

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



**Alert Digest**

**No. 6 of 2000**

**10 May 2000**

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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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- **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.



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

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## **Amendment of the Northern Territory (Self-Government) Act 1978 Bill 2000**

This bill was introduced into the House of Representatives on 10 April 2000 by Mr Andren as a Private Member's bill.

The bill proposes to amend the *Northern Territory (Self-Government) Act 1978* to prevent the Northern Territory Legislative Assembly from making laws which would require a court to sentence a person to imprisonment or detention for an offence committed when that person is under 18 years of age. The bill also contains certain application and transitional provisions.

### **Individual rights and the rights of citizens**

#### **Schedule 1**

Under section 6 of the *Northern Territory (Self-Government) Act 1978* ("the Self Government Act"), the Legislative Assembly of the Northern Territory has power to legislate "for the peace, order and good government" of the Territory. This bill proposes to diminish the scope of this general power by specifically providing that the Territory Assembly not have power to make "laws which would require a court to sentence a person to imprisonment or detention for an offence committed as a child".

The Explanatory Memorandum accompanying the bill notes that:

- section 122 of the Commonwealth Constitution gives the Federal Parliament power to make laws for the governance of territories and to override laws made by a Territory Assembly – in 1997 the Parliament used this power to override the Northern Territory's euthanasia laws;
- in October 1998 the people of the Northern Territory were given the opportunity to become a State, but voted to remain a Territory for the time being; and
- the bill attempts to give effect to Australia's obligations as a signatory to the International Convention on the Rights of the Child – specifically the obligation under Article 37(b) to ensure that detention or imprisonment of children is used as a measure of last resort and for only the shortest period of time, and the obligation under Article 40 to ensure that punishments are proportionate to the circumstances of each offence, and that signatories



introduce alternatives to imprisonment to maximise the chances of child-offenders assuming a constructive role in their societies.

While there is no doubt that the Commonwealth Parliament has constitutional power to enact this bill, it raises two contrasting issues. On the one hand, individuals – and particularly children – found guilty of committing criminal acts should receive a punishment appropriate for the particular offence committed. It was in a related context that this Committee commented, in its *Eighth Report of 1998*, on the need for consistent, fair and appropriate non-custodial penalties for offences involving the giving or withholding of information.

On the other hand, the Northern Territory Assembly has been duly and democratically elected on the basis of a universal adult franchise. This bill, if passed, will intrude on the law-making function of the Assembly, not in accordance with principle, but on an ad hoc basis. In effect, this threatens the certainty which ought exist when a validly elected government passes a valid law. It was in a similar context that this Committee drew attention, in *Alert Digest No 7 of 1996*, to the effect of the Euthanasia Laws Bill 1996 and, in *Alert Digest No 6 of 1999*, to the effect of the Norfolk Island Amendment Bill 1999 on the rights and liberties of citizens in those jurisdictions.

Similar considerations apply to this bill. The resolution of these issues is a matter most appropriately left for consideration by the Senate as a whole.

*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.*

## **Aviation Legislation Amendment Bill (No. 2) 2000**

This bill was introduced into the House of Representatives on 12 April 2000 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Transport and Regional Services]

The bill proposes to amend the *Civil Aviation Act 1988* by simplifying and removing uniquely Australian terminology and replacing it with internationally recognised terminology. This will assist in the development of regulations dealing with aircraft maintenance and maintenance engineer licensing.

The bill also proposes amendments to enable the Civil Aviation Safety Authority (CASA) to:

- enter into certain agreements with the national airworthiness authorities of other countries; and
- accept voluntary written undertakings from persons in relation to compliance with civil aviation safety legislation.

The bill further proposes amendments to the *Civil Aviation (Carriers' Liability) Act 1959* to correct a drafting error.

### **Retrospective application Subclause 2(2) and Schedule 2**

Subclause 2(2) provides that Schedule 2 to this bill is to commence retrospectively at the same time as Schedule 4 to the *Aviation Legislation Amendment Act (No 1) 1998* commenced (23 July 1998). However the Explanatory Memorandum states that the purpose of the amendments proposed in Schedule 2 is to correct an unintended error which imposed liability on some foreign aircraft operators, potentially in contravention of Australia's international treaty obligations.

