

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



Alert Digest

No. 12 of 2002

23 October 2002

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Members of the Committee

Senator J McLucas (Chair)

Senator B Mason (Deputy Chairman)

Senator G Barnett

Senator T Crossin

Senator D Johnston

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.

Corporations Amendment (Repayment of Directors' Bonuses) Bill 2002

This bill was introduced into the House of Representatives on 16 October 2002 by the Treasurer. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Corporations Act 2001* to facilitate the restoration of funds, assets and other property to companies in liquidation for the benefit of employees and other creditors. The bill will permit liquidators to reclaim 'unreasonable director-related transactions' made by companies in the four years prior to liquidation. The specified transactions include payments by the company, as well as conveyances, transfers and dispositions of property, issue of securities and options, and the incurring of an obligation to enter into these types of transfers in the future.

Retrospective operation

Proposed new subparagraph 588FE(6A(b)(ii))

Proposed new subparagraph 588FE(6A)(b)(ii) of the *Corporations Act 2001*, to be inserted by item 5 of Schedule 1 to this bill, would allow a transaction to be avoided even though it was entered into up to four years prior to the "relation-back" day. This provision therefore allows for a measure of retrospective operation. The Treasurer observes, in his Second Reading speech, that the "relation-back" day is "usually the date of filing of an application to wind up the company, and is the usual point in time for measuring the reach of voidable transactions." However, other existing subsections of section 588FE permit other types of transactions to be set aside if they were entered into during varying periods prior to "relation-back" day – those referred to in subsection 588FE(2) may be set aside only if they were entered into within six months prior to "relation-back" day, whereas those referred to in subsection 588FE(5) may be avoided if they were entered into at any time within ten years prior to "relation-back" day. Therefore, the provision in subparagraph 588FE(6A)(b)(ii) falls within the range of retrospectivity already catered for in the Principal Act.

In the circumstances, the Committee makes no further comment on this provision.

Higher Education Legislation Amendment Bill (No. 3) 2002

This bill was introduced into the House of Representatives on 16 October 2002 by the Minister for Education, Science and Training. [Portfolio responsibility: Education, Science and Training]

The bill proposes to amend the *Higher Education Funding Act 1988* to extend the application of the *National Protocols for Higher Education Approval Processes* (the National Protocols) to Australia's external territories on the same basis as has been agreed to by the states and mainland territories. This will mean that universities or other providers of higher education will not be able to deliver higher education in the external territories without accreditation in accordance with the National Protocols. The proposed amendments will have the effect of overriding the operation of the *Greenwich University Act 1998* (Norfolk Island).

The bill also prohibits the use of the term 'university', 'university college' or any like words in a company or business name without the Minister's written approval. The immediate effect of this measure will be to require the International University of America Pty Ltd on Norfolk Island and any other bodies registered in the external territories with the name 'university' or 'university college' to cease using the word 'university' or 'university college' in their company or business name.

Other measures included in the bill provide for the Minister to act as the accrediting authority in relation to certain persons providing higher education in external territories; and to enable the review of decisions made by the Minister under the proposed subsections 106ZQ(4), (5), (8) or (9) by the Administrative Appeals Tribunal.

Strict liability

Proposed new subsections 106ZM(2), 106ZN(3) and 106ZO(2)

Proposed new subsections 106ZM(2), 106ZN(3) and 106ZO(2) of the *Higher Education Funding Act 1988*, to be inserted by Schedule 1 to this bill, would apply strict liability to aspects of the criminal liability created by proposed new subsections 106ZM(1), 106ZN(1) and (2) and 106ZO(1). However, as the

Explanatory Memorandum makes clear, this imposition of strict criminal liability applies only to limited aspects of the facts on which each of the proposed new offences would be based, namely that a power of approval or accreditation has been granted to the Minister under proposed new section 106ZQ of the Act. It is with respect only to that part of the proposed new offences that the prosecution will not have to prove fault on the part of the accused.

