# SENATE STANDING COMMITTEE

# FOR THE

# SCRUTINY OF BILLS

# EIGHTH REPORT

# OF

# 2010

**27 October 2010**

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## SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

## MEMBERS OF THE COMMITTEE

Senator the Hon H Coonan (Chair)
Senator M Bishop (Deputy Chair)
Senator G Marshall
Senator L Pratt
Senator R Siewert
Senator the Hon J Troeth

## 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

## EIGHTH REPORT OF 2010

The Committee presents its *Eighth Report of 2010* 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:

Food Standards Australia New Zealand Amendment Bill 2010

Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010

Tax Laws Amendment (Research and Development) Bill 2010

Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010

# Food Standards Australia New Zealand Amendment Bill 2010

Introduced into the House of Representatives on 13 May 2010
Portfolio: Health and Ageing

## *Introduction*

The Committee dealt with this bill in *Alert Digest No. 6 of 2010*. The Parliamentary Secretary responded to the Committee's comments in a letter dated 23 June 2010. A copy of the letter is attached to this report.

## *Extract from Alert Digest No. 6 of 2010*

### Background

The bill implements a reform agreed to by the Council of Australian Governments, on 3 July 2008, that calls for the recognition, for domestically grown produce, by Food Standards Australia New Zealand, of the Australian Pesticides and Veterinary Medicines Authority's residue risk assessment and the promulgation of the resulting maximum residue limits in the Australia New Zealand Food Standards Code. The implementation of this reform requires the amendment of the *Food Standards Australia New Zealand Act 1991*, and consequential amendments to the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*.

The bill also amends the annual reporting requirements for the Authority and corrects some minor inconsistencies inadvertently made to the Act in 2007.

### Legislative instrument – commencement
### Schedule 1, item 20

The proposed new section 82(8) of the *Food Standards Australian New Zealand Act 1991* states that a variation made to the Maximum Residue Limits Standard takes effect on the day a copy of the variation is published in the Gazette despite subsections 12(1) and (2) of the *LIA*. The Committee accepts that there are circumstances in which this approach is appropriate, but considers that the explanatory memorandum should explain why the general rule set out in the *LIA* should be overridden. In this case the explanatory memorandum does not address the issue. The Committee therefore **seeks the Minister's advice** about the reasons for the why this is necessary and whether this approach will be to the detriment of any person.

## *Relevant extract from the response from the Minister*

**Legislative instrument - commencement**
**Schedule I, item 20**

Subsection 82(8) of the *Food Standards Australia New Zealand Act* 1991, states that a variation made to the Maximum Residue Limits Standard takes effect on the day a copy of the variation is published in the Gazette despite subsections 12(1) and (2) of the *Legislative Instruments Act 2003* (LIA). The Committee has requested advice about the reasons for overriding the general rule set out in the LIA, and whether this approach is to the detriment of any person.

The current mechanism for incorporating variations to the Australia and New Zealand Food Standards Code into State and Territory law is established under an intergovernmental agreement. Clause 19 of the Food Regulation Agreement states that:

> The States and Territories will take such legislative or other steps as are necessary to adopt or incorporate as food standards in force under the food legislation of the State or Territory, the food standards (including variations to those standards) that are from time to time:
> …
> (b) published in the Commonwealth of Australia Gazette.

The provision in the amended s 82(8) is consistent with the process taken for all other variations to the Code. As the approach is consistent with that taken for the Code as a whole, the provision is not expected be to the detriment of any person.

***Committee Response***

The Committee thanks the Minister for this response, which addresses its concerns. The Committee notes that it would have been useful for this information to have been included in the explanatory memorandum.

## *Extract from Alert Digest No. 6 of 2010*

### Explanatory memorandum – no explanation
### Items 29, 30, 32, 33, 36, 38 and 39

There is no explanation in the explanatory memoranda for these items. The Committee recognises the manner in which information in explanatory memorandums can assist in the interpretation of bills, and ultimately, Acts and **seeks the Minister's advice** about whether material about these items can be included in the explanatory memorandum.

## *Relevant extract from the response from the Minister*

**Explanatory memorandum - no explanation**
**Items 29, 30, 32, 33, 36, 38 and 39**

Explanation on the above points were prepared, but were erroneously omitted from the explanatory memorandum tabled in the House of Representatives due to a printing error. A revised explanatory memorandum is included at Attachment A, and will be tabled in the House of Representatives prior to debate on the Bill.

