

**Senate Standing Committee
for the
Scrutiny of Bills**



Alert Digest

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Members of the Committee

Senator R Ray (Chair)
Senator B Mason (Deputy Chair)
Senator G Barnett
Senator D Johnston
Senator A McEwen
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.

Appropriation Bill (No. 3) 2005-2006

Introduced into the House of Representatives on 8 February 2006
Portfolio: Finance and Administration

Background

The bill appropriates money (\$1,258.1 million) out of the Consolidated Revenue Fund, additional to the appropriation made by the *Appropriation Act (No. 1) 2005-2006*, to meet payments for the ordinary annual services of the government for the year ending on 30 June 2006.

The Committee has no comment on this bill.

Appropriation Bill (No. 4) 2005-2006

Introduced into the House of Representatives on 8 February 2006
Portfolio: Finance and Administration

Background

The bill appropriates money (\$1,368.6 million) out of the Consolidated Revenue Fund, additional to the appropriation made by the *Appropriation Act (No. 2) 2005-2006*, to provide additional funding to agencies for:

- expenses in relation to grants to the states and for payments to the Northern Territory and the Australian Capital Territory;
- non-operating expenses such as equity injections and loans.

The Committee has no comment on this bill.

Bankruptcy Legislation Amendment (Fees and Charges Bill 2006

Introduced into the House of Representatives on 16 February 2006
Portfolio: Attorney-General

Background

This bill provides for fees and charges provided for in the *Bankruptcy Act 1966*, the *Bankruptcy (Estate Charges) Act 1997* and the *Bankruptcy (Registration Charges) Act 1997*, to be determined by the Minister by legislative instrument. Fees and charges are currently set in the primary legislation or by regulation.

The bill also allows for Insolvency and Trustee Service Australia to implement cost recovery arrangements consistent with the Government's cost recovery policy.

The bill also includes minor technical amendments in relation to the delivery of personal insolvency services.

The Committee has no comment on this bill.

Cancer Australia Bill 2006

Introduced into the House of Representatives on 16 February 2006
Portfolio: Health and Ageing

Background

This bill establishes Cancer Australia as a statutory agency to provide national leadership and coordination in the control of cancer. The Government has committed a total of \$13.7 million over five years to establish the new agency.

The bill outlines the functions of the agency and includes the terms of appointment and roles of the Chef Executive Officer, support staff and the Advisory Council.

Cancer Australia's functions include the coordination and provision of financial support for cancer research and the implementation of the Government's policies and programs in cancer control.

The Committee has no comment on this bill.

Family Assistance, Social Security and Veterans' Affairs Legislation Amendment (2005 Budget and Other Measures) Bill 2006

Introduced into the House of Representatives on 16 February 2006
Portfolio: Families, Community Services and Indigenous Affairs)

Background

This bill amends the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, *A New Tax System (Family Assistance) Act 1999*, *A New Tax System (Family Assistance) (Administration) Act 1999* and the *Veterans' Entitlements Act 1986*.

The bill gives effect to changes announced in the 2005-2006 Budget and other changes in relation to the calculation of the Family Tax Benefit (FTB), portability of social security payments and family tax benefits overseas and the provision of pensions by small superannuation funds.

The bill also contains a minor technical amendment so that the FTB Part B income test operates as intended where a customer returns to work after the birth of a child.

Retrospective commencement Schedule 3

By virtue of item 4 in the table to subclause 2(1) of this bill, the amendments proposed in Schedule 3, in relation to the operation of the FTB Part B income test in certain circumstances where an individual returns to paid work after the birth of a child, would commence retrospectively on 1 July 2005.

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. However, the explanatory memorandum makes it clear (on page 22) that the amendments not only are beneficial to some recipients of FTB Part B, but also, despite their commencement on 1 July

2005, will not come into effect until some time after the end of the 2005-2006 tax year, on 30 June 2006.

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

Retrospective commencement Schedule 8, part 1 and Schedule 9

By virtue of items 9 and 11 in the table to subclause 2(1) of this bill, the amendments to the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*, proposed in Part 1 of Schedule 8, and in Schedule 9 respectively, would commence retrospectively on 1 January 2006. 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. However, the explanatory memorandum makes it clear (on pages 35-36 and 47-48 respectively) that the amendments are beneficial to some recipients of social security or veterans' entitlements benefits.

In the circumstances, the Committee makes no further comment on these provisions.

