



15 June 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 6 of 2023 reports on the committee's consideration of **26** bills which were introduced into the Parliament during recent sitting weeks as well as amendments introduced in relation to **3** bills. It also contains the committee's comments on ministerial responses in relation to **8** bills.

Key scrutiny issues: Bills (*Scrutiny Digest 6 of 2023*)

Appropriation Bill (No. 1) 2023-2024

Appropriation Bill (No. 2) 2023-2024

Appropriation Bill (No. 3) 2022-2023

Appropriation Bill (No. 4) 2022-2023

- *Insufficient parliamentary scrutiny*: The committee considers that the Appropriation bills raise concerns in relation to parliamentary scrutiny and oversight over government expenditure. These include concerns relating to:
 - the potentially inappropriate classification of measures as 'ordinary annual services';
 - the power for the finance minister to allocate additional funds, by non-disallowable legislative instrument for urgent expenditure, up to \$1 billion;
 - the marking of measures as 'not for publication', with limited information as to why they are so classified;
 - the broad discretion provided to ministers to determine terms and conditions for grants to the states; and

- the setting of debit limits for general purpose financial assistance and national partnership projects that are significantly higher than the government's proposed expenditure.
- The committee draws these matters to the attention of Senators and leaves to the Senate as a whole the appropriateness of these provisions. The committee is also requesting the minister's detailed advice as to why the caps to the additional amounts that may be allocated by the Finance Minister (Advance to the Finance Minister) are significantly higher than the pre-pandemic caps.

Migration Amendment (Giving Documents and Other Measures) Bill 2023

- *Procedural fairness*: The committee considers that the proposed test of 'substantial prejudice', in determining whether a document is taken to comply with content requirements, suggests a qualitative assessment of the extent of prejudice. The committee considers that it may be appropriate to narrow the statutory language to frame the test in terms of 'material prejudice' rather than 'substantial prejudice' and is seeking advice from the minister on this matter.

Other bills commented on (*Scrutiny Digest 6 of 2023*)

- **Creative Australia Bill 2023**: the committee is seeking advice in relation to the exemption of ministerial directions given to the Australia Council Board from the usual disallowance process, and in relation to the inclusion of significant matters in delegated legislation.
- **Criminal Code Amendment (Prohibition of Nazi Symbols) Bill 2023 (No. 2)**: this private member's bill may raise scrutiny concerns in relation to significant penalties which are not sufficiently justified in the explanatory memorandum, and provisions which reverse the evidential burden of proof.
- **Defence Capability Assurance and Oversight Bill 2023**: this private senator's bill may raise scrutiny concerns in relation to procedural fairness, significant documents not required to be tabled in Parliament, significant penalties which are not justified in the explanatory memorandum, and provisions which confer immunity from civil penalty.
- **Inspector-General of Live Animal Exports Amendment (Animal Welfare) Bill 2023**: the committee is seeking further information on provisions which provide the Inspector-General with a broad discretionary power to conduct reviews of the performance of livestock export officials, and provisions which may impact on a person's right to privacy.
- **Veterans' Affairs Legislation Amendment (Miscellaneous Measures No. 2) Bill 2023**: the committee is seeking further information in relation to instruments not subject to an appropriate level of parliamentary oversight.

Scrutiny of Delegated Legislation Committee

Delegated Legislation Monitor 6 of 2023 reports on the Scrutiny of Delegated Legislation Committee's consideration of **98** disallowable legislative instruments and **9** instruments exempt

from disallowance registered on the Federal Register of Legislation between 17 April and May 2023. It was tabled following an out-of-session meeting of the committee on 2 June 2023.

Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 6 of 2023*)

Corporations Amendment (Design and Distribution Obligations— Income Management Regimes) Regulations 2023; Corporations Amendment (Litigation Funding) Regulations 2022; Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022

- *Exemption from the operation of primary legislation; parliamentary oversight*: the committee wrote a joint monitor entry for the above three instruments. It is seeking the minister's further advice as to whether amendments can be progressed to ensure that the Corporations Regulations are subject to sunseting to allow a minimum degree of parliamentary oversight; or alternatively, whether the measures introduced in these three instruments can be subject to 10-year sunseting period as they create exemptions to primary legislation.

Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee **gave** notice of motion to disallow the following instrument on 13 June 2023:

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

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 Imtoual, 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