

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



**Alert Digest**

**No. 3 of 2003**

**19 March 2003**



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# Senate Standing Committee for the Scrutiny of Bills

## 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.



## **Employee Protection (Employee Entitlements Guarantee) Bill 2003**

This bill was introduced into the House of Representatives on 3 March 2003 by Mrs Crosio as a Private Member's bill.

The bill proposes to secure the full payment of employee entitlements such as unpaid wages, annual leave, long service leave and redundancy payments in the case of corporate insolvency. The bill proposes that workers' entitlements be secured through a 0.1% levy on payroll with small business having their entitlement costs covered directly by the federal government so that they are not affected by the 0.1% levy.

*The Committee has no comment on this bill.*

## **Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 [No. 2]**

This bill was introduced into the House of Representatives on 6 March 2003 by the Minister for Children and Youth Affairs. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to:

- change the qualification criteria for disability support pension (DSP) in relation to work capacity for people who apply for DSP from 1 July 2003; and
- restrict exemptions from the activity test requirements for Newstart allowance and youth allowance recipients.

The bill also contains application and transitional provisions.

The bill is the same as the Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 which was negatived by the Senate on 19 November 2002.

*The Committee has no comment on this bill.*

## **Great Barrier Reef Marine Park (Protecting the Great Barrier Reef from Oil Drilling and Exploration) Amendment Bill 2003 [No. 2]**

This bill was introduced into the Senate on 5 March 2003 by Senators McLucas and Bartlett as a Private Senators' 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 bill is the same as the Great Barrier Reef Marine Park (Protecting the Great Barrier Reef from Oil Drilling and Exploration) Amendment Bill 2003 introduced into the House of Representatives by Mr K J Thomson on 10 February 2002.

*The Committee has no comment on this bill.*

## **Health Legislation Amendment (Private Health Insurance Reform) Bill 2003**

This bill was introduced into the Senate on 6 March 2003 by the Minister for Justice and Customs. [Portfolio responsibility: Health and Ageing]

The bill proposes to amend the *National Health Act 1953* and the *Private Health Insurance Incentives Act 1998* to reduce the regulatory burden surrounding health fund product design and introduce a system of monitoring and compliance for registered health benefits organisations rule changes.

The bill also proposes to amend the *National Health Act 1953* to:

- increase the powers of the Private Health Insurance Ombudsman to investigate complaints and resolve disputes;
- provide for the production of an annual ‘State of the Health Funds’ report by the Private Health Insurance Ombudsman; and
- make a number of improvements to the Lifetime Health Cover regulations to facilitate the sustaining of high levels of membership in private health insurance.

### **Abrogation of the privilege against self-incrimination Proposed new subsection 73BEE(4)**

Proposed new subsection 73BEE(4) of the *National Health Act 1953* would abrogate the privilege against self-incrimination for a person who is required to provide information under proposed new subsection 73BED(1) of the same Act. However, subsection 73BEE(4) also provides that such information is not admissible as evidence against that person in any other proceedings (see also entry on page 16, provisions of bills which impose criminal sanctions for a failure to provide information). The Committee is therefore prepared to accept that this strikes a reasonable balance between the competing interests of obtaining information and protecting individuals’ rights.

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

## **Late Payment of Commercial Debts (Interest) Bill 2003**

This bill was introduced into the Senate on 6 March 2003 by Senator Conroy as a Private Senator's bill.

The bill proposes to establish a right for small business to apply an interest levy to the late payment of commercial debts arising in relation to contracts for the supply of goods and services to Commonwealth government agencies and large corporations.

The bill also includes a regulation-making power.

### **Absence of parliamentary scrutiny Clause 9**

Clause 9 of this bill would empower the Minister either to determine the rate of interest for late payment of debts that is to be statutorily implied into contracts or to determine a formula for the calculation of such a rate. This power would appear to be legislative in character, but the bill (although it provides criteria which the Minister must consider) makes no provision for the parliamentary review of the exercise of the power. The Committee therefore **seeks the advice of the proposer of the bill** of the reasons for this omission.

