

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



**Alert Digest**

**No. 9 of 2003**

**20 August 2003**



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# Senate Standing Committee for the Scrutiny of Bills

## Members of the Committee

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





## **Australian National Training Authority Amendment Bill 2003**

[Introduced into House of Representatives on 14 August 2003. Portfolio: Education, Science and Training]

This bill amends the *Australian National Training Authority Act 1992* to provide for an Australian National Training Authority Agreement for the period 2004 to 2006. The Agreement, between the Commonwealth, states and territories, sets out planning, accountability and funding arrangements for vocational education and training, and is re-negotiated every 3 years.

The bill also increases the number of members of the Authority from seven to nine and increases the number of members required for a quorum and voting majority at its meetings.

### **Insufficient parliamentary scrutiny Item 2 of Schedule 2**

The current Australian National Training Authority Agreement, which expires on 31 December 2003, is contained in Schedule 1 of the Principal Act. Item 2 of Schedule 2 to this bill provides that the Schedule containing the Agreement will be repealed and will not be replaced. The Explanatory Memorandum indicates that a new Agreement is being negotiated and that, when agreed to by the Commonwealth, the states and the territories, it will be tabled in each House of the Parliament. Past practice has been to incorporate each new Agreement in the Principal Acts by way of an amending bill, enabling consideration and debate in either chamber.

The Committee considers it likely that the Agreement, when concluded, will be legislative in character. If that were not the case there would have been no need to include the current Agreement in the Act. The question which then arises is whether the Parliament is being afforded adequate opportunity to scrutinise this exercise of legislative power. The Committee considers that, by proposing merely to table the new Agreement, the Minister will have insufficiently subjected his exercise of legislative power to parliamentary

scrutiny. The Committee therefore **seeks the Minister's advice** as to the reason for this provision.

*Pending the Minister'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.*

## **Migration Legislation Amendment (Identification and Authentication) Bill 2003**

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Immigration and Multicultural and Indigenous Affairs]

The bill amends the *Migration Act 1958* to include a legislative framework for the collection of personal identifiers, such as fingerprints, photographs, measurements, recordings, signatures, iris scans, and other personal identifiers as prescribed in the regulations from non-citizens at key points in the immigration process.

The bill also includes provisions intended to protect non-citizens who are required to provide their personal identifiers, and prescribes general rules that must be followed when carrying out an identification test on a non-citizen, or accessing and disclosing information.

The bill was previously considered by the Committee in *Alert Digest No. 8 of 2003* in which it made no comment. After the publication of that *Digest*, the following issue has come to the Committee's attention.

### **Wide discretion**

#### **Items 13, 17, 20, 22, 24 and 28**

The bill provides for the collection of 'personal identifiers' from non-citizens for the purposes of identifying persons entering Australia. A number of the proposed new sections set out, in general terms, situations in which a person may be required to supply such personal identifiers 'if prescribed circumstances exist'. The Committee is concerned about the breadth of the power to prescribe such circumstances.

According to the Explanatory Memorandum 'it is envisaged that the regulations prescribing the situations in which such persons must provide personal identifiers, and the types of identifiers required, will largely mirror the current situations in which proof of identity to determine lawful status is required in the migration context.' The Committee notes that, while it is envisaged that regulations will largely reflect current arrangements, the measures in the bill would permit extensive changes by way of regulation.

While the bill places specific limits upon the types of identifiers which might be prescribed, there do not appear to be any constraints on the power to prescribe the circumstances in which identifiers must be supplied, nor any indication of the nature of the circumstances which might be prescribed.

The Committee recognises that regulations establishing ‘prescribed circumstances’ would be disallowable instruments and subject to the scrutiny of the Senate Regulations and Ordinances Committee. It is possible, however, that such a broad power might be used to implement policy measures which properly should be considered by the Parliament before implementation.

The Committee therefore **seeks the Minister’s advice** as to the scope of the power to prescribe circumstances for these purposes, the nature of the circumstances which might be prescribed, and whether the bill should include measures to limit the circumstances which might be prescribed.

