

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



Alert Digest

No. 2 of 2007

28 February 2007

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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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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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ACIS Administration Amendment (Unearned Credit Liability) Bill 2007

Introduced into the House of Representatives on 7 February 2007

Portfolio: Industry, Tourism and Resources

Background

This bill amends the *ACIS Administration Act 1999* to provide the Commonwealth with the power to issue an Unearned Credit Liability (UCL) in circumstances where a registered Automotive Competitiveness and Investment Scheme (ACIS) participant has received credits to which it is not entitled.

Retrospective application

Schedule 1, item 4

Item 4 of Schedule 1 provides that the amendments made by the Schedule apply 'in relation to duty credits in respect of a quarter after the final quarter for ACIS Stage 1'. The purpose of the bill is to give the Commonwealth the power to claw back from an ACIS participant credits to which the participant was not entitled. Although there is no mention in the explanatory memorandum or the second reading speech of the date of termination of Stage 1 of ACIS, reference to subsection 4(1A) of the *ACIS Administration Act 1999* reveals that it ended on 31 December 2005. It therefore appears that this bill will operate retrospectively in relation to duty credits received since 1 January 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. The Committee **seeks the Minister's advice** as to whether this bill will operate retrospectively in relation to duty credits received since 1 January 2006 and, if so, whether it trespasses *unduly* on personal rights and liberties.

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.

Aged Care Amendment (Security and Protection) Bill 2007

Introduced into the House of Representatives on 8 February 2007

Portfolio: Ageing

Background

This bill amends the *Aged Care Act 1997* to establish a requirement for approved providers of residential aged care to report, to both the police and the Secretary of the Department of Health and Ageing, any allegations or reasonable suspicions of reportable assault, as defined in the Accountability Principles of the Aged Care Principles.

The bill also provides protections for approved providers and their staff who make certain disclosures about reportable assaults and enables the establishment of complaints investigation arrangements through new Investigation Principles in the Aged Care Principles.

In addition, the bill establishes the role of a new Aged Care Commissioner, who replaces the existing Commissioner for Complaints, and outlines the appointment, functions and reporting requirements of the Commissioner.

The bill also contains application provisions.

Wide delegation of power Schedule 1, item 5

Proposed new subsection 95A-11(1) of the *Aged Care Act 1997*, to be inserted by item 5 of Schedule 1, would allow the Aged Care Commissioner (an office to be created by this bill) to delegate 'all or any of his or her functions to an APS employee in the Department [of Ageing].' The Committee generally draws attention to the delegation of wide ranging powers to a range of persons, with little or no specificity as to their qualifications or attributes. However, on this occasion the Committee notes that the explanatory memorandum, at pages 7 to 8:

- recognises the need normally to limit delegations to certain functions or to certain people, such as members of the Senior Executive Service, but goes on to put forward reasons for extending the range of possible delegates in this instance; and
- observes that proposed new subsection 95A-11(2) obliges the Commissioner, in exercising the power of delegation, to have regard to ‘the function to be performed and the responsibilities of the APS employee to whom the function is delegated.’

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

Airport Development and Aviation Noise Ombudsman Bill 2007

Introduced into the House of Representatives on 12 February 2007

By Mr Georganas

Background

Similar to a bill of the same name introduced in 2006, this bill establishes an Airport Development and Aviation Noise Ombudsman to serve as a point of liaison between the Minister and the public in relation to the impact of airport development and aircraft noise on populated areas.

The bill also makes consequential amendments to the *Airports Act 1996*, the *Air Services Act 1995*, the *Civil Aviation Act 1988* and the *Ombudsman Act 1976*.

Explanatory Memorandum

The Committee notes that this bill, introduced as a private Member's bill, was accompanied by a statement made on presentation of the bill 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, which is available from the Clerk Assistant (Procedure) and on the Senate's intranet site, may assist Senators and Members in preparing explanatory memoranda.

