SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

SIXTEENTH REPORT

OF

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Members of the Committee

Current members

Senator Helen Polley (Chair)	ALP, Tasmania
Senator John Williams (Deputy Chair)	NATS, New South Wales
Senator Cory Bernardi	LP, South Australia
Senator the Hon Bill Heffernan	LP, New South Wales
Senator the Hon Kate Lundy	ALP, Australian Capital Territory
Senator Rachel Siewert	AG, Western Australia

Secretariat

Ms Toni Dawes, Secretary
Mr Glenn Ryall, Principal Research Officer
Ms Ingrid Zappe, Legislative Research Officer

Committee legal adviser

Associate Professor Leighton McDonald

Committee contacts

PO Box 6100
Parliament House
Canberra ACT 2600
Phone: 02 6277 3050
Email: scrutiny.sen@aph.gov.au
Website: http://www.aph.gov.au/senate_scrutiny

Terms of Reference

Extract from **Standing Order 24**

(1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate or the provisions of bills not yet before the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

(b) The committee, for the purpose of reporting on its terms of reference, may consider any proposed law or other document or information available to it, including an exposure draft of proposed legislation, notwithstanding that such proposed law, document or information has not been presented to the Senate.

(c) The committee, for the purpose of reporting on term of reference (a)(iv), shall take into account the extent to which a proposed law relies on delegated legislation and whether a draft of that legislation is available to the Senate at the time the bill is considered.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTEENTH REPORT OF 2014

The committee presents its *Sixteenth Report of 2014* to the Senate.

The committee draws the attention of the Senate to clauses of the following bills which contain provisions that the committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014

Introduced into the Senate on 24 September 2014
Received the Royal Assent on 3 November 2014
Portfolio: Attorney-General

Introduction

The committee initially dealt with this bill in its *Alert Digest relating to the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* which was presented out of sitting on 13 October 2014. The Attorney-General responded to the committee's comments in a letter dated 21 October 2014. The committee then sought further information and the Attorney-General responded in letters received 27 October 2014 and 24 November 2014.

Background

The bill seeks to amend several Acts relating to counter-terrorism including:

- amending Australia's counter-terrorism legislative framework to provide additional powers to security agencies;
- introducing a new offence of 'advocating terrorism';
- creating a new offence of entering a declared area overseas where terrorist organisations are active;
- expanding existing Customs detention powers;
- allowing the Department of Immigration and Border Protection to collect, access, use and disclose personal identifiers for purposes of identification of persons who may be a security concern to Australia or a foreign country;
- amending the arrest threshold for foreign incursion and terrorism offences to allow police to arrest individuals on reasonable suspicion;
- cancelling welfare payments for individuals of security concern;
- enabling the Minister for Immigration to cancel the visa of a person who is offshore where ASIO suspects that the person might be a risk to security; and
- enabling the Minister for Foreign Affairs to temporarily suspend a passport to prevent a person who is onshore in Australia from travelling overseas where ASIO has unresolved security concerns.

Attorney-General's general comment - extract

I note the Committee has requested further information in relation to the reviewability of decisions to cancel welfare payments under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) and the exclusion of natural justice in relation to discretionary cancellation of visas under 134F of the new Subdivision FB of the *Migration Act 1958.* I trust the following will provide sufficient information to address the Committee's concerns.

Alert Digest relating to the Counter-Terrorism Legislation Amendment (Foreign Fighters) - extract

Merits and judicial review
Schedule 2

The above question in relation to the broad discretion provided to ministers is of considerable importance given that it appears that the key decisions leading to the cancellation of payments will not be subject to normal merits review arrangements. (See, for example, item 2, proposed section 57GR of the *A New Tax System (Family Assistance) Act 1999*; item 3, proposed section 278K of the *Paid Parental Leave Act 2010*). It should also be noted that the requirement to give reasons under the ADJR Act will not apply in relation to these decisions by virtue of item 8 of Schedule 2. Without a statement of reasons for the decisions resulting in the cancellation of payments the practical utility of any judicial review would be negligible. The explanatory memorandum simply restates the effect of the provision other than to say that 'the reviewability of decisions […] is limited for security reasons'.

The committee therefore seeks further advice from the Attorney-General as to the justification for the limitations on the reviewability of these decisions, and whether removing the obligation to provide reasons, will undermine what review procedures remain.

> *Pending the Attorney-General's reply, the committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the committee's terms of reference.*

Attorney-General's initial response - extract

For security reasons, the decisions of the Foreign Affairs Minister, Immigration Minister and Attorney-General to issue notices in relation to stopping welfare payments will not be subject to merits review. This is because the decisions to issue the notices will be based on security advice which may be highly classified and could include information that if disclosed to an applicant may put Australia's security at risk.

The decisions of the Foreign Affairs Minister, Immigration Minister and Attorney-General to issue notices in relation to stopping welfare payments will be reviewable under the *Administrative Decisions (Judicial Review) Act 1977*, but for security reasons, there will be no requirement to provide reasons. The reasons for the decisions to issue the notices will be based on security advice which may be highly classified and could include information that if disclosed to an applicant may put Australia's security at risk.

However, given any decision by the Attorney-General to cancel welfare payments is triggered by the cancellation of a visa or the cancellation of, or refusal to issue an Australian passport, an individual will be able to obtain reasons for, and seek review of the decision to cancel a visa or the cancellation of, or refusal to issue, a passport. This would include merits review under the AAT Act of an adverse security assessment made by ASIO in support of those decisions.

Committee's initial response

The committee thanks the Attorney-General for this response.

The committee remains concerned that the judicial review of a decision to cancel welfare payments will be undermined by the lack of a statement of reasons for the decision.

Further, the committee considers the merits review of a decision to cancel or refuse the issue of a visa to be a separate circumstance from the decision to cancel welfare payments, due to the ministerial discretion involved in the cancellation of welfare payments. **The committee therefore seeks further advice from the Attorney-General as to whether consideration has been given to addressing concerns regarding the review mechanisms, such as the recent recommendation from COAG for a 'nationwide system of special advocates' that could participate in review process with all the facts of the case before them.**

Attorney-General's further response (1 of 2) - extract

In relation to judicial review, although there will be no requirement to provide reasons for the decision, this will not prevent reasons from being provided to the person, where appropriate. As much information as possible will be provided to the person so long as the disclosure of that information would not prejudice national security.

