

Chapter 3

Offences, civil penalties and entry, search and seizure powers

3.1 The committee was advised that the NVR Bills are designed to establish a more 'robust regulatory framework' for the VET sector.¹ DEEWR explained that the National NVR Regulator would be given powers that exceed those of the state and territory regulators.² The Department has further stated that stronger regulation is a key objective behind implementing a national regulator.³

3.2 Several stakeholder submissions advocated that sanctions and enforcement powers are necessary to address non-compliance with VET standards.⁴ Views put forward to the committee are reflected in the statement made by the Minerals Council of Australia that 'the NVR must ... have the authority to sanction or deregister providers who do not meet the required standards'.⁵

3.3 There were, however, divergent views about the appropriateness of the proposed offences, civil penalties and enforcement powers. EE-Oz Training Standards argued that the punitive measures in the Bill should be strengthened.⁶ Conversely, several submissions raised concerns with aspects of the offences and civil penalties, and the National VET Regulator's coercive entry, search and seizure powers.

3.4 It was put to the committee that the severity of the offences, civil penalties and enforcement powers may deter RTOs from continuing in the VET sector. Surf Life Saving Australia stated that the enforcement powers are 'not only unrealistic and problematic for enterprise RTOs, but may make many of them question the value of their commitment to accredited training'.⁷ The ACCI questioned whether 'some of the provisions will act to control the market too strongly potentially resulting in the loss of good as well as poor providers'.⁸

1 Explanatory Memorandum, National Vocational Education and Training Regulator Bill 2010, p. 2.

2 DEEWR, *Submission 7*, p. 4.

3 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 1.

4 ACCI, *Submission 14*, p. 2; ACTU, *Submission 10*, p. 3; EE-Oz training standards, *Submission 15*, p. 2; Minerals Council of Australia, *Submission 6*, p. 2.

5 Minerals Council of Australia, *Submission 6*, p. 2.

6 EE-Oz Training Standards, *Submission 15*, p. 2. Skills Australia also endorsed strong regulatory powers for the National VET Regulator (*Submission 17*, p. 1.)

7 Surf Life Saving Australia, *Submission 20*, p. 2.

8 ACCI, *Submission 14*, p. 2.

3.5 Master Builders Australia noted that a reduction in the number of providers could significantly undermine the viability of the VET system:

...Master Builders is concerned that elements of the Bill impose undefined and potentially burdensome requirements on training providers, which may result in some legitimate providers choosing to leave (or not enter) the VET market. A lack of competition in training provision arising from such an outcome would be as undesirable as a failure of standards from insufficient regulation.⁹

Committee views

3.6 The committee notes the concerns that harsh or inappropriate regulation may deter legitimate RTOs from continuing to provide VET services.

3.7 Mr John Smyth, Interim CEO, National VET Regulator, advised that the National VET Regulator has conducted 'a fairly intensive consultation process with all stakeholders'. Stakeholder discussions canvassed issues relating to the implementation of the NVR legislation and the proposed regulatory model, and the establishment and operation of the National VET Regulator.¹⁰ The committee believes that the national system would benefit from continued discussions between the National VET Regulator and RTOs about the effect of the new regulatory environment.

Use of criminal offences

3.8 A number of submissions queried whether criminal offences were an appropriate means of regulating the VET sector. The AMWU stated that 'non-compliance should result in suspension of registration'.¹¹

3.9 The ACCI advised against the use of criminal sanctions as part of regulating the VET sector, recommending the NVR Bill be amended to exclude those offences. The ACCI considers that, as a regulatory response to concerns with RTO conduct, offences are 'heavy handed and disproportionate'.¹²

ACCI does not believe, on balance, that the majority of contraventions in the Bill should be classified as criminal offences. They do not warrant the seriousness and social stigma of criminal responsibility, even if they are summary offences (as opposed to indictable offences).¹³

9 Master Builders Australia, *Submission 2*, p. 1.

10 Mr John Smyth, Interim CEO, National VET Regulator, Department of Education, Employment and Workplace Relations, *Proof Hansard*, 7 March 2011, pp. 43–44.

