

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



Alert Digest

No. 13 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.

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ACIS Administration Amendment Bill 2000

This bill was introduced into the Senate on 6 September 2000 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Industry, Science and Resources]

The bill proposes to amend the *ACIS Administration Act 1999* to implement minor administrative changes to the operation of the Automotive Competitiveness and Investment Scheme (ACIS).

The bill authorises regulations to define what is approved plant and equipment and approved research and development for the purposes of calculating benefits under the scheme. This is intended to assist participants to determine what is, and what is not, eligible expenditure in what is largely a self-assessed scheme.

Regulations will also be able to provide for investment loadings to cover the incidental costs of investment. Participants often find these costs difficult to substantiate, and administrators find them difficult to audit.

The bill also clarifies terms and phrases used in the legislation, and introduces provisions to protect the scheme from 'artificial' companies set up purely to take advantage of the ACIS scheme.

The Committee has no comment on this bill.

Aged Care Amendment Bill 2000

This bill was introduced into the House of Representatives on 7 September 2000 by the Minister for Aged Care. [Portfolio responsibility: Health and Aged Care]

The bill proposes to amend the *Aged Care Act 1997* to provide the Department of Health and Aged Care with greater powers over providers who cannot or will not comply with the Act. Specifically, the bill enables notice to be given to residents and relatives of residents where an approved provider of a residential aged care service faces withdrawal of approved provider status, revocation of places and evacuation of residents.

Where the approved provider of a residential aged care service is a corporate entity, the bill enables the taking of action to require the removal of key personnel of that entity. Such action may be taken where those key personnel have been convicted of an indictable offence, are of unsound mind or become bankrupt.

Old convictions, continuing consequences

Proposed new paragraph 10A-1(1)(a)

Schedule 2 of this bill amends the *Aged Care Act 1997* in relation to “key personnel” of approved providers. Item 10 of Schedule 2 inserts a new Division 10A in the Principal Act, making it an offence for a “disqualified individual” to be engaged as one of the key personnel of an approved provider. Proposed new paragraph 10A-1(1)(a) provides that an individual is a disqualified individual if he or she “has been convicted of an indictable offence”.

Proposed new subsection (3) provides that an individual may be disqualified for a conviction occurring before, at or after the commencement of the section. The Explanatory Memorandum states that pre-commencement offences have been included “because of the concern that such individuals pose a risk to frail, often vulnerable, aged care recipients while they remain key personnel, particularly where they have direct responsibility (executive, management, overall nursing or day-to-day responsibility) for the care of those care recipients”.

The Committee is mindful of the need to ensure the welfare of frail and vulnerable people in aged care. However, provisions such as those proposed raise a number of issues. First, proposed paragraph 10A-1(1)(a) does not specify what precise offences should lead to disqualification. This may see apparently ‘irrelevant’ offences taken into account while other apparently ‘relevant’ offences may be disregarded.

Under section 4G of the *Crimes Act 1914 (Cth)*, unless a contrary intention is apparent, indictable Commonwealth offences are those punishable by imprisonment for more than 12 months. Offences such as removing (in proclaimed waters) a fish from a net or trap while not the owner of that net or trap (under *Fisheries Act 1952* s 13A) or, without permission, using a transmitter on a foreign vessel, aircraft or space object to transmit radio or television programs to the general public in Australia (under *Radiocommunications Act 1992* s 195(1)) or possessing unlawfully imported whale products (under *Environment Protection and Biodiversity Conservation Act 1999* s 233(1)) are all punishable by imprisonment for more than 12 months. Therefore, these are all apparently relevant indictable Commonwealth offences for the purposes of paragraph 10A(1)(a) of this bill. A person convicted of any of these offences at any time would be permanently disqualified as a member of the key personnel of a provider of a residential aged care service even though there is little apparent relevance between the offence and aged care.

However, a nursing home proprietor or employee found guilty of influencing the vote of a nursing home resident under section 325A of the *Commonwealth Electoral Act 1918* (an offence punishable by imprisonment for only 6 months) would not have committed an indictable offence, and would therefore not come within the definition of a disqualified individual. Arguably, a conviction for such an offence would be highly relevant to a person’s fitness to be involved as a provider of a residential aged care service.

