

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



Alert Digest

No. 8 of 2004

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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.

Anti-terrorism Bill (No. 2) 2004

[Introduced into the House of Representatives on 17 June 2004. Portfolio: Attorney-General]

The bill amends various Acts to:

- create powers to demand, confiscate and seize foreign travel documents to ensure that those suspected of serious offences or harmful conduct are prevented from leaving Australia on a foreign travel document;
- insert new offences in relation to misrepresentation and misuse of foreign travel documents or false foreign travel documents;
- ensure that those subject to a request by the Director-General of the Australian Security Intelligence Organisation (ASIO) to the Minister for consent to apply for a questioning warrant are prevented from leaving Australia;
- strengthen counter-terrorism legislation by extending the application of offence provisions under Division 102 of the Criminal Code to individuals associating with a listed terrorist organisation, or individuals who are members or promote or direct the activities of such an organisation, or assist the organisation to continue to exist or to expand;
- exempt from the application of the *Administrative Decisions (Judicial Review) Act 1977* any decision of the Attorney-General under the Act on the grounds of security and decisions of the Attorney-General under Part IV of the *Transfer of Prisoners Act 1983*;
- include security as a third ground for transfer between State or Territory prisons for federal, State and Territory prisoners, as well as for persons charged with and remanded in custody for an offence; and
- amend the forensic procedure provisions to facilitate effective disaster victim identification in the event that a disaster causing mass casualties, such as a terrorist attack or an aircraft disaster, were to occur within Australia.

The bill also contains a regulation-making power and an application provision.

Personal rights and liberties
Schedule 1, item 22

In proposed new subsection 17(1) of the *Passports Act 1938*, to be added by item 22 of Schedule 1 to this bill, an “enforcement officer” (that is, a police officer or Customs officer) may demand that a person surrender their foreign travel documents to the officer merely on the basis that the enforcement officer suspects on reasonable grounds that the travel document has either been obtained by false or misleading conduct, or has been used in the commission of an offence against the Act. Furthermore, by virtue of new subsection 17(2), the person of whom such a demand has been made may commit an offence if he or she fails to surrender the document. It appears that the factual basis of an offence may be created by no more than an enforcement officer’s suspicion, on reasonable grounds, of certain conduct. The Committee considers that this new section may be regarded as trespassing on personal rights and liberties. The Committee, however, **leaves for the Senate as a whole** the question of whether the bill *unduly* trespasses on those rights.

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

Excluding judicial review
Schedule 4, item 1

By virtue of new paragraph (xb) and (xc) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977*, to be inserted by item 1 of Schedule 4 to this bill, two types of decisions made by the Attorney-General relating to the transfer of prisoners would be removed from the purview of the 1977 Act. The Committee is concerned with bills that would reduce the review rights of defendants, specifically if they remove the right of defendants to access federal administrative law procedures and remedies. The Explanatory Memorandum describes the effect of these changes, but does not provide a reason for this denial of judicial review of administrative decisions. The

Committee therefore **seeks the Attorney-General's advice** as to the reason for this proposed amendment.

The Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Australian Energy Market Bill 2004

[Introduced into the House of Representatives on 17 June 2004. Portfolio: Industry, Tourism and Resources]

Introduced with the Trade Practices Amendment (Australian Energy Market) Bill 2004 to provide for a national legislative framework for the operation of an Australian energy market, the bill applies the National Electricity Law, the National Electricity Code (and other Rules) and regulations as Commonwealth law in offshore areas. The bill also contains a regulation-making power to allow regulations to prescribe further State and Territory energy laws to be applied in the offshore areas.

The total package is intended to improve the quality, timeliness and national character of the Australian energy market. The Commonwealth legislation complements legislation which is to be passed by State and Territory Governments in the coming months.

Commencement on proclamation

Clauses 3 to 14

By virtue of item 2 in the table in subclause 2(1), clauses 3 to 14 of this bill might commence on Proclamation, but in any event must commence 12 months after Assent.

The Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee will not usually comment where the period of delayed commencement is 6 months or less, but where the delay is longer would expect that the Explanatory Memorandum will comply with both paragraph 18 of Drafting Direction 2003, No. 3 and paragraph 6.17 of the *Legislation Handbook*.

