

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



**Alert Digest**

**No. 6 of 2007**

**13 June 2007**



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# Senate Standing Committee for the Scrutiny of Bills

## Members of the Committee

Senator R Ray (Chair)  
Senator J Adams (Deputy Chair)  
Senator G Barnett  
Senator A McEwen  
Senator A Murray  
Senator S Parry

## 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.

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## **Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill 2007**

Introduced into the House of Representatives on 24 May 2007  
Portfolio: Families, Community Services and Indigenous Affairs

### **Background**

This bill amends the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Aboriginal Land Rights (Northern Territory) Amendment Act 2006* to establish an office of Executive Director of Township Leasing to enter into and administer township leases (99 years) on Aboriginal land in the Northern Territory.

The bill provides for the appointment by the Governor-General of an Executive Director of Township Leasing for a term of up to five years and outlines the terms and conditions under which the Executive Director will hold office, the way in which the Executive Director may obtain the assistance of staff and consultants and reporting procedures.

The bill also contains technical provisions.

### **Commencement on Proclamation Schedule**

Items 3, 4 and 5 in the table to subclause 2(1) of this bill provide that the amendments proposed in Schedule 2 will commence immediately after the commencement of various items in Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Amendment Act 2006*. Reference to that Act reveals that the various items referred to are to commence on Proclamation, with no limit on the time within which the provisions must commence in any event. The result is that the amendments referred to in items 3, 4 and 5 in the table to subclause 2(1) will only commence on Proclamation, with no limit being imposed on the time within which they must commence.

The Committee noted, in *Alert Digest No. 5 of 2006*, the commencement provisions in what is now the *Aboriginal Land Rights (Northern Territory)*

*Amendment Act 2006*, and sought the Minister's advice on whether the provisions could be required to commence or be repealed within a fixed period after Assent. As reported in the Committee's *Fifth Report of 2006*, the Minister's response indicated that the commencement of all of the relevant amendments was dependent upon the passage of complementary legislation by the Northern Territory. The Committee notes the Minister's response and also that each of the amendments referred to in Items 3, 4 and 5 in the table to subclause 2(1) of the current bill are no more than technical corrections of drafting errors in the earlier legislation.

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

## **Delegation of legislative power**

### **Schedule 1, item 1**

Proposed new section 20S of the *Aboriginal Land Rights (Northern Territory) Act 1976*, to be inserted by item 1 of Schedule 1 to this bill, would permit the Minister, if he or she is satisfied as to various matters and if various other conditions are met, to specify by legislative instrument, the day on which Part IIA of the Act (the whole of which is proposed to be inserted by this bill) is to be repealed. The explanatory memorandum seeks to justify this delegation of legislative power on the ground that it will ensure that 'there is no unnecessary expense incurred by having an Executive Director [of Township Leasing] in place when there is no further need for one.' The Committee considers that proposed new section 20S may inappropriately delegate legislative powers and **seeks the Minister's advice** as to why 'unnecessary expenses' could not be similarly avoided by allowing Parliament to repeal Part IIA of the Act if required.

*Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.*

## **Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2007**

Introduced into the House of Representatives on 10 May 2007

Portfolio: Agriculture, Fisheries and Forestry

### **Background**

This bill amends the *Agricultural and Veterinary Chemicals (Administration) Act 1992* to implement the outcome of an assessment of the Australian Pesticides and Veterinary Medicines Authority (APVMA) against the recommendations of the *Review of Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Review).

The bill:

- replaces the current board of directors with an executive manager, the Chief Executive Officer (CEO), supported by an Advisory Board of up to nine part-time members who are to be appointed by the Minister;
- authorises the payment of remuneration and allowances to board members and outlines the manner in which board meetings are to be conducted and organised, including the disclosure of interest;
- authorises the Minister to appoint the CEO and to terminate that appointment in certain circumstances;
- allows the APVMA to retain its current functions and powers and transfers the assets and liabilities of the APVMA to the Commonwealth; and
- makes the APVMA subject to the provisions of the *Financial Management and Accountability Act 1997* and provides for staff to be engaged under provisions of the *Public Service Act 1999*.

The bill also contains application and transitional provisions in relation to definitions.

*The Committee has no comment on this bill.*

## **Agriculture, Fisheries and Forestry Legislation Amendment (2007 Measures No. 1) Bill 2007**

Introduced into the House of Representatives on 23 May 2007

Portfolio: Agriculture, Fisheries and Forestry

### **Background**

This bill amends the *Australian Meat and Live-stock Industry Act 1997* and the *Primary Industries (Excise) Levies Act 1999* to replace the voluntary contributions system, which ceases to operate on 1 July 2007, with a statutory levy on the slaughter of cattle, sheep and goats.

The bill provides for the Minister to declare a body as being eligible to receive the meat processor levies, which will allow the Australian Meat Processor Corporation Ltd to receive and administer levy funds in relation to marketing and research and development programmes. Commonwealth matched funds for eligible research expenditure will continue to be directed to Meat & Livestock Australia Ltd. The bill also allows certain disaggregated information about levy payers to be disseminated to the red meat industry.

### **Standing appropriations**

#### **Schedule 1, item 18**

Proposed new sections 64C and 64D of the *Australian Meat and Live-stock Industry Act 1997*, to be inserted by item 18 of Schedule 1, would make standing appropriations out of Consolidated Revenue. However, the explanatory memorandum (paragraph 20) points out that the amounts appropriated are:

- a) limited to amounts of levy received by the Commonwealth under the *Primary Industries (Excise) Levies Act 1999*; and
- b) those that are currently appropriated for payment to the industry marketing and research body, which are being redirected to the meat processor marketing body and the meat processor research body that are provided for under other provisions of this bill.

The explanatory memorandum further points out that there is ‘no financial impact to the Commonwealth from this change.’

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

## **Appropriation Bill (No. 5) 2006-2007**

Introduced into the House of Representatives on 8 May 2007  
Portfolio: Finance and Administration

### **Background**

This bill appropriates additional funding of \$554.8 million, to meet payments for the ordinary annual services of the government for the financial year ending 30 June 2007.

*The Committee has no comment on this bill.*



## **Appropriation Bill (No. 6) 2006-2007**

Introduced into the House of Representatives on 8 May 2007  
Portfolio: Finance and Administration

### **Background**

This bill appropriates additional funding of \$259.2 million to enable agencies to meet payments to or for the states, territories and local government, and for new administered expenses and non-operating expenses for the financial year ending 30 June 2007.

*The Committee has no comment on this bill.*

## **Appropriation Bill (No. 1) 2007-2008**

Introduced into the House of Representatives on 8 May 2007  
Portfolio: Finance and Administration

### **Background**

This bill appropriates \$58.9 billion to meet payments for the ordinary annual services of the government for the financial year ending 30 June 2008.

*The Committee has no comment on this bill.*

## **Appropriation Bill (No. 2) 2007-2008**

Introduced into the House of Representatives on 8 May 2007  
Portfolio: Finance and Administration

### **Background**

This bill appropriates \$10.1 billion to meet payments to or for the States, Territories and local government and payments for new administered expenses and non-operating expenses for the financial year ending 30 June 2008.

*The Committee has no comment on this bill.*

## **Appropriation (Parliamentary Departments) Bill (No. 1) 2007-2008**

Introduced into the House of Representatives on 8 May 2007

Portfolio: Finance and Administration

### **Background**

This bill appropriates \$170.7 million to meet the expenses of the parliamentary departments for the financial year ending 30 June 2008.

*The Committee has no comment on this bill.*

## **Australian Centre for International Agricultural Research Amendment Bill 2007**

Introduced into the House of Representatives on 10 May 2007

Portfolio: Foreign Affairs

### **Background**

This bill amends the *Australian Centre for International Agricultural Research Act 1982* to implement the outcome of an assessment of the Australian Centre for International Agricultural Research (ACIAR) against the recommendations of the *Review of Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Review).

The bill:

- replaces the Board of Management of the Centre with a seven member Commission for International Agricultural Research and authorises the appointment of commissioners, the termination of commissioners in certain circumstances, and the payment of remuneration and allowances to commissioners;
- abolishes the position of Director and creates a new position of Chief Executive Officer, who will be directly accountable to the Minister for the administrative and financial management of the Centre; and
- retains the Policy Advisory Council (PAC) but ensures no duplication of membership between the Commission and the PAC.

The bill also contains transitional provisions.

### **Wide delegation of power**

#### **Schedule 1, item 36**

Proposed new section 41 of the *Australian Centre for International Agricultural Research Act 1982*, to be inserted by item 36 of Schedule 1, would permit the Minister to delegate to 'any person' all or any of the

Minister's functions or powers under that Act. The Committee has consistently drawn attention to legislation which allows delegations to a large class of persons, with little or no specificity as to their qualifications or attributes.

In this instance, the explanatory memorandum (page 11) seeks to justify this very wide power of delegation on the basis that 'there may be circumstances where it would not be appropriate for the Minister to delegate those functions or powers to the [Chief Executive Officer of the Centre].' While the Committee recognises that this may be the case, it remains concerned that the solution adopted is to allow delegation to 'any person' rather than to attempt to limit the power to delegate in some way by identifying the various classes of persons, for example, CEO, Commissioner etc, to whom such delegations might reasonably be made. The Committee **seeks the Minister's advice** whether this very wide power of delegation should be limited in some way.

*Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.*

## **Australian Citizenship Amendment (Citizenship Testing) Bill 2007**

Introduced into the House of Representatives on 30 May 2007

Portfolio: Immigration and Citizenship

### **Background**

This bill amends the *Australian Citizenship Act 2007* to provide for the testing of prospective applicants for Australian citizenship by conferral. The bill:

- requires certain applicants for Australian citizenship by conferral to have successfully completed a citizenship test prior to making an application;
- outlines the general eligibility criteria for Australian citizenship; and
- provides that the fee prescribed for an application to become an Australian citizen may include a component that relates to the test or tests sat by the applicant.

