

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



**Alert Digest**

**No. 12 of 2008**

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# Senate Standing Committee for the Scrutiny of Bills

## Members of the Committee

Senator the Hon H Coonan (Chair)

Senator M Bishop (Deputy Chair)

Senator D Cameron

Senator J Collins

Senator R Siewert

Senator the Hon J Troeth

## 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.



## **Aged Care Amendment (2008 Measures No. 2) Bill 2008**

Introduced into the House of Representatives on 16 October 2008  
Portfolio: Health and Ageing

### **Background**

This bill amends the *Aged Care Act 1997* and the *Aged Care (Bond Security) Act 2006* to update the regulatory and administrative framework in relation to aged care services in Australia.

The bill also contains application and transitional provisions.

*The Committee has no comment on this bill.*

## **Australian Curriculum, Assessment and Reporting Authority Bill 2008**

Introduced into the House of Representatives on 23 October 2008  
Portfolio: Education, Employment and Workplace Relations

### **Background**

This bill gives effect to the decision of the Council of Australian Governments (COAG) on 2 October 2008 to establish the Australian Curriculum, Assessment and Reporting Authority, a new independent statutory authority with responsibility for managing national curriculum, assessment and data, and analysis and reporting for schools education.

*The Committee has no comment on this bill.*

## COAG Reform Fund Bill 2008

Introduced into the House of Representatives on 23 October 2008

Portfolio: Treasury

### Background

This bill establishes the COAG Reform Fund as a Special Account to provide a vehicle for the disbursement of grants of financial assistance to the states and territories for the purposes of:

- supporting the delivery of specified outputs or projects through appropriations from the nation-building funds; and
- facilitating the implementation of nationally significant reforms and rewarding jurisdictions that deliver nationally significant reforms through National Partnership payments.

The bill provides that the terms and conditions on which financial assistance is granted are to be set out in written agreements between the Commonwealth and the states or territories, setting out performance benchmarks and the amount of the payment for meeting each benchmark.

The bill also contains an application provision.

### Standing appropriations

#### Clause 5

Clause 5 of the bill establishes the COAG Reform Fund, which is declared to be a Special Account for the purposes of the *Financial Management and Accountability Act 1997*; clause 6 of the bill identifies the purpose of the COAG Reform Fund. If an Act establishes a Special Account and identifies the purposes of the account then, by virtue of section 21 of the *Financial Management and Accountability Act 1997*, the consolidated revenue fund is appropriated for those purposes. Clause 5, therefore, establishes a standing appropriation.

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.

In scrutinising standing appropriations, the Committee looks to the explanatory memorandum for an explanation of the reason for the standing appropriation. In addition, the Committee likes to see:

- some limitation placed on the amount of funds that may be so appropriated; and
- a sunset clause that ensures the appropriation cannot continue indefinitely without any further reference to the Parliament.

In this case, although the bill does not specify a limit on the amount of funds that may be appropriated or the time within which the appropriation may occur, the sole purpose of the fund (as explained in clause 6) is to make grants of financial assistance to the states and territories, on such terms and conditions as are agreed to between the Commonwealth and the recipient state or territory. In light of the fact that the money in this Special Account is not available to be spent at the Federal Government's unfettered discretion, the Committee considers that it does not raise the same concerns as other Special Accounts to which the Committee has previously drawn the attention of Senators.

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

## **Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Bill 2008**

Introduced into the House of Representatives on 16 October 2008

Portfolio: Home Affairs

### **Background**

Introduced with the Customs Tariff Amendment (Australia-Chile Free Trade Agreement Implementation) Bill 2008, this bill amends the *Customs Act 1901* to introduce new rules of origin for goods that are imported into Australia from Chile to give effect to the Australia-Chile Free Trade Agreement. The bill will enable goods that satisfy the rules of origin to enter Australia at preferential rates of customs duty.

The bill also contains application provisions.

*The Committee has no comment on this bill.*

## **Customs Tariff Amendment (Australia-Chile Free Trade Agreement Implementation) Bill 2008**

Introduced into the House of Representatives on 16 October 2008  
Portfolio: Home Affairs

### **Background**

Introduced with the Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Bill 2008, this bill amends the *Customs Tariff Act 1995* to implement the Australia-Chile Free Trade Agreement by:

- providing duty-free access, and preferential rates of customs duty, for goods that are Chilean-originating goods, in accordance with new Division 1F of Part VIII of the *Customs Act 1901*;
- phasing the preferential rates of customs duty for certain goods to zero by 2015; and
- creating a new Schedule 7 to the Tariff to accommodate the preferential and phasing rates of duty.

