

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



**Alert Digest**

**No. 3 of 2006**

**29 March 2006**



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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 A McEwen  
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.





## **Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Bill 2006**

Introduced into the Senate on 1 March 2006

Portfolio: Communications, Information Technology and the Arts

### **Background**

This bill amends the *Broadcasting Services Act 1992* to:

- increase flexibility in the operation of the 10% requirement for new spending on drama on subscription television; and
- give the Australian Communications and Media Authority a discretion to allow the transfer of a community broadcasting licence to another person which represents the same community interest, to more easily deal with changes of corporate arrangements by licensees.

The bill contains an application provision.

### **Retrospective commencement**

#### **Schedule 1**

By virtue of item 2 in the table to subclause 2(1) of this bill, the amendments proposed in Schedule 1 would commence retrospectively on 1 January 2006. The explanatory memorandum states (on page 3) that commencement on this date will allow expenditure consistent with the proposed changes incurred after 1 January 2006 to be treated as new eligible expenditure for that financial year. The amendments are therefore potentially beneficial to some subscription television broadcasting licensees.

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

## **General Insurance Supervisory Levy Imposition Amendment Bill 2006**

Introduced into the House of Representatives on 2 March 2006

Portfolio: Treasury

### **Background**

This bill amends the *General Insurance Supervisory Levy Imposition Act 1998* to allow the Treasurer to determine, by legislative instrument, a special levy component to be imposed on a class of general insurance company regulated by the Australian Prudential Regulation Authority (APRA).

The bill is intended to provide increased flexibility in the recovery of costs incurred by APRA, which manages the regulatory framework covering all insurers operating in Australia, and will enable costs to be recovered only from those general insurance companies which contribute to and benefit from their services.

*The Committee has no comment on this bill.*

## **Health and Other Services (Compensation) Amendment Bill 2006**

Introduced into the House of Representatives on 2 March 2006  
Portfolio: Health and Ageing

### **Background**

This bill amends the *Health and Other Services (Compensation) Act 1995* to provide for the recovery of monies by the Commonwealth that have been paid to claimants as Medicare, nursing home or residential care benefits, once those claimants have received a judgement or settlement in respect of their compensation claim for an injury.

The bill repeals paragraph 42(2)(d) to clarify that all claims under the definition of compensation are covered, including those involving a fatal injury or disease.

The bill also formalises an existing informal process for reconsideration of decisions by the Chief Executive Officer or a delegate.

The bill repeals a sunset clause and contains minor technical provisions.

*The Committee has no comment on this bill.*

## **Renewable Energy (Electricity) Amendment Bill 2006**

Introduced into the House of Representatives on 2 March 2006

Portfolio: Environment and Heritage

### **Background**

This bill amends the *Renewable Energy (Electricity) Act 2000* to implement the Government's response to a 2003 independent statutory review to make changes to improve market transparency and business certainty.

The bill:

- amends and clarifies procedures for the creation, claim and surrender of renewable energy certificates;
- provides for provisional accreditation of proposed generation projects and establishes timeframes for the consideration of applications for accreditation of generators;
- allows for the publication of additional data and information relevant to investment decisions;
- provides increased opportunities for bioenergy and solar energy technologies by amending procedures and expanding the range of eligible installations;
- ensures only one entity is made liable in relation to the purchase of electricity; and
- allows the Renewable Energy Regulator (the Regulator) to vary the energy acquisition and shortfall statements and baselines for accredited power stations, to gather information in relation to monitoring and compliance, and to suspend an accredited power station.

## **Exemption from judicial review**

### **Schedule 1, item 1**

By virtue of item 1 of Schedule 1 to this bill, a new paragraph (gb) would be added to Schedule 1 of the *Administrative Decisions (Judicial Review) Act 1977*, removing from the list of decisions reviewable under that Act decisions relating to assessments under Division 2 of Part 5 of the *Renewable Energy (Electricity) Act 2000*. The explanatory memorandum seeks to justify this provision (on page 15) by pointing to the ‘comprehensive objections procedure included in sections 54 to 65 of the Act in relation to both shortfall and shortfall charge assessments.’ The explanatory memorandum goes on to point out that the review mechanisms already in the Act include review on the merits by the Administrative Appeals Tribunal, and appeal therefrom to the Federal Court.

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

## **Legislative Instruments Act - Declarations**

### **Schedule 1, item 57**

Item 57 of Schedule 1 would add a new subsection 22(2) to the Principal Act, under which regulations made for the purpose of the existing subsection 22(1) might empower the Regulator to make written determinations in relation to the number of renewable energy certificates able to be created for a particular solar water heater installation. Unfortunately, the explanatory memorandum merely restates the provisions of the bill (on page 25) and does not indicate whether such a written determination would be legislative in character or administrative. If such a determination were to be legislative in character, it would appear that the proposed new subsection 22(2) would allow for sub-delegation of legislative power, and would not subject the exercise of such sub-delegation to any scrutiny by the Parliament. The Committee **seeks the Minister’s advice** on the nature of these written determinations of the Regulator.

*Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they 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.*

### **Legislative Instruments Act - Declarations** **Schedule 1, item 100**

Proposed new subsections 44(5), 44(6), 44(7) and 44(8) of the principal Act provide for the payment of a fee for the surrender of renewable energy certificates within a period of 28 days from an entity receiving a notice from the Regulator following the lodgement of an energy acquisition statement. Proposed new subsection 44(9), to be inserted by item 100 of Schedule 1, declares that such a notice, provided for under proposed new subsection 44(6), is not a legislative instrument. It would appear that such a notice is not of a legislative character, and therefore proposed new subsection 44(9) is no more than declaratory. However, while the explanatory memorandum clarifies the purpose of the notice (on page 33), it does not clarify whether the proposed new subsection is declaratory of the existing position. The Committee **seeks the Minister's advice** whether the proposed new subsection is merely declaratory.

