

Senate Standing Committee
for the
Scrutiny of Bills

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Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator Helen Polley (Chair)
Senator Anne Ruston (Deputy Chair)
Senator Cory Bernardi
Senator the Hon Kate Lundy
Senator the Hon Ian Macdonald
Senator Rachel Siewert

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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Senate Standing Legislation Committee Inquiries

The committee will forward any comments it has made on a bill to any relevant legislation committee for information.

- **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.

Adelaide Airport Curfew Amendment (Protecting Residents' Amenity) Bill 2014

Introduced into the Senate on 12 February 2014

By: Senator Wright

Background

This bill amends the *Adelaide Airport Curfew Act 2000* to prevent the Minister from approving international aircraft movements at Adelaide Airport during curfew shoulder periods.

The bill also makes some consequential amendments.

The committee has no comment on this bill.

Appropriation Bill (No. 3) 2013-2014

Introduced into the House of Representatives on 13 February 2014
Portfolio: Finance

Background

The bill provides for additional appropriations totalling just under \$11.6 billion from the Consolidated Revenue Fund for services that are not the ordinary annual services of the government, in addition to the appropriations provided for by the *Appropriation Act (No. 1) 2013-2014*.

The committee has no comment on this bill.

Appropriation Bill (No. 4) 2013-2014

Introduced into the House of Representatives on 13 February 2014

Portfolio: Finance

Background

The bill provides for additional appropriation of \$3.2 billion from the Consolidated Revenue Fund for services that are not the ordinary annual services of the government, in addition to the appropriations provided for by the *Appropriation Act (No. 2) 2013-2014*.

The committee has no comment on this bill.

Appropriation (Parliamentary Departments) Bill (No. 2) 2013-2014

Introduced into the House of Representatives on 13 February 2014

Portfolio: Finance

Background

This bill appropriates \$5.4 million additional funding to the Department of Parliamentary Services in addition to the appropriations provided for by the *Appropriation (Parliamentary Departments) Act (No. 1) 2013-2014*.

The committee has no comment on this bill.

Customs Tariff Amendment (Tobacco) Bill 2014

Introduced into the House of Representatives on 26 February 2014

Portfolio: Immigration and Border Protection

Background

This bill amends the *Customs Tariff Act 1995* to:

- increase the rates of excise equivalent customs duty on tobacco through a series of four staged increases of 12.5 per cent, commencing on 1 December 2013; and
- change the basis of indexation of excise equivalent customs duty on tobacco to average weekly ordinary time earnings (AWOTE) instead of the consumer price index (CPI) on 1 March 2014.

The committee has no comment on this bill.

Excise Tariff Amendment (Tobacco) Bill 2014

Introduced into the House of Representatives on 26 February 2014
Portfolio: Immigration and Border Protection

Background

This bill amends the *Excise Tariff Act 1921* to:

- increase the rates of excise on tobacco through a series of four staged increases of 12.5 per cent, commencing on 1 December 2013; and
- change the basis of indexation of excise duty on tobacco and tobacco products from the consumer price index (CPI) to average weekly ordinary time earnings (AWOTE) on 1 March 2014.

The committee has no comment on this bill.

Fair Work Amendment Bill 2014

Introduced into the House of Representatives on 27 February 2014

Portfolio: Employment

Background

This bill amends the *Fair Work Act 2009* to:

- clarify the taking or accruing of leave while receiving workers' compensation;
- clarify the circumstances in which annual leave loading is payable when a person leaves their job;
- introduce a requirement that an employer must give an employee who has requested an extension to their unpaid parental leave a reasonable opportunity to discuss the request unless the employer has already agreed to the request;
- make changes to the transfer of business rules to assist the transfer of employees who wish to move between associated entities voluntarily;
- establish a new process for the efficient negotiation of single-enterprise greenfield agreements;
- amend the right of entry framework of the Fair Work Act;
- provide for the Fair Work Commission to make decisions on an unfair dismissal application without being required to hold a hearing or conduct a conference; and
- provide for the Fair Work Ombudsman to pay interest on unclaimed monies.

