

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



Alert Digest

No. 1 of 2004

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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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A New Tax System (Commonwealth-State Financial Arrangements) Amendment Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Treasury]

The bill amends the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999* to:

- enable the Commissioner of Taxation to account for all Goods and Services Tax (GST) refunds when determining the amount of GST revenue collected and provided to the States;
- adjust the timing of final determinations to ensure that parties are able to comply with the requirements of the Act when making their determinations; and
- introduce a mechanism to allow payments to a State to be adjusted as that State comes off Budget Balancing Assistance, to fully account for any overestimate or underestimate of payments in a previous financial year.

The bill also contains application provisions.

The Committee has no comment on this bill.

Australian Crime Commission Amendment Bill 2003

[Introduced into the Senate on 4 December 2003. Portfolio: Attorney-General]

The bill amends the *Australian Crime Commission Act 2002* to facilitate the transition from the National Crime Authority to the Australian Crime Commission (ACC) by addressing transitional and other issues which have arisen since the establishment of the ACC on 1 January 2003.

The bill also amends the *Administrative Decisions (Judicial Review) Act 1977* to exempt certain decisions from being subject to requests for statements of reasons; and the *Australian Postal Corporation Act 1989* to allow disclosure of certain information and documents to the ACC.

Retrospectivity

Schedule 1, item 17

By virtue of item 3 in the table to subclause 2(1) of this bill, the amendments proposed in item 17 of Schedule 1 would commence immediately after the commencement of Schedule 1 to the *Australian Crime Commission Establishment Act 2002*. It appears from the Explanatory Memorandum that this Act commenced on 1 January 2003. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this case however, the Explanatory Memorandum advises that the proposed amendment fulfils an undertaking which the Minister gave to the Regulations and Ordinances Committee, in that it replaces Regulations which would have had retrospective effect. The amendment addresses transitional matters, providing for the transition of functions from the National Crime Authority to the Australian Crime Commission, and the retrospectivity does not appear to affect any person adversely.

The Committee notes, however, that on page 2 of the Explanatory Memorandum, the note on clause 2 states that the clause:

provides that all provisions commence on the day the Act receives the Royal Assent, other than items 1 to 16 of Schedule 1 (the transitional provisions) which have retrospective application from the date of the

establishment of the [Australian Crime Commission] – ie, from 1 January 2003.

That statement is incorrect, but would be correct if “items 1 to 16” were omitted and replaced by “item 17”. The Committee therefore draws the Minister’s attention to this cross-referencing error in the Explanatory Memorandum.

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

Decisions no longer subject to judicial review Schedule 2, item 1

Item 1 of Schedule 2 to this bill would amend the *Administrative Decisions (Judicial Review) Act 1977* to remove from the purview of that Act various decisions under the *Australian Crime Commission Act 2002*. The Australian Crime Commission has replaced the National Crime Authority, but decisions made by that Authority under its constituent Act were not removed from the purview of the *Administrative Decisions (Judicial Review) Act 1977*. The Committee consistently draws attention to provisions which explicitly exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. The Committee therefore **seeks the Minister’s advice** as to the reason for this proposed amendment to the 1977 Act.

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.

Australian Federal Police and Other Legislation Amendment Bill 2003

[Introduced into the Senate on 4 December 2003. Portfolio: Justice and Customs]

The bill amends the *Australian Federal Police Act 1979* to complete the integration of the Australian Protective Service into the Australian Federal Police (AFP) by:

- creating a new category of employee to be known as a ‘protective service officer’;
- establishing the powers and duties of protective services officers and special protective service officers; and
- including the protective service function as a function of the AFP in the Act.

The bill amends the *Australian Federal Police Act 1979* and *Crimes Act 1914* to enable the AFP to investigate State offences which have a federal aspect.

The bill makes consequential amendments to 11 other Acts and repeals the *Australian Protective Service Act 1987*. The bill also contains transitional and application provisions.

The Committee has no comment on this bill.

Broadcasting Services (Safeguarding Local Content and Local Audience Needs) Amendment Bill 2003

[Introduced into the Senate on 3 December 2003 by Senator Lees as a Private Senator's bill.]

The bill proposes to amend the *Broadcasting Services Act 1992* to require the Australian Broadcasting Authority to impose licence conditions on commercial television licensees in metropolitan areas, obliging them to provide locally-produced news, current affairs and other programming.

