

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



**Alert Digest**

**No. 16 of 2000**

**8 November 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.



## **Auditor of Parliamentary Allowances and Entitlements Bill 2000**

This bill was introduced into the Senate on 1 November 2000 by Senator Faulkner as a Private Senator's bill.

The bill proposes to establish the office of Auditor of Parliamentary Allowances and Entitlements as an independent office of the Parliament to investigate and report to the Parliament on matters associated with the use of parliamentary allowances. The Auditor will have a wide range of powers modelled on those of the Auditor-General and the Ombudsman, including the powers to enter premises, access and copy documents and report on any member of the parliament who refuses to cooperate with an inquiry or on any other matter.

Consequential amendments are also made to the *Auditor-General Act 1997* and the *Public Accounts and Audit Committee Act 1951*.

### **Search and entry provision**

#### **Clause 21**

Subdivision A of Division 2 of this bill applies to Members of Parliament and their staff. Subdivision B of Division 2 applies "to any person who is not covered by Subdivision A". Subdivision B includes clause 21, which will permit the Auditor established by the bill (or a duly authorised member of his or her staff), at all reasonable times to enter any premises for the purposes of inquiring into a person's receipt or use of parliamentary entitlements or allowances. No provision is made for obtaining a warrant from a judicial officer.

In its *Fourth Report of 2000*, the Committee examined the issue of search and entry provisions in Commonwealth legislation and, among other things, set out a number of principles which should govern the authorisation of an entry. In general terms, the Committee considered that legislation should authorise entry on to, and search of, premises only with the occupier's genuine and informed consent, or under warrant or equivalent statutory instrument, or by providing for a penalty determined by a court for a failure to comply.



Clause 21 permits entry to any premises to inquire into any person's receipt or use of parliamentary entitlements or allowances. The Committee **seeks the advice of the Senator sponsoring the bill** as to why clause 21 does not require that the Auditor obtain a warrant if he or she cannot enter with consent.

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

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

#### **Clause 23**

Clause 23 of this bill will abrogate the privilege against self-incrimination where a person is required to provide documents or information under clause 20. However, clause 23 limits the circumstances in which any information so provided may be used in evidence in proceedings against that person – in general terms, neither the document or information, nor anything obtained as a direct or indirect result, is admissible in any criminal proceedings (other than proceedings for a failure to provide information, or for providing false or misleading information). In these circumstances, the Committee accepts that this provision strikes a reasonable balance between the competing interests of obtaining information and protecting the rights of individuals.

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

## Job Network Monitoring Authority Bill 2000

This bill was introduced into the House of Representatives on 30 October 2000 by Ms Kernot as a Private Member's bill.

The bill proposes to establish the Job Network Monitoring Authority. The role of this Authority will be to provide an independent and accountable means of monitoring the actions and outcomes of the Job Network, and the management of the Network by the Department of Employment, Workplace Relations and Small Business. The Authority will be required to report to the Parliament and also act as an independent complaints review mechanism.

### Commencement on Proclamation

#### Subclause 2(1)

Subclause 2(1) of this bill provides that it is 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)".

Subclause 2(1), in effect, provides the Executive with an unfettered discretion in deciding when (or whether) to bring the measures in this bill into force. The Committee, therefore, **seeks the advice of the member sponsoring the bill** as to whether the bill should contain a provision requiring it to commence, at the latest, six months after Assent.

*Pending the sponsoring 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.*

## **Job Network Monitoring Authority Bill 2000 (No. 2)**

This bill was introduced into the Senate on 31 October 2000 by Senator Collins as a Private Senator's bill.

In terms almost identical to a bill introduced in the House of Representatives by Ms Kernot, this bill proposes to establish the Job Network Monitoring Authority. The role of the Authority will be to provide an independent and accountable means of monitoring the actions and outcomes of the Job Network, and the management of the Network by the Department of Employment, Workplace Relations and Small Business. The Authority will be required to report to the Parliament and also act as an independent complaints review mechanism.

### **Commencement on Proclamation**

#### **Subclause 2(1)**

Subclause 2(1) of this bill provides that it is 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)".

Subclause 2(1), in effect, provides the Executive with an unfettered discretion in deciding when (or whether) to bring the measures in this bill into force. The Committee, therefore, **seeks the advice of the member sponsoring the bill** as to whether the bill should contain a provision requiring it to commence, at the latest, six months after Assent.

*Pending the sponsoring 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.*

## **Jurisdiction of Courts (Miscellaneous Amendments) Bill 2000**

This bill was introduced into the House of Representatives on 2 November 2000 by the Attorney-General. [Portfolio responsibility: Attorney-General]

Schedule 1 to the bill proposes amendments to the jurisdiction of the Federal Magistrates Court and the Federal Court.

Part 1 of Schedule 1 proposes to amend the *Administrative Decisions (Judicial Review) Act 1997*, the *Family Law Act 1975* and the *Trade Practices Act 1974* to clarify certain aspects of the jurisdiction of the Federal Magistrates Court and the Federal Court.

Part 2 of Schedule 1 contains safety-net provisions to ensure the validity of judgments of the Federal Magistrates Court. These provisions provide certainty in the event that it is later held that the Federal Magistrates Court did not have jurisdiction in the kinds of proceedings in question. This will be achieved by creating new statutory rights and liabilities that may be exercised and enforced in the same manner as valid judgements of the Federal Magistrates Court.

The bill also contains transitional provisions.

