

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



**Alert Digest**

**No. 1 of 2005**

**9 February 2005**



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# Senate Standing Committee for the Scrutiny of Bills

## Members of the Committee

Senator R Ray (Chair)  
Senator B Mason (Deputy Chair)  
Senator G Barnett  
Senator D Johnston  
Senator G Marshall  
Senator A Murray

## Terms of Reference

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
  - (iv) inappropriately delegate legislative powers; or
  - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.



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This Digest is circulated to all Honourable Senators.  
Any Senator who wishes to draw matters to the attention of the  
Committee under its terms of reference is invited to do so.

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- **The Committee has commented on these bills**

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## **A New Tax System (Goods and Services Tax Imposition (Recipients)—Customs) Bill 2004**

[Introduced in the House of Representatives on 8 December 2004. Portfolio: Treasury]

Introduced with the Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004 and two other imposition bills, the bill imposes a goods and services tax on recipients of taxable supplies made under a long-term non-reviewable contract, to the extent that it is a duty of customs.

*The Committee has no comment on this bill.*

## **A New Tax System (Goods and Services Tax Imposition (Recipients)—Excise) Bill 2004**

[Introduced in the House of Representatives on 8 December 2004. Portfolio: Treasury]

Introduced with the Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004 and two other imposition bills, the bill imposes a goods and services tax on recipients of taxable supplies made under a long-term non-reviewable contract, to the extent that it is a duty of excise.

*The Committee has no comment on this bill.*

## **A New Tax System (Goods and Services Tax Imposition (Recipients)—General) Bill 2004**

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Treasury]

Introduced with the Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004 and two other imposition bills, the bill imposes a goods and services tax on recipients of taxable supplies made under a long-term non-reviewable contract, to the extent that it is neither a duty of customs, nor a duty of excise.

*The Committee has no comment on this bill.*

## AusLink (National Land Transport) Bill 2004

[Introduced in the House of Representatives on 9 December 2004. Portfolio: Transport and Regional Services]

The bill establishes a new framework for Australian Government funding of land transport infrastructure. It requires the Minister to determine a National Land Transport Network, consisting of nationally significant road and rail links.

The bill provides for funding of relevant projects and activities, and sets out the conditions that apply to Commonwealth funding and approval of AusLink projects. The bill also extends funding for the Roads to Recovery Program until 30 June 2009.

### **Parliamentary scrutiny of the exercise of legislative power**

One of the key principles underlying the work of the Scrutiny of Bills Committee is that Parliament properly carry out its legislative function. Parliament should not inappropriately delegate its legislative power to the Executive and, where it does delegate legislative powers, Parliament must address the question of how much oversight it should maintain over the exercise of the delegated power.

The criterion in standing order 24(1)(a)(v) requires that the Committee draw to the attention of the Senate provisions which seek to delegate legislative power but fail to provide for the proper auditing of its use.

One area in which a bill may insufficiently subject the exercise of delegated power to parliamentary scrutiny is in giving a power to make subordinate legislation which is not to be tabled in the Parliament or, where tabled, is free from the risk of disallowance. These issues are directly raised where a provision declares that an instrument (that appears to be legislative in character) is *not* a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. That Act, which commenced on 1 January 2005, provides the general framework for the registration, tabling, disallowance and ‘sunsetting’ of legislative instruments. It also provides means to exclude specific instruments from aspects of the tabling and disallowance regime.

This bill raises, across a variety of provisions, the question of the adequacy of parliamentary oversight of delegated legislation. These are addressed below. One difficulty the Committee has found in considering this legislation is that, in a number of areas, there is little provided by way of explanation to justify the exclusion of instruments from the usual tabling and disallowance regime. As a general rule, the Committee would expect the explanatory memorandum accompanying a bill to provide sufficient explanation to enable the Committee and, indeed, the Parliament to assess the need for such an exclusion.

### **Legislative Instruments Act – Disallowance and sunset provisions**

#### **Subclause 5(4)**

Subclause 5(1) requires the Minister to determine, in writing, a National Land Transport Network. Subclause 5(4) provides that such a determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but goes on to provide that neither section 42 of that Act (which relates to the disallowance of legislative instruments) nor Part 6 (which relates to the sunsetting of such instruments) applies to the instrument.

