

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



Alert Digest

No. 12 of 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.

Child Support Legislation Amendment Bill (No. 2) 2000

This bill was introduced into the House of Representatives on 30 August 2000 by the Minister for Community Services. [Portfolio responsibility: Family and Community Services]

Schedule 1 to this bill proposes to amend the *Child Support (Assessment) Act 1989* to reduce the child support formula percentages where a non-resident parent has contact with his or her child or children for between 10% and 30% of the time. This is intended to recognise the additional costs of contact faced by non-resident parents and to encourage such parents to maintain contact with their children.

Schedule 2 proposes to lower the cap on income that can be subject to child support formula assessment (to approximately \$79,000).

Schedule 3 proposes to create a new ground for departing from the child support formula assessment for a parent who earns additional income for the benefit of a child or children in the parent's current family.

Schedule 4 proposes to amend the *A New Tax System (Family Assistance) Act 1999* to increase the family tax benefit and child care benefit income test deductions for child support payers from 50% to 100%, by allowing for a dollar for dollar deduction for any child support paid. This means that child support payers with children in a new family will have their family tax benefit and child care benefit assessed on the actual income available to their new family.

Schedule 5 proposes to amend a number of Acts to reflect the fact that the child support function has moved from the Treasury portfolio to that of Family and Community Services. In particular, the Child Support Registrar will no longer be the Commissioner of Taxation.

Schedule 6 proposes to amend the *Child Support (Registration and Collection) Act 1988* to establish a system of departure prohibition orders, similar to that under the *Taxation Administration Act 1953*, to prevent persistent child support payment defaulters from attempting to leave Australia.

Schedule 7 proposes to amend the *Child Support (Assessment) Act 1989* to establish a regulation making power to allow certain amounts to be excluded from income so that the current \$260 annual minimum child support liability will not apply.

Schedule 8 proposes to vary the current requirement that supporting documents supplied with one party's application to depart from the child support formula assessment be provided to the other party to the child support arrangement.

Schedule 9 is intended to ensure that carers who are not parents or legal guardians of a child who has left home cannot be 'eligible carers' in relation to that child, and therefore cannot get child support, unless a parent or guardian has consented to the arrangement, or it is unreasonable for the child to live at home.

Schedule 10 proposes to amend the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* to make a number of technical amendments to correct and clarify minor matters.

Retrospective application Subclauses 2(5) to (10)

By virtue of subclauses 2(5) to 2(10) of this bill, various provisions in Schedule 10 are to commence retrospectively. However, in each case the proposed amendments are technical in nature, and make no substantive change to the law.

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

Use of tax file numbers Schedule 5, items 30 and 57

Item 30 of Schedule 5 to this bill proposes to include a new section 150D in the *Child Support (Assessment) Act 1989*, and item 57 of the same Schedule

proposes to include a new section 16C in the *Child Support (Registration and Collection) Act 1988*. Each of these provisions will permit the Child Support Registrar to obtain from the Commissioner of Taxation the tax file numbers of persons for the purposes set out in each of the proposed sections.

In general terms, Schedule 5 to the bill proposes to transfer the functions of child support from the Treasury portfolio to that of Family and Community Services. At present, the Child Support Registrar is the Commissioner of Taxation and has access to this information. The Explanatory Memorandum states that these amendments “are to ensure that the flow of information between the Child Support Agency and the Australian Taxation Office that is integral to the child support function continues to operate effectively”.

While this bill apparently only makes administrative re-arrangements with regard to the availability of tax file numbers, it nevertheless raises a number of issues.

First, it is not clear – either from the bill or the Explanatory Memorandum – whether the newly created Child Support Registrar will have the same information-gathering, enforcement and other powers as the Commissioner of Taxation has under the existing legislation. It may be appropriate that such powers be available to the Commissioner to be exercised as part of the broad taxation function. Arguably, it may be less appropriate that all of those powers be available to the Registrar to be exercised as part of a specific child support function. The Committee considers that this is a matter that should have been addressed in the Explanatory Memorandum accompanying the bill.

