

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



Alert Digest

No. 11 of 2001

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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.

TABLE OF CONTENTS

Australian Citizenship Legislation Amendment Bill 2001	5
Commonwealth Inscribed Stock Amendment Bill 2001	6
Disability Services Amendment (Improved Quality Assurance) Bill 2001	7
• Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Bill) 2001	8
• Family and Community Services Legislation Amendment (Application of Criminal Code) Bill 2001	10
Family Assistance Estimate Tolerance (Transition) Bill 2001	12
• Industry, Science and Resources Legislation Amendment (Application of Criminal Code) Bill 2001	13
• Innovation and Education Legislation Amendment Bill (No. 2) 2001	15
Migration Agents Registration Application Charge Amendment Bill 2001	18
Migration Legislation Amendment Bill (No. 5) 2001	19
Parliamentary Service Amendment Bill 2001	20
Quieter Advertising – Happier Homes Bill 2001	21
Royal Commissions and Other Legislation Amendment Bill 2001	22
Superannuation Guarantee (Administration) Amendment Bill 2001	23

- **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.

• Taxation Laws Amendment Bill (No. 5) 2001	24
Parliamentary amendments and the Committee's terms of reference	28

- **The Committee has commented on these bills**

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Committee under its terms of reference is invited to do so.

Australian Citizenship Legislation Amendment Bill 2001

This bill was introduced into the House of Representatives on 23 August 2001 by the Minister for Immigration and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural Affairs]

In response to the Australian Citizenship Council's report 'Australian Citizenship for a New Century', the bill proposes to amend the *Australian Citizenship Act 1948* by:

- repealing section 17 so that adult Australian citizens in future do not lose their Australian citizenship on the acquisition of citizenship of another country;
- extending the descent and resumption provisions to give young people more opportunities to acquire Australian citizenship;
- providing for children who acquire Australian citizenship with their responsible parent, or at a later date, to be given their own citizenship certificates; and
- strengthening aspects of the integrity of the Australian citizenship process.

The bill also inserts a specific reference to 'people smuggling' offences in the existing Act which provides for the deprivation of Australian citizenship. This amendment highlights the conditions under which a person who has committed such an offence may be deprived of Australian citizenship.

The Committee has no comment on this bill.

Commonwealth Inscribed Stock Amendment Bill 2001

This bill was introduced into the House of Representatives on 23 August 2001 by the Minister for Employment, Workplace Relations and Small Business for the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Commonwealth Inscribed Stock Act 1911* to provide for the issue and transfer of Commonwealth Government Securities (CGS) by electronic means.

The bill provides a regulation-making power for the transfer of legal or equitable interests, and clarifies the roles, powers, responsibilities and obligations of appointed Registrars of the CGS. The bill does not preclude the Reserve Bank from a continuing role as a Registrar in providing for the electronic recording and transfer of the ownership of CGS, in addition to its role in the recording of transfers of ownership of CGS in paper form.

The Committee has no comment on this bill.

Disability Services Amendment (Improved Quality Assurance) Bill 2001

This bill was introduced into the Senate on 23 August 2001 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the *Disability Services Act 1986* to provide better access to education and training, better assessment of people's work capacities, better access to employment assistance services, and quality assurance for available employment services and rehabilitation programs.

The bill aims to improve the quality of Commonwealth-funded employment services and rehabilitation programs provided to people with disabilities. It establishes a new quality assurance system in relation to the provision of services, based on certification of services against a range of Australian industry and international standards.

The bill also contains transitional provisions.

The Committee has no comment on this bill.

Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Bill 2001

This bill was introduced into the House of Representatives on 23 August 2001 by the Minister for Employment, Workplace Relations and Small Business. [Portfolio responsibility: Employment, Workplace Relations and Small Business]

The bill proposes to amend 16 Acts within the Employment, Workplace Relations and Small Business portfolio to reflect the application of the *Criminal Code* with effect from 15 December 2001.

The main amendments:

- apply the *Criminal Code* to all offence-creating and related provisions within the portfolio;
- remove defences of lawful excuse and lawful authority specific to individual provisions, instead relying on the general defences of lawful authority and lawful excuse under the *Criminal Code*;
- better identify exceptions and defences;
- replace certain references to the *Crimes Act 1914* with references to provisions of the *Criminal Code* where appropriate;
- apply strict liability to individual offences or specified physical elements of offences where appropriate;
- reconstruct provisions in order to clarify physical elements of conduct, circumstance and result; and
- remove or replace inappropriate fault elements.