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

Commencement on Proclamation

Clause 2

Clause 2 provides that this measure is to commence on Proclamation, without any limit on the period within which such a Proclamation must be made or within which the bill commences in any event. Parliamentary Counsel Drafting Direction No. 1.3 states that:

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

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

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

As this bill is not accompanied by an explanatory memorandum, the Committee **seeks the advice of the proposer** as to the reason for not defining a time period within which the measure must commence and **inquires whether the proposer** may wish to consider amending the bill to take account of this general rule.

Pending the Member'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.

Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2007

Introduced into the House of Representatives on 15 February 2007

Portfolio: Justice and Customs

Background

This bill makes a number of technical amendments to the *Administrative Decisions (Judicial Review) Act 1977*, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, the *Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Act 2006*, the *Commonwealth Electoral Act 1918*, the *Financial Transactions Reports Act 1988*, the *Inspector-General of Intelligence and Security Act 1986* and the *Surveillance Devices Act 2004* to ensure the effective operation of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and to address concerns raised by the Legal and Constitutional Affairs Committee and the Scrutiny of Bills Committee.

Retrospective commencement

Schedule 1

Item 7 in the table to subclause 2(1) of this bill provides that items 59 to 61 of Schedule 1 would commence retrospectively on 13 December 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. The Committee notes, however, that these amendments are technical only, amending references in the *Financial Transactions Reports Act 1988* from the former title of Director of AUSTRAC to the current title of AUSTRAC CEO. It therefore appears that the amendments do not make any change in the substantive law.

The Committee further notes, however, that the explanatory memorandum makes no reference to the fact of the retrospective commencement, nor does it indicate the reason for 13 December 2006 being chosen as the date of that commencement. It is only by independent reference to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* that the reader

discovers that the relevant provisions of that Act commenced on 13 December 2006. The Committee **seeks the Minister's advice** as to whether a better explanation of the retrospective commencement provisions, outlined at item 7 in the table to subclause 2(1), could be included in the explanatory memorandum.

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.

Retrospective application Schedule 1, item 65

Item 1 of Schedule 1 would amend the *Administrative Decisions (Judicial Review) Act 1977* by limiting the classes of decisions under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* which are exempt from review. Item 65 of the Schedule ensures that this amendment will apply retrospectively to any decision whether made 'before, at or after the commencement' of the bill under discussion.

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 Committee notes that whilst this bill will have a retrospective impact, the retrospectivity will not adversely affect any person, because the purpose of the amendment is to restrict the decisions that are exempt from review to those made under sections 176 and 248 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, replacing the general exemption that currently applies.

In *Alert Digest No. 13 of 2006*, the Committee noted the very wide exemptions from review that were provided for in the *Anti-Money Laundering and Counter-Terrorism Financing (Transitional Provisions and Consequential Amendments) Bill 2006*, and **thanks the Minister** for restricting those exemptions.

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

Absolute liability to strict liability
Schedule 1, items 41 to 47

Items 41 to 47 of Schedule 1 amend various provisions of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* by changing offences of absolute criminal liability to strict liability. The explanatory memorandum notes that these amendments ensure that the Act is in accordance with the recommendations of the Committee in its *Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. The Committee notes that in its *Thirteenth Report of 2006* it recorded the Minister's undertaking to make the amendments to be effected by items 41 to 47 of Schedule 1. The Committee **thanks the Minister** for implementing his undertaking to change offences of absolute criminal liability to strict liability, in accordance with the recommendations of the Committee in its *Sixth Report of 2002*.

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

Appropriation Bill (No. 3) 2006-2007

Introduced into the House of Representatives on 8 February 2007
Portfolio: Finance and Administration

Background

The bill appropriates money (\$1.2 billion) out of the Consolidated Revenue Fund, additional to the appropriation made by the *Appropriation Act (No. 1) 2006-2007*, to meet payments for the ordinary annual services of the government for the year ending on 30 June 2007.

The Committee has no comment on this bill.

