



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

TENTH REPORT

OF

2008

24 September 2008

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MEMBERS OF THE COMMITTEE

Senator the Hon C Ellison (Chair)

Senator M Bishop (Deputy Chair)

Senator D Cameron

Senator J Collins

Senator R Siewert

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.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TENTH REPORT OF 2008

The Committee presents its Tenth Report of 2008 to the Senate.

The Committee draws the attention of the Senate to clauses of the following bill which contains provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Safe Work Australia Bill 2008

Safe Work Australia Bill 2008

Introduction

The Committee dealt with this bill in *Alert Digest No. 9 of 2008*. The Minister for Employment and Workplace Relations responded to the Committee's comments in a letter dated 22 September 2008. A copy of the letter is attached to this report.

Extract from Alert Digest No. 9 of 2008

Introduced into the House of Representatives on 4 September 2008
Portfolio: Education, Employment and Workplace Relations

Background

This bill, introduced with the Safe Work Australia (Consequential and Transitional Provisions) Bill 2008, establishes Safe Work Australia (to replace the Australian Safety and Compensation Council) as an independent Commonwealth statutory body. The bill:

- details the functions of Safe Work Australia;
- provides for the appointment of members to Safe Work Australia and for the appointment, remuneration, and termination of the Chair and CEO;
- requires the development of a three year strategic plan and annual operational plans, and details the process for approval of the plans by the Workplace Relations Ministers' Council;
- specifies meeting, disclosure of interests, and reporting requirements of Safe Work Australia;
- specifies the functions of the CEO and provides for the appointment of staff under the *Public Service Act 1999*; and
- establishes a Special Account and details the purposes of the Account.

Standing (special) appropriation

Clause 64

Clause 64 establishes the Safe Work Australia Special Account. If an Act establishes a Special Account and identifies the purposes of the account then, by virtue of section 21 of the *Financial Management and Accountability Act 1997*, the consolidated revenue fund is appropriated for those purposes. This proposed new section is, therefore, establishing a standing appropriation.

In its *Fourteenth Report of 2005*, the Committee stated that:

The appropriation of money from Commonwealth revenue is a legislative function. The committee considers that, by allowing the executive government to spend unspecified amounts of money for an indefinite time into the future, provisions which establish standing appropriations may, depending on the circumstances of the legislation, infringe upon the committee's terms of reference relating to the delegation and exercise of legislative power.

In scrutinising standing appropriations, the Committee looks to the explanatory memorandum to the bill for an explanation of the reason for the standing appropriation. In addition, the Committee ideally likes to see:

- some limitation placed on the amount of funds that may be so appropriated; and
- a sunset clause that ensures the special appropriation cannot go on indefinitely without any further reference to the Parliament.

In this instance, the Committee notes from the explanatory memorandum that the amounts to be credited to the Special Account will come from the States and Territories and the Commonwealth, and will be the subject of an Intergovernmental Agreement. The Committee further notes that Clause 66 of the bill specifies how the funds in the Account may be expended.

The Committee **seeks the Minister's advice** as to whether the Commonwealth contribution to Safe Work Australia could be subject to approval through the standard annual appropriations process, thus ensuring ongoing Parliamentary oversight. The Committee also **seeks the Minister's advice** whether the activities and functions of Safe Work Australia will be fully funded through this Standing Appropriation.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference and insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference.

Relevant extract from the response from the Minister

Thank you for your letter 18 September 2008 on behalf of the Senate Scrutiny of Bills Committee, concerning clause 64 of the Safe Work Australia Bill 2008, which establishes a Special Account.

Safe Work Australia will be jointly funded by the Commonwealth and the States and Territories. The purpose of the Special Account is to allow for a mechanism whereby the funds provided by the States and Territories for the functioning of Safe Work Australia may be allocated.

The Commonwealth will be funding 50% of Safe Work Australia's expenditure. I confirm that the Commonwealth's contribution will be appropriated to my Department through the standard annual appropriations process and therefore subject to the normal scrutiny by Parliament.

I also confirm that the activities and functions of Safe Work Australia will be fully funded through this Special Account.

The Committee thanks the Minister for this timely response, which addresses the Committee's concerns.

Senator Chris Ellison
Chair



RECEIVED

23 SEP 2008

Senate Standing Committee
for the Scrutiny of Bills

THE HON JULIA GILLARD MP
DEPUTY PRIME MINISTER

Parliament House
Canberra ACT 2600

22 SEP 2008

Senator the Hon Chris Ellison
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Chris
Dear Senator Ellison

Thank you for your letter 18 September 2008 on behalf of the Senate Scrutiny of Bills Committee, concerning clause 64 of the Safe Work Australia Bill 2008, which establishes a Special Account.

Safe Work Australia will be jointly funded by the Commonwealth and the States and Territories. The purpose of the Special Account is to allow for a mechanism whereby the funds provided by the States and Territories for the functioning of Safe Work Australia may be allocated.

The Commonwealth will be funding 50% of Safe Work Australia's expenditure. I confirm that the Commonwealth's contribution will be appropriated to my Department through the standard annual appropriations process and therefore subject to the normal scrutiny by Parliament.

I also confirm that the activities and functions of Safe Work Australia will be fully funded through this Special Account.

I trust my comments have been of assistance to the Committee.

Yours sincerely


Julia Gillard
Minister for Employment and Workplace Relations

