Senate Standing Committee for the Scrutiny of Bills

Alert Digest

No. 4 of 2000

5 April 2000

Senate Standing Committee

for the

Scrutiny of Bills

Alert Digest No. 4 of 2000

5 April 2000

ISSN 1329-668X

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.

TABLE OF CONTENTS

- **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.

A New Tax System (Trade Practices Amendment) Bill 2000

This bill was introduced into the House of Representatives on 16 March 2000 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Trade Practices Act 1974*:

- by inserting a new provision to extend the operation of the Price Exploitation Code to prohibit conduct, in connection with the supply of goods or services, that misrepresents, misleads or deceives a person about the effect of the New Tax System changes;
- to clarify the Australian Competition and Consumer Commission's legal basis for performing functions and exercising powers in relation to access undertakings by service providers; and
- to make a consequential amendment to repeal a subsection which sets out the Constitutional basis for enforcement of access undertakings.

Retrospective application
Subclauses 2(2) and (3)

Item 1 of Schedule 2 to this bill adds a new subsection (3A) to section 44ZZA of the *Trade Practices Act 1974* (TPA). Subclause 2(2) of the bill provides that this amendment is to be taken to have commenced when Part 3 of the *Competition Policy Reform Act 1995* commenced. The Explanatory Memorandum states that the retrospective operation of this provision "will ensure that existing undertakings accepted under section 44ZZA of the TPA fall within the Commonwealth's legislative power".

Item 2 of Schedule 2 to this bill replaces subsection (6A) in section 44ZZA of the TPA. Subclause 2(3) of the bill provides that this amendment is to be taken to have commenced when the *Trade Practices Amendment (Industry Access Codes) Act 1997* commenced. The Explanatory Memorandum states that the retrospective operation of this provision "ensures that the clarified operation of subsection (6A) applies to existing access undertakings".

The Explanatory Memorandum states that neither amendment extends the operation of section 44ZZA, and each amendment is "consistent with the original intention of the legislation".

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

Reversal of the onus of proof
Proposed new sections 75AYA and 76A

Among other things, Schedule 1 to this bill proposes to add a new section 75AYA to the *Trade Practices Act 1974*. This prohibits various misrepresentations as to the effect of the New Tax System changes. Proposed new section 76A provides for various defences where a contravention of section 75AYA is alleged. These defences include reasonable mistake; reasonable reliance on information provided by another person; or accident or some other cause beyond the defendant's control. These defences must be established by the defendant.

Taken together, these two provisions effectively reverse the normal onus of proof in criminal proceedings – a matter which usually concerns the Committee. In its Report *The Work of the Committee during the 38th Parliament (May 1996-August 1998)* the Committee observed that:

> Where legislation provides that a particular state of belief is to constitute an excuse for carrying out an action which would otherwise be a crime, and in that way allows a defence to a person who is accused of committing one, the Committee will more readily accept the onus of proof being placed on him or her to prove that excuse.

While the matters which the defendant is obliged to prove under proposed section 76A may be matters which are within the defendant's knowledge, so are many others which the prosecution must prove in seeking a conviction. It should be noted that this provision represents yet another instance of the reversal of the onus of proof and thus affects the rights and liberties of defendants.

Given this, the Committee draws this provision to the attention of the Senate 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.

Criminal Assets Recovery Bill 2000

This bill was introduced into the House of Representatives on 13 March 2000 by Mr Kerr as a Private Member's bill.

The bill proposes a civil forfeiture scheme for the proceeds of criminal activity. It is based on a recommendation of the Australian Law Reform Commission in its report *Confiscation that counts: A Review of the Proceeds of Crime Act 1987*.

The principle objects of the bill are:

- to provide for the confiscation of a person's property if the Federal Court finds it to be more probable than not that the person has engaged in serious crime related activity;
- to enable the proceeds of serious crime related activity to be recovered as a debt due to the Crown; and
- to enable law enforcement authorities to effectively identify and recover property.

Trespass on rights and liberties
Clauses 10, 24 and 36

Under clause 10 of this bill, the Commonwealth Director of Public Prosecutions (DPP) may apply to a court, ex parte, for a restraining order in relation to the property interests of a person suspected of having engaged in "serious crime related activity" or the property interests of any other person. An application must be supported by an affidavit stating that an authorised officer "suspects that the person has engaged in a serious crime related activity" and the grounds on which that suspicion is based, or (where the property interest is held by another person) that the authorised officer "suspects that the interest is serious crime derived property" and the grounds on which that suspicion is based.

