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Statute Stocktake (Regulatory and Other Laws) Bill 2009

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Law and Bills Digest Section

Contents

Statute Stocktake (Regulatory and Other Laws) Bill 2009

Date introduced: 24 June 2009

House: Representatives

Portfolio: Finance and Deregulation

Commencement: The Act commences on the day after Royal Assent.

Links: The relevant links to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at http://www.aph.gov.au/bills/. When Bills have been passed they can be found at ComLaw, which is at http://www.comlaw.gov.au/.

Purpose

To amend or repeal Acts which have been identified in a 2008 stocktake of Commonwealth regulation as containing redundant provisions.

Background

Basis of policy commitment

In a press release issued on 24 June 2009, the Minister for Finance and Deregulation stated that the Statute Stocktake (Regulatory and Other Laws) Bill 2009 'includes the removal of redundant and outdated laws relating to matters such as:

- protection for consumers from price exploitation during the changeover to the GST;
- obligations on digital data service providers to provide services now overtaken by technological advances; and
- the *Income Tax (Franking Deficit) Act 1987*, which had been superseded by the introduction of the *New Business Tax System (Franking Deficit Tax) Act 2002'*.[1]

He further stated that 'relieving businesses and consumers of the burden of inappropriate, ineffective or unnecessary regulation will build Australia's productive capacity and create a stronger economy'.[2]

1. L Tanner (Minister for Finance and Deregulation) *Redundant Regulation gets the chop*, media release, Canberra, 24 June 2009, viewed 10 September, http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/CJYT6/upload_binary/cjyt60.pdf;fileType=application%2Fpdf#search=%22redundant%20regulation%22

In a speech given in the House of Representatives on 17 March 2008, the Minister for Finance and Deregulation, the Hon Lindsay Tanner MP outlined the Government's '*Best Practice Regulation Requirements*'. He stated that the deregulation agenda was considered a key element in the Government's plan to increase Australia's productivity. As part of the agenda, the Minister stated that work was already underway in undertaking a stocktake of existing regulation in order to determine any 'unnecessarily burdensome or ineffectual regulation'.[3]

Taskforce on reducing the regulatory burden on business

On 12 October 2005, the former Coalition Government announced the appointment of a taskforce 'to identify practical options for alleviating the compliance burden on business from Government regulation'.[4] The Taskforce delivered its report entitled '*Rethinking Regulation*' in January 2006.[5] Gary Banks, Chairman of the taskforce and then Chairman of the Productivity Commission, stated that:

> The taskforce identified only a few regulations that were clearly 'redundant', in the sense of having fallen into disuse or duplicating an existing requirement. More regulations were assessed as not being justified by the policy intent behind them. In some cases, poor regulatory design has given rise to unintended or even perverse consequences. In others, the regulation has become ineffective or unnecessary as circumstances have changed over time. The upshot is that businesses continue to incur compliance costs for no good reason.[6]

In March 2008, the Hon Lindsay Tanner MP stated that 'the Rudd Labor Government fully endorses the six principles of good regulatory process identified by the 2006 Banks Taskforce on Reducing the Regulatory Burden on Business'.[7] In addition he stated that:

> These principles state that governments should not act to address problems until a case for action has been clearly established. In acting, governments need to consider

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2. L Tanner, media release, 24 June 2009.
3. L Tanner, 'Ministerial statement: Best Practice Regulation Requirements', House of Representatives, *Debates*, 17 March 2008, pp. 1889—1890
4. Regulation taskforce, 'Taskforce on reducing the regulatory burden on business', Australian Government website, viewed 27 October 2009, http://www.regulationtaskforce.gov.au/home
5. G Banks, *Rethinking Regulation: report of the Taskforce on Reducing Regulatory Burdens on Business*, January 2006, viewed 27 October 2009, http://www.regulationtaskforce.gov.au/__data/assets/pdf_file/0007/69721/regulationtaskforce.pdf
6. G Banks, 'Reducing the regulatory burden: the way forward', speech to the Monash Centre for Regulatory Studies, 17 May 2006, viewed 10 September 2009, http://www.pc.gov.au/speeches/cs20060517
7. L Tanner, Ministerial statement, p. 1889

> the benefits and costs of a range of feasible policy options and then select the one which provides the greatest overall net benefit to the community. Effective guidance should be provided to regulators and regulated parties about the regulation's policy intent and expected compliance requirements. Then there should also be mechanisms to ensure regulation remains relevant and effective over time as well as effective consultation with regulated parties at all stages of the regulatory cycle.[8]