Health Legislation Amendment (Pharmacy Location Arrangements) Bill 2006

Introduced into the House of Representatives on 16 February 2006
Portfolio: Health and Ageing

Background

This bill proposes a number of amendments to the *National Health Act 1953* relating to the arrangements for approving pharmacists to supply pharmaceutical benefits to the community including:

- the provision of a discretionary power to the Minister to substitute a decision by the Secretary not to approve a pharmacist to supply pharmaceutical benefits at or from particular premises;
- amendments to the Secretary's power to approve more than one pharmacist to supply pharmaceutical benefits in respect of particular premises; and
- amendments relating to expanded or contracted pharmacy premises.

The bill also amends the *National Health Act 1953* to extend the operation of Australian Community Pharmacy Authority and Ministerial rules until 30 June 2010.

The bill also provides for an increase in membership of the Authority by including a consumer representative to represent the interests of consumers and makes two technical amendments.

Retrospective commencement Schedule 1, part 3

By virtue of item 4 in the table to subclause 2(1) of this bill, the amendments proposed in Part 3 of Schedule 1 would commence retrospectively on 1 July 2000. 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. However, the explanatory

memorandum makes it clear that the amendments are of a technical nature, and are designed to correct drafting errors in existing legislation. The Committee notes that the amendments will not make any change to the substantive law.

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

Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment Bill 2006

Introduced into the House of Representatives on 16 February 2006
Portfolio: Education, Science and Training

Background

This bill amends the *Schools Assistance (Learning Together—Achievement through Choice and Opportunity) Act 2004*, to automatically provide maximum general recurrent grants funding (70% of Average Government School Recurrent Costs) for non-government schools that primarily cater for students with emotional, social or behavioural difficulties who are at risk of leaving mainstream schooling. The bill includes a new definition of ‘special assistance school’. Schools that meet the new definition will receive the same funding as non-government schools recognised as special schools.

The bill also:

- allows for the transfer of uncommitted capital infrastructure grant funding for government schools from 2005 to 2006;
- repeals section 125 of the Act,
- amends an incorrect cross reference; and
- includes a regulation-making power to allow funding for a programme year to be carried over or brought forward to another programme year.

Retrospective commencement Schedule 1, item 3

By virtue of item 3 in the table to subclause 2(1) of this bill, the amendment proposed in item 3 of Schedule 1 would commence retrospectively immediately after the commencement of section 36 of the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act*

2004. 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. In this case, the explanatory memorandum notes that the amendment merely corrects a drafting error in the earlier Act and makes no change to the substantive law.

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

Tax Laws Amendment (2006 Measures No. 1) Bill 2006

Introduced into the House of Representatives on 16 February 2006
Portfolio: Treasury

Background

Schedule 1 amends the *Income Tax Assessment Act 1997* to provide exemptions from Australian tax on non-Australian source income for individuals who are temporary residents of Australia for tax purposes and from interest withholding tax obligations associated with overseas liabilities and some record-keeping obligations.

Schedule 2 provides for deductions for certain business capital expenses that are not otherwise recognised and are not denied a deduction elsewhere in the income tax law. This Schedule also amends the cost base for capital gains tax (CGT) assets and cost rules for uniform capital allowances (UCA) assets and provides for deductions for certain lease and licence-related payments.

Schedule 3 amends the *Taxation Administration Act 1953* and the *Income Tax Assessment Act 1997* to introduce measures to deter:

- the promotion of tax avoidance and evasion schemes; and
- the implementation of schemes that have been promoted on the basis of conformity with a produce ruling.

Schedule 4 amends the *A New Tax System (Goods and Services Tax) Act 1999* to provide for prepaid phone cards or facilities to be treated as eligible vouchers for the purposes of Division 100 of that Act and to clarify that GST should be calculated on the stated monetary value of the voucher.

**Retrospective application
Schedule 2, parts 1 and 2**

By virtue of Part 3 of Schedule 2 to this bill, the amendments proposed by Parts 1 and 2 of that Schedule would apply to expenditures incurred on or after 1 July 2005. 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. The Committee has been prepared to accept a measure of retrospective application where a bill implements a tax or revenue measure in respect of which the relevant Minister has published a date from which the measure is to apply and that publication took place prior to that date.