The Committee has no comment on this bill.

Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Treasury]

Introduced with the Corporations (Fees) Amendment Bill (No. 2) 2003, the bill amends the *Australian Securities and Investments Commission Act 2001*, the *Corporations Act 2001* and the *Trade Practices Act 1974* to introduce a regulatory framework governing audit oversight and independence to:

- improve disclosure outcomes;
- improve enforcement arrangements in the event of corporate misbehaviour; and
- enhance auditor independence.

The bill also contains application and transitional provisions.

The Committee has no comment on this bill.

Corporations (Fees) Amendment Bill (No. 2) 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Treasury]

Introduced with the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003, the bill amends the *Corporations (Fees) Act 2001* to provide for companies to be charged a fee for referring a matter to the newly established Financial Reporting Panel.

The Committee has no comment on this bill.

Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Justice and Customs]

Introduced with the Import Processing Charges (Amendment and Repeal) Amendment Bill 2003, the bill amends the *Customs Act 1901*, *Customs Legislation Amendment Act (No. 1) 2002*, *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001*, *Import Processing Charges (Amendment and Repeal) Act 2002* and *Migration Act 1958* to:

- make transitional arrangements for the handling of imports during the transition between the Customs legacy electronic systems and the new Integrated Cargo System;
- clarify the operation of the legislation that implements Customs international trade modernisation;
- enhance Customs border controls in relation to certain restricted goods such as firearms; and
- clarify cargo reporting requirements, record retention obligations, certain maritime powers, impoundment provisions and charges payable for in-transit cargo reports; and
- clarify the basis for calculating customs duties on certain alcoholic beverages.

The bill also repeals existing transitional provisions in respect of import entries for when the import provisions of the *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* commence and enacts transitional provisions for imports, arrival and cargo reporting.

Non-reviewable discretion
Proposed new section 77EA

Proposed new section 77EA of the *Customs Act 1901*, to be inserted by item 5 of Schedule 2 to this bill, would give to the Minister an apparently unfettered discretion to order Customs to detain certain goods, provided only that the goods come within the limits specified in proposed new subsection 77EA(2). Although the provision states that the Minister must consider that the detention is “in the public interest”, there is apparently no means by which the owner of those goods could challenge the exercise of the Minister’s discretion. The Committee consistently draws attention to provisions which explicitly exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. The Committee therefore **seeks the Minister’s advice** as to the reason for the grant of this discretion.

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.

Dairy Produce Amendment Bill 2003

[Introduced into the House of Representatives on 3 December 2003. Portfolio: Agriculture, Fisheries and Forestry]

Further to the *Dairy Industry Service Reform Act 2003*, the bill amends the *Dairy Produce Act 1986* to provide for the industry services body, Dairy Australia Limited, to:

- be fully indemnified, out of the assets of the Dairy Structural Adjustment Fund, for any liabilities incurred by it in managing and administering the fund; and
- have the power to enter into financial and other arrangements and perform contracts associated with risk management in the administration of the fund.

The bill also contains application provisions.

Retrospectivity Schedules 2 and 3

By virtue of item 3 in the table to subclause 2(1) of this bill, the amendments proposed in Schedules 2 and 3 would commence immediately after the commencement of Schedule 1 to the *Dairy Industry Service Reform Act 2003*. That table also indicates that this Act commenced on 1 July 2003. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Explanatory Memorandum observes that the retrospectivity is “necessary to ensure [that] the industry services body is not exposed or in any way impeded in its prudent management of the Dairy Structural Adjustment Fund and that there is no concern as to the nature of current contracts and financial arrangements.” The Explanatory Memorandum, however, does not provide any express assurance that the retrospectivity will not affect any person adversely. The Committee **seeks the Minister’s advice** as to whether an assurance can be provided that no person will be affected by the retrospectivity.

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.

Retrospective application
Schedule 1, item 3

By virtue of item 3 of Schedule 1, the amendments proposed in that Schedule would apply “in relation to liabilities arising before, on or after the commencement” of the item. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, as the Explanatory Memorandum makes clear, the purpose of those amendments is to provide an indemnity for the industry services body, and the amendments are therefore beneficial – at least to that body.

