

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



Alert Digest

No. 12 of 2004

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

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

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

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

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Bills restored to the *Notice Paper*

The following bills, which were introduced in the Senate in previous Parliaments, have been restored to the *Notice Paper*. The Committee dealt with these bills in Alert Digests as indicated below.

Criminal Code Amendment (Workplace Death and Serious Injury) Bill 2004

(Senator Nettle, restored 30 November 2004)

Alert Digest No. 10 of 2004

Constitution Alteration (Right to Stand for Parliament – Qualification of Members and Candidates) 1998

(Senator Brown, restored 1 December 2004)

Alert Digests Nos. 9 and 10 of 1998

Aboriginal and Torres Strait Islander Commission Amendment Bill 2004

[Introduced in the House of Representatives on 27 May and reintroduced in the Senate on 1 December 2004, with amendments. 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) and ATSIC Regional Councils. It also makes consequential amendments to enable the transfer of ATSIC's assets and liabilities to other agencies, to establish a new housing fund to be administered by Indigenous Business Australia and to modify the role of the Office of Evaluation and Audit.

The bill makes consequential amendments to 11 other Acts and also contains transitional and saving provisions.

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

Proposed new subsection 193ZG(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 193ZG(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 193ZG(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.

Australian Communications and Media Authority Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

The bill establishes a new regulatory authority for communications, the Australian Communications and Media Authority (ACMA), replacing the Australian Broadcasting Authority and the Australian Communications Authority.

The bill specifies the functions of the new authority in the areas of telecommunications, spectrum management, broadcasting services and datacasting, among others. It sets out administrative arrangements for the authority and provides for the appointment of members, including a full-time Chair and Deputy Chair, and associate members.

The bill is accompanied by the Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004 and eight related bills.

Wide discretion

Subclauses 24(1) and (4)

According to the second reading speech, the bill 'allows the Minister to appoint associate members to undertake specified matters such as inquiries, investigations and hearings'. In fact, subclause 24(1) of this bill would give to the Minister the discretion to appoint 'as many associate members of the ACMA as he or she thinks fit'. The only limit on the exercise of this discretion is that, by virtue of subclause 24(4), an associate member's appointment must relate to one or more 'specified matters', however paragraph 24(4)(b) allows such specified matters to be 'any other matter that relates to the ACMA's functions or the exercise of the ACMA's powers'.

The Committee considers that this clause may insufficiently subject the exercise of legislative power to parliamentary scrutiny, and **seeks the Minister's advice** as to whether the number of associate members of the

Authority, or the circumstances in which they may be appointed, might not be limited to some extent.

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

Incorporation of extrinsic material

Clause 65

Under clause 64 of this bill, the ACMA may make determinations, which may be of a legislative character, setting out the definitions of expressions used in specified instruments made by the ACMA under telecommunications and broadcasting legislation. Clause 65 would allow a determination made under clause 64 to apply, adopt or incorporate '(with or without modifications) matter contained in any other instrument or writing whatever', whether or not that other instrument or writing is in existence at the time of the making of the determination. Furthermore, the other instrument or writing may, by virtue of paragraph 65(2)(g), be 'an instrument or writing made unilaterally'.

Section 49A of the *Acts Interpretation Act 1901* allows an instrument to adopt or incorporate extrinsic material and to give it the force of law. Where the material adopted is not itself an Act or a regulation, the general rule in section 49A allows for its adoption in the form that it exists at the time of adoption, but *not* 'as in force from time to time'. Without such an approach a person or organisation may change the obligations imposed by a regulation without the Parliament's knowledge, or without the opportunity for the Parliament to scrutinise the variation. (Section 14 of the *Legislative Instruments Act 2003* contains a similar provision.) While this is a general rule, it may be ousted by a statement of contrary intention in an Act and this is what clause 65 seeks to achieve.