11 AMWU, *Submission 8*, p. 4.

12 ACCI, *Submission 14*, p. 2.

13 ACCI, Answer to Questions on Notice, 7 March 2011 (received 10 March 2011), p. 2.

3.10 In response to concerns raised about whether the use of criminal sanctions is appropriate, DEEWR advised that serious non-compliance, such as corrupt conduct, can materially damage the VET sector:

Serious non-compliance by only a few providers has the potential to undermine confidence in the entire sector. It also has the potential to pose health and safety risks to the public through the provision of qualifications to students, who have not completed the necessary requirements, who then participate in the building and construction or electrical industries.¹⁴

3.11 DEEWR submitted that regulating conduct through offences is, in part, intended to reduce the risk of corruption in the VET sector.¹⁵ The Department informed the committee that the 2010 report *Stronger, simpler smarter ESOS: supporting international students* highlighted concerns with sanctions for non-compliance with regulatory standards. The report noted that 'Too many international education providers have become comfortable with the idea that they will not get caught, and if they do get caught, the sanctions will be weak...'.¹⁶

3.12 DEEWR provided the committee the following illustration of corrupt conduct by RTOs.

An example of the type of behaviour that can occur is in the *Report on Corruption in the Provision and Certification of Security Industry Training* (ICAC, 2009). The Commission identified a level of corruption in security industry training where both RTOs and students were complicit in deceiving the registering authority. RTOs were falsely claiming the students had an adequate level of English, and had passed examinations where the students had poor or no English skills and had been given the answers to the exam in advance by the RTO.¹⁷

3.13 DEEWR further advised that 'offences have been part of the VET regulatory framework for a number of years', and that several of the offences are based on the Model Clauses for Training, National Registration and Accreditation.¹⁸ The committee was informed that a report into the South Australian VET sector also recommended the use of offences.¹⁹

14 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 1.

15 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 4.

16 The Hon Bruce Baird, *Stronger, simpler smarter ESOS: supporting international students*, February 2010, p. 22.

17 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 1.

18 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), pp. 2–3.

19 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 2.

Committee view

3.14 The committee considers that the use of offences is generally appropriate, though the justifications offered in the Explanatory Memorandum were sometimes inadequate. However, there are concerns with aspects of several of the proposed offences and some of these as discussed further below. The committee expects the government to closely monitor the application of the offences created by the new legislation.

Meaning of 'appropriate assessment'

3.15 The NVR Bill proposes that it will be an offence for an RTO to issue a VET qualification or a VET statement of attainment without providing, or arranging another person to provide, 'the assessment necessary for a VET student to satisfy the requirements [of the qualification or statement of attainment]'.²⁰

3.16 'Adequate assessment' or 'assessment' are not defined in Division 2 of the NVR Bill. Master Builders Australia questioned what is meant by adequate assessment, advising the committee that 'there is no settled understanding of what "adequate assessment" may constitute'.²¹ The Explanatory Memorandum provides no clarity on its meaning, which is of concern as the scope of an offence should be clear.²²

3.17 In response to the concerns, DEEWR provided the committee with additional information about the required nature of VET assessments. It indicated that the meaning would vary between VET qualifications and statements of attainment.

Assessment necessary for the purpose of clauses 103 and 105 will depend on the type of VET qualification or statement of attainment that is being awarded. Guidance is provided through training packages and accredited course documentation which provide the basis for the development of strategies for training and assessment by each RTO and describe essential course information including the packaging rules, outcomes to be achieved, standards for assessment and required resources.²³

Committee views

3.18 The additional information provided by DEEWR, and its ongoing dissemination through training packages and accredited course documentation, clarifies the requirements on RTOs to avoid committing the offences at clauses 103

20 Clause 103, clause 105, National Vocational Education and Training Regulator Bill 2010 [2011].

21 Master Builders Australia, *Submission 2*, p. 2.

22 Commonwealth Attorney-General's Department, *A guide to framing Commonwealth offences, civil penalties and enforcement powers*, December 2007, p. 15.

23 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 2.

and 105 of the NVR Bill. The committee notes the importance of information about the kind of assessment required being clearly specified in the training packages and accredited course documentation. The committee considers that stakeholder concerns would have been addressed in the first instance had the additional information been contained in the Explanatory Memorandum.