The explanatory memorandum seeks to justify this exemption by noting that the ‘composition of the Network to be covered by the initial determination has been the subject of inter-governmental consultation, and subsequent policy consideration and wide dissemination by the Government’ and for that reason would be inappropriate to be subject to disallowance.

The Committee considers that the level of consultation described in the explanatory memorandum is appropriate, given the complexity the task of determining a national transport network and the number of competing interests involved. The Committee does not, however, see this as necessarily precluding parliamentary scrutiny of the ministerial determination, especially given the breadth of the discretion involved and given that the Minister, in exercising this discretion, would clearly be exercising legislative power. The Committee considers that this provision may be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny, but **leaves for the Senate as a whole** the question of whether the proposal to exclude this determination from the usual disallowance and sunset regime is appropriate

*The Committee draws Senators' attention to the provisions, as they may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference.*

## **Legislative Instruments Act – Application**

### **Various clauses**

A large number of provisions in the bill state that an instrument to be made by the Minister is *not* a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The provisions are contained in subclauses 9(2), 17(4), 24(3), 25(5), 26(4), 27(4), 29(2), 35(4), 37(4), 43(4), 46(6), 53(2), 59(4), 61(4), 67(4), 76(4), 78(4), 85(4), 89(5) and 91(4).

In each case, the explanatory memorandum says no more than is contained in the relevant subclause and gives no reason for this exclusion. The instrument referred to in each of those subclauses must, presumably, be of a legislative character. In the absence of these provisions, each instrument would be a legislative instrument, and, as such, subject to scrutiny by the Regulations and Ordinances Committee and to disallowance by the Senate. As noted above, the Committee would generally expect the explanatory memorandum to set out the justification for such provisions. In the absence of that explanation, the Committee **seeks the Minister's advice** as to the reason for all these exclusions from the *Legislative Instruments Act*.

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

**Legislative Instruments Act – Disallowance and sunset provisions  
Subclauses 27(4), 44(4), 68(4), 86(4) and 90(6)**

Various provisions in this bill permit the Minister to determine conditions that apply to the provision of funding for various transport projects. However, in each case the clause concludes by providing that any ‘instrument determining, varying or revoking conditions is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 [relating to disallowance] nor Part 6 [relating to sunset] of that Act applies to the instrument.’ The provisions containing this standard form exclusion are subclauses 27(4), 44(4), 68(4), 86(4) and 90(6).

In each case the explanatory memorandum says no more than ‘Conditions specified in ministerial determinations would be in the nature of contractual conditions between contracting parties. Accordingly, exemption from the disallowance provisions and sunset provisions of the *Legislative Instruments Act 2003* is considered appropriate.’ The Committee **seeks from the Minister** a fuller explanation for these instruments, which are declared to be legislative in character, not being subject to oversight and (if necessary) disallowance by the Senate.

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

**Legislative Instruments Act – Disallowance and sunset provisions  
Subclause 87(2)**

Subclause 87(1) requires the Minister to determine and publish an AusLink Roads to Recovery List. Subclause 87(2) then provides that this determination ‘is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 nor Part 6 of that Act applies to the instrument.’

The explanatory memorandum seeks to justify this exclusion by noting that the ‘list of funding recipients and their funding allocations is central to the

administration of the Roads to Recovery Program. Local government authorities will be expecting to continue to receive funding under a relatively seamless transition from the current programme which expires on 30 June 2005. The listing of funding recipients follows existing practice, is well known to local government, and is not subject to disallowance.’ The Committee is prepared to accept this explanation as a justification for the exclusion of this instrument from the usual disallowance and sunset regime.

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

### **Legislative Instruments Act – Disallowance and sunset provisions Subclause 88(1)**

Subclause 88(1) permits the Minister to vary the AusLink Roads to Recovery List referred to in clause 87, but only – by virtue of subclauses 88(3) and (4) – to correct an error or to update the name of a person or body on the List. Subclause 88(5) then provides that such a variation ‘is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 nor Part 6 of that Act applies to the instrument.’

