

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



Alert Digest

No. 7 of 2006

9 August 2006

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ISSN 1329-668X

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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Australian Capital Territory (Self-Government) Amendment (Disallowance Power of the Commonwealth) Bill 2006

Introduced into the Senate on 19 June 2006

By Senator Brown

Background

This bill amends the Australian Capital Territory (Self-Government) Act 1988 to repeal provisions which provide for the Governor-General to disallow any Act of the Legislative Assembly of the Australian Capital Territory.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator's bill, was accompanied only by a second reading speech and 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. 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. In this context, 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, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide is available from the Clerk Assistant (Procedure) and on the Senate's intranet site.

The Committee makes no further comment on this bill.

Crimes Act Amendment (Forensic Procedures) Bill (No. 1) 2006

Introduced into the Senate on 21 June 2006
Portfolio: Justice and Customs

Background

This bill amends the *Crimes Act 1914* to provide for the integration of the Commonwealth DNA database system with that of a State or Territory and provides for the exchange of information between jurisdictions. The explanatory memorandum states that the purpose of these amendments is to facilitate the implementation of inter-jurisdictional DNA profile matching using the National Criminal Investigation DNA Database (NCIDD). Under current legislation States and Territories cannot transfer DNA profiles from their DNA databases to the Commonwealth and the Commonwealth cannot disclose DNA profile information it holds to the States and Territories.

The amendments clarify the application of Commonwealth law to the Commonwealth DNA database system, including the portion of the Commonwealth DNA database integrated into the NCIDD. The bill also provides for prison officers to be present while forensic procedures are carried out, where this is required or allowed for by the law of the relevant State or Territory.

The bill also contains transitional provisions and corrects drafting errors.

The Committee has no comment on this bill.

Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006

Introduced into the Senate on 21 June 2006

Portfolio: Justice and Customs

Background

Schedule 1 of this bill amends the *Customs Act 1901* to provide Customs officers with additional powers to deal with certain prescribed prohibited imports, including:

- voluntary surrender of goods that have not been concealed;
- grant of post-importation permissions rather than automatic seizure of goods; and
- the introduction of a new scheme for the issue of infringement notices in lieu of prosecution for offences relating to prohibited imports and border security related offences.

Schedule 1 also contains application provisions to ensure that each of these sets of provisions do not have retrospective effect.

Schedule 2 of the bill amends the Act to incorporate changes to Certificates of Origin requirements under Articles 11 and 12 of Chapter 3 of the Singapore-Australia Free Trade Agreement. The bill contains application provisions in relation to goods claimed to be the produce or manufacture of Singapore.

Uncertainty of commencement

Schedule 2

Item 5 in the table to subclause 2(1) of this bill provides for the amendments proposed in Schedule 2 to commence on the later of the date of Assent to the bill and the day on which Articles 11 and 12 of Chapter 3 of the Singapore-Australia Free Trade Agreement come into force for Australia. The item goes on to require the Minister for Justice and Customs to announce by *Gazette* notice the day on which those Articles come into force. The Committee notes

that the item also provides that the amendments proposed in Schedule 2 ‘do not commence at all if the event mentioned in paragraph (b) [ie, the coming into force of Articles 11 and 12] does not occur.’

The Committee is wary of provisions which link commencement to an uncertain event and would generally expect to see a fixed date (or period of time) by which that event must occur to trigger commencement. The Committee therefore **seeks the Minister’s advice** as to whether Item 5 of the table might be amended to include a requirement for the Minister to announce by *Gazette* notice that the Articles will not come into force, in the event that the Singapore-Australia Free Trade Agreement does not come 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.

Financial Transaction Reports Amendment Bill 2006

Introduced into the Senate on 21 June 2006

Portfolio: Justice and Customs

Background

This bill amends the *Financial Transaction Reports Act 1988* to vary amendments made to the Act by Schedule 9 of the *Anti-Terrorism (No. 2) Act 1988*, which comes into force on 14 December 2006, in relation to certain transactions and transfers and certain record-keeping obligations. The bill amends the definition of 'account' and 'customer information' and restricts the application of proposed Division 3A of Part II, which provides for customer information to be included in international funds transfer instructions, to authorised deposit taking institutions.

The Committee has no comment on this bill.