Secondly, the Committee again draws attention to the words of the then Treasurer in the Parliament on 25 May 1988 when referring to the proposed introduction of the tax file number scheme:

The only purpose of the file number will be to make it easier for the Tax Office to match information it receives about money earned and interest payments.

This system is for the exclusive and limited use of the Tax Office – it will simply allow the better use of information the Tax Office already receives.

The Committee also draws attention to the words of the then member for Kooyong in the Parliament on 21 December 1990, that “since the inception of the tax file number in 1988 as an identifying system, we have seen the gradual

extension of that system to other areas by way of a process sometimes referred to as function creep”.

This bill seems to represent another approach to “function creep”. The tax file number regime is currently applicable in the area of child support because child support is within the jurisdiction of the Tax Office. This bill now proposes to transfer responsibility for child support to another Department. Therefore, by initially giving the Tax Commissioner responsibility for the administration of any function, and permitting the Commissioner to use the tax file number system in administering that function, and then later transferring that function with all its powers to another department, the use of tax file numbers in virtually any area of government activity would become legitimate.

The Committee has consistently expressed concern at the extension of the tax file number scheme to activities beyond taxation. This process has continued over a number of years, irrespective of the governing party of the day, and in spite of assurances that it would not occur. The provisions of this bill represent yet another example of this process.

The Committee, therefore, **seeks the Minister’s advice** as to whether the Child Support Registrar will have access to all the powers available to the Tax Commissioner under the current legislation. The Committee also **seeks the Minister’s advice** as to why the tax file number system should be applied to the child support scheme when this is neither a matter involving taxation or the administration of taxation.

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.

Abrogation of the privilege against self-incrimination

Schedule 6, Part 1

Part 1 of Schedule 6 to this bill proposes to insert a new Part VA in the *Child Support (Registration and Collection) Act 1988*. This new Part sets up a system of departure prohibition orders so that certain child support payers

who have persistently failed to meet their child support commitments may be prevented from leaving Australia without making satisfactory arrangements to discharge those debts.

Among other things, Part VA contains proposed new section 72V. This section abrogates the privilege against self-incrimination for a person who provides information under proposed new section 72U. However, the section goes on to limit the circumstances in which information so provided may be admitted in evidence. In general terms, any information provided or anything obtained as a direct result is not admissible in evidence against the individual, other than in proceedings for knowingly providing false and misleading information.

While this provision attempts to strike a balance between the competing interests of obtaining information and protecting individual rights, the Committee notes that the provision refers only to information “obtained as a direct result” of complying with a request. Similar provisions usually provide an immunity for information “obtained as a direct or indirect consequence” of complying with a request (see, for example, proposed section 268BK to be included in the *Migration Act 1958* by the Migration Legislation Amendment (Overseas Students) Bill 2000; *Dairy Industry Adjustment Act 2000* s 40(2)(b); *Product Grants and Benefits Administration Act 2000* s 43(2)(b)).

With regard to this provision, the Explanatory Memorandum simply states that “the requirement to answer questions or produce documents in this way overrides the common law privilege against self-incrimination” but that “the use of incriminatory information against the person in proceedings other than under subsection 72U(5) itself will be prevented. This is in keeping with accepted Commonwealth criminal law policy”.

Unlike many other similar provisions, proposed section 72V does not address the possible use in evidence of information, documents or things obtained indirectly as a result of compelling someone to incriminate himself or herself. The Committee, therefore, **seeks the Minister’s advice** as to the reason for this departure from what seems to have been settled criminal law policy.

Pending the Minister’s advice, the Committee draws Senators’ attention to this provision, as it may be considered to trespass

unduly upon personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

**Strict liability offence
Schedule 6, Part 1**

As noted above, Part 1 of Schedule 6 to this bill proposes to insert a new Part VA in the *Child Support (Registration and Collection) Act 1988* to establish a system of departure prohibition orders.

Among other things, Part VA contains proposed new section 72W. This section applies if a person is subject to a departure prohibition order, and that person is about to leave Australia, and their departure is authorised by a departure authorisation certificate. Subsection 72W(1) requires the person to give a copy of the certificate to an authorised officer on request. Subsection 72W(2) states that a failure to produce the certificate is an offence of strict liability.

