Senate Standing Committee for the Scrutiny of Bills

No. 7 of 2004

16 June 2004

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for the

Scrutiny of Bills

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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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Aboriginal and Torres Strait Islander Commission Amendment Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Immigration and Multicultural and Indigenous Affairs]

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

- abolish the Aboriginal and Torres Strait Islander Commission (ATSIC) by repealing the provisions of the Act that establishes the national board of ATSIC with effect from 1 July 2004;
- make consequential amendments to the ATSIC Act arising from the abolition of ATSIC to enable the transfer of ATSIC's assets and liabilities to other agencies;
- establish a new housing fund to be administered by Indigenous Business Australia to replace ATSIC's housing fund;
- modify the role of the Office of Evaluation and Audit;
- abolish the ATSIC Regional Councils with effect from 30 June 2005 and make consequential amendments; and
- amend 11 other Acts to make amendments consequential upon the abolition of ATSIC.

The bill also contains transitional and saving provisions.

Abrogation of the privilege against self-incrimination
Schedule 2, item 1, proposed subsection 193ZF(10)

Proposed new subsection 193ZF(10) of the *Aboriginal and Torres Strait Islander Commission Act 1989*, to be inserted by item 1 of Schedule 2 to this bill, would abrogate the privilege against self-incrimination for a person required to provide information under proposed new paragraph 193ZF(4)(c).

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, proposed new subsection 193ZF(10) also limits the circumstances in which information so provided is admissible in evidence in proceedings against the affected person. The Committee accepts that this provision strikes a reasonable balance between the competing interests of obtaining information and protecting individual rights.

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

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

Aged Care Amendment Bill 2004

[Introduced into the House of Representatives on 2 June 2004. Portfolio: Health and Ageing]

The bill amends the *Aged Care Act 1997* to:

- remove the requirement for reassessment of a person's classification level before they can move from low to high care classification within the same residential aged care service; and
- remove the 5 year upper limit, for all persons entering the system from 1 July 2004, on the time a high care residential aged care person is required to pay an accommodation charge whilst living in a facility.

The bill also contains an application provision.

The Committee has no comment on this bill.

Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Bill 2004

[Introduced into the House of Representatives on 2 June 2004. Portfolio: Agriculture, Fisheries and Forestry]

The bill amends the *Australian Meat and Live-stock Industry Act 1997* to increase government regulation of the live animal export trade by:

- providing for the Minister to determine a set of principles, known as the Australian Code for the Export of Live-stock, that must be taken into account by the Secretary and authorised officers in exercising powers or performing functions under the Act;
- improving the integration of the provisions of the Act and the *Export Control Act 1982* in relation to the export licence and permit systems; and
- enabling the Secretary to deal with the licences of associates or previous associates of applicants or holders of live-stock export licences under the Act.

The bill also amends the *Export Control Act 1982* to:

- provide a legislative basis for the scheme relating to accredited veterinarians under the Act; and
- create seven new offences in relation to the scheme for accredited veterinarians under the Act which apply to both accredited veterinarians and other persons, including exporters.

The bill also contains an application provision.

Retrospective application
Schedule 1, item 12

By virtue of item 12 of Schedule 1 to this bill, the amendment proposed by item 11 of that Schedule, which is to insert a new section 25A into the *Australian Meat and Live-stock Industry Act 1997*, would apply to

circumstances which occurred before the commencement of that new section. 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.

Section 25A would permit the Secretary to the Department, among other things, to refuse to grant a live-stock export licence to a person on the ground that the applicant for the licence had been an "associate" (as that term is to be defined in section 3 of the Act) of some-one who had previously been refused the same sort of licence. Item 12 of the Schedule would apparently mean that a person could be refused a live-stock export licence on the ground that he or she had been an associate of some-one who had previously been refused such a licence, despite the fact that both the earlier refusal, and the association between the two applicants for a licence, had all occurred before this bill was assented to, and despite the fact that any such association had ceased before that Assent. Neither the Explanatory Memorandum nor the Minister's Second Reading speech seek to justify this retrospective application of the proposed amendment. The Committee therefore **seeks the Minister's advice** as to whether this case of retrospective application is justified.

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.

