SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

TWELFTH REPORT

OF

2003

15 October 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.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TWELFTH REPORT OF 2003

The Committee presents its Twelfth 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:

Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003

Offshore Petroleum (Safety Levies) Bill 2003

Textbook Subsidy Bill 2003

Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003

Introduction

The Committee dealt with this bill in *Alert Digest No. 12 of 2003*, in which it made various comments. The Minister for Family and Community Services has responded to those comments in a letter dated 14 October 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. 12 of 2003

[Introduced into the House of Representatives on 18 September 2003. Portfolio: Family and Community Services]

The bill amends various Acts to give effect to 2003 Budget measures, a related 2001 Budget measure and minor policy changes. The main provisions:

- exclude from income tests payments made under the laws of Germany or Austria to compensate victims of National Socialist persecution;
- allow limited access by Centrelink and the Child Support Agency to new data sources relating to taxation and financial transaction activities;
- improve the operation of the Assurance of Support Scheme for new migrants;
- strengthen provisions to stop payments to social security recipients who are absent from Australia without notice;
- allow for the full recovery of overpayments that arise when a foreign pension payment is made as a lump sum in arrears; and
- reduce the allowable period of temporary overseas absences for certain payments from 26 weeks to 13 weeks.

The bill also makes technical corrections to four Acts and contains application and transitional provisions.

Retrospective application
Schedule 3, Part 2, subitem 18(5)

By virtue of subitem 18(5) of Schedule 3, the amendments to the *Social Security Act 1991* proposed in Part 2 of that Schedule will apply both prospectively and retrospectively in relation to all assurances of support debts.

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 does not explain the reason for the retrospective application of these amendments. The Committee is therefore unable to determine the likely impact of the measure and **seeks the Minister's advice** as to the reason for this retrospective application.

Pending the Minister'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.

Relevant extract from the response from the Minister

I am writing in response to comments made by your Committee in its Alert Digest No. 12 of 8 October 2003 in relation to Schedule 3, Part 2, subitem 18(5) of the Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003 (the Bill). The Committee seeks advice as to the retrospective application of the Part 2 amendments in order to determine its likely impact on people.

Schedule 3 amends the social security legislation and the migration legislation to provide for the transfer of the Assurance of Support Scheme from the migration legislation to the social security law. This measure commences on 1 July 2004. The object of the measure is to improve the operation of the Scheme, simplify arrangements for people who provide assurances of support and to strengthen the recovery of assurance of support debts.

Part 2 of the Bill makes several amendments relating to assurance of support debts. Subitem 18(5) provides for the application of the amendments made in Part 2 of the Bill to assurance of support debts arising before and after the commencement of the amendments. The effect of the relevant amendments is as follows.

Amendment to the definition of assurance of support debt - Part 2, item 7

The existing definition of 'assurance of support debt' creates a debt out of the debts/liabilities arising as a result of the operation of the past and current Migration

Regulations relating to assurances of support. From 1 July 2004, this definition is amended to include a reference to a liability arising as a result of the operation of new section 1061ZZGG that sets out the liability of a person giving an assurance under new social security provisions. The effect of this amendment is that, in addition to the existing sources of the assurance of support debts, an assurance of support debt is also created out of the liability specified in new section 1061ZZGG. This amendment does not have any effect before 1 July 2004 and does not affect assurance of support debts arising before 1 July 2004.

Amendment to 'methods of recovery of debt'- Part 2, item 8

New social security provisions relating to the giving of assurances of support require in certain cases that, for an assurance to be accepted, a 'security' be given in relation to the assurance (item 1, new subsection 1061ZZGD(3) refers). An amendment made by item 8 provides that the enforcement of the security is an additional method of recovery of the assurance of support debt for which the security was given. This amendment does not affect recovery of assurance of support debts arising before 1 July 2004, that is, debts arising as a result of the operation of the current migration legislation. The migration legislation requires in certain cases that a 'bond' (rather than 'security') be given. Under that legislation, the bond has to be enforced before the amount of the assurer's liability, and therefore the amount of debt, is established. In effect, the bond amount reduces the amount of debt.

