

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

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# Senate Standing Committee for the Scrutiny of Bills

## Members of the Committee

Senator the Hon Ian Macdonald (Chair)

Senator C Brown (Deputy Chair)

Senator M Bishop

Senator S Edwards

Senator R Siewert

Senator the Hon L Thorp

## 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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**Senate Standing Legislation Committee Inquiries**

The committee will forward any comments it has made on a bill to any relevant legislation committee for information.

- **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.

## **Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Climate Change and Energy Efficiency

### **Background**

This bill is part of a package of seven bills to link Australia's carbon pricing mechanism to overseas emissions trading schemes from 1 July 2015.

This bill amends the *Clean Energy Act 2011* to:

- remove the price floor for carbon units by removing the surrender charge on eligible international emissions units and the requirement for a minimum auction reserve price;
- restrict the quantity of eligible Kyoto units that liable entities can use to discharge their carbon pricing liabilities; provide for the calculation of an equivalent carbon price that reflects liable entities' cost of compliance under a linking arrangement; increase the limit on advance-auctioned carbon units;
- prevent units being issued at auction more than three years in advance of their vintage year; change the treatment of relinquished carbon units; and
- enable regulations to be made to determine how specific circumstances relating to the supply and use of natural gas are treated;

The bill amends the *Australian National Registry of Emissions Units Act 2011* to enable European allowance units to be held in the Australian National Registry of Emissions Units; and the Clean Energy Regulator to issue and transfer Australian-issued international units in the event that a direct link with a foreign emissions trading scheme is not possible.

The bill amends the *Fuel Tax Act 2006* to adjust the calculation of the equivalent carbon price to provide that it remains consistent with the compliance costs of liable entities under the carbon pricing mechanism with linking arrangements.

The bill amends the *National Greenhouse and Energy Reporting Act 2007* to enable the minister to determine methods to measure and adjust amounts of designated fuels for the purposes of ascertaining potential greenhouse gas emissions.

The bill also repeals the *Clean Energy (International Unit Surrender Charge) Act 2011*.

**Delegation of legislative power—Henry VIII clause  
Schedule 1, item 19, proposed subsection 57(2) (*Australian National Registry of Emissions Units Act 2011*)**

This provision enables regulations to be made which ‘modify’ the provisions of new Division 3 of Part 4 of the *Australian National Registry of Emissions Units Act 2011* (the ANREU Act) in relation to a specified class of Australian-issued international units (AIUs). (AIUs will be used where a direct link with a foreign emissions trading scheme is not possible. In these circumstances the bill would enable the Clean Energy Regulator to issue AIUs which correspond to foreign emissions units withdrawn from circulation – see the explanatory memorandum at page 16). The Committee routinely raises concerns about so-called Henry VIII provisions that enable the executive government to modify the operation of primary legislation, passed by the Parliament. The concern is that such clauses may subvert the appropriate relationship between the Parliament and the Executive branch of government.

The regulation making power introduced by this item is said to provide ‘necessary flexibility to implement future international linking arrangements, which may differ in their nature and scope’ and that this is ‘necessary to ensure that the current form of the ANREU Act does not unduly limit the capacity of Australia to effectively negotiate future linking arrangements in its best interests and to ensure that Australia can also implement the operating requirements for any such future linking arrangements’. It is also said that this approach may ‘expedite access by liable entities to new types or classes of eligible international emissions units’ and that this would ‘further encourage the development of a deep and liquid international carbon market’. Finally, it is emphasised that any regulations made under the section would be disallowable and that the regulation-making power is limited in scope to amendments concerning a specified class of AIUs and does not apply more generally. (See the explanatory memorandum at page 36.)

**In light of the detailed justification provided in the explanatory memorandum the Committee leaves the appropriateness of this approach to the consideration of the Senate as a whole.**

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

**Delegation of legislative power**

**Schedule 1, item 79, proposed subsection 123A(1) (*Clean Energy Act 2011*)**

Proposed subsection 123A(1) grants the Government a regulation making power to introduce one or more ‘designated limits’ on eligible international emissions units (other than Kyoto units). A ‘designated limit’ would constrain the number of eligible international emissions units of a certain class or classes that a liable entity could surrender in a given financial year.

The explanatory memorandum contains a detailed explanation seeking to justify the use of regulations rather than primary legislation for this purpose. It emphasises the need for flexibility so as to respond to changing international circumstances and to facilitate future links with other emission trading schemes. The explanatory memorandum notes that the Government is ‘very conscious of the need for a stable market and investment environment’ and states that the Government is ‘committed to provide at least three years’ notice before new designated limits are introduced or changes to existing designated limits are due to take effect’. Further, ‘if it is necessary to facilitate linking with another emissions trading scheme, then the Government will provide at least one year’s notice’ (See the explanatory memorandum at page 27.)

**The Committee notes that the legislation does not contain guarantees that the intended notice periods expressed in the explanatory memorandum will be respected and leaves the appropriateness of this approach to the Senate as a whole.**

*The Committee draws Senators’ attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee’s terms of reference.*

## **Clean Energy (Charges–Customs) Amendment Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Climate Change and Energy Efficiency

### **Background**

This bill is part of a package of seven bills that amend the *Clean Energy Act 2011* and related Acts.

The bill facilitates the removal of the price floor by removing requirement for a minimum action reserve charge from the *Clean Energy (Charges-Customs) Act 2011*.