Appropriation Bill (No. 5) 2003-2004

[Introduced into the House of Representatives on 11 May 2004. Portfolio: Finance and Administration]

The bill appropriates money ($603.8 million) out of the Consolidated Revenue Fund, additional to the appropriations made by the *Appropriation Act (No. 1) 2003-2004* and the *Appropriation Act (No. 3) 2003-2004*, to meet payments for the ordinary annual services of the government for the year ending on 30 June 2004.

The Committee has no comment on this bill.

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

Appropriation Bill (No. 6) 2003-2004

[Introduced into the House of Representatives on 11 May 2004. Portfolio: Finance and Administration]

The bill appropriates money ($183.3 million) out of the Consolidated Revenue Fund, additional to the appropriations made by the *Appropriation Act (No. 2) 2003-2004* and the *Appropriation Act (No. 4) 2003-2004*, to enable agencies to meet:

- expenses in relation to grants to the States and for payments to the Northern Territory and the Australian Capital Territory; and
- non-operating purposes in the form of an administered assets and liabilities appropriation, the majority of which will be directed to the Department of Health and Ageing for measures to combat avian flu.

The Committee has no comment on this bill.

Appropriation Bill (No. 1) 2004-2005

[Introduced into the House of Representatives on 11 May 2004. Portfolio: Finance and Administration]

The bill proposes to appropriate money totalling $45,060 million out of the Consolidated Revenue Fund to meet payments for the ordinary annual services of the government for the year ending on 30 June 2005.

The Committee has no comment on this bill.

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

Appropriation Bill (No. 2) 2004-2005

[Introduced into the House of Representatives on 11 May 2004. Portfolio: Finance and Administration]

The bill proposes to appropriate money totalling $5,187.5 million out of the Consolidated Revenue Fund to meet payments to or for the States and Territories, and payments for administered items, administered capital items and departmental capital items for the year ending on 30 June 2005.

The Committee has no comment on this bill.

Appropriation (Parliamentary Departments) Bill (No. 1) 2004-2005

[Introduced into the House of Representatives on 11 May 2004. Portfolio: Finance and Administration]

The bill proposes to appropriate money totalling $178.7 million out of the Consolidated Revenue Fund to meet the expenses of the parliamentary departments for the year ending on 30 June 2005.

The Committee has no comment on this bill.

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

Australian Institute of Marine Science Amendment Bill 2004

[Introduced into the House of Representatives on 3 June 2004. Portfolio: Education, Science and Training]

The bill amends the *Australian Institute of Marine Science Act 1972* to:

- increase the size of the Council of the Institute for Marine Science from six to seven members, and for the additional part-time member to be nominated by the James Cook University; and
- change the title of the principal executive officer of the Institute from 'Director' to 'Chief Executive' in line with current terminology and that used in other scientific institutions.

The Committee has no comment on this bill.

Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Justice and Customs]

The bill amends the *Customs Act 1901* to:

- enable Customs officers to detain passengers who have committed or are suspected to have committed offences and are seeking to enter or depart Australia;
- enable Customs officers to control goods and people in Customs areas;
- establish reporting requirements for certain vessels, aircraft passengers and crew; and
- allow the Chief Executive Officer of Customs to take security related matters into account when appointing or revoking an appointment of a port under the Act.

The bill also contains an application provision and amends a regulation-making power.

Search of persons
Schedule 1, item 1, proposed section 219ZJD

Proposed new section 219ZJD of the *Customs Act 1901*, to be inserted by item 1 of Schedule 1 to this bill, would permit a Customs officer to conduct either a frisk search or an ordinary search of a person whom the officer has detained on suspicion of having committed a serious offence against a law of the Commonwealth. In a *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, issued in February 2004 by authority of the Minister for Justice and Customs, it is said, in paragraph 11.3, that any "proposal for new powers to search persons, whether in the form of a frisk, ordinary or strip search, should have strong justification." The Committee notes that no reference was made in the Second Reading speech to this bill in relation to this proposed search power and the Explanatory Memorandum

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advises only that the "search and seizure powers set out in this [proposed] section are similar to the powers that are conferred on protective service officers." The Committee therefore **seeks the Minister's advice** as to the "strong justification" for this power in accordance with the *Guide* referred to above.

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.

Export Market Development Grants Amendment Bill 2004

[Introduced into the House of Representatives on 13 May 2004. Portfolio: Trade]

The bill amends the *Export Market Development Grants Act 1997* to enable Austrade to apply, in accordance with Ministerial guidelines, a 'not fit and proper' person test when determining grant applications, with effect from the 2003-04 EMDG grant year.

