

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 I 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.

Anti-Money Laundering Amendment (Gaming Machine Venues) Bill 2012

Introduced into the Senate on 30 October 2012

By: Senator Xenophon

Background

This bill amends the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* to:

- provide that poker machine payouts of more than \$1000 and the cashing of transferred cheques are threshold transactions which are reportable to AUSTRAC;
- require gaming machine venues to issue cheques for payouts of winnings or gaming machine credits over \$1000 with an indication that they have been issued for that purpose; and
- impose penalties for failure to issue cheques in those circumstances.

The Committee has no comment on this bill.

Appropriation (Implementation of the Report of the Expert Panel on Asylum Seekers) Bill (No. 1) 2012

Introduced into the House of Representatives on 30 October 2012

Portfolio: Finance and Deregulation

Background

This bill appropriates additional money out of the Consolidated Revenue Fund for the ordinary annual services of the government in relation to implementation of the *Report of the Expert Panel on Asylum Seekers*.

The Committee has no comment on this bill.

Appropriation (Implementation of the Report of the Expert Panel on Asylum Seekers) Bill (No. 2) 2012

Introduced into the House of Representatives on 30 October 2012

Portfolio: Finance and Deregulation

Background

This bill appropriates additional money out of the Consolidated Revenue Fund for certain expenditure in relation to implementation of the *Report of the Expert Panel on Asylum Seekers*.

The Committee has no comment on this bill.

Courts and Tribunals Legislation Amendment (Administration) Bill 2012

Introduced into the House of Representatives on 31 October 2012

Portfolio: Attorney-General

Background

This bill amends the *Native Title Act 1993*, the *Family Law Act 1975*, and the *Federal Magistrates Act 1999* to implement changes to the administrative structures and processes of the National Native Title Tribunal, the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court of Australia.

The bill implements recommendations of the *Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio*, conducted by Mr Stephen Skehill and released on 8 June 2012.

The Committee has no comment on this bill.

Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Bill 2012

Introduced into the House of Representatives on 1 November 2012

Portfolio: Home Affairs

Background

This bill amends the *Customs Act 1901* and the *Customs Amendment (New Zealand Rules of Origin) Act 2012* to:

- provide for rules of origin for goods imported into Australia from Malaysia to give effect to chapter three of the Malaysia-Australia Free Trade Agreement; and
- make technical amendments.

Delegation of legislative power

Various

The bill requires a number of matters be dealt with in the regulations, though the explanatory memorandum does not detail the reasons why the terms of the MAFTA cannot be adequately reflected in the primary legislation. **The Committee therefore seeks a general explanation for the reliance on regulation making powers within the bill, and in particular (1) why it is necessary for the regulations to incorporate adopt or apply any matter contained in an instrument or other writing as in force or existing from time to time (see proposed subsection 153ZLB(6), introduced by item 1 of Schedule 1), and (2) why the record keeping obligations required by MAFTA are to be dealt with in regulations as opposed to the primary legislation (see proposed section 126ALB, item 2 of schedule 1).**

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

Customs Tariff Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Bill 2012

Introduced into the House of Representatives on 1 November 2012

Portfolio: Home Affairs

Background

This bill amends *Customs Tariff Act 1995* to give effect to the Malaysia-Australia Free Trade Agreement by:

- providing free rates of customs duty for goods that are Malaysian originating goods;
- maintaining customs duty rates for certain Malaysian originating goods; and
- specifying excise equivalent duties on certain alcohol, tobacco and petroleum products.

The Committee has no comment on this bill.

Fair Indexation of Military Superannuation Entitlements Bill 2012

Introduced into the House of Representatives on 29 October 2012

By: Mr Katter

Background

This bill provides that the minister must, within six months of this legislation taking effect, take legislative action to index the Defence Force Retirement Benefit Scheme, the Defence Force Retirement and Death Benefit Scheme and the Military Superannuation and Benefits Scheme using the same methodology as that used for the Australian age and service pensions.