Independent Contractors Bill 2006

Introduced into the House of Representatives on 22 June 2006

Portfolio: Employment and Workplace Relations

Background

Introduced with the Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006, this bill provides for independent contractors to enter into commercial arrangements outside the framework of workplace relations laws. The bill overrides state and territory laws which deem certain classes of independent contractors to be employees and which limit independent contractors from entering into primarily commercial relationships. The bill provides for the continued operation of certain state and territory laws in respect of the road transport industry and the clothing and textile industry. The bill also establishes a national services contract review scheme and provides civil penalties for misrepresentation of an employment relationship as an independent contracting arrangement.

The bill also provides a regulation-making power in relation to transitional and other matters and provides for such regulations to be retrospective, with the exception of regulations which would modify or otherwise affect a provision that would make a person liable to an offence or civil penalty.

Abrogation of the privilege against self-incrimination Subclauses 22(8) and 22(9)

Clause 22 of this bill would provide workplace inspectors with certain powers to investigate compliance with the minimum rate of pay obligation proposed in section 20. Subclause 22(8) of this bill would abrogate the privilege against self-incrimination for a person required to answer a question or produce a document under paragraph 22(2)(c). However, the Committee notes that subclause 22(9) limits the circumstances in which information so provided is admissible as evidence in proceedings against the affected person. The Committee considers that the provisions appear to 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 these provisions.

Indigenous Education (Targeted Assistance) Amendment Bill 2006

Introduced into the House of Representatives on 22 June 2006
Portfolio: Education, Science and Training

Background

This bill amends the *Indigenous Education (Targeted Assistance) Act 2000* to increase appropriations for non-ABSTUDY payments for the 2005-2008 calendar years by \$43.6 million in relation to:

- tutorial assistance for Indigenous school, vocational and technical education students;
- school-based sporting academies and related activities for Indigenous students;
- the Indigenous Youth Festivals component of the Community Festivals for Health Promotion programme; and
- activities addressing substance abuse by Indigenous youth in remote regions.

The Committee has no comment on this bill.

International Tax Agreements Amendment Bill (No. 1) 2006

Introduced into the House of Representatives on 22 June 2006
Portfolio: Treasury

Background

This bill contains amendments to:

- the *Taxation Administration Act 1953* and the *Income Tax Assessment Act 1997* to provide a framework to allow the Commissioner of Taxation to collect a taxation debt on behalf of a foreign taxation authority;
- the *International Tax Agreements Act 1953* and the *Taxation Administration Act 1953* to provide a legislative framework to support Australia's treaty obligations to provide assistance in the collection of tax debts and to exchange information on tax matters with other jurisdictions; and
- the *International Tax Agreements Act 1953* to give legislative authority to a protocol amending the existing agreement between Australia and New Zealand in relation to double taxation and the prevention of income tax evasion.

The bill contains application and transitional provisions in relation to claims for assistance and requests for exchange of information.

The Committee has no comment on this bill.

Migration Amendment (Visa Integrity) Bill 2006

Introduced into the Senate on 21 June 2006

Portfolio: Immigration and Multicultural Affairs

Background

This bill is an omnibus bill that amends the *Migration Act 1958* to:

- clarify the immigration clearance and immigration status of non-citizen children born in Australia;
- harmonise certain offence provisions with the Criminal Code;
- clarify the power of an authorised officer to require and take security in relation to an application for a visa to address the uncertainty raised in *Tutugri v Minister for Immigration and Multicultural Affairs* [1999] FCA 1785; and
- clarify the application of certain provisions in relation to the operation of bridging visas.

The bill also contains a number of application provisions.

Retrospective application Schedule 1, items 1 and 5

The Committee notes that items 2 and 6 of Schedule 1 to this bill provide for the amendments proposed to be made by items 1 and 5 respectively of that Schedule to apply to a non-citizen child who has been born in Australia on or after 1 September 1994. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The explanatory memorandum describes the effect of each of these items and notes that the date in question corresponds with the introduction of the concept of ‘immigration clearance’ and the relevant provisions into the Act by the *Migration Reform Act 1992*. However, the explanatory memorandum does not indicate whether this retrospective application would adversely affect any

non-citizen child. The Committee **seeks the Minister's advice** as to why such a long period of retrospectivity is necessary in each case and whether it would result in a detrimental effect on people.