Where a provision seeks to oust this general rule, the Committee will usually seek an explanation of the need for the provision. In this case, the explanatory memorandum states that the operation of section 49A 'would cause

unnecessary administrative work for the ACMA and [the ACMA Act] would lack the flexibility' in other telecommunications legislation.

In considering the precursor to clause 65, section 54A of the *Australian Communications Authority Act 1997*, the Committee repeated its long held position that mere administrative convenience cannot justify an absence of parliamentary scrutiny, but accepted the Minister's argument that the incorporation of material was not intended to affect policy, but rather to make technical changes. (See *Fourth Report of 2003*, Communications Legislation Amendment Bill (No. 1) 2002.)

The Committee has taken a similar approach with other relevant legislation. In its commentary on proposed section 314A of the *Radiocommunications Act 1992*, for instance, the Committee was prepared to accept a similar provision where it was clear that the instruments in question dealt with the technical nature of standards (*Fourth Report of 1995*, Communications and the Arts Legislation Amendment Bill 1994).

In relation to clause 65, the explanatory memorandum sets out a wide range of examples of material which may be incorporated, and there is nothing to indicate an intention that the matters to be dealt with by incorporation would be restricted, for instance, to technical matters.

The only limit on the width of the Authority's power is that determinations made under clauses 64 and 65 are solely for the purpose of defining expressions used in other determinations. The Committee considers that this clause may insufficiently subject the exercise of legislative power to parliamentary scrutiny, and **seeks the Minister's advice** as to whether there might not be some limit put upon the exercise of this power.

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

Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

Introduced with the Australian Communications and Media Authority Bill 2004, the bill contains transitional provisions and consequential amendments relating to the proposed merger of the Australian Broadcasting Authority and the Australian Communications Authority to form the Australian Communications and Media Authority.

The Committee has no comment on this bill.

Australian Passports (Application Fees) Bill 2004

[Introduced in the House of Representatives on 24 June 2004 and reintroduced on 2 December 2004. Portfolio: Foreign Affairs]

Part of a package of three bills establishing a new framework for Australia's passport system, this bill imposes application fees for passports and related travel documents.

The bill also contains a regulation-making power.

The Committee has no comment on this bill.

Australian Passports Bill 2004

[Introduced in the House of Representatives on 24 June 2004 and reintroduced on 2 December 2004, with amendments. Portfolio: Foreign Affairs]

Part of a package of three bills establishing a new framework for Australia's passport system, the bill:

- makes a clear statement of the entitlement of Australians to a passport;
- increases maximum penalties for passport-related fraud;
- provides mechanisms to deal with refusal, cancellation and replacement of lost and stolen passports, and privacy matters;
- provides for exceptional circumstances when applying for a child's passport; and
- establishes a framework for the use of technology.

The bill also contains a regulation-making power.

Commencement on proclamation

Clauses 3 to 59

By virtue of item 2 in the table in subclause 2(1), clauses 3 to 59 of this bill might commence on Proclamation, but in any event must commence 9 months after Assent. The Committee expects that, where legislation is expressed to commence on proclamation, the date should ordinarily be no later than 6 months after Parliament passes the relevant measure. Where the period will be longer, the Committee expects that the explanatory memorandum will provide an explanation for the delayed commencement. In this case, the explanatory memorandum observes that delayed commencement is 'necessary to ensure time for an adequate public awareness campaign' relating to the changes to existing law to be made by this bill.

The Committee accepts that this is an adequate reason for such a delay in commencement.

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

Personal rights and liberties

Paragraphs 23(1)(a) and (b)

Paragraphs 23(1)(a) and (b) are virtually identical to paragraphs 17(1)(a) and (b) of the *Passports Act 1938*, inserted by the *Anti-terrorism Act (No. 3) 2004*. The Committee commented on the bill for that Act in *Alert Digest No. 8 of 2004* and made some additional comments, in relation to an earlier incarnation of this bill, in *Alert Digest No. 9 of 2004*. The essence of those comments is set out below.