Proposed delegation of legislative power

General

This bill takes an unusual form. It requires the Minister to take ‘legislative action’ that has the effect that ‘military superannuation entitlements are, as soon as practicable and with ongoing effect, to be indexed using the same indexation methodology, applied with the same frequency as applies for age pension under the Social Security Act 1991.’ ‘Legislative action’ is defined to be (1) action to make a legislative instrument in relation to the Military Superannuation and Benefits Scheme and (2) to cause a bill to be introduced into the House of Representatives in relation to other schemes. The bill does not of itself delegate legislative power. However, the Minister is required to exercise legislative powers delegated under other legislation to achieve a particular outcome and to introduce a bill to which if passed would achieve the desired result. The explanatory memorandum does not provide a rationale for requiring the future use of delegated legislation. **The Committee therefore seeks the Private Member’s advice as to the justification for the proposed approach.**

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

Fair Work Amendment Bill 2012

Introduced into the House of Representatives on 30 October 2012

Portfolio: Education, Employment and Workplace Relations

Background

This bill makes amendments to the operation of the *Fair Work Act 2009* in accordance with a number of the Fair Work Act Review Panel recommendations contained in the *Towards more productive and equitable workplaces: An evaluation of the fair work legislation* of June 2012.

The bill also makes amendments in response to recommendations of the Productivity Commission in its final report on *Default Superannuation Funds in Modern Awards* (released on 12 October 2012), additional amendments to the structure and operation of the FWC and a number of technical amendments.

Possible undue trespass on personal rights and liberties—fair hearing

Part 4, Schedule 6

Part 4 of Schedule 6 would introduce two new subsections (subsections 401(1) and 401(1A) which are designed to provide a stronger deterrent for lawyers and paid agents ‘from encouraging parties to bring or continue speculative unfair dismissal claims, particularly claims they know have no reasonable prospect of success’ (see the explanatory memorandum at page 38) or in cases where the representative has acted in an unreasonable way connected with the conduct or continuation of the matter.

The Statement of Compatibility with Human Rights argues that these amendments ‘strike a balance between the need to protect workers from unfair dismissal, and to provide a deterrent against unreasonable conduct during proceedings’. It is concluded, in the SOC, that the measures will not ‘prevent genuine claims from being pursued’ and as such are ‘reasonable and proportionate to address the time and expense that unreasonable conduct’ of a representative ‘may cause another party to incur’ (at page 7). The explanatory memorandum, at page 39, indicates that these amendments respond to recommendation 46 of The Fair Work Act Review Panel’s report, *Towards more productive and equitable workplaces: An evaluation of the fair work legislation* (June 2012).

Although these proposed subsections may have a ‘chilling effect’ on the willingness or vigour with which lawyers and representatives may represent a party in unfair dismissal matters, **the Committee notes the objective of minimising unreasonable claims and actions and leaves the question of whether the proposed limitation is appropriate to the consideration of the Senate as a whole.**

The Committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee’s terms of reference.

Possible inappropriate delegation of power Schedule 8, item 62, proposed subsection 581A(3)

Part 7 of Schedule 8 of the bill provides for the creation of a framework for handling complaints about FWC Members. The provisions are said to be ‘broadly modelled on provisions contained in the Courts Legislation Amendment (Judicial Complaints) Bill 2012’ (explanatory memorandum, page 48).

Proposed subsection 581A(3) provides that the President may authorise a person or a body to undertake a number of functions in relation to handling a complaint against an FWC Member. The functions that may be undertaken by such a person or body are significant and in practical effect appear to enable the function of handling complaints to be delegated to such persons or bodies.

The explanatory memorandum, at page 49, indicates that the approach enables the President to have a discretion to appoint an independent person or body to investigate a complaint and is part of a flexible scheme which may involve the establishing of a Conduct Committee to investigate a complaint. Nevertheless, it is of concern that the bill does not provide any guidance as to the qualifications of persons or bodies that may be appropriate to exercise these functions nor does it provide for any institutional protections that may be considered to ensure or protect the independence of such decision-makers. **The Committee therefore seeks advice as to why the decision has been taken to confer a broad unstructured discretionary power on the President to authorise other persons or bodies to investigate complaints and whether consideration can be given to providing more legislative guidance on these matters, including in relation to the qualifications or**

experience required of a potential delegate; safeguards on the operation of the delegated power; and accountability.

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

**Inappropriate delegation of legislative power
Schedule 8, item 62, proposed section 581B**

Part 7 of Schedule 8 of the bill provides for the creation of a framework for handling complaints about FWC Members. The provisions are said to be 'broadly modelled on provisions contained in the Courts Legislation Amendment (Judicial Complaints) Bill 2012' (see the explanatory memorandum at page 48).

