



18 January 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 1 of 2024 reports on the committee's consideration of **16** bills which were introduced into the Parliament during recent sitting weeks as well as amendments agreed to or explanatory materials tabled in relation to **10** bills. It also contains the committee's comments on ministerial responses in relation to **5** bills.

Key scrutiny issues: Bills (*Scrutiny Digest 1 of 2024*)

Australian Naval Nuclear Power Safety Bill 2023

- Significant penalties; reversal of the evidential burden of proof: the committee is seeking advice on the appropriateness of the penalties proposed in relation to certain offences, and whether these penalties are broadly equivalent to similar offences in Commonwealth legislation.
- Reversal of the evidential burden of proof: the committee is seeking advice as to why it is proposed to use offence-specific defences in clauses that provide defences for offences in relation to performing regulated activities without holding a relevant licence.
- Coercive powers—entry and search powers: the committee is seeking advice as to whether consideration has been given to including a monitoring warrant regime in the bill, and if it was not considered appropriate, why that is the case.
- Coercive powers—seizure; use and derivative use of seized material: the committee is seeking advice as to further clarity regarding a term in the bill, whether consideration has been given to include remote warrant provisions in the bill, to including limits on the use and derivative use of seized material, and to amending the bill to more clearly define the extent of certain seizure powers.

Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023

- Henry VIII clause—modification of primary legislation by delegated legislation: the committee is seeking advice examples of what would constitute ‘exceptional circumstances’ permitting regulations to amend the operation of the *Corporations Act 2001*. The committee is also seeking advice as to whether there is any guidance or relevant matters to consider in exercising this power and whether the provision allowing regulations to amend primary legislation can be amended to include a requirement that the regulations may only prescribed certain products, services, or classes of such, as exemptions to the *Corporations Act 2001* in exceptional circumstances.
- Instruments not subject to an appropriate level of parliamentary oversight: the committee is seeking advice as to why it is necessary and appropriate for certain instruments made under the bill to be exempt from disallowance, and for another instrument to be a notifiable instrument. The committee is also drawing this matter to the attention of the Senate Standing Committee for the Scrutiny of Delegated Legislation.

Other bills commented on (*Scrutiny Digest 1 of 2024*)

- **Australian Research Council Amendment (Review Response) Bill 2023**: the committee is seeking the minister’s advice as to the necessity and appropriateness of providing a broad power to vary and terminate funding agreements and approvals and whether guidance can be provided as to the exercise of the termination power. The committee is also seeking the minister’s advice as to whether independent merits review is available in relation to a decision to vary or terminate, and if not, why it is necessary and appropriate to exclude merits review.
- **Customs Amendment (Preventing Child Labour) Bill 2023**: this private senator’s bill may raise scrutiny concerns in relation to the abrogation of privilege against self-incrimination, and privacy.
- **Defence Trade Controls Amendment Bill 2023**: the committee is seeking advice as to why it is proposed to use offence-specific defences which reverse the evidential burden of proof. The committee are also seeking advice as to why it is necessary and appropriate to provide the power to delegate the minister’s functions or powers to an Executive Level 1 or 2 employee and whether those exercising delegated powers will possess the appropriate training, qualifications, skills or experience.
- **National Security Legislation Amendment (Comprehensive Review and Other Measures No. 3) Bill 2023**: the committee is seeking advice as to the use of an offence-specific defence which reverses the evidential burden of proof, and why this is necessary, as the offence provision had previously included it as an element of the offence.

- **Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Bill 2023:** the committee is seeking advice as to why it is necessary and appropriate to allow delegated legislation made under the bill to modify the operation of the *Telecommunications Act 1997*.

Scrutiny of Delegated Legislation Committee

The scrutiny of Delegated Legislation Committee did not report this week.

For any comments or questions, please contact:

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