Subclause 23(1) provides that an ‘enforcement officer’ (that is, a police officer or Customs officer) may demand that a person surrender foreign travel documents to the officer merely on the basis that the enforcement officer suspects on reasonable grounds that the travel documents have either been obtained by false or misleading conduct, or have been used in the commission of an offence against the Act. Furthermore, by virtue of subclause 23(2), the person of whom such a demand has been made may commit an offence if he or she fails to surrender the document.

It appears that the factual basis of an offence may be created by no more than an enforcement officer’s suspicion, on reasonable grounds, of certain conduct. The Committee is also concerned as to whether anyone charged with an offence under this provision is sufficiently protected (or protected at all) by the constraints on, and penalties for, any misuse of this power. The Committee considers that this new section may be regarded as trespassing on personal rights and liberties. The Committee **leaves for the Senate as a whole** the question of whether the bill *unduly* trespasses on those rights.

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.

Australian Passports (Transitionals and Consequentials) Bill 2004

[Introduced in the House of Representatives on 24 June 2004 and reintroduced on 2 December 2004. Portfolio: Foreign Affairs]

Part of a package of three bills establishing a new framework for Australia's passport system, the bill:

- makes consequential amendments to six Acts, including the *Passports Act 1938*;
- removes all provisions relating to Australian passports or travel-related documents from the *Passports Act 1938* and renames that Act the *Foreign Passports (Law Enforcement and Security) Act 2004*; and
- contains transitional provisions to ensure the continuing validity of travel documents, the continued application of the *Passports Act 1938* to pending proceedings and reviews, and the application of the proposed *Australian Passports Act 2004* to pending applications.

The bill also contains a regulation-making power.

The Committee has no comment on this bill.

Broadcasting Services Amendment (Anti-Siphoning) Bill 2004

[Introduced in the House of Representatives on 24 June 2004 and reintroduced on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

The bill amends the *Broadcasting Services Act 1992* to extend the automatic de-listing period for events on the ‘anti-siphoning’ list, which lists events determined by the Minister to be available free-to-air, so that events are removed 12 weeks prior to their commencement.

The Committee has no comment on this bill.

Copyright Legislation Amendment Bill 2004

[Introduced in the Senate on 30 November 2004. Portfolio: Attorney-General]

The bill makes minor, technical and ‘clarifying’ amendments to the *Copyright Act 1968* and the *US Free Trade Agreement Implementation Act 2004* relating to copyright protection. According to the explanatory memorandum, the bill ‘will also ensure that Australia fully complies with its obligations under the Australia-United States Free Trade Agreement’.

The bill:

- broadens the scope of some criminal offences to apply to commercial infringements that do not occur in a trade context;
- clarifies the effect of provisions relating to prima facie recognition of the maker of a recording or owner of copyright in a recording; and
- narrows the scope of the ‘incidental copies’ exception.

The bill also clarifies the remedies available against carriage service providers and amends the *US Free Trade Agreement Implementation Act 2004* to limit the application of transitional provisions relating to the term of copyright protection.

Uncertainty of commencement Schedule 1

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

The Committee takes the view that Parliament is responsible for determining when laws are to come into force and commented on this issue in relation to

the *US Free Trade Agreement Implementation Act 2004* and an associated Act.

In its *Eleventh Report of 2004*, the Committee also noted with approval paragraphs 81 to 83 of the Drafting Direction No. 3 of 2003 from the Office of Parliamentary Counsel and endorsed the formulation in paragraph 83:

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).

The Committee **seeks the Minister’s advice** as to whether the item might not also provide 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.

Datacasting Charge (Imposition) Amendment Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

Introduced with the Australian Communications and Media Authority Bill 2004, the bill amends the *Datacasting Charge (Imposition) Amendment Act 1998* to replace references to the Australian Communications Authority with references to the new Australian Communications and Media Authority.

The Committee has no comment on this bill.