The amendments in relation to business related expenditure were foreshadowed in an announcement on 28 August 2002, and announced in the 2005-06 Budget [Treasurer's Press Release No. 45 of 10 May 2005]. The explanatory memorandum makes it clear that those amendments are beneficial to some taxpayers, and are intended as provisions of last resort.

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

**Retrospective application
Schedule 4, subitem 20(3)**

By virtue of subitem 20(2) of Schedule 4 to this bill, the amendments proposed by that Schedule to amend the definition of 'voucher' would apply from 1 July 2000, the commencement date of GST. By virtue of subitem 20(3) of Schedule 4, the amendments proposed to clarify that GST be remitted on the stated monetary value of a voucher would apply from 11 May 2005.

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. In this case, the explanatory memorandum states that it was intended that all prepaid phone cards or facilities be treated as eligible vouchers for the purpose of Division 100 of the *A New Tax System (Goods and Services Tax) Act 1999*, but that this outcome is uncertain in the

current Act. The proposed amendments are intended to clarify rather than change the existing law. While the explanatory memorandum states that the amendments are expected to lead to a gain of \$10 million in GST revenue, the explanatory memorandum also states that the amendments are expected to reduce compliance costs and ensure consistency of treatment of pre-paid phone cards.

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

Telecommunications (Interception) Amendment Bill 2006

Introduced into the House of Representatives on 16 February 2006

Portfolio: Attorney-General

Background

This bill amends the *Telecommunications (Interception) Act 1979* to implement recommendations of the *Report of the Review of the Regulation of Access to Communications* which was presented to the Parliament on 14 September last year, to:

- insert a warrant regime for access to stored communications held by a telecommunications carrier;
- enable interception of communications of a person known to communicate with the person of interest;
- enable interception of telecommunications services on the basis of the telecommunications device;
- remove the distinction between class 1 and class 2 offences for which telecommunications interception powers are available to law enforcement agencies; and
- remove the Telecommunications Interception Remote Authority Connection function currently exercised by the Australian Federal Police and transfer the associated warrant register function to the Department administering the legislation.

The bill will also amend the Act to:

- remove the exception to the definition of interception;
- clarify that employees of a carrier exercise authority under a telecommunications interception warrant when assisting law enforcement agencies in the execution of interception;
- include an additional permitted purpose for use and communication of lawfully obtained information in relation to the Victorian Office of Police Integrity; and

- update applicable reference to money laundering offences in New South Wales.

The bill also contains transitional and saving provisions.

Retrospective commencement Schedule 6, items 3 and 8

By virtue of items 5 and 7 in the table to subclause 2(1) of this bill, the amendments proposed in items 1 and 3 of Schedule 6 would commence retrospectively immediately after the commencement of item 10 of Schedule 1 to the *Telecommunications (Interception) Amendment (Stored Communications and Other Measures) Act 2005*. The explanatory memorandum states that the effect of these amendments will be to expand the circumstances in which the Victorian Office of Police Integrity may lawfully obtain intercepted information to include investigations under the *Whistleblowers Protection Act 2001* of Victoria.

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. In the Committee's view, where proposed legislation is to have retrospective effect, the explanatory memorandum should set out in detail the reasons retrospectivity is sought. However, the explanatory memorandum gives no indication of the reason for the amendments coming into force at the time proposed in subclause 2(1). The Committee **seeks the Attorney-General's advice** as to the reason for that date of commencement.

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.

Retrospective commencement

Schedule 6, item 8

By virtue of item 9 in the table to subclause 2(1) of this bill, the amendment proposed in item 8 of Schedule 6 would commence retrospectively, on 1 February 1994, immediately after the commencement of section 17 of the *Telecommunications (Interception) Amendment Act 1993*. 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. In this case, however, the explanatory memorandum makes it clear that the purpose of the amendment is to abrogate the effect of a decision of the District Court of South Australia, and that the retrospectivity is necessary ‘to ensure the validity of the provision of technical assistance by an employee of a carrier’ since the relevant provision was first included in the legislation.

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

Trespass on personal rights and liberties

Schedule 2

The amendments proposed by Schedule 2 to this bill would permit the issue of an interception warrant in relation to the telecommunications services used by a person whom the relevant interception agency has no reason to suspect of any offence, but who may be a recipient of communications from a person whom the agency does suspect of being guilty of an offence. The Committee notes that these amendments have the potential to trespass on the personal rights and liberties of the subject of such a warrant. The Committee makes no final determination on this matter, but **leaves for the Senate as a whole** the question of whether these amendments *unduly* trespass upon personal rights and liberties.

