

Senate Standing Committee
for the
Scrutiny of Bills

Alert Digest No. 1 of 2010

3 February 2010

ISSN 1329-668X

Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator the Hon H Coonan (Chair)

Senator M Bishop (Deputy Chair)

Senator D Cameron

Senator J Collins

Senator R Siewert

Senator the Hon J Troeth

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.

TABLE OF CONTENTS

Commentary on bills

Appropriation Bill (No. 3) 2009-2010	5
Appropriation Bill (No. 4) 2009-2010	6
• Australian Astronomical Observatory Bill 2009	7
Australian Astronomical Observatory Bill (Transitional Provisions) Bill 2009	10
Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2009	11
Do Not Call Register Legislation Amendment Bill 2009	12
• Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009	14
• Fisheries Legislation Amendment Bill 2009	17
Food Standards Amendment (Truth in Labelling—Palm Oil) Bill 2009	19
• Freedom of Information Amendment (Reform) Bill 2009	20
Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2009	23
• Information Commissioner Bill 2009	24
International Arbitration Amendment Bill 2009	26
International Tax Agreements Amendment Bill (No. 2) 2009	27
• Occupational Health and Safety and Other Legislation Amendment Bill 2009	28

Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009 [No. 2]	31
• Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009	33
Tax Laws Amendment (2009 GST Administration Measures) Bill 2009	35
• Tax Laws Amendment (2009 Measures No. 6) Bill 2009	36
Tax Laws Amendment (Improving the Producer Offset) Bill 2009	39
• Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Bill 2009	41
• Therapeutic Goods Amendment (2009 Measures No. 3) Bill 2009	44
Therapeutic Goods (Charges) Amendment Bill 2009	47
Trade Practices Amendment (Material Lessening of Competition—Richmond Amendment) Bill 2009	48
Trans-Tasman Proceedings Bill 2009	49
• Trans-Tasman Proceedings (Transitional and Consequential Amendments) Bill 2009	50
Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2009	51
Commentary on amendments to bills	53
Provisions of bills which impose criminal sanctions for a failure to provide information	54
Scrutiny of standing appropriations	56

- The Committee has commented on these bills

Appropriation Bill (No. 3) 2009-2010

Introduced into the House of Representatives on 26 November 2009
Portfolio: Finance and Deregulation

Background

This bill appropriates \$1.7 billion from the Consolidated Revenue Fund to meet payments for the ordinary annual services of the Federal Government, in addition to those provided in the 2009-2010 Budget.

The Committee has no comment on this bill.

Appropriation Bill (No. 4) 2009-2010

Introduced into the House of Representatives on 26 November 2009
Portfolio: Finance and Deregulation

Background

This bill appropriates \$311 million from the Consolidated Revenue Fund, for services that are not the ordinary annual services of the Federal Government, in addition to those provided in the 2009-10 Budget.

The Committee has no comment on this bill.

Australian Astronomical Observatory Bill 2009

Introduced into the House of Representatives on 25 November 2009
Portfolio: Innovation, Industry, Science and Research

Background

Introduced with the Australian Astronomical Observatory (Transitional Provisions) Bill 2009, this bill establishes the Australian Astronomical Observatory (AAO) as an Australian-owned and operated facility when the joint Australia-UK Anglo-Australian Observatory ceases operations on 1 July 2010.

The bill establishes the AAO as a business unit within the Department of Innovation, Industry, Science and Research. The main functions of the AAO will be to operate Australia's national observatory for optical astronomy and to undertake research and development into, and manufacture of, astronomical observing instruments.

Wide discretion Subclause 15(4)

The bill establishes an Advisory Committee (see clause 13) to advise the Secretary of the Department of Innovation, Industry, Science and Research about the performance of the functions conferred on the Secretary under clause 11. Committee members are appointed by the Secretary (clause 15) and their remuneration is determined by the Remuneration Tribunal or by regulations (subclause 17(1)). Subclause 15(4) provides that the Secretary 'may terminate the appointment of an Advisory Committee member'.

The bill provides no reason for termination of a committee member's appointment and the explanatory memorandum does not provide any guidance as to the intended operation of subclause 15(4). The Committee **seeks the Minister's advice** on how subclause 15(4) is intended to operate and whether the explanatory memorandum might be amended to provide information on the grounds for termination of appointment.

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

Wide discretion

Clause 18

Clause 18 provides that the Secretary may grant leave of absence to an Advisory Committee member 'on the terms and conditions that the Secretary determines'. This gives the Secretary broad scope to determine whether an Advisory Committee member can perform his or her role. The explanatory memorandum does not provide any guidance as to the intended operation of the provision. The Committee **seeks the Minister's advice** on how clause 18 is intended to operate and whether the explanatory memorandum might be amended to provide guidance on the exercise of this power.

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

Wide discretion

Clause 22

Similarly, clause 22 provides that Advisory Committee members hold office 'on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Secretary'. The explanatory memorandum provides no guidance as to the intended operation of the provision. The Committee **seeks the Minister's advice** on the operation of clause 22 and whether the explanatory memorandum might be amended to provide guidance on the exercise of this power.

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

Wide delegation of power

Clause 23

Clause 23 provides that the Secretary may delegate all or any of his or her powers to the Director (who must be an Senior Executive Service employee under subclause 9(2)) or to 'an APS employee within the Australian Astronomical Observatory who has the expertise appropriate to the function or power delegated'. Generally, the Committee prefers that delegates be confined to members of the Senior Executive Service. However, in this case, the Committee notes that the delegation to APS employees has been confined to those APS employees with appropriate expertise.

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

Australian Astronomical Observatory (Transitional Provisions) Bill 2009

Introduced into the House of Representatives on 25 November 2009
Portfolio: Innovation, Industry, Science and Research

Background

Introduced with the Australian Astronomical Observatory Bill 2009, this bill provides for transitional arrangements relating to the proposed establishment of the Australian Astronomical Observatory within the Department of Innovation, Industry, Science and Research.

The Committee has no comment on this bill.

Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2009

Introduced into the Senate on 26 November 2009

By Senator Bob Brown

Background

This bill amends the *Australian Capital Territory (Self-Government) Act 1988* to abolish the power of the Federal Government to override or amend legislation made by the Australian Capital Territory.

