

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

Alert Digest

No. 3 of 2002

20 March 2002

Senate Standing Committee
for the
Scrutiny of Bills

Alert Digest No. 3 of 2002

20 March 2002

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 T Crossin
Senator J Ferris
Senator B Mason
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.

TABLE OF CONTENTS

• Aboriginal and Torres Strait Islander Commission Amendment Bill 2002	5
• Aviation Legislation Amendment Bill 2002	7
• Border Security Legislation Amendment Bill 2002	9
Commonwealth Electoral Amendment Bill (No. 1) 2002	13
• Copyright Amendment (Parallel Importation) Bill 2002	14
• Corporate Responsibility and Employment Security Bill 2002	16
• Criminal Code Amendment (Espionage and Related Offences) Bill 2002	18
Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002	20
• Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002	21
Employee Protection (Employee Entitlements Guarantee) Bill 2002	25
Family Law Amendment (Child Protection Convention) Bill 2002	26
• Financial Corporations (Transfer of Assets and Liabilities) Amendment Bill 2002	27
Horticulture Marketing and Research and Development Services (Amendment) Bill 2002	28
• Jurisdiction of Courts Legislation Amendment Bill 2002	29
• Migration Legislation Amendment Bill (No. 1) 2002	30

• **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.

• Migration Legislation Amendment (Procedural Fairness) Bill 2002	34
• Migration Legislation Amendment (Transitional Movement) Bill 2002	36
Ministers of State (Post-Retirement Employment Restrictions) Bill 2002	37
• Plant Breeders Rights Amendment Bill 2002	38
• Proceeds of Crime Bill 2002	39
• Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002	42
• Quarantine Amendment Bill 2002	46
Security Legislation Amendment (Terrorism) Bill 2002	48
• Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]	49
Social Security and Veterans' Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002	53
Superannuation Guarantee (Administration) Amendment Bill 2002	54
• Suppression of the Financing of Terrorism Bill 2002	55
Taxation Laws Amendment (A Simpler Business Activity Statement) Bill 2002	57
Taxation Laws Amendment (Baby Bonus) Bill 2002	58
• Taxation Laws Amendment Bill (No. 2) 2002	59
• Telecommunications Interception Legislation Amendment Bill 2002	65

• **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.

Veterans' Entitlements Amendment (Gold Card Extension) Bill 2002	67
Provisions of bills which impose criminal sanctions for a failure to provide information	68
Bills giving effect to National Schemes of Legislation	70

- **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 Commission Amendment Bill 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Minister for Immigration and Multicultural and Indigenous Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

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

- implement some of the recommendations contained in the review of the Act conducted under section 26 of the Act, and some of the recommendations of the Review Panel established by section 141 of the Act;
- prevent an ATSIC Commissioner or Regional Councillor who has been removed from office for misbehaviour from standing for the next round of Regional Council elections;
- entitle corporations to appeal to the ATSIC Board and Administrative Appeals Tribunal against refusals of loans for business enterprises;
- allow the Commission to delegate its power to review delegates' decisions;
- allow review by the Administrative Appeals Tribunal of the merits of a decision to refuse a loan or guarantee once internal review by the Commission has been exhausted; and
- amend financial provisions of the ATSIC Act to ensure consistency with the accrual budgeting system.

Retrospective application

Subclause 4(1) and Schedule 1, items 1, 3, 6, 8, 28, 30, 33, 34, 40 and 41

By virtue of subclause 4(1), the above amendments contained in Schedule 1 will have a measure of retrospective application, as they render a person ineligible to stand for election where he or she has been convicted of an offence prior to the commencement of Schedule 1. The Explanatory

Memorandum provides no reason for this retrospective application. The Committee, therefore, **seeks the Minister's advice** as to why these provisions should apply retrospectively.

Pending the Minister's response, 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.

Aviation Legislation Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 March 2002 by the Minister for Regional Services, Territories and Local Government. [Portfolio responsibility: Transport and Regional Services]

Schedule 1 of the bill proposes to amend the *International Air Services Commission Act 1992* to provide the major part of the legislative framework required to implement Government decisions to reform the role and responsibilities of the International Air Services Commission (IASC).

Schedule 2 proposes to amend the *Air Navigation Act 1920* to initiate reform in aviation security. The amendments are consequential or administrative in nature and precede the introduction of the main bulk of the reforms within the Aviation Security Regulations 2002.

Schedule 3 proposes to repeal the *Federal Airports Corporation Act 1986* and transfer any remaining contracts, assets and liabilities of the Corporation (that were not previously dealt with in the *Airports (Transitional) Act 1996*) to the Commonwealth.

Abrogation of the privilege against self-incrimination Proposed new section 20A

Schedule 2 to this bill proposes to insert a new section 20A in the *Air Navigation Act 1920*. This new section will abrogate the privilege against self-incrimination for a person from whom the Secretary of the Department has sought aviation security information under proposed new section 20 of the same Act.

However, proposed new section 21D will limit the circumstances in which any information so provided is admissible in evidence in proceedings against that person. In general terms, neither the information, nor anything obtained as a direct or indirect consequence, is admissible in any proceeding (other than a proceeding for providing false and misleading information). The Committee has previously accepted that such a provision strikes an appropriate balance between the competing interests of obtaining information and protecting individuals' rights.

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

Border Security Legislation Amendment Bill 2002

This bill was introduced into the House of Representatives on 12 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The Bill proposes to amend the *Customs Act 1901*, the *Customs Administration Act 1985*, the *Fisheries Management Act 1991*, the *Migration Act 1958* and the *Evidence Act 1995* to:

- increase Customs powers at airports by allowing Customs officers to patrol airports, increasing the restricted areas in which unauthorised entry is prohibited and by allowing officers to remove people from those restricted areas;
- require employers of people who work in restricted areas of the airport to provide information about those people to Customs; and the issuers of security identification cards, which are issued to most people who work at airports, to provide information about the people to whom they have issued security identification cards;
- require goods that are in transit through Australia to be reported to Customs; allow in-transit goods to be examined; and allow certain in-transit goods to be seized;
- require mail to be electronically reported to Customs as part of a cargo report;
- require certain airlines and shipping operators to report passengers and crew to Customs and the Department of Immigration and Multicultural and Indigenous Affairs by electronic means;
- require certain airlines to provide Customs with access to their computer reservation systems;
- allow the Australian Fisheries Management Authority to disclose vessel monitoring system data to Customs under the Fisheries Management Act;
- allow the Chief Executive Officer of Customs to authorise a person to perform the functions of a Customs officer by reference to their position or office even if that position or office does not exist at the time of making the authorisation;

- tighten provisions allowing the Chief Executive Officer of Customs to authorise the carriage of approved firearms and personal defence equipment by Customs officers for the safe exercise of powers conferred under the Customs Act and other Acts;
- restore the power to arrest persons who assault, resist, molest, obstruct or intimidate a Customs officer in the course of his or her duties, which was inadvertently removed by the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- include the Australian Bureau of Criminal Intelligence as a Commonwealth agency for the purposes of section 16 of the Customs Administration Act; and
- provide that certain undeclared dutiable goods found in the unaccompanied personal and household effects of a person are forfeited goods.

The bill also contains a saving provision.

Strict liability offences

Various provisions

A number of amendments proposed by this bill will create criminal offences of strict liability. These provisions include proposed new subsections 64AB(3AE), 64ACD(2) and 213A(6) of the *Customs Act 1901*, and proposed new section 245N of the *Migration Act 1958*.

Proposed subsection 64AB(3) of the *Customs Act 1901* concerns the provision to Customs of a report where cargo is intended to be kept on board a ship or aircraft for on-shipment outside Australia. Proposed section 64ACD of the *Customs Act 1901* concerns the provision to Customs of a report of passengers and crew on ships or aircraft arriving in Australia from overseas. Proposed section 245N of the *Migration Act 1958* concerns the provision of a similar report to the Department of Immigration and Multicultural and Indigenous Affairs. Proposed section 213A of the *Customs Act 1901* concerns the provision to Customs of information about restricted area employees.

In each case, the Explanatory Memorandum merely notes the fact that these provisions create offences of strict liability, but provides no reason for this departure from the normal practice – ie that criminal liability should be

imposed only on someone who acts intentionally or recklessly. The Committee, therefore, **seeks the Attorney-General's advice** as to why these provisions create offences of strict liability.

Pending the Attorney's response, 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.

