

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

Alert Digest

No. 8 of 2003

13 August 2003

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Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator T Crossin (Chair)
Senator B Mason (Deputy Chairman)
Senator G Barnett
Senator D Johnston
Senator J McLucas
Senator A Murray

Terms of Reference

Extract from **Standing Order 24**

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

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

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

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

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ACIS Administration Amendment Bill 2003

[Introduced into the House of Representatives on 25 June 2003. Portfolio: Industry, Tourism and Resources]

Introduced with the Customs Tariff Amendment (ACIS) Bill 2003, the bill amends the *ACIS Administration Act 1999* to:

- extend the Automotive Competitiveness and Investment Scheme from its initial finishing date in 2005 to 2015;
- split funding from the scheme into two separate pools in accordance with an industry proposal made to government;
- establish a research and development fund of \$150 million within the motor vehicle producers' pool of funding to encourage investment in high-end research and development activities; and
- provide for the Minister, from 2006 onwards, to disclose the identity of a participant in the scheme and the amount of assistance a participant receives.

The bill also contains transitional and application provisions.

The Committee has no comment on this bill.

Age Discrimination Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Attorney-General]

The bill prohibits age discrimination in key areas of public life including employment, education, accommodation, administration of Commonwealth laws and programs, and requests for information.

The bill also provides exemptions for circumstances where distinctions are legitimately based on age. These include positive discrimination, superannuation, insurance, pensions, and acts done in compliance with specified Commonwealth, state and territory laws, awards and agreements.

The bill also confers related functions on the Human Rights and Equal Opportunity Commission, contains a regulation-making power, and binds the states and territories.

Delegation of powers

Paragraph 55(c)

Paragraph 55(c) of this bill would permit the Human Rights and Equal Opportunities Commission to delegate 'all or any of the powers and functions conferred on it' by this measure to 'another person or body of persons.' The Explanatory Memorandum does not provide any reason for this provision.

The Committee has regularly commented on provisions such as this which grant to a statutory body the unfettered discretion to delegate all or any of its powers to anyone at all. Generally, the Committee would expect to see a limit set either on the sorts of powers that might be delegated, or on the categories of people to whom those powers might be delegated. The Committee therefore **seeks the Attorney-General's advice** as to the reason for the breadth of the discretion contained in this provision.

Pending the Attorney-General's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon

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

Age Discrimination (Consequential Provisions) Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Attorney-General]

Introduced with the Age Discrimination Bill 2003, the bill proposes consequential amendments required following commencement of the proposed *Age Discrimination Act 2003* and the *Australian Human Rights Commission Legislation Act 2003*.

The Committee has no comment on this bill.

Australian Protective Service Amendment Bill 2003

[Introduced into the Senate on 26 June 2003. Portfolio: Justice and Customs]

The bill amends the *Australian Protective Service Act 1987* to confer additional powers on protective service officers undertaking protective security functions to request personal identification details and information; to stop, detain and search certain persons for security purposes, and to seize things found during such a search.

Search without warrant

Schedule 1, item 1

Proposed new sections 18B and 18C of the *Australian Protective Service Act 1987*, to be added by item 1 of Schedule 1 to this bill, would permit a protective service officer, in some circumstances, to stop and search a person, without either obtaining a warrant for that purpose, or formally arresting the person. Regrettably, the Explanatory Memorandum does not indicate whether consideration was given to the Committee's *Fourth Report of 2000* on powers of search and seizure in formulating these provisions. The Committee **seeks the Minister's advice** as to whether consideration was given to the principles, conclusions and recommendations contained in that report.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003

[Introduced into the House of Representatives on 25 June 2003. Portfolio: Transport and Regional Services]

The bill amends the *Civil Aviation Act 1988* and the *Civil Aviation (Carriers' Liability) Act 1959* to permit the mutual recognition of certain aviation-related safety certification between Australia and New Zealand.

