



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

7 December 2017 (drawing on material in the committee's *Scrutiny Digest No. 15 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](#).

New developments

- On 29 November 2017 the Senate agreed to amend (on an ongoing basis) Senate standing order 24 to provide that, where the Scrutiny of Bills committee has not finally reported on a bill because a ministerial response has not been received, any Senator may ask the minister for an explanation of why a response has not been provided: see the committee's [webpage](#) for more information.

Key scrutiny issues ([Scrutiny Digest No. 15 of 2017](#))

• Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017

- ❖ *Significant matters in delegated legislation*: the committee leaves to the Senate the appropriateness of leaving significant elements of the redress scheme to delegated legislation (including enabling rules to prescribe when a person is not eligible for redress and when an institution is not to be held responsible) and has suggested certain amendments.
- ❖ *Broad discretionary power*: the committee leaves to the Senate the appropriateness of a broad discretionary power for the Operator of the scheme to disclose protected information to any person and for any purpose so long as the Operator considers it is in the public interest to do so.
- ❖ *Limitation on review rights*: the committee considers it would be appropriate for the bill to be amended to remove the prohibition on internal reviewers accessing relevant new information or documents and leaves to the Senate the appropriateness of excluding external merits review on applications for redress.
- ❖ *Broad delegation of administrative powers*: the committee leaves to the Senate the appropriateness of allowing much of the Operator's powers and functions to be delegated to an APS employee at any level and to allow independent decision makers to be appointed without any legislative guidance as to their skills, training or experience.

• Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017

- ❖ *Broad delegation of administrative power*: the committee considers it would be appropriate for the bill to be amended to require persons authorised to issue infringement notices be confined to officers that hold special attributes, qualifications or qualities.
- ❖ *Procedural fairness*: the committee leaves to the Senate the appropriateness of excluding aspects of the natural justice hearing rule in relation to the deregistration process for a registered worker entitlement fund.

- ❖ *Exclusion of merits review*: the committee leaves to the Senate the appropriateness of excluding merits review of decisions taken by the Commissioner to direct a fund to take, or stop taking, one or more actions.

Other bills commented on ([Scrutiny Digest No. 15 of 2017](#))

- **Bankruptcy Amendment (Enterprise Incentives) Bill 2017**: the committee received advice that the Minister will seek to amend the penalty applicable to a strict liability offence.
- **Family Assistance and Child Support Legislation Amendment (Protecting Children) Bill 2017**: the committee received advice in relation to whether an amendment relating to child support agreements would have retrospective effect.
- **Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017**: the committee leaves to the Senate the appropriateness of provisions that reverse the evidential burden of proof and abrogate the privilege against self-incrimination.
- **Migration Amendment (Skilling Australians Fund) Bill 2017**: the committee received advice that the Minister will consider setting an upper limit on a penalty that may be prescribed in regulations.
- **National Health Amendment (Pharmaceutical Benefits—Budget and Other Measures) Bill 2017**: the committee leaves to the Senate the appropriateness of ministerial determinations relating to statutory price reductions which are not subject to any parliamentary oversight.
- **Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017**: the committee leaves to the Senate the appropriateness of provisions that reverse the evidential burden of proof and abrogate the privilege against self-incrimination.
- **Treasury Laws Amendment (Banking Measures No. 1) Bill 2017**: the committee received advice as to the incorporation of documents and a no-invalidity clause with respect to consultation obligations.
- **Treasury Laws Amendment (National Housing and Homelessness Agreement) Bill 2017**: the committee leaves to the Senate the appropriateness of delegating, to the executive, Parliament's power to make grants without any guidance as to applicable terms and conditions or a requirement that agreements be tabled and published.

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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