The deregulation agenda

According to the Department of Finance and Deregulation website, the Government has given 'cabinet-level status' to deregulation and two Ministers have been given the responsibility and 'task of driving reductions in the levels of business regulation'.[9] Some key elements of the agenda include:

- a strengthening of procedures that means new or amended regulation will only be enacted where necessary and at a minimum cost to business, non-profit organisations and consumers. This includes maintaining and improving the best practice regulation requirements. As well, a one-in-one-out principle has been introduced that requires that in bringing forward new regulatory proposals, Ministers identify other areas where regulation can be modified or removed to reduce compliance costs for business, thereby addressing the cumulative burden of regulation, and
- the introduction of a culture of continuous improvement in regulatory activity that will be demonstrated by the Government continually looking for opportunities to streamline regulatory processes. [10]

Committee consideration

The Statute Stocktake (Regulatory and Other Laws) Bill 2009 was not referred to a Committee.[11]

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8. L Tanner, Ministerial statement, p. 1889
9. They are the Minister for Finance and Deregulation, the Hon Lindsay Tanner MP and the Minister Assisting, the Hon Dr Craig Emerson MP: Department of Finance and Deregulation, *The Deregulation Agenda*, viewed 10 September 2009, http://www.finance.gov.au/deregulation/index.html
10. Department of Finance and Deregulation, *The Deregulation Agenda*
11. The Senate Selection of Bills Committee resolved to recommend that the Statute Stocktake (Regulatory and Other Laws) Bill 2009 not be referred to a Committee, see Senate Selection of Bills Committee, *Report no. 10*, 25 June 2009.

Financial implications

The Explanatory Memorandum states that the Bill has no direct or indirect financial impact for the Commonwealth. However, it is envisaged that the Bill will reduce costs to business by removing the need to examine redundant legislation to determine its applicability.[12]

Main provisions

Schedule 1—Amendments

Part1—General Amendments

Schedule 1 amends seventeen Acts. **Item 1** repeals section 52 of the *Australian Wine and Brandy Corporation Act 1980* because monies received by the Commonwealth for charges and levies before commencement of the Act have all been paid making the provision now redundant. Similarly, **item 11** repeals section 22 of the *Dairy Adjustment Act 1974* because payments to the States under agreements have all been made making the provision now redundant. **Item 17** repeals section 22 of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000* which involved the payment of monies not paid before the transfer day to a new industry service body Horticulture Australia Limited from several existing bodies. All payments have now been paid.

Item 7 amends the *Civil Aviation (Carriers' Liability) Act 1959* to remove reference to the Montreal Protocol No.3 which did not come into operation. **Items 8 to 10 similarly** repeal subsection 2(2), section 9, and subsections 11(1) and 13(1) of the *Civil Aviation (Carriers' Liability) Amendment Act 1991* for the same reason. As the report on unproclaimed legislation states:

> According to the official database of the International Civil Aviation Organisation, this Protocol currently has 21 ratifications. As the Protocol has now been superseded by the 1999 Montreal Convention on Carriers' Liability, it is unlikely to ever enter into force.[13]

Items 14 and 15 repeal Schedule 1 and its associated commencement provisions of the *Hearing Services and AGHS Reform Act 1997*. The Explanatory Memorandum states that

12. Explanatory Memorandum, Statute Stocktake (Regulatory and Other Laws) Bill 2009, p.1.
13. Department of Prime Minister and Cabinet, *Report on Unproclaimed Legislation*, prepared in accordance with Senate Standing Order 139(2), August 2009, viewed 8 September 2009, http://www.pmc.gov.au/parliamentary/docs/unproc_legis180809.pdf

Schedule 1 contained amendments as well as transitional arrangements. The transitional arrangements have now taken effect.[14] **Item 16** provides that the repeal of these provisions does not affect the amendments made by Schedule 1 to the *Hearing Services Act 1991*.

Part 2—Repeal of Part VB of the *Trade Practices Act 1974* and related amendments

Part VB (price exploitation in relation to a new tax system) and Part XIAA– (the new tax system price exploitation code) were inserted into the *Trade Practices Act 1974* by *A New Tax System (Trade Practices Amendment) Act 1999*. Part VB prohibited price exploitation in relation to the imposition of the GST. It allowed the Australian Competition and Consumer Commission (ACCC) to monitor prices for a period before and after the implementation of the GST. Part XIAA dealt with the New Tax System Price Exploitation Code. The Bills Digest on the Bill stated that:

