



12 May 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 5 of 2023* reports on the committee's consideration of **10** bills which were introduced into the Parliament during recent sitting weeks as well as amendments introduced in relation to **1** bill. It also contains the committee's comments on ministerial responses in relation to **4** bills.

### Key scrutiny issues: Bills (*Scrutiny Digest 5 of 2023*)

#### Australian Security Intelligence Organisation Amendment Bill 2023

- *Merits review*: the bill introduces a new merits review framework for security vetting and security clearance related activities of ASIO. The framework allows for three basic types of review – external review by the AAT, internal review, and review by an independent third-party. Which level of review applies depends on the circumstances of the case, and the status of the affected person.
- The committee is seeking advice on several issues relating to the availability and adequacy of merits review under this new framework. Including, why certain categories of people are excluded from review, whether amendments can appropriately be made to the minister's power to make certain decisions not externally reviewable in exceptional circumstances, and what safeguards are in place to ensure the independence of an independent reviewer.

### Other bills commented on (*Scrutiny Digest 5 of 2023*)

- **Customs Legislation Amendment (Controlled Trials and Other Measures) Bill 2022**: the committee leaves to the Senate the appropriateness of exempting certain instruments

from the usual disallowance process. The committee requests that an addendum to the explanatory memorandum be tabled containing further information on the inclusion of significant matters in delegated legislation.

- **Crimes and Other Legislation Amendment (Omnibus) Bill 2023:** the committee is seeking further information on the Attorney-General's broad discretionary power to refuse a decision to transfer a prisoner from Australia, the availability of independent merits review, and administrative powers that may not be defined with sufficient precision.
- **Digital Assets (Market Regulation) Bill 2023:** this private senator's bill may raise scrutiny concerns in relation to significant penalties which are not sufficiently justified in the explanatory memorandum, significant matters in delegated legislation, and the broad delegation of powers and functions.
- **Education Legislation Amendment (Startup Year and Other Measures) Bill 2023:** the committee is seeking further information on the availability of independent merits review.
- **Family Law Amendment Bill 2023:** the committee is seeking further information on a reversal of the evidential burden of proof, a provision which may restrict a person's right to commence proceedings in their personal capacity, and the inclusion of significant matters in delegated legislation.
- **Family Law Amendment (Information Sharing) Bill 2023:** the committee is seeking further information on the inclusion of significant matters in delegated legislation.
- **Interactive Gambling Amendment (Credit Card Ban and Acknowledgement of Losses) Bill 2023:** this private member's bill may raise scrutiny concerns in relation to the evidential burden of proof.
- **National Security Legislation Amendment (Comprehensive Review and other Measures No. 2) Bill 2023:** the committee is seeking further information on a reversal of the evidential burden of proof, and provisions which may impact on a person's right to privacy.
- **Nature Repair Market Bill 2023:** the committee is seeking further information on the inclusion of significant matters in delegated legislation, provisions which confer a power to make non-disallowable legislative instruments, reports which are not required to be tabled in the Parliament, and a provision which confers immunity from civil liability.
- **Nature Repair Market (Consequential Amendments) Bill 2023:** the committee is seeking further information on the broad delegation of administrative powers and functions.
- **Social Security (Administration) Amendment (Income Management Reform) Bill 2023:** the committee leaves to the Senate the appropriateness of including significant matters in delegated legislation.
- **Social Services Legislation Amendment (Child Support Measures) Bill 2023:** the committee is seeking further information on a broad discretionary power which allows the Child Support Registrar to issue a 'departure authorisation certificate'. Such a

certificate authorises persons who would otherwise be prohibited from leaving Australia to instead depart for a foreign country.

## Scrutiny of Delegated Legislation Committee

### Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 5 of 2023*)

#### Public Service Regulations 2023 [F2023L00368]

- *Delegation of administrative powers and functions*: the committee requests the minister's advice as to why it is necessary and appropriate to provide for such a broad delegation of powers, noting there is existing delegation power in the Act, as well as whether the delegates are required to have appropriate skills, qualifications and experience, and whether any safeguards or limitations apply to the delegation.
- *Consultation with persons affected; compliance with Legislation Act 2003*: the committee requests the minister's advice regarding whether any consultation was undertaken in relation to the instrument with persons affected.
- *Availability of independent merits review; exemption from the operation of primary legislation*: the committee requests the minister's advice as to the nature and scope of each APS action listed in the instrument as non-reviewable, what characteristics of each of these justify the exclusion of merits review, and why it is considered appropriate to include these exemptions from the Act in delegated rather than primary legislation.
- *Adequacy of explanatory materials*: the committee requests the minister's advice as to whether the explanatory statement can be amended to explain the purpose and operation of the instrument, rather than referring to the 1999 regulation which this instrument remakes.

### Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee did not give any notices of motion to disallow instruments or withdraw or give notice of its intention to withdraw any instruments on 10 May 2023.

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:  
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