***Committee Response***

The Committee thanks the Minister for this response, which addresses its concern.

# Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010

Introduced into the House of Representatives on 16 June 2010
Portfolio: Attorney-General

## *Introduction*

The Committee dealt with this bill in *Alert Digest No.7 of 2010*. The Attorney-General responded to the Committee's comments in a letter dated 9 July 2010. A copy of the letter is attached to this report.

## *Extract from Alert Digest No. 6 of 2010*

### Background

This bill implements a decision of the Standing Committee of Attorneys-General to establish a framework that enables States and Territories to register interstate court-imposed fines that have a cross-border element.

### Retrospective application
### Schedule 1, item 1, proposed subparagraphs 112(1)(c)(ii) and 112(1)(c)(iii)

This bill provides for a 'scheme whereby a State or Territory that is owed a fine may request the fine's enforcement in another jurisdiction', replacing the existing scheme. In particular the new scheme no longer relies on apprehension and imprisonment for enforcing court-imposed fines across State and Territory borders.

In general, the new scheme applies in relation to the enforcement of fines imposed after the commencement of the relevant amendments. However, the new scheme (see item 1 of Schedule 1 which inserts a new subparagraph 112(1)(c)(ii) into the *Service and Execution of Process Act 1992*) can also apply to 'pre-commencement fines' if 'related to a post-commencement fine'.

The explanatory memorandum at page 3 states that this provision is specifically targeted 'at persistent or recalcitrant fine defaulters'. The new section 110 (also inserted by item 1 of Schedule 1) defines when a pre-commencement fine is 'related' to a post-commencement fine, namely, where the same offender is involved, the pre-commencement

fine originates from the same State as the post-commencement fine, and the liability in relation to the post-commencement fine has not been fully discharged.

It is also the case that (pursuant to the new subsection 113(3)) that a pre-commencement fine can only be registered if the post-commencement fine to which it is related has been registered in the same State. Although (1) there are limits to the application of the new scheme to pre-commencement fines, and (2) the new scheme changes the way in which fines imposed under existing laws are to be recovered (as opposed to altering the nature of the substantive rights of those who owe fines), it remains the case that the scheme will apply with retrospective effect in relation to some fines.

The same difficulty arises in relation to the new subparagraph 112(1)(c)(iii), which permits the registration of 'pre-commencement serious fines'. The new section 110 provides that such fines are pre-commencement fines which the originating State considers to be a serious fine because, for example, of the value of the fine, the nature or seriousness of the underlying conduct, or the fact the fine is not the first fine imposed in relation to similar offences. Although subparagraph 112(2)(d)(ii) requires the originating state to provide reasons as to why a pre-commencement fine is considered to be serious, the explanatory memorandum does not squarely address the question of whether the application of the new scheme for the enforcement of fines should apply to fines incurred prior to its commencement.

The Committee is concerned that these arrangements might be considered to unduly trespass on rights and liberties therefore **seeks the Attorney-General's further advice** as to why the pre-commencement fines arrangements proposed in these sections are justified.

> *Pending the advice of the Attorney-General, 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*

The Committee has expressed concerns over a possible retrospective effect in relation to some of the fines covered by the Bill. Specifically, the Committee has sought advice as to whether the pre-commencement fine arrangements proposed in the Bill trespass unduly on personal rights and liberties.

Under the existing provisions of the *Service and Execution of Process Act 1992,* court-imposed fines can only be enforced interstate by arresting and imprisoning the individual.

However, these punitive provisions do not reflect the way States and Territories currently enforce fines within their own jurisdiction. Under the proposed new regime, States and Territories will be able to enforce such fines using less punitive measures, including garnishing wages, suspending drivers' licences or issuing community service orders. The Standing Committee of Attorneys-General unanimously considered these measures more appropriate when agreeing to the scheme in 2008.

The new regime will ensure the continued enforceability of certain court-imposed fines in existence before the commencement of the legislation. However, rather than enabling the enforcement of all pre-commencement fines, the application of the new scheme will be limited to only two types: those that relate to a fine imposed after the commencement of the scheme and those considered to be serious.

In relation to both types of pre-commencement fines, the obligation to pay the fine was imposed on the individual for a breach of the law as it was at the time of the offence and prior to the commencement of the new regime. The obligation is a continuing obligation, fulfilled only on payment. It continues after commencement, regardless of the means by which the fine is enforced. The extension of the regime to these two types of pre-commencement fines is essentially a transitional mechanism to ensure application of the new regime to certain outstanding fines. To the extent that the new scheme has any retrospective operation, it will, as I have pointed out above, be less punitive to fine defaulters than the current arrangements.

