



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

SEVENTH REPORT

OF

2004

16 June 2004

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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

SEVENTH REPORT OF 2004

The Committee presents its Seventh Report of 2004 to the Senate.

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

Bankruptcy Legislation Amendment Bill 2004

Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004

Bankruptcy Legislation Amendment Bill 2004

Introduction

The Committee dealt with this bill in *Alert Digest No. 5 of 2004*, in which it made various comments. The Attorney-General has responded to those comments in a letter dated 3 May 2004. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Attorney-General's response are discussed below.

Extract from Alert Digest No. 5 of 2004

[Introduced into the House of Representatives on 24 March 2004. Portfolio: Attorney-General]

The bill amends the *Bankruptcy Act 1966* to:

- replace the three existing types of arrangements with creditors without sequestration under Part X of the Act with a single type of arrangement to be called a personal insolvency agreement;
- streamline the process for setting aside and terminating personal insolvency agreements; and
- strengthen the post-bankruptcy compositions and schemes of arrangement provisions of Division 6 of Part IV of the Act relating to the disclosure obligations of debtors, creditors and trustees, so that they mirror the proposed provisions in Part X.

The bill also amends 15 other Acts to make minor and technical amendments to improve the operation of the Act and to correct a drafting error in the transitional provisions contained in the *Bankruptcy Legislation Amendment Act 2002*.

Retrospectivity

Schedule 7, items 1 and 2

By virtue of item 5 in the table in subclause 2(1), the amendments proposed in items 1 and 2 of Schedule 7 to this bill would commence retrospectively, immediately after the commencement of Schedule 1 to the *Bankruptcy Legislation Amendment Act 2002*, on 5 May 2003. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people.

Although the Explanatory Memorandum gives a very full explanation of the reason for these amendments, and indicates that bankruptcy practitioners have been operating on the assumptions contained in the amendments since 5 May 2003, there is no express assurance, either in the Explanatory Memorandum or in the Second Reading speech, that the retrospectivity will not operate to the detriment of any person. The Committee **seeks the Attorney-General's assurance** that no person will be adversely affected by the retrospective commencement of these amendments.

Pending the Attorney-General'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 Attorney-General

You have sought my assurance that no person will be adversely affected by the retrospective commencement of those amendments. I am happy to give that assurance. In fact, a significant number of people could be disadvantaged if the error corrected by those amendments is not corrected retrospectively. As the amendments are to correct an error in the transitional provisions contained in the Bankruptcy Legislation Amendment Act 2002, they would have no utility if they applied prospectively only.

As you have noted, the Explanatory Memorandum provides a full explanation of the reason for these amendments. The Explanatory Memorandum notes that the problem caused by this error applies particularly to the abolition of early discharge. If the error is not corrected retrospectively, a significant number of bankrupts who believe they are eligible to apply for early discharge, and have considered this in deciding whether bankruptcy is the best option for them, may not be eligible for discharge until three years after the date of bankruptcy.

The Committee thanks the Attorney-General for this response.

Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004

Introduction

The Committee dealt with this bill in *Alert Digest No. 6 of 2004* in which it made various comments. The Special Minister of State has responded to those comments in a letter dated 15 June 2004. 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. 6 of 2004

[Introduced into the House of Representatives on 1 April 2004. Portfolio: Special Minister of State]

The bill amends the *Commonwealth Electoral Act 1918* and the *Electoral and Referendum Amendment Act (No. 1) 1999* to strengthen provisions relating to:

- enrolment and voting processes, including proof of identity and address arrangements, and closure of electoral rolls;
- prisoners' rights to vote;
- financial disclosure thresholds;
- the provision of certain voting information to political parties and independent members of parliament;
- the removal of the requirement for broadcasters and publishers to lodge returns on electoral advertising during an election period;
- multiple voting and enrolment offences;
- the restriction of scrutineers' activities in relation to assisted votes;
- reinstatement on the electoral roll; and
- registration of party names.

