The Senate

# Standing Committee for the Scrutiny of Bills

Scrutiny Digest 10 of 2018

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# Membership of the Committee

**Current members**

| | |
|---|---|
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| Senator Jonathon Duniam | LP, Tasmania |
| Senator Jane Hume | LP, Victoria |
| Senator Janet Rice | AG, Victoria |
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# Introduction

## Terms of reference

Since 1981 the Senate Standing Committee for the Scrutiny of Bills has scrutinised all bills against certain accountability standards to assist the Parliament in undertaking its legislative function. These standards focus on the effect of proposed legislation on individual rights, liberties and obligations, and on parliamentary scrutiny. The scope of the committee's scrutiny function is formally defined by Senate standing order 24, which requires the committee to scrutinise each bill introduced into the Parliament as to whether the bills, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

## Nature of the committee's scrutiny

The committee's long-standing approach is that it operates on a non-partisan and consensual basis to consider whether a bill complies with the five scrutiny principles. In cases where the committee has scrutiny concerns in relation to a bill the committee will correspond with the responsible minister or sponsor seeking further explanation or clarification of the matter. If the committee has not completed its inquiry due to the failure of a minister to respond to the committee's concerns, Senate standing order 24 enables Senators to ask the responsible minister why the committee has not received a response.

While the committee provides its views on a bill's level of compliance with the principles outlined in standing order 24 it is, of course, ultimately a matter for the Senate itself to decide whether a bill should be passed or amended.

## Publications

It is the committee's usual practice to table a *Scrutiny Digest* each sitting week of the Senate. The Digest contains the committee's scrutiny comments in relation to bills introduced in the previous sitting week as well as commentary on amendments to bills and certain explanatory material. The Digest also contains responses received in relation to matters that the committee has previously considered, as well as the committee's comments on these responses. The Digest is generally tabled in the Senate on the Wednesday afternoon of each sitting week and is available online after tabling.

## General information

Any Senator who wishes to draw matters to the attention of the committee under its terms of reference is invited to do so. The committee also forwards any comments it has made on a bill to any relevant Senate legislation committee for information.

# Chapter 1

# Commentary on Bills

1.1 The committee seeks a response or further information from the relevant minister or sponsor of the bill with respect to the following bills.

## Federal Circuit and Family Court of Australia Bill 2018

## Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018

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| **Purpose** | The Federal Circuit and Family Court of Australia Bill 2018 seeks to bring the Family Court of Australia and the Federal Circuit Court of Australia together into an overarching, unified administrative structure to be known as the Federal Circuit and Family Court of Australia[1]<br><br>The Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 seeks to make the necessary amendments to other Commonwealth Acts and Regulations affected by the passage of the Federal Circuit and Family Court of Australia Bill 2018 |
| **Portfolio** | Attorney-General |
| **Introduced** | House of Representatives on 23 August 2018 |

### Broad delegation of administrative powers[2]

1.2 Subclause 32(1) of the Federal Circuit and Family Court of Australia Bill 2018 (Principal bill) sets out a process to be followed by the Chief Justice if a complaint is made about another judge of the Federal Circuit and Family Court of Australia (FCFC) (Division 1). Subclause 32(2) provides that the Chief Justice may authorise, in writing, 'a person or a body' to: assist the Chief Justice to handle complaints or a specified

1 This bill also contains a standing appropriation under clause 96. The significance of standing appropriations from a scrutiny perspective, and the committee's approach to such provisions, are explained in chapter 3.

2 Subclauses 32(2) and 113(2) of the Federal Circuit and Family Court of Australia Bill 2018. The committee draws senators' attention to these provisions pursuant to Senate Standing Order 24(1)(a)(ii).

complaint; decide whether or not to handle complaints or a specified complaint; dismiss complaints or a specified complaint; or handle complaints or a specified complaint. Subclause 32(3) provides that, to avoid doubt, the Chief Justice may authorise the Deputy Chief Justice or a body that includes the Deputy Chief Justice under subclause 32(2). Clause 113 contains equivalent provisions in relation to the complaint-handling process to be followed by the Chief Judge of the FCFC (Division 2).

1.3 The committee has consistently drawn attention to legislation that allows the delegation of administrative powers to a relatively large class of persons, with little or no specificity as to their qualifications or attributes. Generally, the committee prefers to see a limit set either on the scope of powers that might be delegated, or on the categories of people to whom those powers might be delegated. The committee's preference is that delegates be confined to the holders of nominated offices or to members of the Senior Executive Service. Where broad delegations are provided for, the committee considers that an explanation of why these are considered necessary should be included in the explanatory memorandum.

1.4 In this instance, the explanatory memorandum states that subclauses 32(2) and 113(2) seek to give the Chief Justice or Chief Judge discretion as to the categories of persons or bodies which may be authorised to handle a complaint and that this is necessary to ensure a high degree of flexibility for the Chief Justice or Chief Judge as the complaints handling process may involve a wide variety of circumstances.[3] However, the explanatory memorandum contains no information about the range of persons or bodies it is envisaged the Chief Justice or Chief Judge might authorise to handle complaints and the committee has generally not accepted a desire for administrative flexibility as a sufficient justification for allowing a broad delegation of administrative powers with no specificity as to the qualifications or attributes delegates must possess.

**1.5 The committee requests the Attorney-General's advice as to:**

- **the persons or bodies it is envisaged the Chief Justice and Chief Judge may authorise to handle complaints under subclauses 32(2) and 113(2), and**
- **the appropriateness of amending the bill to require that, when authorising a person or body to handle complaints, the Chief Justice or Chief Judge be satisfied the person or body has the expertise appropriate to this role.**

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3 Explanatory memorandum, pp. 31, 74-75.

## Broad delegation of administrative powers[4]

1.6 Clauses 72, 234 and 235 of the Principal bill seek to allow the Sheriff or a Deputy Sheriff of the FCFC (Division 1), and the Marshal or a Deputy Marshal of either division of the FCFC, to authorise persons to assist them in exercising powers or performing functions. Similarly, proposed sections 18PB and 18PE of the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018 (Consequential bill) provide that the Sheriff or a Deputy Sheriff, and the Marshal or a Deputy Marshal, of the Federal Court of Australia may authorise persons to assist them in exercising powers or performing functions.

1.7 The Principal bill's explanatory memorandum merely restates the effect of clause 72, and states that clauses 234 and 235 replicate the equivalent sections of the *Federal Circuit Court of Australia Act 1999*.[5] The Consequential bill's explanatory memorandum states that proposed section 18PB is substantively the same as provisions in the *Federal Court of Australia Act 1976*, and proposed section 19PE replicates the approach taken to the Marshal and Deputy Marshal positions in the Family Court and Federal Circuit Court.[6] However, neither explanatory memorandum contains an explanation of why it is considered necessary to allow the Sheriff or a Deputy Sheriff, or the Marshal or a Deputy Marshal, to authorise persons to assist them, nor an explanation of why neither bill confines who may be authorised to assist by reference to any particular expertise or training.

1.8 The committee notes that the Principal bill seeks to give the Sheriff and a Deputy Sheriff of the FCFC the power to use force to enter premises for the purpose of searching the premises for an arrestee or arresting the arrestee, and use force against the arrestee in order to make the arrest,[7] and that the Sheriff or a Deputy Sheriff of the Federal Court has equivalent powers under the *Federal Court of Australia Act 1976*.[8] As the Principal bill and Consequential bill would allow the Sheriff or a Deputy Sheriff to authorise a person to assist in the exercise of these coercive powers, the committee's scrutiny concerns about the absence of any legislative guidance as to who may be authorised to assist are heightened.

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4 Clauses 72, 234 and 235 of the Federal Circuit and Family Court of Australia Bill 2018, and Schedule 1, item 208, proposed sections 18PB and 18PE of the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018. The committee draws senators' attention to these provisions pursuant to Senate Standing Order 24(1)(a)(ii).

5 Federal Circuit and Family Court of Australia Bill 2018, explanatory memorandum, pp. 54-55, 125.

6 Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Bill 2018, explanatory memorandum, pp. 66-68.

7 See clause 237.

8 *Federal Court of Australia Act 1976*, section 55A.

**1.9 The committee requests the Attorney-General's advice as to:**

- **why it is necessary to allow the Sheriff or a Deputy Sheriff, and the Marshal or a Deputy Marshal, of both the Federal Circuit and Family Court and the Federal Court to authorise 'any person' to assist in the exercise of powers and performance of functions; and**
- **whether it would be appropriate to amend the bills to require that any person assisting have the expertise appropriate to the function or power being carried out.**

# Social Security Commission Bill 2018

| | |
|---|---|
| **Purpose** | This bill seeks to establish a Social Security Commission to provide the Parliament with independent advice on the minimum levels for social security payments |
| **Sponsor** | Ms Cathy McGowan MP |
| **Introduced** | House of Representatives on 20 August 2018 |

## Broad delegation of administrative powers[9]

1.10 Clause 43 provides that the general manager of the proposed Social Security Commission (the Commission) may delegate all or any of his or her functions or powers to SES employees or acting SES employees of the Commission, or a member of the staff of the Commission who is in a class of employees prescribed by the regulations.