Appropriation Bill (No. 4) 2006-2007

Introduced into the House of Representatives on 8 February 2007

Portfolio: Finance and Administration

Background

The bill appropriates money (\$636.9 million) out of the Consolidated Revenue Fund, additional to the appropriation made by the *Appropriation Act (No. 2) 2006-2007*, to provide additional funding to agencies for:

- expenses in relation to grants to the states and for payments to the Northern Territory, the Australian Capital Territory and local government authorities; and
- non-operating purposes, such as equity injections and loans.

The Committee has no comment on this bill.

Australian Territories Rights of the Terminally Ill Bill 2007

Introduced into the Senate on 8 February 2007

By Senator Bob Brown

Background

This bill provides a terminally ill person with the right to request assistance from a medically qualified person to voluntarily terminate his or her life and allows such assistance to be given, in certain circumstances, without legal impediment to the person rendering the assistance.

The bill also provides procedural protection against the possibility of abuse of the rights recognised in the bill.

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, which is available from the Clerk Assistant (Procedure) and on the Senate's intranet site, may also assist Senators in preparing explanatory memoranda.

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

Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007

Introduced into the House of Representatives on 14 February 2007

Portfolio: Transport and Regional Services

Background

This bill amends the *Aviation Transport Security Act 2004* in order to implement recommendations of the International Civil Aviation Organization to enhance security screening measures at international airports.

The bill allows for the making of regulations to determine ‘things that must not pass through a screening point’, allowing for limits to be placed on the amount of liquids, aerosols and gels that can be taken through an international screening point by people flying to or from Australia. The bill also allows for screening officers to conduct frisk searches if necessary and with consent.

Strict liability

Schedule 1, item 5

Proposed new subsection 95C(5) of the *Aviation Transport Security Act 2004*, to be inserted by item 5 of Schedule 1, would render the offence created by proposed new subsection 95(3) an offence of strict liability. The only person who is capable of committing the proposed offence to be created by new subsection 95(3) is a screening officer at an airport, and the offence consists of requiring a passenger to undergo a frisk search, or conducting a frisk search without the consent of the subject, or conducting a frisk search to an extent greater than is necessary in the circumstances.

However, the explanatory memorandum makes no mention of proposed new subsection 95C(5), and there is consequently no indication of whether the Minister considered the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* in considering whether strict criminal liability was necessary in these circumstances. The Committee **seeks the Minister’s advice** as to whether an explanation could be included in the

explanatory memorandum outlining why the offence created by proposed new subsection 95(3) is an offence of strict liability.

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.

Bankruptcy (Estate Charges) Amendment Bill 2007

Introduced into the House of Representatives on 15 February 2007

Portfolio: Attorney-General

Background

This bill amends the *Bankruptcy (Estate Charges) Act 1997* to extend the application of the realisations charge and interest charge, which are used to recover the cost of regulating the personal insolvency system, to money received by debt agreement administrators.

The bill also contains application provisions.

The Committee has no comment on this bill.

Bankruptcy Legislation Amendment (Debt Agreements) Bill 2007

Introduced into the House of Representatives on 15 February 2007
Portfolio: Attorney-General

Background

This bill amends the *Bankruptcy Act 1966* to introduce a registration system for debt agreement administrators. The bill:

- provides for increased regulation of debt agreement administrators and specifies their duties;
- requires the provision of certain information to both debtors and creditors to assist them to make decisions;
- provides procedures for varying, ending and terminating debt agreements, including in the event of default by the debtor; and
- clarifies and streamlines a number of provisions to improve the operation of the Act.

The bill also contains application and transitional provisions.

Strict liability Schedule 1, item 19

Proposed new subsection 186N(7) of the *Bankruptcy Act 1966*, to be inserted by item 19 of Schedule 1, would make the offences created by proposed new subsections 186N(1), (3) and (5) offences of strict liability. The explanatory memorandum does not acknowledge the existence of new subsection (7), and there is consequently no indication of whether the *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers* was consulted when this provision was drafted. The Committee **seeks the Attorney-General's advice** as to whether an explanation could be included in the explanatory memorandum outlining why the offences created by proposed new subsections 186N(1), (3) and (5) are offences of strict liability.

Pending the Attorney-General'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.