The bill also amends the *Public Employment (Consequential and Transitional) Amendment Act 1999* to make a technical amendment, and the *Referendum (Machinery Provisions) Act 1984* to strengthen ‘silent elector’ protections and clarify minimum disclosure provisions.

The bill also contains application and transitional provisions.

Commencement on proclamation

Schedule 1, items 5, 9, 12, 16, 19, 42, 78 and 116

By virtue of items 3, 5, 8, 11, 14, 18, 24 and 30 in the table in subclause 2(1), the amendments proposed in items 5, 9, 12, 16, 19, 42, 78 and 116 of Schedule 1 to this bill would commence on proclamation, with no date being fixed within which the amendments must commence in any event. The Committee expects that where legislation is expressed to commence on proclamation, the date should be no later than 6 months after the Parliament passes the relevant measure. Where the period will be longer, the Committee expects that the explanatory memorandum will provide an explanation for the delayed commencement. In this case, the Explanatory Memorandum indicates that these amendments are concerned with proof of identity and address at enrolment, and are ‘subject to regulations being developed in consultation with the States and Territories and possible complementary State and Territory legislation’. These factors are put forward as the reasons for there being no date by which the provisions must commence in any event.

The Committee, however, **seeks the Minister’s advice** as to whether the measures proposed in these amendments need to be confirmed prior to any relevant election date. The Committee also **seeks the Minister’s advice** as to whether the bill might provide for these amendments to be deemed to be repealed if they have not commenced within 12 months of assent.

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 Minister

As indicated in the explanatory memorandum to the Bill, the provisions for new arrangements for proof of identity are subject to regulations being developed in consultation with the States and Territories and possible complementary State and Territory legislation.

It is not known how long it will take for the arrangements to be in place in each of the States and Territories. Given that uncertainty, it is possible that the new arrangements may not commence in the current electoral cycle.

In response to the question regarding possible repeal of the proof of identity provisions if they have not commenced within 12 months of assent, it is possible that the relevant State and Territory legislation may not be in place within this time period. The Government considers that it is important that the provisions are able to be proclaimed to commence once all arrangements are in place, without the delay of reintroducing legislation into Parliament.

The Committee thanks the Minister for this response. The Committee notes that the timetable for the completion of complementary State and Territory legislation is uncertain and that the arrangements may not commence in the current electoral cycle.

The Committee continues to have concerns with the uncertainty arising out of the use of open-ended commencement provisions. Where a six-month period is said to be impractical, the Committee likes to see another period, such as a period of 12 months, specified. The Committee therefore continues to inquire as to whether the bill might provide for these amendments to be deemed to be repealed if they have not commenced within 12 months of assent. The Committee notes the Minister's concern about the delays in reintroducing the legislation but notes that if the complementary legislation could not be finalised within the 12 month period, it would be possible to amend only the repeal date to extend the commencement of the bill rather than reintroduce legislation. Ultimately, this is an issue best left for resolution by the Senate.

For this reason, the Committee continues to draw 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.

The voting rights of prisoners

Schedule 1, items 6 to 7 and 18

The amendments proposed by items 6 and 7 and 18 of Schedule 1 will abrogate the rights of all persons serving a term of imprisonment to enrol and vote in a federal election. This is a change in the law that was originally proposed in the Electoral and Referendum Amendment Bill (No. 2) 1998, and on which the Committee reported in its *Seventh Report of 1998*. This change in the law was again proposed in the Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002.

In the *Seventh Report of 1998*, the Committee noted that this issue had been debated for many years, and concluded that it was possible ‘that voters may be dealt with differently depending on the nature of their sentence and the effectiveness of notification procedures in the various States and Territories’. Accordingly, the Committee drew attention to the possible effect of that provision on personal rights and liberties.

The Committee reaffirms these comments in relation to this bill.

The Committee considers that this may be a matter more appropriately dealt with at the time of sentencing. The Committee therefore **seeks the minister’s advice** as to whether this is a matter that could more appropriately be dealt with under the Criminal Code, thus allowing judicial officers to determine whether a person should lose their voting rights at the time of sentencing.