1.11 The committee has consistently drawn attention to legislation that allows the delegation of administrative powers to a relatively large class of persons, with little or no specificity as to their qualifications or attributes. Generally, the committee prefers to see a limit set either on the scope of powers that might be delegated, or on the categories of people to whom those powers might be delegated. The committee's preference is that delegates be confined to the holders of nominated offices or to members of the Senior Executive Service. Where broad delegations are provided for, the committee considers that an explanation of why these are considered necessary should be included in the explanatory memorandum.

1.12 In this instance, the explanatory memorandum does not explain why it is necessary to allow the general manager to delegate his or her functions or powers to a member of the staff of the Commission who is in a class of employees prescribed by regulation.

**1.13 The committee considers it may be appropriate to amend the bill to require that, when delegating a function or power, the general manager be satisfied that the employee has, or the class of employees have, the expertise appropriate to the functions or powers delegated.**

**1.14 The committee otherwise draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of allowing the general manager to delegate all or any of his or her functions or powers to a staff member of the Commission in a class of employees prescribed by regulation.**

9 Subclause 43(1). The committee draws senators' attention to this provision pursuant to Senate Standing Order 24(1)(a)(ii).

# Social Security Legislation Amendment (Community Development Program) Bill 2018

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|---|---|
| **Purpose** | This bill seeks to amend the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to introduce the Targeted Compliance Framework to Community Development Programme (CDP) participants in remote Australia, with the exception of CDP participants undertaking subsidised employment |
| **Portfolio** | Indigenous Affairs |
| **Introduced** | Senate on 23 August 2018 |

## Significant matters in delegated legislation[10]

1.15 The bill seeks to amend the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* (Administration Act) to extend the Targeted Compliance Framework (TCF) in the Administration Act to Community Development Programme (CDP) participants in remote Australia. As a result, CDP participants would be subject to the targeted compliance requirements in the TCF; however, participants undertaking 'subsidised employment' would be exempt from these requirements.

1.16 Proposed subsection 42AEA(1) provides that 'subsidised employment' means employment in relation to which a subsidy of a kind prescribed in subsection 42AEA(2) is payable or has been paid by the Commonwealth. Subsection 42AEA(2) provides that the secretary may, by legislative instrument, determine a kind of subsidy for the purposes of subsection 42AEA(1).

1.17 The committee's view is that significant matters, such as determining what constitutes 'subsidised employment' (which relates to whether the targeted compliance framework for social security payments applies), should be included in primary legislation unless a sound justification for the use of delegated legislation is provided. In this instance, the explanatory memorandum explains that the government is finalising the detail of the subsidised jobs package in consultation with communities, and the ability to determine a kind of subsidy by legislative instrument will 'provide the government with the flexibility to specify the subsidy arrangement at a later date'.[11] However, the committee notes that it does not generally consider administrative flexibility to be sufficient justification for including significant matters in delegated legislation rather than in primary legislation.

10 Schedule1, item 26, proposed subsection 42AEA. The committee draws senators' attention to this provision pursuant to Senate Standing Order 24(1)(a)(iv) and (v).

11 Explanatory memorandum, p. 12.

**1.18 The committee draws its concerns to the attention of senators, and leaves to the Senate as a whole the appropriateness of allowing delegated legislation to prescribe what constitutes 'subsidised employment' (which relates to whether the targeted compliance framework for social security payments applies).**

# Veterans' Entitlements Amendment Bill 2018

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|---|---|
| **Purpose** | This bill seeks to authorise the Department of Veterans' Affairs to deduct an overpayment of a service pension, income support supplement or social security pension from a specified payment paid to the surviving partner, where the partner had the benefit of that overpayment and the overpayment was due to the death of the deceased |
| **Portfolio** | Veterans' Affairs |
| **Introduced** | House of Representatives on 22 August 2018 |

## Retrospective application[12]

1.19 Item 4 seeks to insert proposed section 53NAA into the *Veterans' Entitlements Act 1986* (the Act), the effect of which would be to authorise the Department of Veterans' Affairs to deduct an overpayment of a service pension, income support supplement or social security pension from a specified payment paid to a surviving partner where that partner had the benefit of the overpayment and the overpayment occurred due to the death of the deceased partner. Item 5 seeks to retrospectively apply this to deaths occurring, or payments or amounts that became payable or were paid on or after 1 January 1996.

1.20 The committee has a long-standing scrutiny concern about provisions that have the effect of applying retrospectively, as it challenges a basic value of the rule of law that, in general, laws should only operate prospectively (not retrospectively). The committee has a particular concern if the legislation will, or might, have a detrimental effect on individuals.

1.21 Generally, where proposed legislation will have a retrospective effect the committee expects the explanatory materials should set out the reasons why retrospectivity is sought, and whether any persons are likely to be adversely affected and the extent to which their interests are likely to be affected.

1.22 In this instance, the explanatory memorandum contains no explanation of why it is considered necessary to retrospectively apply the proposed new section, merely stating that the proposed new section is intended to operate in the same way as the previously removed section 36U.[13] The explanatory memorandum also does not address the question of whether any persons are likely to be adversely affected.

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12 Schedule 1, item 5. The committee draws senators' attention to this provision pursuant to Senate Standing Order 24(1)(a)(i).

13 The committee notes that section 36U was removed from the Act by the *Veterans' Affairs Legislation Amendment (1995-96 Budget Measures) Act (No.2) 1995*.

**1.23 The committee requests the minister's advice as to why it is necessary to retrospectively apply proposed section 53NAA from 1 January 1996 and whether this will adversely affect any persons.**

# Bills with no committee comment

1.24 The committee has no comment in relation to the following bills which were introduced into the Parliament between 20 – 23 August 2018:

- Aged Care Amendment (Staffing Ratio Disclosure) Bill 2018;
- Australian Multicultural Bill 2018;
- Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Bill 2018;
- Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Bill 2018;
- Family Law Amendment (Review of Government Support for Single Parents) Bill 2018;
- Freedom of Information Legislation Amendment (Improving Access and Transparency) Bill 2018;
- My Health Records Amendment (Strengthening Privacy) Bill 2018;
- Restoring Territory Rights Bill 2018; and
- Veterans' Entitlements Amendment Bill 2018.

# Commentary on amendments and explanatory materials

## Education and Other Legislation Amendment (VET Student Loan Debt Separation) Bill 2018

***[Digests 5 & 6/18]***

1.25 On 22 August 2018 the House of Representatives agreed to 16 Government amendments, the Assistant Minister for Vocational Education and Skills (Mrs K. L. Andrews) presented a correction and addendum to the explanatory memorandum and a supplementary explanatory memorandum, and the bill was read a third time.

**1.26 The committee thanks the minister for tabling this addendum to the explanatory memorandum which contains key information the minister previously undertook to include.**[14]

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## Farm Household Support Amendment (Temporary Measures) Bill 2018

***[Digest 9/18]***

1.27 On 22 August 2018 the House of Representatives agreed to one Government amendment, the Minister for Agriculture and Water Resources presented a supplementary explanatory memorandum and the bill was read a third time.

1.28 The committee notes that the amendment will allow the minister to prescribe the day on which the increase to the farm assets threshold will begin by legislative instrument, rather than the day being specified in the *Farm Household Support Act 2014*. The supplementary explanatory memorandum states that the amendment will provide 'administrative flexibility' but does not explain why it is necessary to leave this matter to be determined by the minister.[15]

**1.29 In light of the fact that this bill has already passed both Houses of Parliament the committee makes no further comment on this matter.**

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14 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 6 of 2018*, 20 June 2018, pp. 89-94.

15 Supplementary explanatory memorandum, p. 1.

**Space Activities Amendment (Launches and Returns) Bill 2018**
***[Digests 6 & 8/18]***

1.30 On 23 August 2018 the Minister for Indigenous Affairs (Senator Scullion) tabled an addendum to the explanatory memorandum and the bill was read a third time.

**1.31 The committee thanks the minister for tabling this addendum to the explanatory memorandum which includes key information previously requested by the committee.**[16]

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1.32 The committee has no comments on amendments made or explanatory material relating to the following bill:

- Broadcasting Legislation Amendment (Foreign Media Ownership and Community Radio) Bill 2017.[17]

16 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 8 of 2018*, 15 August 2018, pp. 48-50.

17 On 20 August 2018 the House of Representatives agreed to two Government amendments, the Minister for Small and Family Business, Workplace and Deregulation (Mr C. A. S. Laundy) presented a supplementary explanatory memorandum and the bill was read a third time.

