

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



Alert Digest

No. 11 of 2004

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Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator R Ray (Chair)
Senator B Mason (Deputy Chair)
Senator G Barnett
Senator D Johnston
Senator G Marshall
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 in 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 in 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
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Bills restored to the *Notice Paper*

On 17 November 2004, on the motion of Senator Allison, a number of bills introduced in the Senate in previous Parliaments were restored to the *Notice Paper*. The Committee has dealt with many of these bills in previous reports and digests, as indicated below.

Anti-Genocide Bill 1999 [2004]

See *Alert Digest No. 17 of 1999*

Charter of Political Honesty Bill 2000 [2004]

See *Seventeenth Report of 2000*

Constitution Alteration (Appropriations for the Ordinary Annual Services of the Government) 2001 [2004]

See *Alert Digest No. 9 of 2001*

Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) 2000 [2004]

See *Alert Digest No. 5 of 2000*

Defence Amendment (Parliamentary approval for Australian involvement in overseas conflicts) Bill 2003 [2004]

See *Alert Digest No. 5 of 2003*

Electoral Amendment (Political Honesty) Bill 2003 [2004]

See *Fourth Report of 2003*

Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002 [2004]

See *Alert Digest No. 15 of 2002*

Euthanasia Laws (Repeal) Bill 2004

See *Alert Digest No. 3 of 2004*

Financial Management and Accountability (Anti-Restrictive Software Practices) Amendment Bill 2003 [2004]

See *Alert Digest No. 12 of 2003*

Freedom of Information Amendment (Open Government) Bill 2003 [2004]

See *Alert Digest No. 8 of 2003*

Genetic Privacy and Non-discrimination Bill 1998 [2004]

See *Fourth Report of 1998*

Ministers of State (Post-Retirement Employment Restrictions) Bill 2002 [2004]

See Alert Digest No. 3 of 2002

National Animal Welfare Bill 2003 [2004]

See Tenth Report of 2003

Patents Amendment Bill 1996 [2004]

See Alert Digest No. 5 of 1996

Parliamentary Approval of Treaties Bill 1995 [2004]

See Alert Digest No. 8 of 1995

Public Interest Disclosure (Protection of Whistleblowers) Bill 2002 [2004]

See Alert Digest No. 1 of 2003

Reconciliation Bill 2001 [2004]

See Alert Digest No. 6 of 2001

Republic (Consultation of the People) Bill 2001 [2004]

The Committee has not previously considered this bill. See page 39 of this digest.

Sexuality Anti-Vilification Bill 2003 [2004]

See Alert Digest No. 5 of 2003

Sexuality and Gender Identity Discrimination Bill 2003 [2004]

See Alert Digest No. 16 of 2003

State Elections (One Vote, One Value) Bill 2001 [2004]

See Alert Digest No. 10 of 2001

Textbook Subsidy Bill 2003 [2004]

See Twelfth Report of 2003

Uranium Mining in or near Australian World Heritage Properties (Prohibition) Bill 1998 [2004]

See Alert Digest No. 8 of 1998

Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 [2004]

See Alert Digest No. 5 of 2002

Administrative Appeals Tribunal Amendment Bill 2004

[Introduced in the House of Representatives on 11 August 2004 and reintroduced on 17 November 2004. Portfolio: Attorney-General]

The bill inserts into the *Administrative Appeals Tribunal Act 1975* an objects clause, requiring that ‘the Tribunal must pursue the objective of providing a mechanism that is fair, just, economical, informal and quick’, and makes procedural and administrative changes that support that objective. These include:

- expanding the role and powers of the President;
- adding alternative dispute resolution procedures;
- requiring the consent of the President to refer a question of law to the Federal Court and giving that court the power to make findings of fact in appeals of tribunal decisions; and
- expanding the range of people eligible for appointment as President of the tribunal.

The bill amends 18 other Acts to make consequential amendments, remove redundant provisions, modernise vocabulary, update penalties and harmonise penalty provisions with the *Criminal Code*.

The bill also contains application and transitional provisions.

The Committee has no comment on this bill.

Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2004

[Introduced in the House of Representatives on 23 June 2004 and reintroduced on 17 November 2004 in an amended form. Portfolio: Agriculture, Fisheries and Forestry]

The bill amends the *Australian Meat and Live-stock Industry Act 1997* to allow, in addition to current arrangements, an industry organisation representing live-stock exporters to be determined as a marketing body and as a research body able to receive revenue from compulsory charges applied to the live-stock export industry.

The bill, originally introduced in June 2004, has been reintroduced with amendments to tighten accountability arrangements for the live-stock export industry, as recommended by the Senate Rural and Regional Affairs and Transport Legislation Committee, and to clarify certain definitions.

The bill makes minor technical amendments to several other Acts.

Retrospective commencement Schedule 3, Parts 1 and 2

By virtue of items 3 and 4 in the table in subclause 2(1), Parts 1 and 2 of Schedule 3 to this bill will commence retrospectively, immediately after the commencement of statutes which have already been passed. 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, it is clear from the terms of the amendments that they do no more than correct references to earlier legislation, and make no substantive change to the law.

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

Australian Security Intelligence Organisation Amendment Bill 2004

[Introduced in the House of Representatives on 17 November 2004. Portfolio: Attorney-General]

On 25 June 2004 the Council of Australian Governments, as part of a national review of hazardous materials, agreed on a national approach to restricting access to ammonium nitrate. Under the agreement, a licensing regime will be established in each jurisdiction for the use, manufacture, storage, transport, supply, import and export of ammonium nitrate. This regime requires ASIO to furnish security assessments to the states and territories.

The bill amends the *Australian Security Intelligence Organisation Act 1979* to expand and clarify the circumstances in which ASIO can furnish security assessments. The amendments are not limited in their operation to furnishing assessments in relation to ammonium nitrate. According to the explanatory memorandum:

Whilst the proposed amendments have arisen as a result of discussions about controlling access to ammonium nitrate, the amendments are intended to be sufficiently broad to cover, to the extent that is possible, issues that may arise in the future, for example other hazardous materials to which access is controlled or limited on security grounds.

