

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



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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.

Appropriation (Nation Building and Jobs) Bill (No. 1) 2008-2009

Introduced into the House of Representatives on 4 February 2009
Portfolio: Finance and Deregulation

Background

Part of the economic stimulus package, this bill seeks to appropriate \$89 million from the Consolidated Revenue fund for the ordinary annual services of the Federal Government in relation to the Nation Building and Jobs Plan.

Legislative Instruments Act—determinations and sunset provisions Subclauses 10(6), 11(3) and 12(7)

Subclauses 10(6), 11(3) and 12(7) provide that a Ministerial determination made under subclause (2) of each of the respective clauses in relation to adjusting appropriation items ‘is a legislative instrument and, despite subsection 44(2) of the *Legislative Instruments Act 2003*, section 42 (disallowance) of that Act applies to the determination. However, Part 6 (sunsetting) of that Act does not apply to the determination’.

The explanatory memorandum clearly explains the reason for these respective provisions noting (at paragraphs 31, 36 and 41) that ‘(d)espite subsection 44(2) of the [*Legislative Instruments Act 2003*,] which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 10(6) [and subclauses 11(3) and 12(7) provide] that a determination reducing [an appropriation item] is subject to disallowance in accordance with section 42 of the [*Legislative Instruments Act*]. Parliament retains the power to disallow a determination to reduce [an appropriation item] because any such determination will reduce the amount of an appropriation authorised by Parliament. Subclause 10(6) [and subclauses 11(3) and 12(7) also confirm] subsection 54(2) of the [*Legislative Instruments Act*], which provides that instruments made under annual Appropriation Acts are not subject to sunsetting’.

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

Appropriation (Nation Building and Jobs) Bill (No. 2) 2008-2009

Introduced into the House of Representatives on 4 February 2009
Portfolio: Finance and Deregulation

Background

Part of the economic stimulus package, this bill seeks to appropriate \$1.727 million from the Consolidated Revenue Fund (that are not the ordinary annual services of the Federal Government) to provide additional funding to the states, the Australian Capital Territory, the Northern Territory and local government authorities in relation to the Nation Building and Jobs Plan.

The measures in the bill provide specified amounts for expenditure by Commonwealth agencies for local government items, administered items, administered assets and liabilities items, and other departmental items in relation to, for example, the building of schools and roads, the supply of affordable housing and the renewal and upgrading of infrastructure in local communities.

Legislative Instruments Act—determinations and sunset provisions Subclauses 12(3), 13(6) and 14(7)

Subclauses 12(3), 13(6) and 14(7) provide that a Ministerial determination made under subclause (2) of each of the respective clauses in relation to adjusting appropriation items ‘is a legislative instrument and, despite subsection 44(2) of the *Legislative Instruments Act 2003*, section 42 (disallowance) of that Act applies to the determination. However, Part 6 (sunsetting) of that Act does not apply to the determination’.

The explanatory memorandum clearly explains the reason for these respective provisions noting (at paragraphs 33, 38 and 43) that ‘(d)espite subsection 44(2) of the [*Legislative Instruments Act 2003*,] which provides that instruments made under annual Appropriation Acts are not subject to disallowance, subclause 12(3) [and subclauses 13(6) and 14(7) provide] that a determination reducing [an appropriation item] is subject to disallowance in accordance with section 42 of the [*Legislative Instruments Act*]. Parliament

retains the power to disallow a determination to reduce [an appropriation item] because any such determination will reduce the amount of an appropriation authorised by Parliament. Subclause 12(3) [and subclauses 13(6) and 14(7) also confirm] subsection 54(2) of the [Legislative Instruments Act], which provides that instruments made under annual Appropriation Acts are not subject to sunseting’.

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

Commonwealth Inscribed Stock Amendment Bill 2009

Introduced into the House of Representatives on 4 February 2009

Portfolio: Treasury

Background

Part of the economic stimulus package, this bill amends the *Commonwealth Inscribed Stock Act 1911* to allow the Treasurer, in special circumstances, to make a written declaration to increase the cap of Commonwealth Government Securities on issue by \$125 billion to \$200 billion.

The bill requires that the declaration be published in the *Gazette* and be tabled in each House of the Parliament within 15 sitting days after it is published, and provides that there can be only one declaration at any one point in time.

