

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



**Alert Digest**

**No. 4 of 2006**

**10 May 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.

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

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## **Age Discrimination Amendment Bill 2006**

Introduced into the House of Representatives on 29 March 2006  
Portfolio: Attorney-General

### **Background**

This bill amends the *Age Discrimination Act 2004* to provide for ongoing exemptions for a limited number of Commonwealth laws and regulations and certain other instruments, schemes and programs from the operation of the *Age Discrimination Act 2004*. Subsection 39(2) of the Act currently provides a temporary general exemption for all Commonwealth Acts and regulations for a period of 2 years. This general exemption will expire on 23 June 2006. The bill also clarifies the application of some existing exemptions and repeals an exemption for regulations no longer in force.

*The Committee has no comment on this bill.*

## **Airport Development and Aviation Noise Ombudsman Bill 2006**

Introduced into the House of Representatives on 27 March 2006

By Mr Georganas

### **Background**

This bill establishes a Development and Aviation Noise Ombudsman to serve as a point of liaison between the Minister and the public in relation to the impact of airport development and aircraft noise on populated areas. The bill also makes consequential amendments to the *Airports Act 1996*, the *Airservices Act 1995*, the *Civil Aviation Act 1988* and the *Ombudsman Act 1976*.

### **Explanatory memorandum**

The Committee notes that this bill, introduced as a private Member's bill was introduced without an explanatory memorandum. The consideration of bills by the Committee and by the parliament is assisted if they are accompanied by explanatory memoranda. Explanatory memoranda also provide an opportunity for Members and Senators to set out in more detail the policies reflected in these bills.

The Committee recognises, of course, that private Senators and Members do not generally have access to the resources of departments and agencies to assist in the development of such documents. The Committee notes that the Department of the Senate has developed a set of guidelines to assist Senators with the preparation of private bills and explanatory material. This guide, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*, is available from the Clerk Assistant (Procedure) and on the Senate's intranet site and may also assist Members in preparing explanatory memoranda.

## Commencement on Proclamation Clause 2

Clause 2 provides that this bill would commence on Proclamation with no limit on the period within which such a Proclamation must be made. Parliamentary Counsel Drafting Direction No. 1.3 states that:

As a general rule, a restriction should be placed on the period within which an Act, or a provision of an Act, may be proclaimed. The commencement clause should specify either a period, or a date, after Royal Assent after which:

- the Act commences, if it has not already commenced by Proclamation; or
- the Act is taken to be repealed, if a Proclamation has not been made by that time.

If the specified period option is chosen, the period should generally not be longer than 6 months. A longer period should be explained in the Explanatory Memorandum.

As this bill is not accompanied by an explanatory memorandum, the Committee **seeks the advice of the proposer** as to the reason for the deferred commencement.

*Pending the advice of the proposer, 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.*

## Artist's Resale Rights Bill 2006

Introduced into the House of Representatives on 27 March 2006

By Mr McMullan

### Background

This bill amends the *Copyright Act 1968* to provide for payment of resale royalties to visual artists.

### Explanatory memorandum

The Committee notes that this bill, introduced as a private Member's bill was introduced without an explanatory memorandum. The consideration of bills by the Committee and by the parliament is assisted if they are accompanied by explanatory memoranda. Explanatory memoranda also provide an opportunity for Members and Senators to set out in more detail the policies reflected in these bills.

The Committee recognises, of course, that private Senators and Members do not generally have access to the resources of departments and agencies to assist in the development of such documents. The Committee notes that the Department of the Senate has developed a set of guidelines to assist Senators with the preparation of private bills and explanatory material. This guide, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*, is available from the Clerk Assistant (Procedure) and on the Senate's intranet site and may also assist Members in preparing explanatory memoranda.

*The Committee has no comment on this bill.*

## **ASIO Legislation Amendment Bill 2006**

Introduced into the House of Representatives on 29 March 2006

Portfolio: Attorney-General

### **Background**

This bill amends the *Australian Security Intelligence Organisation Act 1979* in response to the recommendations of the Parliamentary Joint Committee on ASIO, ASIS and DSD (now the Parliamentary Joint Committee on Intelligence and Security) concerning the operation of ASIO's questioning and detention powers in relation to terrorism.

The bill clarifies the operation of the current warrant regime by distinguishing between a questioning-only warrant and a questioning and detention warrant and by clarifying the rights of persons questioned or detained under each type of warrant. The bill also extends the existing sunset clause and prior joint committee review period by 10 years to July 2016 and 22 January 2016 respectively.

### **Legislative Instruments Act — Disallowance and sunset provisions Schedule 1, item 1 and Schedule 2, items 32 and 33**

Proposed new subsection 34C(1) of the *Australian Security Intelligence Organisation Act 1979* provides for the Director-General to prepare a written statement of procedures to be followed in the exercise of authority under warrants issued under this Act. New subsection 34C(5) of the Act, to be inserted by item 1 of Schedule 1 to this bill, provides that such a statement of procedures is a legislative instrument, but is not subject to the disallowance provisions in section 42 of the *Legislative Instruments Act 2003*. However, the explanatory memorandum justifies this on page 3 by noting that the instrument 'has been developed as a policy document giving effect to Parliament's intent for the basic standards applicable when a person is questioned'. The proposed new subsection further provides that such a statement is not subject to the sunset requirements of Part 6 of the *Legislative Instruments Act 2003*. However, the explanatory memorandum justifies this on page 4 by noting that items 32 and 33 of Schedule 2 to this bill will insert a

10 year sunset provision into this Part of the Principal Act, and that therefore the sunset provisions of the *Legislative Instruments Act 2003* are not necessary.