# Chapter 2

# Commentary on ministerial responses

2.1 This chapter considers the responses of ministers to matters previously raised by the committee.

## Defence Amendment (Call Out of the Australian Defence Force) Bill 2018

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|---|---|
| **Purpose** | This bill seeks to amend the *Defence Act 1903* to:<br>• permit states and territories to request that the Commonwealth call out the Australian Defence Force (ADF) in a wider range of circumstances;<br>• enable call out orders to authorise the ADF to operate in multiple jurisdictions, as well as the offshore area;<br>• authorise the ADF to respond to incidents that cross a border into a jurisdiction that has not been specified in an order in certain circumstances;<br>• allow the ADF to be pre-authorised to respond to land and maritime threats, in addition to aviation threats;<br>• increase the requirements for the ADF to consult with state and territory police where it is operating in their jurisdictions;<br>• simplify, expand and clarify the power of the ADF to search and seize, and to control movement during an incident;<br>• remove the distinction between general security areas and designated areas;<br>• clarify that acting ministers are to be treated as substantive ministers and add the Minister for Home Affairs as an alternative authorising minister; and<br>• make technical and consequential amendments |
| **Portfolio** | Attorney-General |
| **Introduced** | House of Representatives on 28 June 2018 |
| **Bill status** | Before House of Representatives |

## Trespass on personal rights and liberties[1]

2.2 In *Scrutiny Digest 8 of 2018*[2] the committee requested the Attorney-General's advice as to:

- the type of incidents that would fall within the definition of 'domestic violence', and whether incidents involving widespread industrial action, political protests or civil disobedience could fall within the definition;
- if the definition of 'domestic violence' would allow for orders to be made to stop or restrict protests, dissents, assemblies or industrial action, would action be able to be taken against peaceful protesters if there is a risk that other actors may cause injury to people or serious damage to property as a direct consequence of the protest;
- what would be covered by the term 'Commonwealth interests';
- why it is appropriate that before an order is made the authorising ministers must simply 'consider' the nature of the domestic violence and whether utilising the ADF would 'enhance' the abilities of the states and territories to protect the relevant interests, noting that this is not a precondition to the exercise of the power (but merely a matter which must be considered) and noting the stated intention that these orders only be made in exceptional circumstances; and
- why it is considered necessary to allow call out orders to remain in effect for up to 40 days.

### *Attorney-General's response*[3]

2.3 The Attorney-General advised:

*Definition of 'domestic violence'*

Part IIIAAA provides the legislative framework authorising the Australian Defence Force (ADF) to be called out to use force to resolve 'domestic violence' occurring in Australia. The term is not defined in legislation but refers to conduct that is marked by significant force and would include a terrorist attack, hostage situation, and widespread or significant violence. Part IIIAAA uses the term 'domestic violence' as this is the term used in section 119 of the Constitution, which deals with state requests for assistance in responding to domestic violence. Peaceful industrial action,

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1 Schedule 1, item 2, proposed Part IIIAAA. The committee draws senators' attention to this proposed Division pursuant to Senate Standing Order 24(1)(a)(i).

2 Senate Scrutiny of Bills Committee, *Scrutiny Digest 8 of 2018*, at pp. 3 to 8.

3 The minister responded to the committee's comments in a letter dated 4 September 2018. A copy of the letter is available on the committee's website: see correspondence relating to *Scrutiny Digest 10 of 2018* available at: www.aph.gov.au/senate_scrutiny_digest

political protests or civil disobedience would not fall within the definition of 'domestic violence'.

Call out orders can only be made where domestic violence is occurring or likely to occur (subsections 33(1), 34(1), 35(1) and 36(1)). If the Governor-General makes a call out order, or in relation to a contingent call out order the circumstances specified in the order arise, subsection 39(1) requires the Chief of the Defence Force to utilise the Defence Force in such manner as is reasonable and necessary for the purposes specified in the call out order under subsection 33(3), 34(3), 35(3) or 36(3). This is subject to limitations, including that subsection 39(3) requires that in doing so the Chief of the Defence Force must not stop or restrict any protest, dissent, assembly or industrial action, except if there is a reasonable likelihood of the death of, or serious injury, to persons, or serious damage to property. Therefore, peaceful industrial action, political protests or civil disobedience, not giving rise to such circumstances, would not fall within the definition of 'domestic violence'.

Where other actors are engaging in domestic violence that may cause injury to people or serious damage to property, the ADF could be called out to respond to that violence. Part IIIAAA does provide the ADF with powers to evacuate innocent persons to places of safety, and crowd control powers to control the movement of persons and means of transport (subsection 46(7), section 51D and section 51L). These powers could be used in relation to peaceful protesters to protect them from other actors carrying out acts of violence.

It is important to note that state or territory police forces would be the first responders in such circumstances and they are well trained and equipped to respond to such situations.

*Definition of 'Commonwealth interests'*

The term 'Commonwealth interests' is not defined in legislation. For the purposes of Part IIIAAA, 'Commonwealth interests' would include the protection of: Commonwealth property or facilities; Commonwealth public officials; visiting foreign dignitaries or heads of state; and, major national events, including the Commonwealth Games or G20. This reflects the approach under existing Part IIIAAA.

*The threshold for call out*

The existing threshold for call out requires that authorising Ministers must be satisfied that the states and territories are not, or are unlikely to be, able to protect themselves or Commonwealth interests against domestic violence. Any such assessment inherently involves a consideration of the 'nature' of the violence (including the type of violence, types of weapons used, number of perpetrators, and the scale of violence) as well as the capability and capacity of state or territory law enforcement agencies. It also requires an assessment that the state or territory has exhausted all other options, including support from other jurisdictions. Where the

Commonwealth assesses that a state or territory has both the capability and capacity to resolve the incident, it would not be able to call out the ADF under Part IIIAAA to assist a state or territory. This precondition could operate to prevent the Commonwealth from providing ADF assistance to a state or territory, even where the state or territory has requested it, and even though the ADF possesses specialist capabilities that could assist law enforcement to resolve an incident in a safer, faster, and more appropriate manner, to most effectively protect the Australian populace and save lives.

It is important that the legislative requirements for call out do not hinder the provision of unique ADF capabilities that may be best suited to resolving an incident. The proposed threshold will allow the ADF to be called out where an incident is not beyond the capability and capacity of a state or territory, but where the ADF has relevant specialist capabilities that could be brought to bear. However, this proposed threshold will not impermissibly expand the circumstances in which the ADF might be called out, or result in the ADF being called out in response to minor incidents that police routinely and appropriately deal with. This is because the authorising Ministers will need to be satisfied that the ADF *should* be called out in response to a terrorist incident or other incident of significant violence, noting that this can only occur after a state or territory request for assistance, or the Commonwealth assessing that the violence affects, or would be likely to affect, a Commonwealth interest. In making this assessment, Commonwealth authorising Ministers are required to consider the nature of the violence, and whether the ADF would be likely to enhance the state or territory response, as well as any other relevant matters. These are the same factors that authorising Ministers would consider in making a decision under the existing threshold. The threshold in proposed sections 33 to 36 recognises that calling out the ADF to respond to an incident is a significant and exceptional act, and ensures that it is not to be done in relation to incidents that are within the ordinary capability of police.

However, by requiring authorising Ministers to consider these mandatory factors, the amended threshold will provide flexibility for the ADF to be called out in appropriate circumstances. This could occur where an incident is not beyond the capability of a state or territory, but where authorising Ministers determine that the ADF has relevant specialist capabilities that could most effectively resolve the incident. The requirement to consider 'nature' and 'enhancement' makes clear that it is not intended that the ADF be called out in response to every incident potentially falling within the meaning of 'domestic violence'.

There are a range of circumstances in which the ADF may be called out. For example in response to:

- unique types of violence, such as a chemical, biological, radiological or nuclear attack, for which the ADF maintains specialist response capabilities, or

- incidents of violence that are so widespread that law enforcement resources are in danger of being exhausted and ADF assistance is necessary to supplement the law enforcement response.

These circumstances are by their nature 'exceptional'. However, under the current threshold it may not be possible to call out the ADF to assist state and territory police in these circumstances, unless the capability and capacity of the police has been totally overwhelmed. The amendments are aimed at making it easier for the ADF to assist states and territories in responding to such incidents, where requested.

*Time limitations on call out orders*

The Bill does not allow call out powers to be exercised for longer than is strictly necessary, and does not automatically allow for call out orders to remain in effect for up to 40 days. The 20 day limitation on call out orders ensures that there is adequate time during which the ADF may be utilised to respond to the domestic violence or threat specified in the order, without a new order having to be made.

However, the Bill imposes strict limitations governing when a call out order must be revoked, and when an order may be extended. Proposed subsection 37(3) provides that the Governor-General must revoke a call out order if: one or more authorising Ministers cease to be satisfied of the matters in proposed subsections 33(1), 34(1), 35(1) or 36(1) (as the case requires), or if, in the case of a State protection order, the government of the State or self-governing Territory withdraws its application to the Commonwealth Government for the call out order. This proposed subsection operates to require that the authorising Ministers continually monitor the domestic violence or threat in question as it evolves. Where an authorising Minister identifies that either the domestic violence is no longer occurring, or is no longer satisfied that the ADF should be called out to deal with the violence (for example because it has subsided to such an extent that ADF support is no longer necessary), then the Minister must immediately advise the Governor-General that the criteria for the call out order are no longer met, and the Governor-General must revoke it.

Further, proposed paragraph 37(1)(a) makes clear that, before the Governor-General may vary a call out order, including to extend the period during which the order is in force, the authorising Ministers must still be satisfied of the preconditions for making the call out order in the first place, as set out in proposed subsections 33(1), 34(1), 35(1) or 36(1). Further, proposed paragraph 37(1)(b) requires that the order, as varied, must comply with proposed subsections 33(3) to (5), 34(3) to (5), 35(3) to (5), or 36(3) to (5), as the case requires. Relevantly, these proposed provisions state when an order is in force, when it ceases to be in force, and what information it must contain.

