



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

27 November 2015 (drawing on material in the committee's *Alert Digest No. 13 of 2015* and *Thirteenth Report of 2015*)

Introduction

This newsletter highlights key aspects of the Senate Scrutiny of Bills Committee's work, with a particular focus on information that may be useful when bills are debated and to raise awareness about scrutiny principles (see Senate Standing Order 24).

For more detail and discussion of these matters and comments on additional bills look to the committee's [Alert Digests](#) and [Reports](#). An index to all committee comments is available [here](#).

Key scrutiny issues

- **Counter-Terrorism Legislation Amendment Bill (No. 1) 2015** ([Alert Digest No. 13 of 2015](#))
 - ❖ Trespass on personal rights and liberties (various matters): The committee has sought information in relation to the following matters from the Attorney-General:
 - noting the proposed extension of the control order regime to 14 and 15 year olds—questions about the existing control order regime raised by the Independent National Security Legislation Monitor (INSLM) and the INSLM's current inquiry into control order safeguards;
 - whether consideration has been given to including a provision in the bill that would have the effect of requiring that *all* reasonable steps are taken to notify a parent or guardian where a control order decision is made in relation to a child;
 - how the independence of court appointed advocates is to be secured in practice;
 - disclosure of information provided by a child to a court appointed advocate against the wishes of the child;
 - broadening the power to issue a preventative detention order (including advice as to any relevant alternative powers at the disposal of law enforcement);
 - whether each of the powers under the proposed new 'monitoring warrant' regime are consistent with the principles in the Guide to Framing Commonwealth Offences and the approach taken in Part IAA of the Crimes Act;
 - the use of things seized or information obtained in circumstances in which the relevant control order has been declared void;
 - whether the authorisation of warrants should be limited to persons who hold judicial office;
 - the retrospective validation of dealing with information relating to preventative detention orders;
 - the proposed new offence of publicly advocating genocide (including whether it would be possible to include some guidance in the bill in relation to the meaning of 'publicly' and what conduct is intended to be captured by this proposed offence that is not already captured by current offences);
 - the apparent lowering of the threshold for issuing a delayed notification search warrant;

- provisions which would allow a court to determine that it can rely on secret evidence in particular circumstances (the committee has sought as advice as to whether the court could be expressly limited to making these three new special orders where the risk to national security is considered to reach a threshold degree of seriousness);
 - a provision which would allow the three new special orders in relation to secret evidence to be applied retrospectively to existing proceedings; and
 - a proposal which would allow taxation officers to disclose protected information to *any* Australian government agency for the purpose of preventing or investigating conduct that relates to a matter of security (the committee noted that while some breadth in the authorisation to disclose may be appropriate, the committee has sought advice about more targeted authorisation options and noted that flexibility with some parliamentary oversight could be maintained through the use of a disallowable legislative instrument to extend authorisation to additional agencies).
- ❖ Trespass on personal rights and liberties: The bill seeks to extend telecommunications interception warrants and surveillance device warrants to the control order regime. More specifically, the amendments will:
- introduce new ‘deferred reporting’ arrangements which would permit the deferral of public reporting of the use of a warrant in certain circumstances;
 - permit the issue of ‘B party’ warrants which target the telecommunications service of a person who ‘is likely to communicate with’ the person who is subject to the control order; and
 - extend the circumstances in which agencies may use specified surveillance devices without a warrant.

The committee draws this matter to the attention of Senators and leaves the question of whether the proposed approach is appropriate to the Senate as a whole.

● **Omnibus Repeal Day (Spring 2015) Bill 2015** ([Alert Digest No. 13 of 2015](#))

- ❖ Parliamentary scrutiny (guidelines for omnibus repeal day bills): As this bill is the fourth omnibus repeal day bill to be considered by the Parliament, the committee has sought advice as to whether the government has given any consideration to developing guidelines in relation to what may be included in (and what types of matters will be excluded from) these bills in order to assist parliamentary scrutiny.
- ❖ Parliamentary scrutiny (new and previously introduced measures): This bill proposes amendments across a large number of portfolios and includes some measures previously introduced in the Omnibus Repeal Day (Spring 2014) Bill, as well as new measures. In order to assist parliamentary scrutiny, the committee has sought advice as to whether the explanatory memorandum to the bill can be amended to specify whether items are new or previously introduced measures.
- ❖ Delegation of legislative power: The committee noted that part 2 of schedule 3 seeks to repeal various provisions in Communications and the Arts portfolio legislation that require rule-makers to consult before making certain legislative instruments (such as disability standards for telecommunications equipment). The committee drew Senators’ attention to comments that it made in relation to these provisions when they were previously introduced in 2014. At that time the committee noted that the default consultation requirements in the Legislative Instruments Act (the LI Act) are not the same as the consultation requirements that would be repealed by these provisions—for example, the ‘no invalidity’ clause in the LI Act would begin to apply to the making of these legislative instruments, which means that a failure to meet consultation requirements does not affect the validity or enforceability of an instrument.
- ❖ Use or disclosure of personal information: The amendments in part 1 of schedule 12 would allow a person to disclose protected social security information for the purpose of research or policy development. As there is a detailed explanation for the approach, the committee leaves the question of whether the proposed approach is appropriate to the Senate as a whole.

Other comments and responses received

- **Aviation Transport Security Amendment (Cargo) Bill 2015:** The committee had sought advice about the breadth of the power to make legislative instruments authorising the opening of cargo. The committee noted the Minister's advice that the authority to open cargo is limited to safeguarding against unlawful interference with aviation, requested that key information be included in the explanatory memorandum, and made no further comment. ([Thirteenth Report of 2015](#))
- **Migration Amendment (Charging for a Migration Outcome) Bill 2015 / Migration and Maritime Powers Amendment Bill (No. 1) 2015:** The committee thanked the Minister for revising the explanatory material accompanying these bills. ([Alert Digest No. 13 of 2015](#))

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).

For any comments or questions, please contact:

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