



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

SEVENTH REPORT

OF

2003

13 August 2003

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ISSN 0729-6258

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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.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SEVENTH REPORT OF 2003

The Committee presents its Seventh Report of 2003 to the Senate.

The Committee draws the attention of the Senate to clauses of the following bills which contain provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Civil Aviation Legislation Amendment Bill 2003

Textbook Subsidy Bill 2003

Civil Aviation Legislation Amendment Bill 2003

Introduction

The Committee dealt with this bill in *Alert Digest No. 5 of 2003*, in which it made various comments. The Minister for Transport and Regional Services has responded to those comments in a letter dated 4 June 2003. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Minister's response are discussed below.

Extract from Alert Digest No. 5 of 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Minister for Science. [Portfolio responsibility: Transport and Regional Services]

Schedule 1 to the bill proposes to amend the *Civil Aviation Act 1988* to provide for the simplification and international harmonisation of Australia's civil aviation regulatory regime; enable the Civil Aviation Safety Authority (CASA) to enter into certain agreements with the national airworthiness authorities of other countries; and make minor corrections to provisions relating to dealing with goods seized as part of an investigation.

Schedule 2 to the bill proposes to amend the *Air Navigation Act 1920* to align certain definitions with the *Civil Aviation Act 1988*.

Schedule 3 to the bill proposes to amend the *Airports Act 1996* to repeal a redundant provision in relation to ministerial declarations of airport services.

Commencement on proclamation

Subclause 2(3)

By virtue of subclause 2(3) of this bill, the provisions referred to in items 2 and 3 of the table to subclause 1 are to commence on Proclamation, which may occur up to 12 months after Assent, after which they commence automatically. The Explanatory Memorandum, however, fails to comply with paragraph 18 of Drafting Direction No. 2, 2002, in that it provides no reason for commencement being deferred beyond the six months referred to in that Drafting Direction. The Committee therefore **seeks the Minister's advice** as to the reason for the disregard of paragraph 18 of the Drafting Direction, and also an explanation for the extended deferral of commencement.

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.

Relevant extract from the response from the Minister

I refer to the request by the Senate Standing Committee for the Scrutiny of Bills (the Committee) for an explanation regarding the delay in commencement of certain provisions of the Civil Aviation Legislation Amendment Bill 2003 (the Bill), and for a reason why paragraph 18 of the Drafting Direction No. 2, 2002, was disregarded, as reflected in the Committee's Alert Digest No. 5, 2003. Paragraph 18 of that Drafting Direction specifies that if the period before commencement of a provision is longer than 6 months then an explanation should appear in the Explanatory Memorandum.

Items 3 and 8 of the table to subclause 2(1) of the Bill (ie. item 2 of Schedule 1 and item 1 of Schedule 2 of the Bill) will commence on a date to be fixed by proclamation or 12 months from Royal Assent, whichever is earlier. As explained at the foot of page 10 of the Explanatory Memorandum, in the note on item 2 of Schedule 1 of the Bill (ie. item 3 in the table under subclause 2(1) of the Bill), the reason for the delayed commencement is to align the commencement of those provisions of the Bill with the commencement of a substantial package of regulations being made under the *Civil Aviation Act 1988* ('the Act') which relate to aircraft maintenance, definitions and offence provisions. Those regulations are currently scheduled to be put before the Governor-General for making in July or August this year. However, there is still some residual uncertainty about when those regulations will come into effect, owing to the need for CASA to finalise a plan for implementation of the whole body of civil aviation regulations which are being re-written as part of the organisation's Regulatory Reform Program.

The above reason for delayed commencement also applies to item 8 of the table to subclause 2(1) (ie. item 1 Schedule 2 of the Bill) which is to commence at the same time as item 3 of the table. The flexibility in the commencement date for these items is designed to cater for the uncertainty in the commencement of the regulations to which they relate.

