



Department of the Senate

## Senate Scrutiny of Bills Committee

# NEWS

15 June 2017 (drawing on material in the committee's [Scrutiny Digest No. 6 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. 6 of 2017](#))

#### ● Appropriation Bill (No. 1) 2017-2018 and Appropriation Bill (No. 2) 2017-2018

- ❖ *Parliamentary scrutiny of appropriations*: One of the core functions of the Parliament is to scrutinise appropriations of money proposed by the executive. The committee is therefore seeking the Minister's advice in relation to a number of matters including:
  - the apparent inappropriate classification of items as ordinary annual services of the government (which are not amendable by the Senate);
  - provisions which allow the Finance Minister to provide for urgent additional appropriations in a non-disallowable legislative instrument;
  - the provision of information about grants to the States and Territories; and
  - parliamentary scrutiny of debit limits for certain grant programs (which appear to be set well above the expected level of expenditure).

#### ● ASIC Supervisory Cost Recovery Levy Bill 2017

- ❖ *Modified disallowance procedures*: The committee draws to the attention of Senators its scrutiny concerns in relation to a provision which would weaken the Senate's oversight of certain legislative instruments by reversing the usual disallowance procedure so that instruments will remain in force if a notice of motion to disallow is not resolved within a reduced five sitting day disallowance period.

#### ● Australian Education Amendment Bill 2017

- ❖ *Significant matters in delegated legislation*: The committee is seeking the Minister's advice in relation to setting a limit on the extent to which the share of Commonwealth funding for government and non-government schools can be modified by regulations and why all of the details of the new transitional adjustment funding scheme for schools are left to be worked out in delegated legislation.
- ❖ *Parliamentary scrutiny of grants to the States*: The committee is seeking the Minister's advice in relation to the appropriateness of amending the bill to include at least some high-level policy initiatives and school reform priorities which States will be required to implement and for relevant agreements with the States to be tabled in Parliament and published on the internet.

#### ● Competition and Consumer Amendment (Competition Policy Review) Bill 2017

- ❖ *Significant penalties*: The committee draws to the attention of Senators the appropriateness of doubling the period of imprisonment (to two years) for offences of failure to give evidence or produce information to the ACCC, as it is unable to conclude that this increase is consistent with other comparable Commonwealth offences and is necessary in the circumstances.
- **National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017**
  - ❖ *Broad discretionary powers*: The committee is seeking advice in relation to the NDIS Commissioner's broad power to disclose personal information and whether guidance on the exercise of the power can be included in primary legislation and why there is no positive requirement to make rules regulating the exercise of the power.
  - ❖ *Significant matters in delegated legislation*: The committee is seeking advice as to why a number of significant matters (including a Code of Conduct, breach of which could lead to significant penalties) is to be left to delegated legislation.
  - ❖ *Broad delegation of administrative powers*: The committee is seeking advice as to why certain monitoring and investigatory powers are to be conferred on any 'other person' and why it is necessary to allow the NDIS Commissioner's powers to be delegated to a Commission officer at any level.
  - ❖ *Fair hearing and review rights*: The committee is seeking advice as to the justification for removing the right of persons to make submissions before the making of a banning order in certain circumstances and whether any decisions are excluded from merits review.
- **Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017**
  - ❖ *Significant penalties*: The committee draws to the attention of Senators the appropriateness of substantially increasing the penalty for offences of failure to attend as a witness, produce a document or answer a question before a Royal Commission (up to two years imprisonment), noting that this appears to be inconsistent with comparable Commonwealth offences and could apply broadly to any person before a Royal Commission.
  - ❖ *Privilege against self-incrimination*: The committee draws to the attention of Senators the appropriateness of abrogating the privilege against self-incrimination.

### Other bills commented on ([Scrutiny Digest No. 6 of 2017](#))

- **Competition and Consumer Amendment (Exploitation of Indigenous Culture) Bill 2017**: The committee has scrutiny concerns in relation to the breadth of the proposed offence in this bill.
- **Defence Legislation Amendment (2017 Measures No. 1) Bill 2017**: The committee has suggested a possible amendment to ensure that a review is conducted into the desirability of moving the defence reserve service complaints and mediation scheme from the regulations to primary legislation.
- **Education Legislation Amendment (Provider Integrity and Other Measures) Bill 2017**: The committee is seeking advice as to why the test for a 'fit and proper person' is to be included in an instrument rather than primary legislation and why certain investigatory powers are to be conferred on any 'other person'.
- **Electoral and Other Legislation Amendment Bill 2017**: The committee has scrutiny concerns in relation to consultation obligations prior to making certain regulations.
- **Fair Work Amendment (Pay Protection) Bill 2017**: Following receipt of a response from the proposing Senator the committee has no remaining scrutiny concerns in relation to this bill.
- **Government Procurement (Judicial Review) Bill 2017**: The committee is seeking advice as to why the Minister is to be given a broad power to exempt classes of procurement from the operation of the bill and whether the bill could be amended to restrict the power.
- **Imported Food Control Amendment Bill 2017**: The committee is seeking advice as to why guidelines on the exercise of certain powers will not be subject to parliamentary disallowance; whether the bill should be amended to require different decision-makers for the making and extension of holding orders; why certain

monitoring and investigatory powers are conferred on any 'other person'; and whether the bill should be amended to require the Secretary to have regard to any submissions made by the Information Commissioner prior to disclosing information.

- **Industrial Chemicals Bill 2017:** The committee is seeking advice about the abrogation of the privilege against self-incrimination, the incorporation of external material into the law and whether any decisions are excluded from merits review.
- **Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017:** The committee is seeking advice as to why it is necessary to disapply subsection 12(2) of the *Legislation Act 2003*, relating to the making of retrospective transitional rules.
- **Industrial Chemicals Charges (General) Bill 2017, Industrial Chemicals Charges (Customs) Bill 2017; and Industrial Chemicals Charges (Excise) Bill 2017:** The committee is seeking advice as to why there are no limits as to the level of charges in the primary legislation and whether guidance and a maximum level of charge can be included in the bill.
- **Major Bank Levy Bill 2017:** The committee is seeking advice as to the incorporation of external material into the law.
- **National Vocational Education and Training Regulator (Charges) Amendment (Annual Registration Charge) Bill 2017:** The committee welcomed foreshadowed government amendments which would set a maximum charge on the face of the primary legislation and left to the Senate the appropriateness of allowing the method for calculation and amount of taxation to be determined by legislative instrument.
- **Ozone Protection and Synthetic Greenhouse Gas Management Legislation Amendment Bill 2017:** The Minister provided satisfactory advice regarding reversal of the evidential burden of proof, strict liability offences and the inclusion of significant matters in delegated legislation.
- **Petroleum and Other Fuels Reporting Bill 2017:** The committee considered that it would be appropriate if the power to delegate compliance monitoring powers were limited to those with appropriate training.
- **Transport Security Amendment (Serious Crime) Bill 2016:** The committee considers that it may be possible to address concerns about inserting into the bill a requirement for merits review of certain decisions by re-drafting the amendments already agreed to.
- **Treasury Laws Amendment (2017 Measures No. 2) Bill 2017:** The committee is seeking advice as to why certain amendments relating to superannuation apply retrospectively.
- **Treasury Laws Amendment (Major Bank Levy) Bill 2017:** The committee is seeking advice as to the reversal of the evidential burden of proof and the incorporation of external material into the law.
- **Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017:** The committee welcomed undertakings by the Minister to appropriately limit the delegation of administrative powers and in relation to the incorporation of external material into the law.

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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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