



21 June 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. 6 of 2018](#))

Counter Terrorism Legislation Amendment (No. 1) Bill 2018

- ***Extension of sunset provisions***: the committee leaves to the Senate the appropriateness of extending for a further 1-3 years the operation of a number of broad coercive powers that raise significant scrutiny concerns.

Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018

- ***Retrospective application***: the committee considers it may be appropriate to amend the bill to apply changes to capital gains tax small business concessions to events occurring after the bill receives royal assent, and otherwise leaves to the Senate the appropriateness of applying the amendments retrospectively.

Underwater Cultural Heritage Bill 2018

- ***Forfeiture***: the committee is seeking further detailed advice as to why a proposed forfeiture provision does not include appropriate safeguards for innocent third parties.
- ***Criminal offences***: the committee leaves to the Senate the appropriateness of a broadly framed offence, strict liability offences and the reversal of the evidential burden of proof.
- ***Significant matters in delegated legislation***: the committee leaves to the Senate the appropriateness of the bill not providing criteria to guide decisions to grant or vary a permit.
- ***Broad delegation of administrative powers***: the committee leaves to the Senate the appropriateness of allowing 'other persons' to assist authorised officers without requiring that they have appropriate expertise.

Key scrutiny issues: Legislative instruments ([Delegated legislation monitor 6 of 2018](#))

Customs (Prohibited Exports) Amendment (Defence and Strategic Goods) Regulations 2018

- **Privacy**: the committee is seeking advice as to the justification for authorising the secretary to disclose certain information to a broad range of persons and entities; the type of information that may be disclosed; and any safeguards in place to protect privacy.
- **Retrospective effect**: the committee is seeking advice as to whether any persons were or could be disadvantaged by the application of the instrument to permission applications made before it commenced, and if so, what steps have been taken to avoid such disadvantage and ensure natural justice is preserved.
- **Merits review**: the committee is seeking advice as to the impact withholding reasons for certain decisions may have on effective merits review of those decisions; and how this would interact with relevant provisions of the AAT Act.

Archives Regulations 2018

- **Subdelegation**: the committee welcomes the minister's undertaking to amend the regulations to require that the Director-General be satisfied that persons to whom significant powers (including powers to authorise the destruction and alteration of Commonwealth records) are delegated, have appropriate expertise.

Other bills commented on ([Scrutiny Digest No. 6 of 2018](#))

- **Air Services Amendment Bill 2018 (No. 2)**: the committee leaves to the Senate the appropriateness of a broad delegation of powers and significant matters being left to delegated legislation.
- **Aboriginal and Torres Strait Islander Land and Sea Future Fund Bill 2018**: the committee considers it would be appropriate to amend the bill to require a review of the operation of the Act be tabled and published, and leaves to the Senate the appropriateness of not subjecting investment mandate directions to disallowance and sunset.
- **Appropriation Bill (No. 1) 2018-2019**: the committee draws to the attention of senators the apparent inappropriate classification of expenditure for certain items as ordinary annual services, and leaves to the Senate the appropriateness of allowing the Finance Minister to allocate significant additional funds to entities in a non-disallowable legislative instrument.
- **Appropriation Bill (No. 2) 2018-2019**: the committee leaves to the Senate the appropriateness of delegating to the minister the power to determine terms and conditions attaching to grants to the states, and of setting debit limits for certain grant programs well above the expected level of expenditure.
- **Australian Institute of Health and Welfare Amendment Bill 2018**: the committee considers it may be appropriate to amend the bill to require that the CEO be satisfied persons performing delegated functions or powers have the appropriate expertise.

- **Corporations Amendment (Asia Region Funds Passport) Bill 2018:** the committee leaves to the Senate the appropriateness of provisions reversing the evidential burden of proof.
- **Criminal Code and Other Legislation Amendment (Removing Commonwealth Restrictions on Cannabis) Bill 2018:** the committee leaves to the Senate the appropriateness of provisions reversing the legal burden of proof.
- **Education and Other Legislation Amendment (VET Student Loan Debt Separation) Bill 2018:** the committee leaves to the Senate the appropriateness of applying an offence of absolute liability that is potentially subject to a custodial penalty.
- **Health Legislation Amendment (Improved Medicare Compliance and Other Measures) Bill 2018:** the committee is seeking advice as to the necessity of limiting the right to make an application to the Administrative Appeals Tribunal.
- **National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018:** the committee received advice as to why it is considered necessary to leave significant elements of the mandatory credit reporting scheme, which may have significant privacy implications, to delegated legislation.
- **National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018:** the committee noted its scrutiny concerns regarding the exemption of decisions made under the redress scheme from judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.
- **National Redress Scheme for Institutional Child Sexual Abuse Bill 2018:** the committee noted its scrutiny concerns in relation to leaving a number of significant matters to delegated legislation, excluding and limiting merits review, granting broad discretionary powers to the scheme Operator, granting an immunity from civil or criminal liability, and allowing the broad delegation of the Operator's administrative powers.
- **Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2018:** the committee received advice as to why it is considered appropriate to reverse the legal, rather than evidential, burden of proof.
- **Primary Industries Levies and Charges Collection Amendment Bill 2018:** the committee received advice as to the necessity of leaving significant matters to delegated legislation.
- **Private Health Insurance Legislation Amendment Bill 2018:** the committee considers it may be appropriate to amend the bill to require the Private Health Insurance Ombudsman (PHIO) be satisfied persons performing delegated powers have appropriate expertise, and leaves to the Senate the appropriateness of allowing the PHIO to enter premises without a warrant.
- **Space Activities Amendment (Launches and Returns) Bill 2018:** the committee is seeking advice regarding the power to incorporate documents.
- **Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018:** the committee received advice on the appropriateness of expanding the classes of person affected by the abrogation of the privilege against self-incrimination.

- **Treasury Laws Amendment (2018 Measures No. 4) Bill 2018:** the committee is seeking a further justification for a proposed no-invalidity clause, and leaves to the Senate the appropriateness of a number of proposed strict and absolute liability offences.
- **Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018:** the committee is seeking advice on whether decisions to disqualify a person from the superannuation guarantee shortfall amnesty would be subject to merits review.
- **Water Amendment Bill 2018:** the committee is seeking a more detailed justification regarding the disapplication of consultation requirements for Basin Plan amendments.

Other legislative instruments commented on (*[Delegated legislation monitor 6 of 2018](#)*)

- The Regulations and Ordinances committee commented on 12 legislative instruments registered on the Federal Register of Legislation between 29 March and 9 May 2018. The committee concluded its interest in 24 instruments on which the committee had previously commented.
- 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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