The bill also contains an application provision.

*The Committee has no comment on this bill.*

## ***Financial Claims Scheme (ADIs) Levy Act 2008***

Introduced into the House of Representatives and passed on 15 October 2008  
Portfolio: Treasury

Introduced into the Senate and passed on 16 October 2008  
Assented to on 17 October 2008

### **Background**

This bill is part of a package of three bills (also including the Financial Claims Scheme (General Insurers) Levy Bill 2008 and the Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008) which introduces a Financial Claims Scheme (FCS) and other measures to enhance the stability of Australia's financial system.

The bill provides for the imposition of a levy on authorised deposit-taking institutions (ADIs) in the event that liquidation monies are not sufficient to recover the Australian Prudential Regulation Authority's costs in meeting entitlements and administering the FCS where it is activated in relation to the failure of an ADI.

The bill also contains application and transitional provisions.

*The Committee has no comment on this bill.*

## ***Financial Claims Scheme (General Insurers) Levy Act 2008***

Introduced into the House of Representatives and passed on 15 October 2008  
Portfolio: Treasury

Introduced into the Senate and passed on 16 October 2008  
Assented to on 17 October 2008

### **Background**

This bill is part of a package of three bills (also including the Financial Claims Scheme (ADIs) Levy Bill 2008 and the Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008) which introduces a Financial Claims Scheme (FCS) and other measures to enhance the stability of Australia's financial system.

The bill provides for the imposition of a levy on general insurers in the event that liquidation monies are not sufficient to recover the Australian Prudential Regulation Authority's costs in meeting entitlements and administering the FCS where it is activated in relation to the failure of a general insurer.

The bill also contains application and transitional provisions.

*The Committee has no comment on this bill.*

## ***Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008***

Introduced into the House of Representatives and passed on 15 October 2008  
Portfolio: Treasury

Introduced into the Senate and passed on 16 October 2008  
Assented to on 17 October 2008

### **Background**

This bill introduces measures to implement a Financial Claims Scheme (FCS), including a three-year 100 per cent guarantee of deposits in authorised deposit-taking institutions (ADIs), and other arrangements, to deal with 'distressed' or failing financial institutions. The bill is part of a package of three bills (also including the Financial Claims Scheme (ADIs) Levy Bill 2008 and the Financial Claims Scheme (General Insurers) Levy Bill 2008) aimed at enhancing the stability of Australia's financial system in the current global financial crisis.

Schedule 1 of the bill amends the *Banking Act 1959*, the *Insurance Act 1973* and the *Australian Prudential Regulation Authority Act 1998* to, respectively:

- establish the Early Access Facility for Depositors (EAFD) to ensure that depositors in a failed ADI have access to their deposit funds;
- establish the Policyholder Compensation Facility (PCF) to provide eligible general insurance policyholders with access to funds from insurance claims in the event of a failure of a general insurer; and
- provide the Australian Prudential Regulation Authority (APRA) with the function of administering the FCS.

Schedule 1 also makes consequential amendments to the *Administrative Decisions (Judicial Review) Act 1977*, the *Corporations Act 2001*, the *Financial Institutions Supervisory Levies Collection Act 1998*, the *Income Tax Assessment Act 1936*, the *Reserve Bank Act 1959* and the *Taxation Administration Act 1953*.

Schedule 2 of the bill amends the *Banking Act 1959* to expand the duties, powers and functions of ADI statutory managers in order to improve statutory management of ADIs and the recapitalisation of an ADI.

Schedule 3 of the bill amends the *Insurance Act 1973* to establish arrangements to provide for the judicial management of general insurers and facilitate the recapitalisation of a general insurer.

Schedule 4 of the bill amends the *Life Insurance Act 1995* to establish arrangements to improve judicial management of life insurers and facilitate the recapitalisation of a life insurer.

Schedule 5 of the bill amends the *Financial Sector (Business Transfer and Group Restructure) Act 1999* to establish enhanced arrangements to facilitate the transfer of assets and liability between institutions.

The bill also includes application, saving and transitional provisions.

Although this bill has passed both Houses of Parliament and received Royal Assent on 17 October 2008, the following comments are provided by the Committee for the information of Senators.