A related issue concerns the reference to offences which are punishable by imprisonment for more than 12 months. As the Committee has previously noted, there is potential for unfairness in provisions which take away rights or privileges on the basis of the maximum penalty provided for the offence committed by a person, rather than the actual penalty imposed on him or her. A person found guilty of illegal fishing under section 13A of the *Fisheries Act 1952*, who received only a small fine for a comparatively minor breach of the legislation, would see themselves disqualified from involvement in the

provision of aged care. However, a person found guilty of electoral fraud in a nursing home, who received the maximum penalty for a comparatively serious breach of the legislation, would not be disqualified.

It would be helpful if the bill set out a list of offences (perhaps those involving physical or emotional violence or cruelty, or fraud or dishonesty) the commission of which by a person would better reflect his or her suitability to provide aged care services.

A second issue concerns the inclusion of convictions recorded at any time before the commencement of the provision. Such a provision may be regarded as having retrospective effect, and exposing a person to double punishment for an offence which may have been committed many decades ago.

Comparable legislation recently considered by this Committee has limited consideration of ‘old’ offences in these circumstances to those committed within the previous ten years (see, for example, *Customs Amendment Act (No 2) 1999* s 67EB(3)(b) and *ACIS Administration Act 1999* s 29). It may be that a similar approach should be taken in the present instance.

The Committee, therefore, **seeks the Minister’s advice** as to why the bill does not set out a regime of offences which are relevant to the disqualification of key personnel of aged care providers, and why the bill places no limit on the retrospective consideration of a person’s previous offences.

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.

Australian Research Council Bill 2000

This bill was introduced into the House of Representatives on 7 September 2000 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

The bill proposes to establish the Australian Research Council (ARC) as an independent agency within the Education, Training and Youth Affairs portfolio, with an enhanced governance and accountability framework. The bill also establishes a funding regime for competitive research grants for the higher education system to be administered by the ARC.

The role of the ARC will be to provide advice to the Minister on matters relating to research in the higher education sector, to make recommendations to the Minister on the funding of competitive grants on the basis of excellence, and to administer the new National Competitive Grants Program.

The Committee has no comment on this bill.

Australian Research Council (Consequential and Transitional Provisions) Bill 2000

This bill was introduced into the House of Representatives on 7 September 2000 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

The bill repeals the *Employment, Education and Training Act 1988* and outlines the transitional arrangements arising from the repeal of that Act and the commencement of the *Australian Research Council Act 2000*.

The bill also amends the *Higher Education Funding Act 1988* to introduce two performance-based block funding schemes – the ‘Institutional Grants Scheme’ and the ‘Research Training Scheme’ – to support research and research training. The bill also introduces a quality assurance framework for higher education research.

The Committee has no comment on this bill.

Aviation Noise Ombudsman Bill 2000

This bill was introduced into the House of Representatives on 4 September 2000 by Mr Albanese as a Private Member's bill.

The bill proposes to establish an Aviation Noise Ombudsman to liaise between Airservices Australia and members of the public in relation to excessive aircraft noise, breaches of caps and curfews operating at certain airports and incidents of fuel dumping and venting. This bill is identical to the Aviation Noise Ombudsman Bill 1999 which was discharged from the House of Representatives Notice Paper on 10 April 2000.

Commencement on Proclamation

Clause 2

Clause 2 provides that this bill is to commence on proclamation, with no limit placed on the time within which it must come into force in any event. The Committee is wary of such provisions which, effectively, provide the Executive with an unfettered discretion in deciding whether, and when, to bring a particular measure into force. The Committee takes the view that Parliament, as the elected holder of Federal legislative power, is responsible for determining when the laws it makes are to come into force.

In taking this view, the Committee is conscious of *Drafting Instruction No 2 of 1989* issued by the Office of Parliamentary Counsel. This provides that, as a general rule, "a restriction should be placed on the time within which an Act should be proclaimed". The commencement clause should fix either a period (preferably 6 months), or a date, after Royal Assent within which the Act should commence (if it has not already commenced by Proclamation) or be taken to be repealed. The *Drafting Instruction* goes on to state that "clauses providing for commencement by Proclamation ... should be used only in unusual circumstances, where the commencement depends on an event whose timing is uncertain (eg enactment of complementary State legislation)".

