



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

7 September 2017 (drawing on material in the committee's [Scrutiny Digest No. 10 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 or considered by other Senate committees 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. 10 of 2017](#))

● **Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017**

- ❖ *Strict liability offences*: The committee is seeking advice as to the grounds for penalising persons lacking fault, in circumstances where a person could be subject to up to seven years imprisonment.
- ❖ *Significant matters in delegated legislation*: The committee is seeking advice as to why details about suspension and renewal of registrations are left to delegated legislation rather than being set out in the bill.
- ❖ *Civil penalty provisions*: The committee is seeking advice as to the appropriateness of making certain provisions, including a failure to notify of a change of circumstances, subject to civil penalties of up to 20,000 penalty units (or \$4.2 million) for an individual.
- ❖ *Fair hearing rights and immunity from liability*: The committee is seeking advice as to the appropriateness of providing immunity from civil or criminal liability to the Commonwealth and AUSTRAC for making certain decisions; and why it is necessary to remove notification requirements in certain situations.
- ❖ *Seizure powers*: The committee is seeking the Minister's justification for expanding powers for police and customs officers to seize physical currency and bearer negotiable instruments without a warrant (rather than providing that the items be secured pending obtaining of a warrant).

● **Australian Border Force Amendment (Protected Information) Bill 2017**

- ❖ *Broad scope of offence*: The committee leaves to the Senate as a whole the appropriateness of making it an offence to disclose or record any information that has a security classification, in circumstances where there is no discretion available to the court to consider if the information could be expected to prejudice the security, defence or international relations of Australia and where there is no definition of 'security classification'.

● **Product Emissions Standards Bill 2017 and related bills**

- ❖ *Significant matters in delegated legislation*: The committee leaves to the Senate as a whole the appropriateness of relying heavily on delegated legislation to determine the scope and operation of the new scheme, including in relation to the classes of products that may be part of the scheme, the process for certification and exemption, and the applicability of merits review.

- ❖ Reversal of the evidential burden of proof: The bill proposes to make it an offence to engage in certain conduct and the committee has suggested it may be appropriate to amend the bill to add an additional element to this offence, rather than placing an evidential burden of proof on the defendant.
- ❖ Determining amount of charge in delegated legislation: The related Customs and Excise bills seek to impose a charge on the importation and manufacture of 'emissions-controlled products', however the amount of the charge imposed is to be prescribed in regulations. The committee has noted that there is no guidance in relation to the amount of the charge on the face of the bill, nor are there any special disallowance procedures which recognise the fundamental role of the Parliament in levying taxation.

- **Social Services Legislation Amendment (Welfare Reform) Bill 2017**

- ❖ Significant matters in delegated legislation: The committee leaves to the Senate as a whole the appropriateness of including significant matters, relating to the drug testing of welfare recipients and the new compliance framework regarding participation payments, in delegated legislation.
- ❖ Broad delegation of administrative powers: The committee leaves to the Senate as a whole the appropriateness of allowing private contractors to make referrals as to who will be subject to income management under the drug testing trial, where there is no legislative process by which an affected person can challenge a positive drug test and the contractor's decision to make the referral does not appear to be subject to merits or judicial review.
- ❖ Broad delegation of legislative powers: The committee leaves to the Senate as a whole the appropriateness of enabling delegated legislation to be made that could bind decision-makers as to what must *not* be considered as constituting a 'reasonable excuse' for a participation failure.
- ❖ Restriction on judicial review: The committee welcomes proposed Government amendments, responding to its scrutiny concerns, that would ensure that the Secretary *must* determine that a person is not subject to income management if satisfied it would pose a serious risk to their mental, physical or emotional wellbeing.

Other bills commented on ([Scrutiny Digest No. 10 of 2017](#))

- **Education Services for Overseas Students (TPS Levies) Amendment Bill 2017**: The committee leaves to the Senate as a whole the appropriateness of allowing the Minister to alter the rate of a levy via delegated legislation.
- **Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017**: The committee is seeking advice in relation to provisions that insufficiently define disqualification powers; reverse the evidential burden of proof; and provide immunity to administrators from civil liability, and leaves to the Senate as a whole the appropriateness of three strict liability offences.
- **Migration Amendment (Regulation of Migration Agents) Bill 2017**: The committee leaves to the Senate as a whole the appropriateness of a broad delegation of administrative powers and the imposition of a strict liability offence.
- **Migration Amendment (Validation of Decisions) Bill 2017**: The committee received advice in relation to the appropriateness of retrospectively deeming decisions being valid, but as the bill has already passed makes no further comment.
- **Migration and Other Legislation Amendment (Enhanced Integrity) Bill 2017**: The committee is seeking advice in relation to the appropriateness of including significant matters in delegated legislation; the exclusion of the natural justice hearing rule; the provision of immunity for the Minister from civil liability; and the retrospective application of amendments.
- **Social Services Legislation Amendment (Cashless Debit Card) Bill 2017**: The committee is seeking advice as to why the primary legislation does not include more guidance and safeguards concerning the cashless debit card scheme, such as in relation to site selection and participant criteria.

- **Social Security Legislation Amendment (Payment Integrity) Bill 2017:** The committee leaves to the Senate as a whole the appropriateness of applying amended residency requirements to individuals who may have arranged their affairs on the basis of the existing law.
- **Telecommunications (Regional Broadband Scheme) Charge Bill 2017 and Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017:** The committee leaves to the Senate as a whole the appropriateness of allowing the Minister to alter the rate of a tax via delegated legislation and the reversal of the usual disallowance procedures.

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:

Ms Anita Coles, Secretary, Senate Scrutiny of Bills Committee T: 02 6277 3050, E: scrutiny.sen@aph.gov.au.