Commencement on proclamation Schedule 1

By virtue of item 2 in the table to subclause 2(1), the amendments proposed to be made by Schedule 1 to this bill would commence on Proclamation, with no limit stated in the bill as to the time when the provisions must either commence in any event, or be regarded as repealed. The Explanatory Memorandum complies with paragraph 21 of Drafting Direction 2002, No. 2, in that the Memorandum observes that the delayed commencement is 'to enable the finalisation of the inter-governmental agreement/arrangement on mutual recognition by the Governments of Australia and New Zealand and completion of the operational arrangements between regulating agencies.'

The Committee notes that the Minister, in his second reading speech, suggests that commencement is dependent upon complementary legislation being enacted in New Zealand. However, the difficulty which the Committee has with a provision such as item 2 in the table to subclause 2(1) is that it grants to the Executive an unfettered discretion as to the timing of the commencement. The Committee therefore **seeks the Minister's advice** as to whether it would not be possible to include a provision to the effect that, if Schedule 1 has not commenced within (say) one year of Assent, it shall be deemed to have been repealed at that time.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate

legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Communications Legislation Amendment Bill (No. 2) 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Communications, Information Technology and the Arts]

The bill amends the *Telecommunications Act 1997*, the *Australian Security Intelligence Organisation Act 1979* and the *Administrative Decisions (Judicial Review) Act 1977* to enhance the security of Australia's telecommunication services and networks and to improve existing arrangements in relation to call data disclosure and interception services.

Non-reviewable decisions **Schedule 1, item 10**

Proposed new section 58A of the *Telecommunications Act 1997*, to be inserted by item 10 of Schedule 1 to this bill, would give to the Attorney-General, after consulting the Prime Minister and the Minister administering the Telecommunications Act, a discretion to direct the Australian Communications Authority to refuse to grant a carrier licence to a person. Such a decision by the Attorney-General can only be made if he or she considers that the grant of a licence would be 'prejudicial to security', but there is no means by which that basis for a decision can be tested before any independent body. The *Telecommunications Act 1997* does not provide for a review on the merits of such a decision before the Administrative Appeals Tribunal, and item 1 of Schedule 1 to this bill proposes to amend the *Administrative Decisions (Judicial Review) Act 1977* to remove from the possibility of review under that Act a decision made under the new section 58A.

The Committee **seeks the Minister's advice** as to whether this is the effect of the provision and, if so, the reason for excluding review of such a decision.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable

decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Non-reviewable decisions

Schedule 1, item 27

Proposed new subsection 581(3) of the *Telecommunications Act 1997*, to be inserted by item 27 of Schedule 1 to this bill, would give to the Attorney-General, after consulting the Prime Minister and the Minister administering the Telecommunications Act, a discretion to direct a carriage service provider to deny carriage services to a particular person. As with proposed new section 58A, such a decision by the Attorney-General can only be made if he or she considers that the use of carriage services would be 'prejudicial to security', but there is no means by which that basis for a decision can be tested before any independent body.

The Committee **seeks the Minister's advice** as to whether this is the effect of the provision and, if so, the reason for excluding review of such a decision.

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

Customs Tariff Amendment (ACIS) Bill 2003

[Introduced into the House of Representatives on 25 June 2003. Portfolio: Justice and Customs]

Introduced with the ACIS Administration Amendment Bill 2003, the bill amends the *Customs Tariff Act 1995* to:

- reduce customs duty rates for passenger motor vehicles and certain components, from 10 per cent to 5 per cent; and
- implement a related amendment to item 59 (used and second-hand passenger motor vehicles) in Schedule 4 of the Tariff.

The Committee has no comment on this bill.

Education Services for Overseas Students (Registration Charges) Amendment Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Education, Science and Training]

The bill creates a new fee structure to replace the current tiered charges structure for the compulsory annual registration charge payable by all providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students. The base fee and charge per student enrolment will replace the existing scale of fees which places a comparatively greater burden on providers with small numbers of overseas students.