Amendment to limit waiver in certain circumstances - Part 2, item 14

• *background*

An assurance of support is an undertaking, signed by an assurer, that the assurer will repay to the Commonwealth the amount of any specified social security payments made during the period of the operation of the assurance (2 or 10 years depending on the kind of visa) to the migrant in respect of whom the assurance is given. The Assurance of Support Scheme operates to protect the Commonwealth's outlays. An assurance is required as a condition of grant of a visa in relation to migrants who are likely to claim social security payments during the assurance of support period. The main reason for requesting the assurance is to ensure that the cost of their financial support is not borne by the taxpayer but by the assurer. The pivotal element of giving of assurance is the signing by an assurer of an undertaking to repay the value of the migrant's income support. To further guarantee the funds being available to repay the social security payments, the lodgement of a 'bond' or a 'security' is required in some cases.

• *waiver under 'special circumstances' provision when an assurer is unaware of the assurer's obligations*

It is not uncommon for assurers, once a decision to recover their assurance of support debts is made, to claim that they were unaware that they had to repay social security payments of the migrant for whom they gave an assurance. While there have been no waiver decisions on the sole ground that the assurer was unaware of his/her

repayment obligations, claims of that nature might have contributed to the decision to waive some assurance of support debts.

New subsection 1237AAE(2) prevents waiver in special circumstances under section 1237AAD if the only 'special circumstance' is that the assurer was unaware of his/her repayment obligations. This amendment is intended to counteract assurers' tendency to claim lack of knowledge concerning their obligations, to send a clear message to the assurers that it is not appropriate to make such claims when they signed an undertaking relating to that obligation and, generally, to reinforce the message of the obligation connected with the assurance. (It is intended that the publicity campaign relating to the implementation of the assurance of support measure will draw on that amendment.) The amendment is, essentially, one for avoidance of doubt rather than to change any current interpretation of the provision relating to waiver in special circumstances. The amendment is unlikely to affect any assurance of support debt arising before 1 July 2004 as these debts are not being waived on the sole ground of the assurer being unaware of his or her obligation (also, it is not expected that it will affect the debts arising after 1 July 2004).

• *waiver of small debts, under 'special circumstances' and in relation to settlements when a security is given*

New subsection 1237AAE (3) relates to debts arising in connection with an assurance given under new social security provisions, that is, to debts arising on or after 1 July 2004. It ensures that, when a security was given in relation to an assurance, and a debt arising in connection with the assurance would be waived under the waiver provisions relating to small debts or to settlement or in special circumstances, the amount of debt that can be recovered from the security is not waived. For the reason explained under the heading *Amendment to 'methods of recovery of debt',* this amendment has no direct application in cases of debts arising before 1 July 2004 under the migration legislation.

• *waiver in 'special circumstances' when multiple assurers are involved*

Under the current Scheme, an assurance in respect of one migrant may be given by more than one assurer (multiple assurers) that are jointly and severally liable for the debt arising in connection with this assurance. A similar arrangement will be available under the new social security Scheme. New subsection 1237AAE(4) simply clarifies that a debt of multiple assurers is not waived on the basis of special circumstances of only one of the assurers. The intention of this provision is not to change the way the waiver in special circumstances is currently applied to multiple assurers but to clarify the provision. Therefore, this amendment does not affect debts arising before 1 July 2004.

The waiver amendments in subsections 1237AAE(2) and (4) clarify how the relevant waiver provisions work. They capture the way they currently operate. In that respect, the amendments cannot be said to be of detrimental effect to people whose debts arose before 1 July 2004. The reference in subitem 18(5) to the amendments applying also to debts arising before 1 July 2004 is to avoid any inference that debts

arising before I July 2004 could be waived, eg, for the sole reason that the assurer was unaware of the repayment obligations (even though this is not the current interpretation) or that a debt of multiple assurers may be waived on the basis of the circumstances of one assurer with effect for all of them (even though it is not currently the case).

Amendments made by Part 2, items 9 to 13

These are technical amendments, consequential on the amendment to waiver provisions made by item 14.

I hope this explanation is of assistance.

The Committee thanks the Minister for this response. The Committee notes, however, that its consideration of this bill would have been assisted by an Explanatory Memorandum that clearly explained the effect of these amendments.

