



SENATE STANDING COMMITTEE
FOR THE
SCRUTINY OF BILLS

NINTH REPORT
OF
2015

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Members of the Committee

Current members

Senator Helen Polley (Chair)	ALP, Tasmania
Senator John Williams (Deputy Chair)	NATS, New South Wales
Senator Cory Bernardi	LP, South Australia
Senator Katy Gallagher	ALP, Australian Capital Territory
Senator the Hon Bill Heffernan	LP, New South Wales
Senator Rachel Siewert	AG, Western Australia

Secretariat

Ms Toni Dawes, Secretary
Mr Glenn Ryall, Principal Research Officer
Ms Ingrid Zappe, Legislative Research Officer

Committee legal adviser

Associate Professor Leighton McDonald

Committee contacts

PO Box 6100
Parliament House
Canberra ACT 2600
Phone: 02 6277 3050
Email: scrutiny.sen@aph.gov.au
Website: http://www.aph.gov.au/senate_scrutiny

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 or the provisions of bills not yet before 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 on its terms of reference, may consider any proposed law or other document or information available to it, including an exposure draft of proposed legislation, notwithstanding that such proposed law, document or information has not been presented to the Senate.
- (c) The committee, for the purpose of reporting on term of reference (a)(iv), shall take into account the extent to which a proposed law relies on delegated legislation and whether a draft of that legislation is available to the Senate at the time the bill is considered.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

NINTH REPORT OF 2015

The committee presents its *Ninth Report of 2015* to the Senate.

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

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Appropriation Bill (No. 4) 2014-2015	611
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Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015	622

Appropriation Bill (No. 4) 2014-2015

Introduced into the House of Representatives on 12 February 2015

Portfolio: Finance

The bill received Royal Assent on 2 April 2015

Introduction

The committee dealt with this bill in *Alert Digest No. 2 of 2015*. The Finance Minister responded to the committee's comments in letters dated 8 May, 4 June and 15 July 2015.

After receiving the Finance Minister's second response the committee wrote to the Treasurer on 18 June 2015 seeking additional information. Following the receipt of the Finance Minister's third response the committee reiterated its request to the Treasurer.

The Treasurer responded in a letter dated 27 August 2015. A copy of the letter is attached to this report.

Extract from Sixth Report of 2015

Noting the terms of section 96 of the Constitution which provides that '...the Parliament may grant financial assistance to any State on such terms and conditions *as the Parliament thinks fit*' [emphasis added], the committee also seeks the Treasurer's general advice as to what parliamentary (and public) scrutiny mechanisms are available in relation to payments made to States and Territories under the standing appropriations contained in the *Federal Financial Relations Act 2009* and the *COAG Reform Fund Act 2008*. For example, the committee is interested in whether details about payments made to States and Territories (and the terms and conditions attached to them) are published in a comprehensive, systematic and publicly available manner.

Treasurer's response - extract

The Senate Standing Committee for the Scrutiny of Bills has requested that, as the responsible minister, I provide general advice on what parliamentary and public scrutiny mechanisms are available for payments made to States and Territories under the standing appropriations contained in the *Federal Financial Relations Act 2009* and the *COAG Reform Fund Act 2008*.

Together, these Acts give effect to the payment arrangements under the *Intergovernmental Agreement on Federal Financial Relations* (IGA). There are a number of agreements under the IGA, such as the National Health Reform Agreement, National Education Reform

Agreement, and various National Partnerships, which together set out the terms and conditions on which grants of financial assistance may be made to the States and Territories.

Under the *Federal Financial Relations Act 2009*, I am able to make determinations for the payment of financial assistance to the States and Territories. These determinations give effect to the IGA and subordinate agreements, and I must have regard to those agreements, as well as other various legislative requirements, when making a determination. I am able to make determinations in relation to:

- payments of collected Goods and Services Tax;
- payments of other General Revenue Assistance;
- National Specific Purpose Payments;
- National Health Reform payments; and
- National Partnership payments.

These determinations are legislative instruments and are published as soon as is reasonably practicable on the Federal Register of Legislative Instruments. The majority of these determinations are not subject to disallowance under section 42 of the *Legislative Instruments Act 2003*, except for determinations of National Specific Purpose Payments, which are made annually.

