



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

10 August 2017 (drawing on material in the committee's [Scrutiny Digest No. 8 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. 8 of 2017](#))

- **Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017** (see also [Scrutiny Digest No. 7 of 2017](#))
 - ❖ *Broad delegation of legislative power*: The committee leaves to the Senate as a whole the appropriateness of setting out in delegated legislation the question of whether a person has 'integrated into the Australian community' or the circumstances in which a person has 'competent English'. The committee considers it would be appropriate for the bill to be amended to provide guidance in the primary legislation as to what is meant by the phrase 'has integrated into the Australian community'.
 - ❖ *Broad discretionary power to revoke citizenship*: The committee leaves to the Senate as a whole the appropriateness of conferring broad discretionary powers on the Minister to cancel a person's citizenship on the basis that the person was not of good character at the time citizenship was granted or became a citizen as a result of fraud or misrepresentation.
 - ❖ *Exemption from disallowance*: The committee leaves to the Senate as a whole the appropriateness of exempting from disallowance a determination setting out an Australian Values Statement (AVS), and considers it would be appropriate for the bill to be amended to include at least core matters in primary legislation and otherwise to ensure any instrument setting out the AVS is subject to disallowance.
 - ❖ *Merits review*: The committee leaves to the Senate as a whole the appropriateness of excluding merits review where a decision is made by the Minister personally and giving the power to the Minister to set aside a decision of the Administrative Appeals Tribunal in certain circumstances, noting the importance of the system of independent merits review.
 - ❖ *Retrospective application*: The committee leaves to the Senate as a whole the appropriateness of retrospectively applying changes to citizenship requirements, in circumstances where thousands of people would be made ineligible for citizenship despite meeting the legal criteria at the time their application was made. The committee also draws to the attention of Senators its scrutiny concerns regarding changes to acquiring citizenship by birth to children born before commencement of these amendments.
- **Imported Food Control Amendment Bill 2017**
 - ❖ *Broad discretionary power*: The bill would allow holding orders to be placed on imported food in certain circumstances. The committee has suggested that it may be appropriate for the bill to be amended to ensure that decisions to extend the period of a holding order are made by different decision-makers to those who made the original order. The committee is also seeking further advice as to the appropriateness of amending the bill to provide further statutory guidance on the exercise of the holding order power.

- ❖ Monitoring and investigatory powers: The committee leaves to the Senate as a whole the appropriateness of allowing 'other persons' to assist authorised officers in exercising potentially coercive or investigatory powers in circumstances where there is no legislative guidance about the appropriate skills and training required of those persons.
- **Industrial Chemicals Charges (General) Bill 2017 and two related bills**
 - ❖ Charges in delegated legislation: The committee draws to the attention of Senators the appropriateness of allowing regulations to determine the amount of charge payable without any guidance being provided on the face of the bill.
- **Migration Amendment (Validation of Decisions) Bill 2017**
 - ❖ Retrospective effect: The committee is seeking advice as to why the bill seeks to retrospectively validate decisions made in circumstances which may have denied an applicant the right to a fair hearing.
- **Regional Investment Corporation Bill 2017**
 - ❖ Section 96 grants to the States: The committee draws to the attention of Senators the appropriateness of delegating to the Executive and the Regional Investment Corporation the Parliament's power under section 96 of the Constitution to make grants to the States relating to water infrastructure projects.
 - ❖ Exemption from disallowance and sunseting: The committee draws to the attention of Senators the appropriateness of exempting ministerial directions relating to the operation of the Regional Investment Corporation from disallowance and sunseting.
 - ❖ No requirement to table report in Parliament: The committee leaves to the Senate as a whole the appropriateness of there being no legislative requirement to table the report of the statutory review into the operation of the Act in the Parliament.
- **Social Service Legislation Amendment (Welfare Reform) Bill 2017**
 - ❖ Significant matters in delegated legislation: The committee is seeking advice as to why a number of significant matters, relating to the drug testing of welfare recipients and the new compliance framework regarding participation payments, are to be left to delegated legislation.
 - ❖ Broad delegation of administrative powers: The committee is seeking advice as to the appropriateness of allowing contractors to determine who will be subject to income management (under the drug testing trial); the qualifications of such contractors; any accountability or oversight mechanisms that contractors will be subject to; and the availability of review of the contractor's decision.
 - ❖ Broad delegation of legislative powers: The committee is seeking advice as to why it is necessary and appropriate to bind decision-makers via delegated legislation as to what must *not* be considered as constituting a 'reasonable excuse' for a participation failure.
 - ❖ Merits review: The committee is seeking advice as to why it is necessary and appropriate to remove the Secretary's ability to ensure that certain welfare payments continue to be paid pending the outcome of merits review in certain circumstances.
- **National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017**
 - ❖ Broad discretionary powers: The committee leaves to the Senate as a whole the appropriateness of the NDIS Commissioner's broad power to disclose personal information and considers it would be appropriate for the bill to be amended to provide legislative guidance on the exercise of the power.
 - ❖ Significant matters in delegated legislation: The committee leaves to the Senate as a whole the appropriateness of significant matters, particularly the establishment of a Code of Conduct (breach of which could be subject to significant penalties), being left to delegated legislation.
 - ❖ Broad delegation of administrative powers: The committee leaves to the Senate as a whole the appropriateness of allowing 'other persons' to assist authorised officers in exercising potentially coercive powers, without any legislative guidance about appropriate skills and training; and allowing the NDIS Commissioner's powers to be delegated to a Commission officer at any level.