Strict liability offences

Various provisions

The effect of this bill is to include, in legislation administered within the Employment, Workplace Relations and Small Business portfolio, a number of offences which are specified as offences of strict liability. An offence is one of strict liability where it provides that a person may be punished for doing

something, or failing to do something, whether or not they have a guilty intent. The Committee is usually concerned at the imposition of strict liability and is currently inquiring generally into the issue.

The Explanatory Memorandum states that these particular amendments are intended to ensure that when Chapter 2 of the *Criminal Code* is applied to all Commonwealth criminal offences, from 15 December 2001, “the relevant offences continue to have much the same meaning and to operate in the same manner as they do at present”.

The Committee has considered a number of bills which make similar provision for legislation administered within other portfolio areas. With regard to this bill, the Committee **seeks the Minister’s advice** as to whether any of its provisions converts an offence which previously was not one of strict liability into such an offence.

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.

Family and Community Services Legislation Amendment (Application of Criminal Code) Bill 2001

This bill was introduced into the Senate on 22 August 2001 by the Parliamentary Secretary to the Minister for Health and Aged Care. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend 15 Acts to make consequential amendments to certain offence provisions in legislation administered by the Minister for Family and Community Services and the Minister for Community Services to reflect the application of the *Criminal Code* with effect from 15 December 2001.

The main amendments:

- make offence-creating and related provisions in the Family and Community Services portfolio comply with the Code;
- apply strict liability or absolute liability to individual offences or specified physical elements of offences where necessary;
- remove the defences of lawful excuse and lawful authority that appear in certain provisions, instead placing reliance on the *Criminal Code's* general defence of lawful authority and lawful excuse;
- delete references to certain provisions of the *Crimes Act 1914* and replace them with references to the equivalent *Criminal Code* provisions; and
- reconstruct provisions in order to clarify physical elements of conduct, circumstance and result.

Strict liability offences

Various provisions

The effect of this bill is to include, in legislation administered within the Family and Community Services portfolio, a number of offences which are specified as offences of strict liability. An offence is one of strict liability where it provides that a person may be punished for doing something, or failing to do something, whether or not they have a guilty intent. The

Committee is usually concerned at the imposition of strict liability and is currently inquiring generally into the issue.

The Explanatory Memorandum states that these particular amendments are intended to ensure that when Chapter 2 of the *Criminal Code* is applied to all Commonwealth criminal offences, from 15 December 2001, “the relevant offences continue to have the same meaning and operation as they do at present”.

The Committee has considered a number of bills which make similar provision for legislation administered within other portfolio areas. With regard to this bill, the Committee **seeks the Minister’s advice** as to whether any of its provisions converts an offence which previously was not one of strict liability into such an offence.

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.

Family Assistance Estimate Tolerance (Transition) Bill 2001

This bill was introduced into the Senate on 22 August 2001 by the Parliamentary Secretary to the Minister for Health and Aged Care. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the *A New Tax System (Family Assistance) (Administration) Act 1999* to enable a disallowable instrument to be made to allow a \$1000 tolerance for families in receipt of family tax benefit (FTB) or child care benefit (CCB) overpayments as a consequence of incorrectly estimated income or shared care in the 2000-2001 income year. This will mean that up to \$1000 of an overpayment will be waived for recipient families in the 2000-2001 year.

The Committee has no comment on this bill.

Industry, Science and Resources Legislation Amendment (Application of Criminal Code) Bill 2001

This bill was introduced into the Senate on 22 August 2001 by the Parliamentary Secretary to the Minister for Health and Aged Care. [Portfolio responsibility: Industry, Science and Resources]

The bill proposes to amend 26 Acts within the Industry, Science and Resources portfolio to reflect the application of the *Criminal Code* with effect from 15 December 2001.

The main amendments:

- specify offences of strict liability in accordance with the *Criminal Code*;
- restructure offence provisions to include appropriate fault elements;
- restructure offence provisions to proscribe the actions of a person whose conduct causes damage, injury, destruction or obliteration of prescribed property;
- restructure criminal offence provisions containing a defence to avoid that defence being mistakenly interpreted as included among the elements of an offence;
- specify whether a defence places a legal or evidential burden on a defendant;
- restructure ancillary offence provisions so as to apply relevant ancillary provisions of the *Criminal Code*;
- extend the meaning of ‘engaging in conduct’ to include omissions;
- restructure offence provisions so as not to require knowledge of the law; and
- specify, in provisions which establish criminal responsibility for corporations, whether or not Part 2.5 of the *Criminal Code* (dealing with corporate criminal responsibility) is applicable.