Offshore Petroleum (Safety Levies) Bill 2003

Introduction

The Committee dealt with this bill in *Alert Digest No. 12 of 2003*, in which it made various comments. The Minister for Industry, Tourism and Resources has responded to those comments in a letter dated 14 October 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. 12 of 2003

[Introduced into the House of Representatives on 17 September 2003. Portfolio: Industry, Tourism and Resources]

Introduced with the Petroleum (Submerged Lands) Amendment Bill 2003, the bill imposes a number of levies on the operators of facilities engaged in the exploration, development and production of offshore petroleum. The levies will be used to recover the costs of operating the National Offshore Petroleum Safety Authority. The bill also contains a regulation-making power.

Imposing a levy by regulation
Subclauses 5(5), 6(5), 7(5), 8(5), 9(4) and 10(4)

Subclauses 5(5), 6(5), 7(5), 8(5), 9(4) and 10(4) of this bill would allow the amount of the various levies to be imposed thereby to be set by regulation, without any upper limit being specified in the primary legislation. Since levies of this nature may be regarded as a form of taxation, the Committee has regularly taken the view that the upper limit of such an impost should be determined by the Parliament as a whole, and not merely subject to possible disallowance, as is the case when the amount is to be fixed by regulation without an upper limit set in the bill. The Committee **seeks the Minister's advice** as to whether an upper limit on the various levies could be set by the primary legislation.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they 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 Minister

The Committee has commented that subclauses 5(5), 6(5), 7(5), 8(5), 9(4) and 10(4) may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference. This is because the Bill imposes taxation and, in the view of the Committee, the upper limit of such an impost should be determined by the Parliament as a whole and not merely be subject to possible disallowance, as is the case when the amount is to be fixed by regulations without an upper limit set in the Bill.

In response to the Committee's comments, I would like to advise that the Government does not consider that it is appropriate in this case to set upper limits on the various levies imposed by the Bill. This is for the following reasons.

While the levies are imposed by a taxing Bill**,** their function is purely to recover the costs of the operations of the National Offshore Petroleum Safety Authority ('NOPSA'). A decision was made by the Commonwealth, State and Northern Territory Governments that NOPSA's operations would be 100% recovered through industry levies, and the Bill implements that decision. (The reason that cost-recovery is taking place by means of a taxing Bill rather than through fees for services under the amended *Petroleum (Submerged Lands) Act 1967* is that some of the costs of NOPSA's regulatory activities may, for constitutional reasons, be unable to be recovered by way of fees for services.)

The safety case levy and the pipeline safety management plan levy are measures to recover the costs of NOPSA's day-to-day regulation of offshore facilities and pipelines. These levies will recover most of the NOPSA budget. Until NOPSA is fully operational, it is impossible to ascertain with any accuracy what its annual costs will be. If an upper limit were set for these levies, it would need to be high (an upper-estimate) so as to avoid a situation where NOPSA under-recovers and is unable to fulfil all of its functions. However, setting a high limit would alarm industry and may lead to perceptions that NOPSA is over-recovering or operating in a manner which was extravagant.

The safety investigations levy is a means of recovering the costs of conducting investigations into serious incidents or occurrences. It is hoped that there will be no need to charge this levy but should there be a need for a major investigation into an incident or alleged occurrence, the costs of conducting it could run into millions of dollars. For this reason, it is impossible in advance, and particularly without any operational experience of investigations by NOPSA to draw on, to set an upper limit for this levy.

The Government considers that the new financial management provisions being inserted in the Petroleum (Submerged Lands) Act make the imposition of upper limits unnecessary in practical terms. New section 150YN, inserted by the Petroleum (Submerged Lands) Amendment Bill 2003, establishes the National Offshore Petroleum Safety Account ('the Account'), which is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. New section 150Y0 requires that amounts raised by the levies imposed by the Bill be paid into

that Account and new section 150YP permits that money to be spent *only* to pay NOPSA's costs in carrying out its statutory functions. The levies therefore cannot be used for anything other than cost-recovery purposes.