Items 2, 4 and 6 of the table to subclause 2(1) of the Bill (referring to items 1, 3 and 8-18 of Schedule 1 of the Bill) also commence on a date to be fixed by proclamation, or 12 months from Royal Assent, whichever is earlier. The reason for the flexibility in the commencement of those amendments is similar to that set out above, to align with the commencement of regulations which are related to the amendments.

The Committee thanks the Minister for this response. The Committee notes, however, that it would have been preferable if the reasons for the delayed commencement of this bill were explained in the part of the Explanatory Memorandum dealing with the commencement provisions, rather than in the part dealing with item 2 of Schedule 1, which does no more than amend the definition of 'Australian aircraft' for the purposes of the *Civil Aviation Act 1988*.

Textbook Subsidy Bill 2003

Introduction

The Committee dealt with this bill in *Alert Digest No. 7 of 2003*, in which it made various comments. Senator Stott Despoja has responded to those comments in a letter dated 15 July 2003. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Senator's response are discussed below.

Extract from Alert Digest No. 7 of 2003

This bill was introduced into the Senate on 18 June 2003 by Senator Stott-Despoja as a Private Senator's bill.

The bill proposes to extend the Educational Textbook Subsidy Scheme beyond 30 June 2004, the date when it is currently due to cease.

Exercise of legislative power

Clause 11

Clause 11 of this bill would permit the Secretary of the Department to issue guidelines "for the performance of functions and duties, and for the exercise of powers, by officers of the Department". This power appears to be legislative in character, but the only Parliamentary oversight of its exercise is that, by force of subclause 11(3), any guidelines must be tabled in each House of the Parliament within five sitting days after they are issued. The Committee **seeks advice of the proposer of the bill** as to whether the guidelines ought not to be disallowable instruments, and therefore subject not only to tabling but also to scrutiny by the Regulations and Ordinances Committee, and possible disallowance if any guidelines were to infringe that Committee's Terms of Reference.

Pending the Senator'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.

Relevant extract from the response from the Senator

Thank you for the committee's letter and for bringing my attention to clause 11 of the Textbook Subsidy Bill 2003.

I note the Committee's comments, however, I would point out that the administration of such a scheme necessarily involves a level of detail which is not normally included in primary legislation. Further, I have ensured that the primary obligations and responsibilities are in the Bill and that the administrative matter which is delegated does not amount to providing any material discretion in relation to the entitlements under the Bill. This means that legislation will determine who is eligible for the subsidy, who must pay the subsidy and how the subsidy is calculated. What forms applicants use, what records are kept and how payments are made will be determined by the Secretary. The arrangements under the Bill differ from the current arrangements under the Educational Textbook Subsidy Scheme (ETSS) administered by the Department of Education, Science and Training. Under the ETSS there is no specific statute which provides the primary obligations or responsibilities. All primary obligations and responsibilities under the ETSS are settled by agreement between DEST and booksellers.

I am aware of the issue of delegating a guideline issuing power to the Secretary. My intention to retain part control over such delegated authority was to provide at subsection 11 (3) for the guidelines to be tabled in each house of the Parliament.

If the Committee thought that an extra safeguard of disallowance of such guidelines were appropriate, I could make that amendment to the Bill.

On balance, however, the Committee may agree that the matters over which the guidelines have authority are of a minor and often delegated nature in the Australian Public Service that such an amendment may not be necessary.

The Committee thanks the Senator for this response and for undertaking that it would be possible to amend the bill. The Committee recognises the Senator's intention to delegate only minor administrative matters and to provide for the Secretary's guidelines to be tabled in each House. The Committee considers, however, that there is merit in providing for the disallowance of these instruments, as this allows the expertise of the Regulations and Ordinances Committee to be brought to bear should any contentious issues arise in the administration of the scheme.