The bill also provides that a 'not fit and proper' determination is subject to review in the Administrative Appeals Tribunal.

The bill also contains an application provision.

Retrospective application
Clause 4

Clause 4 of this bill provides that the amendments made by Schedule 1 "apply to grants in respect of a grant year commencing on or after 1 July 2003." It might therefore appear that the bill would apply retrospectively. 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, however, makes it clear that because of the way in which this grant scheme operates, "in effect the amendments apply to applications received on or after 1 July 2004."

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

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

Extension of Charitable Purpose Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Treasury]

The bill provides a statutory extension to the common law meaning of 'charity' for the purposes of all Commonwealth legislation. The extension will allow organisations providing child care to the public on a non-profit basis, self-help bodies with open and non-discriminatory membership and closed or contemplative religious orders that offer prayerful intervention to the public to be treated as charities.

The Committee has no comment on this bill.

Family and Community Services and Veterans' Affairs Legislation Amendment (Income Streams) Bill 2004

[Introduced into the House of Representatives on 26 May 2004. Portfolio: Family and Community Services]

The bill amends the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to:

- change the means test assessment of certain income streams, including the provision of a 50% assets test exemption for a new product, 'market-linked income streams' from 20 September 2004;
- change the assets test exemption from 100% to 50% for certain non-commutable income streams purchased from 20 September 2004;
- align the characteristics of life expectancy income streams with those of the new market-linked income stream product; and
- extend the guarantee period for asset-test exempt lifetime income streams within which such income streams can be commuted if the primary beneficiary dies.

The bill also contains application and transitional provisions.

The Committee has no comment on this bill.

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

Family Assistance Legislation Amendment (More Help for Families—Increased Payments) Bill 2004

[Introduced into the House of Representatives on 11 May 2004. Portfolio: Family and Community Services]

The bill amends the *A New Tax System (Family Assistance) Act 1999,* the *A New Tax System (Family Assistance) (Administration) Act 1999,* the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act* 1997 to:

- provide for an ongoing increase in the maximum and base rates of Family Tax Benefit (FTB) Part A supplement for each FTB child from the 2003-04 financial year;
- provide for a new maternity payment, commencing on 1 July 2004, which will replace the current means tested maternity allowance and baby Bonus; and
- reduce the rate at which FTB Part A reduces from the maximum rate to the base rate;
- reduce the rate at which FTB Part B is withdrawn; and
- increase the income free area for FTB Part B, from 1 July 2004.

The bill also contains application and transitional provisions.

The Committee has no comment on this bill.

Family Assistance Legislation Amendment (More Help for Families—One-off Payments) Bill 2004

[Introduced into the House of Representatives on 11 May 2004. Portfolio: Family and Community Services]

The bill amends the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999,* the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997,* the *Social Security Act 1991,* and the *Social Security (Administration) Act 1999* to:

- provide for a one-off payment to eligible families of $600 per child;
- provide for a one-off payment to recipients of the carer payment and carer allowance; and
- establish an administrative scheme to provide for payments to be made in certain circumstances not covered by the statutory one-off payments regime.

The Committee has no comment on this bill.

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

Farm Household Support Amendment Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Agriculture, Fisheries and Forestry]

The bill amends the *Farm Household Support Act 1992* to:

- extend the *Farm Help – Supporting Families Through Change* program to 30 June 2008;
- improve the effectiveness and administration of the program to ensure that it reaches low income farmers in most need; and
- amend the objects of the Act to refer separately to the objects of the Exceptional Circumstances Relief Payment and Farm Help income support.

The bill also contains application and savings provisions.

The Committee has no comment on this bill.

Marriage Legislation Amendment Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Attorney-General]

The bill amends the *Marriage Act 1961* to:

- define marriage as the union of a man and a woman to the exclusion of all others; and to
- clarify that same sex marriages entered into under the law of another country will not be recognised as marriages in Australia.

The bill also amends the *Family Law Act 1975* to prevent inter-country adoptions by same sex couples under multilateral or bilateral agreements or arrangements.

The Committee has no comment on this bill.