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

## Employment Security Bill 2000

This bill was introduced into the House of Representatives on 10 April 2000 by Mr Bevis as a Private Member's bill.

The bill proposes to amend the *Workplace Relations Act 1996* to:

- enable the Commission or the Court to extend the operation of an order for the reinstatement of an employee to a body corporate related to the employer; and
- impose liability for the payment of employees' legal entitlements on a body corporate related to the employer.

The bill also proposes to amend the *Corporations Law* in relation to:

- the liability of a company for the debts or liabilities of a related company; and
- the recovery of profits, and compensation of any loss, resulting from a contravention of a civil penalty provision in the Law.

### Drafting note

#### Schedule 2, item 1

Item 1 of Schedule 2 to this bill proposes to insert a new Division 6A in the *Corporations Law*. However, the text to be inserted does not have a section number (section 588YA) or section heading to identify it. The Committee draws the member's attention to this inadvertent omission.

*The Committee makes no further comment on this bill.*

## **Environmental Legislation Amendment Bill (No. 1) 2000**

This bill was introduced into the Senate on 12 April 2000 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Environment and Heritage]

The bill proposes to amend the *Environment Protection and Biodiversity Conservation Act 1999* and *Environmental Reform (Consequential Provisions) Act 1999* to make technical amendments to rectify a number of operational anomalies and unintended drafting consequences. The amendments proposed are intended to facilitate the transition to the new legislative regime to commence on 16 July 2000.

*The Committee has no comment on this bill.*

## **Family Law Legislation Amendment (Superannuation) Bill 2000**

This bill was introduced into the House of Representatives on 13 April 2000 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Family Law Act 1975* to provide for the division of superannuation interests on marriage breakdown in the same way as other assets are divided.

The proposed amendments provide for the division of a superannuation interest either by agreement or by court order. Parties will be able to make a superannuation agreement, in the context of a broader financial agreement, which specifies how a superannuation interest will be divided on marriage breakdown. Parties will also be able to agree on how payments made pursuant to a superannuation interest are to be spilt.

Superannuation agreements are to be binding in the same circumstances as general financial agreements –pursuant to the amendments proposed in the Family Law Amendment Bill 1999 (currently before the Parliament) – and the trustees of funds will be required by law to give effect to the agreements.

The bill also proposes consequential amendments to the *Bankruptcy Act 1966*, the *Superannuation Industry (Supervision) Act 1993*, and the *Superannuation (Resolution of Complaints) Act 1993*.

### **Commencement**

#### **Subclause 2(2) and Schedule 1**

Subclause 2(2) provides that Schedule 1 to this bill is to commence on the anniversary of the day on which it receives Royal Assent. *Drafting Instruction No 2 of 1989*, issued by the Office of Parliamentary Counsel, states that the Explanatory Memorandum should provide reasons if an Act is to commence more than 6 months after Royal Assent.

In the case of this bill, the Explanatory Memorandum states that the 12 month delay in commencement will “allow the superannuation industry and relevant government agencies to make the necessary adjustments to their information technology and administrative systems to implement the division of a

superannuation interest on marriage breakdown”. It will also enable a range of education activities to be undertaken in relation to the bill.

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

## **Financial Sector Legislation Amendment Bill (No. 1) 2000**

This bill was introduced into the House of Representatives on 13 April 2000 by the Minister representing the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

*Banking Act 1959* to:

- enhance the prudential regulation of Authorised Deposit-taking Institutions;
- authorise the delegation of certain of the Treasurer's functions to other Treasury portfolio agencies;
- provide the Australian Prudential Regulation Authority (APRA) and the Treasurer (or delegate) with power to seek an injunction if certain sections of the Banking Act are breached; and
- facilitate the rationalisation and consolidation of the Commonwealth's unclaimed moneys provisions;

*Reserve Bank Act 1959* to simplify and modernise the Reserve Bank service, consistent with reforms in the Commonwealth public sector; and

*Superannuation Industry (Supervision) Act 1993* to enhance the enforcement and offence provisions in the Act and to facilitate the application of the Commonwealth's Criminal Code to offences under the Act.

