

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



Alert Digest

No. 2 of 2003

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Members of the Committee

Senator J McLucas (Chair)
Senator B Mason (Deputy Chairman)
Senator G Barnett
Senator T Crossin
Senator D Johnston
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.

Dairy Industry Service Reform Bill 2003

This bill was introduced into the House of Representatives on 12 February 2003 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

Introduced with the Primary Industries (Excise) Levies Amendment (Dairy) Bill 2003, the bill proposes to:

- convert the Australian Dairy Corporation (ADC) into a not for profit organisation, limited by guarantee, under the *Corporations Act 2001*. The new corporation, to be known as Dairy Australia Limited, will be controlled by levy-paying dairy farmers. The staff, assets and liabilities of the Dairy Research and Development Corporation (DRDC) will be transferred to Dairy Australia so that the new corporation can provide most of the marketing, and research and development services for the dairy industry that are currently provided by the ADC and the DRDC;
- establish the concept of an “industry services body”, entitled under a funding contract with the Commonwealth, to levy payments and match of Commonwealth payments;
- require the industry services body to take over the ADC’s role in relation to the Dairy Structural Adjustment Fund;
- simplify the export control arrangements for dairy produce whilst retaining the function with the Commonwealth;
- repeal the Dairy Research and Development Corporation Regulations 1990; and
- make consequential amendments to 6 Acts.

The bill also contains transitional provisions.

Commencement by Proclamation

Schedule 1

By virtue of item 2 in the table to subclause 2(1) of this bill, the amendments proposed by Schedule 1 would commence on “a single day to be fixed by

Proclamation”, but with no provision in the bill for that Schedule to commence at a particular time in any event. The Explanatory Memorandum seeks to justify this provision by asserting that “the commencement of the amendments can only, effectively, take place after [an] industry services body has been selected and a funding contract negotiated with it. It would be undesirable to commence the amendments, which include amendments imposing a new levy and providing for levy amounts to be paid to the industry services body, before the industry services body had been selected and appropriate protections for the Commonwealth’s interests put in place.” The Committee accepts that some leeway needs to be provided in the commencement of Schedule 1, but **seeks the Minister’s advice** as to whether subclause 2(1) could not contain a sunset clause under which Schedule 1 would be repealed if it had not come into force, say, 12 months after the bill had been assented to. Such a provision would meet the Committee’s concerns of the commencement being subject to an unfettered Ministerial discretion, and may meet the Minister’s concerns, as the sunset clause could always be amended, if the industry services body had not been selected within that period of 12 months.

Pending the Minister’s advice, the Committee draws Senators’ attention to the 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.

Energy Grants (Credits) Scheme Bill 2003

This bill was introduced into the House of Representatives on 13 February 2003 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Introduced with the Energy Grants (Credit) Scheme (Consequential Amendments) Bill 2003, the bill proposes to replace the Diesel Fuel Rebate Scheme and the Diesel and Alternative Fuels Grants Scheme with a single scheme to be called the Energy Grants Credits Scheme, with effect from 1 July 2003. The proposed new scheme will maintain entitlements equivalent to those currently available and correct administrative inconsistencies. The bill also contains a regulation-making power.

Non-disallowable determinations

Clause 9

Clause 9 would permit the Commissioner of Taxation to make a written determination which would, in effect, define which operations of a vehicle were a journey, for the purposes of the legislation, and which were to be taken not to be a journey. It would appear that this power is legislative in character, but apparently it is not subject to any form of Parliamentary scrutiny. The Committee therefore **seeks the Treasurer's advice** as to why these determinations are not subject to the usual Parliamentary oversight.

Pending the Treasurer's advice, the Committee draws Senators' attention to the 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.

Energy Grants (Credits) Scheme (Consequential Amendments) Bill 2003

This bill was introduced into the House of Representatives on 13 February 2003 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Introduced with the Energy Grants (Credit) Scheme Bill 2003, the bill proposes to make consequential amendments to the following Acts as a result of the introduction of the Energy Grants Credits Scheme:

- *Customs Act 1901*;
- *Excise Act 1901*;
- *Taxation Administration Act 1953*;
- *A New Tax System (Australian Business Number) Act 1999*; and the
- *Income Tax Assessment Act 1936*.