Parliament also has a role in setting the debit limits in Appropriation Bill (No. 2), which are the maximum amount of funds which are able to be debited from the COAG Reform Fund in each financial year for the purposes of making National Partnership payments or other General Revenue Assistance payments.

For payments of collected Goods and Services Tax, National Specific Purpose Payments and National Health Reform payments, I am required to have regard to specific legislative directives when making a determination, including any relevant agreement that sets out the terms and conditions on which financial assistance may be paid.

As you would be aware, a comprehensive list of all payments to the States and Territories is reported in Budget Paper No. 3. Additionally, for accountability and transparency reasons, all agreements with the States and Territories under the IGA are publicly available on the Federal Financial Relations website, which my Department administers.

I trust this information will be of assistance to the work of the Committee.

Committee response

The committee thanks the Treasurer for this response.

The committee notes that in 2015-16 the Commonwealth will provide the States with payments totalling \$107.7 billion. This represents an estimated 24.8 per cent of all Commonwealth expenditure (*Federal Financial Relations*, Budget Paper No. 3 2015-16, 12 May 2015, p. 3).

Section 96 of the Constitution provides that ‘...the Parliament may grant financial assistance to any State *on such terms and conditions as the Parliament thinks fit*’ [emphasis added]. While, as noted by the Treasurer, there is the opportunity for some public and parliamentary scrutiny of this expenditure, the committee notes that the Parliament has largely delegated to the executive the power to determine the terms and conditions on which financial assistance is granted to the States. For example, this is illustrated in the explanatory memorandum accompanying this bill (at p. 7):

Clauses 7 and 14 delegate Parliament’s power under section 96 of the Constitution to impose terms and conditions on payments of financial assistance to the States to the responsible Ministers listed in Schedule 1 of the Bill. Schedule 1 also lists the Ministers who may determine the amounts and timing of those payments.

In addition, as the Treasurer notes in his response, the majority of determinations made under the *Federal Financial Relations Act 2009*, while being legislative instruments, are not subject to disallowance by the Parliament.

Noting the significance of expenditure on payments to the States and Territories and the substantial delegation of legislative power in this regard, the committee draws the information about payments to the States and Territories in Budget Paper No. 3 and on the Federal Financial Relations website to the attention of Senators.

In addition, and noting the role of Senators in representing the people of their State or Territory, the committee requests that detailed information about the particular purposes for which money is sought to be appropriated for payments to State, Territory and local governments be included in explanatory memoranda accompanying future even-numbered appropriation bills. This information should deal only with the proposed appropriations in the relevant bill. This would significantly assist Senators in scrutinising payments to State, Territory and local governments by ensuring that clear explanatory information in relation to the appropriations proposed in the particular bill is readily available in one stand-alone location.

continued

The committee draws this general matter to the attention of the Regulations and Ordinances Committee and the Parliamentary Joint Committee on Human Rights for information.

The committee will also draw this matter to the attention of the Senate where appropriate in the future.

Asian Infrastructure Investment Bank Bill 2015

Introduced into the House of Representatives on 13 August 2015

Portfolio: Treasury

Introduction

The committee dealt with this bill in *Alert Digest No. 8 of 2015*. The Treasurer responded to the committee's comments in a letter dated 1 September 2015. A copy of the letter is attached to this report.

Alert Digest No. 8 of 2015 - extract

Background

This bill provides authority and an appropriation for the payment of Australia's capital contribution to the Asian Infrastructure Investment Bank, thereby facilitating Australia's membership of the Bank.

Delegation of legislative power

Possible trespass on personal rights and liberties

Clause 8

Clause 8 will allow regulations to confer on the bank 'such privileges and immunities as are necessary or desirable to give effect to Chapter IX of the Bank Agreement'. Chapter IX is headed 'status, immunities, privileges and exemptions' and these are described as being needed 'to enable the Bank to fulfil its purpose and carry out the functions entrusted to it' (Article 44). Chapter IX covers topics such as:

- the status of the bank as a 'juridical personality';
- immunity from judicial proceedings, immunity of assets and archives and immunities and privileges for officers and employees;
- privilege for communications; and
- freedom of assets from restrictions.

