

**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 B Cooney (Chairman)  
Senator W Crane (Deputy Chairman)  
Senator T Crossin  
Senator J Ferris  
Senator B Mason  
Senator A Murray

## 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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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.

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

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Committee under its terms of reference is invited to do so.

## **A New Tax System (Tax Administration) Bill (No. 2) 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

*Taxation Administration Act 1953* to:

- make further provision for the new PAYG instalment regime to replace the company instalment and provisional tax systems; and
- ensure that an oral ruling can only be made by certain authorised persons;

*Fringe Benefits Tax Assessment Act 1986* and the *Taxation Administration Act 1953* to complete the alignment of FBT instalments with other business tax instalment obligations; and

20 Acts to make consequential amendments in relation to the transition from the existing recovery provisions throughout various taxation laws to standardised collection and recovery rules; and

5 Acts to make consequential amendments in relation to the PAYG withholding arrangements.

*The Committee has no comment on this bill.*

## **Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) 1999**

This bill was introduced into the House of Representatives on 8 December 1999 by the Minister Assisting the Prime Minister for Reconciliation. [Portfolio responsibility: Prime Minister and Cabinet]

The bill proposes to amend the *Aboriginal Land Rights (Northern Territory) Act 1976* to add three parcels of land described as Rockhampton Downs to Schedule 1 so that the Aboriginal Land Trusts will hold title on behalf of Aboriginal people by agreement.

*The Committee has no comment on this bill.*



## **Appropriation Bill (No. 3) 1999-2000**

This bill was introduced into the House of Representatives on 8 December 1999 by the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to appropriate money (\$1,847 million) out of the Consolidated Revenue Fund, additional to the appropriation made by Appropriation Act (No. 1) 1999-2000, to meet payments for the ordinary annual services of the government for the year ending on 30 June 2000.

*The Committee has no comment on this bill.*

## **Appropriation Bill (No. 4) 1999-2000**

This bill was introduced into the House of Representatives on 8 December 1999 by the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to appropriate money (\$649 million) out of the Consolidated Revenue Fund, additional to the appropriation made by Appropriation Act (No. 2) 1999-2000, to enable agencies to meet:

- expenses in relation to grants to the States and for payments to the Northern Territory and the Australian Capital Territory;
- administered expenses; and
- equity injections and loans to agencies as well as administered capital funding and carryovers.

*The Committee has no comment on this bill.*

## **Broadcasting Services Amendment Bill (No. 3) 1999**

This bill was introduced into the House of Representatives on 6 December 1999 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the following Acts:

*Broadcasting Services Act 1992* to:

- impose licence conditions on subscription television broadcasting licensees in relation to expenditure on drama programs on subscription TV drama services;
- limit the scope of international obligations applicable to the Australian Broadcasting Authority (ABA); and
- provide a scheme for the regulation of international broadcasting services transmitted from Australia which requires the Minister for Foreign Affairs to make a national interest assessment of whether a service is likely to be contrary to the national interest;

*Administrative Decisions (Judicial Review) Act 1977* to provide that decisions of the Minister for Foreign Affairs in relation to the proposed international broadcasting scheme are not subject to a requirement under the Act to provide a statement of reasons; and

*Radiocommunications Act 1992* to provide that only persons who have an international broadcasting licence allocated by the ABA under the Broadcasting Act may be issued with a transmitter licence authorising operation of a transmitter for transmitting an international broadcasting service by the Australian Communications Authority.

### **No reasons for decision**

#### **Schedule 3, Part 1, Item 1**

Schedule 3 to this bill contains a scheme for the regulation of international broadcasting services transmitted from Australia. This Schedule inserts proposed new Part 8B in the *Broadcasting Services Act 1992*. Under Part 8B, an Australian company wishing to provide an international broadcasting service must first apply to the Australian Broadcasting Authority (ABA) for a licence. If the ABA determines that the applicant is suitable, it must then refer

the application to the Minister for Foreign Affairs, who is to assess whether the proposed international broadcasting service is likely to be contrary to the national interest. In making such an assessment, the Minister must have regard to the likely effect of the proposed service on Australia's international relations. The national interest criterion also applies after the grant of a licence.