As such, the same conditions that apply to the making of a call out order also apply to the subsequent varying and extension of the order. The authorising Ministers must continue to be satisfied that the conditions for

making the order are met. These limitations ensure that call out powers are only available during such time as they are necessary and the conditions for call out continue to be met.

***Committee comment***

*Definition of 'domestic violence' and 'Commonwealth interests'*

2.4 The committee thanks the Attorney-General for this response. The committee notes the Attorney-General's advice that the term 'domestic violence' refers to conduct that is marked by significant force, including a terrorist attack, hostage situation, and widespread or significant violence, but that peaceful industrial action, political protests or civil disobedience would not fall within the definition. The committee also notes the Attorney-General's advice that, although peaceful industrial action, political protest or civil disobedience would not itself fall within the definition and therefore meet the threshold for a call out order being made, where other actors are engaging in domestic violence that may cause injury to people or serious damage to property, the ADF could be called out to respond to that violence and then exercise crowd control powers under proposed subsection 46(7) and proposed sections 51D and 51L on peaceful protestors in order to protect them from such actors.

2.5 With respect to the definition of 'Commonwealth interests' the committee notes the Attorney-General's advice that, although this term is not defined in legislation, for the purposes of proposed Part IIIAAA it would include Commonwealth property or facilities, Commonwealth public officials, visiting foreign dignitaries or heads of state, and major national events such as the Commonwealth Games or G20.

2.6 The committee reiterates its concern that these two key terms lack a clear definition in legislation and that, as a result, it is not clear whether they would function to appropriately limit the circumstances in which the ADF may be called out and associated coercive powers may be used. This lack of clarity with respect to the definitions of these key terms is illustrated by the fact that the Attorney-General's explanation as to the types of events that will be captured under the term 'domestic violence' differs from that included in the explanatory memorandum—the latter states that domestic violence refers to conduct marked by 'great physical force, including a terrorist attack or other mass casualty incident', while the former states that it would include conduct marked by 'significant force, including a terrorist attack, hostage situation, *and widespread or significant violence*'.[4] Furthermore, although the Attorney-General's response provides a list of matters that would be considered 'Commonwealth interests' for the purposes of proposed Part IIIAAA, this list is not exhaustive and is not set out in the bill. Finally the committee notes that while peaceful industrial action, political protest or civil disobedience would not appear to meet the threshold for making a call out order, it is possible that persons

4 Explanatory memorandum, p. 6 (emphasis added).

participating in such actions may have their activities curtailed and be subjected to coercive powers where other actors engage in activities that could be characterised as 'domestic violence'.

*The threshold for call out*

2.7 The committee notes the Attorney-General's advice that the proposed threshold that must be reached before a call out order may be made will allow the ADF to be called out where an incident is not beyond the capability and capacity of a state or territory but the ADF has relevant specialist capabilities that could be brought to bear to most effectively resolve the incident. By contrast, the existing threshold provides that the Commonwealth may not make a call out order unless the authorising ministers are satisfied that the states and territories are not, or are unlikely to be, able to protect themselves or Commonwealth interests against domestic violence.

2.8 The committee further notes the Attorney-General's advice that the proposed new threshold will not impermissibly expand the circumstances in which the ADF might be called out because the authorising ministers must be satisfied that the ADF should be called out, and in making this assessment they must consider the nature of the violence and whether the ADF would be likely to enhance the response of the state or territory, as well as any other matter they consider relevant. The committee notes the Attorney-General's advice that these are the same factors the authorising ministers would consider when making a decision under the existing threshold, and that requiring consideration of these issues makes it clear that it is not intended that the ADF be called out in response to every incident potentially falling within the meaning of 'domestic violence'.

2.9 However, the committee emphasises that the relevant provisions of the bill[5] provide that in making a call out order the authorising ministers must be satisfied that the ADF 'should be called out'. In making this decision the authorising ministers must 'consider' the nature of the domestic violence and whether the utilisation of the ADF would 'enhance' the state or territory response. By contrast, the existing threshold requires an authorising minister to be satisfied on the objective matter of whether the state or territory is not, or is unlikely to be, able to protect itself or Commonwealth interests.[6] The proposed threshold would therefore grant authorising ministers a far broader discretion than is currently the case with respect to determining whether the ADF should be called out. In addition, the committee notes that calling out the ADF is likely to enhance the ability of the states and territories to respond to domestic violence in many cases and as such this does not appear to effectively limit the use of call out orders to the exceptional circumstances cited by the Attorney-General. The committee reiterates its view that the proposed

5 See proposed subsections 33(2), 34(2), 35(2) and 36(2).

6 *Defence Act 1903*, subsections 51A(1) and 51B(1).

new threshold appears to significantly expand the range of circumstances in which a call out order may be made, including in response to domestic violence incidents which state and territory authorities may be capable of resolving.

*Time limitations on call out orders*

2.10 The committee notes the Attorney-General's advice that the bill does not allow call out powers to be exercised for any longer than is strictly necessary, and that the bill imposes strict limitations on when a call out order must be revoked and when it may be extended. For example, under proposed subsection 37(3) the Governor-General must revoke a call out order if one or more of the authorising ministers cease to be satisfied that the conditions under which the orders may be made continue to be met, or the state or territory withdraws its application to the Commonwealth. The committee notes the Attorney-General's advice that this subsection requires that authorising ministers continually monitor the domestic violence or threat in question as it evolves and immediately advise the Governor-General if the criteria for the call out order are no longer met. The committee further notes the Attorney-General's advice that the same conditions that apply to the making of a call out order also apply to the variation or extension of the order and authorising ministers must continue to be satisfied that the conditions for making the order are met.

2.11 However, while the requirement to revoke a call out order if the authorising ministers cease to be satisfied the conditions are met may operate to require some form of monitoring while a call out order remains in effect, the committee emphasises that the bill does not require an authorising minister to make a positive decision that a call out order should remain in effect until the 20-day time limit expires. In light of the extraordinary coercive powers that may be exercised by members of the ADF under a call out order, the committee considers that it may be appropriate for the bill to be amended to require authorising ministers to make a positive decision that a call out order should remain in place at more regular intervals than the current 20 days.

**2.12 The committee requests that the key information provided by the Attorney-General be included in the explanatory memorandum, noting the importance of this document as a point of access to understanding the law and, if needed, as extrinsic material to assist with interpretation (see section 15AB of the *Acts Interpretation Act 1901*).**

**2.13 The committee reiterates its scrutiny concern that, given the extraordinary nature of the coercive powers the bill seeks to confer on ADF members who are utilised under a call out order, including the use of deadly force in certain circumstances, the bill may not adequately restrict the circumstances in which a call out order may be made.**

**2.14 In particular, the committee draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of:**

- **leaving significant terms, such as 'domestic violence' and 'Commonwealth interests', undefined;**
- **lowering the threshold with respect to the matters an authorising minister must be satisfied of before determining that a call out order should be made; and**
- **allowing a call out order to remain in effect for 20 days before requiring authorising ministers to make a positive decision as to whether it should remain in effect.**

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## Use of force[7]

2.15 In *Scrutiny Digest 8 of 2018*[8] the committee requested the Attorney-General's advice as to:

- the appropriateness of amending proposed subsection 51H(2)(b) so as to require that infrastructure can only be declared where damage or disruption would *directly* endanger life or cause serious injury; and
- the appropriateness of amending proposed subsection 46(3) to require that the minister may only authorise the taking of measures against an aircraft or vessel where this is necessary and reasonable to protect the lives or safety of others.

### *Attorney-General's response*[9]

2.16 The Attorney-General advised:

> It would not be appropriate to limit infrastructure declarations to circumstances where damage or disruption would *directly* endanger life or cause serious injury. To do so would unduly limit the ADF's ability to respond to damage or disruption to infrastructure which, though indirect, would nevertheless present a grave risk to life and safety. For example, an attack on a nuclear reactor could result in the release of radioactive material that causes direct and immediate harm to people. It could also result in radioactive material being released into a water source. In that case, a person may only be harmed by actually drinking the contaminated water, and therefore suffer indirect harm. In both cases, the cause of the harm and the gravity of the harm are the same and distinguishing between

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7 Schedule 1, item 2, proposed sections 46, 51H and 51N. The committee draws senators' attention to these provisions pursuant to Senate Standing Order 24(1)(a)(i).

8 Senate Scrutiny of Bills Committee, *Scrutiny Digest 8 of 2018*, at pp. 8 to 12.

9 The minister responded to the committee's comments in a letter dated 4 September 2018. A copy of the letter is available on the committee's website: see correspondence relating to *Scrutiny Digest 10 of 2018* available at: www.aph.gov.au/senate_scrutiny_digest

direct and indirect causes would be arbitrary. It is therefore important that infrastructure declarations can be made where the damage or disruption would directly or indirectly endanger life.

There must always be a nexus between the damage or disruption to the infrastructure and the risk of death or serious injury to a person. Under proposed subsection 51H(2), authorising Ministers can only make an infrastructure declaration if they believe on reasonable grounds that there is a threat of damage or disruption to the infrastructure, and that the damage or disruption would directly or indirectly endanger a person's life or cause serious injury to them.