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 Minister

I note the Committee’s comments on the proposed voting rights of prisoners. The Government remains firmly of the view that people who commit offences against society, sufficient to warrant a prison term, should not, while they are serving that prison term, be entitled to vote and elect the leaders of the society whose laws they have disregarded.

The Committee has sought my advice on the appropriateness of dealing with this at the time of sentencing and suggested it could be dealt with under the Criminal Code. However, the Government considers that it is more appropriate for the entitlement to vote in federal elections to be addressed in the Electoral Act rather than by judicial officers sentencing people under State and Territory legislation.

The Committee thanks the Minister for this response which notes that people who commit offences that warrant a prison term should not be entitled to vote while they are serving that term. Notwithstanding this, the Committee continues to have concerns with provisions that have the possibility of dealing differently with voters depending on the nature of their sentence and the effectiveness of notification procedures in the various States and Territories. Ultimately, this is an issue best left for resolution by the Senate.

For this reason, the Committee continues to draw 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.

Commencement on proclamation

Schedule 1, items 10, 13, 17, 37, 45, 62, 63 and 106 to 109

By virtue of items 6, 9, 12, 16, 20, 22 and 28 in the table in subclause 2(1), the amendments proposed in items 10, 13, 17, 37, 45, 62, 63 and 106 to 109 of Schedule 1 to this bill would commence on proclamation, with no date being fixed within which the amendments must commence in any event. The Committee expects that where legislation is expressed to commence on proclamation, the date should be no later than 6 months after the Parliament passes the relevant measure. Where the period will be longer, the Committee expects that the Explanatory Memorandum will provide an explanation for the delayed commencement. In this case, the Explanatory Memorandum indicates that these amendments 'change the time when the electoral rolls close prior to an election for the addition of new enrolments and changes to existing enrolment details.' The Explanatory Memorandum further notes that 'complementary State legislation will be required to enable ...implementation of the provisions' and therefore can commence only on proclamation.

The Committee, however, **seeks the Minister's advice** as to whether the measures proposed in these amendments need to be confirmed prior to any relevant election date. The Committee also **seeks advice** as to whether the bill might provide for these amendments to be deemed to be repealed if they have not commenced within 12 months of assent.

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 Minister

In relation to the close of rolls, as indicated in the explanatory memorandum, complementary amendments to State legislation will be required to ensure that the rolls close at consistent times for the House of Representatives and Senate elections. Given the uncertainty as to when the complementary legislation would be in place, it is possible that the provisions may not be implemented in the current electoral cycle. Retention of commencement on proclamation without an automatic repeal within 12 months of assent would allow the provisions to be proclaimed as soon as complementary State legislation was in place, without the delay of reintroducing the legislation into Parliament.

The Committee thanks the Minister for this response. The Committee notes that the timetable for the completion of complementary State and Territory legislation is uncertain and that the arrangements may not commence in the current electoral cycle.

The Committee continues to have concerns with the uncertainty arising out of the use of open-ended commencement provisions. Where a six-month period is said to be impractical, the Committee likes to see another period, such as a period of 12 months, specified. The Committee therefore continues to inquire as to whether the bill might provide for these amendments to be deemed to be repealed if they have not commenced within 12 months of assent. The Committee notes the Minister's concern about the delays in reintroducing the legislation but notes that if the complementary legislation could not be finalised within the 12 month period, it would be possible to amend only the repeal date to extend the commencement of the bill rather than reintroduce legislation. Ultimately, this is an issue best left for resolution by the Senate.

For this reason, the Committee continues to draw 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.

Trish Crossin
Chair



ATTORNEY-GENERAL
THE HON PHILIP RUDDOCK MP

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5 MAY 2004

Senate Standing C'ttee
for the Scrutiny of Bills

MC04/3230
04/031 ITSA

- 3 MAY 2004

Senator Trish Crossin
Chair, Senate Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator Crossin

I refer to the Committee's letter of 1 April 2004 drawing my attention to comments in the Scrutiny of Bills Alert Digest No. 5 of 2004 concerning the Bankruptcy Legislation Amendment Bill 2004. Those comments relate to the retrospective application of amendments to be made by items 1 and 2 of Schedule 7 to that Bill.