The bill also proposes to repeal the *Diesel and Alternative Fuels Grants Scheme Act 1999* and contains application and transitional provisions.

The Committee has no comment on this bill.

Family Law Amendment Bill 2003

This bill was introduced into the House of Representatives on 12 February 2003 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Family Law Act 1975* to clarify those provisions of the Act dealing with property and financial interests, including:

- providing a clear power for courts exercising jurisdiction under the Act to make orders binding on third parties when dealing with property settlement proceedings under the Act;
- removing the requirement to register parenting plans;
- clarifying the power of the Court to use electronic technology, including video and telephonic links;
- reflecting changes to the structure and operation of the Family Court of Australia;
- improving the parenting compliance regime;
- varying provisions relating to the operation of financial agreements;
- allowing for orders and injunctions to be binding on third parties; and
- making miscellaneous and technical amendments.

The bill also contains application provisions.

Retrospective commencement Schedules 4, 5 and 7

By virtue of items 6, 8, 10, 12, 14, 15, 17, 20, 22 and 24 in the table to subclause 2(1) of this bill, the amendments proposed by various items in Schedules 4, 5 and 7 would commence immediately after the commencement of Schedule 2 to the *Family Law Amendment Act 2000*, which occurred on 27 December 2000. The Explanatory Memorandum does not indicate whether any of these amendments would adversely affect any person. All that that Memorandum does is to refer to the fact that various items in those Schedules

are to commence immediately after the commencement of the 2000 Amendment Act (although it might be noted that the numbering of the items in the various Schedules is not in accordance with the numbering either later in the Explanatory Memorandum or in the bill itself). The Explanatory Memorandum goes on to assert that “the effect of the actual provisions is described below.” Unfortunately, that promise is not completely fulfilled. The explanations of the effect of the particular items in each Schedule does not address the fact that the amendment has retrospective effect, and does not advise whether that retrospectivity will adversely affect any person. The Committee therefore **seeks the Attorney-General’s advice** on this point.

Pending the Attorney-General’s advice, the Committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee’s terms of reference.

Retrospective operation

Part 1 of Schedule 6, Part 2

By virtue of Part 2 of Schedule 6 to this bill, the amendments proposed by Part 1 of that Schedule will apply to “all marriages, including those that were dissolved before” the date of commencement of that Schedule. However, the Explanatory Memorandum does not advise whether this retrospective application will adversely affect any person. Accordingly, the Committee **seeks the Attorney-General’s advice** on this aspect of the provision.

Pending the Attorney-General’s advice, the Committee draws Senators’ attention to the 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.

Great Barrier Reef Marine Park (Protecting the Great Barrier Reef from Oil Drilling and Exploration) Amendment Bill 2003

This bill was introduced into the House of Representatives on 10 February 2003 by Mr K. J. Thomson as a Private Member's bill.

The bill proposes to give the Commonwealth the power to protect the Great Barrier Reef from oil, gas and mineral drilling and exploration by extending the boundaries of the Great Barrier Reef Region to Australia's exclusive economic zone.

The Committee has no comment on this bill.

Primary Industries (Excise) Levies Amendment (Dairy) Bill 2003

This bill was introduced into the House of Representatives on 12 February 2003 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

Introduced with the Dairy Industry Service Reform Bill 2003, the bill proposes to amend the *Primary Industries (Excise) Levies Act 1999* to combine three existing levies applicable to the dairy industry into a single levy to be known as the dairy service levy. The maximum rate of the new levy will be the same as the combined maximum rates of the existing levies.

The bill also contains application provisions.

The Committee has no comment on this bill.

Taxation Laws Amendment Bill (No. 4) 2003

This bill was introduced into the House of Representatives on 13 February 2003 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Schedule 1 to the bill proposes to amend the *Income Tax Assessment Act 1936* to ensure that roll-over transactions which occur wholly within the one superannuation fund or annuity provider (internal roll-overs) are treated in the same way for RBL purposes as roll-overs which occur between funds or providers (external roll-overs).

Schedule 2 to the bill proposes to amend the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to make technical corrections and amendments in relation to the uniform capital allowances system.