Proposed subsection 581B(1) provides for the President of the FWC to determine a Code of Conduct for FWC Members. Subsection 581(3) requires that the Code be published on the FWC's website or any other means the President considers appropriate. Subsection 581B(4) states that a determination under subsection (1) is not a legislative instrument. The explanatory memorandum indicates that this subsection, which exempts the code from the operation of the *Legislative Instruments Act (LIA)*, is 'intended to be declaratory of the law'.

The definition of a legislative instrument under the *LIA* is that the instrument be 'of a legislative character' and be made in the exercise of a power delegated by the Parliament. Further, it is provided by the *LIA*, that an instrument is to be taken to be a legislative instrument if it 'determines the law or alters the content of the law, rather than applying the law in a particular case' and it 'has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right'.

As it is likely that the a complaint handler under the framework provided for in Part 7 of Schedule 8 of the bill would be required to at least consider any Code of Conduct made pursuant to subsection 581B(1) the reasons why subsection 581(4) is not a substantive exemption from the *LIA* are not obvious. The Committee notes that the statement in the SOC that the

complaints process amendments ‘strengthen the right of FWC Members not to be unjustly deprived of work by enabling the formulation of standards of conduct for FWC Members and by ensuring that complaints can be dealt with in a structured way’ arguably indicates an intention that the complaints process should be administered taking into account the Code of Conduct (see the explanatory memorandum at pages 8 to 10). **The Committee therefore seeks the Minister’s advice as to why the express declaration that the Code is not a legislative instrument and should be considered to be declaratory of the law.**

Pending the Minister’s advice, the Committee draws Senators’ attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee’s terms of reference.

**Possible undue trespass on personal rights and liberties—
retrospective effect
Schedule 11, item 1**

Item 1 of Schedule 3 of the bill makes amendments to section 160 of the *Fair Work Act* that have the effect of broadening the standing requirements for bringing an application to have a modern award varied to remove an ambiguity, uncertainty or to correct an error.

Item 1 of Schedule 11 inserts a new Schedule 3 into the *Fair Work Act*, and item 3 of Part 4 to Schedule 3 ensures that applications and determinations to vary a modern award under section 160 before the commencement of this amendment are valid. Subitem 3(2) provides that a determination or application are ‘as valid, and are taken always to have been valid, as they would have been if paragraphs 160(2)(c) and (d) (as inserted by Part 1 Schedule 3 to the amending Act) had been in force at the time the determination or application was made’.

The Committee seeks the Minister’s advice as to whether the application of the amendments to section 160 to applications and determinations prior to commencement will have any detrimental effect on any person whose interests might be affected by such applications and determinations.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012

Introduced into the House of Representatives on 31 October 2012

Portfolio: Immigration and Citizenship

Background

This bill amends the *Migration Act 1958* to:

- implement a recommendation of the Expert Panel on Asylum Seekers to provide that asylum seekers who unlawfully arrive anywhere in Australia are subject to the same regional processing arrangements as asylum seekers who arrive at an excised offshore place;
- ensure that a person does not cease to be a transitory person if they have been assessed to be a refugee; and
- provide for discretionary immigration detention of Papua New Guinea citizens who are unlawful non-citizens and are in a protected area.

Undue trespass on personal rights and liberties—natural justice Schedule 1, item 33, subsection 198AE(3)

Item 31 of Schedule 1 proposes to insert a new subsection 198AE(1A) which would provide that the Minister may, in writing, vary or revoke a determination made under subsection 198AE(1) that section 198AD does not apply to an offshore entry person. Section 198AD provides for the taking of an offshore entry persons to a regional processing country. The proposed amendment, which expressly gives the Minister authority to revoke a determination made under subsection 198AE(1), is (like the power to make an initial determination under that subsection) available only if the Minister ‘thinks that it is in the public interest to do so’.

