Senate Standing Committee for the Scrutiny of Bills



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Members of the Committee

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator T Crossin
Senator J Ferris
Senator B Mason
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.

TABLE OF CONTENTS

•	Australia New Zealand Food Authority Amendment Bill 2001	5
	Customs Tariff Amendment (Petrol Tax Cut) Bill 2001	7
	Excise Tariff Amendment (Petrol Tax Cut) Bill 2001	8
	Bills giving effect to National Schemes of Legislation	9
	Parliamentary Amendments and the Committee's Terms of Reference (Taxation Laws Amendment (Superannuation Contributions) Bill 2000	10

• The Committee has commented on these bills

This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Australia New Zealand Food Authority Amendment Bill 2001

This bill was introduced into the Senate on 8 February 2001 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Health and Aged care]

The bill proposes to amend the *Australia New Zealand Food Authority Act* 1991 to implement food regulatory reforms agreed to by the Council of Australian Governments on 3 November 2000. These reforms include the establishment of:

- a Ministerial Council to develop domestic food regulation policy as well as policy guidelines for setting domestic food standards, and to make arrangements to provide for high level consultation with key stakeholders;
- Foods Standards Australia New Zealand a new statutory authority based on the existing Australia New Zealand Food Authority to develop domestic food standards that are to be adopted nationally; and
- an Authority Board that will approve standards developed by the Authority and notify those standards to the Ministerial Council.

The bill also proposes a technical correction to the Australia New Zealand Food Authority Amendment Act (No. 2) 1997 and makes consequential amendments to the Agricultural and Veterinary Chemicals Act 1994; Gene Technology Act 2000; Imported Food Control Act 1992; Industrial Chemicals (Notifications and Assessments) Act 1989; and Therapeutic Goods Act 1989.

Retrospective commencement Subclauses 2(3) and (4)

By virtue of subclause 2(3) of this bill, Part 2 of Schedule 1 is to have commenced retrospectively on 23 December 1999, immediately after the commencement of an earlier amendment to the Principal Act. However, the amendment proposed in this Part seems to be technical only – remedying an incorrect paragraph reference in the previous amending bill.

In a similar manner, subclause 2(4) of the bill provides that Schedule 2 is to have commenced retrospectively on 16 December 1997, immediately after the commencement of another earlier amendment to the Principal Act. However,

the amendment proposed in this Schedule similarly seems to be technical in nature – clarifying that a "variation of a food regulatory measure" includes, and has always included, the revocation of a food regulatory measure.

Nevertheless, the Committee **seeks the Minister's confirmation** that no person will be disadvantaged by the retrospective commencement of these provisions.

Pending the Minister's confirmation, the Committee draws Senators' attention to these provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle I(a)(i) of the Committee's terms of reference.

Customs Tariff Amendment (Petrol Tax Cut) Bill 2001

This bill was introduced into the Senate on 7 February 2001 by Senator Cook as a Private Senator's bill.

The bill proposes to amend the *Customs Tariff Act 1995* to provide relief from the 1 February 2001 indexation of rates of customs duty applying to petroleum.

The Committee has no comment on this bill.

Excise Tariff Amendment (Petrol Tax Cut) Bill 2001

This bill was introduced into the Senate on 7 February 2001 by Senator Cook as a Private Senator's bill.

The bill proposes to amend the *Excise Tariff Act 1921* to provide relief from the 1 February 2001 indexation of rates of excise duty applying to petroleum.

The Committee has no comment on this bill.

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

Recent discussions between the Chairs and Deputy Chairs of Commonwealth, State and Territory Scrutiny Committees have again noted difficulties in the identification and scrutiny of national schemes of legislation. Essentially, these difficulties arise because 'national scheme' bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation. Any requests for amendment are seen to threaten that agreement and that uniformity.

To assist in the early identification of national schemes of legislation, the Committee proposes to note bills that give effect to such schemes as they come before the Committee for consideration.

Australia New Zealand Food Authority Amendment Bill 2001

This bill amends the *Australia New Zealand Food Authority Act 1991* to implement those aspects of the new food regulatory system agreed to by all Australian jurisdictions. The bill reflects the arrangements for the new system that are set out in the Inter-governmental Food Regulation Agreement agreed to by members of the Council of Australian Governments on 3 November 2000.

The Agreement establishes a new Ministerial Council – the Australia and New Zealand Food Regulation Ministerial Council 2000. This Council "will develop domestic food regulation policy as well as policy guidelines for setting domestic food standards". Recognising the primacy of public health and safety considerations in developing such policy, the new Ministerial Council will be based on the existing Council of Health Ministers (ANZFSC) but can be complemented by other Ministers nominated by individual jurisdictions covering portfolios such as primary or processed food production, or trade. Each jurisdiction will have a single vote on all resolutions.

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

Taxation Laws Amendment (Superannuation Contributions) Bill 2000

The Committee considered this bill in *Alert Digests Nos 13 and 14 of 2000*. In *Digest No 13*, the Committee discussed Item 11 in Schedule 1 to the bill. This item provided that certain amendments were to apply from 30 June 2000, being the date on which the Assistant Treasurer had announced those amendments in a media release. The Committee commented that, while this constituted an example of 'legislation by press release', the bill had been introduced well within the six-month period referred to in the Senate resolution of 8 November 1988 and the Committee made no further comment on this provision.

On 8 February 2001, the Senate in Committee amended Item 11 in Schedule 1 to provide that:

- the amendment made by item 3 of that Schedule applied to contributions made after 4pm (by legal time in the Australian Capital Territory) on 19 May 1999; and
- the amendments made by items 1, 2 and 4 and Part 2 of that Schedule applied to contributions made after 4pm (by legal time in the Australian Capital Territory) on 30 June 2000.