Schedule 3 to the bill proposes to amend the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997* and the *Taxation Administration Act 1953* to clarify, standardise and rationalise the recognition and treatment of non-assessable non-exempt income amounts.

Schedule 4 to the bill proposes to amend the *Income Tax Assessment Act 1997* to ensure that taxpayers always receive the maximum benefit from refundable tax offset carry forward rules; and to prevent double refunds of the private health insurance tax offset to trustees and beneficiaries.

Schedule 5 to the bill proposes to amend the *Taxation Administration Act 1953* to introduce new withholding obligations to apply to certain payments to foreign residents, thereby facilitating greater compliance of foreign residents with their Australian tax obligations.

Schedule 6 to the bill proposes to amend the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953* to ensure that the “no ABN withholding event” will apply to enterprise-to-enterprise transactions in Australia; and to amend the “no ABN withholding rules” so that they have the same geographical application as contained in the *A New Tax System (Australian Business Number) Act 1999*.

Schedule 7 to the bill proposes to amend the *Fringe Benefits Tax Assessment Act 1986* to provide a fringe benefits tax exemption for certain payments to approved worker entitlement funds; and the *Income Tax Assessment Act 1997* to provide a capital gains tax roll-over to a fund that amends or replaces its trust deed in order to be approved as an “approved worker entitlement fund”.

The bill also contains application and transitional provisions.

Title of bill not chronological

Clause 1

Clause 1 provides for the short title to this measure. That short title indicates that the bill which has been introduced in the second sitting week of the year is the fourth measure of 2003 to amend various parts of the taxation laws. In addition, under the table in subclause 2(1), some provisions in this bill may commence immediately after the commencement of the *Taxation Laws Amendment Act (No. 2) 2003*, a measure which has not yet been introduced into the Parliament under that title. The Committee **seeks the Treasurer’s advice** on these matters.

Pending the Treasurer’s advice, the Committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee’s terms of reference.

Retrospective application

Item 18 of Schedule 1

By virtue of item 18 of Schedule 1, the amendments proposed by that Schedule are to apply from 1 July 2001. Unfortunately, the Explanatory Memorandum does not make it clear whether this retrospective application will adversely affect any taxpayers. The Memorandum indicates that the amendments are to give effect to a Press Release issued on 1 July 2001, and the Committee **seeks the Treasurer’s advice** on two matters. First, this amendment has been introduced long after the expiry of the six months’ grace which the Committee is usually prepared to give to Press Releases relating to

taxation matters, and the Committee would appreciate the reasons for that delay. Secondly, the Memorandum merely states that “the revenue impact of [this] measure is not readily quantifiable”. In this case, the Committee asks whether this means that the measure will increase or decrease the tax burden on affected taxpayers.

Pending the Treasurer’s advice, the Committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee’s terms of reference.

Retrospective application Item 17 of Schedule 2

By virtue of item 17 of Schedule 2, the amendments proposed by that Schedule are to apply from 1 July 2001. Unfortunately, the Explanatory Memorandum does not make it clear whether this retrospective application will adversely affect any taxpayers. All that the Memorandum reveals is that there is “no revenue impact as a result of these amendments, as the amendments ensure that the uniform capital allowance system operates as intended and as originally costed.” The Committee, therefore, **seeks the Treasurer’s advice** as to whether this means that the measure will increase or decrease the tax burden on affected taxpayers.

Pending the Treasurer’s advice, the Committee draws Senators’ attention to the 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.

Retrospective application Sub-items 140(2) to (6) of Schedule 3

By virtue of sub-items 140(2) to (6) of Schedule 3, some of the amendments proposed by that Schedule are to apply from a variety of dates between 1997

and 1 July 2002. However, the Explanatory Memorandum notes that the relevant amendments are either correcting technical errors or implementing minor policy decisions and that the financial impact is nil.

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

Retrospective application

Item 5 of Schedule 4

By virtue of item 5 of Schedule 4, the amendments proposed by that Schedule are to apply from 1 July 2000. However, the Explanatory Memorandum notes that the financial impact of these amendments is nil.