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

Disability Discrimination Amendment Bill 2003

[Introduced into the House of Representatives on 3 December 2003. Portfolio: Attorney-General]

The bill amends the *Disability Discrimination Act 1992* to remove the prohibition on disability discrimination on the grounds of a person's addiction to a prohibited drug and to make consequential amendments to the *Workplace Relations Act 1996* to include a cross-reference to the new provision.

The Committee has no comment on this bill.

Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Bill 2003

[Introduced into the Senate on 4 December 2003. Portfolio: Agriculture, Fisheries and Forestry]

The bill amends the *Fisheries Administration Act 1991* and *Fisheries Management Act 1991* to:

- strengthen deterrence and compliance regimes directed at foreign fishers illegally fishing in Australian waters;
- improve the operating efficiency and effectiveness of the Australian Fisheries Management Authority's management of Commonwealth fisheries resources; and
- promote the sustainable utilisation of Commonwealth fisheries and promote ecologically sustainable management of Commonwealth fisheries.

The Committee has no comment on this bill.

Flags Amendment (Eureka Flag) Bill 2003

[Introduced into the House of Representatives on 1 December 2003 by Ms King as a Private Member's bill.]

The bill proposes to amend the *Flags Act 1953* to recognise the Eureka Flag as an official flag of Australia.

The Committee has no comment on this bill.

Health Legislation Amendment (Medicare) Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Health and Ageing]

The bill amends the *Health Insurance Act 1973* to introduce three new safety-nets to cover 80% of the out-of-pocket costs incurred for out-of-hospital Medicare services above specified thresholds in a calendar year.

The bill also contains application provisions.

The Committee has no comment on this bill.

Import Processing Charges (Amendment and Repeal) Amendment Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Justice and Customs]

Introduced with the Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Bill 2003, the bill amends the *Import Processing Charges (Amendment and Repeal) Act 2002* to extend certain charges in the *Import Processing Charges Act 1997* and thereby ensure that cost recovery charges will continue to be payable during the transition between the Customs legacy electronic systems and the new Integrated Cargo System.

The Committee has no comment on this bill.

Industry Research and Development Amendment Bill 2003

[Introduced into the House of Representatives on 3 December 2003. Portfolio: Industry, Tourism and Resources]

The bill amends the *Industry Research and Development Act 1986* to remove the existing powers of the Industry Research and Development Board to commit and approve expenditure of Commonwealth funds and to clarify its role in the provision of advice on innovation programs in addition to research and development programs.

The bill also contains savings and transitional provisions.

The Committee has no comment on this bill.

Local Community Input into Renewable Energy Developments Bill 2003

[Introduced into the House of Representatives on 1 December 2003 by Mr Zahra as a Private Member's bill.]

The bill amends the *Renewable Energy (Electricity) Act 2000* to allow only those wind power stations that have been approved by local councils to issue renewable energy certificates.

The Committee has no comment on this bill.

Migration Legislation Amendment (Children and Families) Bill 2003

[Introduced into the House of Representatives on 1 December 2003 by Ms Roxon as a Private Member's bill.]

The bill amends the *Migration Act 1958* to release by Christmas 2003 all children detained in immigration detention centres.

The Committee has no comment on this bill.

Military Rehabilitation and Compensation Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Veterans' Affairs]

Introduced with the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003, the bill proposes a new military rehabilitation and compensation scheme for members of the Australian Defence Force (ADF) who suffer an injury or disease, or die, as a result of ADF service on or after commencement of the proposed Act.

The bill also contains a regulation-making power.

Ministerial discretion

Subclause 6(1)

Subclause 6(1) would permit the Minister for Defence to determine (in writing) whether any particular kind of service with the Defence Force is warlike or non-warlike. Such a determination is not reviewable in any way by the Parliament. The Explanatory Memorandum seeks to justify this lack of Parliamentary scrutiny on the basis the Minister's determinations "relate to decisions on national defence and security that are taken by the government of the day." The Committee therefore **seeks the Minister's advice** on whether a fuller explanation may be provided of the reason for such determinations not being made disallowable.

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 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.

**Abrogation of the privilege against self-incrimination
Clause 407**

Clause 407 would abrogate the privilege against self-incrimination for a person required to provide information under clause 406. At common law, people can decline to answer questions on the grounds that their replies might tend to incriminate them. Legislation which interferes with this common law entitlement trespasses on personal rights and liberties.