Current provisions cover ‘access by a person to any information or place’ where access is controlled on security grounds. This bill expands the relevant provisions to also cover ‘a person’s ability to perform an activity in relation to, or involving, a thing... if that ability is controlled or limited on security grounds.’

The bill also contains minor technical amendments.

The Committee has no comment on this bill.

Aviation Security Amendment Bill 2004

[Introduced in the House of Representatives on 11 August 2004 and reintroduced on 17 November 2004. Portfolio: Transport and Regional Services]

The bill amends the *Aviation Transport Security Act 2004* and the *Civil Aviation Act 1988* to allow background checking of holders of security designated authorisations, including flight crew and trainee flight crew, and other holders of Civil Aviation authorisations. A decision that a person has an adverse aviation security status is a security assessment for the purposes of the *Australian Security Intelligence Organisation Act 1979*, and advice to that effect triggers specific review rights under the ASIO Act and the *Administrative Appeals Tribunal Act 1975*.

The bill also amends the *Aviation Transport Security Act 2004*, to include contractors of Airservices Australia in the definition of aviation industry participants and the *Aviation Transport Security (Consequential Amendments and Transitional Provisions) Act 2004*, to enable certain airport security programs to continue under the *Aviation Transport Security Act 2004*.

The bill contains regulation-making powers relating to security status checking.

The bill also contains a transitional provision that clarifies the status of assessments made and powers exercised under regulation 5 of the *Air Navigation (Aviation Security Status Checking) Regulations*.

The Committee has no comment on this bill.

Bankruptcy and Family Law Legislation Amendment Bill 2004

[Introduced in the House of Representatives on 11 August 2004 and reintroduced on 17 November 2004, with minor changes. Portfolio: Attorney-General]

The bill amends the *Bankruptcy Act 1966* and the *Family Law Act 1975* to give the Family Court additional jurisdiction to deal with bankruptcy matters, and particularly matters relating to the rights of the non-bankrupt spouse and the interests of creditors, where those matters run concurrently with matters under the Family Law Act.

The bill further amends the *Bankruptcy Act 1966* to:

- establish a supervised account regime for the collection of money from bankrupts liable to pay income contributions;
- amend the definition of ‘maintenance agreement’ to exclude financial agreements entered into under Part VIIIA of the Family Law Act; and
- insert a new act of bankruptcy to apply where a person is rendered insolvent as a result of assets being transferred pursuant to a financial agreement under Part VIIIA of the Family Law Act.

The bill also contains application provisions.

The Committee has no comment on this bill.

Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2004

[Introduced in the House of Representatives on 17 November 2004. Portfolio: Attorney-General]

The bill is intended to ensure that prosecutions, including prosecutions for child pornography related offences under Commonwealth, state or territory legislation, do not fail on technical grounds related to applications for classification of material.

The bill amends the *Classification (Publications, Films and Computer Games) Act 1995*. According to the explanatory memorandum, the bill makes ‘minor technical amendments’ which are ‘designed to remove any doubt as to the validity of classification decisions made ... in response to deficient or defective applications for classification.’

The bill also removes any doubt as to the validity of decisions made or any later action taken by the Board, the Review Board or the Director in respect of the decisions validated by the amendments.

Retrospectivity Schedule 1, items 1 and 2

Proposed new sections 22C and 44B of the *Classification (Publications, Films and Computer Games) Act 1995*, to be inserted by items 1 and 2 of Schedule 1 to this bill, would retrospectively validate decisions of the Classification Board and the Classification Review Board that are based on applications made by or on behalf of law enforcement agencies, even though the application did not satisfy the requirements of the Act.

The purpose of the bill is described in the explanatory memorandum as being ‘to ensure that prosecutions for child pornography and related offences do not fail for technical reasons related to applications for classifications.’ However, the wording of the proposed new sections goes further than that, and would validate a decision, whatever the reason – whether technical or substantive – for the application not satisfying the requirements of the Act.

The Committee **seeks the Attorney-General's advice** as to whether there is a need to amend the legislation to ensure it operates only to validate minor or technical deficiencies.

Furthermore, although the proposed amendments would operate retrospectively, neither the explanatory memorandum nor the second reading speech give any indication of the extent of any deficiencies in applications which have been discovered. All that the Attorney-General says, in his second reading speech, is that 'this retrospectivity is appropriate and justified and will not lead to any substantive injustice.' The Attorney-General continues by stating that 'Any errors that may have been made in the application process were purely technical and cast no doubt whatever on the correctness of the classification decision.'

The Committee also **seeks the Attorney-General's advice** as to what injustice the Attorney considers may result from the provisions (if not 'substantive injustice') and whether this retrospectivity might be regarded as trespassing unduly on the rights of persons who might be charged with offences under this legislation.

Pending the Attorney-General'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.

Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004

[Introduced in the House of Representatives on 11 August 2004 and reintroduced on 17 November 2004; this bill was passed by the Senate on 18 November 2004. Portfolio: Justice and Customs]

Introduced with the Customs Tariff Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004, the bill amends the *Customs Act 1901* to give effect to Australia's obligations under the Thailand-Australia Free Trade Agreement by:

- introducing new rules of origin for goods that are the produce of Thailand and enabling goods that satisfy these rules of origin to enter Australia at preferential rates of customs duty; and
- imposing certain obligations on Australian exporters and Australian producers of goods who claim preferential tariff treatment in Thailand.

Uncertainty of commencement Schedule 1, parts 1 and 2

By virtue of item 2 in the table to subclause 2(1) in this bill, Parts 1 and 2 of Schedule 1 are to commence on the later of 1 January 2005 or the day on which the Thailand-Australia Free Trade Agreement comes into force for Australia. The item goes on to provide that the provisions do not commence at all if the Agreement does not come into force, but does not provide any fixed date by which it can be finally determined that the agreement will not come into force.

The Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee is wary, for instance, of provisions which enable legislation to commence on a date 'to be proclaimed' rather than on a determinable date and seeks an explanation for any significant delay in commencement.

The Committee is equally wary of provisions which link commencement to an 'uncertain event' and would generally expect to see a fixed date (or period of

time) by which that event must occur to trigger either commencement or repeal. The Committee would also expect the explanatory memorandum accompanying a bill to explain the reasons for including uncertain commencement provisions, as outlined in Drafting Direction No. 3 of 2003. In this case, the memorandum makes no reference to the reasons for uncertainty.

The Committee endorses the formulation at paragraph 83 of that Drafting Direction:

83 In some situations, there may be a need to build a time limit into the wording that states that the relevant items do not commence if an uncertain event does not occur. For example, “However, the items do not commence at all if the event mentioned in paragraph (b) does not occur before 1 July 2004” (where the event might, eg, be Australia entering into an international agreement).

Although the bill has now passed both Houses, the Committee **seeks the Minister’s advice** as to whether the commencement provision might not also have provided a means of determining when (if ever) the Agreement is to be regarded as not coming into force.

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

Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004

[Introduced in the House of Representatives on 16 June 2004 and reintroduced on 17 November 2004. Portfolio: Justice and Customs]

Introduced with the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004, the bill amends the *Customs Tariff Act 1995* to extend the provisions of the Textile, Clothing and Footwear Strategic Investment Program for another 10 years.

The Committee has no comment on this bill.

Customs Tariff Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004

[Introduced in the House of Representatives on 11 August 2004 and reintroduced on 17 November 2004; this bill passed the Senate on 18 November 2004. Portfolio: Justice and Customs]

Introduced with the Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004, the bill amends the *Customs Tariff Act 1995* to give effect to Australia's obligations under the Thailand-Australia Free Trade Agreement by:

- providing duty-free access for certain goods and preferential rates of customs duty for other goods that are of Thai origin;
- phasing the preferential rates of customs duty for certain goods to 'Free' by 2015;
- creating a new Schedule 6 to the Tariff to accommodate those phasing rates of duty; and
- providing a mechanism to initiate safeguard measures on sensitive products including canned tuna, processed pineapple and pineapple juice, if necessary.

The bill amends the *US Free Trade Agreement Implementation (Customs Tariff) Act 2004* in the event that the Thailand-Australia Free Trade Agreement enters into force for Australia before the Australia-US Free Trade Agreement.

Uncertainty of commencement Schedule 1, items 1 to 37

By virtue of item 2 in the table to subclause 2(1) in this bill, items 1 to 37 of Schedule 1 are to commence on the later of 1 January 2005 or the day on which the Thailand-Australia Free Trade Agreement comes into force for Australia. The item goes on to provide that the provisions do not commence at all if (among other matters) the agreement does not come into force, but does

not provide any fixed date by which it can be finally determined that the agreement will not come into force.

The Committee takes the view that Parliament is responsible for determining when laws are to come into force. The Committee is wary, for instance, of provisions which enable legislation to commence on a date ‘to be proclaimed’ rather than on a determinable date and seeks an explanation for any significant delay in commencement.

The Committee is equally wary of provisions which link commencement to an ‘uncertain event’ and would generally expect to see a fixed date (or period of time) by which that event must occur to trigger either commencement or repeal. The Committee would also expect the explanatory memorandum accompanying a bill to explain the reasons for including uncertain commencement provisions, as outlined in Drafting Direction No. 3 of 2003. In this case, the memorandum makes no reference to the reasons for uncertainty.

The Committee endorses the formulation at paragraph 83 of that Drafting Direction:

83 In some situations, there may be a need to build a time limit into the wording that states that the relevant items do not commence if an uncertain event does not occur. For example, “However, the items do not commence at all if the event mentioned in paragraph (b) does not occur before 1 July 2004” (where the event might, eg, be Australia entering into an international agreement).

Although the bill has now passed both Houses, the Committee **seeks the Minister’s advice** as to whether the commencement provision might not also have provided a means of determining when (if ever) the Agreement is to be regarded as not coming into force.

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

Disability Discrimination Amendment (Education Standards) Bill 2004

[Introduced in the Senate on 12 August and reintroduced on 17 November 2004.
Portfolio: Attorney-General]

The bill amends the *Disability Discrimination Act 1992* to support the provisions of the draft Disability Standards for Education by:

- making it unlawful for education providers to discriminate on the grounds of disability in the development or accreditation of curricula or training courses, except where avoidance of that discrimination would impose unjustifiable hardship on the education provider;
- clarifying that, to avoid unlawful discrimination on the ground of disability, the disability standards may require reasonable adjustments to be made; and
- providing that education providers may be required to develop strategies and programs to prevent the harassment and victimisation of students with disabilities.

The Committee has no comment on this bill.

Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Election Commitments) Bill 2004

[Introduced in the House of Representatives on 18 November 2004. Portfolio: Attorney-General]

This bill amends the social security law, the family assistance law and the *Veterans' Entitlements Act 1986* to give effect to a number of commitments made during the 2004 election campaign. Measures include new payments and concession allowances for certain self-funded retirees, older Australians, carers, grandparents and disability pensioners.

The Committee has no comment on this bill.

Family Assistance Legislation Amendment (Adjustment of Certain FTB Child Rates) Bill 2004

[Introduced in the House of Representatives on 18 November 2004. Portfolio: Family and Community Services]

This bill amends the *A New Tax System (Family Assistance) Act 1999* to ensure that fortnightly payments of Family Tax Benefit Part A are not lower than the safety net benchmark, by maintaining wage-linked adjustments to fortnightly rates if the wage-linked adjustments exceed the CPI indexed amounts.

