

**Senate Standing Committee
for the
Scrutiny of Bills**



Alert Digest

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Members of the Committee

Senator the Hon C Ellison (Chair)

Senator M Bishop (Deputy Chair)

Senator A McEwen

Senator A Murray

Senator R Ray

Senator the Hon J Troeth

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, 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 upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

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- **The Committee has commented on these bills**

This Digest is circulated to all Honourable Senators.
Any Senator who wishes to draw matters to the attention of the
Committee under its terms of reference is invited to do so.

Communications Legislation Amendment (Miscellaneous Measures) Bill 2008

Introduced into the Senate on 12 March 2008

Portfolio: Broadband, Communications and the Digital Economy

Background

This bill amends the *Broadcasting Services Act 1992* to provide the Australian Communications and Media Authority (ACMA) with the discretion to consider late applications for renewal of community broadcasting licences, in exceptional circumstances. The bill:

- provides that late applications may only be considered if the application is made prior to the time the licence is due to expire, is accompanied by a statement of reasons for the lateness, and ACMA considers that there are exceptional circumstances that warrant the consideration of the late application;
- specifies the circumstances that ACMA must have regard to in deciding whether there are exceptional circumstances; and
- provides for a community broadcasting licence to remain in force if ACMA, in considering a late application, has been unable to make a decision before the expiry date of the licence.

The bill also contains application provisions.

Lack of merits review

Schedule 1, item 3

Proposed new subsection 90(1C) of the *Broadcasting Services Act 1992*, to be inserted by item 3 of Schedule 1, would give the ACMA a discretion to consider a late application for the renewal of a community broadcasting licence, but the bill makes no provision for the holder of such a licence to seek merits review, under the *Administrative Appeals Tribunal Act 1975*, of a decision to refuse to consider such a late application.

The Committee consistently draws attention to provisions that explicitly exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. In this instance, the Committee notes that the explanatory memorandum (page 6) seeks to justify this lack of merits review on the basis that the ‘existing legislative regime does not provide for ACMA decisions regarding whether to exercise its discretion to renew a community broadcasting licence under subsection 90(1) to be subject to review by the Administrative Appeals Tribunal. Given that ACMA’s substantive decisions on licence renewal are not subject to merit review, it is appropriate for ACMA’s preliminary decisions on whether to consider a late application should be similarly excluded from merits review.’

In the circumstances, the Committee makes no further comment on this provision.

Personal rights and liberties

Schedule 1, item 3

Proposed new subsection 90(1F) of the *Broadcasting Services Act 1992*, to be inserted by item 3 of Schedule 1, provides that if ACMA decides to consider a late application, but does not make a decision on the application within 26 weeks after receiving it, the Authority ‘is taken to have made, at the end of that 26-week period, a decision under section 91 to refuse to renew the licence.’ The Committee notes that the explanatory memorandum (page 5) seeks to justify this provision by asserting that the ‘combined effect of new subsections 90(1E) and 90(1F) is to ensure that the ACMA has appropriate time to consider the licensee’s performance in serving the community before deciding whether to renew the licence.’

The Committee further notes, however, that the combined effect of the new subsections would also appear to be that a community broadcaster could be refused licence renewal not because of any fault on the part of the licence holder, but rather because the ACMA had failed to make a decision within the allotted timeframe.

The Committee **seeks the Minister's advice** on this matter, including whether there are any further reasons, not included in the explanatory memorandum, for this provision.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Drink Container Recycling Bill 2008

Introduced into the Senate on 13 March 2008

By Senator Fielding

Background

This bill establishes a national deposit scheme to encourage the recycling of drink containers to protect the environment. The bill:

- requires a producer or distributor of a beverage or an industry or other group to develop, and have approved by the Minister, a beverage container stewardship plan;
- specifies the content of the stewardship plan and the consultation process that must be undertaken in developing the plan;
- specifies the matters that the Minister may take into account when deciding whether to approve a stewardship plan;
- provides for review of a stewardship plan at five yearly intervals; and
- provides for the payment of a deposit when purchasing a beverage container and for the refund of such deposits when the beverage container is taken to a redemption facility.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator's bill, was accompanied only by a second reading speech and was introduced without an explanatory memorandum. The consideration of bills by the Committee and by the Parliament is assisted if they are accompanied by an explanation of the intent and operation of the proposed amendments, preferably in the form of an explanatory memorandum.

