



## Delegated Legislation Monitor Tabling Statement

Thursday 9 November 2023

I rise to speak to the tabling of the Senate Standing Committee for the Scrutiny of Delegated Legislation's *Delegated Legislation Monitor 13 of 2023* which reports on the committee's consideration of **175** legislative instruments registered between **19 September 2023** and **30 October 2023**. This includes **152** disallowable instruments, and **23** instruments exempt from disallowance.

I would first like to draw the Chamber's attention to three instruments which the committee has been engaging with the Minister for Education. These include the Australian Education Regulations 2023, the Higher Education Support (Other Grants) Amendment (National Priorities Pool Program and Regional Partnerships Project Pool Program) Guidelines 2023 and the Australian National University (Governance) Statute 2023.

These instruments determine arrangements for Commonwealth financial assistance to schools, clarify how grants are to be paid under the National Priorities Pool Program and provide for governance matters relating to the Australian National University.

The committee has corresponded with the minister about scrutiny issues relating to all these instruments. These issues include the inclusion of broad discretionary powers, the availability of merits review and the adequacy of the accompanying explanatory statements.

The committee is pleased to report that in accordance with its requests, the minister has undertaken to update the explanatory statements to address the committee's concerns.

On behalf of the committee, I thank the Minister for Education for his timely and constructive engagement about these matters and his undertakings to address the committee's concerns. In light of the minister's undertakings, the committee has concluded its examination of the instruments and has resolved to withdraw the relevant notices of motion to disallow the instruments.

Finally, I would like to draw the Chamber's attention to the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2023. This instrument raised a number of scrutiny concerns, including the inclusion of several no-invalidity clauses which have the potential to limit judicial review, and the inclusion of strict liability offences.

Noting the seriousness of no-invalidity clauses, the committee had sought the minister's further advice about whether the clauses can be removed, noting there are existing provisions that allow NOPSEMA to extend the time they have to make certain decisions.

In the alternative to the clauses being removed, the committee sought further justification as to why the clauses are necessary.

In her response, the minister provided a further explanation about why the clauses are necessary and appropriate – including that they serve as a safeguard for relevant titleholders who have already commenced activities based on proposals approved by NOPSEMA. The minister also advised that these provisions have been included in offshore environmental management regulations since 1999.

The committee thanks the minister for her response, and while the committee reiterates that no-invalidity clauses should be used only in exceptional circumstances, it understands the minister's justification in this particular case.

The minister also undertook to amend the explanatory statement to include the information about how NOPSEMA calculates fees and the review mechanisms available, to address another concern the committee had previously raised.

The committee thanks the minister for her advice and welcomes her undertakings about this matter. In light of this, the committee resolved to conclude its examination of this instrument and to withdraw the notice of motion to disallow the instrument.

With these comments, I commend the committee's *Delegated Legislation Monitor 13 of 2023* to the Senate.