

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



Alert Digest

No. 11 of 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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Aged Care Amendment (Residential Care) Bill 2006

Introduced into the Senate on 13 September 2006

Portfolio: Health and Ageing

Background

This bill amends the *Aged Care Act 1997* to provide for income streams and assets that have been disposed of (gifts) to be treated the same way under the aged care assets test as they are for the purposes of the pension assets test under the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986*. The aged care assets test is undertaken to determine whether a person is eligible for subsidised aged care accommodation costs. The changes will apply to people who undergo an assets test on or after 1 January 2007.

The bill also allows for the Secretary to the Department of Health and Ageing to delegate certain functions and powers to members of Aged Care Assessment Teams in relation to the formal approval of applications for respite care extensions.

The bill also contains application provisions.

Retrospective application Schedule 1, item 3

Item 3 of Schedule 1 to this bill provides that when determining an amount under paragraph 44-10(1C)(b) of the Act, the Secretary must take into account assets that a person has disposed of on or after 10 May 2006. 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 second reading speech mentions that these changes were announced in the 2006-2007 Budget, which presumably explains the choice of date. Neither the explanatory memorandum nor the second reading speech explains whether (as appears to be the case) the retrospective application will detrimentally affect some persons. The Committee notes that the explanatory

memorandum merely paraphrases the two provisions of the bill. The Committee **seeks the Minister's advice** whether this retrospective application will detrimentally affect some persons, and whether the proposal to make these changes has been widely publicised among those likely to be affected.

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.

Australian Participants in British Nuclear Tests (Treatment) Bill 2006

Introduced into the House of Representatives on 14 September 2006

Portfolio: Veterans' Affairs

Background

Introduced with the Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Bill 2006, this bill provides non-liability treatment of, and testing for, malignant neoplasia (cancer) of eligible Australians who participated in the British Nuclear Testing Program from 1952 to 1963. Treatment will be provided through the Repatriation Commission and the Department of Veterans' Affairs.

The bill also provides for the Consolidated Revenue Fund to be appropriated to the extent necessary for the payment of amounts payable for the provision of treatment and for the payment of travelling expenses. The bill also provides continued access to existing statutory workers' compensation schemes.

Strict criminal liability

Subclauses 34(2) and 42(2)

Subclauses 34(2) and 42(2) create offences of strict liability. The Committee notes that the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* states, on page 23, that '[s]trict or absolute liability should only be used in an offence where there are well thought out grounds for this.' The Committee expects that such justification will be clearly set out in the explanatory memorandum.

In this case, the explanatory memorandum does not expressly state the reason for these provisions, although the Committee notes it states, on page 22, that subclause 42(2) is based on section 93E of the *Veterans' Entitlements Act 1986* and section 311 of the *Military Rehabilitation and Compensation Act 2004*. A note on page iv of the explanatory memorandum states that many of the provisions of this bill are based on those Acts, and goes on to assert that

the ‘need to maintain a consistent offence and penalty regime in relation to the provision of treatment is important in protecting the integrity of the health care arrangements and the operation of the current health card system.’ Reading all of these comments together, the reader may be able to understand the purported justification for these impositions of strict criminal liability, but only with difficulty. The Committee **seeks the Minister’s advice** whether there could have been a clearer explanation of the reason for these impositions of strict criminal liability, as has been done in relation to subclause 37(2).

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.

Abrogation of the privilege against self-incrimination Subclause 35(1)

Subclause 35(1) of this bill would abrogate the privilege against self-incrimination for a person required to answer a question or produce a document under clause 33. However, subclause 35(2) limits the circumstances in which information so provided is admissible in evidence in proceedings against the affected person and the Committee is prepared to accept that it strikes a reasonable balance between the competing interests of obtaining information and protecting individuals’ rights.

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

Australian Participants in British Nuclear Tests (Treatment) (Consequential Amendments and Transitional Provisions) Bill 2006

Introduced into the House of Representatives on 14 September 2006
Portfolio: Veterans' Affairs

Background

Introduced with the Australian Participants in British Nuclear Tests (Treatment) Bill 2006, this bill makes consequential amendments to the *Aged Care Act 1997*, the *Income Tax Assessment Act 1997*, the *National Health Act 1953* and the *Social Security Act 1991*. The bill also contains application and transitional provisions.

The Committee has no comment on this bill.