The powers in relation to aircraft and vessels in section 46 are sufficiently connected with the protection of life. In addition to the specific limitations on the use of force that is likely to cause the death of, or grievous bodily harm to, a person as set out in subsection 51N(3), Part IIIAAA sets out an overriding requirement that in exercising their powers ADF members may only use such force as is reasonable and necessary in the circumstances (subsection 51N(1)). The taking of measures against an aircraft or vessel would only be reasonable and necessary where that aircraft or vessel posed a significant threat to life.

***Committee comment***

2.17 The committee thanks the Attorney-General for this response. The committee notes the Attorney-General's advice that it is considered that limiting infrastructure declarations to circumstances where damage or disruption would directly endanger life or cause serious injury would unduly limit the ADF's ability to respond in circumstances where damage or disruption presents an indirect risk to life and safety—for example, where an attack on a nuclear reactor results in the contamination of the water supply, which then presents a threat to life or health. The committee further notes the Attorney-General's advice that it would be arbitrary to distinguish between direct and indirect causes where both the cause and potential gravity of harm are the same.

2.18 However, the committee reiterates its scrutiny concern that the bill may allow infrastructure declarations to be made in relation to a broad range of infrastructure, and therefore authorises the ADF to use force, including deadly force in certain circumstances, to protect such infrastructure.

2.19 The committee also notes the Attorney-General's advice that it is considered that powers in relation to taking measures against aircraft and vessels are sufficiently connected with the protection of life by proposed subsections 51N(1) and (3), and that the taking of measures against an aircraft or vessel would only be reasonable and necessary where that aircraft or vessel posed a significant threat to life.

2.20 However, the committee notes that the bill does not expressly state that the taking of measures against an aircraft or vessel can only be considered reasonable and necessary where the aircraft or vessel poses a significant threat to life. The bill

instead requires that an authorising minister must not authorise the taking of measures against an aircraft or vessel unless satisfied that taking the measure is reasonable and necessary, and an ADF member must not use force against an aircraft or vessel likely to cause death or grievous bodily harm unless it is reasonable and necessary to give effect to the order or authority under which the member is acting.[10]

2.21 The committee accepts that it would generally not be considered reasonable and necessary to take measures against an aircraft or vessel unless it posed a significant threat to life. However, it considers that this might not always be the case. As such, the committee considers that it may be beneficial to amend the bill so as to make clear on the face of the legislation that the taking of measures against an aircraft or vessel can only be considered reasonable and necessary in circumstances where this is necessary to protect the lives of others.

**2.22 The committee requests that the key information provided by the Attorney-General be included in the explanatory memorandum, noting the importance of this document as a point of access to understanding the law and, if needed, as extrinsic material to assist with interpretation (see section 15AB of the *Acts Interpretation Act 1901*).**

**2.23 The committee reiterates its scrutiny concerns in relation to:**

- **authorising the use of force, including deadly force in certain circumstances, to protect a broad range of infrastructure, and**
- **the absence of an explicit limitation on the circumstances in which measures may be taken against aircraft or vessels to instances where this is necessary and reasonable to protect the lives or safety or others.**

**2.24 The committee otherwise draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of allowing ADF members who are being utilised under a call out order to use force against persons and things, including deadly force in certain circumstances.**

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## Immunity from liability[11]

2.25 In *Scrutiny Digest 8 of 2018*[12] the committee requested the Attorney-General's advice as to the appropriateness of amending the bill so as to

10 See proposed subsections 46(3) and 51N(3).

11 Schedule 1, item 2, proposed section 51S. The committee draws senators' attention to this provision pursuant to Senate Standing Order 24(1)(a)(i).

12 Senate Scrutiny of Bills Committee, *Scrutiny Digest 8 of 2018*, at pp. 12 to 13.

preserve legal liability in instances where an ADF member has exceeded their legal authority in circumstances that cannot be characterised as minor or technical.

***Attorney-General's response***[13]

2.26 The Attorney-General advised:

> Proposed section 51S is not intended to remove legal liability in instances where an ADF member has exceeded their legal authority in circumstances that cannot be characterised as minor or technical. An ADF member who exceeds their legal authority in circumstances which could not be characterised as minor or technical would be highly unlikely to have exercised their powers in good faith. For example, an ADF member who uses force against a person in doing anything that is likely to cause the death of, or grievous bodily harm to, the person without believing on reasonable grounds that doing that thing satisfies one of the matters specified in subparagraphs 51N(3)(a)(i) to (iii), would be highly unlikely to have exercised their powers in 'good faith'.

***Committee comment***

2.27 The committee thanks the Attorney-General for this response. The committee notes the Attorney-General's advice that proposed section 51S is not intended to remove legal liability where an ADF member exceeds their legal authority in circumstances that cannot be characterised as minor or technical. The committee also notes the Attorney-General's advice that an ADF member who exceeds their legal authority with respect to more serious matters would be highly unlikely to have exercised their powers in good faith.

2.28 However, the committee reiterates that the provision seeks to exclude liability in relation to a failure to comply with *any* obligation imposed under Part IIIAAA on the use of a power, provided the ADF member acted in good faith. As such, it remains unclear to the committee why it would not be possible for an ADF member to exceed their legal authority in circumstances that cannot be characterised as minor or technical yet still have exercised their powers in good faith, and therefore enjoy immunity from legal liability.

**2.29 The committee requests that the key information provided by the Attorney-General be included in the explanatory memorandum, noting the importance of this document as a point of access to understanding the law and, if needed, as extrinsic material to assist with interpretation (see section 15AB of the *Acts Interpretation Act 1901*).**

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13 The minister responded to the committee's comments in a letter 4 September 2018. A copy of the letter is available on the committee's website: see correspondence relating to *Scrutiny Digest 10 of 2018* available at: www.aph.gov.au/senate_scrutiny_digest

**2.30 The committee draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of limiting the legal liability of ADF members who exceed their legal authority to instances where bad faith can be demonstrated, noting the extraordinary nature of the powers conferred on ADF members under the proposed call out regime.**

# Family Law Amendment (Family Violence and Cross-Examination of Parties) Bill 2018

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|---|---|
| **Purpose** | This bill seeks to amend the *Family Law Act 1975* to restrict personal cross-examination in family law proceedings where there are allegations of family violence between the parties |
| **Portfolio** | Attorney-General's |
| **Introduced** | House of Representatives on 28 June 2018 |
| **Bill status** | Before the House of Representatives |

## Procedural fairness[14]

2.31 In *Scrutiny Digest 8 of 2018*[15] the committee requested the Attorney-General's advice as to:

- why it is considered necessary and appropriate to provide the court with a broad discretion to order that the mandatory requirements apply,[16] and the appropriateness of amending the bill to provide some legislative guidance as to when the discretion should be exercised;
- the circumstances in which legal aid would be available to parties to family law proceedings involving allegations of family violence; and
- whether, in the circumstances that a person is subject to the prohibition on personal cross-examination or to other restrictions on their ability to present their own case, legal aid will be made more readily available.

### *Attorney-General's response*[17]

2.32 The Attorney-General advised:

> It is important that judicial officers have a broad discretion to order that the mandatory requirements apply so that they are able to respond appropriately to each individual matter. As the High Court of Australia has

14 Schedule 1 , item 1, proposed subparagraph 102NA(1)(c)(iv). The committee draws senators' attention to this provision pursuant to Senate Standing Order 24(1)(a)(i) and (iii).

15 Senate Scrutiny of Bills Committee, *Scrutiny Digest 8 of 2018*, at pp. 14 to 16.

16 See proposed subparagraph 102NA(1)(c)(iv).

17 The Attorney-General responded to the committee's comments in a letter dated 31 August 2018. A copy of the letter is available on the committee's website: see correspondence relating to *Scrutiny Digest No. 10 of 2018* available at: www.aph.gov.au/senate_scrutiny_digest

recognised, a wide discretion maximises the possibility of doing justice in every case.[18] The definition of family violence in the *Family Law Act 1975* is very broad,[19] and there will be great variability in the circumstances in which paragraph 102NA(1)(c)(iv) could apply. For example, allegations may refer to a one-off historical event of either low or high severity, there may be cross-allegations, there may or may not be current safety concerns, a victim may or may not want the mandatory requirements to apply, and there may or may not be substantiating evidence (for example, medical records). As each victim of family violence is unique, none of these circumstances provide definitive guidance on whether or not an order should be made. A broad discretion will enable judicial officers to respond to the individual circumstances of each case.

Though the discretion in paragraph 102NA(1)(c)(iv) is broad, it is not unlimited and must be exercised judicially and in accordance with legal principles laid down in the Family Law Act.[20] The most relevant principle is that the court must have regard to the need to ensure protection from family violence.[21] This means that, when deciding whether to make an order under paragraph 102NA(1)(c)(iv), the court would consider whether such an order was necessary to protect the parties from family violence. As the family law courts deal with allegations of family violence on a daily basis, judicial officers are well placed to determine the veracity of allegations, the effects of that violence on victims, and whether or not the mandatory requirements should apply.