The Committee does not see this privilege as absolute, recognising that the public benefit in obtaining information may outweigh the harm to civil rights. One of the factors the Committee considers is the subsequent use that may be made of any incriminating disclosures. In this case clause 407 limits the circumstances in which information so provided is admissible in evidence in proceedings against the affected person. The Committee accepts that the provision appears to strike a reasonable balance between the competing interests of obtaining information and protecting individuals' rights.

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

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Veterans' Affairs]

Introduced with the Military Rehabilitation and Compensation Bill 2003, the bill makes transitional arrangements and amendments to 20 Acts consequential on the commencement of the new military rehabilitation and compensation scheme.

The bill also contains application provisions.

Retrospective effect Subclause 24(2)

Subclause 24(2) would permit the making of Regulations prescribing matters of a transitional nature which may have effect retrospectively prior to the date of the making of the Regulations. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, as the Explanatory Memorandum makes clear, such Regulations cannot have effect prior to the date on which the bill commences, and the subject of such Regulations is limited to matters of a transitional nature.

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

National Measurement Amendment Bill 2003

[Introduced into the House of Representatives on 3 December 2003. Portfolio: Industry, Tourism and Resources]

The bill amends the *National Measurement Act 1960* to:

- establish the National Measurement Institute, including the establishment of the position of Chief Metrologist, within the Department of Industry, Tourism and Resources and outline its functions and responsibilities; and
- dissolve the National Standards Commission.

The bill contains transitional provisions to provide for the transfer of assets and liabilities from the Commission and the Commonwealth Scientific and Industrial Research Organisation to the Commonwealth with a consequential amendment of the *Science and Industry Research Act 1949*.

The bill also clarifies the commencement date of the National Measurement Regulations 1999 and contains a regulation-making power and an application provision.

The Committee has no comment on this bill.

New International Tax Arrangements Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Treasury]

The bill amends the *Income Tax Assessment Act 1936* to:

- modify certain foreign investment fund rules;
- provide an interest withholding tax exemption for interest paid on certain debentures issued by eligible unit trusts;
- remove the need for certain income of a controlled foreign country resident to be included as notional assessable income; and
- prevent double taxation of royalties subject to withholding tax.

The bill also makes consequential amendments and contains application provisions.

The Committee has no comment on this bill.

Norfolk Island Amendment Bill 2003

[Introduced into the Senate on 4 December 2003. Portfolio: Local Government, Territories and Roads]

The bill amends the *Norfolk Island Act 1979* to align electoral arrangements in Norfolk Island more closely to those of other Australian parliaments, including those of the other self-governing Territories.

The Committee has no comment on this bill.

Privacy Amendment Bill 2003

[Introduced into the House of Representatives on 3 December 2003. Portfolio: Attorney-General]

The bill amends the *Privacy Act 1988* to:

- ensure that the protections under the Act are available to all persons irrespective of nationality;
- provide the private sector with greater flexibility in relation to privacy codes; and
- correct an unintended limitation on the provision of superannuation services to Commonwealth employees.

The bill also contains application provisions.

The Committee has no comment on this bill.

Racial and Religious Hatred Bill 2003

[Introduced into the House of Representatives on 1 December 2003 by Mr McClelland as a Private Member's bill.]

The bill amends the *Crimes Act 1914* to create new offences for acts of racial and religious hatred.

The Committee has no comment on this bill.

Racial and Religious Hatred Bill 2003 [No. 2]

[Introduced into the Senate on 1 December 2003 by Senator Ludwig as a Private Senator's bill.]

The bill amends the *Crimes Act 1914* to create new offences for acts of racial and religious hatred.

The Committee has no comment on this bill.

Royal Commission (House of Representatives Elections) Bill 2003

[Introduced into the House of Representatives on 1 December 2003 by Mr Organ as a Private Member's bill.]

The bill provides for the appointment of a royal commission of inquiry to determine an appropriate model and method of implementation of a system of proportional representation for House of Representatives elections.

The Committee has no comment on this bill.