The bill clarifies the extent of APRA's powers to provide actuarial services over the period the Australian Government Actuary was part of APRA, and proposes minor miscellaneous amendments to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, the *Superannuation (Resolution of Complaints) Act 1993* and the *Retirement Savings Accounts Act 1997*.

The bill also proposes consequential amendments to the *Australian Prudential Regulation Authority Act 1998* and the *Financial Corporations Act 1974*.

## Strict liability offences

### Division 1 of Part 2 of Schedule 3

Schedule 3 to this bill proposes to amend the *Superannuation Industry (Supervision) Act 1993* (the SIS Act). The amendments proposed in Division 1 of Part 2 to this Schedule relate to the application of the Criminal Code to the SIS Act.

In general terms, the offence provisions in the SIS Act are currently fault-based. The proposed amendments convert these offences into either offences of strict liability, or into ‘two-tier’ offences which may be prosecuted either as fault-based offences or offences of strict liability at the election of the prosecutor. The maximum penalty applicable where an offence is prosecuted as one of strict liability is generally half that applicable where the prosecution is required to prove the intent or recklessness of the accused.

The Explanatory Memorandum simply notes that these amendments:

will provide Regulators with various new or enhanced enforcement powers. These powers will strengthen the regulatory framework for superannuation and facilitate the prosecution of contraventions of the SIS Act. This in turn will assist in ensuring that superannuation entities are administered prudently and that superannuation savings are adequately protected.

However, it is not clear why it is thought necessary, or appropriate, to replace a scheme under which the prosecution is required to prove all the elements of an offence – including intent – with a scheme based on strict liability. The Committee, therefore, **seeks the Treasurer’s advice** as to this matter.

*Pending the Treasurer’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.*



## Fuel Sales Grants Bill 2000

This bill was introduced into the House of Representatives on 12 April 2000 by the Treasurer. [Portfolio responsibility: Treasury]

Part of a package of three bills, this bill proposes a fuel sales grants scheme to address the divergence in fuel prices between metropolitan and regional areas. Under the scheme, registered seller of petroleum fuel will be entitled to grants for sales of fuel to end users, provided the sales are made at eligible locations (as specified by regulation).

*The Committee has no comment on this bill.*

## **Fuel Sales Grants (Consequential Amendments) Bill 2000**

This bill was introduced into the House of Representatives on 12 April 2000 by the Treasurer. [Portfolio responsibility: Treasury]

Part of a package of three bills to implement the fuel sales grants scheme, this bill proposes to amend the *Taxation Administration Act 1953* to ensure that provisions which apply generally to Acts administered by the Commissioner of Taxation will apply as appropriate to the new grants and benefits scheme. These provisions include those relating to prosecutions and offences, the general interest charge and the collection and recovery of tax-related liabilities.

*The Committee has no comment on this bill.*

## **Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 2000**

This bill was introduced into the House of Representatives on 10 April 2000 by the Leader of the Opposition, Mr Beazley, as a Private Member's bill.

The bill proposes amendments which will effect Australia's obligations under Articles 37(b) and 40(4) of the Convention on the Rights of the Child by providing that a law of the Commonwealth, or of a State or Territory, must not require a court to sentence a person to imprisonment or detention for an offence committed when that person is under 18 years of age. The bill also contains certain application and transitional provisions.

### **Individual rights and the rights of citizens**

#### **Section 5**

This bill is expressed to implement Australia's human rights obligations to children under Articles 37(b) and 40(4) of the Convention on the Rights of the Child.

