Scrutiny Digest 4 of 2023*)

Export Control Amendment (Streamlining Administrative Processes) Bill 2022

- *Privacy; significant matters in delegated legislation*: the committee welcomes safeguards which protect against the inappropriate use or disclosure of personal information.
- However, the committee recommends that further safeguards be introduced in relation to the use of these powers, particularly where they may be used by non-Commonwealth officers. The committee has also requested that an addendum to the explanatory memorandum be tabled.

Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Bill 2023

- *Significant matters in delegated legislation; automated decision-making*: the committee recommends that any future review of the operation of the scheme should consider the inclusion of appropriate safeguards within primary legislation.
- The committee leaves to the Senate the appropriateness of including significant matters within delegated legislation, in this case a new visa pre-application process with broad application to any category of visa, in circumstances where few safeguards relating to the oversight of the process have been included within the bill.

Other bills commented on (*Scrutiny Digest 4 of 2023*)

- **Health Insurance Amendment (Prescribed Dental Patients and Other Measures) Bill 2023:** the committee leaves to the Senate the appropriateness of retrospective commencement of provisions in the bill.
- **Housing Australia Future Fund Bill 2023 and Treasury Laws Amendment (Housing Measures No. 1) Bill 2023:** the committee leaves to the Senate the appropriateness of providing the responsible Ministers with a power to make non-disallowable legislative instruments and non-disallowable Investment Mandates, and the appropriateness of conferring a broad power to make grants to the states.
- **Infrastructure Australia Amendment (Independent Review) Bill 2023:** the committee is seeking further information in relation to the tabling of documents in the Parliament.
- **Inspector-General of Aged Care Bill 2023:** the committee is seeking further information in relation to the reversal of the evidential burden of proof, the use of coercive powers to enter non-Commonwealth premises and the provision of protection from civil liability.
- **Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023:** this private senator's bill may raise scrutiny concerns in relation to the evidential burden of proof.

Scrutiny of Delegated Legislation Committee

Delegated Legislation Monitor 4 of 2023 reports on the Scrutiny of Delegated Legislation Committee's consideration of **78** disallowable legislative instruments and **13** instruments exempt from disallowance registered on the Federal Register of Legislation between 21 February and 15 March 2023.

Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 4 of 2023*)

Treasury portfolio instruments

- *Exemption from the operation of primary legislation; parliamentary oversight:* The committee is seeking the Assistant Treasurer's advice in relation to one new, and two ongoing, instruments that create continuing exemptions to the *Corporations Act 2001* (the Corporations Act).

Corporations Amendment (Design and Distribution Obligations – Income Management Regimes) Regulations 2023 [F2023L00193]

The committee is seeking advice on:

- why the relevant exemptions are required;
- whether they can be included in the Corporations Act, or the instrument can be amended to provide that the measures cease within three years after commencement; and
- how this instrument is consistent with the ASIC Corporations (Design and Distribution Obligations Interim Measures) Instrument 2021/784.

Corporations Amendment (Litigation Funding) Regulations 2022 [F2022L01614]

The committee is seeking further advice on:

- why the amendments cannot be time limited or subject to sunseting; and
- whether it would be possible to include this instrument's exemptions and others in the Corporations Act, noting previous advice that creating bespoke exemptions in the Corporations Act would affect clarity and navigability.

Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022 [F2022L01629]

The committee is seeking further advice on:

- Treasury's Law Improvement program and whether the committee's principles were considered throughout its development;
- what factors were considered when deciding to transfer time-limited exemptions from primary legislation into ongoing measures in delegated legislation that are not subject to sunseting; and
- what formal review mechanisms apply to ensure the measures remain fit-for-purpose and up to date.

Age 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 concluding its examination of this instrument following the minister's undertaking to amend the instrument and explanatory statement to reflect that the powers in section 23BE are limited to the actions available under the *Aged Care Quality and Safety Commission Act 2018* and the *Aged Care Quality and Safety Commission Rules 2018*.

Data Availability and Transparency Code 2022 [F2022L01719]

- *Conferral of discretionary power; clarity of drafting*: the committee is concluding its examination of this instrument following the publication of a replacement explanatory statement that includes additional information on several discretionary terms.

Telecommunications Amendment (Disclosure of Information for the Purpose of Cyber Security) Regulations 2022 [F2022L01333]

- *Parliamentary oversight; adequacy of explanatory materials*: the committee is concluding its examination of the instrument, primarily due to the limited duration of sections 15A and 15B and the minister's undertaking to include any future measures to improve information security in primary legislation.

Notices of motion to disallow

On 29 March 2023, the Scrutiny of Delegated Legislation Committee **gave** notice of motion to disallow the following instruments:

- Corporations Amendment (Litigation Funding) Regulations 2022 [F2022L01614]
- Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022 [F2022L01629]

On 30 March 2023, the Scrutiny of Delegated Legislation Committee **withdrew** notices of motions to disallow the following instruments:

- Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022 [F2022L01457]
- Telecommunications Amendment (Disclosure of Information for the Purpose of Cyber Security) Regulations 2022 [F2022L01333]

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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