



Department of the Senate

## Senate Scrutiny of Bills Committee

# NEWS

6 February 2017 (drawing on material in the committee's *Alert Digests and Reports*)

### 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 Digest and Report*. An index to all committee comments is available [here](#).

### New developments

- Commencing 7 February 2017, where the Scrutiny of Bills Committee has not completed its scrutiny of a bill due to the failure of a minister to respond to the committee's concerns, a temporary order of the Senate allows any Senator to ask the minister why a response has not been provided: see the committee's [webpage](#) for more information.
- Commencing this year the committee will be publishing its scrutiny comments on recently introduced bills (including responses received on matters previously considered by the committee) in a single report, the [Scrutiny Digest](#).

### Key scrutiny issues for bills listed for debate 7–9 February

- **Criminal Code Amendment (Firearms Trafficking) Bill 2016** ([Alert Digest No. 7 of 2016](#))
  - ❖ Penalties: The explanatory material does not contain sufficient justification as to why it is proposed to double the maximum penalties for firearms trafficking offences. The committee also noted that mandatory minimum sentences remove the discretion of judges to ensure penalties imposed are proportionate in light of individual circumstances.
- **Migration Amendment (Character Cancellation Consequential Provisions) Bill 2016** ([Fourth Report of 2016](#))
  - ❖ While this bill is described as making technical and consequential amendments to the *Migration Amendment (Character and General Visa Cancellation) Act 2014*, it potentially extends the reach of existing provisions about which the committee has raised scrutiny concerns. The committee sought the Minister's advice in relation to the effect of the current provisions in light of the previous scrutiny concerns. Following this advice the committee concluded that references to efficiency and consistency did adequately explain the rationale for the provisions.
  - ❖ Retrospectivity: The bill seeks to retrospectively authorise removal of people who have had their visa cancelled, which the Minister advised will provide clarity about the existence of the power to remove. The committee noted the desire for clarity to exercise coercive powers did not address the fairness of applying the power retrospectively.
- **Migration Amendment (Visa Revalidation and Other Measures) Bill 2016** ([Tenth Report of 2016](#))
  - ❖ Inappropriately defined administrative power: The bill enables the Minister to require persons holding certain types of visa to complete a revalidation check, which will consider whether there is any 'adverse information' relating to the person. There is no definition of 'adverse information' in the bill

and the revalidation check is not tied to whether the person still meets the criteria for the grant of the visa. From a scrutiny perspective, the committee considered the provision to be overly vague with limited scope for parliamentary scrutiny.

❖ *Delegation of legislative power*: The bill provides that the Minister may require a person holding a visa 'of a prescribed kind' to complete a revalidation check, with no limit on the type of visa that can be prescribed. The bill also gives the Minister the power to make a legislative instrument determining that a specified class of persons must complete the revalidation check, which is not subject to disallowance. It was not clear to the committee why the legislation does not set limits on the type of visas to be prescribed or to exempt certain visa categories from the revalidation check.

- **Privacy Amendment (Re-identification Offence) Bill 2016** ([Tenth Report of 2016](#))

❖ *Retrospective offences*: The bill makes new offences (relating to the re-identification of de-identified information) operate from 29 September 2016 (the date of the Attorney-General's announcement relating to the bill); making the offences retrospective. The committee noted its long-standing scrutiny concerns about 'legislation by press release', and that the importance of laws operating only prospectively is particularly acute in relation to the criminal law.

- **Tax and Superannuation Laws Amendment (2016 Measures No. 2) Bill 2016** ([Eighth Report of 2016](#))

❖ *Delegation of legislative power—Taxation Commissioner's remedial power*: The bill will allow the Taxation Commissioner to modify the operation of Acts passed by the Parliament in certain circumstances. From a scrutiny perspective, the committee is concerned that this power may be too broad and there is scope for further legislative guidance to constrain the use of this power. The committee also noted that it would be appropriate to include more specific consultation requirements in the bill and suggested a review into the operation of this power should be mandatory.

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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).

For any comments or questions, please contact:

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