



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

15 September 2016 (drawing on material in the committee's *Alert Digest No. 6 of 2016*)

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

- **Budget Savings (Omnibus) Bill 2016** ([Alert Digest No. 6 of 2016](#))
 - ❖ *The committee commented on several matters in this bill and may, if necessary, comment on other measures in a future report.*
 - ❖ Parliamentary scrutiny—distinguishing new and previously introduced measures: in order to facilitate Parliamentary scrutiny of the bill, the Treasurer has been asked about amending the explanatory memorandum to clearly identify (and provide certain further information in relation to) previously introduced measures.
 - ❖ **Schedule 9 (dental services)**
 - ❖ *The committee is aware that schedule 9 has been removed from the bill, but notes that the government has indicated its intention that 'Schedule 9 be reintroduced as a standalone Bill'.*
 - ❖ Parliamentary scrutiny—section 96 grants to the States: this schedule empowers the Commonwealth executive to enter into agreements with the States relating to financial assistance for the provision of dental services. While the constitutional power to enter into these grants actually resides with the Parliament, the terms and conditions applying to these grants will largely be set out in the relevant agreement between the Commonwealth executive and the State without Parliamentary scrutiny or involvement. The committee is therefore seeking the Treasurer's advice as to whether the bill can be amended to include a requirement that relevant agreements with the States are (a) tabled in the Parliament within 15 sitting days, and (b) published on the internet within 30 days after being made.
 - ❖ Delegation of legislative power: the level of financial assistance payable under the dental services scheme is subject to a statutory funding cap, but this can be reduced in 2016-17 by the Minister by disallowable instrument. This is a significant delegation of legislative power, but given the detailed explanation and the ability for Parliament to scrutinise the matter through the disallowance process, the committee made no further comment.
 - ❖ **Schedule 13 (debt recovery)**
 - ❖ Merits review: this schedule provides authority for the secretary to issue a 'departure prohibition order' if a person owes a debt to the Commonwealth in specified circumstances. Although judicial review of these decisions will be available, merits review will not be available. As judicial review provides only very limited grounds for review, the committee drew its concern about the absence of merits review to the attention of Senators and left the matter the Senate as a whole.
 - ❖ Privilege against self-incrimination: the committee left to the Senate as a whole the appropriateness of several provisions in this schedule which abrogate the privilege against self-incrimination.

- ❖ Reversal of evidential burden of proof: the committee has sought the Treasurer's advice in relation to several provisions that place an evidential burden on the defendant (rather than the prosecution) for exceptions to certain offences.
- ❖ New explanatory memorandum: the committee thanked the Minister for including the additional information it requested previously into the current explanatory memorandum.
- **National Cancer Screening Register Bill 2016** ([Alert Digest No. 6 of 2016](#))
 - ❖ Privacy: the bill provides for the proposed National Cancer Screening Register to include certain personal information about individuals. The bill allows individuals to opt out of participation in the screening programs, and also allows an individual to elect not to have further new information included in the Register (but not to remove existing information on the Register). The committee is therefore seeking the Minister's advice as to (a) whether consideration was given to framing the register as an opt-in initiative, rather than requiring individuals to actively opt-out, and (b) the rationale for not allowing individuals to elect to have all their information removed from the Register.
 - ❖ Privacy and inappropriate delegation of legislative power:
 - the bill provides that the register may include further information prescribed by delegated legislation. The committee has asked the Minister for advice about including a specific requirement to consult the Privacy Commissioner prior to doing so.
 - the bill also authorises a person to collect, make a record of and disclose protected information for the purposes of the Register if that person is a 'prescribed body'. The committee is seeking the Minister's advice as to (a) the rationale for, and necessity of, this broad delegation of an important matter, and (b) how adequate control over personal information is to be maintained in relation to these (yet to be determined) prescribed bodies.

Bills for which the committee restated previous comments ([Alert Digest No. 6 of 2016](#))

- **Building and Construction Industry (Improving Productivity) Bill 2013**;
- **Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013**;
- **Fair Work (Registered Organisations) Amendment Bill 2014**; and
- **Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016**.

Other bills commented on in the Alert Digest ([Alert Digest No. 6 of 2016](#))

- **Corporations Amendment (Auditor Registration) Bill 2016**: this bill proposes to retrospectively validate a legislative instrument, however in light of the detailed explanation the committee made no comment.
- **Social Services Legislation Amendment (Youth Employment) Bill 2016**: the committee restated previous comments about the delegation of legislative power in this bill relating to determining the existence of a 'personal financial crisis'.
- **Statute Update Bill 2016**: the committee thanked the Attorney-General for including new information in the explanatory memorandum, which clarified a matter relating to references to dollar penalties that the committee had previously commented on.
- **Transport Security Amendment (Serious or Organised Crime) Bill 2016**: the committee noted the proposal to allow penalties of up to 200 units to be prescribed by delegated legislation (in excess of the 50 penalty unit maximum in the *Guide to Framing Commonwealth Offences*), but in light of the detailed explanation left the matter to the Senate.

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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