Legislative Instruments Act – declarations

Excluding merits review

Schedule 1, item 1, proposed new subsections 5A(6) and (7)

Proposed new subsection 5A(6) of the *Commonwealth Inscribed Stock Act 1911*, to be inserted by item 1 of Schedule 1, provides that a declaration by the Treasurer that there are special circumstances that would justify increasing the limit imposed by section 5 on the total face value of stock and securities that may be on issue at any time (under that Act and the *Loans Securities Act 1919*) is not a legislative instrument. The explanatory memorandum (at paragraph 1.7) states that this represents an exemption from the Legislative Instruments Act but does not provide any further explanation. The Committee also notes that proposed new subsection 5A(7) provides that a decision by the Treasurer to make a declaration under subsection (1) is not reviewable under the *Administrative Decision (Judicial Review) Act 1977*.

However, proposed new subsection 5A(2) provides that any declaration under subsection (1) must be published in the *Gazette* and must be tabled in each House of the Parliament within 15 sitting days after it is published. The

Committee **leaves for the Senate as a whole** the question of whether the level of parliamentary scrutiny is sufficient in the circumstances.

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

Household Stimulus Package Bill 2009

Introduced into the House of Representatives on 4 February 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

Part of the economic stimulus package, this bill amends the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* to establish administrative schemes to provide for household stimulus payments in the form of a single income family bonus, a back to school bonus, a training and learning bonus (including an education entry payment supplement), and a farmers hardship bonus. The bonus in each case is \$950.

The bill also makes consequential amendments to the *Farm Household Support Act 1992*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Social Security Act 1991*, the *Social Security (Administration) Act 1999* and the *Veterans' Entitlements Act 1986* to ensure that the payments will not count as income for social security, family assistance, farm household support and veterans' entitlements purposes, and will be income tax-free. It also ensures that, where an individual is subject to income management, any household stimulus package payment they receive will be income managed at 100 per cent.

Retrospective commencement

Subclause 2(1)

Item 3 in the table to subclause 2(1) provides that Schedule 2, Part 1 (relating to education entry payment) is to commence on 1 January 2009. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the Committee notes in this case that the retrospective application is clearly beneficial to recipients of the relevant income support payments.

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

**Determination of important matters by legislative instrument
Schedule 4**

Schedule 4 would give to the Minister administering the *A New Tax System (Family Assistance) Act 1999*, the *Social Security Act 1991*, the *Farm Household Support Act 1992* and the *Veterans' Entitlements Act 1986*, a discretion to determine, by legislative instrument, a scheme under which household stimulus payments may be made to persons in particular circumstances (who would not otherwise qualify for such payments). Schedule 4 provides for payments under the scheme 'to be made out of the Consolidated Revenue Fund, which is appropriated accordingly'. The only limit on the width of the Minister's discretion is that payments under the scheme must be in circumstances where the Minister considers that the primary scheme established in the bill 'does not produce 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 the scheme including, for example, the circumstances in which payments are to be made and the amount of any payments, is to be included in a legislative instrument, and the bill imposes no limit on the amount of funds that can be appropriated to implement the scheme.

Further, while any legislative instrument made under Schedule 4 would be subject to scrutiny by the Senate Standing Committee on Regulations and Ordinances, its terms of reference 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 Schedule 4 may make the rights of possible beneficiaries of such a scheme unduly dependent upon non-reviewable decisions.

However, the explanatory memorandum states (at page 20) that this scheme is substantially the same as the 'one-off payments' made in previous years and the economic security strategy payments, including the legislative instrument basis and the appropriation arrangements for the scheme. The Committee notes that the Social Security and Veterans' Entitlements Legislation

Amendment (One-off Payments and Other Budget Measures) Bill 2008 and the Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008 contained very similar provisions, which the Committee noted but made no further comment on, in *Alert Digest No. 4 of 2008* and *Alert Digest No. 13 of 2008*, respectively. The explanation for the scheme in this bill is almost identical to that for the schemes in the 2008 bills.

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

Tax Bonus for Working Australians Bill 2009

Introduced into the House of Representatives on 4 February 2009

Portfolio: Treasury

Background

Introduced with the Tax Bonus for Working Australians (Consequential Amendments) Bill 2009 and part of the economic stimulus package, this bill authorises the Commissioner of Taxation to pay the Tax Bonus for Working Australians (Bonus) to eligible taxpayers.

Eligible taxpayers will receive the following amounts:

- \$950 where their taxable income is up to and including \$80,000;
- \$650 where their taxable income exceeds \$80,000 and does not exceed \$90,000; or
- \$300 where their taxable income exceeds \$90,000 and does not exceed \$100,000.