The explanatory memorandum notes that under the Bank Agreement Australia is 'obligated' to provide certain privileges to the Bank and officers and employees of the bank and provides an example in relation to:

...the exemption from application of laws relating to immigration and the registration of aliens for experts and consultants performing services for the Bank

which are additional to those that would ordinarily be provided to other international organisations (see pp 7 and 8).

While there is some information available about the scope of possible immunities and privileges that might be provided by regulation under clause 8, the committee is interested in more detail about the nature of the proposed immunities and privileges. In particular, the committee seeks advice from the Minister which addresses the question of whether these modifications to the normal operation of the law may have an adverse impact on the personal rights or liberties of individuals.

In accordance with its terms of reference, the committee also scrutinises bills to ensure that delegations of power are made appropriately. The committee prefers that important matters are included in primary legislation unless there is a comprehensive and persuasive justification for an alternative approach. **The committee therefore also seeks the Minister's advice as to the reasons why it is considered appropriate for these privileges and immunities to be set out in regulation, rather than for them to be included in the bill itself.**

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) and to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee's terms of reference.

Treasurer's response - extract

Nature of proposed privileges and immunities and impact on the personal rights or liberties of Individuals

As you are aware, Australia is a signatory to the AIIB's Articles of Agreement (the Articles). The Articles provide for privileges and immunities to be conferred by members of the AIIB. Privileges and immunities are provided to international organisations and associated personnel because they are considered necessary for the efficient and independent functioning of the organisation.

The nature of the proposed privileges and immunities are consistent with privileges and immunities afforded to the Asian Development Bank and the European Bank for Reconstruction and Development. Australia is a member of both of these multilateral development banks. The Articles also provide for the additional privileges and immunities in relation to exemption from taxation on staff salaries, emoluments and expenses and privileges from immigration restrictions for experts and consultants providing services for the AIIB.

As outlined in the AIIB Bill Explanatory Memorandum's Statement of Compatibility with Human Rights, I consider that the additional privileges and immunities in the Articles do not impact any individual's human rights nor have the potential to breach any of our human rights obligations.

Request for advice on reasons why the privileges and immunities will be set out in Regulations

The privileges and immunities are most appropriately provided through Regulations because they will set out arrangements for how particular rights (under the authority of a Legislative Act) will be implemented. This approach to privileges and immunities is consistent with the existing practice provided to other international financial institutions of which Australia is a member, such as the World Bank, International Monetary Fund, Asian Development Bank and European Bank for Reconstruction and Development.

I trust this information will be of assistance to you and the Committee.

Committee response

The committee thanks the Treasurer for this response. The committee notes the Treasurer's advice that the nature of many of the privileges and immunities are consistent with those provided in relation to other multilateral development banks of which Australia is a member, and that '...the additional privileges and immunities in the Articles do not impact any individual's human rights nor have the potential to breach any of our human rights obligations'.

The Scrutiny of Bills Committee is not limited to considering whether a provision might 'trespass on personal rights and liberties' in the context of international human rights parameters, and has a long-standing practice of seeking to identify whether an approach could result in detriment to any person. For example, without further information it seems possible that immunity from judicial proceedings could give rise to detriment to another person, as a person would be prevented by the immunities from bringing legal proceedings against any AIIB officials in Australia, such as for breach of contract or defamation. The committee therefore remains concerned about the proposed approach and the limited information readily available as to the detail of the intended immunities and privileges. However, in light of the advice that 'privileges and immunities are provided to international organisations and associated personnel because they are considered necessary for the efficient and independent functioning of the organisation', the committee draws its concern to the attention of Senators and leaves the question of whether the proposed modifications to the normal operation of the law (which may have an adverse impact on the personal rights or liberties of individuals) is appropriate to the consideration of the Senate as a whole.

continued

The committee also notes the Treasurer's advice that the use of regulations is 'consistent with the existing practice provided to other international financial institutions of which Australia is a member'. While the committee prefers that important information is included in primary legislation wherever possible, based on the committee's understanding that any regulations will be disallowable **the committee leaves the question of whether the proposed use of delegated legislation is appropriate to the consideration of the Senate as a whole.**

Fair Work Amendment (Penalty Rates Exemption for Small Businesses) Bill 2015

Introduced into the Senate on 13 August 2015

By: Senators Leyonhjelm and Day

Introduction

The committee dealt with this bill in *Alert Digest No. 8 of 2015*. Senator Leyonhjelm responded to the committee's comments in a letter dated 24 August 2015. A copy of the letter is attached to this report.

