

**Senate Standing Committee
for the
Scrutiny of Bills**



Alert Digest

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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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- **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.

Appropriation (Dr Carmen Lawrence's Legal Costs) Bill 1999-2000

This bill was introduced into the House of Representatives on 6 April 2000 by the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes an appropriation out of the Consolidated Revenue Fund to meet the Commonwealth's liability under orders made on 25 February 2000 by the Federal Court of Australia in *Vass & Ors v The Commonwealth*, and an associated liability to pay interest. The Commonwealth's liability in this regard relates to the legal costs of Dr Carmen Lawrence in connection with the Marks Royal Commission and her court challenges to that Commission.

The Money appropriated in this bill is additional to appropriations made by any other Appropriation Act.

The Committee has no comment on this bill.

Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) 2000

This bill was introduced into the Senate on 4 April 2000 by Senator Murray as a Private Senator's bill.

The bill proposes to amend the Constitution to:

- provide for elector-initiated constitutional changes;
- include new provisions for the dissolution of the House of Representatives and for the holding of simultaneous elections for both Houses of Parliament;
- remove the provision for dividing states into divisions for the purposes of Senate elections; and entrench proportional representation as the method for choosing Senators;
- reduce senators' terms of office from six years to four years, in line with the proposed new term of the House of Representatives;
- increase the three year unfixed term for the House of Representatives to a four year fixed term;
- recognise the office of Prime Minister and provide for the dismissal of the Prime Minister by the Governor-General after the House of Representatives has agreed to a motion expressing lack of confidence in the Prime Minister; and
- clarify anomalies with respect to the qualification and disqualification of members of Parliament.

The Committee has no comment on this bill.

Customs Amendment (Alcoholic Beverages) Bill 2000

This bill was introduced into the House of Representatives on 6 April 2000 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Justice and Customs]

The bill proposes to amend the *Customs Act 1901* to:

- extend to certain prescribed alcoholic beverages the provisions which currently restrict the entry into home consumption of spirits in bulk containers;
- authorise the Chief Executive Officer of Customs (CEO) to permit certain alcoholic beverages to be entered into home consumption in bulk containers having a capacity of more than 20 litres; and
- make decisions of the CEO made in respect to the entry of certain alcoholic containers subject to review by the Administrative Appeals Tribunal.

The changes proposed in this bill are mirrored in the Excise Amendment (Alcoholic Beverages) Bill 2000.

The Committee has no comment on this bill.

Excise Amendment (Alcoholic Beverages) Bill 2000

This bill was introduced into the House of Representatives on 6 April 2000 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Excise Tariff Act 1921* to:

- amend definitions in the Excise Act to introduce excise on certain alcoholic beverages with less than 10% alcohol content;
- provide additional circumstances and conditions for excisable and customable goods to be used in the manufacture of excisable goods;
- extend the conditions on the entry of home consumption of spirits to other defined excisable beverages;
- give the Chief Executive Officer of Customs (CEO) the authority to permit certain alcoholic beverages to be entered into home consumption in bulk containers having a capacity of more than 20 litres; and
- make decisions of the CEO made in respect to bulk containers of certain alcoholic containers subject to the review of the Administrative Appeals Tribunal.

The changes proposed in this bill are mirrored in the Customs Amendment (Alcoholic Beverages) Bill 2000.

The Committee has no comment on this bill.

International Tax Agreements Amendment Bill (No. 1) 2000

This bill was introduced into the House of Representatives on 6 April 2000 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Treasury]

The bill proposes to amend the *International Tax Agreements Act 1953* to give legislative authority to a new comprehensive double taxation agreement with Romania and an amending protocol to the existing agreement with Finland. The bill will insert the text of the agreement and the protocol into the principal Act as schedules to that Act.

The new Romanian agreement generally accords with other comprehensive taxation agreements concluded by Australia in recent years.

The Finnish protocol amends the existing Finnish agreement to exempt from dividend withholding tax dividends paid out of fully taxed company profits. It also corrects a previous drafting error.

The Committee has no comment on this bill.

Petroleum Excise Amendment (Measures to Address Evasion) Bill 2000

This bill was introduced into the House of Representatives on 6 April 2000 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Aviation Fuel Revenues (Special Appropriation) Act 1988*; the *Excise Act 1901*; the *Excise Tariff Act 1921*; the *Fuel Blending (Penalty Surcharge) Act 1997*; the *Fuel Misuse (Penalty Surcharge) Act 1997*; the *Fuel (Penalty Surcharges) Administration Act 1997* and the *Fuel Sale (Penalty Surcharge) Act 1997* to improve the ability to address excise evasion occurring through fuel substitution.