Under Article 37(b), signatories to the Convention have an obligation to ensure that detention or imprisonment of children is used as a measure of last resort, and for only the shortest period of time. Under Article 40, signatories have an obligation to ensure that punishments are proportionate to the circumstances of each offence, and to introduce alternatives to imprisonment to maximise the chances of child-offenders assuming a constructive role in their societies.

Section 5 of this bill provides that a law of the Commonwealth, or of a State or of a Territory, must not require a court to sentence a person to imprisonment or detention for an offence committed when under the age of 18 years of age. As such, the bill seeks to limit the powers of any Australian Parliament or Legislative Assembly to legislate in relation to the mandatory sentencing of juvenile offenders.

Elsewhere in this *Digest* (at page 5), the Committee considers a similar bill which seeks specifically to limit the powers of the Legislative Assembly of the Northern Territory to legislate on this matter.

In relation to that bill, the Committee observes that it raises two contrasting issues. On the one hand, individuals – and particularly children – found guilty of committing criminal acts should receive a punishment appropriate for the particular offence committed. It was in a related context that the Committee commented, in its *Eighth Report of 1998*, on the need for consistent, fair and appropriate non-custodial penalties for general offences involving the giving or withholding of information.

On the other hand, Australian Parliaments and Assemblies are duly and democratically elected on the basis of a universal adult franchise. This bill, if passed, will intrude on the law-making function of those Parliaments and Assemblies on an ad hoc basis. In effect, this threatens the certainty which ought exist when a validly elected government passes a valid law. It was in a similar context that this Committee drew attention, in *Alert Digest No 7 of 1996*, to the effect of the Euthanasia Laws Bill 1996 and, in *Alert Digest No 6 of 1999*, to the effect of the Norfolk Island Amendment Bill 1999 on the rights and liberties of citizens in those jurisdictions.

Similar considerations apply to this bill. The resolution of these issues is a matter most appropriately left for consideration by the Senate as a whole.

*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.*

## **New Business Tax System (Alienation of Personal Services Income) Bill 2000**

This bill was introduced into the House of Representatives on 13 April 2000 by the Treasurer. [Portfolio responsibility: Treasury]

Part of a package of three bills relating to the alienation of personal services income, this bill proposes to implement measures recommended by the Ralph Review of Business Taxation. These measures are intended to prevent individuals reducing their tax liability by diverting income generated by their personal services to a company, partnership or trust, and to limit work-related deductions available in similar circumstances.

Specifically, this bill proposes to amend the following Acts:

*Income Tax Assessment Act 1997* to introduce new rules for the income tax treatment of certain personal services income; and the

*Taxation Administration Act 1953* to apply the Pay As You Go withholding system to personal services income paid to interposed entities, including deductions allowed against that income.

The bill also proposes consequential amendments to the *Child Support (Registration and Collection) Act 1988*, the *Fringe Benefits Tax Assessment Act 1986* and the *Income Tax Assessment Act 1936*, and contains application and transitional provisions.

*The Committee has no comment on this bill.*

## **New Business Tax System (Alienated Personal Services Income) Tax Imposition Bill (No. 1) 2000**

This bill was introduced into the House of Representatives on 13 April 2000 by the Treasurer. [Portfolio responsibility: Treasury]

Part of a package of three bills relating to the alienation of personal services income, this bill proposes to impose a tax on certain alienated personal services income, where income gained by an interposed entity is included in the individual's assessable income.

*The Committee has no comment on this bill.*

## **New Business Tax System (Alienated Personal Services Income) Tax Imposition Bill (No. 2) 2000**

This bill was introduced into the House of Representatives on 13 April 2000 by the Treasurer. [Portfolio responsibility: Treasury]

Part of a package of three bills relating to the alienation of personal services income, this bill proposes to impose a tax on certain alienated personal services income, by ensuring that the interposed entity pays amounts under the Pay As You Go withholding system.

*The Committee has no comment on this bill.*

## **New Business Tax System (Integrity Measures) Bill 2000**

This bill was introduced into the House of Representatives on 13 April 2000 by the Treasurer. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

*Income Tax Assessment Act 1997* to limit the extent to which taxpayers can use non-commercial losses to reduce the tax paid on their other income; and the

*Income Tax Assessment Act 1936* to require that prepayments for services under tax shelter arrangements be deducted over the period during which the services are provided, rather than being immediately tax deductible.