The explanatory memorandum seeks to justify this exclusion by noting that ‘Variations to the List are limited to those necessitated by administrative circumstances. As such they are not considered appropriate for disallowance. The sunset provisions of the *Legislative Instruments Act 2003* would have no practical effect.’ The Committee is prepared to accept this explanation as a justification for the exclusion of this instrument from the usual disallowance and sunset regime.

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

## **AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004**

[Introduced in the House of Representatives on 9 December 2004. Portfolio: Transport and Regional Services]

The bill makes transitional arrangements relating to the commencement of the AusLink (National Land Transport) Act.

### **Legislative Instruments Act – Disallowance and sunset provisions Subitem 2(6)**

Subitem 2(1) of Schedule 2 permits the Minister to determine that various approvals to funding given under earlier legislation are to be taken to be approvals under the new AusLink legislation, and subitem 2(3) permits the Minister to vary such a determination to correct an error. Subitem 2(6) then provides that a determination, or its variation, is ‘a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but neither section 42 nor Part 6 of that Act applies to the instrument.’

The explanatory memorandum seeks to justify this exclusion by noting that the ‘disallowance provisions and the sunset provisions of [the Legislative Instruments] Act will not apply. This is because the determination is a routine machinery measure to enable all AusLink projects to be administered under the same legislation.’ The Committee is prepared to accept this explanation as a justification for the exclusion of this instrument from the usual disallowance and sunset regime.

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

## Australian Sports Commission Amendment Bill 2004

[Introduced in the Senate on 8 December 2004. Portfolio: Arts and Sport]

The bill provides for the disclosure by the Australian Customs Service to the Australian Sports Commission (ASC) of protected personal information for 'permitted anti-doping purposes', defined in new section 51AA. The bill also facilitates the use of this information by the ASC and sporting organisations in anti-doping processes.

### Retrospective application

#### Schedule 1, item 8

By virtue of item 8 of Schedule 1 to this bill, the amendments made by that Schedule are to apply 'in relation to protected information, whether disclosed to the Commission before, on or after the commencement' of that item. 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 seeks to justify this retrospective application by noting that the Australian Sports Commission [ASC] 'already holds information which may be relevant to anti-doping policies. If this information cannot be used and disclosed under the proposed amendments, individuals to whom the information relates could gain an unfair advantage in sporting competitions. For example, an athlete who is taking a banned substance in breach of anti-doping policies, and about whom Customs has already disclosed protected information to the ASC, could gain an unfair advantage over other athletes, if the ASC were not able to use and disclose the information, as intended by the proposed amendments.'

Clearly there is the potential for this provision to operate to the detriment of some individuals. The Committee considers that this provision may be regarded as trespassing on personal rights and liberties. The Committee **leaves for the Senate as a whole** the question of whether the bill *unduly* trespasses on those rights.

*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.*

## **Authorised Deposit-taking Institutions Supervisory Levy Imposition Amendment Bill 2004**

[Introduced in the House of Representatives on 12 August 2004 and reintroduced 9 December 2004. Portfolio: Treasury]

This bill is part of a package of seven bills that implement the new financial sector levy setting framework set out in the government response to the 'Review of Financial Sector Levies'.

The bill also contains application and transitional provisions.

*The Committee has no comment on this bill.*

## **Authorised Non-operating Holding Companies Supervisory Levy Imposition Amendment Bill 2004**

[Introduced in the House of Representatives on 12 August 2004 and reintroduced 2 December 2004. Portfolio: Treasury]

This bill is part of a package of seven bills that implement the new financial sector levy setting framework set out in the government response to the 'Review of Financial Sector Levies'.

The bill also contains an application provision.

*The Committee has no comment on this bill.*

## **Child Support Legislation Amendment Bill 2004**

[Introduced in the House of Representatives on 31 March 2004 and reintroduced 8 December 2004. Portfolio: Family and Community Services]

The bill amends various Acts to give effect to minor policy measures in relation to child support. The main provisions:

- move into the principal legislation those provisions currently contained in regulations relating to overseas maintenance arrangements;
- make minor and consequential amendments to the family law legislation;
- improve equity between parents in access to courts and streamlining of certain review processes; and
- make minor and technical amendments in relation to child support.