The decisions open to the Minister under proposed Part 8B are, in effect:

- to refuse an application because the proposed service is likely to be contrary to Australia's national interest;
- to formally warn a licensee because a service is contrary to Australia's national interest;
- to suspend a licence because a service is contrary to Australia's national interest; or
- to cancel a licence because a service is contrary to Australia's interest.

Item 1 of Part 1 of Schedule 3 to the bill proposes to amend the *Administrative Decisions (Judicial Review) Act 1977* so that these decisions are not subject to the requirement in that Act that a statement of reasons be provided. The Explanatory Memorandum observes that "the nature of these decisions is such that exposure of the reasons for the decisions could itself be contrary to Australia's national interest".

While noting this explanation, the Committee is concerned at the apparent finality of such decisions by the Minister. For example, the Minister may direct the ABA to cancel a licence because he or she is of the opinion that the international broadcasting service is contrary to "Australia's national interest". If there is no obligation to provide reasons under the *Administrative Decisions (Judicial Review) Act 1977*, it is not clear what other rights of review or appeal (if any) are available to such a licensee.

Under proposed subsection 121FL(6), the licensee must be given a reasonable opportunity to send a submission to the ABA in relation to the cancellation, and the ABA must forward this submission to the Minister, but there seems to be no obligation on the Minister to actually consider the submission, and no similar procedure for making a submission where a licence is suspended rather than cancelled.

Where a licence is refused, suspended or cancelled, it is also not clear whether there is any right of appeal to the courts, and whether any such right of appeal extends to a consideration of the merits of the Minister's decision. The Committee, therefore, **seeks the Minister's advice** as to these matters.

*Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.*

## **Broadcasting Services Amendment Bill (No. 4) 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the following Acts:

*Broadcasting Services Act 1992* to provide a scheme for the regulation of international broadcasting services transmitted from Australia which requires the Minister for Foreign Affairs to make a national interest assessment of whether a service is likely to be contrary to the national interest;

*Administrative Decisions (Judicial Review) Act 1977* to provide that decisions of the Minister for Foreign Affairs in relation to the proposed international broadcasting scheme are not subject to a requirement under the Act to provide a statement of reasons; and

*Radiocommunications Act 1992* to provide that only persons who have an international broadcasting licence allocated by the ABA under the Broadcasting Act may be issued with a transmitter licence authorising operation of a transmitter for transmitting an international broadcasting service by the Australian Communications Authority.

### **No reasons for decision**

#### **Schedule 1, Part 1, Item 1**

Schedule 1 to this bill is apparently identical to Schedule 3 to the Broadcasting Services Amendment Bill (No 3) 1999, considered above.

This Schedule also contains a scheme for the regulation of international broadcasting services transmitted from Australia. The Scheme enables the Minister for Foreign Affairs to refuse an application for a licence, or to warn a licence-holder, or to suspend or cancel a licence, where an international broadcasting service, or proposed service, is seen as contrary to Australia's national interest.

Item 1 of Part 1 of Schedule 1 to this bill proposes to amend the *Administrative Decisions (Judicial Review) Act 1977* so that these decisions are not subject to the requirement in that Act that a statement of reasons be

provided. The Explanatory Memorandum again observes that “the nature of these decisions is such that exposure of the reasons for the decisions could itself be contrary to Australia’s national interest”.

As noted above, the Committee is concerned at the apparent finality of such decisions. If there is no obligation to provide reasons under the *Administrative Decisions (Judicial Review) Act 1977*, it is not clear what other rights of review or appeal (if any) are available to licensees where the Minister makes such a decision.

The Committee notes that under proposed subsection 121FL(6), a licensee must be given a reasonable opportunity to send a submission to the ABA where a licence is cancelled, and the ABA must forward this submission to the Minister, but there seems to be no obligation on the Minister to actually consider the submission, and no similar procedure for making a submission where a licence is suspended rather than cancelled.

Where a licence is refused, suspended or cancelled, it is also not clear whether there is any right of appeal to the courts, and whether any such right of appeal extends to a consideration of the merits of the Minister’s decision. The Committee, therefore, **seeks the Minister’s advice** as to these matters.

