Senate Standing Committee for the Scrutiny of Bills

No. 7 of 2003

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for the

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Members of the Committee

Senator T Crossin (Chair)
Senator B Mason (Deputy Chairman)
Senator G Barnett
Senator D Johnston
Senator J McLucas
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.

Commonwealth Electoral Amendment (Representation of Territories) Bill 2003

This bill was introduced into the House of Representatives on 16 June 2003 by Mr Tollner as a Private Member's bill.

The bill proposes to amend the *Commonwealth Electoral Act 1918* to increase the minimum representation for the Australian Capital Territory and the Northern Territory in the House of Representatives; and to provide for any consequential redistribution.

The Committee has no comment on this bill.

Communications Legislation Amendment Bill (No. 3) 2003

This bill was introduced into the House of Representatives on 19 June 2003 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the:

- *Broadcasting Services Act 1992* and the *Radiocommunications Act 1992* to vary the conditions for the introduction of additional commercial television licences to existing licensees in single- ('solus') and two-service television markets;
- *Broadcasting Services Act 1992* to allow the Australian Broadcasting Authority to determine a date from which certain licensees may apply for an additional commercial television licence; and delegation of power to approve variations to approved digital broadcasting plans for national broadcasters;
- *Radiocommunications Act 1992* to remove certain prohibitions on the transmission of datacasting services; and the
- *Telecommunications Act 1997* to provide for a 'penalty in lieu of prosecution' scheme for certain offences.

Parliamentary scrutiny
Schedule 1, item 10

Proposed new subsection 38B(27) of the *Broadcasting Services Act 1992*, to be inserted by item 10 of Schedule 1 to this bill, would permit the Australian Broadcasting Authority to make a determination fixing a date from which a commercial licensee may apply for an additional commercial television broadcasting licence. It appears that this power to determine the relevant time is legislative in character, and yet there is no provision for the exercise of this power to be subject to Parliamentary scrutiny. The Committee **seeks the Minister's advice** as to whether this power is legislative in character, and, if so, whether it should be subject to Parliamentary scrutiny.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

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

Retrospective application
Schedule 1, item 48

By virtue of item 48 of Schedule 1 to this bill, the proposed new Division 13 of the *Telecommunications Act 1997*, to be inserted by item 47 of Schedule 1, would apply to all offences, whether committed before or after the new Division comes into effect. However, the Minister's Second Reading speech points out that the new Division 13, which will introduce an infringement notice scheme, imposes penalties which are less than those currently provided for in the Act. Furthermore, the Explanatory Memorandum notes that, "[at] the date of introduction of the bill, there were no prosecutions for contravention of offences [referred to in new Division 13] in progress."

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

HIH Royal Commission (Transfer of Records) Bill 2003

This bill was introduced into the House of Representatives on 18 June 2003 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

The bill proposes to:

- transfer custody of certain records of the HIH Royal Commission to the Australian Securities and Investments Commission (ASIC);
- clarify that the transferred records may be used by ASIC for the purposes of its functions and powers but that they will be afforded appropriate protection while in the custody of ASIC; and
- ensure that the legal protections that would otherwise apply to the records of a Royal Commission, including legal professional privilege, continue to attach to the records while in the custody of ASIC.

The proposed measures are intended to overcome procedural impediments to ASIC pursuing the referrals made to it by the Government following the Royal Commission.

The bill also contains a regulation-making power.

The Committee has no comment on this bill.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Migration Amendment (Duration of Detention) Bill 2003

This bill was introduced into the House of Representatives on 18 June 2003 by the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

The bill proposes to amend the *Migration Act 1958* to confirm that an unlawful non-citizen must be kept in immigration detention unless a court finally determines that:

- the detention is unlawful; or
- the detainee is not an unlawful non-citizen.

The bill seeks to prevent the release of a detainee from immigration detention pending a court's determination of the substantive matter as to the lawfulness of the person's detention or whether the person is an unlawful non-citizen.

Denial of interlocutory remedy
Schedule 1, item 1

The effect of proposed new subsections 196(4) to (7) of the *Migration Act 1958*, to be inserted by item 1 of Schedule 1 to this bill, is to nullify the effect of various recent decisions of the Federal Court granting interlocutory release from migration detention of some unlawful non-citizens.