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

Migration Legislation Amendment (Migration Advice Industry) Bill 2002

This bill was introduced into the House of Representatives on 16 October 2002 by the Minister for Citizenship and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

The bill proposes to amend the *Migration Act 1958* (the Act) to repeal the sunset provisions for the current statutory regulatory arrangements in relation to the Migration Advice Industry. The Act currently provides for the regulatory arrangements to be terminated on 21 March 2003 but the 2001-2002 *Review of Statutory Self-Regulation of the Migration Advice Industry* concluded that the industry will not be ready for voluntary de-regulation by March 2003.

The Committee has no comment on this bill.

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE HOUSE OF REPRESENTATIVES

(14-17 October)

Broadcasting Services Amendment (Media Ownership) Bill 2002: On 15 October 2002, the House of Representatives agreed to amend this bill. The amendments raise no issues within the committee's terms of reference.

AMENDMENTS IN THE SENATE

(14-17 October)

Members of Parliament (Life Gold Pass) Bill 2002: On 16 October 2002, the Senate agreed to request an amendment of this bill. The requested amendment raises no issues within the Committee's terms of reference.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2002

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
		HOUSE	SENATE			
Bills dealt with in 2001						
<i>Air Passenger Ticket Levy (Collection) Act 2001</i>	14(26.9.01)	20.9.01	26.9.01	Transport and Regional Services	27.9.01	31.12.01 1(20.2.02)
<i>Border Protection (Validation and Enforcement Powers) Act 2001</i>	13(20.9.01)	18.9.01	20.9.01	Immigration and Multicultural Affairs	20.9.01	6.02.02 1(20.2.02)
<i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	12(19.9.01)	29.8.01	24.9.01	Defence	20.9.01	8.11.01 1(20.2.02)
<i>Electoral and Referendum Amendment Act (No. 1) 2001</i>	4(28.3.01)	7.3.01	2.4.01	Finance and Administration Further response required	29.3.01 24.5.01	4.5.01 10.1.02 6(23.5.01) 1(20.2.02)
<i>Environment and Heritage Legislation Amendment Bill (No. 2) 2000 [2001]</i>	1(7.2.01) 8(27.6.01)	7.12.00		Environment and Heritage Further response required	28.6.01 23.8.01	20.8.01 26.9.01 10(22.8.01) 1(20.2.02)
<i>Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001</i>	9(8.8.01)	25.6.01	24.5.01	Environment and Heritage re Amendments	23.8.01	18.10.01 1(20.2.02)
<i>Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001</i>	10(22.8.01)	8.8.01	23.8.01	Health and Aged Care	23.8.01	8.10.01 1(20.2.02)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE	MINISTER	RESPONSE Sought Received	REPORT NUMBER
<i>Migration Amendment (Excision from Migration Zone) Act 2001</i>	13(20.9.01)	18.9.01	20.9.01	Immigration and Multicultural Affairs 20.9.01	6.2.02 1(20.2.02)
<i>Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001</i>	13(20.9.01)	18.9.01	20.9.01	Immigration and Multicultural Affairs 20.9.01	6.2.02 1(20.2.02)
<i>Migration Legislation Amendment Act (No. 6) 2001</i>	13(20.9.01)	28.8.01	24.9.01	Immigration and Multicultural Affairs 20.9.01	6.2.02 1(20.2.02)
<i>Taxation Laws Amendment Act (No. 5) 2001</i>	11(29.8.01)	23.8.01	26.9.01	Treasurer 30.8.01	18.9.01 1(20.2.02)
<i>Trade Practices Amendment (Telecommunications) Act 2001</i>	10(22.8.01)	9.8.01	19.9.01	Communications, Information Technology and the Arts 23.8.01 20.9.01	17.9.01 25.9.01 12(19.9.01) FRR13(26.9.01) 1(20.2.02)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
Bills being dealt with in 2002					
Aboriginal and Torres Strait Islander Commission Amendment Bill 2002	3(20.3.02)	13.3.02	16.5.02	Immigration and Multicultural and Indigenous Affairs	21.3.02 20.6.02
Airports Amendment Bill 2002	1(20.2.02)	14.2.02	--	Transport and Regional Services	21.2.02 6.5.02
Australian Heritage Council Bill 2002	7(21.8.02)	27.6.02		Environment and Heritage	22.8.02
Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002	7(21.8.02)	27.6.02		Environment and Heritage	22.8.02
Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Bill 2002	4(15.5.02)	21.3.02	20.6.02	Health and Ageing	16.5.02 4.6.02
Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002	4(15.5.02)	21.3.02	15.10.02	Attorney-General	16.5.02 27.9.02
Border Security Legislation Amendment Bill 2002	3(20.3.02)	12.3.02	14.3.02	Attorney-General	21.3.02 23.4.02
<i>Coal Industry Repeal Act 2001</i>	1(20.2.02)	28.6.00	5.4.01	Industry, Science and Resources	21.2.02 11.3.02
<i>Coal Industry Repeal (Validation of Proclamation) Act 2002</i>	2(13.3.02)	20.2.02	13.3.02	Industry, Tourism and Resources	14.3.02 22.3.02
Communications Legislation Amendment Bill (No. 1) 2002	7(21.8.02)	27.6.02		Communications, Information Technology and the Arts	22.8.02 16.9.02

