



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

COMMITTEES

Scrutiny of Bills Committee

Report

SPEECH

Wednesday, 23 June 2010

BY AUTHORITY OF THE SENATE

SPEECH

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Questioner
Speaker Parry, Sen Stephen

Source Senate
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Responder
Question No.

Senator PARRY (Tasmania) (5.50 pm)—On behalf of the Chair of the Standing Committee for the Scrutiny of Bills, Senator Coonan, I present the seventh report of 2010 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills *Alert Digest No 7* of 2010, dated 23 June 2010. I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in *Hansard*.

Leave granted.

The statement read as follows—

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TABLING STATEMENT

Alert Digest No. 7 and Seventh Report of 2010

23 June 2010

In tabling the Committee's *Alert Digest No. 7 of 2010* and its *Seventh Report of 2010* I draw the Senate's attention to the Committee's views on:

- the level of responsiveness to issues raised by the Scrutiny Committee;
- the Insurance Contracts Act assurance from the Treasurer in relation to current litigation; and
- the treason offence comments.

On behalf of the Committee I would like to acknowledge the timely and comprehensive replies the Committee is receiving from Ministers to concerns raised by the Committee. The current responses are outlined in the Committee's *Seventh Report of 2010*. The Committee uses the information provided to further analyse possible concerns that a bill may breach its terms of reference. In many instances the additional information satisfies the Committee and no further action is needed.

In particular, in scrutinising the amendments to bills for *Alert Digest No. 7* the Committee had occasion to thank Ministers for responding to issues identified by the Committee and acting to implement changes to address the concerns.

For example the Scrutiny Committee had requested that further explanation in relation to some items in the Comsuper and Governance of Australian Government Superannuation Scheme bills be included in the explanatory memoranda. The Treasurer has since tabled revised explanatory memoranda for both of these bills addressing the concerns raised. The Committee thanks the Treasurer for taking action to make available this additional information as it should assist Senators and the public to better understand the context and intended operation of these items.

I also draw the Senate's attention to a possible issue in relation to the Insurance Contracts Amendment Bill 2010 that has been resolved.

A concern was raised in *Alert Digest No.5* about the possible retrospective application of proposed new section 27A of the *Insurance Contracts Act 1984*.

The Treasurer has advised the Committee that there will in fact be a beneficial effect to holders of existing contracts and also that because the provision will commence on Royal Assent it only affects future rights and liabilities that arise from existing contracts.

The Treasurer further advised that the bill is not intended to confer additional remedies becoming available to life insurers in current litigation.

In its *Seventh Report* the Committee thanks the Treasurer for his comprehensive response and recommends and requests that the Treasurer amends the explanatory memorandum to make this advice explicit.

In relation to current matters of concern to the Committee I draw the Senate's attention to the National Security Legislation Amendment Bill. The Committee recently commented on this bill in its *Alert Digest No. 5* and a comprehensive response from the Attorney-General is included in today's *Seventh Report of 2010*.

Despite the further information provided, one item in relation to a treason offence remains a particularly significant issue of concern to the Committee. Schedule 1, item 15 of the bill seeks to provide that a Proclamation declaring an enemy to be at war with the Commonwealth will take effect immediately, rather than following the usual *Legislative Instruments Act* rule that it commences when it is made public by its registration on the Federal Register of Legislative Instruments.

The Attorney-General has resisted the Committee's request to include in the bill a requirement for making the Proclamation public at the time it is made, explaining that a requirement for publication could undermine the effect of the provision if means of communication are adversely impacted because Australia is at war.

Although there may be circumstances in which communication is limited, the Committee does not accept that the reasons offered justify the general exclusion of a publication requirement.

In the Committee's view the publication of a Proclamation should usually be contemporaneous with its commencement. In addition, the public should be informed not only of the making of a Proclamation, but also of its effect (in this instance giving rise to new criminal liability).

In view of its concern that this provision will trespass unduly on personal rights and liberties, in its *Seventh Report* the Committee recommends and requests that the Attorney-General amends the bill to address these concerns.

The full details of these matters are available in the alert digest and report I am tabling today, and I commend the Committee's *Alert Digest No. 7 of 2010* and *Seventh Report of 2010* to the Senate.

Question agreed to.