### **Legislative instruments—exemptions Schedules 1, 2, 3 and 4**

A number of provisions in the bill provide that a Ministerial authorisation or declaration ‘is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the *Legislative Instruments Act 2003* applies’ to it. The relevant provisions are:

- new subsection 5(9) of the *Banking Act 1959*, inserted by item 12 of Schedule 1;
- new subsection 16AD(6) of the *Banking Act 1959*, inserted by item 15 of Schedule 1;
- new subsection 62ZZC(6) of the *Insurance Act 1973*, inserted by item 26 of Schedule 1;

- new subsection 70C(7) of the *Banking Act 1959*, inserted by item 23 of Schedule 2;
- new subsection 131A(7) of the *Insurance Act 1973*, inserted by item 26 of Schedule 3; and
- new subsection 251A(7) of the *Life Insurance Act 1995*, inserted by item 34 of Schedule 4.

As outlined in Drafting Direction No. 3.8, where a provision specifies that an instrument is *not* a legislative instrument, the Committee would expect the explanatory memorandum to explain whether the provision is merely declaratory (and included for the avoidance of doubt) or expresses a policy intention to exempt an instrument (which *is* legislative in character) from the usual tabling and disallowance regime set out in the *Legislative Instruments Act 2003*. Where the provision is a substantive exemption, the Committee would expect to see a full explanation justifying the need for the provision.

In the case of new subsection 16AD(6) of the *Banking Act 1959*, the explanatory memorandum seeks to justify the provision (at paragraph 1.26), with the observation that it ‘ensures that the disallowance process does not create uncertainty around the operation of the [Financial Claims] Scheme and avoids any potential for the scheme to be activated and then be disallowed, which would cause significant disruption’.

The explanatory memorandum includes a broadly similar justification for new subsection 62ZZC(6) of the *Insurance Act 1973* (at paragraph 2.40), but no justification or explanation is given for the other provisions set out above.

The Committee makes the assumption, in light of the similarity of the wording in each proposed subsection, that the justification is the same in each case but notes that it would have been useful if this information had been included in the explanatory memorandum.

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

**Legislative instruments—commencement  
Schedules 1, 2, 3 and 4**

A number of provisions in the bill declare that a Ministerial authorisation or declaration ‘takes effect from the time it is made, despite subsections 12(1) and (2) of the *Legislative Instruments Act 2003*’. The relevant provisions are:

- new subsection 5(10) of the *Banking Act 1959*, inserted by item 12 of Schedule 1;
- new subsection 16AD(7) of the *Banking Act 1959*, inserted by item 15 of Schedule 1;
- new subsection 62ZZC(7) of the *Insurance Act 1973*, inserted by item 26 of Schedule 1;
- new subsection 70C(8) of the *Banking Act 1959*, inserted by item 23 of Schedule 2;
- new subsection 131A(8) of the *Insurance Act 1973*, inserted by item 26 of Schedule 3; and
- new subsection 251A(8) of the *Life Insurance Act 1995*, inserted by item 34 of Schedule 4.

In the case of new subsection 131A(8) of the *Insurance Act 1973*, the explanatory memorandum seeks to justify the provision (at paragraph 6.101), with the observation that it ‘is necessary to ensure that delays in the registration [of the relevant legislative instrument] do not unduly delay an authorisation which is ultimately done in the interests of policyholders or financial system stability in Australia.’

A broadly similar justification can be found in the explanatory memorandum for new subsections 62ZZC(7) of the *Insurance Act 1973* and 251A(8) of the *Life Insurance Act 1995* (at paragraphs 2.42 and 7.48 respectively) but no justification or explanation is given for the other provisions set out above.

The Committee makes the assumption that, in light of the similarity of the wording in each proposed subsection, the justification is the same in each case but notes that it would have been useful if this information had been included in the explanatory memorandum.

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

### **Wide delegation of power**

#### **Schedule 1, item 15; Schedule 1, item 26**

New subsection 16AN(1) of the *Banking Act 1959*, inserted by item 15 of Schedule 1, and new subsection 62ZZT(1) of the *Insurance Act 1973*, inserted by item 26 of Schedule 1, permits APRA to delegate ‘any or all of APRA’s functions and powers’ under a relevant Division or Part of the respective Acts to ‘a person’, with no limit expressed in the legislation on the attributes or qualifications of the proposed delegate.

The Committee has consistently drawn attention to legislation that allows delegations to a relatively large class of persons, with little or no specificity as to their qualifications or attributes. Generally, the Committee prefers to see a limit set either on the sorts of powers that might be delegated, or on the categories of people to whom those powers might be delegated. The Committee’s preference is that delegates be confined to the holders of nominated offices or to members of the Senior Executive Service.