The Committee has no comment on this bill.

Do Not Call Register Legislation Amendment Bill 2009

Introduced into the House of Representatives on 26 November 2009
Portfolio: Broadband, Communications and the Digital Economy

Background

This bill amends the *Do Not Call Register Act 2006* to enable all Australian telephone and fax numbers to be registered on the Do Not Call Register.

In particular, the bill:

- will allow individuals, businesses, government, emergency service operators and other organisations to express their preference not to receive telemarketing calls or marketing faxes;
- prohibits the sending of unsolicited marketing faxes to an Australian number which is registered on the Do Not Call Register, subject to certain exemptions;
- requires that agreements for the sending of unsolicited marketing faxes must comply with the Do Not Call Register Act;
- provides civil penalties for breaches of the new provisions;
- introduces 'registered consent' which gives all new registrants the option of consenting to receive telemarketing calls or marketing faxes relating to particular industry classifications at the time of listing their number on the Do Not Call Register;
- confers powers on the Australian Communications and Media Authority (ACMA) to make a determination setting out the industry classifications for the purposes of enabling registrants to choose the telemarketing calls and marketing faxes they wish to receive (if any); and

- confers powers on the ACMA to make a determination(s) about the circumstances in which consent will be inferred for unsolicited telemarketing calls and marketing faxes to business numbers.

The bill also makes consequential amendments to the *Telecommunications Act 1997* to allow the fax marketing industry to make industry codes; and provides the ACMA with the power to make industry standards for the 'fax marketing industry', consistent with the existing arrangements which allow codes and standards to be made for the telemarketing industry.

The Committee has no comment on this bill.

Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill amends various pieces of portfolio legislation to provide for several non-Budget measures.

Schedule 1 amends the *Aboriginal Land Rights (Northern Territory) Act 1976* to allow several parcels of land in the West MacDonnell National Park, Loves Creek and Tennant Creek regions of the Northern Territory to be granted to relevant Aboriginal Land Trusts (following an agreement between the Central Land Council and the Northern Territory Government).

Schedule 2 amends the *Social Security (Administration) Act 1999* to:

- enable income management in Cape York of age pension and carer payment;
- close a loophole by allowing any residual amounts from a past period of income management, for a person who starts a new period of income management, to be paid into the Special Account for the person instead of being paid to the person; and
- allow the residual amount for a deceased customer to be paid to an appropriate person.

Schedule 3 amends the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Social Security (Administration) Act 1999* and the *Child Support (Registration and Collection) Act 1988* to improve the operation of the Social Security Appeals Tribunal (SSAT) across its social security, family assistance and child support jurisdictions.

The bill also amends a number of other Acts in relation to the disposal of assets, controlled private trusts, and baby bonus; and addresses minor anomalies and technical errors.

Apparently excessive powers

Schedule 3, items 5 and 10, new subsections 141B(3) and 177A(3)

Schedule 3 contains two provisions, in the same terms, which provide for the SSAT to correct errors in decisions or statements of reasons: proposed new section 141B, to be inserted by item 5, and proposed new section 177A, to be inserted by item 10. The provisions enable the presiding member or the Principal Member of the SSAT to alter the text of a decision or a written statement of reasons for a decision if they are satisfied that there is an obvious error. The Committee notes that examples of obvious errors are provided in proposed new subsections 141B(3) and 177A(3) (clerical or typographical errors in the text of a decision or statement, and inconsistencies between a decision and a statement). The explanatory memorandum states (at page 12) that ‘these examples are not intended to be exhaustive’. The Committee notes that, while these provisions may appear to give the SSAT excessive powers, they merely codify the existing common law ‘slip rule’.

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

Retrospective application

Schedule 4, item 11, proposed new section 1126E

Schedule 4 contains provisions amending the *Social Security Act 1991*. Item 11 is an application provision and it provides that proposed new section 1126E of the Social Security Act applies in relation to an event in paragraph 1126E(1)(b), whether it occurred before, on or after commencement of item 11. The relevant provision concerns disposal of assets and valuation for the purpose of determining income.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, the Committee notes that in this case

the explanatory memorandum explains (at page 20) that the retrospective element in the application provision is beneficial to customers.

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

Strict liability

Schedule 7, item 16

Schedule 7 contains amendments to various Acts including the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act). Item 16 inserts a new subsection (5) at the end of section 150-35, thereby making an offence against subsection (4) an offence of strict liability. The explanatory memorandum explains (at page 34) that the relevant offence is minor in nature and does not involve dishonesty or serious imputation affecting a person's reputation. The explanatory memorandum also states that the offence will give directors a stronger incentive to inform a person that their membership of a corporation has been cancelled for misbehaviour and also makes the provision consistent with other provisions in the CATSI Act.

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

Fisheries Legislation Amendment Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Agriculture, Fisheries and Forestry

Background

This bill amends the *Fisheries Management Act 1991* and the *Torres Strait Fisheries Act 1984* to:

- improve the ability of the Australian Fisheries Management Authority (AFMA) to provide an efficient and cost-effective fisheries management service through changes to the administration of fisheries licensing and the introduction of electronic decision-making;
- ensure that fisheries officers engaged in investigating suspected illegal fishing can be properly equipped to safely perform that function; and
- provide for consolidated arrangements regarding holders of fish receiver licences in the Torres Strait.

Appropriate penalty for misuse of power

Schedule 1, item 20, new section 89A

Proposed new section 89A of the Fisheries Management Act, to be inserted by item 20 of Schedule 1, provides for the supply and use of defensive equipment by officers of the AFMA who are appointed under section 83 of that Act. Defensive equipment includes handcuffs (proposed paragraph 89A(2)(c)) and other equipment prescribed under the regulations (proposed paragraph 89A(2)(d)). An officer who has been issued with defensive equipment and fails to return it commits an offence of strict liability under proposed new subsection 89A(8).

The need for this provision is clearly explained in the explanatory memorandum (at page 8): its purpose is to ensure that defensive equipment that has been issued to an officer is returned as soon as practicable if an officer ceases to be an officer and, if strict liability did not apply, it could be

difficult for the prosecution to prove the fault element (knowledge) of the offence.