### **Retrospective commencement**

#### **Schedule 3, item 10**

By virtue of item 8 in the table in subclause 2(1), the amendments proposed in item 10 of Schedule 3 to this bill would commence retrospectively, immediately after the commencement of item 7 of Schedule 10 to the *Child Support Legislation Amendment Act 2001*, on 30 June 2001. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the explanatory memorandum makes it clear that the purpose of the amendment is ‘to override [a] superfluous amendment.’ The explanatory memorandum continues by assuring that ‘no person will be adversely affected by this retrospective commencement.’

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

## **Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004**

[Introduced in the Senate on 8 December 2004. Portfolio: Justice and Customs]

The bill amends the *Criminal Code Act 1995* and the *Telecommunications (Interception) Act 1979* to extend the federal regime of offences targeting trafficking in persons. It extends the existing offence of deceptive recruiting for sexual services, increases the penalty for the aggravated sexual servitude offence, creates a number of new offences targeting the trafficking of persons and makes telephone interception warrants available for the investigation of the new offences.

Passage of the bill will enable Australia to ratify the relevant United Nations Protocol.

### **Absolute liability Schedule 1, item 9**

The Committee will generally draw to Senators' attention provisions which create strict liability and absolute 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.

Proposed new subsections 271.2(3) and 271.5(3) of the *Criminal Code*, to be inserted by item 9 of Schedule 1 to this bill, would impose absolute criminal liability for one element of each of the offences created by proposed new subsections 271.2(1) and 271.5(1), respectively. That element is that the use of force or threats by the alleged offender resulted in him or her obtaining consent from an alleged victim.

In this case, the explanatory memorandum points out that this element of the offence 'does not affect the culpability of the offender, but rather sets the perimeters of the offence. Under the *Criminal Code*, the fault element of "recklessness" applies to an element of a circumstance unless another fault element is specified. Recklessness requires the person to be aware of a substantial risk, but to engage in the conduct anyway. If the prosecution was required to prove awareness on the part of the defendant that the force or

threats would result in the victim's consent, many defendants would be able to evade liability by demonstrating that they did not turn their minds to that issue (despite the fact that they had committed the prohibited conduct). Therefore, it is necessary only to prove that the person used threats or force, and that those threats or that force in fact resulted in the victim consenting.'

This explanation would appear to place the offences within the principles espoused by the Committee in its report, *Application of Strict and Absolute Liability Offences in Commonwealth Legislation*:

- absolute liability offences should be rare and limited to jurisdictional or similar elements of offences ...; and
- absolute liability may be acceptable where an element is essentially a precondition of an offence and the state of mind of the offender is not relevant (*Sixth Report of 2002*, p 285).

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

## **Customs Amendment Bill 2004**

[Introduced in the Senate on 8 December 2004. Portfolio: Justice and Customs]

The maximum penalties for serious drug offences under the *Customs Act 1901* vary depending on the quantity of drugs involved. The bill prescribes a 'commercial quantity' for all those drugs in Schedule VI of the Customs Act for which a commercial quantity is not currently prescribed.

*The Committee has no comment on this bill.*

## **Financial Institutions Supervisory Levies Collection Amendment Bill 2004**

[Introduced in the House of Representatives on 12 August 2004 and reintroduced 9 December 2004. Portfolio: Treasury]

This bill is part of a package of seven bills that implement the new financial sector levy setting framework set out in the government response to the 'Review of Financial Sector Levies'.

The bill also contains an application provision.

*The Committee has no comment on this bill.*

## **General Insurance Supervisory Levy Imposition Amendment Bill 2004**

[Introduced in the House of Representatives on 12 August 2004 and reintroduced 9 December 2004. Portfolio: Treasury]

This bill is part of a package of seven bills that implement the new financial sector levy setting framework set out in the government response to the 'Review of Financial Sector Levies'.

The bill also contains an application and transitional provision.

*The Committee has no comment on this bill.*

## **Life Insurance Supervisory Levy Imposition Amendment Bill 2004**

[Introduced in the House of Representatives on 12 August and reintroduced 9 December 2004. Portfolio: Treasury]

This bill is part of a package of seven bills that implement the new financial sector levy setting framework set out in the government response to the 'Review of Financial Sector Levies'.

