



22 March 2024

## 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 4 of 2024* reports on the committee's consideration of **11** bills which were introduced into the Parliament during recent sitting. It also contains the committee's comments on ministerial responses in relation to **10** bills. The Chair made a [statement](#) corresponding to the tabling of the digest.

### Key scrutiny issues: Bills ([Scrutiny Digest 4 of 2024](#))

#### Agriculture (Biosecurity Protection) Charges Bill 2024

#### Agriculture (Biosecurity Protection) Levies Bill 2024

- *Charges and levies in delegated legislation*: the committee draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of allowing the rates of charges and levies in each of the bills to be specified in, or worked out in accordance with, the regulations.
- *Incorporation of external materials as existing from time to time*: the committee is seeking the minister's advice as to whether material incorporated from time to time will be made freely and readily available to all persons interested in the law, including individuals not in the industries concerned.

#### Agriculture (Biosecurity Protection) Levies and Charges Collection Bill 2024

- *Broad delegation of administrative powers/coercive powers/infringement notices*: the committee draws to the attention of senators and leaves to the Senate as a whole the appropriateness of providing for a broad delegation of administrative power without a requirement that compliance officers exercising such power have appropriate skills, experience or training on the face of the bill, noting in particular the coercive nature of the powers that may be exercised.

- Reversal of the evidential burden of proof: the committee is seeking the minister's advice on the justification of the offence-specific defence in clause 40(4), which reverses the evidential burden of proof
- Automated decision-making: the committee is requesting the minister's advice as to whether automated decision making powers in the bill can be limited to non-discretionary decisions
- Incorporation of external materials as existing in force from time to time: the committee is requesting the minister's advice as to whether material incorporated from time to time will be made freely and readily available to all persons interested in the law, including individuals not in the industries concerned.

#### **Autonomous Sanctions Amendment Bill 2024**

- Retrospective validation: the committee draws the Senate's attention to the appropriateness of provisions which retrospectively validate sanctions listings.

#### **Financial Framework (Supplementary Powers) Amendment Bill 2024**

- Insufficient parliamentary scrutiny/inappropriate delegation of legislative powers: the committee draws the Senate's attention to the appropriateness of allowing the Executive the power to expand its own power to spend and contract by the making of regulations.
- Retrospective validation/parliamentary scrutiny: the committee is seeking the minister's further advice in relation to when and how the need for the amendments proposed by the bill and the retrospective validation provisions became apparent.

#### **Other bills commented on ([Scrutiny Digest 4 of 2024](#))**

- **Appropriation Bill (No. 3) 2023-2024/Appropriation Bill (No. 4) 2023-2024**: the committee welcomed the minister's commitment to consider improving guidance on measures marked as 'not for publication', but drew the Senate's attention to the impact this has on parliamentary scrutiny.
- **Australian Naval Nuclear Power Safety Bill 2023**: the committee requested an addendum to the explanatory memorandum to include clarificatory material on offence provisions, coercive powers, and seizure powers, and drew the Senate's attention to concerns in relation to defences which reverse the evidential burden of proof, coercive power provisions, and seizure provisions.
- **Competition and Consumer Amendment (Fair Go for Consumers and Small Businesses) Bill 2024**: the committee drew the Senate's attention to the provision of significant matters in relation to the designated complaint scheme in delegated legislation, and concluded its concerns in relation to merits review.
- **Defence Trade Controls Amendment Bill 2023**: the committee requested that clarificatory information in relation to offence provisions and delegation of administrative powers or functions be added to the explanatory memorandum and drew concerns in relation to the offence provisions to the attention of the Senate.

- **Digital ID Bill 2023:** the committee thanked the minister for undertaking to move amendments which provide for the tabling of documents in Parliament, and welcomed a commitment from the Department to determine how incorporated documents may be made freely and publicly available.
- **National Vocational Education and Training Regulator Amendment (Strengthening Quality and Integrity in Vocational Education and Training No. 1) Bill 2024:** the committee drew the Senate’s attention to the appropriateness of exemptions from disallowance for instruments made under the bill, and welcomed clarifying information in relation to privacy aspects of the bill, and requested that, in this regard, the explanatory memorandum be amended.
- **Treasury Laws Amendment (Foreign Investment) Bill 2024:** the committee drew the Senate’s attention to the appropriateness of the bill retrospectively applying legislation to clarify the operation of non-discrimination provisions in bilateral tax treaties.

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For any comments or questions, please contact:  
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## Scrutiny of Delegated Legislation Committee

### Key scrutiny issues: Legislative instruments (*Delegated Legislation Monitor 3 of 2024*)

#### Migration Amendment (Biosecurity Contravention) Regulations 2023

- *Adequacy of consultation*: the committee is recommending that the minister amend the explanatory statement to include the explanation provided to the committee as to why consultation was not undertaken in this case. However, the committee is not requesting the minister’s further advice and concludes its examination of the instrument in relation to this issue.
- *Availability of independent merits review*: while noting the minister’s advice that visa cancellations will only be undertaken by comprehensively trained Australian Border Force Officers, the committee acknowledges that merits review is not available in this instance due to the operation of the *Migration Act 1958*. Accordingly, the committee concludes its examination of the instrument in relation to this issue.

#### Notices of motion to disallow

The Scrutiny of Delegated Legislation Committee **gave** notice of motion to disallow the following instrument on 19 March 2024:

- Offshore Petroleum and Greenhouse Gas Storage (Greenhouse Gas Injection and Storage) Regulations 2023 [F2023L01551]

The Scrutiny of Delegated Legislation Committee **withdrew** a notice of motion to disallow the following instrument on 21 March 2024:

- Migration Amendment (Biosecurity Contravention) Regulations 2023 [F2023L01443]

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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