

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



Alert Digest

No. 5 of 2004

31 March 2004

Senate Standing Committee
for the
Scrutiny of Bills

Alert Digest No. 5 of 2004

31 March 2004

ISSN 1329-668X

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.

TABLE OF CONTENTS

Agriculture and Veterinary Chemicals Legislation Amendment (Name Change) Bill 2004	5
Bankruptcy (Estate Charges) Amendment Bill 2004	6
• Bankruptcy Legislation Amendment Bill 2004	7
• Classification (Publications, Films and Computer Games) Amendment Bill 2004	9
Commonwealth Electoral Amendment (Representation in the House of Representatives) Bill 2004	11
Excise and Other Legislation Amendment (Compliance Measures) Bill 2004	12
Flags Amendment (Eureka Flag) Bill 2004	13
• Law and Justice Legislation Amendment Bill 2004	14
• Migration Amendment (Judicial Review) Bill 2004	16
Surveillance Devices Bill 2004	18
• Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004	19
Provisions of bills which impose criminal sanctions for a failure to provide information	20
Parliamentary amendments and the Committee's terms of reference	21

- **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.

Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Bill 2004

[Introduced into the House of Representatives on 24 March 2004. Portfolio: Agriculture, Fisheries and Forestry]

The bill amends the *Agricultural and Veterinary Chemicals Act 1994*, the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, the *Agricultural and Veterinary Chemicals Code Act 1994*, the *Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994* and the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* to change the name of the National Registration Authority for Agricultural and Veterinary Chemicals to the Australian Pesticides and Veterinary Medicines Authority.

The bill also amends the *Agricultural and Veterinary Chemicals Code Act 1994* to introduce measures that protect the logo of the APVMA and its name from inappropriate use.

The Committee has no comment on this bill.

Bankruptcy (Estate Charges) Amendment Bill 2004

[Introduced into the House of Representatives on 24 March 2004. Portfolio: Attorney-General]

Introduced with the Bankruptcy Legislation Amendment Bill 2004, the bill amends the *Bankruptcy (Estate Charges) Act 1997* to make consequential and technical amendments that reflect the repeal of the three types of administrations and the proposed introduction of personal insolvency agreements under Part X of the *Bankruptcy Act 1966*.

The Committee has no comment on this bill.

Bankruptcy Legislation Amendment Bill 2004

[Introduced into the House of Representatives on 24 March 2004. Portfolio: Attorney-General]

The bill amends the *Bankruptcy Act 1966* to:

- replace the three existing types of arrangements with creditors without sequestration under Part X of the Act with a single type of arrangement to be called a personal insolvency agreement;
- streamline the process for setting aside and terminating personal insolvency agreements; and
- strengthen the post-bankruptcy compositions and schemes of arrangement provisions of Division 6 of Part IV of the Act relating to the disclosure obligations of debtors, creditors and trustees, so that they mirror the proposed provisions in Part X.

The bill also amends 15 other Acts to make minor and technical amendments to improve the operation of the Act and to correct a drafting error in the transitional provisions contained in the *Bankruptcy Legislation Amendment Act 2002*.

Retrospectivity

Schedule 7, items 1 and 2

By virtue of item 5 in the table in subclause 2(1), the amendments proposed in items 1 and 2 of Schedule 7 to this bill would commence retrospectively, immediately after the commencement of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2002*, on 5 May 2003. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people.

Although the Explanatory Memorandum gives a very full explanation of the reason for these amendments, and indicates that bankruptcy practitioners have been operating on the assumptions contained in the amendments since 5 May 2003, there is no express assurance, either in the Explanatory Memorandum or

in the Second Reading speech, that the retrospectivity will not operate to the detriment of any person. The Committee **seeks the Attorney-General's assurance** that no person will be adversely affected by the retrospective commencement of these amendments.

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.

Classification (Publications, Films and Computer Games) Amendment Bill 2004

[Introduced into the House of Representatives on 24 March 2004. Portfolio: Attorney-General]

The bill amends the *Classification (Publications, Films and Computer Games) Act 1995* to provide for:

- common classification types for films and computer games; and
- the inclusion of age references in the names of restricted classification types, thereby distinguishing between advisory classifications and legally restricted classifications.

The bill also makes consequential amendments to the *Broadcasting Services Act 1992* to update references to classification types.

The bill also contains application provisions.

Commencement on proclamation Schedules 1 and 2

By virtue of item 2 in the table in subclause 2(1), the amendments proposed in Schedules 1 and 2 to this bill would commence on Proclamation, and may not commence for up to 12 months after Assent. The Committee expects that where legislation is expressed to commence on proclamation, the date should be no later than 6 months after the Parliament passes the relevant measure. Where the period will be longer, the Committee expects that the explanatory memorandum will provide an explanation for the delayed commencement. In this case, the explanatory memorandum observes that such delayed commencement “is necessary to allow sufficient time for complementary amendments to State and Territory classification enforcement legislation to be enacted.”