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

Workplace Relations Amendment (Compliance with Court and Tribunal Orders) Bill 2003

This bill was introduced into the House of Representatives on 13 February 2003 by the Minister for Employment and Workplace Relations. [Portfolio responsibility: Employment and Workplace Relations]

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

- specify general duties of officers and employees of registered employer and employee organisations in relation to orders or directions of the Federal Court or the Australian Industrial Relations Commission;
- provide for the disqualification from holding office in registered organisations of persons on whom certain prescribed pecuniary penalty orders have been imposed;
- provide that the Federal Court can order that a registered organisation recover compensation from an officer or employee as a consequence of a breach of a civil penalty provision by that person, where the organisation took reasonable steps to prevent the action;
- make consequential amendments; and
- amend the Registration and Accountability of Organisations Schedule (Schedule 1B).

The bill also contains application provisions.

The Committee has no comment on this bill.

Workplace Relations Amendment (Protecting the Low Paid) Bill 2003

This bill was introduced into the House of Representatives on 13 February 2003 by the Minister for Employment and Workplace Relations. [Portfolio responsibility: Employment and Workplace Relations]

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

- ensure that the primary focus of the award safety net is to address the needs of the low paid; and
- require the Australian Industrial Relations Commission to recognise that the primary role of awards is to address the needs of the low paid when it performs functions and exercises powers in relation to awards.

The bill also contains application provisions.

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 - 2003

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
		HOUSE	SENATE			
Bills dealt with in 2002						
Charter of the United Nations Amendment Bill 2002	15(4.12.02)	14.11.02	5.12.02	Foreign Affairs	5.12.02	
Communications Legislation Amendment Bill (No. 1) 2002	7(21.8.02)	27.6.02		Communications, Information Technology and the Arts	22.8.02	16.9.02
Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002	16(11.12.02)	4.12.02	12.12.02	Justice and Customs	17.12.02	11.2.03
<i>Criminal Code Amendment (Offences Against Australians) Act 2002</i>	15(4.12.02)	12.11.02	13.11.02	Attorney-General	5.12.02	3.2.03
Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002	3(20.3.02)	14.3.02		Special Minister of State	21.3.02	30.4.02
Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002	15(4.12.02)		19.11.02	Senator Bartlett	5.12.02	4.2.03
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2002	13(13.11.02)	21.10.02		Mr Katter	14.11.02	

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Health Insurance Amendment (Professional Services Review and Other Matters) Bill 2002	15(4.12.02)	27.6.02	11.11.02	Health and Ageing re Amendments	5.12.02	31.1.03	1(5.2.03)
Intellectual Property Laws Amendment Bill 2002	7(21.8.02)	27.6.02		Industry, Tourism and Resources	22.8.02	17.9.02	
<i>International Criminal Court Act 2002</i>	7(21.8.02)	25.6.02	26.6.02	Attorney-General	22.8.02	13.1.03	1(5.2.03)
<i>International Criminal Court (Consequential Amendments) Act 2002</i>	7(21.8.02)	25.6.02	26.6.02	Attorney-General	22.8.02	13.1.03	1(5.2.03)
Migration Legislation Amendment Bill (No. 1) 2002	3(20.3.02)	13.3.02	5.2.03	Immigration and Multicultural and Indigenous Affairs	21.3.02	27.5.02	2(5.3.03)
<i>Quarantine Amendment Act 2002</i>	3(20.3.02)	14.3.02	21.3.02	Agriculture, Fisheries and Forestry	21.3.02	24.1.03	1(5.2.03)
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002	2(13.3.02)	21.2.02	19.6.02	Finance and Administration	14.3.02 20.6.02	16.5.02 20.12.02	5(19.6.02) 1(5.2.03)
Taxation Laws Amendment Bill (No. 8) 2002	16(11.12.02)	5.12.02		Treasury	12.12.02	30.1.03	
<i>Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Act 2002</i>	5(19.6.02)	14.5.02	19.6.02	Treasurer	20.6.02	24.12.02	1(5.2.03)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	SENATE	MINISTER	RESPONSE SOUGHT	RECEIVED	REPORT NUMBER
Bills introduced 2003							
Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2002	1(5.2.03)	12.12.02	3.3.03	Agriculture, Fisheries and Forestry	6.2.03	24.2.03	2(5.3.03)
Criminal Code Amendment (Terrorism) Bill 2002	1(5.2.03)	12.12.03		Attorney-General	6.2.03		