The Committee, therefore, **seeks the advice of the member sponsoring the bill** as to whether it should include an additional provision requiring the bill to commence, at the latest, 6 months after Assent.

Pending the honourable member's advice, the Committee draws Senators' attention to this provision, as it may be considered to inappropriately delegate legislative power, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Commonwealth Electoral Amendment Bill (No. 1) 2000

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

The bill proposes to amend the *Commonwealth Electoral Act 1918* to allow for the provision of:

- a wide range of elector information (in addition to name and address information) to Members of the House of Representatives, Senators and federally registered political parties; and
- age-range extracts from the Electoral Roll for use in approved medical research and public health screening programs.

The amendments are required following legal advice that the Australian Electoral Commission could not provide this information in the absence of specific authority in the Act.

The Committee has no comment on this bill.

Corporate Code of Conduct Bill 2000

This bill was introduced into the Senate on 6 September 2000 by Senator Bourne as a Private Senator's bill.

The bill proposes to impose environmental, employment, health and safety and human rights standards on the conduct of Australian corporations undertaking business activities in other countries. The bill contains reporting requirements, enforcement provisions and a regulation making power.

The Committee has no comment on this bill.

Farm Household Support Amendment Bill 2000

This bill was introduced into the House of Representatives on 7 September 2000 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Farm Household Support Act 1992* to:

- rename the Farm Family Restart Scheme as the ‘Farm Help’ program;
- extend the income support application deadline to 30 November 2003, with payments being made until 30 November 2004; and
- as part of the case management of Farm Help clients, provide for the development of mandatory activity plans for non-viable farmers.

Disallowable instruments will provide for a retraining grant of \$3500 for those farmers who have received the re-establishment grant, the discretionary payment of re-establishment grants in exceptional circumstances, and for the compulsory development of activity plans.

The bill also includes consequential amendments to the *Health Insurance Act 1973*, *Income Tax Assessment Act 1936*, *Income Tax Assessment Act 1997*, *Bankruptcy Act 1966* and *Social Security Act 1991* to give effect to the renaming of the Farm Help scheme.

The Committee has no comment on this bill.

Freedom of Information Amendment (Open Government) Bill 2000

This bill was introduced into the Senate on 5 September 2000 by Senator Murray as a Private Senator's bill.

The bill proposes to amend the *Freedom of Information Act 1982* to implement recommendations contained in the 1995 report of the Administrative Review Council entitled *Open Government: A review of the Federal Freedom of Information Act 1982* and which have not been implemented to date. These provisions include extending access to information in the possession of the Commonwealth and creating an independent Freedom of Information Commissioner. The bill also proposes amendments to the Freedom of Information (Fees and Charges) Regulations.

Commencement

Subclauses 2(2) and (3)

Subclauses 2(2) and (3) provide for the commencement of various items in the Schedule to the bill on, respectively, the third or first anniversary after the bill receives Royal Assent.

While this period is longer than the six months after Assent specified in *Drafting Instruction No 2 of 1989*, issued by the Office of Parliamentary Counsel, it is nevertheless a fixed period and therefore commencement is not left to the unfettered discretion of the Executive.

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

Fuel Quality Standards Bill 2000

This bill was introduced into the Senate on 7 September 2000 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Environment and Heritage]

The bill establishes a framework to set, implement and enforce national quality standards for fuels. It aims to regulate fuel quality to reduce pollutants and emissions arising from the use of fuel that may cause environmental, greenhouse and health problems; to facilitate the adoption of better engine and emission control technologies; and to allow for the more effective operation of engines. In particular, the bill:

- creates offences relating to the supply of fuel that does not comply with a fuel standard; to the alteration of fuel which is subject to a fuel standard; and to the supply or importation of a fuel additive that is entered in the Register of Prohibited Fuel Additives;
- sets out an enforcement regime for the purposes of compliance monitoring and prosecuting offences under its provisions; and
- sets out record-keeping and reporting obligations which apply to persons supplying or importing fuels which are subject to a fuel standard.

Commencement on Proclamation

Clause 2

Clause 2 permits this bill to commence on Proclamation, with no further time specified within which its provisions must necessarily come into force. The Committee is wary of such provisions which, effectively, provide the Executive with an unfettered discretion in deciding whether, and when, to bring a particular measure into force. The Committee takes the view that Parliament, as the elected holder of Federal legislative power, is responsible for determining when the laws it makes are to come into force.