Unrestricted discretion Schedule 1, item 2

Proposed new subsection 5A(1) of the Principal Act, to be substituted by item 2 of Schedule 1 to this bill, would permit the Governor-General to vary the amount of the registration charge set by section 5 of the Act. There is no reference in the bill itself, or in the Explanatory Memorandum, to any limit being placed on the amount of charge which the Governor-General may determine, giving the impression of an unrestricted discretion being granted to the Executive. However, subsections 5A(4) and (5) of the Principal Act require the Minister to table any determinations made by the Governor-General in both Houses of the Parliament. The determinations do not take effect until there is a positive resolution from each House to that effect. Those provisions were considered by the Committee in *Alert Digest No. 12 of 2000* and the *Seventeenth Report of 2000*.

The Committee considers that the Explanatory Memorandum would have been more useful if it had clearly set out the limitations placed on what might otherwise appear to be an unrestricted discretion.

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

Family and Community Services (Closure of Student Financial Supplement Scheme) Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Family and Community Services]

The bill closes the Student Financial Supplement Scheme to new loan applications from tertiary students from 1 January 2004, but continues loan repayment arrangements for existing loans.

The Committee has no comment on this bill.

Financial Services Reform Amendment Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Treasury]

The bill amends the *Corporations Act 2001* to clarify and amend various aspects of the regulatory framework governing the licensing, conduct and disclosure of providers of financial services, and the licensing of financial markets and clearing and settlement facilities, as contained in Chapter 7 and related provisions of the Act and following the commencement of the *Financial Services Reform Act 2001* on 11 March 2002.

The bill also proposes consequential amendments to the *Income Tax Assessment Act 1997* and the *Retirement Savings Accounts Act 1997*, and contains transitional provisions.

Delegation of legislative power

Parliamentary scrutiny

Schedule 1, item 42

Proposed new section 926A of the *Corporations Act 2001*, to be inserted by item 42 of Schedule 1 to this bill, would permit the Australian Securities and Investments Commission to exempt persons or classes of persons, or products or classes of products, from compliance with various provisions of that Act, and to modify the terms of the Act in various ways. This legislative power is granted without any provision for oversight by the Parliament.

The Committee notes that proposed new sections 926B (see item 42), 951C (see item 51), 992C (see item 69) and 1045A (see item 97) all provide for exemptions and modifications to be made to the Act by regulation, ensuring that such measures are subject to the scrutiny of the Regulations and Ordinances Committee.

In respect of proposed new section 926A, the Committee **seeks the Minister's advice** as to why such a power has been conferred on the Australian Securities and Investments Commission, and whether the powers of exemption and modification granted by proposed new section 926A should not be exercised by regulation rather than by the Commission.

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

Freedom of Information Amendment (Open Government) Bill 2003

[Introduced into the Senate on 25 June 2003 by Senator Murray as a private senator's bill.]

The bill amends the *Freedom of Information Act 1982* and the Freedom of Information (Fees and Charges) Regulations to extend access to information in the possession of the Commonwealth and to create an independent position of Freedom of Information Commissioner, to be held by the Commonwealth Ombudsman.

The Committee has no comment on this bill.

Fuel Quality Standards Amendment Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Environment and Heritage]

The bill amends the *Fuel Quality Standards Act 2000* to establish a national regime for the labelling of fuels at the point of sale and to make a number of the existing offences under the Act ‘strict liability’ offences.

The Committee has no comment on this bill.

Governor-General Amendment Bill 2002

[Introduced into the House of Representatives on 24 June 2003. Portfolio: Prime Minister]

The bill amends the *Governor-General Act 1974* to set the salary for the new Governor-General.

This bill was passed by the Senate on 26 June 2003 and enacted on 3 July 2003.

The Committee has no comment on this Act.

Higher Education Legislation Amendment Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Education, Science and Training]

Schedule 1 to the bill amends the *Higher Education Funding Act 1988* to:

- set a new maximum aggregate funding level in section 17 of the Act for 2002 and 2003;
- set new maximum funding amounts in Part 2.2 of the Act for 2003; and
- set a new maximum aggregate grant amount for special capital projects in section 27 of the Act.