Although the item does ensure commencement at a specified time, no reason for the delay has been provided in the Explanatory Memorandum. The Committee therefore **seeks the Minister's advice** as to the reason for the potential delay in commencement longer than six months after Assent.

Pending the Minister'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.

Delegation of legislative power Clauses 6 and 7

Clauses 6 and 7 of this bill would apply as a law of the Commonwealth legislative provisions set out in Schedule 1 to the *National Electricity (South Australia) Act 1996* of South Australia and regulations made thereunder. Clearly, when these provisions of South Australian law become part of the law of the Commonwealth, they will not have been considered either by this Committee or by the Regulations and Ordinances Committee. Equally clearly, clauses 6 and 7 would delegate the legislative power of the Commonwealth. However, as this bill is part of a national scheme of legislation for the energy market, the Committee **leaves for the Senate as a whole** the question of whether that delegation is inappropriate.

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

Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004

[Introduced into the House of Representatives on 16 June 2004. Portfolio: Justice and Customs]

Introduced with the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004, the bill amends the *Customs Tariff Act 1995* to extend the provisions of the Textile, Clothing and Footwear Strategic Investment Program for another ten years by:

- reducing the customs duty rates applicable to a range of textile yards, fabrics, certain finished textile goods and footwear parts which will be dutiable at 7.5% from 1 January 2005 to 5% from 1 January 2010;
- reducing the customs duty rates applicable to a range of footwear, cotton sheeting and woven and knitted fabrics of various textile materials which will be dutiable at 10% from 1 January 2005 to 5% from 1 January 2010;
- reducing the customs duty rates applicable to most articles of apparel and certain finished textiles which will be dutiable at 17.5% from 1 January 2005 to 10% from 1 January 2010 and to 5% from 1 January 2015; and
- creating a new concessional item in Schedule 4 to the Tariff to enable the operation of a Product Diversification Scheme for certain clothing and finished textiles.

The Committee has no comment on this bill.

Renewable Energy Amendment (Increased MRET) Bill 2004

[Introduced into the Senate on 17 June 2004 by Senator Lees as a Private Senator's bill.]

The bill amends the *Renewable Energy (Electricity) Act 2000* to increase the Mandatory Renewable Energy Target from the current target of 2% to 3.5% as part of the shift to reduce greenhouse gas emissions by the energy sector.

The Committee has no comment on this bill.

Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004

[Introduced into the House of Representatives on 16 June 2004. Portfolio: Industry, Tourism and Resources]

Introduced with the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004, the bill amends the *Textile, Clothing and Footwear Strategic Investment Program Act 1999* to:

- extend the provisions of the Textile, Clothing and Footwear Strategic (TCF) Investment Program for another ten years, and to broaden and simplify the scheme;
- establish a ten year small TCF business grants-based program;
- establish a ten year TCF structural adjustment to assist both displaced workers and to encourage industry restructuring;
- introduce a product diversification scheme to encourage local firms to increase production and diversify their product range;
- establish a supply chain efficiency program from 2010 to 2015 to enable TCF tariffs to be reduced to the general manufacturing rate; and
- extend the Expanded Overseas Assembly Provisions Scheme for a further five years.

The Committee has no comment on this bill.

Trade Practices Amendment (Australian Energy Market) Bill 2004

[Introduced into the House of Representatives on 17 June 2004. Portfolio: Treasury]

Introduced with the Australian Energy Market Bill 2004 to provide for a national legislative framework for the operation of an Australian energy market.

The bill amends the *Trade Practices Act 1974* to provide for the establishment of the Australian Energy Regulator (AER) as a body corporate responsible for the economic regulation of Australian energy markets, and to establish its functions and governing regime. The AER will perform functions and exercise powers as conferred by Commonwealth, State and Territory legislation.

The bill also amends the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) to insert a reference to the *National Electricity (South Australia) Act 1996* of South Australia so that decisions of Commonwealth officers or authorities, such as the AER, under the National Electricity Law, Regulations and Rules, including the National Electricity Code, will be subject to judicial review by the Federal Court under the ADJR Act.

The bill also contains a regulation-making power.

Commencement on proclamation Schedules 1 and 2

By virtue of item 2 in the table in subclause 2(1), Schedules 1 and 2 to this bill might commence on Proclamation, but in any event must commence 12 months after Assent.

The Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee will not usually comment where the period of delayed commencement is 6 months or less, but where the delay is longer would expect that the Explanatory Memorandum will comply with both paragraph 18 of Drafting Direction 2003, No. 3 and paragraph 6.17 of the *Legislation Handbook*.

Although the item does ensure commencement at a specified time, no reason for the delay has been provided in the Explanatory Memorandum. The Committee therefore **seeks the Treasurer's advice** as to the reason for the potential delay in commencement longer than six months after Assent.

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.

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

Recent discussions between the Chairs and Deputy Chairs of Commonwealth, State and Territory Scrutiny Committees have again noted difficulties in the identification and scrutiny of national schemes of legislation. Essentially, these difficulties arise because 'national scheme' bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation. Any requests for amendment are seen to threaten that agreement and that uniformity.

To assist in the early identification of national schemes of legislation, the Committee proposes to note bills that give effect to such schemes as they come before the Committee for consideration.

Australian Energy Market Bill 2004

Trade Practices Amendment (Australian Energy Market) Bill 2004

The bills are part of a new national legislative framework which has been developed with all States and Territories through a new intergovernmental agreement — the *Australian Energy Market Agreement*.

The Australian Energy Market Bill 2004 provides for a national legislative framework for the operation of an Australian energy market by applying the National Electricity Law, the National Electricity Code (and other Rules) and regulations under the *National Electricity (South Australia) Act 1996* (SA) as Commonwealth law in offshore areas. The bill also contains a regulation-making power to allow regulations to prescribe further State and Territory energy laws to be applied in the offshore areas. This arrangement will improve the quality, timeliness and national character of the Australian energy market and enable the electricity market rules to apply consistently across all participating government jurisdictions. The Explanatory Memorandum advises that this bill complements legislation which is to be passed by State and Territory Governments in coming months.

The energy reforms provide for the establishment of two new bodies, the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC). The Australian Energy Market Commission (AEMC) will be established by South Australian legislation and will be responsible for rule-making and market development. The AER will be established by the Commonwealth through the Trade Practices Amendment (Australian Energy Market) Bill 2004. The AER will be responsible for the economic regulation of the Australian energy markets and will perform functions and exercise powers as conferred by the Commonwealth, State and Territory legislation. The regulator will initially be responsible for regulation of electricity wholesale and transmission arrangements with the intention of expanding his or her responsibilities to gas access arrangements in 2005 and distribution and retail regulation (excluding retail pricing) in 2006 following the development of an agreed national framework. Further legislation will be required to implement these reforms.

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (15 to 17 June 2004)

New International Tax Arrangements (Participation Exemption and Other Measures)

Bill 2004: The House of Representatives amended this bill on 16 June 2004. The amendments raise no issues within the Committee's terms of reference.

Treasury Legislation Amendment (Professional Standards) Bill 2003: The House of Representatives amended this bill on 16 June 2004. The amendments raise no issues within the Committee's terms of reference.

AMENDMENTS IN THE SENATE (15 to 18 June 2004)

Anti-terrorism Bill 2004: The Senate amended this bill on 18 June 2004. The amendments raise no issues within the Committee's terms of reference.

Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004: The Senate amended this bill on 16 June 2004. The amendments raise no issues within the Committee's terms of reference.

Tax Laws Amendment (2004 Measures No. 1) Bill 2004: The Senate amended this bill on 15 June 2004. The amendments raise no issues within the Committee's terms of reference.

Tourism Australia Bill 2004: The Senate amended this bill on 18 June 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	20.4.04	6(12.5.04)
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							
Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004	7(16.6.04)	2.6.04	16.6.04	Agriculture, Fisheries and Forestry	17.6.04		
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bankruptcy Legislation Amendment Bill 2004	5(31.3.04)	24.3.04	15.6.04	Attorney-General	1.4.04	5.5.04	7(16.6.04)
Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004	7(16.6.04)	27.5.04		Justice and Customs	17.6.04	21.6.04	
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)
Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004	6(12.5.04)	1.4.04	15.6.04	Special Minister of State	13.5.04	15.6.04	7(16.6.04)
<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		
Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Bill 2004	7(16.6.04)	13.5.04	15.6.04	Health and Ageing	17.6.04		
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)
Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004	5(31.3.04)	25.3.04	22.6.04	Veterans' Affairs	1.4.04	23.4.04	8(23.6.04)

