



18 October 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 12 of 2018](#))

Aged Care Quality and Safety Commission Bill 2018

Aged Care Quality and Safety Commission (Consequential Amendment and Transitional Provisions Bill 2018)

- Significant matters in delegated legislation: the committee leaves to the Senate the appropriateness of leaving the Commissioner's complaints and regulatory functions to be set out entirely in the rules.
- Privacy: the committee leaves to the Senate the appropriateness of granting the Commissioner a broad discretionary power to share personal information and to allow the rules to specify additional circumstances in which personal information may be shared.
- Broad delegation of administrative powers: the committee considers it may be appropriate to amend both bills to limit delegations to persons with appropriate expertise.

Crimes Legislation Amendment (Police Powers at Airports) Bill 2018

- Trespass on personal rights and liberties: in light of the minister's advice, the committee considers it would be appropriate to amend the bill to provide that identification, stop and move-on directions powers cannot be used to disrupt or quell a peaceful protest.

Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018

- Broad discretionary powers: the committee is seeking advice in relation to the breadth of proposed powers to request or require a communications provider to give assistance to law enforcement, intelligence and security agencies.
- Coercive powers and privacy: the committee is seeking advice in relation to the extension of access to covert computer access warrants for Commonwealth, State and Territory law enforcement agencies and the expansion of ASIO's powers in relation to such warrants.

- Significant penalties: the committee is seeking advice on the appropriateness of a proposed penalty of 5 to 10 years imprisonment for failing to comply with an assistance order to help law enforcement or ASIO access a computer or device.
- Exclusion of judicial review: the committee is seeking advice as to the appropriateness of excluding judicial review for decisions under the proposed assistance framework.
- Immunity from liability: the committee is seeking advice as to the appropriateness of conferring immunities from civil liability for complying with requests or notices or assisting ASIO.

Key scrutiny issues: Legislative instruments (*Delegated legislation monitor 12 of 2018*)

Census and Statistics (Information Release and Access) Determination 2018 [F2018L01114]

- Merits review: the committee is seeking further advice as to why certain decisions regarding disclosure of statistical information are not subject to merits review.

Financial Framework (Supplementary Powers) Amendment (Defence Measures No. 1) Regulations 2018 [F2018L01128]

- Merits review: the committee is seeking further advice as to why decisions relating to the provision of support under the Sustainable Access to Drinking Water program are not subject to merits review.

Historic Shipwrecks Regulations [F2018L01322]

- Matter more appropriate for parliamentary enactment: the committee is seeking advice as to the appropriateness of setting a custodial penalty in regulations.

Other bills commented on (*Scrutiny Digest 12 of 2018*)

- **Corporations Amendment (Strengthening Protections for Employee Entitlements) Bill 2018**: the committee leaves to the Senate the appropriateness of several reversals of the evidential burden of proof.
- **Criminal Code Amendment (Food Contamination) Bill 2018**: the committee noted scrutiny concerns regarding the magnitude of penalties for offences relating to food contamination.
- **Federal Circuit and Family Court of Australia Bill 2018**
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018: the committee considers it would be appropriate for the bill to be amended to require that persons authorised to handle complaints, and persons authorised to assist certain court officers, possess appropriate expertise.
- **Higher Education Support (Charges) Bill 2018**: the committee is seeking advice as to why no limits on a proposed charge are set in primary legislation.
- **Higher Education Support Amendment (Cost Recovery) Bill 2018**: the committee is seeking advice as to why the rate of a penalty and review rights are left to delegated legislation.

- **Higher Education Support Amendment (VET FEE-HELP Student Protection) Bill 2018:** the committee is seeking advice as to why the matters that may constitute inappropriate conduct by a VET provider are left to delegated legislation.
- **Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018:** the committee leaves to the Senate the appropriateness of allowing ASIC, via a legislative instrument, to modify, and exempt persons from, provisions of the *Corporations Act 2001*.
- **Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018:** the committee is seeking advice as to why it is necessary to exclude judicial review in relation to certain decisions by the Treasurer.
- **Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018:** the committee is seeking advice in relation to the retrospective application of proposed amendments, and considers it may be appropriate to amend the bill to require that delegates have appropriate expertise.

Other legislative instruments commented on (*Delegated legislation monitor 12 of 2018*)

- The Regulations and Ordinances committee commented on 24 legislative instruments registered on the Federal Register of Legislation between 30 August and 26 September 2018. The committee requested further information in relation to two instruments and concluded its interest in 16 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:

Ms Anita Coles, Secretary

Senate Scrutiny of Bills Committee

02 6277 3050 | scrutiny.sen@aph.gov.au

Regulations and Ordinances Committee

02 6277 3066 | regords.sen@aph.gov.au