

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



Alert Digest

No. 3 of 2010

10 March 2010

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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.

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- **The Committee has commented on these bills**

This Digest is circulated to all Honourable Senators.
Any Senator who wishes to draw matters to the attention of the
Committee under its terms of reference is invited to do so.

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Anti-People Smuggling and Other Measures Bill 2010

Introduced into the House of Representatives on 24 February 2010

Portfolio: Attorney-General

Background

This bill amends the *Australian Security Intelligence Organisation Act 1979*, the *Criminal Code Act 1995*, the *Migration Act 1958*, the *Proceeds of Crime Act 2002*, the *Surveillance Devices Act 2004* and the *Telecommunications (Interception and Access) Act 1979*.

The purpose of this bill is to amend the Commonwealth's anti-people smuggling legislative framework by broadening the range of offences available to target and deter people smuggling activity and by creating greater harmonisation across Commonwealth legislation. The bill will put in place laws to provide greater deterrence of people smuggling activity and to address the serious consequences of such activity. The bill will also provide greater capacity for Australian Government agencies to investigate and disrupt people smuggling networks.

Absolute liability

Schedule 1, item 8, proposed subsection 233A(2), 233C(2)

The effect of applying absolute liability to an element of an offence means that no fault element needs to be proved and the defence of mistake of fact is not available.

In December 2007, the Minister for Home Affairs published an updated *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers*, which draws together the principles of the criminal law policy of the Commonwealth. Part 4.5 of the *Guide* contains a statement of the matters which should be considered in framing strict and absolute liability offences. The Committee will generally draw to Senators' attention provisions which create strict liability and absolute liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum that accompanies the bill.

The bill contains two absolute liability offences and the Committee notes that the explanatory memorandum provides a comprehensive explanation for each of these provisions, and also refers to their consistency with the approach taken in other existing offences. In both cases absolute liability pertains to a physical element of the relevant offence and the Committee notes that they are consistent with the 2007 *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* published by the Minister for Home Affairs.

In the circumstances, the Committee has no comment on this bill.

Mandatory minimum penalties

Item 10, Schedule 1, Part 1, proposed new provision 236B

Item 10 of Schedule 1 to this bill proposes to insert new section 236B in the *Migration Act 1958*. As outlined in the explanatory memorandum (at page 16) this new provision adopts existing section 233C, which imposes mandatory minimum sentences for various offences under that Act, and expands it to apply to a broader range of circumstances including to the offences proposed in this bill.

In general, mandatory sentences limit the usual judicial discretion exercised when determining a proper sentence given all the circumstances of a particular offence. The Committee commented adversely in *Alert Digest 13/01* when the existing mandatory penalties were proposed in the Border Protection (Validation and Enforcement Powers) Bill 2001 and the then Minister's reply was outlined in the Committee's Report No. 1 of 2002.

While the Committee notes that the proposed approach is consistent with existing provisions in the *Migration Act 1958*, the Committee remains concerned about the use of mandatory penalties (including mandatory minimum penalties) and therefore **seeks the Minister's advice** as to the scope of all the offences to which this section applies and why it is appropriate to give the Executive control by limiting judicial discretion in these circumstances.

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

Environment Protection and Biodiversity Conservation Amendment (Recreational Fishing for Mako and Porbeagle Sharks) Bill 2010

Introduced into the House of Representatives on 24 February 2010

Portfolio: Attorney-General

Background

This bill amends the *Environment Protection and Biodiversity Conservation Act 1999* to allow recreational fishing of longfin mako, shortfin mako, and porbeagle sharks in Commonwealth areas, notwithstanding the offence provisions in Part 13, Division 2 of the EPBC Act, which prohibit killing, injuring, taking, trading, keeping or moving listed migratory species in Commonwealth areas, and trading, keeping or moving a listed migratory species that has been taken in a Commonwealth area. The bill is not intended to override the effect of any State or Territory laws prohibiting recreational fishing of longfin mako, shortfin mako or porbeagle sharks.

The Committee has no comment on this bill.

