

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



Alert Digest

No. 10 of 2003

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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.

Abolition of the Gold Travel Pass for Former Politicians (Reflecting Community Standards) Bill 2003

[Introduced into the House of Representatives on 18 August 2003 by Mr Organ as a Private Member's bill]

The bill proposes a comprehensive reduction of travel entitlements for former Members of Parliament and their spouses, and repeals the *Members of Parliament (Life Gold Pass) Act 2002*.

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

The Committee has no comment on this bill.

Australian Citizenship for Eligible De facto Spouses Bill 2003

[Introduced into the House of Representatives on 18 August 2003 by Ms Plibersek as a Private Member's bill]

The bill extends existing ministerial discretion provisions in relation to married couples applying for Australian citizenship to include same-sex and heterosexual de facto couples.

The Committee has no comment on this bill.

Corporate Responsibility and Employment Security Bill 2003

[Introduced into the House of Representatives on 18 August 2003 by Mr Crean as a Private Member's bill]

The bill amends:

- the *Corporations Act 2001* to enable a court to make orders for a related body corporate to pay the whole or part of an insolvent company's debts to its liquidator; and
- the *Workplace Relations Act 1996* to extend provisions concerning reinstatement, legal entitlements and recovery of wages to a related body corporate where a company or employer becomes insolvent.

Retrospective commencement

Subclause 2(1)

By virtue of subclause 2(1) of this bill, all of the amendments proposed, other than the amendments proposed by item 3 of Schedule 2, would be deemed to have commenced at 9 am on 12 September 2001.

The Committee's general approach is to draw attention to any bill which seeks to have retrospective application, and to comment adversely where such a bill has detrimental effect on people. To assist in the consideration of these matters, the Committee would expect the Explanatory Memorandum to set out in detail the reason retrospectivity is sought.

Since the bill does not have an Explanatory Memorandum, and the matter was not addressed by the Member in introducing the bill, the Committee is not aware of the reason for this proposed retrospective commencement. The Committee therefore **seeks the advice of the member sponsoring the bill** as to the reason retrospectivity is sought and whether anyone would be adversely affected by the retrospective application of these provisions.

Pending the Member'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.

Commencement on proclamation Subclause 2(2)

By virtue of subclause 2(2) of this bill, the amendments proposed to be made by item 3 of Schedule 2 would commence on Proclamation, with no further date set for the commencement of those amendments in any event. In effect, the amendments may never be proclaimed, and so may never commence. In this respect, the bill represents a departure from paragraph 17 of *Drafting Direction No. 2 of 2002*, issued by the Office of the Parliamentary Counsel.

In light of the absence of an Explanatory Memorandum, the Committee **seeks the advice of the member sponsoring the bill** as to why these provisions should not commence at some fixed time unless proclaimed sooner.

Pending the Member's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Protection of Australian Flags (Desecration of the Flag) Bill 2003

[Introduced into the House of Representatives on 18 August 2003 by Mrs Draper as a Private Member's bill]

The bill applies criminal sanctions against a person who desecrates or otherwise dishonours or, without legal authority, burns, mutilates or otherwise destroys the Australian National Flag or an Australian Ensign.

The Committee has no comment on this bill.

Quarantine Amendment (Health) Bill 2003

[Introduced into the Senate on 21 August 2003. Portfolio: Health and Ageing]

The bill amends the *Quarantine Act 1908* to:

- enable health clearance (pratique) to be automatically granted to incoming overseas aircraft where appropriate;
- clarify the basis on which a person can be made subject to quarantine, provide a quarantined person the right to seek an independent medical opinion, and provide that persons released under quarantine surveillance cannot be apprehended;
- provide for vector monitoring and control activities, including the right to enter property with consent, in an emergency, or under the terms of a warrant;
- create new vector control offence and penalty provisions; and
- insert new and updated definitions, and make technical amendments to correct references.

The bill also includes savings provisions.

The Committee has no comment on this bill.

