



Department of the Senate

## Senate Scrutiny of Bills Committee

# NEWS

23 March 2017 (drawing on material in the committee's *Scrutiny Digest No. 3 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. 3 of 2017](#))

#### ● Migration Legislation Amendment (Code of Procedure Harmonisation) Bill 2016

- ❖ Merits review: The committee restated its request for advice regarding provisions which limit merits review and the provision of written statements to merits review applicants.
- ❖ Procedural fairness: The committee considers the rules of procedural fairness require the disclosure to a review applicant of any relevant, credible and significant adverse information (or the substance of the information). Amendments to remove an entitlement for an applicant to access written material may reduce the right to procedural fairness, and the committee draws this issue to the attention of Senators.
- ❖ No-invalidity clause: The committee left to the Senate as a whole the appropriateness of a clause providing that a failure to comply with notification requirements does not affect the validity of a Tribunal's decision.

#### ● Native Title Amendment (Indigenous Land Use Agreements) Bill 2017

- ❖ Retrospective application: The bill responds to a court decision requiring *all* members of a 'registered native title claimant' to sign an Indigenous Land Use Agreement. The bill operates retrospectively to validate agreements registered (or agreed to) on or before 2 February 2017 where not all members of the claimant group signed the agreement. The committee is seeking advice on the appropriateness and fairness of the proposed retrospective application.

#### ● Therapeutic Goods Amendment (2016 Measures No. 1) Bill 2016

- ❖ Significant matters in delegated legislation: The committee considers it would be appropriate if more detail regarding a new conformity assessment body determination scheme were included in the primary legislation rather than being left to delegated legislation and draws its scrutiny concerns to the attention of Senators.
- ❖ Broad delegation of administrative power: The committee leaves to the Senate as a whole the appropriateness of regulations allowing all or any of the Secretary's powers or functions to be delegated.
- ❖ Consultation prior to making standards: The committee leaves to the Senate as a whole the appropriateness of removing the requirement for the Minister to consult with an advisory committee before making standards for medicines and other therapeutic goods.

- ❖ Criminal offence procedure: The committee considered a number of provisions that were of strict liability, imposed a reverse evidential burden of proof or abrogated the privilege against self-incrimination and in one instance draws its scrutiny concerns to the attention of Senators.

- **VET Student Loans Bill 2016**

- ❖ Significant matters in delegated legislation and broad delegation of administrative powers: The committee suggested it would be preferable to remove the power of the Minister to specify an external dispute resolution scheme by legislative instrument, and to remove a provision which would allow the Secretary to delegate any or all of his or her powers to certain non-APS employees.

### Other bills commented on ([Scrutiny Digest No. 3 of 2017](#))

- **Agriculture and Water Resources Legislation Amendment Bill 2016**: The committee leaves to the Senate as a whole the appropriateness of removing tabling requirements given its impact on parliamentary scrutiny.
- **Air Services Amendment Bill 2016**: The committee leaves to the Senate as a whole the appropriateness of leaving significant matters to delegated legislation.
- **Appropriation Bill (No. 3) 2016-2017**: The committee has revised the list of items previously identified as potentially being inappropriately classified as ordinary annual services of the government (this inappropriate classification undermines the Senate's constitutional right to amend such appropriations).
- **Appropriation Bill (No. 4) 2016-2017**: The Minister advised Budget documentation was being reviewed to consider providing more information on Commonwealth payments to the States and Territories.
- **Biosecurity Amendment (Ballast Water and Other Measures) Bill 2017**: The committee is seeking advice in relation to strict liability offences and the reversal of the evidential burden of proof.
- **Commonwealth Electoral Amendment (Donation Reform and Transparency) Bill 2017**: The committee is seeking advice in relation to the imposition of vicarious liability and the reversal of the evidential burden of proof.
- **Competition and Consumer Amendment (Exploitation of Indigenous Culture) Bill 2017**: The committee is seeking advice in relation to strict liability offences and the reversal of the evidential burden of proof.
- **Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016**: The Minister advised that amendments were being considered to make it a statutory requirement for certain incorporated material to be made available to those affected by it.
- **Criminal Code Amendment (Firearms Trafficking) Bill 2016**: The committee noted that certain amendments made to the bill address previous scrutiny comments about mandatory minimum penalties, and that other amendments further increase the proposed maximum penalties for firearms trafficking.
- **Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016**: The Attorney-General advised that management standards regarding conditions of detention would not be included in primary or delegated legislation.
- **Criminal Code Amendment (Prohibition of Full Face Coverings in Public Places) Bill 2017**: The committee received advice that amendments would be made to address the committee's concerns regarding significant matters in delegated legislation and reversal of the evidential burden of proof.
- **Customs and Other Legislation Amendment Bill 2016**: The committee left to the Senate as a whole the appropriateness of allowing penalties to be prescribed in the regulations.
- **Customs Tariff Amendment Bill 2016**: The Assistant Minister advised why it was considered necessary to move a Schedule of the Act to delegated legislation.
- **Education and Other Legislation Amendment Bill (No. 1) 2017**: The committee is seeking advice about the abrogation of the privilege against self-incrimination, reversal of the evidential burden of proof and the delegation of administrative powers to any person.

- **Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017:** The committee considers that a derivative use immunity should be provided for in relation to the abrogation of the privilege against self-incrimination.
- **Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Bill 2017:** The committee draws attention to comments that it previously made in relation to search and entry powers, privacy, reversal of the evidential burden of proof and abrogation of the privilege against self-incrimination.
- **Independent Parliamentary Expenses Authority Bill 2017:** The committee considered there remains a question, in cases such as these, as to whether the Parliament should legislate to place limits on its own powers to require the production of information.
- **Protection of the Sea (Prevention of Pollution from Ships) Amendment (Polar Code) Bill 2017:** The committee is seeking advice in relation to strict liability offences and the reversal of the evidential burden of proof.
- **Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017:** Satisfactory information was received regarding questions about retrospectivity but the committee left to the Senate as a whole the appropriateness of the reversal of the evidential burden of proof.
- **Treasury Laws Amendment (2016 Measures No. 1) Bill 2016:** The committee noted that there will not be any way to directly enforce consultation requirements in the bill.
- **Treasury Laws Amendment (2017 Measures No. 1) Bill 2017:** The committee is seeking advice about a provision that will allow ASIC to share confidential information with the ATO.
- **Treasury Laws Amendment (Combating Multinational Tax Avoidance) Bill 2017:** The Minister advised why it was appropriate that appeals on certain tax assessments go to the Federal Court and the appropriateness of the retrospective application of a measure.
- **Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016:** The committee welcomed certain amendments to the bill made in light of the committee's previous comments, but noted that it remains of the view that high level guidance about the exercise of the Secretary's disclosure power should be included in the primary legislation.

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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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