

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



Alert Digest

No.17 of 2000

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Members of the Committee

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator T Crossin
Senator J Ferris
Senator B Mason
Senator A Murray

Terms of Reference

Extract from **Standing Order 24**

- (1) (a) At the commencement of each parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

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Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Bill 2000

This bill was introduced into the House of Representatives on 9 November 2000 by the Minister for Veterans' Affairs. [Portfolio responsibility: Defence]

Introduced with the Defence Reserve Service (Protection) Bill 2000, the bill amends the *Defence Act 1903* and other legislation as follows:

Schedule 1 to the bill proposes to amend the *Defence Act 1903* to repeal sections 50D, 50E, 50F and 50G, and substitute new provisions to enable the call out of members of the Reserve Forces in circumstances less than in the defence of Australia.

Schedule 2 proposes amendments to the *Defence Act 1903* and 17 other Acts to modernise the organisation and structure of the Defence Force Reserve. The Schedule also contains saving and transitional provisions.

Schedule 3 repeals the *Defence (Re-establishment) Act 1965*, makes consequential amendments to the *Defence Act 1903* and the *Disability Services Act 1986*, and contains application and transitional provisions.

Schedule 4 proposes to expand the allowances and benefits for employers to better compensate them for the effects of Reservists undertaking defence duties, and makes other consequential amendments.

Commencement

Subclause 2(3)

Subclause 2(3) of this bill provides that many of the amendments proposed in Schedule 2 are to commence on Proclamation or 12 months after Assent – whichever is the earlier.

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, where a clause provides for commencement after assent, the preferred period should not be longer than 6 months. The *Drafting Instruction* goes on to state that, where a longer period is chosen “Departments should explain the reason for this in the Explanatory Memorandum”.

The Explanatory Memorandum accompanying this bill provides no explanation for the adoption of a longer period for the commencement of the relevant provisions in Schedule 2. The Committee, therefore, **seeks the Minister's advice** as to why these provisions may not commence until 12 months after Assent.

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.

Non-reviewable discretion Schedule 1, item 1

Among other things, item 1 of Schedule 1 to this bill proposes to insert a new section 50D in the *Defence Act 1903*. This new section authorises the Governor-General to call out the Reserves, or a part of the Reserves, for continuous full time service. Some examples of circumstances which may give rise to such a call out are set out in proposed new subclause 50D(2) – these include (but are not limited to) war, defence, emergency, defence preparation, peacekeeping or peace enforcement, civil aid, humanitarian assistance or disaster relief.

Proposed new subclause 50D(3) provides that, in making or revoking a call out, the Governor-General must act with the advice of the Executive Council. However if, after the Minister has consulted the Prime Minister, the Minister is satisfied that, for reasons of urgency, the Governor-General should act on his or her advice alone, then the Governor-General must call out the troops on the advice of the Minister alone.

The exercise of either of these discretions is not subject to any form of review, other than the general accountability of the Executive Council to the Parliament, and where the Reserves are called out on the advice of the Minister alone, not even this level of accountability exists. The Committee, therefore, **seeks the Minister's advice** as to why the bill provides no scope for review of the exercise of these discretions.

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 non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Defence Reserve Service (Protection) Bill 2000

This bill was introduced into the House of Representatives on 9 November 2000 by the Minister for Veterans' Affairs. [Portfolio responsibility: Defence]

Introduced with the Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Bill 2000, the bill contains provisions to protect members of the Defence Force Reserve in their employment and education, to facilitate their return to civil life, and for related purposes. The bill sets out the entitlements and prohibitions that apply in relation to people who are rendering or have rendered defence service as members of the Reserves. In certain cases these entitlements have also been extended to the dependants of Reservists.

The Committee has no comment on this bill.

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 (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		REPORT NUMBER
	HOUSE	SENATE	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)	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)
Auditor of Parliamentary Allowances and Entitlements Bill 2000	16(8.11.00)			1.11.00	Senator Faulkner	9.11.00	24.11.00	17(29.11.00)
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	27.11.00	17(29.11.00)
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

NAME OF BILL	ALERT DIGEST		INTRODUCED		MINISTER	RESPONSE SOUGHT		REPORT NUMBER
	HOUSE	SENATE	HOUSE	SENATE		RECEIVED	RECEIVED	
Criminal Code Amendment (United Nations and Associated Personnel) Bill 2000	10(16.8.00)	7.9.00	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 1999 <small>(new citation: Customs Legislation Amendment (Criminal Sanctions and Other Measures) Bill 2000)</small>	*19(1.12.99) 2(8.3.00)	13.3.00	24.11.99	13.3.00	Justice and Customs	9.3.00		Act No. 23
Dairy Industry Adjustment Bill 2000	2(8.3.00)	15.3.00	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)	14.8.00	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)	10.11.00	30.8.00	10.11.00	Education, Training and Youth Affairs	7.9.00	24.11.00	17(29.11.00)
Education Services for Overseas Students	12(6.9.00)	27.11.00	30.8.00	27.11.00	Education, Training and Youth Affairs	7.9.00	24.11.00	17(29.11.00)
Education Services for Overseas Students (Registration Charges) Amendment Bill 2000	12(6.9.00)	10.11.00	30.8.00	10.11.00	Education, Training and Youth Affairs	7.9.00	24.11.00	17(29.11.00)
Electoral Amendment (Political Honesty) Bill 2000	15(1.11.00)	10.10.00		10.10.00	Senator Murray	2.11.00	27.11.00	17(29.11.00)
Excise Amendment (Compliance Improvement) Bill 2000	9(28.6.00)	22.6.00	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)	13.4.00	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)	8.6.00	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)	9.11.00	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	8.11.00	Agriculture, Fisheries and Forestry	12.10.00	1.11.00	17(29.11.00)
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
Job Network Monitoring Authority Bill 2000	16(8.11.00)	30.10.00		Ms Kernot	9.11.00		
Job Network Monitoring Authority Bill 2000 [No. 2]	16(8.11.00)	30.10.00		Senator Collins	9.11.00		
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	DC

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
		HOUSE	SENATE				
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	28.11.00	Attorney-General	11.5.00	4.10.00	17(29.11.00)
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 7.9.00	4.9.00 15.9.00	12(6.9.00) 13(4.10.00)
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	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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
States Grants (Primary and Secondary Education Assistance) Bill 2000	11(30.8.00)	29.6.00	9.10.00	Education, Training and Youth Affairs	31.8.00	4.9.00	14(11.10.00)
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)