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
Copyright Amendment (Parallel Importation) Bill 2002	3(20.3.02)	13.3.02	Attorney-General	21.3.02	5.6.02
Corporate Responsibility and Employment Security Bill 2002	3(20.3.02)	11.3.02	Mr McClelland	21.3.02	
Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002	1(20.2.02)	13.2.02	11.3.02	Attorney-General	21.2.02 14.3.02 21.3.02
Criminal Code Amendment (Espionage and Related Offences) Bill 2002 (new citation: Criminal Code Amendment (Espionage and Related Matters) Bill 2002)	3(20.3.02)	13.3.02	16.9.02	Attorney-General	8.3.02 19.3.02 4.4.02
Customs Legislation Amendment Bill (No. 1) 2002	6(26.6.02)	19.6.02	22.8.02	Justice and Customs	21.3.02
Egg Industry Service Provision Bill 2002	9(18.9.02)	28.8.02	23.9.02	Agriculture, Fisheries and Forestry	21.3.02
Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002	3(20.3.02)	14.3.02		Special Minister of State	30.4.02
Excise Laws Amendment Bill (No. 1) 2002	11(16.10.02)	26.9.02	17.10.02	Treasurer	17.10.02
Financial Corporations (Transfer of Assets and Liabilities) Amendment Bill 2002	3(20.3.02)	15.5.02	12.3.02	Treasury	21.3.02
Financial Sector Legislation Amendment Bill (No. 1) 2002	4(15.5.02)	21.3.02	20.6.02	Treasury	16.5.02
					17.6.02
					7(26.6.02)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
Financial Sector Legislation Amendment Bill (No. 2) 2002	7(21.8.02)	26.6.02	Treasury		22.8.02
Financial Services Reform Bill 2001	6(23.5.01) 11(29.8.01)	5.4.01	9.8.01 Treasurer re Amendments	24.5.01 30.8.01 17.5.02	7.8.01 13.5.02 14.8.02 9(8.8.01) 4(15.5.02) 8(21.8.02)
Financial Services Reform (Consequential Provisions) Bill 2001	7(20.6.01)	7.6.01	9.8.01 Treasurer Further response requested	21.6.01 9.8.01	7.8.01 13.5.02 9(8.8.01) 4(15.5.02)
<i>General Insurance Reform Act 2001</i>	9(8.8.01)	28.6.01	27.8.01 Treasurer Amendments	9.8.01 30.8.01	27.8.01 24.6.02 11(29.8.01) 7(26.6.02)
Higher Education Funding Amendment Bill 2002	5(19.6.02) 10(25.9.02)	5.6.02	22.8.02 Education, Science and Training Amendments Amendments	20.6.02 26.9.02 17.10.02	20.8.02 9(28.8.02)
Higher Education Legislation Amendment Bill (No. 1) 2002	1(20.2.02)	14.2.02	13.3.02 Education, Science and Training	--	12.3.02 2(13.3.02)
Import Processing Charges (Amendment and Repeal) Bill 2002	6(26.6.02)	19.6.02	22.8.02 Justice and Customs	27.6.02	20.8.02 9(28.8.02)
Intellectual Property Laws Amendment Bill 2002	7(21.8.02)	27.6.02		Industry, Tourism and Resources	22.8.02 17.9.02
International Criminal Court Bill 2002	7(21.8.02)	25.6.02		Attorney-General	22.8.02
International Criminal Court (Consequential Amendments) Bill 2002	7(21.8.02)	25.6.02		Attorney-General	22.8.02

