



Department of the Senate

## Senate Scrutiny of Bills Committee

# NEWS

**22 February 2016** (drawing on material in the committee's *Alert Digest No. 1 of 2016* and *First Report of 2016*)

### 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 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 *Alert Digests* and *Reports*. An index to all committee comments is available [here](#).

### Key scrutiny issues

- **Australian Crime Commission Amendment (National Policing Information) Bill 2015** ([Alert Digest No. 1 of 2016](#))
  - ❖ Privacy: The bill seeks to merge the CrimTrac Agency into the Australian Crime Commission. The bill includes accreditation provisions that will mean that particular bodies could apply for and receive sensitive personal information. The committee has sought further advice about scrutiny issues in relation to (1) whether it would be preferable for the legislation to contain more guidance for accreditation and (2) whether the policy and directions issued by the ACC Board in relation to accreditation should be subject to Parliamentary oversight and disallowance.
- **Communications Legislation Amendment (Deregulation and Other Measures) Bill 2015** ([First Report of 2016](#))
  - ❖ Consultation and merits review: The committee has sought advice in relation to changes to consultation requirements for draft procedural rules, and about the adequacy of merits review for the proposed carriage numbering scheme.
- **Corporations Amendment (Crowd-sourced Funding) Bill 2015** ([Alert Digest No. 1 of 2016](#))
  - ❖ Delegation of legislative power and reversal of the burden of proof: The committee has sought the Minister's further advice in relation to two Henry VIII clauses and clauses that include a reversal of the burden of proof.
- **Corporations Amendment (Financial Advice Measures) Bill 2015** ([First Report of 2016](#))
  - ❖ Delegation of legislative power: Given the complexity of proposed regulation-making powers and the amendments proposed to them, the committee restated its concerns that the brief description in the supplementary explanatory memorandum has the potential to cause confusion and could usefully be expanded to more clearly outline the effect of the amendments.
- **Courts Administration Legislation Amendment Bill 2015** ([Alert Digest No. 1 of 2016](#))
  - ❖ Delegation of legislative power: The bill seeks to amalgamate the corporate structures for the three federal courts. Given the importance of federal courts maintaining an appropriate level of control over their own administrative affairs the committee has sought a more detailed explanation for allowing matters to be prescribed as 'corporate services' by delegated legislation.
- **Crimes Legislation Amendment (Proceeds of Crime and Other Measures) Bill 2015** ([First Report of 2016](#))

- ❖ Privacy: The committee restated its view that consideration be given to amending regulation 15(1) to at least specify that the Secretary 'must issue guidelines about the use and disclosure of information included in the AusCheck database.' This would at least ensure that there is a general legislative requirement that safeguards, such as those currently in the Guidelines, are required to be in place. The committee also remains of the view that it would be useful to include at least some minimum safeguards relating to the use and disclosure of personal information in the primary legislation or regulations.
- ❖ Delegation of legislative power: The committee had sought advice about the use of regulations to expand the options for the release of personal information in specified circumstances. The Minister provided a detailed explanation and the committee has left the matter to the Senate.
- **Criminal Code Amendment (Firearms Trafficking) Bill 2015** ([Alert Digest No. 1 of 2016](#))
  - ❖ Penalties: The committee has sought further advice about the justification for the very significant increase in penalties and the new mandatory minimum sentence (which may undermine the discretion of judges), including a request for example of analogous offences and penalties.
- **Family Assistance Legislation Amendment (Jobs for Families Child Care Package) Bill 2015** ([Alert Digest No. 1 of 2016](#))
  - ❖ Various: the committee is seeking further advice in relation to review rights, delegation of legislative power and strict liability.
- **Family Law Amendment (Financial Agreements and Other Measures) Bill 2015** (*First Report of 2016*)
  - ❖ Retrospective application: The committee had sought advice about a number of matters in relation to retrospectivity and received a detailed response from the Attorney-General. The committee has requested that key information be included in the EM and left the matters to the Senate.
- **Higher Education Support Amendment (VET FEE-HELP Reform) Bill 2015** ([Alert Digest No. 1 of 2016](#))
  - ❖ Merits review: The committee has sought advice about whether there are any decisions made under Schedule 1A that are not 'reviewable VET decisions' and, if so, the rationale for excluding these decisions from this review mechanism.
  - ❖ Delegation of power to 'a person': This amendment will enable the Secretary to appoint any person (rather than just an APS employee in the Department) as an investigator for the purpose of investigations relating to VET providers. The committee has sought advice as to (1) examples of the types of persons or bodies outside the public service that may be appointed as an investigator; and (2) whether it would be possible to provide any further limits or safeguards noting that if an investigator is appointed from outside the public service that person would not automatically be subject to the APS Values and Code of Conduct.
- **Insolvency Law Reform Bill 2015** ([Alert Digest No. 1 of 2016](#))
  - ❖ Delegations of legislative power: The committee has sought advice in relation to: (1) the ability for delegated legislation to extend the category of persons considered to have a 'financial interest' in the administration of a regulated debtor's estate, but the EM does not explain why this important matter is not more appropriate for Parliamentary enactment; (2) more detail about the proposed content of Insolvency Practice Rules as these can include matters of significance, such as consequences for failure to comply with particular trustee requirements; and (3) two Henry VIII clauses, which allow delegated legislation to override the Act.
  - ❖ Privacy: The committee has sought advice as to the impact on privacy of allowing the Inspector-General to record information in the Insolvency Practice Register that includes details of persons who have had their registration as a trustee suspended or cancelled.
  - ❖ Reversal of the onus of proof: The committee has also sought advice about why the proposed approach in relation to the reversal of the onus of proof is appropriate.
- **Omnibus Repeal Day (Spring 2015) Bill 2015** (*First Report of 2016*)