Alert Digest No. 8 of 2015 - extract

Background

This bill amends the *Fair Work Act 2009* to state that 'excluded small business employers' (employers who employ fewer than 20 full-time equivalent staff in the restaurant and catering, hospitality or retail industries) cannot be required by an existing or future modern award to pay penalty rates unless the work is in addition to ten hours of work in a day, the work is on a public holiday, or the work is on a weekend and in addition to 38 hours of work over a seven day period.

Retrospective application

Item 6, application of section 155A of the amended Act

This bill creates new section 155A, which provides that a modern award must not include a term that would require an excluded small business employer to pay penalty rates to an employee in specified industries, unless the work is in addition to ten hours of work in a 24 hour period, the work is on a public holiday, or the work is on a weekend and in addition to 38 hours of work over the relevant week. This item permits section 155A of the amended Act to apply to awards that were made prior to the commencement of the bill.

The committee is concerned about the retrospective impact of provisions if they will, or might, have a detrimental effect on any person and looks to the explanatory material accompanying the bill for a comprehensive and persuasive justification of the proposed approach.

As the explanatory memorandum merely repeats the effect of item 6 without further explanation **the committee seeks the Senators' explanation in relation to the fairness of applying this provision to awards made before the commencement of the provision.**

Pending the Senators' reply, 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.

Senator's response - extract

The key provision in this Bill bans a modern award from including a term requiring certain employers to pay certain penalty rates. The Committee raises a concern about retrospectivity, stating that this provision is permitted to apply to awards that were made prior to the commencement of the Bill. The Committee questions the fairness of the provision and suggests that it may be considered to trespass unduly on personal rights and liberties.

The Bill contains no retrospective provision adverse to individuals, is fair, and in no way trespasses on personal rights and liberties.

The aforementioned provision commences a year after Royal Assent, so in no way can the Bill be construed to require anything adverse to individuals prior to Royal Assent or within a year thereafter.

The Bill also does not require any adverse result in the years beyond Royal Assent.

- Awards are regulations banning employment where pay and conditions are below certain thresholds. They represent a price floor, rather than price fixing.
- The Bill lowers the thresholds below which employment is banned. The Bill does not require employers to offer lower pay or conditions to existing employees.

Awards are not employment contracts, so the Bill's adjustment of awards does not represent interference with contractual benefits. If an employer decides to offer pay and conditions over coming years according to whatever happens to be in a particular award over those years, and if an employee accepts, that is a matter for the employer and employee.

- An analogy is where an employer proposed that pay over the coming years will be indexed to inflation, and an employee accepted. Such an agreement does not mean that a government's efforts to subsequently reduce inflation should be viewed as interference with contractual benefits.

The Fair Work Commission regularly varies awards. If the Bill's impact on awards is said to retrospectively harm individuals, then award variations by the Fair Work Commission must be similarly viewed.

- Indeed, according to such thinking, any regulatory imposition, subsidy reduction or tax increase would be judged to retrospectively harm individuals, even where such changes only apply in future years to future behaviour.
- As an aside, the year between Royal Assent and the commencement of the Bill's key provision provides ample opportunity for the Fair Work Commission to vary awards in response to the Bill.

If the Bill is judged to harm existing employees, presumably the Bill would also be judged to benefit existing unemployed and underemployed people, whose employment prospects are currently reduced by the prevalence of weekend penalty rate provisions in awards.

The potential for the Bill to assist existing unemployed and underemployed people underlines the fairness of the Bill.

As I indicated earlier, awards represent a price floor, which the Bill serves to lower. This price floor does not represent a personal right or liberty, particularly given the presence of Australia's welfare regime. This view is reiterated by the absence of award regimes in other developed countries. As such, the Bill's lowering of the price floor does not represent a trespass on personal rights and liberties.

Given the above, I request the Committee to state in a future Digest that its concerns and questions have been satisfactorily addressed. I also agree to the contents of this letter being republished.

More broadly, I commend the Committee for its important work, which I often find to be of great assistance.