The COAG Review recommendation for a system of special advocates was in relation to control order proceedings rather than legal proceedings in general. However, COAG recently decided not to pursue that recommendation, noting that the Commonwealth has significant reservations about introducing a regime of special advocates in respect of national security litigation.

Committee's further response (1 of 2)

The Committee thanks the Attorney-General for this further response.

The response does not address the point raised by the committee that the key decision in the cancellation of welfare payments will not be subject to normal merits review arrangements. The committee therefore restates its concern that merits review of a decision to cancel or refuse the issue of a visa is a separate circumstance from the decision to cancel welfare payments, due to the ministerial discretion involved in the cancellation of welfare payments. Without further justification the committee is not yet convinced that merits review is inappropriate. **The committee draws the matter to the attention of Senators, and in light of the explanation provided by the Attorney-General, leaves the appropriateness of the approach to the Senate as a whole.**

In relation to the second point on the provision of reasons for a decision pursuant to the *Administrative Decisions (Judicial Review) Act 1977*, the committee notes the Attorney-General's statement that 'although there will be no requirement to provide reasons for the decision, this will not prevent reasons from being provided to the person, where appropriate'. The committee further notes the Attorney-General's advice that 'as much information as possible will be provided to the person so long as the disclosure of that information would not prejudice national security.' However the committee is not reassured by this response as it remains the case that the provision of reasons is to be determined in the exercise of a discretionary power. The committee's preference is for there to be a right to reasons for such a significant decision, even if it is necessary to provide for limitations to the information which must be disclosed.

(continued)

While it may not be possible to disclose all information, **the committee seeks further advice as to why the problem cannot be adequately resolved through the application of paragraph 14(1)(a) of the *Administrative Decisions (Judicial Review) Act 1977*. That paragraph provides that the Attorney-General may certify that disclosure of information concerning a specified matter would be contrary to the public interest 'by reason that it would prejudice the security, defence or international relations of Australia'.**

Attorney-General's further response (2 of 2) - extract

Merits review-Schedule 2-*Administrative Decisions (Judicial Review) Act 1977*

Following consideration of the Committee's comments on the reviewability of decisions to cancel welfare payments, the Bill was amended to remove the exemption under Schedule 2 of the ADJR Act. Following those amendments, section 13 of the ADJR Act will apply to Ministers' decisions to issue a notice. The individual may be provided with the reasons for the cancellation unless disclosure of those reasons would prejudice Australia's security, defence or international relations. Where disclosure of information supporting those reasons is not possible for security reasons, the Attorney-General can certify that disclosure would be contrary to the public interest under paragraph 14(1)(a) of the ADJR Act.

Committee's further response (2 of 2)

The committee thanks the Attorney-General for this further response and for moving an amendment to the bill which addresses the committee's concerns about the provision of reasons regarding Ministers' decisions to issue notices in relation to stopping welfare payments.

The committee does, however, also reiterate its general view that it remains unconvinced that merits review is inappropriate in relation to the decision to cancel welfare payments.

Alert Digest relating to the Counter-Terrorism Legislation Amendment (Foreign Fighters) - extract

Possible undue trespass on personal rights and liberties—procedural fairness
Schedule 4, item 4, proposed new subdivision FB of the *Migration Act 1958*

This proposed new subdivision provides for the emergency cancellation of temporary and permanent visas on security grounds in relation to persons outside Australia.

The explanatory memorandum (at p. 187) contains a detailed explanation of the new powers:

> This Schedule creates a new obligation on the Minister for Immigration to cancel a visa held by a non-citizen who is outside Australia. These amendments will strengthen the government's capacity to proactively mitigate security risks posed by individuals located offshore who may be seeking to travel to Australia and might be planning to engage in activities of security concern.
>
> The obligation to cancel the visa will arise if the ASIO suspects that the person might be a risk to security and recommends cancellation of the person's visas. The power would be used in circumstances where ASIO suspects that a person located offshore may pose a risk to security but has either insufficient information and/or time to furnish a security assessment in advance of the person's anticipated travel. It will enable ASIO to furnish a security assessment where it suspects the person might be, directly or indirectly a risk to security and require the Minister to cancel the visa/s held by the person for a temporary and limited period of 28 days.
>
> The visa cancellation would be revoked where ASIO, after further consideration, recommends the cancellation be revoked or if ASIO does not provide an adverse security assessment that the person is, directly or indirectly, a risk to security within the 28 day period.

The current visa cancellation provisions in the *Migration Act 1958* are said to be inadequate because:

> The existing provisions do not adequately provide for a situation where ASIO has information that indicates a person located outside Australia may be a risk to security but is unable to furnish a security assessment that meets existing legal thresholds in the Migration Act due to insufficient information and/or time constraints linked to the nature of security threat. (p. 187)

A significant feature of the scheme is that the rules of natural justice are expressly excluded by proposed section 134A in relation to decisions made under proposed subdivision FB.

Given the explanatory material outlined above, the committee leaves the general question of the appropriateness of the overall scheme, including the exclusion of the rules of natural justice which would require a fair hearing prior to the exercise powers which directly affect rights or interests, to the Senate as a whole.

However, the committee seeks further information in relation to the following specific issues:

…

- Thirdly, it is unclear why the rules of natural justice are excluded in relation to the consequential cancellation decision which may be made pursuant to section 134F. These decisions are discretionary and the explanatory memorandum does not address why the well-established aspects of the rules of natural justice (procedural fairness and rules against bias) should not be applicable. **The committee therefore seeks the Attorney-General's advice as to the justification for the proposed approach.**

Attorney-General's initial response - extract

Section 134F allows for discretionary cancellation of visas held by family members and others whose visas were granted because a visa was held by the person whose visa has been cancelled on security grounds under proposed section 134B. The exclusion of natural justice in relation to that cohort is a consequence of proposed section 134A which excludes the rules of natural justice from all decisions under proposed Subdivision FB. The justification for excluding natural justice in relation to consequential cancellations under proposed section 134F is that there will be occasions where the family member is outside Australia, in the company of the security target who has been cancelled under section 134B, and where the Department has no means of contacting the person. In those cases, it may be appropriate to cancel without notice in order to prevent the family member returning to Australia, even if the family member is not a security concern. In addition to the exclusion of the rules of natural justice in proposed section 134A, this policy approach is reflected in the wording of proposed subsection 134F(2) which authorises cancellation "without notice". The circumstances which may arise are difficult to predict in advance, but it is advisable to retain flexibility for the Minister or delegate to act quickly and without notice should this be necessary. This approach is consistent with the existing position in relation to consequential cancellations in subsection 140(2) of the Migration Act, which has been in force for over 20 years. It is not the policy intention to authorise bias in decision-making, and to the extent that exclusion of the “rules of natural justice” is understood to amount to exclusion of the requirement for an unbiased decision, that is not the policy intention.