Schedule 2 to the bill amends the *Australian Research Council Act 2001* to:

- update the offices of members of the Australian Research Council Board to reflect the current Administrative Arrangement Orders and broaden Board members' disclosure of interest requirements;
- permit the CEO to be included on a committee if required;
- appropriate funding by financial year rather than calendar year; and
- provide the Minister greater flexibility in determining the funding split between research programs and extend ministerial delegations.

The bill also contains transitional and saving provisions.

The Committee has no comment on this bill.

Legislative Instruments Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Attorney-General]

The bill establishes a regime for the registration, tabling and scrutiny of Commonwealth legislative instruments. Key elements of the proposed regime include:

- defining the term ‘legislative instrument’;
- encouraging rule-makers to consult before instruments are made and to apply high standards in the drafting of legislative instruments;
- establishing the Federal Register of Legislative Instruments;
- parliamentary scrutiny through tabling and disallowance provisions;
- gazettal and registration requirements;
- delegation of certain ministerial powers;
- automatic repeal (sunset) of legislative instruments after a period of approximately ten years, except for a limited range of instruments; and
- review of the operation of the legislation (3 years after commencement) and of the sunset provisions (12 years after commencement).

The bill also contains a regulation-making power.

Commencement

Subclause 2(4)

By virtue of subclause 2(4), the whole of the bill (other than clauses 1 and 2) is to commence, at the latest, on the first day of January or of July after the period ending 12 months after Assent. The Committee notes that the Explanatory Memorandum does not comply with paragraph 18 of Drafting Direction 2002, No. 2 and explain the reason for the period of delayed commencement being longer than 6 months. The Committee therefore **seeks**

the Attorney-General's advice as to the reason for the delayed commencement.

Pending the Attorney-General's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Attorney-General]

Introduced with the Legislative Instruments Bill 2003, the bill makes transitional and consequential amendments to 20 Acts arising from the enactment of the proposed *Legislative Instruments Act 2003*. These matters include:

- applying the *Legislative Instruments Act 2003* to rules of court;
- repealing sections 46 and 46A of the *Acts Interpretation Act 1901* and replacing them with provisions dealing with the construction and disallowance of non-legislative instruments;
- repealing sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901*; and
- repealing the *Statutory Rules Publication Act 1903*.

The bill also includes a limited retrospective regulation-making power and transitional provisions.

Retrospective regulation Subclause 5(2)

By virtue of subclause 5(2), regulations may be made under this bill which will have retrospective effect. However, such regulations cannot have effect at a time prior to the commencement of that clause, and such regulations must only prescribe matters ‘of a transitional nature’.

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

Migration Legislation Amendment (Identification and Authentication) Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Immigration and Multicultural and Indigenous Affairs]

The bill amends the *Migration Act 1958* to include a legislative framework for the collection of personal identifiers, such as fingerprints, photographs, measurements, recordings, signatures, iris scans, and other personal identifiers as prescribed in the regulations from non-citizens at key points in the immigration process.

The bill also includes provisions intended to protect non-citizens who are required to provide their personal identifiers, and prescribes general rules that must be followed when carrying out an identification test on a non-citizen, or accessing and disclosing information.

The Committee has no comment on this bill.

Non-Proliferation Legislation Amendment Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Foreign Affairs]

Schedule 1 to the bill amends the *Nuclear Non-Proliferation (Safeguards) Act 1987* to strengthen procedures for the protection of, and application of non-proliferation safeguards to, nuclear material, facilities and associated information and makes consequential amendments to the *Australian Protective Service Act 1987* and the *Australian Radiation Protection and Nuclear Safety Act 1998*.

Schedule 2 to the bill amends the *Comprehensive Nuclear-Test-Ban Treaty Act 1998* to enable Australia to enact legislation banning nuclear weapons tests ahead of entry into force of the Comprehensive Nuclear Test-Ban Treaty.

Schedule 3 to the bill amends the *Chemical Weapons (Prohibition) Act 1994*, the *Comprehensive Nuclear-Test-Ban Treaty Act 1998* and the *Nuclear Non-Proliferation (Safeguards) Act 1987* to provide for the implementing office and its Director to be referred to by a name or title specified by the Minister.