Committee response

The committee thanks the Senator for this detailed response, which confirms that while the bill will apply to existing awards, the changes it introduces will only apply prospectively. **The committee notes that it would be useful for the information relevant to this matter to be included in the explanatory memorandum. In light of the information provided the committee makes no further comment on this bill.**

Tax and Superannuation Laws Amendment (2015 Measures No. 1) Bill 2015

Introduced into the House of Representatives on 27 May 2015

Portfolio: Treasury

The bill received Royal Assent on 25 June 2015

Introduction

The committee dealt with this bill in *Alert Digest No. 6 of 2015*. The Assistant Treasurer responded to the committee's comments in a letter dated 22 August 2015. A copy of the letter is attached to this report.

Alert Digest No. 6 of 2015 - extract

Background

This bill amends various taxation and superannuation laws.

Schedule 1 repeals the legislation providing for the First Home Saver Accounts Scheme, including the related tax concessions.

Schedule 2 amends the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to:

- abolish the dependent spouse tax offset (DSTO);
- expand the dependant (invalid and carer) tax offset (DICTO) by removing the exclusion in relation to spouses previously covered by the dependent spouse tax offset;
- remove an entitlement to DSTO where it is made available as a component of another tax offset, and replace that component with a component made up of DICTO; and
- rewrite the notional tax offsets covering children, students and sole parents that are available as components of other tax offsets.

Schedule 3 makes a number of reforms to modernise the Offshore Banking Unit regime.

Schedule 4 amends the *Income Tax Assessment Act 1997* to exempt the Global Infrastructure Hub Ltd from liability to pay income tax on ordinary income and statutory income.

Schedule 5 amends the *Income Tax Assessment Act 1997* to update the list of specifically listed deductible gift recipients.

Schedule 6 makes a number of miscellaneous amendments to taxation, superannuation and other laws.

Schedule 7 amends the income tax laws to implement the final element of the investment manager regime.

Retrospective application Schedule 6, various provisions

This Schedule makes a number of miscellaneous amendments, including amendments concerning style and formatting changes, the repeal of redundant provisions, the correction of anomalous outcomes and corrections to previous amending Acts. The explanatory material, states that '[w]hile some of these amendments have retrospective application, taxpayers should not be adversely impacted' (at p. 6). While the committee notes this effort to address the question of possible disadvantage as a result of the retrospective application of certain provisions, the committee seeks the Assistant Treasurer's clarification as to whether or not there may be any circumstances in which it is possible that taxpayers will be adversely affected.

Pending the Assistant Treasurer's reply, the committee draws Senators' attention to the provisions, as they 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.

Assistant Treasurer's response - extract

Thank you for your letter on behalf on the Senate Standing Committee for the Scrutiny of Bills of 18 June 2015 concerning the Taxation and Superannuation Laws Amendments (2015 Measures No. 1) Bill 2015 (the Bill). The Committee inquired whether there may be any circumstances in which it is possible that taxpayers will be adversely affected by the retrospective application of some amendments made by Schedule 6 of the Bill.

Schedule 6 of the Bill contains miscellaneous amendments to the tax laws, including amendments concerning style and formatting changes, the repeal of redundant provisions, the correction of anomalous outcomes and corrections to previous amending Acts. The majority of these amendments apply from the day after Royal Assent to the Bill. However, two categories of amendments have retrospective application.

The first category corrects technical errors in amending Acts. These amendments apply from the date of application of the amending Acts, in order to ensure the law achieves Parliament's intent. I am advised that these amendments will not adversely affect taxpayers. More detail is provided on each of these amendments in the Appendix.

The second category of amendments, contained in Part 2 of Schedule 6 to the Bill, amends the *Australian Charities and Not-for-Profits Commission Act 2012*. These amendments are consequential to the *Public Governance, Performance and Accountability Act 2013*, and apply from the date of commencement of the *Public Governance, Performance and Accountability Act 2013*. Taxpayers benefit from having legal clarity about the public governance obligations of statutory bodies such as the Australian Charities and Not-for-Profits Commission.

I trust this information will be of assistance to you.