Family Assistance Legislation Amendment (Child Care) Bill 2010

Introduced into the House of Representatives on 24 February 2010
Portfolio: Early Childhood Education, Childcare and Youth

Background

This bill provides for a number of amendments to be made to the *A New Tax System (Family Assistance) (Administration) Act 1999* and *Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Act 2007*. These amendments include:

- introducing business continuity payments to support a service's financial viability during a period of disruption. Once the payments to a service have ended, they are offset against any subsequent payment due to the service under the family assistance law or under the *Child Care Management System Act*.
- simplifying the provision of statements to individuals receiving child care benefits.
- amending mandatory suspension for 10 infringement notices by making the suspension discretionary and enabling the Secretary to take into consideration the impact of suspension or cancellation on the families using the service.
- Requiring an operator to provide at least 42 days notice that they have decided to close the service or transfer ownership. Operators that are unable to provide 42 days notice because they have to cease the operation earlier in order to comply with Commonwealth or State/Territory law, or due to other circumstances beyond their control, will be required to provide notice as soon as possible after the decision to cease operating the service is made. The existing penalty regime will continue to apply in relation to failure to comply with these notification requirements.
- Clarifying the authority to recover over advanced amounts paid under the previous quarterly advance system where the acquittal occurred prior to a service transitioning to Child Care Management System and the over advance amounts were not recovered before the transition. These

amendments are retrospective to 29 June 2007 (commencement of the amendments made for the purposes of the Child Care Management System).

Retrospective application

Clause 2, Schedule 5, Part 1, Divisions 1 and 2 and Schedule 3, item 2

These Schedule 5 provisions will commence retrospectively from 29 June 2007 (Division 1) and 16 May 2009 (Division 2). As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people.

The explanatory memorandum (at pages 24 and 25) notes that the retrospective commencement is necessary to correct anomalies relating to the acquittals of over-advanced amounts to ensure that these amounts are fully recoverable as originally intended. This will have a detrimental effect on those families who have received over-advanced amounts that have not yet been recovered. However, the Committee notes that recovery of over-advanced amounts is consistent with the intent of the Family Assistance Legislation Amendment (Child Care Management System and Other Measures) Bill 2007 and the Family Assistance Legislation Amendment (Child Care Management and Other Measures) Regulations 2009 which implemented the current system.

Item 2 of Schedule 3 provides that the amendment made by item 1 (changing 'must' to 'may' in subsection 219TSQ(1)) applies in relation to infringement notices given before the amendment commences and that are not yet finalised. The explanatory memorandum states that this commencement arrangement is beneficial as it gives access to the discretion being introduced by the amendment.

The Committee makes no further comment on these provisions.

Strict liability

Schedule 2, subitem 5(9)

As a matter of practice, the Committee draws attention to any bill that seeks to impose strict liability and will comment adversely where such a bill does not

accord with principles of criminal law policy of the Commonwealth outlined in part 4.5 of the *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers* approved by the Minister for Home Affairs in December 2007. The Committee considers that the reasons for the imposition of strict and absolute liability should be set out in the relevant explanatory memorandum.

Subitem 5(9) provides that subsection 219E(8) is an offence of strict liability. Subsection 219E(8) makes it an offence if an approved child care service gives a statement to a person relating to a period of care, which statement is subsequently subject to a recalculation, and the service fails to provide the person with an amended statement reflecting the recalculation. An offence is subject to a maximum of 60 penalty units.

The explanatory memorandum states at page 18 that the approach is consistent with existing subsection 219E(1) which creates an offence for the failure to provide a child care statement and explains that strict liability is appropriate:

...because of the difficulty the prosecution would have in proving fault (especially knowledge or intention) in this case and the fact that the offence does not involve dishonesty or serious imputation affecting a person's reputation.

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

Health Practitioner Regulation (Consequential Amendments) Bill 2010

Introduced into the House of Representatives on 24 February 2010

Portfolio: Health and Ageing

Background

This bill provides for consequential amendments to recognise and support the implementation of the National Registration and Accreditation Scheme for the Health Professions (NRAS). The Bill also proposes to streamline the extensive processes involved in the recognition of doctors for Medicare purposes under the *Health Insurance Act 1973* (HIA).

