

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



Alert Digest

No. 6 of 2009

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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**

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Any Senator who wishes to draw matters to the attention of the
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Appropriation Bill (No. 1) 2009-2010

Introduced into the House of Representatives on 12 May 2009
Portfolio: Finance and Deregulation

Background

This bill appropriates \$71.3 billion to meet payments for the ordinary annual services of the government for the financial year ending 30 June 2010.

The Committee has no comment on this bill.

Appropriation Bill (No. 2) 2009-2010

Introduced into the House of Representatives on 12 May 2009
Portfolio: Finance and Deregulation

Background

This bill appropriates \$10.6 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 2010.

Legislative Instruments Act—exemption Subclause 14(6)

Clauses 12-15 provide for the adjustment of appropriation items. Clause 14 provides a process for the reduction of payment items of bodies within the meaning of the *Commonwealth Authorities and Companies Act 1997* (CAC Act bodies). Subclause 14(1) allows for a request to be made to the Finance Minister to reduce a CAC Act body payment item. Subclause 14(6) provides that such a request is not a legislative instrument.

The explanatory memorandum (at paragraph 39) repeats the substance of subclause 14(6) but does not indicate the reason for the request not being a legislative instrument. The explanation may be the same as that in paragraph 35 of the explanatory memorandum in relation to subclause 13(5) (reducing payments to CAC Act bodies for departmental items), that is, to assist readers. The Committee **seeks the Minister's advice** whether subclause 14(6) has been inserted solely for the benefit of readers, or whether it is designed to exempt the request from the provisions of the *Legislative Instruments Act 2003*.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it 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.

Appropriation Bill (Parliamentary Departments) Bill (No. 1) 2009-2010

Introduced into the House of Representatives on 12 May 2009
Portfolio: Finance and Deregulation

Background

This bill appropriates \$172.7 million to meet the expenses of the parliamentary departments for the financial year ending 30 June 2010.

The Committee has no comment on this bill.

Australian Climate Change Regulatory Authority Bill 2009

Introduced into the House of Representatives on 14 May 2009
Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill establishes the Australian Climate Change Regulatory Authority (Authority) as a statutory authority. The Authority will be responsible for administering the Carbon Pollution Reduction Scheme, the Renewable Energy Target, and the National Greenhouse and Energy Reporting System.

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009 on 1 July 2011. 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. However, 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 explains (at paragraphs 1.85-1.86) the delayed commencement by reference to the bill's linkage to the Carbon Pollution Reduction Scheme Bill.

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

Legislative Instruments Act—exemption Subclause 39(5)

Part 2 (clauses 10-42) contains the provisions for the establishment and operation of the Authority. Clauses 39 and 40 contain the planning and reporting obligations of the Authority. Subclause 39(5) provides that the Minister may give written guidelines to the Chair of the Authority in relation to matters covered by paragraph 39(3)(c) or 39(4)(b) which are relevant to the Authority's corporate plan. Subclause 39(6) provides that a guideline issued under subclause 39(5) is not a legislative instrument but the explanatory memorandum does not explain why this is the case. The Committee **seeks the Minister's advice** whether subclause 39(5) has been inserted solely for the benefit of readers, or whether it is designed to exempt the guidelines from the provisions of the *Legislative Instruments Act 2003*.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it 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.

Reversal of the onus of proof Subclause 43

Subclause 43(1) prohibits disclosure of information by a person who is, or has been, an official of the Authority. Subclause 43(2) reverses the onus of proof so that in a prosecution the defendant would have the burden of proving that an exception applies to exempt him or her from the prohibition against disclosure. The explanatory memorandum explains (at paragraph 1.65) that this is because it is usually peculiarly within the defendant's knowledge as to which, if any, of the exceptions apply. The Committee is satisfied that this explanation accords with current practice.

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

Legislative Instruments Act—exemption Subclause 47(3)

Part 3 (clauses 43-53) regulates disclosure of information under the bill. Subclause 47(1) provides for disclosure of protected information to a Royal Commission. The Chair of the Authority may, in writing, impose conditions on the disclosure (subclause 47(2)). Subclause 47(3) provides that an instrument under subclause 47(2) is not a legislative instrument but the explanatory memorandum does not explain why this is the case. The Committee **seeks the Minister’s advice** whether subclause 47(3) has been inserted solely for the benefit of readers, or whether it is designed to exempt an instrument from the provisions of the *Legislative Instruments Act 2003*.

Pending the Minister’s advice, the Committee draws Senators’ attention to the provision, as it 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.

Legislative Instruments Act – exemption Subclause 48(4)

Similarly, subclause 48(2) provides for disclosure of protected information to an ‘agency, body or person’ if the Chair of the Authority authorises the disclosure in writing. The Chair may, in writing, impose conditions on the disclosure (subclause 48(3)). Subclause 48(4) provides that an instrument under subclause 48(3) is not a legislative instrument. The explanatory memorandum gives no explanation why the instrument is not a legislative instrument. The Committee **seeks the Minister’s advice** whether subclause 48(4) has been inserted solely for the benefit of readers, or whether it is designed to exempt an instrument from the provisions of the *Legislative Instruments Act 2003*.

Pending the Minister’s advice, the Committee draws Senators’ attention to the provision, as it 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.

Car Dealership Financing Guarantee Appropriation Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Treasury

Background

This bill provides an appropriation to enable claims to be paid under the Deed of Guarantee in respect of the Federal Government's Guarantee to Support Interim Funding to Car Dealerships, executed on behalf of the Commonwealth on 23 December 2008. The bill will enable interim liquidity to be provided to car dealer financiers who have encountered financing difficulties as a result of the global financial crisis.

Standing appropriation

Clause 5

Clause 5 provides for an appropriation out of the Consolidated Revenue Fund for the purposes of paying claims under the Deed of Guarantee. Clause 3 states that the Deed of Guarantee is in force from 'time to time'. This is a standing appropriation.

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 Parliament.

The Deed supports 'Interim Funding to Car Dealerships' (clause 3) and the explanatory memorandum states (at page 6) that the financing trust, which was announced in a media release, will be available to advance loans to new financiers until 30 June 2010.

The explanatory memorandum explains (at page 6) that '(t)he Deed of Guarantee will guarantee notes issued by the Trustee during that period. As notes issued by the Trustee will have a 3-year maturity, the Guarantee will continue to apply to the eligible notes until they mature or are retired'. The explanatory memorandum also explains (at page 7) that the 'overall contingent liability for the Australian Government is estimated to be around \$550 million'.

Since there is some limitation on the funds appropriated, and in light of the global economic crisis which is the driving force behind the proposal, the Committee makes no further comment.

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

Carbon Pollution Reduction Scheme Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Climate Change and Water

Background

As the main bill in the package of 10 bills relating to the Carbon Pollution Reduction Scheme, this bill gives effect to Australia's obligations to reduce greenhouse gas emissions under the United Nations Framework Convention on Climate Change and the Kyoto Protocol. The bill contains the detailed framework of the national emissions trading scheme, including:

- the entities and emissions to be covered by the scheme;
- the obligation on liable entities to surrender emissions units corresponding to their emissions;
- limits on the number of emissions units that will be issued;
- the nature of Australian emissions units;
- allocation of Australian emissions units, including by auction and the issue of free units;
- mechanisms to contain costs, including a fixed price period and a price cap;
- linking to other emissions trading schemes;
- assistance in relation to emissions-intensive trade-exposed activities and coal-fired electricity generators;
- voluntary inclusion of reforestation activities under the scheme;
- the Australian National Registry of Emissions Units; and
- monitoring and enforcement.

Delayed commencement

Clause 4

Part 1 (clauses 1-12) contains preliminary matters, including a simplified outline (clause 4) which explains that the scheme begins on 1 July 2011. This would mean a delay in commencement. 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. However, 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 Committee notes that the explanatory memorandum explains (at page 11) that there is ‘a delay in the start of the Scheme of one year, to help Australian businesses to manage the impacts of the global recession’.

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

Insufficiently defined administrative powers

Various clauses

The operation of the scheme established under the bill relies heavily on the use of the Australian Climate Change Regulatory Authority’s website. At least fifty provisions in the bill require the Authority to publish information on its website, remove information from the website, or undertake certain action contingent on, or related to, publication of information on the website (subclauses 23(3), 30(3), 49(3), 133(3)(b), 143A(3), 157(3), 158(3), 180(6), 183(4), 186(3)(a), 186(7), 186(8), 186(9), 187(10)(a), 187(12)(a), 238(3), 261(3), 269, 270, 271(1), 271(2), 272(1), 272(2), 272(3), 272(4), 272(5), 273(1), 273(2), 273(3), 273(4), 274, 275(1), 275(2), 276(1), 276(2), 276(3), 277, 278(2), 278A(2), 278B(2), 278C(2), 278D(2), 278D(3)(d), 278D(3)(e), 278D(3)(f), 278E(2), 278F(2), 278G(1), 294(6), 343(5) and 384(3)).

The Australian Climate Change Regulation Authority Bill 2009 (the related bill in the package which establishes the Authority) gives the Authority the *power* to do all things necessary for the performance of its functions (subclause 12(1)); and its *functions* (set out in clause 11 of the related bill) would include all of the activities prescribed in the relevant sections of the Carbon Pollution Reduction Scheme Bill 2009. While there is no specific power to maintain an efficient website, it is an implied power.

However, since so many of the Authority's activities will be communicated solely via its website, and since those affected by the carbon pollution reduction scheme will be so reliant on the effective operation of the website, the Committee considers that the administrative powers and responsibilities regarding the operation of the website could perhaps be better articulated, or at the very least, closely monitored.

The Committee appreciates that the bill is reflective of a modern approach to the communication and dissemination of information. At the same time, however, the bill is seeking to implement an entirely new scheme with major implications for many stakeholders, including business and the broader community. If a website is to be exclusively relied upon as the source of vital information, it is imperative that the efficient operation of the website, including the availability of up-to-date information, is assured at all times.

The Committee **seeks the Minister's advice** on whether these issues have been considered. In particular, the Committee is interested to ascertain how the Authority will ensure that the website is reliable and up-to-date; how the Authority will make sure that the website is available to, and can be accessed by, all those affected or impacted upon by the operation of the scheme; and whether any of the administrative powers and responsibilities of the Authority regarding the operation of the website will be monitored or assessed to ensure effective operation over time. In this context, the Committee considers that it may be appropriate for a parliamentary committee to be tasked with independent assessment of the operation of the website and the broader issue of utilising the Internet as the only means of information dissemination.