Broadcasting Legislation Amendment Bill 2007

Introduced into the House of Representatives on 15 February 2007
Portfolio: Communications, Information Technology and the Arts

Background

This bill amends the *Broadcasting Services Act 1992* to exempt from the regulatory requirements of the Act, persons who re-transmit content provided by National Indigenous TV Limited (NITV Ltd) for transmission by Imparja Television on its channel 31 narrowcast service.

The bill also amends the definition of a ‘free-to-air broadcast’ in the *Copyright Act 1968*, extending the statutory licence scheme for the re-transmission of free-to-air broadcasts in Part VC of that Act to apply it to re-transmission of NITV Ltd programming.

The Committee has no comment on this bill.

Corporations Amendment (Takeovers) Bill 2007

Introduced into the House of Representatives on 14 February 2007

Portfolio: Treasury

Background

This bill amends the *Corporations Act 2001* to ensure that the 'Takeovers Panel' has the necessary powers and jurisdiction to continue to perform its duties effectively, efficiently and expeditiously in resolving takeover disputes during takeover bids.

The bill also contains transitional provisions.

The Committee has no comment on this bill.

Customs Tariff Amendment (Greater Sunrise) Bill 2007

Introduced into the House of Representatives on 14 February 2007
Portfolio: Justice and Customs

Background

Introduced with the Offshore Petroleum Amendment (Greater Sunrise) Bill 2007, this bill seeks to make minor consequential amendments to the *Customs Tariff Act 1995*, to reflect the *Offshore Petroleum Act 2006*.

The Committee has no comment on this bill.

Family Law (Divorce Fees Validation) Bill 2007

Introduced into the House of Representatives on 7 February 2007

Portfolio: Attorney-General

Background

This bill amends the *Family Law Act 1975* to validate retrospectively the amount of the filing fee for divorce applications charged by the Family Court of Western Australia for the period 1 July 2005 to 8 October 2006.

Retrospective operation

Clause 3

The effect of clause 3 is to validate filing fees for divorces which have been charged and collected by the Family Court of Western Australia between 1 July 2005 and 8 October 2006. It is therefore retrospective in its operation.

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 Committee notes, however, that the explanatory memorandum makes it clear that this bill corrects an administrative oversight, whereby regulations under the *Family Law Act 1975* had not been amended to ensure that they were the same as regulations under the *Federal Magistrates Act 1999*, which sets the filing fees for divorces in the Family Court in all States and Territories other than Western Australia.

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

Human Services (Enhanced Service Delivery) Bill 2007

Introduced into the House of Representatives on 7 February 2007
Portfolio: Human Services

Background

This bill establishes a framework for the Health and Social Services Access Card (not to be used as a national identity card). The bill:

- provides for the establishment of a register and specifies what information may be kept on the register;
- establishes eligibility criteria as a process for applying for and issuing an access card, including specifying what information may be included on both the surface of the card and in the ‘chip’ inside the card;
- allows the Secretary of the Department of Human Services to make decisions about whether a person is listed on the register or issued with an access card; and
- provides for ownership and use of the access card.

The bill also sets out offences against the bill, including offences in relation to applying for registration or an access card and offences relating to the use and misuse of the access card.

Commencement on Proclamation Item 2

Item 2 in the table to subclause 2(1) of this bill provides that the whole of the measure other than clauses 1 and 2 would commence on Proclamation, but within 18 months of Assent in any event. The explanatory memorandum seeks to justify this deferral of commencement beyond the 6 months specified in paragraph 19 of Drafting Direction No. 1.3 on the ground that that period ‘will allow sufficient time to ensure that the infrastructure and administrative

arrangements that are required for the effective implementation of the access card scheme are in place to ensure a smooth transition to the new access card.’ The Committee notes that the explanatory memorandum states, at page 3, that the access card ‘will use smartcard technology to replace existing cards’ and that the item specifies a particular date by which the bill must commence.