Recommendation 3

3.19 That the Department of Education, Employment and Workplace Relations amend the Explanatory Memorandum for the National Vocational Education and Training Regulator Bill 2010 [2011] to include the additional general information regarding the application of offences at pages 1 and 2 of the Answers to Questions on Notice dated 11 March 2011 and the answer to question one on pages 2 to 3 of the Answers to Questions on Notice dated 11 March 2011.

Extended geographical jurisdiction

3.20 The offences in subdivisions A and C, Division 1, Part 6 of the NVR Bill will apply whether or not the conduct constituting the alleged offence, and its result, occurs in Australia. The Explanatory Memorandum explains the effect of the extended geographical jurisdiction but does not justify its use. The committee notes the advice in *A guide to framing Commonwealth offences, civil penalties and enforcement powers* (the Guide) that offences should have extraterritorial application only where appropriate.²⁴

3.21 DEEWR informed the committee of a growing number of offshore providers of Australian VET qualifications, with approximately 2 per cent of all registered Australian private providers and 61 per cent of all Australian TAFE institutes involved in the delivery of VET offshore in 2009. The Department advised that:

[i]t is therefore necessary to allow for the geographical jurisdiction to be extended to allow for confidence in Australian qualifications provided offshore by Australian RTOs and to deter overseas providers from falsely claiming to be registered in Australia and adversely affecting the reputation of AQF qualifications and Australian registration.²⁵

Committee views

3.22 Given the growing number of offshore providers of Australian VET qualifications, the committee considers that the extraterritorial operation of the offences is appropriate. It would be useful for information explaining the need for the extraterritorial operation to be included in the Explanatory Memorandum.

Recommendation 4

24 Attorney-General's Department, *A guide to framing Commonwealth offences, civil penalties and enforcement powers*, pp. 36–37.

25 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 6.

3.23 That the Department of Education, Employment and Workplace Relations amend the Explanatory Memorandum for the National Vocational Education and Training Regulator Bill 2010 [2011] to include the explanation for the proposed extraterritorial operation of the offences, as provided to the committee at page 6 of the Answers to Questions on Notice dated 11 March 2011.

Infringement notices

3.24 Clause 148 of the NVR Bill would provide for regulations to establish an infringement notice scheme for all the offences under the proposed legislation, while clause 149 would provide for regulations to establish a similar scheme for the civil penalties. The Explanatory Memorandum advises the penalty attached to the infringement notice will be 1/5th the maximum penalty for an offence and 1/10th the maximum penalty for a civil penalty.²⁶

3.25 The committee notes the directions in the Guide that infringement notices should only be used for strict or absolute liability offences, or civil penalties that do not require proof of fault.

3.26 The committee also notes that the Guide stipulates that the penalty attached to an infringement notice should not exceed 12 penalty units for a natural person and 60 penalty units for a body corporate, and that exceeding this limit requires 'strong justification'.²⁷

3.27 The committee notes in this regard that the penalties provided for under the scheme exceed those stipulated in the Guide. In particular, the civil penalties at clause 115, 117, 119, 121, 127, 129 apply to natural persons and have a penalty of 600 penalty units. A penalty 1/10th the maximum of 600 penalty units would significantly exceed the infringement notice limit of 12 penalty units for a natural person.

3.28 Likewise, the offences at clause 114, 116, 118, 120, 126, 128 apply to natural persons and have a penalty of 300 penalty units. A penalty 1/5th the maximum of 300 penalty units would exceed the infringement notice limit of 12 penalty units for a natural person.

3.29 Furthermore, the civil penalty at clause 131 applies to natural persons and has a penalty of 240 penalty units. A penalty 1/10th the maximum of 240 penalty units would exceed the infringement notice limit of 12 penalty units for a natural person.

3.30 Therefore it appears that the infringement notice scheme will depart from the principles in the Guide in two respects. First, the offences in the NVR Bill are not

26 Explanatory Memorandum, National Vocational Education and Training Regulator Bill 2010 [2011], pp. 76–77.

27 Attorney-General's Department, *A guide to framing Commonwealth offences, civil penalties and enforcement powers*, Chapter 6, pp 50–61.

strict or absolute liability offences. Second, in some cases the penalties would exceed the limit of 12 penalty units for a natural person.

