

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator J Ferris
Senator S Macdonald
Senator A Murray
Senator J Quirke

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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V The committee has commented on these bills

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

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V The committee has commented on these bills

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Aboriginal and Torres Strait Islander Commission Amendment Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister representing the Minister for Aboriginal and Torres Strait Islander Affairs. [Portfolio responsibility: Aboriginal and Torres Strait Islander Affairs]

The bill proposes to amend the *Aboriginal and Torres Strait Islander Commission Act 1989* to:

- allow ATSIC to impose conditions to its consent to the disposal of an interest in ATSIC funded property;
- enable ATSIC to delegate to a Regional Council powers incidental to its funding powers;
- allow ATSIC to delegate its power to approve the disposal of residential property;
- provide that certain remedies for breaches of grant or loan conditions do not affect the availability of other remedies for such breaches to the Commission; and
- correct minor drafting errors.

Retrospectivity Subclauses 2(2), (3) and (4)

Subclauses 2(2), (3) and (4) of this bill, if enacted, would provide for the amendments proposed in Schedule 1 to have retrospective effect from various dates. It seems to the committee, however, that the amendments are for the purpose of correcting grammatical and other similar errors in the legislation affected and make no substantive change to the law.

In these circumstances, the committee makes no further comment on these subclauses.

Australian Capital Territory (Planning and Land Management) Amendment Bill 1997

This bill was introduced into the House of Representatives on 4 December 1997 by the Minister for Regional Development, Territories and Local Government. [Portfolio responsibility: Regional Development, Territories and Local Government]

The bill proposes to amend the *Australian Capital Territory (Planning and Land Management) Act 1988* to increase the maximum permissible limit for the grant of new estates to 999 years and remove the provision for prescribing periods longer than 99 years.

The committee has no comment on this bill.

Charter of Budget Honesty Bill 1996 [No. 2]

This bill was introduced into the House of Representatives on 5 December 1997 by the Treasurer. It is identical to the bill introduced into the House of Representatives on 11 December 1996 and passed by the Senate, with amendments, on 28 October 1997. [Portfolio responsibility: Treasury]

The bill proposes to implement arrangements to require governments to provide regular fiscal and economic reports. Further, the bill proposes that Secretaries to the Treasury and Department of Finance release a pre-election report to provide updated fiscal and economic projections and to publicly release the fiscal impact of announced election commitments as requested by the Government or Opposition.

The committee has no comment on this bill.

Commonwealth Superannuation Board Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to establish a new body corporate, the Commonwealth Superannuation Board, to administer certain Commonwealth superannuation schemes for civilian employees and to manage the Funds of those schemes.

Inappropriate delegation of legislative power Subclause 8(1)

Subclause 8(1) of this bill, if enacted, would permit the Minister to make determinations which would vary the operation of any provision in Acts relating to superannuation for members of the Australian Public Service.

The committee notes that the explanatory memorandum indicates that the variations thus made must not result in the legislation falling outside the terms of the *Superannuation Industry (Supervision) Act 1993*. It appears to the committee that making the Minister's power to make determinations subject to the *Superannuation Industry (Supervision) Act 1993* sufficiently circumscribes this delegation of legislative power.

In these circumstances, the committee makes no further comment on this subclause.

Inappropriate delegation of legislative power Subclause 8(9)

Subclause 8(9) of this bill, if enacted, would enable the Minister to give retrospective effect to the determinations which the Minister may make under subclause 8(1). These determinations would vary the operation of any provision in Acts relating to superannuation for members of the Australian Public Service.

The committee notes that the explanatory memorandum points out that the *Superannuation Industry (Supervision) Act 1993* to which these determinations are

subject, does not permit the reduction of benefits to members except in particular circumstances. The committee **seeks the advice of the Minister** on the particular circumstances in which a determination would be made which would reduce superannuation benefits to which members would otherwise be entitled.

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.

Company Law Review Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the Corporations Law to:

- streamline the process of a setting up a company;
- remove the requirement for companies to have memoranda of association;
- enable companies limited by guarantee to convert into companies limited by shares;
- remove the requirement for proprietary companies to keep their registered offices open to the public and to have a common seal;
- facilitate the use of electronic technology to hold meetings;
- enable members of a proprietary company to pass all forms of resolution by signing a circulating resolution;
- require that 21 days notice is given individually to members for all general meetings;
- give certain members certain powers in relation to general meetings and proposed resolutions;
- recognise the right of members to ask questions about or comment on company management at annual general meetings;
- streamline the process for appointing a proxy;
- enable members of both public and proprietary companies to appoint proxies and allow that proxy documents are provided at least 48 hours before the meeting;
- enable a proxy to vote on a show of hands;
- set out rules for when an appointment specifies the way the proxy is to vote on a particular resolution;
- provide that the quorum for a general meeting will be two for both proprietary and public companies;

- no longer require that companies hold a statutory meeting or send members a statutory report following the issue of shares under their first prospectus;
- base the rules for meetings of members of collective investment schemes on those for companies;
- provide that shares will no longer have a par value;
- streamline provisions relating to the issue and conversion of shares, the redemption of redeemable preference shares, partly-paid shares and dividends;
- provide that capital reductions no longer require court confirmation;
- amend the rules in relation to a company acquiring its own shares;
- amend provisions to allow the buy-back of redeemable preference shares;
- retain the requirement to prepare a profit and loss statement and balance sheet and introduce the requirement to prepare a cash flow statement;
- enable a company or collective investment scheme to send its members a concise version of its annual report;
- revise over half the items currently required to be included in annual reports;
- facilitate electronic lodgment of returns with the ASC;
- introduce new procedures for ASC deregistration of defunct companies;
- enable a person to sue a deregistered company's insurer directly;
- rewrite rules for obtaining and using company names and Australian Company Numbers; and
- restrict the type of companies and the conditions applicable when companies are permitted to omit "Limited" from their names.

The committee has no comment on this bill.

Criminal Code Amendment Bill 1997

This bill was introduced into the Senate on 3 December 1997 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Justice]

The bill proposes to amend the *Criminal Code Act 1995* to bring forward commencement of provisions which relate to the proof of an offence where the accused person is intoxicated. The provisions provide that self-induced intoxication cannot be considered in determining intent or voluntariness in relation to basic offences such as assault.

The committee has no comment on this bill.

Customs and Excise Legislation Amendment Bill (No. 3) 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Industry, Science and Tourism]

The bill proposes to amend the following Acts:

- *Customs Act 1901* to clarify that the Act does not apply in, or in relation to, the external Territories;
- *Customs Amendment Act (No. 1) 1997* to defer by six months the commencement of the reduced entry threshold for goods imported by the post;
- *Australian Postal Corporation Act 1989* to correct an anomaly in the exercise of Customs' powers of examination of mail arriving into Australia from the external Territories; and
- *Customs Act 1901* and *Excise Act 1901* to make minor technical amendments.

Retrospectivity Subclauses 2(2) and (3)

Subclauses 2(2) and (3) of this bill, if enacted, would provide for the amendments proposed in Schedule 1 to have retrospective effect from various dates. It seems to the committee, however, that the amendments are of a technical nature only and make no substantive change to the law.

In these circumstances, the committee makes no further comment on these subclauses.

Electoral and Referendum Amendment Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to amend the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* to:

- enable the Australian Electoral Commission (AEC) to delegate to staff its powers to supply and charge for certain goods and services;
- allow for the provision of the gender of electors for certain information purposes;
- allow relatives and friends to apply for the removal of certain electors from the roll on medical advice and without payment of an objection deposit;
- allow for electors to be removed from the roll in the period between the issue of the writ for an election and the close of rolls whose enrolment has been objected to;
- ensure that personal details of silent electors are not disclosed to persons inspecting applications for postal votes;
- allow the AEC to use the method of security printing of ballot papers instead of using watermarked ballot papers;
- disallow canvassing in and around hospitals that are polling places on polling day and in special hospitals during the five days before and including poll day;
- enable the AEC to conduct Senate scrutiny using a computer process;
- extend the two-candidate preferred count, as conducted in polling places on polling night, to the fresh scrutiny and declaration votes scrutinies, as conducted later by the Divisional Returning Officers and for the election of candidates based on a two-candidate preferred count;
- enable the release of confidential elector data to State and Territory electoral administrations;
- allow that the determination of State and Territory representation entitlements shall fall due in the thirteenth month of the first meeting of the House of Representatives (rather than the tenth month);

- bring the membership of the Redistribution Committee for the Australian Capital Territory into line with an equivalent body for a State;
- provide that comments and objections in relation to a redistribution are made available for public scrutiny;
- allow “community of interest” factors to be properly considered in relation to electoral variations between electorates;
- enable more opportunity for the public to object to proposed boundaries;
- allow certain Australians living overseas to apply for enrolment within two years of departure and to obtain eligible overseas status for a period of six years;
- reduce the nomination period by one day (to not less than 10 days or no more than 27 days), with the declaration of nominations to be held 24 hours after the close of nominations;
- increase from six to fifty the number of signatures required in support of a nomination by a candidate not endorsed by a registered political party;
- increase the deposit for nomination from \$250 to \$350 in the House of Representatives, and from \$500 to \$700 in the Senate;
- enable voters with a physical incapacity who cannot enter a polling place to vote outside the polling place;
- remove the possibility for voters to make a formal optional preferential vote on the ballot paper;
- allow that the declaration of the poll proceeds based on the result of the two candidate preferred count where, on the basis of first preference votes, the exclusion of all but two candidates for a House of Representatives Division is inevitable;
- remove the requirement for registered political parties to lodge returns of electoral expenditure; and
- allow registered political parties to lodge audited accounts in place of the annual return subject to certain conditions.

The committee has no comment on this bill.

Insurance Laws Amendment Bill 1997

This bill was introduced into the House of Representatives on 4 December 1997 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

- *Insurance Act 1973* to streamline the processes for form setting and lodgement of accounts and statements within the Insurance and Superannuation Commissioner by authorised insurers in Australia;
- *Insurance (Agents and Brokers) Act 1984* to:
 - make certain technical amendments;
 - insert additional definitions; and
 - strengthen broker disclosure notification requirements;
- *Insurance Contracts Act 1984* to:
 - place contracts of insurance over non-commercial marine pleasure craft owned by individuals within the scope of the *Insurance Contracts Act 1984* and removing them from the ambit of the *Marine Insurance Act 1909*;
 - amend provisions relating to information flows between contracting parties; and
 - amend provisions relating to the insured's duty of disclosure; and
- *Insurance Act 1973, Insurance (Agents and Brokers) Act 1984* and *Insurance Supervisory Levies Collection Act 1989* to amend the prudential supervisory arrangements for Lloyd's of London to improve the security arrangements for Lloyd's underwriters' Australian policyholders.

Commencement

Subclause 2(4)

Subclause 2(4) of this bill provides that almost all of Schedule 2 to this bill will commence on Proclamation, with no date being fixed at which the Bill must come into force or be automatically repealed.

With respect to commencement provisions, the committee has placed importance on the Office of Parliamentary Counsel Drafting Instruction No. 2 of 1989. The Drafting Instruction provides, in part:

3. As a general rule, a restriction should be placed on the time within which an Act should be proclaimed (for simplicity I refer only to an Act, but this includes a provision or provisions of an Act). The commencement clause should fix either a period, or a date, after Royal Assent, (I call the end of this period, or this date, as the case may be, the 'fixed time'). This is to be accompanied by either:
 - (a) a provision that the Act commences at the fixed time if it has not already commenced by Proclamation: or
 - (b) a provision that the Act shall be taken to be repealed at the fixed time if the Proclamation has not been made by that time.
4. Preferably, if a period after Royal Assent is chosen, it should not be longer than 6 months. If it is longer, Departments should explain the reason for this in the Explanatory Memorandum. On the other hand, if the date option is chosen, [the Department of the Prime Minister and Cabinet] do not wish at this stage to restrict the discretion of the instructing Department to choose the date.
5. It is to be noted that if the 'repeal' option is followed, there is no limit on the time from Royal Assent to commencement, as long as the Proclamation is made by the fixed time.
6. Clauses providing for commencement by Proclamation, but without the restrictions mentioned above, should be used only in unusual circumstances, where the commencement depends on an event whose timing is uncertain (eg enactment of complementary State legislation).

The committee notes that paragraph 5 of the explanatory memorandum points out the unusual circumstances where uncertainty of the timing of an event would make paragraph 6 of the Drafting Instruction applicable. The explanatory memorandum states:

The main purpose of the amendments contained in Schedule 2 is to replace the current security arrangements applying to the authorisation and conduct of business of Lloyd's underwriters in Australia with new arrangements which will accommodate Lloyd's new trading structure and substantially improve the protection available to Lloyd's underwriters' Australian policyholders. If Schedule 2 were subject to commencement by default, and for some reason Lloyd's had not met the requirements of the new arrangements within the given time frame, this would lead to the untenable situation where the existing security arrangements would fall away with no substitute in place. While the Commissioner could immediately revoke authorisation for Lloyd's

underwriters in Australia, this would only have the effect of not allowing Lloyd's underwriters to write new business in Australia. Existing liabilities would have no financial backing. Accordingly, it is extremely important that the commencement provision not permit the cessation of the current security until there is at least a simultaneous commencement of the new security.

In these circumstances, the committee makes no further comment on this subclause.

Power of entry and search without warrant

Item 5 of Schedule 2 - proposed subsection 80(1)

Proposed subsection 80(1), to be inserted in the *Insurance Act 1973* by item 5 of Schedule 2 to this bill provides:

Entry on premises

- (1) If the Commissioner or the inspector, while investigating the whole or a part of the affairs of a designated security trust fund, believes on reasonable grounds that it is necessary for the purposes of the investigation to enter land or premises occupied by:
 - (a) the trustee, or a former trustee, of the fund; or
 - (b) the custodian, or a former custodian, of the fund; or
 - (c) the investment manager, or a former investment manager, of the fund;the Commissioner or the inspector may, at all reasonable times, enter the land or premises and may:
 - (d) examine books on the land or premises that relate to the affairs of the trust fund or that the Commissioner or inspector believes on reasonable grounds relate to those affairs; and
 - (e) take possession of any of those books for such period as the Commissioner or inspector thinks necessary for the purposes of the investigation; and
 - (f) make copies of, or take extracts from, any of those books.

This power of entry and search is not subject to any requirement that the officer obtain a judicially sanctioned search warrant before entering the premises.

The committee recognises that, in this respect, subclause 31(1) does not differ from similar provisions in taxation laws. For example, the *Income Tax Assessment Act 1936* contains a provision (section 263) of similar effect. Another example occurs in the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

There would appear, however, to be no basis in principle for giving officers enforcing insurance laws greater powers than officers enforcing criminal law where a judicially sanctioned warrant is generally required. The committee is also interested to receive advice on what might constitute “reasonable grounds” for exercising the power of entry.

Accordingly, the committee **seeks the advice of the Treasurer** on this issue.

Pending the advice of the Treasurer, 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 right against self-incrimination

Item 5 of Schedule 2 - proposed subsections 82(3) and (4)

Proposed Division 4, to be inserted in the *Insurance Act 1973* by item 5 of Schedule 2 to this bill, deals with investigations by the Commissioner. Proposed subsections 82(3) and (4) deal with the requirement for persons being examined by the Commissioner or the inspector to answer questions. The person is not excused from doing so on the grounds that it may incriminate him or her.

To protect the person under examination, however, proposed subsection 82(4), would make inadmissible in evidence against the person, in any criminal proceedings, any information or thing (including a document) obtained as a direct or indirect result of answering a question. This inadmissibility is subject to an exception with respect to a proceeding for an offence against proposed subsection 82(2). That provision makes it an offence intentionally or recklessly to give information or evidence that is false or misleading. The committee is concerned about all such exceptions, but is prepared to accept the position in these circumstances.

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

Law Officers Amendment Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Law Officers Act 1964* to:

- remove the current entitlement to a judge's pension and payment in lieu of unused long service leave for future appointees to the office of Solicitor-General; and
- preserve the current Solicitor-General's accrued pension entitlements under the Act.

The committee has no comment on this bill.

Managed Investments Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the Corporations Law to implement a new regime for the regulation of managed investment schemes. Each managed investment scheme is to be operated by a single responsible entity; most of the schemes must be licensed by the Australian Securities Commission and submit compliance plans to the ASC; and will be required to hold a securities dealer's licence.

The committee has no comment on this bill.

NRS Levy Imposition Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister representing the Minister for Communications, the Information Economy and the Arts. [Portfolio responsibility: Communications, the Information Economy and the Arts]

The bill proposes to impose a levy on participating carriers to provide funding for the National Relay Service (NRS). It is intended that the NRS will be provided by a person, who may or may not be a carrier, under a contract with the Commonwealth and that the cost of the NRS will be met by carriers depending on their eligible revenue or timed traffic.

The committee has no comment on this bill.

Primary Industries and Energy Legislation Amendment Bill (No. 3) 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Primary Industries and Energy]

The bill proposes to:

- amend 9 portfolio Acts to give the portfolio bodies full responsibility for the employment of their CEOs; and

amend the following Acts:

- *Agricultural and Veterinary Chemicals (Administration) Act 1992* to:
 - provide a wider scope from which applicants with experience in occupational health and safety can be considered for appointment as a Director of the National Registration Authority for Agricultural and Veterinary Chemicals (NRA); and
 - provide for an additional Director of the NRA with experience in the development or administration of Commonwealth government policy;
- *Australian Horticultural Corporation Act 1987* to:
 - reduce the number of “other members” on the Australian Horticultural Corporation Selection Committee from seven to three, four or five; and
 - repeal the Corporation’s export trading powers;
- *Australian Wine and Brandy Corporation Act 1980* to correct a drafting error in relation to regulation-making powers;
- *Dairy Produce Act 1986* to repeal clauses which provide for the exclusion of people aged 65 and over from holding membership on the Board of the Australian Dairy Corporation;
- *Farm Household Support Act 1992* to annul Farm Household Support scheme debts;
- *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* to make consequential amendments in relation to the annulment of the Farm Household Support scheme debts;

- *Petroleum (Submerged Lands) Act 1967* to amend the descriptions of the Adjacent Areas defined in respect of Western Australian and the Territory of Ashmore and Cartier Islands;
- *Primary Industries and Energy Research and Development Act 1989* to reduce Commonwealth funding to the Fisheries Research and Development Corporation in 1997-98 by \$3.612 million; and
- *Primary Industries Councils Act 1991* to abolish the Australian Pig Industry Council.

The committee has no comment on this bill.

Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister representing the Minister for Social Security. [Portfolio responsibility: Social Security]

The bill proposes to amend the following Acts:

- *Social Security Act 1991* to:
 - extend qualification for carer payment to the carers of profoundly disabled children under the age of 16;
 - allow a person to cease caring for a person for up to 63 days in a calendar year and still continue to qualify for carer payment;
 - ensure that lump sum payments received by social security recipients will be consistently treated as either income over 12 months or a deemed asset;
 - impose preclusion periods on certain high income seasonal, intermittent and contract workers following cessation of the work period; and
 - take account of the introduction of the exceptional circumstances relief payment and restart income support;
- *Social Security Act 1991* and *Veterans' Entitlements Act 1986* to change the means testing of income streams;
- *Social Security Act 1991* and *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997* to make amendments consequent upon the amendments relating to seasonal worker preclusion periods;
- *Social Security Act 1991* and *Student and Youth Assistance Act 1973* to reflect the role of the Commonwealth Services Delivery Agency in relation to payments to the unemployed; and
- *Bankruptcy Act 1966*, *Child Support (Assessment) Act 1989*, *Data-matching Program (Assistance and Tax) Act 1990*, *Farm Household Support Act 1992*, *Health Insurance Act 1973*, *Income Tax Assessment Act 1997*, *Medicare Levy Act 1986* and *Veterans' Entitlements Act 1986* to reflect the change of term from "family payment" and associated references to "family allowance".

The committee has no comment on this bill.

Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to change superannuation arrangements for Commonwealth employees by amending the following Acts:

- *Superannuation Act 1990* to close the Public Sector Superannuation Scheme (PSS) to new members from 1 July 1998;
- *Superannuation Act 1976* and *Superannuation Act 1990* to allow Commonwealth Superannuation Scheme (CSS) and PSS members to choose to leave those schemes for another scheme offered by, or arranged with, their employer;
- *Superannuation Act 1976* to:
 - improve access to superannuation spouse benefits in certain circumstances where the retirement pensioner commenced a marital relationship after age 60 years;
 - provide an option for age and early age retirees to reduce their pension entitlements and increase reversionary benefits payable to their spouse or to any children of the retiree;
 - enable certain payments payable from other superannuation funds or schemes to be paid into the CSS Fund; and
 - restore the original intention in relation to the acceptance of late elections for preservation of rights;
- *Superannuation Benefits (Supervisory Mechanisms) Act 1990* to provide that a determination made under the Act in relation to agencies meeting certain requirements in setting up superannuation arrangements for their employees will be a disallowable instrument;
- *Parliamentary Contributory Superannuation Act 1948* to:
 - improve access to superannuation spouse benefits in certain circumstances where the retirement pensioner commenced a marital relationship after age 60 years;

- rectify anomalies and technical errors in relation to orphan benefits;
- rectify anomalies and technical errors in relation to the maximum reversionary benefit payable where there is more than one beneficiary;
- amend the arrangements relating to transfer values;
- cease the application of the inwards transfer value arrangements to persons who become Members of Parliament after the date Royal Assent is given to this bill;
- *Administrative Appeals Tribunal Act 1975, Law Officers Act 1964 and Workplace Relations Act 1996* in relation to people who leave the CSS or PSS to join the Judges' Pension Scheme to assist the schemes to comply with the national regulatory system for superannuation schemes.

The bill also proposes to repeal the *Superannuation Act 1922, Superannuation Act 1976, Superannuation Act 1990, Superannuation (Productivity Benefit) Act 1988* and the superannuation and retirement income provisions of the *Papua New Guinea (Staffing Assistance) Act 1973*. However, in most circumstances, the repealed legislation will continue to operate through the application of the *Superannuation Legislation (Commonwealth Employment–Savings and Transitional Provisions) Act 1997*.

Delegated legislation with retrospective effect

Item 14 of Schedule 1 - proposed subsection 3(1A)

Proposed subsection 3(1A), to be inserted in the *Superannuation Act 1976* by item 14 of Schedule 1 to this bill, would allow delegated legislation to be made which might have retrospective effect. Subsection 48(2) of the *Acts Interpretation Act 1901*, however, ensures that such measures are of no effect if they would prejudicially affect any person other than the Commonwealth. Hence, any retrospectivity would not trespass unduly on personal rights and liberties.

The committee appreciates the intention of the legislation but is concerned that the bill allows delegated legislation to be made which may have retrospective and prejudicial effect, notwithstanding the safeguards provided by the *Acts Interpretation Act 1901*. The committee notes, however, that the role of the Senate Regulations and Ordinances Committee is to scrutinise delegated legislation and to pursue any possible instances of undue trespass on personal rights and liberties in delegated legislation and therefore draws this item to the attention of that committee.

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

Superannuation Legislation (Commonwealth Employment—Saving and Transitional Provisions) Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to make savings and transitional provisions arising out of amendments to, and subsequent repeals of, five Acts by the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1997 and the Commonwealth Superannuation Board Bill 1997.

The committee has no comment on this bill.

Taxation Laws Amendment Bill (No. 7) 1997

This bill was introduced into the House of Representatives on 4 December 1997 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

- *Income Tax Assessment Act 1997* to:
 - provide for the tax deductibility of expenses incurred in contesting an election for delegates to the Constitutional Convention;
 - allow income tax deductions for gifts made to the National Nurses' Memorial Trust;
 - ensure that the rewrite of the income tax law reflects recent changes to the exempt entities provisions in relation to charitable trusts and makes consequential amendments to the *Income Tax Assessment Act 1936*; and
 - make technical amendments to ensure that depreciation rules relating to ownership of lessors' fixtures operate appropriately and properly reflect connecting provisions in the *Income Tax Assessment Act 1936*;
- *Sales Tax (Exemptions and Classifications) Act 1992* to exempt certain goods from sales tax to effect the Status of Forces Agreement between the Government of Australia and the Government of Malaysia which was entered into on 3 February 1997;
- *Income Tax Assessment Act 1936* to:
 - rationalise the remittance obligations of withholders under the Pay-As-You-Earn, Prescribed Payments and Reportable Payments schemes and make consequential amendments to the *Child Support (Registration and Collection) Act 1988*; *Crimes (Taxation Offences) Act 1980*, *Income Tax Assessment Act 1936* and *Taxation (Interest on Overpayments and Early Payments) Act 1983*;
 - allow taxpayers to use an asset register instead of source documents for capital gains tax record keeping purposes; and
 - introduce a general anti-avoidance provision that applies to franking credit trading and dividend streaming schemes where one of the purposes of the scheme is to obtain a franking credit benefit;
- *Superannuation Guarantee (Administration) Act 1992* to:

- require employers to make superannuation contributions on behalf of an employee to a complying superannuation fund or scheme or retirement savings account in compliance with the “choice of fund requirements”; and
- increase the amount of Superannuation Guarantee Charge payable by the employer where these contributions do not comply with the choice of fund requirements;
- *Retirement Savings Accounts Act 1997* and *Superannuation Industry (Supervision) Act 1993* to make consequential amendments on the amendments made to the *Superannuation Guarantee (Administration) Act 1992*;
- *Income Tax Assessment Act 1936*, *Fringe Benefits Tax Assessment Act 1986* and *Income Tax Assessment Act 1997* to ensure that all advances, loans and other credits (unless they come within a defined class of exclusions) by private companies to shareholders and their associates are deemed to be dividends to the extent that there are realised or unrealised profits in the company; and
- *Income Tax Assessment Act 1997* and *Income Tax Assessment Act 1936* to provide for a new tax offset (the savings rebate) for resident individuals in respect of savings and investment income and underacted superannuation contributions.

Retrospectivity

Items 9 and 26 of Schedule 8

Items 9 and 26 of Schedule 8 would provide that the amendments proposed by Schedule 8 will apply from 7.30pm on Budget night, 13 May 1997, and therefore prior to Royal Assent. The committee notes that the amendments give effect to a budget announcement.

The committee has previously indicated that, in relation to retrospectivity, budget measures are something of a special case. In a paper titled *The Operation of the Senate Standing Committee for the Scrutiny of Bills, 1981-85*, the then Chairman of the Committee, Senator Tate, said:

It is customary ... for budgetary measures to be made retrospective to the date of their announcement on Budget night and for changes to taxes, levies, fees to be given effect from the date of their introduction into Parliament.

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

Taxation Laws (Technical Amendments) Bill 1997

This bill was introduced into the House of Representatives on 4 December 1997 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

- *Taxation Administration Act 1953* and *Income Tax Assessment Act 1936* to:
 - enable interest payable on distributions received by companies and superannuation funds from non-resident trust estates, that are not taxed at a comparable rate in foreign countries, to be subject to the self-assessment process;
 - remove the requirement for various elections to be in writing and given to the Commissioner; and
 - enable the Commissioner to amend an assessment outside the usual time period, to give effect to a private ruling;
- *Income Tax Assessment Act 1997* and *Income Tax Assessment Act 1936* to ensure that the film component of a company's tax loss is calculated separately for each period in an income year;
- *Fringe Benefits Tax Assessment Act 1986* to make minor amendments in relation to the retention of statutory evidentiary documents;
- *Income Tax Assessment Act 1936* to:
 - amend the provisions which set out the rules for calculating the amount of the deduction for car parking expenses incurred by self-employed persons;
 - ensure that the rollover of the post-June 1994 invalidity component of an eligible termination payment to purchase an annuity or superannuation pension does not change the "tax free" status of the component;
 - ensure that bankrupt estates administered by a registered trustee will be given the same tax treatment as estates administered by the Official Receiver;
 - amend the definition of "eligible investment business" to ensure that the definition specifically includes secured loans;

- ensure that the franking surplus of a demutualising life or general insurance company, a mutual affiliate company, or wholly-owned subsidiary is to be reduced to nil;
- ensure that the spouse rebate is reduced by a taxpayer's entitlements to certain benefits paid by the Department of Social Security;
- provide a foreign tax credit for Australian tax paid by a foreign investment fund;
- amend the definition of "associate";
- ensure that life assurance companies; superannuation funds, registered organisations and pooled superannuation trusts holding shares indirectly through a trust or partnership receive the same franking benefits as those who hold the shares directly;
- provide that where a beneficiary of a discretionary trust has an interest in a public entity and the trust deed provides that the entity is a potential beneficiary of the trust, then the entity will not be deemed to control the trust for the purposes of the \$5 million threshold test;
- clarify that a payment received by a person from the sale of a debt that would otherwise be a reportable payment is subject to the reportable payment system; and
- ensure that provisional tax credits cannot be applied against provisional tax notified for a later year that is not due and payable;
- *Taxation Administration Act 1953* to permit regulations to provide that a decision by the Commissioner of Taxation is reviewable by the Administrative Repeals Tribunal; and
- *Income Tax Assessment Act 1936, Income Tax Assessment Act 1997, Taxation Laws Amendment Act (No. 4) 1995, Taxation Laws Amendment Act (No. 2) 1997, Statute Law Revision Act 1996 and Industry Research and Development Act 1986* to make technical amendments.

Retrospectivity

Subclauses 2(5) to (7) and (11) to (16)

Subclauses 2(5) to (7) and (11) to (16) of this bill, if enacted, would provide for some of the amendments proposed by this bill to commence prior to Royal Assent.

