



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

6 March 2015 (drawing on material in the committee's *Alert Digest No. 2 of 2015* and *Second Report of 2015*)

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

- **Biosecurity Bill 2014** ([Alert Digest No. 2 of 2015](#))
 - ❖ Trespass on personal rights and liberties (various) – the bill includes a large number of issues relating to possible trespass on personal rights and liberties, including reversal of the burden of proof, privacy, liberty and freedom of movement, strict liability, entry without consent and self-incrimination. The committee has sought further information from the Minister about these matters.
 - ❖ Delegation of legislative power (various) – the bill also contains a large number of provisions which provide that legislative instruments to be made under the bill are exempt from disallowance on the basis that it would interfere with the capacity of expert decision-makers to manage biosecurity risks. In light of the explanation provided, the committee leaves consideration of the items to the Senate as a whole.
- **Enhancing Online Safety for Children Bill 2014** ([Second Report of 2015](#)) [this bill passed both Houses on 5 March 2015]
 - ❖ Delegation of legislative power – the bill contains a provision that allows legislative rules to add to the conditions which must be satisfied for material to constitute 'cyber-bullying'. The Minister provided information about the rationale for the approach and confirmed that these rules can only narrow the scope of the scheme. The committee noted this information, but as the rules may involve complex drafting has sought the Minister's advice as to whether consideration can be given to ensuring that expert drafters will be involved in the preparation of any such delegated legislation (an approach would be to make them 'regulations' rather than 'rules').
 - ❖ Discretionary powers – the committee sought advice as to whether the legislation itself should include guidance about the application of the Commissioner's intended discretion as to whether or not to investigate a complaint. The Minister noted similar powers to those proposed in the bill and perceived difficulties in codifying relevant considerations in legislation. However, the committee expressed the view that it would be desirable and possible to structure at least some legislative guidance without interfering with nuanced judgments when these are required.
 - ❖ Insufficiently defined administrative power – the commissioner will be empowered to delegate functions and powers to a body corporate in specific circumstances. The committee sought advice about this approach, and the Minister advised that this power to delegate to a body corporate may be used where it would be more effective and efficient to do so (rather than the functions and powers being performed by a government agency). The Minister provided an example of a non-profit organisation in New Zealand, although noted that to date no equivalent organisation has been

established in Australia. The Minister also stated it is not appropriate to restrict the delegation to particular levels, but that rules delegating these powers will be subject to Parliamentary scrutiny through the disallowance process. The committee noted these points, but stated that it would be desirable for appropriate arrangements for the use of powers to be required by the legislation and that involving a body corporate in the operation of the regulatory scheme arguably involves significant questions of policy that are more appropriately determined by Parliament in consideration of a specific legislative proposal (rather than through the use of delegated legislation).

- **Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014** ([Second Report of 2015](#))
 - ❖ General comment – the committee restated its view that the efficacy of increased oversight by the Ombudsman will depend upon the Ombudsman being appropriately resourced to undertake the increased oversight responsibilities set out in the bill. The committee welcomed the Attorney-General's advice that the budget for the Inspector General of Intelligence and Security will be increased.
 - ❖ Further comments about this bill can be found in the committee's [First Report of 2015](#) (pp 113–126).

Other bills for which advice is being sought from the Minister or proposer ([Alert Digest No. 2 of 2015](#))

The Senate Scrutiny of Bills Committee is also seeking advice from the relevant Minister or proposer in relation to provisions of other bills (responses will be considered and tabled in the committee's future Reports), including:

- **Appropriation Bill (No. 3) 2014-2015** (the committee is seeking advice from the Minister in relation to some items in the additional estimates bills that may have been inappropriately classified as 'ordinary annual services of the government' and therefore included in Appropriation Bill (No. 3) 2014-2015 which is not amendable by the Senate);
- **Appropriation Bill (No. 4) 2014-2015** (the committee is seeking advice from the Minister in relation to the nature of determinations made under clause 14 of the bill [these determinations relate to grants of financial assistance to the States]);
- **Criminal Code Amendment (Animal Protection) Bill 2015 [Non-government bill]** (the committee is seeking advice from the bill's proposer in relation to a number of matters including penalty provisions and provisions which reverse the burden of proof); and
- **Quarantine Charges (Imposition—Customs) Amendment Bill 2014** (the committee is seeking advice from the Minister in relation to a delegation of legislative power which would allow the Minister to prescribe the amount of certain charges connected with the administration of the Act).

Other responses received ([Second Report of 2015](#))

- **Defence Legislation Amendment (Military Justice Enhancements – Inspector-General ADF) Bill 2014;** and
- **Higher Education and Research Reform Bill 2014.**

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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