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

**Personal rights and liberties and abrogation of the privilege against self-incrimination**  
**Schedule 1, item 2**

Proposed new sections 34E and 34G of the *Australian Security Intelligence Act 1979*, to be inserted by item 2 of Schedule 1 to this bill, would permit a person to be taken into custody either for questioning or for questioning and detention, despite the fact that the person is not suspected of having committed an offence. In addition, proposed new subsection 34L(8) of the same Act, also to be inserted by item 2 of Schedule 1, would abrogate the privilege against self-incrimination. However, the explanatory memorandum makes it clear, on page 5, that the purpose of this part of the bill is simply to restructure various parts of the 1979 Act, and the amendments are ‘not intended to change the current operation of the Act.’

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

**Legislative Instruments Act — Exemption**  
**Schedule 2, item 31**

Proposed new section 34ZY of the *Australian Security Intelligence Act 1979*, to be inserted by item 31 of Schedule 2 to this bill, would declare that an instrument made under Division 3 of Part III (other than an instrument made under proposed new section 34C) is not a legislative instrument.

Where a provision specifies that an instrument is not a legislative instrument, The Committee expects the explanatory memorandum to explain whether:

- the provision is merely declaratory of the law and included to clarify that the instrument is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*; or
- expresses a policy intention to exempt an instrument, which is legislative in character, from the usual tabling and disallowance regime set out in the *Legislative Instruments Act*.

Where the provision is a substantive exemption, the Committee expects the explanatory memorandum to include clear reasons justifying the need for the exemption.

Unfortunately, in this case, the explanatory memorandum simply states, on page 17, that the provision will ‘prevent things done under Division 3 from unintentionally becoming a legislative instrument.’ The Committee therefore **seeks the Attorney-General’s advice** as to the character of each of the instruments to which this exemption is to apply, the justification for each exemption and whether it would have been appropriate to include this information in the explanatory memorandum.

*Pending the Attorney-General’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 Broadcasting Corporation Amendment Bill 2006**

Introduced into the Senate on 29 March 2006

Portfolio: Communications, Information Technology and the Arts

### **Background**

This bill amends the *Australian Broadcasting Corporation Act 1983* to abolish the staff-elected Director and deputy staff-elected Director positions, in response to the recommendations of the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig Review).

*The Committee has no comment on this bill.*

## **Australian Nuclear Science and Technology Organisation Amendment Bill 2006**

Introduced into the House of Representatives on 30 March 2006  
Portfolio: Education, Science and Training

### **Background**

This bill amends the *Australian Nuclear Science and Technology Organisation Act 1987* to allow the Australian Nuclear Science and Technology Organisation (ANSTO) to condition, manage and store radioactive material and radioactive waste other than that which may arise directly from ANSTO's own activities and including spent nuclear fuel returned to Australia after reprocessing overseas. The bill also ensures ANSTO is able to provide assistance to State and Territory jurisdictions in the event of an incident involving radiological material.

*The Committee has no comment on this bill.*

## Australian Research Council Amendment Bill 2006

Introduced into the House of Representatives on 30 March 2006  
Portfolio: Education, Science and Training

### Background

This bill amends the *Australian Research Council Act 2001* to implement changes to the Australian Research Council's (ARC's) governance arrangements in response to the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig Review). The bill provides for the abolition of the ARC Board, and the transfer of most of its duties to the Chief Executive Officer. The bill also establishes other governance arrangements, updates annual funding caps, and makes other administrative provisions.

*The Committee has no comment on this bill.*

## **Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Amendment Bill 2006**

Introduced into the House of Representatives on 30 March 2006  
Portfolio: Vocational and Technical Education

### **Background**

This bill amends the *Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005* to allow for funding from 2008 and 2009 to be brought forward into 2006 and 2007 to meet the expected expenditure for the Australian Technical Colleges initiative over those years. The total amount of funds appropriated under the Act will remain unchanged.

The bill also includes a regulation-making power to allow funding for a calendar year to be varied to another calendar year without amendment of the Act.

*The Committee has no comment on this bill.*

## **Australian Trade Commission Legislation Amendment Bill 2006**

Introduced into the House of Representatives on 30 March 2006  
Portfolio: Trade

### **Background**

This bill amends the *Australian Trade Commission Act 1985* to implement changes to the Australian Trade Commission's governance arrangements in response to the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig Review). The bill provides for the transition of the Australian Trade Commission from a statutory authority under the *Commonwealth Authorities and Companies Act 1997* to a statutory agency subject to the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997*.

*The Committee has no comment on this bill.*

## Aviation Transport Security Amendment Bill 2006

Introduced into the House of Representatives on 29 March 2006

Portfolio: Transport and Regional Services

### Background

This bill amends the *Aviation Transport Security Act 2004* to amend the regulatory arrangements for airport security by: creating event zones that may be used for handling special events at an airport; regulating the security and clearance processes for domestic and international cargo before it is taken on an aircraft; and allowing for the Secretary of the Department of Transport and Regional Services to approve alterations to an existing Transport Security Program.

### Commencement

#### Schedule 2, items 1 to 33 and Schedule 2, part 2

Schedule 2 of the bill amends the Act to create a legal environment that will enable regulations to be made dealing specifically with the security process to be applied to domestic and international cargo prior to being taken onto an aircraft. Items 5 and 7 in the table to subclause 2(1) of this bill provide for the amendments proposed in items 1 to 33 of Schedule 2, and those in Part 2 of Schedule 2, to commence up to 12 months after Assent.

Parliamentary Counsel Drafting Direction No.1.3 states that:

As a general rule, a restriction should be placed on the period within which an Act, or a provision of an Act, may be proclaimed. The commencement clause should specify either a period, or a date, after Royal Assent after which:

- the Act commences, if it has not already commenced by Proclamation; or
- the Act is taken to be repealed, if a Proclamation has not been made by that time.

If the specified period option is chosen, the period should generally not be longer than 6 months. A longer period should be explained in the Explanatory Memorandum.