It seems to the committee, however, that the amendments are of a technical nature only and make no substantive change to the law.

In these circumstances, the committee makes no further comment on these subclauses.

**Retrospective application
Subitem 27(3) of Schedule 6**

Subitem 27(3) of Schedule 6 to this bill, if enacted, would provide for the amendment proposed by item 4 to apply from Budget night 1995.

The committee notes, however, that the explanatory memorandum states, in paragraph 1.82 that the amendment is 'clarificatory only and does not change the meaning of the relevant provision'.

In these circumstances, the committee makes no further comment on this subclause.

**Retrospective application
Subitem 27(5) of Schedule 6**

Subitem 27(5) of Schedule 6 to this bill, if enacted, would provide for the amendment proposed by item 7 to apply from 1 July 1988. It appears to the committee, however, that the amendment is beneficial to taxpayers.

In these circumstances, the committee makes no further comment on this subclause.

Telecommunications Amendment Bill (No. 2) 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Minister representing the Minister for Communications, the Information Economy and the Arts. [Portfolio responsibility: Communications, the Information Economy and the Arts]

The bill proposes to deal with the operation and funding of the National Relay Service (NRS) which provides people who are deaf, hearing, or speech impaired, with access to the standard telephone service on terms, and in circumstances, that are comparable to those on which other Australians have access to a standard telephone service.

The committee has no comment on this bill.

Therapeutic Goods Legislation Amendment Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Parliamentary Secretary to the Minister for Health and Family Services. [Portfolio responsibility: Health and Family Services]

The bill proposes to amend the following Acts:

- *Therapeutic Goods Act 1989* to:
 - introduce a “data protection regime” to provide a five-year period of protection for information lodged about a new active component in relation to an application to register therapeutic goods, not being therapeutic devices;
 - enable the Secretary to obtain more detailed information about the manufacturing processes and premises of an applicant seeking to list its therapeutic goods in the Australian Register of Therapeutic Goods, or from a person whose goods are already listed in the Register;
 - enable the Secretary to prevent persons in control of another licensee convicted of an offence against the Act, or a law of a State or Territory in relation to therapeutic goods, from immediately applying for and obtaining another manufacturing licence through another person, such as a new or different company; and
 - provide for the Governor-General to make regulations associated with the issue of import and export licences and permits for therapeutic goods imported into or exported from Australia; and
- *Customs Act 1901* to make amendments consequent upon the Governor-General’s power to regulate the issue of import and export permits and licences under the *Therapeutic Goods Act 1989*.

The committee has no comment on this bill.

Workplace Relations Amendment (Superannuation) Bill 1997

This bill was introduced into the House of Representatives on 4 December 1997 by the Minister for Workplace Relations and Small Business. [Portfolio responsibility: Workplace Relations and Small Business]

The bill proposes to amend the *Workplace Relations Act 1996* to remove superannuation from the allowable award matters set out in the Act. The effect of the amendment will be that the Australian Industrial Relations Commission will not be permitted to deal with disputes about superannuation by arbitration.

The committee has no comment on this bill.

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 2 of 1998

11 March 1998

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator J Ferris
Senator S Macdonald
Senator A Murray
Senator J Quirke

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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V The committee has commented on these bills

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

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V The committee has commented on these bills

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Any Senator who wishes to draw matters to the attention of the
committee under its terms of reference is invited to do so.

Aged Care Amendment Bill 1998

This bill was introduced into the House of Representatives on 5 March 1998 by the Minister for Family Services. [Portfolio responsibility: Family Services]

The bill proposes to amend the following Acts:

- *Aged Care Act 1997* to:
 - introduce accommodation charges, as a replacement for accommodation bonds, for care recipients requiring nursing home level care;
 - make consequential changes to some of the rules about payment of accommodation bonds;
 - clarify definitions, rules about pre-entry leave, rules about entering into accommodation payment agreements where a person has a mental impairment and the keeping of essential aged care service records in English;
- *Social Security Act 1991* and *Veterans' Entitlements Act 1986* to ensure that rental income will be excluded from the pension income test and the value of the home will be exempted from the pension assets test where the former home is being rented to pay the accommodation charge;
- *Veterans' Affairs Legislation Amendment (Budget and Simplification Measures) Act 1997* to correct cross reference errors; and
- *Aged Care (Consequential Provisions) Act 1997* to remedy unintended effects in the original measures.

Retrospectivity

Subclauses 2(2) and (3)

Subclauses 2(2) and (3) of this bill, if enacted, would allow the amendments in Schedule 4 and some amendments in Schedule 5 to have retrospective effect. The committee notes from the explanatory memorandum that the retrospectivity under subclause 2(2) is in respect of amendments which are technical in nature and will not adversely affect any individual. The amendments correct cross references between the *Aged Care Act 1997* and Rate Calculators in the *Veterans' Entitlements Act 1986*.

Schedule 5, according to the explanatory memorandum, amends the *Aged Care (Consequential Provisions) Act 1997* to remedy unintended effects and oversights in the original transitional measures. Items 3 and 4, which will commence retrospectively if subclause 2(3) is enacted, relate to additional recurrent funding for new and rebuilt and upgraded nursing homes. These items will effectively reverse the earlier repeal of subsections 52C(3) and 58CA(3) of the *National Health Act 1953* to restore the power to extend the time for approvals-in-principle for additional recurrent funding where construction has not been commenced within the relevant time. According to the explanatory memorandum, the withdrawal of this power was unintended as it would have had unfair consequences. The retrospective commencement of these provisions prevents those unfair consequences.

In these circumstances, the committee makes no further comment on these subclauses.

Retrospective application? Items 1 and 2 of Schedule 5

These items rectify a drafting defect in the *Aged Care (Consequential Provisions) Act 1997* which repealed certain provisions of the *National Health Act 1953* and the *Aged or Disabled Persons Care Act 1954*. After the Aged Care legislation took effect on 1 October 1997 it became apparent that sanctions could not be invoked against a provider for breaches of responsibilities that occurred before 1 October 1997 under the previous legislation. These items insert new clauses 78A and 81A which provide for breaches that occurred under the previous legislation, but in respect of which no action had been commenced, to be dealt with under the *Aged Care Act 1997*. The committee notes from the explanatory memorandum that these items correct a technical defect that would otherwise have prevented appropriate action being taken against providers who did not meet their obligations and responsibilities.

In these circumstances, the committee makes no further comment on these items.

Child Care Legislation Amendment Bill 1998

This bill was introduced into the House of Representatives on 4 March 1998 by the Minister for Family Services. [Portfolio responsibility: Health and Family Services]

The bill proposes to defer implementation of the *Child Care Payments Act 1997*. Further it proposes to amend the *Child Care Act 1972*, *Child Care Rebate Act 1993* and the *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997* to effect measures contained in the *Child Care Payments Act 1997*, namely to:

- limit child care assistance to 20 hours a week for non-work related care;
- introduce a planning system for long day care places and a limit on the number of new places approved in 1998 and 1999;
- introduce immunisation as a criterion for eligibility for child care assistance and the child care rebate; and
- facilitate the transfer of the current child care assistance program to Centrelink for an interim period.

The committee has no comment on this bill.

Commonwealth Places (Consequential Amendments) Bill 1998

This bill was introduced into the House of Representatives on 5 March 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

Complementary to the Commonwealth Places (Mirror Taxes) Bill 1998, Commonwealth Places Windfall Tax (Collection) Bill 1998 and Commonwealth Places Windfall Tax (Imposition) Bill 1998, this bill proposes to amend the following Acts:

- *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* to exempt from income tax refunded State taxes subject to the windfall tax and deny an income tax deduction for the windfall tax; and
- *Commonwealth Places (Application of Laws) Act 1970* to ensure that the provisions of the State taxing laws which will be mirrored by the proposed *Commonwealth Places (Mirror Tax) Act 1998* will have effect under that Act rather than the 1970 Act.

Retrospective operation Subclause 4(1)

By virtue of subclause 4(1), the amendments proposed to the *Income Tax Assessment Act 1936* would apply to the 1996-97 year of income. For most taxpayers, this year ended on 30 June 1997 and to this extent, the bill would have a retrospective effect, but this is of such a nature as might be described as technical. However, the bill is one of a package of measures that are intended to take effect from 6 October 1997. The bills are designed to overcome the effect of a decision of the High Court in *Allders International Pty Ltd v Commissioner of State Revenue (Victoria)* and to ensure that State revenue bases are not eroded. The legislation has been formulated with the assistance of State governments, and is intended to do no more than maintain the current level of indirect taxes payable to the States.

In these circumstances, the committee makes no further comment on these items.

Commonwealth Places (Mirror Taxes) Bill 1998

This bill was introduced into the House of Representatives on 5 March 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

Complementary to the Commonwealth Places Windfall Tax (Collection) Bill 1998, Commonwealth Places Windfall Tax (Imposition) Bill 1998 and Commonwealth Places (Consequential Amendments) Bill 1998, this bill proposes to provide for the imposition of taxes, in relation to Commonwealth places in a State, which mirror the stamp duties, payroll taxes, financial institutions duties and debits taxes of that State.

Retrospective operation

Clause 7

By virtue of clause 7, the provisions of this bill will apply to acts and transactions taking place on or after 6 October 1997 and the legislation, if enacted, will have a retrospective operation but this is of such a nature as might be described as technical. However, the committee notes that the Explanatory Memorandum indicates that this is one of a package of bills designed to overcome the effect of a decision of the High Court in *Allders International Pty Ltd v Commissioner of State Revenue (Victoria)* and to ensure that State revenue bases are not eroded. The legislation has been formulated with the assistance of State governments, and is intended to do no more than maintain the current level of indirect taxes payable to the States.

In these circumstances, the committee makes no further comment on these items.

Regulations which may have retrospective effect

Subclause 25(2)

Subclause 25(2) would permit the making of regulations which might be retrospective in effect, in derogation of subsection 48(2) of the *Acts Interpretation Act 1901*. However, one purpose of regulations made under this measure is to apply, with or without modifications, State legislation imposing indirect taxes. The committee notes that in the Explanatory Memorandum, subclause 25(2) is described as necessary to cover the eventuality that new State taxing laws, not identified in the bill, may subsequently be identified and need to be included within the ambit of this measure.

In these circumstances, the committee makes no further comment on these items.

Commonwealth Places Windfall Tax (Collection) Bill 1998

This bill was introduced into the House of Representatives on 5 March 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

Complementary to the Commonwealth Places (Mirror Taxes) Bill 1998, Commonwealth Places Windfall Tax (Imposition) Bill 1998 and Commonwealth Places (Consequential Amendments) Bill 1998, this bill proposes to provide for the determination, collection and administration of the Commonwealth places windfall tax which applies to claims for refunds of amounts paid under State taxing laws before 6 October 1997.

Retrospectivity Clause 2

By virtue of clause 2, this bill is to be taken to have commenced on 6 October 1997. The purpose of the retrospectivity, however, is to protect State revenues collected before that date in respect of Commonwealth places. Imposition of stamp duty on a lease covering part of a Commonwealth place was found to be invalid by the High Court in *Allders International Pty Ltd v Commissioner of State Revenue (Victoria)*. As well as stamp duty, the bills cover financial institutions duty, debits tax and payroll tax, which risk being found similarly invalid by the High Court in relation to Commonwealth places.

The committee is always concerned about retrospectivity and its potential to affect personal rights and liberties. The circumstances of this case, however, are such as to satisfy the committee that the need for retrospective commencement is reasonable.

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

Commonwealth Places Windfall Tax (Imposition) Bill 1998

This bill was introduced into the House of Representatives on 5 March 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

Complementary to the Commonwealth Places (Mirror Taxes) Bill 1998, Commonwealth Places Windfall Tax (Collection) Bill 1998 and Commonwealth Places (Consequential Amendments) Bill 1998, this bill proposes to impose the Commonwealth places windfall tax at a rate of 100 per cent.

Retrospectivity Clause 2

By virtue of clause 2, this bill is to be taken to have commenced on 6 October 1997. The purpose of the retrospectivity, however, is to protect State revenues collected before that date in respect of Commonwealth places. Imposition of stamp duty on a lease covering part of a Commonwealth place was found to be invalid by the High Court in *Allders International Pty Ltd v Commissioner of State Revenue (Victoria)*. As well as stamp duty, the bills cover financial institutions duty, debits tax and payroll tax, which risk being found similarly invalid by the High Court in relation to Commonwealth places.

The committee is always concerned about retrospectivity and its potential to affect personal rights and liberties. The circumstances of this case, however, are such as to satisfy the committee that the need for retrospective commencement is reasonable.

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

Legislative Instruments Bill 1996 [No. 2]

This bill was introduced into the House of Representatives on 5 March 1998 by the Attorney-General. This bill comprises the earlier bill, as amended and passed by the House of Representatives on 11 September 1996, and amendments made by the Senate and agreed to by the House, and further amendments made by the House and agreed to by the Senate. [Portfolio responsibility: Attorney-General]

The bill proposes to establish a regime to govern drafting standards and procedures for the making, registration, publication, scrutiny and sunseting of delegated legislation.

The committee commented on the previous version of this bill in Alert Digest No. 5 of 1996, the Ninth Report of 1996, and the Fourth and Sixth Reports of 1997. In the course of its consideration of the bill, the committee corresponded with the Attorney-General on a number of occasions and the Attorney-General's responses are discussed in those reports. The issues that were of concern to the committee are summarised below.

Attorney-General's certificate—judicial review and parliamentary scrutiny

Clause 8 of the bill authorises the Attorney-General to determine whether an instrument is a legislative instrument and to issue a certificate accordingly. The Attorney-General's decision is reviewable by the Federal Court. The committee sought advice from the Attorney-General as to whether the certificate, registrable under Part C of the Federal Register of Legislative Instruments, was itself a legislative instrument and therefore also subject to parliamentary scrutiny and disallowance. The Attorney-General's reply, included in the Ninth Report of 1996, confirmed that the certificate was not, and was not intended to be, disallowable; and that a policy decision had been made to provide for judicial review, rather than parliamentary disallowance, on the basis that "the certificate is in essence a legal opinion to which ADJR review is appropriate and disallowance is not" (Ninth Report of 1996, page 136). The committee thanked the Attorney-General for this response.

An amendment made by the Senate to provide for the disallowance of an Attorney-General's certificate in addition to judicial review was subsequently disagreed to by the House of Representatives.

Insufficient scrutiny by Parliament—national schemes of legislation

Subclause 61(7) of the bill provides for legislative instruments made to facilitate the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States to be exempt from the general disallowance framework where the legislation authorising the instrument to be made directs that the instruments may not be disallowed. The committee was concerned that the subclause, if enacted, could be considered to give a general approval for removing from Parliament's scrutiny subordinate legislation in respect of national schemes of legislation. The Attorney-General's response indicated that removal of the provision would be premature while the principles and framework for scrutiny of National Scheme Legislation were still under development (Ninth Report of 1996, page 137). The committee continued to query the need for such a provision given that there was no general exemption for such legislation at present. The committee continued to draw senators' attention to the provision.

The Attorney-General's further response undertook that the operation of the subclause would be considered in the review of the operation of the bill under clause 72 (Fourth Report of 1997, page 65). The committee thanked the Attorney-General for this response.

An amendment by the Senate to omit subclause 61(7) was subsequently disagreed to by the House of Representatives.

Insufficient parliamentary scrutiny of legislative power—Proclamation not disallowable

Paragraph 61(8)(c) provides an exemption from disallowance of Proclamations under section 5 of the *Flags Act 1953*. In the absence of any explanation for this exemption in the explanatory memorandum, the committee sought the Attorney-General's response on the matter. The Attorney-General advised the committee that most authorised flags are required to be authorised by methods other than Proclamation. To allow disallowance of such Proclamations would therefore discriminate against those few flags which were authorised by Proclamation (Ninth Report of 1996, page 139). The committee thanked the Attorney-General for this response.

Insufficient parliamentary scrutiny of legislative power—instruments that are not legislative instruments

Schedule 1 of the bill lists certain instruments and provides that they are not to be legislative instruments for the purpose of the legislation. Table item 14 provides for certain instruments, relating to terms and conditions of Commonwealth employees, to be included in the list by being prescribed. While the instrument including other

instruments in the Schedule would itself be disallowable, the committee considered that this was not a satisfactory safeguard. The Attorney-General responded that the exemption of instruments dealing with terms and conditions of persons employed by the Commonwealth was consistent with the Government's industrial relations policy but would be reviewed in the course of the review of the legislation. The committee remained concerned that the bill altered the *status quo* by removing such instruments from parliamentary scrutiny and continued to draw senators' attention to the provision. Further comments on this issue were included in the Fourth and Sixth Reports of 1997, the latter containing extracts from a letter from the Minister for Industrial Relations to the Regulations and Ordinances Committee in which the Minister stated that the Government would introduce amendments to ensure preservation of the *status quo*. Certain public sector instruments would be exempt from the requirements of the bill but those instruments currently subject to disallowance would continue to be so subject.

An amendment by the Senate to omit table item 14 of Schedule 1 was subsequently disagreed to by the House of Representatives but a further amendment was made by the House of Representatives restoring the *status quo*. This amendment was agreed to by the Senate and is included in the new bill.

Inappropriate delegation of legislative power—amendment of various Acts with respect to Rules of Court

Schedule 4 of the bill, among other things, regulates the relationship between the substantive provisions of the bill and the Rules of Court of the Family Court, Federal Court, High Court and the Industrial Relations Court, although clause 7 provides that such rules are not generally legislative instruments. Schedule 4, however, provides that the bill, with some exceptions, would apply to those rules as if they were legislative instruments. Schedule 4 also provides that the provisions of the bill which apply to the rules of court may be modified or adapted by regulations made under the Acts regulating those Courts. Although such regulations would themselves be disallowable, the committee was concerned that modifications achieved through such regulations could have the effect of ousting parliamentary scrutiny. The Attorney-General noted that any modification made by such regulations could not affect the requirement to comply with Part 5 of the bill (concerning scrutiny of legislative instruments). The committee remained concerned, however, and continued to draw senators' attention to the provisions. The Attorney-General's further response indicated that he was considering an amendment to make it clear that a modification or adaptation by regulation could not operate to affect the operation of Part 5 of the bill.

Amendments to this effect were agreed to by the Senate and subsequently by the House of Representatives as well. They have been included in the version of the bill currently before the Parliament.

The committee notes that the bill was previously passed by the Senate with amendments, some of which were agreed to by the House of Representatives and others of which were not agreed to. The issues are now before the Senate again in the form of this bill.

Managed Investments Bill 1997

This bill was introduced into the House of Representatives on 3 December 1997 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the Corporations Law to implement a new regime for the regulation of managed investment schemes. Each managed investment scheme is to be operated by a single responsible entity; most of the schemes must be licensed by the Australian Securities Commission and submit compliance plans to the ASC; and will be required to hold a securities dealer's licence. The committee dealt with the bill in Alert Digest No. 1 of 1998 but made no comment.

The committee has subsequently received a submission on the bill from the Trustee Corporations Association of Australia (TCAA) which claims that the bill transgresses principles (1)(a)(i), (ii) and (iv) of the committee's terms of reference. A copy of the covering letter accompanying the submission is included at the end of this Alert Digest.

Does the bill trespass unduly on personal rights and liberties?

The TCAA claims that the bill denies the beneficial owners of some \$160 billion of assets in collective investments the right to continue to have those assets held for them on the same terms and conditions, and with the same level of protection as they presently enjoy. Further, the TCAA suggests that the bill is retrospective in seeking to overturn established contractual and equitable rights.

The committee does not regard the bill as having any retrospective effect. Although the bill may well affect the relationship between the beneficial owners and the managers of collective investments, those charges apply only for the future and cannot affect any matters occurring prior to this bill being assented to.

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

Does the bill make rights unduly dependent upon insufficiently defined administrative powers?

The TCAA suggests that because implementation of the scheme contained in the bill will be the responsibility of the ASC and the relevant draft regulations and

policy guidelines have not been released, the Parliament cannot know how the law, if enacted, will operate to achieve its stated intent.

The committee notes that it is not an uncommon practice for matters of administration to be dealt with in delegated legislation. In the committee's view, the bill does not exceed acceptable parameters in that the matters of administrative detail are sufficiently defined for the bill not to transgress the committee's terms of reference. While it may be considered desirable for draft regulations to be available before the bill is debated, this is a matter for the Senate to determine.

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

Does the bill inappropriately delegate legislative power?

The TCAA suggests that policy statements, responsibility for which is delegated to the ASC, are legislative in character but not subject to parliamentary or public scrutiny. Examples are given.

The committee is not convinced that the required policy statements, examples of which are alluded to in the submission are indeed legislative in character or that the matters raised under this heading contravene any of the committee's terms of reference.

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

Other matters

The TCAA's submission also suggests that the bill inappropriately creates civil penalties to enforce private contracts, a matter which does not fall within the committee's terms of reference.

In the circumstances, the committee has no further comment on the bill but will make a copy of the TCAA's submission available to the Treasurer.

National Residue Survey Administration Amendment Bill 1998

This bill was introduced into the House of Representatives on 4 March 1998 by the Minister for Primary Industries and Energy. [Portfolio responsibility: Primary Industries and Energy]

The bill proposes to amend the *National Residue Survey Administration Act 1992* and related legislation to:

- clarify that national residue survey (NRS) levies are “stand alone” levies, levied separately from other primary industry levies;
- validate the imposition of the NRS levy on onions; and

and repeals the 22 NRS levy imposition Acts to enable their consolidation into two Acts.

Retrospectivity Subclause 2(2)

Subclause 2(2) of the bill, if enacted, would provide for the amendments contained in Schedule 1 to take effect retrospectively from 1 February 1994 in order to validate levies on onions that have already been collected.

The bill is said to be necessary to overcome technical faults in the *National Residue Survey Administration Act 1992* which made liability for payment of National Residue Survey (NRS) levies dependent upon liability for the payment of another primary industry levy. According to the explanatory memorandum, the original intention had been that the liabilities for payment of both levies would arise at the same point in the process and would be collected at the same time, not that one should depend on the other. In the case of onions, the other primary industry levy is set at \$0.00 and there is some question whether a zero rate triggers an NRS levy liability. As the levy on onions has been collected since 1 February 1994, the retrospective application of Schedule 1 is regarded as necessary to validate the imposition of NRS levy on onions.

Although the proposal is said to be supported by the industry, such retrospectivity is of concern to the committee as it may have the effect of trespassing unduly on personal rights and liberties. The committee, therefore, **seeks the Minister's advice** on the circumstances which have given rise to the bill and whether the rights of any person may be adversely affected by its retrospective operation.

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.

National Residue Survey (Customs) Levy Bill 1998

This bill was introduced into the House of Representatives on 4 March 1998 by the Minister for Primary Industries and Energy. [Portfolio responsibility: Primary Industries and Energy]

The bill proposes to impose levies that are duties of customs on five commodity groups to replace the relevant imposition Acts proposed to be repealed by the National Residue Survey Administration Amendment Bill 1998.

Imposing levy by regulation

Clause 3 of Schedule 4

Clause 3 of Schedule 4 sets the rate of levy on onions at 40 cents per tonne, with provision for amendment by regulation and a maximum rate of levy of \$5.00. The committee has consistently drawn attention to provisions which allow that rate of a levy to be set by regulation, largely on the basis that a rate of a levy could be prescribed which would amount to a tax. Generally, the committee has taken the view that setting taxes is more appropriately a matter for primary legislation, a prerogative of Parliament, not the executive. If there is a need for flexibility (that is, adjustments to the rate of a levy need to be made so frequently and/or so quickly that it is impractical to amend primary legislation) the committee prefers that the primary legislation prescribe either a maximum rate of the levy or a method of calculating such a maximum rate. In this case, although a maximum rate has been set, the disproportion between the current rate of 40 cents and the proposed maximum of \$5.00 is such that the committee is concerned that this clause may effectively allow the rate of levy to be set by regulation.

The committee therefore **seeks the Minister's advice** on why the parameters set by the legislation are so broad in relation to the rate of levy and whether the industry has been consulted on the maximum rate of levy.

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

Imposing levy by regulation
Subclause 5(1)

Subclause 5(1) of Schedule 4 would permit the rate of levy on a particular class of eligible horticultural products to be set by regulation. Although subclause 5(2) seeks to provide for a maximum rate of levy in the legislation, that maximum is dependent upon the Australian Statistician publishing a particular set of figures. The purpose of this clause is to provide for a rate of levy for horticultural products other than onions, apples and pears in anticipation of arrangements with the relevant growers of such products. While the committee understands that an attempt is being made to set a maximum, the committee notes that such clauses are potentially an inappropriate delegation of legislative power for the reasons outlined above and therefore **seeks the Minister's views** on why this particular formula for setting the maximum rate was chosen.

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

National Residue Survey (Excise) Levy Bill 1998

This bill was introduced into the House of Representatives on 4 March 1998 by the Minister for Primary Industries and Energy. [Portfolio responsibility: Primary Industries and Energy]

The bill proposes to impose levies that are duties of excise on 16 commodity groups to replace the relevant imposition Acts proposed to be repealed by the National Residue Survey Administration Amendment Bill 1998.

Imposing levy by regulation—proportionality

Clause 3 of Schedule 3, subclause 4(1) of Schedule 4, the table of rates in clause 3 of Schedule 5 and clause 4 of Schedule 9

These provisions set minimum and maximum rates of levy for various primary products that appear to be in disproportionate relationship with one another in that the maximum figure is considerably greater than the minimum. As noted in relation to the National Residue Survey (Customs) Levy Bill 1998, the committee has consistently drawn attention to provisions which allow that rate of a levy to be set by regulation, largely on the basis that a rate of a levy could be prescribed which would amount to a tax. Generally, the committee has taken the view that setting taxes is more appropriately a matter for primary legislation, a prerogative of Parliament, not the executive. If there is a need for flexibility (that is, adjustments to the rate of a levy need to be made so frequently and/or so quickly that it is impractical to amend primary legislation) the committee prefers that the primary legislation prescribe either a maximum rate of the levy or a method of calculating such a maximum rate. In these cases, although maximum rates have been set, the disproportion between the current rates and the proposed maxima are such that the committee is concerned that these provisions may effectively allow the rates of levies to be set by regulation.

The committee therefore **seeks the Minister's advice** on why the parameters set by the legislation are so broad in relation to the rates of levy and whether the replacement levies differ in scope from the previous regime.

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

Imposing levy by regulation

Clause 9 of Schedule 9

Clause 9 of Schedule 9 would permit the rate of levy on a particular class of eligible horticultural products to be set by regulation. Although subclause 9(2) seeks to provide for a maximum rate of levy in the legislation, that maximum is dependent upon the Australian Statistician publishing a particular set of figures. The purpose of this clause is to provide for a rate of levy for horticultural products other than onions, apples and pears in anticipation of arrangements with the relevant growers of such products. While the committee understands that an attempt is being made to set a maximum, the committee notes that such clauses are potentially an inappropriate delegation of legislative power for the reasons outlined above and therefore **seeks the Minister's views** on why this particular formula for setting the maximum rate was chosen.

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

Privacy Amendment Bill 1998

This bill was introduced into the House of Representatives on 5 March 1998 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Privacy Act* 1988 to apply it to personal information held by contractors in relation to services provided to the Commonwealth. It proposes to:

- require “contracted service providers” to comply with the Information Privacy Principles when collecting or holding personal information in relation to that contract;
- enable the Privacy Commissioner to investigate, conciliate or make determinations in respect of a complaint about an act or practice of a contracted service providers and to conduct audits of contracted service providers; and
- provide accountability mechanisms to involve outsourcing agencies in such investigations.

The committee has no comment on this bill.

Public Employment (Consequential and Transitional) Amendment Bill 1997 [No. 2]

This bill was introduced into the House of Representatives on 5 March 1998 by the Minister Assisting the Prime Minister for the Public Service. This bill is identical to the bill, as amended and passed by the House of Representatives on 30 October 1997. [Portfolio responsibility: Prime Minister]

The bill proposes to deal with consequential and transitional matters arising from the repeal of the *Public Service Act 1992* and the enactment of replacement legislation, the *Public Service Act 1997*. Primarily, the bill proposes to:

- set in place conversion arrangements for those who work in the Australian Public Service;
- make transitional arrangements for some conditions covered by the *Public Service Act 1992* because they will no longer be regulated in the same way;
- provide for the continuation of processes already in progress, eg. appointments, promotions, suspensions, transfers and advancements, as well as appeals, grievances and other reviews of employment decisions;
- deal with the consequences of devolving the arrangements for setting the salaries of the Senior Executive Service; and
- make consequential amendments to amend or repeal numerous Acts.

Delegation of legislative power Subclauses 14(4) and (5)

In Alert Digest No. 10 of 1997, the committee noted that subclauses 14(4) and (5), if enacted, would permit the making of regulations which may prevail over existing legislation or amend existing legislation, but that such regulations were authorised only for the purpose of providing for the transition from the present Public Service Act to the new one.

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

Regulations with retrospective effect
Subclause 14(7)

The committee noted in Alert Digest No. 10 of 1997 that subclause 14(7) of the bill, if enacted, would permit the making of regulations which might have retrospective effect, in that it would be possible for the regulations to take effect from a date prior to that on which they were made. Such regulations, however, would be subject to the *Acts Interpretation Act 1901*. Any regulations made under this subclause which retrospectively affected adversely any person other than the Commonwealth would, therefore, be invalid.