*The Committee has no comment on this bill.*

## **Clean Energy (Charges–Excise) Amendment Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Climate Change and Energy Efficiency

### **Background**

This bill is part of a package of seven bills that amend the *Clean Energy Act 2011* and related Acts.

The bill facilitates the removal of the price floor by removing requirement for a minimum action reserve charge from the *Clean Energy (Charges-Excise) Act 2011*.

*The Committee has no comment on this bill.*

## **Clean Energy (Unit Issue Charge–Auctions) Amendment Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Climate Change and Energy Efficiency

### **Background**

This bill is part of a package of seven bills that amend the *Clean Energy Act 2011* and related Acts to

The bill facilitates the removal of the price floor by removing requirement for a minimum action reserve charge from the *Clean Energy (Unit Issue Charge-Auctions) Act 2011*.

*The Committee has no comment on this bill.*

## **Competition and Consumer Amendment (Australian Food Labelling) Bill 2012**

Introduced into the House of Representatives on 17 September 2012

By: Mr Bandt

### **Background**

This bill amends the *Competition and Consumer Act 2010* to create a new section specifying new definitions and standards with regard to the country of origin labelling on packaged and non-packaged food.

The bill also amends the *Australia New Zealand Food Standards Act 1991* to reflect the changes to the *Competition and Consumer Act 2010*.

### **Delayed commencement**

#### **Clause 2**

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 substantive amendments in this bill do not commence until 1 January 2014. While it is possible that industry may need time to prepare for the proposed labelling requirements no justification for the delay is provided in the explanatory memorandum. **The Committee therefore seeks the Member's advice about the justification for the delayed commencement.**

*Pending the Member's reply, 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.*

### **Reversal of onus of proof**

#### **Schedule 1, item 3, proposed subsection 137C(4)**

Proposed subsection 137C(3) creates a civil penalty for contravening the requirement that a person must not, in or for the purposes of trade or commerce, possess or have control of food the supply of which is prohibited on account of non-compliance with the proposed food labelling requirements.

Proposed subsection 137C(4) provides that ‘it is a defence’ to the proceedings in relation to a contravention of proposed subsection 137C(3) if ‘the defendant proves that the defendant’s possession or control of the food was not for the purposed of supplying the food’.

The Committee expects explanatory memoranda to contain detailed explanations of provisions which reverse the burden of proof. As the effect of this provision would be to place the legal burden on a defendant to establish the relevant matter **the Committee seeks the Member’s advice about the justification of the proposed approach.**

*Pending the Member’s reply, 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.*

### **Reversal of onus of proof**

#### **Schedule 1, item 18, proposed subsection 9(1B)**

This provision places an evidential burden on defendants in relation to an offence relating to country of origin labelling requirements. As the explanatory memorandum does not justify the reversal of the burden of proof **the Committee seeks the Member’s advice about the justification of the proposed approach.**

*Pending the Member’s reply, 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.*

## **Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 (No.2)**

Introduced into the Senate on 17 September 2012

By: Senator Milne

### **Background**

This bill amends the *Competition and Consumer Act 2010* to create a new section specifying new definitions and standards with regard to the country of origin labelling on packaged and non-packaged food.

The bill also amends the *Australia New Zealand Food Standards Act 1991* to reflect the changes to the *Competition and Consumer Act 2010*.

This bill is in identical terms to the bill introduced in the House of Representatives by Mr Bandt, discussed above.

### **Delayed commencement**

#### **Clause 2**

For the reasons outlined in relation to the identical bill discussed in the section above, **the Committee therefore seeks the Senator's advice about the justification for the delayed commencement.**

*Pending the Senator's reply, 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.*

### **Reversal of onus of proof**

#### **Schedule 1, item 3, proposed subsection 137C(4)**

For the reasons outlined in relation to the identical bill discussed in the section above, **the Committee seeks the Senator's advice about the justification of the proposed approach.**

*Pending the Senator's reply, 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.*

**Reversal of onus of proof**

**Schedule 1, item 18, proposed subsection 9(1B)**

For the reasons outlined in relation to the identical bill discussed in the section above, **the Committee seeks the Senator's advice about the justification of the proposed approach.**

*Pending the Senator's reply, 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.*

## **Environment Protection and Biodiversity Conservation Amendment (Making Marine Parks Accountable) Bill 2012 [No.2]**

Introduced into the House of Representatives on 17 September 2012

By: Mr Christensen

### **Background**

The bill amends the *Environment Protection and Biodiversity Conservation Act 1999* to:

- require the relevant Minister to commission an independent social and economic impact assessment before any proclamations are made;
- require the Minister to obtain independent scientific peer-reviewed advice that is made publicly available;
- establish an independent scientific reference panel and stakeholder advisory group to analyse possible scientific, economic and social impacts of proposed Marine Protected Areas; and
- make declarations disallowable by the Parliament.

*The Committee has no comment on this bill.*

## **Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Climate Change and Energy Efficiency

### **Background**

This bill is part of a package of bills that amend the *Clean Energy Act 2011* and related Acts.

The bill amends the *Excise Tariff Act 1921* so that the per-tonne carbon price equivalent is applied to liquid fuels, instead of the average carbon unit action price.

*The Committee has no comment on this bill.*

## **Federal Circuit Court of Australia Legislation Amendment Bill 2012**

Introduced into the House of Representatives on 20 September 2012

Portfolio: Attorney-General

### **Background**

This bill amends the *Federal Magistrates Act 1999* and other legislation to:

- rename the Federal Magistrates Court as the 'Federal Circuit Court of Australia'; and
- change the title of Chief Federal Magistrate to 'Chief Judge' and Federal Magistrates to 'Judge'.