In this case the explanatory memorandum states, on page 11, that the justification for this delay in commencement 'is to allow sufficient time for consultation with [those involved in the aviation transport] industry to occur.'

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

## **Customs Legislation Amendment (Border Compliance and Other Measures) Bill 2006**

Introduced into the House of Representatives on 29 March 2006  
Portfolio: Justice and Customs

### **Background**

This bill amends the *Customs Act 1901* in relation to:

- the disposal of dangerous goods seized by Customs;
- access by holders of a security identification card to section 234AA places, ships, aircraft and wharves;
- minor corrections to provisions implementing the Australia-United States Free Trade Agreement;
- the provision of updated information in relation to security identification cards to Customs; and
- implementation of an Accredited Client Program.

The bill also amends the *Customs Act 1901* and the *Customs Administration Act 1985* in relation to the issue of seizure warrants

### **Retrospective commencement Schedule 7, items 3 and 4**

Item 8 in the table to subclause 2(1) of this bill, provides that the amendments proposed in items 3 and 4 of Schedule 7 would commence retrospectively on 4 December 2003, immediately after the commencement of item 2 of Schedule 3 to the *Customs Legislation Amendment Act (No. 1) 2003*. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this case, the explanatory memorandum states, on pages 25 – 26, that the two items correct a drafting error in the *Customs Legislation Amendment Act (No.1) 2003* and do not substantively alter the law.

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

## Defence Housing Authority Amendment Bill 2006

Introduced into the House of Representatives on 30 March 2006

Portfolio: Defence

### Background

This bill amends the *Defence Housing Authority Act 1987* to reflect the recommendations of the inter-departmental committee established to review the Defence Housing Authority's (DHA) governance and legislative arrangements after consideration of the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig Review).

The bill amends the *Defence Housing Authority Act 1987* to:

- rename the Defence Housing Authority as Defence Housing Australia (DHA);
- reduce the size of the Board and create an advisory committee;
- expand the scope of services provided by DHA and enable it to provide services to other Commonwealth agencies; and
- removes DHA's exemption from Commonwealth taxation and require it to make State and Territory tax equivalent payments to the Commonwealth.

The bill also removes outdated provisions in the Act and amends the *Defence Force (Home Loans Assistance) Act 1990* and the *Occupational Health and Safety (Commonwealth Employment) Act 1991* to reflect the name change to Defence Housing Australia.

*The Committee has no comment on this bill.*

## **Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) (Consequential Amendments) Bill 2006**

Introduced into the House of Representatives on 29 March 2006

Portfolio: Employment and Workplace Relations

### **Background**

This bill amends the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, the *A New Tax System (Family Assistance) Act 1999*, the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005* and the *Social Security (International Agreements) Act 1999* to replace, amend or repeal terminology and provisions to clarify the policy intent of certain Welfare to Work measures. The bill includes provisions which will:

- allow principal carers who are bereaving the death of a child to continue receiving newstart or youth allowance, education supplement or telephone allowance for a period of 14 weeks following the death of the child;
- provide an exception to the newly-arrived resident waiting period for principal carers who are Australian residents and become single after commencement of their Australian residency;
- extend access to the Employment Entry Payment;
- provide a higher rate of mobility allowance to certain recipients of newstart allowance, youth allowance and disability support pension; and
- extend access to pharmaceutical allowance to partnered parenting payment recipients who have a temporary incapacity exemption.

**Retrospective commencement**  
**Schedule 13, item 21**

Item 25 in the table to subclause 2(1) of this bill provides for the amendment proposed in item 21 of Schedule 13 to commence retrospectively on 14 December 2005, immediately after the commencement of Part 5 of Schedule 22 to the *Employment and Workplace Relations Legislation (Welfare to Work and Other Measures) Act 2005*. 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 makes it clear, on page 20, that the amendment is merely technical and is intended to clarify a provision in the earlier Act. The Committee notes that the amendment will not make any change to the substantive law.

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

## **Export Market Development Grants Legislation Amendment Bill 2006**

Introduced into the House of Representatives on 30 March 2006  
Portfolio: Trade

### **Background**

This bill amends the *Export Market Development Grants Act 1997* to:

- extend the Export Market Development Grants scheme for a further 5 years to the end of the 2010-11 grant year and provide for a review of the scheme by 30 June 2010;
- increase the claimable overseas visit allowance from \$200 to \$300 per day;
- amend the rules of the scheme relating to applicant eligibility, origin of eligible products, applicant expenses, changes in business ownership, special approval status and export earnings; and
- implement changes to the administration of the scheme.

The bill also repeals the *Export Expansion Grants Act 1978*.

### **Retrospective commencement Schedule 1, item 34**

Item 3 in the table to subclause 2(1) of this bill provides for the amendment proposed in item 34 of Schedule 1 to commence retrospectively on 16 July 1999, immediately after the commencement of item 19 of Schedule 1 to the *Export Market Development Grants Legislation Amendment Act 1999*. 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 makes it clear on page 34 that the amendment is technical and merely corrects

an incorrect reference in the Act. The Committee notes that the amendment will not make any change to the substantive law.

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

## **Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006**

Introduced into the House of Representatives on 29 March 2006  
Portfolio: Attorney-General

### **Background**

This bill amends the *Federal Magistrates Act 1999* to provide statutory disability cover and death benefits for Federal Magistrates, their spouses and dependants.

### **Standing appropriation Schedule 1, item 13**

The Committee determined in its *Fourteenth Report of 2005*, that it should draw Senators' attention to the presence in bills of standing appropriations under provisions (1)(a)(iv) and (v) of its terms of reference. A full list of bills with standing appropriation clauses introduced during the 41<sup>st</sup> Parliament is provided at the back of this Digest.