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

Public Service Bill 1997 [No. 2]

This bill was introduced into the House of Representatives on 5 March 1998 by the Minister Assisting the Prime Minister for the Public Service. This bill is identical to the bill, as amended and passed by the House of Representatives on 30 October 1997. [Portfolio responsibility: Prime Minister]

The bill proposes to replace the current legislative framework for the establishment and management of the Australian Public Service.

The committee has no comment on this bill.

Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Bill 1998

This bill was introduced into the House of Representatives on 5 March 1998 by the Minister for Family Services. [Portfolio responsibility: Social Security]

The bill proposes to amend the following Acts:

- *Social Security Act 1991* to:
 - introduce austudy payment for students aged 25 years and over;
 - standardise the hardship rules for the liquid assets waiting period with those of other similar social security payments;
 - ensure the consistent treatment of lump sum payments received by youth allowance recipients;
 - transfer the rules relating to the austudy pensioner education supplement to the Social Security Act;
 - with the exception of ABSTUDY customers, move the Student Financial Supplement Scheme to the Social Security portfolio;
 - enable the making of a disallowable instrument to provide fares allowance for certain tertiary students;
 - ensure that youth allowance and austudy payment are indexed;
 - make amendments and transitional and consequential amendments to various rate calculator provisions resulting from the youth allowance changes and the repeal of youth training allowance, Benefit Rate Calculator A and the Sickness Allowance Rate Calculator;
- *Student and Youth Assistance Act 1973* to make amendments consequential on the introduction of youth allowance and austudy payment into the Social Security Act;
- *Income Tax Assessment Act 1936, Income Tax Assessment Act 1997 and Taxation (Interest on Overpayments and Early Payments) Act 1983* to provide for the taxation treatment of the new youth allowance package;
- and makes consequential amendments to 11 other Acts.

Tax file numbers**Proposed sections 577A and 577B in Item 6 of Schedule 1**

These sections, if enacted, would provide that austudy would not be payable if the applicant has not provided the tax file number of the applicant and (where relevant) his or her partner. The committee recognises that these provisions may be included in the bill in order to prevent overpayments and fraud against the Commonwealth. The committee, however, notes that this is yet one more example of tax file numbers being used more as a means of identification and as an aid to income testing rather than as part of the tax laws. This is an issue to which the committee has repeatedly drawn attention.

In these circumstances, 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.

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 3 of 1998

25 March 1998

ISSN 1329-668X

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator J Ferris
Senator S Macdonald
Senator A Murray
Senator J Quirke

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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V The committee has commented on these bills

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committee under its terms of reference is invited to do so.

Child Support Legislation Amendment Bill 1998

This bill was introduced into the House of Representatives on 12 March 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

- *Child Support (Assessment) Act 1989* to:
 - modify the child support administrative formula;
 - limit the disclosure of information relating to children of a parent on the notice of assessment;
 - provide for a \$260 minimum annual rate of child support;
 - modify the effect of care arrangements on assessments;
 - provide that the starting date of liability for applications for administrative assessment will be the date the application is made to the Registrar;
 - allow a person in receipt of more than the minimum rate of Family Allowance to elect to end their administrative assessment where approval has been granted by the Secretary to the Department of Social Security;
 - modify the date of effect of information provided to or obtained by the Registrar;
 - allow clients to object to decisions made by the Registrar;
 - allow both parents to be involved and to participate in the assessment departure process;
 - modify the income on which a child support liability is raised;
 - enable child support assessments to be calculated using the most current taxable income available for each parent;
 - allow a person to lodge an income estimate election up to 31 July following the end of the child support year, and to allow the Registrar to reject an income estimate election where satisfied it does not accurately reflect the person's financial circumstances;

- provide that either parent can apply for a child support assessment; and
- make corrections to out of date or incorrect references;
- *Child Support (Assessment) Act 1989* and *Child Support (Registration and Collection) Act 1988* to:
 - enable a carer to apply for a child support assessment to continue to the end of the school year in which a full-time secondary student turns 18; and
 - modify the manner in which information must be provided to the Registrar;
- *Child Support (Registration and Collection) Act 1988* to:
 - allow the Registrar to request the Secretary to the Department of Social Security to make deductions from social security pensions or benefits to be applied towards child support liabilities;
 - allow parties to move to private collection by agreement at any time;
 - require parties to move to private collection in certain circumstances where the Registrar is satisfied that regular payments would be likely to continue;
 - allow the Registrar to hold money collected from a payer in certain circumstances;
 - allow debts between two persons who owe child support in respect of their children to be offset;
 - enable paying parents to elect to pay their child support in accordance with a nominated period rather than having to pay a monthly amount by the seventh of each month; and
 - ensure that a liability arising out of a paying parent's application will not be registered for collection until the eligible carer applies to the Registrar to have it collected; and
- *Social Security Act 1991* to:
 - enable deductions to be made from social security pensions and benefits where requested by written notice from the Registrar; and

- ensure that 50 per cent of any child maintenance paid by a paying parent will be deducted from their Family Allowance income when calculating entitlement to Family Allowance.

The committee has no comment on this bill.

Genetic Privacy and Non-discrimination Bill 1998

This bill was introduced into the Senate on 11 March 1998 by Senator Stott Despoja as a Private Senator's bill.

The bill proposes to:

- protect the genetic privacy of individuals and makes genetic discrimination unlawful;
- define the circumstances in which genetic information and DNA samples may be collected, stored, analysed and disclosed;
- outlines the rights and responsibilities of individuals and persons with respect to genetic information; and
- establishes mechanisms to enforce these rights and responsibilities.

Commencement

Clause 2

Clause 2 of this Bill will permit the whole Bill to commence on Proclamation. No provision is made for automatic commencement or repeal at a particular time.

With respect to commencement provisions, the committee has placed importance on the Office of Parliamentary Counsel Drafting Instruction No 2 of 1989. The Drafting Instruction provides, in part:

3. As a general rule, a restriction should be placed on the time within which an Act should be proclaimed (for simplicity I refer only to an Act, but this includes a provision or provisions of an Act). The commencement clause should fix either a period, or a date, after Royal Assent, (I call the end of this period, or this date, as the case may be, the 'fixed time'). This is to be accompanied by either:

- (a) a provision that the Act commences at the fixed time if it has not already commenced by Proclamation: or
- (b) a provision that the Act shall be taken to be repealed at the fixed time if the Proclamation has not been made by that time.

4. Preferably, if a period after Royal Assent is chosen, it should not be longer than 6 months. If it is longer, Departments should explain the reason for this in the Explanatory Memorandum. On the other hand, if the date option is chosen, [the Department of the Prime Minister and Cabinet] do not wish at this stage to restrict the discretion of the instructing Department to choose the date.

5. It is to be noted that if the 'repeal' option is followed, there is no limit on the time from Royal Assent to commencement, as long as the Proclamation is made by the fixed time.

6. Clauses providing for commencement by Proclamation, but without the restrictions mentioned above, should be used only in unusual circumstances, where the commencement depends on an event whose timing is uncertain (eg enactment of complementary State legislation).

The committee notes that paragraph 6 of Drafting Instruction No. 2 of 1989 suggests that clauses providing for commencement by Proclamation, with no other restrictions as to time of commencement, should be used only in unusual circumstances, where commencement depends on an event whose timing is uncertain. The committee further notes that there is no indication in the explanatory memorandum of the reason for adopting a provision in this form.

Accordingly, the Committee **seeks the advice of the Senator** on the reason for choosing the mechanism in clause 2.

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

Health Legislation Amendment (Health Care Agreements) Bill 1998

This bill was introduced into the House of Representatives on 12 March 1998 by the Minister for Health and Family Services. [Portfolio responsibility: Health and Family Services]

The bill proposes to amend the *Health Insurance Act 1973* and *National Health Act 1953* to enable the Commonwealth to enter into agreements with the States and Territories, to be known as Australian Health Care Agreements, for the provision of designated health care services for eligible people from 1 July 1998 to 30 June 2003.

Commencement Subclause 2(3)

By virtue of subclause 2(3), items 2 and 13 of Schedule 1 to this bill will be taken to have been repealed if they have not been proclaimed to commence within 12 months of Assent. In this case, the drafter has used the “repeal” option as referred to in paragraph 5 of the Office of Parliamentary Counsel Drafting Instruction No. 2 of 1989.

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

International Monetary Agreements Amendment Bill 1998

This bill was introduced into the House of Representatives on 12 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

The bill proposes to amend the *International Monetary Agreements Act 1947* to:

- enable the Treasurer, on behalf of Australia, to enter into agreements to lend money or enter into currency swaps in circumstances where the International Monetary Fund requests Australia to provide assistance in support of a Fund program and where at least one other country or organisation has provided or intends to provide assistance to the recipient country in response to a similar request; and
- apply to agreements that meet the above conditions, made with the Republic of Indonesia or the Republic of Korea prior to the bill commencing.

The committee has no comment on this bill.

Native Title Amendment Bill 1997 [No. 2]

This bill was introduced into the House of Representatives on 9 March 1998 by the Attorney-General. The bill comprises the earlier bill, as amended and passed by the House of Representatives on 29 October 1997, and certain amendments made by the Senate and agreed to by the House. [Portfolio responsibility: Prime Minister]

The bill proposes to amend the following Acts:

- *Native Title Act 1993* to:
 - deal with certain acts done on or before 23 December 1996 (the date of the High Court's decision in *Wik*) concerning the interaction between native title rights and the interests and other rights and interests in land or waters;
 - confer new functions on representative Aboriginal/Torres Strait Islander bodies and deal with the selection, funding, accountability and administration of representative bodies;
 - explain how the new future acts processes will apply to processes already underway when the amendments commence, what will happen to applications already made to the NNTT and the Federal Court and how the new registration test will apply to claims already on the Register of Native Title Claims; and
 - list historic and current leases considered, on the basis of common law, to confer exclusive possession on the grantee and therefore extinguish native title; and
- *Native Title Act 1993, Federal Court of Australia Act 1976 and Human Rights and Equal Opportunity Commission Act 1986* to:
 - explain how applications concerning native title issues are to be made and dealt with by the Federal Court, the NNTT and State or Territory bodies which have been approved under the *Native Title Act 1993* in relation to applications about native title matters; and
 - amend the way in which the Register of Native Title Claims and the National Native Title Register are to be kept and, in particular, the new registration test that is to be applied to claims for native title.

This Bill is the same, in all relevant respects, as the Bill introduced into the House of Representatives on 4 September 1997, and on which the Committee commented

in Alert Digest No 12 of 1997. The committee will follow up a letter forwarded to the Prime Minister on 25 September 1997 seeking a response. For the information of Senators, the comments from Alert Digest No. 12 of 1997 are repeated below.

Extract from Alert Digest No. 12 of 1997

**Commencement by Proclamation/effluxion of time
Subclauses 2(2) to (6)**

Subclauses 2(2) to (6) of this bill provide that the substantive amendments made by the bill will commence at various times after Royal Assent. The subclauses state:

- (2) Subject to subsection (3), Part 1 of Schedule 3 commences on a day to be fixed by Proclamation.
- (3) If Part 1 of Schedule 3 does not commence within the period of 9 months beginning on the date on which this Act receives the Royal Assent, that Part commences on the first day after the end of that period.
- (4) Part 2 of Schedule 3 commences:
 - (a) on the first day after the end of the period of 12 months after the commencement of Part 1 of Schedule 3; or
 - (b) if, before the end of that period, a later day is fixed by Proclamation—on that later day.
- (5) Subject to subsection (6), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (6) If a provision referred to in subsection (5) does not commence within the period of 9 months beginning on the day on which this Act receives the Royal Assent, that provision commences on the first day after the end of that period.

With respect to commencement provisions, the committee has placed importance on the Office of Parliamentary Counsel Drafting Instruction No. 2 of 1989. The Drafting Instruction provides, in part:

- 3. As a general rule, a restriction should be placed on the time within which an Act should be proclaimed (for simplicity I refer only to an Act, but this includes a provision or provisions of an Act). The commencement clause should fix either a period, or a date, after Royal Assent, (I call the end of this period, or this date, as the case may be, the 'fixed time'). This is to be accompanied by either:
 - (a) a provision that the Act commences at the fixed time if it has not already commenced by Proclamation: or
 - (b) a provision that the Act shall be taken to be repealed at the fixed time if the Proclamation has not been made by that time.

4. Preferably, if a period after Royal Assent is chosen, it should not be longer than 6 months. If it is longer, Departments should explain the reason for this in the Explanatory Memorandum. On the other hand, if the date option is chosen, [the Department of the Prime Minister and Cabinet] do not wish at this stage to restrict the discretion of the instructing Department to choose the date.

5. It is to be noted that if the 'repeal' option is followed, there is no limit on the time from Royal Assent to commencement, as long as the Proclamation is made by the fixed time.

6. Clauses providing for commencement by Proclamation, but without the restrictions mentioned above, should be used only in unusual circumstances, where the commencement depends on an event whose timing is uncertain (eg enactment of complementary State legislation).

With respect to subclauses (3) and (6), the committee notes that paragraph 4 of the Drafting Instruction is applicable. The explanatory memorandum does not appear to give a reason for using a nine month period rather than a 6 month period for automatic commencement.

With respect to subclause (4), the committee notes that the explanatory memorandum at paragraph 1.13 suggests that the change from the present system for recognising and regulating representative bodies to the new system will need a transition period sufficiently long to enable the necessary preparatory work to be completed. The mechanism chosen, however, will result in a date for commencement that is not limited to any particular time. Paragraph 6 of the Drafting Instruction suggests that such a method should be used only in unusual circumstances.

The committee, therefore, **seeks the advice of the Minister** on the reasons for choosing the mechanisms in subclauses 2(3), (4) and (6).

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

Vicarious liability and reversal of the onus of proof **Subclause 203FH(4)**

Subclause 203FH(4) provides:

- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of this Part, to have been engaged in also by the person unless the person establishes that the person took reasonable precautions and exercised due diligence to avoid the conduct.

This subclause, if enacted, would impose vicarious liability on a person for the criminal acts of his or her employee or agent. It would also put the onus of disproving liability on the principal by requiring that person to establish that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

The committee has been prepared to accept the imposition of criminal liability on the manager/directors of a company for the acts of a company as they constitute the effective mind and heart of the company. The company, in effect, thinks and makes decisions through them. Different considerations, however, apply where vicarious liability for the acts of other persons is imposed on an employer or principal who is a natural person.

The primary issue is whether imposing criminal liability vicariously on an employer who is a natural person unduly trespasses on that person's personal rights and liberties. Accordingly, the committee **seeks the Minister's advice** on this matter.

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.

The Committee reiterates its comments in relation to this Bill.

Pending the Prime Minister's advice, the committee draws Senators' attention to the provisions, as they may be considered to delegate legislative power inappropriately, in breach of principle 1(a)(iv) of the committee's terms of reference and also 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.

Parliamentary Service Bill 1997 [No. 2]

This bill was introduced into the House of Representatives on 10 March 1998 by the Speaker. This bill is identical to the bill, as amended and passed by the House of Representatives on 30 October 1997. [Portfolio responsibility: Prime Minister]

The bill proposes to provide for the establishment and administration of the Australian Parliamentary Service.

The committee has no comment on this bill.

Social Security and Veterans' Affairs Legislation Amendment (Retirement Assistance for Farmers) Bill 1998

This bill was introduced into the House of Representatives on 11 March 1998 by the Minister representing the Minister for Social Security. [Portfolio responsibility: Social Security]

The bill proposes to amend the *Social Security Act 1991* and *Veterans' Entitlements Act 1986* to establish the Retirement Assistance for Farmers Scheme (to operate until 14 September 2000) to enable pension age farmers, veterans and their partners to transfer their farm and farm assets, up to a maximum of \$500,000, to the next generation without affecting their access to the age pension and Veterans' Affairs income support payments, respectively.

Retrospectivity Clause 2

By virtue of clause 2, this Bill will be deemed to have commenced on 15 September 1997. It seems to the Committee, however, that the retrospectivity will not disadvantage any person. The purpose of this retrospectivity is to provide benefits in relation to social security payments and Veterans' Affairs allowances to those who can show a long term involvement in farming. Therefore, the committee merely notes this retrospectivity.

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

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 4 of 1998

1 April 1998

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator J Ferris
Senator S Macdonald
Senator A Murray
Senator J Quirke

TERMS OF REFERENCE

Extract from Standing Order 24

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***The committee has commented on these bills**

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***The committee has commented on these bills**

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committee under its terms of reference is invited to do so.

Australian Hearing Services Reform Bill 1998

This bill was introduced into the House of Representatives on 25 March 1998 by the Parliamentary Secretary to the Minister for Health and Family Services. [Portfolio responsibility: Health and Family Services]

The bill proposes to repeal the *Australian Hearing Services Act 1991* and provides for a number of transitional provisions to facilitate the restructuring of the Australian Hearing Services Authority as a Commonwealth company.

Commencement

Subclause 2(2) and Schedule 1

By virtue of subclause 2(2) of the Bill, the amendments proposed in Schedule 1 will commence at a time which is at the discretion of the Minister. These amendments propose the repeal of the *Australian Hearing Services Act 1991*, and a minor amendment to the *Hearing Services Administration Act 1997*. While discretionary commencement is something that attracts the attention of the Committee, it is apparent from other provisions of the Bill that these amendments ought not come into force until those other provisions have first been implemented.

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

Insufficient Parliamentary scrutiny

Clause 24

Clause 24 of the Bill provides that no instrument made under the Bill (with the exception of any regulations made under section 25) is a legislative instrument for the purposes of the *Legislative Instruments Act 1998*. Such a clause is clearly not necessary in relation to instruments which are administrative in nature, and so must relate to instruments which are legislative in nature. The Committee notes that the intention underlying the proposed Legislative Instruments Act is that all such instruments should be scrutinised by the Parliament. Accordingly, the Committee **seeks the advice of the Minister** on the reasons for excluding such instruments from scrutiny.

Pending the Minister's advice, the committee draws Senators' attention to this provision, 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.

Australian Prudential Regulation Authority Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to establish the Australian Prudential Regulation Authority (APRA) which will be an independent prudential operator of banks and other deposit-taking institutions, life and general insurance companies, superannuation funds and retirement income amounts.

The committee has no comment on this bill.

Authorised Deposit-taking Institutions Supervisory Levy Imposition Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to impose a levy on authorised deposit-taking institutions regulated by the Australian Prudential Regulation Authority (APRA). The levy is one of several being imposed to fund the APRA and the cost to the Australian Securities and Investments Commission of undertaking consumer protection functions.

Commencement Subclause 2(2)

Subclause 2(2) of the Bill provides that commencement may be delayed for up to 24 months after assent. This is a substantially greater period than the 6 months referred to in Office of Parliamentary Counsel Drafting Instruction No 2 of 1989. However, paragraph 4.4 of the Explanatory Memorandum indicates that the additional time for proclamation is necessary as banking institutions are expected to be subject to the requirements for non-callable deposits during 1998-99, while other deposit-taking institutions are currently subject to State prudential arrangements and supervisory levies.

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

Authorised Non-operating Holding Companies Supervisory Levy Imposition Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to impose a levy on authorised non-operating holding companies regulated by the Australian Prudential Regulation Authority (APRA). The levy is one of several being imposed to fund the APRA and the cost to the Australian Securities and Investments Commission of undertaking consumer protection.

The committee has no comment on this bill.

Commonwealth Rehabilitation Service Reform Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Minister for Family Services. [Portfolio responsibility: Health and Family Services]

The bill proposes to provide transitional arrangements to facilitate the restructuring of the Commonwealth Rehabilitation Service as a Commonwealth company and makes consequential amendments to eight other Acts.

Insufficient Parliamentary scrutiny Clause 18

Clause 18 of the Bill provides that no instrument made under the Bill (with the exception of any regulations made under section 19) is a legislative instrument for the purposes of the *Legislative Instruments Act 1998*. Such a clause is clearly not necessary in relation to instruments which are administrative in nature, and so must relate to instruments which are legislative in nature. The Committee notes that the intention underlying the proposed Legislative Instruments Act is that all such instruments should be scrutinised by the Parliament. Accordingly, the Committee **seeks the advice of the Minister** on the reason for excluding such instruments from scrutiny.

Pending the Minister's advice, the committee draws Senators' attention to this 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.

Employee Protection (Wage Guarantee) Bill 1998

This bill was introduced into the House of Representatives on 23 March 1998 by Mrs Crosio as a Private Member's bill.

The bill proposes to protect workers in the event of their employer's insolvency by:

- establishing a scheme of wage protection insurance;
- requiring employers to insure their workforces under the scheme; and
- providing for the determination and enforcement of claims under the scheme.

The committee has no comment on this bill.

Financial Institutions Supervisory Levies Collection Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to enable the collection of the levies on financial institutions regulated by the Australian Prudential Regulation Authority (APRA).

The committee has no comment on this bill.

Financial Sector Reform (Amendments and Transitional Provisions) Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to amend the following Acts:

- *Australian Securities Commission Act 1989* to:
 - change the name of the Australian Securities Commission to the Australian Securities and Investments Commission (ASIC);
 - provide the ASIC with additional functions, particularly in relation to the consumer protection and market integrity aspects of insurance and superannuation regulation; and
 - make consequential amendments;
- *Banking Act 1959* to extend the coverage of the Act so that the banking and deposit-taking sector will be administered by the Australian Prudential Regulation Authority (APRA);
- *Financial Corporations Act 1974* to require that authorised deposit-taking institutions provide certain data to both the Reserve Bank of Australia and the APRA;
- *Insurance Acquisitions and Takeovers Act 1991* to facilitate integration with the proposed Financial Sector (Shareholdings) Act 1998 and transfer regulatory responsibility to the APRA;
- *Insurance Act 1973, Insurance (Agents and Brokers) Act 1984 and Insurance Contracts Act 1984* to transfer regulatory responsibility to the APRA;
- *Life Insurance Act 1995, Retirement Savings Accounts Act 1997 and Superannuation Industry (Supervision) Act 1993* to separate responsibility for the administration of the Acts between the ASIC and the APRA;
- *Reserve Bank Act 1959* to:
 - establish the Payments System Board to operate as the policy making board in relation to the payments system;

- reduce the Reserve Bank Board from 11 to nine members; and
- make consequential amendments;
- *Superannuation (Resolution of Complaints) Act 1993* to transfer regulatory responsibility to the ASIC; and

repeals six Acts and makes consequential and transitional amendments to other Acts.

Commencement

Subclause 2(4)

Subclause 2(4) of the Bill provides that commencement of Item 86 of Schedule 2 (which repeals Division 3 of Part II of the Banking Act) may be delayed for up to 24 months after assent. This is considerably longer than the 6 months referred to in Office of Parliamentary Counsel Drafting Instruction No 2 of 1989. The Explanatory Memorandum merely observes that the removal of the requirement for banks to hold non-callable deposits with the Reserve Bank “will take effect from a date specified by proclamation (capped at 24 months)”. By inference, the extended time is required for the same reasons as noted above in relation to the Authorised Deposit-taking Institutions Supervisory Levy Imposition Bill 1998.

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

Non-availability of merits review

Schedule 2, Items 29-40

Items 29 to 40 of Schedule 2 to the Bill propose substantial changes to section 9 of the *Banking Act 1959*, and add new sections 9A, 9B and 9C to that Act. The effect of these amendments will be to give to the newly established Australian Prudential Regulation Authority (APRA) the power, currently exercised by the Governor-General, to issue and revoke the authority to carry on banking business in Australia. The exercise of such a power clearly has considerable commercial implications, yet the Bill seems to make no provision for AAT review of APRA decisions. Accordingly, the Committee **seeks the advice of the Treasurer** on the reason for excluding such decisions from independent review on the merits.

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

Insufficient Parliamentary scrutiny Schedule 2, Items 49

Item 49 of Schedule 2 to the Bill inserts a proposed new section 11AF in the *Banking Act 1959*. This section will permit APRA to make prudential standards for authorised deposit-taking institutions. These standards appear to be legislative in character. However, there seems to be no provision for parliamentary scrutiny. The Committee notes that the intention underlying the proposed Legislative Instruments Act is that all such instruments should be scrutinised by the Parliament. Accordingly, the Committee **seeks the advice of the Minister** on the reason for omitting such instruments from scrutiny.

Pending the Minister's advice, the committee draws Senators' attention to this 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.

Abrogation of the right against self-incrimination Schedule 2, Items 65 and 128

Items 65 and 128 of Schedule 2 to the Bill will insert proposed new subsections 16B(5) and (6) and 62(3) and (4) in the *Banking Act 1959*. These subsections will remove the privilege against self-incrimination for persons charged with some offences under the Act. While mindful of the need to scrutinise such provisions, the Committee notes that they are in a form which the Committee has previously been prepared to accept.

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

Financial Sector (Shareholdings) Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to regulate the ownership and acquisitions of prudentially regulated financial institutions.

Non-availability of merits review Subclause 14(1)

Subclause 14(1) of the Bill grants to the Treasurer the discretion to determine whether an applicant may hold a stake of more than 15% in a financial sector company. However, the Bill seems to make no provision for review on the merits by the Administrative Appeals Tribunal of any exercise of that discretion. Accordingly, the Committee **seeks the advice of the Treasurer** on the reason for excluding such decisions from independent review on the merits.

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

Non-availability of merits review Clauses 23 and 31

Clause 23 of the Bill will permit the Treasurer to declare that a person has practical control of a financial sector company. On the making of such a declaration, clause 24(1) requires the person to give up that control. By virtue of clause 24(3), a failure to give up that control is a criminal offence.

Clause 31 of the Bill will permit the Treasurer to issue a direction to a stakeholder to reduce his or her stake in a financial sector company if "it would be concluded" (by an unspecified person or persons) that the stakeholder was seeking to avoid other provisions in the Bill. A failure to comply with such a direction issued by the Treasurer is, again, a criminal offence.

Since the commission of each of these offences depends, initially, on the exercise of a discretion by the Treasurer, it may be considered that the Treasurer can, in effect, create criminal liability in another person. Accordingly, the Committee **seeks the advice of the Treasurer** on whether the exercise of discretions which may create criminal liability should be subject to independent review on the merits.

Pending the Treasurer's advice, the committee draws Senators' attention to these provisions, as they may be considered to make rights, liberties or obligations unduly dependent on non-reviewable decisions, in breach of principle 1(a)(iii) of the committee's terms of reference.

Food Labelling Bill 1998

This bill was introduced into the Senate on 24 March 1998 by Senator Woodley as a Private Senator's bill.

The bill proposes to make it compulsory for food to be labelled with a table of product contents, detailing each ingredient, its percentage by volume in the product and its country of origin.

The committee has no comment on this bill.

General Insurance Supervisory Levy Imposition Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to impose a levy on the general insurance industry regulated by the Australian Prudential Regulation Authority (APRA). The levy is one of several being imposed to fund the APRA and the cost to the Australian Securities and Investments Commission of undertaking consumer protection.

The committee has no comment on this bill.

Life Insurance Supervisory Levy Imposition Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to impose a levy on the life insurance industry regulated by the Australian Prudential Regulation Authority (APRA). The levy is one of several being imposed to fund the APRA and the cost to the Australian Securities and Investments Commission of undertaking consumer protection.

The committee has no comment on this bill.

Payment Systems (Regulation) Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to provide that the Reserve Bank has the power to designate payment systems; to impose access regimes; make standards; arbitrate disputes; and give directions to participants in designated systems.

Insufficient scrutiny by Parliament of legislative power Subclause 9(3) and clause 18

Subclause 9(3) of the Bill will permit the Reserve Bank to issue notices declaring that the Act will not apply to specified facilities. Clause 18 will permit the Bank to make standards for designated payment systems. In each case, the provisions appear to grant the bank a legislative power, with no corresponding provision for Parliamentary scrutiny of the exercise of that power. Accordingly, the Committee **seeks the advice of the Treasurer** as to the reasons for not subjecting the exercise of these powers to Parliamentary scrutiny.

Pending the Treasurer's advice, the committee draws Senators' attention to these 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.

Non-availability of merits review Clauses 21 and 24

Clauses 21 and 24 will allow the Reserve Bank to issue directions to various financial institutions. Failure to comply with these directions will be a criminal offence. Such provisions appear to permit the Bank to, in effect, create criminal liability – something which is appropriately the domain of Parliament. Accordingly, the Committee **seeks the advice of the Treasurer** on whether the exercise of discretions which may create criminal liability should be subject to independent review on the merits.

Pending the Treasurer's advice, the committee draws Senators' attention to these provisions, as they may be considered to make rights, liberties or obligations unduly dependent on non-reviewable decisions, in breach of principle 1(a)(iii) of the committee's terms of reference.

Non-availability of merits review Clauses 23 and 25

Clause 23 of the Bill will permit the Reserve Bank to authorise a corporation to be a holder of the stored value of a class of purchased payment facilities. Clause 25 of the Bill permits the Bank to exempt a corporation from the need to have such an authority. In neither case is the exercise of this discretion subject to review on the merits by the Administrative Appeals Tribunal. Accordingly, the Committee **seeks the advice of the Treasurer** on whether the exercise of such discretions should be subject to independent review on the merits.

Pending the Treasurer's advice, the committee draws Senators' attention to these provisions, as they may be considered to make rights, liberties or obligations unduly dependent on non-reviewable decisions, in breach of principle 1(a)(iii) of the committee's terms of reference.

Retirement Savings Account Providers Supervisory Levy Imposition Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to impose a levy on providers of retirement savings accounts regulated by the Australian Prudential Regulation Authority (APRA). The levy is one of several being imposed to fund the APRA and the cost to the Australian Securities and Investments Commission of undertaking consumer protection.

The committee has no comment on this bill.