Rights and liberties and the carrying of firearms

Proposed new subsection 89A(1)

Proposed new subsection 189A(1) of the *Customs Act 1901*, to be inserted by item 1 of Schedule 10 to this bill, makes provision for officers of Customs to carry firearms.

Section 189A was originally inserted into the *Customs Act 1901* by the *Border Protection Legislation Amendment Act 1999*. The Committee expressed some concerns about that provision in *Alert Digest No. 15 of 1999*. In its *Eighteenth Report of 1999*, the Committee was satisfied with the response it received to its concerns.

The Explanatory Memorandum states that the purpose of these amendments is “to tighten the various provisions and accommodate the various circumstances where the CEO considers it appropriate for an officer to be issued with personal defence equipment and firearms”. It is therefore proposed that:

- firearms be issuable to Customs officers to enable the safe exercise of powers conferred on them under the Customs Act and any other Act;
- firearms continue to be issued to enable the boarding of either a foreign or Australian ship that has been chased; and
- the restriction that only the commander of a Customs vessel issue firearms to officers under his or her command be removed – under the amendments, firearms will now be issued by an authorised arms issuing officer.

In responding to the Committee's concerns in *Alert Digest No. 15 of 1999*, the Minister for Immigration and Multicultural Affairs emphasised the safeguards to be introduced to ensure that the risks involved in the use of weapons in these circumstances by persons other than trained police officers were kept to a minimum. The Committee **seeks the Attorney-General's advice** as to the reason for now introducing these amendments, and their effect, if any, on the safeguards previously referred to.

Pending the Attorney's response, 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.

Commonwealth Electoral Amendment Bill (No. 1) 2002

This bill was introduced into the House of Representatives on 14 March 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Special Minister of State]

The bill proposes to amend the *Commonwealth Electoral Act 1918* to provide that the agent of the Liberal Party of Australia (commonly known as the Federal Secretariat) may, before polling day, provide a written notice to the Electoral Commission specifying the percentage of public funding that is the federal percentage, and the percentage that is the State percentage for a specified State Division of the Liberal Party.

This bill had previously been introduced into the House of Representatives on 9 August 2001, during the 39th Parliament, but lapsed when the Parliament was prorogued for the 2001 Federal Election.

The Committee has no comment on this bill.

Copyright Amendment (Parallel Importation) Bill 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Copyright Act 1968* to enable the legal parallel importation and subsequent commercial distribution of computer software products, including interactive computer games, books, periodical publications (such as journals and magazines) and sheet music. It applies to imported articles.

Amendments to correct or clarify the law are also proposed in relation to the communication to the public of works and other subject matter using electronic networks.

The bill also contains application provisions.

Delayed commencement Schedule 2

By virtue of subclause 2(1) of this bill, Schedule 2 will commence 12 months after Assent. This is a departure from the usual practice set out in *Drafting Direction No. 12 of 2001*, issued by the Office of Parliamentary Counsel, which states that an explanation should be provided whenever a period of longer than 6 months is chosen.

Neither the Explanatory Memorandum nor the Second Reading Speech indicate the reason for this failure to comply with the *Drafting Direction*. However, the Explanatory Memorandum acknowledges that this bill is identical to one introduced in the previous Parliament. In *Alert Digest No. 3 of 2001*, the Committee raised the matter of delayed commencement in relation to that previous bill, and received a response which, in its *Ninth Report of 2001*, the Committee accepted as being satisfactory.

Given the Attorney's previous explanation, the Committee makes no further comment on this provision.

Retrospective commencement
Schedule 3, items 1, 2, 3, 5 and 7

Subclause 2(1) also permits the amendments proposed by items 1-3, 5 and 7 of Schedule 3 to commence retrospectively, immediately after the commencement of the *Copyright Amendment (Digital Agenda) Act 2000*. The Explanatory Memorandum points out that these amendments are technical in nature, and correct drafting errors. However, it does not provide an assurance that they will not operate to the disadvantage of any person. The Committee, therefore, **seeks the Attorney-General's confirmation** that no-one will be disadvantaged by these amendments.

Pending the Attorney's confirmation, 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.

Corporate Responsibility and Employment Security Bill 2002

This bill was introduced into the House of Representatives on 11 March 2002 by Mr McClelland as a Private Member's bill.

The bill proposes to amend the *Corporations Act 2001* and the *Workplace Relations Act 1996* to establish a framework that will enable workers or their nominees to pursue their entitlements directly from a related company when the company employing them fails, and to recover their superannuation entitlements. Provision is also made for subcontractors and employees of subcontractors to recover their wages and fees from a higher level contractor.

Retrospective commencement Subclause 2(1)

By virtue of subclause 2(1), this bill will commence retrospectively at 9.00am on 12 September 2001. It appears from the terms of the bill that this retrospectivity is intended to benefit persons employed by Ansett Airlines, as that company went into liquidation on that date. However, the bill is not confined in its operation to that company. The Committee, therefore, **seeks the advice of the member proposing the bill** as to whether the bill's retrospective commencement will act to the disadvantage of any person.

Pending the Member's response, 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.

Commencement on Proclamation Subclause 2(2)

Subclause 2(2) of this bill will permit the amendments proposed by item 3 of Schedule 2 to commence on Proclamation, with no further date set for the commencement of those amendments in any event. In effect, the amendments may never be proclaimed, and so may never commence. In this respect,

subclause 2(2) is a departure from *Drafting Direction No. 12 of 2001*, issued by the Office of Parliamentary Counsel.

The bill is not accompanied by any explanatory material so it is not possible to determine the reason for this provision. The Committee, therefore, **seeks the advice of the member proposing the bill** as to why these provisions should not commence at some fixed time unless proclaimed sooner.

Pending the Member's response, 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.

Criminal Code Amendment (Espionage and Related Offences) Bill 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Crimes Act 1914*, the *Criminal Code Act 1995* and the *Australian Protective Service Act 1987* to establish new offences dealing with the protection of security and defence in Part 5.2 of the *Criminal Code Act 1995*. These offences relate to espionage and similar activities and soundings.

The bill substantially replicates the provisions in Part VII of the Crimes Act with respect to unlawful soundings offences (formerly section 83 of the Crimes Act). Espionage offences have been changed to establish a more effective legal framework that both deters, and punishes, people who intend to betray Australia's security interests. The bill will strengthen Australia's espionage laws by:

- referring to conduct that may prejudice Australia's security and defence, rather than safety and defence, and explicitly defining this term;
- expanding the range of activity that may constitute espionage;
- affording the same protection to foreign-sourced information belonging to Australia as Australian-generated information; and
- increasing the maximum penalty for a person convicted of espionage from seven years imprisonment to 25 years imprisonment.

The bill also sets out procedural matters in relation to the prosecution of offences under Part 5.2 of the Criminal Code (Division 93) and provides for the forfeiture of articles that have been dealt with in contravention of Part 5.2 (Division 94). In addition, some offences in Part VII of the Crimes Act are repealed but are not replaced in the Criminal Code because they are no longer relevant or appropriate.

Reversal of the onus of proof

Proposed new subsections 92.1(2) and (3)

Proposed new subsections 92.1(2) and (3), to be inserted in the *Criminal Code* by Schedule 1 to this bill, will reverse the burden of proof in a prosecution for an offence under subsection 92.1(1) which concerns the taking or recording of soundings. The Explanatory Memorandum provides no reason for the inclusion of these provisions. The Committee, therefore, **seeks the Attorney-General's advice** as to why the defendant should bear the burden of proving the matters referred to in these provisions.

Pending the Attorney's response, 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.

Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002

This bill was introduced into the House of Representatives on 12 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Criminal Code Act 1995* to insert a new division, Division 72 – International terrorist activities using explosive or lethal devices, into the *Criminal Code* to give effect to the International Convention for the Suppression of Terrorist Bombings (the Convention), which came into effect on 23 May 2001.

The bill also amends the *Extradition Act 1988* to ensure that the offences in the bill are not regarded as political offences for extradition purposes, and contains a saving provision.

The Committee has no comment on this bill.

Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002

This bill was introduced into the House of Representatives on 14 March 2002 by the Special Minister of State. [Portfolio responsibility: Special Minister of State]

The bill proposes to amend the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* to give effect to certain recommendations of the Joint Standing Committee on Electoral Matters in its report on the 1998 Federal Election.

The bill was previously introduced into the House of Representatives during the 39th Parliament, on 26 September 2001, as the Electoral and Referendum Amendment Bill (No. 2) 2001, but lapsed when the Parliament was prorogued for the 2001 Federal Election.