Determinations made under subsection 198AE(1) are, by subsection 198AE(3), expressly said not to be subject to the rules of natural justice. Item 33 of Schedule 1 proposes to add ‘or (1A)’ at the end of subsection 198AE(3) so that the rules of natural justice would also not apply to a determination under subsection 198AE(1A) to vary or revoke a determination made under subsection 198AE(1). Although such a declaration is conditioned

on the Minister's consideration of the public interest, the revocation of a determination under subsection 198AE(1), that the provisions for taking an offshore entry person to a regional processing country not apply, will operate to frustrate expectations such a person may reasonably hold based on the initial determination. In such circumstances it may be thought that fairness should require that persons affected be entitled to rely on the common law rules of natural justice that would entitle them to a fair, unbiased hearing.

The explanatory memorandum simply states that the rules of natural justice will be excluded, but offers no justification for the approach. **The Committee therefore seeks the Minister's advice as to the rationale for the proposed approach so that it is able to form a view as to the appropriateness of the exclusion of natural justice in relation to the exercise of the power under subsection 198AE(1A).**

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

National Electricity Bill 2012

Introduced into the House of Representatives on 29 October 2012

By: Mr Oakeshott

Background

This bill makes the national electricity law a Commonwealth law by:

- incorporating the *Australian Energy Market Act 2004*, *Australian Energy Market Commission Establishment Act 2004* (SA) and parts of the *National Electricity (South Australia) Act 1996* (SA) (the existing National Electricity Law);
- making the national electricity rules a disallowable instrument;
- establishing the Australian Energy Market Commission as a Commonwealth statutory authority;
- establishing a Consumer Advocacy Panel; and
- retaining the judicial review of decisions made by the Australian Energy Market Operator.

General

This bill is unusual in that it seeks to make the *National Electricity Law*, which is currently in force as a result of State and Territory legislation, ‘an Act of the Commonwealth, without altering the substantive effect of the *National Electricity Law*’ (see the explanatory memorandum at page 2). It appears that the purpose is to allow the ‘Australian Parliament’ to amend the *National Electricity Law* to address ‘significant regulatory failures’ (see the explanatory memorandum at page 3).

The explanatory memorandum states, at page 2, that the bill ‘would adopt, in so far as is practicable, the existing *National Electricity Law*’ and the bill does in fact reflect many provisions of the schedule to the *National Electricity (South Australia) Act 1996*, which establishes the details of the current scheme. The bill also contains amendments that appear necessary to reflect the move from State legislation to Commonwealth legislation, as well as

additional sections such as Division 1, Part 5C which introduces a consumer advocacy panel.

There are a number of provisions in the bill (some from the current scheme and some that are new to this bill) that are of interest from a scrutiny perspective, such as the removal of the disallowance provisions from the creation of national electricity rules (clause 9) and the ability for national electricity rules to modify the operation of Chapter 5 of the *Corporations Act 2001*. **However, given that a key purpose of this bill is to allow the Commonwealth to amend the current scheme, and given the lack of detailed information in the explanatory memorandum (including the absence of a statement of compatibility with human rights), the Committee intends scrutinising the scheme in more detail if the bill progresses to further stages of debate.**

The Committee draws Senators' attention to the bill as it is possible that it breaches a number of principles of the Committee's terms of reference. However, this cannot be determined without a significant amount of additional information, which it intends to seek if the bill proceeds to further stages of debate.

National Gambling Reform Bill 2012

Introduced into the House of Representatives on 1 November 2012

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill is part of a package of three bills in relation to a national scheme for gaming machines. The bill provides for:

- precommitment systems for gaming machines;
- registered users to set a loss limit;
- gaming machines to display certain warnings; limits daily withdrawals from automatic teller machines located in gaming premises (excluding casinos) to \$250;
- new machines manufactured or imported to be capable of supporting precommitment;
- a Regulator to be established to monitor and investigate compliance;
- enforcement measures;
- an Australian Gambling Research Centre to be established within the Australian Institute of Family Studies; and
- the Productivity Commission to undertake two inquiries.

Delegation of legislative power

Paragraph 51(1)(c) and Subclause 51(4)

These provisions relate to the Regulator's power to approve a precommitment system for a State or Territory and to vary the approved terms and conditions for such a system. In both instances the Regulator must be, among other things, satisfied that the terms and conditions are reasonable 'taking into account the matters prescribed by the regulations'. The Committee prefers that important information is included in primary legislation unless there is an appropriate reason for using delegated legislation. Unfortunately the explanatory memorandum does not indicate why these relevant considerations cannot be specified in the primary legislation (see the discussion at page 25).