Serious crime related activity

The bill defines 'serious crime related activity' as "anything done by the person that was at the time a serious criminal offence, whether or not the person has been charged with the offence, or, if charged, has been … tried and

acquitted". A 'serious criminal offence' is defined as an offence involving narcotics, theft, fraud, obtaining financial benefit from the crime of another, money laundering, extortion, violence, bribery, corruption, harbouring criminals, blackmail, obtaining or offering a secret commission, perverting the course of justice, tax or revenue evasion, illegal gambling, forgery or homicide which is punishable by imprisonment for 5 years or more, or "a prescribed indictable offence".

A court must grant the application and make the restraining order where the court considers that "there are reasonable grounds for any such suspicion". A court may refuse to grant the application if the Commonwealth fails to give appropriate undertakings as to damages or costs.

If granted, a restraining order prevents anyone disposing of, or dealing with, the property interest except as provided for in the order. After the first 48 hours of its operation, a restraining order remains in force only while there are proceedings for various other orders pending.

Assets forfeiture orders

One of these proceedings is an application for an assets forfeiture order under clause 24. Such an order forfeits to, and vests in, the Crown all or any of the property interests that are subject to a restraining order. The court must make such an order if it finds that it is "more probable than not" that the person whose suspected serious crime related activity provided the basis for the restraining order was, at any time in the previous 6 years, engaged in a serious crime related activity involving an offence punishable by imprisonment for 5 years or more.

Under subclause 24(6), the raising of a doubt is not of itself sufficient to avoid such a finding. Under subclause 24(7), the quashing or setting aside of a conviction does not affect the validity of an assets forfeiture order made before or after the conviction was quashed.

On a forfeiture order taking effect, the property interest is forfeited to the Crown and is to be disposed of by the Official Trustee in accordance with the directions of the Minister for Finance.

Production orders

Under clause 36 of the bill, if an authorised officer has reasonable grounds for suspecting that a person has possession or control of property-tracking

documents (defined as documents relevant to identifying, locating or quantifying property interests which are related to, or derived from, serious criminal activity), the authorised officer may lay before a court an information on oath setting out those grounds, and apply to the court, ex parte, for an order for the production of any such documents.

Under subclause 38(1), a person is not excused from complying with a production order on the ground of self-incrimination, or breach of an obligation of non-disclosure, or legal professional privilege.

Under subclause 38(2), if a person objects to a production order, the production or making available of the document, or anything obtained as a consequence, is not admissible against the person in any criminal proceedings other than proceedings for failure to comply with the order.

Purpose of these provisions

In introducing this bill, the Member for Denison stated that those behind organised crime were "too often able to distance themselves from … individual instances of criminal activity". This had become "a source of frustration for law enforcement agencies". While they were able to identify the profits of illegal activity, and those who benefited from those profits "sophisticated financial transactions and money laundering schemes often mean that it is difficult to identify beyond reasonable doubt the particular crime from which each amount of money or property stemmed".

Recent years had seen "a developing judicial and legislative recognition of the principle that the law should not countenance the retention by any person … of the profits of unlawful conduct". This had seen non-conviction-based schemes for the forfeiture of the proceeds of crime introduced in New South Wales and Victoria, and this bill was said to be based on these State Acts.

Concerns

While mindful of the significance, pervasiveness and complexity of organised criminal activity, the Committee is concerned that this bill seems to attach grave consequences to what are essentially suspicions. Assets may be removed from a person's control, without that person having a right to be heard on the matter, simply because there is a reasonable suspicion that they are connected with serious criminal activity. Assets may be confiscated simply because it is more probable than not that someone, at some time, has

been involved in serious criminal activity. Incriminating material may be obtained under compulsion and is only inadmissible where a person objects to producing that material. The long-established protections imposed by the criminal law and, in general terms, recognised in the existing *Proceeds of Crime Act 1987,* are here avoided because they are seen to be inconvenient or to hinder law enforcement.

In its examination of the civil forfeiture provisions in the Confiscation Bill 1997 (Vic), the Victorian Scrutiny of Acts and Regulations Committee stated that:

> The civil forfeiture provisions set out in Part 4 contemplate the forfeiture of property through a process which is initiated at the time a serious criminal charge is laid. For the purpose of giving effect to that process the civil standard of proof, namely, on the balance of probabilities is applied, rather than the criminal standard of beyond reasonable doubt. To that extent, this is a diminution in rights.