Strict liability offences

Various provisions

The effect of this bill is to include, in legislation administered within the Industry, Science and Resources portfolio, a number of offences which are specified as offences of strict liability. An offence is one of strict liability where it provides that a person may be punished for doing something, or failing to do something, whether or not they have a guilty intent. The Committee is usually concerned at the imposition of strict liability and is currently inquiring generally into the issue.

The Explanatory Memorandum states that these particular amendments are intended to ensure that when Chapter 2 of the *Criminal Code* is applied to all Commonwealth criminal offences, from 15 December 2001, “offences [will] operate in the same way after the *Criminal Code* comes into effect as they operate before the *Criminal Code* applies”.

The Committee has considered a number of bills which make similar provision for legislation administered within other portfolio areas. With regard to this bill, the Committee **seeks the Minister’s advice** as to whether any of its provisions converts an offence which previously was not one of strict liability into such an offence.

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.

Innovation and Education Legislation Amendment Bill (No. 2) 2001

This bill was introduced into the House of Representatives on 22 August 2001 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

The bill proposes to amend the *Higher Education Funding Act 1988* to:

- increase the maximum amount of financial assistance payable to higher education institutions in 2001 to reflect revised estimates of planned expenditure under the Higher Education Workplace Reform Programme;
- increase the maximum amount of financial assistance payable to higher education institutions in 2002 and 2003 to reflect revised estimates of the Commonwealth's overall superannuation liability as a result of the Beneficiary Choice Programme in Victoria;
- create the Postgraduate education loan scheme;
- introduce a cap on the total amount of indebtedness that an individual is able to accrue in aggregate; and
- allow higher education institutions to accept electronic communications, including electronic signatures, and to elect to communicate electronically with students without seeking the student's agreement, provided students have access to the appropriate technology and services.

Extension of tax file number regime

Proposed new section 98E

This bill is in almost identical terms to the Innovation and Education Legislation Amendment Bill 2001 which was introduced in the House of Representatives on 5 April 2001, which was divided by the Senate on 29 June 2001, and on which the Committee commented in *Alert Digest No. 6 of 2001*.

As the Committee noted in that *Digest*, item 5 of Schedule 2 to this bill proposes to insert new section 98E in the *Higher Education Funding Act 1988*. This section will require postgraduate students under the proposed Postgraduate Education Loan Scheme to reveal their tax file numbers to the tertiary education institution at which they will be studying.

The purpose of this requirement is obviously to minimise the possibility for fraud in the administration of the new loans scheme. However, the requirement marks yet another step in the process of providing information ostensibly collected solely for taxation purposes to persons outside the Tax Office. The Committee again notes the words of the then Treasurer in the Parliament on 25 May 1988 when referring to the proposed introduction of the tax file number scheme:

The only purpose of the file number will be to make it easier for the Tax Office to match information it receives about money earned and interest payments.

This system is for the exclusive and limited use of the Tax Office – it will simply allow the better use of information the Tax Office already receives.

The Committee also notes the words of the then member for Kooyong in the Parliament on 21 December 1990, that “since the inception of the tax file number in 1988 as an identifying system, we have seen the gradual extension of that system to other areas by way of a process sometimes referred to as function creep”.

As the Committee has previously noted, this process has continued and grown over a number of years, irrespective of the governing party of the day, and in spite of assurances that it would not occur. This provision represents yet another example of this process.

In recent times the Committee has drawn attention to this issue in relation to the Youth Allowance Consolidation Bill 1999 (*Alert Digest No. 2 of 1999*), the Social Security (Administration) Bill 1999 (*Alert Digest No. 9 of 1999*), the A New Tax System (Family Assistance) (Administration) Bill 1999 (*Alert Digest No. 9 of 1999*), the Social Security and Veterans’ Entitlements Legislation Amendment (Private Trusts and Private Companies – Integrity of Means Testing) Bill 2000 (*Alert Digest No. 11 of 2000*), and the Child Support Legislation Amendment Bill (No 2) 2000 (*Alert Digest No. 12 of 2000*).

Given the increasing use of tax file numbers outside the tax system, the Committee **seeks the Minister’s advice** as to whether all statutory provisions which require that a person’s tax file number be disclosed should now be appended as a Schedule to the tax laws.

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.

Migration Agents Registration Application Charge Amendment Bill 2001

This bill was introduced into the House of Representatives on 23 August 2001 by the Minister for Immigration and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural Affairs]

The bill proposes to amend the *Migration Agents Registration Application Charge Act 1997* to increase the upper limit of the migration agents' registration application charge, and thereby enable future increases in such charges where appropriate. The actual charge payable on an individual's making a registration application is set out in the Regulations.

The Committee has no comment on this bill.