The bill also contains an application and transitional provision.

*The Committee has no comment on this bill.*

## Navigation Amendment Bill 2004

[Introduced in the House of Representatives on 9 December 2004. Portfolio: Transport and Regional Services]

The bill amends the *Navigation Act 1912* to remove the requirement for assessors of nautical experience to advise the Court in a prosecution for a breach of regulations relating to the prevention of collisions and the display on ships of lights and signals, and clarifies that a breach of such regulations may be prosecuted on indictment.

The bill also revises penalties relating to careless navigation near ice and breaches of the requirement to render assistance following an accident, or where persons are in distress, at sea.

*The Committee has no comment on this bill.*

## **Retirement Savings Account Providers Supervisory Levy Imposition Amendment Bill 2004**

[Introduced in the House of Representatives on 12 August 2004 and reintroduced 9 December 2004. Portfolio: Treasury]

This bill is part of a package of seven bills that implement the new financial sector levy setting framework set out in the government response to the 'Review of Financial Sector Levies'.

The bill also contains an application and transitional provision.

*The Committee has no comment on this bill.*

## **Senate Voters' Choice (Preference Allocation) Bill 2004**

[Introduced in the Senate on 9 December 2004 as a private Senator's bill]

The bill amends the *Commonwealth Electoral Act 1918* to enable voters at Senate elections to determine the order of their party preferences in above the line voting.

*The Committee has no comment on this bill.*

## **Superannuation Supervisory Levy Imposition Amendment Bill 2004**

[Introduced in the House of Representatives on 12 August 2004 and reintroduced 9 December 2004. Portfolio: Treasury]

This bill is part of a package of seven bills that implement the new financial sector levy setting framework set out in the government response to the 'Review of Financial Sector Levies'.

The bill also contains an application and transitional provision.

*The Committee has no comment on this bill.*

## **Tax Laws Amendment (2004 Measures No. 7) Bill 2004**

[Introduced in the House of Representatives on 8 December 2004. Portfolio: Treasury]

This bill is an omnibus tax laws amendment bill, comprising 11 Schedules and making amendments to some 22 Acts. Topics include:

- tax offset for entrepreneurs;
- use of the Simplified Tax System (STS) accounting method;
- extension of tax concessions under the employee share scheme;
- fringe benefits tax exemptions for long service award benefits;
- tax incentives for remote offshore petroleum exploration;
- refinement of the consolidation regime;
- roll-over relief in relation to depreciating assets allocated to simplified tax system pools;
- family trust and interposed entity elections;
- compliance costs for small business in relation to non-commercial loans from private companies;
- technical corrections and amendments; and
- refundable film tax offset provisions.

### **Retrospective commencement and application Schedules 3, 5 6, 9, 10 and 11**

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 contains a number of relevant provisions:

- By virtue of item 3 in the table to subclause 2(1) in this bill, Part 1 of Schedule 9 is to commence on 29 June 2004, immediately after the commencement of earlier legislation and, by virtue of item 2 in the Schedule, the amendment made by item 1 is to apply to loans made on or after 12 December 2002. The explanatory memorandum points out that the purpose of this amendment is to correct a minor technical error, and that it has no financial impact.

- By virtue of items 6 to 22 in the table to subclause 2(1) in this bill, the various amendments contained in Part 2 of Schedule 10 are to commence on various dates ranging from 29 June 1998 to 25 June 2004, immediately after the commencement of other legislation. The explanatory memorandum points out that the purpose of these amendments is to correct minor technical errors and that they have no financial impact.
- By virtue of item 22 of Schedule 3, the amendments in that Schedule are to apply from 1 July 2004. The explanatory memorandum points out that the cost to revenue of these amendments is ‘unquantifiable but expected to be small.’
- By virtue of item 17 of Schedule 5, the amendments made by that Schedule are to apply ‘in respect of any exploration expenditure incurred (whether before or after this Schedule commences).’ The explanatory memorandum points out this measure is estimated to have a cost to revenue of \$17 million over the next three fiscal years.
- By virtue of Part 1 of Schedule 6, the amendments in that Schedule are to apply from 1 July 2002. The explanatory memorandum points out that these amendments ‘are not expected to impact on the revenue.’
- By virtue of item 5 of Schedule 11, the amendments made by that Schedule are to apply to ‘any expenditure incurred in respect of a film (whether before or after this Schedule commences).’ The explanatory memorandum points out that the financial impact of these amendments is ‘expected to be negligible.’

