

Report

Introduction

1.1 On 12 November 2015, the Omnibus Repeal (Spring 2015) Bill 2015 (the bill) was introduced into the House of Representatives by the Assistant Minister for Productivity, the Hon Dr Peter Hendy MP.¹

1.2 On 26 November 2015, the Senate referred the provisions of the bill to the Senate Finance and Public Administration Legislation Committee (committee) for inquiry and report by 3 February 2016.²

Purpose of the bill

1.3 The bill seeks to amend or repeal legislation across 14 portfolios. The Explanatory Memorandum provides the following reason for the bill:

The Bill brings forward a range of non-controversial measures to reduce regulatory burden for business, families, individuals and the community sector that are not the subject of individual stand-alone bills.³

1.4 In total, this bill, together with the Statute Law Revision Bill (No.3) 2015 and the Amending Acts 1990 to 1999 Repeal Bill 2015, will repeal 905 Commonwealth Acts.⁴

Conduct of the inquiry

1.5 Details of the inquiry, including links to the bill and associated documents, were placed on the committee's website at www.aph.gov.au/senate_fpa.

1.6 The committee directly contacted a number of relevant organisations and individuals to notify them of the inquiry and invite submissions by 18 December 2015. Submissions received by the committee are listed at Appendix 1.

1.7 The committee decided to prepare its report on the basis of submissions received. The committee thanks those who assisted by providing submissions to the inquiry.

Committee's previous inquiries into Omnibus Repeal Day bills

1.8 This is the fourth Omnibus Repeal Day Bill introduced into this Parliament. The Omnibus Repeal Day (Autumn 2014) Bill 2014 received royal assent on 16 October 2014. The Omnibus Repeal Day (Spring 2014) Bill 2014 and the

1 *Votes and Proceedings*, No. 158, 12 November 2015, pp 1715-1716.

2 *Journals of the Senate*, No. 130, 26 November 2015, p. 3495.

3 Explanatory Memorandum (EM), p. 1.

4 EM, p. 1.

Omnibus Repeal Day (Autumn 2015) Bill 2015 are before the House of Representatives and the Senate, respectively.⁵

1.9 During its inquiry on the Omnibus Repeal Day (Autumn 2014) Bill 2014 (Autumn 2014 bill), the committee received a submission from the Clerk of the Senate, Dr Rosemary Laing. The Clerk suggested, given that the government intended to introduce Omnibus Repeal Day bills twice a year, consideration should be given to developing legislative policy parameters to assist parliamentary scrutiny:

A statement from the executive government about what it expects such bills to cover – and perhaps more importantly – not cover would be a useful adjunct to parliamentary scrutiny and would assist in optimising the limited resources of both Houses.⁶

1.10 The Clerk continued:

Without such an understanding of the scope of such bills in the future, the Senate may wish to apply the full range of scrutiny to bills which might otherwise be able to be considered as non-controversial.⁷

1.11 The committee supported the Clerk's suggestion that the government develop guidelines to assist parliamentary scrutiny.⁸

Comments by the Scrutiny of Bills Committee

Development of guidelines

1.12 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny Committee) noted the committee's support for guidelines. Given that Omnibus Repeal Day bills are now introduced on a regular basis, the Scrutiny of Bills Committee requested advice from the Assistant Minister for Productivity on whether the government has given consideration to developing any guidelines in relation to what may be included in (and the types of matters to be excluded from) such bills.⁹

Comments on previously introduced measures

1.13 The Scrutiny Committee noted that some of the measures in the current bill are identical to measures in the Omnibus Repeal Day (Spring 2014) Bill 2014 (Spring

5 The committee has inquired into two of these bills, see: Senate Finance and Public Administration Legislation Committee, *Omnibus Repeal Day (Autumn 2014) Bill 2014 [Provisions]*, 14 May 2014; and Senate Finance and Public Administration Legislation Committee, *Omnibus Repeal Day (Autumn 2015) Bill 2015*, 15 June 2015.