Social Security and Veterans' Affairs Legislation Amendment (Pension Bonus Scheme) Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Minister representing the Minister for Social Security. [Portfolio responsibility: Social Security]

The bill proposes to amend the following Acts:

- *Social Security Act 1991* to enable persons who have qualified for an age pension but deferred receipt of the payment to be entitled to the pension bonus;
- *Veterans' Entitlements Act 1986* to enable persons who are eligible for certain designated pensions but have deferred claiming those payments to be entitled to the pension bonus; and
- *Income Tax Assessment Act 1997* to make lump sum payments of pension bonus exempt from income tax.

The committee has no comment on this bill.

Student and Youth Assistance Amendment Bill 1998

This bill was introduced into the House of Representatives on 25 March 1998 by the Minister for Employment, Education, Training and Youth Affairs. [Portfolio responsibility: Schools, Vocational Education and Training]

The bill proposes to amend the *Student and Youth Assistance Act 1973* relating to the AUSTUDY/ABSTUDY Financial Supplement (FS) Scheme to:

- enable the Secretary to allow a person to repay benefits after the “cut off” dates when the benefit was paid in certain circumstances;
- require the Secretary to decide whether a person who applies for AUSTUDY or ABSTUDY is eligible for FS at the same time;
- ensure that a student may apply for FS only while an eligible student;
- introduce a 14 day cooling off period for FS applications;
- provide that payments of FS are to stop if a person in receipt of FS is found to be eligible for a reduced amount of FS and has already been paid that amount;
- provide for the consequences flowing from when a student remains eligible for the FS but is entitled to access a reduced maximum amount;
- provide that a corporation (providing funds for FS) is not responsible for any amount paid to a deceased student before notice is given is the corporation;
- provide that if a person repays an FS debt in full during the contract period, they are entitled to a 15 per cent discount, whether the debt is repaid as a single lump sum or as a number of partial payments;
- maintain the parity between HECS and FS prescribed amounts and to align procedures for indexing HECS and FS prescribed amounts;
- deal with what happens to wrongly paid FS where FS payments to students are to stop because students have already been paid their maximum entitlement;
- provide that FS payments are to stop in certain circumstances; and
- makes administrative and consequential amendments.

The committee has no comment on this bill.

Superannuation Supervisory Levy Imposition Bill 1998

This bill was introduced into the House of Representatives on 26 March 1998 by the Treasurer. [Portfolio responsibility: Treasury]

One of a package of bills to effect the introduction of the new regulatory framework for the financial system, this bill proposes to impose a levy on non-excluded superannuation funds regulated by the Australian Prudential Regulation Authority (APRA). The levy is one of several being imposed to fund the APRA and the cost to the Australian Securities and Investments Commission of undertaking consumer protection.

The committee has no comment on this bill.

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 5 of 1998

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator J Ferris
Senator S Macdonald
Senator A Murray
Senator J Quirke

TERMS OF REFERENCE

Extract from Standing Order 24

(1)

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

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

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

Aboriginal and Torres Strait Islander Heritage Protection Bill 1998

This bill was introduced into the House of Representatives on 2 April 1998 by the Attorney-General. [Portfolio responsibility: Prime Minister]

The bill proposes to replace the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. Primarily the bill:

- provides a discretion for the Minister to protect areas and objects of particular significance to Aboriginal peoples and Torres Strait Islanders;
- reforms the processes for dealing with applications for protection under the Act;
- seeks to engage the States and Territories in protecting indigenous heritage;
- establishes a Director of Indigenous Heritage Protection to assist the Minister in the administration of the bill;
- encourages applications to be resolved by negotiation and/or mediation facilitated by the Director;
- provides for the separation of assessments of significance from the Minister's decision about whether or not to grant protection;
- requires that significance be assessed according to indigenous traditions, observances, customs and beliefs and that primacy be given to the views of indigenous people in making assessments of significance;
- provides protection for culturally sensitive information disclosed in the course of administering the bill;
- provides for accreditation by the Commonwealth Minister of State/Territory heritage protection regimes which meet certain minimum standards; and
- requires applicants to exhaust State/Territory processes before seeking protection under the Commonwealth Act and, where State/Territory regimes are accredited, limits applications to cases where protection may be in the national interest.

Strict liability offence
Subclause 67(2)

Subclause 67(1) of the bill creates an offence of failing to report the discovery of indigenous human remains. Subclause 67(2) states that this is a strict liability offence. As a result, a person may be convicted of an offence against this subclause even though that person was unaware of any relevant heritage protection regime in force. The Explanatory Memorandum makes no reference to any reason for the imposition of strict liability. Accordingly, the Committee **seeks the advice of the Prime Minister** on the reasons for making this an offence of strict liability.

Pending the Prime Minister's advice, the committee draws Senators' attention to this 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.

Onus of proof
Subclause 70(2)

Subclause 70 of the bill applies in relation to proceedings for certain offences. Under subclause 70(2), a defendant must not be committed for trial or convicted of those offences “if there is evidence” that “the defendant did not know of the existence” of certain matters. However, the subclause makes no provision as to who bears the onus of proving this lack of knowledge, nor is the matter referred to in the Explanatory Memorandum to the bill. Accordingly, the Committee **seeks the advice of the Prime Minister** on the following matters:

- i) whether the bill should specify on whom the onus of proof falls under the subclause; and
- ii) if that onus is to be placed on the defendant, the reason for reversing the normal requirement that a person should not be found guilty of an offence unless the prosecution has established all the elements of the offence.

Pending the Prime Minister's advice, the committee draws Senators' attention to this 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.

Australian Science, Technology and Engineering Council Repeal Bill 1998

This bill was introduced into the House of Representatives on 1 April 1998 by the Minister for Industry, Science and Tourism. [Portfolio responsibility: Industry, Science and Tourism]

The bill proposes to repeal the *Australian Science, Technology and Engineering Council Act 1978* as a consequence of the establishment of a new advisory body to be known as the Prime Minister's Science, Engineering and Innovation Council.

The Committee has no comment on this bill.

Crimes Amendment (Enforcement of Fines) Bill 1998

This bill was introduced into the Senate on 1 April 1998 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Justice]

The bill proposes to amend the *Crimes Act 1914* to:

- apply new and anticipated fine enforcement procedures under State and Territory law to federal offenders;
- ensure that fine enforcement procedures of a judicial nature are only performed by judicial officers in relation to federal offenders; and
- ensure that arrangements between the Commonwealth and each State and Territory covering the performance of fine enforcement functions by officers of the States and Territories, can extend to new fine enforcement procedures.

The Committee has no comment on this bill.

Customs Tariff Amendment Bill (No. 1) 1998

This bill was introduced into the House of Representatives on 2 April 1998 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Customs and Consumer Affairs]

The bill proposes to amend the *Customs Tariff Act 1995* to:

- reduce the rate of customs duty on aviation gasoline by 0.6 cents per litre from 3 July 1997;
- reinstate the \$0.17403 per litre rate of duty on aviation gasoline from 31 January 1998;
- allow non-personal and non-commercial cargo, with certain exceptions, to be imported duty free by non-Australian Olympic and Paralympic Family members attending the Sydney 200 Olympics and associated events; and
- makes administrative and technical amendments.

Retrospectivity

Clause 2

By virtue of the various subclauses in clause 2 of the bill, many of the amendments proposed by the bill will have retrospective effect. For example, subclause 2(2) states that Schedule 1 is taken to have commenced on 1 July 1996. However, the Committee notes that the provision contained in this Schedule is technical only, and no change is made to the substantive law.

Subclause 2(3) states that Schedule 2 to the bill is taken to have commenced on 3 July 1997, and subclause 2(5) states that Schedule 4 to the bill is taken to have commenced on 1 March 1998. However, the Committee notes that, in each case, the amendments referred to are apparently beneficial to those liable to pay customs duty.

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

Interstate Road Transport Amendment Bill 1998

This bill was introduced into the House of Representatives on 2 April 1998 by the Minister for Transport and Regional Development. [Portfolio responsibility: Transport and Regional Development]

The bill proposes to amend the *Interstate Road Transport Act 1985* to enable the appointment of additional inspectors by the ACT Government. The bill also updates references to penalties by converting existing monetary penalties to equivalent penalty units.

The Committee has no comment on this bill.

Interstate Road Transport Charge Amendment Bill 1998

This bill was introduced into the House of Representatives on 2 April 1998 by the Minister for Transport and Regional Development. [Portfolio responsibility: Transport and Regional Development]

The bill proposes to amend the *Interstate Road Transport Charge Act 1985* to provide for a charge formula relating to less than one year registration charges for vehicles registered under the Federal Interstate Registration Scheme.

The Committee has no comment on this bill.

Payment Systems and Netting Bill 1998

This bill was introduced into the House of Representatives on 1 April 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to:

- ensure that multilateral netting arrangements in the payment system that are approved by the Reserve Bank will survive the insolvency of a participant in the arrangement;
- exempt real time gross settlement payments from the possible application of the Zero Hour Rule; and
- provide certainty for close-out netting in financial markets and for netting undertaken in accordance with the rules governing stock and futures exchanges and the associated clearing houses.

Non-reviewable discretions Clauses 9 and 12

Clause 9 of the bill provides the Reserve Bank with a discretion to approve a payment or settlement system. Under subclause 9(3)(c), the exercise of this discretion is subject to a measure of Parliamentary review in that an approval is a disallowable instrument.

Clause 12 of the bill provides the Reserve Bank with a discretion in deciding whether or not to approve a multilateral netting arrangement. However, the exercise of this discretion does not seem subject to review of any kind. Accordingly, the Committee **seeks the advice of the Treasurer** on the following matters:

- i) why the exercise of the discretion by the Reserve Bank under clause 12 is not subject to review; and
- ii) why a failure or refusal by the Reserve Bank to exercise its discretion under clauses 9 and 12 is not reviewable.

Pending the Treasurer's advice, the committee draws Senators' attention to these provisions, as they may be considered to make rights, liberties or obligations unduly dependant upon non-reviewable decisions, in breach of principle 1(a)(iii) of the committee's terms of reference.

Taxation Laws Amendment Bill (No. 4) 1998

This bill was introduced into the House of Representatives on 1 April 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

This bill proposes to amend the following Acts:

- *Sales Tax (Exemptions and Classifications) Act 1992* to:
 - ensure that sales tax exemption for goods incorporated into properties owned by, or leased to, always exempt persons (AEPs) or the government of a foreign country is only available for the purchase of goods principally for their own use or for use by organisations conducting the business of AEPs or the government of a foreign country; and
 - provide that certain properties are ineligible for the exemption;
- *Fringe Benefits Tax Assessment Act 1986* to:
 - exempt certain employers from keeping records for fringe benefits tax purposes and, providing certain conditions are met, allow those employers to calculate their FBT liability for an FBT year on the basis of fringe benefits provided in a previous FBT year; and
 - exempt certain benefits consisting of places in student exchange programs from FBT;
- *Income Tax Assessment Act 1936* to:
 - ensure that amounts of commercial debt that are forgiven will be applied, where relevant, in reduction of a debtor's prior net capital losses in respect of all years before the forgiveness year of income, rather than the immediately preceding year of income;
 - make consequential amendments arising from the rewrite of the income tax laws;
 - prevent unintended usage of franking credits through franking credit trading schemes;
- *Taxation Administration Act 1953* to enable the Commissioner of Taxation to provide the New South Wales Police Integrity Commission with certain taxation information;

- *Income Tax Assessment Act 1997* to:
 - to allow income tax deductions for gifts made to the Menzies Research Centre Public Fund;
 - amend technical errors arising from the rewrite of the income tax laws;
 - include an amount in the assessable income of a taxpayer where amounts are unpaid on the termination of a hire purchase or limited recourse debt arrangement;
 - treat taxpayers who acquire capital assets by hire purchase or instalment sale as the owners of those assets for the purposes of determining eligibility for capital allowance deductions and relevant anti-avoidance provisions;
 - treat a hire purchase or instalment sale as though it were a loan transaction, and makes consequential amendments to the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997*;
 - change the way that depreciation is to be calculated on plant previously owned by an exempt entity when that plant enters the tax net, and makes consequential amendments to two other Acts;

and makes technical corrections to three Acts as a result of the rewrite of the income tax laws.

Retrospective application

Schedule 2, Clause 2 and Schedule 11, Part 5

Clause 2 of Schedule 2 to the bill will allow the amendments made by that Schedule to apply from 1 April 1998. While retrospective in operation, these amendments are beneficial to taxpayers. Similarly, Part 5 of Schedule 11 will permit the amendments to be made by that Schedule to apply from 28 February 1998. While the Explanatory Memorandum provides no explanation for the choice of this date, it remains well within the 6 month period referred to in Senate Resolution of 8 November 1998. Given this, the Committee notes the retrospective application of these two Schedules.

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

Retrospective application
Schedule 13, Item 81

Item 81 of Schedule 13 provides that the amendments proposed in that Schedule are to apply from 13 May 1997 (ie the night of the 1997 Budget). The Committee usually accepts that measures announced in a Budget may be deemed to apply from Budget night. However, the usual practice is that legislation giving effect to such measures is introduced into Parliament within a few months of the bringing down of the Budget. If the Budget were to be regarded as the equivalent of a Press Release, the amendments proposed in this Item would clearly fall outside the six-month period referred to in the Senate Resolution of 8 November 1988. Accordingly, the Committee **seeks the advice of the Treasurer** on the reason for the delay in putting these proposed amendments into legislative form and whether there are any precedents for such delays in introducing legislation to give effect to Budget measures.

Pending the Treasurer's advice, the committee draws Senators' attention to these 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.

Telecommunications (Carrier Licence Charges) Amendment Bill 1998

This bill was introduced into the House of Representatives on 1 April 1998 by the Minister for the Status of Women. [Portfolio responsibility: Communications, the Information Economy and the Arts]

The bill proposes to amend the *Telecommunications (Carrier Licence Charges) Act 1997* to impose annual charges to recover costs incurred by the Department of Industry, Science and Tourism in monitoring telecommunications industry development plans prepared by certain telecommunications licence carriers.

The Committee has no comment on this bill.

Telstra (Transition to Full Private Ownership) Bill 1998

This bill was introduced into the House of Representatives on 30 March 1998 by the Minister representing the Minister for Communications, the Information Economy and the Arts. [Portfolio responsibility: Communications, the Information Economy and the Arts]

The bill proposes to amend the following Acts:

- *Telstra Corporation Act 1991* to repeal the provisions which require the Commonwealth to retain two-thirds of the equity in the company; and
- *Telecommunications Act 1997* to enable the Australian Communications Authority to give remedial directions to carriage service providers requiring them to take specific action to ensure that they do not contravene Customer Service Guarantee performance standards;

and makes transitional and consequential amendments to two other Acts and Regulations.

Commencement Clause 2

By virtue of clause 2, the substantive provisions of this bill will commence at various presently unspecified times in the future. For example, Schedule 2 to the bill will commence on a day to be fixed by Proclamation, but Proclamation is not to take place before the return of the writs for the first general election of the members of the House of Representatives that occurs after 15 March 1998. While there is uncertainty as to the bill's commencement, this uncertainty seems a necessary corollary of legislation which provides for the sale of public assets. Therefore the Committee simply notes this provision.

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

Veterans' Entitlements Amendment (Male Total Average Weekly Earnings Benchmark) Bill 1998

This bill was introduced into the House of Representatives on 2 April 1998 by the Minister for Veterans' Affairs. [Portfolio responsibility: Veterans' Affairs]

The bill proposes to amend the *Veterans' Entitlements Act 1986* to maintain the rate of pension payable to war widows and war widowers at no less than 25 per cent of male total average weekly earnings.

Retrospective application Clause 2

By virtue of clause 2, this bill will commence retrospectively on 19 March 1998. The Committee notes that the amendments proposed by the Bill are beneficial to war widows and war widowers. However, the Committee also notes that the Explanatory Memorandum fails to indicate why this particular date was chosen.

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

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 6 of 1998

13 May 1998

ISSN 1329-668X

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator J Ferris
Senator S Macdonald
Senator A Murray
Senator J Quirke

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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Committee under its terms of reference is invited to do so.

Australian Radiation Protection and Nuclear Safety Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Parliamentary Secretary to the Minister for Health and Family Services. [Portfolio responsibility: Health and Family Services]

The bill proposes to establish a scheme to regulate the operation of nuclear installations and the management of radiation sources, including ionising material and apparatus and non-ionising apparatus, where these activities are undertaken by the Commonwealth, Commonwealth entities and those who deal with such entities.

Abrogation of the privilege against self-incrimination Subclause 55(2)

Subclause 55(1)(e) of the bill authorises an inspector to require any person on particular premises to answer any questions put by the inspector and produce any documents requested by the inspector.

Subclause 55(2) makes compliance an absolute requirement. No provision is made for non-compliance where a person has a reasonable excuse. As a consequence, subclause 55(2) removes the privilege against self-incrimination and does not contain the safeguards often included in such provisions (see, for example, *Agricultural and Veterinary Chemicals Code 1994*, s 146; *Child Support Assessment Act 1989*, s 161(4); *Australian Wine and Brandy Corporation Act 1980*, s 39ZH(3); *Ozone Protection Act 1989*, s 64(2)).

Accordingly, the Committee **seeks the advice of the Minister** on the reasons why the requirement in subclause 55(2) makes no provision for possible non-compliance where a person has a reasonable excuse, which would include the likelihood that the information required was likely to incriminate that person.

Pending the Minister's advice, the Committee draws Senators' attention to this 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.

Australian Radiation Protection and Nuclear Safety (Consequential Amendments) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Parliamentary Secretary to the Minister for Health and Family Services. [Portfolio responsibility: Health and Family Services]

The bill proposes to make consequential changes to the *Australian Nuclear Science and Technology Organisation Act 1987* and to provide for transitional arrangements to cover the operation of controlled facilities and the handling of radiation sources while applications for licences to cover these facilities and activities are being made under the proposed Australian Radiation Protection and Nuclear Safety Bill 1998.

The Committee has no comment on this bill.

Australian Radiation Protection and Nuclear Safety (Licence Charges) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Parliamentary Secretary to the Minister for Health and Family Services. [Portfolio responsibility: Health and Family Services]

The bill proposes to enable annual fees and application fees to be payable by entities regulated under the Australian Radiation Protection and Nuclear Safety Bill 1998.

Imposing a levy by regulation Subclauses 4(2) and 5(2)

Subclause 4(2) of the bill requires the holder of a “facility licence” to pay an annual charge. Subclause 5(2) imposes a similar requirement on the holder of a “source licence”. In each case, the amount of the charge is set by regulation.

At page 62 of its report on *The Work of the Committee during the 37th Parliament (May 1993-March 1996)*, the Committee restated its concerns in this area in the following terms:

[T]he Committee has consistently drawn attention to legislation which provides for the level of a ‘levy’ to be set by regulation. This creates a risk that the levy may in fact become a tax. It is for Parliament to set a tax rate and not for the makers of subordinate legislation to do so. Where the level of a levy needs to be changed frequently and expeditiously the question arises as to whether this can best be done by regulation rather than by statute. If a compelling case can be made out for the level to be set by subordinate legislation the Committee seeks to have the enabling Act prescribe a maximum figure above which the relevant regulations cannot fix the levy or alternatively a formula by which such an amount can be calculated.

Many bills adopt such an approach, providing for a basic levy to be set by regulation, subject to a statutory maximum rate. Examples of such bills considered by the Committee recently include the Laying Chicken Levy Amendment (AAHC) Bill 1996 and the Live-stock Export Charge Amendment (AAHC) Bill 1996 (both considered in *Alert Digest No 5 of 1996*), and the Retirement Savings Accounts Supervisory Levy Bill 1996 and the Telecommunications (Carrier Licence Charges) Bill 1996 (both considered in *Alert Digest No 1 of 1997*).

The Explanatory Memorandum to this Bill makes no reference to the appropriateness of such an approach, and the Minister's Second Reading Speech simply notes that the Commonwealth intends employing an independent consultant to advise on appropriate cost recovery processes and fees and charges. Accordingly, the Committee **seeks the advice of the Minister** on why the legislation places no upper limit on the power to set a rate of levy by regulation.

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

Cheques and Payment Orders Amendment Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Treasurer. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Cheques and Payment Orders Act 1986* to:

- allow building societies, credit unions and their industry Special Services Providers to issue cheques in their own name;
- repeal the provisions relating to payment orders to enable their abolition;
- make miscellaneous amendments; and

make consequential amendments to the *Bills of Exchange Act 1909* and the *Debits Tax Administration Act 1982*.

The Committee has no comment on this bill.

Cheques and Payment Orders Amendment (Turnback of Cheques) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Treasurer. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Cheques and Payment Orders Act 1986* to transfer the risk of the insolvency of a participant from the collecting institutions and their customers to the customers of the failed drawee institution in relation to cheques drawn on that institution by:

- deeming unsettled cheques drawn on the failed drawee institutions to be dishonoured; and
- entitling surviving collecting institutions to reverse provisional credits made to their customers' accounts in respect of those cheques.

The Committee has no comment on this bill.

Comprehensive Nuclear Test-Ban Treaty Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Minister for Foreign Affairs. [Portfolio responsibility: Foreign Affairs]

The bill proposes to effect Australia's obligations as a party to the Comprehensive Nuclear Test-Ban Treaty.

Commencement

Subclause 2(1)

Subclause 2(1) states that the bill is to commence "on a day to be fixed by Proclamation", with no further time specified within which the bill either must come into force or be repealed. On its face, therefore, the bill is not in accordance with the Office of Parliamentary Counsel *Drafting Instruction No 2 of 1989*, which provides that such a fixed time should be included.

However, the Explanatory Memorandum observes that the bill cannot commence until the Comprehensive Nuclear Test-Ban Treaty has been ratified by a number of other countries. The bill, therefore, comes within the exception noted in clause 6 of the Drafting Instruction. This states that clauses simply providing for commencement by Proclamation should only be used in unusual circumstances "where the commencement depends on an event whose timing is uncertain".

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

Delegation without limitation

Clause 69

Clause 69 of the bill permits the Minister to delegate all or any of his or her powers under the Act. No limitations are imposed as to the qualifications or attributes of any potential delegate.

Generally, the Committee prefers to see limits set either on the sorts of powers that can be delegated or the categories of people to whom they may be delegated. In the latter case, the Committee has expressed a preference that powers be delegated only to the holders of nominated offices, or to members of the Senior Executive Service,

or to persons holding specified qualifications. Accordingly, the Committee **seeks the advice of the Minister** on why the bill authorises this unfettered delegation.

Pending the Minister's advice, the Committee draws Senators' attention to this 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.

Datacasting Charge (Imposition) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Minister representing the Minister for Communications, the Information Economy and the Arts. [Portfolio responsibility: Communications, the Information Economy and the Arts]

The bill proposes to provide for the imposition of a charge in relation to the provision of datacasting services by commercial and national free-to-air television broadcasters.

Imposing a levy by regulation Clause 7

Clause 7 states that the amount of the charge to be imposed by the bill is to be set through delegated legislation – specifically, in accordance with a written determination of the Australian Communications Authority. Further, the bill does not specify an upper limit on this charge.

At page 62 of its report on *The Work of the Committee during the 37th Parliament (May 1993-March 1996)*, the Committee restated its concerns in this area in the following terms:

[T]he Committee has consistently drawn attention to legislation which provides for the level of a ‘levy’ to be set by regulation. This creates a risk that the levy may in fact become a tax. It is for Parliament to set a tax rate and not for the makers of subordinate legislation to do so. Where the level of a levy needs to be changed frequently and expeditiously the question arises as to whether this can best be done by regulation rather than by statute. If a compelling case can be made out for the level to be set by subordinate legislation the Committee seeks to have the enabling Act prescribe a maximum figure above which the relevant regulations cannot fix the levy or alternatively a formula by which such an amount can be calculated.

Many bills adopt such an approach, providing for a basic levy to be set by regulation, subject to a statutory maximum rate. Examples of such bills considered by the Committee recently include the Laying Chicken Levy Amendment (AAHC) Bill 1996 and the Live-stock Export Charge Amendment (AAHC) Bill 1996 (both considered in *Alert Digest No 5 of 1996*), and the Retirement Savings Accounts Supervisory Levy Bill 1996 and the Telecommunications (Carrier Licence Charges) Bill 1996 (both considered in *Alert Digest No 1 of 1997*).

The Explanatory Memorandum to the Bill and accompanying Second Reading Speech indicate that the government's intention is to impose a charge on broadcasters who provide datacasting services, and to set this charge at a level which will be "competitively neutral".

Complementary amendments proposed in the Television Broadcasting Services (Digital Conversion) Bill 1998 indicate that the Australian Communications Authority cannot specify an initial level of charge without first reporting to the Minister, who will be obliged to table that report in the Parliament.

However no reference is made to the appropriateness or desirability of imposing an upper limit on such a charge in the Bill. Accordingly, the Committee **seeks the advice of the Minister** on why the legislation places no upper limit on the power to set a rate of levy by regulation.

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

Excise Tariff Amendment Bill (No. 1) 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Customs and Consumer Affairs]

This bill proposes to amend the *Excise Tariff Act 1921* to:

- reduce the rate of duty on aviation gasoline from 3 July 1997; and
- make technical amendments in relation to fuel substitution minimisation legislation.

Retrospective application

Clause 2

The various subclauses of clause 2 will permit most of the substantive amendments proposed by the bill to commence retrospectively. However, the Committee notes that these amendments are either beneficial to payers of excise duty, or are technical in nature and make no substantive change to the law.

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

Fisheries Legislation Amendment Bill (No. 1) 1998

This bill was introduced into the Senate on 8 April 1998 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Primary Industries and Energy]

The bill proposes to:

- amend the *Fisheries Management Act 1991* to prohibit the commercial taking of black marlin and blue marlin in the Australian fishing zone; and
- repeal the *Prawn Boat Levy Act 1995* and the *Prawn Export Charge Act 1995* (to take effect three years after Royal Assent) to effect the abolition of the prawn boat levy and prawn export charge from 1 January 1998.

Retrospective application Subclauses 2(2) and 2(3)

Under subclause 2(2), some of the amendments proposed in this bill are to commence retrospectively on 1 July 1997. However, the Committee notes that these amendments are beneficial to payers of prawn boat levy.

Under subclause 2(3), the remaining provisions of the bill are to commence three years after Assent. While this period is longer than the preferred period of six months referred to in paragraph 4 of Office of Parliamentary Counsel *Drafting Instruction No 2 of 1989*, it is nevertheless a fixed commencement date, and therefore meets the concern of an unfettered discretion which is addressed by that Drafting Instruction.

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

Human Rights Legislation Amendment Bill (No. 2) 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to provide for the reorganisation of the Human Rights and Equal Opportunity Commission (HREOC) by:

- renaming HREOC as the Human Rights and Responsibilities Commission (HRRC);
- providing for an executive structure consisting of a President and three Deputy Presidents;
- making education, dissemination of information on human rights and assistance to business and the general community central functions of the HRRC;
- creating an Office of the Privacy Commissioner as a separate statutory authority;
- enabling the Attorney-General to approve an intervention by the new Commission in court proceedings which involve human rights or discrimination issues;
- abolishing the Community Relations Council and providing for the establishment of advisory committees;
- removing from the HRRC powers of delegation under the *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984* – these powers will be repealed and consolidated into a single delegation provision in the renamed *Human Rights and Responsibilities Commission Act 1986*;
- removing from the HRRC any power to recommend the payment of damages or compensation following inquiries into certain types of complaints under the renamed Act;
- enabling the appointment of a person aged over 65 years as a member of the HRRC or for such a person's term to extend beyond their 65th birthday;
- and makes consequential amendments.

The Committee has no comment on this bill.

Income Tax (Untainting Tax) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to impose a liability to untainting tax in certain circumstances where a company elects to untaint its share capital account.

The Committee has no comment on this bill.

National Measurement Amendment Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Industry, Science and Tourism]

The bill proposes to amend the *National Measurement Act 1960* to:

- allow the appointment of existing certifying bodies by the National Standards Commission both for the certification of certified measuring instruments and for the certification of certified reference materials; and
- remove the requirement for the Executive Director of the National Standards Commission to retire upon reaching the age of 65.

The Committee has no comment on this bill.

National Road Transport Commission Amendment Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Minister for Transport and Regional Development. [Portfolio responsibility: Transport and Regional Development]

The bill proposes to amend the following Acts:

- *National Road Transport Commission Act 1991* to:
 - extend the sunset of the Act for another five years, to 14 January 2004;
 - enable regular review of the Act and related legislation;
 - replace the Ministerial Council for Road Transport with the Australian Transport Council as the responsible Ministerial Council;
 - allow New Zealand involvement in deciding trans-Tasman road vehicle standards;
 - allow Defence Force exemptions from road transport regulation under certain circumstances;
 - enable the involvement of the National Environment Protection Council in the joint development of motor vehicle noise and emission standards; and
- *Road Transport Reform (Dangerous Goods) Act 1995*, the *Road Transport Reform (Heavy Vehicles Registration) Act 1997* and the *Road Transport Reform (Vehicles and Traffic) Act 1993* to remove provisions linking these Acts to the sunset provision of the *National Road Transport Commission Act 1991* and making them subject to review by the Australian Transport Council at least every six years.

The Committee has no comment on this bill.

Stevedoring Levy (Collection) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Minister for Workplace Relations and Small Business. [Portfolio responsibility: Workplace Relations and Small Business]

The bill proposes to provide for the collection of the levy imposed by the Stevedoring Levy (Imposition) Bill 1998 on the loading and unloading of containers and vehicles in Australia. The bill also provides for the lodgement of levy returns, penalty payments, distribution of surplus levy, appointment of inspectors to carry out functions relating to levy collection and allows the Minister to authorise payments directly or indirectly in relation to restructuring or reform of the stevedoring industry.