While an officer may only use the equipment if it is reasonably necessary to do so (proposed paragraph 89A(5)), the Committee notes that misuse of defensive equipment could result in, for example, a deprivation of liberty. However, there appears to be no legislative penalty for using the defensive equipment when it is ‘unreasonable’ to do so. The Committee **seeks the Minister’s advice** in relation to any action that would be taken against an officer who misuses defensive equipment and whether this might be provided for specifically in proposed section 89A.

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.

Food Standards Amendment (Truth in Labelling— Palm Oil) Bill 2009

Introduced into the Senate on 23 November 2009

By Senators Xenophon, Bob Brown and Joyce

Background

This bill amends the *Food Standards Australia New Zealand Act 1991* to provide consumers with accurate labelling information about palm oil in food.

In particular, the bill requires Food Standards Australia New Zealand to develop and approve labelling standards for food producers, manufacturers and distributors of foods containing palm oil.

The Committee has no comment on this bill.

Freedom of Information Amendment (Reform) Bill 2009

Introduced into the House of Representatives on 26 November 2009

Portfolio: Cabinet Secretary

Background

Introduced with the Information Commissioner Bill 2009, this bill amends the *Freedom of Information Act 1982* (FOI Act) to introduce a new regime for access to government information. The measures in the bill arise from the Federal Government's election commitment in 2007, set out in the policy statement *Government information: restoring trust and integrity*. The bill also implements a number of recommendations from the 1995 joint Australian Law Reform Commission and Administrative Review Council *Open government report* on the FOI Act, as well as other initiatives.

The bill complements the proposed structural reforms to be implemented by the Information Commissioner Bill 2009 (which include the establishment of the Office of the Information Commissioner and the new independent statutory positions of Information Commissioner and FOI Commissioner).

In particular, the bill:

- aims to ensure that the right of access to documents under the FOI Act is as comprehensive as possible, limited only where a stronger public interest lies in withholding access to documents;
- gives greater weight to the role that the FOI Act serves in pro-active publication of government information; and
- aims to improve the request process under the FOI Act.

**Insufficiently defined administrative power
Schedule 6, item 25, new paragraph 15(2A)(a)**

Proposed new subsection 15(2A) of the *Freedom of Information Act 1982*, to be inserted by item 25 of Schedule 6, sets out the means for sending a request for access to a document. Proposed new paragraph 15(2A)(a) provides that the request may be delivered ‘to an officer of the [relevant] agency, or a member of the staff of the [relevant] Minister’. A member of staff of the Minister would, in these circumstances, be acting as an agent for the Minister and may not be a member of the Australian Public Service. The Committee **seeks the Cabinet Secretary’s advice** as to whether the explanatory memorandum might be amended to provide clarification about the legal status of Ministerial staff.

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

**Insufficiently defined administrative power
Schedule 6, item 32, new section 24**

Similarly, Ministerial staff may have a role pursuant to proposed new section 24AB of the FOI Act, to be inserted by item 32 of Schedule 6. Proposed new sections 24, 24AA and 24AB replace existing section 24 which allows for an access request to be refused if the work involved in processing the request is excessive. Proposed new paragraph 24AB(2)(c) provides that, during a request consultation process, the agency or Minister must give an applicant a written notice which states the name of an officer of the agency or member of staff of the Minister (the ‘contact person’) with whom the applicant may consult during a period.

In these circumstances, a member of the Minister’s staff would be acting as the Minister’s agent. The Committee notes that the explanatory memorandum does not refer to the specific role of Ministerial staff members in this regard. The Committee **seeks the Cabinet Secretary’s advice** as to whether the

explanatory memorandum might be amended to provide clarification about the legal status of Ministerial staff.

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

Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2009

Introduced into the House of Representatives on 25 November 2009
Portfolio: Health and Ageing

Background

This bill amends the *Health Insurance Amendment (Diagnostic Imaging Accreditation) Act 2007* to broaden the scope of the Diagnostic Imaging Accreditation Scheme (Scheme). The framework for the Scheme is set out in the *Health Insurance Act 1973* and provides for the accreditation of diagnostic imaging premises and bases for mobile diagnostic imaging equipment. Specific provisions of the Scheme are provided by regulations and other subordinate legislation.

The Scheme is being implemented in two stages and the bill will provide transitional arrangements for premises and bases which are in operation prior to 1 July 2010, which are not accredited under Stage I of the Scheme and which provide either non-radiology services or a combination of non-radiology and radiology services, so that they can register for 'deemed accreditation' under the Stage II Scheme. This will enable those practices to continue to provide Medicare eligible services following the commencement of the Stage II Scheme on 1 July 2010.

The Committee has no comment on this bill.

Information Commissioner Bill 2009

Introduced into the House of Representatives on 26 November 2009

Portfolio: Cabinet Secretary

Background

Introduced with the Freedom of Information (Reform) Bill 2009, this bill establishes the Office of the Information Commissioner and creates two new independent statutory office holders – the Information Commissioner and the Freedom of Information (FOI) Commissioner. The bill also makes provision for the appointment of the Privacy Commissioner (an existing statutory office holder), instead of under the *Privacy Act 1988*.

The Office of the Information Commissioner will bring together the independent oversight functions for privacy protection, principally regulated by the *Privacy Act 1988*, and for access to government information, regulated by the *Freedom of Information Act 1982*. This is consistent with the Federal Government's 2007 election commitments set out in the policy statement *Government information: restoring trust and integrity*.

Insufficiently defined administrative powers

Clause 27

Part 4 of the bill provides for the establishment of an Information Advisory Committee (IAC) to assist and advise the Information Commissioner on matters relating to the performance of the Information Commissioner's functions. Clause 27 provides for the IAC's establishment (subclause 27(1)), membership (subclause 27(2)), payment of travel allowance (subclause 27(3)), and the non-payment of remuneration or allowances (subclause 27(4)).

The Committee notes that there is no provision for disclosure of interests by IAC members or written directions about the way the IAC is required to carry out its functions. This may be contrasted with the Advisory Committee established in the Australian Astronomical Observatory Bill 2009 (discussed earlier in this *Alert Digest*). The Committee **seeks the Cabinet Secretary's**

advice on whether further guidance for the IAC's operation might be provided in the bill.