Trish Crossin
Chair



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6 JUN 2003

Senate Standing C'ttee
for the Scrutiny of Bills

The Hon John Anderson MP
Deputy Prime Minister
Minister for Transport and Regional Services
Leader National Party of Australia

Senator J McLucas
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
Canberra ACT 2600

- 4 JUN 2003

Dear Senator McLucas

I refer to the request by the Senate Standing Committee for the Scrutiny of Bills (the Committee) for an explanation regarding the delay in commencement of certain provisions of the Civil Aviation Legislation Amendment Bill 2003 (the Bill), and for a reason why paragraph 18 of the Drafting Direction No. 2, 2002, was disregarded, as reflected in the Committee's Alert Digest No. 5, 2003. Paragraph 18 of that Drafting Direction specifies that if the period before commencement of a provision is longer than 6 months then an explanation should appear in the Explanatory Memorandum.

Items 3 and 8 of the table to subclause 2(1) of the Bill (ie. item 2 of Schedule 1 and item 1 of Schedule 2 of the Bill) will commence on a date to be fixed by proclamation or 12 months from Royal Assent, whichever is earlier. As explained at the foot of page 10 of the Explanatory Memorandum, in the note on item 2 of Schedule 1 of the Bill (ie. item 3 in the table under subclause 2(1) of the Bill), the reason for the delayed commencement is to align the commencement of those provisions of the Bill with the commencement of a substantial package of regulations being made under the *Civil Aviation Act 1988* ('the Act') which relate to aircraft maintenance, definitions and offence provisions. Those regulations are currently scheduled to be put before the Governor-General for making in July or August this year. However, there is still some residual uncertainty about when those regulations will come into effect, owing to the need for CASA to finalise a plan for implementation of the whole body of civil aviation regulations which are being re-written as part of the organisation's Regulatory Reform Program.

The above reason for delayed commencement also applies to item 8 of the table to subclause 2(1) (ie. item 1 Schedule 2 of the Bill) which is to commence at the same time as item 3 of the table. The flexibility in the commencement date for these items is designed to cater for the uncertainty in the commencement of the regulations to which they relate.

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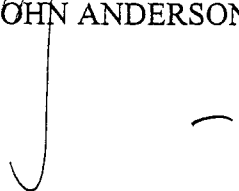
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Please do not hesitate to contact Ms Maureen Ellis, Director, Safety and Regulatory Policy within the Department, on 6274 8087 should you have any concerns regarding this matter.

Yours sincerely



JOHN ANDERSON





Senator Natasha Stott Despoja
Australian Democrat Senator for South Australia

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25 JUL 2003

Senate Standing C'ttee
for the Scrutiny of Bills

Senator Trish Crossin
Chair
Standing Committee for the Scrutiny of Bills
Parliament House
Canberra ACT 2600

Dear Senator Crossin,

Thank you for the committee's letter and for bringing my attention to clause 11 of the Textbook Subsidy Bill 2003.

I note the Committee's comments, however, I would point out that the administration of such a scheme necessarily involves a level of detail which is not normally included in primary legislation. Further, I have ensured that the primary obligations and responsibilities are in the Bill and that the administrative matter which is delegated does not amount to providing any material discretion in relation to the entitlements under the Bill. This means that legislation will determine who is eligible for the subsidy, who must pay the subsidy and how the subsidy is calculated. What forms applicants use, what records are kept and how payments are made will be determined by the Secretary. The arrangements under the Bill differ from the current arrangements under the Educational Textbook Subsidy Scheme (ETSS) administered by the Department of Education, Science and Training. Under the ETSS there is no specific statute which provides the primary obligations or responsibilities. All primary obligations and responsibilities under the ETSS are settled by agreement between DEST and booksellers.

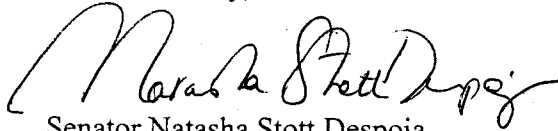
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If the Committee thought that an extra safeguard of disallowance of such guidelines were appropriate, I could make that amendment to the Bill.

' On balance, however, the Committee may agree that the matters over which the guidelines have authority are of a minor and often delegated nature in the Australian Public Service that such an amendment may not be necessary.

I look forward to your response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Natasha Stott Despoja', written in a cursive style.

Senator Natasha Stott Despoja

15 July 2003