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

### **Abrogation of the privilege against self-incrimination** **Schedule 1, item 169**

Item 169 of Schedule 1 of this bill adds a new Part 11A to the Principal Act which provides the Regulator with information-gathering powers, which the explanatory memorandum states (on page 42) are consistent with powers

contained in other Commonwealth legislation such as the *Textile, Clothing and Footwear Strategic Program Act 1999* and the *Diesel and Alternative Fuel Grants Scheme Act 1999*. The Committee notes that proposed new subsection 125B(1) of this Part would abrogate the privilege against self-incrimination for a person required to answer a question or produce a document under proposed new section 125A.

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. The Committee notes that in this case, new subsection 125B(2) limits the circumstances in which information so provided is admissible in evidence in proceedings against the affected person. The Committee is prepared to accept that the provisions strike a reasonable balance between the competing interests of obtaining information and protecting individuals' rights.

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

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

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

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

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

**TABLE**

<b>Bill/Act</b>	<b>Section/Subsection</b>	<b>Offence</b>	<b>Penalty</b>
Renewable Energy (Electricity) Amendment Bill 2006	Proposed new subsection 125A(4)	Fail to provide information to a public authority	20 penalty units



## SCRUTINY OF STANDING APPROPRIATIONS

The Committee has determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the Committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Further details of the Committee's approach to scrutiny of standing appropriations are set out in the Committee's *Fourteenth Report of 2005*. The following is a list of the bills containing standing appropriations that have been introduced since the beginning of the 41<sup>st</sup> Parliament.

### Bills introduced with standing appropriation clauses - 41<sup>st</sup> Parliament

*Indicates passed by Senate	Bills and Clauses
*	<b>Appropriation (Regional Telecommunications Services) Bill 2005-2006</b> – clause 13
*	<b>Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005</b> – subclause 8(2)
*	<b>Asbestos-related Claims (Management of Commonwealth Liabilities) (Consequential and Transitional Provisions) Bill 2005</b> – subclause 5(3)
*	<b>Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Bill 2005</b> – clause 23
*	<b>Financial Framework Legislation Amendment Bill 2004</b> – Schedule 1, item 397, paragraphs 124(1)(b) and (c) and item 422, subsection 235(2)  [also Schedule 1, items 58, 63, 82, 86, 95, 99, 114, 135, 136, 145, 153, 164, 169, 182, 197, 205, 218, 261, 293, 317, 324, 370, 419, 437, 448, 484 and 493 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i> ]
*	<b>Human Services Legislation Amendment Bill 2005</b> – Schedule 2, subitem 720(4)
	<b>Indigenous Education (Targeted Assistance) Amendment Bill 2004</b> – Schedule 1, item 3, subsection 14A(1)
*	<b>National Water Commission Bill 2004</b> – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>

	<b>Offshore Petroleum Bill 2005</b> – clause 56
*	<b>Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004</b> – clause 133
*	<b>Skilling Australia’s Workforce Bill 2005</b> – clause 40
*	<b>Superannuation Bill 2005</b> – subclause 29(4)
*	<b>Superannuation (Consequential Amendments) Bill 2005</b> – Schedule 5, item 1, subsection 4AA(5) and Schedule 6, item 1, subsection 12A(5)
*	<b>Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005</b> – Schedule 1, item 1, subsections 158ZO(4), 158ZP(7) and 158ZQ(5) and Schedule 3, item 1, subsection 136C(4)
*	<b>Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004</b> – Schedule 1, item 12, section 37ZH and subsection 37ZJ(3)
*	<b>Water Efficiency Labelling and Standards Bill 2004</b> – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>

### Other relevant appropriation clauses

*Indicates Passed by Senate	Bills and Clauses
*	<b>AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004</b> – Schedule 2, item 3: special appropriation clause – for a finite amount and a finite period of time.
*	<b>Social Security Legislation Amendment (One-off Payments for Carers) Bill 2005</b> – Schedule 2, item 1: special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).

## STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

## INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2005/2006

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<b>Bills dealt with in 2005</b>							
Australian Citizenship Bill 2005	14(30.11.05)	9.11.05		Citizenship and Multicultural Affairs	1.12.05	13.2.06	1(1.3.06)
Corporations (Aboriginal and Torres Strait Islander) Bill 2005	8(10.8.05) 9(17.8.05)	23.6.05		Immigration and Multicultural and Indigenous Affairs	11.8.05		
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2005	11(14.9.05)	5.9.05		Mr Katter	15.9.05		
Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005	11(14.9.05)	5.9.05		Mr Kerr	15.9.05		
Workplace Relations Amendment (Work Choices) Bill 2005	13(9.11.05)	2.11.05	10.11.05	Employment and Workplace Relations	10.11.05	28.3.06	2(29.3.06)
<b>Bills dealt with in 2006</b>							
Aged Care (Bond Security) Bill 2005	1(8.2.06)	8.12.05	9.2.06	Ageing	9.2.06	23.3.06	2(29.3.06)
Australian Sports Anti-Doping Authority Bill 2005	1(8.2.06)	7.12.05	9.2.06	Arts and Sport	9.2.06	27.2.06	1(1.3.06)
Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005	1(8.2.06)	13.2.06	7.12.05	Defence	9.2.06	27.3.06	2(29.3.06)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE		MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER	
Telecommunications (Interception) Amendment Bill 2006	2(1.3.06)	16.2.06	1.3.06	Attorney-General	2.3.06	17.3.06	2(29.3.06)