*Pending the Minister’s advice, the Committee draws Senators’ attention to this provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee’s terms of reference.*

## **Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 1999**

This bill was introduced into the House of Representatives on 8 December 1999 by the Attorney-General. [Portfolio responsibility: Attorney-General]

This bill has been introduced under the national co-operative censorship scheme. Under this national scheme, any changes to classification categories, the National Classification Code and the classification guidelines must have the unanimous agreement of the Commonwealth, the States and Territories, and implementation involves the introduction of complementary State and Territory legislation.

The bill proposes to amend the following Acts:

*Classification (Publications, Films and Computer Games) Act 1995* primarily to:

- abolish the X classification for videotapes and create a NVE (Non-violent Erotica) classification category;
- expand the current range of films exempt from classification; and
- expand the range of persons and organisations that can be considered to be “a person aggrieved” for the purposes of seeking a review of a classification decision; and

*Broadcasting Services Act 1992* to make consequential amendments.

### **Commencement**

#### **Subclause 2(2)**

Subclause 2(1) provides that this bill is to commence on Proclamation. However, subclause 2(2) provides that, if the bill does not commence within 12 months of assent, it is to commence on the first day after that period.

This is a departure from the usual 6 month period referred to in *Drafting Instruction No 2 of 1989*, issued by the Office of Parliamentary Counsel. That Drafting Instruction states that an explanation should be provided whenever a period longer than 6 months after assent is chosen.



The Explanatory Memorandum indicates that a twelve month period has been chosen for this bill to allow sufficient time for complementary State and Territory legislation to be enacted.

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

### **Strict liability offences**

#### **Proposed new subsections 23A(4), 39(7) and 44A(3)**

This bill proposes to make a series of amendments to the *Classification (Publications, Films and Computer Games) Act 1995*. A number of these amendments will create offences of strict liability. Specifically, under proposed new subsection 23A(4) failing to comply with a ‘call-in’ notice, which requires the publisher of an apparently unclassified film or computer game to apply for classification, will be a strict liability offence.

Similarly, under proposed new subsections 39(7) and 44A(3), failing to comply with a ‘call-in’ notice to enable the review or reclassification of a film or computer game will also be a strict liability offence.

An offence is one of strict liability where it provides for someone to be punished for doing something, or failing to do something, whether or not they have a guilty intent. The Committee will usually draw the Senate’s attention to provisions which create such offences.

In the case of this bill, the Explanatory Memorandum notes that:

- strict liability has been imposed as these offences are directed at professionals engaged in the dissemination of films and computer games as a business (as applies to the current powers, which followed recommendations of the ALRC);
- the offences are less serious and do not attract a penalty of imprisonment;
- the general defence of honest and reasonable mistake will be available to those charged; and

- a specific defence will also be available to defendants if they can show that they did not intend to publish the film or computer game in the ACT, or cause, authorise, permit or licence the film or computer game to be published in the ACT.

The Committee accepts this explanation.

*In these circumstances, the Committee makes no further comment on these provisions.*

## Copyright Amendment (Moral Rights) Bill 1999

This bill was introduced into the House of Representatives on 8 December 1999 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Copyright Act 1968* to:

- introduce moral rights provisions for authors of copyright works and directors and producers of films (with reference to international standards set by the Berne Convention for the Protection of Literary and Artistic Works); and
- make consequential amendments.

*The Committee has no comment on this bill.*

## Customs Tariff Amendment Bill (No. 3) 1999

This bill was introduced into the House of Representatives on 8 December 1999 by the Minister representing the Minister for Justice and Customs. [Portfolio responsibility: Justice and Customs]

The bill proposes to amend the *Customs Tariff Act 1995* to:

- ensure that textile mats, rugs and similar articles are considered to be floor coverings to ensure Australia's compliance with the international Harmonized System;
- reinstate the five per cent rate of customs duty on certain non-medical and non-scientific goods; and
- remove the customs rate of duty on steel tinplate and aluminium cansheet used in the manufacture of aluminium cans.