The committee has no comment on this bill.

Governor-General Amendment (Salary) Bill 2014

Introduced into the House of Representatives on 27 February 2014
Portfolio: Prime Minister

Background

This bill amends the *Governor-General Act 1974* to change the sum payable for the salary of the Governor-General from \$394,000 to \$425,000.

The committee has no comment on this bill.

Great Barrier Reef Legislation Amendment Bill 2014

Introduced into the Senate on 13 February 2014

By: Senator Waters

Background

This bill amends the *Environment Protection and Biodiversity Conservation Act 1999* to implement key recommendations of the Work Heritage Committee to ensure that the Great Barrier Reef is not added to the 'World Heritage in Danger' list.

The bill also prohibits sludge dredged up for port developments from being dumped anywhere within the Great Barrier Reef World Heritage Area.

Insufficiently defined administrative powers

Retrospective operation

Schedule 1, item 1, proposed section 24CB

This proposed section provides that, notwithstanding any other provision of this Act or the regulations made for the purposes of this Act, the Minister must not, after 13 February 2014, approve an action relating to building or development of a port in specified areas that would impact on the world heritage values of the Great Barrier Reef World Heritage Area.

The explanatory memorandum does not indicate what the intended effect of this provision is in relation to approvals which may be given after 13 February 2014, but before the bill is enacted. As the provision may render the legal consequences of a Ministerial exercise of administrative power uncertain, **the committee seeks the Senator's advice about this provision and, in particular, the need for the possible retrospective operation of this prohibition on Ministerial approvals.**

Pending the Senator's response, 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; and as it may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the committee's terms of reference.

Delegation of Legislative Power

Schedule 1, item 1, proposed subsection 24CD(2)

This proposed subsection requires the Minister to make a determination setting out a methodology to be applied to determine whether an action has an overall net benefit for the world heritage values of the Great Barrier Reef World Heritage Area. As the committee usually prefers that important matters are included in primary legislation whenever possible and there is no explanation as to why this matter is more appropriate to be dealt with by delegated legislation, **the committee seeks the Senator's advice about this matter.**

Pending the Senator's response, 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.

Trespass on Personal Rights and Liberties--penalties

Schedule 2, items 2 and 3

The committee seeks the Senator's advice as to the consistency of the proposed penalties relating to the offences provided for in these items with similar offences in other Commonwealth legislation and the *Guide to Formulating Commonwealth Offences*.

Pending the Senator's response, 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.

Trespass on Personal Rights and Liberties--penalties

Schedule 2, item 2, subsection 10AA(2)

Subsection 10AA(1) establishes that it is an offence to dump dredged material within the Great Barrier Reef World Heritage Area, and subsection 10AA(2) provides that this is an offence of strict liability in relation to the element of the offence relating to the material being dumped in the Great Barrier Reef World Heritage Area.

The explanatory memorandum states, that the application of strict liability is appropriate as it:

...may be difficult to prove that a person knew they were in the Great Barrier Reef (or were reckless to that fact) making the offence difficult to prosecute and accordingly undermining the deterrent effect of the provisions. The application of strict liability is also justifiable on the basis that a defendant can reasonably be expected, because of his or her professional involvement in the dredging industry, to know the requirements of the law’.

In light of this explanation the committee leaves the question of whether the proposed approach is appropriate to the Senate as a whole.

In the circumstances, the committee makes no further comment on this matter.

Land Transport Infrastructure Amendment Bill 2014

Introduced into the House of Representatives on 27 February 2014

Portfolio: Infrastructure and Regional Development

Background

This bill amends the *Nation Building Program (National Land Transport) Act 2009* and repeals the *Australian Land Transport Development Act 1988*, the *Roads to Recovery Act 2000* and the *Railway Standardization (New South Wales and Victoria) Agreement Act 1958*.