It is important to reiterate that the NOPSA legislation has been developed with the support of the State and the Northern Territory Governments, industry and the workforce. In the interests of continuing this cooperative approach and in adherence to the Government's cost recovery policy, the levies will be set in regulations after the finalisation of a cost recovery impact statement which includes consultation with stakeholders, including industry. The final cost recovery impact statement will be a public document.

Through its annual reporting requirements, NOPSA's ongoing operations and finances will also be open to public scrutiny through the Commonwealth Parliament. NOPSA's cost recovery revenue will also be reported in the Industry, Tourism and Resources Portfolio Budget Statements.

The Committee thanks the Minister for this response. The Committee considers that it would have been helpful if this explanation had been included in the Explanatory Memorandum to this bill.

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 responded to those comments in a letter dated 15 July 2003.

A further letter dated 8 October 2003 has been received from the Senator in response to the Committee's *Seventh Report of 2003*. A copy of the letter is attached to this report. An extract from the *Seventh Report* 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 dated 15 July 2003

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.

Relevant extract from the further response from the Senator dated 8 October 2003

Thank you for your response regarding the Textbook Subsidy Bill 2003.

I acknowledge the point that was made by the Committee in relation to making guidelines disallowable.

I have issued instructions to have such a provision drafted. If the Bill is brought on for debate I will move the amendment.

If an election is called before the Bill is debated and I reintroduce the Bill in the next Parliament, I will see that the provision is incorporated in to the Bill at that time.

The Committee thanks the Senator for a further response on this bill. The Committee appreciates the Senator's intention to move an amendment to make the Secretary's guidelines disallowable.

Trish Crossin
Chair

Minister for Family and Community Services

MINISTER ASSISTING THE PRIME MINISTER FOR THE STATUS OF WOMEN
SENATOR THE HON KAY PATTERSON

Senator T Crossin
Chairperson
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Crossin

I am writing in response to comments made by your Committee in its Alert Digest No.12 of 8 October 2003 in relation to Schedule 3, Part 2, subitem 18(5) of the Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003 (the Bill). The Committee seeks advice as to the retrospective application of the Part 2 amendments in order to determine its likely impact on people.

Schedule 3 amends the social security legislation and the migration legislation to provide for the transfer of the Assurance of Support Scheme from the migration legislation to the social security law. This measure commences on 1 July 2004. The object of the measure is to improve the operation of the Scheme, simplify arrangements for people who provide assurances of support and to strengthen the recovery of assurance of support debts.

Part 2 of the Bill makes several amendments relating to assurance of support debts. Subitem18(5) provides for the application of the amendments made in Part 2 of the Bill to assurance of support debts arising before and after the commencement of the amendments. The effect of the relevant amendments is as follows.

Amendment to the definition of assurance of support debt - Part 2, item 7

The existing definition of 'assurance of support debt' creates a debt out of the debts/liabilities arising as a result of the operation of the past and current Migration Regulations relating to assurances of support. From 1 July 2004, this definition is amended to include a reference to a liability arising as a result of the operation of new section 1061ZZGG that sets out the liability of a person giving an assurance under new social security provisions. The effect of this amendment is that, in addition to the existing sources of the assurance of support debts, an assurance of support debt is also created out of the liability specified in new section 1061ZZGG. This amendment does not have any effect before 1 July 2004 and does not affect assurance of support debts arising before 1 July 2004.

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Amendment to 'methods of recovery of debt'-Part 2, item 8

New social security provisions relating to the giving of assurances of support require in certain cases that, for an assurance to be accepted, a 'security' be given in relation to the assurance (item 1, new subsection 1061ZZGD(3) refers). An amendment made by item 8 provides that the enforcement of the security is an additional method of recovery of the assurance of support debt for which the security was given. This amendment does not affect recovery of assurance of support debts arising before 1 July 2004, that is, debts arising as a result of the operation of the current migration legislation. The migration legislation requires in certain cases that a 'bond' (rather than 'security') be given. Under that legislation, the bond has to be enforced before the amount of the assurer's liability, and therefore the amount of debt, is established. In effect, the bond amount reduces the amount of debt.