Migration Legislation Amendment Bill (No. 5) 2001

This bill was introduced into the House of Representatives on 23 August 2001 by the Minister for Immigration and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural Affairs]

The bill proposes to amend the *Migration Act 1958* to ensure that private organisations can continue to disclose, to officers exercising powers and functions under the Act, information concerning a person's travel, or proposed travel, to or from Australia. The provision authorises disclosure of personal information regarding a person's past, current or proposed travel on the way (directly or indirectly) to the migration zone, or travel which involves the departure of any person from the migration zone.

The Committee has no comment on this bill.

Parliamentary Service Amendment Bill 2001

This bill was introduced into the House of Representatives on 23 August 2001 by the Speaker. [Portfolio responsibility: Prime Minister]

The bill proposes to amend the *Parliamentary Service Act 1999* to clarify arrangements in relation to the mobility of employees between the Parliamentary Service and the Australian Public Service (section 26); and to provide for continuity where the name of a parliamentary department is changed or where a parliamentary department is created to replace an existing department or departments (section 54).

The Committee has no comment on this bill.

Quieter Advertising—Happier Homes Bill 2001

This bill was introduced into the House of Representatives on 20 August 2001 by Ms M. O’Byrne as a Private Member’s bill.

The bill proposes to amend the *Broadcasting Services Act 1992* to require the Australian Broadcasting Authority to investigate and determine program standards in relation to the loudness of television advertisements, and the compliance monitoring of those standards.

The Committee has no comment on this bill.

Royal Commissions and Other Legislation Amendment Bill 2001

This bill was introduced into the House of Representatives on 23 August 2001 by the Minister for Defence. [Portfolio responsibility: Prime Minister]

The bill proposes to amend the *Royal Commissions Act 1902* to allow Royal Commissions to:

- communicate information and furnish evidence that relates to or may relate to a contravention of the law to the responsible persons and authorities, regardless of whether the contravention may give rise to a criminal, civil or administrative penalty; and
- communicate such information to the Attorney-General of the Australian Capital Territory, along with other Attorneys-General of Australia.

The bill also proposes to amend the *Australian Securities and Investments Commission Act 2001* to allow ASIC to disclose information to Royal Commissions voluntarily, and the *Financial Transaction Reports Act 1988* to allow Royal Commissions which are inquiring into whether unlawful conduct may have occurred, to access financial transaction reports information.

The Committee has no comment on this bill.

Superannuation Guarantee (Administration) Amendment Bill 2001

This bill was introduced into the House of Representatives on 20 August 2001 by Mr K. K. Thomson as a Private Member's bill.

The bill proposes to amend the *Superannuation Guarantee (Administration) Act 1992* to require all employers, as a minimum, to remit superannuation guarantee payments on a quarterly, rather than an annual, basis. The bill also makes provision for employers to remit advice to the Australian Taxation Office on a quarterly, rather than an annual, basis if they have a shortfall in their superannuation guarantee liability.

The Committee has no comment on this bill.

Taxation Laws Amendment Bill (No. 5) 2001

This bill was introduced into the House of Representatives on 23 August 2001 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Schedule 1 of the bill proposes to amend the *A New Tax System (Australian Business Number) Act 1999*, *A New Tax System (Goods and Services Tax) Act 1999*, *Fringe Benefits Tax Assessment Act 1986*, *Income Tax Assessment Act 1997*, and *Taxation Administration Act 1953* to clarify the treatment of religious practitioners under the new tax system. The amendments will broadly ensure that religious practitioners who are not employees are treated in the same way as employees and office holders.

Schedule 2 proposes to amend the *Income Tax Assessment Act 1936* and *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* to facilitate the change in status of constitutionally protected superannuation funds that elect to become taxed superannuation funds.

Schedule 3 proposes to amend the *Income Tax Assessment Act 1997* to prevent capital gains tax (CGT) event E4 provisions applying to payments out of the CGT discount, and to correct the treatment of certain capital gains passing through a chain of trusts. Amendments dealing with payments of non-assessable amounts associated with building allowances and minor amendments are also made.

Schedule 4 proposes to amend the *Income Tax Assessment Act 1997* to allow income tax deductions for certain gifts of \$2 or more made to certain organisations.

Schedule 5 proposes to amend the *Income Tax Assessment Act 1997* to exempt from income tax the income of a non-profit society or association established for the purpose of promoting the development of Australian information and communications technology resources. This schedule also proposes to amend the *Fringe Benefits Tax Assessment Act 1986* to provide a rebate of FBT to an employer which is a non-profit society or association established for the purpose of promoting the development of information and communications technology, aquaculture and fishing resources of Australia.

The bill also contains application and transitional provisions.

