

# **Senate Standing Committee**

# for the

# **Scrutiny of Bills**

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## Senate Standing Committee for the Scrutiny of Bills

#### **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.

# **Crimes (Overseas) Amendment Bill 2003**

[Introduced into the House of Representatives on 11 September 2003. Portfolio: Attorney-General]

The bill amends the *Crimes (Overseas) Act 1964* to extend Australian criminal jurisdiction (ie. the criminal law of the Jervis Bay Territory) to Australians working in foreign countries in the following circumstances:

- when granted diplomatic or consular immunities, or a general immunity due to a relationship with an international organisation;
- when under an agreement or arrangement between the Commonwealth and the United Nations or a foreign country, and granted an immunity by a foreign country;
- when under a prescribed agreement or arrangement between the Commonwealth and the United Nations or a foreign country; or
- where a foreign country, or a part of a foreign country, has been declared by regulation to be a 'declared foreign country' for the purpose of the Act.

The bill also amends the way the criminal law applies to individuals covered by the Act and allows certain regulations to be made with retrospective application to 1 July 2003.

### Retrospective commencement Subclause 2(1), item 2

By virtue of item 2 in the table to subclause 2(1) to this bill, the amendments proposed in Schedule 1 would commence retrospectively on 1 July 2003. The Explanatory Memorandum states that the purpose of this retrospectivity is to enable regulations to be made which will (in effect) make the amendments in this bill apply to Australians in Iraq and the Solomon Islands since that date. However, the Explanatory Memorandum does not provide any reason for making those amendments retrospective. The Attorney-General hints at such a reason in his second reading speech, when he says that the "extension of Australian criminal jurisdiction … will ensure that Australia is in the best

position to protect Australians deployed in [foreign] countries." That speech also indicates the reason for the date of 1 July 2003 being chosen as the commencement date is that the Attorney-General issued a media statement, jointly with the Minister for Justice and Customs and the Minister for Foreign Affairs, on 26 June 2003, "stating that Australian criminal jurisdiction would be extended to Australian civilians serving in Iraq from 1 July 2003." It therefore appears that this legislation is another example of "legislation by press release", a practice which the Committee has regularly commented on in the past. The Committee seeks the Attorney-General's advice as to why it was considered necessary to extend Australian criminal jurisdiction retrospectively to Australian civilians working in foreign countries, and why the date of 1 July 2003 was chosen for that purpose.

Pending the Attorney-General's response, 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 effect Proposed new subsection 3C(5)

Proposed new subsection 3C(5) of the *Crimes (Overseas) Act 1964*, to be inserted by item 16 of Schedule 1 to this bill, would permit regulations to be made having effect retrospectively to 1 July 2003, provided that they are made within 3 months of this bill being assented to. This provision implements the proposal referred to above, to extend Australian criminal jurisdiction to some Australian civilians working in some foreign countries. The Committee again **seeks the Attorney-General's advice** as to the reason for the retrospective effect of this provision, and why the date of 1 July 2003 was chosen for that purpose.

Pending the Attorney-General's response, 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.

# **Energy Grants (Cleaner Fuels) Scheme Bill 2003**

[Introduced into the House of Representatives on 11 September 2003. Portfolio: Treasury]

The bill provides a generic framework for the payment of grants for the importation and manufacture of cleaner fuels. The scheme will be administered under the *Product Grants and Benefits Administration Act 2000*, which currently provides the administrative and compliance framework for other grant schemes administered by the Australian Taxation Office.

The bill also contains a regulation-making power.

# EnergyGrants(CleanerFuels)Scheme(Consequential Amendments)Bill 2003

[Introduced into the House of Representatives on 11 September 2003. Portfolio: Treasury]

The bill amends:

- the *Products Grants and Benefits Administration Act 2000* to place the Energy Grants (Cleaner Fuels) Scheme under the administration framework of that Act;
- the *Excise Act 1901* to include additional measures for the protection of revenue under the Energy Grants (Cleaner Fuels) Scheme arrangements; and
- the *Fuel Quality Standards Act 2000* to allow for information to be provided to the Australian Taxation Office by the Department of the Environment and Heritage.