The Committee has no comment on this bill.

Social Security Amendment (Supporting Young Carers) Bill 2003

[Introduced into the Senate on 26 June 2003 by Senator Lees as a private senator's bill.]

The bill amends the *Social Security Act 1991* to extend the eligibility of persons under 25 years of age to the carer payment where they are working or studying more than 20 hours per week.

The Committee has no comment on this bill.

States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Education, Science and Training]

The bill amends the *States Grants (Primary and Secondary Education Assistance) Act 2000* to provide:

- additional capital grant funding allocation figures for non-government schools for 2004 to 2007;
- additional funding for 2004 for the Strategic Assistance for Improving Student Outcomes programme; and
- additional funding for 2003 and continued funding 2004 for the National Literacy and Numeracy Strategies and Projects programme.

The Committee has no comment on this bill.

Statistics Legislation Amendment Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Treasury]

The bill amends the *Australian Bureau of Statistics Act 1975*, the *Census and Statistics Act 1905* and the Statistics Regulations to rectify technical deficiencies which arose as an unintended consequence of previous amendments to the Act. The amendments:

- confirm the Statistician's power to engage supplementary staff under regulations;
- confirm that staff engaged under regulations meet the definition of ABS 'officer' and are subject to the secrecy provisions and other obligations of the *Census and Statistics Act 1905*; and
- allow the Statistician to make arrangements to second persons from both Australian and foreign authorities.

The Committee has no comment on this bill.

Student Assistance Amendment Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Education, Science and Training]

The bill amends the *Student Assistance Act 1973*:

- to close the Student Financial Supplement Scheme to new applications from ABSTUDY students from 1 January 2004 and continue loan repayment arrangements for existing loans; and
- to extend the regulation-making power relating to notifications.

Regulations

Schedule 2, item 1

Proposed new subsection 48(2) of the *Student Assistance Act 1973*, to be inserted by item 1 of Schedule 2 to this bill, would permit the making of regulations under that Act which may ‘apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time.’ The Committee has previously commented on provisions allowing regulations to incorporate material as it exists ‘from time to time’, noting especially the difficulty of ensuring effective parliamentary scrutiny where such material is incorporated.

Although the Explanatory Memorandum states that the purpose of this provision is to ‘eliminate the need to make new regulations under the Act whenever guidelines for the non-statutory ABSTUDY and Assistance for Isolated Children schemes are altered’, the new subsection, as drafted, goes very much wider than that. The Committee therefore **seeks the Minister’s advice** as to why the new subsection was drafted in such broad terms, and whether it could not be expressed to more closely give effect to its avowed purpose.

Pending the Minister’s advice, the Committee draws Senators’ attention to the provision, as it may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny,

in breach of principle 1(a)(v) of the Committee's terms of reference.

Taxation Laws Amendment Bill (No. 7) 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Treasury]

Schedule 1 to the bill amends the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to provide tax exemptions for Australian residents receiving Second World War compensation payments from overseas funds.

Schedules 2, 3 and 9 amend the *Income Tax Assessment Act 1997* to update and simplify the listing of specifically-listed deductible gift recipients; allow deductions for cash donations to be spread over a period of up to 5 years; and provide an automatic capital gains tax roll-over for financial services providers during the financial services reform transitional period.

Schedule 4 amends the *Crimes (Taxation Offences) Act 1980* to correct a technical deficiency with the deeming mechanism; and clarify the interpretation of offences under the Criminal Code.

Schedule 5 amends the *Income Tax (Transitional Provisions) Act 1997* to allow certain entities with foreign losses to be excluded from a consolidated group for a transitional period.

Schedule 6 amends the *A New Tax System (Goods and Services Tax) Act 1999* to ensure that certain supplies made as a result of the consolidation regime are not taxable supplies.

Schedule 7 amends the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to include imputation rules for life insurance companies.