***Committee Response***

The Committee thanks the Minister for this response, which addresses its concerns.

# Tax Laws Amendment (Research and Development) Bill 2010

Introduced into the House of Representatives on 13 May 2010
Portfolio: Treasury

## *Introduction*

The Committee dealt with this bill in *Alert Digest No. 6 of 2010*. The Minister responded to the Committee's comments in a letter dated 22 June 2010. A copy of the letter is attached to this report.

## *Extract from Alert Digest No. 6 of 2010*

### Background

This bill is part of a package of two bills which introduces a new research and development tax incentive to replace the existing R & D Tax Concession for all income years starting on or after 1 July 2010.

The bill amends the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997*, the *Income Tax Rates Act 1986*, the *Taxation Administration Act 1953* and the *Industry, Research and Development Act 1986*.

### Determination of important matters by regulation
### Determination of important matters by legislative instrument
### Schedule 2, Part 1, proposed sections 29A and 32A

Item 1 of Schedule 2, Part 1 includes the new section 29A to be inserted in the *Industry Research and Development Act 1986*. This section deals with the registration of research service providers by the Board. Subsection 29A(2) provides that the Board must not register an entity unless satisfied that it meets criteria specified in regulations made for the purposes of this subsection. The explanatory memorandum (at page 145) notes that 'regulations will specify the criteria the entity must meet to satisfy the Board that it is capable of providing services to R&D entities in one or more specified fields of research' and that specified fields of research will also be prescribed in the regulations'. The explanatory memorandum does not explain why such criteria might not be specified in the primary legislation.

Similarly, section 32A provides for 'decision-making principles' to be made by legislative instrument. These principles play an important role in determining how the Board should exercise various powers. The explanatory memorandum at page 153 essentially repeats the terms of section 32A and does not explain why such principles might not be specified in the primary legislation.

Although the regulations and legislative instruments will be disallowable and therefore subject to Parliamentary scrutiny, the Committee prefers that important matters are included in primary legislation to increase the level of parliamentary scrutiny and to assist those whose rights may be affected by the provision. The Committee therefore **seeks the Treasurer's advice** as to why the criteria referred to in proposed section 29A and why the decision-making principles outlined in proposed section 32A cannot be set out in the primary legislation.

## *Relevant extract from the response from the Minister*

The Committee has noted that sections 29A and 32A of Schedule 2 of the Tax Laws Amendment (Research and Development) Bill 2010 provide powers to make criteria for Research Service Providers (RSPs) and to specify decision-making principles to be complied with in particular circumstances and expressed its concern that these provisions involve an inappropriate delegation of legislative power.

Currently, criteria for Registered Research Agencies (RRAs), the RSP equivalent under the existing R&D Tax Concession, are outlined in guidelines, rather than in regulations or primary legislation. The move to specify these criteria in regulations, rather than as guidelines, is a positive one intended to strengthen the administrative arrangements governing RSPs.

In making administrative decisions under the existing R&D Tax Concession, the Board has limited high-level guidance in relation to its decision-making processes. The current decision making guidance available to the Board is derived from internal documents, rather than from either primary legislation or a legislative instrument. Under the proposed arrangements, the decision-making principles will provide a clear set of directives for the Board to comply with in making a number of administrative decisions, and will increase the transparency of the administration of the R&D Tax Incentive.

By making these criteria and decision-making principles as subordinated legislation, properly focussed consultation can occur to ensure the rules are appropriate for those who will be affected by them.

As the Committee has noted, the regulations and legislative instrument are disallowable instruments, and will accordingly be subject to Parliamentary scrutiny.

I support the Committee's desire to include important matters in primary legislation, and note the Committee's obligations under its terms of reference. However, as the criteria for RRAs/RSPs is currently outlined in subordinated legislation, and the decision-making principles will enhance the transparency of administrative decision-making, I believe the delegation of powers is appropriate.

***Committee Response***

The Committee thanks the Minister for this response, which addresses its concerns.

# Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010

Introduced into the House of Representatives on 18 March 2010
Portfolio: Broadband, Communications and the Digital Economy

## *Introduction*

The Committee dealt with this bill in *Alert Digest No. 5 of 2010*. The Minister responded to the Committee's comments in a letter dated 21 June 2010. A copy of the letter is attached to this report.