### **Commencement on Proclamation**

#### **Schedule 1**

Item 2 in the table to subclause 2(1) of this bill provides that the amendments proposed in Schedule 1 will commence on Proclamation, with no time being specified within which the amendments must commence in any event. The Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee will generally not comment where the period of delayed commencement is six months or less. Where the delay is longer the Committee expects that the explanatory memorandum to the bill will provide an explanation, in accordance with Paragraph 19 of Drafting Direction No. 1.3.

In this instance the explanatory memorandum indicates that the Minister needs to have this broad discretion to determine the date of commencement of the amendments proposed by the bill on the basis that ‘an unspecified period of

time is required prior to commencement to implement arrangements for the test and any computer systems required to conduct the test and to ensure that applicants for Australian citizenship who will be required to complete the test have reasonable access to necessary information and testing facilities.’ The Committee **seeks the Minister’s advice** whether it would be possible to make the necessary arrangements within a fixed period after Assent and thereby limit the currently unfettered discretion granted to the Minister.

*Pending the Minister’s advice, the Committee draws Senators’ attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee’s terms of reference.*

### **Insufficient scrutiny of instrument and excluding merits review Schedule 1, item 5**

Proposed new subsection 23A(7) of the *Australian Citizenship Act 2007*, to be inserted by item 5 of Schedule 1, states that a determination under new subsection 23A(1) is not a legislative instrument. The explanatory memorandum asserts that the reason for the inclusion of new subsection 23A(7) is that the Ministerial determination under new subsection 23A(1) ‘is not of a legislative character.’ The determination thus referred to is one under which the Minister is to approve a test, to be administered to applicants for Australian citizenship in order to determine whether they satisfy the eligibility criteria for citizenship, in proposed new paragraphs 21(2)(d), (e) and (f). The effect of this new subsection 23A(7) is that the test will not be subject to disallowance or sunseting under the *Legislative Instruments Act 2003*.

Section 5 of the *Legislative Instruments Act 2003* defines a legislative instrument as follows:

- ‘(1) Subject to sections 6, 7 and 9, a **legislative instrument** is an instrument in writing:
- a) that is of a legislative character; and
  - b) that is or was made in the exercise of a power delegated by the Parliament.



- (2) Without limiting the generality of subsection (1), an instrument is taken to be of a legislative character if:
- a) it determines the law or alters the content of the law, rather than applying the law in a particular case; and
  - b) it has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right or varying or removing an obligation or right.’

If the determination of a proposed citizenship test is not of a legislative character, then it may be considered not to apply generally to a group of people, but is more of an administrative decision, tailored to a particular applicant for Australian citizenship. This view may be supported by the provision in new subsection 23A(6), that a determination may cover ‘any ... matter related to the test that the Minister thinks appropriate.’ If the determination is taken to be an administrative decision to approve a test for a particular applicant, then there does not appear to be any provision in the bill for the determination to be subject to any form of merits review under the *Administrative Appeals Tribunal Act 1975*. The Committee consistently draws attention to provisions that exclude review by relevant appeal bodies or otherwise fail to provide for administrative review.

The Committee **seeks the Minister’s advice** as to the reasons for deciding that a determination under new subsection 23A(1) is not a legislative instrument and, if the determination is administrative in nature, whether the exercise of the power granted by proposed new subsection 23A(1) should be subject to review.

*Pending the Minister’s advice, the Committee draws Senators’ attention to these provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee’s terms of reference, and to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee’s terms of reference.*

## **Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2007**

Introduced into the House of Representatives on 28 May 2007

By Mr Garrett

### **Background**

This bill requires the Australian Government to take necessary steps to ratify the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

*The Committee has no comment on this bill.*

## Communications Legislation Amendment (Content Services) Bill 2007

Introduced into the House of Representatives on 10 May 2007

Portfolio: Communications, Information Technology and the Arts

### Background

This bill amends the *Australian Communications and Media Authority Act 2005*, the *Broadcasting Services Act 1992*, the *Criminal Code Act 1995*, the *Export Market Development Grants Act 1997*, the *Freedom of Information Act 1982*, the *Interactive Gambling Act 2001*, the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to provide for the regulation of content services delivered over a range of devices, such as mobile phones, and for new types of content provided over the Internet.

The bill:

- provides that content that is, or potentially would be, rated X18+ and above must not be delivered or made available to the public and access to material that is likely to be rated R18+ must be subject to appropriate age verification mechanisms;
- provides that, as a general rule, where content is provided by means of a content service that is operated on a commercial basis, and is likely to be classified MA 15+ or above, access must only be made available subject to appropriate age verification mechanisms;
- prohibits electronic editions of publications such as books and magazines which have been classified 'Restricted-Category 1', 'Restricted Category 2' or 'Refused Classification';
- provides for the Australian Communications and Media Authority (ACMA) to issue 'take down' notices for stored or static content, 'service-cessation' notices for live content and 'link deletion' notices for links to content, and to issue a notice to a content service provider to remove content that is substantially similar to content already the subject of a take-down notice;

- provides for civil or criminal penalties to be pursued where a content service provider fails to comply with a take-down notice, service cessation or link-deletion notice; and
- empowers the ACMA to determine industry standards where it considers that industry codes are deficient in ensuring that content services are provided in accordance with prevailing community standards.

The bill also contains application and transitional provisions and special transitional provisions.

## **Commencement on Proclamation Schedule 2**

Item 4 in the table to subclause 2(1) of this bill provides that Schedule 2 will commence on Proclamation, but must commence within 12 months of Assent in any event. The Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee will generally not comment where the period of delayed commencement is six months or less. Where the delay is longer the Committee expects that the explanatory memorandum to the bill will provide an explanation. This is consistent with Paragraph 19 of Drafting Direction No. 1.3, which states that '[i]f the Specified period option is chosen, the period should generally not be longer than 6 months. A longer period should be explained in the Explanatory Memorandum'.

In this instance the explanatory memorandum (page 28) records the effect of item 4 in the table to subclause 2(1), but does not provide an explanation for the commencement being delayed beyond 6 months after Assent. The Committee **seeks the Minister's advice** as to the reason for this extended delay in commencement and whether it would be possible to include the reason for the delay in the explanatory memorandum.

*Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.*

## Corporations Amendment (Insolvency) Bill 2007

Introduced into the House of Representatives on 31 May 2007

Portfolio: Treasury

### Background

This bill amends the *Corporations Act 2001*, the *Superannuation Guarantee (Administration) Act 1992* and the *Australian Securities and Investments Commission Act 2001* to implement measures aimed at modernising Australia's insolvency laws. The bill:

- provides enhanced protections for employee entitlements, improved information to creditors and removes unnecessary procedural requirements;
- introduces a statutory pooling process to facilitate the winding-up of related companies;
- clarifies the operation of the Superannuation Guarantee Charge in relation to employers under external administration;
- establishes an assetless administration fund to improve the quality of information forwarded to the Australian Securities and Investment Commission (ASIC) by insolvency practitioners and provides ASIC with enhanced powers to investigate the conduct of registered liquidators;
- establishes a new ASIC enforcement programme targeted at phoenix company behaviour;
- enhances the registration regime for insolvency practitioners and introduces more flexible disciplinary procedures; and
- makes a number of technical amendments aimed at enhancing the efficiency and cost effectiveness of the voluntary administration process.

The bill also contains transitional provisions.

## **Commencement on Proclamation**

### **Schedule 1, items 49, 50 and 121 and Schedule 2, item 11**

Items 3, 5 and 8 in the table to subclause 2(1) of this bill provide that the amendments proposed in items 49, 50, and 121, of Schedule 1, and the amendments proposed in item 11 of Schedule 2, will commence six months after the commencement of almost all of the other amendments proposed by this bill, which, in turn, are to commence on Proclamation, but within six months of Assent. Thus, the amendments referred to in items 3, 5 and 8 in the table to subclause 2(1) might not commence until 12 months after Assent.

The Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee will generally not comment where the period of delayed commencement is six months or less. Where the delay is longer the Committee expects that the explanatory memorandum to the bill will provide an explanation, in accordance with Paragraph 19 of Drafting Direction No. 1.3. Unfortunately the explanatory memorandum, in referring to these amendments, provides no explanation for the delayed commencement. The Committee **seeks the Treasurer's advice** as to the reasons for these delayed commencements and whether it would be possible to include the reasons for the delay in the explanatory memorandum.

*Pending the Treasurer's advice, the Committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.*

## **Strict liability**

### **Schedule 1, item 50**

Proposed new subsection 161A(4) of the *Corporations Act 2001*, to be inserted by item 50 of Schedule 1, would declare that an offence based on new subsections 161A(2) or (3) is an offence of strict liability. The Committee will generally draw to Senators' attention provisions that create strict liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum that accompanies the bill. The explanatory memorandum

(paragraph 4.234) states only that these offence provisions are ‘comparable to existing subsection 541(2)’ of the *Corporations Act 2001*, and that ‘several other offence provisions in the [Corporations] Act have similar penalties.’

The Committee notes that the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (page 24) states that the application of strict liability to all physical elements of an offence is generally only considered appropriate where, among other matters, the offence is not punishable by imprisonment. But item 121 of Schedule 1 would increase the penalty for an offence against new subsection 161A(2) or (3) to 10 penalty units (currently \$1,100) or imprisonment for three months or both. The Committee **seeks the Treasurer’s advice** whether the imposition of strict liability is justified in these circumstances and the reasons for the apparent departure from the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.