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 insufficiently

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

Apparently excessive powers Clauses 41-43

Division 5 of Part 3 (clauses 41-68) provides for Obligation Transfer Numbers (OTNs). OTNs allow for the transfer of obligations for eligible upstream fuels and synthetic greenhouse gases down the supply chain to re-suppliers or end-users. The Authority will issue OTNs as the result of an application or on its own initiative (clause 41). An applicant must pay a fee (if any) and meet certain other requirements, some of which are prescribed by regulations (subclause 42(2)).

The Authority may also require that a person provide further information in connection with an application, within a specified period. (subclause 43(1)). If they fail to do so, the Authority has an absolute discretion to refuse to consider, or refuse to take any action or further action, in relation to the application (subclause 43(2)). Such a decision by the Authority is not reviewable (see the list of reviewable decisions contained in clause 346).

The Committee notes that there is no obligation on the Authority to assist the applicant to complete the application, and the applicant could lose their application fee and the time involved in resolution of the matter. This is an apparently excessive power, especially during the establishment phase of the scheme. The Committee **seeks the Minister's advice** as to whether it is intended that the Authority will issue guidelines in relation to the exercise of its power in these circumstances.

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

Uncertainty of civil penalty regime Clauses 50A and 330

Division 5 of Part 3 contains provisions imposing obligations on holders of OTNs. For example, clause 50A requires that, if a person who has an OTN entry in the OTN Register changes their address, they must notify the Authority in writing within 14 days of the change. If they fail to do so they are liable to a civil penalty (subclause 50A(2)), but the penalty is unspecified. (This can be compared with the more certain civil penalties in the Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009, such as those in item 172 of Schedule 1 of that bill).

Part 21 (clauses 326-338) of this bill provides for pecuniary penalties for breaches of civil penalty provisions. Clause 328 authorises the Authority to apply to the court for a civil penalty order and clause 329 allows for two or more proceedings for civil penalty orders to be heard together. Clause 330 allows for proceedings for a civil penalty order to be started no later than six years after a contravention. This means that a person who fails to notify a change of address may not know the penalty they face for some time. This is an uncertain penalty and the Committee **seeks the Minister's advice** as to how certainty in relation to the civil penalty regime is intended to be provided.

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.

Standing appropriation Subclause 103B(5)

Subclause 103B(5) provides for an appropriation out of the Consolidated Revenue Fund for the purposes of making payments so that there can be buy-back from persons who have been issued with Australian emission units and do not wish to surrender them. This is a standing appropriation.

In considering 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 Parliament.

The explanatory memorandum (at paragraph 3.47) explains that this facility is limited to requests from 15 July 2011 until 1 December 2012. The appropriation is limited because it ‘will, at most, apply to the number of units that can be issued through the emissions-intensive trade-exposed assistance program, or in accordance with Part 9, for the vintage year beginning on 1 July 2011’.

Since there is a limit on the period and amount of funds that may be appropriated, the Committee considers that this standing appropriation does not raise the same concerns as other standing appropriations to which the Committee has previously drawn the attention of Senators.

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

Standing appropriation Subclause 139(4)

Clause 139(4) provides for an appropriation out of the Consolidated Revenue Fund for the purposes of making payments of interest under subclause 139(2). This would occur when an overpayment has been made by the Authority to a person in error and the overpayment has to be refunded with interest.

The explanatory memorandum (at paragraph 8.66) simply states that overpayments can be refunded. However, since the Commonwealth would be liable to make payments in the circumstances, the Committee makes no further comment.

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

Determination of important matters by legislation

Clause 167

On 29 May 2009, the Committee received a joint letter from OneSteel Ltd and BlueScope Steel Limited drawing the Committee's attention to the regulation-making power in clause 167 (which allows for the creation of the emissions-intensive trade-exposed assistance program in regulations), and arguing that clause 167 inappropriately delegates legislative power by providing for matters which should be contained in the principal Act to be dealt with by subordinate legislation. A copy of the letter is included at the end of this Alert Digest, for the information of readers.

While the Committee considers that the letter raises important issues, the matters raised are larger than this particular bill. The Committee notes that the approach taken in clause 167 reflects current practice. The Student Assistance Amendment Bill 1994 mentioned in the letter is one example of an approach; on the other hand, most of the rules governing entry into Australia are contained in the Migration Regulations because of the need for frequent amendment. Further, since the 1994 bill, the *Legislative Instruments Act 2003* has come into effect and regulations have become more accessible through the Internet.

The Committee **leaves to the Senate as a whole** any consideration of the legislative approach taken in this particular case. However, the Committee flags its intention to examine separately the broader issue of the appropriate delegation of legislative powers in modern circumstances.

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

**Legislative Instruments Act—exemption
Omissions in index of explanatory memorandum
Subclauses 183(5) and 186(10)**

Part 9 (clauses 174-189B) provides for coal-fired electricity generation. Subclause 186(2) provides that the Authority may make a declaration as to whether a generation asset has received a windfall gain. Subclause 186(10) provides that such a declaration is not a legislative instrument. The explanatory memorandum explains (at paragraph 5.68) why such a declaration is not subject to parliamentary scrutiny: it is an administrative decision applicable to one entity, rather than a legislative decision of general application; and the declaration is subject to both merits and judicial review. The Committee notes that the explanation in paragraph 5.68 is not listed in the index to the explanatory memorandum (at page 282).

Clause 183 provides for a second step in the review of a windfall gain by providing the Minister with a discretion to make, or not make, a determination that prevents the issue of free Australian emissions units to a generation asset that is subject to a windfall gain declaration. Subclause 183(5) provides that such a declaration is not a legislative instrument. The explanatory memorandum explains (at paragraph 5.70) that the Ministerial decision is, in effect, another form of review which is already subject to merits and judicial review. As is the case with the explanation in paragraph 5.68, the explanation in paragraph 5.70 is not listed in the index to the explanatory memorandum (at page 282). The Committee **brings these matters to the Minister's attention and seeks her advice** as to whether the index in the explanatory memorandum might be amended to include these important explanations in order to ensure that they are not overlooked by readers.

**Standing appropriation
Subclause 291(4)**

Subclause 291(4) provides for an appropriation out of the Consolidated Revenue Fund for the purposes of making payments of interest under subclause 291(2). This would occur when an overpayment was made by the Authority to a person in error and had to be refunded with interest.

The explanatory memorandum (at paragraph 8.74) does not explain the refund of an overpayment. However, since the Commonwealth would be liable to pay refunds in the circumstances, the Committee makes no further comment.

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

Abrogation of the privilege against self-incrimination Clause 300

Clause 300 would abrogate the privilege against self-incrimination for a person required to provide information or produce a document to the Authority under section 296. However, in the case of an individual, the information given or document produced is not admissible in evidence against that individual:

- in civil proceedings for the recovery of a penalty (other than administrative penalties and late payment penalties in respect of failure to surrender or relinquish units under clauses 133, 135, 287 and 288) (paragraph 300(2)(d)); or
- in criminal proceedings (unless the proceedings are for an offence that relates to information-gathering by the Authority, involving the provision of false or misleading information or documents under section 137.1 or 137.2 of the Criminal Code) (paragraph 300(2)(e)).

The explanatory memorandum explains the reason for the abrogation of the privilege (at paragraphs 9.14, 9.28, 9.30 and 9.31), referring to consistency with the Committee's views and Commonwealth legal policy (at paragraph 9.31).

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

Strict liability
Subclause 307(4)

Subclause 307(4) creates an offence of strict liability where a person ceases to be an inspector and does not, within 14 days, return his or her identity card to the Authority. Inspectors have powers to monitor compliance and substantiate information provided pursuant to the bill.

The Committee will generally draw to Senators' attention any provisions which 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 which accompanies the bill.

In this case, the explanatory memorandum refers to the offence (at paragraph 9.23) and explains that the 'evidential burden is altered' (at paragraph 9.94). The explanatory memorandum states further (at paragraph 9.94) that '(t)his is justified because the punishment is a fine of 1 penalty unit; the approach taken is likely to significantly enhance the effectiveness of the enforcement regime in deterring offences and it will place those appointed as inspectors on notice to guard against the possibility of any contravention'.

However, the explanatory memorandum does not indicate whether the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, issued by the Minister for Justice and Customs in February 2004 (interim new edition released in December 2007), was considered in the course of framing this strict liability offence. The Committee **seeks the Minister's advice** whether the recommendations in the *Guide* were considered in the drafting of this provision.

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.

Abrogation of the privilege against self-incrimination Clause 312

Clause 312 would abrogate the privilege against self-incrimination for a person required to answer questions and produce documents in response to a request from an inspector under clause 311. However, in the case of an individual, the information given or document produced is not admissible in evidence against that individual:

- in civil proceedings for the recovery of a penalty (other than administrative penalties and late payment penalties in respect of failure to surrender or relinquish units under clauses 133, 135, 287 and 288) (paragraph 312(2)(d)); or
- in criminal proceedings (unless the proceedings are for an offence that relates to information-gathering by the Authority, involving the provision of false or misleading information or documents under section 137.1 or 137.2 of the Criminal Code) (paragraph 312(2)(e)).

The explanatory memorandum explains the reason for the abrogation of the privilege (at paragraphs 9.28, 9.30 and 9.31), referring to consistency with the Committee's views and Commonwealth legal policy (at paragraph 9.31).

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

Regulations – incorporating material as in force from time to time Subclauses 384(1) and (3)

Paragraph 384(1)(b) provides that the regulations may make provision in relation to a matter by 'applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing...as in force or existing from time to time'. Subclause 384(3) provides that the text of the particular matter applied, adopted or incorporated, and contained in an instrument or writing, must be published on the Authority's website. The explanatory memorandum gives the example (at paragraph 13.35) of adoption

of a matter contained in a standard published by the International Organization for Standardisation, as in force from time to time.

It follows that the public will, at all times, have access to the current form of the relevant instrument or writing adopted by regulation. Therefore, the Committee, while noting this provision, makes no further comment on it.