Retrospective commencement

Subclause 2(2)

Schedule 2 to this bill amends the income tax law and the superannuation surcharge legislation to facilitate the change in status of constitutionally protected superannuation funds that elect to become taxed superannuation funds. Subclause 2(2) provides that this Schedule is to commence retrospectively on 1 July 2000.

The Explanatory Memorandum summarises the effect of these provisions as follows: “the assessable income of the fund will include the amount that would be assessable if member benefits were rolled over from an untaxed source to a taxed source ... Benefits subsequently paid from the fund will be treated as though they are paid wholly from a taxed source. However, a pension that commenced to be paid from the fund before the fund changed its status will not qualify for the 15% pension rebate”.

From this explanation, it is not clear whether the amendments proposed in Schedule 2 will benefit taxpayers, or will retrospectively increase the burden of taxation on them. The Committee, therefore, **seeks the Minister’s advice** on this issue.

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

Retrospective application

Schedule 1, items 3, 6 and 9

Schedule 1 to this bill seeks to clarify the treatment of religious practitioners under the new tax system. The amendments proposed in items 3, 6 and 9 of this Schedule will apply retrospectively from 1 July 2000. Broadly, these amendments provide that:

- religious practitioners will not be eligible for, or need, an Australian Business Number for activities done in pursuit of their vocation, and payments made to them for activities done in pursuit of their vocation will not be subject to the withholding arrangements where no ABN is provided;
- benefits provided by a religious institution to a religious practitioner for pastoral or related duties will continue to be exempt from Fringe Benefits Tax; and
- activities done in pursuit of a vocation as a religious practitioner and as a member of a religious institution will not be subject to the Goods and Services Tax.

These amendments are apparently beneficial and “are expected to have no effect on the revenue”.

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

Retrospective application Schedule 3, item 4

Schedule 3 to the bill amends the tax law to ensure that CGT event E4 does not apply to certain payments of CGT discount amounts made by trustees to beneficiaries, but does apply to payments associated with building allowances made by trustees to beneficiaries.

In general terms, these amendments apply to payments made by trustees on or after 1 July 2001. However, a “transitional measure that corrects the chain of trusts deficiencies applies to payments made by trustees on or after 11.45 am ... on 21 September 1999 and before 1 July 2001”. This transitional measure was detailed in a Press Release issued on 31 July 2001.

With regard to this provision, the Explanatory Memorandum notes that “if a payment of the CGT discount amount passes through 2 or more trusts before being paid to the beneficiary at the end of the chain of trusts, cost base adjustments under CGT event E4 may be made to each of the trustee’s units or interests in the chain ... This inappropriate outcome is removed by reducing the non-assessable part by the amount of the CGT discount allowed against a capital gain made by a trust that is paid to the trustee of another trust ... a

payment of the small business 50% reduction amount will not generate a capital gain under CGT event E4”.

From this explanation, it is not clear why the date of 21 September 1999 was chosen, nor is it clear whether the transitional provision is beneficial to taxpayers. The Committee, therefore, **seeks the Minister’s advice** on these matters.

Pending the Minister’s advice, 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.

Retrospective application Schedule 5

Schedule 5 to the bill amends the tax law to exempt from income tax the income of a society or association established for the purpose of promoting the development of Australian information and communications technology (ICT) resources, and to allow a rebate from FBT for certain employers of non-profit associations established to promote Australian ICT, aquaculture and fishing resources.

These amendments will apply retrospectively from various dates between 1 April 1999 and 1 July 2000. However, the Explanatory Memorandum notes that these amendments are beneficial to taxpayers.

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

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (20 August – 23 August)

Alcohol Education and Rehabilitation Account Bill 2001: On 23 August, the House of Representatives agreed to make an amendment to this bill requested by the Senate. This amendment raised no issues within the Committee's terms of reference.

Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2001: On 23 August, the House of Representatives agreed to amend this bill. These amendments raised no issues within the Committee's terms of reference.

Migration Legislation Amendment (Immigration Detainees) Bill (No 2) 2001: On 23 August, the House of Representatives agreed to amend this bill. Amendment (2) empowered authorised officers to require immigration detainees to walk through screening equipment. Amendment (3) limited the class of persons with power to authorise a strip search. These amendments raised no issues within the Committee's terms of reference.

States Grants (Primary and Secondary Education Assistance) Amendment Bill 2001: On 20 August, the House of Representatives agreed to amend this bill. These amendments raised no issues within the Committee's terms of reference.

Treasury Legislation Amendment (Application of Criminal Code) Bill (No 2) 2001: On 22 August, the House of Representatives agreed to amend this bill. These amendments raised no issues within the Committee's terms of reference.