The Committee recognises, of course, that private Senators and Members do not generally have access to the resources of departments and agencies to assist in the development of explanatory memoranda. In this context, the Committee notes that the Department of the Senate has developed a set of guidelines to assist Senators with the preparation of private bills and

explanatory material, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide, which is available from the Clerk Assistant (Procedure) and on the Senate's intranet site, may assist Senators and Members in preparing explanatory memoranda.

In this instance, the Committee notes that the second reading speech provides some explanation of the intent and operation of the proposed amendments.

In the circumstances, the Committee makes no further comment on this issue.

Lack of merits review Subclause 13(1)

Subclause 13(1) gives the Minister a discretion to approve a stewardship plan relating to the way in which a producer or distributor of beverages intends to ensure that containers will be effectively recycled. However, there is no provision in the bill for the exercise of that discretion to be subject to merits review under the *Administrative Appeals Tribunal Act 1975*.

The Committee consistently draws attention to provisions that explicitly exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. The Committee **seeks the Senator's advice** about the reasons for not providing for merits review of a decision by the Minister under subclause 13(1).

Pending the Senator's advice, the Committee draws Senators' attention to the provision, as it 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.

Interstate Road Transport Charge Amendment Bill 2008

Introduced into the House of Representatives on 13 March 2008

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Background

Introduced with the Road Transport Charges (Australian Capital Territory) Repeal Bill 2008, this bill amends the *Interstate Road Transport Charge Act 1985* to implement the registration charge elements of the 2007 Heavy Vehicle Charges Determination, which sets out national charges for heavy vehicles and trailers.

The bill, which will commence from 1 July 2008, also allows Regulations to be made to implement the national heavy vehicle charges detailed in the Determination, for application to vehicles registered under the Federal Interstate Registration Scheme.

This bill also contains application provisions.

Setting the rate of a charge by regulation Schedule 1, item 6

Proposed new sub-section 5(3) of the *Interstate Road Transport Charge Act 1985*, to be inserted by item 6 of Schedule 1, provides that the amount of charge in respect of the registration of specified vehicles is ‘the amount worked out in accordance with the regulations made for the purposes of’ that section. The Committee has consistently drawn attention to legislation that provides for the rate of a charge or levy to be set by regulation. This creates a risk that the charge may, in fact, become a tax. In the Committee’s opinion, it is for Parliament, rather than the makers of subordinate legislation, to set a rate of tax.

Where the rate of a charge is to be set by subordinate legislation, the Committee expects that there will be some limits imposed on the exercise of

this power. For example, the Committee expects the enabling Act to prescribe either a maximum figure above which the relevant regulations cannot fix the charge, or, alternatively, a formula by which such an amount can be calculated. The vice to be avoided is delegating an unfettered power to impose fees.

In this instance, the Committee notes from the explanatory memorandum that the purpose of the charge, as determined by the Council of Australian Governments, is ‘to fully recover the costs of the provision of the road network to the heavy vehicle industry’, a point which is echoed in the second reading speech and Regulatory Impact Statement. Thus the Committee notes that the amount of the charge is limited to cost recovery.

In the circumstances, the Committee makes no further comment on this provision.

Road Transport Charges (Australian Capital Territory) Repeal Bill 2008

Introduced into the House of Representatives on 13 March 2008

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Background

Introduced with the Interstate Road Transport Charge Amendment Bill 2008, this bill repeals the *Road Transport Charges (Australian Capital Territory) Act 1993* and parts of the *Road Transport Reform (Heavy Vehicles Registration) Act 1997* that refer to that Act. The *Road Transport Charges (Australian Capital Territory) Act 1993* was enacted by the Commonwealth on behalf of the Australian Capital Territory (ACT). Repeal of the Act will allow the ACT Government to introduce new heavy vehicle registration charges into its own legislative arrangements, in accordance with the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport.

The Committee has no comment on this bill.

Special Broadcasting Service Amendment (Prohibition of Disruptive Advertising) Bill 2008

Introduced into the Senate on 12 March 2008

By Senator Allison

Background

This bill amends the *Special Broadcasting Service Act 1991* to provide that the SBS must not interrupt a televised program to screen non-program content, such as advertising and station promotions.

The Committee has no comment on this bill.

Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Bill 2008

Introduced into the Senate on 13 March 2008

Portfolio: Finance and Deregulation

Background

This bill amends numerous Acts as a consequence of: the introduction of the Public Sector Superannuation Accumulation Plan (PSSAP); the establishment of the Australian Reward Investment Alliance (ARIA); the requirement to use ordinary time earnings (OTE) to calculate employer Superannuation Guarantee (SG) obligations from 1 July 2008; and the introduction of the *Legislative Instruments Act 2003*.