Committee's initial response

The committee thanks the Attorney-General for this response.

The committee is concerned that the explanation provided has not demonstrated the necessity for the exclusion of the hearing rule of natural justice. The content of the fair hearing rule (i.e. what procedures are required to enable a person to fairly put their case) is applied flexibly. The courts have emphasised that what is fair does not depend upon fixed rules and that regard must be had to the circumstances of the case and statutory context. Indeed, in some instances it has been held that the requirements of natural justice may be reduced to nothingness in the circumstances of a particular case (even though, in general, the exercise of the statutory power is attended by an obligation to comply with the rules of natural justice). If it could, in the circumstances of a particular case, be demonstrated that no hearing could have been afforded without undue prejudice to national security, then the rules of natural justice may require no more than a consideration of the extent to which it is possible give notice to the affected person and how much (if any) detail of the reasons for the proposed decision should be disclosed. (For an illustration, see *Leghaei v Director General of Security* [2005] FCA 1576; [2007] FCAFC 27.) Thus, while there may be some instances where it appropriate to cancel the visa of a family member without notice, it may well be the case that in many other cases giving notice and an opportunity to be heard prior to the decision being made will not unduly prejudice national security. **The committee therefore seeks further advice which explains why the court's flexible approach to determining the content of natural justice obligations is not capable of dealing with the problems identified in the Attorney General's response.**

Even if the fair hearing rule is to be excluded the committee is concerned that the very clear statement in section 134A of the bill that states that the rules of natural justice do not apply to this Subdivision, is not consistent with the explanation provided in the response which suggests that 134A does not apply to bias or the appearance of it, which is one of the common law rules of natural justice. The committee notes that in the context of the Migration Act the exclusion of natural justice, in various provisions, is expressly limited to the hearing rule. **The committee therefore seeks further advice from the Attorney-General as to whether the bill could be amended to reflect the explanation provided in the above response.**

Attorney-General's further response (1 of 2) - extract

Section 134F allows for discretionary cancellation of visas held by family members and persons whose visas were granted because of another person's visa. As outlined in my previous response, the circumstances which may arise requiring cancellation under s134F

are difficult to predict in advance, however it is considered necessary for the Minister or delegate to have the flexibility to act quickly and without notice should this be necessary.

Committee's further response (1 of 2)

The Committee thanks the Attorney-General for this further response.

The committee had requested further advice on two issues, the first was concerned with the exclusion of the fair hearing rule, while the second related to the rule against bias.

On the first point, given that the underlying reason for the cancellation of a visa is that the person holds a visa consequential to the person whose visa has been cancelled under 134B, but not on the grounds that the person themselves is considered a security threat, the committee remains unconvinced that a blanket exclusion of the fair hearing rule is necessary, given the flexible approach the courts take to the content of the rules of procedural fairness. **The committee draws the matter to the attention of Senators, and in light of the explanation provided by the Attorney-General, requests that the key information above be included in the explanatory memorandum and leaves the appropriateness of the provision to the Senate as a whole.**

The response does not appear to address the second point in relation to the natural justice rule against bias. The committee therefore reiterates its concern that the provision as currently drafted may be read to exclude the rule against bias. Given the statement in the Attorney-General's first response that 'It is not the policy intention to authorise bias in decision-making, and to the extent that exclusion of the "rules of natural justice" is understood to amount to exclusion of the requirement for an unbiased decision, that is not the policy intention', **the committee seeks the Minister's further advice as to whether this policy position could be reflected in the bill.**

Attorney-General's further response (2 of 2) - extract

Possible undue trespass on personal rights and liberties-procedural fairness Schedule 4, item 4, proposed new subdivision FB of the *Migration Act 19* 58-exclusion of natural justice

This amendment was designed to make the effect of section 134B consistent with the effect of section 140 of the Migration Act. Section 140 of the Migration Act protects the integrity of Australia's visa programmes and international obligations by ensuring that dependant visa holders and certain other family members, including spouses and children of the primary visa holder, are not able to remain in Australia beyond the duration of the primary visa holder. In other words, section 134B seeks to ensure a non-citizen is not able to

remain in Australia merely because the person holds a visa as a result of a primary visa holder previously having held a visa. Instead, such a person will be required to apply for and be granted a more appropriate visa in order to extend their entitlement to enter or stay in Australia.

I also wish to draw the Committee's attention to the broadened discretion in section 134F in comparison to the existing provisions under section 140 of the Migration Act. In particular, this new provision will not result in any visa being cancelled by operation of law, which can occur under subsections 140(1) and 140(3). Instead, before making a decision to cancel the person's visa, section 134F will require the Minister to consider exercising his or her discretion before exercising the emergency cancellation provisions.

Finally, where a person's visa is cancelled under section 134F and that person is located onshore, the non-citizen is able to seek merits review of the decision under subsection 338(3) of the Migration Act.

Thank you again for writing on this matter.

Committee's further response (2 of 2)

The committee thanks the Attorney-General for this further response. The committee notes that while the response provides some further context in relation to the provision, there is no specific discussion in relation to the possible exclusion of the rule against bias. **However, the committee further notes that the bill has already been passed by the Parliament and therefore makes no further comment about this matter.**

Fair Entitlements Guarantee Amendment Bill 2014

Introduced into the House of Representatives on 4 September 2014
Portfolio: Employment

Introduction

The committee dealt with this bill in *Alert Digest No. 12 of 2014*. The Minister responded to the committee's comments in a letter dated 8 October 2014. The Minister then provided a further response dated 18 November 2014. A copy of the letter is attached to this report.

Alert Digest No. 12 of 2014 - extract

Background

This bill seeks to amend the *Fair Entitlements Guarantee Act 2012* (the Act) to align the maximum redundancy pay entitlement under the Fair Entitlements Guarantee scheme with the maximum set by the National Employment Standards contained in the *Fair Work Act 2009*.

The bill also makes a number of technical amendments to clarify the operation of the Act.

Standing Appropriation
Schedule 1, item 13, proposed section 51

Proposed section 51 provides for payments to be made from the Consolidated Revenue Fund for the purposes of payments under section 50 of the Act. Section 50 provides for the establishment of a scheme for the assistance of workers who were not employees, and for payment of certain legal costs incurred by the department in relation to an application to the Administrative Appeals Tribunal.

