

APPENDIX 3
Senate Scrutiny of Bills Committee
Alert Digest No. 5 of 2013

Australia Council Bill 2013

Introduced into the House of Representatives on 20 March 2013

Portfolio: Regional Australia, Local Government, Arts and Sport

Background

This bill will replace the *Australia Council Act 1975*, as recommended in the report of the *Review of the Australia Council*, which was publicly released on 15 May 2012.

The bill will:

- provide the Council the flexibility to establish committees, including for the purposes of awarding grants based on peer assessment; and
- introduce a skills-based governing board consisting of a Chair, Deputy Chair, and between five and nine other members with arts or corporate knowledge or expertise, and the CEO as an ex-officio Board member.

The committee has no comment on this bill.

Australia Council (Consequential and Transitional Provisions) Bill 2013

Introduced into the House of Representatives on 20 March 2013

Portfolio: Regional Australia, Local Government, Arts and Sport

Background

This bill contains consequential amendments and transitional provisions related to the replacement of the *Australia Council Act 1975* by the Australia Council Bill 2013, as recommended in the report of the *Review of the Australia Council*, which was publicly released on 15 May 2012.

Schedule 1 of the bill provides for the repeal of the *Australia Council Act 1975*.

Schedule 2 of the bill contains transitional provisions which allow for the continued operation of the Council during the transition period.

Trespass on personal rights and liberties—reversal of onus of proof

Schedule 2, subitem 14(3)

Item 13 of Schedule 2 imposes obligations on the members of the new Board to prepare, on behalf of the previous Board, an annual report in accordance with Schedule 1 of the *CAC Act* for the transitional reporting period. Item 14 is included to ensure compliance with these obligations. Subitem 14(2) provides that a breach of these obligations will be a civil penalty provision for the purpose of the *CAC Act*, though a pecuniary penalty order can only be made in respect of a serious contravention (this is the effect of paragraph 14(2)(a) - see the explanatory memorandum at page 11).

Subitem 14(3) provides that in circumstances in which a contravention of the final annual reporting obligations (pursuant to item 13) consists of an omission from the financial statements that 'it is a defence if the defendant proves that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by the Finance Minister's orders to be included in the statements'.

The statement of compatibility argues that any contravention of reporting obligations required by item 13, as detailed in item 14, is a civil penalty and not a criminal charge (see pages 3 and 4). Nevertheless, contraventions may result in the imposition of a pecuniary penalty. The explanatory memorandum does not address why the proposed approach, in which the defendant will be required to prove the matters referred to in subitem 14(3) is appropriate. **The committee therefore seeks the Minister's advice as to the rationale because it is not clear that they are matters which would be peculiarly within the defendant's knowledge.**

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