Proposed new clause 9G of Schedule 1 to the *Federal Magistrates Act 1999*, to be inserted by item 13 of Schedule 1 to this bill, would make a standing appropriation in order to provide the funds to pay pensions and other benefits to retired disabled Federal Magistrates or the family of a deceased Federal Magistrate. However, the explanatory memorandum states on page 8 that the 'establishment of a special appropriation is necessary as it is not possible to predict when such benefits will need to be paid.'

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

## Fuel Tax Bill 2006

Introduced into the House of Representatives on 29 March 2006

Portfolio: Treasury

### Background

Introduced with the Fuel Tax (Consequential and Transitional Provisions) Bill 2006, this bill amends the following Acts:

- *Energy Grants (Credits) Scheme Act 2003*;
- *A New Tax System (Goods and Services Tax) Act 1999*;
- *Taxation Administration Act 1953*;
- *A New Tax System (Luxury Car Tax) Act 1999*;
- *A New Tax System (Wine Equalisation Tax) Act 1999*;
- *Crimes (Taxation Offences) Act 1980*;
- *Freedom of Information Act 1982*;
- *Income Tax Assessment Act 1936*;
- *Income Tax Assessment Act 1997*; and
- *Taxation (Interest on Overpayments and Early Payments) Act 1983*.

The bill introduces a single fuel tax credit system to remove or reduce the incidence of fuel tax levied on taxable fuels from 1 July 2006 and provides for the introduction of a framework for the taxation of gaseous fuels from 1 July 2011.

### Apparently excessive powers

#### Proposed new Section 75-55

Proposed Division 75 of this bill sets out anti-avoidance provisions to prevent schemes that are designed to obtain fuel tax benefits by taking advantage of the fuel tax law in circumstances other than those intended by the fuel tax law. Under proposed new sections 75-40 and 75-45, the Commissioner can make declarations making an avoider's fuel tax benefits ineffective and can make declarations compensating an entity other than the avoider. Proposed new section 75-55 would permit the Commissioner to disregard any part of a scheme in making such declarations.

In particular, under proposed new section 75-55, the Commissioner may:

- treat a particular event that actually happened as not having happened; and
- treat a particular event that did not actually happen as having happened; and
- treat a particular event that actually happened as having happened at a time different from the time it actually happened, or having involved particular action by a particular entity (whether or not the event actually involved any action by that entity).

The Committee notes that the proposed provisions are based on similar provisions contained in the *A New Tax System (Goods and Services Tax) Act 1999*, the *Income Tax Assessment Act 1936* and the *Sales Tax Assessment Act 1992*. The Committee has previously expressed its concern at the apparently wide discretion conferred by such powers of reconstruction. The Committee notes, on page 64 of the explanatory memorandum, that in this case, the provisions are subject to a test of fairness and reasonableness and that a declaration by the Commissioner under section 75-45 is a reviewable fuel tax decision under the *Taxation Administration Act 1953*. Nevertheless, the Committee would expect that the exercise of such wide powers would be infrequent and subject to some guidelines or codes of practice. The Committee considers that the frequency with which such powers are exercised should be brought to the attention of the parliament on an annual basis. The Committee makes no final determination on this matter but **leaves for the Senate as a whole** the question of whether the amendments make rights, liberties or obligations **unduly** dependent upon insufficiently defined administrative powers.

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

## **Fuel Tax (Consequential and Transitional Provisions) Bill 2006**

Introduced into the House of Representatives on 29 March 2006

Portfolio: Treasury

### **Background**

Introduced with the Fuel Tax Bill 2006, this bill amends the *Fuel Sales Grants Act 2000*, the *Energy Grants (Credits) Scheme Act 2003*, the *Product Grants and Benefits Administering Act 2000*, the *States Grants (Petroleum Products) Act 1965* and the Fuel Tax Bill 2006 to provide transitional arrangements for the fuel tax credit system canvassed in the Fuel Tax Bill 2006. The system will be phased in, commencing 1 July 2006, with the final changes taking effect on 1 July 2012.

The bill also repeals the *Fuel Sales Grants Act 2000* on 1 January 2007, the *States Grants (Petroleum Products) Act 1965* on 1 July 2007 and the *Energy Grants (Credit) Scheme Act 2003* on 1 July 2012, and makes consequential amendments to 13 other Acts.

### **Retrospective commencement**

#### **Schedule 4, item 3**

Item 16 in the table to subclause 2(1) of this bill provides that the amendment proposed in item 3 of Schedule 4 would commence retrospectively on 19 June 2000, immediately after the commencement of section 34 of the *Products Grants and Benefits Administration Act 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. In this case, the explanatory memorandum makes it clear, at paragraph 3.52, that the amendment is technical only, and designed to correct a drafting error in the earlier Act. The Committee notes that the amendment will not make any change to the substantive law.

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

## Intellectual Property Laws Amendment Bill 2006

Introduced into the House of Representatives on 30 March 2006  
Portfolio: Industry, Tourism and Resources

### Background

This bill amends the *Patents Act 1990*, the *Trade Marks Act 1995*, the *Designs Act 2003*, the *Plant Breeder's Rights Act 1994* and the *Olympic Insignia Protection Act 1987* to give effect to certain recommendations of three reviews of intellectual property legislation. The bill also makes a number of minor and technical amendments.

### Retrospective commencement Schedule 16

Items 14, 15 and 16 in the table to subclause 2(1) of this bill provide that the amendments proposed in Schedule 16 would commence retrospectively on various dates between 1 January 1996 and 4 October 2002, immediately after the commencement of legislation already in force. 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 makes it clear, on pages 53 and 54, that these are merely technical amendments that will not make any change to the substantive law and will 'not adversely impact on any person.'