Amendment to limit waiver in certain circumstances – Part 2, item 14

- *background*

An assurance of support is an undertaking, signed by an assurer, that the assurer will repay to the Commonwealth the amount of any specified social security payments made during the period of the operation of the assurance (2 or 10 years depending on the kind of visa) to the migrant in respect of whom the assurance is given. The Assurance of Support Scheme operates to protect the Commonwealth's outlays. An assurance is required as a condition of grant of a visa in relation to migrants who are likely to claim social security payments during the assurance of support period. The main reason for requesting the assurance is to ensure that the cost of their financial support is not borne by the taxpayer but by the assurer. The pivotal element of giving of assurance is the signing by an assurer of an undertaking to repay the value of the migrant's income support. To further guarantee the funds being available to repay the social security payments, the lodgement of a 'bond' or a 'security' is required in some cases.

- *waiver under 'special circumstances' provision when an assurer is unaware of the assurer's obligations*

It is not uncommon for assurers, once a decision to recover their assurance of support debts is made, to claim that they were unaware that they had to repay social security payments of the migrant for whom they gave an assurance. While there have been no waiver decisions on the sole ground that the assurer was unaware of his/her repayment obligations, claims of that nature might have contributed to the decision to waive some assurance of support debts.

New subsection 1237AAE(2) prevents waiver in special circumstances under section 1237AAD if the only 'special circumstance' is that the assurer was unaware of his/her repayment obligations. This amendment is intended to counteract assurers' tendency to claim lack of knowledge concerning their obligations, to send a clear message to the assurers that it is not appropriate to make such claims when they signed an undertaking relating to that obligation and, generally, to reinforce the message of the obligation connected with the assurance. (It is intended that the publicity campaign relating to the implementation of the assurance of support measure will draw on that amendment.) The amendment is, essentially, one for avoidance of doubt rather than to change any current interpretation of the provision relating to waiver in special circumstances. The amendment is unlikely to affect any assurance of support debt arising before 1 July 2004 as these debts are not being waived on the sole ground of the assurer being unaware of his or her obligation (also, it is not expected that it will affect the debts arising after 1 July 2004).

- *waiver of small debts, under 'special circumstances' and in relation to settlements when a security is given*

New subsection 1237AAE (3) relates to debts arising in connection with an assurance given under new social security provisions, that is, to debts arising on or after 1 July 2004. It ensures that, when a security was given in relation to an assurance, and a debt arising in connection with the assurance would be waived under the waiver provisions relating to small debts or to settlement or in special circumstances, the amount of debt that can be recovered from the security is not waived. For the reason explained under the heading *Amendment to 'methods of recovery of debt'*, this amendment has no direct application in cases of debts arising before 1 July 2004 under the migration legislation.

- *waiver in 'special circumstances' when multiple assurers are involved*

Under the current Scheme, an assurance in respect of one migrant may be given by more than one assurer (multiple assurers) that are jointly and severally liable for the debt arising in connection with this assurance. A similar arrangement will be available under the new social security Scheme. New subsection 1237AAE(4) simply clarifies that a debt of multiple assurers is not waived on the basis of special circumstances of only one of the assurers. The intention of this provision is not to change the way the waiver in special circumstances is currently applied to multiple assurers but to clarify the provision. Therefore, this amendment does not affect debts arising before 1 July 2004.

The waiver amendments in subsections 1237AAE(2) and (4) clarify how the relevant waiver provisions work. They capture the way they currently operate. In that respect, the amendments cannot be said to be of detrimental effect to people whose debts arose before 1 July 2004. The reference in subitem 18(5) to the amendments applying also to debts arising before 1 July 2004 is to avoid any inference that debts arising before 1 July 2004 could be waived, eg, for the sole reason that the assurer was unaware of the repayment obligations (even though this is not the current interpretation) or that a debt of multiple assurers may be waived on the basis of the circumstances of one assurer with effect for all of them (even though it is not currently the case).

Amendments made by Part 2, items 9 to 13

These are technical amendments, consequential on the amendment to waiver provisions made by item 14.

I hope this explanation is of assistance.