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

Migration Legislation Amendment (Appropriate Access to Detention Centres) Bill 2006

Introduced into the Senate on 19 June 2006
By Senator Bartlett

Background

This bill amends the *Migration Act 1958* to repeal provisions in relation to security and screening measures for visitors and other persons entering immigration detention centres.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator's bill, was accompanied only by a second reading speech and 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. 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. In this context, 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, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide is available from the Clerk Assistant (Procedure) and on the Senate's intranet site.

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

Migration Legislation Amendment (Temporary Protection Visas Repeal) Bill 2006

Introduced into the Senate on 19 June 2006

By Senator Bartlett

Background

This bill amends the Migration Regulations 1994 to remove the category of Temporary Protection Visa.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator's bill, was accompanied only by a second reading speech and 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. 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. In this context, 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, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide is available from the Clerk Assistant (Procedure) and on the Senate's intranet site.

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

National Health Amendment (Immunisation) Bill 2006

Introduced into the House of Representatives on 21 June 2006
Portfolio: Health and Ageing

Background

This bill amends the *National Health Act 1953* to allow for, in addition to the Minister's current power to provide designated vaccines, the provision of goods and services associated with, or incidental to, the provision or administration of designated vaccines.

The Committee has no comment on this bill.

Privacy (Extension to Political Acts and Practices) Amendment Bill 2006

Introduced into the Senate on 22 June 2006

By Senator Stott Despoja

Background

This bill amends the *Privacy Act 1988* to include registered political parties in the definition of ‘organisation’ for the purposes of the Act.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator’s bill, was accompanied only by a second reading speech and 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. 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. In this context, 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, *Preparing Private Senator’s Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide is available from the Clerk Assistant (Procedure) and on the Senate’s intranet site.

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

Privacy Legislation Amendment Bill 2006

Introduced into the House of Representatives on 22 June 2006

Portfolio: Attorney-General

Background

This bill amends the *National Health Act 1953* and the *Privacy Act 1988* to facilitate the continued operation of Medicare Australia's Prescription Shopping Information Service (PSIS) beyond the temporary determination date of 22 December 2006. The PSIS allows medical practitioners to access health information about their patients' prescription status by permitting the collection of certain health information. The bill also amends the *Privacy Act 1988* to implement certain recommendations by the Australian Law Reform Commission and the Australian Health Ethics Committee by:

- providing that the collection of health information for the purposes of providing a health service does not breach the Privacy Act where this is authorised by or under law;
- permitting medical practitioners to collect health information, without initially obtaining the consent of the patient, where the collection is authorised by or under law, provided they do not breach the Privacy Act;
- amending the definitions of 'health information' and 'sensitive information' in the Privacy Act to include genetic information, and permitting the disclosure of genetic information to genetic relatives in certain circumstances; and
- providing for the development of guidelines by the National Health and Medical Research Council relating to the use or disclosure of genetic information to a genetic relative.

The Committee has no comment on this bill.

Protection of the Sea (Harmful Anti-fouling Systems) Bill 2006

Introduced into the House of Representatives on 22 June 2006

Portfolio: Transport and Regional Services

Background

This bill implements Australia's obligations under the International Convention on the Control of Harmful Anti-fouling Systems on Ships (the AFS Convention) by prohibiting or restricting the use of harmful organotins in anti-fouling paints used on ships.

The bill establishes a regulatory system to ensure that all ships are surveyed prior to service and when anti-fouling systems are changed or replaced. The bill also establishes a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems used on Australian ships or foreign ships that are in an Australian facility.

Legislative Instruments Act — declarations

Item 2, subclause 2(1) and subclause 5(2)

Item 2 to the table in subclause 2(1) of this bill provides that if the provisions in clauses 3 to 25 do not commence within 6 months of the commencement of the AFS Convention, the Minister must announce by notice in the Gazette the day on which the provisions commence. Item 2 provides that this notice is not a legislative instrument. Clause 5 of the bill provides for the Australian Maritime Safety Authority to approve a body corporate as a survey authority. Subclause 5(2) provides that such an approval is not a legislative instrument.