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

Carbon Pollution Reduction Scheme Amendment (Household Assistance) Bill 2009

Introduced into the House of Representatives on 28 May 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill is linked to the package of legislation giving effect to the national emissions trading scheme. The bill amends the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, the *Income Tax Assessment Act 1997*, the *A New Tax System (Family Assistance) Act 1999*, the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Veterans' Entitlements Act 1986*, the *Military Rehabilitation and Compensation Act 2004*, the *Income Tax Assessment Act 1936* and the *Medicare Levy Act 1986* to assist low and middle-income households with expected increases in the cost of living arising from the introduction of the Carbon Pollution Reduction Scheme.

The bill provides for increases to pensions, benefit and allowance payments and family tax benefit; and also provides for additional tax offsets and for transitional payments to independent adults in low-income households who do not receive sufficient assistance from other measures set out in the bill.

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009. Subclause 2(1) contains the table of commencement information and provides that Schedules 1, 2, 3, 4 and 5 (Part 1) commence on 1 July 2011, or not at all if the main bill does not commence before 1 July 2011. Part 2 of Schedule 5 commences on 1 July 2012, or not at all if the main bill does not commence before 1 July 2011.

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. However,

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 refers to the bill's linkage to the delayed commencement of the Carbon Pollution Reduction Scheme Bill (for example, see the explanatory memorandum at page 36).

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

Carbon Pollution Reduction Scheme (Charges— Customs) Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill allows for the imposition of charges for the issue of Australian emissions units as the result of an auction, or for a fixed charge, if the charges are taxation and duties of customs within the meaning of section 55 of the Constitution.

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009 on 1 July 2011. 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. However, 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 explains (at page 1) the delayed commencement by reference to the bill's linkage to the Carbon Pollution Reduction Scheme Bill.

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

Carbon Pollution Reduction Scheme (Charges—Excise) Bill 2009

Introduced into the House of Representatives on 14 May 2009
Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill allows for the imposition of charges for the issue of Australian emissions units as the result of an auction, or for a fixed charge, if the charges are taxation and duties of excise within the meaning of section 55 of the Constitution.

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009 on 1 July 2011. 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. However, 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 explains (at page 1) the delayed commencement by reference to the bill's linkage to the Carbon Pollution Reduction Scheme Bill.

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

Carbon Pollution Reduction Scheme (Charges— General) Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill allows for the imposition of charges for the issue of Australian emissions units as the result of an auction, or for a fixed charge, if the charges are taxation within the meaning of section 55 of the Constitution but are neither duties of customs nor duties of excise.

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009 on 1 July 2011. 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. However, 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 explains (at page 1) the delayed commencement by reference to the bill's linkage to the Carbon Pollution Reduction Scheme Bill.

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

Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009

Introduced into the House of Representatives on 14 May 2009
Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill contains consequential amendments to the *National Greenhouse and Energy Reporting Act 2007*, and to taxation legislation, to provide the basis for emissions reporting required under the scheme.

The bill also contains transitional provisions that are necessary as the result of amendments which will transfer the functions of the Greenhouse and Energy Data Officer under the *National Greenhouse and Energy Reporting Act 2007* and the Renewable Energy Regulator under the *Renewable Energy (Electricity) Act 2000* to the Australian Climate Change Regulatory Authority.

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009 on 1 July 2011. 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. However, 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 explains (at page 5 and pages 8-9) the delayed commencement by reference to the bill's linkage to the Carbon Pollution Reduction Scheme Bill.

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

**Insufficiently defined administrative power
Schedule 1, item 110, new definition of ‘activity’**

Item 110 of Schedule 1 would insert a new definition of ‘activity’ in existing section 7 of the *National Greenhouse and Energy Reporting Act 2007*. Under section 9 of that Act, a facility ‘is an activity, or a series of activities (including ancillary activities), that involve the production of greenhouse gas emissions, the production of energy or the consumption of energy’. The definition of ‘facility’ applies to both the National Greenhouse and Energy Reporting Act and the Carbon Pollution Reduction Scheme Bill.

The Australian Climate Change Regulatory Authority can, on application or on its own initiative, declare that an activity or series of activities are a facility (proposed new subsection 54A(1), to be inserted by item 189 of Schedule 1). The explanatory memorandum explains (at paragraph 1.44) that a controlling corporation or a non-group entity could apply to have a facility declared by the Authority.

The new definition of activity in item 110 includes ‘a condition’, ‘a circumstance’, or ‘a state of affairs’ which relate to, amongst other things, ‘other storage’ or ‘any other matter or thing’. The explanatory memorandum states (at paragraph 1.47) that the definition is expanded to allow ‘for the coverage of emissions from solid waste and other things such as stockpiling and storage’.

The Committee notes that, when interpreting the words in the definition of the term ‘activity’, a court or tribunal would also have regard to the words surrounding it. However, the Committee considers that in this case the proposed new definition is so broad that a court or tribunal would have difficulty in doing so. The Committee therefore **seeks the Minister’s advice** as to whether the scope of the definition might 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.

Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Treasury

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill seeks to implement a Carbon Pollution Reduction Scheme fuel credit program to provide transitional assistance to eligible industries such as agriculture, fishing and heavy on-road transport industries, and gaseous fuel suppliers (who will not benefit from the ‘cent-for-cent’ fuel tax reduction made under the Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009).

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009 on 1 July 2011. 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. However, 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 explains (at page 7) the delayed commencement by reference to the bill’s linkage to the Carbon Pollution Reduction Scheme Bill.

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

Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Treasury

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill amends the *Fuel Tax Act 2006*, the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953* as a consequence of the introduction of the Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009 and other administrative arrangements announced by the Federal Government.

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009 on 1 July 2011. 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. However, 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 explains (at page 7) the delayed commencement by reference to the bill's linkage to the Carbon Pollution Reduction Scheme Bill.

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

Coordinator-General for Remote Indigenous Services Bill 2009

Introduced into the House of Representatives on 27 May 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

In November 2008, the Council of Australian Governments (COAG) signed a National Partnership Agreement on Remote Service Delivery to commit the Commonwealth, the states and the Northern Territory to work together with Indigenous communities to improve Indigenous Australians' access to government services, including early childhood, health, housing and welfare services, through a single government interface.

This bill establishes a statutory position of Coordinator-General for Remote Indigenous Services (Coordinator-General) to provide strategic central leadership and coordination of the overall Remote Service Delivery Strategy in Indigenous communities specified by the Minister.

Wide delegation of power

Clause 29

The bill gives the Coordinator-General various powers, including the power to request persons to produce information and documents (paragraph 9(2)(a)), to request persons to attend meetings (paragraph 9(2)(b)), and to report failures to comply with requests made by the Coordinator-General to the Minister (paragraph 9(2)(d)). Clause 29 provides that the Coordinator-General may delegate 'all or any of his or her powers' under the bill (other than clause 27) 'to a member of the Coordinator-General's staff'.

This is a delegation to a large class of persons with 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 these 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. Therefore, the Committee **seeks**

the Minister's advice regarding the potential delegation of powers to a junior officer of the Coordinator-General's staff and why this is considered to be appropriate.

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.

Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Home Affairs

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill amends the *Customs Tariff Act 1995* to ensure that reductions made to the excise rates on fuels (on a ‘cent by cent’ basis to offset the initial price impact on fuel of introducing the Carbon Pollution Reduction Scheme) will also apply to the relevant imported products. Where a relevant excise rate – as defined in the Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 – is reduced, the bill will substitute the same rate to the excise-equivalent customs duty rates.

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009 on 1 July 2011. 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. However, 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 explains (at page 7) the delayed commencement by reference to the bill’s linkage to the Carbon Pollution Reduction Scheme Bill.

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

Customs Tariff Validation Act 2009

Introduced into the House of Representatives on 12 May 2009

Portfolio: Home Affairs

Introduced into the Senate on 12 May 2009 and passed by the Senate on 13 May 2009

Assented to on 13 May 2009

Background

Introduced with the Excise Tariff Validation Bill 2009, this bill provides for the validation of all increased excise-equivalent customs duties demanded or collected between 27 April 2008 and 13 May 2009 (inclusive) as a result of the *Customs Tariff Proposal (No. 1) 2008*. The bill ensures that duty relating to 'alcopops' is taken to have been lawfully imposed and lawfully demanded or collected.

The Committee has no comment on this bill.

Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2009

Introduced into the Senate on 14 May 2009

By Senator Ludlam

Background

This bill provides for the environmentally sustainable use of resources and best practice in waste management by establishing a national Beverage Container Deposit and Recovery Scheme. The scheme would include an environmental levy for beverage containers.

Among other things, the bill:

- sets out the functions of the relevant Department in administering the scheme;
- sets a beverage container environmental levy at 10 cents and also allows a higher amount to be prescribed by regulation;
- requires the levy to be paid within 14 days after the end of the month in which the beverage container was sold to enable the funds to be received by the Department before refunds are reimbursed to authorised depots and transfer stations;
- provides penalties for non-payment of the levy;
- requires all beverage containers to be labelled as refundable;
- requires an authorised collection depot or transfer station to pay a refund of the levy to a person returning a used beverage container;
- requires the Department to review the amount of the refund value at least once every five years; and
- enables the Department to grant exemptions to pay the levy in certain circumstances.

Imposing a levy by regulation Clause 12

The second reading speech and explanatory memorandum explain that the bill establishes a scheme, administered by the relevant Department, to collect a beverage container levy and authorise collection depots and transfer stations. The bill provides for regulations to give effect to the scheme (clause 40). Clause 12 provides that the environmental deposit on each container is 10 cents or a higher amount if prescribed by the regulations. The Committee notes that this could result in imposing a levy by regulation, with no upper limit being set in the bill.

The Committee has consistently drawn attention to legislation that provides for the rate of a levy to be set by regulation. The Committee recognises that where the rate of a levy needs to be changed frequently and expeditiously, this may be better done through amending regulations rather than the enabling statute. Where a compelling case can be made for the rate to be set by subordinate legislation, the Committee expects that there will be some limits imposed on the exercise of this power. For example, the Committee expects the enabling Act to prescribe either a maximum figure above which the relevant regulations cannot fix the levy, or, alternatively, a formula by which such an amount can be calculated.

The vice to be avoided is delegating an unfettered power to impose fees. In this instance, the Committee notes that the explanatory memorandum provides no explanation as to why the rate of the levy would need to be set by regulation. Similarly, the explanatory memorandum gives no explanation of why the primary legislation does not provide some limits on the exercise of the power, such as specifying a maximum amount above which the levy cannot be set by regulation, or a formula for calculating the amount of the levy. Therefore, the Committee **seeks the Senator's advice** in respect of these matters.