These changes maintain the existing general law tests that determine whether an individual is carrying on a business activity; and do not affect the deductibility of a loss from that activity. The proposed changes are intended to ensure that individual taxpayers carrying on a business activity either alone or in partnership may only claim a loss from that activity against their other income in an income year if they satisfy one of five tests in that year. The changes will apply to assessments for the 2001-2002 income year and later income years.

### **Legislation by press release Schedule 2, Part 1**

Subitem 11(1) of Schedule 2 to this bill provides that the amendments proposed in Part 1 of that Schedule are to apply from 11 November 1999 – the date the proposal was first announced in a Press Release. While this is a further example of ‘legislation by press release’, the date of effect is within the six-month period specified in the Senate Resolution of 8 November 1988 which deals with legislation to give effect to proposals to amend the tax laws.

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



## **New Business Tax System (Miscellaneous) Bill (No. 2) 2000**

This bill was introduced into the House of Representatives on 13 April 2000 by the Treasurer. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

*Income Tax Assessment Act 1997* in relation to multiple recognition of inter-entity losses; company losses and bad debts; loss duplication measures; linked group transfer measures; and capital payments received for trust interests. The bill also proposes technical amendments in relation to the continuity of ownership test, unrealised losses, excess mining or exploration deductions, and 13-month prepayments;

*Income Tax Assessment Act 1936* in relation to company losses and bad debts and the dividend imputation system;

*Income Tax Assessment Act 1936, Income Tax Assessment Act 1997, Income Tax (Transitional Provisions) Act 1997, Income Tax Rates Act 1986, Income Tax Act 1986 and the Taxation Administration Act 1953* to broaden the tax base for life insurers, and broadly tax the current pension business of superannuation funds consistently with that of life insurers;

*Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* in relation to scrip for scrip rollover relief;

*Taxation Administration Act 1953* in relation to anti-avoidance rules for Pay As You Go instalments; and

*Income Tax Assessment Act 1936* and *New Business Tax System (Integrity and Other Measures) Act 1999* to make technical corrections in relation to deducting prepayments.

### **Tax legislation and the six month rule**

#### **Subclause 2(2) and Schedule 1, items 18 and 67**

By virtue of subclause 2(2), items 18 and 67 of Schedule 1 to this bill are to commence retrospectively on 11 November 1999 – the date the changes were first announced in a Press Release. While this is a further example of ‘legislation by press release’, the date of effect is within the six-month period

specified in the Senate Resolution of 8 November 1988 which deals with legislation to give effect to proposals to amend the tax laws.

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

**Tax legislation and the six month rule**  
**Schedule 1, subitems 68(1) and (3)**

Subitems 68(1) and (3) of Schedule 1 to this bill provide that various changes proposed by that Schedule are to apply from 11 November 1999 – the date the changes were first announced in a Press Release. While this is a further example of ‘legislation by press release’, the date of effect is within the six-month period specified in the Senate Resolution of 8 November 1988 which deals with legislation to give effect to proposals to amend the tax laws.

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

**Tax legislation and the six month rule**  
**Schedule 1, subitem 68(2)**

Subitem 68(2) of Schedule 1 to this bill states that the amendments made by items 3 to 5, 20 to 22, 24 to 29, 31 to 33 and 34 to 36 apply to tax losses, net capital losses or deductions claimed in returns for an income year ending after 21 September 1999 – the date these changes were first announced in a Press Release.

This is a further example of ‘legislation by press release’. However, in this case, the legislation giving effect to the proposals as announced has not been introduced within the six-month period specified in the Senate Resolution of 8 November 1988. This resolution deals with the introduction of legislation to give effect to proposed amendments to taxation laws. In general terms it states that, where the relevant legislation has not been introduced into Parliament or made available by way of a draft bill within 6 months of 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”.