In the same manner, this bill seems to trespass on the rights of persons who have neither been charged with, nor convicted of, any wrong-doing. The Committee, therefore, **seeks the advice of the member sponsoring the bill** as to the reasons for diminishing rights where there is only suspicion of, or likely involvement in, serious criminal activity.

> *Pending the honourable member's advice, the Committee draws Senators' attention to these 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.*

Abrogation of the privilege against self-incrimination
Clause 13

Under clause 13 of this bill, a person being examined under clause 12 is not excused from answering a question or from producing a document or other thing on the grounds of self-incrimination, or breach of an obligation of non-disclosure, or legal professional privilege.

Subclause 13(2) goes on to limit the circumstances in which information obtained under compulsion may be used in evidence against the person. In general terms, such information, or any document or other thing obtained as a consequence, is not admissible in any civil or criminal proceedings except proceedings for making false or misleading statements, or proceedings relating to an application under this Act, or proceedings for the enforcement of a confiscation order, or (in the case of a document or other thing) civil proceedings in respect of a right or liability conferred or imposed by that document or thing.

While the approach taken in this clause is conscious of the need to strike a balance between the competing interests of obtaining information and protecting rights, the Committee nevertheless has some concerns. First, it seems that information disclosed or revealed will be admissible in proceedings on an application under the Act. This would seem to suggest that a person may forfeit their property as a result of incriminating statements they were compelled to make.

Secondly, abrogation of the privilege against self incrimination, combined with use and derivative use immunity, has often been used to assist in the gathering of information for essentially administrative purposes. This provision now seems to extend this into the area of what are essentially criminal proceedings.

The Committee has always expressed concern at the loss of the privilege against self incrimination. In its *Report on the operation of the Senate Standing Committee for the Scrutiny of Bills during the 36th Parliament (May 1990-February 1993)* the Committee observed that it was "reluctant to see the use of provisions abrogating the privilege – even with a use/derivative use indemnity – being used as a matter of course." The Committee preferred to see the use of such provisions "limited to 'serious' offences and to situations where they are absolutely necessary".

The Committee, therefore, **seeks the advice of the member sponsoring the bill** as to the reasons for further diminishing the rights of defendants in this manner, and whether a preferable approach might be to allow inferences to be drawn from any failure to provide information rather than a penalty to be imposed.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Pending the honourable member's advice, the Committee draws Senators' attention to these 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.

Employee Protection (Employee Entitlements Guarantee) Bill 2000

This bill was introduced into the House of Representatives on 13 March 2000 by Mrs Crosio as a Private Member's bill.

The bill proposes the establishment and administration of a scheme to guarantee the payment of wages and certain other liabilities owed to employees in the event of employer insolvency.

The Committee has no comment on this bill.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Migration Legislation Amendment Bill (No. 2) 2000

This bill was introduced into the House of Representatives on 14 March 2000 by the Minister for Immigration and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural Affairs]

The bill proposes to amend the following Acts:

Migration Act 1958 in relation to judicial review of visa related matters to:

- prohibit class actions in migration litigation; and to
- limit those persons who may commence and continue proceedings in the courts.

Migration Act 1958 and *Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Act 1998* to:

- clarify the scope of the Minister's power to set aside non-adverse decisions of the delegate or the Administrative Appeals Tribunal in relation to the "character test" and to substitute the Minister's own adverse decision;
- rectify an omission from the Act which allows for the consequential cancellation of visas, so that they also apply where a person's visa is cancelled; and
- correct three misdescribed amendments of the Act.

The bill also proposes a number of technical corrections and rectifications to the *Migration Act 1958*; the *Migration Legislation Amendment Act (No 1) 1998*; and the *Migration Legislation Amendment (Migration Agents) Act 1999*.

Retrospective application
Subclause 2(4) and Schedule 2, Part 1

A number of the amendments proposed in Part 1 of Schedule 2 to this bill concern section 501A of the *Migration Act 1958*. By virtue of subclause 2(4), these amendments are to be taken to have commenced on 1 June 1999, immediately after the commencement of item 23 of Schedule 1 to the *Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Act 1998* (the Character and Conduct Act).