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.

Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Treasury

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill amends the *Excise Tariff Act 1921* to cut fuel taxes on a 'cent for cent' basis to offset the initial price impact on fuel of introducing the scheme. The first fuel tax reduction of 2.455 cents per litre will occur on 1 July 2011 with the commencement of the scheme.

Delayed commencement

Clause 2

The commencement of this bill is affected by the delayed commencement of the Carbon Pollution Reduction Scheme Bill 2009 on 1 July 2011. 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. However, 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 explains (at page 7) the delayed commencement by reference to the bill's linkage to the Carbon Pollution Reduction Scheme Bill.

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

Excise Tariff Validation Act 2009

Introduced into the House of Representatives on 12 May 2009

Portfolio: Treasury

Introduced into the Senate on 12 May 2009 and passed by the Senate on 13 May 2009

Assented to on 13 May 2009

Background

Introduced with the Customs Tariff Validation Bill 2009, this bill provides for the validation of all increased excise between 27 April 2008 and 13 May 2009 (inclusive) as a result of the *Excise Tariff Proposal (No. 1) 2008*. The bill ensures that duty relating to ‘alcopops’ is taken to have been lawfully imposed and lawfully demanded or collected.

The Committee has no comment on this bill.

Fair Work Amendment (Paid Parental Leave) Bill 2009

Introduced into the Senate on 13 May 2009

By Senator Hanson-Young

Background

This bill would amend the *Fair Work Act 2009* to provide for a system of paid parental leave for all eligible Australian parents who take time off work upon the birth or adoption of a child. The bill provides for 26 weeks of government-funded paid leave at or around the birth or adoption of a child, at the level of the federal minimum wage (or, if a person's earnings are less than this, at their average wage), with a guaranteed income and a right to return to work at the end of the period of leave.

Delegation of legislative power

Schedule 1, item 2, new subsection 79F(1)

Proposed new subsection 79F(1), to be inserted by item 2 of Schedule 1, would give the Minister and the Treasurer the power to determine, by legislative instrument, a scheme to provide parental leave benefits, including financial benefits (proposed new paragraph 79F(2)(a)), to individuals who are individual contractors or self-employed.

The policy development of a paid parental leave benefits scheme for individual contractors and the self-employed, and the resulting regulatory framework to give effect to that policy, is an integral part of a paid parental leave scheme as a whole. It is not a matter that is suitable for delegation to individual Ministers for regulation by legislative instrument. In addition, the appropriation of funds for the payment of financial benefits cannot be done through legislative instrument.

The Committee therefore considers that this is an inappropriate delegation of legislative power. However, since the provision of paid parental leave is a policy issue, the Committee **leaves to the Senate as a whole** any consideration of this matter.

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

Fair Work (State Referral and Consequential and Other Amendments) Bill 2009

Introduced into the House of Representatives on 27 May 2009
Portfolio: Education, Employment and Workplace Relations

Background

This bill amends the *Fair Work Act 2009* (Fair Work Act) to enable the states to refer matters to the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution with a view to establishing a national workplace relations system. The bill makes transitional arrangements for Victorian employees and employers who are currently covered by the *Workplace Relations Act 1996* (Workplace Relations Act) as a result of a reference of power, and who are expected to be covered by a new reference of power.

The bill also makes transitional and consequential amendments to 67 Commonwealth Acts which refer to parts of the Workplace Relations Act that will be repealed by the bill. The bill also makes more significant amendments to certain other Commonwealth legislation to provide clarity and consistency with respect to the operation of that legislation in the new federal workplace relations system established by the Fair Work Act. The more significant of these amendments are amendments to the *Human Rights and Equal Opportunity Commission Act 1986*, the *Migration Act 1958* (Migration Act), the *Privacy Act 1988*, the *Seat of Government (Administration) Act 1910* and the *Northern Territory (Self-Government) Act 1988*.

Insufficiently defined administrative powers Schedule 2, item 51, subitem 11(2) of new Schedule 6A

Schedule 2 contains amendments to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* to ensure that it operates effectively in relation to transitional and common rules that have effect in relation to Victorian employers and employees under the Victorian reference (see explanatory memorandum at paragraph 66).

Subitem 11(2) of proposed new Schedule 6A, to be inserted by item 51 of Schedule 2, provides for a notification of the cut-off for the state reference public sector transitional award modernisation process. The Fair Work Authority (FWA) must, at least six months before the end of the prescribed period (1 July 2012), advise parties who are still covered by a state reference public sector transitional award about the time limit of 31 December 2013 for making applications for a state reference public sector modern award; as well as the fact that, if no application is made before that time, the FWA will commence the modernisation process in relation to any employees or employers who are still covered by the transitional award.

Subitem 11(2) provides that the FWA ‘may give that advice by any means it considers appropriate’. This gives the FWA a broad discretion in relation to advising people and organisations about their rights and obligations. The explanatory memorandum does not explain why the FWA is required to have unlimited discretion in choosing a method of notification. The Committee therefore **seeks the Minister’s advice** on the reason for granting this broad discretion to the FWA.

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.

Abrogation of the privilege against self-incrimination Schedule 12, item 3, new section 713A

Schedule 12 contains amendments to the Fair Work Act and the Migration Act.

Item 3 of Schedule 12 amends the Fair Work Act by inserting a new section 713A which provides that certain records and documents are inadmissible in evidence in criminal proceedings against an individual. The explanatory memorandum (at paragraph 300) explains that this ‘clarifies the circumstances in which criminal limited use immunity applies to information obtained by an inspector under paragraph 709(e) of the [Fair Work Act]’.

In *Alert Digest No. 14 of 2008*, the Committee drew attention to the abrogation of the privilege against self-incrimination in subclause 713(1) of the Fair Work Bill 2008. The Committee does not see this privilege as absolute, recognising that the public benefit in obtaining information may outweigh the harm to civil rights. One of the factors the Committee considers is the subsequent use that may be made of the incriminating disclosures. In *Alert Digest No. 14 of 2008*, the Committee concluded that subclause 713(1) struck a reasonable balance between the competing interests of obtaining information and protecting people's rights. In the context of the current bill, the Committee welcomes the clarification in the explanatory memorandum of the use that may be made of the incriminating disclosure.

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

Abrogation of the privilege against self-incrimination Schedule 12, item 4, new section 140XG

Item 4 of Schedule 12 amends the Migration Act immediately after the *Migration Amendment (Worker Protection) Act 2008* (Worker Protection Act) comes into force (item 35 in the table to subclause 2(1)). This means that the powers of inspectors that were introduced into the Migration Act by the Workers Protection Act will be amended by this bill to make them 'similar in substance and form to those of Fair Work Inspectors' (explanatory memorandum at paragraph 305). Item 4 of Schedule 12 repeals sections 140X, 140Y, 140Z and 140ZA of the Migration Act (as amended by the Worker Protection Act) and substitutes sections, including proposed new section 140XG which abrogates the privilege against self-incrimination.

Proposed new section 140XG provides that a person is not excused from producing a record or document to an inspector (under paragraph 140XC(d) or subsection 140XF(1)) on the ground that the production of the record or document might tend to incriminate the person or expose the person to a penalty. However, since proposed new subsection 140XG(2) and proposed new section 140XH clarify the use that may be made of the incriminating disclosure (that is, it may not be used against the individual in criminal proceedings), the Committee considers that there is a reasonable balance

between the competing interests of obtaining information and protecting people's individual rights.

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

Fairer Private Health Insurance Incentives Bill 2009

Introduced into the House of Representatives on 27 May 2009

Portfolio: Treasury

Background

Part of a package of three bills, this bill amends the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Private Health Insurance Act 2007*, the *Taxation Administration Act 1953* and the *Taxation (Interest on Overpayments and Early Payments) Act 1983* to give effect to the three new 'Private Health Insurance Incentive Tiers' announced in the 2009-10 Budget. The new arrangements will apply to income years starting on or after 1 July 2010.

The bill will reduce the amount of private health insurance rebate an eligible taxpayer with a complying private health insurance policy is entitled to when they have income for surcharge purposes above the relevant Medicare levy surcharge threshold. The bill will also increase the rate of Medicare levy surcharge that certain taxpayers are liable for when they have income for surcharge purposes above specified thresholds and do not have complying health insurance.

Delayed commencement

Clause 2

Clause 2 provides that the bill commences on the latest day on which either of the two other bills in the package – the Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2009 and the Fairer Private Health Insurance Incentives (Medicare Levy Surcharge—Fringe Benefits) Bill 2009) – receive Royal Assent and 1 July 2010 (item 2 in the table to subclause 2(1)).

The Committee takes the view that, if a specified period is chosen for the commencement of legislation, it is preferable that it be no longer than six months after the date of Royal Assent. The Committee has, in the past, accepted a period of 12 months if the explanatory memorandum contains sufficient justification. In this instance, the explanatory memorandum

provides no explanation for the delay in commencement of the bill. However, the Committee notes that the explanatory memorandum does refer (at page 3) to a media release on 12 May 2009 announcing that this legislation affects income years starting on or after 1 July 2010.

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

Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2009

Introduced into the House of Representatives on 27 May 2009

Portfolio: Treasury

Background

Part of a package of three bills, this bill amends the *Medicare Levy Act 1986* to give effect to the three new 'Private Health Insurance Incentive Tiers' announced in the 2009-10 Budget. The bill inserts the new tier system in order to determine which level of surcharge a person must pay where they do not hold appropriate private health insurance.

The Committee has no comment on this bill.

Fairer Private Health Insurance Incentives (Medicare Levy Surcharge—Fringe Benefits) Bill 2009

Introduced into the House of Representatives on 27 May 2009

Portfolio: Treasury

Background

Part of a package of three bills, this bill amends the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999* to give effect to the three new ‘Private Health Insurance Incentive Tiers’ announced in the 2009-10 Budget. The bill inserts the new tier system in order to determine which level of surcharge a person must pay where they do not hold appropriate private health insurance.

The Committee has no comment on this bill.

Family Assistance Legislation Amendment (Child Care) Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Education, Employment and Workplace Relations

Background

This bill makes amendments to the family assistance law as it relates to child care.