## *Extract from Alert Digest No. 5 of 2010*

### Background

The bill amends the *Telecommunications Act 1997* to provide a legislative framework for the installation of optical fibre and fibre-ready telecommunications infrastructure in new developments in Australia from 1 July 2010.

**Determination of important matters by regulation**
**Various**

There are a number of provisions in the bill that delegate significant legislative power in relation to this scheme. For example, proposed section 372B will allow the Minister, by legislative instrument, to specify conditions in relation to, or grant exemptions from, the requirement to install optical fibre lines to building lots.

The explanatory memorandum states at page 34 that:

> The ability for the Minister to specify in a legislative instrument conditions that must be satisfied…is intended to enable the specification of the characteristics, features, performance requirements, methods of installation or other matters relating to the optical fibre infrastructure to be installed in a project area, in both general terms (eg necessary outcomes) and, if required, to a high degree of specificity.

On its face each of the provisions delegating legislative power appears appropriate, especially given the highly technical nature of the subject matter. However, the number of provisions which delegating legislative power mean that collectively significant portions of the scheme are left to be determined in future delegated legislation. The Minister's Second Reading Speech appears to acknowledge this as the purpose of the bill is described as being 'to provide a legislative framework for the scheme'.

In its *Seventy-Seventh Report* and *40th Parliament Report* the Regulations and Ordinances Committee set out criteria for determining whether matters should be more appropriately included in a bill rather than in delegated legislation. These include whether the delegated legislation amounts to a fundamental change in the law which alters rights, obligations and liabilities or if the delegated legislation would be a lengthy and complex document.

The Committee notes the highly technical nature of many aspects of the scheme and the description of the bill as 'framework legislation', but is concerned to ensure that as much information as possible is available in the primary legislation. Therefore, the Committee **seeks the Minister's advice** about whether more details of the scheme, such as the 'necessary outcomes' sought from the scheme (referred to on page 34 of the explanatory memorandum in relation to proposed section 372B) can be included in the primary legislation.

## *Relevant extract from the response from the Minister*

In response to the Committee's questions, the Fibre Deployment Bill is quite specific in its intention and requirements. That is, if enacted, the Bill will require that in specified classes of developments fixed line facilities like ducts, pits and conduits arc fibre-ready and fixed lines are optical fibre. This will be a significant and complex change to the operation of the Australian telecommunications industry. As such, it needs to be implemented in a sensible, targeted and measured way. The use of subordinate legislation as proposed in the Bill makes this possible.

The use of subordinate legislation enables requirements which may be of considerable technical complexity to be specified in sufficient detail and provides flexibility, particularly to allow for the targeting and phasing in of requirements. It also provides scope for requirements to be adjusted over time in light of changes in circumstances on the ground.

Such flexibility is needed to deal with such variables as:

- the geographical location of developments to be captured;
- size, cost or other thresholds for capturing developments;
- appropriate exemptions;
- commencement triggers; and
- detailed technical characteristics for network facilities.

Dealing with such issues in the primary legislation would make it cumbersome and would not provide the flexibility required to implement the arrangements effectively and to adjust them in response to changing circumstances.

The Australian Government has been working closely with stakeholders in developing the Bill and the associated subordinate legislation. In the earlier stages of the drafting of the Bill many stakeholders expressed concern about inflexible primary legislation with blanket requirements being drafted.

By contrast the approach taken by the Government provides a flexible framework within which stakeholder and community concerns can be addressed if required. Stakeholders generally appear comfortable with this approach.

In addition to developing the subordinate legislation in consultation with stakeholders, the subordinate legislation will be disallowable and subject to full Parliamentary scrutiny.

I trust this information addresses the Committee's concerns.

***Committee Response***

The Committee thanks the Minister for this response, which assists to understand the proposed approach.

Senator the Hon Helen Coonan
Chair

# The Hon Mark Butler MP
## Parliamentary Secretary for Health


Senator the Hon Helen Coonan
Parliament House
CANBERRA ACT 2600

Dear Senator Coonan

In response to the comments contained in the *Alert Digest No. 6 of 2010 (16 June 2010)* of the Standing Committee for the Scrutiny of Bills (the Committee) with regard to the *Food Standards Australia New Zealand Amendment Bill 2010* (the Bill), I submit the following advice:

**Legislative instrument - commencement**
**Schedule 1, item 20**
Subsection 82(8) of the *Food Standards Australia New Zealand Act* 1991, states that a variation made to the Maximum Residue Limits Standard takes effect on the day a copy of the variation is published in the Gazette despite subsections 12(1) and (2) of the *Legislative Instruments Act 2003* (LIA). The Committee has requested advice about the reasons for overriding the general rule set out in the LIA, and whether this approach is to the detriment of any person.