If necessary, the family law courts may issue practice directions and/or guidelines on the exercise of the discretion in paragraph 102NA(1)(c)(iv), or include guidance in the Family Violence Best Practice Principles. Indeed, the High Court of Australia has noted that 'it does not follow that, because a discretion is expressed in general terms, Parliament intended that the courts should refrain from developing rules or guidelines affecting its exercise'.[22] As the committee is aware, the measures will also be reviewed after two years which will provide an opportunity to assess whether the discretion is being exercised as intended (to protect victims of family violence) and whether any further amendments are required.

It may assist the committee to know that the family law courts already have a range of powers under the Family Law Act to manage proceedings

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18 *Norbis v Norbis* (1986) 65 ALR 12 at 16.

19 Section 4AB of the *Family Law Act 1975* defines family violence as any 'violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member) or causes the family member to be fearful'.

20 *Norbis v Norbis* (1986) 65 ALR 12; *Stanford v Stanford* (2012) 293 ALR 70.

21 Paragraph 43(1)(ca) of the *Family Law Act 1975.*

22 *Norbis v Norbis* (1986) 65 ALR 12 at 16.

and protect vulnerable witnesses. Most relevantly, in child-related proceedings, the court may give directions or make orders limiting, or not allowing, cross-examination of a particular witness.[23] As with proposed paragraph 102NA(1)(c)(iv), there is no legislative guidance on the exercise of this power.

The committee has expressed concern that an order that the mandatory requirements apply could potentially require a party to argue their case without the opportunity to cross-examine the other party. The Government intends that representation through legal aid commissions would be available where a party cannot obtain the services of a private lawyer. The Government is working with National Legal Aid to determine the impacts of meeting demand introduced by the Bill. The eligibility criteria that would apply for legal aid in cases where the mandatory requirements apply are part of the Government's discussions with National Legal Aid.

The details regarding funding for the measures, including the circumstances in which legal aid will be available, will be announced prior to debate in the Senate in accordance with the recommendation of the Senate Standing Committees on Legal and Constitutional Affairs.

***Committee comment***

2.33 The committee thanks the Attorney-General for this detailed response, and notes the Attorney-General's advice that it is important for judicial officers to have a broad discretion to order that the mandatory requirements apply so that they are able to respond appropriately to individual cases of family violence and maximise the possibility of doing justice in every case. The committee also notes the Attorney-General's advice that, while the discretion is broad, it is not unlimited, and must be exercised in accordance with legal principles in the *Family Law Act 1975*. In this regard, the committee notes the advice that, when deciding whether to order that the mandatory requirements apply, the court would consider whether such an order was necessary to protect the parties from family violence.

2.34 With respect to the availability of legal aid, the committee notes the Attorney-General's advice that the government intends that legal aid would be available where a party cannot obtain the services of a private lawyer and the government is working with National Legal Aid to determine the impacts of meeting the demand introduced by the bill, and that this includes discussing eligibility for legal aid in cases where the mandatory requirements apply.

23 Paragraph 69ZX(2)(i) of the *Family Law Act 1975.*

**2.35 The committee requests that the key information provided by the Attorney-General be included in the explanatory memorandum, noting the importance of that document as a point of access to understanding the law and, if necessary, as extrinsic material to assist with interpretation (see section 15AB of the *Acts Interpretation Act 1901*).**

**2.36 In light of the detailed information provided by the Attorney-General, the committee makes no further comment on this matter.**

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## Parliamentary scrutiny—no requirement to table certain documents[24]

2.37 In *Scrutiny Digest 8 of 2018*[25] noting that there may be impacts on parliamentary scrutiny where documents associated with a significant review are not made available to the Parliament, the committee requested the Attorney-General's advice as to:

- why it is not proposed to require documents associated with the review of proposed Division 4, conducted pursuant to proposed section 102NC, be tabled in Parliament; and
- whether the documents associated with the review of proposed Division 4 will be made available online.

### *Attorney-General's response*[26]

2.38 The Attorney-General advised:

> The results of the review will be made available on the Attorney-General's Department website.
>
> The intention of the review is to inform Government about whether the amendments are operating as intended to protect victims of family violence, while also maintaining procedural fairness for all parties. Based on the results, the Government will determine whether any changes or further amendments are required. As the committee has noted, the Attorney-General's Department will review the amendments internally, in consultation with the family law courts, National Legal Aid and other relevant stakeholders.

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24 Schedule 1, item 1, proposed section 102NC. The committee draws senators' attention to this provision pursuant to Senate Standing Order 24(1)(a)(v).

25 Senate Scrutiny of Bills Committee, *Scrutiny Digest 8 of 2018*, at pp. 14 to 16.

26 The Attorney-General responded to the committee's comments in a letter dated 31 August 2018. A copy of the letter is available on the committee's website: see correspondence relating to *Scrutiny Digest No. 10 of 2018* available at: www.aph.gov.au/senate_scrutiny_digest

> The Government recognises the importance of parliamentary scrutiny, and considers that making the results of the review available on line will ensure the opportunity for the Parliament to do so, noting that the primary purpose of the review will be to inform future policy development.

***Committee comment***

2.39 The committee thanks the Attorney-General for this response, and notes the Attorney-General's advice that the results of the review will be made available on the Attorney-General's Department website. The committee also notes the advice that the government considers that making the results of the review available online will ensure appropriate parliamentary scrutiny.

2.40 While noting this advice, the committee remains concerned that there is no requirement to table the results of the review, or any other documents associated with the review, in Parliament. As outlined in the committee's initial comments, the process of tabling documents in Parliament alerts parliamentarians to their existence and provides opportunities for debate that are not available where documents are only published online. In this regard, the committee emphasises that it does not consider publishing the results of a review online to be sufficient to ensure appropriate levels of parliamentary scrutiny.

2.41 The committee is also concerned that, while it may be intended that the results of the review would be made available on the Attorney-General's website, there does not appear to be anything on the face of the bill that would require the result of the review to be published in that manner.

**2.42 The committee considers that it would be appropriate to amend the bill to require that all key documents associated with the review of proposed Division 4 of the *Family Law Act 1975* (for example, the terms of reference and the final report) be tabled in Parliament and published online.**

**2.43 The committee otherwise draws its scrutiny concerns to the attention of senators, and leaves to the Senate as a whole the appropriateness of there being no legislative requirement to table or publish online the results of the review.**

# Office of National Intelligence Bill 2018

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|---|---|
| **Purpose** | This bill seeks to establish the Office of National Intelligence (ONI) as an independent statutory agency. The ONI would subsume the role, functions and staff of the Office of National Assessments |
| **Portfolio** | Prime Minister |
| **Introduced** | House of Representatives on 28 June 2018 |
| **Bill status** | Before House of Representatives |

## Reversal of the evidential burden of proof[27]

2.44 In *Scrutiny Digest 8 of 2018*[28] the committee requested the Prime Minister's and Attorney-General's advice as to why it is proposed to use offence-specific defences (which reverse the evidential burden of proof) in relation to the matters in proposed subclauses 42(2) and (3), 43(2) and (3) and 44(3) and (4).

2.45 The committee also requested the advice of the Prime Minister and the Attorney-General as to the appropriateness of amending the bill to include a general defence to the offences in clauses 42 to 44 for all government officials who engage in relevant conduct for the purpose of exercising powers, or performing functions or duties, as a government official.

### *Attorney-General's response*[29]

2.46 The Attorney-General advised:

> Consistent with section 13.3 of the Criminal Code, the defendant bears an evidential burden in relation to the offence-specific defences in proposed subclauses 42(2) and (3), 43(2) and (3) and 44(3) and (4).
>
> The *Guide to Framing Commonwealth Offences* (the Guide) acknowledges that it is appropriate to reverse the onus of proof and place a burden on the defendant in certain circumstances. This includes where a matter is peculiarly within the knowledge of the defendant and where it would be

27 Clauses 42 to 44 and clause 46. The committee draws senators' attention to these provisions pursuant to Senate Standing Order 24(1)(a)(i).

28 Senate Scrutiny of Bills Committee , *Scrutiny Digest 8 of 2018,* pp. 24 to 27.

29 The Attorney-General responded to the committee's comments in a letter dated 31 August 2018. A copy of the letter is available on the committee's website: see correspondence relating to *Scrutiny Digest No. 10 of 2018* available at: www.aph.gov.au/senate_scrutiny_digest

significantly more difficult and costly for the prosecution to disprove the matter than for the defendant to establish the matter.

The offences in clauses 42 and 44 of the Bill (including the offence-specific defences) are almost identical to the existing secrecy offences in sections 40A, 40J and 40K of *the Intelligence Services Act 2001* (IS Act) that currently apply to the communication of, and dealing with, information acquired by or on behalf of the Office of National Assessments (ONA) in connection with its functions. They are also consistent with the secrecy offences in the IS Act, including the offence-specific defences, that apply in relation to other intelligence agencies.

This is in recognition of the special duties and responsibilities that apply to ONI staff and people with whom the agency has an agreement or arrangement. It is expected that such persons would be well aware of the sensitivity of the information being communicated or dealt with and the importance of ensuring appropriate authorisation when communicating and dealing with that information.

*Subclauses 42(2) and 44(3) - Information or matter lawfully available*

It is considered appropriate to cast the matters set out in subclauses 42(2) and 44(3) as an exception to the offences rather than including them as elements of the offence. Evidence of whether there was a reasonable possibility of a prior, authorised public disclosure of the relevant information or matter is evidence peculiarly within the knowledge of the defendant.