3.31 The Explanatory Memorandum does not provide justification for these departures from the general principles for framing infringement notice schemes. DEEWR advised the committee that the infringement notice scheme would be 'based on consideration of the Guide' but did not provide further explanation despite the committee specifically requesting this.²⁸

Committee views

3.32 The committee is concerned that, while there may be justification for departing from the guide, an adequate explanation has not been provided.

Recommendation 5

3.33 That the Department of Education, Employment and Workplace Relations amend the Explanatory Memorandum for the National Vocational Education and Training Regulator Bill 2010 [2011] to include explanation for the proposed infringement notice scheme's departures from the principles in *A guide to framing Commonwealth offences, civil penalties and enforcement powers*.

Recommendation 6

3.34 That the National VET Regulator review the operation of the infringement notice scheme after 12 months operation.

Civil penalties

3.35 Clause 60 of the NVR Bill contains four civil penalty provisions applicable to VET students who do not return cancelled VET qualifications or statements of attainment. Clause 61 creates a civil penalty of purporting to hold a VET qualification or statement of attainment in circumstances where the qualification or statement of attainment has been cancelled.

3.36 The Senate Standing Committee for the Scrutiny of Bills questioned whether the penalties attached to civil penalties in the NVR Bill, particularly at clauses 60 and 61, are excessive.²⁹ The Australian Council of Trade Unions (ACTU) also queried whether the penalty levels were appropriate.³⁰

3.37 The ACTU and Master Builders Australia further submitted that the civil penalties at clauses 60 and 61 are inappropriate as they do not require knowledge that

28 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 8.

29 Senate Standing Committee for the Scrutiny of Bills, *Report 2 of 2011*, pp. 69–70.

30 ACTU, *Submission 10*, p. 6.

the VET qualification or statement of attainment has been cancelled for the civil penalty to be made out.³¹ On this point, the ACTU argued that:

...the concern with each of these provisions is that there seems to be undue burden on the individual or worker, including potentially heavy penalties, where they have enrolled in a course in good faith, finished the course, and unknown to them, and for reasons beyond their control, the qualification has been cancelled or is bogus in some way.³²

3.38 The committee notes the advice in the Guide that knowledge is required to make out a civil penalty only when expressly stated in the provisions.³³ The civil penalties at subclauses 60(1), and 60(2) do not contain any express statement about requiring the person to know of the cancellation of the VET statement of attainment or qualification. Therefore, it appears that a person could contravene the civil penalties where he or she does not know that the VET qualification or statement of attainment has been cancelled. This is of concern to the committee.

3.39 In contrast, it appears that subclause 60(3) and clause 61 would require knowledge of cancellation for the civil penalty to be made out. The civil penalty at subclause 60(3) requires 'the person to whom the notice relates to be aware of [the notice]'. The civil penalty at clause 61 applies where a person 'purports to hold' a VET qualification or statement of attainment that has been cancelled. DEEWR has advised that the civil penalty 'will be used where a person who purports to hold a VET qualification or VET statement of attainment has knowledge that the qualification or statement has been cancelled'.³⁴ In relation to the civil penalty at subclause 60(4), the committee notes DEEWR's advice that for the penalty to apply the person must have knowledge of the cancellation:

Subclause 60(4) requires a person to return their qualification or statement of attainment to the NVR in circumstances where the Administrative Appeals Tribunal (AAT) has reviewed the NVR's initial cancellation decision and confirmed it. This penalty is appropriate as a person who has applied to the AAT to review the NVR's cancellation decision must have knowledge of the decision.³⁵

3.40 The committee is satisfied that the civil penalty at subclause 60(4) will not apply where persons are unaware of the cancellation.

31 ACTU, *Submission 10*, pp. 6–7, Master Builders Australia, *Submission 2*, p. 2.

32 ACTU, *Submission 10*, p. 7.

33 Attorney-General's Department, *A guide to framing Commonwealth offences, civil penalties and enforcement powers*, p. 65.

34 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 7.

35 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 7.

3.41 While it is clear that at least subclause 60(3), subclause 60(4) and clause 61 would apply only where the person has received notice of the cancellation,³⁶ some submissions questioned whether the service arrangements are sufficient given the severity of the penalties under these clauses.³⁷ Clause 57 of the NVR Bill directs that where personal service is not feasible, the National VET Regulator may issue the notice 'in any other way it considers appropriate'. Subclause 57(2) provides examples of alternative methods of service, which include publishing the notice on the regulator's website or in a newspaper circulated in the State or Territory where the person is believed to reside.