Yours sincerely

Senator Kay Patterson

14 OCT 2003

The Hon Ian Macfarlane MP
Minister for Industry, Tourism and Resources

PARLIAMENT HOUSE
CANBERRA ACT 2600

14 OCT 2003

Senator Trish Crossin
Senator for the Northern Territory
Chair of the Standing Committee
for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Trish Crossin

I am writing to respond to the comments of the Senate Standing Committee for the Scrutiny of Bills ('the Committee') on the Offshore Petroleum (Safety Levies) Bill 2003 ('the Bill').

The Committee has commented that subclauses 5(5), 6(5), 7(5), 8(5), 9(4) and 10(4) may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference. This is because the Bill imposes taxation and, in the view of the Committee, the upper limit of such an impost should be determined by the Parliament as a whole and not merely be subject to possible disallowance, as is the case when the amount is to be fixed by regulations without an upper limit set in the Bill.

In response to the Committee's comments, I would like to advise that the Government does not consider that it is appropriate in this case to set upper limits on the various levies imposed by the Bill. This is for the following reasons.

While the levies are imposed by a taxing Bill, their function is purely to recover the costs of the operations of the National Offshore Petroleum Safety Authority ('NOPSA'). A decision was made by the Commonwealth, State and Northern Territory Governments that NOPSA's operations would be 100% recovered through industry levies, and the Bill implements that decision. (The reason that cost-recovery is taking place by means of a taxing Bill rather than through fees for services under the amended *Petroleum (Submerged Lands) Act 1967* is that some of the costs of NOPSA's regulatory activities may, for constitutional reasons, be unable to be recovered by way of fees for services.)

The safety case levy and the pipeline safety management plan levy are measures to recover the costs of NOPSA's day-to-day regulation of offshore facilities and pipelines. These levies will recover most of the NOPSA budget. Until NOPSA is fully operational, it is impossible to ascertain with any accuracy what its annual costs will be. If an upper limit were set for these levies, it would need to be high (an upper-estimate) so as to avoid a situation where NOPSA under-recovers and is unable to fulfil all of its functions. However, setting a high limit would

alarm industry and may lead to perceptions that NOPSA is over-recovering or operating in a manner which was extravagant.

The safety investigations levy is a means of recovering the costs of conducting investigations into serious incidents or occurrences. It is hoped that there will be no need to charge this levy but should there be a need for a major investigation into an incident or alleged occurrence, the costs of conducting it could run into millions of dollars. For this reason, it is impossible in advance, and particularly without any operational experience of investigations by NOPSA to draw on, to set an upper limit for this levy.

The Government considers that the new financial management provisions being inserted in the Petroleum (Submerged Lands) Act make the imposition of upper limits unnecessary in practical terms. New section 150YN, inserted by the Petroleum (Submerged Lands) Amendment Bill 2003, establishes the National Offshore Petroleum Safety Account ('the Account'), which is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. New section 150YO requires that amounts raised by the levies imposed by the Bill be paid into that Account and new section 150YP permits that money to be spent *only* to pay NOPSA's costs in carrying out its statutory functions. The levies therefore cannot be used for anything other than cost-recovery purposes.

It is important to reiterate that the NOPSA legislation has been developed with the support of the State and the Northern Territory Governments, industry and the workforce. In the interests of continuing this cooperative approach and in adherence to the Government's cost recovery policy, the levies will be set in regulations after the finalisation of a cost recovery impact statement which includes consultation with stakeholders, including industry. The final cost recovery impact statement will be a public document.

Through its annual reporting requirements, NOPSA's ongoing operations and finances will also be open to public scrutiny through the Commonwealth Parliament. NOPSA's cost recovery revenue will also be reported in the Industry, Tourism and Resources Portfolio Budget Statements.

Yours sincerely

Ian Macfarlane

Senator Natasha Stott Despoja
Australian Democrat Senator for South Australia

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

Dear Chair, Trish

Thank you for your response regarding the Textbook Subsidy Bill 2003.

I acknowledge the point that was made by the Committee in relation to making guidelines disallowable.

I have issued instructions to have such a provision drafted. If the Bill is brought on for debate I will move the amendment.

If an election is called before the Bill is debated and I reintroduce the Bill in the next Parliament, I will see that the provision is incorporated in to the Bill at that time.

Yours sincerely,

Natasha Stott Despoja
Senator for South Australia
Australian Democrats' Higher Education Spokesperson
8 October 2003

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