This is to be achieved by:

- replacing specific tariff items with generic descriptions;
- ensuring that a broader range of imported products that can be used in fuel substitution activities are covered by the legislation; and
- including provisions for the use of evidentiary certificates in prosecutions.

The proposed changes do not affect the way excise is levied or impose an additional excise liability.

The Committee has no comment on this bill.

Postal Services Legislation Amendment Bill 2000

This bill was introduced into the House of Representatives on 6 April 2000 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 *Australian Postal Corporation Act 1989* to:

- reduce the scope of the services reserved to Australia Post, thereby increasing the opportunities for competition in postal services;
- revise certain definitions and make consequential amendments; and
- provide a postal services access regime under the *Trade Practices Act 1974*.

The bill also proposes to convert Australia Post, a statutory corporation established under the *Australian Postal Corporation Act 1989*, to a public company under the Corporations Law. Consequent upon this change of status, the bill proposes to amend the *Administrative Decisions (Judicial Review) Act 1977* and the *Freedom of Information Act 1982* to remove Australia Post from the operation of those Acts.

Consequential amendments are also proposed to 13 other Acts.

Legislative instruments not subject to scrutiny Proposed new sections 153T and 153TA

Among other things, Part 1 of Schedule 4 to this bill inserts a new Part XID in the *Trade Practices Act 1974*. This new Part includes proposed new section 153T, which authorises the Australian Competition and Consumer Commission (ACCC), by instrument, to make rules requiring providers of postal services to keep records. These record-keeping rules may specify the manner, form and level of detail in which the records are to be kept, and in which reports are to be prepared. If the rules apply to a specific provider, the ACCC must give a copy of the rules to that provider.

New Part XID also contains proposed new section 153TA, which requires the ACCC to make record-keeping rules for Australia Post. The Explanatory Memorandum states that the primary purpose of these rules “is to enable the

ACCC to advise Australia Post's competitors that Australia Post is not cross-subsidising from the reserved services to the services it provides in competition with others".

It appears that the rules to be developed by the ACCC may be sufficiently general in nature to make them legislative in character. Such rules should be tabled in the Parliament and subject to parliamentary scrutiny. The Committee therefore **seeks the Minister's advice** as to why no provision has been made for parliamentary scrutiny of the record-keeping rules to be made by the ACCC.

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

Abrogation of the privilege against self-incrimination Proposed new section 153TF

As noted above, Part 1 of Schedule 4 to this bill inserts a new Part XIX in the *Trade Practices Act 1974*. This new Part includes proposed section 153TF, which provides that an individual is not excused from giving a report under the record-keeping rules, or from making a report or extracts available, on the grounds that this might tend to incriminate the individual or expose him or her to a penalty.

However, under proposed subsection 153TF(2), the giving of a report, or making a report or an extract available, or any information or thing obtained as a direct or indirect consequence, is not admissible in evidence against the individual in criminal proceedings other than proceedings for keeping incorrect records.

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. However, 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 appropriate test should be:

- is the information being sought for a civil (usually administrative) purpose;
- is the purpose a ‘serious’ one; and
- in balancing the need to gain information for a ‘serious’ purpose and the need to preserve the right of people not to incriminate themselves, does the balance favour requiring that the information be provided.

Otherwise the right to silence and the right not to be compelled to incriminate oneself is effectively denied.

The Committee, therefore, **seeks the Minister’s advice** as to the reasons for further diminishing the rights of defendants in this manner.

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.

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

REPORT NO 3/2000

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
<i>Postal Services Legislation Amendment Bill 2000</i>	Proposed new section 153LK	Fail to answer questions at arbitration of dispute about access to declared services	6 months imprisonment

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
		HOUSE	SENATE			
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
<i>Migration Legislation Amendment Act (No. 1) 1999</i> (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
<i>Telecommunications (Interception) Amendment Act 1999</i>	14(22.9.99)	2.9.99	14.10.99	Attorney-General	23.9.99 21.10.99	17(20.10.99) 4(5.4.00)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills being dealt with during 2000							
A New Tax System (Family Assistance and Related Measures) Bill 2000	3(15.3.00)	9.3.00	10.4.00	Family and Community Services	16.3.00	4.4.00	5(12.4.00)
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		
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	11.4.00	Attorney-General	16.3.00	30.3.00	5(12.4.00)
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)
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		