> *The bill may be regarded as trespassing on the rights of those who might have been granted an interlocutory release from migration detention, but whether that trespass is undue or not is a matter to be left for decision by the Senate as a whole.*
>
> *In the circumstances, the Committee makes no further comment on this provision.*

Postal Services Legislation Amendment Bill 2003

This bill was introduced into the House of Representatives on 19 June 2003 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the:

- *Australian Communications Authority Act 1997* to require that the Australian Communications Authority (ACA) monitor and report on the supply of postal services by Australia Post;
- *Australian Postal Corporation Act 1989* to extend the responsibilities of the Australian Competition and Consumer Commission (ACCC) in relation to Australia Post; exclude document exchanges and aggregation services from Australia Post's reserved service; allow performance standards in relation to Australia Post's delivery arrangements to be prescribed; and establish a levy on Australia Post to fund the new functions conferred on the ACCC and ACA; and the
- *Trade Practices Act 1974* to allow the ACCC to delegate its powers under the *Australian Postal Corporation Act 1989* to a member of the Commission.

The bill also contains application and saving provisions.

The Committee has no comment on this bill.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Textbook Subsidy Bill 2003

This bill was introduced into the Senate on 18 June 2003 by Senator Stott-Despoja as a Private Senator's bill.

The bill proposes to extend the Educational Textbook Subsidy Scheme beyond 30 June 2004, the date when it is currently due to cease.

Exercise of legislative power
Clause 11

Clause 11 of this bill would permit the Secretary of the Department to issue guidelines "for the performance of functions and duties, and for the exercise of powers, by officers of the Department". This power appears to be legislative in character, but the only Parliamentary oversight of its exercise is that, by force of subclause 11(3), any guidelines must be tabled in each House of the Parliament within five sitting days after they are issued. The Committee **seeks advice of the proposer of the bill** as to whether the guidelines ought not to be disallowable instruments, and therefore subject not only to tabling but also to scrutiny by the Regulations and Ordinances Committee, and possible disallowance if any guidelines were to infringe that Committee's Terms of Reference.

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

Workplace Relations Amendment (Good Faith Bargaining) Bill 2003

This bill was introduced into the House of Representatives on 16 June 2003 by Mr McLelland as a Private Member's bill.

The bill proposes to amend the *Workplace Relations Act 1996* to insert a provision requiring a negotiating party to a proposed agreement to take part in negotiations in good faith, with a commitment to try to reach an agreement with the other negotiating party or parties; and to provide a management framework for good faith bargaining.

The Committee has no comment on this bill.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

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

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

Bill/Act	Section/Subsection	Offence	Penalty
Textbook Subsidy Bill 2003	Subclause 15(6)	Failure to provide information to a public authority	Imprisonment for 12 months

25 June 2003

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2003

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	INTRODUCED SENATE	MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
Bills dealt with in 2002							
Charter of the United Nations Amendment Bill 2002	15(4.12.02)	14.11.02	5.12.02	Foreign Affairs	5.12.02	20.5.03	5(18.6.03)
Communications Legislation Amendment Bill (No. 1) 2002	7(21.8.02)	27.6.02	13.5.03	Communications, Information Technology and the Arts	22.8.02	16.9.02	4(14.5.03)
Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002	16(11.12.02)	4.12.02	12.12.02	Justice and Customs	17.12.02	11.2.03	2(5.3.03)
Criminal Code Amendment (Offences Against Australians) Act 2002	15(4.12.02)	12.11.02	13.11.02	Attorney-General	5.12.02	3.2.03	1(5.2.03)
Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002	3(20.3.02)	14.3.02		Special Minister of State	21.3.02	30.4.02	
Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002	15(4.12.02)		19.11.02	Senator Bartlett	5.12.02	4.2.03	1(5.2.03)
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2002	13(13.11.02)	21.10.02		Mr Katter	14.11.02		