The Committee therefore seeks the Minister's advice as to the rationale for the proposed approach so that it is able to form a view as to its appropriateness.

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

Delegation of legislative power

Clause 201; see also clauses 79 and 80

Clause 201 enables the making of regulations to include offences and civil penalty provisions, and to prescribe penalties for contraventions of such provisions. Other clauses in the legislation provide for offences based on a breach of requirements to be prescribed in the regulations.

It is noted that the penalty limits set in clause 201 are consistent with the *Guide to Framing Commonwealth Offences*. Further the explanatory memorandum justifies the necessity for offence content to be delegated to regulations 'due to the changing nature of the subject matter and technology governed by gambling reform measures' in the bill and, also, on the basis that it is possible that 'the information that may be required to provide other offence content in relation to this subject matter will involve a level of detail and material of such a technical nature that it is not appropriate to deal with it in this Bill' (see page 93). These sorts of reasons are consistent with accepted bases for providing for offences in regulations and the Committee makes no further comment.

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

National Gambling Reform (Related Matters) Bill (No. 1) 2012

Introduced into the House of Representatives on 1 November 2012

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill is part of a package of three bills in relation to a national scheme for gaming machines. The bill imposes a supervisory levy on licensees of gaming machines.

The Committee has no comment on this bill.

National Gambling Reform (Related Matters) Bill (No. 2) 2012

Introduced into the House of Representatives on 1 November 2012

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill is part of a package of three bills in relation to a national scheme for gaming machines. The bill imposes a gaming machine regulation levy payable by anyone entitled to any gaming machine revenue from gaming machines which do not meet precommitment systems and warning requirements.

The Committee has no comment on this bill.

Public Interest Disclose (Whistleblower Protection) Bill 2012

Introduced into the House of Representatives on 29 October 2012

By: Mr Wilkie

Background

This bill provides for a framework to facilitate public interest disclosures by public officials and provides those officials with protections by providing for:

- processes for who can make a public interest disclosure and to whom;
- the conduct of investigations;
- public interest disclosures to third parties;
- the obligations of agencies;
- legal protections of disclosers; and
- oversight of the disclosures.

Delegation of legislative power Subclause 54(4)

Clause 54 lists a series of subjects relating to public interest disclosures about which the Ombudsman is required to publish standards. Subclause 54(4) provides that such standards are not legislative instruments. As the explanatory memorandum does not address the question, **the Committee seeks the Private Member's advice as to whether this is intended as a substantive exemption for the *Legislative Instruments Act*.**

Pending the Private Member's reply, the Committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

**Undue trespass on personal rights and liberties—reversal of onus
Subclauses 58(3) and 54(4)**

These subclauses place an evidential burden on defendants in relation to a number of defences to a charge for offences relating to the use or disclosure of protected information provided for in clause 58. This approach is common across Commonwealth legislation in relation to such offences and consistent with the principles in the *Guide to Framing Commonwealth Offences*. The explanatory memorandum addresses the issue and argues that ‘under the standard evidentiary burden a court would have to be satisfied that no act or legal instrument exists that authorises or may authorise the use of divulgence of the protected information in in question.’ As the defendant may be taken to know which ‘act or legal instrument’ justified the use of disclosure of the information it is argued that it is appropriate to place an evidential burden on the defendant (see explanatory memorandum at paragraphs 90 to 92).

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

Public Interest Disclose (Whistleblower Protection) (Consequential Amendments) Bill 2012

Introduced into the House of Representatives on 29 October 2012

By: Mr Wilkie

Background

This bill makes consequential amendments to the *Fair Work Act 2009*, *Ombudsman Act 1976*, *Parliamentary Service Act 1999* and *Public Service Act 1999*.

The Committee has no comment on this bill.