The Committee also notes that in this case the commencement is nevertheless still fixed at a maximum of 12 months after Assent. The Committee congratulates the Attorney-General for providing for a fixed time of

commencement, despite the need for the federal legislation to come into force at the same time as complementary State and Territory legislation.

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

**Commonwealth Electoral Amendment
(Representation in the House of Representatives) Bill
2004**

[Introduced into the House of Representatives on 25 March 2004. Portfolio:
Special Minister of State]

The bill amends the *Commonwealth Electoral Act 1918* to ensure transparency and certainty of the process for calculating the representative entitlement for each of the states and territories in the House of Representatives and to maintain the Northern Territory's current representation of two members at the next federal election.

The Committee has no comment on this bill.

Excise and Other Legislation Amendment (Compliance Measures) Bill 2004

[Introduced into the House of Representatives on 25 March 2004. Portfolio: Treasury]

The bill amends the *Excise Act 1901* to improve compliance and administration arrangements by:

- enabling the Commissioner of Taxation to control the delivery of excisable goods for exportation by permissions and requiring payment of an excise duty equivalent in certain circumstances;
- including tobacco seed and plant in provisions relating to permission for movement of tobacco leaf, and unlawful movement and penalty provisions;
- enabling immediate disposal of certain seized forfeited goods and use of evidentiary certificates relating to those goods in prosecutions and certain other proceedings;
- enabling licence and certain other information about a person to be disclosed to a second person to ensure that the second person is able to satisfy legislative requirements; and
- repealing a *Customs Act 1901* provision relating to exportation of excisable goods.

The Committee has no comment on this bill.

Flags Amendment (Eureka Flag) Bill 2004

[Introduced into the Senate on 23 March 2004 by Senator Marshall as a Private Senator's bill.]

The bill proposes to amend the *Flags Act 1953* to recognise the Eureka Flag as an official flag of Australia.

The Committee has no comment on this bill.

Law and Justice Legislation Amendment Bill 2004

[Introduced into the House of Representatives on 24 March 2004. Portfolio: Attorney-General]

The bill amends twenty-two Acts to correct minor drafting errors, clarify the operation of certain provisions, update references to organisations and other Acts, and update legislation to increase efficiencies and reflect current practices.

The bill also contains application provisions.

Retrospective commencement Schedule 1, items 2 and 13

By virtue of items 3 and 7 in the table in subclause 2(1), the amendments proposed in items 2 and 13 of Schedule 1 to this bill would commence on 1 January 2003 and 12 October 2001 respectively. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the Explanatory Memorandum points out that in each case the amendment proposed is no more than editorial, in that it corrects a drafting error.

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

Retrospective commencement Schedule 1, item 39

By virtue of item 10 in the table in subclause 2(1), the amendment proposed in item 39 of Schedule 1 to this bill would commence retrospectively on 31 August 1998. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the

Explanatory Memorandum points out that the amendment removes a reference which became obsolete on that date.

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

Migration Amendment (Judicial Review) Bill 2004

[Introduced into the House of Representatives on 25 March 2004. Portfolio: Immigration and Multicultural and Indigenous Affairs]

The bill amends the *Migration Act 1958* to redefine the meaning of ‘privative clause decision’ to extend the definition of that term to include a purported decision which was subject to jurisdictional error. This amendment will restore the original procedural intent of the migration judicial review scheme in relation to:

- time limits on judicial review applications;
- exclusive jurisdiction of the High Court, Federal Court and Federal Magistrates Court to hear judicial review of migration applications; and
- restrictions on judicial review of decisions where merits review of primary decisions is available.

The bill also makes a consequential amendment to the *Administrative Decisions (Judicial Review) Act 1997* to reflect the redefinition of a ‘privative clause decision’.

The bill also contains application provisions.

Limited right of review or appeal Schedule 1, item 2

The new definition of *privative clause decision* to be inserted by item 2 of Schedule 1 to this bill would extend the definition of that term to include a purported decision which was subject to jurisdictional error. The amendment therefore increases the range of decisions concerning migrants in relation to which there is only a limited right of review or appeal. To that extent, this amendment may be regarded as trespassing on personal rights and liberties. The Committee, however, leaves for the Senate as a whole to decide whether the amendment trespasses *unduly* on those rights and liberties.

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.

Surveillance Devices Bill 2004

[Introduced into the House of Representatives on 24 March 2004. Portfolio: Attorney-General]

The bill consolidates and modernises current surveillance device laws and provides law enforcement agencies with access to the surveillance tools necessary to protect Australians and to investigate crime. The bill includes provisions that:

- establish a structured process for the use of surveillance devices both in Australia and overseas;
- extend the issue of surveillance device warrants in certain circumstances; and
- include a range of strong accountability measures relating to information obtained from surveillance activities.