APPENDIX

Item numbers(s) of Schedule 6 to the Bill	Brief description – more detail can be found in the explanatory memorandum accompanying the Bill	Comments on potential adverse effects from retrospective application
3	This amendment corrected a spelling error by changing ‘trusts funds’ to ‘trust fund’.	Taxpayers will not be adversely affected by this amendment applying retrospectively. Given the intent of the erroneous provision was clear, an error of this nature did not affect the operation of the law.
31	This amendment ensures the imputation system applies correctly to life insurance companies, given their unusual corporate structure. By correcting an erroneous reference in the law, it prevented life insurance companies from being inappropriately liable for franking debits in a particular circumstance, and removed an exemption that prevented a liability arising for franking debits in a different circumstance.	Although life insurance companies could, in theory, be adversely affected by the removal of the exemption, the commercial reality of how those companies operate prevents the change from having any adverse effect in practice. This amendment was requested by industry through the Tax Issues Entry System, an Australian Government initiative that allows members of the public to raise issues relating to the care and maintenance of the tax and superannuation systems. Affected industry, and taxpayers more generally, benefit from a properly functioning imputation system

41	This amendment removes an asterisk that had been incorrectly included in an amending provision.	Taxpayers will not be adversely affected by this amendment applying retrospectively. Given the intent of the erroneous provision was clear, an error of this nature did not affect the operation of the law.
47 to 50	The amendment corrects grammatical errors. It changed “; and; or” to “; or”, and changed a full stop to “; and”.	Taxpayers will not be adversely affected by this amendment applying retrospectively. Given the intent of the erroneous provision was clear, an error of this nature did not affect the operation of the law.
64	This amendment corrected an error in clarify the application date of certain provisions.	Taxpayers will not be adversely affected by this amendment applying retrospectively. Given the intent of the erroneous provision was clear, an error of this nature did not affect the operation of the law.

Committee response

The committee thanks the Assistant Treasurer for this detailed response. **The committee notes that it would have been useful had the key information above been included in the explanatory memorandum.**

Senator Helen Polley
Chair



TREASURER

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Polley

The Senate Standing Committee for the Scrutiny of Bills has requested that, as the responsible minister, I provide general advice on what parliamentary and public scrutiny mechanisms are available for payments made to States and Territories under the standing appropriations contained in the *Federal Financial Relations Act 2009* and the *COAG Reform Fund Act 2008*.

Together, these Acts give effect to the payment arrangements under the *Intergovernmental Agreement on Federal Financial Relations (IGA)*. There are a number of agreements under the IGA, such as the National Health Reform Agreement, National Education Reform Agreement, and various National Partnerships, which together set out the terms and conditions on which grants of financial assistance may be made to the States and Territories.

Under the *Federal Financial Relations Act 2009*, I am able to make determinations for the payment of financial assistance to the States and Territories. These determinations give effect to the IGA and subordinate agreements, and I must have regard to those agreements, as well as other various legislative requirements, when making a determination. I am able to make determinations in relation to:

- payments of collected Goods and Services Tax;
- payments of other General Revenue Assistance;
- National Specific Purpose Payments;
- National Health Reform payments; and
- National Partnership payments.

These determinations are legislative instruments and are published as soon as is reasonably practicable on the Federal Register of Legislative Instruments. The majority of these determinations are not subject to disallowance under section 42 of the *Legislative Instruments Act 2003*, except for determinations of National Specific Purpose Payments, which are made annually.

Parliament also has a role in setting the debit limits in Appropriation Bill (No. 2), which are the maximum amount of funds which are able to be debited from the COAG Reform Fund in each financial year for the purposes of making National Partnership payments or other General Revenue Assistance payments.

For payments of collected Goods and Services Tax, National Specific Purpose Payments and National Health Reform payments, I am required to have regard to specific legislative directives when making a determination, including any relevant agreement that sets out the terms and conditions on which financial assistance may be paid.

As you would be aware, a comprehensive list of all payments to the States and Territories is reported in Budget Paper No. 3. Additionally, for accountability and transparency reasons, all agreements with the States and Territories under the IGA are publicly available on the Federal Financial Relations website, which my Department administers.

I trust this information will be of assistance to the work of the Committee.

Yours sincerely

HON J. B. HOCKEY MP



TREASURER

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suit 1.111
Parliament House
CANBERRA ACT 2600

01 SEP 2015
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ACT 2600

Dear Senator

Australian Infrastructure Investment Bank Bill 2015

Thank you for your letter dated 20 August 2015 regarding the *Asian Infrastructure Investment Bank Bill 2015* (AIIB Bill) which requested a response on certain provisions of the Bill.

