



DEPARTMENT
OF THE SENATE

Scrutiny NEWS

Scrutiny of Bills Committee

Scrutiny of Delegated Legislation Committee

12 August 2021

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 (see Senate Standing Orders 23 and 24).

For more detail and discussion of these matters see the committees' [Scrutiny Digests](#) and [Delegated Legislation Monitors](#).

Key scrutiny issues: Bills ([Scrutiny Digest 12 of 2021](#))

Counter-Terrorism Legislation Amendment (Sunsetting Review and Other Measures) Bill 2021

- Trespass on personal rights and liberties: the committee leaves to the Senate the appropriateness of extending, by a further one to three years, the operation of a number of broad coercive powers which raise significant scrutiny concerns.

Treasury Laws Amendment (COVID-19 Economic Response No. 2) Bill 2021

- Significant matters in delegated legislation: the committee considers that some of the matters that are to be provided for in delegated legislation (such as the core eligibility requirements for COVID-19 business support payments) should have been included on the face of the primary legislation.
- Reverse evidential burden: the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof in relation to matters that do not appear to be peculiarly within the knowledge of the defendant.

Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 12 of 2021](#))

Australian Charities and Not-for-profits Commission Amendment (2021 Measures No. 2) Regulations 2021 [F2021L00863]

- Conferral of discretionary powers: the committee is seeking advice as to the factors that the ACNC Commissioner must consider when determining whether a registered charity has complied with the requirements to maintain reasonable internal control procedures.

- *Implied freedom of political communication*: the committee is seeking advice as to how the instrument as a whole, including provisions which restrict charities from promoting or supporting the unlawful actions of other entities, does not impermissibly restrict the implied freedom of political communication.

Australian Renewable Energy Agency Amendment (2020-21 Budget Programs) Regulations 2021 [F2021L00590]

Australian Renewable Energy Agency (Implementing the Technology Investment Roadmap) Regulations 2021 [F2021L01043]

- *Compliance with authorising legislation*: the committee is seeking advice as to whether there is any additional evidence, beyond that already provided to the committee, that Parliament intended that functions not relating to renewable energy could be conferred on the ARENA.
- *Compliance with the Legislation Act 2003*: the committee is seeking advice as to why the newly registered ARENA instrument should not be considered to be the 'same in substance' as the ARENA instrument that was disallowed by the Senate on 22 June 2021.

Australia's Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569]

- *Matters more appropriate for parliamentary enactment/clarity of drafting*: the committee has concluded its examination of the instrument in light of the minister's undertaking to amend the instrument to provide that it will repeal five years after commencement.

Scrutiny of COVID-19 related legislation

The Scrutiny of Delegated Legislation Committee has continued to list all delegated legislation made in response to COVID-19 on its [website](#). As of 5 August 2021, 541 legislative instruments have been made, of which 16.8% are exempt from disallowance and scrutiny by the committee.

Other bills commented on ([Scrutiny Digest 12 of 2021](#))

- **International Human Rights and Corruption (Magnitsky Sanctions) Bill 2021**: the committee leaves to the Senate the appropriateness of allowing sanctions and penalties, including custodial penalties, to be imposed by delegated legislation.

Other legislative instruments commented on ([Delegated Legislation Monitor 12 of 2021](#))

The Scrutiny of Delegated Legislation committee considered 61 disallowable legislative instruments registered on the Federal Register of Legislation between 19 and 25 June 2021. The committee is continuing to engage with ministers and agencies in relation to 49 instruments, and has concluded its consideration of 12 instruments.

All legislative instruments subject to a notice of motion for disallowance in either House of Parliament are listed in the [Disallowance Alert](#).

Notices of motion to disallow

The Senate Scrutiny of Delegated Legislation Committee **gave** notices of motions to disallow the following instruments on 11 August 2021:

- Bankruptcy Regulations 2021 [F2021L00261]
- Financial Framework (Supplementary Powers) Amendment (Health Measures No. 1) Regulations 2021 [F2021L00290]
- High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021 [F2021L00391]
- Industry Research and Development (Carbon Capture, Use and Storage Development Program) Instrument 2021 [F2021L00547]
- Industry Research and Development (Growing Australia’s Cyber Skills Program) Instrument 2021 [F2021L00536]
- Industry Research and Development (Modern Manufacturing Initiative Program) Instrument 2021 [F2021L00539]
- Legislation (Telecommunications Customer Service Guarantee Instruments) Sunset-altering Declaration 2021 [F2021L00277].

The Senate Scrutiny of Delegated Legislation Committee **withdrew** a notice of motion to disallow the following instrument on 11 August 2021:

- Australia’s Foreign Relations (State and Territory Arrangements) Rules 2020 [F2020L01569].

This document contains a very brief summary of some recent comments made by the Senate Scrutiny of Bills Committee (Chair: Senator Helen Polley and Deputy Chair: Senator Dean Smith) and the Senate Scrutiny of Delegated Legislation Committee (Chair: Senator the Hon Concetta Fierravanti-Wells and Deputy Chair: Senator the Hon Kim Carr).

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