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

## **Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006**

Introduced into the House of Representatives on 29 March 2006

Portfolio: Attorney-General

### **Background**

This bill amends the *Australian Federal Police Act 1979*, to provide for a new complaints and professional standards regime within the Australian Federal Police (AFP), and the *Ombudsman Act 1976*, to align the Ombudsman's administrative review role over the AFP with the role it has in relation to other Australian government agencies. The bill also repeals the *Complaints (Australian Federal Police Act) 1981* and makes consequential amendments to the *Australian Federal Police Act 1979* and 7 other Acts.

### **Legislative Instruments Act – determinations and directions Schedule 1, item 27 and Schedule 1, item 28**

Various provisions in this bill would declare certain determinations and directions to be given under the *Australian Federal Police Act 1979* not to be legislative instruments. Proposed new subsection 35(2), to be inserted by item 27 of Schedule 1, provides for the Commissioner to determine, in writing, that a consultant or independent contractor is to be an AFP appointee. Subsection 35(3) provides that such a determination is not a legislative instrument.

Proposed new section 40VB outlines the manner in which an investigation or inquiry is to be conducted and provides for directions to be given to the investigator by the head of a unit (subsection 40VB(3)), the Commissioner (subsection 40VB(5)) or the Minister (subsection 40VB(7)). Proposed new subsection 40VB(8) provides that such directions are not legislative instruments.

Proposed new section 40VE provides for an investigator to give directions to an AFP appointee for the purposes of an investigation or inquiry. Subsection 40VE(10), to be inserted by item 28 of Schedule 1, provides that such a direction is not a legislative instrument.

In each case, it appears that the determinations or directions are not legislative in character, and that therefore the above provisions are no more than declaratory. However, the explanatory memorandum is silent on the character of each determination or direction. Where a provision specifies that an instrument is *not* a legislative instrument, the Committee would expect the explanatory memorandum to explain whether the provision is merely declaratory of the law (and included for the avoidance of doubt), or expresses a policy intention to exempt an instrument, which *is* legislative in character, from the usual tabling and disallowance regime set out in the *Legislative Instruments Act 2003*. Where the provision is a substantive exemption, the Committee would expect to see a full explanation justifying the need for the provision.

The Committee therefore **seeks the Attorney-General's advice** as to whether these provisions are no more than declaratory and, if so, whether it would have been appropriate to include this information in the explanatory memorandum.

*Pending the Attorney-General'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 28**

Proposed new paragraph 40VE(3)(b) of the *Australian Federal Police Act 1979*, to be inserted by item 28 of Schedule 1, would abrogate the privilege against self-incrimination for an AFP appointee who has been given a direction by a person investigating an allegation of serious misconduct or corruption by an AFP employee, or conducting a ministerially directed inquiry.

At common law people can decline to answer a question on the grounds that their reply might tend to incriminate them. Legislation which interferes with this common law entitlement trespasses on personal rights and liberties. The

Committee has been prepared to accept such an abrogation of the privilege if any information obtained as both a direct *and* indirect consequence of the provision of the information is not admissible in evidence against the person required to give that information.

In this case, subsection 40VE(4) provides that ‘the information, the production of the document, record or thing, the answer to the question or the evidence obtained by doing that thing, is not admissible in evidence against the AFP appointee in any civil or criminal proceedings.’ It is not clear to the Committee whether subsection 40VE is intended to also provide a level of protection to information or evidence which is obtained as an indirect consequence of the abrogation of the privilege. While the explanatory memorandum states on page 18 that ‘the production of information or evidence obtained from the AFP appointee is not admissible in evidence’, it is silent on the question of derivative use immunity. The Committee therefore **seeks the Attorney-General’s advice** as to whether subsection 40VE(4) provides that information or evidence obtained as an indirect consequence of the abrogation of the privilege against self-incrimination is not admissible in evidence against the person required to give that information. If derivative use immunity has not been extended in this case, the Committee **seeks the Attorney-General’s advice** as to the reason for this and whether it would have been appropriate to include this information in the explanatory memorandum.

*Pending the Attorney-General’s advice, the Committee draws Senators’ attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee’s terms of reference.*

## Law Enforcement Integrity Commissioner Bill 2006

Introduced into the House of Representatives on 29 March 2006

Portfolio: Attorney-General

### Background

This bill provides for the establishment of the Office of the Integrity Commissioner and the Australian Commission for Law Enforcement Integrity (ACLEI), an independent body with powers to prevent, detect and investigate corruption within Australian Government law enforcement agencies.

The Integrity Commissioner will be a judge or experienced legal practitioner appointed by the Governor-General and will have the power to investigate corruption issues using a combination of inquiry and investigative powers to assemble evidence to support prosecutions. The Integrity Commissioner will also be able to refer certain matters to another agency for investigation and to then manage, oversee or review that investigation where appropriate.

The bill provides for the Integrity Commissioner to inform the Minister, the head of the agency concerned, the complainant and the subject of the investigation as to the initiation, progress and outcomes of an investigation. The Integrity Commissioner will also have the power to make recommendations for disciplinary or employment action and may also report to the Prime Minister and Parliament if he or she believes that there is a failure by the head of an agency to take adequate remedial action.

The bill provides for the investigation of complaints of corruption issues within the ACLEI, including the Integrity Commissioner, and for the Minister to authorise a special external investigation into an ACLEI corruption issue.

### Abrogation of the privilege against self-incrimination Subclauses 80(1) and 96(1)

Subclauses 80(1) and 96(1) would abrogate the privilege against self-incrimination in relation to public inquiries and investigations carried out by the Integrity Commissioner. The Committee recognises that good administration might, in certain circumstances, necessitate the obtaining of

information which can only be obtained, or best be obtained, by forcing someone to answer questions or produce documents or things. However, the Committee generally holds the view that the loss of a person's common law right to silence in these circumstances should be balanced by a prohibition against *both* the direct *and* indirect use of the forced disclosure.