Treasury Legislation Amendment (Application of Criminal Code) Bill (No 3) 2001: On 22 August, the House of Representatives agreed to amend this bill. These amendments raised no issues within the Committee's terms of reference. Some penalty provisions under the *Trade Practices Act 1974* are increased to a maximum of 10,000 penalty units to "ensure that penalties that currently apply will continue to apply following the application of the Criminal Code".

AMENDMENTS RAISING ISSUES WITHIN THE COMMITTEE'S TERMS OF REFERENCE

General Insurance Reform Bill 2001

Strict liability offences

Various provisions

This bill proposes a number of amendments to the *Insurance Act 1973*. The Committee considered the bill in *Alert Digest No. 9 of 2001* in which it sought the Minister's advice in relation to certain matters, and has reported on that advice in its *Eleventh Report of 2001*. The bill was passed by the Senate, with amendments, on 27 August 2001.

On 22 August 2001, the House of Representatives agreed to amend the bill. Most of these amendments raised no issues within the Committee's terms of reference. However, amendment (16) creates an offence of doing or failing to do an act which results in an insurer failing to comply with a direction under section 17. This offence is expressed to be a strict liability offence. Amendment (23) creates a similar offence in relation to a direction under section 27. Amendment (34) creates a similar offence in relation to an exemption condition under section 47. In the absence of an explanation, the Committee **seeks the Minister's advice** as to why these offences should be offences of strict liability.

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.

Incorporation of extrinsic material as in force from time to time

Proposed new subsection 32(6)

Proposed new section 32 authorises APRA to determine prudential standards. Under proposed subsection 32(5), such determinations are disallowable instruments.

However, amendment (25) adds a new subsection (6) which states that these standards may apply, adopt or incorporate any matter contained in an instrument or other writing as in force from time to time, contrary to section 49A of the *Acts Interpretation Act 1901*.

In the absence of an explanation, the Committee **seeks the Minister's advice** as to why it is appropriate that such standards should be able to incorporate any extrinsic

material as it exists from time to time, and how parliamentary scrutiny can be effective where such material is incorporated.

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

**Delegation to a 'class of persons'
Proposed new paragraph 59(1)(b)**

Section 59 of the Principal Act deals with reports of investigations by the inspector. Amendment (46) proposes to substitute a new paragraph 59(1)(b) which authorises the inspector to delegate his or her powers to an APRA staff member or to "a person included in a class of persons approved in writing by APRA". No explicit provision is made requiring that a delegate have appropriate training, qualifications or experience. The Committee **seeks the Minister's advice** as to why such a wide and apparently unfettered power of delegation is appropriate.

Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to make rights and liberties unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

AMENDMENTS IN THE SENATE

(20 August – 23 August)

Alcohol Education and Rehabilitation Account Bill 2001: On 22 August, the Senate agreed to request that the House of Representatives amend this bill. This request raised no issues within the Committee's terms of reference.

Financial Sector (Collection of Data - Consequential and Transitional Provisions) Bill 2001: On 23 August, the Senate agreed to amend this bill. This amendment raised no issues within the Committee's terms of reference.

Financial Services Reform (Consequential Provisions) Bill 2001: On 23 August, the Senate agreed to amend this bill. These amendments raised no issues within the Committee's terms of reference.

AMENDMENTS RAISING ISSUES WITHIN THE COMMITTEE'S TERMS OF REFERENCE

Financial Services Reform Bill 2001

Henry VIII clause

Proposed new section 854B

This bill proposes a number of amendments to the law relating to financial services and markets. The Committee considered the bill in *Alert Digest No. 6 of 2001* in which it sought the Minister's advice in relation to certain matters, and has reported on that advice in its *Ninth Report of 2001*.

On 22 and 23 August 2001, the Senate agreed to amend the bill. Most of these amendments raised no issues within the Committee's terms of reference. However, amendment (36) proposes to insert a new section 854B in the *Corporations Act 2001*. This provision states that regulations may exempt a person or class of persons from the provisions of the relevant Part of the Act, or provide that that Part applies as if specified provisions "were omitted, modified or varied as specified in the regulations".

This provision would seem to authorise the modification of the application of primary legislation by regulation. In the absence of an explanation, the Committee **seeks the Minister's advice** as to why it is appropriate that regulations are able to affect the operation of primary legislation in these circumstances.

Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to inappropriately delegate legislative power, in breach of principle 1(a)(iv) of the Committee's terms of reference.