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.

Trespass on personal rights and liberties Schedule 3

The amendments proposed by Schedule 3 to this bill would permit the issue of an interception warrant in relation to specified telecommunications equipment, rather than to telecommunications made by a named person. For example, the proposed amendments would permit a warrant to be issued to intercept all communications made to or from a specified computer terminal, whoever might in fact be using that terminal. The Committee notes that the amendments in this Schedule would appear to trespass on the personal rights and liberties of anyone who happened, in all innocence, to use a computer terminal or mobile telephone handset in relation to which an interception warrant had been issued. The Committee makes no final determination on this matter but **leaves for the Senate as a whole** the question of whether the amendments trespass *unduly* on those personal rights and liberties.

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.

SCRUTINY OF STANDING APPROPRIATIONS

The committee has determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Further details of the Committee's approach to scrutiny of standing appropriations are set out in the committee's *Fourteenth Report of 2005*. The following is a list of the bills containing standing appropriations that have been introduced since the beginning of the 41st Parliament.

Bills introduced with standing appropriation clauses - 41st Parliament

*Indicates passed by Senate	Bills and Clauses
*	Appropriation (Regional Telecommunications Services) Bill 2005-2006 – clause 13
*	Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005 – subclause 8(2)
*	Asbestos-related Claims (Management of Commonwealth Liabilities) (Consequential and Transitional Provisions) Bill 2005 – subclause 5(3)
*	Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Bill 2005 – clause 23
*	Financial Framework Legislation Amendment Bill 2004 – Schedule 1, item 397, paragraphs 124(1)(b) and (c) and item 422, subsection 235(2) [also Schedule 1, items 58, 63, 82, 86, 95, 99, 114, 135, 136, 145, 153, 164, 169, 182, 197, 205, 218, 261, 293, 317, 324, 370, 419, 437, 448, 484 and 493 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>]
*	Human Services Legislation Amendment Bill 2005 – Schedule 2, subitem 720(4)
	Indigenous Education (Targeted Assistance) Amendment Bill 2004 – Schedule 1, item 3, subsection 14A(1)
*	National Water Commission Bill 2004 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>

	Offshore Petroleum Bill 2005 – clause 56
*	Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004 – clause 133
*	Skilling Australia’s Workforce Bill 2005 – clause 40
*	Superannuation Bill 2005 – subclause 29(4)
*	Superannuation (Consequential Amendments) Bill 2005 – Schedule 5, item 1, subsection 4AA(5) and Schedule 6, item 1, subsection 12A(5)
*	Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005 – Schedule 1, item 1, subsections 158ZO(4), 158ZP(7) and 158ZQ(5) and Schedule 3, item 1, subsection 136C(4)
*	Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 – Schedule 1, item 12, section 37ZH and subsection 37ZJ(3)
*	Water Efficiency Labelling and Standards Bill 2004 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>

Other relevant appropriation clauses

*Indicates Passed by Senate	Bills and Clauses
*	AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004 – Schedule 2, item 3: special appropriation clause – for a finite amount and a finite period of time.
*	Social Security Legislation Amendment (One-off Payments for Carers) Bill 2005 – Schedule 2, item 1: special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2005/2006

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2005							
Australian Citizenship Bill 2005	14(30.11.05)	9.11.05		Citizenship and Multicultural Affairs	1.12.05	13.2.06	1(1.3.06)
Corporations (Aboriginal and Torres Strait Islander) Bill 2005	8(10.8.05) 9(17.8.05)	23.6.05		Immigration and Multicultural and Indigenous Affairs	11.8.05		
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2005	11(14.9.05)	5.9.05		Mr Katter	15.9.05		
Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005	11(14.9.05)	5.9.05		Mr Kerr	15.9.05		
Workplace Relations Amendment (Work Choices) Bill 2005	13(9.11.05)	2.11.05	10.11.05	Employment and Workplace Relations	10.11.05		
Bills dealt with in 2006							
Aged Care (Bond Security) Bill 2005	1(8.2.06)	8.12.05	9.2.06	Ageing	9.2.06		
Australian Sports Anti-Doping Authority Bill 2005	1(8.2.06)	7.12.05	9.2.06	Arts and Sport	9.2.06	27.2.06	1(1.3.06)
Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005	1(8.2.06)	13.2.06	7.12.05	Defence	9.2.06		