*The Committee has no comment on this bill.*

## Health and Other Legislation Amendment Bill 2012

Introduced into the House of Representatives on 19 September 2012

Portfolio: Health and Ageing

### Background

This bill amends the:

- *Food Standards Australia New Zealand Act 1991* to make minor amendments and correct typographical issues and obsolete references;
- *Health Insurance Act 1973* to permit a trainee medical specialist to perform certain procedures in a private setting under the direct supervision of a specialist;
- *Human Services (Medicare) Act 1973* to ensure that the term 'medicare' can be used by authorised persons without breaching the Act; and
- *Industrial Chemicals (Notification and Assessment) Act 1989* to correct an inaccurate description of how chemicals are kept under the control of Customs during transshipment without affecting the intent of the exemption provision.

*The Committee has no comment on this bill.*

## **Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Industry, Innovation, Science, Research and Tertiary Education

### **Background**

This bill amends the *Higher Education Support Act 2003* to:

- enable the Minister to determine a category of providers and financial reporting requirements for low-risk VET FEE-HELP applicants and approved providers;
- enable a managed trial of VET FEE-HELP for specified certificate IV level qualifications;
- provide that a notice revoking a higher education or VET provider takes effect on the day the notice is registered on the Federal Register of Legislative Instruments;
- consolidate four separate guidelines into one guideline;
- move the specific date requirement for census dates to the guidelines; and
- enable the Minister and secretary to delegate powers to Australian Public Service employees outside the department.

*The Committee has no comment on this bill.*

## **Law Enforcement Integrity Legislation Amendment Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Home Affairs and Justice

### **Background**

This bill amends the *Crimes Act 1914*, the *Australian Crime Commission Act 2002*, the *Telecommunications (Interception and Access) Act 1979*, the *Surveillance Devices Act 2004*, the *Customs (Administration) Act 1985* and the *Law Enforcement Integrity Commissioner Act 2006*.

Schedule 1 introduces targeted integrity testing for staff members of the Australian Federal Police, Australian Crime Commission and the Australian Customs and Border Protection Service suspected of corrupt conduct. It will also extend the jurisdiction of the Australian Commission for Law Enforcement Integrity to include CrimTrac, AUSTRAC and prescribed staff in the Department of Agriculture, Fisheries and Forestry.

Schedule 2 enables drug and alcohol testing to be conducted on Customs and Border Protection staff, and introduces a range of other powers to support integrity initiatives within Customs and Border Protection.

### **Delayed Commencement**

#### **Clause 2**

The amendments in Schedule 1, Part 2 of the bill are set to commence from 1 July 2013. These amendments operate to expand the jurisdiction of the Australian Commission for Law Enforcement Integrity, so more law enforcement agencies will be covered. Although the explanatory memorandum does not give a reason for the delayed commencement, the second reading speech indicates that this delay will ‘enable appropriate compliance and administrative arrangements to be put in place’.

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

## **Delegation of legislative power Schedule 2, item 16, proposed subsection 4B(5)**

This item inserts a new section 4B into the *Customs Administration Act 1985*. The effect of this provision is to empower the CEO to issue orders with which a Customs worker must comply. The powers conferred are said to be similar to those held by the Commissioner of the Australian Federal Police that enable orders ‘in relation to professional standards, including in relation to mandatory reporting of misconduct and corruption’ (see the explanatory memorandum at page 49). Subsection 4B(5) provides that the orders are not legislative instruments.

The explanatory memorandum suggests that it is possible that some orders may fall within the definition of ‘legislative instruments’ for the purposes of the *Legislative Instruments Act 2003* (the LIA). The justification given for this substantive exemption from the LIA is that the orders will ‘relate to the internal workings of Customs and Border Protection and are aimed in particular at dealing with issues of integrity of the workforce’ and thus it is not ‘considered appropriate that the orders should be subject to possible disallowance, and sunseting’. Further, it is explained that the approach is consistent with that taken in the context of the *Australian Federal Police Act 1979* in relation to the operation of the LIA (see the explanatory memorandum at page 50).

Given the explanation provided in the explanatory memorandum **the Committee leaves the appropriateness of exempting such orders from disallowance and sunseting requirements under the *Legislative Instruments Act 2003* to the Senate as a whole.**

**However, the Committee seeks further advice as to whether consideration has been given to the appropriateness of requiring such orders to be tabled in Parliament or alternative requirements to report on the exercise of these significant powers.**

*Pending the Minister’s reply, 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.*

**Undue trespass on personal rights and liberties—self-incrimination  
Schedule 2, item 16, proposed section 4C**

This item provides that where a Customs worker is required to give information, produce a document or answer a question under an order referred to in proposed subsection 4B(2), the worker ‘is not excused from giving the information, answering the question or producing the document on the ground that the information, the answer to the question or the production of the document might tend to incriminate the Customs worker or expose the Customs worker to a penalty’ (proposed subsection 4C(1)).

Importantly, proposed subsection 4C(2) provides that the information, production of a document or answering of a question is not admissible in evidence against the Customs worker in any proceedings. Although a ‘use’ immunity is thereby provided for, no provision is made for a derivative use immunity.