Retrospectivity Schedule 1, items 2 and 4

By virtue of item 2 in the table to subclause 2(1) in this bill, Schedule 1 is to commence, immediately after the commencement of existing legislation, on 1 July 2004. Similarly, by virtue of item 4 in Schedule 1, the amendments made by that Schedule are to apply from the 2003-2004 tax year. 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 it clear that these amendments are beneficial to recipients of Family Tax Benefit Part A.

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

Family Law Amendment (Annuities) Bill 2004

[Introduced in the House of Representatives on 11 August 2004 and reintroduced in the Senate on 17 November 2004; this bill was passed by the Senate on 30 November 2004. Portfolio: Attorney-General]

The bill amends the *Family Law Act 1975* to:

- amend the definition of ‘eligible superannuation plan’; and
- move the power to make orders binding providers of superannuation-like annuity products into Part VIIIB of the Act, so that the products are treated consistently with other superannuation assets held by parties to a marriage.

The bill also contains application provisions.

The Committee has no comment on this bill.

Fisheries (Validation of Plans of Management) Bill 2004

[Introduced in the Senate on 11 August 2004 and reintroduced on 17 November 2004; this bill was passed by the Senate on 30 November 2004. Portfolio: Agriculture, Fisheries and Forestry]

The bill validates certain plans of management determined, amended or revoked under the *Fisheries Management Act 1991* and certain decisions and actions taken with respect to plans of management by the Managing Director or Acting Managing Director of the Australian Fisheries Management Authority.

Retrospective application Clause 3

Clause 3 of this bill will apply retrospectively, for an unspecified period, to ensure the validity of plans of management made by the Managing Director or acting Managing Director of the Australian Fisheries Management Authority. 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, the explanatory memorandum suggests that there is only ‘a small, residual legal risk that the validity of the plans could be challenged’ and that the ‘Government believes that the plans, and all things done under or for the purpose of the plans, are valid.’ In the light of this assurance, it is unlikely that the retrospective application of this bill would have any effect on the rights of any person.

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

Health Insurance Amendment (100% Medicare Rebate and Other Measures) Bill 2004

[Introduced in the House of Representatives on 17 November 2004. Portfolio: Health and Ageing]

This bill amends the *Health Insurance Act 1973* to increase the Medicare rebate for services provided by general practitioners from 85% to 100% of the schedule fee and makes complementary increases in relation to GP services provided to eligible veterans and war widows.

The bill also confirms that all families eligible for Family Tax Benefit Part A are eligible for the extended Medicare safety net at the \$300 threshold.

The Committee has no comment on this bill.

Higher Education Legislation Amendment Bill (No. 3) 2004

[Introduced in the House of Representatives on 5 August 2004 and reintroduced on 17 November 2004 in an amended form. Portfolio: Education, Science and Training]

The bill makes numerous amendments to the *Higher Education Support Act 2003*, including amendments relating to funding under the Commonwealth Grants Scheme; the continuation of higher education summer schools; Commonwealth-supported student assistance; repayment provisions for advances to higher education providers; and undergraduate and postgraduate higher education awards.

The bill also amends the following Acts:

- *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003* to provide transitional arrangements for the repayment of 'special purpose' grants and for OS-HELP prior study requirements; and to correct an error in a definition;
- *Australian National University Act 1991* to extend the time within which the Minister must make appointments to the ANU Council; and
- *Australian Research Council Act 2001* to update the annual appropriations to reflect revised forward estimates.

Retrospective commencement

Schedule 1, items 44 and 45; Schedule 2, item 9

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.

According to item 3 in the table to subclause 2(1) in this bill, items 45 and 46 of Schedule 1 are to commence, immediately after the commencement of items 59 and 61 of Schedule 2 to the *Higher Education Legislation Amendment Act (No. 2) 2004*, on 13 July 2004. However, the explanatory memorandum correctly observes that it is items 44 and 45 of Schedule 1

which are intended to commence on 13 July 2004. These are technical amendments of the earlier Act and do no more than update cross-references in notes to sections therein.

It appears that the commencement provisions in the bill have not been updated to account for the omission of an item since the bill was introduced in the previous Parliament. *The Committee draws the Minister's attention to this incorrect cross-reference in the legislation.*

By virtue of item 6 in the table in subclause 2(1), item 9 of Schedule 2 to this bill will commence retrospectively on 1 January 2004, immediately after the commencement of earlier legislation. However, the explanatory memorandum notes that the amendment corrects a drafting error, and makes no substantive change to the law.

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

Indigenous Education (Targeted Assistance) Amendment Bill 2004

[Introduced in the House of Representatives on 23 June 2004 and reintroduced on 17 November 2004. Portfolio: Education, Science and Training]

The bill amends the *Indigenous Education (Targeted Assistance) Act 2000* to:

- continue funding for the Indigenous Education Strategic Initiatives Programme and the Indigenous Education Direct Assistance Programme for the period 1 January 2005 to 30 June 2009;
- continue the ‘away-from-base’ element of ABSTUDY for 2005 to 2008; and
- specify accountability arrangements for funding agreements made under the Act and to enable ministerial intervention to address underperformance by funding recipients.

The bill also repeals the *Indigenous Education (Supplementary Assistance) Act 1989*, contains an application provision and extends a regulation-making power.

The Committee has no comment on this bill.

Legislative Instruments (Technical Amendment) Bill 2004

[Introduced in the House of Representatives on 16 November 2004. Portfolio:
Prime Minister]

This bill amends the *Acts Interpretation Act 1901* to clarify the effect of the expression 'by legislative instrument' and to confirm that the use of the expression does not imply that the instrument must be of a legislative character within the ordinary meaning of that term.

The bill was introduced and taken to its first reading stage on 16 November 2004. At that stage neither an explanatory memorandum nor a second reading speech was available. The Committee may further consider the bill when more is known of its purpose and the mischief it is intended to address.

