



15 November 2018

## Introduction

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

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

## Key scrutiny issues: Bills ([Scrutiny Digest 13 of 2018](#))

### Migration Amendment (Strengthening the Character Test) Bill 2018

- *Broad discretionary power; trespass on personal rights and liberties*: the committee leaves to the Senate the appropriateness of amending the character test in the *Migration Act 1958* to expand ministerial powers to cancel a visa (which may lead to a non-citizen's detention and removal), noting that the Act already gives the minister a broad discretionary power to refuse or cancel a visa in the absence of procedural fairness obligations and where merits review is largely unavailable.

## Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 13 of 2018](#))

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

- *Merits review*: the committee is seeking specific advice as to the possibility of engaging an independent contractor to conduct merits review of decisions relating to the provision of support under the Sustainable Access to Drinking Water program.

### Industry Research and Development (Artificial Intelligence Capability Program) Instrument 2018 [F2018L01419]

### Industry Research and Development (Automotive Engineering Graduate Program) Instrument 2018 [F2018L01451]

- *Constitutional authority for expenditure*: the committee is seeking advice as to the constitutional authority for government expenditure on the programs to which the instruments relate.

## **Inspector General of the Australian Defence Force Amendment Regulations 2018 [F2018L01428]**

- *Constitutional validity*: the committee is seeking advice as to the constitutional validity of provisions conferring powers and functions on judicial officers.
- *Privacy*: the committee is seeking a justification for empowering the disclosure of inquiry information to 'any other person' or any person affected by a submission to an inquiry, and what safeguards are in place to protect privacy.
- *Retrospective effect*: the committee is seeking advice as to whether any persons were, or could be, disadvantaged by retrospective transitional provisions.

## **Norfolk Island Legislation Amendment (Protecting Vulnerable People) Ordinance 2018 [F2018L01377]**

### **Norfolk Island Continued Laws Amendment (Statutory Appointments and Other Matters) Ordinance 2018 [F2018L01378]**

- *Matters more appropriate for parliamentary enactment*: the committee reiterates its concerns about the provision of significant matters in delegated legislation, such as levying taxation and imposing custodial penalties, due to the unusual legislative framework in which Norfolk Island laws are made and amended.

## **Other bills commented on ([Scrutiny Digest 13 of 2018](#))**

- **Agricultural and Veterinary Chemicals Legislation Amendment (Streamlining Regulation) Bill 2018**: the committee is seeking advice on the appropriateness of amending the bill to include high-level guidance as to the requirements of a proposed accreditation scheme.
- **Copyright Amendment (Online Infringement) Bill 2018**: the committee is seeking advice on amending the bill to specifically exclude certain online search providers from a copyright injunctive scheme, rather than leaving this to delegated legislation.
- **Higher Education Support Amendment (VET FEE-HELP Student Protection) Bill 2018**: the committee leaves to the Senate the appropriateness of leaving to delegated legislation all of the matters that may constitute inappropriate conduct by VET providers.
- **National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2018**: the committee leaves to the Senate the appropriateness of applying strict liability to offences, leaving significant matters to delegated legislation and allowing ASIC to exempt certain schemes via delegated legislation.
- **Treasury Laws Amendment (Making Sure Foreign Investors Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018**: the committee leaves to the Senate the appropriateness of excluding judicial review in relation to certain decisions by the Treasurer.
- **Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Bill 2018**: the committee received advice on the

retrospective application of proposed amendments and considers it may be appropriate to amend the bill to require that delegates have appropriate expertise.

- **Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018:** the committee is seeking advice in relation to several proposed reversals of the evidential burden of proof, and leaves the appropriateness of proposed penalty amounts for strict liability offences, absolute liability offences and infringement notices to the Senate.

### **Other legislative instruments commented on** (*[Delegated legislation monitor 13 of 2018](#)*)

- The Regulations and Ordinances committee commented on 25 legislative instruments registered on the Federal Register of Legislation between 27 September 2018 and 22 October 2018. The committee sought further advice in relation to 4 instruments, and concluded its interest in 13 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](#).

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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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