Where broad delegations are made, the Committee considers that an explanation of why these are considered necessary should be included in the explanatory memorandum. There is no reference to subsection 16AN(1) in the explanatory memorandum; and paragraph 2.158 of the explanatory memorandum describes subsection 62ZZT(1), but provides no justification for it. While the Committee appreciates the need to provide APRA with greater powers to enable it to properly manage financial institutions in the current economic crisis, the Committee nevertheless **seeks the Treasurer’s advice** about the reason for conferral of the unlimited delegation contained in subsections 16AN(1) and 62ZZT(1).

*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 insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee’s terms of reference.*

**Non-reviewable decisions**  
**Schedule 1, item 53**

Item 53 of Schedule 1 amends the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) by adding paragraphs (hc) and (hd) to Schedule 1 of the ADJR Act, the effect of which would be to exclude from review decisions under particular provisions of the *Insurance Act 1973* and the *Banking Act 1959*. The Committee consistently draws attention to provisions that explicitly exclude review by relevant appeal bodies or otherwise fail to provide for administrative review.

In this case, paragraphs 3.38-3.41 of the explanatory memorandum explain that the sole purpose of these proposed amendments is to ensure that the Financial Claims Scheme can be administered in a seamless and timely way. That is, '(i)f depositors were able to challenge the decision of APRA about individual entitlements and amounts received, there is the potential to delay finalisation of payments to all depositors which could significantly complicate the management of the failure'. The explanatory memorandum also notes that curtailment of review rights under the ADJR Act 'does not in itself prevent a policyholder from pursuing what they believe is owed to them through the liquidation process'.

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

**Legislative Instruments Act—declarations**  
**Schedule 2, item 9, proposed subsection 13BA(3)**

New subsection 13BA(3) of the *Banking Act 1959*, inserted by item 9 of Schedule 2, provides that a notice, given by APRA to an ADI that an ADI statutory manager will take, or is taking, control of an ADI's business under new subsection 13BA(1), is not a legislative instrument.

As outlined in Drafting Direction No. 3.8, where a provision specifies that an instrument is *not* a legislative instrument, the Committee would expect the explanatory memorandum to explain whether the provision is merely declaratory (and included for the avoidance of doubt) or expresses a policy

intention to exempt an instrument (which *is* legislative in character) from the usual tabling and disallowance regime set out in the *Legislative Instruments Act 2003*. Where the provision is a substantive exemption, the Committee would expect to see a full explanation justifying the need for the provision.

In this case, although it appears that such a notice is not legislative in character, and that subsection 13BA(3) is no more than declaratory in nature, there is no specific reference to this provision in the explanatory memorandum. The Committee notes that it would have been helpful if a statement to this effect had been included in the explanatory memorandum for the benefit of readers.

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

### **Retrospective application Schedule 2, subitem 13(1)**

Subitem 13(1) of Schedule 2 provides for the application of various new provisions of the *Banking Act 1959* (to be inserted by that Schedule) ‘to an ADI statutory manager that takes control of an ADI’s business before, on or after the commencement of [that] Schedule’. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Committee notes that, in this instance, the explanatory memorandum does not provide an explanation of subitem 13(1), and it is therefore unclear whether its retrospective application would adversely affect any individual.

However, the explanatory memorandum explains in broad terms that the current powers of ADI statutory managers have been broadened so that they may recapitalise a financial institution (by, for example, issuing new shares or selling shares), or alter the governance arrangements of an ADI, in order to more effectively resolve financial institution distress. Ordinarily, the Committee would view the retrospective application of such a provision as a possible intrusion on personal rights and liberties. However, the Committee notes that this bill passed both Houses of Parliament and received Royal

Assent within a period of two days. Therefore, any retrospective application of its provisions was extremely limited and, in any case, was designed to deal with extraordinary circumstances.

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

**Standing (special) appropriations  
Schedule 1, item 49; Schedule 2, item 23**

The bill establishes two standing (special) appropriations for the purpose of, respectively:

- making payments under the FCS; and
- enabling the Commonwealth to make payments in accordance with its obligations under certain contracts or arrangements.

The bill also provides for additional appropriations to be made to the existing APRA Special Account.

New section 54A of the *Australian Prudential Regulation Authority Act 1998*, inserted by item 49 of Schedule 1, sets up the Financial Claims Scheme Special Account. New subsection 54A(2) provides that the Financial Claims Scheme Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. This standing appropriation is established for the purpose of making payments to depositors and policyholders. For the first three years of the FCS, the amount that can be appropriated for the purposes of meeting depositors' entitlements is unlimited; after three years, the maximum amount of the appropriation is \$20 billion.

