



Department of the Senate

## Senate Scrutiny of Bills Committee

# NEWS

**1 February 2016** (drawing on material in the committee's *Alert Digest No. 14 of 2015* and *Fourteenth 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

- **Australian Crime Commission Amendment (Criminology Research) Bill 2015** ([Fourteenth Report of 2015](#))
  - ❖ *Privacy*: It is unclear why the jurisdiction of the Information Commissioner, who is empowered to investigate breaches of the Privacy Act (and has relevant specialised expertise), should not be extended to investigate breaches of the disclosure regime that applies to the ACC. While the minister provided additional advice to the committee supporting the proposed approach, the committee remains of the view that that it would be appropriate for the Information Commissioner to investigate disclosure breaches.
- **Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Bill 2015** ([Alert Digest No. 14 of 2015](#))
  - ❖ *Use of delegated legislation for important matters*: The committee has sought advice about a power to use delegated legislation to prescribe additional international law enforcement bodies for the purpose of sharing AUSTRAC information (rather than including this important matter in primary legislation).
  - ❖ *Privacy*: The committee has asked whether existing safeguards for ensuring that personal information is only released for specified purposes can be made a legislative requirement, or whether there can at least be a general legislative requirement that safeguards are in place.
  - ❖ *Level of penalties*: The committee noted that the ratio between imprisonment and penalty units for two new offences relating to false dealing with accounting documents is inconsistent with other provisions in the criminal code, but the approach is justified in detail in the explanatory memorandum.
- **Migration Amendment (Complementary Protection and Other Measures) Bill 2015** ([Fourteenth Report of 2015](#))
  - ❖ *Merits review*: The bill includes a provision that expands the circumstances in which a person can be declared 'an excluded person', which then restricts access to seek merits review in the Administrative Appeals Tribunal. In response to the committee's request for additional justification, the minister noted that the intention is to ensure consistency in dealing with non-citizens of serious character concern and that while merits review can provide an important safeguard, it is not an international treaty obligation. However, as judicial review is significantly narrower than merits review, in the context of broad discretionary powers the committee retains its view that it is appropriate for merits review to be available and has left the matter to the Senate.

## Other bills for which advice is being sought from the Minister or proposer

[\(Alert Digest No. 14 of 2015\)](#)

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:

- **Corporations Amendment (Financial Advice Measures) Bill 2015** (formerly known as the Corporations Amendment (Streamlining of Future of Financial Advice) Bill 2014): The committee reiterated concerns that it had previously expressed about:
  - using regulations to initially enact changes ultimately intended for primary legislation; and
  - amendments which will allow regulations to override the effect of the primary legislation in relation to what benefits are treated as conflicted remuneration.

The committee has sought advice about (1) whether the supplementary explanatory memorandum can be amended to more clearly outline the effect of these amendments, and (2) possible examples of circumstances in which this regulation-making power may be utilised.

*[The committee has received a response from the Assistant Treasurer in relation to these matters and expects to consider the response in its next report].*

- **Family Law Amendment (Financial Agreements and Other Measures) Bill 2015:** The committee has sought advice about whether the retrospective application of certain amendments proposed in the bill to existing financial agreements may cause detriment to a party to those existing agreements.  
*[The committee has received a response from the Attorney-General in relation to these matters and expects to consider the response in its next report.]*
- **Interactive Gambling Amendment (Sports Betting Reform) Bill 2015 [Private Senator's Bill]:** The committee has sought advice about the level of penalties proposed in the bill and the delegation of legislative power in relation to a person's application to be removed from the proposed 'National Self-Exclusion Register'.
- **Labor 2013-14 Budget Savings (Measures No. 2) Bill 2015:** A proposed new interest charge regime in Schedule 5 to the bill will apply to existing outstanding debts. However, as Schedule 5 was removed from the bill the committee has only sought advice in relation to this matter in the event this measure is introduced again in the future.
- **Privacy Amendment (Protecting Children from Paparazzi) Bill 2015 [Private Member's Bill]:** The committee has sought advice about the breadth of the proposed new offence.

## Other response received [\(Fourteenth Report of 2015\)](#)

- **Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015:** The committee had sought advice about a delegation of legislative power which would permit regulations to specify what actions constitute 'significant' or 'notifiable' actions. The committee expressed the view that a revised disallowance process could be used to appropriately retain parliamentary involvement in relation to this matter without compromising flexibility and responsiveness, although as the bill has already been passed the committee made no further comment.

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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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