With regard to this provision, the Explanatory Memorandum observes that strict liability applies because:

- it would be difficult for the prosecution to prove fault (especially knowledge or intention) in this case;
- the offence is minor (subject to a penalty of only 5 penalty units); and
- the offence does not involve dishonesty or any other serious imputation which might affect a person's reputation.

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

Crimes Amendment (Forensic Procedures) Bill 2000

This bill was introduced into the Senate on 30 August 2000 by the Special Minister of State. [Portfolio responsibility: Justice and Customs]

The bill is based on the February 2000 draft Model Forensic Procedures Bill developed by the Model Criminal Code Officers' Committee under the auspices of the Standing Committee of Attorneys-General.

Schedule 1 to the bill proposes to amend the *Crimes Act 1914* to:

- facilitate the establishment of the CrimTrac national DNA database system by enabling the taking of forensic material from any serious convicted offender still under sentence;
- provide safeguards in relation to the taking of forensic material from volunteers for use in criminal investigations and placement of DNA information on the national DNA database system;
- provide procedures for the matching and use of DNA information obtained from forensic material designed to ensure there is no misuse of that information;
- provide for adequate procedures for the making of orders by State and Territory judges, magistrates and other court officers in relation to criminal matters; and
- provide for appropriate interjurisdictional recognition of orders under both Part 1D of the *Crimes Act 1914* and equivalent State and Territory legislation.

Schedule 2 of the bill proposes amendments to the *Mutual Assistance in Criminal Matters Act 1987* to clarify that a foreign restraining order, whatever its terms, once registered in an Australian court, will take effect as if it were an order in the form of a restraining order made under domestic law.

Wide power of delegation

Proposed section 23YQ

Among other things, item 77 of Schedule 1 to this bill proposes to insert a new section 23YQ in the *Crimes Act 1914 (Cth)*. This section authorises the AFP

Commissioner to delegate all or any of his or her functions and powers to a constable or staff member.

With regard to this provision, the Explanatory Memorandum observes that it is “important that the Commissioner can delegate functions to forensic experts, database technicians etc as the Commissioner is not able to perform all the functions contemplated under Part 1D by him or herself”.

Clearly, some limitation on the power of delegation is contemplated by the Explanatory Memorandum, which refers to potential delegates possessing specific qualifications, technical expertise or functional ability. The Committee, therefore, **seeks the Minister’s advice** as to why these appropriate limitations cannot be included in the bill itself.

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

Education Services for Overseas Students (Assurance Fund Contributions) Bill 2000

This bill was introduced into the House of Representatives on 30 August 2000 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

Introduced as one of a package of five bills to reform the provision of education services to overseas students, the bill proposes to impose a requirement on registered providers of educational services to pay annual contributions and special levies to the ESOS Assurance Fund. It is proposed that the Fund will provide greater security for overseas students' pre-paid course fees than exists under the current scheme.

Unlimited amount of levy

Clause 6

Subclause 6(1) of this bill states that the amount of annual Fund contribution payable by a provider "is as determined by the Fund Manager for that provider under Division 4 of Part 5" of the *Education Services for Overseas Students Act 2000*.

Subclause 6(2) states that the amount of special levy payable "is as determined by the Fund Manager for that provider under section #73 [sic] of that Act".

In each case, the Fund Manager (a statutory office holder) is empowered to determine an amount of levy with no upper limit on this amount, or formula for determining this amount, specified in the legislation itself.

The amount of annual Fund contribution is referred to in clauses 59 and 60 of the *Education Services for Overseas Students Act 2000*. Clause 59 requires the Fund Manager (in conjunction with the Contributions Review Panel) to determine criteria for contributions. Clause 60 states that these criteria "must be determined having regard solely to the purpose of the Fund" and "must enable the amount of contribution for each provider to reflect, at least to some extent, the risk of calls being made on the Fund in respect of that provider".

The amount of special levy is referred to in clause 73 of the *Education Services for Overseas Students Act 2000*. Clause 73 states that this amount “must correspond, so far as practicable, to the provider’s proportion of the total of the annual Fund contributions required of registered providers for the year”.