The amendment made by item 3 in Schedule 1 concerns deductions for contributions to superannuation funds made by employers for the benefit of eligible employees. The amendment is intended to clarify the meaning of the term 'eligible employee' to ensure that a person cannot be an eligible employee of themselves if they are employed by an entity controlled by themselves.

In moving the amendment, Senator Allison stated that "making this measure retrospective to 19 May 1999 is more appropriate than either the government's proposal or the ALP's amendment that we have just voted on. We locate that date at the time when the tax commissioner put out a detailed statement making it very clear that the tax office, following a review of aggressively marketed employee benefit arrangements, had concluded that there were clear attempts to frustrate the law and that they would be defeated" (Senate, *Parliamentary Debates*, Proof Hansard, 8 February 2001, p 21554)

The Committee notes that the effect of this amendment, if enacted, would be to increase the period of retrospective operation of this provision by an additional period of more than 12 months. The Committee **seeks the advice of the Minister** as to whether the Government proposes to accept this amendment.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2001

NAME OF BILL AL	ERT DIGEST	INTRO HOUSE	DUCED SENATE	MINISTER	RESPON SOUGHT RE		REPORT NUMBER
Bills Carried over from 1999/2000							
Aboriginal and Torres Strait Islander Commission Amendment Bill 2000	18(6.12.00)	29.11.00	6.2.01	Aboriginal and Torres Strait Islander Affairs	7.12.00	15.1.01 27.2.01	1(7.2.01) 2(28.2.01)
Administrative Review Tribunal Bill 2000	10(16.8.00)	28.6.00	6.2.01	Attorney-General	17.8.00		
Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000	15(1.11.00)	12.10.00	6.2.01	Attorney-General	2.11.00		
Aviation Noise Ombudsman Bill 2000	13(4.10.00)	4.9.00		Mr Albanese MP	5.10.00	6.10.00	
Broadcasting Services Amendment Bill 200 (previous citation: Broadcasting Services Amendment Bill (No. 4) 1999)	0 1(16.2.00)	9.12.99	7.11.00	Communications, Information and the Arts	17.2.00 9.11.00	4.5.00 8.1.01	16(8.11.00) 1(7.2.01)
Convention on Climate Change (Implementation) Bill 1999	14(22.9.99)		2.9.99	Senator Brown	3.9.99		
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 1999 (new citation: Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 2000)	19(1.12.99)	24.11.99	30.10.00	Justice and Customs	2.12.99	15.3.00 11.00	15(1.11.00) 2(28.2.01)
Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Bill 2000	17(29.11.00)	9.11.00	7.2.01	Defence	30.11.00	5.12.00	2(28.2.01)

NAME OF BILL	ALERT DIGEST		ODUCED SENATE	MINISTER	RESP SOUGHT	ONSE RECEIVED	REPORT NUMBER
Job Network Monitoring Authority Bill 2000	16(8.11.00)	30.10.00		Ms Kernot	9.11.00		
Job Network Monitoring Authority Bill 2000 [No. 2]	16(8.11.00)		31.10.00	Senator Collins	9.11.00		
Migration Legislation Amendment Bill (No. 1) 2001 (previous citation: Migration Legislation Amendment Bill (No. 2) 2000)	4(5.4.00)	14.3.00	26.2.01	Immigration and Multicultural Affairs	6.4.00	26.4.00	2(28.2.01)
Migration Legislation Amendment (Integrity of Regional Migration Schemes) Bill 2000	18(6.12.00)	9.11.00		Immigration and Multicultural Affairs	7.12.00	5.2.01	
Pig Industry Bill 2000	18(6.12.00)	30.11.00		Agriculture, Fisheries and Forestry	7.12.00	14.2.01	
Postal Services Legislation Amendment Bill 2000	5(12.4.00)	6.4.00		Communications, Information Technology and the Arts	13.4.00		
Remuneration Tribunal Amendment Bill 200	0 18(6.12.00)	29.11.00		Finance and Administration	7.12.00	31.1.01	
Roads to Recovery Bill 2000	18(6.12.00)	30.11.00	5.12.00	Transport and Regional Services	7.12.00		
Bills being dealt with in 2001							
Communications and the Arts Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)	30.11.00	8.2.01	Communications, Information Technology and the Arts	8.2.01	26.2.01	2(28.2.01)
Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000	1(7.2.01)	6.12.00		Justice and Customs	8.2.01		

NAME OF BILL	ALERT DIGEST		ODUCED SENATE	MINISTER	RESP SOUGHT	PONSE RECEIVED	REPORT NUMBER
Environment and Heritage Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)	8.2.01	6.12.00	Environment and Heritage	8.2.01	26.2.01	2(28.2.01)
Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)	6.12.00		Foreign Affairs and Trade	8.2.01		
Law and Justice Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)		6.12.00	Justice and Customs	8.2.01	20.2.01	2(28.2.01)
National Crime Authority Legislation Amendment Bill 2000	1(7.2.01)		7.12.00	Justice and Customs	8.2.01		
Petroleum (Submerged Lands) Legislation Amendment Bill (No. 3) 2000	1(7.2.01)	6.12.00		Industry, Science and Resources	8.2.01		
Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 200	1(7.2.01) 0	7.12.00		Employment, Workplace Relations and Small Business	8.2.01		
Superannuation Legislation Amendment (Post-retirement Commutations) Bill 2000	1(7.2.01)	7.12.00		Finance and Administration	8.2.01		
Therapeutic Goods Amendment Bill (No. 4) 2000	1(7.2.01)		7.12.00	Health and Aged Care	8.2.01	20.2.01	2(28.2.01)