

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



Alert Digest

No. 15 of 2006

6 December 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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Airports Amendment Bill 2006

Introduced into the House of Representatives on 30 November 2006

Portfolio: Transport and Regional Services

Background

This bill amends the *Airports Act 1996* and the *Australian Capital Territory (Planning and Land Management) Act 1988* to make changes to the land use planning system in place at leased federal airports.

The bill implements recommendations from the Senate Rural and Regional Affairs and Transport References Committee *Report of the Inquiry into the Development of the Brisbane Airport Corporation's Master Plan*. The bill permits non aeronautical development at leased airports, aligns the planning obligations for Canberra Airport with those for other leased federal airports, changes the planning and development approval regime to include streamlined public comment and assessment periods, facilitates public access to a master plan and major development plans, allows the Minister to request further information during the assessment process via 'stop the clock' provisions, refines the regulatory framework for environment matters, and clarifies processes associated with the current noise management arrangements applying at leased federal airports.

The bill also contains application, saving and transitional provisions.

The Committee has no comment on this bill.

Airspace Bill 2006

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

Background

Introduced with the Airspace (Consequential and Other Measures) Bill 2006, this bill provides for the transfer of airspace regulation and administration from Airservices Australia to the Civil Aviation Safety Authority.

The bill requires the Minister to make an Australian Airspace Policy Statement on the administration and regulation of, and policy objectives for, Australian administered airspace.

The bill does not affect powers and functions related to the management and use of airspace in the *Defence Act 1903* and the *Defence Special Undertakings Act 1952*.

Insufficient scrutiny of instrument

Subclauses 8(1) and 8(5) and Section 42, clause 10

Subclause 8(1) obliges the Minister to make the Australian Airspace Policy Statement, which must contain the variety of matters set out in subclause 8(2). Subclause 8(5) provides that this Statement is a legislative instrument, but that section 42 of the *Legislative Instruments Act 2003* does not apply to it, rendering the Statement not subject to disallowance. Subclause 8(5) goes on to provide that Part 6 of the *Legislative Instruments Act 2003* also does not apply to the Australian Airspace Policy Statement, with the effect that the Statement is not subject to sunset. The explanatory memorandum seeks to justify the latter of these exclusions by observing that clause 10 of the bill will require the Statement to be reviewed every three years.

The explanatory memorandum seeks to justify the former exclusion – which would render the Statement not subject to disallowance – on the basis that the regular review of the Statement ‘includes a comprehensive consultation process’.

The Committee considers that it may be argued that consultation, however comprehensive, is in no way equivalent to the consideration which would be given to the Policy Statement if it were subject to the normal processes of possible disallowance by the Senate. The Committee also notes that the inability to propose the disallowance of this Statement gives the Minister an unfettered discretion (within the constraints imposed by subclause 8(2)) to determine the contents of the Statement.

The Committee is concerned that policy statements of this type are subject to appropriate scrutiny, both at the time of their making and subsequently. The Committee notes that the bill requires the Minister to consult with two executive agencies prior to making the Policy Statement, CASA and Airservices Australia, but only provides that the Minister may consult any other person or body the Minister thinks appropriate. Notwithstanding the commitment in the explanatory memorandum to consult with the Department of Defence when making regulations and other matters that may affect Defence activities, operations or practices, there appears to be no requirement in the bill for wider consultation prior to the formulation of the Policy Statement. The Committee **seeks the Minister's advice** as to whether provision could be made to ensure comprehensive consultation is undertaken prior to the making of the policy statement and, notwithstanding the explanation offered in the explanatory memorandum, whether consideration could be given to subjecting the policy statement to disallowance.

Pending the Minister's advice, the Committee draws Senators' attention to these 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.

Airspace (Consequential and Other Measures) Bill 2006

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

Background

Introduced with the Airspace Bill 2006, this bill makes a number of consequential amendments to the *Civil Aviation Act 1988* to allow the effective introduction of the Airspace Bill.

The bill also contains a transitional provision and makes technical amendments to the *Air Services Act 1995* and the *Civil Aviation Act 1988* to accommodate amendments made to the functions of Airservices Australia by the *Civil Aviation Legislation Amendment Act 2003*.

The Committee has no comment on this bill.