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

Legislative Instruments Act—declarations **Subclause 67(3)**

Subclause 67(3) provides that a determination made under subclause 67(1) ‘is not a legislative instrument’. The explanatory memorandum, at page 59, does not acknowledge the existence of subclause 67(3) and, as such, it is not clear to the Committee whether this statement is merely included for the information of readers or is a statement of policy intent. Where a provision states that an instrument is not a legislative instrument the Committee would expect the explanatory memorandum to explain whether the provision is merely declaratory (and included for the avoidance of doubt) or expresses a policy intention to exempt an instrument (which is legislative in character) from the usual tabling and disallowance regime set out in the *Legislative Instruments Act 2003*. The Committee notes that such an explanation is provided in the explanatory memorandum in respect to subclause 65(6), which is in similar terms to 67(3).

The Committee **seeks the Minister’s advice** as to whether subclause 67(3) is no more than declaratory and, if so, whether it would be possible to include this information in the explanatory memorandum.

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.

Wide delegation of power Subclauses 68(1) and 70(1)

Subclause 68(1) would permit the Minister to delegate many of his or her powers or functions under the Act to any Australian Public Service (APS) employee in any of the Departments or Agencies who will be administering the proposed new access card. Subclause 70(1) permits the Secretary to the Department of Human Services to delegate almost all of his or her powers or functions to an even wider group of persons. Subclause 71(1) permits the Secretary to the Department of Veterans' Affairs to delegate his or her powers or functions under clause 65 (which relates to the granting of exemptions from various requirements relating to the proposed new access card) to the same wide group of persons as those to whom the Minister may delegate powers and functions under subclause 68(1).

The only reference which the explanatory memorandum makes to the very wide discretions granted by these provisions is that, in relation to the delegations by the Secretary to the Department of Human Services, under subclause 70(1), the Secretary will be able to delegate some powers and functions to the Chief Executive Officer of agencies such as Medicare and Centrelink, who will in turn be able to subdelegate those powers or functions to officers within the agency. Such a chain of delegation is 'considered to be a more transparent and accountable mechanism for dealing with officers in other agencies from a government perspective.'

The Committee **seeks the Minister's advice** as to whether the various subclauses relating to delegation of power might impose some limit on the type or nature of the powers and functions which may be delegated in any particular instance, along the lines of the limitation in proposed new subsection 95A-11(2) of the *Aged Care Act 1997*, which requires the Aged Care Commissioner, in exercising his or her powers to delegate, to 'have regard to the function to be performed by the delegate and the responsibilities of the APS employee to whom the function is delegated'.

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

Lack of Merits Review of Administrative Decisions

The bill provides for the Secretary of the Department of Human Services to make a range of decisions in respect to the register and access card, including decisions as to whether or not to admit a person to the register (clause 14) and whether or not to issue an access card (clause 24), but remains silent on any appeal mechanisms in respect to these decisions. Page 63 of the explanatory memorandum acknowledges the absence of any mechanisms for reviewing administrative decisions made under the bill and notes that ‘appeal mechanisms in relation to the access card and registration system will be included in the second tranche of legislation.’ The explanatory memorandum goes on to state that ‘appeal rights will not be diminished and will be consistent with those in place for existing cards and entitlements’. The Committee notes, however, that no information is provided in the explanatory memorandum regarding the nature of these existing appeal rights nor whether they are consistent across all cards and entitlements. As such, the Committee remains unclear about what the appeal rights may entail.

The Committee **seeks the Minister’s advice** as to whether appeal rights could be included in this bill, along with the decision-making powers.

Pending the Minister’s advice, the Committee draws Senators’ attention to the absence of appeal rights in this bill, as it may be considered to make rights, liberties or obligations unduly dependent on non-reviewable decisions, in breach of principle 1(a)(iii).

Income Tax Amendment Bill 2007

Introduced into the House of Representatives on 7 February 2007

Portfolio: Treasury

Background

Introduced with the *Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007*, the *Income Tax (Former Non-Resident Superannuation Funds) Amendment Bill 2007*, the *Income Tax Rates Amendment (Superannuation) Bill 2007* and the *Superannuation Legislation Amendment (Simplification) Bill 2007*, this bill makes consequential amendments to the *Income Tax Act 1986*, which are necessary due to the 'Simplified Superannuation' changes.