At this stage, the Committee has no comment on this bill.

National Security Information (Criminal Proceedings) Bill 2004

[Introduced in the House of Representatives on 27 May 2004 and reintroduced in the Senate on 17 November 2004, with amendments. 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 proceedings for Commonwealth offences where the disclosure is likely to prejudice Australia's national security.

The bill was the subject of an inquiry by the Senate Legal and Constitutional Legislation Committee, which tabled its report on 19 August 2004. The Committee made a number of recommendations addressing the proper balance between defendants' rights and national security considerations. The Attorney-General's second reading speech reports that the Government has considered the Committee's report and adopted several of its recommendations.

The explanatory memorandum contends that the legislation 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 second reading speech concludes that 'the new measures will not prevent a defendant from receiving a fair trial. The courts will retain the power to ensure that a trial is fair and that the defendant is not disadvantaged.'

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

Personal rights Subclauses 31(7) and 31(8)

The purpose of this bill, as stated in the explanatory memorandum, is to seek 'to protect information from disclosure during a proceeding for a Commonwealth offence where the disclosure is likely to prejudice Australia's national security.'

In furtherance of this object, subclause 31(7) requires a court, in deciding whether to allow a witness to be called or a document to be tendered, to consider both whether its order might prejudice national security and whether such an order ‘would have a substantial adverse effect on the defendant’s right to receive a fair hearing.’ Subclause 31(8), however, provides that, in making its decision, ‘the Court must give greatest weight to’ the possible prejudice to national security. The Committee considers that these provisions, in subjecting a defendant’s right to a fair hearing in a criminal trial to the demands of national security, may trespass on the defendant’s personal rights. The question of whether they do so *unduly* is a matter for the Senate as a whole.

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

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

[Introduced in the House of Representatives on 27 May 2004 and reintroduced in the Senate on 17 November 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 certificate or a witness exclusion certificate under the *National Security Information (Criminal Proceedings) Act 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.

Exclusion of requirement to give reasons Schedule 1, item 2

Item 2 of Schedule 1 to this bill proposes to amend the *Administrative Decisions (Judicial Review) Act 1977* to exclude from the purview of that Act a decision of the Attorney-General to issue a certificate under the National Security (Criminal Proceedings) Bill 2004 relating to possible evidence or documents, the disclosure of which in criminal proceedings may prejudice national security. This removes the requirement for the Attorney-General to furnish reasons for the decision to issue such a certificate.

As the explanatory memorandum observes, the nature of such a decision 'is such that exposure of the reasons for the decision could itself prejudice Australia's national security.'

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

National Water Commission Bill 2004

[Introduced in the House of Representatives on 18 November 2004. Portfolio: Prime Minister]

This bill establishes the National Water Commission as an independent statutory body to administer the National Water Initiative and provide advice on Commonwealth financial assistance under the Australian Water Fund.

The Committee has no comment on this bill.

New International Tax Arrangements (Managed Funds and Other Measures) Bill 2004

[Introduced in the House of Representatives on 24 June 2004 and reintroduced on 18 November 2004. Portfolio: Communications, Information Technology and the Arts]

The bill amends the following Acts:

- *Income Tax Assessment Act 1997* to modify the capital gains tax treatment of foreign residents with interests in Australian managed funds to provide comparable tax outcomes to those investing directly;
- *International Tax Agreements Act 1953* to amend the rules for determining the source of income derived by certain residents of treaty partner countries;
- *Income Tax Assessment Act 1936, Income Tax Assessment Act 1997 and Financial Corporations (Transfer of Assets and Liabilities) Act 1993* in relation to interest withholding tax.

The bill also contains application provisions.

The Committee has no comment on this bill.

Postal Industry Ombudsman Bill 2004

[Introduced in the House of Representatives on 12 August 2004 and reintroduced on 17 November 2004. Portfolio: Communications, Information Technology and the Arts]

The bill amends the *Ombudsman Act 1976* to provide for the establishment of a Postal Industry Ombudsman (PIO) within the office of the Commonwealth Ombudsman (CO).

The PIO will be investigate complaints against, or actions taken by, Australia Post in relation to the provision of postal or similar services. The CO will continue to investigate action of an administrative nature taken by Australia Post. Provision has been made for complaints to be transferred where it is more appropriate for the other Ombudsman to deal with the matter.

Unlike the CO, the PIO will also have a jurisdiction over non-government entities that voluntarily register with it.

The bill also makes consequential amendments to the *Migration Act 1958* and the *Privacy Act 1988*, and contains application and transitional provisions.

Retrospective commencement Schedule 2

By virtue of items 3 to 7 in the table to subclause 2(1) in this bill, items in Schedule 2 are to commence retrospectively on various dates between 11 May 1989 and 12 October 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. In this case, the explanatory memorandum points out that all of the amendments proposed in that Schedule are corrections of earlier drafting errors, and make no substantive change to the law.

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

**Delegation of power
Schedule 1, item 12**

Proposed new subsection 34(2) of the *Ombudsman Act 1976*, to be inserted by item 12 of Schedule 1 to this bill, would permit the Postal Industry Ombudsman to delegate many of his or her powers under the Act to ‘a person.’ The explanatory memorandum acknowledges that such a delegation is not considered appropriate by the Committee, but contends that ‘there are sound reasons for such powers. For example, the [Ombudsman’s] office is relatively small and is geographically dispersed, and it is therefore impractical to limit investigatory powers to particular classes of officers (such as SES officers), as these officers are not present in every office. In addition, the [Ombudsman] will on occasion, engage a consultant with specialist knowledge to investigate a matter, and will delegate power to the consultant.’

The explanatory memorandum also notes that the delegation powers mirror those available to the Commonwealth Ombudsman and the Defence Force Ombudsman. The Committee accepts that there is value in applying the same administrative arrangements across the Ombudsman’s office.