### Retrospective commencement

#### Subclauses 2(2), (3) and (4)

Subclauses 2(2) of this bill provides that the amendments contained in Schedule 1 are to be taken to have commenced on 22 July 1999. Subclause 2(3) provides that the amendments contained in Schedule 2 are to be taken to have commenced on 3 September 1999. Subclause 2(4) provides that the amendments contained in Schedule 3 are to be taken to have commenced on 1 October 1999.

However, in each case, the amendments proposed were tabled in the Parliament as Customs Tariff Proposals. Such amendments are of a type in relation to which the Committee has regularly been prepared to accept a measure of retrospectivity.

*In these circumstances, the Committee makes no further comment on these provisions.*

## **Fisheries Legislation Amendment Bill (No. 2) 1999**

This bill was introduced into the House of Representatives on 8 December 1999 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Fisheries Administration Act 1991* and the *Fisheries Management Act 1991* to introduce new measures for control, monitoring and enforcement of foreign and domestic fishing operations, including the collection of accurate fishing data, to increase management effectiveness and support sustainable use of Australia's fisheries resources.

*The Committee has no comment on this bill.*

## **Health Insurance (Approved Pathology Specimen Collection Centres) Tax Bill 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Minister for Health and Aged Care. [Portfolio responsibility: Health and Aged Care]

Consequent on the Health Legislation Amendment Bill (No. 4) 1999, this bill proposes to impose the tax which must be paid before the Minister can grant an approval to an approved pathology authority for an eligible collection centre.

*The Committee has no comment on this bill.*

## Health Legislation Amendment Bill (No. 4) 1999

This bill was introduced into the House of Representatives on 9 December 1999 by the Minister for Health and Aged Care. [Portfolio responsibility: Health and Aged Care]

The bill proposes to amend the *Health Insurance Act 1973* to:

- provide the framework for new pathology specimen collection centre arrangements applicable to both the public and private sectors from 1 July 2000;
- simplify and clarify rules relating to temporary resident doctors and overseas trained doctors and the circumstances in which they can access Medicare;
- continue the requirement for certain medical practitioners to meet certain minimum proficiency requirements before they can participate in Medicare; and
- make technical amendments; and

repeal the *Health Insurance (Pathology)(Licence Fee) Act 1991*.

*The Committee has no comment on this bill.*

## **Medicare Levy Amendment (CPI Indexation) Bill 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

The bill proposes to amend the *A New Tax System (Medicare Levy Surcharge–Fringe Benefits) Act 1999* and the *Medicare Levy Act 1986* to:

- increase the Medicare Levy low income exemption thresholds for individuals, married couples and sole parents in line with Consumer Price Index movements; and
- increase the Medicare levy shading-in thresholds as a result of the increased low income thresholds.

*The Committee has no comment on this bill.*



## **Ministers of State and Other Legislation Amendment Bill 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to amend the following Acts:

*Ministers of State Act 1952* to:

- allow for the appointment of Parliamentary Secretaries under section 64 of the Constitution; and
- increase the limit on the sum appropriated from the Consolidated Revenue Fund in respect of ministerial salaries;

*Remuneration Tribunal Act 1973* and the *Freedom of Information Act 1982* to make consequential amendments; and

repeals the *Parliamentary Secretaries Act 1980*.

*The Committee has no comment on this bill.*

## **New Business Tax System (Miscellaneous) Bill 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Treasurer. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

*Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to:

- remove the inter-corporate dividend rebate on unfranked dividends paid between certain resident companies on or after 1 July 2000;
- allow certain non-resident owned companies a tax deduction to offset the removal of the rebate;
- replace, for certain taxpayers, immediate deductibility for plant costing \$300 or less with a right to pool plant costing less than \$1,000 and to depreciate that pool, as a single item of plant, over an effective life of four years; and
- allow certain taxpayers to add plant to that pool if it was written down to less than \$1,000 under the diminishing value method;

*Income Tax Assessment Act 1997* to enable taxpayers whose tax rates are below the company tax rate to receive a refund of excess imputation credits obtained from franked dividends; and

*Income Tax Assessment Act 1936* to:

- make consequential amendments to the dividend imputation and the infrastructure borrowings rebate following the reduction in the company tax rate; and
- allow complying superannuation funds and like entities a special franking rebate which enables them to receive venture capital gains free of tax through pooled development funds.