In taking this view, the Committee is conscious of *Drafting Instruction No 2 of 1989* issued by the Office of Parliamentary Counsel. This provides that, as a general rule, “a restriction should be placed on the time within which an Act should be proclaimed,” and that “clauses providing for commencement by

Proclamation ... should be used only in unusual circumstances, where the commencement depends on an event whose timing is uncertain (eg enactment of complementary State legislation)".

In the case of this bill, the Explanatory Memorandum states that "it is intended that the offence provisions will commence on the same date that the first determinations setting out petrol and diesel standards take effect. This date is not specified in the Bill because consultations on the standards will not be finalised until after the Bill is introduced".

However, subclause 23(2) provides that the Minister is not required to consult the Fuel Standards Consultative Committee in relation to any such determinations made within 6 months after commencement. This is because of "an extensive consultation process involving State and Territory agencies, industry and community stakeholders. These consultations will have concluded before the Fuel Quality Standards Bill is enacted". Given this provision, and this explanation, there would seem to be little real justification for providing the unfettered discretion to the Executive in clause 2. The Committee, therefore, **seeks the Minister's advice** as to why the open-ended discretion as to the commencement of the bill contained in clause 2 should not be limited in some way.

Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to inappropriately delegate legislative power, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Reversal of the onus of proof

Subclause 12(2)

Subclause 12(1) creates an offence of supplying fuel that does not comply with an applicable fuel standard. Subclause 12(2) states that a person is not guilty of this offence if he or she believes on reasonable grounds that the fuel supplied will be further processed for the purpose of bringing it into compliance with the applicable standard. An accompanying note states that a defendant bears an evidential burden in relation to the matter in this subclause.

The Committee is wary of provisions which require a person charged with an offence to prove or disprove some matter to establish his or her innocence, even where the defendant only bears the burden “of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist” (*Criminal Code* s 13.3(6)).

In the case of this bill, the Explanatory Memorandum states that subclause 12(2) “is intended to ensure that supplies occurring in the course of production may not give rise to an offence. It is intended that a person may not rely on this clause unless they believe, on reasonable grounds, that further processing will occur to bring the fuel into compliance with a standard or a standard as varied. A reasonable ground for such belief may arise where fuel was supplied for this purpose to a person who had the capacity to bring the fuel into compliance with a standard or a standard as varied”.

While the Explanatory Memorandum sets out the intention underlying this provision, it does not explain why the accused should bear an evidential burden of proof in these circumstances. The Committee, therefore, **seeks the Minister’s advice** as to why the defendant should bear an evidential burden in relation to matter in subclause 12(2).

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.

Strict liability offence

Subclause 67(6)

Clause 67 requires producers and importers of fuel to provide an annual statement in a form approved by the Secretary, and containing any information required by the Secretary. Subclause 67(5) makes non-compliance an offence, and subclause 67(6) makes the offence one of strict liability. An offence is one of strict liability where it provides for someone to be punished for doing something, or failing to do something, whether or not they had a guilty intent.

The Explanatory Memorandum simply notes that this provision “will enable the Commonwealth to collect information relating to fuel produced in and imported to Australia on an annual basis”. Not only does the Explanatory Memorandum fail to explain why this offence should be one of strict liability, it fails to alert readers even to the fact that strict liability has been imposed. The Committee, therefore, **seeks the Minister’s advice** as to why a failure to provide information in these circumstances should be an offence of strict liability.

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.

Transitional provisions

General comment

As noted above, this bill establishes a framework for setting mandatory national fuel quality standards. In his Second Reading Speech, the Minister states that “if Australia is to reap the environmental benefits of evolving emission control and fuel efficiency technologies, fuel standards need to keep pace with vehicle standards”. It is possible, in these circumstances, that some engines (for example, those used to power vintage or veteran cars) may no longer be able to use fuel that complies with quality standards set by reference to more recent vehicle standards, and that such engines cannot be modified to accommodate new or changing standards.

Further, not all motors are used to power motor vehicles (for example, they may be used in pumps or in mining or farm equipment). It is possible that these motors will no longer be able to operate using fuel that must comply with a modified vehicle standard. The Committee is concerned that individuals may be disadvantaged in these circumstances and **seeks the Minister’s advice** as to what transitional arrangements are proposed to ensure that individuals will not be disadvantaged by the imposition of mandatory quality standards.