The Committee notes, however, the preliminary comment on page 4 of the explanatory memorandum, which refers to an imminent review of the Act. As part of that review, it may be beneficial for the Minister and the Ombudsman to recast the delegation powers in the Act to reflect the principle that a discretion to delegate ought be limited to a particular class of persons (for instance, persons with particular expertise), or limited to a particular range of powers and functions.

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

Private Health Insurance Incentives Amendment Bill 2004

[Introduced in the House of Representatives on 18 November 2004. Portfolio: Health and Ageing]

This bill increases the Private Health Insurance rebate for people aged 65 and over, from 1 April 2005. The bill also extends protection from the Lifetime Health Cover scheme to holders of veterans' Gold Cards.

Retrospective application Schedule, items 1 and 2

By virtue of item 3 of Schedule 2 to this bill, the amendments proposed in items 1 and 2 of that Schedule would apply retrospectively from 1 July 2004. However, the explanatory memorandum points out, on page 8, that the purpose of this retrospective application is to ensure that those who are issued with a Gold Card under the *Military Rehabilitation and Compensation Act 2004* are treated in the same way as those whose Gold Card was issued under the *Veterans' Entitlement Act 1986*.

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

Republic (Consultation of the People) Bill 2001 [2004]

[Introduced in the Senate on 26 September 2001; restored to the *Notice Paper* on 14 May 2002 and 17 November 2004. Portfolio: Attorney-General]

The bill provides for electors to be consulted on whether Australia should become a republic and on whether they should vote again to choose from different republic models.

The Committee has no comment on this bill.

Schools Assistance (Learning Together – Achievement through Choice and Opportunity) Bill 2004

[Introduced in the House of Representatives on 23 June 2004 and reintroduced on 17 November 2004. Portfolio: Education, Science and Training]

The bill establishes the framework for granting financial assistance to the states and territories for government and non-government schools between 2005 and 2008.

The bill also contains transitional provisions and a regulation-making power.

The Committee has no comment on this bill.

Sex Discrimination Amendment (Teaching Profession) Bill 2004

[Introduced in the House of Representatives on 11 August 2004 and reintroduced on 17 November 2004. Portfolio: Attorney-General]

The bill amends the *Sex Discrimination Act 1984* to permit the provision of teaching scholarships to males undertaking school teaching courses in Australia, in order to redress teacher gender imbalance in schools.

The bill is identical in its purpose to the Sex Discrimination Amendment (Teaching Profession) Bill 2004, which was negatived by the Senate at its second reading on 25 June 2004.

The Committee has no comment on this bill.

States Grants (Primary and Secondary Education Assistance) Legislation Amendment Bill 2004

[Introduced in the House of Representatives on 23 June 2004 and reintroduced on 17 November 2004. Portfolio: Education, Science and Training]

The bill amends the *States Grants (Primary and Secondary Education Assistance) Act 2000* to appropriate additional funding for the National Literacy and Numeracy Strategies and Projects Programme for the Tutorial Credits Initiative in 2004 and to correct a technical defect in the socioeconomic status (SES) funding phasing-in arrangements for non-government schools.

The Committee has no comment on this bill.

Superannuation Legislation Amendment Bill 2004

[Introduced in the House of Representatives on 11 August 2004 and reintroduced on 17 November 2004. Portfolio: Finance and Administration]

The bill amends the *Superannuation Act 1976* and the Rules for the Administration of the Public Sector Superannuation Scheme to:

- recognise that superannuation salary for the purposes of the Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS) can be provided for in determinations that set remuneration for departmental secretaries and other Australian government office holders; and
- validate past determinations of superannuation salary that have been made under an Act for the purposes of the CSS and the PSS, so that no benefit already paid will be reduced by this validation.

The bill also contains application provisions.

Retrospective application

Schedule 1, paragraph 2(1)(a) and Schedule 2, paragraph 4(1)(a)

By virtue of paragraph 2(1)(a) of Schedule 1 to this bill and paragraph 4(1)(a) of Schedule 2, the amendments proposed in each Schedule may have retrospective application. 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 the Minister observes, in his second reading speech, that the bill ‘validates some ... determinations of superannuation salary that have been made in the past while also ensuring that no benefit that has been paid or is being paid will be reduced because of the amendments in this bill.’ It appears that the retrospective application will not operate to the prejudice of any person.

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

Surveillance Devices Bill 2004

[Introduced in the House of Representatives on 24 June 2004 (as the Surveillance Devices Bill (No. 2) 2004) and reintroduced in the Senate on 17 November 2004; this bill was passed by the Senate on 30 November 2004. Portfolio: Attorney-General]

The bill establishes a framework for the use of surveillance devices where such use would ordinarily be prohibited under state or territory law. The bill:

- includes procedures for federal, state and territory law enforcement agencies to obtain warrants and emergency authorisations for the installation, maintenance, use and retrieval of surveillance devices in relation to certain criminal investigations and child recovery orders;
- provides for the use of surveillance devices for the investigation of certain Commonwealth offences in a foreign country, or on a foreign vessel or aircraft, with the agreement of an appropriate official of the foreign country;
- regulates the making and use of records of surveillance device operations; and
- establishes a reporting and inspection regime that allows for the scrutiny of the exercise of these powers.

The bill makes consequential amendments to the *Australian Federal Police Act 1979*, the *Criminal Code Act 1995*, the *Customs Act 1901* and the *Mutual Assistance in Criminal Matters Act 1987*.

The bill also contains transitional and savings provisions, and a regulation-making power.

The Committee has no comment on this bill.

Tax Laws Amendment (2004 Measures No. 6) Bill 2004

[Introduced in the House of Representatives on 18 November 2004. Portfolio: Industry, Tourism and Resources]

The bill reintroduces measures contained in the Tax Laws Amendment (2004 Measures No. 4) Bill 2004 (introduced on 24 June 2004) and the Tax Laws Amendment (2004 Measures No. 5) Bill 2004 (introduced on 12 August 2004), which lapsed prior to the commencement of the 41st Parliament.