Australian Energy Market Amendment (Gas Legislation) Bill 2006

Introduced into the House of Representatives on 29 November 2006

Portfolio: Industry, Tourism and Resources

Background

This bill amends the *Australian Energy Market Act 2004*, the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) and the *Trade Practices Act 1974* (Trade Practices Act) to provide for a national regime for the regulation of gas pipeline infrastructure to apply throughout Australia, including the offshore area and external territories. The new regime will involve a new National Gas Law, established by the proposed *National Gas (South Australia) Act 2007*, and National Gas Rules to regulate access to gas pipelines. The new regime will fall within the jurisdiction of the Australian Energy Regulator (AER) and the Australian Energy Market Commission (AEMC) will be responsible for changes to the new National Gas Rules made under the National Gas Law.

The bill repeals the *Gas Pipelines Access (Commonwealth) Act 1998* and amends the *Australian Energy Market Act 2004* to apply the National Gas Law and, where appropriate, complementary Western Australian legislation in the offshore area and the external territories. The bill also addresses technical issues with the conferral of functions and powers on the National Competition Council, the Commonwealth Minister, the AEMC, the AER and the Australian Competition Tribunal.

The bill amends the Trade Practices Act to maintain the existing incentives for greenfields gas pipelines, amends the ADJR Act to provide for judicial review of decisions under the new regime, and repeals redundant common carrier provisions and makes machinery amendments to the *Petroleum (Submerged Lands) Act 1967* and the *Offshore Petroleum Act 2006*.

Commencement on Proclamation Schedule 1

Item 2 in the table to subclause 2(1) would allow the amendments proposed in Schedule 1 to commence on Proclamation, with no date specified within which those amendments must commence in any event. The Committee notes that in the General Outline to this bill, the explanatory memorandum points out that this bill is part of a co-operative scheme, developed by the Ministerial Council on Energy, under which South Australia will enact the *National Gas (South Australia) Act 2007*, which the Commonwealth and the other States and Territories will apply as a National Gas Law. The explanatory memorandum also notes, at paragraph seven, that the South Australian legislation, and the application legislation of all the other jurisdictions, is expected to be enacted by 30 June 2007. In light of the fact that the members of the Ministerial Council on Energy have set this apparently firm deadline for the commencement of the legislation, the Committee notes that while in formal terms the provision gives the Executive the unfettered discretion to determine when these amendments will commence, in reality there is no discretion left for any one member of the Ministerial Council.

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

Delegation of legislative power Schedule 1, Item 48

The National Electricity (Commonwealth) Law and Regulations, National Gas (Commonwealth) Law and Regulations and the Offshore Western Australian Pipelines (Commonwealth) Law and Regulations under the Australian Energy Market Act give effect as Commonwealth law to primary legislation, regulations, Rules and other instruments established under a co-operative scheme of legislation. Proposed new section 13F of the *Australian Energy Market Act 2004* provides that any instrument made under the National Electricity Law or the National Gas Law is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, and therefore cannot be disallowed by the Commonwealth Parliament. The explanatory memorandum states, at paragraph 12, that this reflects the legal status of these instruments

because they are applied by and not made under a Commonwealth law. The explanatory memorandum goes on to state that if such an instrument were a legislative instrument under the Legislative Instruments Act, ‘an instrument made under the various state regimes would be disallowable in Commonwealth Parliament, which would undermine the cooperative nature of the scheme.’ While noting this explanation, the Committee is concerned to understand the degree of parliamentary scrutiny which will apply to regulations made under the National Electricity Law and the National Gas Law. The Committee **seeks the Minister’s advice** as to the provision for parliamentary scrutiny in the formulation of such instruments. The Committee also notes the statement in the explanatory memorandum that the AEMC, a Commonwealth body, will be responsible for changes to the new National Gas Rules made under the National Gas Law. The Committee **seeks the Minister’s advice** as to whether amendments to the National Electricity Rules and the National Gas Rules will be subject to parliamentary scrutiny at any level.

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.

Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006

Introduced into the Senate on 28 November 2006

By Senator Carr

Background

This bill requires the Australian Government to take necessary steps to ratify the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

The Committee has no comment on this bill.

Climate Change Action Bill 2006

Introduced into the Senate on 30 November 2006

By Senator Milne

Background

This bill requires the Australian Government to take necessary steps to ratify the Kyoto Protocol under the United Nations Framework Convention on Climate Change.

The Committee has no comment on this bill.

Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006

Introduced into the Senate on 29 November 2006

Portfolio: Justice and Customs

Background

This bill amends the *Crimes Act 1914*, the *Australian Crime Commission Act 2002*, the *Witness Protection Act 1994*, the *Customs Act 1901*, the *Proceeds of Crime Act 2002* and the *Mutual Assistance in Criminal Matters Act 1987* in relation to the investigation of criminal activity and the protection of witnesses.