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

International Arbitration Amendment Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Attorney-General

Background

This bill amends the *International Arbitration Act 1974* to provide reforms in relation to international arbitration agreements and arbitral awards, following a review of the International Arbitration Act (announced by the Attorney-General on 21 November 2008).

The bill contains amendments which can be divided into four categories:

- amendments to the application of the International Arbitration Act and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration;
- amendments concerning the interpretation of the International Arbitration Act;
- amendments to provide additional option provisions to assist the parties to a dispute; and
- miscellaneous amendments to improve the operation of the International Arbitration Act.

The Committee has no comment on this bill.

International Tax Agreements Amendment Bill (No. 2) 2009

Introduced into the House of Representatives on 25 November 2009
Portfolio: Treasury

Background

This bill amends the *International Agreements Act 1953* and the *Income Tax Assessment Act 1997* to give the force of law to a new tax treaty with New Zealand, a second Protocol to the tax treaty with Belgium, and an Agreement on the allocation of taxing rights over certain income with Jersey.

The Committee has no comment on this bill.

Occupational Health and Safety and Other Legislation Amendment Bill 2009

Introduced into the House of Representatives on 26 November 2009
Portfolio: Education, Employment and Workplace Relations

Background

This bill amends the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), the *Occupational Health and Safety Act 1991*, the *Occupational Health and Safety (Maritime Industry) Act 1993* and the *Seafarers Rehabilitation and Compensation Act 1992* to implement the Federal Government's response to the review of the Comcare scheme, and some associated amendments.

The bill will amend the SRC Act to:

- enable Comcare to access the Consolidated Revenue Fund (CRF) to pay compensation claims in respect of diseases with long latency period (such as asbestos-related disease) where the employment period was pre-1 December 1988 but where the condition did not manifest itself until after that date;
- re-instate claims arising from off-site recess injuries;
- allow for compensation for medical expenses to be paid, where payment of other compensation is suspended; and
- allow for time limits for claim determination.

The bill amends the *Occupational Health and Safety Act 1991* to provide that 'lifts' are interpreted as being within the definition of 'plant' for the purposes of that Act.

The bill also makes a number of minor technical amendments to the Acts, other than the SRC Act, which are consequential on the commencement of the *Legislative Instruments Act 2003*.

Retrospective application

Schedule 3, item 7, new paragraph 90B(ab)

Proposed new paragraph 90B(ab) of the SRC Act, to be inserted by item 7 of Schedule 3, enables Comcare to discharge a liability incurred because of an event or process that happened before 1 December 1988 and results in an injury, loss or damage that first manifests itself on or after that date.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. Although paragraph 90B(ab) appears to have retrospective effect, in fact it merely enables liability to be met upon commencement of the bill. The explanatory memorandum clearly explains (at page 6) the need for Comcare to have access to the CRF to pay for all of its undischarged liabilities, and associated expenses, for claims attributable to employment before 1 December 1988. New paragraph 90B(ab) would simply restore Comcare's access to the CRF to pay for these claims (its access to the CRF under section 90B was indirectly closed off following a decision by the Full Federal Court in 2006).

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

**Standing appropriation
Schedule 3, subitem 10(5)**

Subitem 10(5) of Schedule 3 provides for payments to be made under section 90B of the SRC Act by enabling appropriation from the CRF for the purpose of paying certain amounts to Comcare. In his second reading speech, the Minister explains that a court decision had the indirect result of closing Comcare's access to the CRF. Item 10 provides for money that was previously invalidly paid to Comcare to be recovered as a debt to the Commonwealth (subitem 10(2)); Comcare will then be paid an equivalent amount from the CRF (subitem 10(3)).

In scrutinising standing appropriations, the Committee looks to the explanatory memorandum for an explanation of the reason for the standing appropriation. In addition, the Committee likes to see some limitation placed on the amount of funds that may be so appropriated and a sunset clause that

ensures the appropriation cannot continue indefinitely without any further reference to Parliament.

In this case, the explanatory memorandum provides (at pages 6 and 7) some explanation of the reasons for the standing appropriation. However, there is no reference to any limitation on amounts to be appropriated, nor provision for further parliamentary scrutiny. The Committee **seeks the Minister's comments** on the reason for the standing appropriation, any limitation that may be placed on the appropriated amount, and how parliamentary scrutiny of the appropriation will be secured.

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.

Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009 [No. 2]

Introduced into the House of Representatives on 25 November 2009
Portfolio: Employment and Workplace Relations

Background

This bill amends the *Social Security Act 1991*, the *Higher Education Support Act 2003*, the *Military Rehabilitation and Compensation Act 2004*, the *Social Security (Administration) Act 1999* and the *Veterans' Entitlements Act 1986* to make wide-ranging changes to income support arrangements for students. The bill implements relevant recommendations from the *Review of Australian Higher Education* conducted by Emeritus Professor Denise Bradley AC, and aims to make higher education generally more accessible by increasing income support for certain students.

In particular, the bill:

- changes the criteria upon which a youth allowance recipient is considered to be 'independent', by reducing the age at which a person is automatically independent from 25 to 22 years (to be phased in over three years commencing in 2010), and prevents a youth allowance claimant from attaining 'independence' through part-time employment or wages;
- makes major changes to means testing for payments to students and youth from 1 January 2010, and increases the personal income-free area for youth allowance and Austudy students, and Australian Apprentices, from 1 July 2012;
- provides for new scholarships for students on income support; and
- exempts merit and equity-based scholarships from the income test under social security and veterans' entitlements legislation.

This bill is similar to a bill introduced into the House of Representatives on 10 September 2009 and considered by the Committee in *Alert Digest No. 12 of 2009*. The Committee sought advice from the Minister in relation to one

issue; the Minister's response to that issue is contained in the Committee's *Twelfth Report of 2009*. The re-introduced bill is identical to the original bill but it also incorporates two Australian Greens amendments (agreed to by the Senate on 17 November 2009 and by the House of Representatives on 18 November 2009) and eight Government amendments (which were negatived by the Senate committee-of-the-whole on 24 November 2009).