*The Committee has no comment on this bill.*

## **Superannuation Guarantee (Administration) Amendment Bill 2000**

This bill was introduced into the House of Representatives on 30 October 2000 by Mr K. J. Thomson as a Private Member's bill.

The bill proposes to amend the *Superannuation Guarantee (Administration) Act 1992* to require all employers, as a minimum, to remit the superannuation guarantee payments on a quarterly, rather than an annual, basis. The bill also makes provision for employers to remit advice to the Australian Taxation Office on a quarterly, rather than an annual, basis if they have a shortfall in their superannuation guarantee liability.

*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**

<i>Bill/Act</i>	<b>Section/Subsection</b>	<b>Offence</b>	<b>Penalty</b>
<i>Auditor of Parliamentary Allowances and Entitlements Bill 2000</i>	Subclause 20(3)	Fail to answer questions or produce documents to inspector	10 penalty units
	Subclause 22	Knowingly provide false or misleading information or documents	20 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			
<b>Bills Carried over from 1999</b>						
Convention on Climate Change (Implementation) Bill 1999	14(22.9.99)		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 (new citation: Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 2000)	19(1.12.99)	24.11.99	30.10.00	Justice and Customs	2.12.99	15(1.11.00)
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	23.3.99 4(24.3.99)
					25.3.99	22.6.99 10(23.6.99)
					24.6.99	20.12.99 1(16.2.00)
						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	17(20.10.99)
					21.10.99	16.3.00 3(5.4.00)

NAME OF BILL	ALERT DIGEST		INTRODUCED		MINISTER	RESPONSE SOUGHT		REPORT NUMBER
	HOUSE	SENATE	HOUSE	SENATE		RECEIVED	RECEIVED	
<b>Bills being dealt with during 2000</b>								
A New Tax System (Family Assistance and Related Measures) Bill 2000	3(15.3.00)	5.4.00	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		
Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000	15(1.11.00)		12.10.00		Attorney-General	2.11.00		
Aged Care Amendment Bill 2000	13(4.10.00)		7.9.00	12.10.00	Health and Aged Care	5.10.00	25.10.00	15(1.11.00)
Aviation Noise Ombudsman Bill 2000	13(4.10.00)		4.9.00		Mr Albanese MP	5.10.00	6.10.00	
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 (new citation: Broadcasting Services Amendment Bill 2000)	1(16.2.00)		9.12.99	7.11.00	Communications, Information and the Arts	17.2.00	4.5.00	16(8.11.00)
Charter of Political Honesty Bill 2000	15(1.11.00)			10.10.00	Senator Murray	2.11.00		
Child Support Legislation Amendment Bill (No. 2) 2000	12(6.9.00)		30.8.00	2.11.00	Family and Community Services	7.9.00	25.9.00	15(1.11.00)
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	DC
Criminal Code Amendment (United Nations)	10(16.8.00)		28.6.00	7.9.00	Attorney-General	17.8.00	3.10.00	13(4.10.00)

NAME OF BILL	ALERT DIGEST		INTRODUCED		MINISTER	RESPONSE SOUGHT		REPORT NUMBER
			HOUSE	SENATE		RECEIVED		
and Associated Personnel) Bill 2000								
Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 1999 (new citation: Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 2000)	*19(1.12.99) 2(8.3.00)	24.11.99	13.3.00	Justice and Customs	9.3.00	2(15.3.00)	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)	
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 Bill 2000	12(6.9.00)	30.8.00		Education, Training and Youth Affairs	7.9.00			
Electoral Amendment (Political Honesty) Bill 2000	15(1.11.00)		10.10.00	Senator Murray	2.11.00			
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)	

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
Fuel Quality Standards Bill 2000	13(4.10.00)		7.9.00	Communications, Information Technology and the Arts	5.10.00 12.10.00	10.10.00 7.10.00	14(11.10.00) 16(8.11.00)
Gene Technology Bill 2000	9(28.6.00)	22.6.00	30.8.00	Health and Aged Care	29.6.00	12.10.00	15(1.11.00)
Gene Technology (Licence Charges)	9(28.6.00)	22.6.00	30.8.00	Health and Aged Care	29.6.00	12.10.00	15(1.11.00)
Horticulture Marketing and Research and Development Services Bill 2000	14(11.10.00)	5.10.00		Agriculture, Fisheries and Forestry	12.10.00	1.11.00	
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) NEG
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	DC
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		REPORT NUMBER
			HOUSE	SENATE		RECEIVED		
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	4.10.00			
Product Grants and Benefits Administration Bill 2000	6(10.5.00)	12.4.00	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	Transport and Regional Services	17.8.00	4.9.00	12(6.9.00)	13(4.10.00)	
Renewable Energy (Electricity) Bill 2000	9(28.6.00)	22.6.00	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	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	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	Family and Community Services	3.10.00	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	14(11.10.00)		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Sydney Harbour Federation Trust Bill 1999 (new citation: Sydney Harbour Federation Trust Bill 2000)	1(16.2.00)	26.6.00	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)
Taxation Laws Amendment (Superannuation Contributions) Bill 2000	14(11.10.00)	7.9.00	5.10.00	Treasurer	12.10.00	31.10.00	15(1.11.00)
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	11.10.00	Communications, Information Technology and the Arts	17.8.00	10.10.00	14(11.10.00)
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)
Telecommunications (Universal Service Levy) Amendment Bill 2000	10(16.8.00)	29.6.00	11.10.00			10.10.00	14(11.10.00)
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	5.9.00	Veterans' Affairs	17.8.00	29.8.00	12(6.9.00)