Nature of proposed privileges and immunities and impact on the personal rights or liberties of individuals

As you are aware, Australia is a signatory to the AIIB's Articles of Agreement (the Articles). The Articles provide for privileges and immunities to be conferred by members of the AIIB. Privileges and immunities are provided to international organisations and associated personnel because they are considered necessary for the efficient and independent functioning of the organisation.

The nature of the proposed privileges and immunities are consistent with privileges and immunities afforded to the Asian Development Bank and the European Bank for Reconstruction and Development. Australia is a member of both of these multilateral development banks.

The Articles also provide for the additional privileges and immunities in relation to exemption from taxation on staff salaries, emoluments and expenses and privileges from immigration restrictions for experts and consultants providing services for the AIIB.

As outlined in the AIIB Bill Explanatory Memorandum's Statement of Compatibility with Human Rights, I consider that the additional privileges and immunities in the Articles do not impact any individual's human rights nor have the potential to breach any of our human rights obligations.

Request for advice on reasons why the privileges and immunities will be set out in Regulations

The privileges and immunities are most appropriately provided through Regulations because they will set out arrangements for how particular rights (under the authority of a Legislative Act) will be implemented. This approach to privileges and immunities is consistent with the existing practice provided to other international financial institutions of which Australia is a member, such as the World Bank, International Monetary Fund, Asian Development Bank and European Bank for Reconstruction and Development.

I trust this information will be of assistance to you and the Committee.

Yours sincerely

/ HON J. B. HOCKEY MP



AUSTRALIAN SENATE

David Leyonhjelm

BVSc LLB MBA

Liberal Democrats Senator for NSW

24 August 2015

Senator Helen Polley

Chair

Senate Standing Committee for the Scrutiny of Bills

Parliament House

CANBERRA ACT 2600

Dear Senator Polley,

A handwritten signature in blue ink that reads 'Helen'.

I write in response to a letter of 20 August 2015 from Toni Dawes, Committee Secretary, drawing my attention to comments in the Committee's Alert Digest No. 8 2015. The comments relate to the *Fair Work Amendment (Penalty Rates Exemption for Small Businesses) Bill 2015*, which I introduced with Senator Day.

The key provision in this Bill bans a modern award from including a term requiring certain employers to pay certain penalty rates. The Committee raises a concern about retrospectivity, stating that this provision is permitted to apply to awards that were made prior to the commencement of the Bill. The Committee questions the fairness of the provision and suggests that it may be considered to trespass unduly on personal rights and liberties.

The Bill contains no retrospective provision adverse to individuals, is fair, and in no way trespasses on personal rights and liberties.

The aforementioned provision commences a year after Royal Assent, so in no way can the Bill be construed to require anything adverse to individuals prior to Royal Assent or within a year thereafter.

The Bill also does not require any adverse result in the years beyond Royal Assent.

- Awards are regulations banning employment where pay and conditions are below certain thresholds. They represent a price floor, rather than price fixing.
- The Bill lowers the thresholds below which employment is banned. The Bill does not require employers to offer lower pay or conditions to existing employees.

Awards are not employment contracts, so the Bill's adjustment of awards does not represent interference with contractual benefits. If an employer decides to offer pay and conditions over coming years according to whatever happens to be in a particular award over those years, and if an employee accepts, that is a matter for the employer and employee.

- An analogy is where an employer proposed that pay over the coming years will be indexed to inflation, and an employee accepted. Such an agreement does not mean that a government's efforts to subsequently reduce inflation should be viewed as interference with contractual benefits.

The Fair Work Commission regularly varies awards. If the Bill's impact on awards is said to retrospectively harm individuals, then award variations by the Fair Work Commission must be similarly viewed.

- Indeed, according to such thinking, any regulatory imposition, subsidy reduction or tax increase would be judged to retrospectively harm individuals, even where such changes only apply in future years to future behaviour.
- As an aside, the year between Royal Assent and the commencement of the Bill's key provision provides ample opportunity for the Fair Work Commission to vary awards in response to the Bill.

If the Bill is judged to harm existing employees, presumably the Bill would also be judged to benefit existing unemployed and underemployed people, whose employment prospects are currently reduced by the prevalence of weekend penalty rate provisions in awards.