The Committee has no comment on this bill.

Stevedoring Levy (Imposition) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Minister for Workplace Relations and Small Business. [Portfolio responsibility: Workplace Relations and Small Business]

The bill proposes to impose a levy on the loading and unloading of shipping containers and vehicles in Australia.

The Committee has no comment on this bill.

Sydney Airports Bill 1998

This bill was introduced into the House of Representatives on 6 April 1998 by Mr Zammit as a Private Member's bill.

The bill proposes to establish the Sydney Airports Authority as an independent authority to make planning decisions in relation to flight path locations around Sydney and the location and operation of any second major airport.

Commencement **Subclause 2(1)**

Subclause 2(1) states that the bill is to commence "on a day to be fixed by Proclamation", with no further time specified within which the bill either must come into force or be repealed. The Committee notes that paragraph 6 of Office of Parliamentary Counsel *Drafting Instruction No 2 of 1989* suggests that such an approach should be used only in unusual circumstances, where commencement depends on an event whose timing is uncertain.

Accordingly, the Committee **seeks the advice of the Member** on the reason for choosing the mechanism in subclause 2(1).

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

Taxation Laws Amendment (Company Law Review) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Income Tax Assessment Act 1936* and associated tax laws to prevent dividend substitution and capital streaming arrangements and to make consequential amendments to tax laws. The bill also proposes to introduce a tainting rule that treats distributions from a tainted share capital account as unfrankable and unrebateable dividends in the hands of shareholders.

Indeterminate application Schedule 1, Item 3

By virtue of item 3 of Schedule 1, the amendments proposed by that Schedule are to apply to the provision of bonus shares or capital benefits occurring on or after a day to be fixed by Proclamation. Therefore, the amendments proposed by this Schedule contravene the spirit of Office of Parliamentary Counsel *Drafting Instruction No 2 of 1989*. This suggests that clauses providing for commencement by Proclamation, with no other restrictions as to time of commencement, should be used only in unusual circumstances, where commencement depends on an event whose timing is uncertain. The Explanatory Memorandum apparently provides no indication of the need for such an open-ended application provision. Accordingly, the Committee **seeks the advice of the Treasurer** on the reason for adopting such a provision.

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

Television Broadcasting Services (Digital Conversion) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Minister representing the Minister for Communications, the Information Economy and the Arts. [Portfolio responsibility: Communications, the Information Economy and the Arts]

The bill proposes to provide a regulatory regime for digital television broadcasting for free to air commercial and national broadcasters.

The Committee has no comment on this bill.

Trade Practices Amendment (Country of Origin Representations) Bill 1998

This bill was introduced into the House of Representatives on 8 April 1998 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Customs and Consumer Affairs]

The bill proposes to amend the *Trade Practices Act 1974* to:

- establish minimum criteria for unqualified country of origin representations;
- include consideration of small business experience in the appointment of Commissioners to the Australian Competition and Consumer Commission (ACCC);
- expand the ability of the ACCC to take representative actions in relation to restrictive trade practices; and
- make technical amendments.

Retrospective application Schedule 2, Item 5

Item 5 of Schedule 2 to the Bill will allow the amendment proposed to be made by item 3 of that Schedule to apply to anti-competitive conduct even though that conduct occurred before the commencement of the item. Item 5 therefore seems to permit the retrospective application of the amendment proposed by item 3. However, this amendment grants the ACCC a power to take representative actions for alleged contraventions of Part IV of the Act, which deals with restrictive trade practices. Arguably, this may be regarded as beneficial to the forces of competition.

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

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 7 of 1998

27 May 1998

ISSN 1329-668X

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator J Ferris
Senator S Macdonald
Senator A Murray
Senator J Quirke

TERMS OF REFERENCE

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• The Committee has commented on this bill

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Committee under its terms of reference is invited to do so.

Appropriation Bill (No. 1) 1998-99

This bill was introduced into the House of Representatives on 12 May 1998 by the Treasurer. [Portfolio responsibility: Finance and Administration]

The bill proposes to appropriate money (\$30,863 million) out of the Consolidated Revenue Fund to meet payments for the ordinary annual services of the government for the year ending on 30 June 1999.

The Committee has no comment on this bill.

Appropriation Bill (No. 2) 1998-99

This bill was introduced into the House of Representatives on 12 May 1998 by the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to appropriate money (\$4,171 million) out of the Consolidated Revenue Fund to meet payments for capital works and services, payments to or for the States, the Northern Territory and the Australian Capital Territory, advances and loans, and for other services for the year ending on 30 June 1999.

The Committee has no comment on this bill.

Appropriation (Parliamentary Departments) Bill 1998-99

This bill was introduced into the House of Representatives on 12 May 1997 by the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to appropriate money (\$138 million) out of the Consolidated Revenue Fund to meet recurrent expenditures of the parliamentary departments for the year ending on 30 June 1999.

The Committee has no comment on this bill.

Customs Legislation (Anti-dumping Amendments) Bill 1998

This bill was introduced into the House of Representatives on 14 May 1998 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Customs and Consumer Affairs]

The bill proposes to:

- abolish the Anti-Dumping Authority;
- move responsibility for the conduct of anti-dumping investigations to the Australian Customs Service;
- establish the Trade Measures Review Office to review dumping decisions;
- standardise time limits in which reviews of anti-dumping measures, inquiries into the continuation of anti-dumping measures and duty assessments are conducted; and
- make transitional arrangements.

The Committee has no comment on this bill.

Customs Tariff (Anti-Dumping) Amendment Bill 1998

This bill was introduced into the House of Representatives on 14 May 1998 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Customs and Consumer Affairs]

The bill proposes to amend the *Customs Tariff (Anti-Dumping) Act 1975* to remove provisions that impose countervailing duties on particular goods exported to Australia.

The Committee has no comment on this bill.

Data-matching Program (Assistance and Tax) Amendment Bill 1998

This bill was introduced into House of Representatives on 13 May 1998 by the Minister representing the Minister for Social Security. [Portfolio responsibility: Social Security]

The bill proposes to amend the *Data-matching Program (Assistance and Tax) Act 1990* to remove the sunset clause to enable the continuation of the Data-matching Program.

The Committee has no comment on this bill.

Electoral and Referendum Amendment Bill (No. 2) 1998

This bill was introduced into the Senate on 14 May 1998 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Finance and Administration]

The bill proposes to amend the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* to:

- require new electors to produce one original form of identification at time of enrolment;
- provide that a person witnessing an enrolment application must be an elector in a prescribed class of persons;
- provide that all electors must notify the Australian Electoral Commission of a change of address within one month of moving;
- allow for the provision of date of birth and salutation details of electors to Members, Senators and registered political parties;
- provide that any person sentenced to imprisonment is not entitled to enrol or to vote;
- provide that only the Presiding Officer at a polling place may assist electors in marking their ballot papers;
- provide that the preliminary scrutiny of declaration votes may commence on the Monday prior to polling day;
- raise from \$500 to \$1,500 the threshold for counting individual amounts received in regard to donations to political parties;
- provide that political parties are required to disclose a total amount of \$5,000 or more (currently \$1,500) received from a person or organisation during a financial year; and
- increase from \$1,500 to \$10,000 the amount above which a donor to a registered political party must furnish a return for a financial year.

Commencement

Subclause 2(3)

Under subclause 2(3) of the bill, many of the items in Schedule 1 are to commence on Proclamation. No provision is made for automatic commencement or repeal at a particular time.

With respect to commencement provisions, the Committee places much importance on Drafting Instruction No 2 of 1989, prepared by the Office of Parliamentary Counsel. This Drafting Instruction provides, in part:

3. As a general rule, a restriction should be placed on the time within which an Act should be proclaimed (for simplicity I refer only to an Act, but this includes a provision or provisions of an Act). The commencement clause should fix either a period, or a date, after Royal Assent, (I call the end of this period, or this date, as the case may be, the 'fixed time'). This is to be accompanied by either:
 - (a) a provision that the Act commences at the fixed time if it has not already commenced by Proclamation: or
 - (b) a provision that the Act shall be taken to be repealed at the fixed time if the Proclamation has not been *made* by that time.
4. Preferably, if a *period* after Royal Assent is chosen, it should not be longer than 6 months. If it is longer, Departments should explain the reason for this in the Explanatory Memorandum. On the other hand, if the *date* option is chosen, [the Department of the Prime Minister and Cabinet] do not wish at this stage to restrict the discretion of the instructing Department to choose the date.
5. It is to be noted that if the 'repeal' option is followed, there is no limit on the time from Royal Assent to commencement, as long as the Proclamation is *made* by the fixed time.
6. Clauses providing for commencement by Proclamation, but without the restrictions mentioned above, should be used only in unusual circumstances, where the commencement depends on an event whose timing is uncertain (eg enactment of complementary State legislation).

The Committee notes that paragraph 6 of the Drafting Instruction suggests that clauses providing for commencement by Proclamation, with no other restrictions as to time of commencement, should be used only in unusual circumstances, where commencement depends on an event whose timing is uncertain. The Committee further notes that there is no indication in the Explanatory Memorandum of the reason for adopting a provision in this form.

Accordingly, the Committee **seeks the advice of the Minister** on the reason for choosing the mechanism in subclause 2(3).

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

The voting rights of prisoners

Schedule 1, Item 10

Section 93(8)(b) of the *Commonwealth Electoral Act 1918* governs the circumstances in which prisoners may have their names excluded from the Commonwealth Electoral Roll. It currently provides that those serving a sentence of imprisonment of 5 years or longer are not entitled to enrol or vote at a federal election.

Item 10 of Schedule 1 to the bill proposes to extend this limitation to all prisoners. The Minister's Second Reading speech observes that this proposed amendment is based on a recommendation of the Joint Standing Committee on Electoral Matters, which, in its report on *The 1996 Federal Election*, stated that those "who disregard the Commonwealth or State laws to a degree sufficient to warrant imprisonment should not expect to retain the franchise".

One Minority Report argued that the current provision represented "a reasonable balance between conflicting concepts" and suggested that the new provision "would be even harsher than those provided in 1902". Another Minority Report stated that this issue should be addressed when it took legislative form.

Consideration of the issue in 1994 and before

Section 93(8)(b) of the Act has been subject to considerable debate in recent years. Prior to 1983, the Act denied the franchise to all those serving sentences for offences punishable by imprisonment for 1 year or more. On the passage of the *Commonwealth Electoral Legislation Amendment Act 1983*, the franchise was extended to those serving sentences for offences punishable by imprisonment for less than 5 years – in effect, prisoners were then denied a vote where they were convicted of an offence having a potential maximum penalty of 5 years imprisonment.

In a submission to the Joint Standing Committee on Electoral Matters, the Australian Electoral Commission (AEC) noted that this provision had led to difficulties both in practice and in principle. In practice, it was difficult to

establish, with certainty, every case in which the potential maximum sentence was imprisonment for 5 years or more. And in principle, such a provision was potentially inequitable – “a person serving an actual sentence of one month could be excluded from enrolment, while a person on a sentence of 59 months could be eligible, depending on the potential maximum sentence in each case”.

Therefore, the AEC submitted that a person should be denied a vote only where they were actually serving a sentence of 5 years or more. This approach was ultimately included in the Act (see item 5 of Schedule 1 to the *Electoral and Referendum Amendment Act 1995*), and is currently the law.

However, the approach advocated by a majority of the Joint Standing Committee in 1994 went somewhat further than the AEC’s proposal. In its Report on *The 1993 Federal Election*, the Committee noted that it had previously recommended that enrolment and voting rights be granted to all prisoners, regardless of their sentence (unless convicted of treason or treachery):

an offender once punished under the law should not incur the additional penalty of loss of the franchise. We also note that a principal aim of the modern criminal law is to rehabilitate offenders and orient them positively toward the society they will re-enter on their release. We consider that this process is assisted by a policy of encouraging offenders to observe their civil and political obligations.

In a dissenting report, then Opposition members stated:

As our coalition colleagues on the committee in the 34th Parliament said when this proposal was last mooted, the concept of imprisonment – apart from any rehabilitation aspects – is one of deterrence, seeking by the denial of a wide range of freedoms to provide a disincentive to crime. A person having committed an offence against society is denied the privileges and freedoms of society of which one important one is the right to vote. The Committee’s recommendation is therefore driven by a philosophical position with which we strongly disagree.

The Committee notes the continuing debate and draws the attention of Senators to the various views that have informed it.

The Committee also notes that it currently has before it an inquiry into the appropriate basis for including certain penalty provisions - particularly imprisonment - in legislation. It is possible that people may be imprisoned - perhaps on weekend detention - for relatively minor offences such as failing to provide information or traffic infringements or conscientiously objecting to certain matters. As a consequence, under the bill such people may be denied a

vote. While conscious of the continuing debate on philosophical grounds, the Committee would nevertheless appreciate the Minister's advice as to whether consequences such as those noted above are inadvertent or intended.

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

Employee Protection (Wage Guarantee) Bill 1998 [No. 2]

This bill was introduced into the Senate on 14 May 1998 by Senator Forshaw as a Private Senator's bill.

The bill proposes to protect workers in the event of their employer's insolvency by:

- establishing a scheme of wage protection insurance;
- requiring employers to insure their workforces under the scheme; and
- providing for the determination and enforcement of claims under the scheme.

The Committee has no comment on this bill.

Film Licensed Investment Company Bill 1998

This bill was introduced into the House of Representatives on 14 May 1998 by the Minister representing the Minister for Communications, the Information Economy and the Arts. [Portfolio responsibility: Communications, the Information Economy and the Arts]

Together with the Taxation Laws Amendment (Film Licensed Investment Company) Bill 1998, the bill proposes to provide for the establishment of a pilot scheme for the delivery of tax concessions to investors in the film industry by means of concessional investment in Film Licensed Investment Companies.

The Committee has no comment on this bill.

Financial Sector Reform (Consequential Amendments) Bill 1998

This bill was introduced into the Senate on 14 May 1998 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Treasury]

Consequent on the package of bills which effect the introduction of the new regulatory framework for the financial system, the bill proposes to make consequential amendments to change references and rename some financial sector levy Acts.

The Committee has no comment on this bill.

Taxation Laws Amendment (Film Licensed Investment Company) Bill 1998

This bill was introduced into the House of Representatives on 14 May 1998 by the Minister representing the Minister for Communications, the Information Economy and the Arts. [Portfolio responsibility: Treasury]

Together with the Film Licensed Investment Company Bill 1998, the bill proposes to provide a tax deduction for amounts paid to subscribe for shares in a Film Licensed Investment Company (FLIC) during the period the FLIC is licensed to raise share capital which will qualify for the deduction.

The Committee has no comment on this bill.

Wheat Marketing Legislation Amendment Bill 1998

This bill was introduced into the House of Representatives on 14 May 1998 by the Minister for Primary Industries and Energy. [Portfolio responsibility: Primary Industries and Energy]

To implement the final phase to restructure the Australian Wheat Board from a statutory marketing authority to a grower owned company, the bill proposes to amend the *Wheat Marketing Act 1989* and the *Wheat Marketing Amendment Act 1997* to:

- establish the Wheat Export Authority with functions to control exports of wheat and to monitor and report to Parliament;
- delete redundant provisions of the *Wheat Marketing Act 1989*;
- complete the transfer of assets, liabilities and staff from the Australian Wheat Board to its wholly owned holding company prior to 1 July 1999; and
- continue Government underwriting for pool borrowings outstanding as at 30 June 1999, until these borrowings are repaid.

The Committee has no comment on this bill.

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 8 of 1998

24 June 1998

ISSN 1329-668X

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator J Ferris
Senator S Macdonald
Senator A Murray
Senator J Quirke

TERMS OF REFERENCE

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 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
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- **The Committee has commented on this bill**

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Captioning for the Deaf and Hearing Impaired Bill 1998

This bill was introduced into the Senate on 28 May 1998 by Senator Stott Despoja as a Private Senator's bill.

The bill proposes to amend the *Broadcasting Services Act 1992* to require that certain television programs are captioned from 1 July 2000, and all television broadcasts are captioned from 1 July 2010.

The bill also proposes to amend the *Disability Discrimination Act 1992* to provide that, after 1 July 2002, a person will be taken to have discriminated against someone with a hearing disability if that person sells or hires a video which is not captioned, or a television set which is not able to decode teletext.

The Committee has no comment on this bill.

Customs Tariff Amendment Bill (No. 2) 1998

This bill was introduced into the House of Representatives on 27 May 1998 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Customs and Consumer Affairs]

The bill proposes to amend the *Customs Tariff Act 1995* to:

- phase out customs duty from inputs to the manufacture of information industry equipment, effective from 1 July 1998;
- allow the duty free importation of certain other inputs to the manufacture of information industries equipment; and
- make technical and consequential amendments.

The Committee has no comment on this bill.

Employment Security Bill 1998

This bill was introduced into the House of Representatives on 1 June 1998 by Mr McMullan as a Private Member's bill.

The bill proposes to amend the:

- *Workplace Relations Act 1996* to:
 - enable the Court or Commission, where it has made an order for the reinstatement of an employee by an employer, to order that a 'related body corporate' may be deemed to be the employer; and
 - hold liable a 'related body corporate' for the payment of legal entitlements of employees; and
- *Corporations Law* to:
 - provide that when a company is in receivership, the Court can make an order requiring a related body corporate to pay the company's debts, including debts such as accrued entitlements to employees; and
 - enable creditors to bring proceedings for the recovery of debts against directors of companies resulting from contravention of civil penalty provisions.

The Committee has no comment on this bill.

Employment Security Bill 1998 [No. 2]

This bill was introduced into the Senate on 26 May 1998 by Senator Mackay as a Private Senator's bill.

The bill proposes to amend the

- *Workplace Relations Act 1996* to:
 - enable the Court or Commission to make reinstatement orders against companies related to a direct employer; and
 - hold liable a 'related body corporate' for the payment of legal entitlements of employees; and
- *Corporations Law* to:
 - provide that when a company is in receivership, the Court can make an order requiring a related body corporate to pay the company's debts, including debts such as accrued entitlements to employees; and
 - enable creditors to bring proceedings for the recovery of debts against directors of companies resulting from contravention of civil penalty provisions.

The Committee has no comment on this bill.

Financial Accountability (Commonwealth support of non-public sector bodies) Bill 1998

This bill was introduced into the House of Representatives on 25 May 1998 by Mr Rocher as a Private Member's bill.

The bill proposes to require governments providing \$50 000 or more of support to a private sector enterprise to table details of the agreement in the Parliament within seven sitting days of the support being agreed to by the Minister.

The Committee has no comment on this bill.

Health Care (Appropriation) Bill 1998

This bill was introduced into the House of Representatives on 28 May 1998 by the Acting Minister for Health and Family Services. [Portfolio responsibility: Health and Family Services]

The bill proposes to appropriate money to make a Commonwealth contribution to the cost of health and emergency services that are currently or were historically provided by hospitals in the States and Territories.

The Committee has no comment on this bill.

National Firearms Program Implementation Bill 1998

This bill was introduced into the House of Representatives on 27 May 1998 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill complements the *National Firearms Program Implementation Act 1996* and the *National Firearms Program Implementation Act 1997* and proposes to provide financial assistance to the external territories of Norfolk Island, Cocos (Keeling) Islands and Christmas Island in connection with the implementation of the national firearms program.

The bill proposes to reimburse persons for the surrender of certain firearms and compensate firearms dealers for surrender of stock and associated loss of business.

The Committee has no comment on this bill.

Passenger Movement Charge Amendment Bill 1998

This bill was introduced into the House of Representatives on 28 May 1998 by the Minister for Customs and Consumer Affairs. [Portfolio responsibility: Industry, Science and Tourism]

The bill proposes to amend the *Passenger Movement Charge Act 1978* to increase the rate of the passenger movement charge by \$3, from \$27 to \$30, effective from 1 January 1999.

The Committee has no comment on this bill.

Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998

This bill was introduced into the House of Representatives on 28 May 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

- *Superannuation Guarantee (Administration) Act 1992* to:
 - require employers to make compulsory superannuation contributions to a complying superannuation fund or retirement savings account in compliance with the choice of fund requirements; and
 - increase the amount of Superannuation Guarantee Charge payable by the employer where these contributions do not comply with the choice of fund requirements; and
- *Retirement Savings Accounts Act 1997*, the *Superannuation Industry (Supervision) Act 1993* and the proposed *Workplace Relations Amendment (Superannuation) Act 1998* to make consequential amendments.

Inappropriate delegation of legislative power Schedule 1, item 2

Item 2 of Schedule 1 to the Act proposes to insert a number of new subsections in the *Superannuation Guarantee (Administration) Act 1992*. Of these, proposed new subsections 5(2) and 5(2A) make the Act subject to “such modifications as are prescribed”. This would seem to permit the amendment of the Act by regulation – an example of a ‘Henry VIII’ clause – and so may be regarded as an inappropriate delegation of legislative power.

Proposed new subsection 5(2C) will permit the Minister for Finance to issue directions which “must be complied with, notwithstanding any other law of the Commonwealth”. This would seem to permit the Minister to override any other Commonwealth law – another example of a ‘Henry VIII’ clause in that it will permit the amendment of primary legislation without reference to the Parliament.

In referring to these provisions, the Explanatory Memorandum (at paragraph 1.100) simply notes that the Bill “contains amendments which have the effect of treating individual Commonwealth Departments as separate employers”. The Committee, therefore, **seeks the Minister's advice** on whether it might be more appropriate to achieve this purpose by amendments to primary legislation.

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

Taxation Laws Amendment (Farm Management Deposits) Bill 1998

This bill was introduced into the House of Representatives on 28 May 1998 by the Minister for Veterans' Affairs. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Income Assessment Act 1936* to provide for a farm management deposit scheme to replace the present system of income equalization deposits and farm management bonds.

The bill further proposes to make consequential amendments to five Acts and to repeal the *Income Equalization Deposits (Interest Adjustment) Act 1984*.

The Committee has no comment on this bill.

Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Bill 1998

This bill was introduced into the House of Representatives on 28 May 1998 by the Minister for Veterans' Affairs. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Income Tax Assessment Act 1997* to provide an alternative rebate (to a maximum of \$5000) for low income farmers and rural landholders for deductions for expenditure on landcare works and water conserving and conveying facilities, effective from 1 July 1997.

The bill also makes consequential amendments to the *Income Tax Assessment Act 1936*.

The Committee has no comment on this bill.

Taxation Laws Amendment (Political Donations) Bill 1998

This bill was introduced into the House of Representatives on 28 May 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

- *Income Tax Assessment Act 1997* to allow taxpayers to make deductible contributions (including membership subscriptions) of \$2 or more to political parties registered under the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation up to a maximum level of \$1500 annually, and gifts to independent candidates and members, also up to a maximum level of \$1500 annually, with effect from 1 July 1998;
- *Income Tax Assessment Act 1997* and *Income Tax Assessment Act 1936* to make consequential amendments.

The Committee has no comment on this bill.

Uranium Mining in or near Australian World Heritage Properties (Prohibition) Bill 1998

This bill was introduced into the Senate on 28 May 1998 by Senator Allison as a Private Senator's bill.

The bill proposes to prohibit the mining, extraction, treatment and transport of any uranium or uranium ore in or near any property in Australia included in the World Heritage List.

The Committee has no comment on this bill.

Veterans' Entitlements Amendment (Gold Card) Bill 1998

This bill was introduced into the House of Representatives on 3 June 1998 by the Minister for Veterans' Affairs. [Portfolio responsibility: Veterans' Affairs]

The bill proposes to amend the *Veterans' Entitlements Act 1986* to extend to Australian veterans aged 70 or over and who have World War 2 qualifying service, a Gold Card which would entitle them to full repatriation health care, effective from 1 January 1999.

The Committee has no comment on this bill.

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 9 of 1998

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ISSN 1329-668X

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator J Ferris
Senator S Macdonald
Senator A Murray
Senator J Quirke

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

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Committee under its terms of reference is invited to do so.

Australian National Training Authority Amendment Bill 1998

This bill was introduced into the House of Representatives on 24 June 1998 by the Minister for Employment, Education, Training and Youth Affairs. [Portfolio responsibility: Employment, Education, Training and Youth Affairs]

The bill proposes to amend the following Acts:

- *Australian National Training Authority Act 1992* to:
 - reflect a new Agreement between the Commonwealth, States and Territories on vocational education and training for the three years 1998 to 2000; and
 - clarify that the Australian National Training Authority is exempt from State and Territory taxes; and
- *Vocational Education and Training Funding Act 1992* to make consequential amendments.

Retrospective application

Subclause 2(2) and Schedule 1, item 17

Subclause 2(2) of the bill provides that item 17 in Schedule 1 to the bill is to be taken to have commenced on 21 December 1992, immediately after the commencement of the *Australian National Training Authority Act 1992*. The Explanatory Memorandum notes that the purpose of the amendment proposed by item 17 is to ensure that the Australian National Training Authority is not liable to pay State and Territory taxes.

While such an immunity is usual for Commonwealth statutory authorities, the Committee notes that the retrospective application in this instance is approximately five and a half years. The Explanatory Memorandum provides no explanation as to why such a lengthy period of time has been required to rectify an apparent oversight. The Committee, therefore, **seeks the Minister's advice** on the circumstances giving rise to this provision at this time, and why the Explanatory Memorandum makes no reference to these circumstances.

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.

Constitution Alteration (Right to Stand for Parliament— Qualification of Members and Candidates) 1998

This bill was introduced into the Senate on 24 June 1998 as a Private Senator's Bill by Senator Brown.

The bill proposes to amend section 44 of the Constitution to allow persons who hold an 'office of profit under the Crown' or who are not Australian citizens to nominate for election to Federal parliament.

The Committee has no comment on this bill.

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998

This bill was introduced into the House of Representatives on 24 June 1998 by the Parliamentary Secretary to the Minister for Employment, Education, Training and Youth Affairs. [Portfolio responsibility: Employment, Education, Training and Youth Affairs]

The bill proposes to amend the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* to extend the Act's sunset clause from 1 January 1999 to 1 January 2002.

The Committee has no comment on this bill.

Family Law Amendment Bill (No. 1) 1998

This bill was introduced into the House of Representatives on 24 June 1998 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Family Law Act 1975* to enable regulations to be made to:

- effect bi-lateral arrangements with other countries on intercountry adoption; and
- confer jurisdiction on Australian courts to make decisions on intercountry adoptions.

The Committee has no comment on this bill.

Navigation Amendment (Employment of Seafarers) Bill 1998

This bill was introduced into the House of Representatives on 25 June 1998 by the Minister for Workplace Relations and Small Business. [Portfolio responsibility: Workplace Relations and Small Business]

The bill proposes to amend the following Acts:

- *Navigation Act 1912* to abolish the Marine Council and remove provisions relating to:
 - prohibiting the demand or receipt of fees for the supply of seamen ('crimping');
 - prohibiting the use of a crew engaged in overseas voyages for handling cargo or ballast while the ship is in an Australian port;
 - requirements to enter into a prescribed form of 'articles of agreement' covering conditions of employment;
 - certain procedures in relation to the discharge of seamen from ship service and methods for wage payment; and
- makes consequential amendments; and
- *Occupational Health and Safety (Maritime Industry) Act 1993* to make consequential amendments.

The Committee has no comment on this bill.

Rural Adjustment Amendment Bill 1998

This bill was introduced into the House of Representatives on 24 June 1998 by the Minister for Primary Industries and Energy. [Portfolio responsibility: Primary Industries and Energy]

The bill proposes to amend the *Rural Adjustment Act 1992* to introduce the Farm Business Improvement Program (FarmBis), to operate for three years.

The Committee has no comment on this bill.

Social Security and Veterans' Affairs Legislation Amendment (Payment Processing) Bill 1998

This bill was introduced into the House of Representatives on 25 June 1998 by the Minister representing the Minister for Social Security. [Portfolio responsibility: Social Security]

The bill proposes to amend the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to provide for the payment of social security payments and income support payments to be paid fortnightly in arrears with daily entitlements. Consequential amendments are also made to the *Social Security Act 1991* in relation to bereavement provisions. The bill also proposes to make further consequential amendments to the *Child Care Payments Act 1997* and the *Income Tax Assessment Act 1997*.

The Committee has no comment on this bill.

States Grants (General Purposes) Amendment Bill 1998

This bill was introduced into the House of Representatives on 25 June 1998 by the Parliamentary Secretary (Cabinet) to the Prime Minister. [Portfolio responsibility: Treasury]

The bill proposes to amend the *States Grants (General Purposes) Act 1994*:

- to provide for general revenue assistance (including competition payments) to the States and Territories in 1998-99;
- for the Commonwealth to make payments under the safety net arrangements relating to business franchise fees; and
- provide for the States and Territories to make fiscal contributions to the Commonwealth in 1998-99 by way of deductions from general revenue assistance.

The Committee has no comment on this bill.

States Grants (Primary and Secondary Education Assistance) Amendment Bill 1998

This bill was introduced into the House of Representatives on 25 June 1998 by the Minister for Employment, Education, Training and Youth Affairs. [Portfolio responsibility: Employment, Education, Training and Youth Affairs]

The bill proposes to amend the *States Grants (Primary and Secondary Education Assistance) Act 1996* to:

- provide \$20 million to introduce Full Service Schools;
- provide \$40.2 million to extend the National Asian Languages and Studies in Australian Schools (NALSAS) strategy;
- enable the Minister to vary funding allocations for Literacy and Country Areas programs;
- change funding schedules for capital grants for government and non-government schools to enable capital funding for 2001;
- vary the amounts of 1997 recurrent and capital grants for the 1997 supplementation and provide flow on effects for 1998, 1999 and 2000; and
- make technical amendments.

