



10 May 2018

Introduction

This newsletter highlights key aspects of the work of the Senate Scrutiny of Bills Committee and the Senate Regulations and Ordinances Committee. It has a particular focus on information that may be useful while bills are under consideration and legislative instruments are subject to disallowance, and seeks to raise awareness about the committees' scrutiny principles (see Senate Standing Orders 23 and 24).

For more detail and discussion of these matters see the committees' [Scrutiny Digests](#) and [Delegated legislation monitors](#).

New developments

The Regulations and Ordinances Committee tabled its [Annual Report for 2017](#). The report highlights developments of note in 2017 on issues such as access to Australian Standards incorporated in delegated legislation, misclassification of instruments and sunseting of instruments.

Key scrutiny issues: Bills (*Scrutiny Digest No. 5 of 2018*)

Crimes Amendment (National Disability Insurance Scheme—Worker Screening) Bill 2018:

- Privacy: the committee leaves to the Senate the appropriateness of permitting the disclosure and the taking into account of a person's entire criminal history—including convictions for minor offences and convictions that have been spent, quashed or pardoned—in the context of worker screening for the National Disability Insurance Scheme.

Identity-matching Services Bill 2018

- Privacy: the committee leaves to the Senate the appropriateness of establishing a scheme to allow for the collection, use and disclosure of an extensive amount of personal information for a broad range of purposes to a broad range of agencies and entities, without adequate safeguards being contained in the bill.
- Consultation prior to making delegated legislation: the committee welcomes advice that the minister intends to propose amendments to strengthen requirements for consultation with the Human Rights Commissioner and Information Commissioner prior to making any rules.

- Reversal of the evidential burden of proof: the committee leaves to the Senate the appropriateness of reversing the evidential burden of proof in relation to a matter that does not appear to be peculiarly within the knowledge of the defendant.
- Adequacy of parliamentary oversight; privacy: the committee welcomes advice that the minister intends to propose amendments to subject further disclosures of information to annual reporting obligations.

National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018

- Significant matters in delegated legislation; privacy: the committee is seeking advice as to the appropriateness of leaving significant elements of a proposed mandatory consumer credit reporting scheme, including matters that may have significant impacts on individuals' privacy, to delegated legislation.

Key scrutiny issues: Legislative instruments (Delegated legislation monitor 5 of 2018)

Defence (Inquiry) Regulations 2018

- Privacy: the committee is seeking advice as to the justification for a broad authorisation to use, copy and disclose Defence inquiry information; and what safeguards are in place to protect privacy.
- Subdelegation: the committee is seeking advice as to whether limits should be placed on the Chief of the Defence Force's authority to delegate powers to a broad group of ADF officers, including powers to establish and direct Defence inquiries.
- Privilege against self-incrimination: the committee draws the Senate's attention to the removal of the privilege against self-incrimination for witnesses giving oral evidence at Defence inquiries.

Health Insurance (Quality Assurance Activity) Declarations 2018, No. 1 and No. 2

- Privacy: the committee is seeking advice regarding the collection, storage, use and retention of patient information and what safeguards are in place to protect privacy.

Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018

- Matters more appropriate for parliamentary enactment: the committee draws the Senate's attention to the making of a significant change to the law—the repeal and replacement of the temporary work visa scheme—via delegated legislation.

Other bills commented on (Scrutiny Digest No. 5 of 2018)

- **Aboriginal and Torres Strait Islander Land and Sea Future Fund Bill 2018**: the committee is seeking advice regarding exemptions from disallowance and sunseting and the appropriateness of requiring a review of the Act to be tabled in Parliament and published.
- **Air Services Amendment Bill 2018**: the committee leaves to the Senate the appropriateness of a broad delegation of the Aircraft Noise Ombudsman's powers and

functions, and of leaving significant matters related to these powers to delegated legislation.

