

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



Alert Digest

No. 14 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.

TABLE OF CONTENTS

- Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003 5

- **The Committee has commented on this bill**

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.

Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Bill 2003

[Introduced into the House of Representatives on 5 November 2003. Portfolio: Attorney-General]

The bill proposes to amend the *Criminal Code Act 1995* to create a basis for the identification and listing of Hamas' military wing (Izz al-Din al Qassam Brigades) and Lashkar-e-Tayyiba as terrorist organisations under Australian law, if the Minister is satisfied that either or both organisations are engaged in terrorist activity. This measure would avoid the existing requirement that the organisations be first identified in, or pursuant to, a decision of the United Nations Security Council as terrorist organisations.

The bill also inserts a provision to enable a listing in a regulation of either or both of the Hamas' Izz al-Din al Qassam Brigades and the Lashkar-e-Tayyiba Organisation to operate retrospectively from the time at which a public announcement is made by a Minister stating the Government's intention to specify the organisations in regulations.

Retrospective commencement **Clause 2**

By virtue of clause 2, this bill is to commence on 5 November 2003, the day on which it was introduced into the House of Representatives. In view of the fact that the Senate was not sitting on that day, it is proposed that this bill commence retrospectively. The purpose of the bill is to allow regulations to be made (and made retrospectively) declaring the Hamas organisation, and the Lashkar-e-Tayyiba organisation, to be terrorist organisations for the purposes of the *Criminal Code*. The possible retrospective nature of the proposed regulations is considered in the next paragraph, but it is difficult to see the reason for the proposed retrospectivity of this bill. Despite the proposal for retrospective regulations, it is presumed that such regulations could not be made until this bill has been assented to. Once it is assented to, any regulations having retrospective effect must be made within 60 days of either the Attorney-General or another Minister making a public announcement to the effect that such regulations are going to be made. It appears that the Attorney-General could make such a public statement on 5 November 2003

(for instance) and, provided that the bill was assented to within the next 60 days, regulations could be made immediately after Assent, having retrospective effect to that date, and such regulations would be valid by virtue of proposed new subsections 102.1(11A) and (11B) of the *Criminal Code*. The Committee **seeks the Attorney-General's advice** as to the reason for the retrospectivity proposed by clause 2.

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.

Criminal liability by public announcement Proposed new subsections 102.1(11A) and (11B)

Proposed new subsections 102.1(11A) and (11B) of the *Criminal Code*, to be inserted by item 8 of the Schedule to this bill, would permit the making of regulations having effect retrospectively to the day on which the Attorney-General or another Minister makes an announcement to the effect that such regulations will be made. It appears that the regulations will have the effect of imposing criminal liability on members of the Hamas organisation or of the Lashkar-e-Tayyiba organisation, and the bill will therefore create criminal liability by public announcement. It is suggested that these provisions may be regarded as trespassing on personal rights and liberties, but that whether such a trespass would be undue is a matter to be left for decision by the Senate as a whole.

The Committee has always been alert to legislation by press release. The Senate should be aware that the provision has some of these characteristics.

The Senate should also be aware that criminal liability will be rolled as a consequence of the proposed definition of the organisations in items 1 and 2 of Schedule 1.

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.