Taxation Laws Amendment Bill (No. 9) 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Treasury]

The bill amends various Acts to give effect to several taxation measures. The main provisions:

- ensure that a GST registered supplier of an eligible first aid or life saving course is able to treat the supply as GST-free;
- provide for a transitional exclusion for certain indirect value shifts involving services;
- reduce the taxable value of a fringe benefit by the same amount as is made non-deductible to the provider by virtue of the personal services income provisions;
- and to ensure that an individual, working through a personal services entity, can deduct a net personal service income loss in an income year;
- specify the taxation treatment of sugar industry exit grants made under the Sugar Industry Reform Program;
- ensure the application of foreign resident withholding arrangements to certain alienated personal services payments;
- extend to mutual friendly societies that are life insurance companies when they restructure by demutualising, the provisions of the taxation framework applying to mutual insurance companies that have demutualised;
- allow, under certain circumstances, optional roll-over relief for balancing adjustments arising from the partial changeover of ownership of depreciating assets for partnerships operating under the simplified tax system;
- consolidate provisions relating to the making and revoking of certain choices;

- consolidate research and development provisions; and
- make minor technical corrections.

Schedules 1, 3, 4, 7 and 8 to the bill also contain application provisions.

Retrospectivity

Schedule 6

By virtue of item 3 in the table to subclause 2(1) of this bill, the amendments proposed in Schedule 6 would commence on 1 July 2000. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the Explanatory Memorandum makes clear that those amendments are beneficial to mutual friendly societies that are life insurance companies.

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

Retrospectivity

Schedule 1, item 6

By virtue of item 6 of Schedule 1 to this bill, the amendments proposed in that Schedule would apply from 1 July 2000. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, as the Explanatory Memorandum makes clear, those amendments are beneficial to taxpayers.

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

Retrospectivity
Schedule 3, Part 2

By virtue of Part 2 of Schedule 3 to this bill, the amendments proposed in that Schedule would apply from 1 July 2000. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the Explanatory Memorandum states that the financial impact of those amendments is nil.

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

Retrospectivity
Schedule 4, item 9

By virtue of item 9 of Schedule 4 to this bill, the amendments proposed in that Schedule would apply from 1 February 2003. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, as the Explanatory Memorandum makes clear, those amendments are beneficial to taxpayers.

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

Retrospectivity
Schedule 7, item 9

By virtue of item 9 of Schedule 7 to this bill, the amendments proposed in that Schedule would apply from 1 July 2001. As a matter of practice the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the Explanatory Memorandum indicates that those

amendments will have an “insignificant effect on revenue” and are therefore generally beneficial to taxpayers.

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

Taxation Laws (Clearing and Settlement Facility Support) Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Treasury]

The bill ensures that there are no taxation consequences as a result of a payment out of the National Guarantee Fund under section 891A of the *Corporations Act 2001*, which provides for payments to prescribed bodies to fund clearing and settlement facility support. The bill also contains an application provision.

The Committee has no comment on this bill.

Treasury Legislation Amendment (Professional Standards) Bill 2003

[Introduced into the House of Representatives on 4 December 2003. Portfolio: Treasury]

The bill amends the *Trade Practices Act 1974*, the *Australian Securities and Investments Commission Act 2001* and the *Corporations Act 2001* to establish a structure under which the Commonwealth, by prescribing State professional standards legislation (PSL) schemes via regulations, can support PSL by allowing liability under the relevant Commonwealth legislative provisions to be capped.

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
Military Rehabilitation and Compensation Bill 2003	Clauses 405 and 406	Failure to provide information to a public authority	10 penalty units

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (1 to 4 December 2003)

Aviation Transport Security Bill 2003: The House of Representatives amended this bill on 3 December 2003. One amendment codified the power of an airport screening officer to request a person subject to screening to undergo a limited frisk search. Another amendment provided that a person could undergo a frisk search as an alternative to another screening procedure. The remaining amendments raise no issues of concern within the Committee's terms of reference.

The Committee commented on this bill in *Alert Digest No. 5 of 2003* in relation to various issues. The Committee has received a response from the Minister and will report on those issues in its *First Report of 2004*.