Broadcasting Legislation Amendment (Digital Television) Bill 2006

Introduced into the Senate on 14 September 2006

Portfolio: Communications, Information Technology and the Arts

Background

Introduced with the Broadcasting Services Amendment (Media Ownership) Bill 2006, this bill amends the *Broadcasting Services Act 1992* and the *Radiocommunications Act 1992* to change several aspects of the digital television and commercial television broadcasting regime in relation to the regulation of digital television services, the broadcasting of sports on the anti-siphoning list on new digital channels, and procedures for the allocation of new commercial television licences. The bill also provides for reviews of the anti-siphoning scheme prior to 31 December 2009 and the regulation of multi-channels by the end of the simulcast period, due to commence in the period 2010 to 2012.

The bill also contains transitional provisions.

The Committee has no comment on this bill.

Broadcasting Services Amendment (Media Ownership) Bill 2006

Introduced into the Senate on 14 September 2006

Portfolio: Communications, Information Technology and the Arts

Background

Introduced with the Broadcasting Legislation Amendment (Digital Television) Bill 2006, this bill amends the *Broadcasting Services Act 1992* to:

- remove broadcasting-specific restrictions on foreign investment in Australia's media sector;
- allow cross-media mergers in radio licence areas where sufficient diversity of media groups remains following the merger;
- provide for the Australian Communications and Media Authority to maintain a Register of Controlled Media Groups identifying the ownership and control of media groups in each licence area;
- require public disclosure when a media outlet reports on the activities of a cross-held entity; and
- introduce regulatory measures in relation to local and regional content on commercial radio and television.

Commencement on proclamation Schedule 2

By virtue of item 3 in the Table to subclause 2(1) of this bill, the amendments proposed in Schedule 2 would commence on Proclamation, but must commence in any event on 1 January 2008. Although the ultimate commencement date is likely to be longer than the six months after Assent which the Committee has been prepared to accept, the Committee notes that the explanatory memorandum states, on page 53, that '[i]t is intended that Schedule 2 will be proclaimed to commence once the process for the

allocation of datacasting transmitter licences to authorise the provision of new digital services is resolved.’

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

Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Bill 2006

Introduced into the House of Representatives on 14 September 2006
Portfolio: Families, Community Services and Indigenous Affairs

Background

This bill amends the *Child Support (Assessment) Act 1989*, the *A New Tax System (Family Assistance) Act 1999*, the *Child Support (Registration and Collection) Act 1988*, the *Family Law Act 1975*, the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Veterans' Entitlements Act 1986* and the *Social Security Act 1991* by implementing recommendations of the Ministerial Taskforce on Child Support, effective from July 2008. The bill:

- provides a new formula for calculating child support;
- expands the role of the Social Security Appeals Tribunal to include independent review of child support decisions;
- simplifies the relationship between the courts and the new Child Support Scheme from 1 January 2007;
- alters the family tax benefit Part A maintenance income test so payments are reduced only for those children in the family for whom child support is paid;
- provides flexible arrangements for parents who want to make agreements between themselves in relation to child support;
- aligns the income definitions used to calculate child support and family tax benefit;
- requires non-resident parents who pay child support to two or more families to pay the minimum weekly child support payment to each family;

- excludes income from second jobs and overtime from child support calculations during the first three years after separation;
- allows parents to suspend and resume child support payments without having to reapply should they reconcile and then separate again;
- allows for certain step-children to be treated as dependants under the child support formula; and
- simplifies the processes and rules for ‘changes of assessment’.

The bill also contains application, consequential and saving provisions.

The Committee has no comment on this bill.

Communications Legislation Amendment (Enforcement Powers) Bill 2006

Introduced into the House of Representatives on 14 September 2006
Portfolio: Communications, Information Technology and the Arts

Background

This bill amends the *Broadcasting Services Act 1992* and the *Radiocommunications Act 1992* to provide the Australian Communications and Media Authority (ACMA) with a greater range of enforcement powers including powers in relation to civil penalties, injunctions, enforceable undertakings and infringement notices.

The bill also requires ACMA to develop guidelines regarding the appropriate use of enforceable undertakings, infringement notices and civil penalties.

The bill also contains application provisions.

The Committee has no comment on this bill.

Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006

Introduced into the House of Representatives on 14 September 2006
Portfolio: Families, Community Services and Indigenous Affairs

Background

Introduced with the Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Bill 2006 and consequential on the implementation of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005, this bill amends the *Native Title Act 1993*, the *Aboriginal and Torres Strait Islander Act 2005*, the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*, the *Aboriginal Lands Rights (Northern Territory) Act 1976*, the *Age Discrimination Act 2004*, the *Commonwealth Authorities and Companies Act 1997*, the *Commonwealth Volunteers Protection Act 2003*, the *Criminal Code Act 1995*, the *Environment Protection and Biodiversity Conservation Act 1999*, the *Income Tax Assessment Act 1936* and the *Remuneration Tribunal Act 1973* to:

- provide transitional arrangements for the conversion of Aboriginal and Torres Strait Islander corporations incorporated under the *Aboriginal Councils and Associations Act 1976* to corporations registered under the proposed Corporations (Aboriginal and Torres Strait Islander) Act 2006;
- correct a technical error in the definition of ‘registered native title body corporate’;
- make consequential amendments to certain references and terminology; and
- repeal the *Aboriginal Councils and Associations Act 1976*.

The bill also contains application provisions.

The Committee has no comment on this bill.

Corporations Amendment (Aboriginal and Torres Strait Islander Corporations) Bill 2006

Introduced into the House of Representatives on 14 September 2006
Portfolio: Families, Community Services and Indigenous Affairs

Background

Introduced with the Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Bill 2006 and consequential upon the implementation of the Corporations (Aboriginal and Torres Strait Islander) Bill 2005 (CATSI bill), this bill amends the *Corporations Act 2001* to:

- remove duplication arising from provisions in the CATSI Bill which mirror provisions in the Corporations Act;
- clarify that the Corporations Act otherwise applies to corporations registered under the CATSI bill; and
- ensure a person disqualified from managing a corporation under the CATSI bill will also be disqualified from managing a corporation under the Corporations Act.

The Committee has no comment on this bill.

Crimes Amendment (Bail and Sentencing) Bill 2006

Introduced into the Senate on 14 September 2006

Portfolio: Attorney-General

Background

This bill amends the *Crimes Act 1914* to:

- require a court to consider the potential impact on victims and witnesses, particularly in remote communities, when granting and imposing bail conditions for Commonwealth offences;
- delete the reference to ‘cultural background’ in the Crimes Act; and
- preclude any customary law or cultural practice from being taken into account, in the process of granting bail to an alleged offender, in such a way that the criminal behaviour concerned is seen as less culpable.

The bill also contains application provisions.

The Committee has no comment on this bill.

Defence Legislation Amendment Bill 2006

Introduced into the House of Representatives on 14 September 2006

Portfolio: Defence

Background

This bill amends the *Defence Force Discipline Act 1982*, the *Defence Act 1903*, the *Defence Force Discipline Appeals Act 1955* and the *Migration Act 1958* to establish the Australian Military Court in accordance with the recommendations of the 2005 Senate Foreign Affairs, Defence and Trade References Committee's *Inquiry into the effectiveness of Australia's military justice system*. The bill provides for the statutory appointment of a Chief Military Judge and two military judges for a fixed term of five years with a possible renewal of five years. The bill also contains a regulation-making power to facilitate the creation of a 'Chief of Defence Force Commission of Inquiry' to conduct independent and impartial inquiries into notifiable incidents including suicide, accidental death or serious injury.

The bill contains application and transitional provisions.

Commencement on proclamation

Schedule 1

By virtue of item 2 in the Table to subclause 2(1) of this bill, the amendments proposed in Schedule 1 would commence on Proclamation, but must commence in any event on 1 October 2007. Although the ultimate commencement date is likely to be longer than the six months after Assent which the Committee has been prepared to accept, the explanatory memorandum seeks to justify the additional length of time as being necessary to settle 'the administrative matters associated with' the establishment of the Australian Military Court. The Committee's major concern with the commencement of legislation is possible uncertainty as to when such an event might occur. As these proposed amendments must commence in any event on a fixed day, the Committee, while noting the provision, makes no further comment on it.

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

Constitution of military jury

Item 11, Schedule 1, Sections 122 and 124

In considering this bill, the Committee noted the 2005 Report of the Senate Foreign Affairs, Defence and Trade References Committee and in particular that Committee's concerns regarding the means through which the need for operational effectiveness is balanced against the individual rights of Defence members and Defence civilians, within the military justice system.

By virtue of proposed subsection 115(1) of this bill the Australian Military Court has jurisdiction to try any charge against any Defence member or Defence civilian. The Committee notes that the classes of offences to be heard by a Military Judge and jury could potentially include offences of treason, murder and manslaughter. The Committee is concerned that the provision for a military jury to be composed of six members (proposed section 122) and to determine questions of guilt on the agreement of a two-thirds majority (proposed subsection 124(2)) is an infringement on the rights of an individual.