Subclauses 80(2) and 96(2) provide for indemnity with regard to information *directly* given to the Integrity Commissioner where, prior to producing information, documents or things, a staff member of a law enforcement agency claims that doing so may incriminate or expose them to a penalty. In these circumstances the information, documents or things will not be admissible as evidence against the person in criminal proceedings or any other proceedings for the imposition or recovery of a penalty. Subsections 80(4) and 96(4) provide that this immunity will not apply in the case of proceedings for offences in relation to hearings, confiscation proceedings, proceedings relating to the obstruction of Commonwealth public officials or disciplinary proceedings.

However, the Committee notes that this immunity does not appear to extend to any information which the Commissioner may obtain as an *indirect* consequence of the information, document or thing being provided. Unfortunately, the explanatory memorandum does not address this question of derivative use immunity. The Committee therefore **seeks the Attorney-General's advice** as to the reason why derivative use immunity has not been extended in this case and whether this information should have been included in the explanatory memorandum.

*Pending the Attorney-General's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.*

## **Abrogation of legal professional privilege Subclauses 80(5) and 96(5)**

There is a long-standing principle that professional communications between a person and his or her legal adviser should be confidential. The Committee closely examines legislation which removes or diminishes this right.

Subclauses 80(5) and 96(5) of this bill would abrogate the right to claim legal professional privilege in relation to public inquiries and investigations carried out by the Integrity Commissioner, although clause 95 would permit a legal practitioner to claim legal professional privilege for communications made by or to the practitioner in his or her capacity as such a practitioner. Unfortunately the explanatory memorandum does not explain the reason for this abrogation of legal professional privilege, and the Committee therefore **seeks the Attorney-General's advice.**

*Pending the Attorney-General's advice, the Committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.*

## **Legislative Instruments Act — Direction Subclause 140(5)**

Subclause 140(6) provides that a direction given by the Integrity Commissioner under subclause 140(5) is not a legislative instrument. Such a direction appears not to be legislative in character and therefore the provision appears to be no more than declaratory of the law. However, where a provision specifies that an instrument is not a legislative instrument, the Committee expects the explanatory memorandum to explain whether the provision is merely declaratory, and included to clarify that the instrument is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act, or whether the provision expresses a policy intention to exempt an instrument that is legislative in character. Unfortunately the explanatory memorandum does not address this question and the Committee therefore seeks the **Attorney-General's advice** as to the character of a

direction under subclause 140(5) and whether it would have been appropriate to include this information in the explanatory memorandum.

*Pending the Attorney-General'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.*

## **Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006**

Introduced into the House of Representatives on 29 March 2006  
Portfolio: Attorney-General

### **Background**

Introduced with the Law Enforcement Integrity Commissioner Bill 2006, this bill makes consequential amendments to a number of Commonwealth Acts related to the establishment of the Office of the Integrity Commissioner, and the Australian Commission for Law Enforcement Integrity (ACLEI). The bill also amends the *Ombudsman Act 1976* to clarify the relationship between the functions of the Ombudsman and the Integrity Commissioner.

### **Excluding judicial review Schedule 1, item 1**

Criterion 1(a)(iii) of the Committee's terms of reference requires the Committee to report on legislation which makes 'rights, liberties or obligations unduly dependent upon non-reviewable decisions.' The Committee is concerned where a bill provides that no reasons need be given for a decision, thereby excluding the possibility of review.

Item 1 of Schedule 1 to this bill would amend the *Administrative Decisions (Judicial Review) Act 1977* to include certain decisions made by the Integrity Commissioner in the class of decisions to which section 13 of the ADJR Act does not apply. As a result, the Integrity Commissioner would not be obliged to provide reasons for decisions made under the Law Enforcement Integrity Commissioner Bill 2006 in relation to corruption investigations or a public inquiry. However, the explanatory memorandum justifies this amendment, on page 4, on the ground that disclosure of the Commissioner's reasons may prejudice an operation by the ACLEI, or another law enforcement agency, or may prejudice a person's right to a fair trial.

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

## **Maritime Transport and Offshore Facilities Security Amendment (Security Plans and Other Measures) Bill 2006**

Introduced into the House of Representatives on 29 March 2006  
Portfolio: Transport and Regional Services

### **Background**

This bill amends the *Maritime Transport and Offshore Facilities Security Act 2003* to simplify the procedures for making changes to maritime, ship and offshore facilities security plans and to clarify measures relating to the plan approval process. The bill also contains other technical provisions to clarify the intent of the Act.

The bill also makes amendments to various Acts consequential to the enactment of the *Legislative Instruments Act 2003* and makes a technical amendment to the *Customs Act 1901*.

### **Retrospective commencement Schedule 2, items 31 and 32, Schedule 3**

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. Items 31 and 32 of Schedule 2 propose amendments to the *Interstate Road Transport Act 1985*. Item 31 amends section 34 to clarify that the Minister's declaration of a federal road safety standard is a legislative instrument and item 32 amends section 35 to remove references to sections of the *Acts Interpretation Act 1901* and to the *Statutory Rules Publication Act 1903*. By virtue of item 4 in the table to subclause 2(1) of this bill, these amendments would commence retrospectively immediately after the commencement of sections 34 and 35 of the *Interstate Road Transport Act 1985*.

While the explanatory memorandum does not provide a reason for this retrospectivity, it does include an explanation of the technical nature of the amendments on page 22. The amendments are intended to ensure that the

1985 Act is expressed in a way that is consistent with the *Legislative Instruments Act 2003* and make no change to the substantive law.

Similarly, Item 6 in the table to subclause 2(1) of this bill provides that the amendment to the *Customs Act 1901* proposed in Schedule 3 would commence retrospectively on 27 June 2005, immediately after the commencement of Item 2 of Schedule 1 to the *Maritime Transport Security Amendment Act 2005*. In this case, the explanatory memorandum states, on page 32, that the amendment is technical and merely updates a cross-reference but makes no change to the substantive law.