The Minister's Second Reading Speech states that the amendments to section 501A are intended to "clarify the original policy intention" behind the Character and Conduct Act, and "to put it beyond doubt that the Minister can, in the national interest, substitute his or her own section 501 decision for that of a delegate or the Administrative Appeals Tribunal".

Given the period of retrospectivity involved, and the history of Parliamentary consideration of the Character and Conduct Act, the Committee **seeks the Minister's advice** on how the doubts about the operation of section 501A arose and whether the proposed retrospective application of these amendments is likely to affect any existing or proposed litigation.

With regard to section 501A itself, the Committee remains concerned at its potential use as a device for administrative convenience, and notes the observation of the Administrative Appeals Tribunal that "if the Minister were to exercise the powers in proposed ss 501A and 501B more than infrequently the integrity of the Tribunal's decision-making process and public confidence in the independence of the Tribunal may be undermined".[1]

Pending the Minister's advice, the Committee draws Senators' attention to these 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.

Retrospective application
Subclauses 2(5) and (6) and Schedule 2, items 8, 9 and 10

By virtue of subclause 2(5), the amendments proposed in items 8 and 9 of Schedule 2 are to be taken to have commenced on 1 June 1999. And by virtue of subclause 2(6), the amendment proposed in item 10 of Schedule 2 is to be taken to have commenced on 1 March 2000 immediately after the commencement of item 5 of Schedule 2 to the *Migration Legislation Amendment (Migration Agents) Act 1999*. However, as Notes to each of these amendments make clear, their purpose is simply to correct drafting errors, making no substantive change to the law.

---

[1] Quoted in Senate Legal and Constitutional Legislation Committee, Report on Legislation Referred to the Committee: *Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Bill 1997,* March 1998, p 23.

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

Retrospective application
Schedule 1, item, 7

Item 7 of Schedule 1 to this bill provides that the amendments proposed by Part 2 of this Schedule are to apply to proceedings if the application to commence that proceeding was lodged on or after 14 March 2000. This is the date on which the bill was introduced into the Parliament.

The Explanatory Memorandum observes that the purpose of this retrospective application is "to prevent the commencement of large class actions which may have occurred if the amendments made by this Part only operated after Proclamation".

The Explanatory Memorandum goes on to note that, since October 1997, 14 class actions have been commenced "allowing significant numbers of people to obtain bridging visas to remain in Australia until the courts determined the matter". Since October 1997, 10 of these actions had been decided, all of which had been dismissed.

Provisions which make legislation operative from the date of its introduction, rather than the date of its ultimate passage, raise many of the same issues as provisions which make legislation operative from the date of a press release. In each case, a legislative proposal is to be treated as enacted legislation. As the Committee has previously stated with regard to legislation by press release, such an approach "carries with it the assumption that citizens should arrange their affairs in accordance with announcements made by the Executive rather than in accordance with laws passed by the Parliament".

Making a bill operative from its introduction rather than its passage may place Parliament in the invidious position of either having to agree to the legislation without significant amendment or bearing the odium of overturning arrangements which may have been made in reliance on the proposal.

In its *Tenth Report of 1999*, the Committee considered the Migration Legislation Amendment Bill (No 2) 1998 – a bill which contained a similar commencement clause. In discussing that clause, the Committee observed

that, in essence, "a bill has been introduced and its provisions are being applied even though it has not been passed … and, indeed, may never be passed. Such an approach permits legislation to be introduced and enforced without Parliament ever being required to vote on the matter".

Similar comments might be made in relation to the operation of this bill. The Committee, therefore, **seeks the Minister's advice** as to the effect of Item 7 of Schedule 1 should this bill not be passed, or not be passed in the form in which its was introduced.

The Committee also notes that 10 class actions seem to have been determined over the past 29 months, with only 4 others pending. In the context of general litigation delays, the Committee **also seeks the Minister's advice** as to what in these statistics raises concerns that class actions are being abused to such an extent that they ought be prohibited.

Pending the Minister's advice, the Committee draws Senators' attention to these 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.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

National Crime Authority Amendment Bill 2000

This bill was introduced into the House of Representatives on 13 March 2000 by Mr Kerr as a Private Member's bill.

The bill proposes to amend the following Acts:

National Crime Authority Act 1984 to:

- increase the National Crime Authority's (NCA) investigative powers by:
- removing witnesses' ability to refuse to give evidence on grounds of self-incrimination;
- providing for a use immunity in these circumstances;
- increasing maximum penalties imposed on witnesses who refuse to give evidence; and
- to extend the term of the NCA chairperson from 4 to 6 years.