*Pending the Treasurer’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.*

### **‘Henry VIII’ clause Schedule 1, item 133**

Proposed new paragraph 571(1)(d) of the *Corporations Act 2001*, to be inserted by item 133 of Schedule 1, would permit the liquidator of a company to determine that all or any of a number of listed provisions ‘are modified, as set out in the determination, in their application to’ a particular company. This appears to be a ‘Henry VIII’ clause but it permits a liquidator, rather than delegated legislation, to modify the application of provisions of primary legislation. The explanatory memorandum (paragraph 4.251) argues that this power of modification is ‘desirable from a policy perspective, as it will allow the liquidator to minimise the prospect of a disaffected creditor applying to the court to have a determination terminated or varied.’ The explanatory memorandum also notes that a determination by a liquidator is subject to variation or termination by a court, under new section 579A.

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

### **Abrogation of privilege against self-incrimination Schedule 2, item 12**

Proposed new section 1349 of the *Corporations Act 2001*, to be inserted by item 12 of Schedule 2, would abrogate the privilege against exposing oneself to a variety of penalties under the Act, as listed in paragraphs (f) to (n) of that new section. At common law, people can decline to answer questions or provide information on the grounds that their replies might tend to incriminate them. Legislation which interferes with this common law privilege trespasses on personal rights and liberties. The Committee does not see this privilege as absolute, however, recognising that the public benefit in obtaining information may outweigh the harm to civil rights.

The explanatory memorandum (paragraphs 5.38 to 5.55) notes that prior to the decision of the High Court in *Rich v Australian Securities and Investments Commission*, it had been thought that a requirement to divulge information was not protected by any privilege against self-incrimination if the disclosure of the information would lead merely to a banning from certain activities or a disqualification from holding corporate office, but not to a fine or imprisonment. However in that case the High Court found that a banning or disqualification order was a penalty and, as a direct consequence, allowed people to invoke the common law privileges protecting the disclosure of information that may expose the person to a penalty. The explanatory memorandum goes on to explain that, ‘as a result of the *Rich* decision, where this privilege is claimed, ASIC is not able to obtain discovery of documents or the filing and serving of certain affidavits by defendants in proceedings seeking a banning or disqualification or licence suspension or cancellation order.’ The purpose of new section 1349 is to restore the law to the position that was thought to be the case prior to the decision in the *Rich* case. The Committee accepts that this new section strikes a reasonable balance between the competing interests of obtaining information and protecting individuals’ rights.

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



## **Corporations (Fees) Amendment Bill 2007**

Introduced into the House of Representatives on 24 May 2007

Portfolio: Treasury

### **Background**

Introduced with the Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007 and the Corporations (Review Fees) Amendment Bill 2007, this bill amends the *Corporations (Fees) Act 2001* to allow the Australian Securities and Investment Commission to charge a fee in respect of some additional market supervision functions.

*The Committee has no comment on this bill.*

## **Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007**

Introduced into the House of Representatives on 24 May 2007

Portfolio: Treasury

### **Background**

Introduced with the Corporations (Fees) Amendment Bill 2007 and the Corporations (Review Fees) Amendment Bill 2007, this bill amends the *Corporations Act 2001*, the *Income Tax Assessment Act 1936*, the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to implement some recommendations of the report of the Taskforce on Reducing the Regulatory Burden on Business and to incorporate proposals outlined in the Corporate and Financial Services Regulation Review Proposals Paper of November 2006. The amendments are aimed at simplifying and streamlining Australia's corporate and financial regulatory system.

The bill:

- simplifies company reporting obligations to reduce compliance costs;
- makes changes to the auditor independence provisions of the Corporations Act;
- removes certain requirements in relation to small transactions between public companies and related parties and allows delegation to the Australian Securities and Investments Commission (ASIC) of certain administrative functions;
- amends regulatory processes to facilitate corporate fundraising by various means;
- repeals provisions relating to telephone monitoring during takeover bids; and
- allows companies to electronically register company charges.

The bill also contains application, consequential, saving and transitional provisions and makes various other minor and technical amendments to the Corporations Act and related Acts.

### **Retrospective application**

#### **Items 8, 70, 94, 146 to 150 and 156 to 158**

Item 230, in Part 6 of Schedule 1 to this bill, provides that the amendments proposed to be made by items 8, 70, 94, 146 to 150 and 156 to 158 ‘apply in relation to a Product Disclosure Statement that is lodged with ASIC whether the Statement is lodged before, on or after the day that the amendments commence.’ Item 230 may therefore give some retrospective effect to the amendments referred to in that item.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. Unfortunately, the explanatory memorandum (paragraph 5.109) merely states that the ‘amendments [relating to Replacement Product Disclosure Statements for stapled securities] apply to any Product Disclosure Statement lodged with ASIC at the time of commencement or thereafter’ and does not indicate whether any retrospective application would be to the disadvantage of any person. The Committee **seeks the Treasurer’s advice** whether this application provision is retrospective in effect, and, if so, whether that retrospectivity will have an adverse effect on any person.

*Pending the Treasurer’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.*

### **Retrospective application**

#### **Items 60, 61 and 62**

Item 235, in Part 6 of Schedule 1, provides that the amendments proposed to be made by items 60, 61 and 62 apply to any person who ceases to be

involved with an audit firm or audit company ‘whether the person so ceases before or after the day on which these items commence.’

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance, however, the explanatory memorandum, when explaining the effect of the amendments proposed in items 60, 61 and 62, makes it clear that this application provision is beneficial to those persons who cease to be involved with an audit firm or audit company.

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

## **Corporations (Review Fees) Amendment Bill 2007**

Introduced into the House of Representatives on 24 May 2007

Portfolio: Treasury

### **Background**

Introduced with the Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007 and the Corporations (Fees) Amendment Bill 2007, this bill amends the *Corporations (Review Fees) Act 2003* to provide companies with an option of paying their annual review fees up front to cover a 10 year period, thus reducing transaction costs for companies who take up this option.

*The Committee has no comment on this bill.*

## Customs Tariff Amendment Bill (No. 1) 2007

Introduced into the House of Representatives on 30 May 2007

Portfolio: Justice and Customs

### Background

This bill makes minor amendments to the *Customs Tariff Act 1995* to repeal the current subheading and create a new subheading for the chemical binapacryl, ensuring that it is correctly classified in the Customs Tariff. The separate identification of this chemical is required under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, to which Australia is a signatory.

The bill also provides for a 'Free' rate of customs duty for prepared culture media for the development or maintenance of viruses, by moving it from its current subheading to a new subheading.

The bill also contains application provisions.

### Retrospective commencement

#### Schedule 2

Item 3 in the table to subclause 2(1) of this bill provides that the amendments proposed in Schedule 2 will commence retrospectively on 4 November 2006, immediately after the commencement of the *Customs Tariff Amendment (2007 Harmonized System Changes) Act 2006*.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance the explanatory memorandum makes it clear that, despite this retrospective commencement, the Act of 2006 (and therefore the amendment proposed in Schedule 2) did not apply until 1 January 2007. The explanatory memorandum further points out that the tariff change specified in Schedule 2 was originally included in Customs Tariff Notice No. 1 (2006), which was published in the *Gazette* on

15 December 2006. As such, the public has at least had notice of this change in tariff since before the date on which it will take effect.

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

## **Defence Force (Home Loans Assistance) Amendment Bill 2007**

Introduced into the House of Representatives on 9 May 2007

Portfolio: Defence

### **Background**

This bill amends the *Defence Force (Home Loans Assistance) Act 1990* to provide a further extension of the operation of the Defence HomeOwner Scheme from 31 December 2007 to 30 June 2008.

*The Committee has no comment on this bill.*



## **Evidence Amendment (Journalists' Privilege) Bill 2007**

Introduced into the House of Representatives on 24 May 2007

Portfolio: Attorney-General

### **Background**

This bill amends the *Evidence Act 1995* to introduce a 'professional confidential relationship privilege', at the trial and pre-trial stage of civil or criminal proceedings, for communications made in confidence to journalists. The introduction of this privilege is in response to the recommendations of an inquiry into the operation of the uniform Evidence Acts conducted by the Australian, New South Wales and Victorian Law Reform Commissions. The provisions set out a guided discretion for the court to exclude evidence that would disclose confidential communications made to a journalist who is under an ethical obligation not to disclose that information. In exercising this discretion, the court will be required to give greatest weight to the risk of prejudice to national security.

The bill also amends the *Family Law Act 1975* to ensure that the best interests of the child are paramount when a court is determining whether confidential communications should be disclosed in family law proceedings concerning children.

The bill also makes consequential amendments to the *James Hardie (Investigations and Proceedings) Act 2004* and the *Proceeds of Crime Act 2002* to ensure that the journalists' privilege does not apply in circumstances where legal professional privilege has already been abrogated for public policy reasons.

*The Committee has no comment on this bill.*

## **Families, Community Services and Indigenous Affairs Legislation Amendment (Child Care and Other 2007 Budget Measures) Bill 2007**

Introduced into the House of Representatives on 31 May 2007

Portfolio: Families, Community Services and Indigenous Affairs

### **Background**

This bill amends the *A New Tax System (Family Assistance) Act 1999*, the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* the *Social Security Act 1991* and the *Social Security (Administration) Act 1999* to give effect to child care measures announced in the 2007-08 Budget. The bill:

- provides for a 10 per cent increase in the rate of child care benefit from 1 July 2007, over and above the normal CPI indexation increase that will apply from that date;
- converts the child care tax offset for out-of-pocket child care expenses, currently available under the taxation legislation, into a direct payment under the family assistance law from 1 July 2007. The entitlement for the rebate remains at 30 per cent of out-of-pocket child care costs; and
- provides full-time students aged 16 to 25 years who are ex-carer allowance (child) care receivers continued access to the health care card, commencing 1 October 2007.

The bill also contains application provisions.