Among other things, the bill:

- ensures provisions in the *Superannuation Act 2005* relating to invalidity benefit entitlements are included in a number of other Acts;
- replaces references to the previous CSS and PSS Boards with ARIA;
- removes out-of-date references to the *Acts Interpretation Act 1901* and concepts under that Act and clarifies that instruments that were disallowable under the *Acts Interpretation Act 1901*, prior to these amendments being made, continue to be subject to disallowance; and
- enables the Minister for Finance and Deregulation to make Regulations under the *Superannuation Act 1976*, when necessary, to ensure that the CSS complies with requirements under the *Superannuation Guarantee (Administration) Act 1992*.

The bill also contains application and transitional provisions.

The Committee has no comment on this bill.

Veterans' Entitlements Legislation Amendment (2007 Election Commitments) Bill 2008

Introduced into the House of Representatives on 13 March 2008
Portfolio: Veterans' Affairs

Background

This bill amends the *Veterans' Entitlements Act 1986*, the *Social Security Act 1991* and the *Income Tax Assessment Act 1997* to:

- extend the automatic grant of pension, payable under Part II or IV of the *Veterans' Entitlements Act 1986*, to the eligible dependant of a veteran or member who, immediately before his or her death, was in receipt of an intermediate rate disability pension or temporary special rate disability pension;
- remove the requirement for war widows or widowers who are under qualifying age to have a dependant child, be permanently incapacitated or be the partner of a person receiving an income support pension, before they can receive the income support supplement;
- ensure that incapacitated war widows or widowers under age pension age continue to receive the income support supplement as a tax free payment; and
- provide for the disability pension bereavement payment to be made to the estate of certain single disability pension recipients.

The bill also contains application and transitional provisions.

Retrospective application Schedule 2, item 7

Item 7 of Schedule 2 provides that the amendment made to section 45Q of the *Veterans' Entitlement Act 1986* by Schedule 2 of this bill applies in relation to claims made before the commencement of Schedule 2 that have not been determined by the Commission before that commencement.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance, however, the Committee notes from the explanatory memorandum (page 5) that this ‘provision will not disadvantage any war widow or war widower as the new eligibility regime is more lenient than the previous regime.’

In the circumstances, the Committee makes no further comment on this provision.

COMMENTARY ON AMENDMENTS TO BILLS

Defence Legislation Amendment Bill 2008

On 12 March 2008 the House of Representatives agreed to fourteen amendments to the bill, none of which fall within the Committee's terms of reference.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2007/2008

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2007							
Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures Bill 2007	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 2(12.3.08)
Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007	8(8.8.07)	21.6.07	13.9.07	Treasurer	9.8.07	20.9.07	2(12.3.08)
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Bill 2007	8(8.8.07)	21.6.07	13.9.07	Treasurer	9.8.07	19.9.07	2(12.3.08)
National Greenhouse and Energy Reporting Bill 2007	11(12.9.07)	15.8.07	18.9.07	Environment and Water Resources	13.9.07	2.10.07	2(12.3.08)
<i>Northern Territory National Emergency Response Act 2007</i>	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 2(12.3.08)
<i>Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007</i>	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 2(12.3.08)
<i>Water Act 2007</i>	10(15.8.07)	8.8.07	15.8.07	Environment and Water Resources	16.8.07	23.11.07	2(12.3.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills introduced 2008							
<i>Aged Cared Amendment (2008 Measures No. 1) Act 2008</i>	1(12.3.08)	13.2.08	14.2.08	Health and Ageing	13.3.08		
Financial Sector Legislation Amendment (Review of Prudential Decisions) Bill 2008	1(12.3.08)	11.3.08	13.2.08	Treasury	13.3.08	18.3.08	2(19.3.08)
Horse Disease Response Levy Bill 2008	1(12.3.08)	21.2.08		Agriculture, Fisheries and Forestry	13.3.08		
Horse Disease Response Levy Collection Bill 2008	1(12.3.08)	21.2.08		Agriculture, Fisheries and Forestry	13.3.08		
Infrastructure Australia Bill 2008	1(12.3.08)	21.2.08	18.3.08	Infrastructure, Transport, Regional Development and Local Government	13.3.08	18.3.08	2(19.3.08)
Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008	1(12.3.08)	13.2.08	17.3.08	Employment and Workplace Relations	13.3.08	18.3.08	2(19.3.08)