> The limits on the Commonwealth's constitutional power mean that whilst it can implement price monitoring in respect of goods sold by corporations and prohibit price exploitation by corporations, it can't easily, if at all, implement those measures in respect of goods sold by businesses which are not run by corporations, i.e. sole traders and partnerships (usually smaller businesses).
>
> For that reason, it is proposed that the States and Territories will be able to implement a uniform New Tax System Price Exploitation Code, which will essentially give the ACCC the same powers and functions as Part VB, but in respect of individuals rather corporations.[15]

Items 26 to **50** provide for the repeal of the GST price exploitation provisions in the *Trade Practices Act 1974* in Part VB, Part XIAA, Part 2 of the Schedule and other consequential amendments.[16] **Item 32** repeals Part VB of the *Trade Practices Act 1974*. Miller in his Annotated Trade Practices Act comments on the provisions in Part VB as follows:

> Between July 1999 and 30 June 2002, the ACCC had a role in ensuring that with the introduction of Australia's goods and services tax, no price exploitation occurred. Under this Part the ACCC was empowered to monitor and deal with any such price exploitation. For each quarter during the three year transition period the ACCC was required to report on its operations in overseeing the introduction of the goods and services tax. In that period the ACCC commenced proceedings in 11 cases and

14. Explanatory Memorandum, p. 4
15. L Jones, A New Tax System (Trade Practices Amendment) Bill 1998, *Bills digest*, no. 81 1998—99, Parliamentary Library, Canberra, 1999, viewed 19 October 2009, http://www.aph.gov.au/library/pubs/bd/1998-99/99bd081.htm
16. Explanatory Memorandum, p. 5

> accepted enforceable undertakings in 55 cases. The Part now has little or no application.[17]

Part 3—Amendments relating to digital data services

In 2008, the Government revoked the *Digital Data Service Provider Declaration 1999 (No.1)*. The 'universal service regime is currently set out in Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, consisting of the universal service obligation and the general and special digital data service obligation, known collectively as the digital data service obligation (DDSO)'.[18]

The policy rationale for the decision was that there is now, according to the instrument of revocation, a wide choice for consumers to choose from various digital data services including Telstra. Services are more effectively provided through these existing providers and government programs than through a separate obligation on Telstra.[19] The explanatory statement to the revocation instrument stated that:

> The revocation of the DDSO will result in the removal of related regulatory and reporting burdens that applied to Telstra as a provider for general and special digital data services. The measure will also lead to a minor reduction in the Australian Communications and Media Authority's (ACMA's) responsibility to monitor Telstra's performance in meeting its digital data obligations and to oversight and pay DDSO subsidies. The removal of the DDSO is consistent with the Government's policy to reduce unnecessary and superseded regulation.[20]

Telecommunications Act 1997

Items 51 to **54** amend provisions of the *Telecommunications Act 1997* as they relate to digital data services. **Items 51** repeals paragraph 3(2)(b) which relates to a regulatory framework supportive of a specific digital data capability and **item 52** removes the definition of digital data service provider from section 7. **Item 53** repeals subsection 105(5) which requires the Australian Media and Communications Authority (ACMA) to monitor carriers and carriage service providers who provide digital data capability.

Telecommunications (Consumer Protection and Service Standards) Act 1999

Items 55 to **69** repeal the definitions relating to digital data services in subsection 5(2) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.

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17. R Miller, Annotated Trade Practices Act, Australian Competition and Consumer Law, 30th edition, 2009, p. 707
18. Explanatory Statement, Digital Data Service Provider Declaration Revocation, p. 1
19. Explanatory Statement, Digital Data Service Provider Declaration Revocation, p. 2
20. Explanatory Statement, Digital Data Service Provider Declaration Revocation, p. 3

Items 79 to **97** repeal provisions of the Act that deal with the digital data service obligation. **Item 84** repeals Division 3 (digital data obligation), Division 8 (digital data providers), Division 10 (digital data cost of digital data service providers) and Division 12 (regulation of digital data service charges) of Part 2 of the Act.

Schedule 2—Repeal of Acts etc.

Part 1—Repeals

Part 1 repeals Acts which no longer have any operation or have been subsumed under the operation of another Act. For example the services once controlled by the Acts listed in **Items 2, 3, 6 and 8** are now redundant as they are currently administered under the *Home and Community Care Act 1985.*

Part 2—Consequential amendments

Items 9 to 13 make consequential amendments in relation to the Acts that have been repealed in Part 1.

Part 3—Matters relating to the repeal of the Income Tax (Franking Deficit) Act 1987

Item 14 applies the repeal made by item 4 to any other matters after 14 September 2006 while **items 15—17** preserve any residual operation of the Act which is repealed by item 4.[21]

21. Explanatory Memorandum, p. 14

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