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.

Human Rights (Mandatory Sentencing for Property Offences) Bill 2000

This bill was introduced into the Senate on 6 September 2000 by Senator Brown as a Private Senator's bill.

The bill proposes to invoke Australia's commitments under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child as the basis for Commonwealth action to ban mandatory sentencing for property crime. The bill also contains certain application and transitional provisions.

Individual rights and the rights of citizens Sections 5 and 6

Section 5 of this bill provides that a Commonwealth, State or Territory law must not require a court to sentence a person to imprisonment or detention for a property offence committed as a child. Section 6 provides that a Commonwealth, State or Territory law must not require a court to sentence a person who is 18 years or older to imprisonment for a property offence (as defined).

In a similar manner to the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 2000 (see *Alert Digest No 6 of 2000*), these provisions seek to limit the powers of any Australian Parliament or Legislative Assembly to legislate in a particular area – in this case, in relation to the mandatory sentencing of offenders for property offences.

As the Committee has previously observed, such provisions raise a number of important, possibly contrasting, principles. On the one hand, the rights of individuals – particularly children – found guilty of committing a property offence are affected by mandatory punishment, where there is no scope for the exercise of a sentencing discretion by the court which takes account of the peculiar circumstances of a particular offence. However, the determination of appropriate maximum levels of punishment is a matter ultimately determined by the community, and expressed in legislation.

Parliaments and Assemblies in the Australian federal system are duly and democratically elected on the basis of a universal adult franchise. In giving effect to the law-making function of the elected Commonwealth Parliament, this bill, if passed, may diminish the law-making function of elected State Parliaments and Territory Assemblies. This is a matter ultimately to be determined by the High Court.

The Committee observes that there are some rights that are so fundamental that legislatures should not readily transgress them (for example, the confiscation of property rights without full and proper compensation).

In the context of 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.

National Health Amendment (Improved Monitoring of Entitlements to Pharmaceutical Benefits) Bill 2000

This bill was introduced into the House of Representatives on 6 September 2000 by the Minister for Health and Aged Care. [Portfolio responsibility: Health and Aged Care]

The bill proposes to amend the *National Health Act 1953* to strengthen provisions in Part VII of the Act relating to the supply of subsidised prescribed pharmaceuticals. The bill does this by requiring the inclusion of Medicare numbers on prescriptions for pharmaceutical benefits. It also provides for Medicare numbers to remain private and confidential and not to be used for purposes other than ensuring entitlement to pharmaceutical benefits.

The new system will be implemented in three stages between the date of assent to the bill and 1 July 2001.

The Committee has no comment on this bill.

Taxation Laws Amendment (Superannuation Contributions) Bill 2000

This bill was introduced into the House of Representatives on 7 September 2000 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Fringe Benefits Tax Assessment Act 1986* to prevent individuals reducing their taxable income by entering into aggressive tax planning schemes involving superannuation. This will be achieved by:

- clarifying the definition of ‘eligible employee’ in section 82AAA of the *Income Tax Assessment Act 1936* to put beyond doubt the fact that a taxpayer cannot be an employee of themselves;
- amending the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to deny deductions for employer contributions knowingly made to non-complying superannuation funds; and
- amending the *Fringe Benefits Tax Assessment Act 1986* to ensure that the exclusion of payments to superannuation funds and retirement savings accounts from the term ‘fringe benefits’ applies only to payments made for the employee – contributions made by an employer for the benefit of an associate of the employee will be subject to fringe benefits tax.

The bill also contains application and transitional provisions.

Legislation by press release Schedule 1, item 11

Item 11 of Schedule 1 to this bill provides that the amendments proposed by Parts 1 and 2 of that Schedule are to apply from 30 June 2000 – being the date on which the Assistant Treasurer announced the proposed changes. The bill is, therefore, another example of ‘legislation by press release’.

However, in this case, the bill has been introduced well within the six-month period referred to in the Senate resolution of 8 November 1988. Furthermore, the Explanatory Memorandum asserts that the financial impact of the

proposed amendments will be negligible, as they are more in the nature of preventing a perceived abuse of the existing law rather than the imposition of a new form of taxation.

