



15 February 2018

Introduction

This newsletter highlights key aspects of the work of the Senate Scrutiny of Bills Committee and the Senate Regulations and Ordinances 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 No. 2 of 2018*)

Appropriation Bill (No. 3) 2017-2018

- Parliamentary scrutiny of appropriations: One of the core functions of the Parliament is to scrutinise appropriations of money proposed by the executive. The committee therefore draws to the attention of the Senate:
 - that while this bill is intended to only appropriate money for the ordinary annual services of the government, and is therefore not amendable by the Senate, it appears that appropriations for new policies have been included in the bill, thereby undermining the Senate's constitutional right to amend these appropriations; and
 - the proposal to disregard previous expenditure (in this case, \$122 million) for the purposes of the cap on additional appropriations that may be determined by the Finance Minister through a non-disallowable legislative instrument.

Appropriation Bill (No. 4) 2017-2018

- Parliamentary scrutiny of section 96 grants to the States: The committee leaves to the Senate the appropriateness of delegating to the executive the Parliament's power under section 96 of the Constitution to determine terms and conditions on grants to the States.

Identity-matching Services Bill 2018

- Privacy: the committee has noted that the bill seeks to enable the sharing of an extensive amount of personal information for a broad range of purposes to a broad range of agencies and is seeking advice on whether the intended policy and administrative safeguards to protect privacy can be included as legal requirements in the bill.

- Consultation prior to making delegated legislation: the committee is seeking advice on amending the bill to impose additional consultation requirements on the minister prior to making any rules.
- Adequacy of parliamentary oversight: the committee is seeking advice on amending the bill to require that any instances of disclosures of protected information by entrusted persons be included in the annual reports to Parliament on the operation of the scheme.

Key scrutiny issues: Legislative instruments (*Delegated legislation monitor 2 of 2018*)

Basin Plan Amendment (SDL Adjustments) Instrument 2017

- Compliance with authorising legislation: the committee is seeking advice as to why a Notice, required to be made under the *Water Act 2007* regarding the basis of the Sustainable Diversion Limit adjustments made by the instrument, did not accompany the instrument when it was tabled. The committee has requested that the Notice be provided to Parliament and published on the Federal Register of Legislation without further delay.

Other bills commented on (*Scrutiny Digest No. 2 of 2018*)

- **Australian Citizenship Legislation Amendment (Strengthening the Commitments for Australian Citizenship and Other Measures) Bill 2018**: the committee reiterates its previous views in relation to a substantially similar bill.
- **Australian Passports Amendment (Identity-matching Services) Bill 2018**: the committee is seeking advice as to the appropriateness of leaving to delegated legislation the details of what information relating to the identity of a person may be disclosed.
- **Foreign Acquisitions and Takeovers Fees Amendment (Near-new Dwelling Interests) Bill 2018**: the committee leaves to the Senate the appropriateness of retrospectively applying amendments.
- **Road Vehicle Standards Bill 2018**: the committee is seeking advice on a broad discretionary power, the framing of a number of criminal offences, the abrogation of the privilege against self-incrimination, broad delegations of administrative powers, limitations on judicial review, the lack of merits review in the bill, and an immunity from civil and criminal liability.
- **Road Vehicle Standards Charges (Imposition—Customs) Bill 2018; Road Vehicle Standards Charges (Imposition—Excise) Bill 2018; and Road Vehicle Standards Charges (Imposition—General) Bill 2018**: the committee is seeking advice as to why the bills leave the rate of charges to be determined by delegated legislation.
- **Treasury Laws Amendment (2018 Measures No. 1) Bill 2018**: the committee is seeking advice as to why it is proposed to allow a legislative instrument to amend the operation of primary legislation, and leaves to the Senate the appropriateness of a strict liability offence.

- **Treasury Laws Amendment (2018 Measures No. 2) Bill 2018:** the committee is seeking advice as to why the regulations seek to confer a broad power on ASIC and whether the retrospective application of an amendment would cause detriment to any individual.
- **Treasury Laws Amendment (Black Economy Taskforce Measures No. 1) Bill 2018:** the committee is seeking a more detailed justification for applying strict liability to offences subject to significant penalties and the reversal of the evidential burden of proof.
- **Treasury Laws Amendment (Reducing Pressure on Housing Affordability Measures No. 2) Bill 2018:** the committee leaves to the Senate the appropriateness of retrospectively applying amendments.

Other legislative instruments commented on (*Delegated legislation monitor 2 of 2018*)

- The Regulations and Ordinances committee commented on nine legislative instruments registered on the Federal Register of Legislation between 9 and 30 January 2018.
- All legislative instruments subject to a notice of motion for disallowance in either House of Parliament are listed in the [Disallowance Alert](#).

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 John Williams) and the Senate Regulations and Ordinances Committee (Chair: Senator John Williams and Deputy Chair: Senator Gavin Marshall).

For any comments or questions, please contact:

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