Financial Framework Legislation Amendment Bill 2004

[Introduced in the House of Representatives on 11 August and reintroduced on 1 December 2004: Portfolio: Finance and Administration]

Further to the accrual budgeting and reporting framework introduced by the *Financial Management Legislation Amendment Act 1999*, the bill amends 112 Acts and repeals 28 redundant Acts to:

- align the financial management provisions of 73 Acts with the *Financial Management and Accountability Act 1997*;
- expand the information requirements for a determination made by the Minister for Finance and Administration to establish a Special Account;
- transfer from the Treasurer to the Finance Minister certain powers and functions contained in 25 Acts relating to the approval of investments, money raising and guarantees for specific entities that are legally separate from the Commonwealth, and the delegation of those powers and functions; and
- update, clarify and align other financial management and reporting provisions.

The Committee has no comment on this bill.

James Hardie (Investigations and Proceedings) Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Treasury]

The bill is intended to facilitate investigation by the Australian Securities and Investments Commission (ASIC) of matters arising from the James Hardie Special Commission of Inquiry in New South Wales as well as any proceedings that may result from those investigations.

The bill expressly abrogates legal professional privilege in relation to certain materials for the purposes of those investigations and proceedings.

Abrogation of legal professional privilege

Clause 4

Clause 4 of this bill would abrogate legal professional privilege in relation to a wide range of records and books connected with the Special Commission of Inquiry conducted in New South Wales into the conduct of the James Hardie Group of companies. In his second reading speech the Treasurer acknowledges that ‘legal professional privilege is ... an important common law right’ that ought to be abrogated only in special circumstances, but goes on to assert that such abrogation is justified ‘in order to serve higher public policy interests’ such as the ‘effective enforcement of corporate regulation.’

Any abrogation of legal professional privilege trespasses on the rights of those affected and the Committee will always draw such provisions to the attention of the Senate.

The Committee also notes the retrospective effect of the legislation, which would abrogate legal professional privilege in respect of records produced to, or created by, the James Hardie Special Commission of Inquiry and transferred from the NSW Government to ASIC, as well as relevant material obtained after the commencement of the bill.

The Committee considers that, while clause 4 clearly trespasses on the rights of the James Hardie Group of companies (to the extent that the group can be

considered to enjoy such rights), the question of whether it does so *unduly* is a **matter for the Senate as a whole**.

In respect of those matters, 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.

The Committee further notes the discussion in the explanatory memorandum of the justification for abrogating the privilege:

4.23 As recognised by the High Court in the *Daniels* case, legal professional privilege is not merely a rule of substantive law but an important common law right. Nevertheless, there are situations in which its abrogation is justified in order to serve higher public policy interests. One such situation is the effective enforcement of corporate regulation.

4.24 The community must have confidence in the regulation of corporate conduct, financial markets and services. This confidence would be undermined if ASIC was unduly inhibited in its ability to obtain and use material necessary to conduct investigations and take enforcement action where appropriate in relation to matters arising from the James Hardie Special Commission of Inquiry and any subsequent investigations and prosecutions instigated by the regulator.

4.25 In relation to matters concerning, or arising out of, the James Hardie Special Commission of Inquiry, the Government considers that it is clearly in the public interest that any investigation and subsequent action by ASIC and the DPP be unfettered by claims of legal professional privilege.

While the Committee, according to its usual practice, has left for the Senate as a whole the question of whether this abrogation of a common law right *unduly trespasses* on rights, it is concerned at the use of criteria such as 'higher public policy interests', which are not susceptible to objective definition, to justify the intrusion on such rights. The Committee considers that, if such an approach is to be adopted in the future, the criteria should be better developed and defined, and **seeks the Treasurer's advice** on the development of this approach.

In the absence of a better developed definition of criteria such as 'higher public policy interests', the Committee does not consider that the bill provides

a useful precedent for future legislation intended to abrogate legal professional privilege.