The Council of Australian Governments (COAGs) agreed on 14 July 2006 to establish a national registration scheme for health professionals and a national accreditation scheme for health education and training. COAG subsequently agreed to establish a single national scheme, with a single national agency encompassing both the registration and accreditation functions. On 26 March 2008, COAG signed an Intergovernmental Agreement to implement the NRAS by 1 July 2010.

Possible delayed commencement

Clause 2

Subclause 2(1) contains the table of commencement information for the bill and provides that Schedule 1 commences on a 'single day to be fixed by Proclamation.' This could lead to a situation in which commencement of the bill is delayed by longer than six months.

Where there is a delay in commencement of legislation longer than six months it is appropriate for the explanatory memorandum to outline the reasons for the delay in accordance with paragraph 19 of Drafting Direction No 1.3. The explanatory memorandum provides (at page 3) that:

It is necessary for Schedule 1 to commence by proclamation as the amendments proposed by the Bill are dependant on all State and Territory Parliaments passing their respective application laws to establish the [National Registration and Accreditation Scheme for the Health Professions] as a

national scheme and it is not certain at this stage when that will be, though it is planned that NRAS will be fully operational by 1 July 2010.

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

National Radioactive Waste Management Bill 2010

Introduced into the House of Representatives on 24 February 2010

Portfolio: Resources, Energy and Tourism

Background

This bill establishes a facility for managing at a single site, radioactive waste currently stored at a host of locations across the country. The bill will ensure the safe and responsible management of this waste arising from medical, industrial and research uses of radioactive material in Australia.

The bill also ensures the Commonwealth's power to make arrangements for the safe and secure management of radioactive waste generated, possessed or controlled by the Commonwealth.

Trespass on personal rights and liberties

Clauses 11, 19 , 23 and 30

It is one of the clear purposes of these clauses that the terms of this bill will override any contrary provisions contained in legislation of any of the states or the Northern Territory, and will override any possible future contrary legislation of the States and the Northern Territory. The Committee is concerned that these clauses may trespass on any personal rights contained (or to be contained) in the relevant state or territory legislation.

The Committee notes, however, that the bill is seeking to formalise in legislation what is a clear policy decision. As a result, as is its practice, the Committee **leaves to the Senate as a whole** the question of whether it unduly trespasses on personal rights and liberties.

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.

Absolute ministerial discretion

Procedural fairness

Clauses 5, 9,13 and 17

Clause 5 allows the Minister to declare that nominations of potential sites for radioactive waste management can be made, and clause 8 would give the Minister an absolute discretion to approve land nominated as a site. The requirements of procedural fairness applying to these processes are outlined in clause 9 of the bill. Subclause 9(7) provides that this is 'taken to be an exhaustive statement of the requirements of the natural justice hearing rule'.

Clause 13 would give the Minister an absolute discretion to declare that a site – or part of a site – is selected as a site for a radioactive waste management facility (subclause 13(2)), and that all or specified rights or interests in land in a State or Territory are required for providing all-weather access to such a site (subclause 13(4)).

Clause 17 outlines procedural fairness requirements with which the Minister needs to comply in making declarations under clause 13. Subclause 17(5) provides that this is 'taken to be an exhaustive statement of the requirements of the natural justice hearing rule'.

The effect of subclauses 9(7) and 17(5) is that procedural fairness is limited to the statutory regimes outlined in those clauses. Some elements generally understood to be requirements of procedural fairness are available, but other aspects, such as a right to receive reasons for a decision, are excluded.

The Committee notes that Schedule 1, Part 2 does have the effect that a decision under proposed new section 13 is also subject to the *Administrative Decisions (Judicial Review) Act 1977*. Nonetheless, the Committee is concerned that because of the absolute discretion granted to the Minister and because what constitutes procedural fairness for the purposes of these processes is limited to the matters contained in subclauses 9(7) and 17(5), the approach in the bill appears to make rights, liberties or obligations effectively dependent on non-reviewable decisions. However, the Committee **leaves for the Senate as a whole** the question of whether it does so unduly.

The Committee also notes that the explanatory memorandum is inadequate in relation to these provisions as it merely repeats the text of the provisions in the bill and fails to set out any justification for these measures. The Committee **draws this concern to the attention of the Minister**.