The Committee has no comment on this bill.

Superannuation (Entitlements of same sex couples) Bill 1998

This bill was introduced into the House of Representatives on 22 June 1998 by Mr Albanese as a Private Member's bill.

The bill proposes to amend the *Superannuation Industry (Supervision) Act 1993* to enable same sex couples to receive the same superannuation benefits as heterosexual couples.

The Committee has no comment on this bill.

Taxation Administration Amendment (Public rulings) Bill 1998

This bill was introduced into the House of Representatives on 22 June 1998 by Mr Rocher as a Private Member's bill.

The bill proposes to amend the *Taxation Administration Act 1953* to make all future public rulings disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

The Committee has no comment on this bill.

War Crimes Amendment Bill 1998

This bill was introduced into the Senate on 24 June 1998 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *War Crimes Act 1945* to enable extradition proceedings with former Soviet Block countries, particularly the Baltic States.

The Committee has no comment on this bill.

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 10 of 1998

25 November 1998

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator H Coonan
Senator T Crossin
Senator J Ferris
Senator A Murray

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- (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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Any Senator who wishes to draw matters to the attention of the
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This Digest is circulated to all Honourable Senators.
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Bills Restored to the Notice Paper

On 23 November 1998, on the motion of Senator Bourne (AD), certain bills which had been introduced into the Senate in previous sessions were restored to the Notice Paper.

Under Standing Order 136, a bill restored to the Notice Paper may be proceeded with in both Houses as if its passage had not been interrupted by a prorogation of the Parliament.

The Committee has dealt with all of these bills in previous Digests. Following is a list of the bills restored and any comments made by the Committee:

Air Navigation Amendment (Extension of Curfew and Limitation of Aircraft Movements) Bill 1995 [1996] The Committee made no comment on this bill: see *Alert Digest No. 6/1995*.

Captioning for the Deaf and Hearing Impaired Bill 1998 The Committee made no comment on this bill: see *Alert Digest No. 8/1998*.

D'Entrecasteaux National Park Protection Bill 1996 The Committee made no comment on this bill: see *Alert Digest No. 9/1996*.

Defence Cooperation Control Amendment Bill 1997 The Committee made no comment on this bill: see *Alert Digest No. 3/1997*.

Genetic Privacy and Non-discrimination Bill 1998 In its *Fourth Report of 1998*, the Committee drew attention to clause 2 of this bill. This clause would have permitted the whole bill to commence on Proclamation, with no additional provision for automatic commencement or repeal at a particular time as required by Office of Parliamentary Counsel Drafting Instruction No 2 of 1989. The Committee sought advice from Senator Stott Despoja, who introduced the bill. Senator Stott Despoja responded that she would be happy to include an amendment to set a date for commencement after Royal Assent.

Koongarra Project Area Repeal Bill 1996 In *Alert Digest 1/96*, the Committee was concerned as to whether any rights existing by reason of the *Koongarra Project Area Act 1981* would be extinguished, or otherwise affected, by the repeal of that Act proposed by this bill. The Committee sought the guidance of Senator Lees, who introduced the bill. As yet, the Committee has received no response on this issue.

Native Forest Protection Bill 1996 The Committee made no comment on this bill: see *Alert Digest No. 7/of 1996*.

Parliamentary Approval of Treaties Bill 1995 [1996] The Committee made no comment on this bill: see *Alert Digest No. 8/1995*.

Patents Amendment Bill 1996 The Committee made no comment on this bill: see *Alert Digest No. 5/1996*.

Plebiscite for an Australian Republic Bill 1997 The Committee made no comment on this bill: see *Alert Digest 10/1997*.

Prohibition of Exportation of Uranium (Customs Act Amendment) Bill 1996 The Committee made no comment on this bill: see *Alert Digest No. 1/1996*.

Restitution of Property to King Island Dairy Products Pty Ltd Bill 1996 The Committee made no comment on this bill: see *Alert Digest No. 1/1996*.

Sexuality Discrimination Bill 1995 [1996] In *Alert Digest 1/96*, the Committee drew attention to clause 94 of the bill, which abrogated the privilege against self-incrimination, and clause 109 of the bill, which would permit the delegation of all of the powers of the Commission and of the Commissioner to any person. The Committee sought the guidance of former Senator Spindler, who introduced the bill. As yet, the Committee has received no response on these issues.

Taxation Laws Amendment (Part-Time Students) Bill 1997 The Committee made no comment on this bill: see *Alert Digest No. 16/1997*.

Telecommunications Amendment (Prohibition of B-Party Charging of Internet Service Providers) Bill 1997 The Committee made no comment on this bill: see *Alert Digest No. 10/1997*.

Uranium Mining in or near Australian World Heritage Properties (Prohibition) Bill 1998 The Committee made no comment on this bill: see *Alert Digest No. 8/1998*.

World Heritage Properties Conservation Amendment (Protection of Wet Tropics of Tully) Bill 1996 The Committee made no comment on this bill: see *Alert Digest No. 1/1996*.

1998 Budget Measures Legislation Amendment (Social Security and Veterans' Entitlements) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Community Services. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the following Acts:

- *Social Security Act 1991* and *Veterans' Entitlements Act 1986* to change the income test for the seniors health card to one based on taxable income, and extend income limits for single people and couples;
- *Social Security Act 1991* to:
 - exempt from the “sharers rule” recipients of rent assistance who are lodging in commercial board and lodging type accommodation; and
 - remove the 12-month waiting period for parenting payment for single foster carers; and
- *National Health Act 1953* to enable the issue of a health care card to the fostered child of certain carers.

The Committee has no comment on this bill.

Aboriginal and Torres Strait Islander Heritage Protection Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Arts and the Centenary of Federation. [Portfolio responsibility: Prime Minister]

The bill proposes to replace the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. Primarily the bill:

- provides a discretion for the Minister to protect areas and objects of particular significance to Aboriginal peoples and Torres Strait Islanders;
- reforms the processes for dealing with applications for protection under the Act;
- seeks to engage the States and Territories in protecting indigenous heritage;
- provides for accreditation by the Commonwealth Minister of State/Territory heritage protection regimes which meet certain standards of accreditation;
- encourages the resolution of heritage protection issues by negotiation and/or mediation;
- provides for the separation of assessments of significance from the decisions about heritage protection;
- requires that significance be assessed according to indigenous traditions, observances, customs and beliefs and that primacy be given to the views of indigenous people in making assessments of significance;
- provides protection for culturally sensitive information disclosed in the course of administering the legislation;
- requires applicants to exhaust State/Territory processes before seeking protection under the Commonwealth Act and, where State/Territory regimes are accredited, limits applications to cases where protection may be in the national interest; and
- establishes a Director of Indigenous Heritage Protection to assist the Minister in the administration of the legislation.

The bill also proposes to amend the following Acts:

- *Archives Act 1983* and *Freedom of Information Act 1982* to provide a category of exemption relating to confidential indigenous information collected in the course of administering the legislation; and
- *Hindmarsh Island Bridge Act 1997* to clarify that the Act applies to the proposed Aboriginal and Torres Strait Islander Heritage Protection Bill 1998 in the same way that it applies to the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*.

Committee consideration of the bill in the 38th Parliament

This bill is similar in form to the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998, which was introduced into the House of Representatives on 2 April 1998, and on which the Committee commented in *Alert Digest No 5/98*.

In *Alert Digest No 5/98*, the Committee commented on two aspects of the bill: its creation of a strict liability offence in subclause 67(2), and on a possible reversal of the onus of proof in subclause 70(2).

The Minister for Aboriginal and Torres Strait Islander Affairs responded to the Committee's comments in letters dated 6 August 1998 and 5 November 1998 (copies appended to this *Digest*). These letters were received after the cessation of sittings in the 38th Parliament, but prior to the commencement of the 39th Parliament.

The bill as introduced on 12 November 1998 addresses some of the concerns originally voiced by the Committee.

Strict liability offence Subclause 67(2)

Subclause 67(1) of the bill creates an offence of failing to report the discovery of indigenous human remains. Subclause 67(2) states that this is a strict liability offence. As a result (as the Committee noted in *Alert Digest No 5/98*), a person may be convicted of an offence against this subclause even though that person was unaware of any relevant heritage protection regime in force.

The Explanatory Memorandum provides no reason for the imposition of strict liability in these circumstances. However, in his letter to the Committee of 6 August 1998, the Minister for Aboriginal and Torres Strait Islander Affairs stated that:

- this offence is primarily aimed at persons who discover indigenous human remains while performing work on a site;

- the obligation to report the discovery ensures that steps may be taken to deal with any heritage protection issues that arise;
- the existing *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (to be repealed and replaced by the bill) creates a similar offence to that in clause 67(2) of the bill, but does not make it an offence of strict liability;
- the new offence provision has been redrafted following advice from the Attorney-General's Department that the existing provision has a number of deficiencies and runs counter to certain principles in the *Criminal Code*;
- given the relatively small penalty (10 penalty units) and the need for effective enforcement, strict liability is appropriate and not contrary to Commonwealth law policy; and
- even where strict liability is imposed, it is open to a defendant to rely on a defence of honest and reasonable mistake of fact.

Given this explanation, the Committee makes no further comment on this provision.

Onus of proof

Subclause 70(2)

Subclause 70 of the bill applies in relation to proceedings for certain offences. Under subclause 70(2), a defendant must not be committed for trial or convicted of those offences "if there is evidence" that "the defendant did not know of the existence of the protection order alleged to have been contravened". The subclause makes no provision as to who bears the onus of proving this lack of knowledge.

In *Alert Digest No 5/98*, the Committee sought the advice of the Prime Minister on two matters: whether the bill should specify who bears the onus of proof under the subclause; and, if that onus is to be placed on the defendant, the reason for reversing the normal requirement that the prosecution must establish all the elements of an offence.

In his letter to the Committee of 6 August 1998, the Minister for Aboriginal and Torres Strait Islander Affairs stated that:

- the clause is not intended to impose a burden on the defendant;

- as advised by the Attorney-General's Department, the clause will not impose such a burden because of the requirement in the *Criminal Code* for an express statement of intention if a legal burden of proof is to be imposed on a defendant; and
- the Government intended to remove clause 70 from the bill and redraft clause 69 to incorporate a clear physical element into the offences to remove any doubts about the onus of proof.

However, in his subsequent letter to the Committee dated 5 November, the Minister stated that the same result may be achieved by inserting appropriate wording in the Explanatory Memorandum on clause 70. The Committee notes that the Explanatory Memorandum on clause 70 now states:

In accordance with the *Criminal Code*, a defendant will only bear an evidential burden of proof in relation to lack of knowledge of the existence of a protection order. That is, the defendant must show evidence that suggests a reasonable possibility that, at the time the offence is alleged to have been committed, the defendant did not know of the existence of the protection order alleged to have been contravened.

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

Acts Interpretation Amendment Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Acts Interpretation Act 1901* to address the implications of a recent decision of the Federal Court in *Foster v Attorney-General* (relating to section 19). The bill proposes to:

- provide for a Minister to authorise a non-portfolio Minister or Parliamentary Secretary to act on his or her behalf;
- validate past authorisations that may have been made in reliance on section 19 to the extent that they may be invalid; and
- ensure that an order can be made by the Governor-General under section 19 whenever there is any change to the administration of government business and validates past orders made under section 19BA to the extent that they may be invalid.

Retrospective validation Schedule 1, items 2, 5 and 7

This bill proposes to amend the *Acts Interpretation Act 1901* to address the implications of the decision of the Federal Court in *Foster v Attorney-General*, handed down on 12 October 1998.

The Explanatory Memorandum notes that, in that case, the Federal Court found that section 19 of the Act did not enable the Attorney-General to authorise the Minister for Justice to exercise statutory powers for and on his behalf. The Explanatory Memorandum goes on to suggest that this decision has significant ramifications for other authorisations made under section 19 of the Act, and serious implications for government administration generally.

Therefore, items 2, 5 and 7 of Schedule 1 to the bill retrospectively validate acts undertaken under the legislation as presently in force.

While understanding the argument that this validation may be necessary for the orderly conduct of government, the Committee is concerned that the bill may go further than necessary, and that it may prejudice longstanding tradition and practice. Accordingly, the Committee **seeks the advice of the Minister:**

- to identify the specific implications of the decision in *Foster's case* which the legislation is seeking to address;

- to confirm that a non-portfolio Minister (or member of the Executive Council who is not a Minister) has the same general rights and responsibilities at law as a portfolio Minister;
- to identify the usual protocol with regard to oversight by a portfolio Minister of a non-portfolio Minister (or member of the Executive Council who is not a Minister) who would be authorised by the bill to act on the Minister's behalf; and
- to reassure the Committee that the amendment will not prejudice practice that, in the past, has ensured due process.

Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to make rights, liberties and obligations unduly dependent on insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference, and inappropriately delegate legislative power in breach of principle 1(a)(iv) of the Committee's terms of reference.

Aged Care Amendment (Accreditation Agency) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Aged Care. [Portfolio responsibility: Aged Care]

The bill proposes to enable the Aged Care Standards and Accreditation Agency to charge fees for accrediting aged care services.

Imposing a levy by regulation Schedule 1, item 1

Item 1 in Schedule 1 to this bill enables delegated legislation (the Accreditation Grant Principles) to set fees that may be charged for services provided, or “a way of determining such fees”. While the bill does not specify an upper limit on these fees, item 2 in Schedule 1 states that fees charged for a service must be reasonably related to the cost of providing the service and “must not amount to taxation”.

The Committee has consistently drawn attention to legislation which provides for the level of a ‘levy’ to be set by regulation. This creates a risk that the levy may become a tax. At page 62 of its report on *The Work of the Committee during the 37th Parliament (May 1993-March 1996)*, the Committee noted:

It is for Parliament to set a tax rate and not for the makers of subordinate legislation to do so. Where the level of a levy needs to be changed frequently and expeditiously the question arises as to whether this can best be done by regulation rather than by statute. If a compelling case can be made out for the level to be set by subordinate legislation the Committee seeks to have the enabling Act prescribe a maximum figure above which the relevant regulations cannot fix the levy or alternatively a formula by which such an amount can be calculated.

Many bills adopt such an approach, providing for a basic levy to be set by regulation, subject to a statutory maximum rate. Some recent examples considered by the Committee include the Laying Chicken Levy Amendment (AAHC) Bill 1996 and the Live-stock Export Charge Amendment (AAHC) Bill 1996 (both considered in *Alert Digest No 5/1996*), and the Retirement Savings Accounts Supervisory Levy Bill 1996 and the Telecommunications (Carrier Licence Charges) Bill 1996 (both considered in *Alert Digest No 1/1997*).

The Explanatory Memorandum to this Bill makes no reference to the appropriateness of such an approach, and the Minister’s Second Reading

Speech simply notes that fee levels are expected to reflect the cost of services and be comparable with other commercial accreditation arrangements in similar industries.

A second issue may arise if the Accreditation Grant Principles provide “a way of determining such fees”. In these circumstances, there may be an inappropriate delegation of legislative power where the power to set fees is removed from the direct responsibility of the Minister.

Accordingly, the Committee **seeks the advice of the Minister** on the following matters:

- why the bill itself fails to specify an upper limit on the level of fees; and
- if the Principles simply provide a way by which fees are to be determined, whether the task of setting fees will remain the ultimate responsibility of the Minister.

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

Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to:

- repeal the *Dried Vine Fruits Equalization Act 1978* to cease the current equalization of export returns for dried vine fruits from 1 January 1999; and
- amend the *Pig Industry Act 1986* to:
 - replace references to the former National Meat Processors' Association in the Act with reference to the Australian Food Council's Processed Meats Forum;
 - allow for the nominee of the Australian Food Council's Processed Meats Forum to be nominated to the selection committee for the Australian Pork Corporation; and
 - enable the Australian Food Council's Processed Meats Forum to be defined as an "eligible industry body" for the purpose of making regulations, prescribing levy amounts, formulating or revising a corporate plan or annual operation plan, and the appointment of the Australian Pork Corporation company auditor.

The Committee has no comment on this bill.

Anti-Personnel Mines Convention Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Foreign Affairs. [Portfolio responsibility: Foreign Affairs]

The bill proposes to effect Australia's obligation as a party to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction by:

- creating offences relating to placement, possession, development, production, acquisition, stockpiling and transfer of anti-personnel mines by Australian citizens or members of the Australian Defence Force or on territory under Australian jurisdiction or control;
- authorising the Minister for Defence to grant permission to place, possess, produce or acquire, stockpile or move anti-personnel mines for the purposes of the development of, or training in, mine detection, mine clearance, mine destruction or mine deactivation;
- providing that, if a fact finding mission to Australia is authorised under the Convention, the Minister for Foreign Affairs must appoint each member of the mission as an inspector;
- authorising appropriate Australian officials to accompany members of any fact-finding mission;
- providing that the Minister must not impose any conditions on the appointment of an inspector unless the Minister is satisfied it is necessary to do so for the protection of sensitive equipment, information or areas or for the physical protection and safety of the inspector;
- providing for the power to make regulations with respect to privileges and immunities under Australian law in accordance with the Convention; and
- authorising the Minister for Foreign Affairs to obtain information and documents from persons relevant to the administration or enforcement of the legislation and to Australia's obligations under the Convention.

Commencement

Clause 2

Subclause 2(1) provides that this bill is to commence on a day to be fixed by Proclamation, being a day not earlier than the day on which the Convention enters

into force for Australia. Subclause 2(2) provides that if such a Proclamation is not made within 6 months of the Convention entering into force, the Act will automatically commence on the expiry of 6 months.

The Explanatory Memorandum notes that the time the Convention will enter into force for Australia is uncertain as this depends on the ratification of the Convention by at least 40 State Parties.

Although there is a measure of uncertainty concerning the bill's commencement, clause 2 confers no discretion on the Executive to determine commencement.

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

Australian National Training Authority Amendment Bill 1998

This bill was introduced into House of Representatives on 12 November 1998 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

The bill proposes to amend the following Acts:

- *Australian National Training Authority Act 1992* to:
 - reflect a new Agreement between the Commonwealth, States and Territories on vocational education and training for the three years 1998 to 2000; and
 - clarify that the Australian National Training Authority is exempt from State and Territory taxes; and
- *Vocational Education and Training Funding Act 1992* to make consequential amendments.

Retrospective application

Subclause 2(2) and Schedule 1, item 17.

Subclause 2(2) of this bill provides that item 17 in Schedule 1 is to be taken to have commenced on 21 December 1992, immediately after the commencement of the *Australian National Training Authority Act 1992*. The retrospective application in this instance is, therefore, more than five years. The Explanatory Memorandum notes that the purpose of this amendment is to ensure that the Australian National Training Authority is not liable to pay State and Territory taxes, and the Minister's Second Reading Speech states that this provision "rectifies an omission" from the original Act.

Committee consideration of the bill in the 38th Parliament

This bill is similar in form to the Australian National Training Authority Amendment Bill 1998 which was introduced into the House of Representatives on 24 June 1998, and on which the Committee commented in *Alert Digest No 9/98*.

In *Alert Digest No 9/98*, the Committee noted that, while the proposed immunity from taxation was usual for Commonwealth statutory authorities, the

retrospective application in this instance was approximately five and a half years. The Explanatory Memorandum did not explain why such a lengthy period of time had been required to rectify an apparent oversight. Therefore, the Committee sought the Minister's advice on the circumstances giving rise to this provision at this time, and why the Explanatory Memorandum made no reference to these circumstances.

The then Minister for Employment, Education, Training and Youth Affairs responded to the Committee's comments in a letter dated 19 August 1998 (copy appended to this *Digest*). This letter was received after the cessation of sittings in the 38th Parliament, but prior to the commencement of the 39th Parliament.

The Minister's letter addresses the concerns originally voiced by the Committee.

The Minister's advice

In his letter of 19 August, the Minister stated that the reasons why the immunity issue had not been clarified previously were "not clear", and may have been the result of an administrative oversight. The Minister confirmed that "to date, no State or Territory has sought to recover from ANTA any money relating to outstanding State tax liability and, as a result, urgent action on the issue may not have been required".

The Minister stated that the matter had first been drawn to the Government's attention in October 1996, and consultations were begun with relevant State and Territory Ministers. For various reasons these consultations were protracted. When the new ANTA Agreement was endorsed in November 1997, and the current bill was being prepared to reflect that Agreement, "it was considered opportune to include a specific provision clarifying that ANTA was immune from State and territory taxes".

Given this explanation, the Committee makes no further comment on this provision.

Australian Radiation Protection and Nuclear Safety Bill 1998

This bill was introduced into the House of Representatives on 11 November 1998 by the Minister for Health and Aged Care. [Portfolio responsibility: Health and Aged Care]

The bill proposes to establish a scheme to regulate the operation of nuclear installations and the management of radiation sources, including ionizing material and apparatus and non-ionizing apparatus, where these activities are undertaken by Commonwealth entities.

Abrogation of the privilege against self-incrimination Subclause 66(2)

Subclause 66(1)(e) of this bill authorises an inspector to require any person on particular premises to answer any questions put by the inspector and produce any documents requested by the inspector. Subclause 66(2) seems to make compliance an absolute requirement.

Subclause 66(2) is in the same form as subclause 55(2) in a bill of the same name which was introduced into the House of Representatives on 8 April 1998 and on which the Committee reported in its *Seventh Report of 1998*. In that Report, the Committee referred to correspondence from the Parliamentary Secretary to the Minister for Health and Family Services. This correspondence confirmed the Government's intention that the bill should not abrogate the privilege against self-incrimination, and proposed to clarify this by including a statement to this effect in the Explanatory Memorandum to the bill.

The Committee notes that neither the current bill, nor its Explanatory Memorandum, refers to the privilege against self-incrimination. The Committee also notes the different approach taken in subclause 16(2) of the Anti-Personnel Mines Convention Bill 1998, presently before the Parliament, which specifies that a person is guilty of an offence if that person recklessly contravenes a requirement to answer questions or produce documents. The Explanatory Memorandum to this bill states that the offence created does not abrogate the privilege against self-incrimination.

Accordingly, the Committee reiterates the observations in its *Seventh Report of 1998* and **seeks the advice of the Minister** as to:

- the reason why neither the bill nor its Explanatory Memorandum clarifies the intention to retain the privilege against self-incrimination; and

- the disadvantages, if any, of the different approach to the same issue adopted in the Anti-Personnel Mines Convention Bill 1998.

Pending the Minister's advice, the Committee draws Senators' attention to this 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.

Australian Radiation Protection and Nuclear Safety (Consequential Amendments) Bill 1998

This bill was introduced into the House of Representatives on 11 November 1998 by the Minister for Health and Aged Care. [Portfolio responsibility: Health and Aged Care]

The bill proposes to make consequential changes to the *Australian Nuclear Science and Technology Organisation Act 1987* and to provide for transitional arrangements to cover the operation of controlled facilities and the handling of radiation sources while applications for licences to cover these facilities and activities are being made under the proposed Australian Radiation Protection and Nuclear Safety Bill 1998. The bill also proposes to repeal the *Environment Protection (Nuclear Codes) Act 1978*.

Commencement

Subclause 2(2) and Schedule 1, item 5

By virtue of subclause 2(2), the amendment proposed by item 5 of Schedule 1 to the bill is to commence on Proclamation, with no further time specified within which the bill either must come into force or be repealed. The Committee notes that paragraph 6 of Office of Parliamentary Counsel *Drafting Instruction No 2 of 1989* suggests that such an approach should be used only in unusual circumstances, where commencement depends on an event whose timing is uncertain.

Accordingly, the Committee **seeks the advice of the Minister** on the reason for departing from the Drafting Instruction.

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

Australian Radiation Protection and Nuclear Safety (Licence Charges) Bill 1998

This bill was introduced into House of Representatives on 11 November 1998 by the Minister for Aged Care. [Portfolio responsibility: Health and Aged Care]

The bill proposes to enable annual charges to be levied in respect of licences issued under the proposed Australian Radiation Protection and Nuclear Safety Act 1998.

Imposing a levy by regulation Clauses 4 and 5

Clauses 4 and 5 of this bill impose charges on holders of licences, with the amount of those charges to be fixed by regulation and with no upper limit specified in the bill. This is a matter which usually concerns the Committee.

However, these provisions are the same as provisions in a bill of the same name which was introduced into the House of Representatives on 8 April 1998, and on which the Committee reported in its *Seventh Report of 1998*.

Committee consideration of the bill in its Seventh Report of 1998

In its *Seventh Report of 1998*, the Committee sought the advice of the Minister on why the legislation placed no upper limit on the power to set a rate of levy by regulation.

The Minister responded that the proposed charges would only apply to Commonwealth entities rather than private individuals, businesses or corporations, and the charges would equate only to the amount necessary to recover the cost of the additional functions described in the Bill.

Before any upper limit could be set, it had been necessary to undertake a comprehensive assessment of the additional functions that resulted from the legislation, and to approximate the number of facility and source licences that would be held by various Commonwealth entities. In addition, the Commonwealth had engaged the independent consultancy firm, Ernst and Young, to establish a fees and charges regime based on the newly developed regulatory framework.

The Minister concluded that any move to set an upper limit at this time “would be arbitrary and contrary to the consultative approach undertaken to date”. He also noted that, while an upper limit could not be included in the bill at this

time, the entire cost recovery regime would be the subject of Parliamentary scrutiny through the regulation making process. In addition, should concerns about the inclusion of an upper limit in the bill continue, it would be possible for the Licence Charges Act to be amended to reflect the outcome of the current independent consultancy process.

In its *Seventh Report of 1998*, the Committee thanked the Minister for the explanations provided.

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

Australian Wool Research and Promotion Organisation Amendment Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Australian Wool Research and Promotion Organisation Act 1993* to:

- increase the Australian Wool Research and Promotion Organisation Board from nine to eleven members;
- clarify the prior knowledge and experience required of the Chair;
- provide for the Board selection committee to include:
 - a Presiding Member and another member appointed by the Government;
 - the Chair of the Organisation; and
 - two members nominated by the Wool Council of Australia;
- allow grower initiated motions to be debated at the Annual General Meeting and ease restrictions on eligibility to register for the meeting;
- remove restrictions on conduct of the wool tax ballot and increase flexibility in the form that the ballot may take;
- increase consultation with peak industry councils during development of the corporate plan;
- empower the Organisation to set up a voluntary register of wool growers;
- align the calculation of wool gross value of production with other primary industry research and development authorities;
- allow the Organisation to charge fees for provision of technical services and market information; and
- enable the Organisation to create licensing arrangements.

The Committee has no comment on this bill.

Child Support Legislation Amendment Bill 1998

This bill was introduced into the House of Representatives on 11 November 1998 by the Minister for Community Services. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the following Acts:

- *Child Support (Assessment) Act 1989* to:
 - modify the child support administrative formula;
 - limit the disclosure of information relating to children of a parent on the notice of assessment;
 - provide for a \$260 minimum annual rate of child support;
 - modify the effect of care arrangements on assessments;
 - provide that the starting date of liability for applications for administrative assessment will be the date the application is made to the Registrar;
 - allow a person in receipt of more than the minimum rate of Family Allowance to elect to end their administrative assessment where approval based on risk assessment has been granted by the Secretary to the Department of Social Security;
 - give clients the right to lodge objections to decisions made by the Registrar;
 - modify the process relating to departure from administrative assessment of child support;
 - modify the income on which a child support liability is raised;
 - enable child support assessments to be calculated using the taxable income for the financial year immediately preceding the assessment;
 - allow a person to lodge an income estimate election up to 31 July, and to allow the Registrar to reject an income estimate election;
 - allow a person to apply for an administrative assessment to pay child support; and
 - make corrections to out of date or incorrect references;

- *Child Support (Assessment) Act 1989 and Child Support (Registration and Collection) Act 1988* to:
 - enable a child support assessment to continue to the end of the school year in which a full-time secondary student turns 18; and
 - modify the date of effect of information provided to or obtained by the Registrar and the manner in which information is provided to the Registrar;
- *Child Support (Registration and Collection) Act 1988* to:
 - allow the Registrar to request deductions to be made from social security pensions and benefits and applied towards child support liabilities;
 - to enable private collection of child support between parents;
 - allow the Registrar to hold in reserve money collected where a paying parent has lodged an application to the Family Court seeking a declaration that they are not a person from whom child support may be sought;
 - allow for debts between two persons who owe child support in respect of their children to be offset;
 - modify the way in which non agency payments may be credited against a child support liability; and
 - enable payers to elect to pay their child support in accordance with a nominated period rather than having to pay a monthly amount by the seventh of each month; and
- *Social Security Act 1991* to:
 - require deductions to be made from social security pensions and benefits where requested by the Registrar; and
 - ensure 50 per cent of any child support paid by a paying parent will be deducted from the income which is used to calculate their entitlement to Family Allowance.

Commencement

Subclause 2(10)

By virtue of subclause 2(10), the amendments referred to in subclauses (2), (4) or (9) may commence up to 12 months after assent.

The Committee notes that paragraph 4 of Office of Parliamentary Counsel *Drafting Instruction No 2 of 1989* suggests that, where a commencement period after Royal Assent is chosen, it should be no longer than 6 months. “If it is longer, Departments should explain the reason for this in the Explanatory Memorandum.”