6 Senate Finance and Public Administration Legislation Committee, *Inquiry into the Omnibus Repeal Day (Autumn 2014) Bill 2014, Submission 2*, p. 4.

7 Senate Finance and Public Administration Legislation Committee, *Inquiry into the Omnibus Repeal Day (Autumn 2014) Bill 2014, Submission 2*, p. 4.

8 Senate Finance and Public Administration Legislation Committee, *Omnibus Repeal Day (Autumn 2014) Bill 2014 Report*, May 2014, p. 11.

9 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 13 of 2015*, 25 November 2015, p. 31.

2014 bill). Further, the Scrutiny Committee had commented on two of the measures which have been reintroduced in the current bill, namely:

- the proposed repeal of specific consultation provisions in various Acts within the Communications portfolio; and
- a proposed amendment to the *Social Security (Administration) Act 1999* which would allow a person to disclose certain protected information for research or policy development purposes.¹⁰

1.14 The Scrutiny Committee also commented that in addition to these previously introduced measures, the bill also proposes new measures:

As this bill is an omnibus bill which proposes amendments across a large number of portfolios, the [Scrutiny] Committee considers that it would assist Parliamentary scrutiny if the explanatory memorandum to the bill identified whether measures are new or whether they reflect items previously introduced. This would enable Senators and others to quickly determine which measures have not yet been considered by the Parliament.¹¹

1.15 The Scrutiny Committee sought the Assistant Minister's advice on whether the Explanatory Memorandum could be amended to specify whether items are new or previously introduced measures.¹²

Repeal of consultation provisions

1.16 The Scrutiny Committee referred to provisions in Part 2 of Schedule 3 of the Bill:

This Part seeks to repeal various provisions in Communications and the Arts portfolio legislation that requires rule-makers to consult before making certain legislative instruments (such as industry standards, including disability standards for telecommunications related customer equipment).¹³

1.17 The Scrutiny Committee stated that the provisions may be considered to delegate legislative powers inappropriately.¹⁴ The Scrutiny Committee's Alert Digest sets out a detailed extract from that committee's report on the Spring 2014 bill in

10 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 13 of 2015*, 25 November 2015, p. 31.

11 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 13 of 2015*, 25 November 2015, p. 32.

12 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 13 of 2015*, 25 November 2015, p. 32.

13 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 13 of 2015*, 25 November 2015, p. 32.

14 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 13 of 2015*, 25 November 2015, p. 32.

relation to these provisions, including the Parliamentary Secretary's response to the concerns raised by the Scrutiny Committee.¹⁵

Disclosure of certain protected information

1.18 The Scrutiny Committee noted that Part 1 of Schedule 12 of the bill is identical to Part 3 of Schedule 7 of the Spring 2014 bill:

Item 1 of Schedule 12 seeks to make an addition to paragraph 202(2)(e) of the *Social Security (Administration) Act 1999* to allow a person to disclose (or further use or record) protected information that has been disclosed to them under subsection 202(2C) of the Act for the purpose of research, statistical analysis or policy development, where it is consistent with the purpose of the initial disclosure.¹⁶

1.19 Noting the statement of compatibility provides a detailed explanation for this approach and that the statement suggests that safeguards are in place which will 'ensure that disclosures under this provision will not constitute arbitrary interferences with a person's privacy', the Scrutiny Committee has left the question of whether the proposed approach is appropriate to the Senate as a whole.¹⁷

Explanations contained in submissions

Department of Agriculture and Water Resources

1.20 In recommending that the bill be referred to the committee, the Senate Selection of Bills Committee identified the repeal of the *Rural Adjustment Act 1992* (RA Act) as a possible matter for the committee's consideration.