Ombudsman Act 1976 to provide for review of complaints in relation to the NCA.

Abrogation of the privilege against self-incrimination
Proposed new subsection 30(4)

Item 1 of Schedule 1 to this bill proposes to substitute a new subsection 30(4) in the *National Crime Authority Act 1984*. This new subsection would abrogate the privilege against self-incrimination for a witness at a hearing conducted by the NCA.

Proposed new subsection 30(5A), to be inserted by item 3 of Schedule 1, limits the circumstances in which information obtained under compulsion may be used in evidence against that witness. In general terms, such an answer given or document produced is not admissible in any criminal proceeding or proceeding for the imposition of a penalty, except proceedings for giving a false answer or that relate to making a false statement in a document.

While the approach taken in this clause is conscious of the need to strike a balance between the competing interests of obtaining information and protecting rights, the Committee nevertheless has some concerns. First, unlike

clause 13 of the Criminal Assets Recovery Bill 2000 (see page 11 of this *Digest*) the proposed new subsection seems to make no provision for derivative use immunity. This would enable information or documents obtained as a consequence of any compelled disclosure to be used in evidence against the person making it.

Secondly, abrogation of the privilege against self incrimination has often been used to assist in the gathering of information for essentially administrative purposes. This provision now seems to extend this into the area of what are essentially criminal proceedings.

The Committee has always expressed concern at the loss of the privilege against self incrimination. In its *Report on the operation of the Senate Standing Committee for the Scrutiny of Bills during the 36th Parliament (May 1990-February 1993)* the Committee observed that it was "reluctant to see the use of provisions abrogating the privilege – even with a use/derivative use indemnity – being used as a matter of course." The Committee preferred to see the use of such provisions "limited to 'serious' offences and to situations where they are absolutely necessary".

The Committee, therefore, **seeks the advice of the member sponsoring the bill** as to the reasons for further diminishing the rights of defendants in this manner, and whether a preferable approach might be to allow inferences to be drawn from any failure to provide information rather than a penalty to be imposed.

> *Pending the honourable member's advice, the Committee draws Senators' attention to these 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.*

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Sex Discrimination Legislation Amendment (Pregnancy and Work) Bill 2000

This bill was introduced into the House of Representatives on 13 March 2000 by Ms Macklin as a Private Member's bill.

The bill, which is identical in form with the Sex Discrimination Legislation Amendment (Pregnancy and Work) Bill 2000 [No 2], introduced in the Senate on 14 March 2000, proposes to amend the *Sex Discrimination Act 1984* and *Human Rights and Equal Opportunity Commission Act 1978* to clarify existing protections and establish equity standards to ensure that pregnant, potentially pregnant and breastfeeding women are not discriminated against in the workplace. The bill also proposes to extend the anti-discrimination provisions to employees who are in the process of adopting a child.

Apparently non-disallowable instruments
Proposed new section 27A

Item 37 of Schedule 1 to this bill proposes to insert a new section 27A in the *Sex Discrimination Act 1984*. This new section authorises the relevant Minister to formulate 'pregnancy equity standards' in relation to the employment of women who are pregnant or potentially pregnant.

Provision is made for these standards to be laid before each House of the Parliament, and for either House to move to amend them. However, no reference is made to these instruments as disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*. No provision seems to have been made for either House to disallow the standards, nor for the consequences of either House refusing to accept the standards, even as proposed to be amended.

The Committee, therefore, **seeks the advice of the member sponsoring the bill** as to whether pregnancy equity standards are disallowable, and as to the provision made in the bill where one House moves to amend such an instrument in a way unacceptable to the other House.

Pending the honourable member's advice, the Committee draws Senators' attention to this 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.

Sex Discrimination Legislation Amendment (Pregnancy and Work) Bill 2000 [No. 2]

This bill was introduced into the Senate on 14 March 2000 by Senator Crossin as a Private Senator's bill.

The bill, which is identical in form with the Sex Discrimination Legislation Amendment (Pregnancy and Work) Bill 2000, introduced in the House of representatives on 13 March 2000, proposes to amend the *Sex Discrimination Act 1984* and *Human Rights and Equal Opportunity Commission Act 1978* to clarify existing protections and establish equity standards to ensure that pregnant, potentially pregnant and breastfeeding women are not discriminated against in the workplace. The bill also proposes to extend the anti-discrimination provisions to employees who are in the process of adopting a child.