Undue trespass on personal rights and liberties Clauses 95A and 95B

The House of Representatives amended the bill to allow airport screening officers to frisk search a person either as an alternative to the normal screening procedures or because the results of the initial screening indicate that additional screening procedures are necessary. Clause 95A allows a person subject to screening to choose to undergo a frisk search as an alternative to another screening procedure thus catering for persons who, for medical reasons, prefer not to be screened electronically. Clause 95B allows a screening officer to request a person to undergo a frisk search where the results of a screening procedure indicate that additional screening procedures are required to properly screen a person. The Committee notes that under subclause 95B(3) a screening officer cannot require a person to undergo a frisk search or conduct a frisk search of a person without that person's consent. The reality of this consent may be tendentious, however, given that the person will be left with no alternative but to consent to the search if he or she wishes to pass beyond the screening point. The Explanatory Memorandum provides no information about how a person would be made aware of their rights before a search was carried out and whether they would have any recourse if they were refused passage through the screening point because they did not consent to be searched. The Committee therefore **seeks the Minister's advice** on these matters.

The Committee is concerned that the power to undertake a procedure that has potential to trespass unduly on personal rights and liberties has been extended to airport screening officers without explanation. The supplementary Explanatory Memorandum to these amendments provides no reason for extending this power to persons other than law

enforcement officers or why in the situations in which these powers would be used, law enforcement officers would not be asked to conduct the frisk search. The Committee therefore **seeks the Minister's advice** on the reasons for extending the power to search a person to airport screening officers. The Committee **also seeks the Minister's advice** on the qualifications and the training that will be required by screening officers to ensure that they understand the personal and legal responsibilities involved in searching a person.

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

Apparent wide discretion Subclause 95B(2)

The Committee also notes that the supplementary Explanatory Memorandum advises that a person would be subject to a 'limited frisk search'. Subclause 95B(2) provides that a screening officer 'may conduct the search only to the extent necessary to complete the proper screening of the person'. The extent of the search would appear to be left to the discretion of the screening officer. The Committee therefore **seeks the Minister's advice** on whether guidelines will be developed to assist screening officers in such situations.

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

Legislative Instruments Bill 2003: The House of Representatives amended this bill on 3 December 2003. The amendments raise no issues within the Committee's terms of reference.

Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002: The House of Representatives amended this bill on 4 December 2003. The amendments raise no issues within the Committee's terms of reference.

AMENDMENTS IN THE SENATE (1 to 4 December 2003)

Defence Legislation Amendment Bill 2003: The Senate amended this bill on 2 December 2003. The amendments raise no issues within the Committee's terms of reference.

Family Law Amendment Bill 2003: The Senate amended this bill on 4 December 2003. The amendments raise no issues within the Committee's terms of reference.

Financial Services Reform Amendment Bill 2003: The Senate amended this bill on 4 December 2003. The amendments raise no issues within the Committee's terms of reference.

Higher Education Support Bill 2003: The Senate amended this bill on 3 and 4 December 2003. The amendments raise no issues within the Committee's terms of reference.

Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003: The Senate amended this bill on 4 December 2003. The amendments raise no issues within the Committee's terms of reference.

Legislative Instruments Bill 2003: The Senate amended this bill on 2 December 2003. The amendments raise no issues within the Committee's terms of reference.

New Business Tax System (Taxation of Financial Arrangements) Bill (No.1) 2003: The Senate amended this bill on 1 December 2003. The amendments raise no issues within the Committee's terms of reference.

States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003: The Senate amended this bill on 1 December 2003. The amendments raise no issues within the Committee's terms of reference.

Taxation Laws Amendment Bill (No.5) 2003: The Senate amended this bill on 2 December 2003. The amendments raise no issues within the Committee's terms of reference.

Trade Practices Legislation Amendment Bill 2003: The Senate amended this bill on 1 December 2003. The amendments raise no issues within the Committee's terms of reference.

Trade Practices Amendment (Personal Injuries and Death) Bill 2003: The Senate amended this bill on 1 December 2003. 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		SOUGHT	RECEIVED	
Bills dealt with in 2002							
<i>Charter of the United Nations Amendment Act 2002</i>	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)
<i>Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002</i>	16(11.12.02)	4.12.02	12.12.02	Justice and Customs	17.12.02	11.2.03	2(5.3.03)
<i>Criminal Code Amendment (Offences Against Australians) Act 2002</i>	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		RNP

