

**Senate Standing Committee
for the
Scrutiny of Bills**

Alert Digest

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Senate Standing Committee for the Scrutiny of Bills

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.

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- **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.

Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001

This bill was introduced into the House of Representatives on 29 March 2001 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Primary Industries (Customs) Charges Amendment Regulations (No 1) 2000* to clarify the rate of charge intended to be struck on dried vine fruits that were exported from 1 January 2000. The bill validates regulations that were established to retrospectively reduce the rate of export charge on dried vine fruits exported in that period.

Commencement

Clause 2

The general outline of this bill included in the Explanatory Memorandum concludes with the statement that “it is necessary for this Bill to commence from 1 January 2000”. However, clause 2 of the bill states that it commences on the day on which it receives Royal Assent. Given this apparent inconsistency in commencement provisions, the Committee **seeks the Minister’s advice** as to whether the bill’s commencement clause ensures that the bill achieves its purpose.

Other than this, the Committee makes no further comment on this provision.

A necessary validation?

Clause 3

Subsection 48(2) of the *Acts Interpretation Act 1901* invalidates any regulation which is expressed to take effect at a time before it is gazetted and which operates to the disadvantage of any person other than the Commonwealth.

The Minister, in his Second Reading Speech to this bill, observes that the purpose of the bill is to ensure that subsection 48(2) is taken not to have

applied to certain Statutory Rules. Given this, it might be thought that the Statutory Rules which are to be validated by the bill operate to the disadvantage of persons other than the Commonwealth. However, the Minister concludes his Speech by noting that “the only rights adversely affected are those of the Commonwealth”. In these circumstances, the Committee **seeks the Minister’s advice** as to why it is necessary to retrospectively remove the application of the Acts Interpretation Act.

Other than this, the Committee makes no further comment on this provision.

Dried Vine Fruits (Rate of Primary Industry (Excise) Levy) Validation Bill 2001

This bill was introduced into the House of Representatives on 29 March 2001 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Primary Industries (Excise) Levies Amendment Regulations 2000 (No 3)* to clarify the rate of charge intended to be struck on dried vine fruits that were processed between 1 January and 1 October 2000, and validate the *Primary Industries Levies and Charges Collection Amendment Regulations 2000 (No 2)* which allow for the collection of the levy. The bill validates regulations that were established to retrospectively reduce the rate of excise levy on dried vine fruits processed.

Commencement

Clause 2 and subclauses 3(1) and (2)

Clause 2 provides that this bill is to commence on Assent. However, subclauses 3(1) and (2) are to apply from 31 December 1999.

In his Second Reading Speech, the Minister observes that the purpose of the bill is to validate a reduction in the rate of the relevant levy. The bill, therefore, appears to be beneficial to taxpayers.

In the circumstances, the Committee makes no further comment on these provisions.

Retrospective validation

Clause 3

This bill has the same purpose as the Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001, discussed above. That bill retrospectively removed the application of subsection 48(2) of the *Acts Interpretation Act 1901* to certain Statutory Rules. However, this bill, in addition to such a provision, also retrospectively validates other Statutory Rules with effect from 31 December 1999. The Committee **seeks the**

Minister's advice as to why the approach taken in this bill differs from that adopted in the Customs (Charge) Validation Bill.

Pending the Minister's advice, the Committee draws Senators' attention to this 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.

Excise Tariff Amendment (Rural and Regional Infrastructure) Bill 2001

This bill was introduced into the House of Representatives on 26 March 2001 by Mr Katter as a Private Member's bill.

The bill proposes to reserve 1.5 cents from the existing petrol excise duty and re-allocate it to a proposed rural development fund to support infrastructure development in rural and regional Australia.

The Committee has no comment on this bill.

Therapeutic Goods Amendment (Medical Devices) Bill 2001

This bill was introduced into the House of Representatives on 29 March 2001 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Health and Aged Care]

The bill proposes to amend the *Therapeutic Goods Act 1989* to introduce a new medical device regulatory system to harmonise Australian requirements for quality, safety and performance with recommendations of the medical devices Global Harmonisation Task Force. These recommendations are based on the requirements of the European Community.