The Committee has no comment on this bill, as re-introduced.

Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill amends the social security law, the *Northern Territory National Emergency Response Act 2007*, and other laws giving effect to the Northern Territory Emergency Response to provide the basis for a national welfare reform initiative aimed at supporting disengaged and vulnerable welfare recipients in disadvantaged regions across Australia.

The bill follows a 2008 review of the Emergency Response and extensive consultations undertaken in 2009 with Indigenous people in the Northern Territory. While the core measures of the Emergency Response will be retained, the bill re-designs several measures so that they are strengthened, are sustainable in the long-term, and are more clearly special measures or non-discriminatory within the terms of the *Racial Discrimination Act 1975*. The bill will also repeal provisions that limit the application of the Racial Discrimination Act, and state and territory anti-discrimination laws in relation to the Emergency Response (and associated measures).

Trespass unduly on rights and liberties Schedules 1-7

In *Alert Digest No. 14 of 2009*, the Committee commented on the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 which was introduced by Senator Siewert. That bill contains provisions amending laws giving effect to the Emergency Response by: repealing sections in those bills that exclude the operation of the *Racial Discrimination Act 1975* (Cth); deeming certain provisions to be 'special measures' for the purposes of the *Racial Discrimination Act 1975*; and providing that the *Racial Discrimination Act 1975* prevails.

At the time of introduction of the original Emergency Response bills in 2007, and the introduction of Senator Siewert's bill in 2009, the Committee noted that special measures are those measures which are 'taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups...requiring such protection as may be necessary in order to ensure such groups...equal enjoyment or exercise of human rights and fundamental freedoms'. (see *Alert Digest No. 9 of 2007* and *Alert Digest No. 14 of 2009*).

In 2007 and 2009, the Committee considered that the relevant provisions might be considered to trespass on personal rights and liberties, but left consideration of whether there was *undue* trespass on rights to the Senate as whole. Given that this bill raises similar issues, the Committee again considers it appropriate to **leave consideration of such issues to the Senate as a whole**.

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

Tax Laws Amendment (2009 GST Administration Measures) Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Treasury

Background

This bill amends the *A New Tax System (Goods and Services Tax) Act 1999*, the *Income Tax Assessment Act 1997*, the *Taxation Administration Act 1953*, the *Fuel Tax Act 2006*, the *A New Tax System (Wine Equalisation Tax) Act 1999* and the *A New Tax System (Luxury Car Tax) Act 1999* to implement a number of recommendations made by the Board of Taxation in its review of Goods and Services Tax (GST) administration. In particular, the bill aims to reduce GST administration costs, and to streamline and remove anomalies in the GST administration framework.

The Committee has no comment on this bill.

Tax Laws Amendment (2009 Measures No. 6) Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Treasury

Background

This bill amends various taxation laws to implement a range of improvements to Australia's tax laws.

Schedule 1 amends the *Income Tax Assessment Act 1997* and the *A New Tax System (Goods and Services Tax) Act 1999* to repeal the exception to capital gains tax (CGT) events E1 and E2, widely known as the 'trust cloning' exception. Schedule 1 also provides a limited CGT tax roll-over for the transfer of assets between trusts with the same beneficiaries, each of which has the same interests in each trust.

Schedule 2 amends the *Income Tax Assessment Act 1997* to remove income tax impediments to mergers between complying superannuation funds by permitting the roll-over of capital losses and transfer of revenue losses.

Schedule 3 amends the *Tax Laws Amendment (2006 Measures No. 2) Act 2006* and the *Superannuation Legislation Amendment (Simplification) Act 2007* to clarify the circumstances in which income derived by life insurance companies in respect of immediate annuity business qualifies as non-assessable non-exempt income.

Schedule 4 amends the *Income Tax Assessment Act 1997* to update the list of deductible gift recipients to include two new organisations and change the name of one organisation.

Schedule 5 amends the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to ensure that the Income Recovery Subsidy for the North Western Queensland floods is not subject to income tax.

Schedule 6 amends the *Excise Act 1901* to ensure that imported high strength spirits blended with domestically produced high strength spirits are free of duty under the concessional spirits scheme.

Delayed commencement

Subclause 2(1)

Subclause 2(1) contains the table of commencement information and item 4 of the table provides that Parts 4 and 5 of Schedule 2 commence on 1 July 2013. Parts 4 and 5 of Schedule 2 relate to repeals and savings provisions. The Committee generally does not comment where commencement is delayed for six months or less but where the delay is longer it expects that the explanatory memorandum to the bill will provide an explanation, in accordance with paragraph 19 of Drafting Direction No 1.3. In this case, the explanatory memorandum explains (at page 65) that the relevant amendments end on 30 June 2011, with the repeals and related savings provisions taking effect two years later.

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

Retrospective commencement

Subclause 2(1)

Six items in the table of commencement information in subclause 2(1) provide for retrospective commencement. They are: item 5 (which applies to Division 1 of Part 1 of Schedule 3, commencing on 30 June 2000); item 6 (Division 2 of Part 1 of Schedule 3, commencing on 22 June 2006); item 7 (Division 1 of Part 2 of Schedule 3, commencing on 15 March 2007); item 8 (Division 2 of Part 2 of Schedule 3, commencing on 15 March 2007); item 10 (Part 1 of Schedule 4, commencing on 4 June 2009); and item 12 (Part 1 of Schedule 5, commencing on 25 February 2009).

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Committee notes that, in each case in this

bill, an announcement was made prior to the relevant date of commencement (see pages 7-10 of the explanatory memorandum).

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

**Strict liability and reversal of the onus of proof
Schedule 1, item 9, new subdivision 126-G and new subsection 126-260(4)**

Item 9 of Schedule 1 inserts a new subdivision 126-G into the *Income Tax Assessment Act 1997* relating to transfer of assets between certain trusts. Proposed new subsection 126-260(4) creates an offence of strict liability for a trustee who contravenes the requirement to give beneficiaries certain particulars of a roll-over. Proposed new subsection 126-260(6) provides a defence for a trustee if the trustee did not in any way contribute to the failure to provide the necessary information to beneficiaries, by act or omission. The explanatory memorandum explains (at page 37) that this reversal of the burden of proof is necessary given that the offence is one of strict liability, and that it places trustees on notice against contravening the requirement to give beneficiaries information they need to meet their obligations.