The committee is not questioning the ability for payments to be made, only whether the use of a standing appropriation is an appropriate mechanism. In scrutinising standing appropriations, the committee looks to the explanatory memorandum for an explanation of the reason for the proposed approach. In addition, the committee considers whether the bill:

- places a limitation on the amount of funds that may be so appropriated; and
- includes a sunset clause that ensures the appropriation cannot continue indefinitely without any further reference to Parliament.

In this instance the explanatory memorandum simply repeats the effect of the provision and does not provide an explanation. **The committee therefore seeks the Minister's advice as to the justification for including a standing appropriation in the bill.**

> *Pending the Minister's advice, the committee draws Senators' attention to the provision, as it may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee's terms of reference.*

Minister's initial response - extract

The Committee has noted that the proposed section 51 of the Fair Entitlements Guarantee Bill 2014 provides for payments from the Consolidated Revenue Fund for the purposes of payments under section 50 of the *Fair Entitlements Guarantee Act 2012.* The Committee also noted that in deciding the appropriateness of such appropriations it considers whether there is a limitation on the amount of funds that may be appropriated and whether there is sunset clause that ensures the appropriation cannot continue indefinitely without further reference to Parliament. I note that the Committee raised a similar issue in respect of the Fair Entitlements Guarantee Bill 2012.

The Act currently provides for the Consolidated Revenue Fund to be appropriated for the purpose of making payments under the Act and section 50. Section 50 of the Act provides for the establishment of a scheme of assistance for workers who are not employees. While the Fair Entitlements Guarantee Bill 2014 repeals the current section 51 of the Act and inserts a new provision, the only effective change is to enable the Consolidated Revenue Fund to also be appropriated for legal costs incurred by the department in relation to applications made to the Administrative Appeals Tribunal or an appeal to a court in respect of such an application.

It is appropriate to use a standing appropriation in cases where there is a legal entitlement established which is paid to people on the basis of specific criteria. This is the case for payments made under the Fair Entitlements Guarantee, including where those payments are made in accordance with a regulation made under section 50. Such payments arc determined on the basis of the strict framework set out in the legislation for assessment of an individual's entitlement for payment.

Historically it has not been possible to predict precise costs that will be incurred under the Fair Entitlements Guarantee each year. Demand for assistance under the scheme in any given year is impacted by a wide range of factors. These include the number of insolvencies that occur in that year, the number of claims for assistance resulting from those insolvencies and each claimant's individual entitlements (based on the employment conditions and length of service of those claimants).

The integrity of the scheme would be compromised if assessment decisions were influenced or limited by the availability of funding in the appropriation.

I also note that demand for the scheme has increased from 8,626 claimants being paid $72.97 million in 2006-07 to 16,019 claimants being paid $261.65 million in 2012-13. This is an increase of 259 per cent.

I note that only one scheme has been approved under section 50 since the Act commenced on 5 December 2012, covering contract outworkers in the clothing, textile and footwear industry. This scheme took effect on 15 May 2013 and to date, no claims have been made under that scheme. The Regulation establishing this scheme was tabled before Parliament and subject to the usual disallowance arrangement. Any new scheme which is sought to be established under section 50 of the Act will similarly be via a regulation and subject to disallowance by Parliament.

I hope this information assists the Committee.

Committee's initial response

The committee thanks the Minister for this detailed response.

The committee notes that the key information relating to the justification for the use of the standing appropriation would be useful in the explanatory memorandum and requests that it be included.

Minister's further response - extract

I note the Committee's request that key information concerning the use of the standing appropriation be included in the Explanatory Memorandum to the Bill. I can inform the Committee that I am not minded to make amendments to the Explanatory Memorandum at this time.

That said, I am happy to include such information in my summing up speech on the Bill.

Committee's further response

The committee thanks the Minister for this response and notes that it would be useful for the key information to be included in the Minister's summing up speech. However, the committee also notes that its intention in requesting that important information be included in explanatory memoranda is to ensure that such information is readily accessible in a primary resource to aid in the understanding and interpretation of a bill. **Therefore, the committee's general preference is that such material be included in the explanatory memorandum itself, which may be more readily accessible to people with an interest in the bill. Nevertheless, the committee reiterates its thanks to the Minister for making this information publicly available in his summing up speech.**

Freedom of Information Amendment (New Arrangements) Bill 2014

Introduced into the House of Representatives on 2 October 2014
Portfolio: Attorney-General

Introduction

The committee dealt with this bill in *Alert Digest No. 14 of 2014*. The Minister responded to the committee's comments in a letter dated 24 November 2014. A copy of the letter is attached to this report.

Alert Digest No. 14 of 2014 - extract

Background

This bill seeks to repeal the *Australian Information Commissioner Act 2010* and amend the *Freedom of Information Act 1982*, the *Privacy Act 1988*, the *Ombudsman Act 1976* and other Acts.

The bill seeks to abolish the Office of the Australian Information Commissioner and amends arrangements for the exercise of privacy and freedom of information functions.

Merits review and trespass on personal rights and liberties—general comments

This bill makes significant changes to the administration of the Commonwealth FOI and privacy laws. The central change is the abolition of the Office of the Australian Information Commissioner (OAIC). The OAIC was established on 1 November 2010 and brought the FOI Act and Privacy Act into a single scheme. A shared objective of both Acts is to improve information management and record keeping in government agencies, and to confer upon individuals the right to access government information and to scrutinise government information practices. Bringing both Acts into a single scheme was an attempt to heighten the responsibility of government agencies to pay close attention to information issues. In creating a single office for the management of information law and policy, statutory office holders within the OAIC were given a number of significant new functions. These functions can broadly be characterised as including:

- conducting merits review of FOI decisions;
- investigating FOI complaints;
- promoting open government;
- issuing guidelines to agencies;

- providing assistance and training;
- reviewing legislation; and
- providing advice to government.

The practical effect of the amendments is that the system for the management of privacy and FOI issues that was in operation prior to the establishment of the OAIC will be largely restored (explanatory memorandum, p.2). The explanatory memorandum states that 'combining oversight of privacy and FOI into one agency has created an unnecessarily complex system which caused processing delays in FOI and privacy matters'. It is argued that:

> …simplifying FOI review processes by removing a level of external merits review will improve efficiencies and reduce the burden on FOI applicants,

and

> …streamlining arrangements for investigation of FOI complaints and for privacy regulation will also reduce complexity and make it easier for applicants to exercise their rights under FOI or privacy legislation.