The Committee has no comment on this bill.

Tax Bonus for Working Australians (Consequential Amendments) Bill 2009

Introduced into the House of Representatives on 4 February 2009

Portfolio: Treasury

Background

Introduced with the Tax Bonus for Working Australians Bill 2009 and part of the economic stimulus package to provide eligible taxpayers with a tax bonus payment, this bill makes consequential amendments to the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953* to ensure that the tax bonus payments are not treated as income for tax purposes.

The bill also contains consequential amendments to the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to exempt the tax bonus payments from inclusion in a person's income for the purposes of those Acts.

The Committee has no comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Social Security Legislation Amendment (Employment Services Reform) Bill 2008

On 4 February 2009, the Senate agreed to 14 amendments to the bill, none of which fall within the Committee's terms of reference.

Tax Laws Amendment (Political Contributions and Gifts) Bill 2008

On 3 February 2009, the Senate agreed to 22 amendments to the bill, none of which fall 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 42nd Parliament.

Bills introduced with standing appropriation clauses – 42nd Parliament

*Indicates passed by Senate	Bills and Clauses
*	COAG Reform Fund Bill 2008 — clause 5 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Commonwealth Securities and Investment Legislation Amendment Bill 2008 — Schedule 1, item 10, subsection 5BA(7)
*	Defence Home Ownership Assistance Scheme Bill 2008 — Clause 84
*	Dental Benefits Bill 2008 — Clause 65
*	Education Legislation Amendment Bill 2008 — Schedule 1, item 6, section 14B
	Fair Work Bill 2008 — Subclause 559(4)
*	Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008 — Schedule 1, item 29
*	Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008 — Schedule 1, item 49, section 54A, and Schedule 2, item 23, section 70E (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008 — Schedule 1, item 79, section 94B (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)

*	Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008 — Schedule 5, item 141, section 65A
*	Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008 — clause 5
*	Nation-building Funds Bill 2008 — clauses 13, 61, 68, 75, 82, 132, 181, 188, 215 and 255 — (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Protection of the Sea Legislation Amendment Bill 2008 — Schedule 1, item 20, section 46N
*	Safe Work Australia Bill 2008 — clause 64 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Schools Assistance Bill 2008 — clause 167
	Uranium Royalty (Northern Territory) Bill 2008 – clause 18
*	Veterans’ Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008 — Schedule 1, item 1
*	Wheat Export Marketing Bill 2008 — 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
*	Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008 — Schedule 4, item 4: special appropriation clause – for a finite period of time (ie for circumstances arising in a particular financial year).
*	Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Bill 2008 — 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).
	Household Stimulus Package Bill 2009 — Schedule 4, subitem 1(5): special appropriation clause – 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 - 2008/2009

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2008							
Corporations Amendment (Short Selling) Bill 2008	13(26.11.08)	13.11.08	27.11.08	Treasury	26.11.08	7.1.09	1(4.2.09)
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		
Fair Work Bill 2008	14(3.12.08)	25.11.08	4.12.08	Education, Employment and Workplace Relations	4.12.08	19.1.08	1(4.2.09)
<i>Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008</i>	12(12.11.08)	15.10.08	16.10.08	Treasury	13.11.08	4.12.08	1(4.2.09)
National Commissioner for Children Bill 2008	3(14.5.08)		18.3.08	Senator Bartlett	15.5.08		
Nation-building Funds (Consequential Amendments) Bill 2008	13(26.11.08)	13.11.08	3.12.08	Finance and Deregulation	27.11.08	23.1.09	1(4.2.09)
Tax Agent Services Bill 2008	13(26.11.08)	13.11.08		Treasury	27.11.08	3.2.09	1(4.2.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2009							
Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008	1(4.2.09)	3.12.08		Infrastructure, Transport, Regional Development and Local Government	5.2.09		
Customs Amendment (Enhanced Border Controls and Other Measures) Bill 2008	1(4.2.09)	3.12.08		Home Affairs	5.2.09		
Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008	1(4.2.09)	3.12.08		Attorney-General	5.2.09		
Employment and Workplace Relations Amendment Bill 2008	1(4.2.09)	3.12.08		Employment and Workplace Relations	5.2.09		
Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008	1(4.2.09)	4.12.08		Treasury	5.2.09		
Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008	1(4.2.09)	3.12.08		Health and Ageing	5.2.09		
Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008	1(4.2.09)	3.12.08		Treasury	5.2.09		