Schedule 1 amends the *Crimes Act 1914* by introducing national model legislation to harmonise the controlled operations, assumed identities and protection of witness identity regimes across Australia, developed by the Joint Working Group of the Standing Committee of Attorney's-General and the Australasian Police Ministers Council and published in the Joint working Group's *Cross-Border Investigative Powers for Law Enforcement Report*. The bill expands the operation of the model laws by extending the legislative scheme beyond Australian law enforcement agencies to include, where relevant, foreign law enforcement officers and security and intelligence officers.

Schedule 2 establishes a delayed notification search warrant scheme to enable police officers to covertly enter and search premises for the purposes of preventing or investigating terrorism and other serious Commonwealth offences, without giving notice to the occupier of the premises until operational sensitivities allow.

Schedule 3 amends the *Australian Crime Commission Act 2002* to address some operational difficulties experienced by the Australian Crime Commission (ACC), and to align ACC search warrant provisions more closely to the Crimes Act search warrant provisions.

Schedule 4 amends the *Witness Protection Act 1994* to implement legislative amendments suggested by the Australian Federal Police following the *Review of the National Witness Protection Program Report* of December 2003.

Schedule 5 contains consequential amendments to the *Crimes Act 1914*, the *Customs Act 1901* and the *Australian Commission Act 2002* and amends the *Mutual Assistance in Criminal Matters Act 1987* and the *Proceeds of Crime Act 2002* to allow law enforcement officers to access data from electronic equipment once it is seized.

The bill also contains transitional provisions in relation to controlled operations.

Search and entry Schedule 1, item 8

Proposed new Division 2A of Part 1AA of the *Crimes Act 1914*, to be inserted by item 8 of Schedule 1 to this bill, provides for the issuing and execution of 'Delayed Notification Search Warrants'. These warrants authorise the search of any premises without revealing the fact of the search to the occupier or anyone else in or on the premises (see in particular proposed new section 3SL). The first that the occupier may know of the fact of the search may be six months after it has occurred: see proposed new subsection 3SS(2), under which the executing officer must notify the occupier within six months of execution of the warrant, unless that time is extended by a Judge or nominated member of the Administrative Appeals Tribunal.

The Committee notes that this new Division provides some protection of personal rights and liberties, in that:

- only a police officer may seek to apply for such a warrant (see proposed new section 3SD);
- that application for a warrant must be authorised by the chief officer of the Australian Federal Police or of the police force or police service of a State or Territory (see proposed new section 3SD also);
- the warrant can be issued only by a Judge of the Federal Court or the Family Court, a Judge of a court of a State or Territory or a nominated member of the Administrative Appeals Tribunal (see proposed new section 3SI);

- the chief officer of the relevant police force or police service who authorised the application for a warrant must report to the Minister for Justice and Customs within three months after the end of each financial year on the use that has been made of these powers, and that report must be tabled in the Parliament within 15 sitting days after the Minister has received it (see proposed new section 3SU);
- the Commonwealth Ombudsman must monitor compliance with all aspects of the proposed new Division 2A and report to the Minister thereon every six months (see proposed new Subdivision 6); and
- the Minister must table the Ombudsman's report within 15 sitting days (see proposed new section 3SZF).

The Committee considers that while this new Division may be regarded as trespassing on personal rights and liberties, it leaves the question of whether it does so *unduly* for **consideration by the Senate as a whole**.

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.

Customs Tariff Amendment (Incorporation of Proposals) Bill 2006

Introduced into the House of Representatives on 29 November 2006

Portfolio: Justice and Customs

Background

This bill amends Schedule 4 of the *Customs Tariff Act 1995* to:

- reduce the rate of customs duty from 3% to Free for machinery that is ineligible for a Tariff Concession Order, effective from 11 May 2005;
- allow for duty-free entry of certain equipment and parts used in the modification of aircraft, effective from 1 July 2006; and
- expand the Enhanced Project By-law Scheme to include the duty-free entry of qualifying goods for power and water supply industries, effective from 1 July 2006.

Retrospective commencement Schedules 1 and 2

Items 2 and 3 in the table to subclause 2(1) would allow the amendments proposed in Schedules 1 and 2 to commence on 11 May 2005 and 1 July 2006 respectively. However, the Committee notes that these amendments give effect to Customs Tariff Proposal No. 4, which took effect on 11 May 2005, and Customs Tariff Proposal No. 1, which took effect on 1 July 2006, both of which have been tabled in both Houses of the Parliament prior to their taking effect. The Committee notes the explanatory memorandum makes it clear that both changes to the Customs Tariff provide for a reduction in the rate of customs duty.