The main amendments include:

- amending provisions relating to the close of rolls for new enrolments, and for existing electors wishing to update their enrolment;
- removing the right to vote for all prisoners serving a sentence of full time detention;
- amending the multiple voting, provisional voting and postal voting provisions;
- increasing a number of the financial disclosure thresholds to \$3000, effective from 1 July 2001;
- providing that entitlement to enrolment will be based on residence, for a period of one month, at a particular address in a Subdivision;
- providing for electors to be removed from the roll by objection if they no longer reside at their enrolled address;
- prohibiting scrutineers from actively participating in assisted votes;
- limiting the authorisation requirement for electoral advertising material to material published in journals and magazines;

- providing for nomination deposits to be refunded to the person who paid them; and
- allowing for the declaration of nominations for House of Representatives elections to occur at the office of the relevant Divisional Returning Officer or at a place determined by the Australian Electoral Officer for the relevant State or Territory.

Commencement on Proclamation

Subclause 2(1)

By virtue of items 3, 5, 7, 9, 12 and 14 of the Table in subclause 2(1), various provisions in the Schedule to this bill will commence on Proclamation, with no date being fixed within which those provisions must commence in any event. This is a departure from *Drafting Direction No. 12 of 2001* issued by the Office of Parliamentary Counsel. The Explanatory Memorandum provides no reason for this departure.

The Committee notes that, in *Alert Digest No. 11 of 1998*, it commented on the fact that various provisions of the Electoral and Referendum Amendment Bill (No. 2) 1998 were also to commence on Proclamation, with no further date fixed within which they were to commence in any event. In its *Third Report of 1999*, the Committee reported the then Minister's advice that the reason for open-ended commencement in the case of that bill was to allow for the enactment of complementary State and Territory legislation, and to enable the Australian Electoral Commission to make necessary administrative arrangements. The omission of these reasons from the Explanatory Memorandum was "an oversight" which the then Minister understood had been rectified.

In a similar manner, the Committee **seeks the Minister's advice** as to the reasons for the open-ended commencement of the provisions in this bill, and why those reasons were not included in the Explanatory Memorandum accompanying this bill.

Pending the Minister's response, 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.*

Retrospective commencement

Schedule 3, items 1 and 2

By virtue of item 16 of the Table in subclause 2(1), the amendment proposed by items 1 and 2 of Schedule 3 to this bill will commence retrospectively on 5 December 1999, immediately after the commencement of other legislation. However, on this occasion, the Explanatory Memorandum observes that “it is anticipated that this retrospective commencement date will have no detrimental effect.”

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

The voting rights of prisoners

Schedule 1, items 1, 2 and 6

The amendments proposed by items 1, 2 and 6 of Schedule 1 will abrogate the rights of all persons serving a term of imprisonment to enrol and vote in a federal election. This is a change in the law that was originally proposed in the Electoral and Referendum Amendment Bill (No. 2) 1998, and on which the Committee reported in its *Seventh Report of 1998*.

In that Report, the Committee noted that this issue had been debated for many years, and concluded that (under the previous bill) it was possible “that voters may be dealt with differently depending on the nature of their sentence and the effectiveness of notification procedures in the various States and Territories”. Accordingly the Committee drew attention to the possible effect of that provision on personal rights and liberties.

The Committee reaffirms these comments in relation to this bill.

For these reasons, 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.

Employee Protection (Employee Entitlements Guarantee) Bill 2002

This bill was introduced into the House of Representatives on 11 March 2002 by Mrs Crosio as a Private Member's bill.

The bill proposes the establishment and administration of a scheme to guarantee the full payment of employee entitlements, such as unpaid wages, annual leave, long service leave and redundancy pay in the case of corporate insolvency. The bill proposes that workers entitlements be secured through a 0.1 per cent levy on payroll.

The Committee has no comment on this bill.

Family Law Amendment (Child Protection Convention) Bill 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Family Law Act 1975* to enable Australia to ratify the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children 1996.

The Convention establishes conflict of law rules to be applied in parental responsibility litigation which has an international aspect. These rules govern issues such as whether a court has jurisdiction to hear an international parental responsibility dispute; which country's law is to be applied in determining international parental responsibility disputes; what conditions must be satisfied to ensure international recognition and enforcement of parenting orders; and what obligations courts in Australia and overseas have to cooperate in the protection of children.

The bill also contains application provisions.

The Committee has no comment on this bill.

Financial Corporations (Transfer of Assets and Liabilities) Amendment Bill 2002

This bill was introduced into the Senate on 12 March 2002 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* to extend the sunset clause, from 30 June 2001 to 30 June 2003, for foreign banks obtaining a banking authority in order to be eligible for concessional tax treatment when transferring assets and liabilities. The bill also extends the deadline to effect any subsequent transfer of assets and liabilities from 30 June 2004 to 30 June 2006.

Retrospective commencement Clause 2

By virtue of clause 2 of this bill, all of its provisions will commence retrospectively on 1 July 2001. It appears from the Explanatory Memorandum that these provisions will not prejudice any person, but this is by no means clear. The Committee, therefore, **seeks the Treasurer's confirmation** that the bill's retrospective commencement will not act to the disadvantage of any person.

Pending the Treasurer's confirmation, the Committee draws Senators' attention to this bill 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.

Horticulture Marketing and Research and Development Services (Amendment) Bill 2002

This bill was introduced into the House of Representatives on 14 March 2002 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Horticulture Marketing and Research and Development Services Act 2000* to deem Horticulture Australia Limited (HAL) as the export control body under the Act to be a Commonwealth agency for the purposes of section 16 of the *Customs Administration Act 1985*. HAL commenced business on 1 February 2001, taking over the functions previously undertaken by the Horticultural Research & Development Corporation, the Australian Horticultural Corporation and the Australian Dried Fruits Board.

HAL is an industry-owned company with which the Commonwealth has entered into arrangements for the delivery of marketing and research and development services to the horticulture industry. As HAL does not meet the criteria of a Commonwealth Agency under Section 16 of the Customs Act, the Australian Customs Service (ACS) has advised HAL that it is no longer able to provide information from its EXIT database to the company.

This amendment will ensure that HAL can exercise appropriate management over current export control powers, and any future export controls that may be put in place, by being able to access information in the ACS EXIT database. This information would show evidence of any breaches that may have occurred in contravention of the export controls.

The Committee has no comment on this bill.

Jurisdiction of Courts Legislation Amendment Bill 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

Schedule 1 of the bill proposes to amend the *Federal Court of Australia Act 1976* and the *Judiciary Act 1903* to allow the Australian Capital Territory (ACT) to establish an ACT Court of Appeal with the consequent removal of the appellate jurisdiction from the Federal Court. The provisions in this bill complement the ACT legislation.

Schedule 2 proposes to amend the *Federal Court of Australia Act 1976* to abolish the office of judicial registrar and to make some minor changes to the practices and procedures of the Federal Court.

The bill also contains application and transitional provisions.

Commencement on Proclamation Subclause 2(1)

By virtue of subclause 2(1), the amendments proposed by Schedule 1 to this bill will commence on Proclamation, with no further date fixed within which those provisions must commence in any event. In effect, the amendments may never be proclaimed, and so may never commence. In this respect, subclause 2(1) is a departure from *Drafting Direction No. 12 of 2001*, issued by the Office of Parliamentary Counsel.

However, the Explanatory Memorandum makes it clear that the commencement of these amendments is dependent on the passage of legislation in the Australian Capital Territory.

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

Migration Legislation Amendment Bill (No. 1) 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Minister for Immigration and Multicultural and Indigenous Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

The bill proposes to amend the *Migration Act 1958* to:

- provide that non-citizen children born in Australia are ‘immigration cleared’ for the purposes of their “birth entry”;
- authorise the taking of security for compliance with conditions to be imposed on a visa before it is granted;
- ensure that non-citizens who leave and re-enter Australia on a bridging visa are subject to the section 48 bar on further applications;
- provide that a bridging visa held by a non-citizen ceases at the moment that person’s substantive visa is cancelled;
- ensure that a special purpose visa ceases to be in effect at a specified time if the Minister declares that it is undesirable for a non-citizen to travel to or remain in Australia, and render the rules of natural justice inapplicable to the making of such a declaration;
- impose a time limit on a non-citizen in immigration clearance to apply for revocation of the automatic cancellation of that person’s student visa, and to ensure that a decision not to revoke the cancellation is not subject to merits review;
- create a Deputy Principal Member position for the Migration Review Tribunal;
- ensure that certain offence provisions operate as they did prior to the application of the Criminal Code; and
- make minor technical amendments.