The Committee has no comment on this bill.

Income Tax (Former Complying Superannuation Funds) Amendment Bill 2007

Introduced into the House of Representatives on 7 February 2007
Portfolio: Treasury

Background

Introduced as part of a package of bills, this bill makes consequential amendments to the *Income Tax (Former Complying Superannuation Funds) Act 1994* necessary due to the 'Simplified Superannuation' changes.

The Committee has no comment on this bill.

Income Tax (Former Non-resident Superannuation Funds) Amendment Bill 2007

Introduced into the House of Representatives on 7 February 2007
Portfolio: Treasury

Background

Introduced as part of a package of bills, this bill makes consequential amendments to the *Income Tax (Former Non-resident Superannuation Funds) Act 1994* necessary due to the 'Simplified Superannuation' changes.

The Committee has no comment on this bill.

Income Tax Rates Amendment (Superannuation) Bill 2007

Introduced into the House of Representatives on 7 February 2007
Portfolio: Treasury

Background

Introduced as part of a package of bills, this bill makes consequential amendments to the *Income Tax Rates Act 1986* necessary due to the 'Simplified Superannuation' changes.

The Committee has no comment on this bill.

Migration Amendment (Maritime Crew) Bill 2007

Introduced into the House of Representatives on 15 February 2007
Portfolio: Immigration and Citizenship

Background

This bill amends the *Migration Act 1958* and the *Migration Amendment (Visa Integrity) Act 2007* to create a new temporary maritime crew visa to replace current special purpose and other visas for foreign crew and their families entering Australia on non-military ships.

The bill also contains minor technical provisions.

The Committee has no comment on this bill.

Offshore Petroleum Amendment (Greater Sunrise) Bill 2007

Introduced into the House of Representatives on 14 February 2007

Portfolio: Industry, Tourism and Resources

Background

Introduced with the Customs Tariff Amendment (Greater Sunrise) Bill 2007, this bill amends the *Offshore Petroleum Act 2006*, the *Petroleum Resource Rent Tax Assessment Act 1987* and the *Radiocommunications Act 1992* by incorporating into the *Offshore Petroleum Act 2006* the Greater Sunrise Unitisation Agreement (signed 6 March 2003) which gives effect to the Agreement between Australia and the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields.

Wide delegation of power

Schedule 1, items 26 and 28 and item 35

Proposed new paragraphs 48(1)(b) and 48A(1)(b) of the *Offshore Petroleum Act 2006*, to be inserted by items 26 and 28 of Schedule 1, and proposed new paragraph 52(1)(b) of the same Act, to be inserted by item 35 of Schedule 1, would permit a Joint Authority or a Designated Authority to delegate any or all of the Authority's functions and powers under the *Offshore Petroleum Act 2006* to either or both of a member of the Senior Executive Service in the Australian Public Service or 'an employee of a State or of the Northern Territory'.

The Committee has consistently drawn attention to legislation which allows delegations to a relatively large class of persons, with little or no specificity as to their qualifications or attributes. However, the Committee notes that the explanatory memorandum, in referring to item 26 of Schedule 1, points out that, in relation to delegations to employees of a State or of the Northern Territory, 'since the rank profiles in State and Northern Territory Public Service structures may vary from one jurisdiction to the next, no attempt is being made to include any analogous requirement about the rank of a State or

Northern Territory government employee who receives a Joint Authority [or a Designated Authority] delegation.’

