



3 August 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 8 of 2023* reports on the committee's consideration of **17** bills which were introduced into the Parliament during recent sitting weeks as well as amendments introduced in relation to **5** bills. It also contains the committee's comments on ministerial responses in relation to **10** bills.

### Key scrutiny issues: Bills (*Scrutiny Digest 8 of 2023*)

#### Intelligence Services Legislation Amendment Bill 2023

- *Significant matters in delegated legislation*: the committee is seeking advice on why the definition of 'intelligence functions' is set out within delegated legislation, and whether the bill can be amended to provide further clarification and guidance as to the intelligence functions of the Department of Home Affairs and the use of regulation-making powers.
- *Reversal of the evidential burden*: the committee is seeking advice on several defences which reverse the evidential burden of proof.
- *Immunity from civil and criminal liability*: the committee is seeking advice as to why immunities conferred are necessary and appropriate and a justification for why the approach differs from what is recommended in the National Intelligence Review.

#### Migration Amendment (Strengthening Employer Compliance) Bill 2023

- *Privacy; significant matters in delegated legislation*: the committee is seeking further advice as to the inclusion of regulation making powers in the bill, why it is considered necessary and appropriate not to require the removal of information when a person

stops being a 'prohibited employer' and whether adequate privacy safeguards are in place to ensure the appropriate exercise of publication powers.

- *Immunity from civil liability*: the committee leaves to the Senate the appropriateness of providing an immunity from civil liability in relation to the publication of information in good faith.
- *Retrospective application*: the committee leaves to the Senate the appropriateness of providing that amendments relating to compliance notices have a retrospective application, in light of a potentially negative impact.

### Other bills commented on (*Scrutiny Digest 8 of 2023*)

- **Biosecurity Amendment (Advanced Compliance Measures) Bill 2023**: the committee is seeking advice regarding the privacy implications of personal information that can be collected and used from the production or scanning of a passport or travel document.
- **Broadcasting Services Amendment (Healthy Kids Advertising) Bill 2023**: this private member's bill may raise scrutiny concerns in relation to significant matters in delegated legislation and significant penalties in primary legislation.
- **Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023**: the committee leaves to the Senate the appropriateness of reversing the evidential and legal burden of proof and the inclusion of absolute liability offences.
- **Environment Protection (Sea Dumping) Amendment (Using New Technologies to Fight Climate Change) Bill 2023**: the committee is seeking advice as to the appropriateness of reversing the evidential burden of proof in relation to three new defences introduced.
- **Freeze on Rent and Rate Increase Bill 2023**: this private senators' bill may raise scrutiny concerns in relation to significant matters in delegated legislation.
- **Interactive Gambling Amendment (Ban on Gambling Advertisements) Bill 2023**: this private member's bill may raise scrutiny concerns in relation to significant penalties in primary legislation.
- **Migration Amendment (Overseas Organ Transplant Disclosure and Other Measures) Bill 2023**: this private senator's bill may raise scrutiny concerns in relation to privacy.
- **National Occupational Respiratory Disease Registry Bill 2023**: the committee is seeking further advice regarding the appropriateness of leaving the scope and operation of the National Registry to delegated legislation and the broad discretionary powers of the Chief Medical Officer to determine information to be included on the National Registry.
- **Treasury Laws Amendment (2023 Law Improvement Package No. 1) Bill 2023**: the committee leaves to the Senate the appropriateness of providing for broad authorisation powers and including key details and definitions in delegated legislation.

## Scrutiny of Delegated Legislation Committee

## Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 8 of 2023*)

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

Corporations Amendment (Litigation Funding) Regulations 2022 [F2022L01614]

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

- Exemption from the operation of primary legislation; parliamentary oversight: Following the Assistant Treasurer's undertaking to seek amendments so that the matters in the three instruments cease after 10 years, the committee resolved to conclude its examination of the instruments, and to withdraw the relevant notices of motion to disallow placed on these instruments. However, the committee retains its concerns about the exemption of the Corporations Regulations 2001 from sunseting and draws this matter to the attention of the Senate.

## Public Service Regulations 2023 [F2023L00368]

- Consultation with persons affected; compliance with Legislation Act 2003: the committee concluded its examination of this issue following advice from the minister about how it was decided what updates were necessary to the 1999 regulations in the absence of broader consultation with persons likely to be affected. The minister also provided further information on engagement with the Commonwealth Public Sector Union and advised that implementation of their previous undertaking, to ensure that the Australian Public Service Commission undertook broader consultation, had already begun.
- Availability of independent merits review; exemption from the operation of primary legislation: the committee concluded its examination of the instrument in relation to this issue following detailed information from the minister on the nature and scope of section 37 of the instrument and the continued availability of secondary and judicial review.
- Adequacy of explanatory materials: the committee concluded its examination of the instrument in relation to this issue following an undertaking from the minister to amend the instrument's explanatory statement to include further detail about the instrument's purpose and operation.

## Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee **withdrew** motions to disallow the following instruments on 2 August 2023:

- Corporations Amendment (Design and Distribution Obligations— Income Management Regimes) Regulations 2023 [F2023L00193]
- Corporations Amendment (Litigation Funding) Regulations 2022 [F2022L01614]
- Treasury Laws Amendment (Rationalising ASIC Instruments) Regulations 2022 [F2022L01629]

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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