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 27.2.01	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	6.8.01	9(8.8.01)
Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000	15(1.11.00)	12.10.00	6.2.01	Attorney-General	2.11.00	6.8.01	9(8.8.01)
Aviation Noise Ombudsman Bill 2000	13(4.10.00)	4.9.00		Mr Albanese MP	5.10.00	6.10.00	DNP 2.4.01
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		DC
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 20.4.01	2(28.2.01) 6(23.5.01)
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)
<i>Roads to Recovery Act 2000</i>	18(6.12.00)	30.11.00	5.12.00	Transport and Regional Services	7.12.00	6.4.01	6(23.5.01)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills being dealt with in 2001							
Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Bill 2001	9(8.8.01)	27.6.01	27.8.01	Agriculture, Fisheries and Forestry	9.8.01	29.8.01	
Australia New Zealand Food Authority Amendment Bill 2001	2(28.2.01)	24.5.01	8.2.01	Health and Aged Care	1.3.01	26.3.01	4(28.3.01)
Australian Securities and Investments Commission Bill 2001	6(23.5.01)	4.4.01	18.6.01	Treasurer	24.5.01	18.6.01	7(20.6.01)
Aviation Legislation Amendment Bill (No. 2) 2001	6(23.5.01)	5.4.01		Transport and Regional Services	24.5.01	19.6.01	
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)
Copyright Amendment (Parallel Importation) Bill 2001	3(7.3.01)	28.2.01	28.6.01	Attorney-General	8.3.01	15.5.01	9(8.8.01)
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)
<i>Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001</i> (previous citation: Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000)	1(7.2.01) 4(28.3.01)	6.12.00	26.3.01	Justice and Customs Amendments	8.2.01 29.3.01	27.3.01 12.6.01 7.8.01	4(28.3.01) 7(20.6.01) 9(8.8.01)
Customs Tariff Amendment Bill (No.2) 2001	4(28.3.01)	8.3.01	29.3.01	Justice and Customs	29.3.01	27.4.01	6(23.5.01)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Cybercrime Bill 2001	9(8.8.01)	27.6.01		Justice and Customs	9.8.01		
Dried Vine Fruits (Rate of Primary Industry (Customs) Charge) Validation Bill 2001	5(4.4.01)	29.3.01	18.6.01	Agriculture, Fisheries and Forestry	5.4.01	14.6.01	7(20.6.01)
Dried Vine Fruits (Rate of Primary Industry (Excise Levy) Validation Bill 2001	5(4.4.01)	29.3.01	18.6.01	Agriculture, Fisheries and Forestry	5.4.01	14.6.01	7(20.6.01)
Education, Training and Youth Affairs Legislation Amendment (Application of Criminal Code) Bill 2001	10(22.8.01)	8.8.01		Education, Training and Youth Affairs	23.8.01		
Electoral and Referendum Amendment Bill (No. 1) 2001	4(28.3.01)	7.3.01	2.4.01	Finance and Administration	29.3.01 24.5.01	4.5.01	6(23.5.01)
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)
Environment and Heritage Legislation Amendment Bill (No. 2) 2000	1(7.2.01) 8(27.6.01)		7.12.00	Environment and Heritage	28.6.01 23.8.01	20.8.01	10(22.8.01)
<i>Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001</i>	9(8.8.01)			Environment and Heritage re Amendments	9.8.01		
Excise Tariff Amendment Bill (No. 1) 2001	4(28.3.01)	8.3.01	29.3.01	Treasurer	29.3.01	27.4.01	6(23.5.01)
Fair Prices and Better Access for All (Petroleum) Bill 2001	8(27.6.01)		19.6.01	Senator Schacht	28.6.01	28.8.01	11(29.8.01)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Family Law Legislation Amendment (Superannuation) Bill 2001	*6(10.5.00) 7(21.6.01)	13.4.00	18.6.01	Attorney-General re Amendments	21.6.01	26.6.01	8(27.6.01)
Finance and Administration Legislation Amendment (Application of Criminal Code) Bill 2001 (previous citation: Finance and Administration Legislation Amendment (Application of Criminal Code) Bill (No. 1) 2001)	10(22.8.01)	4.4.01	21.8.01	Finance and Administration re Amendments	23.8.01		
Financial Sector (Collection of Data) Bill 2001	6(23.5.01)	5.4.01	20.8.01	Treasurer re Amendments	24.5.01 23.8.01	30.6.01	10(22.8.01)
Financial Services Reform Bill 2001	6(23.5.01)	5.4.01	9.8.01	Treasurer	24.5.01	7.8.01	9(8.8.01)
Financial Services Reform (Consequential Provisions) Bill 2001	7(20.6.01)	7.6.01	9.8.01	Treasurer	21.6.01 9.8.01	7.8.01	9(8.8.01)
Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)	6.12.00	5.4.01	Foreign Affairs and Trade	8.2.01	2.4.01	5(4.4.01)
General Insurance Reform Bill 2001	9(8.8.01)	28.6.01	27.8.01	Treasurer	9.8.01	27.8.01	11(29.8.01)
<i>Great Barrier Reef Marine Park Amendment Actl 2001</i>	6(23.5.01)	4.6.01	5.4.01	Environment and Heritage	24.5.01	6.7.01	9(8.8.01)
Health and Aged Care Legislation Amendment (Application of Criminal Code) Bill 2001	10(22.8.01)	8.8.01	23.8.01	Health and Aged Care	23.8.01		
Health Legislation Amendment Bill (No. 2) 2001	6(23.5.01)	5.4.01	18.6.01	Health and Aged Care	24.5.01	21.6.01	8(27.6.01)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Intelligence Services Bill 2001	9(8.8.01)	27.6.01		Foreign Affairs	9.8.01		
International Maritime Conventions Legislation Amendment Bill 2001	6(23.5.01)	4.4.01	21.8.01	Transport and Regional Services	24.5.01	1.8.01	10(22.8.01)
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)
Measures to Combat Serious and Organised Crime Bill 2001	6(23.5.01)		4.4.01	Justice and Customs	24.5.01	Briefing	8(27.6.01)
Migration Legislation Amendment (Application of Criminal Code) Bill 2001	6(23.5.01)	5.4.01	18.6.01	Immigration and Multicultural Affairs	24.5.01	13.6.01	7(20.6.01)
Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Bill 2001	6(23.5.01)	5.4.01	18.6.01	Immigration and Multicultural Affairs	24.5.01	13.6.01	7(20.6.01)
Migration Legislation Amendment (Immigration Detainees) Bill 2001	6(23.5.01)	5.4.01	27.6.01	Immigration and Multicultural Affairs	Briefing	25.6.01	8(27.6.01) 11(29.8.01)
Migration Legislation Amendment (Immigration Detainees) Bill (No. 2) 2001	9(8.8.01)	27.6.01	28.8.01	Immigration and Multicultural Affairs	9.8.01	23.8.01	11(29.8.01)
National Crime Authority Legislation Amendment Bill 2000 [2001]	1(7.2.01)	20.8.01	7.12.00	Justice and Customs	8.2.01	13.2.01	7(20.6.01)
<i>New Business Tax System (Capital Allowances) Bill 2001</i>	7(20.6.01)	24.5.01	26.6.01	Treasurer	21.6.01	30.7.01	9(8.8.01)
Parliamentary (Choice of Superannuation) Bill 2001	4(28.3.01)	5.3.01		Mr P Andren MP	29.3.01	3.4.01	