The Committee notes that the Explanatory Memorandum in this instance fails to provide such a reason.

Accordingly, the Committee **seeks the advice of the Minister** on the reason for departing from the Drafting Instruction.

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

Inappropriate delegation of legislative power Subclause 5(3)

Subclause 5(3) of the bill permits the modification by regulation of the operation of proposed section 6, or of the legislation referred to in proposed paragraph 5(2)(c). The Explanatory Memorandum again fails to explain why such an approach is necessary in these circumstances.

Accordingly, the Committee **seeks the advice of the Minister** on the reasons for authorising the modification of these provisions by regulation.

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

Commonwealth Superannuation Board Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to establish a new body corporate, the Commonwealth Superannuation Board, to administer certain Commonwealth superannuation schemes for civilian employees and to manage the Funds of those schemes.

Inappropriate delegation of legislative power Subclause 8(1)

Subclause 8(1) of this bill, if enacted, would permit the Minister to make determinations varying the operation of any provision in Acts relating to superannuation for members of the Australian Public Service.

In *Alert Digest No 1/98*, the Committee dealt with a similar provision in a bill of the same name introduced into the House of Representatives on 3 December 1997.

In *Alert Digest No 1/98*, the Committee noted that the Explanatory Memorandum indicated that the variations thus made must not result in the legislation falling outside the terms of the *Superannuation Industry (Supervision) Act 1993*. Making the Minister's power to make determinations subject to the *Superannuation Industry (Supervision) Act 1993* sufficiently circumscribed this delegation of legislative power. The Committee reiterates these comments.

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

Inappropriate delegation of legislative power Subclause 8(11)

Subclause 8(11) of this bill, if enacted, may enable the Minister to give retrospective effect to any determinations made under subclause 8(1). These determinations would vary the operation of any provision in Acts relating to superannuation for members of the Australian Public Service.

Committee consideration of the provision in the 38th Parliament

In *Alert Digest No 1/98*, the Committee dealt with subclause 8(9) of a bill of the same name, introduced into the House of Representatives on 3 December 1997.

In *Alert Digest No 1/98*, the Committee noted that the Explanatory Memorandum pointed out that the *Superannuation Industry (Supervision) Act 1993* (to which these determinations were subject) did not permit the reduction of benefits to members except in particular circumstances. Therefore the Committee sought the Minister's advice on the particular circumstances in which a determination would be made reducing superannuation benefits to which members would be otherwise entitled.

The Minister for Finance and Administration responded to the Committee's comments in a letter dated 14 July 1998 (copy appended to this *Digest*). This letter was received after the cessation of sittings in the 38th Parliament, but prior to the commencement of the 39th Parliament.

The Minister's letter addresses the concerns originally voiced by the Committee.

The Minister's advice

In his letter of 14 July, the Minister stated that:

- the public sector superannuation schemes were regulated superannuation funds for the purposes of the *Superannuation Industry (Supervision) Act 1993* and its regulations (SIS);
- the SIS regulations restrict the circumstances in which the trustees of a regulated fund can alter the fund's rules to adversely affect a beneficiary's right or claim to accrued benefits;
- SIS regulation 13.16(2) provides for the making of certain allowable adverse alterations to comply with specific legislative requirements (eg income tax, SIS, and in relation to the superannuation contributions tax);
- subclause 8(11) of the Commonwealth Superannuation Board Bill omits the operation of section 48(2) of the *Acts Interpretation Act 1901* "as it could prevent the Commonwealth Superannuation Board from making alterations to the rules of the Schemes that are allowable under SIS. This could prevent the making of amendments necessary to comply with other legislative requirements such as reducing members' benefits as a result of the superannuation contributions tax";

- nothing in subclause 8(11) will enable the Board to reduce members' accrued benefits except in the particular circumstances specified in SIS regulation 13.16; and
- subclause 8(10) provides for parliamentary scrutiny of all Ministerial determinations by making them disallowable instruments.

Given this explanation, the Committee makes no further comment on this provision.

Data-matching Program (Assistance and Tax) Amendment Bill 1998

This bill was introduced into the Senate on 11 November 1998 by the Assistant Treasurer. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the *Data-matching Program (Assistance and Tax) Act 1990* to remove the sunset clause (due to take effect on 22 January 1999) to enable the continuation of the Data-matching Program.

The Committee has no comment on this bill.

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998

This bill was introduced into the Senate on 11 November 1998 by the Assistant Treasurer. [Portfolio responsibility: Education, Training and Youth Affairs]

The bill proposes to amend the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* to extend the Act's sunset clause from 1 January 1999 to 1 January 2002.

The Committee has no comment on this bill.

Environment Protection and Biodiversity Conservation Bill 1998

This bill was introduced into the Senate on 12 November 1998 by the Assistant Treasurer. [Portfolio responsibility: Environment and Heritage]

The bill proposes to implement the 1997 Council of Australian Governments Agreement relating to the Commonwealth's role by reference to certain matters of national environmental significance. Primarily, the bill:

- introduces assessment and approval processes that apply to actions which will or are likely to have a significant impact on world heritage properties, certain Ramsar wetlands, nationally threatened species and communities, certain migratory species, nuclear actions, the Commonwealth marine environment, any additional matter specified by regulation, including actions on Commonwealth lands and actions by the Commonwealth and Commonwealth agencies;
- empower the Minister to enter into bilateral agreements with States or Territories in relation to actions impacting upon matters of national environmental significance;
- provides for the establishment of lists of nationally threatened native species and ecological communities, key threatening processes, internationally protected migratory species, and marine species;
- establishes the Australian Whale Sanctuary;
- regulates certain activities in Commonwealth areas which affect whales and dolphins, listed species and listed ecological communities;
- requires the Minister to prepare recovery plans for listed threatened species and communities and to prepare threat abatement plans for listed key threatening processes;
- specifies steps to be followed before a property can be nominated as a world heritage property or designated as a Ramsar wetland;
- empower the Minister to enter into conservation agreements with private landholders;
- enables regulations to be made about access to biological resources on Commonwealth land and waters; and

- replaces the *Endangered Species Protection Act 1992*, *Environment Protection (Impact of Proposals) Act 1974*, *National Parks and Wildlife Conservation Act 1975*, *Whale Protection Act 1980* and *World Heritage (Properties Conservation) Act 1983*.

Non-disallowable declarations

Clause 33

Clause 33 of this bill gives the Minister power to make various declarations. The Committee believes that some of these declarations are legislative in character. However, the bill does not provide for their scrutiny by the Parliament.

Accordingly, the Committee **seeks the advice of the Minister** on the reasons why the declarations which may be made under clause 33 are not disallowable instruments.

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.

Abrogation of the privilege against self-incrimination

Subclause 112(4)

Subclause 112(4) of the bill abrogates the privilege against self-incrimination. Such provisions are generally of concern to the Committee. However, subclause 112(5) goes on to provide that answers compelled to be given, documents compelled to be produced, and any information obtained as a direct or indirect consequence, is inadmissible in evidence in criminal proceedings against the person (other than proceedings for providing false and misleading information). These protections are in a form which the Committee accepts.

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

Strict liability offences

Subclauses 196(3), 211(3), 229(3), 236(1) and 254(3)

A number of provisions in the bill create criminal offences of strict liability. In each case, the Explanatory Memorandum does not provide a reason for imposing strict liability.

Accordingly, the Committee **seeks the advice of the Minister** on the reasons why the offences in subclauses 196(3), 211(3), 229(3), 236(1) and 254(3) are declared to be offences of strict liability, particularly given the levels of penalty imposed.

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.

Reversal of the onus of proof

Clauses 235, 255, and 492

A number of provisions in the bill expressly impose an evidential burden on a defendant to criminal charges. These provisions require a defendant wishing to escape liability to show the existence of certain circumstances. These circumstances include some matters which may be within the specific knowledge of the defendant (eg. the taking of actions that are reasonably necessary to deal with an emergency, or that occur as a result of an unavoidable accident). Other circumstances seem less likely to be within the defendant's specific knowledge (eg. the taking of actions which are covered by a relevant Ministerial declaration). The Explanatory Memorandum does not provide a reason for imposing an evidential burden on the defendant in these circumstances.

Accordingly, the Committee **seeks the advice of the Minister** on the reasons why clauses 235, 255 and 492 impose an evidential burden on a defendant in the circumstances set out.

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.

Film Licensed Investment Company Bill 1998

This bill was introduced into the House of Representatives on 11 November 1998 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Arts and the Centenary of Federation]

Together with the Taxation Laws Amendment (Film Licensed Investment Company) Bill 1998 , the bill proposes to provide for the establishment of a pilot scheme for the delivery of tax concessions to investors in the film industry by means of concessional investment in Film Licensed Investment Companies.

The Committee has no comment on this bill.

Higher Education Funding Amendment Bill 1998

This bill was introduced into the House of Representatives on 11 November 1998 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

The bill proposes to amend the *Higher Education Funding Act 1988* to:

- vary the maximum aggregate amount which may be granted to higher education institutions for operating purposes for the funding year 1998 and set the maximum total amount of financial assistance for these purposes for the funding years 1999 and 2000;
- vary the maximum total financial assistance payable to higher education institutions for superannuation expenditure for the funding year 1998 and set the maximum total amount of financial assistance for the funding years 1999 and 2000;
- set the maximum aggregate amount of financial assistance which may be granted to open learning organisations for the funding years 1999 and 2000;
- vary the limit on total funds available for higher education institutions for certain grants under the Act in respect of the funding years 1998 and 1999 and set the limit on total funds for the funding year 2000;
- vary the maximum aggregate amount of financial assistance which may be granted to higher education institutions in respect of their teaching hospitals for the 1998 funding year and set the maximum aggregate amount of financial assistance for the funding years 1999 and 2000;
- vary the maximum aggregate amount which may be granted to higher education institutions for approved special capital projects for the 1998 funding year and set the maximum aggregate amount for the funding years 1999 and 2000;
- make provision for funding for expenditure on the international marketing and promotion of Australian education and training services by Australian Education International and set the maximum funding levels for the years 1998, 1999 and 2000;
- provide for the Minister to table in each House of the Parliament, determination of amounts for Australian Education International; and
- empower the Minister to approve grants to the University of Notre Dame Australia for limited operating purposes;

- provide additional funding for the James Cook University of North Queensland; and
- provide additional funding to enable university and industry collaboration under the Strategic Partnerships-Industry Research and Training Scheme.

The Committee has no comment on this bill.

Migration Legislation Amendment Bill (No. 1) 1998

This bill was introduced into the Senate on 12 November 1998 by the Assistant Treasurer. [Portfolio responsibility: Immigration and Multicultural Affairs]

The bill proposes to amend the following Acts:

- *Migration Act 1958* to:
 - merge the Migration Internal Review Office and the Immigration Review Tribunal into a new body to be called the Migration Review Tribunal (MRT);
 - provide the principal members of the MRT and the Refugee Review Tribunal (RRT) with clear authority to apply efficient processing practices;
 - specify the circumstances when the Principal Member of the MRT or the RRT may reconstitute a Tribunal for the more efficient conduct of the review;
 - allow the Minister to appoint a person to act as a Senior Member of the RRT for a period of no more than 12 months;
 - prevent MRT and RRT hearings from being unnecessarily delayed in certain circumstances;
 - provide that the MRT and RRT must invite an applicant to appear before the Tribunal, unless specified circumstances exist;
 - give the MRT and RRT authority to use telephone or other media to conduct personal hearings or for people to appear before them;
 - provide for the publication of tribunal decisions of interest at the discretion of Principal Members;
 - provide for the formal handing down of decisions and certainty of dispatch;
 - apply a code of procedure to the MRT and RRT in relation to decisions on entry and stay of non-citizens;
 - provide for the “no further stay” condition on temporary visas to be waived in prescribed circumstances;

- enable more effective cancellation of visas which were granted on the basis of incorrect information; and
- clarify existing provisions and make amendments of a technical nature;
- *Australian Citizenship Act 1948* to bring the penalty provision into line with similar offences under Commonwealth law; and
- *Immigration (Education) Act 1971*, the *Migration Reform Act 1992* and the *Migration Legislation Amendment Act (No. 5) 1995* to make minor technical amendments.

Retrospective application Subclauses 2(4) to 2(8)

By virtue of subclauses 2(4) to 2(8), the amendments proposed in Schedule 8 will commence at various dates prior to the date of Assent to the Bill. In each case, however, the purpose of the amendment is to correct a drafting error, with no substantive change made to the law.

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

Non-reviewable decisions Schedule 1, item 10

Item 10 of Schedule 1 to the bill proposes to insert a new section 339 in the Principal Act. This provision will give the Minister the discretion to decide that certain administrative decisions cannot be reviewed by the Migration Review Tribunal.

While such a provision is usually of concern, the Committee notes its comments in its *Thirteenth Report of 1997* on similar provisions in the Migration Legislation Amendment Bill (No 4) 1997.

In that Report, the Committee noted the Minister's response that the proposed new section simply transferred a power already vested in the Minister under sections 338(3) and 346(4) of the Act. The Committee also noted that these existing powers were reviewable in the Federal Court, and this would continue in relation to the proposed new provision.

The Committee further notes that, by virtue of item 12 in Schedule 1 to the Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Bill 1998, also currently before the Parliament, the proposed new section 339 to be inserted by this bill will itself be replaced by a provision in the 'Character and Conduct' Bill.

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

Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Bill 1998

This bill was introduced into the Senate on 11 November 1998 1997 by the Assistant Treasurer. [Portfolio responsibility: Immigration and Multicultural Affairs]

The bill proposes to amend the *Migration Act 1958* to increase control over the entry into, and presence in, Australia of non-citizens who have a criminal background or have criminal associations and to strengthen the procedures used in dealing with such people.

Commencement Clause 2

By virtue of clause 2 of this bill, all but two items in the Schedule are to commence on proclamation, with no further time specified within which the provisions either must come into force or be repealed.

The Committee notes that paragraph 6 of Office of Parliamentary Counsel *Drafting Instruction No 2 of 1989* suggests that such an approach should be used only in unusual circumstances, where commencement depends on an event whose timing is uncertain.

Committee consideration of the provision in its Fourth Report of 1998

In its *Fourth Report of 1998*, the Committee sought advice from the Minister in relation to a similar commencement provision in a bill of the same name introduced into the House of Representatives on 30 October 1997. In relation to that bill, the Minister advised that the approach of commencement on proclamation had been adopted because:

- it was desirable for reasons of administrative efficiency and public convenience that the bill should commence at the same time as amendments made by other related bills, however the measures contained in this bill were sufficiently important to justify an earlier commencement should it be passed first; and
- the new administrative procedures which are required by the bill would significantly affect the operations of the Department and the Administrative

Appeals Tribunal – these procedures should be fully developed and in place when the legislation commences.

It is unclear whether these reasons remain relevant and the Explanatory Memorandum does not clarify the issue. Accordingly, the Committee **seeks the advice of the Minister** on the reason for departing from Drafting Instruction No 2 of 1989, issued by the Office of Parliamentary Counsel.

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

Insufficiently defined administrative powers Schedule 1, item 12

Item 12 of Schedule 1 to the bill proposes to insert a new section 339 in the Principal Act. This provision will enable the Minister to issue a conclusive certificate – thereby preventing merits review of the decision the subject of the certificate – where he or she believes that it would be contrary to the national interest that a decision be changed or reviewed.

This provision is in the same terms as section 339 proposed to be inserted by a bill of the same name, introduced into the House of Representatives on 30 October 1997. This provision was the subject of correspondence with the Minister, and was discussed extensively by the Committee in its *Fourth* and *Ninth Reports of 1998*.

Committee consideration of the provision in its Fourth Report of 1998

In its *Fourth Report of 1998*, the Committee noted that the proposed provision would reduce the range of factors which might inform a Ministerial decision to issue a conclusive certificate and thereby prevent merits review of the decision the subject of the certificate. The 'Character and Conduct Bill' proposed to replace two relatively precise grounds (prejudice to the security, defence or international relations of Australia, and possibly exposing Cabinet deliberations to review) with a single more general ground: the Minister could issue a conclusive certificate merely because he or she believed that it would be contrary to the national interest that a decision be changed or reviewed.

It was the Committee's view that this reduction widened the discretion in the use of this administrative power and raised the issue of whether it constituted an insufficiently defined administrative power.

The Minister responded that:

- the amendments were designed to ensure that his personal power to intervene in the review process would be controlled by consistent and uniform criteria (that is, the national interest) across the entire Migration Act; and
- Australia's national interest was a better test than the existing public interest test for direct Ministerial intervention in the review process because Australia's national interest encompassed a broader range of conduct and considerations than does the public interest.

The Committee sought clarification from the Minister as to the differences between the terms 'public interest' and 'national interest' and, in particular, whether the definition of public interest in section 339 might be expanded to include considerations of the national interest.

Committee consideration of the provision in its Ninth Report of 1998

The Minister provided the Committee with a further response, and this was considered by the Committee in its *Ninth Report of 1998*.

In particular, the Minister noted that judicial comments about 'national interest' stressed that it was not possible to give an exhaustive definition of what could be said to be in the national interest. Matters such as Australia's international reputation might be relevant. For example, a reference to the 'national interest' in the context proposed for section 501 of the Migration Act should allow account to be taken of the Government's interest in ensuring that Australia is not perceived internationally as a haven for criminals, terrorists and other persons of proven bad character. The risk that the presence in Australia of particular persons would promote discord or violence also appeared to be relevant to an assessment of the national interest.

The Minister concluded that the 'national interest' generally allowed regard to be had to more specific governmental concerns related to public safety, national security, defence and Australia's reputation abroad.

With regard to expanding the definition of 'public interest' in section 339 to include considerations of the 'national interest', the Minister noted that the 'Character and Conduct' Bill proposed to replace one test with the other.

The Committee thanked the Minister for this further response.

In these circumstances, the Committee draws the Senate's attention to its previous comments on this provision.

Insufficiently defined administrative powers Schedule 1, item 23

Item 23 of Schedule 1 to the bill proposes to insert new subsections 501(3) to (5) and 501A(3) and (4) in the Principal Act. These provisions will enable the Minister, acting personally, either to refuse to grant a visa or to cancel a visa that has been granted where the Minister reasonably suspects that the person does not pass the character test and is satisfied that the refusal or cancellation is in the national interest. The Minister may similarly overturn a favourable decision of his or her delegate or the Administrative Appeals Tribunal on the character test. Such decisions may be made without hearing any representations which the affected person may wish to make.

These provisions are in the same terms as identically numbered provisions proposed to be inserted into the Principal Act by item 23 of a bill of the same name, introduced into the House of Representatives on 30 October 1997. These provisions were the subject of correspondence with the Minister, and were discussed extensively by the Committee in its *Fourth* and *Ninth Reports of 1998*.

Committee consideration of the provision in its Fourth and Ninth Reports of 1998

In its *Fourth* and *Ninth Reports of 1998*, the Committee noted that, by referring to the 'national interest' these proposed provisions also raised the issue of an insufficiently defined administrative power.

The Minister's response on the matter of the 'national interest' is set out above.

In these circumstances, the Committee draws the Senate's attention to its previous comments on these provisions.

NRS Levy Imposition Amendment Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

Together with four other bills relating to consumer protection and service standards applicable to telecommunications carriers and service providers, the bill proposes to amend the *NRS Levy Imposition Act 1998* to replace a reference to a provision of the *Telecommunications Act 1997* with a reference to the corresponding provision of the proposed *Telecommunications (Consumer Protection and Service Standards) Act 1998*.

The Committee has no comment on this bill.

Parliamentary Proceedings Broadcasting Amendment Bill 1998

This bill was introduced into the House of Representatives on 10 November 1998 by the Prime Minister. The bill, a privilege bill, is customarily presented by the Prime Minister on the first sitting day of a new Parliament as the first item of formal business.

The bill proposes to amend the *Parliamentary Proceedings Broadcasting Act 1946* to effect gender neutral language.

The Committee has no comment on this bill.

Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Community Services. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to provide for the payment of social security payments and income support payments to be paid fortnightly in arrears with daily entitlements. Consequential amendments are also made to the *Social Security Act 1991* in relation to bereavement provisions. The bill also proposes to make further consequential amendments to the *Child Care Payments Act 1997* and the *Income Tax Assessment Act 1997*.

The Committee has no comment on this bill.

Private Health Insurance Incentives Amendment Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Health and Aged Care. [Portfolio responsibility: Health and Aged Care]

Together with the Private Health Insurance Incentives Bill 1998 and the Taxation Laws Amendment (Private Health Insurance) Bill 1998, the bill proposes to provide transitional arrangements to enable the establishment of a 30 per cent tax offset scheme to replace the private health insurance incentive scheme from 1 January 1999. The bill also proposes to repeal the *Private Health Insurance Incentives Act 1997* (effective from 1 July 2000).

The Committee has no comment on this bill.

Private Health Insurance Incentives Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Health and Aged Care. [Portfolio responsibility: Health and Aged Care]

Together with the Private Health Insurance Incentives Amendment Bill 1998 and the Taxation Laws Amendment (Private Health Insurance) Bill 1998, the bill proposes to enable the establishment of a 30 per cent tax offset scheme to replace the private health insurance incentive scheme from 1 January 1999.

The Committee has no comment on this bill.

Space Activities Bill 1998

This bill was introduced into the Senate on 12 November 1998 by the Assistant Treasurer. [Portfolio responsibility: Industry, Science and Resources]

The bill proposes to provide a framework for space activities in Australia or involving Australian interests and to effect Australia's obligations as a signatory to five United Nations space treaties.

The Committee has no comment on this bill.

State Grants (General Purposes) Amendment Bill 1998

This bill was introduced into the House of Representatives on 11 November 1998 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

The bill proposes to amend the *States Grants (General Purposes) Act 1994* to:

- provide for general revenue assistance (including competition payments) to the States and Territories in 1998-99;
- provide for the States and Territories to make fiscal contributions to the Commonwealth in 1998-99 by way of deductions from general revenue assistance; and
- enable the Commonwealth to make payments under the safety net arrangements relating to business franchise fees.

The Committee has no comment on this bill.

State Grants (Primary and Secondary Education Assistance) Amendment Bill 1998

This bill was introduced into the House of Representatives on 11 November 1998 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

The bill proposes to amend the *States Grants (Primary and Secondary Education Assistance) Act 1996* to:

- provide \$21 million to introduce the Full Service Schools program;
- provide \$40.2 million to extend the National Asian Languages and Studies in Australian Schools (NALSAS) strategy;
- enable the Minister to vary funding allocations for Literacy and Country Areas programs;
- change funding schedules for capital grants for government and non-government schools to enable capital funding for 2001, 2002 and 2003;
- vary the amounts of 1997 and 1998 recurrent and capital grants for the 1997 and 1998 supplementation and provide flow on effects for 1999 and 2000; and

make technical amendments.

The Committee has no comment on this bill.

Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

- *Superannuation Guarantee (Administration) Act 1992* to:
 - require employers to make compulsory superannuation contributions to a complying superannuation fund or retirement savings account in compliance with the choice of fund requirements; and
 - increase the amount of Superannuation Guarantee Charge payable by the employer where these contributions do not comply with the choice of fund requirements; and
- *Retirement Savings Accounts Act 1997* and the *Superannuation Industry (Supervision) Act 1993* to make consequential amendments.

Inappropriate delegation of legislative power Schedule 1, item 2

Item 2 of Schedule 1 to the bill proposes to insert new subsections 5(2) and (2A) in the *Superannuation Guarantee (Administration) Act 1992*. These new subsections would make that Act subject to “such modifications as are prescribed”. This would seem to permit the amendment of the Act by regulation – an example of a ‘Henry VIII’ clause – and so may be regarded as an inappropriate delegation of legislative power.

In addition, proposed new subsection 5(2C) will permit the Minister for Finance to issue directions which “must be complied with, notwithstanding any other law of the Commonwealth”. This would seem to permit the Minister to override any other Commonwealth law – another example of a ‘Henry VIII’ clause in that it will permit the amendment of primary legislation without reference to the Parliament.

In referring to these provisions, the Explanatory Memorandum (at paragraph 1.99) simply notes that the Bill “contains amendments which have the effect of treating individual Commonwealth Departments as separate employers”.

The provisions are in the same form as in a bill of the same name which was introduced into the House of Representatives on 28 May 1998, and on which the Committee commented in *Alert Digest No 8/98*.

The Committee reiterates its comments as made in that Digest, and **seeks the Minister's advice** on whether it might be more appropriate to achieve the required purposes by amendments to primary legislation.

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

Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to change superannuation arrangements for Commonwealth employees by amending the following Acts:

- *Superannuation Act 1990* to close the Public Sector Superannuation Scheme (PSS) to new members from 1 July 1999;
- *Superannuation Act 1976* and *Superannuation Act 1990* to allow Commonwealth Superannuation Scheme (CSS) and PSS members to choose to leave those schemes for another scheme offered by, or arranged with, their employer;
- *Superannuation Act 1976* to:
 - improve access to superannuation spouse benefits in certain circumstances where the retirement pensioner commenced a marital relationship after age 60 years;
 - provide an option for age and early age retirees to reduce their pension entitlements and increase reversionary benefits payable to their spouse or to any children of the retiree;
 - enable certain payments payable from other superannuation funds or schemes to be paid into the CSS Fund; and
 - restore the original intention in relation to late elections to preserve benefits;
- *Superannuation Benefits (Supervisory Mechanisms) Act 1990* to provide that a determination made under the Act in relation to agencies meeting certain requirements in setting up superannuation arrangements for their employees will be a disallowable instrument;
- *Parliamentary Contributory Superannuation Act 1948* to:
 - improve access to superannuation spouse benefits in certain circumstances where the retirement pensioner commenced a marital relationship after age 60 years;

- rectify anomalies and technical errors in relation to orphan benefits;
- rectify anomalies and technical errors in relation to the maximum reversionary benefit payable where there is more than one beneficiary;
- amend the arrangements relating to transfer values; and
- cease the application of the inwards transfer value arrangements to persons who become Members of Parliament after the date Royal Assent is given to this bill;
- *Administrative Appeals Tribunal Act 1975, Law Officers Act 1964 and Workplace Relations Act 1996* in relation to people who leave the CSS or PSS to join the Judges' Pension Scheme to assist the schemes to comply with the national regulatory system for superannuation schemes;

and repeals the *Superannuation Act 1922, Superannuation Act 1976, Superannuation Act 1990, Superannuation (Productivity Benefit) Act 1988* and the superannuation and retirement income provisions of the *Papua New Guinea (Staffing Assistance) Act 1973*. However, in most circumstances, the repealed legislation will continue to operate through the application of the *Superannuation Legislation (Commonwealth Employment-Savings and Transitional Provisions) Act 1998*.

Retrospective application

Subclauses 2(3) to 2(5)

By virtue of subclause 2(3) of this bill, the amendments proposed in items 248, 251 and 263 of Schedule 1 will be taken to have commenced on 27 June 1997. The Explanatory Memorandum comments that this date was “the date of announcement of the new scheme”.

The Committee consistently disapproves of legislation by press release. For example, *The Work of the Committee during the 37th Parliament (May 1993 – March 1996)* contains the following comments:

The Committee draws attention to legislation by press release. The fact that it is to have effect only after the intention to introduce it is made public is no justification for it being given force prior to its enactment. The expectations of its proposer that parliament will subsequently pass the legislation and that the people it is aimed at will comply with its provisions in the meantime are presumptuous.

By virtue of subclauses 2(4) and (5), other provisions will also commence retrospectively. Paragraphs 2(d) and (c) indicate that the amendments referred to here seek to do no more than clarify provisions in existing legislation, and make

no substantive changes to the law. It is difficult to confirm this from the provisions in the bill.

Accordingly, the Committee **seeks the Minister's advice** as to why the provisions referred to in subclauses 2(3) to 2(5) need to commence retrospectively.

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.

Retrospective application Subclause 2(6) and Schedule 1, Part 5

Subclause 2(6) will permit Part 5 of Schedule 1 to this bill to commence retrospectively on 5 December 1997. The Explanatory Memorandum indicates that these amendments will “restore the original intention of the 1976 Act”.

It is unclear whether this retrospectivity will advantage or disadvantage members of the superannuation scheme established by the 1976 Act. Accordingly, the Committee **seeks the Minister's advice** as to the effect of the amendments referred to in subclause 2(6).

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.

Retrospective application Subclause 2(10) and Schedule 13, items 3 to 6

The amendments referred to in subclause 2(10) of the bill will also commence retrospectively. The Explanatory Memorandum states that these are “minor and technical amendments” taken to have commenced on the day on which a previous amending Act received Royal Assent.

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

Retrospective application Schedule 1, item 15

Item 15 of Schedule 1 to the bill inserts a proposed new subsection 3(1A) in the *Superannuation Act 1976*. This new subsection will allow the Minister to make declarations which might have retrospective effect.

However, the Committee notes that, by virtue of section 48(2) of the *Acts Interpretation Act 1901*, such declarations are of no effect if they prejudicially affect any person other than the Commonwealth.

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

Inappropriate delegation of legislative power Schedule 1, item 18 and Schedule 3, item 10

Item 18 of Schedule 1 to the bill proposes to insert new subsections 3D(8) and (9) in the *Superannuation Act 1976*. Item 10 of Schedule 3 to the bill proposes to insert new subsections 3AAA(8) and (9) in the *Superannuation Act 1990*. Each of these proposed new subsections will permit the Minister to make a declaration as to the status of a Commonwealth authority or body, which declaration may be made “despite the previous provisions of” the relevant legislation.

