



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

SEVENTH REPORT

OF

2006

6 September 2006

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MEMBERS OF THE COMMITTEE

Senator R Ray (Chair)
Senator B Mason (Deputy Chair)
Senator G Barnett
Senator D Johnston
Senator A McEwen
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 2006

The Committee presents its Seventh Report of 2006 to the Senate.

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

Protection of the Sea (Harmful Anti-fouling Systems) Bill 2006 *

- * Although this bill has not yet been introduced into the Senate, the Committee may report on its proceedings in relation to the bills, under standing order 24(9).

Protection of the Sea (Harmful Anti-fouling Systems) Bill 2006

Introduction

The Committee dealt with this bill in *Alert Digest No. 7 of 2006*. The Minister for Transport and Regional Services responded to the Committee's comments in a letter dated 5 September 2006. A copy of the letter is attached to this report.

Extract from Alert Digest No. 7 of 2006

Introduced into the House of Representatives on 22 June 2006

Portfolio: Transport and Regional Services

Background

This bill implements Australia's obligations under the International Convention on the Control of Harmful Anti-fouling Systems on Ships (the AFS Convention) by prohibiting or restricting the use of harmful organotins in anti-fouling paints used on ships.

The bill establishes a regulatory system to ensure that all ships are surveyed prior to service and when anti-fouling systems are changed or replaced. The bill also establishes a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems used on Australian ships or foreign ships that are in an Australian facility.

Legislative Instruments Act – declarations

Item 2, subclause 2(1) and subclause 5(2)

Item 2 to the table in subclause 2(1) of this bill provides that if the provisions in clauses 3 to 25 do not commence within 6 months of the commencement of the AFS Convention, the Minister must announce by notice in the Gazette the day on which the provisions commence. Item 2 provides that this notice is not a legislative instrument. Clause 5 of the bill provides for the Australian Maritime Safety Authority to approve a body corporate as a survey authority. Subclause 5(2) provides that such an approval is not a legislative instrument.

The Committee notes that neither the notice nor the approval appear to be legislative in character, and that therefore the above provisions appear to be no more than declaratory. In such circumstances, the Committee expects the explanatory memorandum to explain whether the instrument is a legislative instrument within the meaning of section 5 of the Legislative Instruments Act and confirm that the provision has been included merely to assist readers of the bill (Office of Parliamentary Counsel Drafting Direction No. 3.8 refers). However, the explanatory memorandum does not provide any information on this point, and the Committee **seeks the Minister's advice** as to the character of the two instruments.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference.

Relevant extract from the response from the Minister

In response to the Committee's comments concerning Item 2, sub clause 2(1) and sub clause 5(2), these instruments are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*. I can confirm that these provisions are merely declaratory and have been included in the Bill to assist readers. This information should have been included in the Explanatory Memorandum to make this clear.

I appreciate the Committee raising this matter.

The Committee thanks the Minister for this response and agrees that it would have been helpful if this explanation had been included in the explanatory memorandum.

Robert Ray
Chair



RECEIVED

5 SEP 2006

Senate Standing C'ttee
for the Scrutiny of Bills

HON WARREN TRUSS MP
Minister for Transport and Regional Services
Deputy Leader of The Nationals

Reference: 07760-2006

Senator R Ray
Chair of the Committee
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

- 5 SEP 2006

Dear Senator Ray

I refer to the Committee's letter of 10 August 2006 regarding the Protection of the Sea (Harmful Anti-fouling Systems) Bill 2006.

In response to the Committee's comments concerning Item 2, sub clause 2(1) and sub clause 5(2), these instruments are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*. I can confirm that these provisions are merely declaratory and have been included in the Bill to assist readers. This information should have been included in the Explanatory Memorandum to make this clear.

I appreciate the Committee raising this matter.

Yours sincerely

WARREN TRUSS