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Petroleum (Submerged Lands) Legislation Amendment Bill (No. 3) 2000	1(7.2.01)	6.12.00	5.4.01	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)	24.5.01	8.3.01	Prime Minister	29.3.01	27.4.01	6(23.5.01)
Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Bill 2001	7(20.6.01)	6.6.01	23.8.01	Reconciliation and ATSI Affairs	21.6.01	23.8.01	11(29.8.01)
Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000	1(7.2.01)	7.12.00	24.5.01	Employment, Workplace Relations and Small Business	8.2.01 21.6.01	2.4.01 20.8.01	7(20.6.01) 10(22.8.01)
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 Bill (No. 2) 2001	7(20.6.01)	7.6.01	26.6.01	Treasurer	21.6.01	27.6.01	9(8.8.01)
<i>Taxation Laws Amendment (Superannuation Contributions) Act 2001</i> (previous citation: Taxation Laws Amendment (Superannuation Contributions) Bill 2000	*14(11.10.00) 2(28.2.01)	7.9.00	5.10.00	Treasurer Amendments	12.10.00 1.3.01	31.10.00 27.6.01	*15(1.11.00) 9(8.8.01)
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)
Therapeutic Goods Amendment (Medical Devices) Bill 2001	5(4.4.01)	29.3.01	7.8.00	Health and Aged Care	5.4.01	13.6.01	9(8.8.01)
Trade Practices Amendment (Telecommunications) Bill 2001	10(22.8.01)	9.8.01		Communications, Information Technology and the Arts	23.8.01		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Treasury Legislation Amendment (Application of Criminal Code) Bill (No. 2) 2001	6(23.5.01)	5.4.01	27.8.01	Treasurer	24.5.01	17.8.01	11(29.8.01)
Treasury Legislation Amendment (Application of Criminal Code) Bill (No. 3) 2001	9(8.8.01)	28.6.01		Treasurer	9.8.01	23.8.01	11(29.8.01)