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

Wool Services Privatisation Bill 2000

This bill was introduced into the House of Representatives on 7 September 2000 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill provides for the implementation of the final stages of the privatisation of the Australian Wool Research and Promotion Organisation (AWRAP) and related matters. AWRAP will be converted from a statutory corporation to a company limited by shares registered under the Corporations Law. The holding company will have two principal subsidiaries. One of these subsidiaries will be responsible for commercial activities, including the commercial development of the Woolmark and the commercialisation of intellectual property. The other subsidiary will manage the proceeds from the wool levy and outsource research and development and intellectual property management.

The bill also provides for:

- the setting of the rate of wool levy to replace the current wool tax;
- the issue of shares in the holding company to eligible wool growers;
- the exemption of the company and its shareholders from certain taxes in relation to specific steps involved in the re-structure process; and
- the Government to enter into a contract with the company in relation to payments of wool levy and matching Government R&D contributions.

The bill also repeals the *Australian Wool Research and Promotion Organisation Act 1993*, makes consequential amendments to seven associated Acts, and contains transitional and savings provisions.

Commencement on Proclamation

Subclause 2(2)

Subclause 2(2) will permit Schedule 1 to this bill to commence on Proclamation, with no further time specified within which the bill must come into force in any event. This is a departure from the practice set out in *Drafting Instruction No 2 of 1989* issued by the Office of Parliamentary

Counsel. This provides that, as a general rule, “a restriction should be placed on the time within which an Act should be proclaimed”. The commencement clause should fix either a period (preferably 6 months), or a date, after Royal Assent within which the Act should commence (if it has not already commenced by Proclamation) or be taken to be repealed. The *Drafting Instruction* goes on to state that “clauses providing for commencement by Proclamation ... should be used only in unusual circumstances, where the commencement depends on an event whose timing is uncertain (eg enactment of complementary State legislation)”.

In referring to this commencement provision, the Explanatory Memorandum states that “a defined period within which the proclamation must occur has not been specified in the bill so as to allow a comprehensive due diligence to be undertaken in relation to AWRAP [the Australian Wool Research and Promotion Organisation] before it is privatised”.

Given this explanation, the Committee makes no further comment on this provision.

**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

<i>Bill/Act</i>	Section/Subsection	Offence	Penalty
<i>Fuel Quality Standards Bill 2000</i>	Subclause 42(2)	Fail to answer questions or produce documents to inspector	6 months imprisonment
	Subclause 67(5)	Fail to provide annual statement to Secretary	60 penalty units

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
<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	19.10.99 16.3.00 17(20.10.99) 3(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	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	
Child Support Legislation Amendment Bill (No. 2) 2000	12(6.9.00)	30.8.00		Family and Community Services	7.9.00	25.9.00	
Crimes Amendment (Forensic Procedures) Bill 2000	12(6.9.00)		30.8.00	Justice and Customs	7.9.00	27.9.00	13(4.10.00)
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	7.9.00	Attorney-General	17.8.00	3.10.00	13(4.10.00)
Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 2000 (previous citation: 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)
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Education Services for Overseas Students (Assurance Fund Contributions) Bill 2000	12(6.9.00)	30.8.00		Education, Training and Youth Affairs	7.9.00		
Education Services for Overseas Students	12(6.9.00)	30.8.00		Education, Training and Youth Affairs	7.9.00		
Education Services for Overseas Students (Registration Charges) Amendment Bill 2000	12(6.9.00)	30.8.00		Education, Training and Youth Affairs	7.9.00		
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)
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	30.8.00	Health and Aged Care	29.6.00		
Gene Technology (Licence Charges)	9(28.6.00)	22.6.00	30.8.00	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	3.10.00	13(4.10.00)
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)
						13.4.00	6(10.5.00)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE SOUGHT		REPORT NUMBER
		HOUSE	SENATE		RECEIVED		
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	7.9.00	13(4.10.00)
Social Security and Veterans' Entitlements Legislation Amendment (Private Trusts and Private Companies-Integrity of Means Testing) Bill 2000	11(30.8.00)	17.8.00	3.10.00	Family and Community Services		20.9.00	13(4.10.00)
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	3(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)
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)
Telecommunications (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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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	5.9.00	Veterans' Affairs	17.8.00	29.8.00	12(6.9.00)