National Health Amendment (Prostheses) Bill 2004

[Introduced in the House of Representatives on 12 August 2004 and reintroduced on 1 December 2004, with amendments. Portfolio: Health and Ageing]

The bill amends the *National Health Act 1953* to allow the Minister to make determinations in relation to the listing and benefit levels of 'no gap' and 'gap permitted' prostheses and to require registered health funds to offer a 'no gap' and 'gap permitted' range of prostheses in relation to every in-hospital procedure on the Medicare Benefits Schedule for which they provide cover. Health funds will still be permitted to choose to provide cover for prostheses which are not listed on relevant determinations.

The Committee has no comment on this bill.

Radiocommunications (Receiver Licence Tax) Amendment Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

Introduced with the Australian Communications and Media Authority Bill 2004, the bill amends the *Radiocommunications (Receiver Licence Tax) Act 1983* to replace references to the Australian Communications Authority with references to the new Australian Communications and Media Authority and to provide for the continuing effect of certain notices and determinations.

The Committee has no comment on this bill.

Radiocommunications (Spectrum Licence Tax) Amendment Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

Introduced with the Australian Communications and Media Authority Bill 2004, the bill amends the *Radiocommunications (Spectrum Licence Tax) Act 1997* to replace references to the Australian Communications Authority with references to the new Australian Communications and Media Authority and to provide for the continuing effect of certain determinations.

The Committee has no comment on this bill.

Radiocommunications (Transmitter Licence Tax) Amendment Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

Introduced with the Australian Communications and Media Authority Bill 2004, the bill amends the *Radiocommunications (Transmitter Licence Tax) Act 1983* to replace references to the Australian Communications Authority with references to the new Australian Communications and Media Authority and to provide for the continuing effect of certain notices and determinations.

The Committee has no comment on this bill.

Radio Licence Fees Amendment Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

Introduced with the Australian Communications and Media Authority Bill 2004, the bill amends the *Radio Licence Fees Act 1967* to replace references to the Australian Broadcasting Authority with references to the new Australian Communications and Media Authority and to provide for the continuing effect of certain directions.

The Committee has no comment on this bill.

Telecommunications (Carrier Licence Charges) Amendment Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

Introduced with the Australian Communications and Media Authority Bill 2004, the bill amends the *Telecommunications (Carrier Licence Charges) Act 1997* to replace references to the Australian Communications Authority with references to the new Australian Communications and Media Authority and to provide for the continuing effect of certain determinations.

The Committee has no comment on this bill.

Telecommunications (Numbering Charges) Amendment Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

Introduced with the Australian Communications and Media Authority Bill 2004, the bill amends the *Telecommunications (Numbering Charges) Act 1997* to replace references to the Australian Communications Authority with references to the new Australian Communications and Media Authority and to provide for the continuing effect of certain notices and determinations.

The Committee has no comment on this bill.

Television Licence Fees Amendment Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Communications, Information Technology and the Arts]

Introduced with the Australian Communications and Media Authority Bill 2004, the bill amends the *Television Licence Fees Act 1964* to replace references to the Australian Broadcasting Authority with references to the new Australian Communications and Media Authority and to provide for the continuing effect of certain directions.

The Committee has no comment on this bill.

Water Efficiency Labelling and Standards Bill 2004

[Introduced in the House of Representatives on 24 June 2004 and reintroduced on 1 December 2004. Portfolio: Environment and Heritage]

The bill provides for the establishment and operation of a scheme to apply national water efficiency labelling and minimum performance standards to certain water-use products. The bill also creates offences and associated penalties, establishes a Special Account to receive funds and to make payments, and includes internal and Administrative Appeals Tribunal review of decisions.

The bills also contains a regulation-making power.

Strict liability

Clauses 33, 34, 35, 36, 37 and 38

Clauses 33, 34, 35, 36, 37 and 38 would impose criminal offences of strict liability.