The current mechanism for incorporating variations to the Australia and New Zealand Food Standards Code into State and Territory law is established under an intergovernmental agreement. Clause 19 of the Food Regulation Agreement states that:

> The States and Territories will take such legislative or other steps as are necessary to adopt or incorporate as food standards in force under the food legislation of the State or Territory, the food standards (including variations to those standards) that are from time to time:
> ...
> (b) published in the Commonwealth of Australia Gazette.

The provision in the amended s 82(8) is consistent with the process taken for all other variations to the Code. As the approach is consistent with that taken for the Code as a whole, the provision is not expected be to the detriment of any person.


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**Explanatory memorandum – no explanation**
**Items 29, 30, 32, 33, 36, 38 and 39**
Explanation on the above points were prepared, but were erroneously omitted from the explanatory memorandum tabled in the House of Representatives due to a printing error. A revised explanatory memorandum is included at **Attachment A**, and will be tabled in the House of Representatives prior to debate on the Bill.

Yours sincerely

**MARK BUTLER**

23 JUN 2010

ATTORNEY-GENERAL
THE HON ROBERT McCLELLAND MP

10/11709, MC10/9596

- 9 JUL 2010

Senator the Hon Helen Coonan
Chair
Senate Scrutiny of Bills Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Coonan

I refer to the letter of 23 June 2010 from the Committee Secretary to my office seeking my response to matters raised by the Senate Scrutiny of Bills Committee in relation to the *Service and Execution of Process Amendment (Interstate Fine Enforcement) Bill 2010*.

The Committee has expressed concerns over a possible retrospective effect in relation to some of the fines covered by the Bill. Specifically, the Committee has sought advice as to whether the pre-commencement fine arrangements proposed in the Bill trespass unduly on personal rights and liberties.

Under the existing provisions of the *Service and Execution of Process Act 1992*, court-imposed fines can only be enforced interstate by arresting and imprisoning the individual. However, these punitive provisions do not reflect the way States and Territories currently enforce fines within their own jurisdiction. Under the proposed new regime, States and Territories will be able to enforce such fines using less punitive measures, including garnishing wages, suspending drivers' licences or issuing community service orders. The Standing Committee of Attorneys-General unanimously considered these measures more appropriate when agreeing to the scheme in 2008.

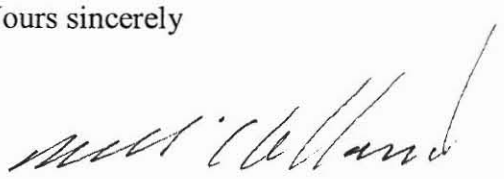
The new regime will ensure the continued enforceability of certain court-imposed fines in existence before the commencement of the legislation. However, rather than enabling the enforcement of all pre-commencement fines, the application of the new scheme will be limited to only two types: those that relate to a fine imposed after the commencement of the scheme and those considered to be serious.

In relation to both types of pre-commencement fines, the obligation to pay the fine was imposed on the individual for a breach of the law as it was at the time of the offence and prior to the commencement of the new regime. The obligation is a continuing obligation, fulfilled only on payment. It continues after commencement, regardless of the means by which the fine is enforced. The extension of the regime to these two types of pre-commencement fines

is essentially a transitional mechanism to ensure application of the new regime to certain outstanding fines. To the extent that the new scheme has any retrospective operation, it will, as I have pointed out above, be less punitive to fine defaulters than the current arrangements.

The officer responsible for this matter in my Department is Janet Power who can be contacted on (02) 6141 3638.

Yours sincerely



Robert McClelland

# SENATOR THE HON KIM CARR

## MINISTER FOR INNOVATION, INDUSTRY, SCIENCE AND RESEARCH

22 JUN 2010

Senator the Hon Helen Coonan
Chair
Senate Scrutiny of Bills Committee
S1.111
Parliament House
Canberra ACT 2600

Dear Madam Chair

I am writing to you in relation to concerns raised by the Scrutiny of Bills Committee about the Tax Laws Amendment (Research and Development) Bill 2010 in Alert Digest No 6, issued on 16 June 2010. Although you requested that the Treasurer respond, I have undertaken to reply on his behalf as the matters raised by the Committee relate to amendments to the Industry Research and Development Act (IR&D Act) 1986, which falls within my portfolio.