While clause 62 requires that the Fund Manager must make contributions criteria, or changed contributions criteria, publicly available, there is no indication of how they are to be made available, and no requirement that they be tabled in the Parliament, or be disallowable.

While flexibility and consultation may be needed in determining the amount of contribution and special levy payable by providers of educational services to overseas students, the Committee consistently draws attention to legislation which provides for the rate of a levy to be set by regulation or in a purely administrative manner without reference to the Parliament. This creates the risk that the levy may, in fact, become a tax. It is for Parliament, rather than the makers of subordinate legislation, to set a rate of tax.

The Committee, therefore, **seeks the Minister’s advice** as to why the bill does not specify an upper limit for annual contributions or levies, or set out criteria by which such contributions or levies might be determined. The Committee also **seeks the Minister’s advice** as to why the contributions criteria to be developed by the Fund Manager are not to be tabled in the Parliament or disallowable by the Parliament.

Pending the Minister’s advice, the Committee draws Senators’ attention to this provision, as it may be considered to inappropriately delegate legislative powers, in breach of principle 1(a)(iv) of the Committee’s terms of reference, and insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee’s terms of reference.

Education Services for Overseas Students Bill 2000

This bill was introduced into the House of Representatives on 30 August 2000 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

Introduced as part of a package of five bills to reform the provision of education services to overseas students, the bill establishes a new national regime for the registration of education and training providers, which have been approved by State and Territory authorities. In general terms, the bill:

- provides overseas students with stronger protection for pre-paid fees and continuing education if their provider collapses, through an industry based assurance fund;
- establishes a legally enforceable national code providing nationally consistent standards for the registration and conduct of providers, and more reliable quality assurance across all States and Territories;
- creates new obligations for providers to report on student breaches of visa conditions;
- makes it an offence to fail to provide genuine courses to students and, in doing so, to intentionally or recklessly facilitate visa breaches;
- provides for the Department to investigate possible breaches of the Act and Code; and
- allows greater powers to impose suspension and cancellation action and other conditions on providers that breach the provisions of the Act or the national code.

Strict liability offences

Subclauses 104(2) and 105(2)

Subclause 104(1) states that a registered provider who fails to provide the information about accepted overseas students required under subsection 19(1) is guilty of a separate offence for each event for which required information is not given. Subclause 104(2) states that strict liability applies to this offence.

Similarly, subclause 105(1) states that a registered provider who breaches the record-keeping requirements under section 21 is guilty of a separate offence

for each student for whom the required records are not kept or retained. Subclause 105(2) states that strict liability applies to this offence.

In dealing with these subclauses, the Explanatory Memorandum gives no indication as to why it was thought necessary to impose strict criminal liability for these offences – particularly as strict liability is not imposed for other related offences such as failing to provide particulars of a breach by a student of their visa conditions under subclause 19(2), or failing to notify a student of a breach of a student visa condition relating to attendance or satisfactory academic performance under clause 20. The Committee, therefore, **seeks the Minister's advice** as to the reason for applying strict liability for offences under subclauses 104(1) and 105(1).

Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to trespass unduly upon personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Education Services for Overseas Students (Consequential and Transitional) Bill 2000

This bill was introduced into the House of Representatives on 30 August 2000 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

Introduced as one of a package of five bills to reform the provision of education services to overseas students, the bill will repeal the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* and provide introductory, transitional and consequential arrangements.

The bill replaces references to the *Education Services for Overseas Students (Registration Charges Act) 1997* with references to the *Education Services for Overseas Students Act 2000*. The bill also amends the *Migration Act 1958* to provide for appropriate exchange of information and to enable the making of regulations; and contains application and transitional provisions.

The Committee has no comment on this bill.

Education Services for Overseas Students (Registration Charges) Amendment Bill 2000

This bill was introduced into the House of Representatives on 30 August 2000 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

Introduced as one of a package of five bills to reform the provision of education services to overseas students, the bill proposes the introduction of changes to the Annual Registration Charge (ARC) for education and training providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). This bill will provide the resources for the new Commonwealth role as provided for in the main bill.

