



9 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](#).

Please note that this edition of Scrutiny News relates only to the work of the Senate Scrutiny of Bills Committee.

Scrutiny of Bills Committee

Scrutiny Digest 9 of 2023 reports on the committee's consideration of **10** bills which were introduced into the Parliament during recent sitting weeks. It also contains the committee's comments on ministerial responses in relation to **1** bill.

Key scrutiny issues: Bills (*Scrutiny Digest 9 of 2023*)

Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023

- *Broad scope of offence provisions; freedom of expression*: the committee is seeking advice on whether the bill can be amended to include a written description and a graphic depiction of the symbols sought to be prohibited, and whether key terms like 'displayed in a public place' and 'reasonable steps' can be further defined and explained.
- *Reversal of the evidential and legal burden of proof; absolute liability offences*: the committee is seeking advice on several defences which reverse the evidential and legal burden of proof and a justification for the application of absolute liability in relation to a defence.
- *Broad scope of offence provisions; significant penalties in primary legislation*: the committee is seeking advice as to whether further clarity can be provided for key terms like 'violent extremist material', 'accessing' violent extremist material, 'advocates' and 'praises', noting the significant penalties that attach to offences which include these terms.

- Exemption from sunseting: the committee is seeking advice as to what circumstances justify the exemption from sunseting for regulations made under subsection 102.1(1) of the Criminal Code.

Other bills commented on (*Scrutiny Digest 9 of 2023*)

- **Housing Australia Future Fund Bill 2023 [No. 2]**
Treasury Laws Amendment (Housing Measures No. 1) Bill 2023 [No. 2]: noting these bills are identical to bills previously introduced and commented on by the committee, the committee leaves to the Senate the appropriateness of providing for powers to make non-disallowable legislative instruments and conferring a broad power to make grants to the states.
- **Social Security and Other Legislation Amendment (Miscellaneous Measures) Bill 2023**: the committee is seeking advice as to the Employment Secretary's broad discretionary powers to determine arrangements and grants and the appropriateness of this being done by notifiable instrument.
- **Telecommunications (Interception and Access) Amendment Bill 2023**: the committee is seeking advice as to the Director-General of Security's broad discretionary powers to communicate foreign intelligence information and why it is necessary to confer a broad power on a second person to communicate foreign intelligence information to another person. The committee is also commenting on the appropriateness of this bill being passed within two days.
- **Treasury Laws Amendment (2023 Measures No. 3) Bill 2023**: the committee is seeking advice as to ASIC's powers to make exemptions from the operation of the *Corporations Act 2001* in delegated legislation and why independent merits review is not considered appropriate in relation to certain decisions by ASIC.

For any comments or questions, please contact:
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