The Committee notes that neither the notice nor the approval appear to be legislative in character, and that therefore the above provisions appear to be no more than declaratory. In such circumstances, the Committee expects the explanatory memorandum to explain whether the instrument is a legislative instrument within the meaning of section 5 of the Legislative Instruments Act and confirm that the provision has been included merely to assist readers of the bill (Office of Parliamentary Counsel Drafting Direction No. 3.8 refers).

However, the explanatory memorandum does not provide any information on this point, and the Committee **seeks the Minister's advice** as to the character of the two instruments.

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.

Public Works Committee Amendment Bill 2006

Introduced into the Senate on 21 June 2006

Portfolio: Finance and Administration

Background

This bill amends the *Public Works Committee Act 1969* to amend the definition of a 'public work' and increase the threshold value at which projects must be referred to the Parliamentary Standing Committee on Public Works. The revised definition of a 'public work' includes works funded using public private partnerships or leasing or other similar arrangements. The amendments also remove the existing requirement that the Commonwealth or a Commonwealth authority is proposed to become the owner of the work. The bill also provides for the threshold value to be varied by regulation.

The Committee has no comment on this bill.

Snowy Hydro Corporatisation Amendment Bill 2006

Introduced into the House of Representatives on 19 June 2006

By Mrs Hull

Background

This bill amends the *Snowy Hydro Corporatisation Act 1997* to require that, in the event of the Snowy Hydro Company being listed on the Australian Stock Exchange, certain limits on individual, corporate and foreign ownership and certain corporate and operational provisions be included in the company constitution.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator's bill, was accompanied only by a second reading speech and 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. 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. In this context, 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, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide is available from the Clerk Assistant (Procedure) and on the Senate's intranet site.

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

Tax Laws Amendment (2006 Measures No. 4) Bill 2006

Introduced into the Senate on 22 June 2006

Portfolio: Treasury

Background

This bill amends the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997*, the *Income Tax Assessment Act 1936* and the *Financial Corporations (Transfer of Assets and Liabilities) Act 1993* to:

- extend the marriage breakdown capital gains tax roll-over to assets transferred under a binding financial agreement or an arbitral award;
- amend the consolidation provisions to ensure that the integrity provision that requires certain roll-overs to be ignored for tax cost setting purposes does not apply to a consolidated group or multiple entry consolidated group that forms after a demerger;
- amend the simplified imputation scheme to ensure that Australian companies receive franking credits attached to non-assessable non-exempt distributions income from New Zealand companies that have elected into the Australian imputation system; and
- narrow the range of assets on which a foreign resident will be liable to capital gains tax to Australian real property and the business assets of a foreign resident's Australian permanent establishment.

The bill also contains application, consequential and transitional provisions.

Retrospective application Schedule 2, item 8

Item 8 of Schedule 2 provides that the amendments proposed in relation to the consolidation provisions in that Schedule would apply from 1 July 2002, the date on which the consolidation regime commenced. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective

impact and will comment adversely where such a bill has a detrimental effect on people. However, the explanatory memorandum notes at paragraph 2.12 that the amendments remove an unintended consequence of the Act and will be advantageous to taxpayers. The Committee notes that the amendments would result in a cost to revenue of \$20 million for the 2006-07 financial year and \$5 million for each of the subsequent three financial years.

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

Retrospective commencement Schedules 3, items 1 to 5

Item 4 in the table to subclause 2(1) of this bill provides for the amendments proposed by items 3 to 5 of Schedule 3 in relation to the simplified imputation system to commence on 13 December 2005. The Committee also notes that items 2 and 5 provide that the amendments proposed by items 1, 3 and 4 will apply to dividends paid on or after 1 April 2003, the commencement of the trans-Tasman imputation measures. 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. While the Committee notes the explanation in the explanatory memorandum regarding the retrospective application of the amendments and that the ‘amendments will ensure that the income tax law operates as intended and will benefit affected taxpayers’, the Committee **seeks the Treasurer’s advice** as to the reason for the retrospective commencement of items 3 to 5 on 13 December 2005.

Pending the Treasurer’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.

Tax Laws Amendment (Repeal of Inoperative Provisions) Bill 2006

Introduced into the House of Representatives on 22 June 2006
Portfolio: Treasury

Background

This bill repeals a number of tax law provisions and tax Acts that have been identified as inoperative following the Board of Taxation's report to the Treasurer, *Identification and possible repeal of the inoperative provisions of the 1936 and 1997 Income Tax Assessment Acts* announced on 24 November 2005. The bill also contains application, consequential, saving and transitional provisions.

