



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

19 October 2017 (drawing on material in the committee's *Scrutiny Digest No. 12 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. 12 of 2017](#))

● Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017

- ❖ *Procedural fairness*: the committee is seeking advice as to why it is necessary to give the Attorney-General a broad discretionary power not to provide notice before revoking a person's parole, or not to give reasons for why parole has been refused.
- ❖ *Limitation on judicial discretion*: the committee is seeking advice as to the appropriateness of removing judicial discretion in the sentencing of certain offenders (in relation to mandatory minimum sentences and limiting suspended sentences).
- ❖ *Presumption against bail*: the committee is seeking advice as to the appropriateness of imposing a presumption against bail, rather than specifying matters a bail authority must have regard to.
- ❖ *Reverse legal burden*: the committee is seeking advice as to why it is proposed to reverse the legal burden of proof, including why it is insufficient to apply a reverse *evidential* burden.

● Defence Legislation Amendment (Instrument Making) Bill 2017

- ❖ *Significant matters in delegated legislation*: The committee is seeking advice as to why details regarding defence force commissions of inquiry are left to delegated legislation and leaves to the Senate the appropriateness of leaving to delegated legislation the power to regulate matters in defence aviation areas.
- ❖ *Broad delegation of administrative powers*: The committee is seeking advice as to why it is necessary to confer monitoring powers on any 'other person' assisting an authorised person, and the appropriateness of amending the bill to require any person assisting to possess specified skills, training or experience.
- ❖ *Use of force*: The committee is seeking advice as to the justification for empowering an authorised person to use force against persons when executing a search warrant in defence aviation areas.

● Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017

- ❖ *Undue trespass on personal rights and liberties*: the committee leaves to the Senate the appropriateness of empowering the Minister, by legislative instrument, to prohibit 'things' (e.g. mobile phones) in immigration detention facilities, and to enable authorised persons to search, screen or strip-search a detainee or their personal effects, regardless of the level of risk posed by different detainees.

- ❖ Significant matters in delegated legislation: the committee is seeking advice as to the necessity and appropriateness of delegating to the Minister the decision as to what items are to be prohibited in immigration detention facilities and what consultation will be conducted before making the instrument.
 - ❖ Broad delegation of administrative powers: the committee is seeking advice as to who will be authorised to exercise coercive search powers in immigration detention facilities and what training and qualifications, if any, will be required of such persons.
- **Migration and Other Legislation Amendment (Enhanced Integrity) Bill 2017**
 - ❖ Significant matters in delegated legislation: the committee considers it may be appropriate for the bill to be amended to set out the type of information the Minister can publish about actions taken against certain employers and otherwise leaves to the Senate the appropriateness of leaving significant matters to delegated legislation.
 - ❖ Procedural fairness: the committee considers it may be appropriate for the bill to be amended to limit the exclusion of the natural justice hearing rule and to require, where a review is pending in relation to action taken against employers, that that information be published alongside the action taken.
 - ❖ Immunity from liability and retrospective application: the committee leaves to the Senate as a whole the appropriateness of giving the Minister immunity from civil liability for the publication of information on actions taken against employers, and the appropriateness of retrospectively applying the proposed amendments.
 - **Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Bill 2017**
 - ❖ Delegated legislation not subject to disallowance: The committee is seeking advice as to why it is proposed that the authorisation of the external dispute resolution scheme is to be done by notifiable instrument, which is not subject to disallowance.
 - ❖ Exclusion of judicial review: The committee is seeking advice as to the effect of excluding superannuation decisions and determinations made by the proposed Australian Financial Complaints Authority (AFCA) from judicial review.
 - ❖ Privacy: The committee is seeking advice on the type of information that may be disclosed to AFCA and the details of any safeguards to maintain the confidentiality of this information.
 - ❖ Significant matters in delegated legislation: The committee is seeking advice as to the justification for setting out requirements in delegated legislation in cases where a breach of those requirements would constitute an offence.

Other bills commented on ([Scrutiny Digest No. 12 of 2017](#))

- **Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2017**: The committee leaves to the Senate the appropriateness of the imposition of strict liability offences and significant civil penalties; significant matters in delegated legislation; immunity from civil or criminal liability; limitations on the right to a fair hearing; and broadening search and seizure powers.
- **Appropriation Bill (No. 1) 2017–2018**: The committee drew senators' attention to a provision which allows the Finance Minister to provide additional appropriations to agencies through a non-disallowable legislative instrument, and also notes the inappropriate classification of items in appropriation bills undermines the Senate's constitutional right to amend proposed laws appropriating revenue or moneys for matters not involving the ordinary annual services of the government.
- **Appropriation Bill (No. 2) 2017–2018**: The committee noted that setting the debit limit for certain grant programs well above the expected level of expenditure may undermine parliamentary oversight of these programs, and received advice regarding the provision of information in Budget documentation about section 96 grants to the States and Territories.
- **Competition and Consumer Amendment (Exploitation of Indigenous Culture) Bill 2017**: The committee leaves to the Senate the appropriateness of a broadly drafted strict liability offence provision.

- **Customs Amendment (Singapore-Australia Free Trade Agreement Amendment Implementation) Bill 2017:** The committee leaves to the Senate the appropriateness of allowing the incorporation by reference into the law of material that may not be freely and readily available.
- **Fair Work Amendment (Terminating Enterprise Agreements) Bill 2017:** The committee leaves to the Senate the appropriateness of applying the proposed amendments retrospectively.
- **Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017:** The committee received advice on potential insufficiently defined disqualification powers; the reversal of the evidential burden of proof; and immunity from civil liability.
- **Family Assistance and Child Support Legislation Amendment (Protecting Children) Bill 2017:** The committee is seeking advice as to the whether certain provisions would have a retrospective effect and leaves to the Senate the appropriateness of extending the Departure Prohibition Order scheme.
- **Investigation and Prosecution Measures Bill 2017:** The committee is seeking advice as to why it is necessary to validate regulations with retrospective effect, and any detrimental effect this may have on any individual.
- **Marriage Law Survey (Additional Safeguards) Bill 2017:** The committee noted a number of scrutiny concerns but made no further comment as the bill has passed.
- **Renewable Fuel Bill 2017:** The committee leaves to the Senate the appropriateness of an offence provision that reverses the evidential burden of proof, imposes a significant maximum penalty and uses regulations to prescribe matters central to the offence.
- **Social Services Legislation Amendment (Cashless Debit Card) Bill 2017:** The committee received advice on the inclusion of significant matters in delegated legislation.
- **Therapeutic Goods Amendment (2017 Measures No. 1) Bill 2017:** The committee is seeking advice as to the appropriateness of restricting merits review in relation to provisionally registered medicines.
- **Therapeutic Goods (Charges) Amendment Bill 2017:** The committee is seeking advice as to why there are no limits on the prescription of an annual charge in regulations.
- **Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017:** The committee is seeking advice as to the justification for the proposed penalties applicable to a range of strict liability offences, and for a broadly framed offence that reverses the evidential burden of proof and allows exceptions to be prescribed in regulations.
- **Treasury Laws Amendment (2017 Measures No. 5) Bill 2017:** The committee received advice on the inclusion of significant matters in delegated legislation; matters relating to procedural fairness; and immunity from civil or criminal liability.
- **Treasury Laws Amendment (Housing Tax Integrity) Bill 2017 and Foreign Acquisitions and Takeovers Fees Imposition Amendment (Vacancy Fees) Bill 2017:** The committee received advice on the retrospective application of several measures and the availability of merits review.

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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