*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 and may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee’s terms of reference.*

## National Animal Welfare Bill 2003

[Introduced into the Senate on 11 August 2003 by Senator Bartlett]

The bill seeks to identify animal welfare as a national issue of concern to promote the responsible care and use of animals, and to protect animals from acts of cruelty.

The bill will primarily achieve this by:

- providing for regulations about codes of practice for animal welfare;
- allowing regulations to require compliance with codes of practice;
- imposing a duty of care on persons in charge of animals;
- regulating and prohibiting certain conduct in relation to animals; and
- requiring a person using an animal for scientific purposes to be registered, and to comply with any scientific use code of practice and a duty of care.

The bill establishes a National Animal Welfare authority to co-ordinate, monitor and review Commonwealth responsibilities for animal welfare, and to appoint inspectors to ensure the welfare, protection and rights of animals.

It also contains a regulation-making power.

### **Search without warrant Paragraphs 18(1)(d) to (g)**

Paragraphs 18(1)(d) to (g) would provide a variety of reasons for an inspector to enter premises without a warrant. Although the proposer of the bill does not refer, in the Explanatory Memorandum, to principles and recommendations contained in the Committee's *Fourth Report of 2000* on powers of entry and search without a warrant, he does seek to provide appropriate justification for these provisions by reference to the need to assist or protect animals and to seize evidence which might otherwise be destroyed or concealed.

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

**Issue of warrant**

**Clause 22**

The proposer of this bill has, in commenting on clause 18 in the Explanatory Memorandum, acknowledged the ‘fundamental legislative principle that power to enter premises should be conferred only with a warrant issued by a judicial officer.’ Clause 22 would allow an inspector to apply for a warrant from a magistrate or a justice of the peace. The Committee notes, however, that a justice of the peace is not a judicial officer, and **seeks the advice of the Senator sponsoring the bill** as to why the legislative principle referred to was not applied in the drafting of this clause.

*Pending the Senator’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.*

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

### AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (11-14 August)

**Family Law Amendment Bill 2003:** The House of Representatives amended this bill on 13 August 2003. Most of the amendments raise no issues of concern to the Committee, however two amendments give rise to an issue of retrospective commencement, similar to those discussed in relation to this bill in the *Eighth Report of 2003*. In this case, however, the impact of this retrospectivity is explained in the Supplementary Explanatory Memorandum tabled by the Attorney-General in support of the amendments.

#### **Retrospective commencement Schedule 5**

An amendment to Schedule 5 inserts a new item amending section 90C of the principal Act in relation to financial agreements. An amendment to the commencement clause provides that the item commences immediately after the commencement of the Family Law Amendment Act 2000, which occurred on 27 December 2000. The Supplementary Explanatory Memorandum explains that the provision 'will not impact on parties who have already made such financial agreements.'

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

### AMENDMENTS IN THE SENATE (11-14 August)

**Civil Aviation Legislation Amendment Bill 2003:** The Senate amended this bill on 14 August 2003. The amendments raise no issues within the Committee's terms of reference.