Apparently, such declarations are not disallowable instruments. Accordingly, the Committee **seeks the Minister's advice** as to why these provisions are appropriate delegations of legislative power and why they are not subject to Parliamentary scrutiny.

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

Superannuation Legislation (Commonwealth Employment) Repeal and Amendment (Consequential Amendments) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to amend the followings Acts:

- *Commonwealth Funds Management Limited Act 1990* retrospectively to remove redundant provisions in relation to the sale of Commonwealth Funds Management Limited; and
- *Defence Force Retirement and Death Benefits Act 1973, Governor-General Act 1974, Judges' Pensions Act 1968 and Military Superannuation and Benefits Act 1991* as a consequence of changes to the Commonwealth's superannuation arrangements.

Retrospective application Subclause 2(2) and Schedule 1

By virtue of subclause 2(2), Schedule 1 to this bill is taken to have commenced on 23 December 1996. The Explanatory Memorandum points out that the repeal effected by that Schedule (which concerns the obligation to provide the Minister with a copy of an annual return) will have no effect on the law, as the provision repealed is redundant.

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

Superannuation Legislation (Commonwealth Employment—Saving and Transitional Provisions) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to make savings and transitional provisions arising out of amendments to, and subsequent repeals of, five Acts by the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1998 and the Commonwealth Superannuation Board Bill 1998.

The Committee has no comment on this bill.

Taxation Laws Amendment Bill (No. 2) 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

- *Income Tax Assessment Act 1936* to:
 - deny the ability to offset against capital gains certain capital losses created by an arrangement entered into before 3pm on 29 April 1997 and to prevent companies using capital losses artificially created through an arrangement entered into after that time;
 - allow instalment taxpayers classified as small to pay their likely tax on 15 December following their income year and the balance, if any, of their tax liability on the following 15 March, and make consequential amendments;
 - prevent franking credits or debits arising from the payment or refund of tax where those amounts are attributable to the retirement savings account business of a life assurance company;
 - replace the formulae used to determine the passive income of the controlled foreign companies of life and general insurance companies;
 - require life companies to use average calculated liabilities, rather than calculated liabilities at the end of the year of income, as the basis for determining income that relates to immediate annuity policies and apportioning income and capital gains;
 - clarify the operation of the depreciation provisions in circumstances when an entity the income of which is exempt becomes, for any reason, subject to tax on any part of its income under the provisions of the Act; and
 - exclude superannuation funds, approved deposit funds, and pooled superannuation trusts from the grouping provisions contained in the company tax instalment system;
- *Fringe Benefits Tax Assessment Act 1986* to:
 - exempt certain benefits relating to approved student exchange programs from FBT;

- introduce new record keeping exemption arrangements;
- *Fringe Benefits Tax Assessment Act 1986, Income Tax Assessment Act 1936 and Income Tax Assessment Act 1997* to:
 - extend the existing exemption for taxi travel beginning or ending at an employee's place of work;
 - introduce a new exemption from FBT for car parking benefits for certain small business owners;
 - simplify "arranger" provisions; and
- *Income Tax Assessment Act 1936, Income Tax Assessment Act 1997 and Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998* to ensure that taxpayers must reduce the cost base or indexed cost base of an asset to the extent of any net deductions allowable for expenditures included in the cost base;
- *Income Tax Assessment Act 1997* to prevent a taxpayer who has become bankrupt from using a carried forward landcare and water facility tax offset in certain circumstances.

Retrospective application Subclause 2(2) and Schedule 7, Part 3

By virtue of subclause 2(2) of this bill, the amendments proposed in Part 3 of Schedule 7 are to commence retrospectively on 14 July 1998. This is the commencement date of the *Taxation Laws Amendment (Landcare and Water Facility Tax Offset) Act 1998*.

The Explanatory Memorandum appears to provide no reason for this retrospectivity. Reference to the associated Act does not clarify matters. Accordingly the Committee **seeks the Minister's advice** as to the reasons for the retrospective application of the amendments proposed in Part 3 of Schedule 7.

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.

Legislation by press release Schedule 1, Part 2 and Schedule 9

The amendments proposed by Part 2 of Schedule 1 to the bill are to apply from 29 April 1997, being the date of the Treasurer's press release on the matter. Similarly, the amendments proposed by Schedule 9 are to apply from the same date, being the date of a separate press release issued by the Treasurer.

In each case, the application provision is outside the 'six month rule', as set out in the Senate resolution of 8 November 1988. This resolution, which deals with taxation legislation only, states that:

Where the Government has announced, by press release, its intention to introduce a Bill to amend taxation law, and that Bill has not been introduced into the Parliament or made available by way of publication of a draft Bill within 6 calendar months after the date of that announcement, the Senate shall, subject to any further resolution, amend the Bill to provide that the commencement date of the Bill shall be a date that is no earlier than either the date of introduction of the Bill into the Parliament or the date of publication of the draft Bill.

Accordingly the Committee **seeks the Treasurer's advice** as to the reason for the delay in putting the proposed amendments into legislative form.

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.

Retrospective application Schedules 2, 3 and 5

The amendments proposed by Schedules 2, 3 and 5 are to apply retrospectively (by virtue of items 2, 12 and 16 respectively of each of those Schedules). However, these retrospective amendments are beneficial to taxpayers.

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

Retrospective application Schedule 7, Parts 1 and 2, and Schedule 8

As a budget announcement, the amendments proposed by Parts 1 and 2 of Schedule 7 apply to assets acquired after 13 May 1997. The amendments proposed by Schedule 8 apply from 1 July 1997.

The Committee usually accepts that measures announced in a Budget may be deemed to apply from Budget night. However, the usual practice is that legislation giving effect to such measures is introduced into Parliament within a few months of the bringing down of the Budget. If the Budget were to be regarded as the equivalent of a Press Release, the amendments proposed in these Schedules would clearly fall outside the six-month period referred to in the Senate Resolution of 8 November 1988.

Accordingly, the Committee **seeks the advice of the Treasurer** on the reason for the delay in putting these proposed amendments into legislative form and whether there are any precedents for such delays in introducing legislation to give effect to Budget measures.

Pending the Treasurer's advice, the Committee draws Senators' attention to these 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.

Retrospective application Schedule 10

The amendments proposed by Schedule 10 to the bill would (by virtue of item 3) apply to entities which became taxable earlier than 3 July 1995 but not earlier than 1 July 1988.

While these amendments are obviously retrospective, the Explanatory Memorandum suggests that they do not impose any tax, but merely seek to prevent a potential loss of revenue, and provide certainty. In general terms, the amendments are intended to clarify the operation of the depreciation provisions in the *Income Tax Assessment Act 1936* in circumstances where an entity the income of which is exempt becomes, for any reason, subject to tax on any part of its income.

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

Taxation Laws Amendment (Film Licensed Investment Company) Bill 1998

This bill was introduced into the House of Representatives on 11 November 1998 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Treasury]

Together with the Film Licensed Investment Company Bill 1998, the bill proposes to provide a tax deduction for amounts paid to subscribe for shares in a Film Licensed Investment Company (FLIC) during the period the FLIC is licensed to raise share capital which will qualify for the deduction.

The Committee has no comment on this bill.

Taxation Laws Amendment (Private Health Insurance) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Health and Aged Care. [Portfolio responsibility: Treasury]

Together with the Private Health Insurance Incentives Bill 1998 and the Private Health Insurance Incentives Amendment Bill 1998, the bill proposes to amend the following Acts:

- *Income Tax Assessment Act 1997* to provide a tax offset for persons who take out or maintain private health insurance and make other consequential changes necessary to make the offset a refundable tax offset; and
- *Income Tax Assessment Act 1936* to make consequential changes.

The Committee has no comment on this bill.

Telecommunications Amendment Bill (No. 2) 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the *Telecommunications Act 1997* to provide that environmental impact requirements placed on carriers proposing to install facilities be extended from 1 January 1999 to 1 January 2001.

The Committee has no comment on this bill.

Telecommunications (Consumer Protection and Service Standards) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

Together with four other bills relating to consumer protection and service standards applicable to telecommunications carriers and service providers, the bill proposes to impose obligations on telecommunications carriers and carriage service providers for the benefit of consumers by:

- imposing a universal service obligation on carriers to ensure that standard telephone services, payphones and prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business;
- continuing the current arrangements for the National Relay Service;
- enabling continued access to untimed local calls;
- continuing Customer Service Guarantee (CSG) arrangements including giving the Australian Communications Authority the power to direct a telephone company to redress systemic problems in relation to the CSG;
- continuing the operation of the Telecommunications Industry Ombudsman scheme;
- protecting residential customers of standard telephone services against a failure by their carriage service providers to supply those services when the customer has made a protected payment;
- continuing the provision of emergency call handling services; and
- continuing the price regulation regime currently applicable to Telstra.

The Committee has no comment on this bill.

Telecommunications Legislation Amendment Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

Together with four other bills relating to consumer protection and service standards applicable to telecommunications carriers and service providers, the bill primarily proposes to:

- limit the use an access provider can make of information which is provided by an access seeker for access purposes;
- enable the Australian Competition and Consumer Commission (ACCC) to make a binding code in relation to conditions carriers must comply with in regard to the provision of information, the provision of access to information or certain consultations;
- enable the ACCC to disclose or require the disclosure of information it requires to be kept under record-keeping rules;
- enable parties other than the ACCC to seek injunctive relief in regard to a breach of the competition rule whether or not a competition notice has been issued in regard to the conduct;
- require the ACCC to monitor and report on compliance by Telstra and universal service providers with price control arrangements applying to them;
- require the ACCC to monitor and report to the Minister on such matters relating to competition in the telecommunications industry as specified in certain determinations;
- enable the ACCC to give directions in relation to negotiations about the terms and conditions on which a carrier or carriage service provider will comply with standard access obligations;
- enable the ACCC to attend or mediate at negotiations about terms and conditions on which a carrier or carriage service provider will comply with standard access obligations;
- enable the Australian Communications Authority to make a determination requiring carriage service providers to give ordinary customers specified information about the terms and conditions governing the supply of goods

and services to them, including information about their rights as customers and their rights under the customer service guarantee;

- make changes to various Acts consequential upon the enactment of the proposed *Telecommunications (Consumer Protection and Service Standards) Act 1998*;
- and make transitional arrangements.

Abrogation of the privilege against self-incrimination Schedule 1, item 15

Item 15 of Schedule 1 to this bill proposes to insert a new section 151BUF in the *Telecommunications Act 1997*. This will remove the privilege against self-incrimination in certain circumstances. However proposed section 151BUF(2) provides that giving a report, or any information, document or thing obtained as a direct or indirect consequence of giving the report, is not admissible in evidence in proceedings for a pecuniary penalty, or in criminal proceedings (other than proceedings for making incorrect records). The Committee accepts a provision in this form.

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

Telecommunications (Universal Service Levy) Amendment Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

Together with four other bills relating to consumer protection and service standards applicable to telecommunications carriers and service providers, the bill proposes to amend the *Telecommunications (Universal Service Levy) Act 1997* to replace references to provisions of the *Telecommunications Act 1997* with references to the corresponding provisions of the proposed *Telecommunications (Consumer Protection and Service Standards) Act 1998*.

The Committee has no comment on this bill.

Telstra (Transition to Full Private Ownership) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Finance and Administration. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the following Acts:

- *Telstra Corporation Act 1991* to repeal the provisions which require the Commonwealth to retain two-thirds of the equity in the company; and
- *Natural Heritage Trust of Australia Act 1997* to increase funding from the partial sale of Telstra for the Natural Heritage Trust of Australia Reserve by a further \$250 million;

and makes transitional and consequential amendments to two other Acts and Regulations.

The Committee has no comment on this bill.

Wool International Amendment Bill 1998

This bill was introduced into the House of Representatives on 11 November 1998 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Wool International Act 1993* to prevent any disposal of Wool International stockpile wool before 30 June 1999 and to allow Wool International to support and meet costs in privatising the wool stockpile.

The Committee has no comment on this bill.

Workplace Relations Amendment (Unfair Dismissals) Bill 1998

This bill was introduced into the House of Representatives on 12 November 1998 by the Minister for Employment, Workplace Relations and Small Business. [Portfolio responsibility: Employment, Workplace Relations and Small Business]

The bill proposes to amend the *Workplace Relations Act 1996* to:

- require a six month qualifying period of employment before new employees can access an unfair dismissal remedy under the Act; and
- exclude new employees of small business from the unfair dismissal remedy under the Act.

The Committee has no comment on this bill.

Senate Standing Committee

for

The Scrutiny of Bills

ALERT DIGEST

No. 11 of 1998

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator H Coonan
Senator T Crossin
Senator J Ferris
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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• **The Committee has commented on these bills**

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

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

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

Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 1) 1998

This bill was introduced into the House of Representatives on 25 November 1998 by the Minister representing the Minister for Aboriginal and Torres Strait Islander Affairs. [Portfolio responsibility: Aboriginal and Torres Strait Islander Affairs]

The bill proposes to amend the *Aboriginal Land Rights (Northern Territory) Act 1976* to:

- raise the retiring age for the occupant of the position of Aboriginal Land Commissioner from 65 to 70 years; and
- add the Innesvale Land Claim and the Urrpantyenye Land Claim to Schedule 1 so that those claims may be granted to Aboriginal Land Trusts to hold title on behalf of Aboriginal people.

The Committee has no comment on this bill.

Classification (Publications, Films and Computer Games) Amendment Bill 1998

This bill was introduced into the House of Representatives on 25 November 1998 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill, consequent upon the Classification (Publications, Films and Computer Games) Charges Bill 1997, proposes administrative provisions relating to the collection of charges and the waiver of charges and prescribes time limits for the making of classification decisions.

The Committee has no comment on this bill.

Classification (Publications, Films and Computer Games) Charges Bill 1998

This bill was introduced into the House of Representatives on 25 November 1998 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to impose charges for the classification of publications, films and computer games and for related services.

Setting a rate of levy by regulation Clause 13

Clause 13 of this bill authorises amendment of the charges levied by the bill by regulation. However, the bill sets no upper limit on the amount of those charges.

In these circumstances, the Committee would normally seek the advice of the Minister on such a provision. However, this bill is in the same form as a bill of the same name introduced into the House of Representatives on 26 November 1997. The Committee reported on that bill in its *Third Report of 1998*. In that *Report* the Committee noted advice from the Attorney General that:

- the bill implements a budget-related decision to implement full cost recovery for the services provided by the Office of Film and Literature Classification (OFLC);
- the charges imposed by the bill are intended solely to generate sufficient revenue to pay the full annual operating cost of the OFLC;
- while the costs associated with running the OFLC have remained fairly constant over time, the revenue generated (particularly by classification services) in any one year may vary greatly;
- given that the revenue to fund OFLC will be obtained from a broad range of application based charges, the Government's preferred approach (regulations to set initial charges, subject to a formula or ceiling included in the primary legislation) could not be applied;
- alternative approaches (such as inserting a general, but uncertain, formula in the bill, or including an upper level charge which would, of necessity, have to be artificially high) were also considered but rejected for practical reasons;

- any fees set by regulation would be disallowable; and
- the bill represents an appropriate compromise in the circumstances of this particular case.

The Committee thanked the Attorney-General for this comprehensive response.

In these circumstances, the Committee notes its earlier concerns and the Minister's advice, and makes no further comment on this bill.

Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) Bill 1998

This bill was introduced into the Senate on 24 November 1998 by Senator Brown as a Private Senator's bill.

The bill proposes to amend section 44 of the Constitution to allow persons who hold an “office of profit under the Crown” or who are not Australian citizens to nominate for election to Federal parliament.

The Committee has no comment on this bill.

Customs Legislation Amendment Bill (No. 1) 1998

This bill was introduced into the Senate on 25 November 1998 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the following Acts in relation to powers of Australian Customs Service (ACS) officers and the detection of illicit drugs:

- *Customs Act 1901* to:
 - extend frisk search powers;
 - insert new power to allow officers to read and copy documents found in baggage and cargo searches;
 - insert new power to allow officers to take into custody firearms which are on ships and aircraft and which, if imported, would be prohibited imports;
 - limit circumstances where reasonable force can be used in the conduct of the external search under the detention and search provisions;
 - extend the operation of section 59, which sets out the circumstances in which a ship or aircraft can be boarded by Customs, to include foreign ships in the contiguous zone in accordance with international law and ships into the waters on the landward side of the territorial sea, including such waters within the limits of a State and Territory; and
 - insert new offences relating to the transfer of goods at sea; and
- *Customs Administration Act 1985* to facilitate access by other law enforcement agencies to Customs' information and intelligence for the purposes of carrying out mutual law enforcement functions.

The Committee has no comment on this bill.

Electoral and Referendum Amendment Bill (No. 2) 1998

This bill was introduced into the House of Representatives on 26 November 1998 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to amend the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* to:

- require new electors to produce one original form of identification at time of enrolment;
- provide that a person witnessing an enrolment application must be an elector in a prescribed class of persons;
- provide that all electors must notify the Australian Electoral Commission of a change of address within one month of moving;
- reduce the time period between the issue of the writ and the close of the rolls;
- allow for the provision of date of birth and salutation details of electors to Members, Senators and registered political parties;
- provide that any person sentenced to imprisonment is not entitled to enrol or to vote;
- provide that only the Presiding Officer at a polling place may assist electors in marking their ballot papers;
- provide that the preliminary scrutiny of declaration votes may commence on the Monday prior to polling day;
- raise from \$500 to \$1,500 the threshold for counting individual amounts received in regard to donations to political parties;
- provide that political parties are required to disclose a total amount of \$5,000 or more (currently \$1,500) received from a person or organisation during a financial year; and
- increase from \$1,500 to \$10,000 the amount above which a donor to a registered political party must furnish a return for a financial year.

Committee consideration of the bill in the 38th Parliament

This bill is, in all relevant respects, the same as a bill of the same name introduced into the Senate on 14 May 1998. The Committee commented on that bill in *Alert Digest 7/98*, and reported on it in the Committee's *Seventh Report of 1998*.

In that *Report*, the Committee referred to two matters: the debate concerning the proposed abolition of the voting rights of prisoners (Item 10 of Schedule 1), and the commencement provisions of the bill (subclause 2(3)).

Voting rights

With regard to the voting rights of prisoners, the Committee in its *Seventh Report of 1998*:

- noted that the *Commonwealth Electoral Act 1918* currently provides that persons serving a sentence of imprisonment of 5 years or longer are not entitled to enrol or vote at a federal election;
- noted that this provision had been under discussion and review for a number of years, with the Joint Standing Committee on Electoral Matters proposing at various times that voting rights be **granted** to all prisoners, and that voting rights be **denied** to all prisoners;
- drew the attention of Senators to the continuing debate and the various views which had informed it; and
- noted that, under the proposed amendment, it was possible that people might be imprisoned – perhaps on weekend detention – for relatively minor offences and be denied a vote.

The Committee sought the Minister's advice as to whether consequences such as these were intended. The Minister responded that:

- the proposed amendment would not apply to persons on remand or held at her Majesty's pleasure (as they were not considered to have been sentenced to imprisonment);
- with regard to persons sentenced to short term imprisonment, where the Australian Electoral Commission received timely notice of a sentence, it would remove that person's name from the roll, but where the Commission received notice of a term of imprisonment which had expired, it would take no retrospective action;

- the bill also proposed to repeal the facilities for mobile polling in prisons and the right to a postal vote due to imprisonment – hence there would be no facility for voting by persons in prison; and
- similar provisions applied in Tasmania and in Britain.

The Committee thanked the Minister for this advice. It noted that, under the bill, it was possible that voters might be dealt with differently depending on the nature of their sentence and the effectiveness of the notification procedures in the various States and Territories. Accordingly, the Committee continued to note the possible effect of this provision on personal rights and liberties.

In these circumstances, the Committee draws the Senate's attention to its previous comments on this provision.

Commencement

Under subclause 2(3) of the bill, many of the items in Schedule 1 are to commence on Proclamation, with no further provision made for automatic commencement or repeal at a particular time. *In Alert Digest 7/98*, the Committee sought the advice of the Minister as to the reason for departing from *Drafting Instruction No 2 of 1989*, issued by the Office of Parliamentary Counsel.

On this issue, the Minister stated that:

- the provisions listed in subclause 2(3) related to the upgrading of witnessing requirements for electoral enrolment; the requirement for new electors to produce proof of identity before lodging an enrolment form; and the removal of the one month qualifying period for enrolment;
- the delay in commencement would enable consultation and discussion with State and Territory governments, giving them the opportunity to enact necessary complementary legislation; and
- the Australian Electoral Commission had advised that it would require a minimum of 6 months to make the necessary administrative arrangements to implement the amendments.

The Committee thanked the Minister for this response, which addressed its concerns. However, this explanation properly belongs in the Explanatory Memorandum accompanying the bill. No reference to these matters appears in the Explanatory Memorandum accompanying the bill as reintroduced. Accordingly, the Committee **seeks the Minister's advice** as to why this

necessary explanation does not appear in the Explanatory Memorandum accompanying the current bill.

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

Health Legislation Amendment Bill (No. 3) 1998

This bill was introduced into the House of Representatives on 26 November 1998 by the Minister for Health and Aged Care. [Portfolio responsibility: Health and Aged Care]

The bill proposes to amend the *National Health and Medical Research Council Act 1992* to:

- introduce a single stage public consultation process when Council intends to issue guidelines or approval guidelines developed by other organisations;
- retain the existing two stage public consultation process in instances where the Council is making regulatory recommendations or engaging in a prescribed activity;
- rename the Medical Research Committee to the Research Committee and change some of Council's operations; and
- enable Principal Committees to appoint a Deputy Chairperson and extend the Council's power to delegate to a working committee and the Chairperson of the Council.

The Committee has no comment on this bill.

National Environment Protection Measures (Implementation) Bill 1998

This bill was introduced into the Senate on 25 November 1998 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Environment and Heritage]

The bill proposes to provide for the implementation of national environment protection measures (NEPMs) in respect of certain activities by or on behalf of the Commonwealth and Commonwealth authorities by:

- extending the application of certain provisions of applied State laws to Commonwealth activities in Commonwealth places;
- extending the application of certain provisions of States or Territory laws to Commonwealth activities;
- making regulations;
- implementing environmental audits and environment management plans;
- providing for Administrative Appeals Tribunal review of any reviewable decisions made under an applied provision of an applied State law or applied provision of a State or Territory law;
- providing that certain persons must not disclose information obtained during their presence while searching premises occupied by the Commonwealth or a Commonwealth authority;
- providing that regulations may declare premises to be *exempt premises* in relation to premises the Environment Minister considers to be of national interest and to which access into, or search of, should be restricted or prohibited;
- enabling the Commonwealth or a Commonwealth authority to pay a fee or charge to a State or Territory or a State or Territory authority in certain circumstances;
- enabling the Environment Minister to make an arrangement with an appropriate Minister of a State or Territory in relation to the exercise of a power, or the performance of a duty or function by a State or Territory, a State or Territory authority or by one of their officers;

- requiring the preparation and tabling of an annual report on the implementation of NEPMs; and
- applying the Criminal Code to certain provisions.

Insufficient parliamentary scrutiny **Subclauses 11(2), 12(2), 16(2) and 17(2)**

By virtue of subclauses 11(2), 12(2), 16(2) and 17(2), the Environment Minister may enable provisions of State and Territory law to apply, or not apply, to the Commonwealth or its authorities following notification in the *Gazette*. The exercise of this power by the Minister is essentially legislative in that a *Gazette* notice will determine whether or not the Commonwealth is subject to the legislative provisions of a State or Territory.

The exercise by a Minister of what appears to be a legislative power would ordinarily be carried out by a disallowable instrument rather than by *Gazette* notice. The Explanatory Memorandum makes no further reference to the matter. The Committee, therefore, **seeks the Minister's advice** on the reasons why declarations under subclauses 11(2), 12(2), 16(2) and 17(2) are not disallowable.

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.

Inadmissible audit report **Clause 28**

Clause 28 of the bill provides that a report of an environmental audit, and any information obtained as a direct or indirect result of the making of that report, is not admissible in evidence in any civil or criminal proceedings against the Commonwealth or its authorities if the audit relates to activities carried on or to be carried on by the Commonwealth or the authority. The Explanatory Memorandum provides no reason for the inclusion of this provision. The Committee, therefore, **seeks the Minister's advice** on the reasons why an environmental audit report should not be admissible in proceedings against the Commonwealth.

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.

National Transmission Network Sale Bill 1998

This bill was introduced into the Senate on 25 November 1998 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to enable the sale of the national transmission network (by the sale of shares in one or more Commonwealth-owned companies) and to set in place a regulatory framework for the provision of national broadcasting and other transmission services after the sale.

The Committee has no comment on this bill.

National Transmission Network Sale (Consequential Amendments) Bill 1998

This bill was introduced into the Senate on 25 November 1998 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the following Acts, as a consequence of the provisions of the National Transmission Network Bill 1997:

- *Australian Broadcasting Corporation Act 1983* and *Special Broadcasting Service Act 1991* to make amendments in relation to the provision of transmission services, annual reporting requirements and a mechanism for dealing with complaints about the degradation of signal quality; and
- *Radiocommunications Act 1992* to make minor amendments relating to licensing provisions of the Act.

The Committee has no comment on this bill.

Petroleum Retail Legislation Repeal Bill 1998

This bill was introduced into the House of Representatives on 25 November 1998 by the Parliamentary Secretary to the Minister for Industry, Science and Resources. [Portfolio responsibility: Industry, Science and Resources]

The bill proposes to repeal the *Petroleum Retail Marketing Sites Act 1980* and the *Petroleum Retail Marketing Franchise Act 1980* to enable the deregulation of the petroleum products industry. The bill also provides for a regulation making power to contain savings or transitional provisions.

The Committee has no comment on this bill.

Regional Forest Agreements Bill 1998

This bill was introduced into the House of Representatives on 26 November 1998 by the Minister for Forestry and Conservation. [Portfolio responsibility: Forestry and Conservation]

The bill proposes to implement Regional Forest Agreements entered into between the Commonwealth and State and Territory Governments in relation to native forests.

The Committee has no comment on this bill.

Rural Adjustment Amendment Bill 1998

This bill was introduced into the House of Representatives on 26 November 1998 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Rural Adjustment Act 1992* to enable the introduction of the Farm Business Improvement Program, known as FarmBis.

The Committee has no comment on this bill.

Superannuation Legislation Amendment (Resolution of Complaints) Bill 1998

This bill was introduced into the House of Representatives on 26 November 1998 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Superannuation (Resolution of Complaints) Act 1993* to enable the Superannuation Complaints Tribunal to arbitrate superannuation complaints with the consent of the parties to the complaints.

Termination by Proclamation Schedule 1, item 10

Item 10 of Schedule 1 proposes to insert a new section 48F in the Principal Act. This section will allow the operation of the amendments proposed in the bill to terminate on a date to be fixed by Proclamation, with no further limit specified within which such a Proclamation might be made.

The Explanatory Memorandum notes that the bill is a response to two recent Federal Court decisions. These decisions prevent the Superannuation Complaints Tribunal (the Tribunal) from using its review powers, leaving it with only an inquiry and conciliation role. As an interim solution to the growing backlog of cases awaiting review before the Tribunal, the bill proposes to allow the Tribunal to arbitrate disputes by consent.

With specific reference to proposed new section 48F, the Explanatory Memorandum simply notes that “in the light of the interim nature of the Tribunal’s arbitration function, Part 7A will cease to have effect on a day to be fixed by Proclamation”.

The Committee has consistently drawn attention to provisions which permit legislation to **commence** by Proclamation. Such provisions remove from Parliament, as the elected holder of federal legislative power, the responsibility of determining when its laws are to come into force. Provisions which remove from Parliament the responsibility of determining when its laws should **cease** to have effect raise similar concerns.

The Committee notes that the bill represents an interim solution. However, it does not refer to any timeframe within which a long term solution is to be developed, nor does it provide that the interim solution should cease to have effect on the adoption of the long term solution. Accordingly, the Committee

seeks the advice of the Minister on the reason for providing the Executive with an unfettered discretion to determine when the amendments made by this bill will cease to have effect.

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

Workplace Relations Legislation Amendment (Youth Employment) Bill 1998

This bill was introduced into the House of Representatives on 26 November 1998 by the Minister for Employment, Workplace Relations and Small Business. [Portfolio responsibility: Employment, Workplace Relations and Small Business]

The bill proposes to amend the following Acts:

- *Workplace Relations Act 1996* to:
 - include in the principal object of the Act and the objects of Part VI of the Act the protection of the competitive position of young people in the labour market, the promotion of youth employment and the reduction of youth unemployment;
 - permanently exempt junior rates of pay from the provisions of the Act intended to prevent and eliminate age discrimination in awards and agreements; and
 - promote the inclusion of junior rates of pay in awards and agreements; and
- *Workplace Relations and Other Legislation Amendment Act 1996* to:
 - permanently exempt junior rates of pay from the provisions of the Act intended to prevent and eliminate age discrimination in awards; and
 - promote the inclusion of junior rates of pay in awards.

General comment Schedule 1, item 4

Item 4 of Schedule 1 to the bill provides, in part, that “junior wage provisions are not to be treated as constituting discrimination by reason of age”. In general terms, this amendment simply recognises a state of affairs that has continued for a considerable period of time, and it may have been included in the bill to avoid conflict with the provisions of other legislation. Nevertheless, the Committee recognises that there are some who may regard such a provision as trespassing on personal rights and liberties, and the reason for its inclusion in the bill is not clear to the Committee.

Accordingly, the Committee **seeks the advice of the Minister** on the reason for including this provision in the bill.

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.