The Committee has noted that sections 29A and 32A of Schedule 2 of the Tax Laws Amendment (Research and Development) Bill 2010 provide powers to make criteria for Research Service Providers (RSPs) and to specify decision-making principles to be complied with in particular circumstances and expressed its concern that these provisions involve an inappropriate delegation of legislative power.

Currently, criteria for Registered Research Agencies (RRAs), the RSP equivalent under the existing R&D Tax Concession, are outlined in guidelines, rather than in regulations or primary legislation. The move to specify these criteria in regulations, rather than as guidelines, is a positive one intended to strengthen the administrative arrangements governing RSPs.

In making administrative decisions under the existing R&D Tax Concession, the Board has limited high-level guidance in relation to its decision-making processes. The current decision-making guidance available to the Board is derived from internal documents, rather than from either primary legislation or a legislative instrument. Under the proposed arrangements, the decision-making principles will provide a clear set of directives for the Board to comply with in making a number of administrative decisions, and will increase the transparency of the administration of the R&D Tax Incentive.

By making these criteria and decision-making principles as subordinated legislation, properly focussed consultation can occur to ensure the rules are appropriate for those who will be affected by them.

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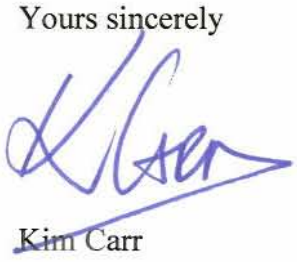
As the Committee has noted, the regulations and legislative instrument are disallowable instruments, and will accordingly be subject to Parliamentary scrutiny.

I support the Committee's desire to include important matters in primary legislation, and note the Committee's obligations under its terms of reference. However, as the criteria for RRAs/RSPs is currently outlined in subordinated legislation, and the decision-making principles will enhance the transparency of administrative decision-making, I believe the delegation of powers is appropriate.

Yours sincerely



Kim Carr

SENATOR THE HON STEPHEN CONROY
MINISTER FOR BROADBAND, COMMUNICATIONS AND THE DIGITAL ECONOMY
DEPUTY LEADER OF THE GOVERNMENT IN THE SENATE



Senator the Hon Helen Coonan
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

21 JUN 2010

Dear Senator Coonan

**Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010**

I refer to the letter of Ms Toni Dawes, Secretary to the Standing Committee, dated 13 May 2010, concerning comments in the Committee's *Alert Digest No 5 of 2010* about the Telecommunications Legislation Amendment (Fibre Deployment) Bill 2010.

In response to the Committee's questions, the Fibre Deployment Bill is quite specific in its intention and requirements. That is, if enacted, the Bill will require that in specified classes of developments fixed line facilities like ducts, pits and conduits are fibre-ready and fixed lines are optical fibre. This will be a significant and complex change to the operation of the Australian telecommunications industry. As such, it needs to be implemented in a sensible, targeted and measured way. The use of subordinate legislation as proposed in the Bill makes this possible.

The use of subordinate legislation enables requirements which may be of considerable technical complexity to be specified in sufficient detail and provides flexibility, particularly to allow for the targeting and phasing in of requirements. It also provides scope for requirements to be adjusted over time in light of changes in circumstances on the ground.

Such flexibility is needed to deal with such variables as:

- the geographical location of developments to be captured;
- size, cost or other thresholds for capturing developments;
- appropriate exemptions;
- commencement triggers; and
- detailed technical characteristics for network facilities.

Dealing with such issues in the primary legislation would make it cumbersome and would not provide the flexibility required to implement the arrangements effectively and to adjust them in response to changing circumstances.

The Australian Government has been working closely with stakeholders in developing the Bill and the associated subordinate legislation. In the earlier stages of the drafting of the Bill many stakeholders expressed concern about inflexible primary legislation with blanket requirements being drafted.

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By contrast the approach taken by the Government provides a flexible framework within which stakeholder and community concerns can be addressed if required. Stakeholders generally appear comfortable with this approach.

In addition to developing the subordinate legislation in consultation with stakeholders, the subordinate legislation will be disallowable and subject to full Parliamentary scrutiny.

I trust this information addresses the Committee's concerns.

Thank you for raising these matters with me.

Yours sincerely

Stephen Conroy
Minister for Broadband,
Communications and the Digital Economy