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

Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Bill 2004

[Introduced into the House of Representatives on 13 May 2004. Portfolio: Health and Ageing]

The bill amends the *Medical Indemnity Act 2002* and the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* to:

- create the run-off cover indemnity scheme, under which the Commonwealth will reimburse medical defence organisations (MDOs) and insurers for eligible run-off cover claims for eligible practitioners;
- require medical indemnity insurers to provide free indemnity cover to practitioners who are eligible for the run-off cover scheme;
- enable regulations to be made which require insurers to provide run-off cover to all doctors (who are not eligible under the run-off cover scheme) who require run-off cover at cost for at least three years;
- allow a claims protocol to be determined to cover the payment of MDO and insurer expenses arising from the IBNR indemnity scheme claims;
- repeal the *Medical Indemnity (Enhanced UMP Indemnity) Contribution Act 2002;*
- include Lloyd's underwriters under the operation of the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*;
- make minor amendments to the scope of the Premium Support Scheme (PSS) and to payment days for insurers to remit to the Health Insurance Commission any United Medical Protection support payments paid by persons to the insurers; and
- make minor amendments to the Federal Court injunction process.

The bill also amends the *Health Insurance Act 1973*, the *Health Insurance Commission Act 1973*, the *Medical Indemnity Act 2002*, and the *National Health Act 1953* to provide for the Commonwealth to recover the costs of the run-off cover scheme.

Retrospectivity
Schedule 6, items 1, 2, 7, 8, 9 and 14

By virtue of items 13, 14, 16 and 18 in the table to subclause 2(1) of this bill, items 1, 2, 7, 8, 9 and 14 of Schedule 6 would commence retrospectively on various dates prior to this bill receiving Assent. 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, however, gives the express assurance that in each case the retrospective commencement will not be detrimental to any person.

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

Retrospectivity
Schedule 6, item 1A

The House of Representatives amended this bill on 26 May 2004. The amendments make a correction to paragraph 30(1)(d) of the *Medical Indemnity Act 2002* in relation to the circumstances in which a high cost claim indemnity is payable to an MDO or insurer.

By virtue of item 13A in the table to subclause 2(1) of this bill, item 1A of Schedule 6 will apply from 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.

The Committee notes that the Revised Explanatory Memorandum advises that the amendment enables the Commonwealth to make payments to an MDO or insurer in relation to incidents notified during the period 1 January 2003 and before a termination date set in accordance with the *Medical Indemnity Act 2002* in addition to claims that are notified during that period. The Explanatory Memorandum, however, does not give an express assurance that the retrospective commencement would not be detrimental to any person.

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

The Committee further notes that during consideration of this bill, the Minister for Health and Ageing advised that the amendment corrected a technical problem identified with the provision as originally drafted that prevented reinsurers from reducing their insurance cover in accordance with the original intent of the Act. The Committee believes that it would have assisted the reader if this explanation had been included in the Revised Explanatory Memorandum.

The Committee therefore **seeks the Minister's assurance** that no person has been adversely affected by the technical problem or will be affected detrimentally 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.

Medical Indemnity (Run-off Cover Support Payment) Bill 2004

[Introduced into the House of Representatives on 13 May 2004. Portfolio: Health and Ageing]

The bill imposes a tax, to be called the run-off cover support payment, on medical indemnity insurers to recover the cost of the run-off cover indemnity scheme.

The bill also includes a regulation-making power.

The Committee has no comment on this bill.

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

National Security Information (Criminal Proceedings) Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Attorney-General]

Introduced with the National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004, the bill provides a framework for the protection of information from disclosure during a proceeding for a Commonwealth offence where the disclosure is likely to prejudice Australia's national security. The framework will allow for information to be introduced in such a form so as to facilitate the prosecution of an offence without prejudicing national security and the rights of the defendant to a fair trial.

The bill also contains an application provision and a regulation-making power.

The Committee has no comment on this bill.

National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Attorney-General]

Introduced with the National Security Information (Criminal Proceedings) Bill 2004, the bill amends the *Administrative Decisions (Judicial Review) Act 1977* to limit a court's jurisdiction to hear and determine an application by a defendant in a federal criminal proceeding where the application relates to a decision of the Attorney-General to issue a non-disclosure or a witness exclusion certificate under the National Security Information (Criminal Proceedings) Bill 2004.