The bill also makes consequential, transitional and savings amendments to the *Australian Federal Police Act 1979*, the *Criminal Code Act 1995*, the *Customs Act 1901* and the *Mutual Assistance in Criminal Matters Act 1987*.

The bill also contains a regulation-making power.

The Committee has no comment on this bill.

Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004

[Introduced into the House of Representatives on 25 March 2004. Portfolio: Veterans' Affairs]

The bill amends the *Veterans' Entitlements Act 1986* to give effect to a range of minor policy measures that will enhance services to veterans and their dependants, correct minor policy flaws or align the Act with the social security law.

The bill also contains application and transitional provisions.

Retrospective commencement Schedule 1, items 38, 39, 40 and 42

By virtue of items 9 and 11 in the table in subclause 2(1), the amendments proposed in items 38, 39, 40 and 42 of Schedule 1 to this bill would commence retrospectively on 1 July 1995. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people.

In this case, the Explanatory Memorandum points out the purpose of these amendments is to “align the income and assets test treatment of ATO small superannuation accounts and private rental income” in the *Veterans' Entitlements Act 1986* with that in the *Social Security Act 1991*. However, neither in the Explanatory Memorandum nor in the Second Reading speech is there any indication of whether the retrospectivity of these amendments would detrimentally affect any person. The Committee **seeks the Minister's advice** as to whether any person would be adversely affected by the retrospective commencement of these amendments.

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.

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
Surveillance Devices Bill 2004	Clause 56	Fail to provide information to a public authority	Imprisonment for 6 months

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE SENATE

(22 to 25 March 2004)

Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003:

The Senate amended this bill on 23 March 2004. 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 - 2004

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
Bill dealt with in 2002 still awaiting reporting						
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	
Bills dealt with in 2003 still awaiting reporting						
<i>ASIO Legislation Amendment Act 2003</i>	16(3.12.03)	27.11.03	3.12.03	Attorney-General	4.12.03 9.2.04	1(11.2.04)
Australian Protective Service Amendment Bill 2003 Amendments	8(13.8.03)	15.10.03	26.6.03	Justice and Customs	14.8.03 9.9.03 27.11.03 4.2.04	9(10.9.03) 1(11.2.04)
Aviation Transport Security Bill 2003 Amendments	5(14.5.03) 1(11.2.04)	27.3.03	10.2.04	Transport and Regional Services	15.5.03 20.6.03 12.2.04 27.2.04	1(11.2.04) 2(3.3.04)
Broadcasting Services Amendment (Media Ownership) Bill 2002 [No. 2]	15(26.11.03)	5.11.03	2.12.03	Communications, Information Technology and the Arts	27.11.03 24.3.04	5(31.3.04)
Building and Construction Industry Improvement Bill 2003	15(26.11.03)	6.11.03	10.2.04	Employment and Workplace Relations	27.11.03 12.1.04	1(11.2.04)
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 29.10.03	

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Corporate Responsibility and Employment Security Bill 2003	10(10.9.03)	18.8.03	--	Hon S F Crean MP	11.9.03	--	RNP
Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Bill 2003	16(3.12.03)	16.2.04	28.11.03	Agriculture, Fisheries and Forestry	4.12.03	5.2.04	1(11.2.04)
Late Payment of Commercial Debts (Interest) Bill 2003	3(19.3.03)		6.3.03	Senator Conroy	27.3.03		
Migration Legislation Amendment (Identification and Authentication) Bill 2003	9(20.8.03)	26.6.03	7.10.03	Immigration and Multicultural and Indigenous Affairs	21.8.03	10.2.04	1(11.2.04)
Sexuality and Gender Identity Discrimination Bill 2003	16(3.12.03)		25.11.03	Senator Greig	4.12.03		
Superannuation Safety Amendment Bill 2003	16(3.12.03)	27.11.03	11.2.04	Treasurer/Revenue	4.12.03	1.3.04	2(3.3.04)
Trade Practices Amendment (Public Liability Insurance) Bill 2003	10(10.9.03)	18.8.03	--	Mr A Griffin MP	11.9.03	--	RNP
Bills dealt with in 2004							
Australian Crime Commission Amendment Bill 2004	1(11.2.04)	8.3.04	4.12.03	Attorney-General/Justice & Customs	12.2.04	1.3.04	2(3.3.04)
Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Bill 2003	1(11.2.04)	4.12.03	11.3.04	Justice and Customs	12.2.04	8.03.04	4(24.3.04)
Dairy Produce Amendment Bill 2003	1(11.2.04)	3.12.03	24.3.04	Agriculture, Fisheries and Forestry	12.2.04	18.3.04	4(24.3.04)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	INTRODUCED SENATE	MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	2(3.3.04)	28.6.99	12.11.98	Environment and Heritage	4.3.04		
Military Rehabilitation and Compensation Bill 2003	1(11.2.04)	4.12.03	1.3.04	Veterans' Affairs	12.2.04	23.3.04	4(24.3.04)