*The Committee has no comment on this bill.*

## **Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Bill 2007**

Introduced into the House of Representatives on 24 May 2007

Portfolio: Families, Community Services and Indigenous Affairs

### **Background**

This bill amends the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* to establish a new online-based Child Care Management System aimed at providing families with access to up-to-date information on child care vacancies and simplifying and standardising the administration of Child Care Benefit for families. The new system will be rolled out over a period of two years commencing on 1 July 2007.

The bill also introduces a civil penalty scheme that provides for the imposition of a pecuniary penalty on a service that contravenes a civil penalty provision. An infringement notice scheme will also operate, which provides the service with the option of paying the lesser penalty set out in the notice or proceeding to a court to determine liability.

In addition the bill includes a range of amendments aimed at reducing overpayment of child care benefits, improving debt recovery and standardising the appeal period for certain decisions affecting services, as well as amendments relating to information gathering powers, the location of records and the fee charging practices of services.

The bill also contains application, savings and transitional provisions.

*The Committee has no comment on this bill.*

## Financial Framework Legislation Amendment Bill (No. 1) 2007

Introduced into the House of Representatives on 10 May 2007  
Portfolio: Finance and Administration

### Background

This bill amends the *Financial Management and Accountability Act 1997*, with the aim of reducing red tape in internal Australian Government administration, and makes consequential amendments to the *Auditor-General Act 1997* and the *Legislative Instruments Act 2003*.

The bill also contains application, saving and transitional provisions.

### ‘Henry VIII’ clause Schedule 1, item 9

Proposed new subsection 32(2) of the *Financial Management and Accountability Act 1997*, to be inserted by item 9 of Schedule 1, is a ‘Henry VIII’ clause. A ‘Henry VIII’ clause is an express provision which authorises the amendment of either the empowering legislation, or any other primary legislation, by means of delegated legislation. Since its establishment, the Committee has consistently drawn attention to ‘Henry VIII’ clauses and other provisions which (expressly or otherwise) permit subordinate legislation to amend or take precedence over primary legislation. Such provisions clearly involve a delegation of legislative power and are usually a matter of concern to the Committee. Proposed new subsection 32(2) creates such a delegation of legislative power in that it would permit the Finance Minister to amend one or more of the Schedules to an Appropriation Act by legislative instrument.

Paragraphs 20 and 21 of the explanatory memorandum, which relate to proposed new section 32, do not explain why a ‘Henry VIII’ clause was considered necessary. The Committee **seeks the Minister’s advice** as to why a ‘Henry VIII’ clause was considered necessary and whether this explanation could be included in the explanatory memorandum.

*Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.*

## **Retrospective application**

### **Item 9**

Proposed new subsection 32(8) of the *Financial Management and Accountability Act 1997*, also to be inserted by item 9, would permit a determination under subsection (2) to be expressed to take effect before the day that it is registered under the *Legislative Instruments Act 2003*, in derogation of subsection 12(2) of that Act. The explanatory memorandum provides no explanation for why this possible retrospectivity is necessary. The Committee **seeks the Minister's advice** as to why this possible retrospectivity is considered necessary and whether this information could be included in the explanatory memorandum.

*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.*

## **Financial Sector Legislation Amendment (Restructures) Bill 2007**

Introduced into the House of Representatives on 24 May 2007

Portfolio: Treasury

### **Background**

This bill amends the *Financial Sector (Transfers of Business) Act 1999* and the *Income Tax Assessment Act 1997* to facilitate the adoption of a non-operating holding company as the ultimate holding company of a financial group in Australia, with the aim of providing financial groups with greater flexibility in choosing a corporate structure to manage their risk exposures and comply with prudential requirements while retaining operational flexibility.

The bill also provides the Minister with the power to: approve and grant relief from specific statutory restrictions in the Corporations Act by issuing a restructure instrument that specifies the statutory provisions and the entities of a company group for which the relief applies; and approve the transfer of assets and liabilities between two bodies of a financial group to allow for the reorganisation of different types of activities into separate business lines.

The bill also makes consequential amendments to the *Australian Prudential Regulatory Authority Act 1998*, the *Financial Sector (Transfers of Business) Act 1999*, the *Income Tax Assessment Act 1997* and the *Life Insurance Act 1995* in relation to the consolidation membership and franking rules and the capital gains tax regime.

The bill also contains application and transitional provisions.

### **Excluding merits review Schedule 1, item 14**

Proposed new subsection 36C(1) of the *Financial Sector (Transfers of Business) Act 1999*, to be inserted by item 14 of Schedule 1, would grant to the Treasurer the discretion to decide whether the conditions specified in paragraphs (a), (b) and (c) of that subsection have been satisfied, thus

permitting an authorised deposit-taking institution, a life insurance company or a general insurer to obtain approval to change its corporate structure and thereby facilitate a non-operating holding company being the ultimate holding company of a financial group. Such a change would both improve the group's flexibility and would have taxation advantages. However, there is no provision in the bill for the exercise by the Treasurer of this discretion to be subject to any form of merits review under the *Administrative Appeals Tribunal Act 1975*.

The Committee consistently draws attention to provisions that exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. The Committee **seeks the Treasurer's advice** whether the exercise of the discretion granted by proposed new subsection 36C(1) should be subject to review.

*Pending the Treasurer's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.*

## **Fisheries Legislation Amendment Bill 2007**

Introduced into the House of Representatives on 23 May 2007

Portfolio: Agriculture, Fisheries and Forestry

### **Background**

Introduced with the Fisheries Levy Amendment Bill 2007, this bill amends the *Fisheries Administration Act 1991*, the *Fisheries Management Act 1991*, the *Torres Strait Fisheries Act 1984* and the *Surveillance Devices Act 2004* to:

- streamline delegation powers of the Minister and the Torres Strait Protected Zone Joint Authority;
- improve the management of Australia's rights and obligations under the Torres Strait Treaty with Papua New Guinea;
- improve operational and administrative effectiveness and bolster compliance and enforcement procedures;
- enhance the monitoring of fishing activity and further deter illegal, unreported and unregulated fishing;
- clarify the role and functions of the Australian Fisheries Management Authority (AFMA);
- broaden the functions of the AFMA to enable it to collect information in addition to that required for the management of fisheries; and
- refine foreign fishing offences and strengthen forfeiture provisions to make it more difficult for foreign fishing boats to profit from illegally fishing in the Australian Fishing Zone.

### **Commencement more than six months after assent Schedule 3, part 2**

Item 4 in the table to subclause 2(1) of this bill provides that the amendments proposed in Part 2 of Schedule 3 will commence 12 months after Assent. The



Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee will generally not comment where the period of delayed commencement is six months or less. Where the delay is longer the Committee expects that the explanatory memorandum to the bill will provide an explanation, in accordance with Paragraph 19 of Drafting Direction No. 1.3.

In this instance the reference to Clause 2 in the explanatory memorandum states that ‘Schedule 3 (sic - it should read part 2 of Schedule 3)... commences on 12 months and one day after royal assent’ but provides no explanation for the delayed commencement. However, in reference to item 285, the explanatory memorandum (page 30) does provide a possible explanation of the delayed commencement by stating that ‘the requirement to hold a licence would not commence for at least 12 months to permit further consultation on the form of licences that operators would hold under the new regime’. The Committee **seeks the Minister’s advice** as to whether this is the reason for the delayed commencement and, if so, whether this explanation could be included in the explanatory memorandum notes on Clause 2, Commencement.

*Pending the Minister’s advice, the Committee draws Senators’ attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee’s terms of reference.*

### **Strict liability**

#### **Schedule 2, item 5 and Schedule 2, item 7**

Proposed new subsection 100B(1A) of the *Fisheries Management Act 1991*, to be inserted by item 5 of Schedule 2, and proposed new subsection 101AA(1A) of the same Act, to be inserted by item 7 of Schedule 2, apply strict criminal liability to the element of the location of a foreign fishing boat in the Australian Fishing Zone, contained in the offences in sections 100B and 101AA of that Act. The result of these proposed amendments is that, in a prosecution under either of those sections, the prosecution will only have to establish that fishers were in the territorial sea of Australia, not that they *intended* to be in such waters. The justification for imposing strict liability

provided in the explanatory memorandum is that the ‘Commonwealth Director of Public Prosecutions has not been able to prosecute people for these offences because there have been difficulties collecting sufficient evidence to prove that the people intended to be in the territorial sea.’

The *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (page 24) states that applying strict liability to a particular physical element of an offence (as is proposed in this instance) may be considered appropriate where there is “demonstrated evidence that the requirement to prove fault of that particular element is undermining or will undermine the deterrent effect of the offence, and there are legitimate grounds for penalising persons lacking ‘fault’ in respect of that element.” It is unclear to the Committee the extent to which the imposition of strict liability in these instances is consistent with the *Guide*, particularly as the offences in sections 100B and 101AA were created by legislation which commenced as recently as 23 June 2006.

The Committee **seeks the Minister’s advice** whether the above *Guide* was consulted in the course of framing these amendments and, if so, what was the nature of the ‘demonstrated evidence’ and ‘legitimate grounds’ referred to in the *Guide*.

*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.*

## **Non-reviewable decisions**

### **Schedule 3, item 180**

Proposed new subsection 26(5) of the *Torres Strait Fisheries Act 1984*, to be inserted by item 160 of Schedule 3, would grant to the Minister a discretion to cancel or suspend a person’s commercial fishing licence if either of two conditions specified in the proposed subsection is satisfied. There does not appear to be any provision for the holder of such a licence to seek merits review of the exercise of the Minister’s discretion under the *Administrative Appeals Tribunal Act 1975*.

The Committee consistently draws attention to provisions that exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. The Committee **seeks the Minister's advice** whether the exercise of the discretion granted by proposed new subsection 26(5) is subject to some form of review, and if not, whether it should be.

*Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.*

## **Fisheries Levy Amendment Bill 2007**

Introduced into the House of Representatives on 23 May 2007

Portfolio: Agriculture, Fisheries and Forestry

### **Background**

Introduced with the Fisheries Legislation Amendment Bill 2007, this bill amends the *Fisheries Levy Act 1984* to ensure that levies can be collected in the Torres Strait fisheries in accordance with new management arrangements provided for in the *Torres Strait Fisheries Act 1984*, introduced by the Fisheries Legislation Amendment Bill 2007.

The bill also contains consequential amendments to ensure that where a levy is applied under the new licence regime in the *Torres Strait Fisheries Act 1984* (licenses 'without a boat'), to be established by the Fisheries Legislation Amendment Bill 2007, a consistency of treatment for all commercial fishing licenses occurs, with or without a boat.

*The Committee has no comment on this bill.*

## Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007

Introduced into the House of Representatives on 24 May 2007

Portfolio: Education, Science and Training

### Background

This bill amends the *Higher Education Support Act 2003* (HESA) to give effect to 2007-08 Budget measures. The bill:

- creates a new Diversity and Structural Adjustment Fund, which aims to promote structural changes by universities to support greater specialisation, diversity, and responsiveness to local labour market needs;
- revises the Commonwealth Grant Scheme (CGS) funding clusters and Commonwealth contribution amounts under specific sections of the HESA;
- sets the maximum student contribution amount for accounting, administration, economics and commerce units of study at the same amount as law, dentistry, medicine and veterinary science and provides for a transitional fund to compensate higher education providers for the change in funding arrangements for students studying these courses;
- provides for three year funding agreements and new CGS adjustment mechanisms from the 2009 grant year;
- removes restrictions on the proportion of domestic undergraduate fee-paying places in certain courses from 1 January 2008; and
- enables the expansion of the Commonwealth Scholarships programme.

The bill also amends the *Australian Research Council Act 2001* to reflect updated annual caps on funding.

The bill also contains application and transitional provisions.

**Non-reviewable decisions**  
**Schedule 2, item 5**

Proposed new paragraph 33-17(1)(c) of the *Higher Education Support Act 2003*, to be inserted by item 5 of Schedule 2 to this bill, would grant to the Minister the discretion to decide whether a higher education provider has failed to meet the requirements in paragraphs (a) and (b) of that subsection. Those requirements are compliance by the higher education provider with the National Governance Protocols and with the Higher Education Workplace Relations Requirements. If the Minister decides that a particular higher education provider does not meet those requirements, the provider's basic grant amount will be reduced. There does not appear to be any provision for a higher education provider that is adversely affected by the Minister's decision to seek merits review of that decision under the *Administrative Appeals Tribunal Act 1975*.

The Committee consistently draws attention to provisions that exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. The Committee **seeks the Minister's advice** whether the exercise of the discretion granted by proposed new paragraph 33-17(1)(c) is subject to some form of review, and if not, whether it should be.

*Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.*

## **Indigenous Education (Targeted Assistance) Amendment (2007 Budget Measures) Bill 2007**

Introduced into the House of Representatives on 23 May 2007  
Portfolio: Education, Science and Training

### **Background**

This bill amends the *Indigenous Education (Targeted Assistance) Act 2000* to appropriate additional funding of \$26.1 million over the 2007 and 2008 calendar years to improve opportunities for Indigenous students in the school, vocational education and training and higher education sectors.

The bill expands the Indigenous Youth Mobility and Youth Leadership Programmes, provides infrastructure funding for boarding school facilities and allows for the conversion of certain Community Development Employment Projects programme places into ongoing jobs in the education sector.

*The Committee has no comment on this bill.*

## Migration Amendment (Statutory Agency) Bill 2007

Introduced into the House of Representatives on 24 May 2007  
Portfolio: Immigration and Citizenship

### Background

This bill amends the *Migration Act 1958* to implement minor changes to the legislative framework of the Migration Review Tribunal and the Refugee Review Tribunal in response to recommendations of the *Review of Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Review).

The bill establishes a single Statutory Agency consisting of the Principal Member of the Refugee Review Tribunal and the Registrars, Deputy Registrars and other officers of both the Refugee Review Tribunal and the Migration Review Tribunal engaged under the *Public Service Act 1999*. The bill also provides for the Principal Member of the Refugee Review Tribunal to be the Agency Head of that Statutory Agency.

*The Committee has no comment on this bill.*



## **Migration (Sponsorship Fees) Bill 2007**

Introduced into the House of Representatives on 30 May 2007

Portfolio: Immigration and Citizenship

### **Background**

This bill makes a technical amendment to regulation 5.38 of the *Migration Regulations 1994* to validate the collection of sponsorship fees for certain temporary entry visas made between 1 May 1997 and 23 May 2007.

### **Retrospective application**

#### **Clause 3**

Clause 3 of this bill ensures that it applies retrospectively to fees paid for the sponsorship of an applicant for a temporary visa between 1 May 1997 and 23 May 2007.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Committee notes, however, that the explanatory memorandum makes it clear that the reason for the retrospective application is to validate payments made under Regulations which, it has recently been discovered, had not been properly amended to refer to such payments.

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

## **National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2007**

Introduced into the House of Representatives on 24 May 2007

Portfolio: Health and Ageing

### **Background**

This bill amends the *National Health Act 1953* to provide for new pricing arrangements for the supply of pharmaceutical drugs after they are listed on the Pharmaceutical Benefits Scheme (PBS). The bill:

- divides the Pharmaceutical Benefits Schedule (PBS) into two parts, known as ‘formularies’, one part for single brand drugs, the other part for drugs that have multiple brands or that are interchangeable at the patient level with drugs with multiple brands;
- specifies the pricing rules for drugs in each formulary and sets out circumstances in which price reductions will occur;
- provides for price disclosure for drugs on the F2 formulary to ensure that the price the government pays for a multiple brand drug more closely reflects the actual price at which the drug is being supplied to pharmacies;
- requires suppliers of certain drugs to guarantee supply of these brands and to notify the Minister of any actual or potential supply failure; and
- provides for special pricing arrangements for certain drugs.

The bill also contains application, consequential, saving, technical and transitional provisions.

Refer also to the Commentary on Amendments to Bills section of this Digest.

*The Committee has no comment on this bill.*

## Product Stewardship (Oil) Amendment Bill 2007

Introduced into the House of Representatives on 24 May 2007

Portfolio: Environment and Water Resources

### Background

This bill amends the *Product Stewardship (Oil) Act 2000* to implement recommendations of a review of that Act. The bill:

- replaces the term *waste oil* throughout the Act with the term *used oil*;
- allows regulations to adopt or incorporate oil testing methods or laboratory accreditation standards to ensure that re-refined oil which attracts the product stewardship (oil) benefit is consistent with the most up to date quality criteria;
- provides that most members of the Oil Stewardship Advisory Council will be appointed on the basis of their knowledge of, or expertise in, a range of prescribed subject areas, enabling members with a wider range of experience to be appointed to the Council than is presently the case;
- provides that members of the Oil Stewardship Advisory Council appointed to represent the Commonwealth and the Commissioner for Taxation will become non-voting members; and
- clarifies the procedures for the disclosure and management of direct and indirect pecuniary interests by members of the Council.

### Incorporation of extrinsic material

#### Schedule 1, item 5

Proposed new subsection 10(5) of the *Product Stewardship (Oil) Act 2000*, to be inserted by item 5 of Schedule 1, would permit regulations made for the purposes of subsection 10(1) of that Act to apply, adopt or incorporate matter contained in documents which have not been considered by the Parliament, in derogation of section 14 of the *Legislative Instruments Act 2003*. The Committee routinely draws attention to provisions that seek to incorporate

into delegated legislation material ‘as in force from time to time’ where that incorporation involves material which appears not to be subject to sufficient parliamentary scrutiny.

In this instance, the types of documents that may be so applied, adopted or incorporated are limited, by the subsection itself, to those that specify oil testing methods and standards for the accreditation of laboratories which undertake oil testing. Furthermore, the explanatory memorandum (paragraph 11) notes that both ‘test methods and accreditation standards, published by various expert bodies, are routinely revised’, and that new subsection 10(5) will ‘ensure that the re-refined oil which attracts the product stewardship (oil) benefit is consistent with the most up to date quality criteria’.

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

## **Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Amendment (2007 Budget Measures) Bill 2007**

Introduced into the House of Representatives on 23 May 2007

Portfolio: Education, Science and Training

### **Background**

This bill amends the *Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004* to provide increased per capita assistance to State and non-government education authorities for newly arrived humanitarian entrant students under the English as a Second Language – New Arrivals programme for the 2008 programme year. In addition the bill:

- includes a new definition for eligible humanitarian entrant students;
- provides for additional funding in the form of a loading linked to recurrent grants for non-government schools in rural and remote regions, based on the degree of remoteness; and
- includes new definitions of ‘moderately accessible school’, ‘remote school’ and ‘very remote school’ to assist in determining the funding loading.

*The Committee has no comment on this bill.*

## **Social Security Amendment (Apprenticeship Wage Top-Up for Australian Apprentices) Bill 2007**

Introduced into the House of Representatives on 24 May 2007  
Portfolio: Vocational and Further Education

### **Background**

This bill amends the *Income Tax Assessment Act 1997*, the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to provide a 'wage top-up' of up to \$2,000 to Australian apprentices aged under 30 who are undertaking an Australian Apprenticeship in a trade occupation identified as experiencing national skills shortages. Full time apprentices will receive a \$500 payment at the 6, 12, 18 and 24 month points of their training, while part-time and school-based apprentices will receive \$500 annually over a longer time frame, totalling \$2000.

The bill also exempts the payments from assessment as income.