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

## **Migration Amendment (Employer Sanctions) Bill 2006**

Introduced into the Senate on 29 March 2006  
Portfolio: Immigration and Multicultural Affairs

### **Background**

This bill amends the *Migration Act 1958* to impose sanctions on employers, labour suppliers and other persons who knowingly engage illegal workers.

*The Committee has no comment on this bill.*

## **National Health and Medical Research Council Amendment Bill 2006**

Introduced into the Senate on 29 March 2006

Portfolio: Health and Ageing

### **Background**

This bill amends the *National Health and Medical Research Council Act 1992* to restructure the National Health and Medical Research Council (NHMRC) as a statutory agency to address governance issues identified in three reviews. The bill makes no changes to the current level of funding allocated for health and medical research. Costs associated with the restructure will be met out of the existing budget of the Department of Health and Ageing.

*The Committee has no comment on this bill.*

## **Petroleum Retail Legislation Repeal Bill 2006**

Introduced into the House of Representatives on 30 March 2006

Portfolio: Industry, Tourism and Resources

### **Background**

This bill repeals the *Petroleum Retail Marketing Sites Act 1980*, which restricts the number of retail sites that prescribed oil companies can directly own, and the *Petroleum Retail Marketing Franchise Act 1980*, which sets out the minimum terms and conditions for franchise agreements between oil majors and their franchisees.

The bill forms part of the government's Downstream Petroleum Reform Package. As part of this package, the Trade Practices (Industry Codes – Oilcode) Regulations 2006 will be introduced to:

- establish standard contractual terms and conditions for wholesale supplier-fuel retail re-selling agreements;
- introduce a national approach to terminal gate pricing arrangements; and
- establish an independent, downstream petroleum dispute resolution scheme.

*The Committee has no comment on this bill.*

## **Protecting Children from Junk Food Advertising Bill 2006**

Introduced into the Senate on 30 March 2006

By Senator Allison

### **Background**

This bill amends the *Broadcasting Services Act 1992* to prohibit the advertising of junk food during certain times. The bill also amends the *Schools Assistance (Learning Together-Achievement Through Choice and Opportunity) Act 2004* to discourage the display of advertisements or sponsorship announcements.

### **Explanatory memorandum**

The Committee notes that this bill, introduced as a private Senator's bill, was introduced without an explanatory memorandum. The consideration of these bills by the Committee and by the parliament is assisted if they are accompanied by explanatory memoranda. Explanatory memoranda also provide an opportunity for Members and Senators to set out in more detail the policies reflected in these bills.

The Committee recognises, of course, that private Senators and Members do not generally have access to the resources of departments and agencies to assist in the development of such documents. The Committee notes that the Department of the Senate has developed a set of guidelines to assist Senators with the preparation of private bills and explanatory material. This guide, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*, is available from the Clerk Assistant (Procedure) and on the Senate's intranet site.

*The Committee has no comment on this bill.*

## **Protection of the Australian National Flag (Desecration of the Flag) Bill 2006**

Introduced into the House of Representatives on 27 March 2006

By Mrs Bishop

### **Background**

This bill amends the *Criminal Code Act 1995* to provide for a penalty in the event of the wilful destruction or desecration of the Australian National Flag.

### **Explanatory memorandum**

The Committee notes that this bill, introduced as a private Member's bill was introduced without an explanatory memorandum. The consideration of these bills by the Committee and by the parliament is assisted if they are accompanied by explanatory memoranda. Explanatory memoranda also provide an opportunity for Members and Senators to set out in more detail the policies reflected in these bills.

The Committee recognises, of course, that private Senators and Members do not generally have access to the resources of departments and agencies to assist in the development of such documents. The Committee notes that the Department of the Senate has developed a set of guidelines to assist Senators with the preparation of private bills and explanatory material. This guide, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*, is available from the Clerk Assistant (Procedure) and on the Senate's intranet site and may also assist Members in preparing explanatory memoranda.

*The Committee has no comment on this bill.*

## **Protection of the Sea (Powers of Intervention) Amendment Bill 2006**

Introduced into the House of Representatives on 29 March 2006  
Portfolio: Transport and Regional Services

### **Background**

This bill amends the *Legislative Instruments Act 2003* and the *Protection of the Sea (Powers of Intervention) Act 1981*. It seeks to clarify the extent of powers available to the government in responding to a threat of serious marine pollution from a marine casualty and ensures that it has clear and unambiguous authority to deliver the desired pollution prevention outcomes. It gives effect to Australia's obligations under the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969, by enabling the Australian Maritime Safety Authority to intervene in the event of any threat of pollution from a ship in Australian waters or on the high seas. The bill gives effect to national maritime emergency response arrangements agreed to between the Commonwealth, State and Northern Territory Governments enabling the Commonwealth to undertake a national coordination role.

*The Committee has no comment on this bill.*

## **Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Bill 2006**

Introduced into the House of Representatives on 30 March 2006

Portfolio: Families, Community Services and Indigenous Affairs

### **Background**

This bill amends the *A New Tax System (Family Assistance) Act 1999*, the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, and the *Social Security (International Agreements) Act 1999* to:

- limit child care benefit for registered care to the fee paid;
- ensure that child care benefit is precluded for care provided as part of a compulsory education programme;
- confirm that a temporarily separated couple can include a temporarily separated *de facto* couple;
- ensure the correct range of Commonwealth payments are taken into account as income for the low-income health care card; and
- align the definition of homelessness for special benefit with the meaning of homelessness that applies more broadly, such as for youth allowance.

The amendments address anomalies, clarify the existing legislation and make a number of technical corrections.  bill also contains saving provisions and technical provisions consequential upon the commencement of the *Legislative Instruments Act 2003*.