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

Superannuation Legislation Amendment (Simplification) Bill 2007

Introduced into the House of Representatives on 7 February 2007

Portfolio: Treasury

Background

Introduced as part of a package of bills in relation to the Tax Laws Amendment (Simplified Superannuation) Bill 2006, this bill makes consequential amendments to the *Income Tax Assessment Act 1936*, the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999*, the *Family Law Act 1975*, the *Fringe Benefits Tax Assessment Act 1986*, the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997*, the *Parliamentary Superannuation Act 2004*, the *Pooled Development Funds Act 1992*, the *Remuneration and Allowances Act 1990*, the *Retirement Savings Accounts Act 1997*, the *Seafarers Rehabilitation and Compensation Act 1992*, the *Small Superannuation Accounts Act 1997*, the *Social Security Act 1991*, the *Superannuation Contributions Tax (Assessment and collection) Act 1997*, the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*, the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*, the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation (Productivity Benefit) Act 1988*, the *Taxation (Interest on Overpayments and Early Payments) Act 1983*, the *Veterans' Entitlements Act 1986*, the *Income Tax (Superannuation Payments Withholding Tax) Act 2002*, the *Bankruptcy Act 1966*, the *Child Support (Registration and Collection) Act 1988*, the *Income Tax (Transitional Provisions) Act 1997*, the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999* and the *Taxation Administration Act 1953* made necessary by the rewriting of the superannuation tax law.

Schedule 1 repeals old superannuation taxation law in the *Income Tax Assessment Act 1936* and updates cross references in other Acts to clarify the way in which superannuation will be treated in various circumstances, for

example, in the event of bankruptcy, for child support purposes and social security purposes.

Schedule 2 contains consequential amendments relating to small business relief for capital gains tax events.

Schedule 3 provides for unclaimed superannuation monies from private sector superannuation funds to be paid to the Australian Government and assists the Australian Taxation Office to establish a single access point for persons seeking advice on any superannuation-related issue, including lost and unclaimed superannuation.

The bill also contains application, technical and transitional provisions.

The Committee has no comment on this bill.

Tax Laws Amendment (2007 Measures No. 1) Bill 2007

Introduced into the House of Representatives on 15 February 2007

Portfolio: Treasury

Background

This bill amends a range of legislation to implement changes to Australia's taxation system.

Schedule 1 amends the secrecy and disclosure provisions in the *Taxation Administration Act 1953*, to allow the Commissioner of Taxation to make disclosures of taxpayer information to Project Wickenby taskforce officers and to officers in other taskforces that may be prescribed by regulations. It also amends the *Administrative Decisions (Judicial Review) Act 1977* and the *Freedom of Information Act 1982*.

Schedule 2 amends the *Superannuation Guarantee (Administration) Act 1992* to enable the Commissioner of Taxation or an officer of the Australian Taxation Office to provide information to an employee in response to a complaint that an employer has not complied with its obligations under the Act.

Schedule 3 amends the *Income Tax Assessment Act 1936* to extend the employee share scheme concessions and related capital gains tax treatment to certain stapled securities that include an ordinary share, and that are listed for quotation on the official list of the Australian Securities Exchange. The bill also makes consequential amendments to the *A New Tax System (Goods and Services Tax) Act 1999*, the *Fringe Benefits Tax Assessment Act 1986*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953*.

The bill also contains application provisions.

**Administrative Decisions (Judicial Review) Act
Schedule 1, item 1**

The Committee notes that item 1 of Schedule 1 would amend the *Administrative Decisions (Judicial Review) Act 1977* by extending the classes of decisions under the *Taxation Administration Act 1953* which are exempt from review under the first-named Act. The explanatory memorandum, at paragraph 1.57, notes that this approach ‘is consistent with existing laws relating to disclosures of information to law enforcement agencies.’

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

**Retrospective application
Schedule 1, item 5**

Item 5 of Schedule 1 provides that the amendments made by that Schedule – which would allow the Commissioner of Taxation to disclose taxpayer information to officers in the Project Wickenby task-force – applies to disclosures made after this bill is assented to, ‘whenever the information [so disclosed] was obtained.’ The amendments may therefore have some retrospective application.

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 Committee notes, however, that the explanatory memorandum indicates that the Project Wickenby task-force has been set up to look into alleged tax avoidance and evasion.

