

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



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Members of the Committee

Senator G Marshall (Chair)
Senator B Mason (Deputy Chair)
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.

Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004

[Introduced into the House of Representatives on 4 August 2004. Portfolio: Justice and Customs]

The bill repeats the provisions contained in the Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill 2004, excepting two proposed sections reintroduced as the Criminal Code Amendment (Suicide Related Material Offences) Bill 2004.

The bill repeals existing telecommunications offences in the *Crimes Act 1914* and replaces them with new and updated telecommunications offences in the *Criminal Code Act 1995* as a part of the process to include all 'serious Commonwealth offences' in the Code and makes consequential amendments to five Acts, including the *Crimes Act 1914* and the *Criminal Code Act 1995*. The offences relate to the sexual abuse of children, child pornography and 'grooming' activities; offensive use of telecommunications services; modification, including 'rebirthing', of mobile phones and improper use of the emergency call service.

The bill also amends the following Acts:

- *Criminal Code Act 1995* in relation to contamination of goods and dealing in personal financial information;
- *Crimes (Aviation) Act 1991* in relation to child prostitution on board Australian-registered aircraft;
- *Customs Act 1901* to clarify the operation of certain serious drug offences;
- *Cybercrime Act 2001* to correct a misdescription; and
- *Mutual Assistance in Criminal Matters Act 1987* to simplify processes for obtaining material for use in foreign proceedings.

The bill also contains application, savings and transitional provisions.

The Committee repeats the comments it made in *Alert Digest No. 9 of 2004* in relation to the original bill.

Retrospective commencement
Schedule 5, item 9

By virtue of item 5 in the table in subclause 2(1), item 9 of Schedule 5 to this bill will commence retrospectively, immediately after the commencement of item 6 of Schedule 1 to the *Cybercrime Act 2001*. 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 notes that the relevant amendment corrects a misdescription of other legislation, and “does not effect any substantive change to the law”.

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

Absolute criminal liability
Schedule 1, item 1

Proposed new subsections 474.6(2), (4) and (6) of the *Criminal Code*, to be inserted by item 1 of Schedule 1 to this bill, would impose absolute criminal liability in relation to the physical elements of the offences created by subsections 474.6(1), (3) and (5) respectively. The Committee will generally draw to Senators’ attention provisions which create strict liability and absolute liability offences.

Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill. In considering bills which provide for the application of the Criminal Code to offence provisions in Commonwealth legislation, the Committee has generally accepted provisions such as these, which identify *existing* strict liability or absolute liability offences, and sought confirmation that no new strict or absolute liability offences have been created. In this case, the explanatory memorandum observes that these provisions replace existing provisions in the *Crimes Act 1914*, and that the only changes are in the

drafting style, in the light of general provisions as to criminal liability in the *Criminal Code*.

The memorandum further explains that in each case that this element “does not affect the culpability of the offender, but rather sets the perimeters of the offence.”

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

Absolute criminal liability Schedule 1, item 1

Proposed new subsections 474.28(1) and (2) of the *Criminal Code*, also to be inserted by item 1 of Schedule 1 to this bill, would impose absolute criminal liability in relation to one of the physical elements of the offences created by sections 474.26 and 474.27 respectively. The Committee will generally draw to Senators’ attention provisions which create strict liability and absolute liability offences.

Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill. In this case, the explanatory memorandum observes that the “dramatic effect of imposing absolute liability is ameliorated through the provision of a specific defence based on belief about age” in proposed subsections 474.29(1) and (2) respectively.

It appears that, reading both provisions together, they have the effect of reversing the onus of proof, and require a defendant to prove a reasonable belief in the age of other possible participants in criminal activity. The memorandum further explains, “Applying absolute liability to this element of each offence, together with a belief of age defence, is consistent with the child sex tourism offences in ... the *Crimes Act 1914*.”

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

Criminal Code Amendment (Suicide Related Material Offences) Bill 2004

[Introduced into the House of Representatives on 4 August 2004. Portfolio: Justice and Customs]

The bill contains provisions originally contained in the Criminal Code Amendment (Telecommunications and Other Measures) Bill 2004.

The bill amends the *Criminal Code Act 1995* to insert new offences relating to the use of a carriage service, including the Internet, to access or make available suicide related material.

The Committee has no comment on this bill.

Criminal Code Amendment (Workplace Death and Serious Injury) Bill 2004

[Introduced into the Senate on 4 August 2004 by Senator Nettle as a Private Senator's bill.]

The bill amends the *Criminal Code Act 1995* to establish a legal framework to provide for the safety of employees in the workplace and create new offences in relation to industrial manslaughter and causing serious harm to workers.