Schedule 8 amends the *Income Tax Assessment Act 1936* to exclude from the overseas forces tax offset provisions periods of service for which an income tax exemption for foreign employment income is available.

Schedule 10 amends the *Income Tax Assessment Act 1997* to treat foreign hybrids as partnerships.

Schedule 11 makes technical amendments to eight Acts to repeal redundant provisions and correct terminology, section references and cross references.

The bill also contains application and transitional provisions.

Retrospective commencement Schedule 5

By virtue of item 6 in the table to subclause 2(1) of this bill, the amendments proposed in Schedule 5 would commence ‘immediately after the commencement of Schedule 16 to the *New Business Tax System (Consolidation and Other Measures) Act 2003*’ on 1 July 2002. However, the Explanatory Memorandum notes that the amendments will have a slight but insignificant impact on revenue.

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

Retrospective commencement Schedule 11, items 11 to 18

By virtue of items 11 to 18 in the table to subclause 2(1) of this bill, the amendments proposed in Schedule 11 would commence at various times prior to the commencement of this bill. However, the Explanatory Memorandum notes that none of the amendments ‘affect the rights or liabilities of taxpayers.’

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

Retrospective application
Schedule 1, item 4

By virtue of item 4 in Schedule 1 to this bill, the amendments proposed in that Schedule would apply from the 2001-02 year of income. However, the Explanatory Memorandum notes that the amendments will cause an unquantifiable but insignificant cost to revenue.

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

Retrospective application
Schedule 6, item 11

By virtue of item 11 in Schedule 6 to this bill, the amendments proposed in that Schedule would apply from 1 July 2002. However, the Explanatory Memorandum notes that the amendments will have no financial impact.

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

Retrospective application
Schedule 8, item 3

By virtue of item 3 in Schedule 8 to this bill, the amendments proposed in that Schedule would apply from 1 July 2001. However, the Explanatory Memorandum notes that the amendments will have a negligible financial impact.

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

Retrospective application
Schedule 9, Part 1

By virtue of Part 2 of Schedule 9 to this bill, the amendments proposed in Part 1 of that Schedule would apply from 11 March 2002. However, the Explanatory Memorandum notes that the amendments are ‘expected to result in a small revenue deferral.’

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

Telstra (Transition to Full Private Ownership) Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Communications, Information Technology and the Arts]

The bill amends the *Telstra Corporation Act 1991* to repeal provisions requiring the Commonwealth to retain 50.1 per cent of the equity in Telstra Corporation Limited; to cease the requirement for Ministerial directions and reporting obligations once the Commonwealth's equity falls below certain percentages; and to provide for foreign ownership limits, regular independent reviews of regional telecommunications, and sale provisions.

The bill also amends the *Telecommunications Act 1997* to permit the imposition of licence conditions on Telstra to ensure that it maintains a local presence in regional, rural and remote parts of Australia; and makes transitional and consequential amendments to a further three Acts and five regulations.

The Committee has no comment on this bill.

Vocational Education and Training Funding Amendment Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Education, Science and Training]

The bill amends the *Vocational Education and Training Funding Act 1992* to:

- supplement 2003 funding in line with real price movements reflected in Treasury indices;
- appropriate general vocational education and training funding for 2004 and additional funding; and
- provide additional growth funding in 2004 for those states and territories that satisfy the provisions set out in the Australian National Training Authority Agreement for 2004-2006; and
- provide further funding for the ‘Australians Working Together’ program and elements of the ‘Recognising and Improving the Capacity of People with a Disability’ program.

The Committee has no comment on this bill.

Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003

[Introduced into the House of Representatives on 26 June 2003. Portfolio: Employment and Workplace Relations]

The bill amends the *Workplace Relations Act 1996* to repeal current offence provisions relating to the proceedings of the Australian Industrial Relations Commission and replace it with offences prohibiting a person from engaging in conduct which contravenes an order of the Commission; publishing a false allegation of misconduct affecting the Commission; or inducing a person to give false evidence to the Commission. The bill also prohibits the giving of false evidence to the Commission, updates penalties for offences, and inserts legislative notes to clarify offence provisions.