The explanatory memorandum explains that the amendments, in addition to the abolition of the OAIC, will provide for:

- an Australian Privacy Commissioner as an independent statutory office holder within the Australian Human Rights Commission, to be responsible for the exercise of privacy functions under the Privacy Act and related legislation;
- the Administrative Appeals Tribunal (AAT) to have sole jurisdiction for external merits review of FOI decisions;
- compulsory internal review of FOI decisions (where available) before a matter can proceed to the AAT;
- the Attorney-General to be responsible for FOI guidelines, collection of FOI statistics and the annual report on the operation of the FOI Act; and
- the Ombudsman to have sole responsibility for the investigation of FOI complaints.

The FOI Act has established itself as an important part of the accountability framework for administrative decision-making by the executive government. The administration of the Act is part of the legal framework to guard against statutory powers being exercised in a manner which may unduly trespass on rights, liberties and obligations. FOI legislation can also play a significant role in facilitating the exercise of review rights. Broadly speaking, adequate and accurate information about the conduct of government is an essential precondition for the successful operation of review rights. The committee therefore takes an interest in legislative proposals which may be considered to diminish the efficacy of the FOI regime.

It is a matter of concern that the substantial amendments being proposed do not appear to have been the subject of consultation or to be based on a review of the operation of the

OAIC. Although there is some discussion in the explanatory memorandum about the justification for making changes to the current system of merits review (for FOI decisions), it is may be noted that the office exercises important functions beyond merits review and that there is very little justification offered for the abolition of the office with reference to these further functions. Some of these functions (for example, issuing guidelines to which agencies must have regard) will be transferred to the Attorney-General. However, the creation of the Office of the Australian Information Commissioner was, at least in part, justified to address a perceived weakness in the initial phase of operation of the FOI Act, namely, the absence of an *independent* and *specialist* agency to provide leadership across government and which could ensure consistency, give active attention to best practice administration of the legislation, and monitor agency practice with a view to advising government on issues of policy and law reform. Transferring certain of the OAIC's functions to the Attorney-General should be considered in this context.

A further concern relates to the possible cost implications of transferring the merit review function back to the AAT. No charge applied to OAIC reviews, however, the AAT cost for applications which attract a fee (which previously included this type of review) is currently $861 (though a concessional rate of $100 is available in specified circumstances). The current AAT fee could be a significant impost and a likely deterrent to many potential applicants.

The committee therefore notes the above issues and, in light of the brevity of the explanatory memorandum, does not believe Senators are well placed to determine whether the bill will detract from the efficacy of the FOI regime, a matter which would be of considerable concern to the committee. **The committee therefore seeks a more comprehensive justification for the key elements of the proposed changes. The committee is also interested in advice as to the cost of transferring merits review to the AAT.**

> *Pending the Attorney-General's advice, the committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the committee's terms of reference.*

Attorney-General's response - extract

The Abbott Government is strongly committed to transparent, accountable and open government. The FOI Act is a very important accountability mechanism to facilitate the open and transparent operation of government.

The purpose of the Bill is to abolish the Office of the Australian Information Commissioner (OAIC), as part of our commitment to reduce the size of government, streamline the delivery of government services and reduce duplication. The Bill does not

affect the legally enforceable right of every person to request access to documents of an agency or official documents. It does not make any changes to the objects of the FOI Act or the matters that agencies and ministers are required to consider in making decisions on FOI requests. It simply removes an anomalous and unnecessary layer of external merits review of FOI decisions.

The dual layers of merits review was examined in the report on the *Review of the Freedom of Information Act 1982 and the Australian Information Commissioner Act 2010* (Hawke FOI Review). The report noted that a number of submissions to the review, including that of the OAIC, questioned whether having access to three levels of merits review was the most efficient model for reviews of FOI decision. A multiple review process where applicants can access a range of dispute resolution mechanisms can be confusing and creates complexity which adds to the resource burden for both applicants and FOI decision makers.

The establishment of the OAIC created an unnecessarily complex, multi-levelled system resulting in duplication of complaint handling and significant processing delays. These issues have existed from conception and are inherent in the design of the system, as opposed to practice or procedure of the OAIC. No amount of time to consolidate practices or refine procedures would redress the underlying issues with the system.

The Bill corrects the fundamental problems in the current system by streamlining FOI regulation to remove a layer of external merits review. By doing so, the Bill brings the process into line with review arrangements for other government decisions. This will mean that FOI applicants will no longer need to navigate a complex multi-level system.

The OAIC also had the function of advising the Minister on government information management policy and practice. Under the new arrangements, this advisory role on information management will be replaced by departments which have direct responsibility for the development and implementation of government information policy. The Government's view is that policy work should be undertaken by portfolio departments.

The Hawke FOI Review noted that since the commencement of the FOI Act in 1982 there has been a transformational change in government agencies to the release of government information, with access to personal information an accepted principle, often provided without requiring an FOI request. It is now also standard practice for agencies and Ministers to release discussion papers and seek submissions from the public to inform policy development. This has significantly increased public participation in government processes, a key objective of the FOI Act.

I do not consider that an independent FOI or Information Commissioner is necessary for FOI applicants, decision makers or the government. Maintaining the existing system would continue the cost and complexity of FOI processing.

AAT application fees

Prior to the establishment of the OAIC, there was compulsory internal review of FOI decisions before an applicant could apply for merits review at the Administrative Appeals Tribunal (AAT). Since the commencement of the OAIC, internal review has been available, but not compulsory, prior to seeking review in the OAIC.

Under the new arrangements, the AAT will have sole responsibility for external merits review of FOI decisions. If an FOI applicant is not satisfied with an agency decision, they can apply for an internal review of the decision. There is, and will continue to be, no application fee for an internal review.

Compulsory internal review will ensure access to low-cost and timely review for applicants. It also provides an opportunity for agencies to reconsider the merits of the initial decision and give agencies primary responsibility for overseeing original FOI decisions. Following the abolition of the OAIC, agencies will again have sole responsibility for the initial review of agency decisions. If an applicant is not satisfied with an internal review decision, they may then apply to the AAT for an external review of the decision.