New subsection 53(e) of the *Australian Prudential Regulation Authority Act 1998*, inserted by item 46 of Schedule 1, provides for a standing appropriation for the purposes of administering the FCS. The bill allows a maximum amount of \$100 million to be credited to the APRA Special Account. The APRA Special Account is already established under section 52 of the *Australian Prudential Regulation Authority Act 1998*; subsection 53(2) of that

Act provides that the APRA Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

New section 70E of the *Banking Act 1959*, inserted by item 23 of Schedule 2, establishes the Financial System Stability Special Account by a standing appropriation. New subsection 70E(2) provides that the Financial System Stability Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*. The purpose of the Financial System Stability Special Account is to provide appropriation authority for payments under contracts and arrangements authorised under the *Banking Act 1959* (maximum appropriation \$20 billion), the *Insurance Act 1973* (maximum appropriation \$10 billion) and the *Life Insurance Act 1995* (maximum appropriation \$10 billion).

If an Act establishes a Special Account and identifies the purposes of the account then, by virtue of section 21 of the *Financial Management and Accountability Act 1997*, the consolidated revenue fund is appropriated for those purposes.

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.*

In scrutinising standing appropriations, the Committee looks to the explanatory memorandum to the bill for an explanation of the reason for the standing appropriation. In addition, the Committee ideally likes to see:

- some limitation placed on the amount of funds that may be so appropriated; and
- a sunset clause that ensures the special appropriation cannot go on indefinitely without any further reference to the Parliament.

While the Committee notes that appropriations under the Financial Claims Scheme Special Account are unlimited for the first three years, the total sum standing to the credit of that account after the first three years, as well as to the Financial System Stability Special Account, is not to exceed certain specified amounts. The appropriation to the existing APRA Special Account is also limited in amount.

The Committee recognises the backdrop of economic uncertainty against which the standing appropriations in this bill have been established. Since the standing appropriations have already been agreed to by both Houses of Parliament and are, in any case, designed to deal with exceptional circumstances, the Committee makes no further comment on them.

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

## COMMENTARY ON AMENDMENTS TO BILLS

### **Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008**

On 16 October 2008, the Senate agreed to 34 amendments to the bill, none of which fall within the Committee's terms of reference. On 16 October 2008, the Senate also agreed to 20 Government requests for amendments in the House of Representatives. On 20 October 2008, the House of Representatives agreed to the Senate's requests for amendments.

### **Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008**

On 10 November 2008, the Senate agreed to two Government amendments and 11 Opposition amendments to the bill.

In its *Alert Digest No. 10 of 2008*, the Committee commented that criteria for determining whether there is a 'significant risk' of one person's operations having a 'significant adverse impact' on another person's operations, under specified sections of the bill, are to be included in regulations. The Committee sought the Minister's advice whether these criteria might be included in the primary legislation rather than in the regulations.

In a response to the Committee (included in its *Twelfth Report of 2008*) the Minister for Resources and Energy stated that the Government had proposed an amendment to the bill to address the Committee's concerns, namely defining what constitutes a significant impact and providing for the regulations on impact to be assessed against a threshold. Pursuant to the amendment, the regulations must also take into account:

- the probability of the occurrence of an adverse impact;
- the extent of the adverse impact; and
- the extent of the impact relative to the extent of petroleum operations in the petroleum title area impacted.

The Committee is pleased to note this amendment.

### **Safe Work Australia Bill 2008**

On 14 October 2008, the Senate agreed to 20 amendments to the bill, none of which fall within the Committee's terms of reference. On 20 October 2008, the House of Representatives disagreed to the amendments made by the Senate (on the basis that the intergovernmental agreement between the Commonwealth and the states/territories, which is reflected in the bill, must prevail). On 10 November 2008, the Senate resolved to insist on its amendments.

### **Tax Laws Amendment (Medicare Levy Surcharge Thresholds) Bill (No. 2) 2008**

On 16 October 2008, the Senate agreed to seven amendments to the bill, none of which fall within the Committee's terms of reference. On 16 October 2008, the House of Representatives agreed to the amendments made by the Senate.

### **Trade Practices Legislation Amendment Bill 2008**

On 16 September 2008, the Senate agreed to six Opposition amendments and one Independent amendment to the bill. On 16 October 2008, the House of Representatives agreed to five of the amendments made by the Senate but disagreed to two of the Opposition amendments. The House of Representatives also agreed to six further amendments. On 10 November 2008, the Senate agreed to the six further amendments made by the House of Representatives. None of these amendments fall within the Committee's terms of reference.