The Committee has no comment on this bill.

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

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

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

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

TABLE

Bill/Act	Section/Subsection	Offence	Penalty
Age Discrimination Bill 2003	Subclause 52(1)	Failure to provide information to a public authority	10 penalty units
Australian Protective Service Amendment Bill 2003	Proposed new section 18A	Failure to provide information to a public authority	20 penalty units

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE SENATE

(23-27 June 2003)

Australian Film Commission Amendment Bill 2003: On 26 June 2003 the Senate agreed to amend this bill. The amendment raises no issues within the Committee's terms of reference.

Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 [No. 2]: On 25 June 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference beyond those previously raised by the Committee in *Alert Digest No. 4 of 2003*.

Broadcasting Service Amendment (Media Ownership) Bill 2002: On 26 June 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Energy Grants (Credits) Scheme Bill 2003: On 24 June 2003 the Senate agreed to amend this bill. The Committee had raised the issue of determinations which could be made by the Commissioner of Taxation under clause 9 of the bill, a power which appeared to be legislative in character, but which was not subject to parliamentary scrutiny. The Minister's response seemed to suggest that the power was administrative in character, raising concerns that its exercise was not subject to merits review. Among the amendments agreed to by the Senate were provisions making the Commissioner's determinations disallowable and establishing a publication and review regime for draft and final determinations. The Committee commented on these matters in the *Third Report of 2003*.

Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2003: On 27 June 2003 a.m. the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Taxation Laws Amendment Bill (No. 4) 2003: On 26 June 2003 the Senate agreed to amend this bill. The amendment raises no issues within the Committee's terms of reference.

Taxation Laws Amendment Bill (No. 6) 2003: On 26 June 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Wheat Marketing Amendment Bill 2003: On 27 June 2003 a.m. the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2003