Apparently non-disallowable instruments
Proposed new section 27A

Item 37 of Schedule 1 to this bill proposes to insert a new section 27A in the *Sex Discrimination Act 1984*. This new section authorises the relevant Minister to formulate 'pregnancy equity standards' in relation to the employment of women who are pregnant or potentially pregnant.

Provision is made for these standards to be laid before each House of the Parliament, and for either House to move to amend them. However, no reference is made to these instruments as disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*. No provision seems to have been made for either House to disallow the standards, nor for the consequences of either House refusing to accept the standards, even as proposed to be amended.

The Committee, therefore, **seeks the advice of the Senator sponsoring the bill** as to whether pregnancy equity standards are disallowable, and as to the provision made in the bill where one House moves to amend such an instrument in a way unacceptable to the other House.

Pending the honourable member's advice, the Committee draws Senators' attention to this 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.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Bill 2000

This bill was introduced into the House of Representatives on 16 March 2000 by the Minister for Community Services. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the following Acts within the portfolio to give effect to a range of 1999 Budget and related matters:

Social Security Act 1991 in relation to:

- international portability provisions;
- 4 per cent pension supplement for pension bonuses and for retirement assistance for farmers;
- unclaimed overseas entitlements; and
- qualifying residence.

Social Security (Administration) Act 1999 in relation to:

- the use of tax file numbers for data-matching purposes;
- unclaimed overseas entitlements; and

makes consequential amendments in relation to international portability.

Veterans' Entitlements Act 1986 in relation to international portability provisions.

Income Tax Assessment Act 1936 and *Taxation Administration Act 1953* in relation to the use of tax file numbers for data-matching purposes.

Health Insurance Act 1973 to make consequential amendments in relation to qualifying residence.

Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999 and *Further 1998 Budget Measures Legislation (Social Security) Act 1999* to correct renumbering errors.

A New Tax System (Family Assistance) Act 1999 and *Social Security (International Agreements) Act 1999* to make a consequential and technical amendment, respectively, in relation to international portability.

Retrospective application
Subclauses 2(6), (7) and (10)

By virtue of subclauses 2(6), (7) and (10), various provisions of this bill are to be taken to have commenced retrospectively to some extent. However, in each case the amendments will do no more than correct drafting errors, making no substantive change to the law.

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

PROVISIONS OF BILLS WHICH IMPOSE CRIMINAL SANCTIONS FOR A FAILURE TO PROVIDE INFORMATION

REPORT NO 2/2000

The Committee's *Eighth Report of 1998* dealt with the appropriate basis for penalty provisions for offences involving the giving or withholding of information. In that Report, the Committee recommended that the Attorney-General develop more detailed criteria to ensure that the penalties imposed for such offences were "more consistent, more appropriate, and make greater use of a wider range of non-custodial penalties". The Committee also recommended that such criteria be made available to Ministers, drafters and to the Parliament.

The Government responded to that Report on 14 December 1998. In that response, the Minister for Justice referred to the ongoing development of the Commonwealth *Criminal Code*, which would include rationalising penalty provisions for "administration of justice offences". The Minister undertook to provide further information when the review of penalty levels and applicable principles had taken place.

For information, the following Table sets out penalties for 'information-related' offences in the legislation covered in this *Digest.* The Committee notes that imprisonment is still prescribed as a penalty for some such offences.

TABLE

Bill/Act	**Section/Subsection**	**Offence**	**Penalty**
Employee Protection (Employee Entitlements Guarantee) Bill 2000	Subclause 32(3)	Failure to comply with notice to provide information and material	150 penalty units

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

Recent discussions between the Chairs and Deputy Chairs of Commonwealth, State and Territory Scrutiny Committees have again noted difficulties in the identification and scrutiny of national schemes of legislation. Essentially, these difficulties arise because 'national scheme' bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation. Any requests for amendment are seen to threaten that agreement and that uniformity.

To assist in the early identification of national schemes of legislation, the Committee proposes to note bills that give effect to such schemes as they come before the Committee for consideration.

A New Tax System (Trade Practices Amendment) Bill 2000

This bill inserts a new provision in Part VB of the *Trade Practices Act 1974* to prohibit conduct, in connection with the supply of goods or services, that falsely represents, or misleads or deceives a person about the effect of, the New Tax System changes.