You have sought my assurance that no person will be adversely affected by the retrospective commencement of those amendments. I am happy to give that assurance. In fact, a significant number of people could be disadvantaged if the error corrected by those amendments is not corrected retrospectively. As the amendments are to correct an error in the transitional provisions contained in the Bankruptcy Legislation Amendment Act 2002, they would have no utility if they applied prospectively only.

As you have noted, the Explanatory Memorandum provides a full explanation of the reason for these amendments. The Explanatory Memorandum notes that the problem caused by this error applies particularly to the abolition of early discharge. If the error is not corrected retrospectively, a significant number of bankrupts who believe they are eligible to apply for early discharge, and have considered this in deciding whether bankruptcy is the best option for them, may not be eligible for discharge until three years after the date of bankruptcy.

The action officer for this matter in my Department is David Bergman who can be contacted on 6270 3434.

Yours sincerely

Philip Ruddock



SENATOR THE HON ERIC ABETZ

Special Minister of State
Liberal Senator for Tasmania

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15 JUN 2004

Senate Standing Committee
for the Scrutiny of Bills

Senator T Crossin
Chair of the Senate Standing Committee
for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

15 JUN 2004

Dear Senator Crossin

I refer to the letter of 13 May 2004 from the Acting Secretary of the Senate Standing Committee for the Scrutiny of Bills addressed to my Senior Adviser seeking my advice on comments contained in the Scrutiny of Bills *Alert Digest No. 6 of 2004* (12 May 2004) about the Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004 (the Bill).

The Committee has sought my advice as to:

- whether the measures to establish new arrangements for proof of identity on enrolment need to be confirmed prior to any relevant election date and whether the Bill might allow for the provisions to be deemed to be repealed if they had not commenced within 12 months of assent;
- whether proposed amendments to the voting rights of prisoners under the *Commonwealth Electoral Act 1918* (the Electoral Act) could be more appropriately dealt with under the Criminal Code as a matter to be considered in sentencing; and
- whether the measures proposed to remove the seven-day period for enrolments between the issue of writs for an election and the close of rolls need to be confirmed prior to any relevant election date and whether the Bill might provide for those provisions to be deemed to be repealed if they had not commenced within 12 months of assent.

As indicated in the explanatory memorandum to the Bill, the provisions for new arrangements for proof of identity are subject to regulations being developed in consultation with the States and Territories and possible complementary State and Territory legislation.

It is not known how long it will take for the arrangements to be in place in each of the States and Territories. Given that uncertainty, it is possible that the new arrangements may not commence in the current electoral cycle.

In response to the question regarding possible repeal of the proof of identity provisions if they have not commenced within 12 months of assent, it is possible that the relevant State and Territory legislation may not be in place within this time period. The Government considers that it is important that the provisions are able to be proclaimed to commence once all arrangements are in place, without the delay of reintroducing legislation into Parliament.

I note the Committee's comments on the proposed voting rights of prisoners. The Government remains firmly of the view that people who commit offences against society, sufficient to warrant a prison term, should not, while they are serving that prison term, be entitled to vote and elect the leaders of the society whose laws they have disregarded.

The Committee has sought my advice on the appropriateness of dealing with this at the time of sentencing and suggested it could be dealt with under the Criminal Code. However, the Government considers that it is more appropriate for the entitlement to vote in federal elections to be addressed in the Electoral Act rather than by judicial officers sentencing people under State and Territory legislation.

In relation to the close of rolls, as indicated in the explanatory memorandum, complementary amendments to State legislation will be required to ensure that the rolls close at consistent times for the House of Representatives and Senate elections. Given the uncertainty as to when the complementary legislation would be in place, it is possible that the provisions may not be implemented in the current electoral cycle. Retention of commencement on proclamation without an automatic repeal within 12 months of assent would allow the provisions to be proclaimed as soon as complementary State legislation was in place, without the delay of reintroducing the legislation into Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Eric Abetz', written in a cursive style.

ERIC ABETZ