The bill also amends the *Judiciary Act 1903* to give relevant Supreme Court jurisdiction in respect of applications for a writ of mandamus or prohibition, or an injunction against the Attorney-General in relation to a certificate decision.

The Committee has no comment on this bill.

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

Same Sex Relationships (Ensuring Equality) Bill 2004

[Introduced into the House of Representatives on 24 May 2004 by Mr Organ as a Private Member's bill.]

The bill proposes to prohibit discrimination on the basis of sexuality.

The Committee has no comment on this bill.

Superannuation Budget Measures Bill 2004

[Introduced into the House of Representatives on 13 May 2004. Portfolio: Treasury]

The bill amends the *Superannuation Contributions Tax Imposition Act 1997*, the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* and the *Termination Payments Tax Imposition Act 1997* to extend the Government's superannuation co-contribution scheme for individual low income earners by:

- increasing the level of Government matching of personal superannuation contributions to 150%;
- increasing the maximum amount of co-contribution available to $1,500;
- increasing the income level up to which the maximum co-contribution applies to $28,000;
- reducing the rate by which the maximum co-contribution phases out; and
- reducing the maximum superannuation surcharge rates from their current levels to 12.5% for 2004-2005, 10.0% for 2005-2006, and 7.5% for 2006-2007 and subsequent years.

The bill also amends the provisions of five Acts to reduce the superannuation surcharge cap.

The bill also contains application provisions.

The Committee has no comment on this bill.

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

Superannuation Laws Amendment (2004 Measures No. 1) Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Treasury]

The bill amends the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to:

- extend the Government co-contribution for low income earners to some employees who currently do not qualify; and
- ensure that individuals entitled to a Government co-contribution cannot also claim a tax deduction for personal superannuation contributions.

The bill also amends the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* to:

- specify an interest rate to be applied to late Government co-contribution payments;
- require superannuation providers to repay Government co-contribution amounts which are not credited to the member's account within a specific time frame;
- impose the general interest charge where a superannuation provider does not repay the Government co-contribution within a specific time frame;
- further outline the requirements for reports by the Minister to Parliament; and
- include a previously omitted definition for *Superannuation Holding Accounts Account*.

The bill also contains application provisions.

The Committee has no comment on this bill.

Superannuation Laws Amendment (2004 Measures No. 2) Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Treasury]

The bill amends the Income Tax Assessment Acts to:

- remove the requirement for superannuation funds to obtain an actuary's certificate in order to qualify for exemption from tax on income derived by assets supporting certain pension liabilities or an exemption of a proportion of income attributable to certain pension liabilities; and
- require taxpayers below the age of 18 to satisfy a work test in order to claim a taxation deduction for personal superannuation contributions.

The bill also amends the *Retirement Savings Accounts Act 1997* and two Superannuation Acts to:

- more closely align the portability regime for retirement savings account providers with the regime that applies to other superannuation;
- simplify the earnings base of an employee for superannuation guarantee purposes; and
- correct a cross-reference error relating to the cancellation of registrable superannuation entity licences.

The bill also contains application provisions.

The Committee has no comment on this bill.

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

Tax Laws Amendment (2004 Measures No. 3) Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Treasury]

The bill amends the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Venture Capital Act 2002* to:

- ensure that the venture capital regime operates as originally intended and to extend eligibility for the concession to investments in a holding company that meet the eligibility criteria; and
- make technical corrections to the provisions that allow foreign tax credits to arise in particular circumstances to ensure those provisions refer to the correct paragraphs in the general foreign tax credit provisions.

The bill also amends the *Fringe Benefits Tax Assessment Act 1986* to extend by one year the transitional arrangements for the fringe benefits tax exemption for certain contributions to worker entitlement funds.

The bill also contains an application provision.

Retrospectivity
Schedule 2

By virtue of item 3 in the table in subclause 2(1), the amendments proposed in Schedule 2 to this bill would commence retrospectively on 1 April 2004. The Explanatory Memorandum, however, observes that the purpose of the amendments is to extend by one year provisions concerned with exemptions from fringe benefits tax, and further that those amendments have no financial impact.

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

Retrospective application
Schedule 1, Part 3

By virtue of Part 3 of Schedule 1 to this bill, the amendments proposed in Parts 1 and 2 thereof would apply retrospectively from 1 July 2002. 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, however, observes that the purpose of the amendments is to extend eligibility for tax concessions relating to the provision of venture capital, and further that those amendments have no financial impact.