The Explanatory Memorandum states that, to achieve Australia-wide coverage, the bill also inserts a version of the new provision into the Schedule to the TPA, in a form which can be applied by the States and Territories. The Explanatory Memorandum notes that, by virtue of the *Price Exploitation Code (Name of State) Act 1999* in each State (except WA) and the Northern Territory, "the proposed amendment to the Schedule will be adopted as part of the price exploitation legislation in each jurisdiction, effective 2 months from when the bill commences. Each jurisdiction retains the discretion to issue a regulation declaring that the amendment takes effect at an earlier date, or does not take effect at all".

Under the *New Tax System Price Exploitation Code (Western Australia) Act 1999*, a modification of the Schedule does not apply as a law of WA unless the modification is declared by an order to be such a law. The ACT did not pass a Price Exploitation Code Act.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

5 April 2000

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2000

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	INTRODUCED SENATE	MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
Bills Carried over from 1999							
Convention on Climate Change (Implementation) Bill 1999	14(22.9.99)		2.9.99	Senator Brown	23.9.99		
Copyright Amendment (Digital Agenda) Bill 1999	14(22.9.99)	2.9.99		Attorney-General	23.9.99		
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 1999	19(1.12.99)	24.11.99		Justice and Customs	2.12.99	15.3.00	
Fair Prices and Better Access for All (Petroleum) Bill 1999	14(22.9.99)	30.8.99		Mr Fitzgibbon	23.9.99	23.12.99	
Fisheries Legislation Amendment Bill (No. 1) 1999	14(22.9.99)	1.9.99	14.10.99	Agriculture, Fisheries and Forestry	23.9.99		1(16.2.00) Act No. 143
Migration Legislation Amendment Act (No. 1) 1999 (previous citation: Migration Legislation Amendment Bill (No. 2) 1998)	1(15.2.99)	30.6.99	3.12.98	Immigration and Multicultural Affairs	16.2.99 25.3.99 24.6.99	23.3.99 22.6.99 20.12.99	4(24.3.99) 10(23.6.99) 1(16.2.00)
Telecommunications (Interception) Amendment Act 1999	14(22.9.99)	2.9.99	14.10.99	Attorney-General	23.9.99 21.10.99	19.10.99 16.3.00	17(20.10.99) 4(5.4.00)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	INTRODUCED SENATE	MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
Bills being dealt with during 2000							
A New Tax System (Family Assistance and Related Measures) Bill 2000	3(15.3.00)	9.3.00		Family and Community Services	16.3.00	4.4.00	
Broadcasting Services Amendment Bill (No. 3) 1999	1(16.2.00)	6.12.99	9.12.99	Communications, Information and the Arts	17.2.00		Act No.198
Broadcasting Services Amendment Bill (No. 4) 1999	1(16.2.00)	9.12.99		Communications, Information and the Arts	17.2.00		
Child Support Legislation Amendment Bill 2000	3(15.3.00)	9.3.00		Community Services	16.3.00		
Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 1999	*19(1.12.99) 2(8.3.00)	24.11.99	13.3.00	Justice and Customs	9.3.00		
Dairy Industry Adjustment Bill 2000	2(8.3.00)	16.2.00	15.3.00	Agriculture, Fisheries and Forestry	9.3.00	14.3.00	2(15.3.00)
Family and Community Services Legislation Amendment Bill 2000	3(15.3.00)	9.3.00		Family and Community Services	16.3.00	4.4.00	
Jurisdiction of Courts Legislation Amendment Bill 2000	3(15.3.00)	8.3.00		Attorney-General	16.3.00	30.3.00	
Pooled Development Funds Amendment Bill 1999	1(16.2.00)	8.12.99		Industry, Science and Resources	17.2.00	2.3.00	
Sydney Harbour Federation Trust Bill 1999	1(16.2.00)		8.12.99	Environment and Heritage	17.2.00	22.3.00	4(5.4.00)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Taxation Laws Amendment Bill (No. 11) 1999	1(16.2.00) 2(8.3.00)	9.12.99		Treasurer	17.2.00 9.3.00	30.3.00 5.4.00	
Telecommunications (Interception) Legislation Amendment Bill 2000	3(15.3.00)	16.2.00	13.3.00	Attorney-General	16.3.00		