The Committee has no comment on this bill.

Trade Marks Amendment Bill 2006

Introduced into the Senate on 21 June 2006
Portfolio: Industry, Tourism and Resources

Background

This bill seeks to clarify the operation of the *Trade Marks Act 1995* in relation to trade mark rights and the predictability of the trade mark system. The bill also seeks to improve the administration and transparency of the trade mark system and align the Act with other intellectual property legislation.

The bill also contains application, saving and transitional provisions.

The Committee has no comment on this bill.

Trade Practices Legislation Amendment Bill 2006

Introduced into the House of Representatives on 19 June 2006

By Mr Katter

Background

This bill amends the *Trade Practices Act 1974* in relation to non-merger authorisations, collective bargaining, exclusionary provisions, price fixing provisions, dual listed companies, exclusive dealing, enforcement, penalties and indemnities, local government bodies and functions and powers under the Competition code. The bill also amends the *Corporations Act 2001* and the *Trade Practices Act 1974* in relation to disqualification from managing corporations and makes a technical amendment to the *Gas Pipelines Access (Commonwealth) Act 1998* to amend an incorrect cross-reference.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Member's bill, was accompanied only by a second reading speech and 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. 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. In this context, 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, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide is available from the Clerk Assistant (Procedure) and on the Senate's intranet site.

Retrospectivity Schedule 12

By virtue of item 5 in the table to subclause 2(1) of this bill, the amendments proposed in what is there referred to as Schedule 12 in this bill would commence on 1 March 2004, immediately after the commencement of Schedule 1 to the *Trade Practices Legislation Amendment Act 2003*. The Committee notes that there is no Schedule 12 to this bill and concludes that item 5 of the table is intended to refer to the amendment in Schedule 11 to the bill. 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. It appears that the amendment in Schedule 11 is no more than technical, and would not make any change to the substantive law, but in the absence of an explanatory memorandum, the Committee **seeks the advice of the proposer** as to whether item 5 does indeed apply to Schedule 11 and whether this retrospectivity will adversely affect any person.

Pending the Member'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 the privilege against self-incrimination Schedule 7, item 4

Proposed new subsection 154R(3) of the *Trade Practices Act 1974*, to be inserted by item 4 of Schedule 7 to this bill, would abrogate the privilege against self-incrimination for a person required to answer a question or produce evidential material under proposed new subsection 154R(1). 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. However, in this case, proposed new subsection 154R(4) protects only the information which is directly provided from admissibility in subsequent criminal proceedings, and does not protect any information which is obtained as an indirect consequence of the abrogation of the privilege. In the absence of an explanatory memorandum,

the Committee **seeks the advice of the proposer** as to the justification for this departure from normal practice in these circumstances.

Pending the Member'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.

Retrospective application Schedule 7, item 4

Item 28 of Schedule 7 provides that the amendment in relation to search and seizure proposed by item 4 of that Schedule 'would apply in relation to contraventions [of the *Trade Practices Act 1974*] occurring either before or after the commencement of that item.' 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 the absence of an explanatory memorandum, the Committee **seeks the advice of the proposer** as to the justification for the retrospective application of the proposed amendment.

Pending the Member'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.

Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006

Introduced into the Senate on 21 June 2006
Portfolio: Employment and Workplace Relations

Background

Introduced with the Independent Contractors Bill 2006, this bill amends the *Workplace Relations Act 1996* to provide civil penalties for contracts which misrepresent an employment relationship as an independent contracting arrangement. The bill also makes consequential and transitional amendments in relation to textile, clothing and footwear outworkers and amends the *Workplace Relations Act 1996* and the *Building and Construction Industry Improvement Act 2005* as a consequence of the proposed national services contract review scheme provided for in Part 3 of the Independent Contractors Bill 2006. The bill also contains savings provisions to provide that regulations in force under section 913 of the *Workplace Relations Act 1996* will continue in force after the commencement of the proposed Independent Contractors Act 2006.

The Committee has no comment on this bill.