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

Retrospective application
Schedule 3, item 39

Item 39 of Schedule 3 provides that the amendments made by that Schedule will apply retrospectively ‘to acquisitions of stapled securities, and of rights to stapled securities, on or after 1 July 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. However, the explanatory memorandum, at paragraph 3.41, indicates that the amendments are ‘beneficial to taxpayers’.

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

Tourism Australia Amendment Bill 2007

Introduced into the House of Representatives on 14 February 2007
Portfolio: Industry, Tourism and Resources

Background

This bill implements recommendations arising from the *Review of the Corporate Governance of Statutory Authorities and Office Holders*, conducted by Mr John Uhrig, by amending the *Tourism Australia Act 2004* to:

- remove the position of Government member from the Board of Directors of Tourism Australia;
- broaden Ministerial power to terminate the appointment of Board members;
- replace the process of Ministerial approval of the corporate and operational plans with one of endorsement; and
- reduce the threshold for Ministerial approval of contracts from \$5 million to \$3 million.

The bill also contains transitional provisions.

The Committee has no comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Australian Citizenship Bill 2006

On 26 February 2007 the Senate agreed to amend the bill. The amendments raise no issues within the Committee's terms of reference.

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
Bankruptcy Legislation Amendment (Debt Agreements) Bill 2007	Proposed subsection 186LA(2)	Fail to provide information to a public authority	60 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
*	Aged Care (Bond Security) Bill 2005 – 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)
*	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)
*	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
	Private Health Insurance Bill 2006 – clause 282-40 and subclause 318-5
	Private Health Insurance (Transitional Provisions and Consequential Amendments) Bill 2006 – subclause 39(2)
*	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>
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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 - 2006/2007

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2006							
Airspace Bill 2006	15(6.12.06) 1(7.2.07)	29.11.06	6.2.06	Transport and Regional Services	7.12.06 8.2.07	26.2.07 26.2.07	2(28.2.07) 2(28.2.07)
Australian Energy Market Amendment (Gas Legislation) Bill 2006	15(6.12.06)	29.11.06		Industry, Tourism and Resources	7.12.06	6.2.07	1(7.2.07)
Australian Participants in British Nuclear Tests (Treatment) Bill 2006	11(11.10.06)	14.9.06	12.10.06	Veterans' Affairs	12.10.06	7.2.07	2(28.2.07)
<i>Copyright Amendment Act 2006</i>	13(8.11.06)	19.10.06	1.12.06	Attorney-General		29.1.07	1(7.2.07)
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2006	10(13.9.06)	4.9.06		Mr Katter	14.9.06		
Trade Practices Legislation Amendment Bill 2006	7(9.8.06)	19.6.06		Mr Katter	10.8.06		
Bills dealt with in 2007							
Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006	1(7.2.07)		6.12.06	Attorney-General	8.2.07	26.2.07	2(28.2.07)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Classification (Publications, Films and Computer Games) Amendment Bill 2006	1(7.2.07)	7.12.06	8.2.07	Attorney-General	8.2.07	26.2.07	2(28.2.07)
Employment and Workplace Relations Legislation (Welfare to Work and Vocational Rehabilitation Services) Bill 2006	1(7.2.07)	7.12.06	27.2.07	Employment and Workplace Relations	8.2.07	22.2.07	2(28.2.07)
Maritime Legislation Amendment (Prevention of Air Pollution from Ships) Bill 2006	1(7.2.07)	6.12.06	26.2.07	Transport and Regional Services	8.2.07	26.2.07	2(28.2.07)
Murray-Darling Basin Amendment Bill 2006	1(7.2.07)	7.12.06		Agriculture, Fisheries and Forestry	8.2.07		
Non-Proliferation Legislation Amendment Bill 2006	1(7.2.07)		6.12.06	Foreign Affairs	8.2.07	27.2.07	2(28.2.07)
Private Health Insurance Bill 2006	1(7.2.07)	7.12.06	26.2.07	Health and Ageing	8.2.07	26.2.07	2(28.2.07)
Tax Laws Amendment (2006 Measures No. 7) 2006	1(7.2.07)	7.12.06	7.2.07	Treasury	8.2.07	27.2.07	2(28.2.07)