Among other things, the bill amends:

- the *A New Tax System (Family Assistance) Act 1999*, the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Act 2008* and the *Income Tax Assessment Act 1997* to change the name of the rebate from ‘child care tax rebate’ to ‘child care rebate’ (CCR) in recognition of the fact that the rebate is no longer a tax offset under the taxation legislation but is a benefit paid under the family assistance law;
- the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* to align the operation of CCR provisions with child care benefit (CCB) provisions by extending payment of CCR for care provided by an approved child care service to a child of a deceased individual, to an individual who is eligible for CCB in respect of that care in substitution for the deceased individual; and
- the *A New Tax System (Family Assistance) (Administration) Act 1999* so that civil penalties in relation to specific obligations of approved child care services may be imposed through regulations made under that Act.

The bill also contains application, consequential and transitional provisions.

Imposing a penalty by regulation

Schedule 4

Schedule 4 contains provisions amending the *A New Tax System (Family Assistance (Administration) Act 1999* by imposing civil penalties through regulations. The explanatory memorandum refers (at page 31) to section 5.2 of the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* which records the long-standing approach of Commonwealth Parliaments and Governments that penalties should be contained in Acts of Parliament and not regulations. However, since Schedule 4 follows the current (and preferred) practice of prescribing the maximum penalty that may be imposed by regulations, the Committee considers that no further comment is necessary.

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

Retrospective application

Schedule 5, item 10

Item 10 of Schedule 5 contains application provisions relating to proposed new section 195A (contained in item 9 of Schedule 5). Proposed new section 195A provides that when an instrument under the family assistance law imposes an obligation, or confers a permission, on an approved child care service, that obligation or permission is taken to be conferred on the person who is operating the child care service. Subitem 10(1) purports to apply new section 195A to obligations imposed, and permissions conferred, 'before, at or after the commencement' of that section.

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 explanatory memorandum explains (at page 39) that this retrospective application will impose no additional obligation on child care service operators in relation to the retrospective period but does not explain why it is considered necessary. The Committee **seeks the Minister's advice** on the need for the retrospective application of proposed new section 195A.

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.

Financial Assistance Legislation Amendment Act 2009

Introduced into the House of Representatives on 12 May 2009

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Introduced into the Senate on 13 May 2009 and passed by the Senate on 14 May 2009

Assented to on 27 May 2009

Background

This bill amends the *Local Government (Financial Assistance) Act 1995* to provide a mechanism to accelerate the provision of funding through the states to local government in respect of financial assistance grants and untied local road funding. The bill will allow the Minister to permit a state to receive, in the 2008-09 financial year, an amount equivalent to that state's entitlement for the first quarter of 2009-10.

The bill also amends the *Federal Financial Relations Act 2009* to increase the general drawing rights limit for the 2008-09 financial year to \$1,250,000,000 in order to authorise debits from the COAG Reform Fund for the purposes of making grants of general revenue assistance to the states (to allow the Commonwealth to meet its Budget commitments in that regard).

The Committee has no comment on this bill.

Guarantee of State and Territory Borrowing Appropriation Bill 2009

Introduced into the House of Representatives on 27 May 2009

Portfolio: Treasury

Background

This bill provides an appropriation to enable claims to be paid under the Guarantee of State and Territory Borrowing (established in the Deed of Guarantee and the Scheme Rules). The bill also provides a borrowing power, enabling money to be borrowed to pay those claims, should there be insufficient funds in the Consolidated Revenue Fund at the time claims are to be paid.

Standing appropriation

Clause 5

Clause 5 provides for a standing appropriation to pay claims under the Deed of Guarantee. The Committee notes that clause 5 limits the purpose for which the appropriated funds can be used, namely for paying claims under the Deed of Guarantee in accordance with the Scheme Rules and for repaying any borrowing, or paying interest on a borrowing, that has been made in order to raise the funds necessary to pay any claims. Since the purpose of the appropriation is strictly limited, the Committee makes no further comment.

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

Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009

Introduced into the House of Representatives on 28 May 2009
Portfolio: Health and Ageing

Background

This bill amends the *Health Insurance Act 1973* to enable the Minister for Health and Ageing to determine, by legislative instrument, the maximum increase of benefit payable under the Extended Medicare Safety Net (EMSN) for specified Medicare Benefits Schedule (MBS) items. The amendments proposed by the bill aim to create a mechanism by which the Federal Government can responsibly manage expenditure on the EMSN.

The cap on the EMSN benefit would apply to individual MBS items and be payable in addition to the standard Medicare rebate. Each person will be eligible to receive up to the EMSN benefit cap each time that they claim that item. The total out-of-pocket costs incurred by the person for services will still count toward the EMSN threshold amount. Once a person has reached the EMSN threshold, they will continue to be eligible to receive EMSN benefits equal to 80% of their out-of-pocket costs for those items that are not specified in the legislative instrument.

The Committee has no comment on this bill.

Health Workforce Australia Bill 2009

Introduced into the House of Representatives on 13 May 2009

Portfolio: Health and Ageing

Background

This bill establishes Health Workforce Australia (HWA) as a statutory authority under the *Commonwealth Authorities and Companies Act 1997* and specifies the functions, governance arrangements and structure of HWA. HWA will be a National Health Workforce Authority that forms part of the \$1.6 billion health workforce package agreed to by the Council of Australian Governments (COAG) in November 2008.

HWA will be responsible for implementing the majority of initiatives under the COAG package. In particular, HWA will be responsible for funding, planning and coordinating pre-professional entry clinical training across all health disciplines; supporting clinical training supervision; supporting health workforce research and planning, including through a national workforce planning statistical resource; funding simulation training; and providing advice to Health Ministers on relevant national workforce issues.

The Committee has no comment on this bill.

Higher Education Support Amendment (2009 Budget Measures) Bill 2009

Introduced into the House of Representatives on 28 May 2009

Portfolio: Education

Background

This bill amends the *Higher Education Support Act 2003* to implement the Federal Government's reform to the higher education system as announced in the 2009-10 Budget. The bill responds to the Review of Australian Higher Education (Bradley Review) and gives effect to measures to address key findings and recommendations of the Review of the National Innovation System and the House of Representatives inquiry into research training and workforce issues.

In particular, the bill:

- provides for changes to the maximum grant amounts under the Commonwealth Grant Scheme (CGS) for 2010 and 2011 to take account of indexation and measures in the Budget;
- provides funding for new programs to support equality of opportunity and structural adjustment, increased funding for continuing research programs and the introduction of two new programs, Sustainable Research Excellence in Universities and Joint Research Engagement;
- replaces certain Commonwealth Scholarships with revised student income support arrangements and increases Australian Postgraduate Awards;
- provides a new funding cluster for 'education';
- transfers funding for the previous Improving the Practical Component of Teacher Education and Workplace Reform programs to the CGS;
- increase the maximum additional funding an eligible higher education provider can receive for over-enrolment from 5 per cent to 10 per cent;

- varies the purposes for which Other Grants may be made and the eligibility for those grants;
- increases the maximum annual student contribution amount for students studying education and nursing units;
- removes the OS-HELP loan fee from 2010; and
- applies new indexation arrangements to maximum student contribution amounts in 2011, in advance of applying those arrangements more generally in 2012 onwards.

The bill also contains application, saving and transitional provisions.

The Committee has no comment on this bill.

International Monetary Agreements Amendment (Financial Assistance) Bill 2009

Introduced into the House of Representatives on 28 May 2009

Portfolio: Treasury

Background

This bill amends the *International Monetary Agreements Act 1947* to establish a framework for Australia to provide financial assistance to a country in support of World Bank or Asian Development Bank programs.

The bill will allow Australia to enter into a standby loan agreement with Indonesia, as announced by the Prime Minister on 10 December 2008.

Standing appropriation

Schedule 1, item 4, new subsection 8CA(4)

Proposed new section 8CA, to be inserted by item 4 of Schedule 1, provides that the Minister may enter into an agreement for Australia to lend money to a recipient country or enter into a currency swap with a recipient country, for a program of the World Bank or Asian Development Bank. Proposed new subsection 8CA(4) provides for a standing appropriation from the Consolidated Revenue Fund. The explanatory memorandum explains (at page 1) that the Treasurer will release publicly and table in each House of the Parliament a national interest statement relating to an agreement entered into under the bill and, when tabled, such statements will be referred to the Joint Standing Committee on Foreign Affairs, Defence and Trade for inquiry and report. In light of the scrutiny of expenditure under the standing appropriation, the Committee makes no further comment.

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

Migration Amendment (Protection of Identifying Information) Bill 2009

Introduced into the House of Representatives on 27 May 2009
Portfolio: Immigration and Citizenship

Background

This bill amends the *Migration Act 1958* to:

- ensure that all personal identifiers obtained by the Department of Immigration and Citizenship are governed by Part 4A of the Act (which regulates the use, access and disclosure of ‘identifying information’); and
- provide in sections 336FA and 336FB that personal identifiers and personal information must only be disclosed by an officer to the extent necessary in order to obtain help from an individual to identify, authenticate the identity of, or locate the subject in connection with the administration of the Act.

The Committee has no comment on this bill.

Nation-building Funds Amendment Bill 2009

Introduced into the House of Representatives on 12 May 2009
Portfolio: Finance and Deregulation

Background

This bill amends the *Nation-building Funds Act 2008* to repeal the crediting of \$2.5 billion from the 2007-08 Budget surplus to the Education Investment Fund, to allow for that amount to be redirected to the Clean Energy Initiative which was announced in the 2009-10 Budget.

The Committee has no comment on this bill.

Nation Building Program (National Land Transport) Amendment Bill 2009

Introduced into the House of Representatives on 13 May 2009

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Background

This bill makes technical amendments to the *AusLink (National Land Transport) Act 2005*, so that references to AusLink are replaced with references to the National Building Program. This includes changing the name of the *AusLink (National Land Transport) Act 2005* to the *National Building Program (National Land Transport) Act 2009*.

The bill also:

- allows for funding to be approved for projects which are off the National Land Transport Network in both regional and metropolitan areas of Australia;
- allows the Minister to incorporate into any funding conditions set for relevant projects, the terms of a particular matter contained in an instrument or other writing, as in force or existing from time to time;
- allows for a regulation to be made to set a prescribed threshold amount which may provide the Minister with an additional criterion by which to exempt a funding recipient from having to call for public tenders on a project approved under section 9;
- allows the Minister to increase amounts of money payable to a person or body that is specified in the Roads to Recovery Program; and
- allows sites that are on the National Land Transport Network to become eligible for Black Spot Projects' funding.