*Pending the Senator's advice, the Committee draws Senators' attention to the provision, as it may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference.*

## **Passenger Movement Charge (Timor Sea Treaty) Amendment Bill 2003**

This bill was introduced into the House of Representatives on 5 March 2003 by the Minister for Industry, Tourism and Resources. [Portfolio responsibility: Industry, Tourism and Resources]

Part of a package of three bills relating to the Timor Sea Treaty, the bill proposes to amend the *Passenger Movement Charge Act 1978* to change the name of the area referred to in the Act as 'Area A' to the 'Joint Petroleum Development Area'. The change of name is required as a result of the ratification by Australia and East Timor of the Timor Sea Treaty which was signed by the Prime Minister on behalf of Australia on 20 May 2002 and replaces the former Timor Gap Treaty. The bill does not make any changes to the rights and responsibilities of companies and persons working in the Timor Gap, providing instead for a continuation of the pre-existing arrangements with effect from 20 May 2002.

### **Retrospectivity**

#### **Clause 2**

By virtue of clause 2, this bill is taken to have commenced on 20 May 2002, that being the date when the Timor Sea Treaty was signed. Although this Bill imposes a tax, the Explanatory Memorandum notes that the changes proposed therein are of a purely technical nature and, more importantly, that it does not "change the rights and responsibilities of companies and persons working in the Timor Gap."

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

## **Petroleum (Timor Sea Treaty) Bill 2003**

This bill was introduced into the House of Representatives on 5 March 2003 by the Minister for Industry, Tourism and Resources. [Portfolio responsibility: Industry, Tourism and Resources]

Part of a package of three bills relating to the Timor Sea Treaty, the bill proposes to give effect to the Timor Sea Treaty between Australia and East Timor. The Treaty provides a framework for the exploration, development and exploitation of the petroleum resources in the Joint Petroleum Development Area (JPDA) created by the Treaty. The Treaty is a provisional arrangement pending permanent delimitation of maritime boundaries between Australia and East Timor. The main aspects of the Treaty include:

- sharing of petroleum production and revenue by Australia and East Timor, split 90/10 in East Timor's favour;
- a joint three tiered administrative structure involving both Australia and East Timor to govern the day to day running and broader policy issues in the JPDA; and
- a tax code for the imposition of taxes on income derived from the JPDA.

The bill also contains application and transitional provisions and a regulation-making power.

### **Retrospectivity**

#### **Clause 2, items 2, 4, 6 and 7**

By virtue of items 2, 4, 6 and 7 in the table in clause 2 of this bill, most of its provisions would commence on 20 May 2002. The Explanatory Memorandum notes that those provisions which are not to commence retrospectively are ones which create offences, and that their commencement is designed to "remove the possibility of retrospective criminal liability." While the Committee acknowledges that this will prevent some adverse effects of retrospectivity, it also notes that Part 3 of the bill would enact tax provisions, and there is no assurance in the Explanatory Memorandum that the commencement of that Part on 20 May 2002 will not adversely affect taxpayers. The Committee accordingly **seeks the Minister's advice** on this aspect of the bill.

*Pending the Minister'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.*

## **Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003**

This bill was introduced into the House of Representatives on 5 March 2003 by the Minister for Industry, Tourism and Resources. [Portfolio responsibility: Industry, Tourism and Resources]

Part of a package of three bills relating to the Timor Sea Treaty, the bill proposes to amend the following Acts to give effect to provisions contained in certain Articles of the Treaty relating to criminal jurisdiction, customs, employment regulation, migration, quarantine, income tax and fringe benefits tax.

*Crimes at Sea Act 2000*

*Customs Act 1901*

*Fringe Benefits Tax Assessment Act 1986*

*Income Tax Assessment Act 1936*

*International Organisations (Privileges and Immunities) Act 1963*

*Migration Act 1958*

*Passenger Movement Charge Collection Act 1978*

*Petroleum (Submerged Lands) Act 1967*

*Quarantine Act 1908*

*Superannuation Guarantee (Administration) Act 1992*

*Taxation Administration Act 1953*

*Workplace Relations Act 1996*

The bill also repeals the *Petroleum (Timor Gap Zone of Cooperation) Act 1990* and contains application, saving and transitional provisions.