It should also be noted that proposed subsection 4C(3) subjects the use immunity to proposed section 16G which provides that the results from an alcohol or drug test or other information, answers or documents relevant to the conducting of these tests may be used in proceedings relating to a decision of the CEO to terminate the employment of the worker, proceedings under the *Safety, Rehabilitation and Compensation Act 1988*, or proceedings in tort against the Commonwealth that is instituted by a Customs worker.

The explanatory memorandum notes that the proposed approach in relation to self-incrimination is identical to that adopted by section 40A of the *Australian Federal Police Act 1979* in relation the AFP Commissioner’s powers to issue similar orders under that Act. By way of additional justification for the approach the explanatory memorandum states that the orders made under subsection 4B(2) will be aimed at ‘exposing misconduct and possible corruption’ and will be ‘intended to send a clear message that Customs and Border Protection is determined to promote a culture of high integrity in the workplace and will not tolerate these behaviours’ (see the explanatory memorandum at page 50).

A derivative use immunity, which would protect a person who is required to give self-incriminating evidence from that evidence being used to gather further evidence against that person, is said to be inappropriate because the ‘object of the CEO’s Orders ... is to promote the high integrity of the Customs

and Border Protection workforce by exposing and addressing conduct that does not meet this standard' and that 'objective cannot be fully realised unless derivative use can be made of the information disclosed in compliance with the CEO's Orders' (see the explanatory memorandum at page 50).

Although the abrogation of the privilege against self-incrimination represents a serious loss of liberty for persons affected, there are circumstances where the public benefit that may flow from requiring a person to disclose information that may incriminate him or herself may be considered to outweigh this consideration. **While the Committee is concerned that the explanatory memorandum only offers a brief explanation of why it is considered that the provision of a derivative use immunity would compromise the objective of maintaining a culture of high integrity in the Customs service, the Committee leaves the appropriateness of the overall approach to the Senate as a whole.**

*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.*

### **Broad discretionary power**

#### **Schedule 2, item 19, proposed section 15A**

Proposed section 15A will provide that the Customs CEO may issue a written declaration that a member of staff who has been dismissed has engaged in serious misconduct. The effect of the declaration will be to remove the operation of the *Fair Work Act 2009* (which provides protection where a dismissal was harsh, unjust or unreasonable) in relation to that particular dismissal. Under paragraph 15A(1)(a) such a declaration may only be made if the CEO believes on reasonable grounds that the staff member's conduct or behaviour 'amounts to serious misconduct' and is having, or is likely to have, a damaging effect on the reputation of, or morale in, the Customs Service.

The explanatory memorandum (at page 52) states that a definition of 'serious misconduct' will be inserted in subsection 15A(8). However, subsection 15A(8) does not relate to this matter. **The Committee therefore seeks clarification as to whether it is intended that such a definition be included. If it has been decided not to include such a provision, the Committee seeks the Minister's advice as to why such a definition is not**

**necessary to appropriately confine the breadth of this power which may deprive workers of statutory rights.**

*Pending the Minister's reply, 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.*

**Delegation of legislative power  
Schedule 2, item 21, proposed section 16F**

This provision provides for regulations to be made in a number of important areas relating to the conduct of alcohol and drug tests that are authorised under proposed sections 16B, 16C and 16D. The regulations will deal with very important matters, including who may conduct the tests, the handling of samples, and confidentiality of results. As the explanatory memorandum does not deal with the matter, and given the invasive nature of some drug testing, **the Committee seeks the Minister's advice as to why more of the details pertaining to drug and alcohol testing cannot be included in the primary legislation.**

*Pending the Minister's reply, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.*

## **Migration Amendment (Reform of Employer Sanctions) Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Immigration and Citizenship

### **Background**

This bill amends the *Migration Act 1958* (the Act) in response to the independent report entitled *Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007* (the Howells Review) conducted by independent legal expert Mr Stephen Howells.

The bill amends the Act to:

- amend the criminal offences and create new non-fault civil penalty provisions for persons who allow an unlawful non-citizen to work, refer an unlawful non-citizen to a third person for work, allow a lawful non-citizen to work in breach of a work-related visa condition or refer a lawful non-citizen to a third person for work in breach of a work-related visa condition;
- extend both criminal and civil liability, in certain circumstances, to executive officers of bodies corporate, partners in a partnership and members of an unincorporated association's committee of management;
- provide for an extended geographical jurisdiction in respect of work-related civil penalty provisions to mirror the extended geographical jurisdiction which is already in place for the work-related offences; and
- introduce search warrant and notice to produce powers specifically to facilitate the investigation of suspected breaches of the work-related offences and work-related provisions.

**Undue trespass on rights and liberties—reversal of burden of proof  
Schedule 1, item 17, proposed subsections 245AB(3), 245AB(6),  
245AC(3), 245AC(6), 245AE(3), 245AE(6), 245AEA(3) and  
245AEA(6)**

It is an offence for an employer to allow an unlawful non-citizen to work. Breach of the obligation not to employ an unlawful non-citizen to work also creates a liability for a civil penalty. Proposed subsections 245AB(3) and 245AB(6) place an evidential burden of proof on defendants who wish to rely on a defence available in relation to the offence/civil penalty provisions. The defence is that the defendant has taken ‘reasonable steps at reasonable times to verify that that the worker is not an unlawful non-citizen’. The use of a computer system prescribed by the regulations to verify that matter or doing any one or more things prescribed by the regulations are given as examples of reasonable steps, but other steps may also be considered reasonable by a court (and the explanatory memorandum gives some examples at page 15).

