



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

FIFTH REPORT

OF

2003

18 June 2003

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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.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIFTH REPORT OF 2003

The Committee presents its Fifth Report of 2003 to the Senate.

The Committee draws the attention of the Senate to clauses of the following which contain provisions that the Committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

Charter of the United Nations Amendment Act 2002

Intellectual Property Laws Amendment Bill 2002

Charter of the United Nations Amendment Act 2002

Introduction

The Committee dealt with the bill for this Act in *Alert Digest No. 15 of 2002*, in which it made various comments. The Minister for Foreign Affairs has responded to those comments in a letter dated 25 March 2003.

Although this bill has been passed by both Houses (and received Royal Assent on 10 December 2002) the response may, nevertheless, be of interest to Senators. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Minister's response are discussed below.

Extract from Alert Digest No. 15 of 2002

This bill was introduced into the House of Representatives on 14 November 2002 by the Parliamentary Secretary to the Minister for Foreign Affairs. [Portfolio responsibility: Foreign Affairs]

The bill proposes to amend the *Charter of the United Nations Act 1945* to give holders of assets such as banks and trustees the same ability as owners of assets to apply to the Minister for Foreign Affairs for permission to deal with an asset that may be a freezable asset, as part of measures to combat terrorism. This provision was recommended by the Senate Legal and Constitutional Legislation Committee in its report on the Security Legislation Amendment (Terrorism) Bill 2002.

No advice of commencement in Explanatory Memorandum Schedule 1

By virtue of item 2 in the table to subclause 2(1) of this bill, the amendments proposed by Schedule 1 would commence immediately after the commencement of Part 4 of the *Charter of the United Nations Act 1945*. However, there is a comment in the Explanatory Memorandum, under the heading “**Outline**” that “Part 4 of the Act has not commenced”, and at the conclusion of his second reading speech, the Minister notes that “Part 4 of the Act will commence either on the making of regulations under section 22A [of the *Charter of the United Nations Act 1945*], or on 6 January 2003, whichever is earlier”.

Although it therefore turns out that this bill does not propose any retrospective commencement, the Committee **seeks the Minister's advice** as to why the information referred to above was not provided in the notes to clause 2 in the Explanatory Memorandum, which may be the preferable location.

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.

Relevant extract from the response from the Minister

I note the Committee's comment that the preferable location for more detailed information on the commencement of bills is in the notes on the commencement clause contained in the Explanatory Memorandum. I will instruct my Department to ensure that sufficient information is included in the Explanatory Memoranda for future bills to allow the Committee to determine their commencement date.

The Committee thanks the Minister for this response, and for the advice that his Department will be instructed to ensure that sufficient information is included in future Explanatory Memoranda.

Intellectual Property Laws Amendment Bill 2002

Introduction

The Committee dealt with this bill in *Alert Digest No. 7 of 2002*, in which it made various comments. The Parliamentary Secretary to the Minister for Industry, Tourism and Resources has responded to those comments in a letter dated 16 September 2002. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Minister's response are discussed below.

Extract from Alert Digest No. 7 of 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for Industry, Tourism and Resources. [Portfolio responsibility: Industry, Tourism and Resources]

Schedule 1 to the bill proposes to amend the *Patents Act 1990*, *Trade Marks Act 1995* and *Designs Act 1906* to clarify that errors or omission by persons such as independent contractors, employed by the Commissioner of Patents, Registrar of Trade Marks or Registrar of Designs, are encompassed by the existing extension of time provisions; and to delete the use of the term 'trade marks officer' in the Trade Marks Act.

Schedule 2 to the bill proposes to amend the:

- *Patents Act 1990* in relation to disclosure of information to the Commissioner of Patents that is relevant to the patentability of an invention;
- *Trade Marks Act 1995* to amend the definition of "employee" and remove the term "trade marks officer"; and
- *Patents Amendment (Innovation Patents) Act 2000* to correct a drafting error.