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

## **Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill 2004**

[Introduced in the House of Representatives on 8 December 2004. Portfolio: Treasury]

Introduced with three imposition bills, the bill provides for the treatment, for goods and services tax purposes, of long-term non-reviewable contracts after the GST-free transition period ends on 1 July 2005.

*The Committee has no comment on this bill.*

## Trade Practices Amendment (Personal Injury and Death) Bill 2004

[Introduced in the House of Representatives on 9 December 2004. Portfolio: Treasury]

The bill amends the *Trade Practices Act 1974* to prevent individuals, and the Australian Competition and Consumer Commission in a representative capacity, bringing actions for damages for personal injuries or death resulting from contraventions of Division 1 of Part V of the Act, which prohibits, under civil law, unfair practices in trade and commerce, including misleading and deceptive conduct.

This bill is virtually identical to one of the same name introduced into the House of Representatives on 27 March 2003, and on which the Committee commented in *Alert Digest No. 5 of 2003*. That bill was amended by the Senate on 1 December 2003. The House did not agree to the Senate's amendments and the Senate insisted on them on 11 February 2004. The bill lapsed prior to the beginning of the current Parliament. The Committee reiterates the comments it made in relation to the earlier bill.

### Personal rights

#### Items 2 and 5 of Schedule 1

Items 2 and 5 of Schedule 1 to this bill would remove the right to claim damages of a person who suffers personal injury, or the personal representatives of one who dies, as a result of misleading or deceptive conduct on the part of another, or any other conduct by that other in breach of Division 1 of Part V of the Principal Act, which deals with unfair practices in relation to consumer protection. The bill may therefore be regarded as trespassing on existing personal rights. However, the Committee **leaves for the Senate as a whole** the question of whether the bill *unduly* trespasses on those rights.

*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.*

## **Workplace Relations Amendment (Small Business Employment Protection) Bill 2004**

[Introduced in the House of Representatives on 8 December 2004. Portfolio: Employment and Workplace Relations]

The bill amends the *Workplace Relations Act 1996* to exempt small businesses from redundancy pay obligations, in effect overturning the decision of the Australian Industrial Relations Commission of 26 March 2004 which determined that the exemption should be removed.

### **Retrospective application Schedule 1, subitem 8(1)**

The explanatory memorandum to this bill makes it clear that its purpose is to reverse the effect of a decision of the Australian Industrial Relations Commission relating to redundancy payments payable by businesses which have fewer than 15 employees. The Commission's decision was given on 26 March 2004.

Both the explanatory memorandum (in the second dot point on page 1) and the Minister's second reading speech (in the sixth paragraph) appear to indicate that the bill would render of no effect any awards or variations of awards relating to employers of fewer than 15 employees, if the awards were made by the Commission after 26 March 2004. If that were the effect of the bill, it would clearly have some retrospective effect. However, subitem 8(1) of Schedule 1 makes it clear that the relevant amendments apply only from the time at which the Schedule commences. It therefore appears that there are no provisions in the bill which come within the Committee's terms of reference.

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

## STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<b>Bills dealt with in 2004</b>							
Australian Communications and Media Authority Bill 2004	12(8.12.04)	2.12.04		Communications, Information Technology and the Arts	9.12.04		
<i>Copyright Legislation Amendment Act 2004</i>	12(8.12.04)	9.12.04	30.11.04	Attorney-General	9.12.04	2.2.05	1(9.2.05)
James Hardie (Investigations and Proceedings) Bill 2004	12(8.12.04)	2.12.04	8.12.04	Treasury	9.12.04		
Water Efficiency Labelling and Standards Bill 2004	9(4.8.04) 12(8.12.04)	24.6.04	12.8.04	Environment and Heritage Reintroduced – no response required	5.8.04	24.12.04	1(9.2.05)