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

Electoral and Referendum Legislation Amendment Bill 2006

Introduced into the House of Representatives on 30 November 2006

Portfolio: Special Minister for State

Background

This bill amends the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* to implement measures arising from the Government's response to the Joint Standing Committee on Electoral Matters' Report, *The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*. The bill will:

- provide for a trial of electronically-assisted voting for sight-impaired people and for a trial of remote electronic voting for Australian Defence Force (ADF) personnel;
- enable members of the ADF and Australian Federal Police serving overseas and persons registered as eligible overseas electors, to apply for registration as general postal voters;
- provide that the deadline for postal vote applications is 6.00pm on the Thursday prior to polling day, amend arrangements for the delivery of postal voting material by the Australian Electoral Commission (AEC), and expand the range of AEC officers who can receive complete postal vote envelopes;
- amend the requirements for the establishment of pre-poll voting centres to enable the AEC to establish pre-poll voting centres in exceptional circumstances; and
- provide applicants for enrolment from outside Australia with the option of providing an Australian passport number, rather than a current driver's licence number, to satisfy the requirements of the proof of identity scheme.

The bill also repeals section 350 of the *Commonwealth Electoral Act 1918* relating to defamation of electoral candidates.

**Legislative Instruments Act 2003—disallowance
Schedule 2, item 1**

Proposed new subsection 202AF(3) of the *Commonwealth Electoral Act 1918*, to be inserted by item 1 of Schedule 2 to this bill, and proposed new subsection 202AM(3) of the same Act, to be inserted by the same item, would provide that an instrument made under proposed new subsections 202AF(1) and 202AM(1) respectively is a legislative instrument, but that section 42 of the *Legislative Instruments Act 2003* does not apply in either case, thereby preventing such instruments from being disallowable. The Committee notes that the instruments in question are written decisions by the Minister that the trial of either of two types of electronic voting methods are not to proceed for any reason that the Minister considers appropriate. The explanatory memorandum seeks to justify these provisions on the basis that ‘the reason for not proceeding with a trial [of electronic voting] would be based on an assessment of the risks to the integrity of the vote, including a software or hardware failure’ and that therefore ‘it would not be appropriate for such a decision to be subject to disallowance’ (see paragraphs 76 and 95 respectively).

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

Energy Efficiency Opportunities Amendment Bill 2006

Introduced into the House of Representatives on 29 November 2006
Portfolio: Industry, Tourism and Resources

Background

This bill makes minor technical amendments (effective 1 July 2006) to the *Energy Efficiency Opportunities Act 2006*.

Retrospective commencement Schedule 1, items 1 to 5

Item 2 in the table to subclause 2(1) would allow the amendments proposed in items 1 to 5 of Schedule 1 to commence on 6 April 2006, immediately after the commencement of the *Energy Efficiency Opportunities Act 2006*. However, the explanatory memorandum observes that a ‘small number of technical anomalies have been identified in the [original] Act that affect the effectiveness of the legislation’ and that the legislation ‘needs to be amended to ensure that stakeholders are not confused by the discrepancies evident in the Act, and that the Act aligns with the Regulations and Industry Guidelines.’ The Committee notes that the explanatory memorandum goes on to note that the effect of items 1 to 5 in Schedule 1 in particular is to validate the conduct of those who have already taken part in the Energy Efficiency Opportunities Scheme.

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

Migration Legislation Amendment (Restoration of Fair Process) Bill 2006

Introduced into the Senate on 30 November 2006

By Senator Bartlett

Background

The bill seeks to repeal certain provisions of the *Migration Act 1958* and the *Administrative Decisions (Judicial Review) Act 1977* which restrict access to Federal and High Court judicial review of administrative decisions made under the Migration Act.

The Committee has no comment on this bill.

Royal Commissions Amendment (Records) Bill 2006

Introduced into the House of Representatives on 30 November 2006

Portfolio: Prime Minister

Background

This bill amends the *Royal Commissions Act 1902* to enable regulations to facilitate provision of custody, use of, and access to, records of royal commissions, including those of the Inquiry into Certain Australian Companies in relation to the UN Oil-for-Food Programme (the Cole Inquiry).