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 (new citation) Taxation Laws Amendment Bill (No. 3) 2003	16(11.12.02)	5.12.02	15.9.03	Treasury	12.12.02	30.1.03	9(10.9.03)
<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		
Age Discrimination Bill 2003	8(13.8.03)	26.6.03	1.12.03	Attorney-General	14.8.03	17.9.03	15(3.12.03)
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)
ASIO Legislation Amendment Bill 2003	16(3.12.03)	27.11.03	3.12.03	Attorney-General	4.12.03	3.12.03	
Australian National Training Authority Amendment Bill 2003	9(20.8.03)	14.8.03	10.9.03	Education, Science and Training	21.8.03	8.9.03	9(10.9.03)
Australian Protective Service Amendment Bill 200 - Amendments	8(13.8.03) 15(26.11.03)	15.10.03	26.6.03	Justice and Customs	14.8.03 27.11.03	9.9.03	9(10.9.03)
Aviation Transport Security Bill 2003	5(14.5.03)	27.3.03		Transport and Regional Services	15.5.03	20.6.03	
Broadcasting Services Amendment (Media Ownership) Bill 2002 [No. 2]	15(26.11.03)	5.11.03	2.12.03	Communications, Information Technology and the Arts	27.11.03		
Building and Construction Industry Improvement Bill 2003	15(26.11.03)	6.11.03		Employment and Workplace Relations	27.11.03		
Civil Aviation Legislation Amendment Bill 2003	5(14.5.03)	27.3.03	11.8.03	Transport and Regional Services	15.5.03	6.6.03	7(13.8.03)
Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003	8(13.8.03)	25.6.03		Transport and Regional Services	14.8.03	29.10.03	

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Communications Legislation Amendment Bill (No. 2) 2003	8(13.8.03)	26.6.03	19.8.03	Communications, Information Technology and the Arts	14.8.03	19.8.03	8(20.8.03)
Communications Legislation Amendment Bill (No. 3) 2003	7(25.6.03)	19.6.03	21.8.03	Communications, Information Technology and the Arts	26.6.03	6.8.03	9(10.9.03)
Corporate Responsibility and Employment Security Bill 2003	10(10.9.03)	18.8.03		Hon S F Crean MP	11.9.03		
Crimes (Overseas) Amendment Bill 2003	11(17.9.03)	11.09.03	18.9.03	Attorney-General	18.9.03	7.10.03	11(8.10.03)
<i>Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003</i>	14(7.11.03)	5.11.03	7.11.03	Attorney-General	7.11.03	2.12.03	15(3.12.03)
Criminal Code Amendment (Hezbollah External Terrorist Organisation) Bill 2003	6(18.6.03)	2.6.03		Hon S F Crean MP	19.6.03		RNP
Criminal Code Amendment (Hizballah) Bill 2003	6(18.6.03)	29.5.03	16.6.03	Attorney-General	19.6.03	29.10.03	13(7.11.03)
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)
<i>Dairy Industry Service Reform Act 2003</i>	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 SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
		HOUSE	SENATE				
Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill 2003	12(8.10.03)	18.9.03	8.10.03	Family and Community Services	9.10.03	14.10.03	12(15.10.03)
Family Law Amendment Bill 2003	2(5.3.03)	12.2.03	20.8.03	Attorney-General	6.3.03 21.8.03	20.7.03 11.9.03	8(20.8.03) 10(17.9.03)
Financial Services Reform Amendment Bill 2003	8(13.8.03)	26.6.03	24.11.03	Treasurer	14.8.03	12.9.03	14(26.11.03)
Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Bill 2003	16(3.12.03)		28.11.03	Agriculture, Fisheries and Forestry	4.12.03		
Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003	12(8.10.03)	17.9.03	27.10.03	Education, Science and Training	9.10.03	21.11.03	14(26.11.03)
Late Payment of Commercial Debts (Interest) Bill 2003	3(19.3.03)		6.3.03	Senator Conroy	27.3.03		
Legislative Instruments Bill 2003	8(13.8.03)	26.6.03	9.9.03	Attorney-General	14.8.03	24.9.03	11(8.10.03)
Maritime Transport Security Bill 2003	12(8.10.03)	18.9.03	9.10.03	Transport and Regional Services	9.10.03	20.11.03	14(26.11.03)
Migration Legislation Amendment (Identification and Authentication) Bill 2003	9(20.8.03)	26.6.03	7.10.03	Immigration and Multicultural and Indigenous Affairs	21.8.03		
National Animal Welfare Bill 2003	9(20.8.03)		11.8.03	Senator Bartlett	21.8.03	10.9.03	10(17.9.03)
National Transport Commission Bill 2003	6(18.6.03)	4.6.03	14.8.03	Transport and Regional Services	19.6.03	27.6.03	8(20.8.03)