The bill also contains application and transitional provisions to clarify that AusLink projects are able to continue to receive funding in relation to public

tenders for certain work, the National Land Transport Network, National Projects, Transport Development and Innovation Projects, land transport research entities, Strategic Regional Projects, Black Spot Projects and the Roads to Recovery Program.

Legislative Instruments Act—disallowance
Omission in explanatory memorandum
Schedule 1, items 107 and 109

Proposed new subsection 88(2B), to be inserted by item 107 of Schedule 1, would allow the Minister to vary an amount in the Nation Building Program Roads to Recovery List (List) to increase that amount. Item 109 amends subsection 88(4) to include a new subsection (2B) as an authorised variation of the List. There is no change to existing subsection 88(5) that states that a variation to the List is a legislative instrument but is not subject to section 42 (disallowance) of the *Legislative Instruments Act 2003*.

The explanatory memorandum does not explain that the variation in new subsection (2B) is a legislative instrument, or that it is not subject to disallowance. The Committee **draws this omission to the attention of the Minister** and **seeks his advice** as to whether the explanatory memorandum might be amended to include such a statement to provide greater assistance to readers and those affected by the operation of the legislation.

National Health Amendment (Pharmaceutical and Other Benefits—Cost Recovery) Bill 2008 [No. 2]

Introduced into the House of Representatives on 12 May 2009
Portfolio: Health and Ageing

Background

This bill is identical to a bill introduced into the House of Representatives on 29 May 2008, negatived in the Senate on 28 August 2008, and which the Committee commented on in *Alert Digest No. 4 of 2008*.

The bill amends the *National Health Act 1953* to enable regulations to be made with respect to services provided by the Commonwealth associated with the exercise of powers by the Minister for the Pharmaceutical Benefits Scheme and the National Immunisation Program.

The bill provides that the regulations may include prescription of fees payable in relation to those services provided by the Commonwealth, such as the making of declarations, determinations, agreements and arrangements, and that the Minister may refuse to exercise powers under section 9B and Part VII of the *National Health Act 1953* until a fee is paid.

The bill provides for a commencement date of 1 July 2008. However, the cost recovery regime cannot commence until subordinate regulations are made by the Governor-General.

Retrospective commencement

Clause 2

Clause 2 provides for retrospective commencement of the bill from 1 July 2008. 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 bill establishes a scheme for regulations to be passed to prescribe and recover fees. However, the Minister's second reading speech states that 'the

Government has no intention of introducing the cost recovery regime to allow for the retrospective collection of fees'. The Committee notes that the regulations have been drafted and have been considered by the Senate Community Affairs Committee. In the circumstances, therefore, the Committee **leaves to the Senate as a whole** any further consideration of the bill and the accompanying regulations.

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

Parliamentary Superannuation Amendment (Removal of Excessive Super) Bill 2009

Introduced into the Senate on 14 May 2009

By Senator Fielding

Background

This bill would amend the *Parliamentary Contributory Superannuation Act 1948* to remove excessive superannuation arrangements for federal politicians.

In particular, the bill would:

- terminate the retirement scheme constituted by the *Parliamentary Contributory Superannuation Act 1948*;
- require existing members of the Parliamentary Contributory Superannuation Scheme to choose a complying superannuation fund, in line with the arrangements applying to new parliamentarians since 2004 under the *Parliamentary Superannuation Act 2004*; and
- require the Commonwealth to pay into the complying superannuation funds chosen by existing members, their respective commuted superannuation benefits and ongoing superannuation contributions.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator's bill, was accompanied only by a second reading speech 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 an explanation of the intent and operation of the proposed amendments, preferably in the form of an explanatory memorandum. In this case, the Committee observes that the second reading speech provides some explanation of the background and intent of the bill.

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

**Inappropriate delegation of legislative power
Schedule 1, item 4, new sections 41 and 42**

Proposed new sections 41 and 42, to be inserted by item 4 of Schedule 1, provide for a default fund in the event of a member failing to choose a fund. Proposed new subsection 42(1) allows the Minister to declare a default fund into which contributions would be made (under proposed new subsection 41(2)) if the member has not chosen a fund.

Proposed new subsection 42(2) provides that the Minister's declaration of the default fund must specify the date of the declaration of the default fund and the specified date 'may be the day on which the declaration is signed, or an earlier or later day'. Proposed new subsection 42(5) provides that the Minister may 'revoke a declaration made under subsection (1) at any time'.

As noted above, there is no explanatory memorandum to assist in understanding why the Minister has been given such uncertain latitude in relation to the date of commencement or operation of the default fund. However, the operation of the scheme, including the need for certainty of accrual dates and the requisite characteristics of a default fund are policy matters. In the circumstances, therefore, the Committee **leaves to the Senate as a whole** any consideration of this matter.

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

Private Health Insurance (National Joint Replacement Register Levy) Bill 2009

Introduced into the House of Representatives on 28 May 2009
Portfolio: Health and Ageing

Background

This bill establishes the National Joint Replacement Register Levy which will be imposed on joint replacement prostheses sponsors in order to fund the National Joint Replacement Registry (NJRR).

The levy (maximum of \$5,000) is required to be paid on days to be specified in the Private Health Insurance (National Joint Replacement Register Levy) Rules and on additional days, if any, determined by the Minister. The bill restricts the number of times a levy can be imposed to a maximum of six levies in any financial year.

The Committee has no comment on this bill.

Rural Adjustment Amendment Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Agriculture, Fisheries and Forestry

Background

This bill amends the *Rural Adjustment Act 1992* to allow for the appointment of National Rural Advisory Council (NRAC) members for three terms rather than the current requirement that a person may, on one occasion only, be re-appointed as a member. The bill aims to ensure that current or previous members who have developed expertise in undertaking ‘exceptional circumstances’ assessments through membership for two terms can serve an additional third term and continue to contribute to the NRAC.

The Committee has no comment on this bill.

Safe Work Australia Bill 2008 [No. 2]

Introduced into the House of Representatives on 13 May 2009
Portfolio: Education, Employment and Workplace Relations

Background

This bill is identical to a bill introduced into the House of Representatives on 4 September 2008, negatived in the Senate on 28 August 2008, and which the Committee commented on in *Alert Digest No. 9 of 2008* and in the *Tenth Report of 2009*.

The bill establishes Safe Work Australia (to replace the Australian Safety and Compensation Council) as an independent Commonwealth statutory body to progress harmonisation of occupational health and safety legislation and workers' compensation arrangements across Australia.

The bill:

- details the functions of Safe Work Australia;
- provides for the appointment of members to Safe Work Australia and for the appointment, remuneration, and termination of the Chair and the Chief Executive Officer (CEO);
- requires the development of a three-year strategic plan and annual operational plans, and details the process for approval of those plans by the Workplace Relations Ministers' Council;
- specifies meeting, disclosure of interests, and reporting requirements of Safe Work Australia;
- specifies the functions of the CEO and provides for the appointment of staff under the *Public Service Act 1999*; and
- establishes a Special Account and details the purposes of the Special Account.

**Standing (special) appropriation
Clause 64**

In its *Alert Digest No. 9 of 2008*, the Committee sought the Minister's comments in relation to clause 64. Clause 64 establishes the Safe Work Australia Special Account which is a standing appropriation. The amounts credited to the Special Account will come from the states and territories and the Commonwealth, and will be the subject of an Intergovernmental Agreement.

The Committee sought the Minister's advice as to whether the Commonwealth contribution to Safe Work Australia could be subject to approval through the standard appropriations process, thus ensuring ongoing parliamentary oversight. The Committee also asked whether the activities and functions of Safe Work Australia would be fully funded through the standing appropriation.

The Minister responded that the activities and functions of Safe Work Australia will be fully funded through the Special Account, to which the Commonwealth will contribute 50 per cent. The Commonwealth's contribution will be appropriated through the standard appropriations process and would be subject to normal scrutiny by the Parliament. The Committee was satisfied that this explanation addressed its concerns.

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

Social Security Amendment (Training Incentives) Bill 2009

Introduced into the House of Representatives on 28 May 2009
Portfolio: Education, Employment and Workplace Relations

Background

This bill amends the *Social Security Act 1991* to introduce two major changes to the social security law arising out of the 2009-10 Budget.

First, the bill provides for a temporary training supplement for eligible recipients of parenting payment and Newstart allowance. Second, the bill amends the participation requirements for youth allowance for new and existing recipients who have not completed Year 12 or an equivalent qualification.

The Committee has no comment on this bill.

Social Security and Family Assistance Legislation Amendment (2009 Budget Measures) Bill 2009

Introduced into the House of Representatives on 12 May 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Introduced into the Senate on 13 May 2009 and passed by the Senate on 14 May 2009

Background

This bill gives effect to a number of measures announced as part of the 2009-10 Budget.

Schedule 1 of the bill amends the *Social Security Act 1991* to provide a new ongoing payment, called Carer Supplement, which will be available to a wide range of eligible carers (an estimated 500,000 carers each year). Carer supplement will not be indexed.

In 2009, carer supplement will be paid to people who received a qualifying payment for the period including 12 May 2009. From 1 July 2010, carer supplement will be paid to people who receive a qualifying payment for a period which includes the test day (1 July) each year.

Schedule 1 also amends the *Social Security (Administration) Act 1999* in relation to lump sum benefits and the *Income Tax Assessment Act 1997* to exempt the carer supplement from income tax.

Schedule 2 amends the *A New Tax System (Family Assistance) Act 1999* so that indexation is not applied to higher income thresholds for the Family Tax Benefit Part A higher income free areas, Family Tax Benefit Part B primary earner income limit and the Baby Bonus family income limit from 1 July 2009 to 30 June 2012.

Wide delegation of power Schedule 1, item 7, new section 47AB

Proposed new section 47AB, to be inserted into the *Social Security (Administration) Act 1999* by item 7 of Schedule 1, requires the Secretary to pay the carer supplement to an eligible person ‘in such manner as the Secretary considers appropriate’. The Committee notes that this gives the Secretary very wide latitude.