The amendments to the *Nation Building Program (National Land Transport) Act 2009* (the NBP Act) will rename the Act to the *National Land Transport Act 2014* and enable the continuation of the Roads to Recovery Programme beyond 30 June 2014.

The Bill also amends the NBP Act to:

- combine Parts 3 and 6 of the Act into one part for Investment Projects, to streamline the Act;
- add a new eligible project type into Part 4 (Transport Development and Innovation Projects) to allow funding of research and investigations of projects funded under the Act or submitted for consideration for funding under the Act. Such research will inform advice to Government and enhance the management of projects; and
- add two new eligible funding recipients - partnerships for Parts 4 and 5 (funding for land transport research entities) and non-corporate Commonwealth entities for Part 5 - to expand the types of organisations that can be funded to undertake research, investigations, studies and analysis under the Act.

The committee has no comment on this bill.

Live Animal Export Prohibition (Ending Cruelty) Bill 2014

Introduced into the House of Representatives on 24 February 2014

By: Mr Wilkie

Background

This bill provides for a phased reduction of the export of live animals for slaughter pending its prohibition on 1 July 2017.

This bill is substantially similar to bills that were introduced into the House of Representatives on 20 June 2011 and 27 May 2013. This *Alert Digest* includes the committee's previous comments to the extent that they are applicable to this bill.

Incorporating material by reference Schedule 1, item 4

Item 4 of the Schedule to this bill seeks to insert a new section 9N into the *Export Control Act 1982*. Proposed subsection 9N(4) provides that live-stock for slaughter may not be exported and a permission or other consent may not be granted under the regulations 'unless the Secretary is satisfied that the live-stock will be treated satisfactorily in the country of destination'.

Proposed subsection 9N(5) provides that 'live-stock for slaughter will be treated satisfactorily in the country of destination if they will be (among other things): (a) kept in holding premises that comply with the 'Holding Standards'; and (b) treated in accordance with the 'OIE Guidelines'.

Proposed subsection 9N(8) defines *holding standards* to mean a number of standards drawn from version 2.3 of the Australian Standards for the Export of Livestock, published by the Department of Agriculture, Fisheries and Forestry. *OIE Guidelines* is defined to mean the 'relevant sections of the current version of the Terrestrial Animal Health Code published by the OIE (the World Organisation for Animal Health).

The appropriateness of this delegation of legislative power in relation to the OIE Guidelines (reliance on information as in force from time-to-time) is not addressed in the explanatory memorandum. The committee routinely expects

such provisions to be accompanied by an informative explanation as they may be considered to enable legislative changes to be made in the absence of proper parliamentary oversight. In addition, such provisions can create uncertainty in the law and those obliged to obey the law may have inadequate access to its terms.

In order to better assess the proposed provision, **the committee requests the Private Member's advice as to the reasons for the proposed approach.**

Pending the Private Member's advice, the committee draws Senators' attention to the provision as it may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny in breach of principle 1(a)(v) of the committee's terms of reference.

Primary Industries (Excise) Levies Amendment (Dairy Produce) Bill 2014

Introduced into the House of Representatives on 13 February 2014

Portfolio: Agriculture

Background

This bill amends the *Primary Industries (Excise) Levies Act 1999* to enable the dairy industry to continue to meet its obligations in relation to its Animal Health Australia annual membership and other animal health and welfare initiatives.

The committee has no comment on this bill.

Public Service Amendment (Employment for all of us) Bill 2014

Introduced into the House of Representatives on 24 February 2014

By: Mr Bandt

Background

This bill amends the *Public Service Act 1999* to require the Commissioner to issue a direction for the numbers of people with disabilities and the numbers of people from a non-English speaking background to double by 1 July 2019.

The committee has no comment on this bill.

Social Security Legislation Amendment (Green Army Programme) Bill 2014

Introduced into the House of Representatives on 26 February 2014

Portfolio: Environment

Background

This bill amends the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to clarify social security arrangements for participants receiving the green army allowance paid under the Green Army Programme.