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

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

Tax Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Treasury]

The bill amends the *A New Tax System (Medicare Levy Surcharge-Fringe Benefits) Act* and the *Medicare Levy Act 1986* to increase the Medicare levy low income thresholds and the Medicare levy surcharge low income thresholds for the 2003-2004 and later years of income.

The bill also contains an application provision.

The Committee has no comment on this bill.

Tax Laws Amendment (Personal Income Tax Reduction) Bill 2004

[Introduced into the House of Representatives on 13 May 2004. Portfolio: Treasury]

The bill amends the *Income Tax Rates Act 1986* to increase the personal income tax thresholds for the top two marginal tax rates of 42% and 47% in two stages, from the 2004-2005 income year, and thereby reduce personal income tax for certain individual taxpayers.

The bill also contains an application provision.

The Committee has no comment on this bill.

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

Telecommunications (Interception) Amendment (Stored Communications) Bill 2004

[Introduced into the House of Representatives on 27 May 2004. Portfolio: Attorney-General]

The bill amends the *Telecommunications (Interception) Act 1979* to exclude interception of stored communications from the prohibition against interception and, in effect, limit the prohibition against interception to the "live" or "real time" interception of communications transiting a telecommunications system.

The Committee has no comment on this bill.

Tourism Australia (Repeal and Transitional Provisions) Bill 2004

[Introduced into the House of Representatives on 13 May 2004. Portfolio: Small Business and Tourism]

Further to the *Tourism Australia Act 2004* the bill repeals the *Australian Tourist Commission Act 1987* and puts in place arrangements to facilitate the merger of the undertakings and employees of the Australian Tourist Commission, the Bureau of Tourism Research and the Tourism Forecasting Council, into Tourism Australia.

The bill also contains a regulation-making power.

The Committee has no comment on this bill.

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

Workplace Relations Amendment (Fair Dismissal) Bill 2004

[Introduced into the House of Representatives on 3 June 2004. Portfolio: Employment and Workplace Relations]

The bill amends the *Workplace Relations Act 1996* to protect small businesses from unfair dismissal claims by:

- preventing employees of small businesses, other than apprentices and trainees, from applying under the Act for a remedy in respect of a claimed unfair dismissal; and
- requiring the Australian Industrial Relations Commission to order that an unfair dismissal application made by a small business employee is invalid, if the Commission is satisfied that the application is outside the Commission's jurisdiction because of the small business exemption.

The bill also contains an application provision.

The Committee has no comment on this bill.

Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004

[Introduced into the House of Representatives on 26 May 2004. Portfolio: Employment and Workplace Relations]

The bill amends the *Workplace Relations Act 1996* to restore the exemption for small business employers from redundancy payments by overturning a recent Australian Industrial Relations Commission decision to impose redundancy pay obligations on small business.

Currently, the Workplace Relations Amendment (Award Simplification) Bill 2002 is also before the Parliament. This bill and the Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004 both propose amendments to paragraph 89A(2)(m) of the Act. The 2004 bill has therefore been drafted in four schedules to take account of all contingencies with respect to the commencement of either or both of these bills.

Retrospective application
Schedules 1 and 2, subitem 8(1)

The Explanatory Memorandum to this bill makes it clear that its purpose is to reverse the effect of a decision of the Australian Industrial Relations Commission relating to redundancy payments payable by businesses which have fewer than 15 employees. The Commission's decision was given on 26 March 2004. Both the Explanatory Memorandum and the Minister's Second Reading Speech appear to indicate that the bill would render of no effect any awards or variations of awards relating to employers of fewer than 15 employees, if the awards were made by the Commission after 26 March 2004. If that were the effect of the bill, it would clearly have some retrospective effect. However, subitem 8(1) of both Schedule 1 and Schedule 2 makes it clear that the relevant amendments made by each Schedule apply only from the time at which the Schedule commences. Furthermore, Schedule 4 reinforces the point that this bill is designed not to have any retrospective effect by providing that nothing in the measure "affects any entitlement to a payment that had arisen before the commencement of" a relevant part of the bill.