The bill also contains application provisions.

Retrospective application

Schedule 1, items 2 and 5

By virtue of items 2 and 5 of Schedule 1 to this bill, the amendments proposed by items 1 and 4 (which concern certain rights of non-citizen children) will apply from 1 September 1994 – a period of more than 7 years. The Explanatory Memorandum merely states the effect of these items, but provides no reason for their retrospective application (other than a reference to the date on which the concept of “immigration clearance” was introduced into the Act). The Committee, therefore, **seeks the Minister’s advice** as to why these provisions apply retrospectively and whether they will disadvantage any person.

Pending the Minister’s response, 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.

Abrogation of the rules of natural justice

Schedule 3, item 2

The amendment proposed by item 2 of Schedule 3 makes it clear that the rules of natural justice do not apply in relation to the making of a declaration under subsection 33(9) of the *Migration Act 1958*. The Explanatory Memorandum seeks to justify this trespass on civil liberties, in the following terms:

The purpose of new section 33(11) is to ensure that, as originally intended, quick action can be taken to prevent the travel to, entry or stay in Australia of a special purpose visa holder whose entry or stay is not in Australia’s interest. It also avoids the operational difficulties associated with an obligation to afford natural justice. In many cases, it is difficult or impossible to contact persons who may be the subject of subsection 33(9) (for example, a seafarer who has deserted his or her vessel and who cannot be located). In other cases, the reasons for making the declaration cannot be put to the person because of adverse intelligence reports or time constraints.

The rules of natural justice have been developed over many years to ensure fairness in the application of the law. It is unusual to see them cast aside simply to avoid “operational difficulties”. The Committee, therefore, **seeks**

the Minister's advice as to the deficiencies in the existing provision and why such an extreme amendment is seen as necessary to deal with them.

Pending the Minister's response, 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.

Strict liability offence

Proposed new subsection 233(1A)

Paragraph 233(1)(a) of the Principal Act makes it an offence for a person to take part in the bringing or coming to Australia of a non-citizen under circumstances from which it might reasonably have been inferred that the non-citizen intended to enter Australia in contravention of the Act. It is an element of this offence that the bringing or coming of the non-citizen be under circumstances from which it might reasonably be inferred that he or she intended to enter Australia illegally. The courts have applied strict liability to this physical element of the offence.

The amendment proposed by item 6 of Schedule 5 will insert a new subsection 233(1A) in the Act. As required by the *Criminal Code* this new subsection will specify that strict liability continues to apply to this element of the offence, and that the offence continues to operate as it did prior to the application of the *Criminal Code*.

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

Strict liability offence

Proposed new subsection 241(3)

Subsection 241(1) makes it an offence for a person to make arrangements that make it look as if two people are de facto spouses for the purposes of the regulations where that person knows or reasonably believes that they are not de facto spouses.

The Explanatory Memorandum states that the structure of this offence requires the prosecution to prove that the defendant knew that the two people were not de facto spouses for the purposes of the regulations. As the definition of de facto spouse in the regulations is said to be “complex”, requiring the prosecution to prove this element “may prove an extremely difficult task”.

The Explanatory Memorandum concludes that this amendment is intended to make it clear that “the prosecution is required only to prove that the de facto relationship was not genuine, and that the defendant knew, or reasonably believed, that this was the case”. However, it is not clear whether this amendment simply restates the existing law in the light of the application of the *Criminal Code*, or changes that law by creating a new strict liability offence.

The Committee, therefore, **seeks the Minister’s advice** as to whether the amendment proposed by item 7 of Schedule 5 will make a change to the law, and, if so, whether options other than the imposition of strict criminal liability were considered.

Pending the Minister’s response, 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.

Migration Legislation Amendment (Procedural Fairness) Bill 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Minister for Immigration and Multicultural and Indigenous Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

The bill proposes to amend the *Migration Act 1958* to provide a clear legislative statement that specified “codes of procedure” identified in the bill are an exhaustive statement of the requirements of the natural justice hearing rule in relation to the matters they deal with. The amendments apply to the “codes of procedure” which relate to visa applications; visa cancellations under sections 109, 116 or 128 of the Act; the revocation of certain visa cancellations; and the review of decisions by the Migration Review Tribunal (“the MRT”) and the Refugee Review Tribunal (“the RRT”).

The bill also clarifies the relationship between the amendments relating to the “codes of procedure” and section 474 of the Act which contains the “privative clause” that has the practical effect of expanding the legal validity of the acts done and decisions made by decision-makers. It is intended that section 474 will be interpreted in accordance with *R v Hickman; ex parte Fox and Clinton* (1945) 70 CLR 598, such that the only reviewable legal errors are those that are set out in that case.

The bill also contains application provisions.

Abrogation of the rules of natural justice

The bill

Notwithstanding the short title of this bill, its purpose (as stated by the Minister in his Second Reading Speech), is to exclude the common law rules of natural justice from hearings by tribunals under the Principal Act, and to ensure that only the already legislated Codes of Procedure will apply to such hearings. In attempting to fulfil this purpose, the Bill will abrogate the effect of the decision of the High Court of Australia in *Re MIMA; Ex parte Miah* [2001] HCA 22.

As noted elsewhere in this *Digest*, the rules of natural justice have been developed over many years to ensure fairness in the application of the law. They should not be lightly cast aside.

For this reason, the Committee draws Senators' attention to this bill 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.

Migration Legislation Amendment (Transitional Movement) Bill 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Minister for Immigration and Multicultural and Indigenous Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

The bill proposes to amend the *Migration Act 1958* to:

- allow a “transitory person” to be brought to Australia without a visa for a temporary purpose;
- bar a “transitory person” from making a valid application for any visa whilst in Australia, unless the Minister believes it is in the public interest to allow the person to apply for a visa;
- stop legal proceedings being taken in relation to the “transitory person’s” presence in Australia; and
- provide clear statutory authority to remove the person from Australia.

Abrogation of common law rights of action Proposed new section 494AB

Item 6 of Schedule 1 to this bill proposes to insert a new section 494AB in the *Migration Act 1958*. This new section will prohibit various rights of action (which would presumably otherwise be available) from being pursued in any court against the Commonwealth, an officer of the Commonwealth or a person acting on behalf of the Commonwealth.

The Explanatory Memorandum does not indicate the reason for this abrogation of common law rights. The Committee, therefore, **seeks the Minister’s advice** as to the reason for abrogating these rights.

Pending the Minister’s response, 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.

Ministers of State (Post-Retirement Employment Restrictions) Bill 2002

This bill was introduced into the Senate on 13 March by Senators Stott Despoja and Murray as a Private Senator's bill.

The bill proposes to set standards for post-ministerial employment for ministers and senior ministerial advisers. The bill draws on international precedents but also takes into account the expectations of the Australian community and the past conduct of Australian ministers.

The bill also contains a range of post-retirement restrictions and penalty provisions.

The Committee has no comment on this bill.

Plant Breeder's Rights Amendment Bill 2002

This bill was introduced into the Senate on 13 March 2002 by the Minister for Health and Ageing. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Plant Breeder's Rights Act 1994* to:

- clarify the rights of plant breeders in certain circumstances where restrictions are imposed;
- enhance the access of breeders to the Plant Breeder's Rights (PBR) scheme; and
- improve the administration of the Act and the PBR scheme.

The bill also contains application provisions.

The rights of users

General comment

As noted above, this bill proposes to clarify the rights of plant breeders in certain circumstances where restrictions are imposed. The Explanatory Memorandum observes that plant breeder's rights (PBR) are negative rights, to exclude others from doing certain acts, thereby providing the PBR owner with the opportunity to gain a commercial reward.

The Committee **seeks the Minister's advice** as to whether the amendments proposed in this bill will further affect the rights of farmers and other users or consumers of seeds.

Pending the Minister's response, 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.

Proceeds of Crime Bill 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Attorney-General. [Portfolio responsibility: Justice and Customs]

Introduced with the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002, the bill proposes:

- a legislative framework to prevent criminals from being able to profit from their crimes, by depriving them of the proceeds and benefits gained from criminal conduct, and to prevent the re-investment of those proceeds and benefits in further criminal activities;
- a civil forfeiture regime, in addition to a strengthened conviction-based confiscation scheme, to enable the freezing and confiscation of property used in, intended to be used in or derived from terrorism offences;
- to strengthen provisions relating to the existing conviction-based scheme;
- the implementation of Australia's obligations under the International Convention for the Suppression of the Financing of Terrorism and resolutions of the United Nations Security Council relevant to the seizure of terrorism related property;
- the introduction of provisions for the forfeiture of literary proceeds, which are benefits a person derives from the commercial exploitation of their notoriety from committing a criminal offence; and
- sets out provisions for the confiscation of proceeds derived from the exploitation of criminal notoriety by means of a type of pecuniary penalty order against the person.