*The Committee has no comment on this bill.*

## **Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Bill 2007**

Introduced into the House of Representatives on 9 May 2007

Portfolio: Families, Community Services and Indigenous Affairs

### **Background**

This bill amends the *Social Security Act 1991*, the *Veterans' Entitlements Act 1986*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, and the *Social Security (Administration) Act 1999* to give effect to measures announced in the 2007 Budget by:

- providing one-off payments to certain older Australians, veterans and carers;
- providing for a once-only compensation payment to certain veteran and civilian prisoners of war interned by enemy forces in Europe during World War Two, or their surviving widows or widowers;
- increasing the amount of funeral benefits payable in respect of veterans;
- increasing the rate of veterans' special rate and intermediate rate disability pensions; and
- extending the maximum backdating period in relation to claims for war widow or widower pensions from three to six months in certain circumstances.

In addition, the bill contains provisions that allow the relevant Ministers to establish administrative schemes to provide for one-off payments in circumstances where the statutory one-off payments regime does not produce an appropriate result.

The bill also contains application provisions.

This bill was passed by the Senate on 10 May 2007 and was assented to on 11 May 2007. Nevertheless, the committee provides the following comments for the information of the Senate.

**Determination of important matters by regulation**  
**Schedule 2, items 1 and 2, Schedule 4, item 1**

Item 1 of Schedule 2 would grant to any of the Ministers administering provisions of the *Social Security Act 1991* a discretion to establish, by legislative instrument, a scheme under which one-off payments may be made to older Australians. Item 2 of the Schedule grants a similar discretion to the Minister for Veterans' Affairs. Similarly, item 1 of Schedule 4 grants, to the Minister administering Part 2.5 of the *Social Security Act 1991*, a discretion to establish a scheme under which one-off payments may be made to carers. Such schemes must relate to circumstances 'occurring in the financial year starting 1 July 2006' (paragraphs 1(2)(b) and 2(2)(b) of Schedule 2 and paragraph 1(2)(b) of Schedule 4 relate).

These schemes may deal with:

- 'a) the circumstances in which payments are to be made;
- b) the amount of the payments;
- c) what a person has to do to get a payment;
- d) debt recovery .... ;
- e) administrative matters, such as determination of entitlement and how and when payments will be made.'

The bill further provides for payments under these schemes 'to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.' The only limits on the width of these discretions is that the respective Minister must, among other things, consider that the scheme established by the primary legislation proposed in this Act 'does not produce appropriate results' (see paragraphs 1(2)(a) and 2(2)(a) of Schedule 2 and paragraph 1(2)(a) of Schedule 4). The bill does not provide a definition of 'appropriate results'.

The Committee draws attention to provisions which may be considered to inappropriately delegate legislative powers of a kind that ought to be exercised by Parliament alone. In this instance the detail of these schemes, including for example, the eligibility criteria, the amount of the payment and



how payments are to be made, is to be included in delegated legislation and the bill includes no limit on the amount of funds that can be appropriated to implement the schemes. The explanatory memorandum to the bill provides no explanation as to why it is considered necessary to include these 'schemes' in regulations.

In addition, while any legislative instrument made under these provisions would be subject to review by the Senate Standing Committee on Regulations and Ordinances, the Terms of Reference of that Committee do not encompass the question of whether a Minister has properly exercised a discretion in deciding to make the legislative instrument. It therefore appears that these provisions may make the rights of possible beneficiaries of such schemes unduly dependent upon non-reviewable decisions.

The Committee **seeks the Minister's advice** as to why it was considered necessary for Ministers to be able to determine these 'schemes' through delegated legislation, rather than by amending primary legislation. The Committee also **seeks the Minister's advice** whether there ought to be some limits placed on the funding that may be appropriated to implement these schemes and a means of reviewing the exercise of these discretions by the respective Ministers.

*Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference and to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.*

### **Special (Standing) Appropriations**

#### **Schedule 2, subitems 1(4) and 2(4) and Schedule 4, subitem 1(4)**

Subitems 1(4) and 2(4) of Schedule 2 and subitem 1(4) of Schedule 4 would appropriate the Consolidated Revenue Fund for the money required to make payments under the schemes referred to in Schedule 2, items 1 and 2 and Schedule 4, item 1. In its *Fourteenth Report of 2005*, the Committee stated that:

‘The appropriation of money from Commonwealth revenue is a legislative function. The committee considers that, by allowing the executive government to spend unspecified amounts of money for an indefinite time into the future, provisions which establish standing appropriations may, depending on the circumstances of the legislation, infringe upon the committee’s terms of reference relating to the delegation and exercise of legislative power.’

The committee expects that the explanatory memorandum to a bill establishing a standing appropriation will include an explanation of the reason the standing appropriation was considered necessary. In this instance, the explanatory memorandum (pages 8 and 15) merely re-states the words from the bill that ‘payments under the administrative scheme would be made out of the Consolidated Revenue Fund.’

The Committee **seeks the Minister’s advice** regarding why these special (standing) appropriations were considered necessary and whether an explanation should have been included in the explanatory memorandum.

*Pending the Minister’s advice, the Committee draws Senators’ attention to these provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee’s terms of reference and insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee’s terms of reference.*

## **Superannuation Laws Amendment (2007 Budget Co-contribution Measure) Bill 2007**

Introduced into the House of Representatives on 9 May 2007

Portfolio: Treasury

### **Background**

This bill amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to double the amount of Government superannuation co-contribution that a person is entitled to under existing provisions in respect of the 2005-06 income year.

This bill was passed by the Senate on 10 May 2007 and was assented to on 15 May 2007. Nevertheless, the committee provides the following comments for the information of the Senate.

### **Retrospective operation**

#### **Schedule 1, item 1**

Proposed new subsection 12A(1) of the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, to be inserted by item 1 of Schedule 1, will apply the remainder of that new section to persons who made a complying payment to their superannuation fund during the 2005-06 income year. It is therefore retrospective in its operation.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance the impact of the new section is to double the amount of the Government's co-contribution to individual's superannuation funds.

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

## **Tax Laws Amendment (2007 Budget Measures) Bill 2007**

Introduced into the House of Representatives on 10 May 2007  
Portfolio: Treasury

### **Background**

Part 1 of Schedule 1 of this bill amends the *Income Tax Assessment Act 1936* to increase the dependent spouse tax offset from \$1,655 to \$2,100 with effect from 1 July 2007.

Part 2 of Schedule 1 amends the *Medicare Levy Act 1986* and the *A New Tax System (Medicare Levy Surcharge-Fringe Benefits) Act 1999* to increase the Medicare levy low-income thresholds for individuals and families in line with movements in the Consumer Price Index. Part 2 also increases the Medicare levy low-income threshold for pensioners below pension age so that they do not have a Medicare levy liability where they do not have an income tax liability. These increased thresholds will apply from the 2006-07 income year and later income years.

The bill also contains application provisions.

This bill was passed by the Senate on 12 June 2007.

*The Committee has no comment on this bill.*

## Tax Laws Amendment (2007 Measures No. 3) Bill 2007

Introduced into the House of Representatives on 10 May 2007

Portfolio: Treasury

### Background

This bill amends the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Fringe Benefits Tax Assessment Act 1986*, the *Income Tax (Transitional Provisions) Act 1997*, the *Income Tax Rates Act 1986* and the *Taxation Administration Act 1953* to:

- remove the automatic debiting of a private company's franking account when a deemed dividend arises in certain circumstances;
- ensure that certain superannuation contributions made prior to 1 July 2007 are subject to a contributions cap;
- allow a trustee of a resident testamentary trust to choose to be assessed on capital gains of the trust;
- allow non-dependants of military, police and protective service officers who have been killed in the line of duty to access the same concessional tax treatment for lump sum superannuation death benefits as dependants;
- extend by one year the transitional period in relation to the application of accounting standards under the thin capitalisation rules;
- repeal the dividend tainting rules;
- specify which debt interests are eligible for exemption from interest withholding tax;
- provide tax deductions to investors in new forestry schemes;
- require Australian trustees to collect tax from trust taxable income that is payable to the trustee of a foreign trust; and

- expand the existing pay-as-you-go withholding system to cover distributions made to foreign residents, of net income by managed investment trusts attributable to Australian sources.

The bill also contains application, consequential and transitional provisions.

### **Legislation by press release Schedule 2, item 2**

Item 3 in the table to subclause 2(1) of this bill provides that Schedule 2 will commence retrospectively on 15 March 2007, immediately after the commencement of Schedule 1 to the *Tax Laws Amendment (Simplified Superannuation) Act 2007*. The effect of proposed new paragraph 292-80(7)(d) of the *Income Tax (Transitional Provisions) Act 1997*, to be inserted in that Act by item 2 of Schedule 2, is that the amendment will apply after 6 December 2006. The explanatory memorandum notes that this proposed amendment was first announced by the Assistant Treasurer in a press release of 24 April 2007. This is therefore an example of ‘legislation by press release’.

In this case, the press release itself was retrospective, in that it was issued on 24 April 2007 but announced measures to take effect from 7 December 2006. A previous press release from the Treasurer had indicated that ‘the Government will act to address any avoidance activities that are undertaken in the simplified superannuation system...[and] that the date of effect of any anti-avoidance measures would be backdated to the date of this announcement [7 December 2006].’

The explanatory memorandum (paragraphs 2.2-2.9) advises that the reason for the amendment is that the legislation introducing the simplified superannuation scheme had a drafting flaw which would allow some taxpayers to avoid the application of a cap on the concessional treatment of some superannuation contributions. This legislation, therefore, is designed to do no more than correct an earlier drafting error. The bill has been introduced considerably less than six months after the date of the press release and also less than six months from the date from which the amendment is to apply.

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

**Retrospective application  
Schedule 1**

Part 4 of Schedule 1 provides that the amendments made by that Schedule generally apply ‘to assessments for the income years in which 1 July 2006 occurred and later income years’ but that those amendments which relate to section 109RB of the *Income Tax Assessment Act 1936* apply ‘in relation to the 2001-02 income year and later income years’.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance the explanatory memorandum notes (page 3) that the ‘overall cost to revenue of these amendments is unquantifiable but expected to be minimal’.