### **Water Amendment Bill 2008**

On 16 October 2008, the House of Representatives agreed to eight amendments to the bill, none of which fall within the Committee's terms of reference.

## PROVISIONS OF BILLS WHICH IMPOSE CRIMINAL SANCTIONS FOR A FAILURE TO PROVIDE INFORMATION

The Committee's *Eighth Report of 1998* dealt with the appropriate basis for penalty provisions for offences involving the giving or withholding of information. In that Report, the Committee recommended that the Attorney-General develop more detailed criteria to ensure that the penalties imposed for such offences were 'more consistent, more appropriate, and make greater use of a wider range of non-custodial penalties'. The Committee also recommended that such criteria be made available to Ministers, drafters and to the Parliament.

The Government responded to that Report on 14 December 1998. In that response, the Minister for Justice referred to the ongoing development of the Commonwealth *Criminal Code*, which would include rationalising penalty provisions for 'administration of justice offences'. The Minister undertook to provide further information when the review of penalty levels and applicable principles had taken place.

For information, the following Table sets out penalties for 'information-related' offences in the legislation covered in this *Digest*. The Committee notes that imprisonment is still prescribed as a penalty for some such offences.

Bill/Act	Section/Subsection	Offence	Penalty
Aged Care Amendment (2008 Measures No. 2) Bill 2008	Schedule 1, item 21, proposed subsection 9-3A(3)	Failure to provide information to a public authority	30 penalty units
<i>Financial System Legislation Amendment (Financial Claims and Other Measures) Act 2008</i>	Schedule 1, item 15, subsection 16AL(2)	Failure to provide information to a public authority	200 penalty units
<i>Financial System Legislation Amendment (Financial Claims and Other Measures) Act 2008</i>	Schedule 1, item 15, subsection 16AL(4)	Failure to provide information to a public authority	50 penalty units

<i>Financial System Legislation Amendment (Financial Claims and Other Measures) Act 2008</i>	Schedule 1, item 26, subsection 62ZZQ(2)	Failure to provide information to a public authority	200 penalty units
<i>Financial System Legislation Amendment (Financial Claims and Other Measures) Act 2008</i>	Schedule 1, item 26, subsection 62ZZQ(4)	Failure to provide information to a public authority	50 penalty units

## **BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION**

Recent discussions between the Chairs and Deputy Chairs of Commonwealth, State and Territory Scrutiny Committees have again noted difficulties in the identification and scrutiny of national schemes of legislation. Essentially, these difficulties arise because 'national scheme' bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation. Any requests for amendment are seen to threaten that agreement and that uniformity.

To assist in the early identification of national schemes of legislation, the Committee proposes to note bills that give effect to such schemes as they come before the Committee for consideration.

### **Australian Curriculum, Assessment and Reporting Authority Bill 2008**

The bill establishes the Australian Curriculum, Assessment and Reporting Authority, creation of which gives effect to the Council of Australian Government's (COAG's) decision on 2 October 2008 to establish a new education authority. The bill establishes the Authority as an independent statutory authority under the *Commonwealth Authorities and Companies Act 1997* which is a governance model consistent with an agreement by the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) on 12 September 2008. The bill provides that accountability for the Authority is to be shared between the Commonwealth and the states/territories through MCEETYA.

### **COAG Reform Fund Bill 2008**

The bill establishes the COAG Reform Fund for the purpose of making grants of financial assistance to the states and territories.

On 26 March 2008, COAG agreed to a new framework for federal financial relations. A central element of the new framework is the provision of new incentive payments to drive certain reforms. The Commonwealth will provide National Partnership payments to the states to support the delivery of specific

projects, to facilitate reforms or to ‘reward’ those jurisdictions that deliver nationally significant reforms.

On 13 May 2008, as part of the 2008-09 Budget, the Federal Government announced that it would establish three new nation-building funds – the Building Australia Fund, the Education Investment Fund, and the Health and Hospitals Fund – as well as a COAG Reform Fund to channel payments from the nation-building funds to the states and territories via National Partnership payments.

The COAG Reform Fund may receive funding through payments from the nation-building funds, annual appropriations in the Federal Budget, and special appropriations in the form of National Partnership payments.

## 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:

- (vi) inappropriately delegate legislative powers; or
- (vii) 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 42<sup>nd</sup> Parliament.