The committee has no comment on this bill.

Social Security Legislation Amendment (Increased Employment Participation) Bill 2014

Introduced into the House of Representatives on 27 February 2014

Portfolio: Employment

Background

The bill amends the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, and the *Income Tax Assessment Act 1997* to implement the Job Commitment Bonus and the Relocation Assistance to Take Up a Job programme.

Delegation of legislative power

Schedule 1, item 2, proposed subsections 861(6) and (8)

These provisions provide that the Employment Secretary may, by legislative instrument, prescribe periods which do not break a continuous period of gainful work and circumstances which will mean that the job commitment bonus will not be paid.

The explanatory memorandum acknowledges that these are important matters (which the committee usually prefers are included in primary legislation), but argues that it is appropriate to deal with such matters in the regulations so that some flexibility is available to take account of lessons learned during the implementation of the scheme and so as to avoid unnecessarily adding to the length and complexity of the *Social Security Act*.

The explanatory memorandum (at 9 and 10) gives examples of the matters intended to be included in the instruments and notes that the instruments will be disallowable for the purposes of the *Legislative Instruments Act 2003* and therefore subject to scrutiny by the Parliament.

In light of the useful explanation provided in the explanatory memorandum and the availability of the disallowance process, the committee leaves the question of whether this delegation of legislative power is appropriate to the Senate as a whole.

The committee also draws this matter to the attention of the Senate Regulations and Ordinances Committee in relation to the justification for the delegation of power and the examples of intended content outlined in the explanatory memorandum.

In the circumstances, the committee makes no further comment on this matter.

Tax and Superannuation Laws Amendment (2014 Measures No. 1) Bill 2014

Introduced into the House of Representatives on 26 February 2014

Portfolio: Treasury

Background

This bill amends various taxation and superannuation laws.

Schedule 1 introduces penalties to deter and penalise persons who promote illegal early release schemes.

Schedule 2 introduces administrative directions and penalties for contraventions relating to self-managed superannuation funds (SMSFs) including:

- rectification directions;
- education directions; and
- administrative penalties.

Schedule 3 amends the *Income Tax Assessment Act 1936* to phase-out the net medical expenses tax offset by the end of the 2018-19 income year. During the income years 2013-14 to 2018-19 the tax offset will be subject to transitional arrangements.

Schedule 4 amends the *Income Tax Assessment Act 1997* to update the list of specifically-listed deductible gift recipients.

The committee has no comment on this bill.

Tertiary Education Quality and Standards Agency Amendment Bill 2014

Introduced into the House of Representatives on 27 February 2014

Portfolio: Education

Background

This bill amends the *Tertiary Education Quality and Standards Agency Act 2011* to implement recommendations arising from the independent *Review of Higher Education Regulation* including:

- providing the Tertiary Education Quality and Standards Agency (TEQSA) the power to extend the period of a higher education provider's registration or accreditation;
- amending the scope of the directions that the Minister may give to TEQSA;
- providing the Minister with greater flexibility to determine the number of Commissioners to be appointed;
- removing the requirement to appoint a specific number of part-time and full-time Commissioners;
- separating the roles and responsibilities of the Chief Commissioner and the Chief Executive Officer (CEO);
- providing for the appointment of Commissioners to cease at a fixed time; and
- making other minor and technical amendments

The committee has no comment on this bill.

SCRUTINY OF STANDING APPROPRIATIONS

The Committee has determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the Committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Further details of the Committee's approach to scrutiny of standing appropriations are set out in the Committee's *Fourteenth Report of 2005*. The following is a list of the bills containing standing appropriations that have been introduced since the beginning of the 42nd Parliament.

Bills introduced with standing appropriation clauses in the 43rd Parliament since the previous *Alert Digest*

Nil

Other relevant appropriation clauses in bills

Nil