Given the generally classified nature of the information covered by the offences, this exception is likely to be of relevance in limited situations where a case is being referred for prosecution. It would be significantly more difficult and costly for the prosecution to prove in every case, beyond a reasonable doubt, that there was no prior authorised communication of the relevant information to the public.

*Subclauses 42(3) and 44(4) - communication to IGIS officials*

The exceptions in subclauses 42(3) and 44(4) replicate exceptions in the existing secrecy provisions in the IS Act. These exceptions were included at the recommendation of the Parliamentary Joint Committee of Intelligence and Security following their consideration of the *National Security Legislation Amendment Bill (No.1) 2014,* to make explicit the intention that the offences should not apply to disclosures to an Inspector-General of Intelligence and Security (IGIS) official, and ensure that they did not operate as a perceived disincentive or barrier to the provision of information, or the making of complaints to, the office of the IGIS.

It is considered appropriate to provide for this as exceptions to the offences rather than as elements of the offences. Evidence of a reasonable possibility that the conduct related to providing information to an IGIS official for the purpose of that official exercising a power, or performing a function or duty as such an official is evidence peculiarly within the

knowledge of the defendant. It would be significantly more difficult and costly for the prosecution to prove in every case, beyond a reasonable doubt, that the communication of the relevant information was not for the purpose of an IGIS official exercising a power, or performing a function or duty as an IGIS official.

*Subclauses 43(2) and (3)*

The development of the Bill overlapped with the Parliamentary Joint Committee on Intelligence and Security's (PJCIS) consideration of the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2018 (EFI Bill). Noting the PJCIS' recommendations in relation to the EFI Bill, and the form in which that Bill passed the Parliament, the ONI Bill, including the Explanatory Memorandum, will be amended to remove clause 43 in its entirety.

Inclusion of a general defence for all government officials

As outlined above, clauses 42 and 44 of the Bill are almost identical to existing secrecy provisions in the IS Act. The Government has agreed to undertake a review of specific secrecy provisions following the passage of the general secrecy provisions in the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018.*

Until such time that this review is completed, an amendment to include a general defence for all government officials is not considered necessary on the basis that the Bill already contains mechanisms to facilitate the appropriate communication of, or dealing with, ONI information by government officials.

The offences only apply to government officials who have obtained ONI information by reason of being a staff member of ONI, having entered into a contract, agreement or arrangement with ONI or being an employee or agent of another person who has entered into a contract, agreement or arrangement with ONI. The offences also do not apply in the circumstances set out in paragraph 42(1)(c), paragraph 44(1)(d) and paragraph 44(2)(d). This includes communication made with the specific authority or approval of the Director-General of National Intelligence or another person authorised by the Director-General.

### *Committee comment*

2.47 The committee thanks the Attorney-General for this response. The committee notes the Attorney-General's advice that it is considered appropriate to reverse the evidential burden of proof in relation to the matters in subclauses 42(2) and 44(3) because evidence of whether there was a reasonable possibility of a prior, authorised public disclosure of the relevant information is peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to prove beyond a reasonable doubt that there was no prior authorised communication of the relevant information to the public.

2.48 However, it remains unclear to the committee how evidence as to whether or not the Commonwealth has previously authorised the communication of relevant information to the public could be described as peculiarly within the knowledge of the defendant, as this would also be known to the Commonwealth.

2.49 The committee notes the Attorney-General's advice that it is appropriate to reverse the evidential burden of proof with respect to the exceptions set out under subclauses 42(3) and 44(4), as evidence of a reasonable possibility that the conduct related to providing information to an IGIS official for the purpose of that official exercising a power or performing a function or duty is peculiarly within the knowledge of the defendant.

2.50 The committee further notes the Attorney-General's advice that, in light of the form in which the National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2018 passed the parliament, it is intended that the bill will be amended to remove clause 43 in its entirety.

2.51 Finally, the committee notes the Attorney-General's advice that the government has agreed to undertake a review of specific secrecy provisions following the passage of the general secrecy provisions in the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018*, and that, pending the completion of this review, it is not considered necessary to amend the bill to include a general defence for all government officials who deal with ONI information in the course of their official duties.

**2.52 In respect of subclauses 42(2) and 44(3), the committee draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of reversing the evidential burden of proof in relation to the matters set out in those subsections, which do not appear to be peculiarly within the knowledge of the defendant.**

**2.53 In respect of subclauses 42(3) and 44(4), in light of the information provided, the committee makes no further comment.**

**2.54 The committee requests that the key information provided by the Attorney-General with respect to subclauses 42(3) and 44(4) be included in the explanatory memorandum, noting the importance of this document as a point of access to understanding the law and, if needed, as extrinsic material to assist with interpretation (see section 15AB of the *Acts Interpretation Act 1901*).**

**2.55 In respect of clause 43 and the committee's query relating to a general defence for all government officials, in light of the information provided, particularly the government's intention to amend the bill to remove clause 43 and to conduct a review of specific secrecy provisions, the committee makes no further comment.**

## Delegated legislation not subject to disallowance

## Significant matters in delegated legislation

## Privacy[30]

2.56 In *Scrutiny Digest 8 of 2018*[31] the committee requested the detailed advice of the Prime Minister and the Attorney-General as to:

- the appropriateness of amending the bill to provide high-level regulation of the collection of identifiable open source information and the communication, handling and retention by the Office of National Intelligence of identifiable information; and
- why it is necessary to declare the entirety of the privacy rules not to be a legislative instrument (and therefore not subject to the usual disallowance and sunsetting procedures under the *Legislation Act 2003*), given that it is intended that they will generally be made public.

### *Attorney-General's response*[32]

2.57 The Attorney-General advised:

> Delegated legislation not subject to disallowance
>
> Clause 53 of the Bill, which is the enabling provision for the privacy rules, is based upon section 15 of the IS Act which requires the responsible Ministers for the Australian Secret Intelligence Service (ASIS), the Australian Signals Directorate (ASD) and the Australian Geospatial Intelligence Organisation (AGO) to make privacy rules to protect Australians.
>
> Rules made under section 15 are currently made available to the public. However, subsection 15(7) of the IS Act provides that they are not legislative instruments, in recognition that it may sometimes not be appropriate for all privacy rules to be made publicly available through the tabling process. Clause 53(8) is consistent with that approach.
>
> As noted, it is anticipated that the privacy rules will generally be made public. Additionally, rules made under clause 53 will be subject to a form of Parliamentary oversight through the Parliamentary Joint Committee on Intelligence and Security. Subclause 53(6) requires the IGIS to brief that Committee on the content and effect of the privacy rules if requested to

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30 Clauses 7, 37 to 39 and 53. The committee draws senators' attention to these provisions pursuant to Senate Standing Order 24(1)(a)(i),(iv) and (v).

31 Senate Scrutiny of Bills Committee, *Scrutiny Digest 8 of 2018,* pp. 27 to 29.

32 The Attorney-General responded to the committee's comments in a letter dated 31 August 2018. A copy of the letter is available on the committee's website: see correspondence relating to *Scrutiny Digest No. 10 of 2018* available at: www.aph.gov.au/senate_scrutiny_digest

do so, or if the rules change. Amendments contained in the Office of National Intelligence (Consequential and Transitional Provisions) Bill 2018 will also place a requirement on the IGIS to report in its public annual report on ONI's compliance with the privacy rules. This will include compliance with any rules that are classified in nature and not publicly available.

Significant matters in delegated legislation

As outlined above, clause 53 of the Bill is in similar terms to section 15 of the IS Act which forms the basis for the making of privacy rules that apply to ASIS, ASD and AGO. Although ONA currently prepares privacy guidelines that are similar to the rules made under the IS Act, there is not a legislative requirement to do so. The inclusion of a privacy rules regime in the Bill clearly supports enhanced privacy protection, as recognised by the Australian Government Solicitor in their independent privacy impact assessment of the establishment of ONI.

In addition, before making proposed privacy rules, the Prime Minister must consult the IGIS and the Attorney-General. This will ensure that the rules are informed by the independent advice and consideration of both national security and broader legal perspectives, including in relation to privacy.

Setting out ONI's obligations in relation to the collection, communication, handling and retention of identifiable information in rules rather than the primary legislation is appropriate. This approach will enable ONI's fulfilment of those obligations to be more responsive and adaptive to changing circumstances and community expectations about the collection, use and disclosure of sensitive and personal information by intelligence agencies.

### *Committee comment*

2.58 The committee thanks the Attorney-General for this response. The committee notes the Attorney-General's advice that the privacy rules made under clause 53 will be subject to a form of parliamentary oversight in that the Inspector-General of Intelligence and Security (IGIS) must brief the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on the rules if requested to do so, or if the rules change. The Office of National Intelligence (Consequential and Transitional) Bill 2018 will also require the IGIS to report on the ONI's compliance with the privacy rules in its public annual report.[33]

2.59 The committee also notes the Attorney-General's advice that the proposed requirement that the privacy rules must be made represents an improvement on the current situation in which the Office of National Assessments prepares privacy

33 See Schedule 2, item 65 of the Office of National Intelligence (Consequential and Transitional Provisions) Bill 2018.

guidelines but is under no legislative requirement to do so, and that by requiring the Prime Minister to consult the IGIS and the Attorney-General prior to making the privacy rules, the bill seeks to ensure the rules are informed by independent advice.