# FamilyAssistanceLegislationAmendment(Extension of Time Limits)Bill 2003

[Introduced into the House of Representatives on 10 September 2003. Portfolio: Family and Community Services]

The bill amends the *A New Tax System (Family Assistance) (Administration) Act 1999* to extend certain limitations of time relating to:

- making past period (lump sum) claims for family tax benefit (FTB) and child care benefit;
- payment of 'top-ups' of FTB as a result of income reconciliation; and
- exchange, use and destruction of tax file number data for income reconciliation purposes.

The bill also makes consequential amendments to the *Income Tax Assessment Act 1997* to enable families using the services of recognised tax advisers to make past period claims from 1 July 2003 to 30 June 2004 to claim the adviser's fee as a tax deduction.

## **Retrospective application Schedule 1, item 6**

By virtue of item 6 of Schedule 1 to this bill, the amendments proposed by Part 1 of Schedule 1 would apply from 1 July 2001. However, the Explanatory Memorandum makes it clear that the changes proposed by the bill are beneficial to persons who might be eligible for family tax benefit.

# **International Tax Agreements Amendment Bill 2003**

[Introduced into the House of Representatives on 11 September 2003. Portfolio: Treasury]

The bill amends the International Tax Agreements Act 1953 to:

- give the force of law to recent tax treaties between Australia and the United Kingdom of Great Britain and Northern Ireland, and Australia and the United Mexican States, in relation to the avoidance of double taxation and the prevention of fiscal evasion; and
- clarify that references in Australian tax treaties to income from shares, or to income from other rights participating in profits, shall not be taken to include a return on a debt interest.

The bill also makes consequential amendments to the:

- *Income Tax Assessment Act 1936* to substitute a new paragraph into the definition 'relevant provision' under subsection 170(14);
- International Tax Agreements Act 1953 to clarify a commencement provision; and
- *Taxation (Interest on Overpayments and Early Payments) Act 1983* to update cross references to the *International Tax Agreements Act 1953*.

# Parliamentary (Choice of Superannuation) Bill 2003

[Introduced into the House of Representatives on 8 September 2003 by Mr Andren as a Private Member's bill.]

The bill amends the *Parliamentary Contributory Superannuation Act 1948* to give senators and members of the House of Representatives the freedom to opt out of the compulsory parliamentary superannuation scheme and, instead, to make contributions to a complying superannuation fund or Retirements Savings Account (RSA) of their choice.

### **Commencement on proclamation Clause 2**

By virtue of clause 2 of this bill, it would commence on Proclamation, with no time limit being set within which the bill is to come into effect in any event. However, the proposer of this bill has set out the reason for this provision in the Explanatory Memorandum accompanying the bill. The measure is necessary, as a private member may not introduce a bill requiring the appropriation of public revenue. The Parliament may provide for such an appropriation as it considers the bill, subject to a receipt of a message from the Governor-General recommending an appropriation. After the appropriation is made the Proclamation can be issued.

# **Taxation Laws Amendment Bill (No. 8) 2003**

[Introduced into the House of Representatives on 11 September 2003. Portfolio: Treasury]

Schedule 1 to the bill amends the *Income Tax Assessment Act 1997* and the *Income Tax Assessment Act 1936* to amend the imputation rules to rectify an anomaly that prevents the franking of non-share dividends. Schedule 1 also contains application provisions.

Schedule 2 to the bill amends the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997* and the *Taxation Administration Act 1953* in relation to consolidated groups.

Schedule 3 to the bill amends the *Income Tax Assessment Act 1997* to provide an income tax deduction for taxpayers entering into certain types of conservation covenants.

Schedule 4 to the bill amends the *Fringe Benefits Tax Assessment Act 1986* in relation to the deemed depreciation rate for cars.

Schedule 5 to the bill amends the *Income Tax Assessment Act 1997* to remove the requirement to have a winding up clause as part of the endorsement provisions for statutory bodies established by the Commonwealth Parliament in perpetuity.

Schedule 6 to the bill amends the *Income Tax Assessment Act 1936* to clarify the eligibility rules for the farm management deposits scheme.

Schedule 7 to the bill amends the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997*, the *Income Tax Assessment Act 1936* and the *Taxation Administration Act 1953* to insert rules in the simplified imputation system for offsetting franking deficit tax against company tax.

### Retrospective commencement and application Subclause 2(1), item 3 and Schedule 6, item 6

By virtue of item 3 in the table to subclause 2(1) of this bill and item 3 in Schedule 6 to this bill, the amendments proposed in Schedule 6 would commence on and apply from 1 July 2003. However, the Explanatory Memorandum notes that the financial impact of these amendments is nil.