3.42 The ACTU argued that the service requirements would create 'a significant risk that somebody will not be aware that a qualification has been cancelled'.³⁸ The ACTU further argued that this raises 'real issues of fairness and justice', as the civil penalties created by subclauses 60(1), 60(2) and 60(4) could be contravened regardless of whether the person knows about the cancellation.³⁹ Master Builders Australia recommended 'that for the serious step of a person's qualifications being cancelled, that person must in all cases be served notice individually'.

Committee view

3.43 The committee is concerned that sufficient explanation has not been provided as to why the civil penalties as subclauses 60(1), 60(2) and 60(4) may apply where the person may not know that the VET statement of attainment or qualification has been cancelled. To address this issue these subclauses could be amended to only apply where the person knows that the statement of attainment or qualification has been cancelled.

Recommendation 7

3.44 That, once enacted, subclause 60(1) and subclause 60(2) be amended to include a requirement that the person know that the qualification or statement of attainment (whatever is applicable) has been cancelled.

Entry, Search and Seizure Powers

3.45 Part 5 of the NVR Bill would provide the National VET Regulator with extensive entry, search and seizure powers. These include the power to request persons to provide the regulator information, documents or things,⁴⁰ to retain documents or things provided,⁴¹ to search premises and seize goods, either with

36 DEEWR, Answers to Questions on Notice, 8 March 2011 (received 11 March 2011), p. 7.

37 For example, ACTU, *Submission 10*, pp. 6–7.

38 Mr Joel Fetter, Policy and Industrial Officer, ACTU, *Proof Hansard*, 7 March 2011, p. 9.

39 Mr Joel Fetter, *Proof Hansard*, 7 March 2011, p. 9.

40 Clause 62, National Vocational Education and Training Regulator Bill 2010 [2011].

41 Clause 62, National Vocational Education and Training Regulator Bill 2010 [2011].

consent or under warrant,⁴² and to question any persons on the premises searched pursuant to a warrant.⁴³

3.46 Submissions expressed concerns with the powers under the part. While entry, search and seizure powers received in-principle support from submitters such as the ACTU, the powers were considered to be excessive and in need of safeguards to ensure their fair and transparent use. Mr Shipstone, representing the ACTU, submitted that:

We are fairly broadly supportive of the broad powers which have been given to the regulator in this case. We think the evidence is that there have been problems in the quality of regulation across the sector and the powers, as some of the explanatory materials say, have probably been strengthened in advance of what was the existing situation with the state regulatory authorities. In this case, given the importance of quality regulation of our VET system, we are broadly supportive of the powers which have been given to the NVR.⁴⁴

3.47 On the same matter, Mr Fetter from the ACTU took the view that:

There are, of course, aspects of these powers that to us, who usually deal in the workplace relations space, seem extraordinary, including, in clause 70, the permission for use of force in executing a warrant. That is something that we would never condone in terms of workplace inspections, but I suppose this is a different regime copied from different regulatory models whereby there are warrants issued and therefore inspectors will be enforcing the warrant. It is out of our area, so we will not say whether it is appropriate or not. But certainly in the civil jurisdiction the use of force in executing warrants is a bit problematic, it would seem to us.⁴⁵

3.48 Surf Life Saving Australia questioned the enforcement powers. In particular, the organisation stated that for enterprise RTOs, for whom VET matters are not core business, the powers to request former employees to produce documents or information, to search anywhere or anything on the premises and to question anyone on the premises are unreasonable and 'will threaten the viability' of enterprise RTOs.⁴⁶

3.49 The Rule of Law Institute of Australia drew attention to other concerns with the powers. These include the following:

The time period for federal regulators wishing to conduct an interview or require information is generally 14 days. The VET Regulator does have the 14 day requirement to require documents/information, but if they consider

42 Division 2, Part 5, National Vocational Education and Training Regulator Bill 2010 [2011].

43 Clause 71, National Vocational Education and Training Regulator Bill 2010 [2011].

44 Mr Tim Shipstone, Industrial Officer, ACTU, *Proof Hansard*, 7 March 2011, p. 9.

45 Mr Joel Fetter, *Proof Hansard*, 7 March 2011, p. 9.

46 Surf Life Saving Australia, *Submission 20*, p. 2.

it ‘reasonably necessary’ they can reduce it to as low as 24 hours, which appears to be out of line with other notice periods.