The bill allows for regulations to be made in relation to specific royal commission records which may:

- provide for the custody in which some or all of a royal commission's records are to be kept;
- specify purposes for which a custodian of royal commission records may use, or must not use, some or all of those records;
- provide for the circumstances in which the custodian of royal commission records must, or may, give some or all of those records to another person or body;
- provide for the circumstances in which the custodian of royal commission records must, or may, allow access to some or all of those records to other persons or bodies; and
- specify purposes for which persons or bodies to whom a custodian of royal commission records gives, or gives access to, those records may use, or must not use, some or all of those records.

The bill also specifies that a custodian of a royal commission record may retain possession of the record despite any request from the record's owner for the return of the record.

The bill maintains the protection against self-incrimination and ensures that legal professional privilege is not affected by any regulations that might be made under these amendments.

Non-reviewable decisions

Schedule 1, item 2

Proposed new subsection 9(11) of the *Royal Commissions Act 1902*, to be inserted by item 2 of Schedule 1, would permit regulations to be made providing for the custody of the records of a royal commission, and permitting those regulations to grant to the custodian of the records a completely unfettered discretion with respect to the use of the records, the persons or bodies who might be given the records or given access to them, ‘without obtaining the consent of, giving notice to, giving an opportunity to make submissions to or taking into account submissions made by the owner of the records or any other person.’ The explanatory memorandum states that this proposed new subsection has been included ‘for the removal of any doubt’ in that it removes ‘any requirement, such as might otherwise have been argued to exist, for the according of procedural fairness to the owner of the records [of any Royal Commission] or any other person.’ The Committee considers that this proposed new subsection might make rights or liberties dependent upon non-reviewable decisions, but leaves the question of whether it does so *unduly* for **consideration by the Senate as a whole**.

The Committee draws Senators’ attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee’s terms of reference.

Retrospective effect

Schedule 1, item 3

Item 3 of Schedule 1 provides that the amendments made by that Schedule ‘apply to the Royal Commission records of a Royal Commission even if the Royal Commission was established and reported before the commencement’ of this measure. The item therefore ensures that all the amendments which are proposed in this bill will have retrospective effect, with no limit on the matters that may be affected thereby. The Committee notes the potential for this retrospectivity to have an adverse impact on individuals who have given evidence before previous royal commissions under the rules applying at that time. While the Committee considers that item 3 may be regarded as

trespassing on personal rights and liberties, it leaves the question of whether it does so *unduly* for **consideration by the Senate as a whole**.

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.

Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006

Introduced into the House of Representatives on 30 November 2006

Portfolio: Employment and Workplace Relations

Background

This bill amends the *Military Rehabilitation and Compensation Act 2004* and the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to maintain the financial viability of the Commonwealth workers' compensation scheme by:

- amending the definitions of 'disease' and 'injury';
- removing claims for non work-related journeys and recess breaks;
- amending the calculation of retirees' incapacity benefits to take account of changes in interest rates and superannuation fund contributions;
- updating measures for calculating benefits for employees;
- ensuring that potential earnings from suitable employment are taken into account when determining incapacity payments;
- allowing for the cost of services to injured employees to be reimbursed directly to health care providers; and
- increasing the maximum funeral benefits payable.

The bill also contains application, saving, technical and transitional provisions and an amendment to the funeral benefit provisions of the *Military Compensation and Rehabilitation Act 2004* to maintain parity with benefits under the SRC Act.

The Committee has no comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Defence Legislation Amendment Bill 2006

Constitution of military jury

Item 11, Schedule 1, Sections 122 and 124

The House of Representatives amended this bill on 29 November 2006. The Committee notes that the amendments include amendments in relation to the constitution of the military jury which address the concerns raised by the Committee in its *Alert Digest No. 11 of 2006*. The amendments provide that there will be a 12 member jury in respect of a trial for a Class 1 offence and a 6 member jury in respect of a trial for a Class 2 or 3 offence. The amendments further provide that a decision of a military jury is to be unanimous or by a five-sixths majority in certain circumstances.

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

Discussions between the Chairs and Deputy Chairs of Commonwealth, State and Territory Scrutiny Committees have noted difficulties in the identification and scrutiny of national schemes of legislation. Essentially, these difficulties arise because 'national scheme' bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation. Any requests for amendment are seen to threaten that agreement and that uniformity.

To assist in the early identification of national schemes of legislation, the Committee proposes to note bills that give effect to such schemes as they come before the Committee for consideration.