*The Committee has no comment on this bill.*

## **New Business Tax System (Venture Capital Deficit Tax) Bill 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Treasurer. [Portfolio responsibility: Treasury]

Complementary to the New Business Tax (Miscellaneous) Bill 1999, this bill proposes to impose the venture capital deficit tax to ensure that a pooled development fund does not venture capital frank its dividends beyond its permissible limit.

*The Committee has no comment on this bill.*

## **Pooled Development Funds Amendment Bill 1999**

This bill was introduced into the House of Representatives on 8 December 1999 by the Parliamentary Secretary to the Minister for Industry, Science and Resources. [Portfolio responsibility: Industry, Science and Resources]

The bill proposes to amend the *Pooled Development Funds Act 1992* to:

- extend the Pooled Development Funds (PDF) Program until 30 June 2003 and to review the Program before that date;
- make PDFs a more attractive proposition for Australian superannuation funds, overseas pension funds and other investors; and
- specify that, from 5 August 1999, lower tier investments by controlled investee companies must comply with statutory requirements.

### **Retrospective application Schedule 1, subitem 27(5)**

Item 15 of Schedule 1 to this bill proposes to insert a new section 28A in the *Pooled Development Funds Act 1992*. Proposed new section 28A specifies that the Act applies to investments made by a Pooled Development Fund (PDF) through controlled interposed entities as if the PDF had made the investments directly.

The Explanatory Memorandum observes that this change is necessary because “some PDFs had undertaken, or were considering, investments in businesses, through controlled eligible investee companies, which would not satisfy the Act’s eligibility criteria if they were made directly by the PDF”.

By virtue of subitem 27(5) of Schedule 1 to this bill, this amendment is to apply retrospectively from 4 August 1999. This raises two issues: whether the retrospective application of this provision will adversely affect any person, and why the date of 4 August 1999 was chosen.

With regard to adverse effect, the Regulation Impact Statement states that the amendment is expected to have a “negligible” impact on existing PDFs. Out of a total of 210 investees who had received funds from registered PDFs, only 2 businesses, invested in by one PDF, could be adversely affected by “the

closing off of this loophole”. In addition, the size of the investments by this PDF are “relatively small”.

With regard to the date of effect, it seems open to inference that this was the date of a press release announcing the changes. The Explanatory Memorandum refers to 4 August 1999 as “the date of an announcement of the change”. The Minister’s Second Reading Speech refers to 5 August 1999 in similar terms. Given this general lack of certainty, the Committee **seeks the Minister’s confirmation** that the date of 4 August 1999 represents the date of a press release announcing the proposed change.

*Pending the Minister’s advice, the Committee draws Senators’ attention to this 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.*

## Sydney Harbour Federation Trust Bill 1999

This bill was introduced into the Senate on 8 December 1999 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Environment and Heritage]

The bill proposes to establish the Sydney Harbour Federal Trust for a period of ten years to:

- ensure the management of Trust land contributes to preserving the amenity of the Sydney Harbour region;
- conserve the environmental and heritage values of Trust land, and establish suitable land as park;
- maximise public access to Trust land; and
- cooperate with other Commonwealth, New South Wales and local government bodies.

### Delegation to ‘a person’

#### Clauses 48 and 72

Clause 72 of this bill gives the Sydney Harbour Federation Trust the power to delegate all or any of its functions and powers to, among others, a person employed by the Trust under clause 48. Clause 48 authorises the Trust to employ “any person who it considers necessary for the performance of its functions and the exercise of its powers”.

Since its establishment, the Committee has consistently drawn attention to legislation which allows significant and wide-ranging powers to be delegated to anyone who fits the all-embracing description of ‘a person’. Generally the Committee prefers to see a limit set either on the sorts of powers that might be delegated, or on the categories of people to whom those powers might be delegated.

For example, in its *Seventh Report of 1985*, the Committee expressed its concern about a provision in the *Australian Sports Commission Bill 1985* which permitted the proposed Commission to delegate any of its powers under the Act (other than the power of delegation) to “a person” or to “a

committee”. The then Minister for Sport, Recreation and Tourism responded to these concerns by proposing an amendment to clarify delegations to “a committee”, but the power to delegate to “a person” was left unamended.