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

Tax Laws Amendment (Improving the Producer Offset) Bill 2009

Introduced into the House of Representatives on 23 November 2009

By Mr Ciobo

Background

This bill amends the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to ensure that money allocated for the refundable Producer Offset for the film and television industry is used more efficiently by stipulating that delays do not occur between completion of a production and the receipt of Producer Offset payments.

Drafting note

Schedule 1, items 1 and 2

Item 1 of Schedule 1 amends the *Income Tax Assessment Act 1936* by inserting a note after section 186 which relates to special assessments. Similarly, in item 2 of Schedule 1, which inserts a new section 376-56 into the *Income Tax Assessment Act 1997*, there is a reference to section 186 of the *Income Tax Assessment Act 1936*. The Committee notes that section 168 of the *Income Tax Assessment Act 1936* provides for special assessments and section 168 is cited in the second reading speech and the explanatory memorandum. The Committee **draws the apparent typographical errors in the bill to the Member's attention.**

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

Insufficient parliamentary scrutiny

Schedule 1, item 2, new subsection 376-56(3)

Proposed new section 376-56(3) of the *Income Tax Assessment Act 1997*, to be inserted by item 2 of Schedule 1, provides for the development of criteria

for decision-making by the Commissioner of Taxation in relation to special assessment applications citing the Producer Offset. There is no provision for any registration of the criteria and no explanation in the explanatory memorandum in relation to their legislative or administrative status. The Committee **seeks the Member's advice** on whether it is intended that there will be parliamentary scrutiny of the criteria.

Pending the Member'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.

Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Innovation, Industry, Science and Research

Background

This bill amends the *Textile, Clothing and Footwear Strategic Investment Program Act 1999* to provide legislative authority for the formulation of the new Clothing and Household Textile (Building Innovative Capability) scheme which will replace the TCF Post-2005 (SIP) Scheme for the 2010-2011 to 2014-2015 program years.

The object of the new scheme is to foster the development of a sustainable and internationally competitive manufacturing industry and design industry for clothing and household textiles in Australia by providing incentives which will promote innovation.

Wide delegation of power

Schedule 1, item 32, new section 37ZM

Item 32 of Schedule 1 inserts a new Part 3C for a Clothing and Household Textile (Building Innovative Capacity (BIC)) scheme. Proposed new section 37ZM provides that '(t)he Minister must, by legislative instrument, formulate a scheme...for the making of grants'. While the bill provides general policy objectives for the scheme (proposed Division 3) and operative provisions (proposed Divisions 4 to 9 inclusive), the criteria for eligibility and other matters will be contained in a legislative instrument. This is a broad delegation of power. However, the Committee notes that the relevant legislative instrument will be subject to the usual scrutiny and disallowance process for legislative instruments, and grant totals will be published pursuant to proposed section 37ZZN (also in item 32 of Schedule 1).

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

Standing appropriation

Schedule 1, item 32, new section 37ZO

Proposed new section 37ZO, to be inserted by item 32 of Schedule 1, is a provision appropriating money from the Consolidated Revenue Fund for innovation grants (including advances on account of innovation grants). The Committee notes that the explanatory memorandum explains (at page 9) that the standing appropriation is warranted to provide participating entities with certainty that innovation grants will be funded in future years of the scheme. This is important since participating entities incur clothing/finished textile expenditure in one year and then wait until the following year before being able to claim innovation grants to which they are entitled to be paid.

The explanatory memorandum also explains that parliamentary control over expenditure for the purposes of the Clothing and Household Textile (BIC) scheme is effected by proposed new section 37ZN and proposed new paragraph 37ZR(2)(b) which operate to restrict the standing appropriation in both amount and duration.

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

Wide delegation of power

Schedule 1, item 32, new section 37ZZK

Proposed new section 37ZZK, to be inserted by item 32 of Schedule 1, provides that the Clothing and Household Textile (BIC) scheme may confer on the Secretary a power to make a decision of an administrative character in order to facilitate the administration of the scheme. The scheme must contain provisions for review of decisions of the Secretary that affect an entity (proposed new subsection 37ZZF(2)) but may also specify circumstances when review does not apply (proposed new subsection 37ZZF(3)).

Under the *Textile, Clothing and Footwear Strategic Investment Program Act 1999*, the Secretary may delegate all of his or her functions or powers to ‘one or more senior officers’ (subsection 52(2)) or to contractors (in relation to functions or powers under the Textile, Clothing and Footwear (Strategic Investment Program) scheme (subsection 52(3)). In the circumstances, and having regard to the Committee’s preference for delegation to Senior Executive Service officers, the Committee **seeks the Minister’s advice** on the intended extent of the delegation of powers under the proposed scheme by the Secretary, in circumstances where there may be no review of the exercise of those powers under proposed new section 37ZZK.

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

Therapeutic Goods Amendment (2009 Measures No. 3) Bill 2009

Introduced into the House of Representatives on 25 November 2009
Portfolio: Health and Ageing

Background

Introduced with the Therapeutic Goods (Charges) Amendment Bill 2009, this bill amends the *Therapeutic Goods Act 1989* to further reform Australia's therapeutic goods regulatory framework.

In particular, the bill:

- provides a new separate framework for the regulation of biological therapeutic goods (known as biologicals);
- provides immunity from legal proceedings for individuals employed by or acting for the Commonwealth where they act in accordance with the Therapeutic Goods Act;
- enables greater flexibility for recall of therapeutic goods without requiring that the entry of the good in the Register of Therapeutic Goods be suspended or cancelled;
- empowers the Secretary to seek information from past sponsors of medicines and therapeutic devices in relation to the time that they were the sponsor;
- provides that unpaid annual charges are a debt due to the Commonwealth; and
- makes a number of other minor amendments.

Strict liability Several provisions

There are several provisions in the bill which contain strict liability offences. The explanatory memorandum lists the provisions, provides a clear explanation of the criminal sanctions regime and refers to the Committee's *Sixth Report of 2002* and the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (at pages 32-35).

