



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

30 March 2017 (drawing on material in the committee's *Scrutiny Digest No. 4 of 2017*)

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 *Scrutiny Digests*. An index to all committee comments is available [here](#).

Key scrutiny issues (*Scrutiny Digest No. 4 of 2017*)

• Fair Work Amendment (Corrupting Benefits) Bill 2017

- ❖ Criminal offence provisions: The bill seeks to introduce a number of new offence provisions which raise the following potential scrutiny concerns:
 - Right not to be tried or punished twice (double jeopardy): The committee is seeking advice whether the concurrent operation of the new offence provisions with existing State or Territory offences would breach the right not to be tried or punished twice for the same, or substantially the same, offence;
 - Reversal of evidential burden of proof: The committee is seeking advice as to a number of exceptions to offences which reverse the evidential burden of proof; and
 - Strict liability offences: The committee is seeking advice regarding the application of strict liability to two offences.
- ❖ Significant matters in delegated legislation: The committee is seeking advice regarding the appropriateness of significant detail in relation to offences being left to be prescribed in the regulations.

• Human Rights Legislation Amendment Bill 2017

- ❖ Parliamentary scrutiny – removing requirement to table certain documents: The committee is seeking advice as to why it is proposed to remove requirements to table in Parliament certain reports; and
- ❖ Strict liability offence: The committee is seeking advice as to the appropriateness of applying strict liability to an offence of failing to attend a conciliation conference, in circumstances where there is no defence if the person had a reasonable excuse for not attending.

• Native Title (Indigenous Land Use Agreements) Bill 2017

- ❖ Retrospective application: The committee has drawn to the attention of Senators scrutiny concerns regarding the retrospective application of the bill, noting it may have significant and adverse consequences for certain native title claimants.

Other bills commented on (*Scrutiny Digest No. 4 of 2017*)

- **Banking and Financial Services Commission of Inquiry Bill 2017**: The bill would give a parliamentary commission of inquiry coercive powers and introduce a number of offences, the appropriateness of which have not been fully justified.

- **Biosecurity Amendment (Ballast Water and Other Measures) Bill 2017:** The Minister provided satisfactory advice regarding the appropriateness of a reverse evidential burden provision and a strict liability offence.
- **Civil Law and Justice Legislation Amendment Bill 2017:** The committee has scrutiny concerns regarding the retrospective application of certain measures, and a provision that enables 'an APS employee' from the Department of Immigration and Border Protection to exercise coercive powers.
- **Fair Work Amendment (Protecting Take Home Pay) Bill 2017, Fair Work Amendment (Protecting Take-Home Pay) Bill 2017, and Fair Work Amendment (Protecting Weekend Pay and Penalty Rates):** These three bills raise scrutiny questions regarding the proposed retrospective application of the measures.
- **Live Animal Export Prohibition (Ending Cruelty) Bill 2017:** The committee has scrutiny concerns regarding the incorporation of external material into the law.
- **Social Services Legislation Amendment Bill 2017:** The committee has noted the bill provides for significant matters to be included in delegated legislation.

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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