[...]

RoLIA is concerned that an ‘authorised officer’ may exercise a warrant or enter by consent. An ‘authorised officer’ is a person appointed by the Chief Commissioner from the staff of the VET Regulator under s 89. Therefore, unlike ASIC and other federal regulators, the Australian Federal Police do not conduct the search. RoLIA strongly disagrees with this, as there is no reason for the VET Regulator to not be required to operate in the same way as other regulators. Safety of authorised officers may become a problem and their training may be called into question.

[...]

Whilst executing a warrant, an authorised officer can question the occupier on, among other things, information regarding the operation of the Act or information provided under the Act. There is no mention of whether a lawyer can be present or whether the principle against self-incrimination is in operation (the provision on self-incrimination included in the Bill only applies to the section on information requests). This gives the impression of being a potential method of gathering evidence not subject to the controls over interviews applicable for regulators such as ASIC, ABCC, ACCC and the ATO. RoLIA is very concerned about this particular issue.⁴⁷

3.50 The Institute recommended that the NVR Bill be amended to require the regulator to include in its annual reports information about the use of the powers under Part 5, and for this report to be tabled in Parliament.⁴⁸

3.51 The ACCI commented that the powers are excessive and that sufficient justification has not been provided.

The powers available to authorised officers are akin to those exercised by law enforcement officers. Monitoring powers, warrants, and the abrogation of the privilege against self-incrimination appears unwarranted and excessive given the types of conduct which is proscribed, particularly where these are new offences and powers for regulating the industry.

There does not appear to be any cogent policy reasons provided in the Second reading speech or explanatory materials which explain in detail why these new powers are required.⁴⁹

3.52 The ACCI provided the committee with a helpful overview of differences between the National VET Regulator's proposed powers and the entry, search and seizure powers under the *Fair Work Act 2009*. The overview indicates that the

47 Rule of Law Institute of Australia, *Supplementary Submission*, pp. 2–3.

48 Rule of Law Institute of Australia, *Supplementary 22*, p. 2.

49 ACCI, Answer to Questions on Notice, 7 March 2011 (received 10 March 2011), p. 2.

National VET Regulator's powers do not include safeguards similar to those required under the Fair Work Act.⁵⁰

Committee views

3.53 The committee acknowledges the seriousness of the concerns raised about the framing of the entry, search and seizure powers in the NVR Bill.

3.54 The committee also notes that the Senate Standing Committee for the Scrutiny of Bills has raised several concerns with the entry, search and seizure powers.⁵¹ The committee notes that the Scrutiny committee continues to correspond with the Minister in relation to several outstanding matter of concern. This committee endorses the Scrutiny committee's reports on the NVR Bills.

Conclusion

3.55 As the committee stated in chapters 1 and 2, there is widespread support for these reforms. The legal situation is such that any substantive amendment to the bills at this time would endanger the process of referring state powers, and therefore the entire regulatory framework. Accordingly, the committee reiterates its view that the bills should be passed.

3.56 The committee is concerned that there are numerous areas in which improvement of the Explanatory Memorandum could have averted stakeholder concerns, as well as some of those raised by the Scrutiny committee. It appears that there were many occasions on which the government departed from the practices recommended in the *Guide to framing Commonwealth offences, civil penalties and enforcement powers*.

3.57 The committee believes closer adherence to these guides would have assisted the Senate's committees. It is possible that the *Legislation Handbook* could be revised to highlight that Explanatory Memoranda must contain explicit explanations and sufficient justification where the Bill departs from the accountability standards applied by the Senate Standing Committee for the Scrutiny of Bills and the principles in the *Guide*, or could include examples of Explanatory Memoranda that have received adverse comment from Parliament for not meeting the above requirements. However, the committee leaves further consideration of this to the Scrutiny of Bills committee.

50 ACCI, Answer to Questions on Notice, 7 March 2011 (received 10 March 2011), pp. 4–13.

51 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 1/11*, 9 February 2011, pp. 20-30; Senate Standing Committee for the Scrutiny of Bills, *Second Report of 2011*, pp. 59–86.