



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

24 November 2016 (drawing on material in the committee's *Alert Digest No. 9 of 2016* and *Ninth Report 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

- **Migration Legislation Amendment (Regional Processing Cohort) Bill 2016** ([Alert Digest No. 9 of 2016](#))
 - ❖ *Retrospective application*: The purpose of the bill is to prevent adult unauthorised maritime arrivals and transitory persons who were taken to a regional processing country after 19 July 2013 from making a valid application for any Australian visa. Applying these provisions to adults transferred after 19 July 2013 has a retrospective application. The committee has consistently highlighted that it is a basic value of the rule of law that, in general, laws should only operate prospectively, as people should be able to guide their actions on the basis of fair notice of the law applicable to them. The committee has sought a detailed justification for the retrospective application of the amendments.
- **Social Services Legislation Amendment (Family Assistance Alignment and Other Measures) Bill 2016** ([Ninth Report of 2016](#))
 - ❖ *Retrospective application*: The bill amends how 'date of effect rules' operate for certain merits review decisions. The bill seeks to apply this amendment to decisions relating to the payment of family tax benefits in the 2012-13 income year or later. The committee sought information as to how many people are likely to be affected by the retrospective application of the bill. The Minister advised that no one would suffer detriment or lose any amount already paid. However, the committee noted it remains unclear whether anyone who had an entitlement to review of a decision would now lose that entitlement.
- **VET Student Loans Bill 2016** ([Ninth Report of 2016](#))
 - ❖ *Merits review*: The bill excludes certain decisions from being subject to merits review at the Administrative Appeals Tribunal. The Minister provided detailed reasons for these exclusions; however, the committee retained scrutiny concerns regarding the exclusion of merits review of decisions involving the exercise of discretion and where the content of what is to be considered by the decision-maker is to be set out in rules that have not yet been made.
 - ❖ *Incorporating external material into the law*: The bill allows external documents (such as the Australian Qualifications Framework) to be incorporated by reference into the law. The committee noted it will generally have scrutiny concerns in relation to this approach because it raises the prospect of changes being made to the law in the absence of parliamentary scrutiny, it can create uncertainty in the law, and those obliged to obey the law may have inadequate access to its terms (for example, if a fee is required to access the external document incorporated into the law).

- ❖ *Other matters*: The committee also received a response from the Minister in relation to:
 - the imposition of vicarious liability;
 - provisions which give decision-makers a general power to reconsider a decision on their own motion;
 - the application of an infringement notice scheme to all strict liability offences and civil penalty provisions in the bill; and
 - the ability of the Secretary to delegate his or her powers to APS employees of any level.

- **VET Student Loans (Charges) Bill 2016** ([Ninth Report of 2016](#))

- ❖ *Delegation of legislative power—setting level of charge by regulation*: The bill provides for the imposition of a charge on ‘approved course providers’, with the amount of charge to be prescribed by the regulations. The Minister advised that the detail about the calculation methodology, amounts and limits to charges are still being worked through and the demand for urgent reform outweighed the benefit of delaying introduction to enable more detail to be included on the face of the bill. The committee noted it does not generally consider the need for urgency is, of itself, a sufficient justification for leaving important aspects of a legislative scheme to the regulations.

Other responses received ([Ninth Report of 2016](#))

- **Counter-Terrorism Legislation Amendment Bill (No. 1) 2016**: The committee thanked the Attorney-General for indicating that key information would be inserted into a revised explanatory memorandum, although the committee reiterated its scrutiny concerns in relation to the discretion given to the court to limit communication between a controlee and special advocate in certain circumstances.
- **Criminal Code Amendment (War Crimes) Bill 2016**: The committee received a detailed response from the Attorney-General in relation to the rationale for reversing the evidential burden of proof in the bill.
- **Industry Research and Development Amendment (Innovation and Science Australia) Bill 2016**: The committee reiterated previous scrutiny concerns in relation to authorising spending activities by regulation, parliamentary scrutiny of section 96 grants to the States, and the broad delegation of administrative powers to any Commonwealth official.

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

For any comments or questions, please contact:

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