The bill amends income tax laws:

- to clarify the operation of the consolidation regime and provide greater flexibility and certainty to the consolidation membership and loss rules;
- to ensure that copyright collecting societies are not taxed on income they collect on behalf of members;
- to further implement the simplified imputation system;
- to add certain fire and emergency service bodies and other entities to the list of specifically listed deductible gift recipients; and
- to extend the transitional period in the debt/equity rules for at call loans to 30 June 2005.

The bill also amends the following Acts:

- *Income Tax Assessment Act 1997* in relation to deductible gift recipients; access to water facilities and landcare tax concessions for irrigation water providers; declaration of shares and other equity interests to be worthless for capital gains tax purposes; and the first child tax offset provisions affecting adoption;
- *Fringe Benefits Tax Assessment Act 1986* to broaden the exemption for incidental purchase costs associated with the acquisition of a dwelling as a result of relocation;

- *Superannuation Guarantee (Administration) Act 1992* to remove the requirement for employers to provide reports to employees under the superannuation guarantee arrangements;
- *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997* and the *Taxation Administration Act 1953* to provide greater flexibility and clarify certain aspects of the consolidation regime; and
- *Taxation Laws Amendment Act (No. 8) 2003* to correct a technical defect in the citation of an Act in the commencement provision applying to the franking deficit tax offset provisions for life insurance companies.

The bill contains application and transitional provisions.

Retrospective commencement and retrospective application Schedules 1, 2, 3, 4, 6, 7, 10, 11 and 12

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 bill contains a number of relevant provisions:

- By virtue of item 1 of Schedule 1 to this bill, the amendments proposed by that Schedule are to apply from 1 July 2002. However, the explanatory memorandum notes that those amendments ‘clarify the operation of the consolidation regime and as such are beneficial to taxpayers and do not have the potential to act to the detriment of any person.’
- By virtue of item 14 of Schedule 2 to this bill, the amendments proposed by that Schedule are to apply from 1 July 2002. However, the explanatory memorandum notes that those amendments are expected to have a negligible financial impact.
- By virtue of Part 3 of Schedule 3 to this bill, the amendments proposed by that Schedule are to apply from 1 July 2002. However, the explanatory memorandum notes that those amendments have no financial impact.

- The amendments proposed in the various items of Schedule 4 would apply from various dates prior to this bill receiving assent. However the explanatory memorandum notes that all of those amendments are beneficial to taxpayers.
- By virtue of item 14 of Schedule 6 to this bill, the amendments proposed by that Schedule are to apply from 1 July 2004. However, the explanatory memorandum notes that those amendments are estimated to have a cost to revenue of \$15 million over the forward estimate period.
- By virtue of item 6 of Schedule 7 to this bill, the amendments proposed by that Schedule are to apply from 1 April 2004. However, the explanatory memorandum notes that those amendments are estimated to have an insignificant cost to revenue.
- By virtue of item 23 of Schedule 10 to this bill, the amendments proposed by that Schedule are to apply from 1 July 2001. However, the explanatory memorandum notes that those amendments are estimated to have an insignificant cost to revenue.
- By virtue of item 8 in the table to subclause 2(1) in this bill, Schedule 11 is to commence retrospectively on 21 October 2003, immediately after the commencement of earlier legislation. However, the explanatory memorandum notes that the amendment proposed by Schedule 11 has no financial impact, as it is technical only.
- By virtue of items 9, 11, 12 and 13 in the table to subclause 2(1) in this bill, various items in Schedule 12 are to commence retrospectively on either 1 July 2000 or 1 July 2001. However, the explanatory memorandum notes that the amendments proposed by Schedule 12 have a negligible financial impact.

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

Tax Laws Amendment (Retirement Villages) Bill 2004

[Introduced in the House of Representatives on 18 November 2004. Portfolio: Treasury]

This bill amends the *A New Tax System (Goods and Services Tax) Act 1999* to:

- ensure that supplies of certain services and accommodation to residents of serviced apartments in retirement villages are GST-free where the resident requires daily living activities assistance or nursing services; and
- confirm that supplies of accommodation, accommodation-related services and meals by a charitable operator of a retirement village are GST-free.

Retrospective application Schedule 1, part 2

By virtue of Part 2 of Schedule 1 to this bill, the amendments proposed by that Schedule are to apply generally 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 notes that those amendments are estimated to have a cost to revenue rising to \$13 million in 2007-08.

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

Tax Laws Amendment (Small Business Measures) Bill 2004

[Introduced in the House of Representatives on 18 November 2004. Portfolio: Treasury]

The bill amends the *A New Tax System (Goods and Services Tax) Act 1999* to:

- allow certain small businesses and non-profit bodies the option to elect to lodge their goods and services tax (GST) returns and pay the GST on an annual basis;
- allow small businesses to elect to undertake annual apportionment of input tax credits for certain acquisitions and importations used partly for non-business purposes; and
- remove the requirement for an entity to make an annual election to continue with the option to pay GST by instalments.

The bill also contains application provisions.

The bill is similar in its terms to the Indirect Tax Legislation Amendment (Small Business Measures) Bill 2004, which was introduced in the House of Representatives on 24 June 2004 and lapsed prior to the commencement of the current Parliament.

Retrospective application Schedule 1, item 16

By virtue of item 16 of Schedule 1 to this bill, the amendments proposed by that Schedule are to apply from either 1 October 2004 or 1 November 2004. 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, the explanatory memorandum notes that those amendments are estimated to have a cost to revenue of \$219 million in 2004-05, falling to \$18 million in 2007-08.

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

**Retrospective application
Schedule 2, item 23**

By virtue of item 23 of Schedule 2 to this bill, the amendments proposed by that Schedule are to apply from either 1 October 2004 or 1 November 2004. However, the explanatory memorandum notes that those amendments will have no financial impact.