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

Abrogation of the privilege against self-incrimination Schedule 1, item 25, new sections 32JD and 32JK

Proposed new subsection 32JD(1), to be inserted by item 25 of Schedule 1, provides that a person is not excused from giving information or producing a document that is required by the Secretary pursuant to section 32JA on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty. However, proposed new subsection 32JD(2) limits the use of such information as evidence against a person in criminal or civil proceedings, except in certain specified criminal and civil proceedings.

Similarly, proposed new subsection 32JK(1) provides that a person is not excused from giving information or producing a document under sections 32JE, 32JF, 32JG or 32JH on the ground that it might tend to incriminate the person or expose the person to a penalty. Proposed new subsection 32JK(2) limits the use of such information as evidence against a person in criminal or civil proceedings, except in certain specified criminal and civil proceedings.

The explanatory memorandum explains (at pages 82 and 86) that the provisions are consistent with existing section 31F of the Therapeutic Goods Act, and are necessary to ensure compliance with the relevant requirements and the monitoring of biologicals that will be supplied to the public or have been supplied to the public. The receipt of relevant information will enable the

Secretary to obtain safety information about biologicals and make informed and timely decisions that adversely affect public health and safety.

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

Therapeutic Goods (Charges) Amendment Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Health and Ageing

Background

Introduced with the Therapeutic Goods Amendment (2009 Measures No. 3) Bill 2009, this bill amends the *Therapeutic Goods (Charges) Act 1989* to:

- enable annual charges to be levied in respect of the inclusion of biologicals in the Register; and
- provide that where a registered or listed good, or a biological, is suspended from the Register under the *Therapeutic Goods Act 1989*, that good can continue to be taken to be included in the Register for the purposes of the Therapeutic Goods (Charges) Act.

The Committee has no comment on this bill.

Trade Practices Amendment (Material Lessening of Competition—Richmond Amendment) Bill 2009

Introduced into the Senate on 26 November 2009

By Senator Xenophon

Background

This bill amends the *Trade Practices Act 1974* to strengthen Australia's anti-merger law and to address the issue of creeping acquisitions.

The Committee has no comment on this bill.

Trans-Tasman Proceedings Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Attorney-General

Background

Introduced with the Trans-Tasman Proceedings (Transitional and Consequential Provisions) Bill 2009, this bill implements into Australian law the *Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement*, signed on 24 July 2008. The bill also incorporates provisions regulating trans-Tasman legal proceedings in existing legislation, to allow a single point of reference for legal rules about how such proceedings are conducted.

In particular, the bill:

- allows civil initiating process issued in Australian court proceedings, and some tribunal proceedings, to be served in New Zealand without leave;
- broadens the range of New Zealand judgments that can be registered and enforced in Australia;
- requires Australian courts to apply a new statutory test when considering whether they have jurisdiction to hear a matter or whether a New Zealand court would be more appropriate to determine the proceeding;
- allows prescribed Australian courts to grant interim relief in support of New Zealand proceedings;
- facilitates the greater use of technology to enable parties and lawyers to appear remotely in proceedings in the other country; and
- builds on the existing co-operative evidence regime to allow subpoenas to be issued in criminal proceedings, and for subpoenas to be issued without leave of a superior court.

The Committee has no comment on this bill.

Trans-Tasman Proceedings (Transitional and Consequential Amendments) Bill 2009

Introduced into the House of Representatives on 25 November 2009
Portfolio: Attorney-General

Background

Introduced with the Trans-Tasman Proceedings Bill 2009, this bill contains a range of transitional measures and consequential amendments to support a smooth transition to the new arrangements established by the main bill.

Retrospective application Schedule 1, item 1

Schedule 1 contains application provisions for the *Trans-Tasman Proceedings Act 2009*. Item 1 provides for the application of Part 2 of that Act with subitem 1(b) providing that Part 2 applies to a civil proceeding commenced ‘before commencement, but only if not all of the initiating documents for the proceeding have been served before commencement’. The explanatory memorandum explains (at page 3) that Part 2 applies to all civil proceedings ‘whether commenced before, on or after commencement’. This provision appears to have a retrospective effect.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. However, in this case, the Committee notes that the service of all initiating documents triggers commencement of proceedings and that would necessarily occur after commencement of the legislation. This means that there is, in fact, no retrospective operation.

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

Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2009

Introduced into the House of Representatives on 25 November 2009

Portfolio: Veterans' Affairs

Background

This bill amends the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*, the *Defence Service Homes Act 1918*, the *Veterans' Entitlements Act 1986*, the *Military Rehabilitation and Compensation Act 2004*, the *Veterans' Entitlements Act 1986* and the *Social Security Act 1991* to make a number of corrections and clarifications.

Specifically, the bill:

- extends nuclear test participant eligibility to certain Australian Protective Service officers for the period 20 October 1984 to 30 June 1988;
- enables Defence Service Homes Insurance to pay a State Emergency Service levy to the New South Wales Government;
- extends from three months to twelve months, the period within which claims for certain travel expenses may be lodged;
- makes provision for the serving of notices under both the *Veterans' Entitlements Act 1986* and the *Military Rehabilitation and Compensation Act 2004*;
- clarifies that a war-caused or defence-caused injury or disease remains compensable under the *Veterans' Entitlements Act* even if the injury or disease has been aggravated, or materially contributed to, by Defence service under the *Military Rehabilitation and Compensation Act*;
- enables the Specialist Medical Review Council to review both versions of the Statements of Principles applicable to the same injury, disease or death;

- clarifies that the Specialist Medical Review Council may review a decision of the Repatriation Medical Authority to not amend a Statement of Principles;
- corrects the Veterans' Entitlements Act to enable the payment of a pension to the dependant of a veteran who had been a prisoner of war during operational service under the Veterans' Entitlements Act, where the veteran died on or after the commencement of the Military Rehabilitation and Compensation Act;
- ensures that certain lump sum payments of compensation under the *Military Rehabilitation and Compensation Act 2004* must be paid into a bank account maintained by the compensation recipient;
- corrects errors to remove redundant provisions, clarifies a formatting error and corrects cross references; and
- enables a Victoria Cross recipient to receive a Victoria Cross allowance under the Veterans' Entitlements Act and a Victoria Cross allowance or annuity from a foreign country.