No changes are proposed for the AAT application fee under the new arrangements for FOI reviews. While there is a reduced fee of $100 that applies in cases of hardship, there are also circumstances where no application fee is payable. This includes where the FOI review relates to a decision about Commonwealth workers' compensation, family assistance and social security payments and veteran's entitlements. Further information is provided in the enclosed extract from the AAT website. Consistent with other AAT matters, a successful applicant before the AAT will receive a refund of all but $100 of the application fee.

Removing a layer of external merits review will bring the process into alignment with review arrangements for other government decisions. It is appropriate that the existing fee regime applies to FOI applicants in the same way as it applies to other government decisions being reviewed by the AAT. Requiring the payment of a fee for an AAT application may also lead to consideration by applicants of whether or not seeking review is appropriate in the circumstances, rather than simply an automatic response to an agency decision that is not favourable to the applicant.

I trust this information is of assistance.

[A copy of the 'Information on AAT application fees' was included with the Attorney-General's response, which is attached to this report]

Committee Response

The committee thanks the Attorney-General for this response and **requests that the key information be included in the explanatory memorandum**.

Nevertheless, the committee remains concerned about the abolition of the OAIC in relation to the scrutiny issues of merits review and possible trespass on personal rights and liberties and makes some further comments for the information of Senators.

The committee notes that the response says that the main purpose of the bill is simply to remove 'an anomalous and unnecessary layer of external merits review of FOI decisions'. The committee accepts that there are legitimate questions about the current design of the merits review system for FOI decisions. These questions include whether two layers of external merits review are required, the appropriateness of combining merits review with the other functions of the OAIC, and how processing delays may be overcome. There is also a question related to the cost of merits review, and it is noted that a consequence of the changes will be that the cost of external merits review will increase. It is also apparent that the bill proposes changes which go far beyond addressing perceived inadequacies of the current system for the merits review of FOI decisions.

The response from the Attorney-General also points to perceived difficulties with the complaints handling function of the OIAC. It may be noted, however, that the explanatory materials do not explain these difficulties by reference to any evidence which would indicate that the underlying issue is one of institutional design (as opposed, for example, to adequate resourcing). The explanatory materials have not provided sufficient details for Senators to adequately evaluate the proposition that complaint handling by the OAIC is attended by 'duplication' and 'significant processing delays'.

The Attorney-General's response also notes that it is the Government's view that FOI policy work should be undertaken by portfolio departments. The implication is that the strength of the FOI system in the Commonwealth administrative law accountability system will not be diminished by the abolition of the OAIC. As the committee emphasised in its Alert Digest comments (above), the OAIC also has the function of giving strategic advice to government about information management, promoting open government, issuing guidelines, providing assistance and training and reviewing legislation. Arguably, a key justification for the establishment of an independent information commissioner was to establish an office directed toward driving cultural change in information policy. Broadly, the underlying goal of the OAIC may be described as the promotion of proactive disclosure of public sector information. Further, it was considered that a statutory official responsible for the administration and development of FOI policy, practice and compliance across government generally would not only promote cultural change, but also lead to better FOI outcomes in individual cases than were achieved by the former approach of leaving each agency to determine its own FOI program.

(continued)

In light of this background, the committee remains concerned that neither the explanatory material nor the Attorney-General's response enables Senators to adequately consider whether the case for the abolition of the OAIC has been appropriately explained and justified. As the committee has emphasised, the FOI regime plays a significant role in the overall accountability framework for controlling government decision-making. As such, it is suggested that significant changes to the regime should be evidence based and justified in a comprehensive way.

Social Services and Other Legislation Amendment (2014 Budget Measures No. 4) Bill 2014

Introduced into the House of Representatives on 2 October 2014
Portfolio: Social Services

Introduction

The committee dealt with this bill in *Alert Digest No. 14 of 2014*. The Minister responded to the committee's comments in a letter dated 21 November 2014. A copy of the letter is attached to this report.

Alert Digest No. 14 of 2014 - extract

Background

This bill reintroduces several measures previously introduced in the Social Services and Other Legislation Amendment (2014 Budget Measures No. 1) Bill 2014 and the Social Services and Other Legislation Amendment (2014 Budget Measures No. 2) Bill 2014.

Schedule 1 implements the following changes to Australian Government payments:

- pauses indexation for three years of the income free areas for all working age allowances (other than student payments), and the income test free area for parenting payment single from 1 July 2015;
- indexes parenting payment single to the Consumer Price Index (CPI) only, by removing benchmarking to Male Total Average Weekly Earnings;
- pauses indexation for three years of several family tax benefit free areas from 1 July 2015; and
- pauses indexation for three years of the income free areas and other means-test thresholds for student payments, including the student income bank limits from 1 January 2015.

Schedule 2 amends the family payment from 1 July 2015 to:

- revise family tax benefit end-of-year supplements to their original values, and cease indexation;

- limit family tax benefit Part B to families with children under six years of age, with transitional arrangements applying to current recipients with children above the new age limit for two years; and

- introduce a new allowance for single parents on the maximum rate of family tax benefit Part A for each child aged six to 12 years inclusive, and not receiving family tax benefit Part B.

Schedule 3 extends the ordinary waiting period for all working age payments from 1 January 2015.

Schedule 4 ceases the pensioner education supplement from 1 January 2015.

Schedule 5 ceases the education entry payment from 1 January 2015.

Schedule 6 extends youth allowance (other) to 22 to 24 year olds in lieu of newstart allowance and sickness allowance from 1 January 2015.

Schedule 7 requires young people with full capacity to earn, learn, or Work for the Dole from 1 January 2015.

Schedule 8 removes the three months' backdating of disability pension under the *Veterans' Entitlements Act 1986*.

Delegation of legislative power—important matters in legislative instrument Schedule 7, item 1, proposed subsection 1157AB(3)

Delegation of legislative power—important matters in legislative instrument Schedule 7, item 1, proposed subsections 1157AC(3), 1157AE(4) and 1157AE(6)

The committee previously sought further advice from the Minister as to the justification for these matters being determined by legislative instrument rather than being included in the bill itself.

The Minister provided the further information and the committee requested that it be included in the explanatory memorandum. Although this was done, the additional information was not included in the explanatory memorandum to the new bill and the committee sought advice about this.

Minister's response - extract

The comment concerns the exclusion periods measure in Schedule 7 to the Bill and, more specifically, the justification for determining certain matters by legislative instrument rather than providing for them in the Bill itself. The committee has noted that I provided them with this information in connection with the original introduction of the measure in the *Social Services and Other Legislation Amendment (2014 Budget Measures No. 2) Bill 2014.* As the committee requested at the time, I also arranged for the key information to be included in the explanatory memorandum for that Bill by tabling an addendum to the explanatory memorandum.