The explanatory memorandum contains a detailed justification for the approach (at pages 17–18), which considers the applicable principles in *The Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Similar issues arise in relation to the defences contained in proposed sections 245AC, 245AE and 245AEA.

Noting the detailed justification for the approach provided, **the Committee leaves the question of whether the approach taken in these provisions is appropriate to the consideration of the Senate as a whole.**

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

**Undue trespass on rights and liberties—strict liability  
Schedule 1, item 17, proposed subsections 245AB(5), 245AC(5),  
245AE(5) and 245AEA(5)  
Schedule 1, item 24, proposed section 486ZF**

The Committee notes that the civil penalty provision relating to the employment of an unlawful non-citizen is, in effect, one of strict liability: ‘it is not necessary to prove a person’s state of mind in proceedings for a civil

penalty order’ (see the note to subsection 245AB(5)). The explanatory memorandum (at pages 1–2) explains that this approach is based on the recommendations of the *Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007* (the Howells Review) and that ‘the decision to introduce non-fault civil penalties reflects the Government’s determination to address the problem of illegal work hire practices’ (at page 17). Given the fact that the taking of reasonable steps to verify the visa status of a worker is a defence (see subsection 245AB(2)) and the fact that the civil penalties are part of an overall regulatory strategy that includes education and administrative warnings (see the explanatory memorandum at page 1).

By operation of proposed section 486ZF, similar issues arise in relation to proposed subsections 245AC(5), 245AE(5) and 245AEA(5).

For the reasons outlined above, **the Committee leaves the question of whether the approach taken in these provisions is appropriate to the consideration of the Senate as a whole.**

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

### **Undue trespass on rights and liberties—reversal of burden of proof Schedule 1, item 20, proposed section 245AM**

Proposed subsection 245AM(1) provides that section 15.2 of the *Criminal Code* (extended geographical jurisdiction – category B) applies to an offence against Subdivision C of Division 12 of Part 2 of the Act. According to the explanatory memorandum, the application of the extended geographical jurisdiction ‘will ensure that, for example, a person would commit an offence under new section 245AB if he or she employs another person under a contract of service outside Australia and that other person entered Australia and performed work in Australia under that contract’ (page 50).

Proposed subsections 245AM(3) and (4) provide for defences relating to contraventions of civil penalty provisions which are taken to have occurred under proposed subsection 245AM(1). However, proposed subsection 245AM(5) provides that a defendant bears an evidential burden in relation to the matters in proposed subsections 245AM(3) and (4). The explanatory memorandum suggests that it is appropriate for the defendant to bear the

evidential burden in these provisions because the issue of whether the conduct constituting the alleged contravention has occurred wholly in a foreign country is a matter best within the knowledge of the defendant (see page 53).

Noting the justification for the approach provided, **the Committee leaves the question of whether the approach taken in these provisions is appropriate to the consideration of the Senate as a whole.**

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

**Undue trespass on rights and liberties—strict liability and reversal of burden of proof**  
**Schedule 1, item 24, proposed section 487B**

Under proposed subsection 487B(1) if the Secretary has reason to believe that a person has information or a document that is relevant to a possible work-related offence or a possible contravention of a work-related provision, the Secretary may issue a written notice requiring the person to give the information, or produce the document to an authorised officer. Proposed subsections 487B(3) and (4) create a strict liability offence where a person fails to comply with the notice.

The explanatory memorandum explains that ‘the purpose of applying strict liability to this offence is to significantly enhance compliance with a notice [that requires a person] to give information or produce documents under section 487B’ (page 77).

In addition, proposed subsection 487B(5) specifies that the offence provision in proposed subsection 487B(3) does not apply to the extent that the person is not capable of complying with the notice. However, a defendant bears an evidential burden in relation to this matter. The explanatory memorandum suggests that ‘it is considered appropriate to place the evidential burden on the defendant in this context because the question of whether, and the extent to whether, the defendant is capable of complying with the notice is something peculiarly within the knowledge of the defendant’ (page 77).

Given the explanations provided in the explanatory memorandum, **the Committee leaves the question of whether the application of strict liability**

**and the reversal of the burden of proof in these provisions is appropriate to the consideration of the Senate as a whole.**

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

**Undue trespass on rights and liberties—self-incrimination  
Schedule 1, item 24, proposed section 487C**

Proposed subsection 487C(1) abrogates the privilege against self-incrimination in relation to the obligation under section 487B to comply with a request by the Secretary to provide information or a document that is relevant to a possible work-related offence. However, subsection 487C(2) goes some way to ameliorate this. The explanatory memorandum describes the effect of that subsection as follows (at page 78):

In the case of an individual:

- the information given or document produced; and
- giving the information or producing the document; and
- any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;

are not admissible in evidence against the individual:

- in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to Subdivision C of Division 12 of Part 2 of this Act); or
- in civil proceedings (other than proceedings for a civil penalty order for an alleged contravention of a work-related provision).

Thus, the abrogation of the privilege against self-incrimination is, subject to the specified exceptions in relation to criminal proceedings, limited in its effect to the context of proceedings for a civil penalty order for an alleged contravention of a work-related provision in this bill.