Unlimited amount of levy Proposed new section 5A

Item 7 of Schedule 1 to this bill proposes to insert a new section 5A in the *Education Services for Overseas Students (Registration Charges) Act 1997*. This new section authorises the Governor-General to vary the amount of annual registration charge by issuing a written instrument.

Such an instrument must be tabled in each House of the Parliament and does not take effect until each House has passed a resolution approving it (proposed subsection 5A(5)). These requirements are more onerous than those that usually apply to disallowable legislative instruments. However, it is unclear whether the Parliament may debate the propriety of any change in amount, or propose amendments to it.

The Committee, therefore, **seeks the Minister's advice** as to why this bill departs from the usual procedure for disallowable legislative instruments, and whether, under the procedures set out in the bill, variations in the amount of registration charge (other than indexation for changes in the CPI, as provided for in section 7 of the Principal Act) may be debated and possibly amended by the Parliament.

Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to

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

Health Insurance Amendment (Rural and Remote Area Medical Practitioners) Bill 2000

This bill was introduced into the House of Representatives on 31 August 2000 by the Minister for Health and Aged Care. [Portfolio responsibility: Health and Aged Care]

The bill proposes to amend the *Health Insurance Act 1973* to provide the legislative framework for the Commonwealth to enforce bond provisions attached to undertakings made by medical practitioners to work in rural Australia. The bill will enable the Commonwealth to restrict access to Medicare benefits for services rendered by medical practitioners who breach a contract with the Commonwealth to work in rural and remote areas.

The Committee has no comment on this bill.

Maritime Legislation Amendment Bill 2000

This bill was introduced into the House of Representatives on 31 August 2000 by the Minister for the Arts and the Centenary of Federation on behalf of the Minister for Transport and Regional Services. [Portfolio responsibility: Transport and Regional Services]

The bill proposes to amend the *Navigation Act 1912* to revise the division of responsibilities between the Commonwealth and the States and Northern Territory for the safety regulation of Australian trading ships and foreign-flagged trading ships visiting Australia. The bill broadly aligns Commonwealth jurisdiction with international convention obligations for vessel safety.

The bill also proposes amendments to the *Seafarers Rehabilitation and Compensation Act 1992* and the *Occupational Health and Safety (Maritime Industry) Act 1993* to ensure that these Acts, as far as practicable, align with the coverage under the *Navigation Act 1912* and contains transitional provisions.

The Committee has no comment on this bill.

Migration Legislation Amendment (Overseas Students) Bill 2000

This bill was introduced into the House of Representatives on 30 August 2000 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Immigration and Multicultural Affairs]

Introduced as one of a package of five bills to reform the provision of education services to overseas students, the bill proposes amendments to the *Migration Act 1958* to:

- provide, in certain circumstances, for the automatic cancellation of student visas by operation of law;
- enable authorised officers of the Department of Immigration and Multicultural Affairs to require the production of, or to search for and inspect, and in some cases seize, relevant records for overseas students held by education providers; and
- enable regulations to provide for modified “no further stay” conditions so that holders of certain temporary visas may make valid applications for a limited number of temporary visas in addition to protection and bridging visas.

Abrogation of the privilege against self-incrimination Schedule 2, item 2

Item 2 of Schedule 2 to this bill proposes to insert a new Division 14A in the *Migration Act 1958*. This new Part sets up a system to monitor compliance with student visa conditions.

Among other things, Division 14A contains proposed new section 268BK. This would abrogate the privilege against self-incrimination for a person providing information or documents under proposed new sections 268BA and 268BD of the Act. However, the section also limits the circumstances in which information or documents so provided may be used in evidence in proceedings against that person. In general terms, the information or documents, or any information or document obtained as a direct or indirect result, is not admissible in evidence against the individual in any criminal

proceedings other than proceedings for providing false or misleading information or documents.

