



29 November 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 14 of 2018*)

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

- **Broad discretionary powers**: the committee leaves to the Senate the appropriateness of the breadth of proposed powers to request or require a communications provider to give assistance to law enforcement, intelligence and security agencies.

The committee considers it may be appropriate to amend the bill to include consultation requirements, prevent the application of the proposed powers for minor offences, and include guidance as to when a provider should not be compensated.

- **Exclusion of judicial review**: the committee leaves to the Senate the appropriateness of excluding judicial review for decisions under the proposed assistance framework.
- **Coercive powers and privacy**: the committee leaves to the Senate the appropriateness of extending and expanding access to covert computer access warrants. The committee considers it may be appropriate to amend the bill to provide for a separate concealment of access warrant if the original warrant has expired.
- **Significant penalties**: the committee leaves to the Senate the appropriateness of a proposed penalty of five to 10 years imprisonment for failing to comply with an assistance order to help law enforcement or ASIO access a computer or device.
- **Immunity from liability**: the committee considers it may be appropriate to amend the bill to provide that immunity from civil liability for assisting ASIO applies only to actions taken in good faith, and otherwise leaves to Senate the appropriateness of conferring immunities for complying with requests or notices.

Key scrutiny issues: Legislative instruments *(Delegated legislation monitor 14 of 2018)*

CASA EX111/18 — English Language Proficiency Assessments Exemption 2018
[F2018L01214]

CASA 66/18 — Number of Cabin Attendants (Alliance Airlines) Direction 2018
[F2018L01244]

- *Merits review*: the committee is seeking further advice as to why certain decisions by the Civil Aviation Safety Authority should not be subject to independent merits review.

Other bills commented on *(Scrutiny Digest 14 of 2018)*

- **Copyright Amendment (Online Infringement) Bill 2018**: the committee leaves to the Senate the appropriateness of enabling delegated legislation to exempt any online search engine providers from the copyright injunctive scheme.
- **Higher Education Support (Charges) Bill 2018**: the committee leaves to the Senate the appropriateness of allowing delegated legislation to determine the amount of a charge without setting any limits on the face of the bill.
- **Higher Education Support Amendment (Cost Recovery) Bill 2018**: the committee leaves to the Senate the appropriateness of leaving the rate of a penalty and review rights to be set out in delegated legislation.
- **Veteran's Affairs Legislation Amendment (Omnibus) Bill 2018**: the committee received advice on the Military Rehabilitation and Compensation Commission's broad information gathering powers and related offence provisions.

Other legislative instruments commented on *(Delegated legislation monitor 14 of 2018)*

- The Regulations and Ordinances committee commented on 14 legislative instruments registered on the Federal Register of Legislation between 26 October and 8 November 2018. The committee sought further advice in relation to two instruments, and concluded its interest in seven 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