



23 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 7 of 2023 reports on the committee's consideration of **5** bills which were introduced into the Parliament during recent sitting weeks as well as amendments introduced in relation to **6** bills. It also contains the committee's comments on ministerial responses in relation to **1** bill. The committee has deferred **3** bills for future consideration.

Key scrutiny issues: Bills (*Scrutiny Digest 7 of 2023*)

Public Service Amendment Bill 2023

- Tabling of documents in Parliament: the committee is seeking advice on whether the bill can be amended to require that the creation of various reports and documents that relate to the performance of government departments and agencies must be tabled in the Parliament or, if not, why this is the case.
- Privacy: the committee is seeking advice as to whether the bill can be amended to include safeguards to protect non-Senior Executive Service employees' personal information in Agency capability review reports.
- Broad delegation of administrative powers or functions: the committee is seeking advice on the power to allow an Agency Head to make a delegation to a member of the Australian Defence Force, and is drawing this matter to the attention of the Senate Standing Committee for the Scrutiny of Delegated Legislation.

Other bills commented on (*Scrutiny Digest 7 of 2023*)

- **Greenhouse and Energy Minimum Standards Amendment (Administrative Changes) Bill 2023**: the committee is seeking advice as to whether the bill can be amended to

provide for a review of the operation of declarations, which are legislative instruments, within a specified time to ensure greater parliamentary oversight.

- **Murdoch Media Inquiry Bill 2023:** 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 confer coercive powers.
- **National Security Legislation Amendment (Comprehensive Review and other Measures No. 2) Bill 2023:** the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof for various telecommunication-related offences in the *Criminal Code Act 1995* and provisions that expand the exclusions in the spent convictions scheme in the *Crimes Act 1914* which may have implications for the privacy of individuals.

Scrutiny of Delegated Legislation Committee

Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 7 of 2023*)

Public Service Regulations 2023

- *Delegation of administrative powers and functions*: following an undertaking by the minister to conduct a review of the scope of the APS Commissioner's delegation powers under the instrument, the *Public Service Act 1999*, and the Australian Public Service Commissioner's Directions 2022, the committee has concluded its examination of this issue.
- *Consultation with person's affected; compliance with Legislation Act 2003*: the committee is seeking the minister's further advice on how it was decided what updates to the Public Service Regulations 1999 were required during the development of the instrument in the absence of consultation with persons likely to be affected by the instrument, such as APS employees and the Commonwealth Public Sector Union.
- *Availability of independent merits review; exemption from the operation of primary legislation*: the committee is seeking further information from the minister on how it was determined the exemptions listed in subsection 37(2) remain fit-for-purpose. Further, the committee is also seeking the minister's advice on the nature and scope of exclusions from merits review contained in subsection 37(4) of the instrument as well as information on whether specific exclusions listed are necessary, and what safeguards are in place.
- *Adequacy of explanatory materials*: the committee is seeking the minister's further advice as to whether the explanatory statement could be amended to include further detail about the purpose and operation of the instrument.

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 21 June 2023.

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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