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

Telecommunications Legislation Amendment Bill 2000

This bill was introduced into the Senate on 30 August 2000 by the Special Minister of State. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to reinforce the Government's powers to safeguard the public interest in the management of electronic addressing services, such as Internet domain names. Schedule 1 proposes to amend the *Telecommunications Act 1997* to clarify the situations in which intervention by government agencies in the management of electronic addressing is warranted. Schedule 2 proposes amendments to the *Australian Communications Authority Act 1997* to enable the Minister to give the Australian Communications Authority responsibility for managing a specified type of electronic addressing.

The Committee has no comment on this bill.

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

REPORT NO 7/2000

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>Migration Legislation Amendment (Overseas Students) Bill 2000</i>	New section 268BH of the <i>Migration Act 1958</i>	Failure to comply with a notice	6 months imprisonment
	New section 268CL of the <i>Migration Act 1958</i>	Failure to answer question	6 months imprisonment

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.

Crimes Amendment (Forensic Procedures) Bill 2000

This bill contains amendments based on the February 2000 draft Model Forensic Procedures Bill developed by the Model Criminal Code Officers' Committee under the auspices of the Standing Committee of Attorneys-General. The existing forensic procedures provisions in the *Crimes Act 1914* are based on the 1995 version of the Model Forensic Procedures Bill.

The 2000 Model Bill is said to provide "a carefully balanced legislative regime, which when implemented in each jurisdiction will allow Commonwealth, State and Territory law enforcement agencies to better utilise DNA technology but at the same time will safeguard individual liberty and ensure there is adequate accountability on the part of those who administer the system".

Education Services for Overseas Students Bill 2000

This bill (and four related bills) establishes a new regime for the registration of education and training providers which have been approved by State and Territory authorities. The bill was developed following a review of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991*. This review involved consultation with industry, State and Territory authorities and Commonwealth agencies.

A nationally consistent code as a prerequisite for registration is now being developed in consultation with State and Territory authorities and industry. Legally enforceable under the bill, the National Code will provide greater quality assurance for overseas students.

Maritime Legislation Amendment Bill 2000

This bill proposes to amend the *Navigation Act 1912*, the *Seafarers Safety, Rehabilitation and Compensation Act 1992*, and the *Occupational Health and Safety (Maritime Industry)*

Act 1993. The proposed amendments provide for revised jurisdiction between the Commonwealth and the States and Northern Territory for trading ship safety regulation under the *Navigation Act 1912*.

That Act currently provides for the Commonwealth to regulate the safety of overseas and interstate voyages by Australian and foreign trading ships. Intra-State voyages by Australian and foreign trading ships are regulated under State or Territory legislation. This current division of responsibility reflects the Shipping and Navigation Agreement between the Commonwealth, the States and the Northern Territory made under the 1979 Offshore Constitutional Settlement.

By 1997, the Australian Transport Council (ATC), comprising Commonwealth, State and Territory Transport Ministers, recognised that this division of shipping regulation had resulted in some difficulties in administration and caused unnecessary confusion for business and duplication of regulatory activity and costs.

The ATC agreed, in 1999, to a revised arrangement whereby the division of jurisdiction over Australian registered vessels trading on the coast would be based on the size (tonnage) of the vessel rather than the nature of the voyage. The Commonwealth will continue to regulate all Australian trading vessels proceeding on overseas voyages and will assume responsibility for maritime safety regulation of all foreign registered vessels trading in Australian waters, with the exception of those under 500 Gross Tonnage operating exclusively intra State.

No change is proposed to the current jurisdictional arrangements for Australian fishing vessels, fishing fleet support vessels, pleasure craft or inland waterways vessels, and offshore support vessels.

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	2.9.99	Senator Brown	3.9.99	
Copyright Amendment (Digital Agenda) Bill 1999	14(22.9.99)	2.9.99	14.8.00	Attorney-General	23.9.99	10(16.8.00)
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> (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 7.2.00 4(24.3.99) 10(23.6.99) 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 21.10.99	17(20.10.99) 3(5.4.00) 19.10.99 16.3.00