NAME OF BILL	ALERT DIGEST		INTRODUCED		MINISTER	RESPONSE SOUGHT		REPORT NUMBER
			HOUSE	SENATE		RECEIVED		
Offshore Petroleum (Safety Levies) Bill 2003	12(8.10.03)	17.9.03	14.10.03	Industry, Tourism and Resources	9.10.03	14.10.03	12(15.10.03)	
Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill 2003	6(18.6.03)	5.6.03	24.11.03	Environment and Heritage	19.6.03	4.8.03	14(26.11.03)	
<i>Petroleum (Timor Sea Treaty) Act 2003</i>	3(19.3.03)	5.3.03	6.3.03	Industry, Tourism and Resources	27.3.03	16.4.03	4(14.5.03)	
<i>Petroleum (Timor Sea Treaty) (Consequential Amendments) Act 2003</i>	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)	6(25.6.03)	
Sexuality and Gender Identity Discrimination Bill 2003	16(3.12.03)		25.11.03	Senator Greig	4.12.03			
Student Assistance Amendment Bill 2003	8(13.8.03)	26.6.03	15.9.03	Education, Science and Training	14.8.03	15.9.03	10(17.9.03)	
Superannuation Safety Amendment Bill 2003	16(3.12.03)	27.11.03		Treasurer	4.12.03			
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	7(13.8.03)	
Trade Practices Amendment (Public Liability Insurance) Bill 2003	10(10.9.03)	18.8.03		Mr A Griffin MP	11.9.03	9.10.03	12(15.10.03)	

RNP = Removed from Notice Paper

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2004

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER
Bill dealt with in 2002 still awaiting reporting						
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	
Bills dealt with in 2003 still awaiting reporting						
A Better Future for Our Kids Bill 2003	6(18.6.03)	26.5.03		Ms Roxon MP	19.6.03	1(11.2.04)
<i>ASIO Legislation Amendment Act 2003</i>	16(3.12.03)	27.11.03	3.12.03	Attorney-General	4.12.03 9.2.04	1(11.2.04)
Australian Protective Service Amendment Bill 2003 Amendments	8(13.8.03)	15.10.03	26.6.03	Justice and Customs	14.8.03 9.9.03 27.11.03 4.2.04	9(10.9.03) 1(11.2.04)
Aviation Transport Security Bill 2003	5(14.5.03)	27.3.03	10.2.04	Transport and Regional Services	15.5.03 20.6.03	1(11.2.04)
Broadcasting Services Amendment (Media Ownership) Bill 2002 [No. 2]	15(26.11.03)	5.11.03	2.12.03	Communications, Information Technology and the Arts	27.11.03	
Building and Construction Industry Improvement Bill 2003	15(26.11.03)	6.11.03	10.2.04	Employment and Workplace Relations	27.11.03 12.1.04	1(11.2.04)
Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003	8(13.8.03)	25.6.03		Transport and Regional Services	14.8.03 29.10.03	

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	SENATE	MINISTER	SOUGHT RESPONSE	RECEIVED	REPORT NUMBER
Corporate Responsibility and Employment Security Bill 2003	10(10.9.03)	18.8.03		Hon S F Crean MP	11.9.03		
Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Bill 2003	16(3.12.03)		28.11.03	Agriculture, Fisheries and Forestry	4.12.03	5.2.04	1(11.2.04)
Late Payment of Commercial Debts (Interest) Bill 2003	3(19.3.03)		6.3.03	Senator Conroy	27.3.03		
Migration Legislation Amendment (Identification and Authentication) Bill 2003	9(20.8.03)	26.6.03	7.10.03	Immigration and Multicultural and Indigenous Affairs	21.8.03	10.2.04	1(11.2.04)
Sexuality and Gender Identity Discrimination Bill 2003	16(3.12.03)		26.11.03	Senator Greig	4.12.03		
Superannuation Safety Amendment Bill 2003	16(3.12.03)	27.11.03		Treasurer	4.12.03		
Trade Practices Amendment (Public Liability Insurance) Bill 2003	10(10.9.03)	18.8.03		Mr A Griffin MP	11.9.03		