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

**Retrospective application  
Schedule 3**

Subitem 3(1) of Schedule 3 provides that the amendments made by that Schedule apply ‘in relation to the 2005-2006 income year and later income years.’ As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance, the explanatory memorandum notes (page 5) that the ‘financial impact of these amendments is unquantifiable, but is expected to be low.’

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

**Retrospective application  
Schedule 6**

Item 8 of Schedule 6 provides that the amendments made by that Schedule apply from 1 July 2004. As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance the explanatory memorandum notes (page 7) that the financial impact of these amendments is ‘negligible.’

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

**Retrospective application  
Schedule 7**

Item 16 of Schedule 7 provides that the amendments made by that Schedule apply from 7 December 2006, which was the date of the Assistant Treasurer’s press release. As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the explanatory memorandum notes, at page 7, that the amendments correct an unintended broadening of an exemption from interest withholding tax, and that they have no financial impact.

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



## **Retrospective application Schedule 9**

Subitem 30(1) of Schedule 9 provides that most of the amendments made by that Schedule apply ‘in relation to income years starting on or after 1 July 2006.’ Subitem 30(2) provides that the remaining amendments apply ‘in relation to income years starting on or after 1 July 2005.’

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. Since the bill has been introduced during the 2006-07 financial year, the majority of these amendments are not retrospective in their effect. In respect of the amendments that apply in relation to income years starting on or after 1 July 2005, the explanatory memorandum notes (page 9) that these amendments ‘favour the taxpayer.’

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

## **Tax Laws Amendment (Personal Income Tax Reduction) Bill 2007**

Introduced into the House of Representatives on 10 May 2007

Portfolio: Treasury

### **Background**

This bill amends the *Income Tax Assessment Act 1936* and the *Income Tax Rates Act 1986* to:

- increase the threshold where the 30 per cent marginal tax rate begins to apply, effective 1 July 2007;
- increase the thresholds for the top two marginal tax rates, from 1 July 2008; and
- increase the low income tax offset and the threshold from which it begins to phase out.

The bill also amends the *Medicare Levy Act 1986* to provide for an increase in the income threshold that applies to taxpayers who are eligible for the senior Australians tax offset.

The bill also contains application provisions.

This bill was passed by the Senate on 12 June 2007.

*The Committee has no comment on this bill.*

## Tax Laws Amendment (Small Business) Bill 2007

Introduced into the House of Representatives on 10 May 2007

Portfolio: Treasury

### Background

This bill amends the *Income Tax Assessment Act 1997*, the *A New Tax System (Goods and Services Tax) Act 1999*, the *Taxation Administration Act 1953*, the *Income Tax Assessment Act 1936*, the *Income Tax (Transitional Provisions) Act 1997*, the *A New Tax System (Wine Equalisation Tax) Act 1999* and the *Fringe Benefits Tax Assessment Act 1986* to standardise the primary eligibility criterion for the small business tax concessions.

The bill:

- creates a single definition of ‘small business entity’ for the purpose of accessing small business tax concessions;
- increases the capital gains tax maximum net assets threshold from \$5 million to \$6 million;
- increases the goods and services tax cash accounting threshold from \$1 million to \$2 million;
- removes the \$3 million depreciating assets test from the simplified tax system eligibility requirements; and
- extends the roll-over relief available under the uniform capital allowance system to small business entities that have adopted the simplified depreciation rules.

The bill also contains application, consequential and transitional provisions.

*The Committee has no comment on this bill.*

## **Trade Practices Amendment (Horticultural Code of Conduct) Bill 2007**

Introduced into the House of Representatives on 21 May 2007

By Mr Katter

### **Background**

This bill amends the *Trade Practices Act 1974* to regulate the relationship between horticulture growers, traders and retailers.

### **Explanatory Memorandum**

The Committee notes that this bill, introduced as a private Member's bill, was accompanied by a statement made on presentation of the bill and was introduced without an explanatory memorandum. The consideration of bills by the Committee and by the parliament is assisted if they are accompanied by explanatory memoranda. The Committee recognises, of course, that private Senators and Members do not generally have access to the resources of departments and agencies to assist in the development of such documents. In this context, the Committee notes that the Department of the Senate has developed a set of guidelines to assist Senators with the preparation of private bills and explanatory material, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide, which is available from the Clerk Assistant (Procedure) and on the Senate's intranet site, may assist Senators and Members in preparing explanatory memoranda.

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

## **Workplace Relations Amendment (A Stronger Safety Net) Bill 2007**

Introduced into the House of Representatives on 28 May 2007

Portfolio: Employment and Workplace Relations

### **Background**

This bill amends the *Workplace Relations Act 1996*, the *Coal Mining Industry (Long Service Leave Funding) Act 1992* and the *Financial Management and Accountability Regulations 1997* to establish a fairness test to apply to workplace agreements lodged on or after 7 May 2007 and covering employees earning less than \$75,000 per annum. The bill also establishes two new statutory agencies, the Workplace Authority and the Workplace Ombudsman, and a compliance framework to facilitate the effective operation of the fairness test.

The bill also contains application, consequential and transitional provisions.

Refer also to the Commentary on Amendments to Bills section of this Digest.

### **Legislation by press release**

#### **Schedule 1, item 1**

Proposed new paragraphs 346E(1)(a) and 346F(1)(a) of the *Workplace Relations Act 1996*, to be inserted by item 1 of Schedule 1, would have the effect that the whole of the new Division 5A of Part 8 of the Act will apply from 7 May 2007. Although there is no direct reference in the explanatory memorandum to the relevance of that date, on 4 May 2007 the Prime Minister issued a press release - *A Stronger Safety Net for Working Australians* - that announced the introduction of the fairness test and indicated that it 'will be applied to all agreements lodged on or after 7 May 2007'. The amendments proposed in Schedule 1 are therefore examples of 'legislation by press release'.

The Committee believes that reliance on Ministerial announcements and the implicit requirement that persons arrange their affairs in accordance with such

announcements, rather than in accordance with the law, tends to undermine the principle that the law is made by Parliament, not by the Executive. Whereas the making of legislation retrospective to the date of its introduction into Parliament may be countenanced as part of the Parliamentary process a similar rationale cannot be advanced for the treatment of Ministerial announcements as de facto legislation. The Committee has, however, been prepared to accept legislation by press release so long as the legislation is introduced within six months of the press release. In this instance, the legislation has been introduced well within the six months and is designed to benefit workers.

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

## **Non-reviewable decisions**

### **Schedule 1, item 1**

Proposed new subsections 346E(1) and (2) and 346F(1) and (2) of the *Workplace Relations Act 1996*, to be inserted by item 1 of Schedule 1, would oblige the Workplace Authority Director to determine whether an Australian Workplace Agreement or a collective agreement pass a 'fairness test', as defined in new section 346M of the same Act. It appears that when the Director makes such a decision the agreement is binding on both parties. However, there does not appear to be any provision for a review of that decision, if an employer or an employee is dissatisfied with it.

The Committee consistently draws attention to provisions that exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. The Committee **seeks the Minister's advice** whether the determinations made by the Workplace Authority Director under proposed new subsections 346E(1) and (2) and 346F(1) and (2) should be subject to some form of review.

*Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon non-*

*reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.*

**Wide delegation of power**  
**Schedule 2, item 2**

Proposed new section 153C of the *Workplace Relations Act 1996*, to be inserted by item 2 of Schedule 2, would permit the Workplace Authority Director to delegate to 'a person appointed or employed by the Commonwealth' any of that Director's powers or functions. The Committee has consistently drawn attention to legislation which allows delegations to a relatively large class of persons, with little or no specificity as to their qualifications or attributes. Where such delegations are made, the Committee considers that an explanation of why such broad delegations are considered necessary should be included in the explanatory memorandum.

In this instance the explanatory memorandum (paragraphs 59-60, page 51) seeks to justify this very wide delegation on the ground that the Workplace Authority Director will have very broad functions, and it would therefore be difficult to impose limitations on the width of any delegation. The explanatory memorandum further states that '[t]he Workplace Authority Director would of course be expected to only to (sic) choose delegates suitably qualified to exercise particular powers or functions'.

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

## **COMMENTARY ON AMENDMENTS TO BILLS**

### **Governance Review Implementation (Treasury Portfolio Agencies) Bill 2007**

On 10 May 2007 the Senate agreed to 1 amendment to the bill. The amendment raises no issues within the Committee's terms of reference.

### **National Health Amendment (Pharmaceutical Benefits Scheme) Bill 2007**

On 31 May 2007 the House of Representatives agreed to 21 amendments to the bill, none of which raise issues within the Committee's terms of reference.

### **Workplace Relations Amendment (A Stronger Safety Net) Bill 2007**

On 30 May 2007 the House of Representatives agreed to four amendments to the bill, none of which raise issues within 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 41<sup>st</sup> Parliament.