The Committee notes that this bill has been referred to a legislation Committee for inquiry and report. Given that the Committee has made substantive comments on the bill, the Committee intends to forward its comments to that committee so they may be taken into account during that inquiry.

Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2010

Introduced into the House of Representatives on 22 February 2010
Portfolio: Mr Kerr

Background

This bill will establish an independent Parliamentary Commission. The Commission will be empowered to test complaints of judicial misbehaviour or incapacity which have been referred to it by either House of the Parliament. The Commission will report its deliberations to the Parliament. Procedures to ensure transparency and fairness have been included in the bill. The House and the Senate retain their exclusive constitutional powers. It will remain open to the Parliament to accept or reject any recommendation for the removal of a justice.

This bill is similar in many respects to the Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2007 which was the subject of comment by the Committee in Alert Digest 12/07.

Search warrants and apprehension warrants– judicial oversight Clauses 22 and 25

Proposed clause 22 provides that the new Commission provided for in the bill is, in specified circumstances, empowered to issue search warrants. It is a long-standing principle of the Committee that 'the power to issue search warrants to enter and search premises should only be conferred on judicial officers' (*Fourth Report of 2000 – Entry and Search Provisions in Commonwealth Legislation*, page 51).

The explanatory memorandum at page 11 provides a detailed statement about the reasons why it is proposed that the Commission rather than judicial officers are authorised to issue search warrants:

While such powers are sometimes thought best conferred upon Ch III judges, in this instance it is peculiarly inappropriate for that to be the case. For the same reason the Act will preclude serving (but not former) judges being a member of the Commission, it is inappropriate to confer investigative and

administrative functions associated with the work of the Commission on serving judges.

In addition, proposed clause 25 provides that the Presiding Member of the Commission is empowered to issue a search warrant for the apprehension of any person who fails to attend the Commission in answer to a summons. The explanatory memorandum provides a justification (at page 13 similar) to that in relation to clause 22 above.

The Committee notes the explanations for the proposed powers, but remains concerned that they might trespass unduly on personal rights and liberties. The Committee **leaves to the Senate as a whole** the question of whether the proposed approach is appropriate.

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

Abrogation of the privilege against self-incrimination

Clause 35

Clause 35 could abrogate the privilege against self-incrimination for a person required to produce a document under clause 32 and for a person obliged to answer a question put to him or her by the Presiding Member of the Commission. At common law, people can decline to answer questions on the grounds that their answers might tend to incriminate them. Legislation which interferes with this common law privilege trespasses on personal rights and liberties.

The Committee does not see this privilege as absolute, however, recognising that the public benefit in obtaining information may outweigh the harm to civil rights. One of the factors the Committee considers is the subsequent use that may be made of any incriminating disclosures. The Committee notes that clause 28 limits the circumstances in which information so provided is admissible in evidence in proceedings against the affected person. However, that limitation applies only to information directly supplied by the person, and not to information gained indirectly from the statement or document provided by the person. The immunity is, in other words, only a 'use immunity' and not a 'derivative use immunity'.

The Committee notes that the explanatory memorandum does not provide any information on why the bill provides only a 'use immunity' and not a

'derivative use immunity' for incriminating documents or information provided to the Commission. The Committee is not persuaded that the abrogation of this privilege is warranted and if the bill progresses to a further stage of debate, the Committee considers that **it would be useful for the proposer to provide an explanation** as to the reasons why 'use immunity' rather than 'derivative use immunity' applies in these circumstances.

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.

Reversal of onus Clauses 32 and 40

The 2007 updated *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* notes at page 27 that:

In general, the prosecution should be required to prove all aspects of a criminal offence beyond reasonable doubt. A matter should be included in a defence [or presumption] only where the matter is peculiarly within the knowledge of the defendant; and is significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

The Committee supports the primary principle that a person is innocent until proven guilty, but also agrees that in the circumstances described in the *Guide* (and outlined above) the burden of adducing evidence of that defence or matter might be placed on the accused. However, the use of defences or presumptions, which impose this burden of proof on the accused, should be kept to a minimum and justification for them provided in the explanatory memorandum. The Committee notes that if the defendant meets the standard of proof required the prosecution then has to refute the defence beyond reasonable doubt.