- ❖ *Fair hearing rights*: The committee leaves to the Senate as a whole the appropriateness of removing the right of persons to make submissions before the making of a ban order in certain circumstances, and considers it would be appropriate for the bill to be amended to provide if a person is not given an opportunity to make submissions, the ban order is only made permanent after an opportunity for submissions is given.

Other bills commented on ([Scrutiny Digest No. 8 of 2017](#))

- **Competition and Consumer Amendment (Safeguarding the Reputation of Australian Beef) Bill 2017**: The committee has scrutiny concerns about the broad scope of a pecuniary penalty provision.
- **Education Legislation Amendment (Provider Integrity and Other Measures) Bill 2017**: The committee leaves to the Senate as a whole the appropriateness of allowing 'other persons' to exercise investigatory powers.
- **Fair Work Amendment (Protecting Take Home Pay of All Workers) Bill 2017**: The committee leaves to the Senate as a whole the appropriateness of applying certain amendments retrospectively.
- **Government Procurement (Judicial Review) Bill 2017**: The committee received advice from the Minister about a broad instrument-making power and the impact of the bill on review rights.
- **Industrial Chemicals Bill 2017**: The committee received advice from the Minister in relation to merits review, abrogation of the privilege against self-incrimination and the incorporation of external material into the law.
- **Industrial Chemicals (Consequential Amendments and Transitional Provisions) Bill 2017**: The committee received advice from the Minister in relation to a provision which would allow legislative instruments to operate retrospectively.
- **Migration Amendment (Regulation of Migration Agents) Bill 2017**: The committee is seeking advice in relation to the broad delegation of administrative powers to any APS employee, the inclusion of significant matters in delegated legislation and a strict liability offence.
- **National Vocational Education and Training Regulator (Charges) Amendment (Annual Registration Charge) Bill 2017**: The committee welcomes government amendments to this bill which address the committee's scrutiny concerns relating to setting the rate of charge in delegated legislation.
- **Parliamentary Business Resources Bill 2017**: The committee received advice from the Minister about the inclusion of significant matters in non-disallowable delegated legislation.
- **Passports Legislation Amendment (Overseas Travel by Child Sex Offenders) Bill 2017**: The committee retains scrutiny concerns about the availability of review of decisions to cancel a person's passport and a reversal of the evidential burden of proof.
- **Public Governance and Resources Legislation Amendment Bill (No. 1) 2017**: The committee is seeking advice in relation to a provision which will authorise the making of retrospective legislative instruments.
- **Social Services Legislation Amendment (Payment Integrity) Bill 2017**: The committee is seeking advice as to why it is considered necessary to apply amended pension residency requirements to individuals who may have arranged their affairs on the basis of the existing law.
- **Telecommunications (Regional Broadband Scheme) Charge Bill 2017**: The committee is seeking advice about leaving significant matters relating to setting the rate of the charge to delegated legislation and a reversal of the usual disallowance procedures.
- **Telecommunications Legislation Amendment (Competition and Consumer) Bill 2017**: The committee is seeking advice in relation to a reversal of the usual disallowance procedures, provisions which exempt certain instruments from disallowance and a strict liability offence.
- **Treasury Laws Amendment (2017 Measures No. 2) Bill 2017**: The committee received advice from the Minister about the retrospective application of a provision of this bill.

For any comments or questions, please contact:

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