The bill replicates the safeguards for innocent third parties, dependents and people with an interest in property which exists in the current legislation.

Trespasses on rights and liberties

General comment

This bill is similar to a bill of the same name which was introduced into the House of Representatives on 20 September 2001, and on which the

Committee commented in *Alert Digest No. 14 of 2001*. In relation to that earlier bill, the Committee observed that:

- the bill seemed to trespass on the rights of persons who had neither been charged with, nor convicted of, any wrong-doing, and the Committee **requested a briefing**, as soon as was practicable, on the provisions of the bill, the persons at whom those provisions were directed, the effect of the bill on rights and liberties, and on the application of the bill (if any) to the proceeds of foreign offences where those proceeds are ‘laundered’ in Australia;
- clause 14 of that bill (reproduced in clause 14 of the current bill) applied retrospectively to offences committed prior to its coming into force, and to convictions prior to that commencement – the Explanatory Memorandum provided no reason for this retrospective application and the Committee **sought the Minister’s advice** on this issue. The Committee also noted that some provisions referred to offences having occurred within a period of 6 years before the application for an order was made and **sought the Minister’s advice** as to whether any provisions applied retrospectively in an open-ended manner;
- subclause 190(1) of that bill, when read with paragraph 191(2)(a) (reproduced in subclause 196(1) and paragraph 197(2)(a) of the current bill) had the effect of abrogating the privilege against self-incrimination for a person attending an examination under Part 3-1 of the bill, as well as failing to provide an explanation for removing derivative use immunity – specifically the Committee **sought the Minister’s advice** as to why clause 192 (now clause 197) made no provision for derivative use immunity, and why it was appropriate that information compelled from a person should be admissible in proceedings for an application under the Act;
- clause 259 of that bill (reproduced in clause 271 of the current bill) would abrogate the privilege against self-incrimination in relation to a person who provides information under Part 4-1 of the bill. However, derivative use immunity applied to this clause and, in general terms, the information or document was only admissible in criminal proceedings for providing false and misleading information; and
- subclause 324(3) of that bill (reproduced in subclause 329(3) of the current bill) provided that any property may be the proceeds of an offence, or an instrument of an offence “even if no person has been convicted of the offence” – the Committee **sought the Minister’s advice** as to how any person’s property could be subject to a restraining order, or subsequent

order, on the basis that it was related to the commission of an offence, notwithstanding that no person had been convicted of that offence.

With regard to the current bill, the Committee reaffirms the above comments and **continues to seek the Minister's advice** about the above concerns.

In addition, in *Alert Digest No. 14 of 2001*, the Committee noted that clause 200 of the previous bill provided for derivative use immunity where information was compelled from a person against whom a production order was made under clause 196. These circumstances are now reproduced in clause 206 of the current bill. However clause 206 provides protection only in relation to information in a document – it provides no protection against the use of information derived indirectly from the production of the relevant document. The Explanatory Memorandum provides no reason for the removal of the protection provided by derivative-use immunity where persons are compelled to incriminate themselves in these circumstances, and the Committee, therefore, **seeks the Minister's advice** on this issue.

Pending the Minister's response, 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.

Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002

This bill was introduced into the House of Representatives on 13 March 2002 by the Attorney-General. [Portfolio responsibility: Justice and Customs]

Introduced with the Proceeds of Crime Bill 2002, the bill proposes to supplement the principal bill by providing transitional provisions and making consequential amendments to other Commonwealth legislation.

Schedule 1 to the bill proposes new money laundering offences in the *Criminal Code Act 1995* which replace the money laundering offences in the *Proceeds of Crime Act 1987*, and updates cross references in the *Telecommunications (Interception) Act 1979*.

Schedule 2 amalgamates and co-locates provisions currently in the *Proceeds of Crime Act 1987* and the *Mutual Assistance Act in Criminal Matters Act 1987* which provide for the registration and enforcement of foreign restraining and confiscation orders in Australia in relation to the confiscation of assets located in Australia, which are the proceeds of a foreign offence.

Schedule 3 re-enacts the document retention provisions currently in the *Proceeds of Crime Act 1987* (sections 76-78B) and in the *Financial Transaction Reports Act 1988*, which already contains record retention provisions.

Schedule 4 makes amendments to the *Bankruptcy Act 1966*, giving priority to recovery of forfeited property or pecuniary penalty/literary proceeds amounts due under the Proceeds of Crime Bill 2002 over bankruptcy proceedings.

Schedule 5 amends the *Family Law Act 1975* to provide for the stay of family law property settlement and spousal maintenance proceedings where some or all of the property of one or both of the parties, is the subject of a forfeiture application or POC order under the Proceeds of Crime Bill 2002.

Schedule 6 amends 12 other Acts to provide clarification and consistency with the Proceeds of Crime Bill 2002 measures.

Schedule 7 contains transitional and related measures to facilitate the transition from the *Proceeds of Crime Act 1987* to the proposed *Proceeds of Crime Act 2002*.

Absolute liability offences

Proposed new subsections 400.3(4), 400.4(4), 400.5(4), 400.6(4) and 400.7(4)

Proposed new subsections 400.3(4), 400.4(4), 400.5(4), 400.6(4) and 400.7(4) of the *Criminal Code*, to be inserted by Schedule 1 to this bill, impose absolute criminal liability on some elements of the offences created by each of those new sections (which involve dealing in the proceeds of crime in varying amounts).

The usual principle of criminal liability requires that the prosecution prove intentional or reckless conduct on the part of an accused. The Explanatory Memorandum seeks to justify this departure from the usual principle by observing that “it is not necessary for the prosecution to prove that the defendant knew, or was aware of, the value of the dealing for him or her to be convicted of these offences. This is achieved by providing that absolute liability applies to that element of the offence. This is consistent with other offences that have been enacted in recent years.”

The Committee **seeks the Minister’s advice** as to why imposing absolute criminal liability is seen as necessary in the circumstances of these offences.

Pending the Minister’s response, 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.

Absolute liability offence

Proposed new subsection 400.9(4)

Proposed new subsection 400.9(4) of the *Criminal Code* will impose absolute criminal liability in relation to one element of the offence created by that section (possession of property reasonably suspected of being the proceeds of

crime). However, the Explanatory Memorandum merely describes the effect of this subsection, and does not seek to justify its inclusion in the legislation. The Committee **seeks the Minister's advice** as to the reason for this provision.

Pending the Minister's response, 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.

Reversal of the onus of proof

Proposed new subsection 400.9(5)

Proposed new subsection 400.9(5) of the *Criminal Code* will reverse the normal onus of proof in criminal matters, and impose upon the defendant the legal burden of proving that he or she had no reasonable grounds for suspecting that money or property was derived or realised from some form of illegal activity.

The Explanatory Memorandum claims that this provision is appropriate (given the knowledge and information the defendant will have concerning the transaction), however the Committee **seeks the Minister's advice** as to the need for this provision, which seems to require people to prove that property in their possession has been legally obtained.

Pending the Minister's response, 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.

Strict liability offence

Proposed new section 40R

Schedule 3 to this bill proposes to insert a new section 40R in the *Financial Transactions Reports Act 1988*. This new section (which requires financial institutions to retain and store documents in a way that makes their retrieval

reasonably practical) will impose strict criminal liability, but the Explanatory Memorandum does not indicate the reason for imposing strict liability. The Committee, therefore, **seeks the Minister's advice** as to why strict liability is to be imposed in this provision.

Pending the Minister's response, 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.

No reasons for decision

Schedule 6, item 1

Item 1 of Schedule 6 will render decisions of the Director of Public Prosecutions, given under Part 3-1 of the *Proceeds of Crime Act 2002*, no longer subject to the *Administrative Decisions (Judicial Review) Act 1977*. The Explanatory Memorandum does not indicate the reason for removing these decisions from the scope of that Act. The Committee, therefore, **seeks the Minister's advice** as to why these decisions are no longer subject to the *Administrative Decisions (Judicial Review) Act 1977*.

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

Quarantine Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 March 2002 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to provide for the Governor-General to declare, by proclamation, that an epidemic or danger of an epidemic has the potential to so affect a primary industry of national significance that it calls for the exercise of coordinated response powers.