In this bill, offences for the failure of a witness to attend or produce documents do not apply if the person has a reasonable excuse (subclauses 32(2) and 32(4)) or if the matter was not relevant (32(5)). The defendant bears an evidential burden in relation to these matters.

Clause 40 provides that a person must not be dismissed from his or her employment for assisting the Commission and the defendant bears an evidential burden to demonstrate that dismissal was for an unrelated purpose.

The Committee notes that the matters subject to the reversal of onus may be peculiarly within the knowledge of a defendant, however, the Committee is concerned that a reversal of onus only applies when it is warranted and it is concerned that no justification for the approach taken has been included in the explanatory memorandum. If the bill progresses to a further stage of debate, the Committee considers that **it would be useful for the proposer to include this information in the explanatory memorandum.**

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

Renewable Energy–Electricity (Water Heaters and Phantom Certificates) Bill 2010

Introduced into the Senate on 24 February 2010

Portfolio: Senator Milne

Background

This bill is intended to improve the integrity of Renewable Energy Certificates (RECs) to sustain investment in renewable energy power stations, as well as provide longer-term investment certainty to the manufacturers and installers of efficient hot water systems. This key components of the bill are for the Minister to:

- develop and announce an alternative approach to support solar hot water systems and heat pump hot water system industries by July 2011, for commencement in July 2012. An obvious option would be a national energy efficiency credit trading scheme – effectively an energy efficiency policy equivalent of the renewable energy target, and
- ensures that the phasing-out of electric resistance water heaters agreed by the Council of Australian Governments and included in the National Strategy on Energy Efficiency (dated July 2009) is completed by 30 June 2012.

Possible insufficient parliamentary scrutiny

Part 2, subitem 5(1)

The bill provides that the Minister 'must establish by 1 July 2011 a scheme to provide support and incentives for the development and use of energy efficiency technologies.' Neither the bill nor the explanatory memorandum articulate whether such a scheme would have a legislative foundation or be a purely administrative program. The Committee's preference is that matters of such significance would be identified in detail in primary legislation and be subject to full parliamentary scrutiny. The Committee **draws this comment to the attention of the proposer** and if the bill proceeds to its next stages of debate requests that consideration be given to clarifying this in the explanatory memorandum.

The Committee has no further comment on this bill.

Social Security and Other Legislation Amendment (Scholarship Payments) Bill 2010

Introduced into the Senate on 24 February 2010

Portfolio: Senator Hanson-Young

Background

This bill seeks to provide students with some of the support they had been expecting from the Government's *Social Security and Other Legislation Amendment (Income Support for Students) Bill* by immediately legislating for scholarships to assist in their educational and living costs.

The bill would ensure that all students currently in receipt of Youth Allowance and those with parental incomes less than \$150,000 would have access to additional financial support in this academic year.

Retrospective commencement

Clause 2, Schedule 1, Part 1; Schedule 1 items 5 to 6; Schedule 1 items 18 to 34

The bill, introduced as a private Senator's bill, seeks to expedite the provision of some scholarships which are a component of the Social Security and Other Legislation Amendment (Income Support for Students) No. 2 Bill still being considered by the Senate.

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 the explanatory memorandum does not address the issue of retrospectivity, the Committee notes that the impact of these provisions is beneficial to students and the measures have already been appropriated in 2009 Budget Paper No. 2.

The Committee makes no further comment on these provisions.

Possible delayed commencement
Clause 2, Schedule 1, item 17

Subclause 2(1) contains the table of commencement information and provides that Schedule 1 item 17 commences 'immediately after the commencement of Schedule 1, Part 1 of the *Social Security and Other Legislation Amendment (Income Support for Students) Act 2010*.' This could result in commencement of the bill being delayed by longer than six months.

Where there is a delay in commencement of legislation longer than six months it is appropriate for the explanatory memorandum to outline the reasons for the delay in accordance with paragraph 19 of Drafting Direction No. 1.3. In this case, the explanatory memorandum does not address this issue. However, the Committee recognises that it is appropriate to link the commencement of this item to the commencement of the Act.

