



SENATE STANDING COMMITTEE
FOR THE
SCRUTINY OF BILLS

TENTH REPORT
OF
2015

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Senator Cory Bernardi	LP, South Australia
Senator Katy Gallagher	ALP, Australian Capital Territory
Senator the Hon Bill Heffernan	LP, New South Wales
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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

TENTH REPORT OF 2015

The committee presents its *Tenth Report of 2015* 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:

Bills	Page No.
Medical Research Future Fund Bill 2015	637

Medical Research Future Fund Bill 2015

Introduced into the House of Representatives on 27 May 2015

Portfolio: Finance

The bill received Royal Assent on 26 August 2015

Introduction

The committee dealt with this bill in the amendment section of *Alert Digest No. 7 of 2015*. The Minister responded to the committee's comments in a letter dated 14 September 2015. A copy of the letter is attached to this report.

Alert Digest No. 7 of 2015 - extract

Background

This bill establishes the Medical Research Future Fund (MRFF) from 1 August 2015.

The bill also provides for initial funding of \$1 billion from the uncommitted balance of the Health and Hospitals Fund; and for the MRFF to be managed by the Future Fund Board of Guardians.

Government amendment (19) on sheet HK145 New subsections 32D(6) and 32E(6)

This amendment inserts a new Part to establish the Australian Medical Research Advisory Board (Advisory Board), which will be responsible for developing the Australian Medical Research and Innovation Strategy (the Strategy) and the Australian Medical Research and Innovation Priorities (the Priorities).

The supplementary explanatory memorandum explains that the 'Strategy and Priorities have been declared as legislative instruments because there needs to be a high level of public transparency around these publications and around the direction of medical research funding' (p. 9). However, the Strategy and Priorities cannot be disallowed. The supplementary explanatory memorandum states that 'this approach enables the public and the Parliament to hold the Advisory Board and the Government accountable without impeding the Advisory Board's ability to perform its functions' (p. 9).

The committee welcomes an approach that will ensure that the Strategy and Priorities are subject to public transparency. **However, the committee seeks further clarification from the Minister as to why disallowance of the Strategy and Priorities is inappropriate,**

including how provision for disallowance of these documents would impede the Advisory Board's ability to perform its functions.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee's terms of reference.

Minister's response - extract

The Committee has requested further information as to why disallowance of the Australian Medical Research and Innovation Strategy (Strategy) and the Australian Medical Research and Innovation Priorities (Priorities) is inappropriate, including how disallowance would impede the Australian Medical Research Advisory Board's (Advisory Board) ability to perform its functions.

It is crucial for the Advisory Board to maintain independence when undertaking its functions as outlined in the MRFF Bill. The Advisory Board's functions include undertaking consultation on and determining the Strategy and the Priorities, which must be taken into account by the Health Minister when disbursing funds from the Medical Research Future Fund (MRFF).

It would be usual to regard the Strategy and Priorities as administrative, rather than legislative, in character because they do not determine or alter the content of the law itself. However to ensure transparency and accountability, they have been established as legislative instruments.

As the Committee has noted, the Strategy and the Priorities are not subject to disallowance. The Advisory Board are required to independently determine the Strategy and the Priorities following consultation with the medical research and medical innovation sectors. Requiring the Advisory Board to review or change a Strategy or Priorities as a result of Parliamentary disallowance would prevent the Advisory Board from carrying out their responsibilities with full independence.

Additionally, allowing the Strategy and Priorities to be disallowable might cause funding uncertainty in the medical research and medical innovation sectors. The legislation requires that there must always be a Strategy and Priorities in force and that the Health Minister must take them into account when disbursing funds from the MRFF. If the Strategy or Priorities were disallowed then no Strategy or Priorities might be in force, preventing the making of grants for the purposes of supporting medical research and medical innovation.

I trust that this additional information will be sufficient to address the Committee's concerns.

Committee response

The committee thanks the Minister for this response and notes his advice that disallowance would affect the board's ability to carry out responsibilities with full independence and might cause funding uncertainty in the medical research and medical innovation sectors. **In light of the Minister's advice, and as the bill has already received the Royal Assent, the committee makes no further comment.**

Senator John Williams
Acting Chair



SENATOR THE HON MATHIAS CORMANN
Minister for Finance

REF: MC15-002235

Senator Helen Polley
Chair
The Senate Scrutiny of Bills Committee
Suite 1.111
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Canberra ACT 2600


Dear Senator Polley

I refer to the letter from Toni Dawes, Committee Secretary for the Senate Scrutiny of Bills Committee (Committee) in relation to the Medical Research Future Fund Bill 2015. Thank you for the opportunity to respond to the Committee's enquiry.

The Committee has requested further information as to why disallowance of the Australian Medical Research and Innovation Strategy (Strategy) and the Australian Medical Research and Innovation Priorities (Priorities) is inappropriate, including how disallowance would impede the Australian Medical Research Advisory Board's (Advisory Board) ability to perform its functions.

It is crucial for the Advisory Board to maintain independence when undertaking its functions as outlined in the MRFF Bill. The Advisory Board's functions include undertaking consultation on and determining the Strategy and the Priorities, which must be taken into account by the Health Minister when disbursing funds from the Medical Research Future Fund (MRFF).

It would be usual to regard the Strategy and Priorities as administrative, rather than legislative, in character because they do not determine or alter the content of the law itself. However to ensure transparency and accountability, they have been established as legislative instruments.

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I trust that this additional information will be sufficient to address the Committee's concerns.

Kind regards

/ Mathias Cormann
Minister for Finance

14 September 2015