The potential for the Bill to assist existing unemployed and underemployed people underlines the fairness of the Bill.

As I indicated earlier, awards represent a price floor, which the Bill serves to lower. This price floor does not represent a personal right or liberty, particularly given the presence of Australia's welfare regime. This view is reiterated by the absence of award regimes in other developed countries. As such, the Bill's lowering of the price floor does not represent a trespass on personal rights and liberties.

Given the above, I request the Committee to state in a future Digest that its concerns and questions have been satisfactorily addressed. I also agree to the contents of this letter being republished.

More broadly, I commend the Committee for its important work, which I often find to be of great assistance.

Yours sincerely,

Senator David Leyonhjelm

cc Senator Day



Assistant Treasurer

Senator Helen Polley
Chair
Senate Scrutiny of Bills Committee
Suite 1.111
Parliament House
CANBERRA ACT 2600

22 AUG 2015

Dear Senator  Polley

Thank you for your letter on behalf on the Senate Standing Committee for the Scrutiny of Bills of 18 June 2015 concerning the Taxation and Superannuation Laws Amendments (2015 Measures No. 1) Bill 2015 (the Bill). The Committee inquired whether there may be any circumstances in which it is possible that taxpayers will be adversely affected by the retrospective application of some amendments made by Schedule 6 of the Bill.

Schedule 6 of the Bill contains miscellaneous amendments to the tax laws, including amendments concerning style and formatting changes, the repeal of redundant provisions, the correction of anomalous outcomes and corrections to previous amending Acts. The majority of these amendments apply from the day after Royal Assent to the Bill. However, two categories of amendments have retrospective application.

The first category corrects technical errors in amending Acts. These amendments apply from the date of application of the amending Acts, in order to ensure the law achieves Parliament's intent. I am advised that these amendments will not adversely affect taxpayers. More detail is provided on each of these amendments in the Appendix.

The second category of amendments, contained in Part 2 of Schedule 6 to the Bill, amends the *Australian Charities and Not-for-profits Commission Act 2012*. These amendments are consequential to the *Public Governance, Performance and Accountability Act 2013*, and apply from the date of commencement of the *Public Governance, Performance and Accountability Act 2013*. Taxpayers benefit from having legal clarity about the public governance obligations of statutory bodies such as the Australian Charities and Not-for-Profits Commission.

I trust this information will be of assistance to you.

Yours sincerely

JOSH FRYDENBERG

APPENDIX

Item number(s) (of Schedule 6 to the Bill)	Brief description – more detail can be found in the explanatory memorandum accompanying the Bill	Comments on potential adverse effects from retrospective application
3	This amendment corrected a spelling error by changing ‘trusts funds’ to ‘trust fund’.	Taxpayers will not be adversely affected by this amendment applying retrospectively. Given the intent of the erroneous provision was clear, an error of this nature did not affect the operation of the law.
31	This amendment ensures the imputation system applies correctly to life insurance companies, given their unusual corporate structure. By correcting an erroneous reference in the law, it prevented life insurance companies from being inappropriately liable for franking debits in a particular circumstance, and removed an exemption that prevented a liability arising for franking debits in a different circumstance.	<p>Although life insurance companies could, in theory, be adversely affected by the removal of the exemption, the commercial reality of how those companies operate prevents the change from having any adverse effect in practice.</p> <p>This amendment was requested by industry through the Tax Issues Entry System, an Australian Government initiative that allows members of the public to raise issues relating to the care and maintenance of the tax and superannuation systems. Affected industry, and taxpayers more generally, benefit from a properly functioning imputation system.</p>
41	This amendment removes an asterisk that had been incorrectly included in an amending provision.	Taxpayers will not be adversely affected by this amendment applying retrospectively. Given the intent of the erroneous provision was clear, an error of this nature did not affect the operation of the law.
47 to 50	The amendment corrects grammatical errors. It changed “; and; or” to “; or”, and changed a full stop to “; and”.	Taxpayers will not be adversely affected by this amendment applying retrospectively. Given the intent of the erroneous provision was clear, an error of this nature did not affect the operation of the law.
64	This amendment corrected an error to clarify the application date of certain provisions.	Taxpayers will not be adversely affected by this amendment applying retrospectively. Given the intent of the erroneous provision was clear, an error of this nature did not affect the operation of the law.