### **Retrospective commencement Schedule 6, items 1, 2 and 3**

The amendments proposed in items 1 and 3 of Schedule 6 make technical corrections to two amending Acts, the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999* and the *Family and Community Services and Veterans' Affairs Legislation Amendment (2004 Election*

*Commitments Act 2004*). Item 2 of Schedule 6 makes a technical correction to the *Disability Services Act 1986*. Items 7, 8 and 9 in the table to subclause 2(1) of this bill provide that each of these amendments would commence retrospectively on various dates between 1 July 2000 and 1 December 2004 immediately after the commencement of legislation already in force. 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 makes it clear, on page 28, that the amendments are technical only, and that the ‘retrospective effect does not produce any adverse effects for customers.’

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

## **Superannuation Legislation Amendment (Trustee Board and Other Measures) Bill 2006**

Introduced into the Senate on 29 March 2006  
Portfolio: Finance and Administration

### **Background**

This bill amends the *Superannuation Act 1976*, the *Superannuation Act 1990*, the *Superannuation Act 2005*, and the *Superannuation Legislation Amendment (Superannuation Safety and Other Measures) Act 2006* to provide for a single entity, the Australian Reward Investment Alliance, to administer the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) and the Public Sector Superannuation Accumulation Plan (PSSAP). The changes are effective from 1 July 2006 and are intended to implement certain recommendations of the Review of the Corporate Governance of Statutory Authorities and Office Holders (the Uhrig Review).

### **Retrospective commencement Schedule 2**

Item 5 in the table to subclause 2(1) of this bill provides that the amendments proposed in Schedule 2 would commence retrospectively on 1 July 2003, immediately after the commencement of Parts 1 and 3 of Schedule 1 to the *Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act (No. 1) 2003*. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this case, the explanatory memorandum states, on page 17, that these are technical amendments that merely correct a number of cross-references and make no change to the substantive law.

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

## **Tax Laws Amendment (2006 Measures No. 2) Bill 2006**

Introduced into the House of Representatives on 29 March 2006  
Portfolio: Treasury

### **Background**

This bill amends the *Income Tax Assessment Act 1997*, to:

- provide that ex-gratia lump sum payments made to certain F-111 aircraft maintenance personnel by the Department of Veterans' Affairs are exempt from income tax;
- update the lists of deductible gift recipients;
- correct unintended consequences from the rewrite of the capital gains tax provisions;
- extend the scope of what is considered to be a compulsory acquisition for capital gains tax and uniform capital allowance purposes; and
- limit the circumstances in which the franking deficit tax offset is reduced.

The bill amends the *Superannuation Guarantee (Administration) Act 1992* to extend the right to choose a fund to employees whose superannuation arrangements are determined by state laws. The bill also makes minor technical amendments to a number of other Acts and contains application, consequential and transitional provisions.

### **Retrospective commencement and application Schedules 3, 4, 5 and 7**

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. This bill contains a number of retrospective provisions.

Item 4 in the table to subclause 2(1) of this bill provides that the amendments proposed in items 4 and 5 of Schedule 5 would commence retrospectively on 1 July 2002. However, the explanatory memorandum states that the amendments have no financial impact (page 5) and, in the case of item 5, will be beneficial to taxpayers (page 30).

Items 7 to 24 in the table to subclause 2(1) of this bill provide that the amendments proposed in Parts 2, 3 and 4 of Schedule 7 would commence retrospectively on various dates between 24 December 1992 and 1 July 2005. However, the explanatory memorandum states, on pages 33 to 34 and pages 51 to 55, that the amendments are technical and merely correct a number of drafting errors while making no change to the substantive law.

Item 7 of Schedule 3 provides that the amendments proposed by that Schedule would apply from 27 May 2005, the date of the then former Minister for Revenue and Assistant Treasurer's press release (No. 045). The explanatory memorandum states on page 4 that the provisions correct unintended consequences from the rewrite of the capital gains tax provisions completed as part of the Tax Law Improvement Project. The explanatory memorandum also states that the financial impact of these amendments is unquantifiable, but the amendments are likely to result in a small loss to revenue overall, although 'significant revenue impacts may arise in particular cases.'

Item 6 of Schedule 4 provides that the amendments proposed by that Schedule would apply from 11 November 1999, the date of the Treasurer's Press Release (No. 074). Although this is a quite outstanding example of 'Legislation by Press Release', on which the Committee has generally commented, the explanatory memorandum states on page 5 that while the financial impact of the amendments is unquantifiable the amendments will 'favour the taxpayer in all cases.'

Item 3 of Schedule 5 provides that the amendments proposed by items 1 and 2 of that Schedule would apply from the 2004-05 income year. However, the explanatory memorandum states on page 5 that the amendments will limit the circumstances in which the franking deficit tax offset is reduced and are to apply from the commencement of the simplified imputation scheme. The explanatory memorandum goes on to state that the amendments will have no financial impact and will be beneficial to tax payers (page 30).

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

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

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

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

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

**TABLE**

<b>Bill/Act</b>	<b>Section/Subsection</b>	<b>Offence</b>	<b>Penalty</b>
ASIO Legislation Amendment Bill 2006	Proposed new subsections 34L(4) and (6)	Failure to provide information to a public authority	Imprisonment for 5 years
Law Enforcement Integrity Commissioner Bill 2006	Clause 78	Failure to provide information to a public authority	Imprisonment for 2 years

## 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.

*Indicates passed by Senate	Bills and Clauses
*	<b>Aged Care (Bond Security) Bill 2005</b> - clause 17
*	<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>Australian Trade Commission Legislation Amendment Bill 2006</b> – Schedule 4, item 16
	<b>Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006</b> – Schedule 1, item 13, section 9G
*	<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>Future Fund Bill 2005</b> – 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	
Renewable Energy (Electricity) Amendment Bill 2006	3(29.3.06)	2.3.06		Environment and Heritage	30.3.06		
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)