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE SOUGHT RECEIVED		REPORT NUMBER
		HOUSE	SENATE				
Bills dealt with in 2002							
Charter of the United Nations Amendment Act 2002	15(4.12.02)	14.11.02	5.12.02	Foreign Affairs	5.12.02	20.5.03	5(18.6.03)
Communications Legislation Amendment Bill (No. 1) 2002	7(21.8.02)	27.6.02	13.5.03	Communications, Information Technology and the Arts	22.8.02	16.9.02	4(14.5.03)
Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002	16(11.12.02)	4.12.02	12.12.02	Justice and Customs	17.12.02	11.2.03	2(5.3.03)
Criminal Code Amendment (Offences Against Australians) Act 2002	15(4.12.02)	12.11.02	13.11.02	Attorney-General	5.12.02	3.2.03	1(5.2.03)
Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002	3(20.3.02)	14.3.02		Special Minister of State	21.3.02	30.4.02	
Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002	15(4.12.02)		19.11.02	Senator Bartlett	5.12.02	4.2.03	1(5.2.03)
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2002	13(13.11.02)	21.10.02		Mr Katter	14.11.02		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Health Insurance Amendment (Professional Services Review and Other Matters) Bill 2002	15(4.12.02)	27.6.02	11.11.02	Health and Ageing re Amendments	5.12.02	31.1.03	1(5.2.03)
Intellectual Property Laws Amendment Bill 2002	7(21.8.02)	27.6.02	16.6.03	Industry, Tourism and Resources	22.8.02	17.9.02	5(18.6.03)
<i>International Criminal Court Act 2002</i>	7(21.8.02)	25.6.02	26.6.02	Attorney-General	22.8.02	13.1.03	1(5.2.03)
<i>International Criminal Court (Consequential Amendments) Act 2002</i>	7(21.8.02)	25.6.02	26.6.02	Attorney-General	22.8.02	13.1.03	1(5.2.03)
Migration Legislation Amendment Bill (No. 1) 2002	3(20.3.02)	13.3.02	5.2.03	Immigration and Multicultural and Indigenous Affairs	21.3.02	27.5.02	2(5.3.03)
<i>Quarantine Amendment Act 2002</i>	3(20.3.02)	14.3.02	21.3.02	Agriculture, Fisheries and Forestry	21.3.02	24.1.03	1(5.2.03)
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002	2(13.3.02)	21.2.02	19.6.02	Finance and Administration	14.3.02 20.6.02	16.5.02 20.12.02	5(19.6.02) 1(5.2.03)
Taxation Laws Amendment Bill (No. 8) 2002	16(11.12.02)	5.12.02		Treasury	12.12.02	30.1.03	
<i>Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Act 2002</i>	5(19.6.02)	14.5.02	19.6.02	Treasurer	20.6.02	24.12.02	1(5.2.03)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills introduced 2003							
A Better Future for Our Kids Bill 2003	6(18.6.03)	26.5.03		Ms Roxon MP	19.6.03		
Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2002	1(5.2.03)	12.12.02	3.3.03	Agriculture, Fisheries and Forestry	6.2.03	24.2.03	2(5.3.03)
Aviation Transport Security Bill 2003	5(14.5.03)	27.3.03		Transport and Regional Services	15.5.03	20.6.03	
Civil Aviation Legislation Amendment Bill 2003	5(14.5.03)	27.3.03		Transport and Regional Services	15.5.03	6.6.03	
Communications Legislation Amendment Bill (No. 3) 2003	7(25.6.03)	19.6.03		Communications, Information Technology and the Arts	26.6.03	6.8.03	
Criminal Code Amendment (Hezbollah External Terrorist Organisation) Bill 2003	6(18.6.03)	2.6.03		Mr Crean MP	19.6.03		
Criminal Code Amendment (Hizballah) Bill 2003	6(18.6.03)	29.5.03	16.6.03	Attorney-General	19.6.03		
Criminal Code Amendment (Terrorism) Bill 2002	1(5.2.03)	12.12.02	13.5.03	Attorney-General	6.2.03	7.5.03	4(14.5.03)
Customs Amendment Bill (No. 1) 2003	6(18.6.03)	15.5.03	16.6.03	Justice and Customs	19.6.03	24.6.03	6(25.6.03)
Dairy Industry Service Reform Bill 2003	2(5.3.03)	12.2.03	19.3.03	Agriculture, Fisheries and Forestry	6.3.03	9.4.03	4(14.5.03)
Electoral Amendment (Political Honesty) Bill 2003	5(14.5.03)		27.3.03	Senator Murray		28.4.03	4(14.5.03)
Energy Grants (Credits) Scheme Bill 2003	2(5.3.03)	13.2.03	26.3.03	Treasurer	6.3.03	24.3.03	3(26.3.03)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Family Law Amendment Bill 2003	2(5.3.03)	12.2.03		Attorney-General	6.3.03	20.7.03	
Late Payment of Commercial Debts (Interest) Bill 2003	3(19.3.03)		6.3.03	Senator Conroy	27.3.03		
National Transport Commission Bill 2003	6(18.6.03)	4.6.03		Transport and Regional Services	19.6.03	27.6.03	
Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003	6(18.6.03)	5.6.03		Environment and Heritage	19.6.03	4.8.03	
Petroleum (Timor Sea Treaty) Bill 2003	3(19.3.03)	5.3.03	6.3.03	Industry, Tourism and Resources	27.3.03	16.4.03	4(14.5.03)
Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003	3(19.3.03)	5.3.03	6.3.03	Industry, Tourism and Resources	27.3.03	16.4.03	4(14.5.03)
Private Health Insurance (Reinsurance Trust Fund Levy) Bill 2003	5(14.5.03)	26.3.03	23.6.03	Health and Ageing	15.5.03	18.6.03) 24.6.03)	6(25.6.03)
Taxation Laws Amendment Bill (No. 4) 2003	2(5.3.03)	13.2.03	19.3.03	Treasurer	6.3.03	18.3.03	3(26.3.03)
Textbook Subsidy Bill 2003	7(25.6.03)		18.6.03	Senator Stott Despoja	26.6.03	25.7.03	