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

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

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

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

TABLE

Bill/Act	Section/Subsection	Offence	Penalty
Trade Practices Legislation Amendment Bill 2006	Proposed new subsection 154R(2)	Fail to provide information	30 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 41st Parliament.

Bills introduced with standing appropriation clauses - 41st Parliament

*Indicates passed by Senate	Bills and Clauses
	Indigenous Education (Targeted Assistance) Amendment Bill 2006 – Schedule 1, subsection 14A
*	Appropriation (Regional Telecommunications Services) Bill 2005-2006 – clause 13
*	Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005 – subclause 8(2)
*	Asbestos-related Claims (Management of Commonwealth Liabilities) (Consequential and Transitional Provisions) Bill 2005 – subclause 5(3)
*	Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Bill 2005 – clause 23
*	Financial Framework Legislation Amendment Bill 2004 – 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>]
*	Human Services Legislation Amendment Bill 2005 – Schedule 2, subitem 720(4)
*	Indigenous Education (Targeted Assistance) Amendment Bill 2004 – Schedule 1, item 3, subsection 14A(1)

*	National Water Commission Bill 2004 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>
*	Offshore Petroleum Bill 2005 – clause 56
*	Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004 – clause 133
*	Skilling Australia’s Workforce Bill 2005 – clause 40
*	Superannuation Bill 2005 – subclause 29(4)
*	Superannuation (Consequential Amendments) Bill 2005 – Schedule 5, item 1, subsection 4AA(5) and Schedule 6, item 1, subsection 12A(5)
*	Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005 – Schedule 1, item 1, subsections 158ZO(4), 158ZP(7) and 158ZQ(5) and Schedule 3, item 1, subsection 136C(4)
*	Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 – Schedule 1, item 12, section 37ZH and subsection 37ZJ(3)
*	Water Efficiency Labelling and Standards Bill 2004 – 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
*	AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004 – Schedule 2, item 3: special appropriation clause – for a finite amount and a finite period of time.
*	Social Security Legislation Amendment (One-off Payments for Carers) Bill 2005 – 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	
Bills dealt with in 2005							
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	--	RNP
Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005	11(14.9.05)	5.9.05	--	Mr Kerr	15.9.05	--	RNP
<i>Workplace Relations Amendment (Work Choices) Act 2005</i>	13(9.11.05)	2.11.05	10.11.05	Employment and Workplace Relations	10.11.05	28.3.06	2(29.3.06)
Bills dealt with in 2006							
Aboriginal Land Rights (Northern Territory) Amendment Bill 2006	5(14.6.06)	31.5.06	20.6.06	Families, Community Services and Indigenous Affairs	15.6.06	20.6.06 17.7.06	4(21.6.06) 5(9.8.06)
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)
Airport Development and Aviation Noise Ombudsman Bill 2006	4(10.5.06)	27.3.06		Mr Georganus	11.5.06		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
ASIO Legislation Amendment Bill 2006 Noise Ombudsman Bill 2006	4(10.5.06)	29.3.06	13.6.06	Attorney-General	11.5.06	8.6.06	3(14.6.06)
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)
<i>Defence Legislation Amendment (Aid to Civilian Authorities) Act 2005</i>	1(8.2.06)	13.2.06	7.12.05	Defence	9.2.06	27.3.06	2(29.3.06)
Education Services for Overseas Students Legislation Amendment (2006 Measures No. 1) Bill 2006	5(14.6.06)	31.5.06		Education, Science and Training	15.6.06	19.7.06	5(9.8.06)
Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Bill 2006	5(14.6.06)	25.5.06	13.6.06	Families, Community Services and Indigenous Affairs	15.6.06	20.6.06	4(21.6.06)
Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006	4(10.5.06)	29.3.06	22.6.06	Attorney-General	11.5.06	20.6.06	4(21.6.06)
Law Enforcement Integrity Commissioner Bill 2006	4(10.5.06)	29.3.06	22.6.06	Attorney-General	11.5.06	20.6.06	4(21.6.06)
Migration Amendment (Designated Unauthorised Arrivals) Bill 2006	5(14.6.06)	11.5.06	22.6.06	Immigration and Multicultural Affairs	15.6.06		
Renewable Energy (Electricity) Amendment Bill 2006	3(29.3.06)	2.3.06	21.6.06	Environment and Heritage	30.3.06	18.5.06	4(21.6.06)
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)