The Committee therefore, **seeks the Treasurer’s advice** as to the effect of this resolution on the proposed commencement date of the bill.

*Pending the Treasurer’s response, 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.*

### **Tax legislation and the six month rule Schedule 1, subitems 68(4) and (6)**

Subitem 68(4) of Schedule 1 to this bill provides that the changes referred to in that subitem are to apply from 22 February 1999. Similarly, subitem 68(6) of that Schedule provides that the changes referred to in that subitem are to apply from 21 October 1999.

The Explanatory Memorandum states that these amendments are clarifications of existing law, and make no changes of substance.

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

### **Tax legislation and the six month rule Schedule 4, item 6**

Schedule 4 to this bill amends the capital gains tax provisions of the *Income Tax Assessment Act 1997* to “take into account the effect of payments out of the CGT discount and small business CGT concessions”. The Explanatory Memorandum states that, under the current law, “a payment by a trustee of a small business 50% reduction amount is not correctly treated in calculating the non-assessable part to which CGT event E4 applies”.

Item 6 of Schedule 4 states that these amendments are to apply from 21 September 1999. The Explanatory Memorandum observes that this measure

“was foreshadowed in the explanatory memorandum to the Capital Gains Tax Act that enacted the small business 50% reduction,” but was otherwise not announced.

This would appear to be a further example of tax legislation introduced more than six months after the proposed amendment was ‘announced’, and therefore affected by the Senate Resolution of 8 November 1988. In general terms that resolution states that, where the relevant legislation has not been introduced into Parliament or made available by way of a draft bill within 6 months of 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”.

The Committee, therefore, **seeks the Treasurer’s advice** as to the effect of this resolution on the proposed commencement date of the bill, and whether the amendments proposed in this Schedule are beneficial to taxpayers.

*Pending the Treasurer’s response, 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 Schedule 5, item 34**

Schedule 5 to this bill amends the scrip for scrip roll-over provisions in the *Income Tax Assessment Act 1997* by clarifying the circumstances in which roll-over can be used; by providing cost-base rules for acquired equity; and by limiting the availability of roll-over where both the original and acquiring entities are non-residents. Item 34 of this Schedule provides that these amendments generally apply from 10 December 1999, with the amendments affecting non-resident companies applying from 14 April 2000.

The Explanatory Memorandum observes that this proposal has not previously been announced, but that the amendments are generally revenue neutral. Some amendments appear to be advantageous to taxpayers in extending the circumstances in which scrip for scrip roll-over is available.

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

**Retrospective application  
Schedule 8, item 11**

Schedule 8 to this bill makes a number of “technical corrections” relating to deducting prepayments. Item 11 of this Schedule provides that these amendments apply from 21 September 1999. The amendments are apparently technical in nature and make no substantive change to the law.

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

## **Primary Industries (Excise) Levies Amendment Bill 2000**

This bill was introduced into the House of Representatives on 12 April 2000 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Primary Industries (Excise) Levies Act 1999* to repeal the sunset clause (due to take effect at the end of 30 June 2000), thus enabling the continued imposition of levy on transactions involving sheep, lambs and goats.

Since the implementation of the *Primary Industries (Excise) Levies Act 1999* the Sheepmeat Council of Australia has conducted a review of the current scheme and recommended that the levy regime remain unchanged and that the existing arrangements continue beyond the end of 30 June 2000.

*The Committee has no comment on this bill.*

## Privacy Amendment (Private Sector) Bill 2000

This bill was introduced into the House of Representatives on 12 April 2000 by the Attorney-General. [Portfolio responsibility: Attorney-General]

After more than 12 months of intensive consultation with Australian business, consumers and privacy advocates, this bill proposes to amend the *Privacy Act 1988* to establish a national scheme for the appropriate collection, holding, use, correction, disclosure and transfer of personal information by private sector organisations. The scheme is to operate through codes of practice adopted by private sector organisations and the National Privacy Principles.