The bill also extends the range of matters for which the Commonwealth may enter into arrangements with the States or Territories, broadens the range of persons who may perform the powers and exercise the functions of quarantine officers and introduces a new offence for the importation of prohibited goods for commercial purposes.

Strict liability offence

Proposed new subsections 2B(4) and 3(10)

Proposed new subsections 2B(4) and 3(10) of the Principal Act, to be inserted by items 2 and 3 of Schedule 1 to this bill, will impose strict liability in relation to certain aspects of criminal offences. The Explanatory Memorandum describes the effect of this imposition of strict liability, but does not provide a reason for the provisions. The Committee, therefore, **seeks the Minister's advice** as to why strict liability has been imposed in relation to these offences.

Pending the Minister's response, 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.

Strict liability offence

Proposed new subsections 18(2), 18(4A) and 18(4C)

Proposed new subsections 18(2), (4A) and (4C) of the Principal Act, to be inserted by Part 2 of Schedule 1 to this bill, will also impose strict liability in relation to certain criminal offences. The Explanatory Memorandum fails to provide a reason for these provisions, indeed it fails even to acknowledge the presence of Part 2 of Schedule 1 in this bill.

The Committee, therefore, **seeks the Minister advice** as to why strict liability has been imposed in relation to these offences, and why the Explanatory Memorandum fails to deal with Part 2 of Schedule 1 to the bill.

Pending the Minister's response, 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.

Security Legislation Amendment (Terrorism) Bill 2002

This bill was introduced into the House of Representatives on 12 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill was discharged from the House of Representatives *Notice Paper* on 13 March 2002 and an identical replacement bill introduced later on 13 March 2002 (see following page).

*As this bill has been discharged from the Notice Paper,
the Committee has no further comment on this bill.*

Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]

This bill was introduced into the House of Representatives on 13 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

This bill is identical in content to the Security Legislation Amendment (Terrorism) Bill 2002, which was introduced into the House of Representatives on 12 March 2002 by the Attorney-General. The former bill was discharged from the House of Representatives *Notice Paper* on 13 March 2002 and re-introduced later on 13 March 2002.

The bill proposes to:

- amend the *Criminal Code Act 1995* (the Criminal Code) to combat terrorism by ensuring that there are criminal offences to deal with terrorism and membership of a terrorist organisation, or other links to a terrorist organisation, may be an offence;
- insert a series of new terrorism offences into the Criminal Code, all of which carry a penalty of life imprisonment;
- include a regime for the Attorney-General to proscribe an organisation that has a specified terrorist connection or that has endangered, or is likely to endanger, the security or integrity of the Commonwealth, and to make membership or other specified links with such an organisation an offence;
- replace the treason offence in the *Crimes Act 1914* with a new offence, framed in accordance with contemporary drafting practice and the standard approach under the Criminal Code; and
- propose amendments to the *Australian Protective Service Act 1987* and the *Crimes (Aviation) Act 1991* to ensure that Australian Protective Service has powers to deal with terrorist related offences, and to exercise the aircraft security officer function on intra-state flights.

General comment

This bill is part of a legislative package designed to strengthen Australia's counter terrorism capabilities. While the bill expressly concerns terrorist acts, it also enables the Attorney-General to proscribe organisations that (in his or her opinion) are "likely to endanger" Australia's security or integrity. The bill would penalise a person who has "taken steps" to become a member of such an organisation and imposes legal burdens on defendants to disprove matters. On its face, the bill seems to introduce considerable scope for discretion in the criminal law. The Committee **intends to seek a briefing and invite comment** on the provisions of this bill and other bills in the legislative package.

Absolute liability offences

Proposed new subsections 101.2(2), 101.4(2) and 101.5(2)

Among other things, this bill proposes to insert three new provisions in the *Criminal Code*. Proposed new subsections 101.2(2), 101.4(2) and 101.5(2) will create criminal offences of absolute liability.

The Explanatory Memorandum seeks to justify this very considerable departure from the general principle that criminal liability should depend on the accused having acted intentionally or recklessly in the following terms (in relation to proposed subsection 101.2(2)):

Proposed subsection 101.2(2) provides that absolute liability applies to the provision or receipt of training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act. This means that, as long as the person's provision or receipt of the training was voluntary, the person's mental state is not relevant ... Absolute liability is appropriate where fault is required to be proven in relation to another element or other elements of the offence, and there is no legitimate ground for the person to allow a situation to occur where the absolute liability element occurs. In this case, a person who provides or receives training in the making or use of firearms, explosives or weapons should be on notice that this should not be done if there is any possibility of this being connected to a terrorist act. The person must avoid this possibility arising, and if they cannot, they should not provide or receive the training.

While the Committee has no wish to support the provision of terrorist training or activities, it seems that criminal liability is being imposed here on the basis

of ‘possible connections’: if the provision of training is possibly connected to a terrorist act then a person commits an offence; if the possession of a thing is possibly connected with a terrorist act then a person commits an offence. These amendments would seem to widen the scope for criminal liability alarmingly.

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.

Creation of criminal liability by declaration Proposed new sections 102.2 and 102.4

Proposed new section 102.2 of the *Criminal Code* will permit the Attorney-General, by written declaration, to declare an organisation to be a proscribed organisation. Proposed new section 102.4 then creates various criminal offences relating to the activities of a proscribed organisation. It may therefore be said that the Attorney-General effectively creates criminal liability by the making of a declaration under new section 102.2.

The Explanatory Memorandum suggests that the lawfulness of the Attorney-General’s decision making process and reasoning under section 102.2 is subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977*. However, it is arguable that the exercise of the Attorney’s discretion is more of a legislative function than an administrative one, and that it should be subject to Parliamentary scrutiny rather than consideration under the ADJR Act. The Committee, therefore **seeks the advice of the Attorney** as to why section 102.2 declarations are not subject to Parliamentary scrutiny.

Pending the Attorney’s response, the Committee draws Senators’ attention to these provisions as they may be considered to insufficiently subject the exercise of delegated legislative power to Parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee’s terms of reference.

Strict liability offence

Proposed new subsection 102.4(2)

Proposed new subsection 102.4(2) of the *Criminal Code* will create an offence of strict liability. The Explanatory Memorandum seeks to justify this on the basis that “it is not legitimate to be a member of, or have links with, an organisation of a kind that could be proscribed.” This justification appears to beg the question of when strict criminal liability should be imposed, and to confuse some form of “moral” legitimacy with conduct that is contrary to the law. The Committee, therefore, **seeks the Attorney’s advice** as to why a person should be strictly liable for an offence under subsection 102.4

Pending the Attorney’s response, 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.

Social Security and Veterans' Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002

This bill was introduced into the House of Representatives on 14 March 2002 by the Minister representing the Minister for Family and 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:

- create a new rule to provide for a free area of \$25,000, over and above already deprived assets, to operate over a 5-year rolling period, with gifts in excess of this free area assessed as a deprived asset for 5 years;
- retain the existing rule which provides for a free area of \$10,000 in a single year;
- retain the existing rules for amounts disposed of before 1 July 2002; and
- make a change in operation of the rules from pension year to the more widely understood financial year.

The Committee has no comment on this bill.

Superannuation Guarantee (Administration) Amendment Bill 2002

This bill was introduced into the House of Representatives on 11 March 2002 by Mr Latham as a Private Member's bill.

The bill proposes to amend the Superannuation Guarantee (Administration) Act 1992 to require employers to remit superannuation guarantee payments at least quarterly, rather than annually.

The Committee has no comment on this bill.

Suppression of the Financing of Terrorism Bill 2002

This bill was introduced into the House of Representatives on 12 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Criminal Code Act 1995* (Criminal Code), the *Financial Transactions Reports Act 1988*, the *Mutual Assistance in Criminal Matters Act 1987* and the *Charter of the United Nations Act 1945* to enhance the Commonwealth's counter terrorism legislative framework by:

- creating an offence directed at those who provide or collect funds with the intention that they be used to facilitate terrorist activities;
- requiring cash dealers to report transactions that are suspected to relate to terrorist activities;
- enabling the Director of the Australian Transaction Reports and Analysis Centre, the Australian Federal Police Commissioner and the Director-General of Security to disclose financial transaction reports information directly to foreign countries, foreign law enforcement agencies and foreign intelligence agencies; and
- introducing higher penalty offences for providing assets to, or dealing in assets of, persons and entities engaged in terrorist activities.