A detailed justification for this approach is set out in the explanatory memorandum (at 78):

In the context of work-related provisions, there would be occasions when the only persons who hold relevant documents and information are parties who are suspected of contravening the work-related provisions. Allowing information or documents obtained from a person, in response to a notice to produce, to be admissible in evidence in work-related civil penalty proceedings against that person will enable the Department to effectively enforce the new work-related provisions. New paragraph 487C(2)(e) will not adversely impact on a person who is doing the right thing, such as a person who can establish a statutory defence to a work-related provision.

This approach is a departure from standard practice in relation to handling self-incrimination but has been accepted by the Attorney-General's Department. As noted above, the privilege against self-incrimination is only being removed in relation to proceedings for a civil penalty order for an alleged contravention of a work-related provision and the protection will still remain in relation to all other civil penalty proceedings. Further, there is no abrogation of legal professional privilege in new section 487B.

The Committee's view is that the abrogation of the privilege against self-incrimination, where it is not subject to complete use and derivative use immunities should only be accepted when it is considered to be strictly necessary. However, in light of this detailed justification for the approach, **the Committee leaves the question of whether the abrogation of the privilege against self-incrimination is necessary in the circumstances to the Senate as a whole.**

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

## **National Health Security Amendment Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Health and Ageing

### **Background**

This bill amends the *National Health Security Act 2007* to:

- enable the Minister for Health to determine the List of Security Sensitive Biological Agents;
- set requirements, in legally enforceable standards, for the secure handling of security sensitive biological agents (SSBAs) and biological agents suspected of being SSBAs;
- provide for the collection, and recording on a National Register of SSBAs, of information about the nature and location of SSBAs legitimately handled by entities in Australia; and
- include powers for monitoring compliance with the regulatory scheme through an inspection regime.

*The Committee has no comment on this bill.*

## **Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Sustainability, Environment, Water, Population and Communities

### **Background**

This bill amends the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* so that the per-tonne carbon price equivalent is applied to the import of synthetic greenhouse gas, instead of the benchmark average auction charge.

*The Committee has no comment on this bill.*

## **Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Sustainability, Environment, Water, Population and Communities

### **Background**

This bill amends the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* so that the per-tonne carbon price equivalent is applied to the manufacture of synthetic greenhouse gas, instead of the benchmark average auction charge.

*The Committee has no comment on this bill.*

## **Personal Liability for Corporate Fault Reform Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Treasury

### **Background**

This bill implements the Council of Australian Governments' (COAG) Directors' Liability reform announced on 29 November 2008.

The bill amends a number of Acts to:

- remove personal criminal liability for corporate fault where such liability is not justified;
- remove the burden of proof on defendants to establish a defence to a charge;
- replace personal criminal liability for corporate fault with civil liability where a non-criminal penalty is appropriate; and
- where personal criminal liability is justified, to make clear the circumstances where such liability would apply.

*The Committee has no comment on this bill.*

## **Superannuation Auditor Registration Imposition Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Treasury

### **Background**

This bill imposes fees on certain matters to recover the costs of establishing the self-managed superannuation fund auditor registration regime.

*The Committee has no comment on this bill.*

## **Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Treasury

### **Background**

This bill amends various Acts relating to superannuation and taxation.

Schedule 1 reinstates the temporary tax relief for merging superannuation funds with some modifications.

Schedule 2 introduces a registration regime for auditors of self-managed superannuation funds.

Schedule 3 amends the tax law to expand the existing reporting obligation for superannuation providers.

Schedule 4 facilitates the electronic transmission of payments and association information between certain funds, schemes and providers by providing for a register to be kept by the Commissioner of Taxation.

The bill also makes technical amendments in relation to eligible superannuation entities.

### **Retrospective operation**

#### **Schedule 1**

Schedule 1 proposes to reinstate temporary loss relief and asset roll-over provisions for merging superannuation funds with the some modifications. This measure will apply for mergers that occur on or after 1 October 2011 and before 2 July 2017 and therefore has retrospective operation.

The explanatory memorandum explains that loss relief and asset roll-over removes income tax impediments to mergers between complying superannuation funds by permitting the roll-over of both revenue gains or losses and capital gains or losses (page 9). Loss relief and asset roll-over was first introduced as a temporary concession to assist the superannuation industry to cope with the severe economic and financial market conditions in late 2008. The temporary loss relief and asset roll-over was granted for transfer events happening on or after 24 December 2008 and before 1 October

2011. The explanatory memorandum suggests that reinstatement of this taxation relief is appropriate ‘given the potential benefits to members of facilitating industry consolidation and the possible costs for some entities transitioning to Stronger Super’ (page 11).

While the explanatory memorandum indicates that the changes will be beneficial, **the Committee seeks the Minister’s advice to confirm that the amendments proposed in the Schedule will be beneficial to the industry, superannuation fund members and any other affected party.**

*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.*

### **Delegation of legislative power—incorporating material by reference**

#### **Schedule 2, item 9, proposed subsection 128Q(4)**

Pursuant to proposed subsection 128Q(1) the Regulator may, by legislative instrument, determine ‘competency standards to be complied with by all approved self-managed superannuation fund auditors’. Proposed subsection 128Q(4) provides that these standards may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument as in force or existing from time to time.