The bill also proposes consequential amendments to the *Administrative Decisions (Judicial Review) Act 1977*, *Customs Act 1901*, *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and amends the *Australian Security Intelligence Organisation Act 1979* and *Privacy Act 1988* in relation to disclosures to intelligence bodies.

### Commencement

#### Subclause 2(1)

Subclause 2(1) of this bill provides that it is to commence at least 12 months after it receives Royal Assent. *Drafting Instruction No 2 of 1989*, issued by the Office of Parliamentary Counsel, states that the Explanatory Memorandum should provide reasons if an Act is to commence more than 6 months after Royal Assent.

While it is likely that the delayed commencement provision is intended to enable businesses to adjust their practices in order to comply with scheme established by the bill, this is not made clear in the otherwise comprehensive Explanatory Memorandum.

The Committee therefore, **seeks the advice of the Attorney-General** on the reasons for departing from the approach to commencement recommended by the Office of Parliamentary Counsel in the case of this bill.

*Pending the Attorney's response, the Committee draws Senators' attention to these provisions, as they may be considered to inappropriately delegate legislative powers, in breach of principle 1(a)(iv) of the Committee's terms of reference.*

### **Inappropriate delegation of legislative power Proposed new subsections 6A(2) and 6B(2)**

Proposed new subsection 6A(2) provides that an act or practice does not breach a National Privacy Principle if the act or practice is undertaken by a contracted service provider for a Commonwealth contract for the purposes of that contract, and is authorised by a provision of the contract that is inconsistent with the Principle.

Proposed new subsection 6B(2) deems that an act or practice does not breach an approved privacy code in similar circumstances.

The Explanatory Memorandum states that the effect of these provisions is that a privacy clause in a Commonwealth contract that is inconsistent with a National Privacy Principle or an approved privacy code will prevail over that Principle or code.

This would seem to permit the provisions of the Act to be circumvented by contract. However, proposed new section 95B, to be inserted by item 131 of Schedule 1 to the bill, requires such contracts to contain terms which oblige service providers not to do an act or engage in conduct which contravenes the privacy principles.

In general terms, the approach taken seems to exempt service providers under Commonwealth contracts from having to observe the privacy principles, but to require the relevant contracts to incorporate them. It is not clear why such an approach has been adopted. It is also not clear how this approach will work in practice. The Committee, therefore, **seeks the Attorney-General's advice** as to why this approach has been taken in relation to service providers under Commonwealth contracts, and would appreciate some examples in plain English of how this approach will work in practice.

*Pending the Attorney's response, the Committee draws Senators' attention to these provisions, as they may be considered to*



*inappropriately delegate legislative powers, in breach of principle 1(a)(iv) of the Committee's terms of reference.*

## **Product Grants and Benefits Administration Bill 2000**

This bill was introduced into the House of Representatives on 12 April 2000 by the Treasurer. [Portfolio responsibility: Treasury]

Part of a package of three bills to implement the fuel sales grants scheme, this bill proposes a framework for assessing and paying fuel sales grants and benefits to be administered by the Commissioner of Taxation.

Specifically, the bill provides for matters including the registration of claimants; the claiming and assessment of grants; the making and advance of payments; the record-keeping obligations of claimants; and measures to promote compliance with the grants and benefits of law.

### **Abrogation of the privilege against self-incrimination Clause 43**

Part 9 of this bill deals with the information-gathering powers of the Commissioner of Taxation. Clause 42 provides that the Commissioner may require a person to provide information, produce documents or give evidence relevant to the operation of the Act. Clause 43 abrogates the privilege against self-incrimination. However, subclause 43(2) limits the circumstances in which the information so provided, or any information document or thing obtained as a direct or indirect consequence, may be used in evidence.

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 36<sup>th</sup> 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, therefore, **seeks the Treasurer’s advice** as to the reasons for diminishing the rights of defendants in this manner.

*Pending the Treasurer’s response, 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.*

## **Search and entry without judicial warrant**

### **Clause 48**

Where an authorised officer has reason to believe that documents or goods relevant to the operation of the Act are on any premises, clause 48 provides that that officer may enter those premises and is entitled to full and free access at all reasonable times to any documents, goods or other property on those premises. No provision is made requiring that a warrant be obtained from an independent judicial officer.