I intend to have this same information tabled in an addendum to the explanatory memorandum for the new Bill.

Thank you again for writing.

Committee Response

The committee thanks the Minister for this response and for his commitment to tabling this information in an addendum to the explanatory memorandum for the new bill.

Senator Helen Polley
Chair

ATTORNEY-GENERAL

CANBERRA

MC14/21515

21 NOV 2014

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator

Thank you for the letter of 30 October 2014 from the Senate Scrutiny of Bills Committee regarding the Committee's consideration of the additional information I provided on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill (the Bill). Thank you also for providing the Committee's *Further Report relating to the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*.

I note the Committee has requested further information in relation to the reviewability of decisions to cancel welfare payments under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) and the exclusion of natural justice in relation to discretionary cancellation of visas under 134F of the new Subdivision FB of the *Migration Act 1958*. I trust the following will provide sufficient information to address the Committee's concerns.

Merits review—Schedule 2—*Administrative Decisions (Judicial Review) Act 1977*

Following consideration of the Committee's comments on the reviewability of decisions to cancel welfare payments, the Bill was amended to remove the exemption under Schedule 2 of the ADJR Act. Following those amendments, section 13 of the ADJR Act will apply to Ministers' decisions to issue a notice. The individual may be provided with the reasons for the cancellation unless disclosure of those reasons would prejudice Australia's security, defence or international relations. Where disclosure of information supporting those reasons is not possible for security reasons, the Attorney-General can certify that disclosure would be contrary to the public interest under paragraph 14(1)(a) of the ADJR Act.

Possible undue trespass on personal rights and liberties—procedural fairness—Schedule 4, item 4, proposed new subdivision FB of the *Migration Act 1958*—exclusion of natural justice

This amendment was designed to make the effect of section 134B consistent with the effect

of section 140 of the Migration Act. Section 140 of the Migration Act protects the integrity of Australia's visa programmes and international obligations by ensuring that dependant visa holders and certain other family members, including spouses and children of the primary visa holder, are not able to remain in Australia beyond the duration of the primary visa holder. In other words, section 134B seeks to ensure a non-citizen is not able to remain in Australia merely because the person holds a visa as a result of a primary visa holder previously having held a visa. Instead, such a person will be required to apply for and be granted a more appropriate visa in order to extend their entitlement to enter or stay in Australia.

I also wish to draw the Committee's attention to the broadened discretion in section 134F in comparison to the existing provisions under section 140 of the Migration Act. In particular, this new provision will not result in any visa being cancelled by operation of law, which can occur under subsections 140(1) and 140(3). Instead, before making a decision to cancel the person's visa, section 134F will require the Minister to consider exercising his or her discretion before exercising the emergency cancellation provisions.

Finally, where a person's visa is cancelled under section 134F and that person is located onshore, the non-citizen is able to seek merits review of the decision under subsection 338(3) of the Migration Act.

Thank you again for writing on this matter.

Yours faithfully

(George Brandis)

SENATOR THE HON. ERIC ABETZ
LEADER OF THE GOVERNMENT IN THE SENATE
MINISTER FOR EMPLOYMENT
MINISTER ASSISTING THE PRIME MINISTER FOR THE PUBLIC SERVICE
LIBERAL SENATOR FOR TASMANIA

18 NOV 2014

Ms Toni Dawes
Committee Secretary
Standing Committee for the Scrutiny of Bills
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Dawes

Thank you for your letter of 30 October 2014 advising of the Scrutiny of Bills Committee's recent consideration of the Fair Entitlements Guarantee Bill 2014.

I note the Committee's request that key information concerning the use of the standing appropriation be included in the Explanatory Memorandum to the Bill. I can inform the Committee that I am not minded to make amendments to the Explanatory Memorandum at this time.

That said, I am happy to include such information in my summing up speech on the Bill.

Please feel free to contact my office should the Committee seek further information. The contact officer is Mr Josh Manuatu on (02) 6277 7320 or at josh.manuatu@employment.gov.au.

Yours sincerely

ERIC ABETZ

CANBERRA: MG 68, Parliament House, Canberra ACT 2600. Phone: 02 6277 7320 Fax: 02 6273 4115
HOBART: 136 Davey Street, Hobart TAS 7001 Phone: 03 6224 3707 Fax: 03 6224 3709
minister@employment.gov.au http://abetz.com.au

ATTORNEY-GENERAL

CANBERRA

MC14/21514

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
PARLIAMENT HOUSE ACT 2600

24 NOV 2014

Dear Senator Polley

I refer to the letter dated 30 October 2014 from the Senate Scrutiny of Bills Committee to my Office requesting information addressing the matters raised in the committee's *Alert Digest No. 14 of 2014* about the Freedom of Information Amendment (New Arrangements) Bill 2014.

The Abbott Government is strongly committed to transparent, accountable and open government. The FOI Act is a very important accountability mechanism to facilitate the open and transparent operation of government.

The purpose of the Bill is to abolish the Office of the Australian Information Commissioner (OAIC), as part of our commitment to reduce the size of government, streamline the delivery of government services and reduce duplication. The Bill does not affect the legally enforceable right of every person to request access to documents of an agency or official documents. It does not make any changes to the objects of the FOI Act or the matters that agencies and ministers are required to consider in making decisions on FOI requests. It simply removes an anomalous and unnecessary layer of external merits review of FOI decisions.

The dual layers of merits review was examined in the report on the *Review of the Freedom of Information Act 1982 and the Australian Information Commissioner Act 2010* (Hawke FOI Review). The report noted that a number of submissions to the review, including that of the OAIC, questioned whether having access to three levels of merits review was the most efficient model for reviews of FOI decision. A multiple review process where applicants can access a range of dispute resolution mechanisms can be confusing and creates complexity which adds to the resource burden for both applicants and FOI decision makers.

The establishment of the OAIC created an unnecessarily complex, multi-levelled system resulting in duplication of complaint handling and significant processing delays. These issues have existed from conception and are inherent in the design of the system, as opposed to practice or procedure of the OAIC. No amount of time to consolidate practices or refine procedures would redress the underlying issues with the system.

Parliament House Canberra ACT 2600 Telephone: (02) 6277 7300 Facsimile: (02) 6273 4102

The Bill corrects the fundamental problems in the current system by streamlining FOI regulation to remove a layer of external merits review. By doing so, the Bill brings the process into line with review arrangements for other government decisions. This will mean that FOI applicants will no longer need to navigate a complex multi-level system.