### **Retrospective commencement**

#### **Clause 2, items 2, 4 and 6**

By virtue of items 2, 4 and 6 in the table in clause 2 of this bill, almost all of its provisions would commence on 20 May 2002. Although the Minister's Second Reading speech notes that the bill will "prevent any retrospective criminal liability arising under the amendments" contained in the bill, many of the amendments that would commence on 20 May 2002 relate to taxation matters. As with the Petroleum (Timor Sea Treaty) Bill 2003, the Committee

therefore **seeks the Minister's advice** on whether their retrospective commencement would adversely affect taxpayers.

*Pending the Minister'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.*

## **Workplace Relations Amendment (Protection for Emergency Management Volunteers) Bill 2003**

This bill was introduced into the House of Representatives on 6 March 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 protect emergency management volunteers from unlawful dismissal. The bill inserts a new ground under subsection 170CK(2) to make it unlawful to dismiss an emergency management volunteer who is temporarily absent from the workplace on voluntary emergency management duty. To attract this protection, the absence must be reasonable in all the circumstances.

The bill also contains an application provision.

### **Commencement Schedule 1, item 6**

By virtue of item 6 of Schedule 1 to this bill, the amendments proposed in that Schedule would apply to circumstances arising either before or after the commencement of the bill. However, the effect of the amendments is beneficial to employees.

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

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

The Committee's *Eighth Report of 1998* dealt with the appropriate basis for penalty provisions for offences involving the giving or withholding of information. In that Report, the Committee recommended that the Attorney-General develop more detailed criteria to ensure that the penalties imposed for such offences were 'more consistent, more appropriate, and make greater use of a wider range of non-custodial penalties'. The Committee also recommended that such criteria be made available to Ministers, drafters and to the Parliament.

The Government responded to that Report on 14 December 1998. In that response, the Minister for Justice referred to the ongoing development of the Commonwealth *Criminal Code*, which would include rationalising penalty provisions for 'administration of justice offences'. The Minister undertook to provide further information when the review of penalty levels and applicable principles had taken place.

For information, the following Table sets out penalties for 'information-related' offences in the legislation covered in this *Digest*. The Committee notes that imprisonment is still prescribed as a penalty for some such offences.

TABLE

Bill/Act	Section/Subsection	Offence	Penalty
<i>National Health Act 1953</i> (See <i>Health Legislation Amendment (Private Health Insurance Reform) Bill 2003</i> , referred to earlier in this <i>Digest</i> )	Proposed new subsection 73BEE(1)	Failure to produce information to a public authority	10 penalty units

## PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

### AMENDMENTS IN THE SENATE

**(3-6 March)**

**Workplace Relations Amendment (Fair Dismissal) Bill 2002 [No. 2]:** On 3 March 2003 the Senate agreed to amend this bill. The amendments raised no issues within the Committee's terms of reference.

### AMENDMENTS IN THE HOUSE OF REPRESENTATIVES

**(3-6 March)**

**Family and Community Services Legislation Amendment Bill 2002:** On 5 March 2003 the House of Representatives agreed to amend this bill. The amendments raised no issues within the Committee's terms of reference.

**Taxation Laws Amendment Bill (No 4) 2003:** On 6 March 2003 the House of Representatives agreed to amend this bill. The amendments raised no issues within the Committee's terms of reference.

## 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			
<b>Bills dealt with in 2002</b>						
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
<i>Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002</i>	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		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<b>Bills introduced 2003</b>							
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		
Dairy Industry Service Reform Bill 2003	2(5.3.03)	12.2.03		Agriculture, Fisheries and Forestry	6.3.03		
Energy Grants (Credits) Scheme Bill 2003	2(5.3.03)	13.2.03		Treasurer	6.3.03		
Family Law Amendment Bill 2003	2(5.3.03)	12.2.03		Attorney-General	6.3.03		
Taxation Laws Amendment Bill (No. 4) 2003	2(5.3.03)	13.2.03		Treasurer	6.3.03	18.3.03	