### Bills introduced with standing appropriation clauses – 42nd Parliament

*Indicates passed by Senate	Bills and Clauses
	<b>COAG Reform Fund Bill 2008</b> — Clause 5 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> )
*	<b>Commonwealth Securities and Investment Legislation Amendment Bill 2008</b> — Schedule 1, item 10, subsection 5BA(7)
*	<b>Defence Home Ownership Assistance Scheme Bill 2008</b> — Clause 84
*	<b>Dental Benefits Bill 2008</b> — Clause 65
	<b>Education Legislation Amendment Bill 2008</b> — Schedule 1, item 6, section 14B
*	<b>Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008</b> — Schedule 1, item 29
*	<b>Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008</b> — Schedule 1, item 49, section 54A (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> ); Schedule 2, item 23, section 70E (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> )
*	<b>Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008</b> — Schedule 1, item 79, section 94B (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> )

	<b>Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008</b> — Schedule 5, item 141, section 65A
*	<b>Protection of the Sea Legislation Amendment Bill 2008</b> — Schedule 1, item 20, section 46N
*	<b>Safe Work Australia Bill 2008</b> — Clause 64 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> )
	<b>Schools Assistance Bill 2008</b> — Clause 167
*	<b>Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008</b> — Schedule 1, item 1
*	<b>Wheat Export Marketing Bill 2008</b> — Clause 58 (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>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Bill 2008</b> — Schedule 2, items 1 and 2, and Schedule 4, item 1: special appropriation clauses – for a finite period of time (ie. 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 - 2007/2008