It is the Committee’s practice to seek a justification for such provisions as they diminish the capacity of the Parliament to adequately oversee the making of legislative instruments. As the explanatory memorandum does not explain why it is necessary to incorporate other instruments as they exist from time to time into the competency standards, **the Committee seeks the Minister’s advice in relation to the justification for this proposed approach.**

*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.*

**Undue trespass on rights and liberties—Strict liability**

**Schedule 4, item 6, proposed subsection 34Z(3) – *Superannuation Industry (Supervision) Act 1993***

**Schedule 4, item 29, proposed subsection 45R(3) – *Retirement Savings Account Act 1997***

Proposed section 34Z of the *Superannuation Industry (Supervision) Act 1993* and proposed section 45R of the *Retirement Savings Account Act 1997* create strict liability offences for failing to provide prescribed information to the Commissioner of Taxation in accordance with the regulations.

The explanatory memorandum indicates that the approach has been developed after consideration of the principles set out in Committee's Report No. 6 of 2002 on the *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. The appropriateness of strict liability in this instance is based on (1) the difficulty of proving intent of a provider to not comply with the requirement to provide information (2) the underlying nature of the provisions being to benefit the members of superannuation entities by improving the efficiency of the system and the importance of information being provided to the Commissioner in a timely manner so as there is a complete and accurate register for the use of participants, and (3) that there is a reasonable expectation that affected providers will have the information readily available. (See the explanatory memorandum at page 82.) The Committee notes that the penalty for the offences is 25 penalty units.

Given the detailed explanation for the approach and, in particular, the consideration given to the principles in the Committee's Report No. 6 of 2002, **the Committee has no comment on this matter.**

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

## **Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Treasury

### **Background**

This bill amends the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Guarantee Administration Act 1992*, the *Corporations Act 2001* and the *Fair Work Act 2009* to:

- ban entry fees and set criteria for the charging of other fees in superannuation, including rules for the charging of financial advice;
- requires all superannuation funds to provide life and total permanent disability insurance to members (excluding defined benefit members) on an opt-out basis;
- enable the Australian Prudential Regulation Authority to collect information on a look-through basis;
- require the disclosure and publication of key information in relation to superannuation funds;
- allow only funds that offer a MySuper product and exempt public sector superannuation schemes to be eligible as default funds in modern awards and enterprise agreements;
- allow exceptions from MySuper for members of defined benefit funds;
- require trustees to transfer certain existing balances of members to MySuper; and
- provides rules in relation to Eligible Rollover Funds.

**Undue trespass on rights and liberties—Strict liability  
Schedule 3, item 14, proposed subsections 1021NA(4), 1021NB(4)  
and 1021NC(5)**

Strict liability will apply to the offence for failing to update the ‘product dashboard’ as required, where information set out in the product dashboard is otherwise misleading or deceptive, and where there is an omission from the product dashboard (proposed subsection 1021NA(4)). The explanatory memorandum (at page 42) states that:

Strict liability is imposed with regard to the product dashboard disclosure requirements to reflect the benefit of these disclosures for consumers and the importance that trustees maintain a level of vigilance to ensure that the information is provided in an accurate and timely manner. The strict liability offence mirrors similar offences that apply to other important disclosures, such as a product disclosure statement.

A trustee will have a defence in relation to an omission from the product dashboard (see subsection 1021NA(5)) where (1) it took reasonable steps to prevent the breach, or (2) the information was omitted because it was not up to date and reasonable steps had been taken to obtain up-to-date information, or (3) the information was omitted because it would have been misleading or deceptive and reasonable steps had been taken to obtain information that would not have been misleading or deceptive. The availability of these defences partly ameliorates the impact of strict liability.

Similar issues in relation to strict liability arise in relation to proposed subsections 1021NB(4) and 1021NC(5). A basic explanation for the use of strict liability in these provisions is provided in the explanatory memorandum at pages 51–52.

Noting the justification provided in the explanatory memorandum for the application of strict liability, **the Committee leaves the question of whether the approach taken in these provisions is appropriate to the consideration of the Senate as a whole.**

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

**Undue trespass on rights and liberties—Reversal of burden of proof  
Schedule 3, item 14, proposed subsections 1021NA(5)–(7),  
1021NB(5)–(7) and 1021NC(6)–(7)**

Defendants bear an evidential burden of proof in relation to the defences provided for in subsections 1021NA(5)–1021NA(7), 1021NB(5)–(7) and 1021NC(6)–(7). Although the explanatory memorandum does not articulate with clarity the reason for this, the matters contained in the provisions relate to matters which may be said to be peculiarly within the knowledge of defendants. To that extent it may be concluded that the approach is consistent with the principles set out in *The Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. The explanatory memorandum does note that the approach is ‘consistent with defences available in relation to other disclosure offences’ in the legislation (see page 42).

For the reasons outlined above, **the Committee leaves the question of whether the approach taken in these provisions is appropriate to the consideration of the Senate as a whole.**

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

**Undue trespass on rights and liberties—Strict liability  
Schedule 3, item 42, proposed subsections 29QB(3) and 29QC(4)**

Strict liability offences relating to the disclosure of certain information are also introduced in proposed subsections 29QB(3) and 29QC(4). The explanatory memorandum provides a basic justification, noting that a strict liability offence is necessary to ensure effective enforcement by ASIC and that as superannuation is a compulsory system of retirement savings ‘it is appropriate that...licensees do everything they can reasonably do to ensure that there is complete transparency on the financial products that members have an equitable interest in’ (see pages 44–45).