1.21 The EM noted that provisions within the RA Act have been superseded and the advisory functions established under the RA Act are now carried out through other bodies.¹⁸ The submission by the Department of Agricultural and Water Resources (DAWR) reiterated material in the EM to explain this further:

The RA Act contains obsolete provisions relating to the Rural Adjustment Scheme and the Farm Business Improvement Program. The Rural Adjustment Scheme ceased in 1997 and funding for the Farm Business Improvement Program ceased on 29 February 2008. The programs were superseded by new reforms for drought support as part of the *Intergovernmental Agreement on National Drought Program Reform* (agreed on 3 May 2013).¹⁹

15 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 13 of 2015*, 25 November 2015, pp 33-37.

16 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 13 of 2015*, 25 November 2015, p. 37.

17 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 13 of 2015*, 25 November 2015, pp 37-38.

18 EM, p. 7.

19 *Submission 2*, p. 1.

1.22 DAWR's submission also discusses the discontinuation of the National Rural Advisory Council (NRAC) pursuant to the repeal of the RA Act:

The RA Act also established the [NRAC]. NRAC was initially established as a statutory body in December 1999 as a skills-based independent advisory council. The function of the NRAC is to give the Minister [for Agriculture and Water Resources (Minister)] such advice and information as the Minister requests. This could include specific issues in relation to rural adjustment and regional issues or any other matter on which the Minister requests advice on.

On 15 December 2014, the Government announced that as part of the Australian Government's Smaller Government Reforms NRAC would merge with the Agricultural Industry Advisory Council (AIAC). AIAC is a non-statutory body which provides the [Minister] with information, advice and recommendations on contemporary issues affecting Australia's agricultural, fishing and forestry sectors.²⁰

1.23 DAWR concluded:

The membership of the AIAC contains a broad cross-section of industry and stakeholder representatives who are well placed to do work that previously may have been asked of NRAC. The merging of NRAC and the AIAC reduces duplication yet maintains the quality of information and advice provided to the [Minister] on issues affecting the portfolio.²¹

The Treasury

1.24 The Treasury noted that the bill will repeal five Acts in the Treasury portfolio:

- *Statistical Bureau (Tasmania) Act 1924*;
- *Statistics (Arrangements with States) Act 1956*;
- *Papua and New Guinea Loan (International Bank) Act 1970*;
- *Termination Payments Tax (Assessment and Collection) Act 1997*;
- *Termination Payments Tax Imposition Act 1997*.²²

1.25 In addition, the bill will repeal the standing appropriation in subsection 92Q(5) of the *Insurance Act 1973*.²³

1.26 In its submission, the Treasury stated:

As these Acts and provisions are no longer operative, they expand the volume of the law without achieving any policy goal: repealing them makes

20 *Submission 2*, pp 1-2.

21 *Submission 2*, p. 2.

22 *Submission 1*, p. 1.

23 Additional information to The Treasury's submission outlines the substance of the legislation being repealed and the reasons that the legislation is no longer required. See *Submission 1*, p. 3.

it easier for businesses, individuals and the community to identify and use current law.²⁴

Conclusion

1.27 As the committee noted in its report on the Autumn 2014 bill, it supports the periodic repeal of spent legislation to ensure legislation in the statute books is current. Further, the committee indicated it was supportive of the Clerk of the Senate's suggestion that guidelines to assist parliamentary scrutiny be developed by government.²⁵

1.28 The committee notes that the Scrutiny Committee has sought advice from the Assistant Minister as to whether the government has given consideration to developing guidelines in relation to what may be included in (and what types of matters will be excluded from) Omnibus Repeal Day bills. The committee looks forward to the Assistant Minister's response on this matter.

1.29 The committee notes that the submissions to the inquiry do not raise any issues of concern in regards to the bill.

Recommendation 1

1.30 The committee recommends that the Senate pass the bill.

Senator Cory Bernardi

Chair

24 *Submission 1*, p. 1.

25 Senate Finance and Public Administration Legislation Committee, *Omnibus Repeal Day (Autumn 2014) Bill 2014 [Provisions] Report*, May 2014, p. 11.