



15 August 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. 8 of 2018](#))

Defence Amendment (Call out of the Australian Defence Force) Bill 2018

- Trespass on personal rights and liberties: the committee is seeking advice on when a call out order may be made, including the breadth of the definitions of 'domestic violence' and 'Commonwealth interests', matters a minister must consider before making a call out order, and the length of time a call out order may remain in effect.
- Use of force: the committee is seeking advice on the appropriateness of amending the bill so as to require that infrastructure can only be declared where damage or disruption would directly endanger life or cause serious injury and that the minister may only authorise action against an aircraft or vessel to protect the lives or safety of others.
- Immunity from liability: the committee is seeking advice as to the appropriateness of amending the bill to preserve legal liability where an ADF member exceeds their legal authority in a manner that is not minor or technical.

Legislation Amendment (Sunsetting Review and Other Measures) Bill 2018

- Parliamentary oversight of delegated legislation: the committee welcomes proposed amendments to introduce a definition of 'sitting day' and improve parliamentary oversight of delegated legislation where an instrument is rectified after its initial registration.

Migration (Validation of Port Appointment) Bill 2018:

- Retrospective validation: the committee leaves to the Senate the appropriateness of retrospectively validating a 2002 appointment, noting that this has the potential to undermine the rule of law and cause detriment to a number of affected persons.

Office of National Intelligence Bill 2018

- *Delegated Legislation; privacy*: the committee is seeking advice as to the appropriateness of amending the bill to provide high-level regulation of identifiable information, and why it is necessary to declare the entirety of privacy rules not to be a legislative instrument.
- *Reversal of the evidential burden of proof*: the committee is seeking advice as to the appropriateness of amending the bill to include a general defence to a number of secrecy offences for any government official who engages in conduct as part of their official duties.

Key scrutiny issues: Legislative instruments ([Delegated legislation monitor 8 of 2018](#))

Court and Tribunal Instrument 2018

- *Unclear basis for determining fees*: the committee is seeking detailed advice as to the basis for increases in court fees imposed by the instrument; and if they amount to more than cost recovery, the legislative authority for levying taxation via the instrument.

Matters more appropriate for parliamentary enactment

- The committee draws the attention of the Senate to the making of significant changes to the law via delegated legislation in a number of instruments, including:
 - expansion of the definition of 'fast-track applicant' under the Migration Act;¹
 - rules for the National Redress Scheme for Institutional Child Sexual Abuse;²
 - determination of various matters relating to the new welfare compliance framework;³ and
 - prescription of charges for the manufacture and import of emissions-controlled products.⁴

Other bills commented on ([Scrutiny Digest No. 8 of 2018](#))

- **Banking System Reform (Separation of Banks) Bill 2018**: the committee noted its scrutiny concerns relating to several broadly framed offences and information-sharing requirements.
- **Family Law Amendment (Family Violence and Cross-examination of Parties) Bill 2018**: the committee is seeking advice regarding procedural fairness and tabling requirements.
- **Freedom of Speech Legislation Amendment (Security) Bill 2018**: the committee leaves to the Senate the appropriateness of a reversal of the evidential burden of proof.
- **Health Legislation Amendment (Improved Medicare Compliance and Other Measures) Bill 2018**: the committee received advice in relation to a limitation on the right to seek merits review and a strict liability offence.

¹ Migration (IMMI 18/019: Fast Track Applicant Class) Instrument 2018 [F2018L00672].

² National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 [F2018L00975].

³ Social Security (Administration) (Job Search Efforts) Determination 2018 [F2018L00776]; Social Security (Declared Program Participant) Determination 2018 [F2018L00777]; Social Security (Administration) (Reasonable Excuse – Participation Payments) Determination 2018 [F2018L00779]; Social Security (Administration) (Non-Compliance) Determination 2018 (No. 1) [F2018L00795].

⁴ Product Emissions Standards (Customs) Charges Regulations 2018 [F2018L00761], Product Emissions Standards (Excise) Charges Regulations 2018 [F2018L00762].

- **Space Activities Amendment (Launches and Returns) Bill 2018:** the committee received advice regarding the availability of material incorporated into the law.
- **Therapeutic Goods Amendment (2018 Measures No. 1) Bill 2018:** the committee leaves to the Senate the appropriateness of incorporating material not freely available.
- **Treasury Laws Amendment (Financial Sector Regulation) Bill 2018:** the committee is seeking advice as to why a fit and proper person test is to be left to delegated legislation, and whether specific consultation obligations can be included in the bill.
- **Treasury Laws Amendment (2018 Measures No. 4) Bill 2018:** the committee leaves to the Senate the appropriateness of a no-invalidity clause that may detrimentally affect taxpayers.
- **Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018:** the committee received advice on the exclusion of merits review in relation to decisions to disqualify a person from the superannuation guarantee shortfall amnesty.
- **Underwater Cultural Heritage Bill 2018:** the committee leaves to the Senate the appropriateness of a forfeiture provision that does not adequately protect the interests of innocent third parties.
- **Unexplained Wealth Legislation Amendment Bill 2018:** the committee leaves to the Senate the appropriateness of abrogating the privilege against self-incrimination and legal professional privilege in the absence of derivative use provisions.

Other legislative instruments commented on ([*Delegated legislation monitor 8 of 2018*](#))

- The Regulations and Ordinances committee commented on 38 legislative instruments registered on the Federal Register of Legislation between 24 May and 4 July 2018. The committee sought further advice in relation to one instrument, and concluded its interest in 12 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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