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I do not consider that an independent FOI or Information Commissioner is necessary for FOI applicants, decision makers or the government. Maintaining the existing system would continue the cost and complexity of FOI processing.

AAT application fees

Prior to the establishment of the OAIC, there was compulsory internal review of FOI decisions before an applicant could apply for merits review at the Administrative Appeals Tribunal (AAT). Since the commencement of the OAIC, internal review has been available, but not compulsory, prior to seeking review in the OAIC.

Under the new arrangements, the AAT will have sole responsibility for external merits review of FOI decisions. If an FOI applicant is not satisfied with an agency decision, they can apply for an internal review of the decision. There is, and will continue to be, no application fee for an internal review.

Compulsory internal review will ensure access to low-cost and timely review for applicants. It also provides an opportunity for agencies to reconsider the merits of the initial decision and give agencies primary responsibility for overseeing original FOI decisions. Following the abolition of the OAIC, agencies will again have sole responsibility for the initial review of agency decisions. If an applicant is not satisfied with an internal review decision, they may then apply to the AAT for an external review of the decision.

No changes are proposed for the AAT application fee under the new arrangements for FOI reviews. While there is a reduced fee of $100 that applies in cases of hardship, there are also circumstances where no application fee is payable. This includes where the FOI review relates to a decision about Commonwealth workers' compensation, family assistance and social security payments and veteran's entitlements. Further information is provided in the enclosed extract from the AAT website. Consistent with other AAT matters, a successful applicant before the AAT will receive a refund of all but $100 of the application fee.

Removing a layer of external merits review will bring the process into alignment with review arrangements for other government decisions. It is appropriate that the existing fee regime applies to FOI applicants in the same way as it applies to other government decisions being reviewed by the AAT. Requiring the payment of a fee for an AAT application may also lead to consideration by applicants of whether or not seeking review is appropriate in the circumstances, rather than simply an automatic response to an agency decision that is not favorable to the applicant.

I trust this information is of assistance.

Yours faithfully

(George Brandis)

Encl: Information on AAT application fees

AAT Application Fees *(information from the AAT website: AAT.gov.au).*

When are you eligible to pay a reduced fee?

If a full application fee is usually payable for an application, you can pay a reduced fee of $100 instead of the full application fee if you fall into one of these groups:

- you are receiving legal aid for your application
- you hold a health care card, a pensioner concession card, a Commonwealth seniors health card or any other card issued by the Department of Social Services or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions
- you are in prison or lawfully detained in a public institution
- you are under 18 years of age; or
- you are receiving youth allowance, Austudy or ABSTUDY.

You can also ask the AAT to reduce the fee you have to pay, if paying the full fee would cause you financial hardship.

Reduced fee because of financial hardship

The Registrar, a District Registrar or Deputy Registrar of the AAT can order that a reduced fee of $100 must be paid instead of the full application fee, if he or she decides that paying the full fee would cause you financial hardship.

In making a decision about whether paying the full fee would cause you financial hardship, a Registrar will take into account your financial circumstances. This includes a range of factors, such as the amount you earn, your living expenses, your assets and debts.

When do you not have to pay an application fee?

In certain circumstances, you do not have to pay an application fee.

1. No fee is payable if the decision to be reviewed is listed in Schedule 3 to the *Administrative Appeals Tribunal Regulations 1976* (see list below). This includes decisions about Commonwealth workers' compensation, family assistance and social security payments and veterans' entitlements.
2. No fee is payable if the decision was made under the *Freedom of Information Act 1982* in relation to a document which relates to a decision under Schedule 3 to the *Administrative Appeals Tribunal Regulations 1976.*

Decisions which do NOT attract an application fee under Schedule 3 of the *Administrative Appeals Tribunal Regulations 1976*

Decisions under the following Acts or enactments:

- Any determination under section 58B of the *Defence Act 1903*
- *A New Tax System (Family Assistance) Act 1999, A New Tax System (Family Assistance) (Administration) Act 1999,* Schedules 5 and 6 to the *A New Tax System (Family Assistance and Related Measures) Act 2000*
- *Defence Force Retirement and Death Benefits Act 1973*
- *Defence Service Homes Act 1918*
- Part III of the *Disability Services Act 1986*
- *First Home Owners Act 1983*
- *Home Deposit Assistance Act 1982*

- *Homes Savings Grant Act 1976*
- *Military Rehabilitation and Compensation Act 2004*
- *National Disability Insurance Scheme Act 2013*
- Subsection 40AA(8), 40AA(10), section 40AB, 40ABA or 40AC of the *National Health Act 1953*
- Subsection 4(7) of the *Nursing Homes Assistance Act 1974*
- *Papua New Guinea (Staffing Assistance) Act 1973* and Papua New Guinea Staffing Assistance (Superannuation) Regulations
- *Safety Rehabilitation and Compensation Act 1988*
- *Seafarers Rehabilitation and Compensation Act 1992*
- *Social Security Act 1991*, *Social Security (Administration) Act 1999*, *Social Security (International Agreements) Act 1999*
- Section 33 of the *Social Services Act 1980* of Norfolk Island
- *Superannuation Act 1976*
- *Student and Youth Assistance Act 1973*, other than Division 6 of Part 4A
- *Veterans' Entitlements Act 1986.*

The Hon Kevin Andrews MP
Minister for Social Services

Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 7560
Facsimile: (02) 6273 4122

MC14-013054

21 NOV 2014

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Polley

Thank you for your letter of 30 October 2014 drawing my attention to the committee's comment in its Alert Digest No. 14 of 2014 about the *Social Services and Other Legislation Amendment (2014 Budget Measures No. 4) Bill 2014.*

The comment concerns the exclusion periods measure in Schedule 7 to the Bill and, more specifically, the justification for determining certain matters by legislative instrument rather than providing for them in the Bill itself. The committee has noted that I provided them with this information in connection with the original introduction of the measure in the *Social Services and Other Legislation Amendment (2014 Budget Measures No. 2) Bill 2014*. As the committee requested at the time, I also arranged for the key information to be included in the explanatory memorandum for that Bill by tabling an addendum to the explanatory memorandum.

I intend to have this same information tabled in an addendum to the explanatory memorandum for the new Bill.

Thank you again for writing.

Yours sincerely

KEVIN ANDREWS MP