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	5.4.00	Family and Community Services	16.3.00	4.4.00	5(12.4.00)
Administrative Review Tribunal Bill 2000	10(16.8.00)	28.6.00		Attorney-General	17.8.00		
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 7(7.6.00)
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	17.5.00	
Criminal Code Amendment (United Nations and Associated Personnel) Bill 2000	10(16.8.00)	28.6.00		Attorney-General	17.8.00		
Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 2000 <small>(previous citation: Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 1999</small>	*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)
Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000	10(16.8.00)	28.6.00	14.8.00	Defence	17.8.00	25.8.00	11(28.8.00)
Excise Amendment (Compliance Improvement) Bill 2000	9(28.6.00)	21.6.00	22.6.00	Treasurer	29.6.00	11.8.00	10(16.8.00)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
Financial Management and Accountability Amendment Bill 2000	7(7.6.00)	10.5.00	8.6.00	Finance and Administration	8.6.00	20.6.00	8(21.6.00)
Financial Sector Legislation Amendment Bill (No. 1) 2000	6(10.5.00)	13.4.00	26.6.00	Treasurer	11.5.00	25.5.00	9(28.6.00)
Gene Technology Bill 2000	9(28.6.00)	22.6.00		Health and Aged Care	29.6.00		
Gene Technology (Licence Charges)	9(28.6.00)	22.6.00		Health and Aged Care	29.6.00		
Interactive Gambling (Moratorium) Bill 2000	11(30.8.00)	17.8.00		Communications, Information Technology and the Arts	31.8.00		
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	
Migration Legislation Amendment (Parents and Other Measures) Bill 2000	8(21.6.00)	7.6.00	27.6.00	Immigration and Multicultural Affairs	22.6.00	27.6.00	9(28.6.00)
National Crime Authority Amendment Bill 2000	4(5.4.00)	13.3.00		Mr Kerr	6.4.00	17.5.00	
New Business Tax System (Miscellaneous) Bill (No. 2) 2000	6(10.5.00)	13.4.00	27.6.00	Treasurer	11.5.00	8.6.00	9(28.6.00)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
		HOUSE	SENATE				
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)
Postal Services Legislation Amendment Bill 2000	5(12.4.00)	6.4.00		Communications, Information Technology and the Arts	13.4.00		
Privacy Amendment (Private Sector) Bill 2000	6(10.5.00)	12.4.00		Attorney-General	11.5.00		
Product Grants And Benefits Administration Bill 2000	6(10.5.00)	12.4.00	11.5.00	Treasurer	11.5.00	5.6.00	7(7.6.00)
Protection of the Sea (Civil Liability) Amendment Bill 2000	10(16.8.00)	28.6.00	31.8.00	Transport and Regional Services	17.8.00	4.9.00	12(6.9.00)
Renewable Energy (Electricity) Bill 2000	9(28.6.00)	22.6.00	14.8.00	Environment and Heritage	29.6.00	14.8.00	10(16.8.00)
Sales Tax (Industrial Safety Equipment) (Transitional Provisions) Bill 2000	7(7.6.00)	11.5.00	5.6.00	Treasurer	8.6.00	20.6.00	8(21.6.00)
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		
States Grants (Primary and Secondary Education Assistance) Bill 2000	11(30.8.00)	29.6.00		Education, Training and Youth Affairs	31.8.00	4.9.00	
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	10.5.00	Treasurer	17.2.00 9.3.00	30.3.00 5.4.00	7(7.6.00)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	SENATE	MINISTER	RESPONSE SOUGHT	RECEIVED	REPORT NUMBER
Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No. 1) 2000	7(7.6.00)	10.5.00	22.6.00	Communications, Information Technology and the Arts	8.6.00	2.8.00	10(16.8.00)
Telecommunication (Consumer Protection and Service Standards) Amendment Bill (No. 2) 2000	10(16.8.00)	29.6.00		Communications, Information Technology and the Arts	17.8.00		
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)
Trade Practices Amendment (Unconscionable Conduct—Saving of State and Territory Laws) Bill 2000	8(21.6.00)	5.6.00		Mr Fitzgibbon	22.6.00		
Veterans' Affairs Legislation Amendment Bill (No. 1) 2000	10(16.8.00)	29.6.00		Veterans' Affairs	17.8.00	29.8.00	12(6.9.00)