The Committee notes that the constitution of a military jury and the manner in which questions are to be determined differs substantially from the constitution and operation of civilian juries in criminal matters, which generally require, as a minimum, the agreement of 10 out of 12 jurors and then only in specific circumstances and with the approval of the judge. As the explanatory memorandum is silent on the basis for the proposed constitution and operation of a military jury, and the extent to which the rights of the individual have been balanced against the particular needs of the military justice system, the Committee **seeks the Minister's advice** as to the justification for this apparent variance from accepted practice.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass

unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006

Introduced into the House of Representatives on 14 September 2006
Portfolio: Families, Community Services and Indigenous Affairs

Background

Schedule 1 of this bill amends the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to increase the maximum amount of land that is exempt from the age pension assets test to encompass all land on the same title as the principal home.

Schedule 2 amends the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Social Security (Administration) Act 1999* and the *Student Assistance Act 1973* to provide new entry, search, and seizure powers to authorised officers.

Schedule 3 amends the *Social Security Act 1991* to provide for a one-off crisis payment to persons receiving a social security income support payment who have been subjected to domestic or family violence and who choose to stay in their own home.

Schedule 4 amends the *Aged Care Act 1997*, the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* to allow for the exchange of information between agencies for compliance purposes.

The bill also contains application and transitional provisions.

Legislative Instruments Act—declarations

Schedule 1, items 6 and 30

Proposed new subsection 11A(12) of the *Social Security Act 1991*, to be inserted by item 6 of Schedule 1, and proposed new subsection 5LA(12) of the *Veterans' Entitlements Act 1986*, to be inserted by item 30 of Schedule 1, declare that determinations made under proposed new subsection (2) and paragraph (6)(b) of each of the above new sections are not legislative instruments. While it appears that the determinations referred to are not legislative in character, and that both of the new subsections are merely declaratory of the law, the Committee notes that the explanatory memorandum does not clarify the intention of either proposed new subsection. The Committee **seeks the Minister's advice** whether these proposed new subsections are no more than declaratory of the law.

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)(v) of the Committee's terms of reference.

Search and entry

Schedule 2

Schedule 2 of the bill introduces entry, search and seizure powers for authorised officers under the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Social Security (Administration) Act 1999* and the *Student Assistance Act 1973*. While not explicitly stated in the explanatory memorandum, the Committee notes that, for the most part, the provisions appear to be consistent with the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (the Guide) and the model search warrant provisions of Part 1AA of the Crimes Act.

In its *Fourth Report of 2000: Entry Search and Seizure Provisions in Commonwealth Legislation*, the Committee stated that '[i]n exercising a power of entry, an officer should be required to show the occupier an identity card which incorporates a recent photograph of that officer.' The committee notes that the Guide also states, on page 70, that '[t]here should be a requirement that an authorised officer who enters premises be in possession of

an identity card, issued for that purpose, which incorporates a recent photograph of the person. The officer should be required to show the occupier this card before entry.'

The Committee notes that proposed section 221B(3), to be inserted by item 10, proposed section 190ZD(4)(a), to be inserted by item 14, and proposed section 88 (4)(a), to be inserted by Item 33, each provide for an authorised officer to produce his or her identity card for inspection upon the request of the occupier. While the Committee notes that the proposed provisions require an authorised officer to identify himself or herself (proposed sections 103K, 190J and 69(2)), the Committee **seeks the Minister's advice** whether it might not be clearer to require an authorised person to produce his or her identity card prior to entering the premises.

In its *Fourth Report of 2000: Entry and Search Provisions in Commonwealth Legislation*, the Committee also stated that the occupier of premises which have been entered and searched should be given a copy of any relevant warrant and informed in writing or, if that is impractical, informed orally, of his or her rights and responsibilities under the relevant legislation. The Committee also stated that this requirement should be waived only where circumstances are critical, or where an official is threatened with violence, or where it is absolutely impractical to follow them. The Guide also states, on page 72, that '[p]rovisions allowing entry and search of premises without consent should require that the occupier be given a copy of any warrant and be informed, in writing if practicable, of his/her rights and responsibilities.' The Committee notes that proposed sections 103K, 190J, and 69(1) require an authorised officer to make a copy of the warrant available only if the occupier of the premises, or another person who apparently represents the occupier, is present at the premises. The Committee also notes that no provision appears to be made for the occupier to be advised of his or her rights under the legislation. The Committee **seeks the Minister's advice** regarding this apparent departure from accepted principle.

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.