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

Incorporating matter as in force from time to time
Schedule 1, item 4 new subsection 592N(2)

This provision replicates proposed new section 592N(2) of the *Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009* introduced into the House of Representatives on 10 September 2009. The explanatory memorandum to this bill in effect adopts the terms of the government's explanatory memorandum for the 2009 for the provisions in this 2010 bill that are identical to those in the 2009 bill. Therefore, the Committee notes that it commented on provision 592N(2) at page 21 of its Alert Digest 12/09.

Wild Rivers (Environmental Management) Bill 2010 [No. 2]

Introduced into the Senate on 23 February 2010

Portfolio: Senator Scullion

Background

This bill aims to protect the interests of Aboriginal traditional owners in the management, development and use of native title land situated in wild river areas, and for related purposes.

Explanatory memorandum

This bill, introduced as a private Senator's bill, was accompanied only by a second reading speech and was introduced without an explanatory memorandum. While noting that the second reading speech provides some explanation of the background, intent and operation of the bill, the Committee prefers to see explanatory memorandums to all bills and recognises the manner in which such documents can assist in the interpretation of bills, and ultimately, Acts. The Committee **seeks the proposer's advice** as to whether an explanatory memorandum could be provided.

The Committee makes no further comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Education Services for Overseas Students Amendment (Re-Registration of Providers and Other Measures) Bill 2009

On 11 February 2010 the House of Representatives agreed to one amendment and disagreed to two amendments made by the Senate. On 22 February 2010 the Senate resolved not to insist on the two amendments it made to which the House of Representatives had disagreed. The amendment that was agreed to does not fall within the Committee's terms of reference.

Health Insurance Amendment (Compliance) Bill 2009

On 24 February 2010 the House of Representative disagreed to 10 amendments made by the Senate and made a Government amendment following the debate changing commencement of the bill from retrospective commencement of 1 January 2010 to commencement the day after the bill receives Royal Assent. A supplementary memorandum and a correction to the explanatory memorandum was also presented.

At the time the bill was introduced in 2009 the proposed commencement was not retrospective. However, because the original commencement clause referred to a specific date that has now passed it would have had a retrospective effect when the Act is promulgated. The Committee is pleased to note that the Government has taken steps to ensure that retrospective commencement is avoided.

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
Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2010	Clause 32	Failure to provide information to the Commission	1000 penalty units or 6 months imprisonment

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

The Chairs and Deputy Chairs of Commonwealth, and state and territory Scrutiny Committees have noted (most recently in 2000) difficulties in the identification and scrutiny of national schemes of legislation. Essentially, these difficulties arise because 'national scheme' bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation. Any requests for amendment are seen to threaten that agreement and that uniformity.

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

Health Practitioner Regulation (Consequential Amendments) Bill 2010

To implement earlier Council of Australian Governments (COAG) agreements, on 26 March 2008 COAG signed an Intergovernmental Agreement to implement the National Registration and Accreditation Scheme for the Health Professions (NRAS) by 1 July 2010. The proposed arrangements seeks to allow health practitioners to move around the country more easily, reduce red tape and provide greater safeguards for the public.

The legislative framework for the NRAS is an applied laws model. Queensland has enacted two statutes, and the third tranche of legislation involves the States and Territories passing legislation to apply the National Law and to include jurisdiction specific consequential and transitional provisions. The Commonwealth does not need to apply the National Law, however, the purpose of this Bill is to make consequential and transitional amendments to Commonwealth legislation required to recognise and support the NRAS.

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 negated by the Senate

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)
	Carbon Pollution Reduction Scheme Bill 2010 — 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)
	ComSuper Bill 2010 — clause 21 (SPECIAL ACCOUNT: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
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)
*	Family Assistance Legislation Amendment (Child Care) Bill 2010 — Schedule 6, item 1
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>)
	Governance of Australian Government Superannuation Schemes Bill 2010 – – paragraphs 33(1)(b), 33(2)(b), and 34(3)(a), and subsection 34(4)
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>)
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Other relevant appropriation clauses in bills

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).