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

Tax Laws Amendment (Superannuation Reporting) Bill 2004

[Introduced in the House of Representatives on 18 November 2004. Portfolio: Treasury]

This bill amends the *Superannuation Guarantee (Administration) Act 1992* to remove the requirement for employers to provide reports to employees under the superannuation guarantee arrangements on employer superannuation contributions.

Employees will continue to be provided with information on at least an annual basis from their superannuation fund or from their employers reporting on payslips in accordance with Australian workplace legislation.

The Committee has no comment on this bill.

Telecommunications (Interception) Amendment (Stored Communications) Bill 2004

[Introduced in the House of Representatives on 27 May 2004 and reintroduced in the Senate on 17 November 2004; this bill was passed by the Senate on 29 November 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.

Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004

[Introduced in the House of Representatives on 16 June 2004 and reintroduced on 17 November 2004. Portfolio: Industry, Tourism and Resources]

Introduced with the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004, the bill amends the *Textile, Clothing and Footwear Strategic Investment Program Act 1999* to:

- extend the provisions of the Textile, Clothing and Footwear Strategic (TCF) Investment Program for another 10 years, and to broaden and simplify the scheme;
- establish a 10-year small TCF business grants-based program;
- establish a 10-year TCF structural adjustment to assist both displaced workers and to encourage industry restructuring;
- introduce a product diversification scheme to encourage local firms to increase production and diversify their product range;
- establish a supply chain efficiency program from 2010 to 2015 to enable TCF tariffs to be reduced to the general manufacturing rate; and
- extend the Expanded Overseas Assembly Provisions Scheme for a further 5 years.

The Committee has no comment on this bill.

Vocational Education and Training Funding Amendment Bill 2004

[Introduced in the House of Representatives on 23 June 2004 and reintroduced on 17 November 2004, with amendments. Portfolio: Education, Science and Training]

The bill amends the *Vocational Education and Training Funding Act 1992* to provide funds for vocational education and training in 2005 under the Australian National Training Authority agreement, and to update the funding limits for 2004 to reflect the outcome of negotiations with the states and territories.

The Committee has no comment on this bill.

Workplace Relations Amendment (Agreement Validation) Bill 2004

[Introduced in the Senate on 17 November 2004. Portfolio: Education, Science and Training]

This bill amends the *Workplace Relations Act 1996* (WR Act) to ensure the validity of agreements which were certified, approved or varied under the WR Act on or before 2 September 2004, prior to the decision of the High Court in *Electrolux Home Products Pty Ltd v The Australian Workers' Union and Others* [2004] HCA 40.

The bill was the subject of an inquiry and report by the Employment, Workplace Relations and Education Legislation Committee, which was tabled in the Senate on 29 November 2004.

Retrospectivity Schedule 1, items 1 and 2

Proposed new sections 170NHA, 170NHB and 170WEA of the *Workplace Relations Act 1996*, to be inserted by items 1 and 2 of Schedule 1 to this bill, would retrospectively validate various types of agreements made under that Act before 2 September 2004. 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, the explanatory memorandum observes that the purpose of the bill is to ensure the continued validity of various agreements, the validity of which was put in doubt by the decision of the High Court in *Electrolux Home Products Pty Ltd v Australian Workers' Union* [2004] HCA 40. The Minister notes, in his second reading speech, that the bill 'will put parties to an agreement in the position they would have been in had they complied with the *Electrolux* decision when they made or varied their agreement.'

The provisions operate to validate agreements only insofar as they 'pertain to the employment relationship.' It is possible that the provisions will be to the detriment of some individuals who have entered into workplace agreements which are retrospectively varied by the legislation. Accordingly, the

Committee considers that these provisions may trespass on personal rights. The question of whether they do so *unduly* is a matter for the Senate as a whole.

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.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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							
<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 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		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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							
<i>Agriculture, Fisheries and Forestry Legislation Amendment (Export Control) Act 2004</i>	7(16.6.04)	2.6.04	16.6.04	Agriculture, Fisheries and Forestry	17.6.04	24.6.04	9(4.8.04)
Anti-terrorism Bill (No. 2) 2004	8(23.6.04)	17.6.04	3.8.04	Attorney-General	24.6.04	10.8.04	10(11.8.04)
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<i>Australian Energy Market Act 2004</i>	8(23.6.04)	17.6.04	23.6.04	Industry, Tourism and Resources	24.6.04	24.6.04	9(4.8.04)
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)
<i>Customs Legislation Amendment (Airport, Port and Cargo Security) Act 2004</i>	7(16.6.04)	27.5.04	24.6.04	Justice and Customs	17.6.04	21.6.04	9(4.8.04)
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)
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	2(3.3.04)	28.6.99	12.11.98	Environment and Heritage	4.3.04	9.8.04	10(11.8.04)
Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Bill 2004	7(16.6.04)	13.5.04	15.6.04	Health and Ageing	17.6.04		
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)
<i>Trade Practices Amendment (Australian Energy Market) Act 2004</i>	8(23.6.04)	17.6.04	23.6.04	Treasury	24.6.04	24.6.04	9(4.8.04)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
US Free Trade Agreement Implementation Bill 2004	9(4.8.04)	23.6.04	3.8.04	Trade	5.8.04		11(1.12.04)
US Free Trade Agreement Implementation (Customs Tariff) Bill 2004	9(4.8.04)	23.6.04	3.8.04	Customs	5.8.04	8.9.04	11(1.12.04)
Veterans' Entitlements Amendment (Direct Deductions and Other Measures) Bill 2004	5(31.3.04)	25.3.04	22.6.04	Veterans' Affairs	1.4.04	23.4.04	8(23.6.04)
Water Efficiency Labelling and Standards Bill 2004	9(4.8.04)	24.6.04	12.8.04	Environment and Heritage	5.8.04		