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<b>Bills dealt with in 2007</b>							
Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures Bill 2007	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 1(12.3.08)
Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007	8(8.8.07)	21.6.07	13.9.07	Treasurer	9.8.07	20.9.07	1(12.3.08)
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Bill 2007	8(8.8.07)	21.6.07	13.9.07	Treasurer	9.8.07	19.9.07	1(12.3.08)
National Greenhouse and Energy Reporting Bill 2007	11(12.9.07)	15.8.07	18.9.07	Environment and Water Resources	13.9.07	2.10.07	1(12.3.08)
<i>Northern Territory National Emergency Response Act 2007</i>	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 1(12.3.08)
<i>Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007</i>	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 1(12.3.08)
<i>Water Act 2007</i>	10(15.8.07)	8.8.07	15.8.07	Environment and Water Resources	16.8.07	23.11.07	1(12.3.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<b>Bills introduced 2008</b>							
<i>Aged Care Amendment (2008 Measures No. 1) Act 2008</i>	1(12.3.08)	13.2.08	14.2.08	Health and Ageing	13.3.08	4.8.08	7(27.8.08)
<i>Australian Crime Commission Amendment Act 2007</i>	3(14.5.08)	19.9.07	18.9.07	Home Affairs	15.5.08	20.6.08	6(25.6.08)
Australian Energy Market Amendment (Minor Amendments) Bill 2008	3(14.5.08)	20.3.08	23.6.08	Resources, Energy and Tourism	15.5.08	28.5.08	4(4.6.08)
Australian Organ and Tissue Donation and Transplantation Authority Bill 2008	10(24.9.08)	18.9.08		Health and Ageing	25.9.08	14.10.08	11(15.10.08)
Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Infrastructure, Transport, Regional Development and Local Government	15.5.08	19.6.08	6(25.6.08)
Communications Legislation Amendment (Miscellaneous Measures) Bill 2008	2(19.3.08)	17.3.08	12.3.08	Broadband, Communications and the Digital Economy	20.3.08	13.5.08	3(14.5.08)
Customs Amendment (Strengthening Border Controls) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Home Affairs	15.5.08	13.6.08	5(18.6.08)
Customs Legislation Amendment (Modernising) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Home Affairs	15.5.08	13.6.08	5(18.6.08)
Dairy Adjustment Levy Termination Bill 2008	11(15.10.08)	24.9.08	16.10.08	Agriculture, Fisheries and Forestry	16.10.08	7.11.08	12(12.11.08)
Dental Benefits Bill 2008	4(4.6.08)	29.5.08	18.6.08	Health and Ageing	5.6.08	23.6.08	6(25.6.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Drink Container Recycling Bill 2008	2(19.3.08)		13.3.08	Senator Fielding	20.3.08		
Environment Protection and Biodiversity Conservation Amendment (Control of Power Station Emissions) Bill 2008	6(25.6.08)		19.6.08	Senator Allison	26.6.08		
Excise Legislation Amendment (Condensate) Bill 2008	4(4.6.08)	15.5.08	16.6.08	Treasury	5.6.08	17.6.08	5(18.6.08)
Excise Tariff Amendment (Condensate) Bill 2008 <b>Amendment</b>	5(18.6.08)	15.5.08	16.6.08	Treasury	19.6.08	28.8.08	8(3.9.08)
Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Bill 2008	4(4.6.08)	29.5.08	16.6.08	Education, Employment and Workplace Relations	5.6.08	18.6.08	6(25.6.08)
Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008	7(27.8.08)	25.6.08	1.9.08	Attorney-General	28.8.08	5.9.08	9(17.9.08)
Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008	4(4.6.08)	29.5.08	16.6.08	Agriculture, Fisheries and Forestry	5.6.08	17.6.08	5(18.6.08)
Financial Sector Legislation Amendment (Review of Prudential Decisions) Bill 2008	1(12.3.08)	11.3.08	13.2.08	Treasury	13.3.08	18.3.08	2(19.3.08)
First Home Saver Accounts Bill 2008	4(4.6.08)	28.5.08	16.6.08	Treasury	5.6.08	16.6.08	5(18.6.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority And Other Matters) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Agriculture, Fisheries and Forestry	15.5.08	28.5.08	4(4.6.08)
Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008	6(25.6.08)	18.6.08	27.8.08	Environment, Heritage and the Arts	26.6.08	22.7.08	7(27.8.08)
Horse Disease Response Levy Bill 2008	1(12.3.08)	21.2.08	3.9.08	Agriculture, Fisheries and Forestry	13.3.08	9.7.08	7(27.8.08)
Horse Disease Response Levy Collection Bill 2008	1(12.3.08)	21.2.08	3.9.08	Agriculture, Fisheries and Forestry	13.3.08	9.7.08	7(27.8.08)
Independent Reviewer of Terrorism Laws Bill 2008	3(14.5.08)	17.3.08	3.9.08	Mr Georgiou MP	15.5.08	26.5.08	4(4.6.08)
Infrastructure Australia Bill 2008	1(12.3.08)	21.2.08	18.3.08	Infrastructure, Transport, Regional Development and Local Government	13.3.08	18.3.08	2(19.3.08)
National Commissioner for Children Bill 2008	3(14.5.08)		18.3.08	Senator Bartlett	15.5.08		
National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008	4(4.6.08)	29.4.08	16.6.08	Treasury	5.6.08	24.6.08	6(25.6.08)
National Measurement Amendment Bill 2008	11(15.10.08)	24.9.08		Innovation, Industry, Science and Research	16.10.08	3.11.08	12(12.11.08)
National Rental Affordability Scheme Bill 2008	11(15.10.08)	24.9.08	10.11.08	Housing	16.10.08	11.11.08	12(12.11.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008 <b>Amendment</b>	6(25.6.08) 10(24.9.08)	18.6.08	24.9.08	Resources, Energy and Tourism	25.6.08 25.9.08	1.8.08 23.10.08	7(27.8.08) 12(12.11.08)
Offshore Petroleum (Annual Fees) Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08	22.9.08	Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
Offshore Petroleum (Registration Fees) Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08	22.9.08	Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
Offshore Petroleum (Safety Levies) Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08	22.9.08	Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
Protection of the Sea (Civil Liability For Bunker Oil Pollution Damage) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Infrastructure, Transport, Regional Development and Local Government	15.5.08	2.6.08	4(4.6.08)
Renewable Energy (Electricity) Amendment (Feed-in-Tariff) Bill 2008	4(4.6.08)		15.5.08	Senator Milne	5.6.08	12.6.08	5(18.6.08)
Safe Work Australia Bill 2008	9(17.9.08)	4.9.08	23.9.08	Employment and Workplace Relations	18.9.08	23.09.08	10(24.9.08)
Unit Pricing (Easy comparison of Grocery prices) Bill 2008	4(4.6.08)		15.5.08	Senator Fielding	5.6.08	5.6.08	5(18.6.08)
Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008	3(14.5.08)	19.3.08	16.6.08	Veterans' Affairs	15.5.08	24.6.08	6(25.6.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE		MINISTER	RESPONSE SOUGHT RECEIVED		REPORT NUMBER
<i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008</i>	1(12.3.08)	13.2.08	17.3.08	Employment and Workplace Relations	13.3.08 20.3.08	18.3.08 22.4.08	2(19.3.08) 3(14.5.08)