The bill also contains application provisions.

Retrospective operation

Items 2 and 3 of Schedule 2

Item 5 of Schedule 2 to this bill seeks to ensure that the amendments made by items 2 and 3 of that Schedule apply from 1 April 2002. However, it is not clear from the Explanatory Memorandum whether this retrospective application will adversely affect anyone. The Committee **seeks the Minister's advice** that this is not the case.

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.

Relevant extract from the response from the Parliamentary Secretary

Thank you for your letter of 22 August 2002 to the Minister for Industry, Tourism and Resources concerning the Intellectual Property Laws Amendment Bill 2002 (the Bill). I have responsibility within the portfolio for intellectual property matters and the Minister has asked me to respond on his behalf.

The Committee has sought advice regarding the operation of items 2 and 3 of Schedule 2 to the Bill. These items will amend subsection 45(3) and section 101D of the *Patents Act 1990*, which provide for the disclosure of certain information to the Commissioner of Patents.

The current disclosure requirements lack certainty and impose an undue burden on applicants and patentees. The amendments made by items 2 and 3 of Schedule 2 will replace these provisions with a more workable disclosure regime that significantly reduces the burden on applicants and patentees.

The new disclosure requirements will have significant benefits for applicants and patentees, so it was considered appropriate to implement the new requirements in a manner that would remove the need for any applicants or patentees to comply with the current arrangements. Therefore, item 5 of Schedule 2 to the Bill provides that the new provisions will have the same application as the current provisions, which applied from 1 April 2002.

This will mean that the new disclosure provisions will completely replace the current provisions and any applicant or patentee who has not complied with the current provisions will no longer be obliged to.

It is not expected that this will disadvantage any applicants or patentees because the amendments will be introducing an improved disclosure regime that imposes a significantly reduced burden on them.

To ensure that people are not adversely affected by the operation of these amendments, item 5 of Schedule 2 to the Bill also provides that any information disclosed under the current provisions will be taken to have been disclosed under the new provisions. This will mean that people who have already disclosed information under the current provisions will not need to disclose that information again. Moreover, as the new disclosure requirements will be less onerous than the current requirements, the information already provided under the current requirements will satisfy the new requirements.

I hope this information helps the Committee in its consideration of the Bill.

The Committee thanks the Parliamentary Secretary for this response.

Trish Crossin
Chair



THE HON ALEXANDER DOWNER MP

MINISTER FOR FOREIGN AFFAIRS
PARLIAMENT HOUSE
CANBERRA ACT 2600

Senator J McLucas
Chair
Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

25 MAR 2003

RECEIVED

20 MAY 2003

Senate Standing Committee
for the Scrutiny of Bills

Dear Senator

I refer to the comments in the Scrutiny of Bills Alert Digest No. 15 of 2002 (4 December 2002) concerning the Charter of the United Nations Amendment Bill 2002.

I note the Committee's comment that the preferable location for more detailed information on the commencement of bills is in the notes on the commencement clause contained in the Explanatory Memorandum. I will instruct my Department to ensure that sufficient information is included in the Explanatory Memoranda for future bills to allow the Committee to determine their commencement date.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alexander Downer', written in a cursive style.

Alexander Downer



RECEIVED

17 SEP 2002

Senate Standing Committee
for the Scrutiny of Bills

THE HON WARREN ENTSCH MP
PARLIAMENTARY SECRETARY
TO THE MINISTER FOR INDUSTRY, TOURISM AND RESOURCES

Senator Jan McLucas
Chair
Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator

Thank you for your letter of 22 August 2002 to the Minister for Industry, Tourism and Resources concerning the Intellectual Property Laws Amendment Bill 2002 (the Bill). I have responsibility within the portfolio for intellectual property matters and the Minister has asked me to respond on his behalf.

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I hope this information helps the Committee in its consideration of the Bill.

Yours sincerely



Warren Entsch

16 SEP 2002