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	INTRODUCED SENATE	MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
Health Insurance Amendment (Professional Services Review and Other Matters) Bill 2002	15(4.12.02)	27.6.02	11.11.02	Health and Ageing **re Amendments**	5.12.02	31.1.03	1(5.2.03)
Intellectual Property Laws Amendment Bill 2002	7(21.8.02)	27.6.02	16.6.03	Industry, Tourism and Resources	22.8.02	17.9.02	5(18.6.03)
International Criminal Court Act 2002	7(21.8.02)	25.6.02	26.6.02	Attorney-General	22.8.02	13.1.03	1(5.2.03)
International Criminal Court (Consequential Amendments) Act 2002	7(21.8.02)	25.6.02	26.6.02	Attorney-General	22.8.02	13.1.03	1(5.2.03)
Migration Legislation Amendment Bill (No. 1) 2002	3(20.3.02)	13.3.02	5.2.03	Immigration and Multicultural and Indigenous Affairs	21.3.02	27.5.02	2(5.3.03)
Quarantine Amendment Act 2002	3(20.3.02)	14.3.02	21.3.02	Agriculture, Fisheries and Forestry	21.3.02	24.1.03	1(5.2.03)
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002	2(13.3.02)	21.2.02	19.6.02	Finance and Administration	14.3.02 20.6.02	16.5.02 20.12.02	5(19.6.02) 1(5.2.03)
Taxation Laws Amendment Bill (No. 8) 2002	16(11.12.02)	5.12.02		Treasury	12.12.02	30.1.03	
Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Act 2002	5(19.6.02)	14.5.02	19.6.02	Treasurer	20.6.02	24.12.02	1(5.2.03)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	INTRODUCED SENATE	MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
Bills introduced 2003							
A Better Future for Our Kids Bill 2003	6(18.6.03)	26.5.03		Ms Roxon MP	19.6.03		
Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2002	1(5.2.03)	12.12.02	3.3.03	Agriculture, Fisheries and Forestry	6.2.03	24.2.03	2(5.3.03)
Aviation Transport Security Bill 2003	5(14.5.03)	27.3.03		Transport and Regional Services	15.5.03		
Civil Aviation Legislation Amendment Bill 2003	5(14.5.03)	27.3.03		Transport and Regional Services	15.5.03	6.6.03	
Criminal Code Amendment (Hezbollah External Terrorist Organisation) Bill 2003	6(18.6.03)	2.6.03		Mr Crean MP	19.6.03		
Criminal Code Amendment (Hizballah) Bill 2003	6(18.6.03)	29.5.03		Attorney-General	19.6.03		
Criminal Code Amendment (Terrorism) Bill 2002	1(5.2.03)	12.12.03	13.5.03	Attorney-General	6.2.03	7.5.03	4(14.5.03)
Customs Amendment Bill (No. 1) 2003	6(18.6.03)	15.5.03		Justice and Customs	19.6.03	24.6.03	6(25.6.03)
Dairy Industry Service Reform Bill 2003	2(5.3.03)	12.2.03	19.3.03	Agriculture, Fisheries and Forestry	6.3.03	9.4.03	4(14.5.03)
Electoral Amendment (Political Honesty) Bill 2003	5(14.5.03)		27.3.03	Senator Murray		28.4.03	4(14.5.03)
Energy Grants (Credits) Scheme Bill 2003	2(5.3.03)	13.2.03	26.3.03	Treasurer	6.3.03	24.3.03	3(26.3.03)
Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003	6(18.6.03)	5.6.03		Environment and Heritage	19.6.03		

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	INTRODUCED SENATE	MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
Family Law Amendment Bill 2003	2(5.3.03)	12.2.03		Attorney-General	6.3.03		
Late Payment of Commercial Debts (Interest) Bill 2003	3(19.3.03)		6.3.03	Senator Conroy	27.3.03		
National Transport Commission Bill 2003	6(18.6.03)	4.6.03		Transport and Regional Services	19.6.03		
Petroleum (Timor Sea Treaty) Bill 2003	3(19.3.03)	5.3.03	6.3.03	Industry, Tourism and Resources	27.3.03	16.4.03	4(14.5.03)
Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003	3(19.3.03)	5.3.03	6.3.03	Industry, Tourism and Resources	27.3.03	16.4.03	4(14.5.03)
Private Health Insurance (Reinsurance Trust Fund Levy) Bill 2003	5(14.5.03)	26.3.03		Health and Ageing	15.5.03	24.6.03	6(25.6.03)
Taxation Laws Amendment Bill (No. 4) 2003	2(5.3.03)	13.2.03	19.3.03	Treasurer	6.3.03	18.3.03	3(26.3.03)