**Workplace Relations Amendment (Transmission of Business) Bill 2002:** The Senate amended this bill on 13 August 2003. The amendments raise 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>						
<i>Charter of the United Nations Amendment Act 2002</i>	15(4.12.02)	14.11.02	5.12.02	Foreign Affairs	5.12.02	5(18.6.03)
Communications Legislation Amendment Bill (No. 1) 2002	7(21.8.02)	27.6.02	13.5.03	Communications, Information Technology and the Arts	22.8.02	4(14.5.03)
<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	2(5.3.03)
<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	1(5.2.03)
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	16.6.03	Industry, Tourism and Resources	22.8.02	17.9.02	5(18.6.03)
<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>							
A Better Future for Our Kids Bill 2003	6(18.6.03)	26.5.03		Ms Roxon MP	19.6.03		
Age Discrimination Bill 2003	8(13.8.03)	26.6.03		Attorney-General	14.8.03		
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)
Australian Protective Service Amendment Bill 2003	8(13.8.03)		26.6.03	Justice and Customs	14.8.03		
Aviation Transport Security Bill 2003	5(14.5.03)	27.3.03		Transport and Regional Services	15.5.03	20.6.03	
Civil Aviation Legislation Amendment Bill 2003	5(14.5.03)	27.3.03	11.8.03	Transport and Regional Services	15.5.03	6.6.03	7(13.8.03)
Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003	8(13.8.03)	25.6.03		Transport and Regional Services	14.8.03		
Communications Legislation Amendment Bill (No. 2) 2003	8(13.8.03)	26.6.03	19.8.03	Communications, Information Technology and the Arts	14.8.03	19.8.03	8(20.8.03)
Communications Legislation Amendment Bill (No. 3) 2003	7(25.6.03)	19.6.03		Communications, Information Technology and the Arts	26.6.03	6.8.03	
Criminal Code Amendment (Hezbollah External Terrorist Organisation) Bill 2003	6(18.6.03)	2.6.03		Mr Crean MP	19.6.03		
Criminal Code Amendment (Hizballah) Bill 2003	6(18.6.03)	29.5.03	16.6.03	Attorney-General	19.6.03		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Criminal Code Amendment (Terrorism) Bill 2002	1(5.2.03)	12.12.02	13.5.03	Attorney-General	6.2.03	7.5.03	4(14.5.03)
Customs Amendment Bill (No. 1) 2003	6(18.6.03)	15.5.03	16.6.03	Justice and Customs	19.6.03	24.6.03	6(25.6.03)
Dairy Industry Service Reform Bill 2003	2(5.3.03)	12.2.03	19.3.03	Agriculture, Fisheries and Forestry	6.3.03	9.4.03	4(14.5.03)
Electoral Amendment (Political Honesty) Bill 2003	5(14.5.03)		27.3.03	Senator Murray		28.4.03	4(14.5.03)
Energy Grants (Credits) Scheme Bill 2003	2(5.3.03)	13.2.03	26.3.03	Treasurer	6.3.03	24.3.03	3(26.3.03)
Family Law Amendment Bill 2003	2(5.3.03)	12.2.03	20.8.03	Attorney-General	6.3.03	20.7.03	8(20.8.03)
Financial Services Reform Amendment Bill 2003	8(13.8.03)	26.6.03		Treasurer	14.8.03		
Late Payment of Commercial Debts (Interest) Bill 2003	3(19.3.03)		6.3.03	Senator Conroy	27.3.03		
Legislative Instruments Bill 2003	8(13.8.03)	26.6.03		Attorney-General	14.8.03		
National Transport Commission Bill 2003	6(18.6.03)	4.6.03	14.8.03	Transport and Regional Services	19.6.03	27.6.03	8(20.8.03)
Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003	6(18.6.03)	5.6.03		Environment and Heritage	19.6.03	4.8.03	
Petroleum (Timor Sea Treaty) Bill 2003	3(19.3.03)	5.3.03	6.3.03	Industry, Tourism and Resources	27.3.03	16.4.03	4(14.5.03)
Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003	3(19.3.03)	5.3.03	6.3.03	Industry, Tourism and Resources	27.3.03	16.4.03	4(14.5.03)

<b>NAME OF BILL</b>	<b>ALERT DIGEST</b>	<b>INTRODUCED HOUSE</b>	<b>SENATE</b>	<b>MINISTER</b>	<b>RESPONSE SOUGHT</b>	<b>RECEIVED</b>	<b>REPORT NUMBER</b>
Private Health Insurance (Reinsurance Trust Fund Levy) Bill 2003	5(14.5.03)	26.3.03	23.6.03	Health and Ageing	15.5.03	18.6.03) 24.6.03)	6(25.6.03)
Student Assistance Amendment Bill 2003	8(13.8.03)	26.8.03		Education, Science and Training	14.8.03		
Taxation Laws Amendment Bill (No. 4) 2003	2(5.3.03)	13.2.03	19.3.03	Treasurer	6.3.03	18.3.03	3(26.3.03)
Textbook Subsidy Bill 2003	7(25.6.03)		18.6.03	Senator Stott Despoja	26.6.03	25.7.03	7(13.8.03)