The bill also amends the *Safety, Rehabilitation and Compensation Act 1988* in relation to monitoring compliance with certain court orders.

The Committee has no comment on this bill.

Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004

[Introduced into the House of Representatives on 5 August 2004. Portfolio: Special Minister of State]

Schedule 1 to the bill amends the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* to provide that prisoners serving a sentence of three years or longer are ineligible to vote.

This replaces the formula based on the electoral cycle and the issuing of writs inserted by the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004*. The bill is also intended to correct and clarify the operation of related provisions.

Schedules 2 and 3 to the bill amend the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* to repeal certain provisions relating to the early closure of rolls for referendums; and to clarify evidentiary requirements for proof of name and address on enrolment.

The bill also contains transitional provisions.

Retrospective commencement Subclause 2(1), items 2 to 9

By virtue of items 2 to 9 in the table in subclause 2(1), the amendments proposed in the Schedules to this bill will commence retrospectively, on either 13 July 2004 or 10 August 2004, immediately after the commencement of various provisions in the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004*. The Committee noted concerns with the bill for this Act in its Seventh Report and in *Alert Digest No. 9 of 2004* at p.47.

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 notes, in paragraphs 3 and 4, that the amendments proposed in Schedules 2 and 3 either repeal redundant provisions or clarify the operation of provisions

already enacted. The explanatory memorandum assures the reader that the amendments “do not have any detrimental effect on people’s rights.” The explanatory memorandum also notes, in paragraph 21, that the retrospective commencement of the amendments proposed in Schedule 1 “will ensure that [items in the earlier Act], which do not have the effect as agreed by the Parliament, do not operate.”

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

Higher Education Legislation Amendment Bill (No. 3) 2004

[Introduced into the House of Representatives on 5 August 2004. Portfolio: Education, Science and Training]

The bill makes numerous amendments to the *Higher Education Support Act 2003*, including amendments relating to funding under the Commonwealth Grants Scheme; the continuation of higher education summer schools; Commonwealth-supported student assistance; repayment provisions for advances to higher education providers; and undergraduate and postgraduate higher education awards.

The bill also amends the following Acts:

- *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* to provide transitional arrangements for the repayment of ‘special purpose’ grants and for OS-HELP prior study requirements; and to correct an error in a definition.
- *Australian National University Act 1991* to extend the time within which the Minister must make appointments to the ANU Council; and
- *Australian Research Council Act 2001* to update the annual appropriations to reflect revised forward estimates.

Retrospective commencement Schedule 1, items 45 and 46

By virtue of items 3 and 6 in the table in subclause 2(1), the amendments proposed in items 45 and 46 of Schedule 1 and in item 9 of Schedule 2 to this bill will commence retrospectively, on 13 July 2004 or 1 January 2004 respectively, immediately after the commencement of two earlier Acts. 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. The explanatory memorandum comments that the first two of these proposals are “Technical amendments” correcting a

cross-reference, and the last “Corrects an error in [a] definition”. It appears that none of these amendments will make any substantive change to the law.

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

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							
<i>Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Act 2004</i>	7(16.6.04)	2.6.04	16.6.04	Agriculture, Fisheries and Forestry	17.6.04	24.6.04	9(4.8.04)
Anti-terrorism Bill (No. 2) 2004	8(23.6.04)	17.6.04	3.8.04	Attorney-General	24.6.04	10.8.04	10(11.8.04)
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	
<i>Australian Energy Market Act 2004</i>	8(23.6.04)	17.6.04	23.6.04	Industry, Tourism and Resources	24.6.04	24.6.04	9(4.8.04)
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)
<i>Customs Legislation Amendment (Airport, Port and Cargo Security) Act 2004</i>	7(16.6.04)	27.5.04	24.6.04	Justice and Customs	17.6.04	21.6.04	9(4.8.04)
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	9.8.04	10(11.8.04)
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)
<i>Trade Practices Amendment (Australian Energy Market) Act 2004</i>	8(23.6.04)	17.6.04	23.6.04	Treasury	24.6.04	24.6.04	9(4.8.04)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	SENATE	MINISTER	RESPONSE SOUGHT	RECEIVED	REPORT NUMBER
US Free Trade Agreement Implementation Bill 2004	9(4.8.04)	23.6.04		Trade	5.8.04		
US Free Trade Agreement Implementation (Customs Tariff) Bill 2004	9(4.8.04)	23.6.04		Trade	5.8.04		
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)
Water Efficiency Labelling and Standards Bill 2004	9(4.8.04)	24.6.04		Environment and Heritage	5.8.04		