Financial Sector Legislation Amendment (Trans-Tasman Banking Supervision) Bill 2006

Introduced into the Senate on 14 September 2006

Portfolio: Treasury

Background

This bill amends the *Australian Prudential Regulation Authority Act 1998* and the *Banking Act 1959* to facilitate regulatory cooperation in relation to banking services in Australia and New Zealand.

The Committee has no comment on this bill.

Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006

Introduced into the House of Representatives on 13 September 2006

Portfolio: Treasury

Background

Introduced with the Housing Loans Insurance Corporation (Transfer of Pre-transfer Contracts) Bill 2006, this bill will repeal the *Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Act 1996* following the transfer, by the Commonwealth, of the ownership of pre-transfer contracts, to which the Housing Loans Insurance Corporation was a party prior to its abolition on 12 December 1997.

The bill also provides for the Commonwealth to pay a reasonable amount of compensation should any acquisition of property not be on just terms, consistent with section 519(xxxi) of the Constitution. The bill provides for the Consolidated Revenue Fund to be appropriated for this purpose.

Commencement Schedules 1 and 2

By virtue of item 2 in the Table to subclause 2(1) of this bill, the amendments proposed in Schedules 1 and 2 would commence on the later of the day after Assent and the day which the Treasurer specifies as that on which the Government transfers those insurance contracts which were written by the former Housing Loans Insurance Corporation, and which the Government still retains. The item goes on to provide that Schedules 1 and 2 will not commence if no such transfer takes place. The Parliamentary Secretary to the Treasurer has acknowledged in his second reading speech that neither this bill nor the Housing Loans Insurance Corporation (Transfer of Pre-Transfer Contracts) Bill 2006 (which is the measure authorising that transfer) commit the Government to a transfer, but merely 'provide the necessary framework to enable any transfer of the contracts to occur, if desired.' The Committee **seeks the Treasurer's advice** whether item 2 of the Table in subclause 2(1) might be amended to set a time limit within which either Schedules 1 and 2 of this

bill will commence (because the relevant transfer has taken place) or the bill will be deemed to have been wholly repealed.

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.

Housing Loans Insurance Corporation (Transfer of Pre-transfer Contracts) Bill 2006

Introduced into the House of Representatives on 13 September 2006

Portfolio: Treasury

Background

Introduced with the Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006, this bill enables the Commonwealth to divest ownership of the remaining mortgage insurance contracts (the pre-transfer contracts) written by the Housing Loans Insurance Corporation prior to its abolition in 1997. The bill provides for Consolidated Revenue Fund to be appropriated for the payment of amounts by the Commonwealth to the acquirer of a mortgage insurance contract.

The Committee has no comment on this bill.

Judiciary Legislation Amendment Bill 2006

Introduced into the Senate on 13 September 2006

Portfolio: Attorney-General

Background

This bill amends the *Judiciary Act 1903* to:

- validate certain orders made by non-judicial officers of State courts of summary jurisdiction in relation to taxation and other federal law matters; and
- repeal certain provisions to enable States to determine which officers, including non-judicial officers, can exercise federal jurisdiction and in what circumstances.

The bill also makes consequential amendments to the *Commonwealth Places (Application of Laws) Act 1970* and the *Crimes Act 1914*.

Retrospective application

Schedule 1, item 9

The effect of item 9 of Schedule 1 to this bill is retrospectively to validate various family law consent orders made by non-judicial officers of State courts of summary jurisdiction. To that extent the bill will have retrospective effect. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the explanatory memorandum makes it clear that the purpose of that retrospectivity is to benefit those persons in relation to whom such an order was made.

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

Medical Indemnity Legislation Amendment Bill 2006

Introduced into the House of Representatives on 13 September 2006
Portfolio: Health and Ageing

Background

This bill amends the *Medical Indemnity Act 2002* and the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003* in relation to doctors' eligibility for the Run-Off Cover Scheme (ROCS), which began on 1 July 2004.

The amendments remove the requirement for a doctor to have had medical indemnity cover at the time of the occurrence of an incident for that incident to be covered by ROCS. The bill also clarifies that the Government will reimburse medical indemnity insurers for claims under ROCS in certain circumstances.

Retrospective commencement Schedule 1, items 1, 20 and 21

By virtue of items 2 and 4 in the Table to subclause 2(1) of this bill, the amendments proposed in items 1, 20 and 21 of Schedule 1 would commence retrospectively on 1 July 2004. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the explanatory memorandum points out, on page three, that 'any possible retrospective effect of this provision will be in the direction of conferring a benefit on medical professionals and medical indemnity insurers.'