The Committee will generally draw to Senators' attention provisions which create strict liability and absolute liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill.

When this bill was previously before the Committee it noted, in *Alert Digest No 9 of 2004*, that there was no indication in the explanatory memorandum whether consideration has been given either to the Committee's Sixth Report of 2002 on *Application of Absolute and Strict Liability Offences in Commonwealth Legislation* or to the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, issued by the authority of the Minister for Justice and Customs in February 2004. The explanatory memorandum to the current bill repairs that deficiency, stating that consideration was given to both of those documents.

The explanatory memorandum goes on to assert that the 'strict liability offences of the bill do not unduly trespass upon personal rights and liberties. It is important to note that the intent of imposing strict liability is not to criminalise innocent contraventions of the scheme but to strongly discourage

actions that lead to excess urban water consumption that would further jeopardise the supply of this diminishing resource. The strict liability provisions contained in the bill therefore remove the uncertainty that would otherwise be inherent in the labelling and standards regime and create a simpler – as well as more stringent – standard.’

This explanation would appear to place the scheme within the principles proposed by the Committee in its report on strict liability offences and, in particular, the recognition that ‘strict liability may be appropriate where it is necessary to ensure the integrity of a regulatory regime such as, for instance, those relating to public health, the environment or financial or corporate regulation’. (*Sixth Report of 2002*, p 284)

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

Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004

[Introduced in the House of Representatives on 3 June (as the Workplace Relations Amendment (Fair Dismissal) Bill 2004) and reintroduced on 2 December 2004. Portfolio: Employment and Workplace Relations]

The bill amends the *Workplace Relations Act 1996* to:

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

The bill also contains an application provision intended to ensure that the provisions do not operate retrospectively.

The Committee has no comment on this bill.

Workplace Relations Amendment (Right of Entry) Bill 2004

[Introduced in the House of Representatives on 2 December 2004. Portfolio: Employment and Workplace Relations]

The bill expands the Commonwealth system for union ‘right of entry’ and overrides state systems, within constitutional limits. The explanatory memorandum notes that the bill ‘does not impinge on any right of entry provided under occupational health and safety legislation’.

The bill introduces more stringent criteria for granting a right of entry permit, including a ‘fit and proper person’ requirement, and expands the grounds for the suspension and revocation of permits. Provisions in the bill empower the Australian Industrial Relations Commission to deal with abuses of the system and prevent the Commission certifying a federal certified agreement that contains right of entry provisions.

According to the Minister’s second reading speech, ‘the bill seeks to limit inappropriate union entry and to ensure that entry is less intrusive and disruptive when it does occur’.

The Committee has no comment on this bill.

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE SENATE (29 November to 2 December 2004)

National Security Information (Criminal Proceedings) Bill 2004: The Senate amended this bill on 1 December 2004. The amendments were generally intended to implement recommendations contained in the report of the Senate Legal and Constitutional Legislation Committee on the bill. An amendment moved by Senator Brown which would have addressed the issue raised by this Committee in *Alert Digest No. 11 of 2004* by removing subclause 31(8) was not agreed to.

Workplace Relations Amendment (Agreement Validation) Bill 2004: The Senate amended this bill on 2 December 2004 to validate certain industrial action and lockouts taken that would have been protected action according to the law as understood before the date of the *Electrolux* decision. Although there is an element of retrospectivity, the Committee notes that the amendments in fact operate to temper the retrospective effect of the legislation noted in *Alert Digest No. 11 of 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		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)
Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2004	11(1.12.04)	17.11.04	2.12.04	Attorney-General	2.12.04	7.12.04	12(8.12.04)
Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004	11(1.12.04)	17.11.04	17.11.04	Justice and Customs	2.12.04	7.12.04	12(8.12.04)
Customs Tariff Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004	11(1.12.04)	17.11.04	17.11.04	Justice and Customs	2.12.04	7.12.04	12(8.12.04)
<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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
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		