Features of the new system include specified criteria for safety and performance with which the devices must conform; increased use of internationally recognised standards for devices; a risk-based classification of medical devices; conformity assessment procedures; increased emphasis on post-market activities; and a new electronic lodgement system for ‘inclusion’ (instead of registration or listing) of medical devices on the Australian Register of Therapeutic Goods.

The bill also contains transitional arrangements for devices currently on the Register to meet the new requirements, and for some specified new devices.

Commencement Subclause 2(4)

Subclause 2(4) provides that Schedule 2 to this bill will not commence until 5 years after the commencement of Schedule 1. While this does not conform with *Drafting Instruction No 2 of 1989* issued by the Office of Parliamentary Counsel, the Explanatory Memorandum notes that this extended transitional period has been included to allow devices currently included on the Register to comply with the new requirements provided for in Schedule 1.

Given this explanation, and the inclusion of a fixed date for commencement, the Committee makes no further comment on this bill.

Abrogation of the privilege against self-incrimination

Proposed new sections 41JC and 41JJ

This bill proposes to insert new sections 41JC and 41JJ in the Principal Act. Each of these provisions will abrogate the privilege against self-incrimination for a person who provides information under proposed new sections 41JB and 41JG. However, in the case of an individual, the information or documents given, and anything obtained as a direct or indirect consequence, will not be admissible in evidence in criminal proceedings against that individual (other than proceedings for providing false and misleading information or documents).

The Committee has generally been prepared to accept that provisions containing such a use/derivative use immunity strike a reasonable balance between the need to obtain information and the protection of personal rights. However, in each of these proposed sections the privilege against self-incrimination is abrogated in relation to “a person”, but the immunity is confined to information provided by “an individual”. The Explanatory Memorandum does not indicate the reason for this departure from the usual drafting practice. The Committee, therefore, **seeks the Minister’s advice** as to the reason for limiting the protection afforded by these two sections to ‘individuals’.

Pending the Minister’s advice, 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 1(a)(i) of the Committee’s terms of reference.

Therapeutic Goods (Charges) Amendment Bill 2001

This bill was introduced into the House of Representatives on 29 March 2001 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Health and Aged Care]

The bill proposes to amend the *Therapeutic Goods (Charges) Act 1989* to insert a new provision relating to the inclusion of kinds of medical devices in the Register. The amendments provide for annual charges for inclusion in the Register to be payable when charges take effect at any time during a financial year. Special exemption provisions from the payment of annual charges are also made for circumstances where turnover of goods is of low volume and low value.

The Committee has no comment on this bill.

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (26 March - 29 March)

Electoral and Referendum Amendment Bill 2000: On 28 March, the House of Representatives agreed to amend this bill. These amendments raised no issues within the Committee's terms of reference.

Pig Industry Bill 2000: On 27 March, the House of Representatives agreed to certain Senate amendments to this bill. These amendments addressed concerns which had been expressed by this Committee.

AMENDMENTS IN THE SENATE (26 March - 29 March)

Broadcasting Legislation Amendment Bill 2001: On 28 March, the Senate agreed to an amendment to this bill agreed to by the House of Representatives. This amendment raised no issues within the Committee's terms of reference.

Pig Industry Bill 2000: On 26 March, the Senate amended this bill. These amendments addressed concerns which had been expressed by this Committee.

PROVISIONS OF BILLS WHICH IMPOSE CRIMINAL SANCTIONS FOR A FAILURE TO PROVIDE INFORMATION

REPORT NO 2/2001

The Committee's *Eighth Report of 1998* dealt with the appropriate basis for penalty provisions for offences involving the giving or withholding of information. In that Report, the Committee recommended that the Attorney-General develop more detailed criteria to ensure that the penalties imposed for such offences were "more consistent, more appropriate, and make greater use of a wider range of non-custodial penalties". The Committee also recommended that such criteria be made available to Ministers, drafters and to the Parliament.