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

Migration Legislation Amendment (Complementary Protection Visas) Bill 2006

Introduced into the Senate on 13 September 2006

By Senator Bartlett

Background

This bill amends the *Migration Act 1958* to introduce a system of complementary protection to provide an alternative system of protection for those who do not meet the definition of a refugee under the Refugee Convention, but who have compelling humanitarian reasons why they cannot return to their country of origin.

The Committee has no comment on this bill.

Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006

Introduced into the Senate on 13 September 2006

Portfolio: Attorney-General

Background

This bill amends the *Privacy Act 1988* to permit the collection, use and disclosure of personal information about deceased, injured and missing individuals involved in an emergency or disaster occurring in Australia or overseas.

The bill will not apply to State and Territory governments and their agencies, other than the ACT, but will allow for the disclosure of personal information to State and Territory governments and their agencies.

The bill also contains regulation-making provisions and makes a consequential amendment to the *Australian Security Intelligence Organisation Act 1979* to ensure that ASIO is not prevented from disclosing personal information when an emergency is declared.

The Committee has no comment on this bill.

Social Security (Helping Pensioners Hit by the Skills Shortage) Bill 2006

Introduced into the Senate on 14 September 2006

By Senator Evans

Background

This bill amends the *Social Security Act 1991* to provide the Secretary of the Department with the discretion to extend the period in which sale proceeds from a pensioner's principal home are not included in the assets test for pensioners where there has been unavoidable delay in the construction of the pensioner's new principal home.

The Committee has no comment on this bill.

Television Licence Fees Amendment Bill 2006

Introduced into the House of Representatives on 14 September 2006
Portfolio: Communications, Information Technology and the Arts

Background

Introduced with the Broadcasting Legislation Amendment (Digital Television) Bill 2006, this bill makes consequential amendments to the *Television Licence Fees Act 1964* to provide that all revenue derived by a commercial television broadcasting licensee from the televising of advertisements or other matter on all services provided by the licensee will be included for the purposes of calculating the television licence fee.

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 |
|--|---------------------------|---|------------------|
| Australian Participants in British Nuclear Tests (Treatment) Bill 2006 | Clause 34 | Fail to provide information to a public authority | 10 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 |
|-----------------------------|---|
| * | 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 Participants in British Nuclear Tests (Treatment) Bill 2005 – clause 49 |
| * | 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>] |
| | Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006 – schedule 2 |
| | Housing Loans Insurance Corporation (Transfer of Pre-Transfer Contracts) Bill 2006 – clause 9 |

| | |
|---|---|
| * | 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) |
| | Indigenous Education (Targeted Assistance) Amendment Bill 2006 – Schedule 1, subsection 14A |
| * | 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 | 10.10.06 | 8(11.10.06) |
| 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) |
| Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006 | 7(9.8.06) | | 21.6.06 | Justice and Customs | 10.8.06 | 15.8.06 | 6(16.8.06) |
| <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 | 14.9.06 | 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) |
| Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2006 | 10(13.9.06) | 4.9.06 | -- | Mr Katter | 14.9.06 | | |
| Law and Justice Legislation Amendment (Marking of Plastic Explosives) Bill 2006 | 10(13.9.06) | 7.9.06 | | Attorney-General | 14.9.06 | | |
| 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) |

| NAME OF BILL | ALERT DIGEST | INTRODUCED | | MINISTER | RESPONSE | | REPORT NUMBER |
|--|--------------|------------|---------|---------------------------------------|----------|----------|---------------|
| | | HOUSE | SENATE | | SOUGHT | RECEIVED | |
| 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 | -- | Immigration and Multicultural Affairs | 15.6.06 | | Withdrawn |
| Migration Amendment (Visa Integrity) Bill 2006 | 7(9.8.06) | | 21.6.06 | Immigration and Multicultural Affairs | 10.8.06 | 10.10.06 | 8(11.10.06) |
| Protection of the Sea (Harmful Anti-Fouling System) Bill 2006 | 7(9.8.06) | 22.6.06 | 7.9.06 | Transport and Regional Services | 10.8.06 | 5.9.06 | 7(6.9.06) |
| 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) |
| Tax Laws Amendment (2006 Measures No. 4) Bill 2006 | 7(9.8.06) | 22.6.06 | | Treasurer | 10.8.06 | | |
| 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) |
| Trade Practices Legislation Amendment Bill 2006 | 7(9.8.06) | 19.6.06 | | Mr Katter | 10.8.06 | | |