- **Australian Institute of Health and Welfare Amendment Bill 2018:** the committee is seeking advice as to the appropriateness of permitting a broad delegation of the CEO's powers.
- **Bankruptcy Amendment (Debt Agreement Reform) Bill 2018:** the committee leaves to the Senate the appropriateness of a number of proposed custodial penalties.
- **Corporations Amendment (Asia Region Funds Passport) Bill 2018:** the committee is seeking advice as to the appropriateness of reversing the evidential burden of proof, the application of strict liability to offences subject to custodial penalties, and allowing delegated legislation to modify and exempt funds and entities from the operation of primary and delegated legislation.
- **Education and Other Legislation Amendment (VET Student Loan Debt Separation) Bill 2018:** the committee is seeking advice as to the appropriateness of applying an absolute liability offence, with a potential custodial penalty, to a failure to comply with provisions of the bill.
- **Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Bill 2018:** the committee received advice as to the appropriateness of a broad delegation of administrative powers to ASD employees, and a broad discretion as to the purposes for which AUSTRAC information can be communicated to foreign intelligence agencies.
- **National Housing Finance and Investment Corporation Bill 2018:** the committee leaves to the Senate the appropriateness of the delegation of the Parliament's powers to make grants to states, and considers it may be appropriate to amend the bill to require that persons to whom broad powers are delegated have the expertise appropriate to the function or power delegated.
- **Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Amendments) Bill 2018:** the committee is seeking advice as to the appropriateness of reversing the legal burden of proof in relation to a number of defences.
- **Primary Industries Levies and Charges Collection Amendment Bill 2018:** the committee is seeking advice as to the appropriateness of leaving significant matters, relating to persons required to collect levies or charges, to delegated legislation.
- **Private Health Insurance Legislation Amendment:** the committee is seeking advice as to the appropriateness of reversing the burden of proof and allowing the Private Health Insurance Ombudsman to enter premises and inspect documents without a warrant, and to delegate powers and functions to any person.
- **Treasury Laws Amendment (2018 Measures No. 3) Bill 2018:** the committee leaves to the Senate the appropriateness of a reversal of the evidential burden of proof.
- **Treasury Laws Amendment (2018 Measures No. 4) Bill 2018:** the committee is seeking advice as to the appropriateness of applying strict and absolute liability to offences

subject to 12 month's imprisonment, reversing the evidential burden of proof, determining the rate of a charge in delegated legislation, and a no-invalidity clause.

- **Treasury Laws Amendment (Australian Consumer Law Review) Bill 2018:** the committee is seeking advice as to the appropriateness of expanding the range of persons affected by the abrogation of the privilege against self-incrimination.
- **Treasury Laws Amendment (Illicit Tobacco Offences) Bill 2018:** the committee leaves to the senate the appropriateness of a reversal of the evidential burden of proof.
- **Treasury Laws Amendment (Tax Integrity and Other Measures) Bill 2018:** the committee is seeking advice as to the extent of detriment that may arise from the retrospective application of provisions relating to small business capital gains tax concessions, and the appropriateness of a no-invalidity clause.
- **Underwater Cultural Heritage Bill 2018:** the committee is seeking advice as to the appropriateness of leaving significant matters to delegated legislation, enabling the forfeiture of property without safeguards to protect innocent third parties, and the framing of a number of offences.

Other legislative instruments commented on (*Delegated legislation monitor 5 of 2018*)

- The Regulations and Ordinances committee commented on 45 legislative instruments registered on the Federal Register of Legislation between 8 and 28 March 2018. The committee concluded its interest in ten instruments on which the committee had previously commented.
- All legislative instruments subject to a notice of motion for disallowance in either House of Parliament are listed in the [Disallowance Alert](#).

This document contains a very brief summary of some recent comments made by the Senate Scrutiny of Bills Committee (Chair: Senator Helen Polley and Deputy Chair: Senator John Williams) and the Senate Regulations and Ordinances Committee (Chair: Senator John Williams and Deputy Chair: Senator Gavin Marshall).

For any comments or questions, please contact:

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