



13 September 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 10 of 2018](#))

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

- Trespass on personal rights and liberties: the committee leaves to the Senate the appropriateness of leaving significant terms undefined, lowering the threshold for matters a minister be satisfied of before determining a call out order should be made, and allowing an order to remain in effect for 20 days before requiring a positive decision to revoke or continue it.
- Use of force: the committee leaves to the Senate the appropriateness of allowing ADF members operating under a call out order to use force, including deadly force.
- Immunity from liability: the committee leaves to the Senate the appropriateness of limiting the legal liability of ADF members who exceed their legal authority.

Key scrutiny issues: Legislative instruments ([Delegated legislation monitor 10 of 2018](#))

Adult Disability Assessment Determination 2018

- Privacy: the committee is seeking advice as to how personal information about people with disabilities will be used and managed, and what safeguards will protect individuals' privacy.
- Merits review: the committee is seeking advice as to whether certain decisions by the secretary are subject to merits review.

Australian Federal Police Regulations 2018

- Review of employment decisions: the committee is seeking advice as to the processes in place for reviewing certain employment decisions made under the instrument.

- Search and entry powers: the committee is seeking advice on the use of force by authorised officers in executing warrants and persons who may assist such officers, and leaves to the Senate the appropriateness of including search and entry powers in delegated legislation.
- Disposal of property: the committee is seeking advice on the appropriateness of a broad discretionary power to dispose of property the AFP Commissioner considers 'offensive', and the remedies available to persons with an interest in property that has been disposed of.
- Subdelegation: the committee is seeking advice as to the necessity of allowing the Commissioner to delegate any of his or her powers, functions and duties to any AFP employee or special member.

Other bills commented on ([Scrutiny Digest 10 of 2018](#))

- **Family Law Amendment (Family Violence and Cross-Examination of Parties) Bill 2018**: the committee received advice regarding whether procedural fairness would be afforded and leaves to the Senate the appropriateness of a lack of tabling and publication requirements.
- **Federal Circuit and Family Court of Australia Bill 2018 and Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018**: the committee is seeking advice as to the appropriateness of amending the bill to require that persons authorised to handle complaints or assist court officers have appropriate expertise.
- **Office of National Intelligence Bill 2018**: the committee leaves to the Senate the appropriateness of a reversal of the burden of proof and allowing privacy rules to be set out in non-legislative rules not subject to disallowance or sunseting.
- **Social Security Commission Bill 2018**: the committee considers it may be appropriate to amend the bill to require that employees exercising delegated functions or powers have the expertise appropriate to the functions or powers delegated.
- **Social Security Legislation Amendment (Community Development Program) Bill 2018**: the committee leaves to the Senate the appropriateness of allowing delegated legislation to prescribe what constitutes 'subsidised employment'.
- **Treasury Laws Amendment (Financial Sector Regulation) Bill 2018**: the committee leaves to the Senate the appropriateness of leaving the content of a fit and proper person test to delegated legislation and of not including specific consultation obligations in the bill.
- **Veterans' Entitlements Amendment Bill 2018**: the committee is seeking advice as to the retrospective application of the bill and whether anyone will be adversely affected.

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

- The Regulations and Ordinances committee commented on 16 legislative instruments registered on the Federal Register of Legislation between 3 and 22 August 2018. The committee concluded its interest in 18 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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