2.60 Finally, the committee notes the Attorney-General's advice that it is considered appropriate to set out the ONI's obligations in relation to identifiable information in rules rather than primary legislation as this will enable the ONI to be more responsive to changing circumstances and community expectations in relation to the collection, use and disclosure of sensitive and personal information by intelligence agencies.

2.61 However, the committee considers that the fact that the PJCIS could be briefed, in private, on the content of the rules, does not provide adequate parliamentary oversight of those rules. The committee notes the advice that the proposal in the bill to require non-legislative rules to be made represents an improvement on the current situation, but considers that this alone is not a sufficient justification to include such significant matters in a non-legislative form. It remains unclear to the committee why at least high-level guidance cannot be included in the primary legislation to regulate the collection of identifiable open source information and the communication, handling and retention by the ONI of identifiable information. It also remains unclear why, if it is intended that the privacy rules will generally be made public, any rules containing more technical matters cannot be made as legislative instruments, noting the possibility of providing the rule maker with the discretion to ensure that any guidance relating to sensitive national security information is issued by way of a non-legislative instrument. The committee considers that taking this approach would not limit the ability of the ONI to adapt to changing circumstances and community expectations with respect to the handling of sensitive and personal information by intelligence agencies.

**2.62 The committee draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of leaving significant matters, such as the privacy rules governing the collection and use of identifiable information by the Office of National Intelligence, to be set out in non-legislative rules (which will not be subject to the usual disallowance and sunsetting procedures under the *Legislation Act 2003*).**

# Treasury Laws Amendment (Financial Sector Regulation) Bill 2018

| | |
|---|---|
| **Purpose** | This bill seeks to amend *Financial Sector (Shareholdings) Act 1998* and the *Banking Act 1959* to:<br>• increase from 15 per cent to 20 per cent the ownership restriction applying to life insurance and general insurance companies, authorised deposit-taking institutions and relevant holding companies;<br>• create a streamlined path for owners of qualifying domestically incorporated companies with assets less than the relevant threshold applying to become a financial sector company; and<br>• enable the Australian Prudential Regulation Authority to grant a new entrant to the banking sector a time limited ADI licence |
| **Portfolio** | Treasury |
| **Introduced** | House of Representatives on 28 June 2018 |
| **Bill status** | Before the Senate |

## Significant matters in delegated legislation

## Consultation prior to making delegated legislation[34]

2.63 In *Scrutiny Digest 8 of 2018*[35] the committee requested the Treasurer's advice as to:

- why it is considered necessary and appropriate to leave all of the content of the fit and proper person test to be prescribed in delegated legislation; and
- whether specific consultation obligations (beyond those in section 17 of the *Legislation Act 2003*) can be included in the legislation (with compliance with such obligations a condition of the validity of the legislative instrument).

34 Schedule 1, item 16, proposed subsection 14A(2). The committee draws senators' attention to this provision pursuant to Senate Standing Order 24(1)(a)(iv).

35 Senate Scrutiny of Bills Committee, *Scrutiny Digest 8 of 2018*, at pp. 33 to 35.

### *Treasurer's response*[36]

2.64 The Treasurer advised:

> The amendments contained in the Treasury Laws Amendment (Financial Sector Regulation) Bill 2018 are intended to encourage innovation and greater participation and competition in the financial system by reducing barriers faced by new entrants.
>
> However, it is necessary that appropriate safeguards to protect consumers and financial system stability against risks associated with concentrated ownership of financial sector companies are maintained including a fit and proper test.
>
> As the Committee notes, the 'fit and proper' test will be prescribed in delegated legislation made by APRA. The nature of fit and proper in the context of the owners of a prudentially regulated institution has broad considerations which necessitate a test that can be readily adapted or articulated more fully as needed.
>
> The need for flexibility and adaptability is the reason the test is contained in delegated legislation. It is also consistent with APRA's other powers which allow it to draft delegated legislation in a similar space.
>
> The legislative instrument setting out the fit and proper test will be subject to parliamentary disallowance and ministerial approval. In this way the instrument will be largely subject to the same parliamentary scrutiny as primary legislation. They are capable of being debated, referred to committees and being voted down (disallowed). In this way there would not appear to be much difference had the test been included in primary legislation or regulations.
>
> I note the Committee's suggestion that specific consultation requirements be included in the Bill. Given APRA's record for undertaking timely and substantive consultation of generally three months it does not seem necessary to include a requirement to consult in the legislation. APRA has noted that consultation in this complex space will be particularly advantageous to get the right balance in its considerations.

### *Committee comment*

2.65 The committee thanks the Treasurer for this response. The committee notes the Treasurer's advice that it is considered necessary that the fit and proper person test with respect to ownership of a prudentially regulated institution be capable of being readily adapted or articulated more fully and that, for this reason, the test has been included in delegated legislation.

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36 The minister responded to the committee's comments in a letter 4 September 2018. A copy of the letter is available on the committee's website: see correspondence relating to *Scrutiny Digest No. 10 of 2018* available at: www.aph.gov.au/senate_scrutiny_digest

2.66 While the committee appreciates that there may be some need to adapt or further articulate aspects of the fit and proper person test, it is not clear that all elements of the test would need to be continually altered. It is therefore unclear to the committee why at least the core elements of the test could not be set out in primary legislation.

2.67 The committee also notes the Treasurer's advice that, as the instrument will be subject to disallowance and ministerial approval, it will be largely subject to 'the same parliamentary scrutiny as primary legislation', and that legislative instruments are capable of 'being debated, referred to committees and voted down (disallowed).' However, the committee notes that legislative instruments are made by the executive government without parliamentary enactment and come into immediate effect. By contrast, primary legislation must be agreed to by both Houses of the Parliament before becoming law. Furthermore, although a legislative instrument may be debated in the chamber if it is the subject of a disallowance motion, this only occurs where a particular instrument among the 1,500 to 2,000 disallowable instruments made each year comes to the attention of a Senator or member.[37] Finally, although it is possible for a committee to inquire into a legislative instrument, this would only occur after the instrument has come into effect. In contrast, where a bill is referred to a Senate legislation committee via the Selection of Bills Committee, further consideration of the bill is deferred until the committee tables its report.[38] The committee therefore emphasises that a legislative instrument, made by the executive, is not subject to the full range of parliamentary scrutiny inherent in bringing proposed legislation in the form of a bill.

2.68 Finally, the committee notes the Treasurer's advice that it is considered unnecessary to include specific consultation requirements in the bill with respect to the legislative instrument containing the fit and proper person test because of APRA's record of undertaking timely and substantive consultation and because APRA has noted that consultation in this instance will be advantageous to get the right balance in its considerations.

2.69 While the committee notes that it is expected that APRA will undertake appropriate consultation prior to finalising the legislative instrument relating to the fit and proper person test, it remains the case that the bill does not contain a positive requirement that such consultation take place. The committee therefore reiterates its view that where the Parliament delegates its legislative power in relation to significant regulatory schemes it is appropriate that specific consultation obligations (beyond those in section 17 of the *Legislation Act 2003*) are included in the bill and

37 See statistics at Rosemary Laing (ed*), Odgers' Australian Senate Practice: As Revised by Harry Evans*, Department of the Senate, 14th Edition, 2016, pp. 431-432.

38 See Senate standing order 24A(8).

that compliance with these obligations is a condition of the validity of the instrument.

**2.70 The committee draws its scrutiny concerns to the attention of senators and leaves to the Senate as a whole the appropriateness of:**

- **leaving all of the content of a fit and proper person test to be prescribed in delegated legislation; and**
- **not including specific consultation obligations (beyond those in section 17 of the *Legislation Act 2003*) in the legislation (with compliance with such obligations a condition of the validity of the legislative instrument).**

# Chapter 3

# Scrutiny of standing appropriations

3.1 Standing appropriations enable entities to spend money from the Consolidated Revenue Fund on an ongoing basis. Their significance from an accountability perspective is that, once they have been enacted, the expenditure they involve does not require regular parliamentary approval and therefore escapes parliamentary control. They are not subject to approval through the standard annual appropriations process.

3.2 By allowing the executive government to spend unspecified amounts of money for an indefinite time into the future, provisions which establish standing appropriations may, depending on the circumstances of the legislation, infringe on the committee's terms of reference relating to the delegation and exercise of legislative power.

3.3 Therefore, the committee has determined that, as part of its standard procedures for reporting on bills, it should draw Senators' attention to bills that establish or amend standing appropriations or establish, amend or continue in existence special accounts.[1] It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the committee to report on whether bills:

> (iv) inappropriately delegate legislative powers; or
>
> (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.[2]

3.4 The committee draws the following bill to the attention of Senators:

- **Federal Circuit and Family Court of Australia Bill 2018**—clause 96.

**Senator Helen Polley**
**Chair**

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1 The Consolidated Revenue Fund is appropriated for expenditure for the purposes of special accounts by virtue of section 80 of the *Public Governance, Performance and Accountability Act 2013*.

2 For further detail, see Senate Standing Committee for the Scrutiny of Bills *Fourteenth Report of 2005*.