In its *Fourth Report of 2000*, this Committee examined the fairness, purpose, effectiveness and consistency of right of entry provisions in Commonwealth legislation. Among other things, the Committee recommended that all such provisions should accord with a set of fundamental principles. One of these principles is that legislation should authorise entry onto, and search of, premises only with an occupier's genuine and informed consent, or under warrant or equivalent statutory instrument, or by providing for a penalty determined by a court for failure to comply. The Committee considered it important that there be independent judicial oversight of the use of an intrusive power.

This provision, which is in similar terms to the other 'access' powers exercisable by the Commissioner of Taxation, does not accord with this principle. Accordingly, the Committee **seeks the Treasurer's advice** as to why clause 48 makes no provision for independent judicial oversight of the power of entry or access.

*Pending the Treasurer's response, 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**

<b>Bill/Act</b>	<b>Section/Subsection</b>	<b>Offence</b>	<b>Penalty</b>
<i>Product Grants and Benefits Administration Bill 2000</i>	Clause 42	Failure to provide information to a public authority	\$2,000

\* Refer to *Taxation Administration Act 1953*

## 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			
<b>Bills Carried over from 1999</b>						
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 DC 3.4.00
Fisheries Legislation Amendment Bill (No. 1) 1999	14(22.9.99)	1.9.99	14.10.99	Agriculture, Fisheries and Forestry	23.9.99	14.2.00 1(16.2.00) Act No. 143
<i>Migration Legislation Amendment Act (No. 1) 1999</i>	1(15.2.99)	30.6.99	3.12.98	Immigration and Multicultural Affairs	16.2.99	23.3.99 4(24.3.99)
(previous citation: Migration Legislation Amendment Bill (No. 2) 1998)					25.3.99	22.6.99 10(23.6.99)
					24.6.99	20.12.99 1(16.2.00)
<i>Telecommunications (Interception) Amendment Act 1999</i>	14(22.9.99)	2.9.99	14.10.99	Attorney-General	23.9.99	19.10.99 17(20.10.99)
					21.10.99	16.3.00 4(5.4.00)

NAME OF BILL	ALERT DIGEST		INTRODUCED		MINISTER	RESPONSE SOUGHT		REPORT NUMBER
			HOUSE	SENATE			RECEIVED	
<b>Bills being dealt with during 2000</b>								
A New Tax System (Family Assistance and Related Measures) Bill 2000	3(15.3.00)	9.3.00	5.4.00	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	4.5.00	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	4.5.00		
Criminal Assets Recovery Bill 2000	4(5.4.00)	13.3.00		Mr Kerr, ALP	6.4.00			
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		Act No. 23	
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	13.4.00	Family and Community Services	16.3.00	4.4.00	6(10.5.00)	
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 13.4.00	5(12.4.00) 6(10.5.00)	
Migration Legislation Amendment Bill (No. 2) 2000	4(5.4.00)	14.3.00		Immigration and Multicultural Affairs	6.4.00	26.4.00		
National Crime Authority Amendment Bill 2000	4(5.4.00)	13.3.00		Mr Kerr	6.4.00			
Pooled Development Funds Amendment Bill 1999	1(16.2.00)	8.12.99	13.4.00	Industry, Science and Resources	17.2.00	2.3.00	6(10.5.00)	

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Postal Services Legislation Amendment Bill 2000	5(12.4.00)	6.4.00		Communications, Information Technology and the Arts	13.4.00		
Sex Discrimination Legislation Amendment (Pregnancy and Work) Bill 2000	4(5.4.00)	13.3.00		Mrs Macklin	6.4.00		
Sex Discrimination Legislation Amendment (Pregnancy and Work) Bill 2000 [No. 2]	4(5.4.00)		14.3.00	Senator Crossin	6.4.00		
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	27.4.00	6(10.5.00)