Noting the justification provided in the explanatory memorandum for the application of strict liability, **the Committee leaves the question of whether the approach taken in these provisions is appropriate to the consideration of the Senate as a whole.**

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

**Undue trespass on rights and liberties—Strict liability  
Schedule 7, item 15, proposed section 242P**

A further strict liability offence is introduced in proposed section 242P. This section creates an offence where a representation is made that a regulated superannuation fund is an eligible rollover fund, but the licensee for the fund does not have authority to operate the fund as an eligible rollover fund.

A detailed justification for this approach is provided at pages 90–91 of the explanatory memorandum. It is noted that ‘APRA will provide a written notice...and [therefore] licensees will always know whether they are authorised to operate a specified superannuation fund as an eligible rollover fund.’ Furthermore, it is noted that eligible rollover funds ‘play a specialised role in the superannuation system as a temporary repository for the interests of members who have lost connection with their superannuation accounts’ and that these ‘members are most vulnerable and require their interests to be protected.’

Noting the detailed justification provided in the explanatory memorandum for the application of strict liability, **the Committee leaves the question of whether the approach taken in this provision is appropriate to the consideration of the Senate as a whole.**

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

## **Tax Laws Amendment (2012 Measures No.5) Bill 2012**

Introduced into the House of Representatives on 19 September 2012

Portfolio: Treasury

### **Background**

This bill amends various taxation laws.

Schedule 1 amends the definition of 'eligible no-till seeder' in the *Income Tax Assessment Act 1997*.

Schedule 2 amends the *Income Tax Assessment Act 1997* to phase out the mature age worker tax offset from 1 July 2012 for taxpayers born on or after 1 July 1957.

Schedule 3 amends the *Excise Act 1901* and the *Excise Tariff Act 1921* to provide a compliance regime for liquid petroleum gas, liquefied natural gas and compressed natural gas.

Schedule 4 amends the *Excise Act 1901* to clarify when the Commissioner of Taxation, may by legislative instrument, specify circumstances when the creation of certain fuel blends is not considered to be excise manufacture.

Schedule 5 amends the *Income Tax Assessment Act 1997* adds The Diamond Jubilee Trust to the list of deductible gift recipients.

Schedule 6 amends the *A New Tax System (Wine Equalisation Tax) Act 1999* to ensure that a wine producer will not be entitled to the wine equalisation tax producer rebate on other wine they use in manufacture, except where the producer of the other wine notifies the subsequent producer.

*The Committee has no comment on this bill.*

## **Water Amendment (Long-term Average Sustainable Diversion Limit Adjustment) Bill 2012**

Introduced into the House of Representatives on 20 September 2012

Portfolio: Sustainability, Environment, Water, Population and Communities

### **Background**

This bill amends the *Water Act 2007* to allow the long-term average sustainable diversion limit set by the Murray-Darling Basin Plan to be adjusted within clearly defined limits without invoking the formal Basin Plan amendment process.

*The Committee has no comment on this bill.*

## COMMENTARY ON AMENDMENTS TO BILLS

### **Australian Charities and Not-for-profits Commission Bill 2012**

*[Digest 10/12 – awaiting response]*

On 18 September 2012 the House of Representatives agreed to nine Government amendments, tabled a revised supplementary explanatory memorandum and four supplementary explanatory memoranda. On 20 September 2012 the Senate tabled a revised explanatory memorandum to the bill. The Committee has no comment on the additional material.

### **Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012**

*[Digest 10/12 – no response required]*

On 18 September 2012 the House of Representatives agreed to nine Government amendments, tabled a revised supplementary explanatory memorandum and four supplementary explanatory memoranda. On 20 September 2012 the Senate tabled a revised explanatory memorandum to the bill. The Committee has no comment on the additional material.

### **Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Bill 2012**

*[Digest 11/12 – no response required]*

On 13 September 2012 the House of Representatives agreed to 45 Government amendments, tabled a supplementary explanatory memorandum and read the bill a third time. On 17 September 2012 the Senate tabled a revised explanatory memorandum and on 19 September 2012 agreed the bill without amendment. The Committee has no comment on the additional material.

## 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
Migration Amendment (Reform of Employer Sanctions) Bill 2012	Section 486Y	A person commits an offence if: (a) the Secretary requests, in writing, the person to give all reasonable assistance in connection with an application for a civil penalty order; and (b) the person fails to comply with the request.	10 penalty units
	Section 487B	If the Secretary has reason to believe that a person has information or a document that is relevant to:	30 penalty units

		(a) a possible work-related offence; or (b) a possible contravention of a work-related provision; the Secretary may, by written notice given to the person, require the person to give the information, or to produce the document, to an authorised officer.	
	Section 487K	A person commits an offence if the person fails to answer any question (or fails to produce any document) relating to the reasons for the authorised officer entering the premises.	30 penalty units
Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012	Section 34Z	The regulations may prescribe information that is required to be given to the Commissioner of Taxation in relation to prescribed eligible superannuation entities.	25 penalty units
	Section 45R	The regulations may prescribe information that is required to be given to the Commissioner of Taxation in relation to prescribed RSAs.	25 penalty units
Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012	Section 29QB	An RSE licensee must ensure that the remuneration and other information is made publicly available and kept up to date.	50 penalty units

## **BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION**

The Chairs and Deputy Chairs of Commonwealth, 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.

### **Personal Liability for Corporate Fault Reform Bill 2012**

## 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 42<sup>nd</sup> Parliament.

### **Bills introduced with standing appropriation clauses in the 43rd Parliament since the previous *Alert Digest***

Nil

### **Other relevant appropriation clauses in bills**

Nil