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

### Retrospective application Schedule 1, Part 3

By virtue of Part 3 of Schedule 1 to this bill, the amendments proposed in that Schedule would apply from 1 July 2001. However, the Explanatory Memorandum notes that the amendments will have no financial impact.

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

### **Retrospective application Schedule 2, part 9**

By virtue of Part 9 of Schedule 2 to this bill, the amendments proposed in that Schedule would apply from 1 July 2002. However, the Explanatory Memorandum notes that the amendments are "either beneficial to taxpayers or correct unintended outcomes."

# Retrospective application Schedule 3, item 2

By virtue of item 2 in Schedule 3 to this bill, the amendment proposed in that Schedule would apply from 1 July 2002. However, the Explanatory Memorandum notes that the amendment is "advantageous to taxpayers."

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

### Retrospective application Schedule 4, item 3

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By virtue of item 3 in Schedule 4 to this bill, the amendments proposed in that Schedule would apply from 1 July 2002. However, the Explanatory Memorandum notes that the amendments will have an estimated cost to revenue, meaning that they are beneficial to taxpayers.

# TaxationLawsAmendment(SuperannuationContributionsSplitting)Bill 2003

[Introduced into the House of Representatives on 11 September 2003. Portfolio: Treasury]

The bill amends the *Income Tax Assessment Act 1936* and the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* in relation to the taxation treatment of superannuation contributions split between a fund contributing member and his or her spouse.

The details of how this will operate will be determined by Regulations under the Superannuation Industry (Supervisions) Act 1993 and the Income Tax Assessment Act 1936.

# PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

# AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (8-11 September)

Taxation Laws Amendment Bill (No. 3) 2003 (previous title: Taxation Laws Amendment Bill (No. 8) 2002): The House of Representatives amended this bill on 10 September 2003.

#### Retrospective commencement Clause 2

An amendment made by the House changed the commencement date for Schedule 1 of this bill, relating to deductible gifts, from the date of Royal Assent, to 29 July 2003. The Supplementary Explanatory Memorandum accompanying the bill explains that the change is made for technical reasons, and will not affect any organisation or donor.

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

## AMENDMENTS IN THE SENATE

#### (8-11 September)

Australian National Training Authority Amendment Bill 2003: The Senate amended this bill on 11 September 2003. The Committee had raised concerns that the proposal to remove the text of the ANTA Agreement from the bill would leave insufficient opportunity for parliamentary scrutiny of the Agreement itself. The Minister, in his response, indicated that the Agreement was not legislative in character, and repeated his undertaking to table the Agreement in both Houses.

The Senate amended the bill to provide that the agreement, and any amendment to it, must be tabled in the Parliament and published on the Authority's website.

**Communications Legislation Amendment Bill (No. 1) 2002:** On 9 September 2003, the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

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:** On 8 September 2003, the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

**Migration Legislation Amendment (Sponsorship Measures) Bill 2003:** On 11 September 2003, the Senate agreed to amend this bill. The amendment raises no issues within the Committee's terms of reference.

**Sex Discrimination Amendment (Pregnancy and Work) Bill 2002:** On 8 September 2003, the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

	STAN	NDING COMIN	AITTEE FOR	STANDING COMMITTEE FOR THE SCRUTINY OF BILLS			
INDEX OF	INDEX OF BILLS COMMENTED ON AND	ENTED ON AI		MINISTERIAL RESPONSES SOUGHT/RECEIVED	<b>JEIVED - 2003</b>		
NAME OF BILL AL	ALERT DIGEST	INTRO HOUSE	INTRODUCED USE SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	SE CEIVED	REPORT NUMBER
Bills dealt with in 2002			-				
Charter of the United Nations Amendment Act 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		