In administering the Social Security (Administration) Act, the Secretary must have regard to certain principles under section 8 of that Act which include the delivery of services in a ‘fair, courteous, prompt and cost-efficient manner’ (paragraph 8(a)(iii)). However, the Secretary may also delegate any or all of his or her powers to ‘an officer’ under subsection 234(1) of the Act (subject to some limitations). The term ‘officer’ is broadly defined in the Act to include any person engaged by an agency (subsection 234(7)). The Committee **seeks the Minister’s advice** in relation to the rationale for the potential delegation of the broad power contained in proposed new section 47AB.

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.

Social Security and Other Legislation Amendment (Australian Apprentices) Bill 2009

Introduced into the House of Representatives on 28 May 2009
Portfolio: Education

Background

This bill amends the *Income Tax Assessment Act 1997*, the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to exempt the value of payments made under two new programs – Skills for Sustainability for Australian Apprentices and Tools For Your Trade (under the *Australian Apprenticeships Incentives Program*) – from treatment as assessable income for taxation, social security and veterans' affairs purposes. The bill seeks to ensure that eligible Australian Apprentices receive the full benefit of the payments made under the two new programs, and are consistent with the taxation treatment of previous programs that have paid personal benefits to Australian Apprentices.

The Committee has no comment on this bill.

Social Security Legislation Amendment (Digital Television Switch-over) Bill 2009

Introduced into the House of Representatives on 13 May 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill amends the *Social Security (Administration) Act 1999* to enable the implementation of the Digital Switch-over Household Assistance Program which will deliver assistance to eligible households in regions due to make the switch from analog to digital television between 1 January 2010 and 31 December 2011.

A household will qualify for the assistance program where one or more residents are in receipt of the maximum rate of the age pension, the disability support pension, carer payment, the Department of Veterans' Affairs service pension, or income support supplement.

The Committee has no comment on this bill.

Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Bill 2009

Introduced into the House of Representatives on 27 May 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill makes amendments as a consequence of the measures contained in the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 (which makes substantive changes to the qualification provisions for carer payment paid in respect of a child).

Schedule 1 amends the *Social Security Act 1991* to remove references to the terms ‘profoundly disabled child’ and ‘disabled child’ that will be redundant from 1 July 2009, and replaces those references with new terminology related to the new qualification provisions inserted by the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009.

Schedules 2 and 3 amend the *Social Security (Administration) Act 1999* and the *Veterans’ Entitlements Act 1986* consequential to the repeal of the qualification provisions for carer payment that utilise the terms ‘profoundly disabled child’ and ‘disabled child’ and the insertion of new qualification provisions for carer payment. Schedule 2 also provides for the backdating of claims for carer payment made on or after 1 July 2009 and before 1 October 2009.

The Committee has no comment on this bill.

Tax Laws Amendment (2009 Budget Measures No. 1) Bill 2009

Introduced into the House of Representatives on 27 May 2009

Portfolio: Treasury

Background

This bill amends various taxation laws to implement a range of 2009-10 budgetary savings measures.

Schedule 1 amends section 23AG of the *Income Tax Assessment Act 1936*, to limit its scope to foreign employment income derived by Australian resident individuals only in specific circumstances.

Schedule 2 amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to temporarily reduce the matching rate and maximum co-contribution that is payable on an individual's eligible personal superannuation contributions, taking effect for the 2009-10 and later income years.

Schedule 3 amends the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to reduce the concessional superannuation contributions cap to \$25,000 per annum (indexed) from the 2009-10 financial year. Schedule 3 will also reduce the transitional concessional contributions cap (applicable to individuals aged 50 and over) to \$50,000 per annum (not indexed) for the 2009-10, 2010-11 and 2011-12 financial years.

The Committee has no comment on this bill.

Tax Laws Amendment (2009 Measures No. 3) Bill 2009

Introduced into the House of Representatives on 14 May 2009

Portfolio: Treasury

Background

This bill amends various taxation laws to implement a range of changes.

Schedule 1 amends the *Taxation Administration Act 1953* to set the GDP (gross domestic product) for the 2009-10 income year at 2 per cent. This measure applies in relation to pay as you go (PAYG) instalment amounts for the 2009-10 income year that become due on or after the date of commencement.

Schedule 2 amends the *Taxation Administration Act 1953* and the *Income Tax Assessment Act 1997* to allow taxpayers who are voluntarily registered for the goods and services tax (GST), and who choose to remit GST annually, to choose to make their PAYG instalments annually if they satisfy the other eligibility tests for annual PAYG instalments.

Schedule 3 amends the *Petroleum Resource Rent Tax Assessment Act 1987* to:

- introduce a functional currency rule into the petroleum resource rent tax, along similar lines to the function currency rule in the *Income Tax Assessment Act 1997*;
- introduce a modified 'look-back' rule for exploration expenditure related to a production licence derived from an exploration permit and a retention lease;
- introduce internal petroleum provisions (similar to the external petroleum provisions) to deal with the case where project petroleum is processed for a tolling fee, or acquired for processing, by a person who has an interest in the project for, (if processed) or from (if acquired), another person who has an interest in the same project; and

- extend the offshore exploration incentive for designated frontier areas by one year so it applies to the 2009 annual offshore acreage release.

Schedule 4 amends the *Income Tax Assessment Act 1997* to update the list of deductible gift recipients to include three new organisations.

Retrospective effect

Clause 2

Clause 2 provides that some of the provisions in Schedule 3 (which amend the *Petroleum Resource Rent Tax Assessment Act 1987*) commence on 1 July 2008, giving them retrospective effect.

As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance, the Committee notes that the explanatory memorandum (at pages 8-9) explains that the measures will have no adverse implications for taxpayers; and that some of the relevant measures were announced on 13 May 2008 and a measure applying to the 2009-10 financial year was announced on 12 May 2009.

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

Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2009

Introduced into the House of Representatives on 28 May 2009

Portfolio: Treasury

Background

This bill amends the *Medicare Levy Act 1986* to:

- increase the Medicare levy low-income thresholds for individuals and families and increase the dependent child/student component of the family threshold; and
- increase the Medicare levy low-income threshold for pensioners below age pension age so that they do not a Medicare levy liability where they do not have an income tax liability.

The bill also amends the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999* to increase the Medicare levy surcharge low-income threshold in line with movements in the consumer price index.

The increases apply from the 2008-09 year of income and in later years of income.

The Committee has no comment on this bill.

Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2009

Introduced into the House of Representatives on 28 May 2009

Portfolio: Veterans' Affairs

Background

This bill amends the *Military Rehabilitation and Compensation Act 2004*, the *Veterans' Entitlements Act 1986*, the *Defence Service Homes Act 1918* and the *Income Tax Assessment Act 1997* to:

- enable certain Veterans' Affairs pensions, allowances and other pecuniary benefits to be paid into an account with a bank or similar financial institution that is outside Australia;
- extend eligibility for the Defence Service Homes Insurance Scheme to persons eligible under the *Defence Home Ownership Assistance Scheme Act 2008*; and
- cease payment of the majority of dependants' pensions and provide for a lump sum payment (to be exempt from income tax) to existing recipients.

The Committee has no comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Employment and Workplace Relations Amendment Bill 2008

On 14 May 2009, the Senate agreed to a number of government amendments to the bill, none of which fall within the Committee's terms of reference. On 25 May 2009, the House of Representatives also agreed to these amendments.

On 14 May 2009, the Senate agreed to three government requests for amendments, including the commencement of certain amending provisions in the *Safety, Rehabilitation and Compensation Act 1988* which are contained in Schedule 1 of the bill. The three requested amendments result in retrospective commencement.

Retrospective commencement

Requested amendments Nos. 1-3

When there is retrospective commencement, the Committee looks to the explanatory memorandum for an explanation of the need for that retrospectivity and an assurance that it will not have a detrimental effect.

Amendment No. 1 amends the information table in clause 2 of the bill. In item 2 of the table, the reference to Schedule 1 would be deleted and replaced so that items 3, 4 and 5 of Schedule 1 will be deemed to have commenced on 13 May 2008. The supplementary explanatory memorandum explains that these items 'prescribe an increase in the amount of compensation for the benefit of dependants to \$400,000 and an increase in compensation for the benefit of children to \$110 per week. Items 3, 4 and 5 of Schedule 1 will have a beneficial effect'.

Amendment No. 2 amends item 6 of Schedule 1, with the effect that the level to which the maximum amount of compensation payable is increased (in the amended items 3 and 4 of Schedule 1). This will commence on or after 13 May 2008. The explanation in the supplementary explanatory memorandum is set out above.

Amendment No. 3 amends item 7 of Schedule 1, with the effect that the amount of weekly compensation is increased (in the amended item 5 of

Schedule 1). This will commence on or after 13 May 2008. The explanation in the supplementary explanatory memorandum is also set out above.

The Committee notes that the explanation provided in the supplementary explanatory memorandum in relation to each provision provides an assurance of no detrimental effect but does not explain the need for retrospective commencement. While the Committee recognises that the requests for amendments have already been agreed to by the Senate and the requested amendments were made by the House of Representatives on 25 May 2009, it nevertheless **draws to the attention of Senators** the existence of these instances of retrospective commencement.

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

Tax Laws Amendment (Small Business and General Business Tax Break) Bill 2009

On 13 May 2009, the House of Representatives agreed to four amendments to the bill, none of which fall within the Committee's terms of reference. On 14 May 2009, the Senate passed the bill as amended. The bill received Royal Assent on 22 May 2009.

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
Carbon Pollution Reduction Scheme Bill 2009	Subclause 311(3)	Failure to answer questions or provide documents to an inspector	60 penalty units
Family Assistance Legislation Amendment (Child Care) Bill 2009	Schedule 5, item 16, proposed subsection 219M(5)	Failure to provide information to a public authority	Imprisonment for six months or 30 penalty units, or both

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

The Chairs and Deputy Chairs of Commonwealth, and state and territory Scrutiny Committees have noted (most recently in 2000) 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 identification of national schemes of legislation, the Committee's practice is to note bills that give effect to such schemes as they come before the Committee for consideration.