In its *Eighth Report of 1985*, the Committee drew attention to a provision in the Australian Federal Police Amendment Bill 1985 which enabled the Commissioner to delegate all or any of his powers under the Principal Act (other than the power of delegation) to another member of the Australian Federal Police or a member of the Public Service support staff. The then Special Minister of State responded by observing that to specify appropriate ranks or levels of delegation “would not have the inherent flexibility presently available”. However, the Committee reaffirmed its concern with such clauses in the following terms:

The routine inclusion of such clauses by those responsible for the drafting of legislation would appear to result from an unwillingness on the part of Departments and authorities to determine in advance which powers should not be capable of delegation at all, which should only be capable of being delegated to senior officers and which may be appropriate for general delegation.

The Committee concedes that the level at which a delegated power is to be exercised is “a matter for judgement in each case” but suggests that this judgement would be more appropriately made by the legislature in conferring the power rather than by the executive after the power has been conferred.

As noted above, this bill authorises the delegation of all or any of the Trust’s functions and powers to any employee. The functions of the Trust include holding, rehabilitating, developing, enhancing and managing land; developing draft land management plans; undertaking community consultation on land management; and promoting appreciation of land. The powers exercisable by the Trust include the power to acquire, hold and dispose of land and other property; the power to undertake inter-governmental negotiations; the power to enter into contracts, agreements and partnerships; the power to form or participate in companies and joint ventures; and the power to borrow or otherwise raise money.

Some of the functions and powers that may be delegated by the Trust are of considerable significance. Given the breadth of the power of employment in clause 48, it is arguable that the power of delegation under clause 72 should not be as broad as it currently is. The Committee, therefore, **seeks the**

**Minister's advice** as to why the power of delegation under clause 72 of this bill should not be limited in some way.

*Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to make rights and liberties unduly dependent on insufficiently defined administrative powers in breach of principle 1(a)(ii) of the Committee's terms of reference.*



## **Taxation Laws Amendment Bill (No. 11) 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

*International Tax Agreements Act 1953* to ensure that the taxing right afforded to Australia under the relevant provision of a double taxation agreement over income, profits or gains arising from the alienation of Australian real property, including mining rights, is fully effective;

*Income Tax Assessment Act 1997* to extend the period of time within which gifts to the Australian National Korean War Memorial Trust Fund, the St Patrick's Cathedral Parramatta Rebuilding Fund and the Shrine of Remembrance Restoration and Development Trust are tax deductible;

*Income Tax Assessment Act 1936* to remove exemptions, from income tax, available to certain sportspersons and sporting clubs or associations; and

*Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to make minor technical amendments.

### **Retrospective commencement**

#### **Subclause 2(2) and Schedule 4, items 43 and 44**

Subclause 2(2) of this bill states that the amendments proposed in items 43 and 44 of Schedule 4 are to be taken to have commenced on 1 July 1998. The amendment proposed in Item 44 is clearly a technical amendment designed to replace a reference to an ITAA 1936 provision with a reference to the ITAA 1997 provision. This will make no retrospective change to the substantive law.

However, the effect of the change proposed by Item 43 is less clear. The Explanatory Memorandum states that this item "maintains the position in the ITAA 1936 by excluding partnerships from the definition of entity for the purposes of the section. The effect is that a partner's assets are used for the threshold rather than the assets of the partnership."

Subitem 82(1) of Schedule 4 states that this amendment, among others, applies to assessments for the 1998-99 income year and later years. Given this subitem, it is unclear why a specific provision has been included to cover the commencement of the amendment proposed in Item 43. The Committee, therefore, **seeks the Treasurer's advice** on the need for a specific retrospective commencement date for this provision.