Australian Energy Market Amendment (Gas Legislation) Bill 2006

This bill forms part of the current Ministerial Council on Energy reform program which is being developed through an intergovernmental agreement – the Australian Energy Market Agreement. The Committee commented on related legislation, the Australian Energy Market Bill 2004 and the Trade Practices Amendment (Australian Energy Market) Bill 2004, in its *Alert Digest No. 8 of 2004*.

This bill will bring gas transmission and distribution under the national institutional framework and regulatory arrangements for the Australian energy market. The South Australian Parliament is expected to enact the *National Gas (South Australia) Act 2007* by 30 June 2007. The Schedule to this Act will be called the National Gas Law. The National Gas Law will be applied as law by all jurisdictions, with the exception of Western Australia which will enact complementary legislation in substantially the same form. Under this cooperative scheme, State and Territory laws will confer functions on the following Commonwealth persons and authorities: the Australian Energy Regulator, the National Competition Council, the Australian Competition Tribunal and the Minister responsible for the Australian Energy Market Act.

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
*	Aged Care (Bond Security) Bill 2006 – clause 17
*	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 2006 – clause 49
*	Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Bill 2005 – clause 23
*	Australian Trade Commission Legislation Amendment Bill 2006 – Schedule 4, item 16
*	Child Support Legislation Amendment (Reform of the Child Support Scheme—Initial Measures) Bill 2006 – Schedule 5, subitem 20(3)
	Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006 – Schedule 1, item 13, section 9G

*	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>]
*	Future Fund Bill 2006 – 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, subitem 1(3)
*	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
	Medibank Private Sale Bill 2006 – Schedule 2, subitem 8(1)
	Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 – Schedule 1, subitem 43(3)
*	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
*	Plant Health Australia (Plant Industries) Funding Amendment Bill 2006 – Schedule 1, item 17, section 10B
*	Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004 – clause 133
*	Skilling Australia’s Workforce Bill 2005 – clause 40
*	Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Bill 2006 – Schedule 4, subitem 1(4)
*	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	30.11.06	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	16.10.06	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 Amendment (Residential Care) Bill 2006	11(11.10.06)	17.10.06	13.9.06	Health and Ageing	12.10.06	17.10.06	9(18.10.06)
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Airport Development and Aviation Noise Ombudsman Bill 2006	4(10.5.06)	27.3.06	--	Mr Georganus	11.5.06		RNP
Anti-Money Laundering and Counter-Terrorism Financing Bill 2006	13(8.11.06)	1.11.06	29.11.06	Justice and Customs	9.11.06 30.11.06	29.11.06 4.12.06	11(29.11.06) 13(6.12.06)
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 Participants in British Nuclear Tests (Treatment) Bill 2006	11(11.10.06)	14.9.06	12.10.06	Veterans' Affairs	12.10.06		
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)
Customs Legislation Amendment (New Zealand Rules of Origin) Bill 2006	13(8.11.06)	1.11.06	29.11.06	Justice and Customs	9.11.06	27.11.06	11(29.11.06)
Datacasting Transmitter Licence Fees Bill 2006	12(18.10.06)	12.10.06	30.11.06	Communications, Information Technology and the Arts	19.10.06	27.11.06	11(29.11.06)
<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)
Defence Legislation Amendment Bill 2006	11(11.10.06)	14.9.06	4.12.06	Defence	12.10.06	28.11.06	11(29.11.06)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
Environment and Heritage Legislation Amendment Bill (No. 1) 2006	12(18.10.06)	12.10.06	6.11.06	Environment and Heritage	19.10.06 30.11.06	13.11.06 5.12.06	11(29.11.06) 13(6.12.06)
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)
Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006	11(11.10.06)	14.9.06	11.10.06	Families, Community Services and Indigenous Affairs	12.10.06	7.11.06	10(8.11.06)
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2006	10(13.9.06)	4.9.06		Mr Katter	14.9.06		
Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006	11(11.10.06)	13.9.06	11.10.06	Treasurer	12.10.06	17.10.06	9(18.10.06)
Law and Justice Legislation Amendment (Marking of Plastic Explosives) Bill 2006	10(13.9.06)	7.9.06		Attorney-General	14.9.06	17.10.06	10(8.11.06)
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)
Medibank Private Sale Bill 2006	13(8.11.06)	18.10.06	6.11.06	Finance and Administration	9.11.06	20.11.06	11(29.11.06)
Migration Amendment (Designated Unauthorised Arrivals) Bill 2006	5(14.6.06)	11.5.06	--	Immigration and Multicultural Affairs	15.6.06		Message Rep
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	16.10.06	Treasurer	10.8.06	17.10.06	9(18.10.06)
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		