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

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

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
Aboriginal and Torres Strait Islander Commission Amendment Bill 2004	Proposed new subsection 193ZF(7)	Fail to provide information to a public authority	20 penalty units
Customs Legislation Amendment (Airport, Port and Cargo Security) Bill 2004	Proposed new subsection 243SA(3)	Fail to provide information to a public authority	30 penalty units
Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Bill 2004	Schedule 4, item 8	Fail to provide information to a public authority	30 penalty units

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (11 to 13 May 2004)

Bankruptcy Legislation Amendment Bill 2004: The House of Representatives amended this bill on 12 May 2004. The amendments raise no issues within the Committee's terms of reference.

(24 to 27 May 2004)

Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Bill 2004: The House of Representatives amended this bill on 26 May 2004. The amendments make a correction to paragraph 30(1)(d) of the *Medical Indemnity Act 2002* in relation to the circumstances in which a high cost claim indemnity is payable to an MDO or insurer. The Committee's comment on this amendment may be found together with other comments on this bill at page 26.

(31 May to 3 June 2004)

Australian Federal Police and Other Legislation Amendment Bill 2004: The House of Representatives amended this bill on 31 May 2004. The amendment raises no issues within the Committee's terms of reference.

AMENDMENTS IN THE SENATE (11 to 13 May 2004)

Australian Federal Police and Other Legislation Amendment Bill 2003 [2004]: The Senate amended this bill on 12 May 2004. The amendments raise no issues within the Committee's terms of reference.

Postal Services Legislation Amendment Bill 2003: The Senate amended this bill on 12 May 2004. The amendments raise no issues within the Committee's terms of reference.

Trade Practices Amendment (Personal Injuries and Death) Bill (No. 2) 2004: The Senate amended this bill on 11 May 2004. The amendments raise no issues within the Committee's terms of reference.

16 June 2004

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	INTRODUCED SENATE	MINISTER	RESPONSE SOUGHT	RESPONSE 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							
ASIO Legislation Amendment Act 2003	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 27.11.03	9.9.03 4.2.04	9(10.9.03) 1(11.2.04)
Aviation Transport Security Bill 2003 **Amendments**	5(14.5.03) 1(11.2.04)	27.3.03	10.2.04	Transport and Regional Services	15.5.03 12.2.04	20.6.03 27.2.04	1(11.2.04) 2(3.3.04)
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	24.3.04	5(31.3..04)
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	INTRODUCED SENATE	MINISTER	RESPONSE 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	--	RNP
Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Bill 2003	16(3.12.03)	16.2.04	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)		25.11.03	Senator Greig	4.12.03	20.4.04	6(12.5.04)
Superannuation Safety Amendment Bill 2003	16(3.12.03)	27.11.03	11.2.04	Treasurer/Revenue	4.12.03	1.3.04	2(3.3.04)
Trade Practices Amendment (Public Liability Insurance) Bill 2003	10(10.9.03)	18.8.03	--	Mr A Griffin MP	11.9.03	--	RNP
Bills dealt with in 2004							
Australian Crime Commission Amendment Bill 2004	1(11.2.04)	8.3.04	4.12.03	Attorney-General/Justice & Customs	12.2.04	1.3.04	2(3.3.04)
Bankruptcy Legislation Amendment Bill 2004	5(31.3.04)	24.3.04	15.6.04	Attorney-General	1.4.04	5.5.04	7(16.6.04)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE	INTRODUCED SENATE	MINISTER	RESPONSE SOUGHT	RESPONSE RECEIVED	REPORT NUMBER
Customs Legislation Amendment (Application of International Trade Modernisation and Other Measures) Bill 2003	1(11.2.04)	4.12.03	11.3.04	Justice and Customs	12.2.04	8.03.04	4(24.3.04)
Dairy Produce Amendment Bill 2003	1(11.2.04)	3.12.03	24.3.04	Agriculture, Fisheries and Forestry	12.2.04	18.3.04	4(24.3.04)
Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004	6(12.5.04)	1.4.04	15.6.04	Special Minister of State	13.5.04	15.6.04	7(16.6.04)
Environment Protection and Biodiversity Conservation Act 1999	2(3.3.04)	28.6.99	12.11.98	Environment and Heritage	4.3.04		
Military Rehabilitation and Compensation Bill 2003	1(11.2.04)	4.12.03	1.3.04	Veterans' Affairs	12.2.04	23.3.04	4(24.3.04)
Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004	5(31.3.04)	25.3.04		Veterans' Affairs	1.4.04	23.4.04	