



15 February 2019

## 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 1 of 2019](#))

### Australian Citizenship Amendment (Strengthening the Citizenship Loss Provisions) Bill 2018

- Broad discretionary powers and trespass on rights: the committee leaves to the Senate the appropriateness of expanding the minister's discretionary power to determine that a person ceases to be an Australian citizen.
- Retrospective application: the committee leaves to the Senate the appropriateness of retrospectively applying the power to remove citizenship based on convictions made up to 13 years ago.

### Migration Amendment (Streamlining Visa Processing) Bill 2018

- Significant matters in non-disallowable instruments: the committee leaves to the Senate the appropriateness of leaving significant elements of the visa processing framework to non-disallowable legislative instruments.

## Key scrutiny issues: Legislative instruments ([Delegated Legislation Monitor 1 of 2019](#))

### Aged Care Quality and Safety Commission Rules 2018 [F2018L01837]

- Retrospective effect: the committee is seeking advice as to whether the retrospective operation of certain transitional provisions could disadvantage any person.
- Privacy; significant matters in delegated legislation: the committee is seeking advice as to why it is necessary for the rules to specify additional circumstances for the disclosure of personal information and what safeguards are in place to protect privacy.
- Merits review: the committee is seeking advice as to why certain decisions made under the rules are not subject to independent merits review.

## **Immigration (Guardianship of Children) Regulations 2018 [F2018L01708]**

- Significant matters in delegated legislation: the committee is seeking advice as to why delegated legislation, rather than primary legislation, should prescribe the circumstances in which non-citizen children can become the ward of the minister.

## **Telecommunications Amendment (Access to Mobile Number Information for Authorised Research) Regulations 2018**

- Privacy: the committee is seeking advice as to why it is necessary and appropriate to permit unlisted mobile numbers and associated postcodes to be disclosed to research entities.
- Strict liability: the committee is seeking a justification for the imposition of strict liability.

## **Other bills commented on ([Scrutiny Digest 1 of 2019](#))**

- **Corporations (Aboriginal and Torres Strait Islander) Amendment (Strengthening Governance and Transparency) Bill 2018**: the committee is seeking advice on the appropriateness of leaving certain matters to delegated legislation, allowing regulations to modify the Act and conferring immunity from liability. It also leaves to the Senate the appropriateness of expanding the abrogation of the privilege against self-incrimination.
- **Defence Legislation Amendment Bill 2018**: the committee is seeking advice on the appropriateness of amending the bill to require that persons performing delegated functions have the appropriate expertise.
- **Electoral Legislation Amendment (Modernisation and Other Measures) Bill 2018**: the committee leaves to the Senate the appropriateness of publishing on the internet the personal details of people with a connection to a nominee for election.
- **Future Drought Fund Bill 2018**: the committee leaves to the Senate the appropriateness of conferring a broad ministerial power, exempting instruments from disallowance and enabling the delegation of functions to *any* official.
- **Intelligence Services Amendment Bill 2018**: the committee received advice in relation to the use of force and the inclusion of significant matters in non-statutory guidelines.
- **International Human Rights and Corruption (Magnitsky Sanctions) Bill 2018**: the committee leaves to the Senate the appropriateness of prescribing sanctions and penalties in delegated legislation.
- **National Integrity (Parliamentary Standards) Bill 2018**: the committee leaves to the Senate the appropriateness of reversing the burden of proof, excluding the right to a fair hearing, conferring immunity from liability and leaving significant matters to delegated legislation.
- **Sex Discrimination and Marriage Legislation Amendment (Protecting Supporters of Traditional Marriage) Bill 2018**: the committee leaves to the Senate the appropriateness of empowering delegated legislation to amend primary legislation.

- **Social Security Commission Bill 2018 (No. 2):** the committee leaves to the Senate the appropriateness of a broad delegation of administrative power.
- **Social Services and Other Legislation Amendment (Supporting Retirement Incomes) Bill 2018:** the committee received advice about leaving a number of matters under the bill to non-disallowable notifiable instruments.
- **Timor Sea Maritime Boundaries Treaty Consequential Amendment Bill 2018:** the committee received advice about allowing legislative rules to modify the operation of primary legislation.
- **Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018:** the committee is seeking advice on the appropriateness of reversing both the evidential and legal burden of proof.

### **Other legislative instruments commented on** (*[Delegated Legislation Monitor 1 of 2019](#)*)

- The Regulations and Ordinances committee commented on 37 legislative instruments registered on the Federal Register of Legislation between 22 November 2018 and 24 January 2019. The committee concluded its interest in 19 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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