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
Migration Legislation Amendment Bill (No. 1) 2002	3(20.3.02)	13.3.02	Immigration and Multicultural and Indigenous Affairs	21.3.02	27.5.02
<i>Migration Legislation Amendment (Transitional Movement) Act 2002</i>	3(20.3.02)	13.3.02	Immigration and Multicultural and Indigenous Affairs	21.3.02	27.5.02
Plant Breeder's Rights Amendment Bill 2002	3(20.3.02)	13.3.02	Agriculture, Fisheries and Forestry	21.3.02	23.5.02
Proceeds of Crime Bill 2002	3(20.3.02)	13.3.02	Justice and Customs	21.3.02	9.5.02
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002	3(20.3.02)	13.3.02	Justice and Customs	21.3.02	9.5.02
Quarantine Amendment Bill 2002	3(20.3.02)	14.3.02	Agriculture, Fisheries and Forestry	21.3.02	21.3.02
Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]	3(20.3.02)	13.3.02	Attorney-General	21.3.02	14.5.02
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002	2(13.3.02)	21.2.02	Finance and Administration	14.3.02	16.5.02
Suppression of Financing of Terrorism Bill 2002	3(20.3.02)	12.3.02	14.3.02	--	14.5.02
Taxation Laws Amendment Bill (No. 2) 2002	3(20.3.02)	14.3.02	Treasury	21.3.02	25.6.02
Taxation Laws Amendment Bill (No. 3) 2002	4(15.5.02)	21.3.02	Treasury	16.5.02	27.9.02
Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2002	5(19.6.02)	14.5.02	Treasurer	20.6.02	12(16.10.02)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
Telecommunications Interception Legislation Amendment Bill 2002	3(20.3.02)	12.3.02	14.3.02 --	--	14.5.02 4(15.5.02)
Therapeutic Goods Amendment Bill (No. 1) 2002	2(13.3.02)	20.2.02	20.3.02 Health and Ageing	14.3.02 19.3.02	3(20.3.02)
Trade Practices Amendment (Liability for Recreational Services) Bill 2002	9(18.9.02)	27.6.02	28.8.02 Treasurer	19.9.02 22.10.02	13(23.10.02)
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2002	2(13.3.02)	20.2.02	14.3.02 Transport and Regional Services		14.3.02
Transport Safety Investigation Bill 2002	6(26.6.02)	20.6.02	15.10.02 Transport and Regional Services Briefing	27.6.02 21.10.02	17.9.02 12(16.10.02) 13(23.10.02)
Veterans' Affairs Legislation Amendment Bill (No. 1) 2002	4(15.5.02)	21.3.02	28.8.02 Veterans' Affairs	16.5.02 27.6.02	10(18.9.02)
Veterans' Affairs Legislation Amendment Bill (No. 2) 2002	7(21.8.02)	27.6.02	26.8.02 Veterans' Affairs	22.8.02	29.8.02 11(25.8.02)
Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2002	2(13.3.02)	21.2.02	21.3.02 Veterans' Affairs	14.3.02	19.3.02 3(20.3.02)
Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002	2(13.3.02)	20.2.02	19.6.02 Employment and Workplace Relations	14.3.02 20.6.02	22.5.02 FRR5(19.6.02) 9.8.02 8(21.8.02)
Workplace Relations (Registration and Accountability of Organisations) Bill 2002	4(15.5.02)	21.3.02	15.10.02 Employment and Workplace Relations	16.5.02	19.8.02 12(16.10.02)