### Bills introduced with standing appropriation clauses - 41<sup>st</sup> Parliament

*Indicates passed by Senate	Bills and Clauses
*	<b>Aged Care (Bond Security) Bill 2005</b> – clause 17
	<b>Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2007</b> – Schedule 1, item 52, section 58 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> )
	<b>Agriculture, Fisheries and Forestry Legislation Amendment (2007 Measures No. 1) Bill 2007</b> - Schedule 1, item 18, subsections 64C(2) and 64D(2)
*	<b>Appropriation (Regional Telecommunications Services) Bill 2005-2006</b> – clause 13
*	<b>Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005</b> – subclause 8(2)
*	<b>Asbestos-related Claims (Management of Commonwealth Liabilities) (Consequential and Transitional Provisions) Bill 2005</b> – subclause 5(3)
*	<b>Australian Participants in British Nuclear Tests (Treatment) Bill 2006</b> – clause 49
*	<b>Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Bill 2005</b> – clause 23
*	<b>Australian Trade Commission Legislation Amendment Bill 2006</b> – Schedule 4, item 16

*	<b>Child Support Legislation Amendment (Reform of the Child Support Scheme—Initial Measures) Bill 2006</b> – Schedule 5, subitem 20(3)
	<b>Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006</b> – Schedule 1, item 13, section 9G
*	<b>Financial Framework Legislation Amendment Bill 2004</b> – 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> ]
	<b>Forestry Marketing and Research and Development Services Bill 2007</b> – clause 9
	<b>Forestry Marketing and Research and Development Services (Transitional and consequential Provisions) Bill 2007</b> – Schedule 1, subitem 16(4)
*	<b>Future Fund Bill 2006</b> – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>
*	<b>Governance Review Implementation (Treasury Portfolio Agencies) Bill 2007</b> – Schedule 1, items 12 and 63 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> ) and Schedule 2, subitems 2(3) and (4)
	<b>Great Barrier Reef Marine Park Amendment Bill 2007</b> – Schedule 1, item 29 (CRF appropriated by virtue of section 28 of the <i>Financial Management and Accountability Act 1997</i> ), Schedule 1, item 32 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> ) and Schedule 2, subitem 2(4)
*	<b>Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006</b> – Schedule 2, subitem 1(3)
*	<b>Housing Loans Insurance Corporation (Transfer of Pre-transfer Contracts) Bill 2006</b> – clause 9
*	<b>Human Services Legislation Amendment Bill 2005</b> – Schedule 2, subitem 720(4)
*	<b>Indigenous Education (Targeted Assistance) Amendment Bill 2004</b> – Schedule 1, item 3, subsection 14A(1)
*	<b>Medibank Private Sale Bill 2006</b> – Schedule 2, subitem 8(1)
	<b>Migration Amendment (Designated Unauthorised Arrivals) Bill 2006</b> – Schedule 1, subitem 43(3)
*	<b>National Water Commission Bill 2004</b> – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>
*	<b>Offshore Petroleum Bill 2005</b> – clause 56
*	<b>Plant Health Australia (Plant Industries) Funding Amendment Bill 2006</b> – Schedule 1, item 17, section 10B
*	<b>Private Health Insurance Bill 2006</b> – clause 282-40 and subclause 318-5

*	<b>Private Health Insurance (Transitional Provisions and Consequential Amendments) Bill 2006</b> – subclause 39(2)
*	<b>Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004</b> – clause 133
*	<b>Skilling Australia’s Workforce Bill 2005</b> – clause 40
*	<b>Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Bill 2006</b> – Schedule 4, subitem 1(4)
*	<b>Social Security and Veterans’ Affairs Legislation amendment (One-off Payments and Other 2007 Budget Measures) Bill 2007</b> – Schedule 2, subitems 1(4) and 2(4) and Schedule 4, subitem 1(4)
*	<b>Superannuation Bill 2005</b> – subclause 29(4)
*	<b>Superannuation (Consequential Amendments) Bill 2005</b> – Schedule 5, item 1, subsection 4AA(5) and Schedule 6, item 1, subsection 12A(5)
*	<b>Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005</b> – Schedule 1, item 1, subsections 158ZO(4), 158ZP(7) and 158ZQ(5) and Schedule 3, item 1, subsection 136C(4)
*	<b>Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004</b> – Schedule 1, item 12, section 37ZH and subsection 37ZJ(3)
*	<b>Water Efficiency Labelling and Standards Bill 2004</b> – 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
*	<b>AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004</b> – Schedule 2, item 3: special appropriation clause – for a finite amount and a finite period of time.
*	<b>Social Security Legislation Amendment (One-off Payments for Carers) Bill 2005</b> – 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 - 2006/2007

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<b>Bills dealt with in 2006</b>							
Airspace Bill 2006	15(6.12.06) 1(7.2.07)	29.11.06	6.2.06	Transport and Regional Services	7.12.06 8.2.07	26.2.07 26.2.07	2(28.2.07) 2(28.2.07)
Australian Energy Market Amendment (Gas Legislation) Bill 2006	15(6.12.06)	29.11.06	22.3.07	Industry, Tourism and Resources	7.12.06	6.2.07	1(7.2.07)
Australian Participants in British Nuclear Tests (Treatment) Bill 2006	11(11.10.06)	14.9.06	12.10.06	Veterans' Affairs	12.10.06	7.2.07	2(28.2.07)
<i>Copyright Amendment Act 2006</i>	13(8.11.06)	19.10.06	1.12.06	Attorney-General	--	29.1.07	1(7.2.07)
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2006	10(13.9.06)	4.9.06	--	Mr Katter	14.9.06	--	RNP
Trade Practices Legislation Amendment Bill 2006	7(9.8.06)	19.6.06	--	Mr Katter	10.8.06	--	RNP
<b>Bills dealt with in 2007</b>							
ACIS Administration Amendment (Unearned Credit Liability) Bill 2007	2(28.2.07)	7.2.07	26.2.07	Industry, Tourism and Resources	1.3.07	20.3.07	3(21.3.07)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Aged Care Amendment (Residential Care) Bill 2007	4(28.3.07)	21.3.07		Ageing	29.3.07	8.5.07	5(9.5.07)
Airport Development and Aviation Noise Ombudsman Bill 2007	2(28.2.07)	12.2.07		Mr Georganas	1.3.07	21.3.07	4(28.3.07)
Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2007	2(28.2.07)	15.2.07	1.3.07	Justice and Customs	1.3.07	16.3.07	3(21.3.07)
Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007	2(28.2.07)	14.2.07	1.3.07	Transport and Regional Services	1.3.07	16.3.07	3(21.3.07)
Bankruptcy Legislation Amendment (Debt Agreements) Bill 2007	2(28.2.07)	15.2.07	20.3.07	Attorney-General	1.3.07	15.3.07	3(21.3.07)
Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006	1(7.2.07)	1.3.07	6.12.06	Attorney-General	8.2.07	26.2.07	2(28.2.07)
Broadcasting Legislation Amendment (Digital Radio) Bill 2007	5(9.5.07)	28.3.07	9.5.07	Communications, Information Technology and the Arts	10.5.07		
Classification (Publications, Films and Computer Games) Amendment Bill 2006	1(7.2.07)	7.12.06	8.2.07	Attorney-General	8.2.07	26.2.07	2(28.2.07)
Education Services for Overseas Students Legislation Amendment Bill 2007	4(28.3.07)	22.3.07	9.5.07	Education, Science and Training	29.3.07	26.4.07	5(9.5.07)
Employment and Workplace Relations Legislation (Welfare to Work and Vocational Rehabilitation Services) Bill 2006	1(7.2.07)	7.12.06	27.2.07	Employment and Workplace Relations	8.2.07 1.3.07	22.2.07 15.3.07	2(28.2.07) 3(21.3.07)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007	5(9.5.07)	29.3.07	9.5.07	Families, Community Services and Indigenous Affairs	10.5.07	28.5.07	6(13.6.07)
Food Standards Australia New Zealand Amendment Bill 2007	5(9.5.07)		28.3.07	Health and Ageing	10.5.07	31.5.07	6(13.6.07)
Forestry Marketing and Research and Development Services Bill 2007	5(9.5.07)	29.3.07	12.6.07	Fisheries, Forestry and Conservation	10.5.07	8.6.07	6(13.6.07)
Gene Technology Amendment Bill 2007	5(9.5.07)	10.5.07	28.3.07	Health and Ageing	10.5.07	29.5.07	6(13.6.07)
Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2007	5(9.5.07)	29.3.07	12.6.07	Health and Ageing	10.5.07	12.6.07	6(13.6.07)
Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Bill 2007	5(9.5.07)	29.3.07	10.5.07	Health and Ageing	10.5.07	12.6.07	6(13.6.07)
Higher Education Legislation Amendment (2007 Measures No. 1) Bill 2007	3(21.3.07)	28.2.07	9.5.07	Education, Science and Training	22.3.07	27.3.07	4(28.3.07)
Human Services (Enhanced Service Service Delivery) Bill 2007	2(28.2.07)	7.2.07	28.2.07	Human Services	1.3.07	27.3.07	4(28.3.07)
Liquid Fuel Emergency Amendment Bill 2007	5(9.5.07)	28.3.07	12.6.07	Industry, Tourism and Resources	10.5.07	1.6.07	6(13.6.07)
Maritime Legislation Amendment (Prevention of Air Pollution from Ships) Bill 2006	1(7.2.07)	6.12.06	26.2.07	Transport and Regional Services	8.2.07	26.2.07	2(28.2.07)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Murray-Darling Basin Amendment Bill 2006	1(7.2.07)	7.12.06		Agriculture, Fisheries and Forestry	8.2.07	8.5.07	5(9.5.07)
Native Title Amendment (Technical Amendments) Bill 2007	5(9.5.07)	29.3.07	12.6.07	Attorney-General	10.5.07	4.6.07	6(13.6.07)
Non-Proliferation Legislation Amendment Bill 2006	1(7.2.07)	1.3.07	6.12.06	Foreign Affairs	8.2.07	27.2.07	2(28.2.07)
<i>Private Health Insurance Act 2007 Amendments</i>	1(7.2.07) 4(28.3.07)	7.12.06	26.2.07	Health and Ageing	8.2.07 29.3.07	26.2.07 8.5.07	2(28.2.07) 5(9.5.07)
Tax Laws Amendment (2006 Measures No. 7) 2006	1(7.2.07)	7.12.06	7.2.07	Treasury	8.2.07 1.3.07	27.2.07 15.3.07	2(28.2.07) 3(21.3.07)
Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Bill 2007	5(9.5.07)	28.3.07	12.6.07	Veterans' Affairs	10.5.07	1.6.07	6(13.6.07)