- ❖ Parliamentary scrutiny: The committee sought the Assistant Minister’s advice as to whether the government has given consideration to developing guidelines in relation to what may be included in (and what types of matters will be excluded from) these bills. The Assistant Minister advised that there are no current plans for the government to do so as the current approach provides ‘a necessary degree of flexibility’. The committee reiterated its view that it may be useful from the point of view of parliamentary scrutiny for there to be some known legislative policy parameters for the content of these bills.
- ❖ Parliamentary scrutiny: The committee noted that it would assist Parliamentary scrutiny if the EM to the bill identified whether measures are new or whether they reflect items previously introduced and the Minister subsequently tabled a helpful Addendum to the Explanatory Memorandum addressing this matter.
- **Social Security Legislation Amendment (Community Development Program) Bill 2015** ([Alert Digest No. 1 of 2016](#))
  - ❖ Delegation of legislative power: The purpose of this bill is to introduce a distinctive community development program in remote areas, which will rely substantially on the use of delegated legislation, including for significant matters. There is a detailed justification for the proposed approach, which the committee draws to the attention of Senators. However, the committee has sought advice as to whether a reporting requirement can be included in the bill to evaluate the operation of the scheme and the appropriateness of the use of delegated legislation (to be tabled in Parliament to facilitate parliamentary scrutiny).
- **Tax Laws Amendment (Implementation of the Common Reporting Standard) Bill 2015** ([Alert Digest No. 1 of 2016](#))
  - ❖ Privacy: The committee noted that this bill engages the right to privacy as it involves the sharing of personal information with other jurisdictions if a relevant information-sharing agreement is in place. In light of the comprehensive justification provided, the committee left the matter to the Senate as a whole.

## Other bills for which advice is being sought from the Minister or proposer

([Alert Digest No. 1 of 2016](#))

The Senate Scrutiny of Bills Committee is also **seeking advice** from the relevant Minister or proposer in relation to provisions of other bills (responses will be considered and tabled in the committee’s future *Reports*), including:

- **Foreign Acquisitions and Takeovers Amendment (Strategic Assets) Bill 2015**

## Other responses received ([First Report of 2016](#))

- **Criminal Code Amendment (Private Sexual Material) Bill 2015**
- **Health Legislation Amendment (eHealth) Bill 2015**

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This document contains a very brief summary of some recent comments made by the Senate Scrutiny of Bills Committee (Chair: Senator Helen Polley and Deputy Chair: Senator John Williams).

For any comments or questions, please contact:

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