The measures in the bill implement obligations under United Nations Security Council Resolution 1373 and the International Convention for the Suppression of the Financing of Terrorism.

Strict liability offences

Proposed new subsections 20(2) and 21(2)

Proposed new subsections 20(2) and 21(2) of the *Charter of the United Nations Act 1945*, to be inserted by Schedule 3 to this bill will create offences of strict liability. In relation to subsection 20(2), the Explanatory Memorandum seeks to justify the imposition of strict liability as “necessary to ensure that a defendant who uses or deals with an asset which he or she knows to be a freezable asset cannot escape liability by demonstrating that they were

not aware that the use or dealing was not in accordance with a notice under section 22.

In relation to subsection 21(2), the Explanatory Memorandum seeks to justify the imposition of strict liability as “necessary to ensure that a defendant who makes an asset available to a person whom he or she knows to be a proscribed person cannot escape liability by demonstrating that they were not aware that the making available of the asset was not in accordance with a notice under section 22.

Notwithstanding this explanation, 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.

Taxation Laws Amendment (A Simpler Business Activity Statement) Bill 2002

This bill was introduced into the House of Representatives on 11 March 2002 by Mr Latham as a Private Member's bill.

The bill proposes a framework for a simplified business activity statement that small business can voluntarily use when calculating tax liability, and to make the tax payment on a quarterly basis. The payment will be calculated using a simple formula that would be applied to their quarterly turnover and would eliminate the need for quarterly and annual GST reconciliations.

The Committee has no comment on this bill.

Taxation Laws Amendment (Baby Bonus) Bill 2002

This bill was introduced into the House of Representatives on 14 March 2002 by the Treasurer. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Income Tax Assessment Act 1997* and the *Income Tax Assessment Act 1936* to introduce the First Child Tax Refund (Baby Bonus) in recognition of the loss of income that generally follows the arrival of a family's first child. The measure has effect from 1 July 2001 and applies to assessments for the 2001-2002 income year and later years.

The Committee has no comment on this bill.

Taxation Laws Amendment Bill (No. 2) 2002

This bill was introduced into the House of Representatives on 14 March 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Schedule 1 of the bill proposes to amend the imputation rules in the *Income Tax Assessment Act 1936* to take account of the reduction of the company tax rate from 34% to 30%.

Schedule 2 amends the *Income Tax Assessment Act 1997* to defer the commencement date of the Review of Business Taxation proposals to tax friendly societies on investment income received that is attributable to funeral policies, scholarship plans and income bonds sold after 30 November 1999. The Schedule also defers the commencement of the new methodology for working out the capital component of ordinary life insurance investment policies until 1 July 2002.

Schedule 3 amends the *Income Tax Assessment Act 1936* to make corrections so that the intercorporate dividend rebate is not available in respect of any unfranked dividends paid to or by a dual resident company, including dividends paid within a wholly-owned group; and the deduction allowed to certain non-resident owned companies to offset the removal of the rebate from 1 July 2000 is not available in respect of unfranked dividends paid to or by a dual resident company.

Schedule 4 amends the *Income Tax Assessment Act 1997* to make a correction to the refundable tax offset rules so that double claiming of a refund of excess imputation credits by both a trustee and a beneficiary will not be possible. It also makes a consequential amendment to the *Income Tax Assessment Act 1936*. The Schedule also proposes amendments to amend the *Income Tax Assessment Act 1997* to deny refunds of excess imputation credits to non-complying superannuation funds and non-complying ADFs.

Schedule 5 proposes technical corrections to the franking rebate provisions in the *Income Tax Assessment Act 1936* to clarify that registered charities and gift-deductible organisations which are trusts are eligible for refunds of excess imputation credits in respect of distributions attributable to franked dividends received indirectly through another trust.

Schedule 6 amends the *Income Tax Assessment Act 1936* to extend the eligibility criteria for Senior Australians Tax Offset (SATO) to ensure that all seniors who are eligible for either an age or service pension (whether or not they receive one) are entitled to receive SATO.

Schedule 7 amends the *Income Tax Assessment Act 1997* to ensure that taxpayers who received shares in Tower Limited as a consequence of the demutualisation of Tower Corporation in October 1999 are not subject to capital gains tax at the time their membership rights ceased to exist; and to specify the cost base for shares received in Tower Limited as a consequence of giving up those membership rights.

Schedule 8 makes a technical amendment to the *Medicare Levy Act 1986* to correct references to the *Income Tax Assessment Act 1936*.

Schedule 9 amends the *Income Tax Assessment Act 1997* and the *Income Tax Assessment Act 1936* to allow income tax deductions for certain gifts of \$2 or more made to certain new organisations. This bill also amends the names of some organisations, extends the period of deductibility for two organisations and ends the period of deductibility for another organisation.

Schedule 10 amends the income tax law to recognise a new demutualisation method for non-insurance mutual entities. Members of non-insurance mutual entities that demutualise using the new method will qualify for the concessions in Schedule 2H to the *Income Tax Assessment Act 1936*.

Schedule 11 amends the *Income Tax Assessment Act 1997* to allow capital gains tax rollover for a policyholder/member of a mutual insurance company who becomes absolutely entitled to a share held on trust as part of a demutualisation and exchanged by the trustee under scrip for scrip rollover for another share.

Schedule 12 makes a number of technical amendments to the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and other tax-related legislation.

Retrospective commencement

Schedule 1

By virtue of the table in subclause 2(1), the amendments proposed by Schedule 1 are to have commenced on 1 July 2001. Unfortunately, the Explanatory Memorandum does not indicate whether that retrospectivity would prejudice any person. The Committee, therefore, **seeks the Treasurer's advice** as to whether these provisions will adversely affect any person.

Pending the Treasurer's response, 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 commencement

Schedule 4, Part 1

By virtue of the table in subclause 2(1), the amendments proposed by Part 1 of Schedule 4 are to have commenced on 1 July 2000. However, the Explanatory Memorandum indicates that those amendments will have no financial impact.

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

Retrospective commencement

Schedule 9, items 10, 13, 14 and 21

By virtue of the table in subclause 2(1), the amendments proposed in items 10, 13, 14 and 21 of Schedule 9 will commence at various dates prior to Assent. However, those amendments are beneficial to those taxpayers who have donated to the charities concerned.

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

Retrospective commencement Schedule 10

By virtue of the table in subclause 2(1), the amendments proposed by Schedule 10 would commence on 17 November 1999. Paragraph 9.18 of the Explanatory Memorandum indicates that at least one entity has already acted in reliance on these amendments being enacted. The Committee, therefore, **seeks the Treasurer's advice** as to whether these provisions will adversely affect any person.

Pending the Treasurer's response, 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 commencement Schedule 12

By virtue of the table in subclause 2(1), many of the amendments proposed by Schedule 12 will commence on a variety of dates prior to Assent. The Explanatory Memorandum does not give any assurance that this retrospectivity will not prejudice any person. The Committee, therefore, **seeks the Treasurer's advice** as to whether these provisions will adversely affect any person.

Pending the Treasurer's response, 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 3

By virtue of item 4 of Schedule 3, the amendments proposed by that Schedule will apply from 1 July 2000. However, the Explanatory Memorandum indicates that those amendments will have no financial impact.

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

Retrospective application Schedule 8, Part 2

By virtue of item 8 of Schedule 4, the amendments proposed by Part 2 of that Schedule will apply from 22 May 2001. The Explanatory Memorandum does not give any assurance that this retrospective application would not prejudice any person. The Committee, therefore, **seeks the Treasurer's advice** as to whether these provisions will adversely affect any person.

Pending the Treasurer's response, 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 5

By virtue of item 2 of Schedule 5, the amendments proposed by that Schedule will apply from 1 July 2000. However, the Explanatory Memorandum indicates that these amendments will have no financial impact.

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

**Retrospective application
Schedule 6**

By virtue of item 3 of Schedule 6, the amendments proposed by that Schedule will apply from the 2000-2001 year of income. However, the Explanatory Memorandum indicates that these amendments will have no financial impact.

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

**Retrospective application
Schedule 7**

By virtue of item 3 of Schedule 7, the amendments proposed by that Schedule will apply “to all income years, whether beginning before or after this item commences.” The Explanatory Memorandum indicates that the amendments “are beneficial to taxpayers”.

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

**Retrospective application
Schedule 11**

By virtue of item 5 of Schedule 11, the amendments proposed by that Schedule will apply from 10 December 1999. However, the Explanatory Memorandum indicates that those amendments will have no financial impact.

