



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

11 May 2017 (drawing on material in the committee's [Scrutiny Digest No. 5 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. 5 of 2017](#))

- **ASIC Supervisory Cost Recovery Levy Bill 2017**
 - ❖ *Modified disallowance procedures*: The committee is seeking advice about a proposal to reverse the usual disallowance procedures so that where a motion to disallow an instrument is unresolved at the end of a reduced 5 sitting day disallowance period, the instrument will be taken *not* to have been disallowed (as a result if no time is available to consider the disallowance motion the instrument would prevail regardless of the attempt to disallow it).
- **Competition and Consumer Amendment (Competition Policy Review) Bill 2017**
 - ❖ *Significant penalties*: The committee is seeking advice as to why the penalty applicable to offences for failure to give evidence or produce information before the ACCC is being substantially increased for individuals and whether this accords with comparable Commonwealth offences.
 - ❖ *Reversal of legal burden of proof*: The committee is seeking advice as to why it is appropriate to reverse the *legal* burden of proof and why it is not sufficient to reverse the *evidential* burden of proof.
 - ❖ *Retrospective commencement*: The committee is seeking advice as to why certain amendments are to commence retrospectively.
- **Fair Work Amendment (Corrupting Benefits) Bill 2017**
 - ❖ The committee draws the following scrutiny comments to the attention of Senators:
 - *Reversal of evidential burden of proof*: The committee considers that the matters for each defence are likely to be within the defendant's knowledge, but the offence as drafted is overly broad, relying heavily on defences to carve out legitimate transactions;
 - *Strict liability offences*: The committee considers it is not appropriate to penalise persons lacking fault in relation to each element to which strict liability applies, particularly in the context of the applicable penalties (including up to two years imprisonment);
 - *Significant matters in delegated legislation*: The committee does not consider it appropriate to include elements of offence or civil penalty provisions in delegated legislation and that specific consultation obligations should be included if delegated legislation is to be made.
- **National Vocational Education and Training Regulator (Charges) Amendment (Annual Registration Charge) Bill 2017**

- ❖ Determining method and rate of taxation in delegated legislation: This bill will impose a National VET Regulator charge as a tax, however the method of calculation and the rate is left to be determined by legislative instrument. As one of the most fundamental functions of the Parliament is to levy taxation, the committee considers it would be preferable that these details were included in primary legislation, or that at least some guidance is included on the face of the bill.
- ❖ Retrospective validation: The committee leaves to the Senate as a whole the appropriateness of the retrospective validation of annual registration monies already collected that may have been invalidly levied.
- **Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017**
 - ❖ Significant penalties: The committee is seeking advice as to why the penalty for offences of failure to attend as a witness, produce a document or answer a question before a Royal Commission is being substantially increased to up to two years imprisonment (without the possibility of a fine) and whether this accords with comparable Commonwealth offences.
 - ❖ Privilege against self-incrimination and reversal of the evidential burden of proof: The committee is seeking advice regarding the appropriateness of provisions that abrogate the privilege against self-incrimination and reverse the evidential burden of proof.

Other bills commented on ([Scrutiny Digest No. 5 of 2017](#))

- **Banking Amendment (Establishing an Effective Code of Conduct) Bill 2017**: The committee is seeking advice as to why it is proposed to delegate the central details of this new regulatory scheme to the Minister.
- **Civil Law and Justice Legislation Amendment Bill 2017**: The committee considers that it would be appropriate if the bill were amended to restrict who could exercise coercive powers and is satisfied that amendments regarding arbitration do not apply retrospectively.
- **Communications Legislation Amendment (Deregulation and Other Measures) Bill 2017**: The committee is seeking advice in relation to the proposed removal of existing requirements to table documents in Parliament and to undertake specific consultation prior to the making of delegation legislation.
- **Criminal Code Amendment (Protecting Minors Online) Bill 2017**: The committee leaves to the Senate as a whole the appropriateness of reversing the legal burden of proof.
- **Defence Legislation Amendment (2017 Measures No. 1) Bill 2017**: The committee is seeking advice as to why it is appropriate for a complaints and mediation scheme to be specified in delegated legislation, rather than in primary legislation.
- **Education and Other Legislation Amendment Bill (No. 1) 2017**: The Minister provided a response to the committee's scrutiny concerns, but as the bill has passed the committee made no further comment.
- **Electoral and Other Legislation Amendment Bill 2017**: The committee is seeking advice about the inclusion of significant matters in delegated legislation and an apparent reversal of the evidential burden of proof.
- **Fair Work Amendment (Pay Protection) Bill 2017**: The committee is seeking advice as to whether the bill will apply retrospectively to existing enterprise agreements.
- **Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017**: The Minister provided satisfactory advice regarding the appropriateness of a reverse evidential burden provision.
- **Human Rights Legislation Amendment Bill 2017**: The Minister provided a response to the committee's scrutiny concerns, but as the bill has passed the committee made no further comment.
- **Live Animal Export Prohibition (Ending Cruelty) Bill 2017**: The committee noted advice that amendments could be made regarding the incorporation of external material into the law.

- **Migration Legislation Amendment (Code of Procedure Harmonisation) Bill 2016:** The committee draws its scrutiny concerns regarding limitations on merits review and the inclusion of key merits review provisions in delegated legislation to the attention of Senators.
- **Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Bill 2017:** The committee is seeking advice about the reversal of the evidential burden of proof, the inclusion of significant matters in delegated legislation and proposed strict liability offences.
- **Parliamentary Business Resources Bill 2017:** The committee is seeking advice as to why the detail of what constitutes 'parliamentary business' is to be included in *non-disallowable* delegated legislation, and leaves to the Senate the appropriateness of exempting certain other determinations from disallowance and including significant matters in delegated legislation.
- **Petroleum and Other Fuels Reporting Bill 2017:** The committee is seeking advice in relation to the broad delegation of coercive powers to APS employees at any level and to private consultants and contractors.
- **Protection of the Sea (Prevention of Pollution from Ships) Amendment (Polar Code) Bill 2017:** The Minister provided satisfactory advice regarding the appropriateness of a strict liability offence and a reverse evidential burden provision.
- **Transport Security Amendment (Serious Crime) Bill 2016:** The committee is seeking advice about the House of Representatives' reasons for disagreeing to Senate amendments which provide that the regulations must provide for reconsideration and merits review.
- **Treasury Laws Amendment (2017 Measures No. 1) Bill 2017:** The Minister provided a response to the committee's scrutiny concerns, but as the bill has passed the committee made no further comment.
- **Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017:** The committee is seeking advice in relation to the broad delegation of administrative powers to APS employees at any level and the incorporation of external material into the law.

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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