Taxation Laws Amendment (A Simpler Business Activity Statement) Bill 2003

[Introduced into the House of Representatives on 18 August 2003 by Mr Latham as a Private Member's bill]

The bill amends the *A New Tax System (Goods and Services Tax) Act 1999* and the *A New Tax System (Goods and Services Tax Administration) Act 1999* to provide a simpler method of calculating Goods and Services Tax payments for small businesses.

The Committee has no comment on this bill.

Trade Practices Amendment (Public Liability Insurance) Bill 2003

[Introduced into the House of Representatives on 18 August 2003 by Mr Griffin as a Private Member's bill]

The bill amends the *Trade Practices Act 1974* to give the Australian Competition and Consumer Commission the power to monitor prices and deal with any price exploitation arising from changes in the law in relation to public liability.

Parliamentary scrutiny

Proposed new subsection 75AZAC(1)

Proposed new subsection 75AZAC(1) of the *Trade Practices Act 1974*, to be inserted by item 4 of Schedule 1 to this bill, would permit the Australian Competition and Consumer Commission to formulate guidelines about when prices for the supply of services may be regarded as being unlawful price exploitation.

Although it appears that such guidelines would be legislative in character, the bill makes no provision for any Parliamentary oversight of their drafting. The Committee therefore **seeks the advice of the member sponsoring the bill** as to the reason for this lack of Parliamentary scrutiny.

Pending the Member'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.

Workplace Relations Amendment (Unfair Dismissal—Lower Costs, Simpler Procedures) Bill 2003

[Introduced into the House of Representatives on 18 August 2003 by Mr Crean as a Private Member's bill]

The bill amends the *Workplace Relations Act 1996* to simplify procedures for the consideration of unfair dismissal cases and to require that claimants seek reinstatement as one of their remedies.

The Committee has no comment on this bill.

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
Trade Practices Amendment (Public Liability Insurance) Bill 2003	Proposed new subsection 75AZAF(4)	Failure to provide information to a public authority	20 penalty units

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE SENATE

(18-21 August)

Australian Heritage Council Bill 2002: The Senate amended this bill on 21 August 2003. The amendments raise no issues within the Committee's terms of reference.

Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002: The Senate amended this bill on 21 August 2003. The amendments raise no issues within the Committee's terms of reference.

Higher Education Legislation Amendment Bill 2003: The Senate amended this bill on 21 August 2003. The amendments raise no issues within the Committee's terms of reference.

Environment and Heritage Legislation Amendment Bill (No. 1) 2002: The Senate amended this bill on 21 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		SOUGHT	RECEIVED	
Bills dealt with in 2002							
<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	20.5.03	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	16.9.02	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	11.2.03	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	3.2.03	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	1(5.2.03)
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	9(10.9.03)
<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	
Bills introduced 2003							
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 National Training Authority Amendment Bill 2003	9(20.8.03)	14.8.03	10.9.03	Education, Science and Training	21.8.03	8.9.03	9(10.9.03)
Australian Protective Service Amendment Bill 2003	8(13.8.03)		26.6.03	Justice and Customs	14.8.03	9.9.03	9(10.9.03)
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	21.8.03	Communications, Information Technology and the Arts	26.6.03	6.8.03	9(10.9.03)
Criminal Code Amendment (Hezbollah External Terrorist Organisation) Bill 2003	6(18.6.03)	2.6.03		Mr Crean MP	19.6.03		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
		HOUSE	SENATE				
Criminal Code Amendment (Hizballah) Bill 2003	6(18.6.03)	29.5.03	16.6.03	Attorney-General	19.6.03		
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)
					21.8.03		
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	9.9.03	Attorney-General	14.8.03		
National Animal Welfare Bill 2003	9(20.8.03)		11.8.03	Senator Bartlett	21.8.03		
Migration Legislation Amendment (Identification and Authentication) Bill 2003	9(20.8.03)	26.6.03		Immigration and Multicultural and Indigenous Affairs	21.8.03		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
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)	26.6.03		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)