The Government responded to that Report on 14 December 1998. In that response, the Minister for Justice referred to the ongoing development of the Commonwealth *Criminal Code*, which would include rationalising penalty provisions for "administration of justice offences". The Minister undertook to provide further information when the review of penalty levels and applicable principles had taken place.

For information, the following Table sets out penalties for 'information-related' offences in the legislation covered in this *Digest*. The Committee notes that imprisonment is still prescribed as a penalty for some such offences.

TABLE

<i>Bill/Act</i>	<i>Section/Subsection</i>	<i>Offence</i>	<i>Penalty</i>
<i>Therapeutic Goods Amendment (Medical Devices) Bill 2001</i>	New subsection 41JB(3)	Failure to provide information to Secretary	30 penalty units
	41JG(3)	Failure to provide information or documents to Secretary	30 penalty units

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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		NEG26.2.01
Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000	15(1.11.00)	12.10.00	6.2.01	Attorney-General	2.11.00		NEG26.2.01
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 2000 (previous citation: Broadcasting Services Amendment Bill (No. 4) 1999)	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 1.3.01	5.12.00 7.3.01	2(28.2.01) 3(7.3.01)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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 1.3.01	26.4.00	2(28.2.01)
Migration Legislation Amendment (Integrity of Regional Migration Schemes) Bill 2000	18(6.12.00)	9.11.00	27.3.01	Immigration and Multicultural Affairs	7.12.00	5.2.01	4(28.3.01)
Pig Industry Bill 2000	18(6.12.00)	30.11.00	8.3.01	Agriculture, Fisheries and Forestry	7.12.00	14.2.01	4(28.3.01)
Postal Services Legislation Amendment Bill 2000	5(12.4.00)	6.4.00	--	Communications, Information Technology and the Arts	13.4.00	--	DC
Remuneration Tribunal Amendment Bill 2000	18(6.12.00)	29.11.00	8.3.01	Finance and Administration	7.12.00	31.1.01	4(28.3.01)
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							
Australia New Zealand Food Authority Amendment Bill 2001	2(28.2.01)		8.2.01	Health and Aged Care	1.3.01	26.3.01	4(28.3.01)
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Copyright Amendment (Parallel Importation) Bill 2001	3(7.3.01)	28.2.01		Attorney-General	8.3.01		
Crimes Amendment (Age Determination) Bill 2001	4(28.3.01)	7.3.01	4.4.01	Justice and Customs	29.3.01	2.4.01	5(4.4.01)
Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000	1(7.2.01) 4(28.3.01)	6.12.00	27.3.01	Justice and Customs	8.2.01 29.3.01	27.3.01	4(28.3.01)
Customs Tariff Amendment Bill (No.2) 2001	4(28.3.01)	8.3.01	29.3.01	Justice and Customs	29.3.01		
Electoral and Referendum Amendment Bill (No. 1) 2001	4(28.3.01)	7.3.01	2.4.01	Finance and Administration	29.3.01		
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)
Excise Tariff Amendment Bill (No. 1) 2001	4(28.3.01)	8.3.01	29.3.01	Treasurer	29.3.01		
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	2.4.01	5(4.4.01)
Law and Justice Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)	5.3.01	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		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Parliamentary (Choice of Superannuation) Bill 2001	4(28.3.01)	5.3.01		Mr P Andren MP	29.3.01	3.4.01	
Petroleum (Submerged Lands) Legislation Amendment Bill (No. 3) 2000	1(7.2.01)	6.12.00		Industry, Science and Resources	8.2.01	5.3.01	5(4.4.01)
Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code Bill 2001	4(28.3.01)		8.3.01	Prime Minister	29.3.01		
Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000	1(7.2.01)	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	1.3.01	Finance and Administration	8.2.01	28.2.01	3(7.3.01)
Taxation Laws Amendment (Superannuation Contributions) Bill 2000	*14(11.10.00) 4(28.3.01)	7.9.00	5.10.00	Treasurer	12.10.00 1.3.01	31.10.01	*15(1.11.00)
Therapeutic Goods Amendment Bill (No. 4) 2000	1(7.2.01)	5.3.01	7.12.00	Health and Aged Care	8.2.01	20.2.01	2(28.2.01)