The Committee has no comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Bankruptcy Legislation Amendment Bill 2009

In *Alert Digest No. 14 of 2009*, the Committee drew to the attention of the Attorney-General the lack of detailed explanation in the explanatory memorandum of Schedules 3 and 4 of the bill. The Committee notes the Attorney-General's advice that this was due to a printing error (see Report No. 1 of 2010). A replacement explanatory memorandum, which includes comprehensive descriptions of these Schedules, has now been tabled.

Carbon Pollution Reduction Scheme (CPRS) bills

A number of amendments were agreed to by the Senate in relation to some of the CPRS bills; however, on 2 December 2009, the bills were negatived by the Senate at the third reading stage. Since the bills were ultimately negatived, the Committee has not examined any of the agreed amendments against its terms of reference. The Committee intends to reconsider the bills in their entirety if they are re-introduced in the future.

Foreign Acquisitions and Takeovers Amendment Bill 2009

On 23 November 2009, the House of Representatives agreed to 11 amendments to the bill, none of which fall within the Committee's terms of reference.

Health Insurance Amendment (Compliance) Bill 2009

On 23 November 2009, the Senate agreed to 10 amendments to the bill. On 24 November 2009, the House of Representatives agreed to eight of these amendments and disagreed to two of them. None of the eight amendments agreed to fall within the Committee's terms of reference. On 26 November 2009, the Senate agreed to insist on the two Senate amendments to which the House of Representatives had disagreed.

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.

Bill/Act	Section/Subsection	Offence	Penalty
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009	Schedule 3, item 1, new subsection 128A(4)	Failure to provide information to a tribunal	Imprisonment for 6 months
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009	Schedule 3, item 6, new subsection 165A(4)	Failure to provide information to a tribunal	Imprisonment for 6 months

Freedom of Information Amendment (Reform) Bill 2009	Schedule 4, item 34, new subsections 55R(5), 79(5) and 82(3)	Failure to provide information to the Information Commissioner	Imprisonment for 6 months
Therapeutic Goods Amendment (2009 Measures No.3) Bill 2009	Schedule 1, new subsections 32JB(1) and 32JI(1)	Failure to provide information to a public authority	500 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 42nd Parliament.

Bills introduced with standing appropriation clauses – 42nd Parliament

* Indicates new entries

P Indicates bills passed by the Senate

N Indicates bills negatived by the Senate

Bills and Clauses	
P	Asian Development Bank (Additional Subscription) Bill 2009 — clause 6
N	Australian Business Investment Partnership Bill 2009 — clauses 13 and 14
	Australian National Preventive Health Agency Bill 2009 — clause 50 (SPECIAL ACCOUNT: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
P	Automotive Transformation Scheme Bill 2009 — clause 10
P	Car Dealership Financing Guarantee Appropriation Bill 2009 — clause 5
N	Carbon Pollution Reduction Scheme Bill 2009 — subclauses 103B(5), 139(4) and 291(4)
N	Carbon Pollution Reduction Scheme Bill 2009 [No. 2] — subclauses 103B(5), 139(4) and 291(4)

P	COAG Reform Fund Bill 2008 — clause 5 (SPECIAL ACCOUNT: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
P	Commonwealth Securities and Investment Legislation Amendment Bill 2008 — Schedule 1, item 10, subsection 5BA(7)
P	Defence Home Ownership Assistance Scheme Bill 2008 — clause 84
P	Dental Benefits Bill 2008 — clause 65
P	Education Legislation Amendment Bill 2008 — Schedule 1, item 6, section 14B
P	Fair Work Bill 2008 — subclause 559(4)
P	Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008 — Schedule 1, item 29
P	Federal Financial Relations Bill 2009 — clause 22
P	Federal Financial Relations (Consequential Amendments and Transitional Provisions) Bill 2009 — Schedule 4, subitem 2(3)
P	Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008 — Schedule 1, item 49, section 54A, and Schedule 2, item 23, section 70E (SPECIAL ACCOUNTS: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
P	Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008 – Schedule 1, item 79, section 94B (SPECIAL ACCOUNT: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
P	Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008 — Schedule 5, item 141, section 65A
P	Guarantee of State and Territory Borrowing Appropriation Bill 2009 — clause 5
P	Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008 — clause 5
P	International Monetary Agreements Amendment (Financial Assistance) Bill 2009 — Schedule 1, item 4, subsection 8CA(4)

	Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 — subclause 43(2), clause 70, and subclause 78(2)
P	Nation-building Funds Bill 2008 — clauses 13, 61, 68, 75, 82, 132, 181, 188, 215 and 255 (SPECIAL ACCOUNTS: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
P	National Consumer Credit Protection Bill 2009 — Schedule 1, subclause 115(2)
*	Occupational Health and Safety and Other Legislation Amendment Bill 2009 — Schedule 3, Part 2, subitem 10(5)
P	Protection of the Sea Legislation Amendment Bill 2008 — Schedule 1, item 20, section 46N
P	Safe Work Australia Bill 2008 — clause 64 (SPECIAL ACCOUNT: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>) [bill laid aside by House of Representatives on 4 December 2008]
P	Safe Work Australia Bill 2008 [No. 2] — clause 64 (SPECIAL ACCOUNT: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
P	Schools Assistance Bill 2008 — clause 167
*	Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Bill 2009 — Schedule 1, item 32, section 37ZO
P	Uranium Royalty (Northern Territory) Bill 2008 — clause 18
P	Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008 — Schedule 1, item 1
P	Wheat Export Marketing Bill 2008 — clause 58 (SPECIAL ACCOUNT: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)

Other relevant appropriation clauses

Bills and Clauses	
N	Household Stimulus Package Bill 2009 — Schedule 4, subitem 1(5): special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).
P	Household Stimulus Package Bill (No. 2) 2009 — Schedule 4, subitem 1(5): special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).
P	Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008 — Schedule 4, subitem 1(4): special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).
P	Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Bill 2008 — Schedule 2, subitems 1(4) and 2(4), and Schedule 4, subitem 1(4): special appropriation clauses – for a finite period of time (i.e. for circumstances arising in a particular financial year).