*Pending the Treasurer's advice, the Committee draws Senators' attention to this 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.*

## **Legislation by press release**

### **Schedule 1**

Schedule 1 to this bill amends the *International Tax Agreements Act 1953* to overcome the 1997 Federal Court decision in *Commissioner of Taxation v Lamesa Holdings BV* (1997) 77 FCR 597. The Explanatory Memorandum states that the purpose of the amendment is "to ensure that Australia is able to maintain its taxing right over alienations of Australian real property in situations where it is owned by non-residents either directly or through a chain of interposed entities and it is one of these entities which is alienated, rather than the real property being directly alienated".

Item 2 of Schedule 1 states that this amendment affects any income, profits or gains from the alienation of shares or interests occurring after 27 April 1998 – the date of a Press Release issued by the Treasurer.

In these circumstances, the Committee frequently refers to the Senate Resolution of 8 November 1988. This resolution, which deals specifically with tax legislation states that "where the Government has announced, by press release, its intention to introduce a Bill to amend taxation law, and that Bill has not been introduced into the Parliament or made available by way of publication of a draft Bill within 6 calendar months after the date of the announcement, the Senate shall, subject to any further resolution, amend the Bill to provide that the commencement date of the Bill shall be a date that is no earlier than either the date of introduction of the Bill into the Parliament or the date of publication of the draft Bill".

As more than 6 months have elapsed between the date of the announcement and the introduction of this bill, and as the Committee is not aware of any publication of a draft bill within that period, the Committee draws these provisions to the attention of Senators and **seeks the Treasurer's advice** on the matter.

*Pending the Treasurer's advice, the Committee draws Senators' attention to this 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.*

### **Retrospective application Schedule 4, subitem 82(1)**

As noted above, subitem 82(1) of Schedule 4 to this bill provides that, with one exception, all amendments proposed in that Schedule are to apply retrospectively from the 1998-99 income year.

The Explanatory Memorandum assures readers that these amendments are necessary to remedy some “unintended consequences” which resulted from the rewriting and transposition of the capital gains tax provisions. These amendments will “merely reinstate the position” prior to the rewrite. One amendment will reinstate a benefit to taxpayers which was inadvertently removed during the rewrite. Other amendments will remove a tax benefit which inappropriately resulted from the process. None of the amendments “change the policy” reflected in the original legislation.

*Given this assurance, the Committee makes no further comment on these provisions.*

## **Telecommunications (Consumer Protection and Service Standards) Amendment Bill 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to provide for changes to the National Relay Service (NRS) funding arrangements to facilitate the collection of the NRS levy from eligible carriers and subsequent payment to the NRS provider, to occur within a period that meets both NRS contractual obligations and legislative requirements.

*The Committee has no comment on this bill.*

## **Telecommunications (Numbering Charges) Amendment Bill 1999**

This bill was introduced into the House of Representatives on 9 December 1999 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the *Telecommunications (Numbering Charges) Act 1997* to:

- define a “transfer” of numbers so that it will be possible to move from a primary to a secondary provider without necessarily moving the numbering charge liability attached to the number; and
- change the date on which numbering charges are imposed from 22 May to a date in April to be determined by the Australian Communications Authority by 15 February of each year.

*The Committee has no comment on this bill.*

## Transport and Territories Legislation Amendment Bill 1999

This bill was introduced into the House of Representatives on 8 December 1999 by the Minister for Community Services. [Portfolio responsibility: Transport and Regional Services]

The bill proposes to amend the following Acts:

*Transport and Communications Legislation Amendment Act (No. 2) 1992* to amend the commencement provision to overcome a technical difficulty;

*Christmas Island Act 1958* and the *Cocos (Keeling) Islands Act 1955* to:

- remove the reference to a Western Australian court which has been abolished;
- remove the application of certain provisions of the *Workplace Relations Act 1996* to Western Australian employees who work wholly or mainly in the Territory;
- remove obsolete provisions relating to prisoners and accused persons;

*Australian Capital Territory (Planning and Land Management) Act 1988* to provide for a quorum at National Capital Authority meetings when the full-time member is precluded having disclosed a pecuniary interest;

*Northern Territory (Self-Government) Act 1978* to provide for the appointment of Parliamentary Secretaries and for them to be members of the Northern Territory Executive Council and receive remuneration for their services; and

amends six other Acts to correct drafting errors and amend gender specific language.

*The Committee has no comment on this bill.*