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NAME OF BILL	ALERT DIGEST	INTRO HOUSE	INTRODUCED OUSE SENATE	MINISTER	RESPONSE SOUGHT REC	ONSE 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 <b>re Amendments</b>	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) (new citation) Taxation Laws Amendment Bill (No. 3) 2003	16(11.12.02)	5.12.02	15.9.03	Treasury	12.12.02	30.1.03	9(10.9.03)
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	INTRO HOUSE	INTRODUCED OUSE SENATE	MINISTER	RESPONSE SOUGHT REC	<b>DNSE</b> 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		
Age Discrimination Bill 2003	8(13.8.03)	26.6.03		Attorney-General	14.8.03		
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)
Australian National Training Authority Amendment Bill 2003	9(20.8.03)	14.8.03	10.9.03	Education, Science and Training	21.8.03	8.9.03	9(10.9.03)
Australian Protective Service Amendment Bill 2003	8(13.8.03)		26.6.03	Justice and Customs	14.8.03	9.9.03	9(10.9.03)
Aviation Transport Security Bill 2003	5(14.5.03)	27.3.03		Transport and Regional Services	15.5.03	20.6.03	
Civil Aviation Legislation Amendment Bill 2003	5(14.5.03)	27.3.03	11.8.03	Transport and Regional Services	15.5.03	6.6.03	7(13.8.03)
Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003	8(13.8.03)	25.6.03		Transport and Regional Services	14.8.03		
Communications Legislation Amendment Bill (No. 2) 2003	8(13.8.03)	26.6.03	19.8.03	Communications, Information Technology and the Arts	14.8.03	19.8.03	8(20.8.03)
Communications Legislation Amendment Bill (No. 3) 2003	7(25.6.03)	19.6.03	21.8.03	Communications, Information Technology and the Arts	26.6.03	6.8.03	9(10.9.03)
Corporate Responsibility and Employment Security Bill 2003	10(10.9.03)	18.8.03		Hon S F Crean MP	11.9.03		

NAME OF BILL	ALERT DIGEST	INTRO HOUSE	<b>DDUCED</b> SENATE	MINISTER	RESP SOUGHT	RESPONSE HT RECEIVED	REPORT NUMBER
Criminal Code Amendment (Hezbollah External Terrorist Organisation) Bill 2003	6(18.6.03)	2.6.03		Hon S F Crean MP	19.6.03		
Criminal Code Amendment (Hizballah) Bill 2003	6(18.6.03)	29.5.03	16.6.03	Attorney-General	19.6.03		
Criminal Code Amendment (Terrorism) Bill 2002	1(5.2.03)	12.12.02	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	16.6.03	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)
Family Law Amendment Bill 2003	2(5.3.03)	12.2.03	20.8.03	Attorney-General	6.3.03 21.8.03	20.7.03 11.9.03	8(20.8.03) 10(17.9.03)
Financial Services Reform Amendment Bill 2003	8(13.8.03)	26.6.03		Treasurer	14.8.03		
Late Payment of Commercial Debts (Interest) Bill 2003	3(19.3.03)		6.3.03	Senator Conroy	27.3.03		
Legislative Instruments Bill 2003	8(13.8.03)	26.6.03	9.9.03	Attorney-General	14.8.03		
Migration Legislation Amendment (Identification and Authentication) Bill 2003	9(20.8.03)	26.6.03		Immigration and Multicultural and Indigenous Affairs	21.8.03		

NAME OF BILL	ALERT DIGEST	INTRC HOUSE	INTRODUCED OUSE SENATE	MINISTER	RESP SOUGHT	RESPONSE HT RECEIVED	REPORT NUMBER
Mational Animal Welfara Bill 2003	0,200 8 03.0		11 8 03	Constor Rortlatt	21 8 02	10 0 03	10/17 0 03)
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National Transport Commission Bill 2003	6(18.6.03)	4.6.03	14.8.03	Transport and Regional Services	19.6.03	27.6.03	8(20.8.03)
Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003	6(18.6.03)	5.6.03		Environment and Heritage	19.6.03	4.8.03	
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	23.6.03	Health and Ageing	15.5.03	18.6.03) 24.6.03)	6(25.6.03)
Student Assistance Amendment Bill 2003	8(13.8.03)	26.6.03	15.9.03	Education, Science and Training	14.8.03	15.9.03	10(17.9.03)
Taxation Laws Amendment Bill (No. 4) 2003	3 2(5.3.03)	13.2.03	19.3.03	Treasurer	6.3.03	18.3.03	3(26.3.03)
Textbook Subsidy Bill 2003	7(25.6.03)		18.6.03	Senator Stott Despoja	26.6.03	25.7.03	7(13.8.03)
Trade Practices Amendment (Public Liability Insurance) Bill 2003	10(10.9.03)	18.8.03		Mr A Griffin MP	11.9.03		