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

Telecommunications Interception Legislation Amendment Bill 2002

This bill was introduced into the House of Representatives on 12 March 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Telecommunications (Interception) Act 1979* to:

- legislatively clarify the application of the Act to telecommunications services;
- include offences constituted by conduct involving acts of terrorism as offences in relation to which a telecommunications interception warrant may be sought;
- include child pornography related and serious arson offences as offences in relation to which a telecommunications interception warrant may be sought;
- extend the purposes for which lawfully obtained information may be communicated and used;
- include the Royal Commission into Police Corruption as an eligible authority for the purposes of the Act to permit the Commission to receive relevant intercepted information in certain circumstances;
- correct a number of unforeseen consequences of the *Telecommunications (Interception) Legislation Amendment Act 2000*;
- clarify the operation of warrants authorising entry onto premises issued under section 48;
- reflect the merger of the Queensland Crime Commission and Criminal Justice Commission to form the Crime and Misconduct Commission; and
- effect a number of minor corrections to the Act, including amending definitions, headings and references to State legislation.

The bill also amends the *Customs Act 1901* to enable Federal Magistrates to be nominated to be judges for the purposes of the listening device provisions

of the Act, consistent with the position under the *Telecommunications (Interception) Act 1979* and *Australian Federal Police Act 1979*.

Retrospective commencement

Schedule 1, items 23, 9, 33, 37 and 39

By virtue of subclause 2(1), the amendments proposed by items 23, 29, 33, 37 and 39 of Schedule 1 will commence retrospectively on 22 June 2000. However, the Explanatory Memorandum observes that the purpose of these amendments is to correct drafting errors subsequently discovered in the *Telecommunications (Interception) Legislation Amendment Act 2000*. The Explanatory Memorandum goes on to assure readers that the “amendments will not have any adverse effect on any person.”

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

Telephone interceptions

Schedule 2, item 21

By virtue of the amendment proposed in item 21 of Schedule 2 to this bill, the Royal Commission into Police Corruption, established by the Governor of Western Australia, is to become another eligible authority for the purposes of the Principal Act. While it is no doubt proper to allow that Commission and members of its staff to intercept telephone calls and other communications, this represents yet another extension of the operation of this Act.

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.

Veterans' Entitlements Amendment (Gold Card Extension) Bill 2002

This bill was introduced into the House of Representatives on 14 March 2002 by the Minister for Veterans' Affairs. [Portfolio responsibility: Veterans' Affairs]

The bill proposes to amend the *Veterans Entitlements Act 1986* extend full Repatriation Health care entitlement (Gold Card) to Australian veterans who are aged 70 or over and who have post-World War 2 qualifying service.

The Committee has no comment on this bill.

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

REPORT NO 3/2002

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

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

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

TABLE

<i>Bill/Act</i>	<i>Section/Subsection</i>	<i>Offence</i>	<i>Penalty</i>
<i>Aviation Legislation Amendment Bill 2002</i>	Proposed new subsection 20(4)	Failure to provide aviation security information	45 penalty units
<i>Border Security Legislation Amendment Bill 2002</i>	Proposed new subsection 213A(5)	Failure to provide information to Customs about people working in restricted areas	30 penalty units
	Proposed new section 64ACD	Intentionally fails to report on passengers and crew	120 penalty units
		Fails to report on passengers and crew	60 penalty units

<i>Migration Act 1958</i>	Proposed new subsection 245N(1)	Intentionally fails to report on passengers and crew	120 penalty units
		Fails to report on passengers and crew	60 penalty units
<i>Proceeds of Crime Bill 2002</i>	Clause 195	Failing to attend an examination	Imprisonment for 6 months or 30 penalty units, or both
	Clause 196	Failure to comply in relation to appearance at an examination	Imprisonment for 6 months or 30 penalty units, or both
	Clause 218	Failure to comply with a notice	Imprisonment for 6 months or 30 penalty units, or both
	Clause 224	Failure to comply with monitoring order	Imprisonment for 6 months and/or 30 penalty units
	Clause 273	Failure to provide information	Imprisonment for 6 months and/or 30 penalty units
<i>Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002</i>	Proposed new section 34W	Failure to comply with a notice	Imprisonment for 6 months and/or 30 penalty units

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

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

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

Jurisdiction of Courts Legislation Amendment Bill 2002

This bill amends the *Federal Court of Australia Act 1976* and the *Judiciary Act 1903* to allow the Australian Capital Territory to establish an ACT Court of Appeal. The ACT Assembly has passed legislation which provides for an ACT Court of Appeal to hear appeals from the ACT Supreme Court. The provisions in this bill complement the ACT legislation.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2002

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2001							
Air Passenger Ticket Levy (Collection) Act 2001	14(26.9.01)	20.9.01	26.9.01	Transport and Regional Services	27.9.01	31.12.01	1(20.2.02)
Border Protection (Validation and Enforcement Powers) Act 2001	13(20.9.01)	18.9.01	20.9.01	Immigration and Multicultural Affairs	20.9.01	6.02.02	1(20.2.02)
Defence Legislation Amendment (Application of Criminal Code) Act 2001	12(19.9.01)	29.8.01	24.9.01	Defence	20.9.01	8.11.01	1(20.2.02)
Electoral and Referendum Amendment Act (No. 1) 2001	4(28.3.01)	7.3.01	2.4.01	Finance and Administration	29.3.01	4.5.01	6(23.5.01)
Environment and Heritage Legislation Amendment Bill (No. 2) 2000 [2001]	1(7.2.01) 8(27.6.01)		7.12.00	Environment and Heritage	24.5.01	10.1.02	1(20.2.02)
					Further response required		
Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001	9(8.8.01)	25.6.01	24.5.01	Environment and Heritage re Amendments	28.6.01	20.8.01	10(22.8.01)
					23.8.01	26.9.01	1(20.2.02)
Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001	10(22.8.01)	8.8.01	23.8.01	Health and Aged Care	23.8.01	18.10.01	1(20.2.02)
					23.8.01	8.10.01	1(20.2.02)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<i>Migration Amendment (Excision from Migration Zone) Act 2001</i>	13(20.9.01)	18.9.01	20.9.01	Immigration and Multicultural Affairs	20.9.01	6.2.02	1(20.2.02)
<i>Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001</i>	13(20.9.01)	18.9.01	20.9.01	Immigration and Multicultural Affairs	20.9.01	6.2.02	1(20.2.02)
<i>Migration Legislation Amendment Act (No. 6) 2001</i>	13(20.9.01)	28.8.01	24.9.01	Immigration and Multicultural Affairs	20.9.01	6.2.02	1(20.2.02)
<i>Taxation Laws Amendment Act (No. 5) 2001</i>	11(29.8.01)	23.8.01	26.9.01	Treasurer	30.8.01	18.9.01	1(20.2.02)
<i>Trade Practices Amendment (Telecommunications) Act 2001</i>	10(22.8.01)	9.8.01	19.9.01	Communications, Information Technology and the Arts	23.8.01 20.9.01	17.9.01 25.9.01	12(19.9.01) FRR 13(26.9.01) 1(20.2.02)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills being dealt with in 2002							
Airports Amendment Bill 2002	1(20.2.02)	14.2.02		Transport and Regional Services	21.2.02		
<i>Coal Industry Repeal Act 2001</i>	1(20.2.02)	28.6.00	5.4.01	Industry, Science and Resources	21.2.02	11.3.02	2(13.3.02)
Coal Industry Repeal (Validation of Proclamation) Bill 2002	2(13.3.02)	20.2.02		Industry, Tourism and Resources	14.3.02		
Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002	1(20.2.02)	13.2.02	11.3.02	Attorney-General	21.2.02 14.3.02	8.3.02 19.3.02	2(13.3.02) 3(20.3.02)
Higher Education Legislation Amendment Bill (No. 1) 2002	1(20.2.02)	14.2.02	13.3.02	Education, Science and Training		12.3.02	2(13.3.02)
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002	2(13.3.02)	21.2.02		Finance and Administration	14.3.02		
Therapeutic Goods Amendment Bill (No. 1) 2002	2(13.3.02)	20.2.02		Health and Ageing	14.3.02	19.3.02	3(20.3.02)
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2002	2(13.3.02)	20.2.02		Transport and Regional Services	14.3.02		
Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2002	2(13.3.02)	21.2.02		Veterans' Affairs	14.3.02	19.3.02	3(20.3.02)
Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002	2(13.3.02)	20.2.02		Employment and Workplace Relations	14.3.02		