Coordinator-General for Remote Indigenous Services Bill 2009

This bill establishes a statutory position of Coordinator-General for Remote Indigenous Services. In November 2008, the Council of Australian Governments (COAG) signed a National Partnership Agreement on Remote Service Delivery. Through this agreement, the Commonwealth, the states and the Northern Territory made a commitment to work together with Indigenous communities to improve access to government services. Reporting directly to the Minister for Families, Housing, Community Services and Indigenous Affairs, the Coordinator-General for Remote Indigenous Services will work with the Commonwealth and state/territory governments to achieve outcomes against COAG's 'Closing the Gap' targets in remote locations specified by the Minister.

Health Workforce Australia Bill 2009

This bill establishes Health Workforce Australia (HWA) which will be a National Health Workforce Authority that forms a critical component of the \$1.6 billion health workforce package agreed to by the COAG in November 2008. HWA will be responsible for implementing the majority of initiatives under the COAG workforce package.

The Commonwealth will provide \$125 million over four years for the establishment and operation of HWA. A further \$1.2 billion in combined

Commonwealth and states/territory funding will be administered through HWA over four years for the majority of initiatives under the COAG health workforce package.

Safe Work Australia Bill 2008 [No. 2]

This bill establishes Safe Work Australia as an independent national body to progress harmonisation of occupational health and safety legislation and workers' compensation arrangements across Australia. In July 2008, the Commonwealth and the states/territories formally committed to such harmonisation through the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety. This agreement commits the Commonwealth and all states/territories to the adoption of approved model legislation and also provides that Safe Work Australia will be jointly funded by the Commonwealth and the states/territories.

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
	Australian Business Investment Partnership Bill 2009 — clauses 13 and 14
	Car Dealership Financing Guarantee Appropriation Bill — clause 5
	Carbon Pollution Reduction Scheme Bill 2009 — subclauses 103B(5), 139(4) and 291(4)
*	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
*	Federal Financial Relations Bill 2009 — clause 22
*	Federal Financial Relations (Consequential Amendments and Transitional Provisions) Bill 2009 — Schedule 4, subitem 2(3)

*	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 of State and Territory Borrowing Appropriation Bill 2009 — clause 5
*	Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008 — clause 5
	International Monetary Agreements Amendment (Financial Assistance) Bill 2009 — Schedule 1, item 4, subsection 8CA(4)
*	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>)
	Safe Work Australia Bill 2008 [No. 2] — 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
*	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).
*	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).



onesteel

29 May 2009

Senate Scrutiny of Bills Committee
PO Box 6100
Parliament House
Canberra ACT 2600

C/ - Committee Secretary

By fax and email: (02) 6277 5838 / scrutiny.sen@aph.gov.au

Dear Senators Coonan, Bishop, Cameron, Collins, Siewart and Troeth

Carbon Pollution Reduction Scheme Bill 2009

We understand that the Senate Scrutiny of Bills Committee ("**Committee**") is due to consider the Carbon Pollution Reduction Scheme Bill 2009 ("**CPRS Bill**") on Tuesday, 2 June 2009 and that, pursuant to the Committee's standing terms of reference, one of the matters to be considered by the Committee is whether the CPRS Bill inappropriately delegates legislative powers.

In our view, the regulation-making power contained in clause 167 of the CPRS Bill inappropriately delegates legislative power. It provides that matters which should be regulated by Parliament are to be dealt with by subordinate legislation. Details of the EITE assistance program should be created and maintained in the CPRS Bill.

EITE assistance program

An assistance program for emissions-intensive trade-exposed industries ("**EITE assistance program**") has formed a fundamental element of the Government's Carbon Pollution Reduction Scheme through all stages of scheme design and parliamentary process. The Government's Green Paper, White Paper and Explanatory Memorandum for the CPRS Bill all contained details of how the EITE assistance program was intended to operate, including:

- o Eligibility criteria for EITE assistance;
- o The level of assistance to be provided to EITE activities; and
- o The timing and rate of decay in EITE assistance.

None of these fundamental elements of the EITE assistance program have been included in the CPRS Bill. Nor has the Government published a draft of the regulations for the EITE assistance program. Instead, Section 167 of the CPRS Bill only provides that the regulations *may* formulate an EITE assistance program.

This amounts to an inappropriate delegation of legislative power for the following reasons:

- The EITE assistance program forms a fundamental element of the Carbon Pollution Reduction Scheme. It is appropriate that this fundamental element be subject to the transparency and scrutiny provided by the parliamentary process.
- While details of the EITE assistance program have been provided in Government papers, and policy changes have been announced as they have occurred, no draft legislation or regulations have been published to date which contain the details of the EITE assistance program. This means that, in considering and voting on the CPRS Bill, the Senate does not have before it draft legislation covering all key aspects of the scheme.
- The CPRS Bill does not require that an EITE assistance program be established, it simply provides that one "may" be. The inclusion of the EITE assistance program in the regulations rather than the CPRS Bill does not provide the Senate or affected industries with sufficient clarity or certainty regarding whether and to what extent the Government will in fact establish and maintain EITE assistance. This uncertainty is heightened because regulations may be disallowed by either House of Parliament, meaning a key element of the scheme could be cancelled at any time by the government or combined opposition parties of the day.
- The treatment of EITE industries under the CPRS Bill is inequitable compared with the treatment of other industries. The CPRS Bill describes the circumstances in which coal-fired generators will receive assistance whereas it does not for EITE industries.

Previous examples of inappropriate delegation of legislative power

The CPRS Bill raises similar issues as were considered by the Committee in relation to the Student Assistance Amendment Bill 1994, which established schemes for ABSTUDY and Assistance for Isolated Children but left most of the relevant details about how to qualify for the schemes to regulations, including:

- the kinds of benefits that may be paid and their value;
- conditions for getting benefits;
- when benefits will be payable; and
- means tests relating to students, parents and spouses¹.

As is the case for the EITE regulations, the rules to be contained in the student assistance regulations were expected to be subject to frequent amendment. The Committee noted that the ability to make frequent amendments was a weakness in the scheme as it created a legislative maze. Similarly, the EITE program is likely to become overly complex and uncertain if it is subject to regular modification.

¹ Senate Scrutiny of Bills Committee, *The Work of the Committee during the 37th Parliament*, <http://www.aph.gov.au/senate/Committee/scrutiny/work37/report/c05.htm>

Previous submissions and changes to the draft legislation

The Bureau of Steel Manufacturers of Australia has previously made submissions to both the Department of Climate Change and to the Senate Standing Committee on Economics in response to the Exposure Draft of the CPRS Bill regarding this issue.

The Government appears to have responded to these submissions by including additional detail in the CPRS Bill regarding the basis on which the five-yearly independent reviews of assistance will be conducted (refer to section 353(1)(h) of the CPRS Bill), but has not provided any additional certainty to EITE industries in the CPRS Bill regarding the fundamental elements of the EITE assistance program that will be established from scheme commencement.

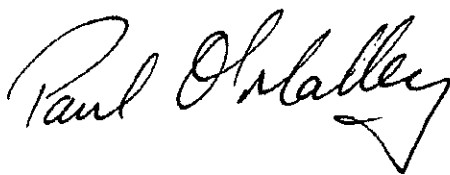
Conclusion

In light of the importance of the EITE assistance program for Australian industry and the Carbon Pollution Reduction Scheme, it is crucial that the transparency and scrutiny afforded to a bill are applied to the details of the program. In its review of the Student Assistance Amendment Bill, the Committee pointed out that the entitlements of social security clients are fully spelled out in the relevant Act and adequately changed by amendments to that Act. The EITE assistance program should likewise be created and maintained in an Act.

Yours faithfully,



Geoff Plummer
Managing Director & Chief Executive Officer
OneSteel Ltd



Paul O'Malley
Managing Director & Chief Executive Officer
BlueScope Steel Limited

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	12.2.09	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	12.2.09	Infrastructure, Transport, Regional Development and Local Government	5.2.09	10.3.09	2(11.3.09)
<i>Civil Aviation Amendment Act 2009</i>	3(11.3.09)	12.2.09	11.3.09	Infrastructure, Transport, Regional Development and Local Government	12.3.09	12.5.09	4(13.5.09)
Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009	4(18.3.09)	12.3.09	17.3.09	Special Minister of State	19.3.09	22.4.09	4(13.5.09)
Customs Amendment (Enhanced Border Controls and Other Measures) Bill 2008	1(4.2.09)	3.12.08	10.3.09	Home Affairs	5.2.09	23.2.09	2(11.3.09)
Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008	1(4.2.09)	3.12.08	12.2.09	Attorney-General	5.2.09	27.2.09	2(11.3.09)
Employment and Workplace Relations Amendment Bill 2008	1(4.2.09)	3.12.08	12.2.09	Employment and Workplace Relations	5.2.09	16.3.09	3(18.3.09)
Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009	5(13.5.09)	19.3.09		Education, Employment and Workplace Relations	14.5.09		
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Bill 2009	5(13.5.09)	19.3.09		Treasury	14.5.09		
Fuel Quality Standards Amendment Bill 2009	5(13.5.09)	18.3.09		Environment, Heritage and the Arts	14.5.09		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Higher Education Support Amendment (VET FEE-HELP and Providers) Bill 2009	5(13.5.09)	18.3.09		Education	14.5.09		
National Greenhouse and Energy Reporting Amendment Bill 2009	5(13.5.09)	18.3.09		Climate Change and Water	14.5.09		
Native Title Amendment Bill 2009	5(13.5.09)	19.3.09		Attorney-General	14.5.09		
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009	5(13.5.09)	19.3.09		Resources and Energy	14.5.09	1.6.09	5(2.6.09)
Tax Laws Amendment (2009 Measures No. 2) Bill 2009	5(13.5.09)	19.3.09		Treasury	14.5.09	28.5.09	5(2.6.09)
Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008	1(4.2.09)	4.12.08	12.2.09	Treasury	5.2.09	11.3.09	3(18.3.09)
Therapeutic Goods Amendment (2009 Measures No. 1) Bill 2009	5(13.5.09)	19.3.09		Health and Ageing	14.5.09		
Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008	1(4.2.09)	3.12.08	3.12.08	Health and Ageing	5.2.09	12.2.09	2(11.3.09)
Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008	1(4.2.09)	3.12.08	12.2.09	Treasury	5.2.09	11.3.09	3(18.3.09)
<i>Transport Safety Investigation Amendment Act 2009</i>	3(11.3.09)	12.2.09	11.3.09	Infrastructure, Transport, Regional Development and Local Government	12.3.09	5.5.09	4(13.5.09)