Treasury Legislation Amendment (Unclaimed Money and Other Measures Bill 2012

Introduced into the House of Representatives on 30 October 2012

Portfolio: Treasury

Background

This bill amends the:

- *Banking Act 1959, First Home Saver Accounts Act 2008 and Life Insurance Act 1995* to:
 - reduce to three years the period before amounts held by authorised deposit-taking institutions, first home saver account providers and life insurance companies are treated as unclaimed moneys; and
 - provide for the payment of interest on unclaimed moneys claimed after 1 July 2013;
- *Superannuation (Unclaimed Money and Lost Members) Act 1999* to: increase to \$2000 the balance threshold below which small lost accounts are required to be transferred to the Commissioner of Taxation; decrease to 12 months the period of inactivity before inactive accounts of unidentifiable members are required to be transferred to the Commissioner; and provide for the payment of interest on all unclaimed superannuation moneys claimed after 1 July 2013;
- *Australian Securities and Investments Commission Act 2001* to close the Companies and Unclaimed Moneys Special Account; and
- *Corporations Act 2001* to establish a new process for the receipt and payment of unclaimed property and provide for the payment of interest on unclaimed property claimed after 1 July 2013.

The Committee has no comment on this bill.

Water Amendment (Water for the Environment Special Account) Bill 2012

Introduced into the House of Representatives on 31 October 2012

Portfolio: Sustainability, Environment, Water, Population and Communities

Background

This bill amends the *Water Act 2007* to establish the Water for the Environment Special Account for a 10-year period from the 2014-15 financial year to acquire additional environmental water entitlement and to remove constraints on the efficient use of environmental water for the Murray-Darling Basin Plan.

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 – response in 13/12 Report]

On 31 October 2012 the Senate agreed to 23 Government amendments and tabled a supplementary explanatory memorandum. On 1 November 2012 the House of Representatives agreed to the Senate amendments. **The Committee thanks the Minister for taking the action requested by the Committee to ensure that specific legislative obligations were placed on the Commissioner to include particular information in the notice provided to a suspended or removed entity about the consequences of non-compliance with obligations imposed on the entity.**

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

[Digest 10/12 – no response required]

On 31 October 2012 the Senate agreed to 11 Government amendments and tabled a supplementary explanatory memorandum. On 1 November 2012 the House of Representatives agreed to the Senate amendments. The Committee has no comment on the additional material.

Corporations Legislation Amendment (Derivative Transactions) Bill 2011

[Digest 11/12 – no response required]

On 29 October 2012 the House of Representatives agreed to two Government amendments and tabled a supplementary memorandum. The Committee has no comment on the additional material.

Customs Amendment (Military End-Use) Bill 2012

[Digest 14/11 – response in 1/12 Report]

On 29 October 2012 the Senate agreed to two Government amendments and tabled a supplementary memorandum. On 30 October 2012 the House of Representatives agreed to the Senate amendments. One of the amendments is in response to a request from the Committee to include a requirement that the Defence Minister table an annual statement to Parliament about the exercise of a proposed power to prohibit the export of specified non-regulated goods to

a particular place or person. **The Committee thanks the Minister for taking this action.** The Committee has no comment on the other amendment.

Defence Trade Controls Bill 2011

[Digest 14/11 – responses in 1/12 and 5/12 Reports]

On 29 October 2012 the Senate agreed to 24 Government, one Opposition and two Australian Greens amendments, tabled an addendum to the explanatory memorandum and a supplementary explanatory memorandum.

On 30 October 2012 the House of Representatives agreed to 26 Senate amendments and disagreed to one Opposition amendment. On 1 November 2012 the Senate did not insist upon the amendment the House of Representatives disagreed to and the Royal Assent to the bill was granted on 13 November.

The Committee notes that the amendments take into account reports of the Senate Foreign Affairs, Defence and Trade Legislation Committee into the bill. **However, the Committee is disappointed that the Minister did not take the opportunity to include additional information in the explanatory memorandum as requested by the Scrutiny of Bills Committee in its *First Report of 2012*, despite his commitment to do so as outlined in his letter to Chair of the Scrutiny of Bills Committee dated 26 March 2012 (see the Committee's *Fifth Report of 2012*).**

Dental Benefits Amendment Bill 2012

[Digest 11/12 – no response required]

On 30 October 2012 the Senate tabled a correction to the explanatory memorandum. The Committee has no comment on the additional material.

Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012

[Digest 8/12 – response in 11/12 Report]

On 1 November 2012 the Senate tabled an addendum to the explanatory memorandum, which responds to a request by the Committee to include additional information in the explanatory memorandum. **The Committee thanks the Minister for this action.**

Fair Entitlements Guarantee Bill 2012

[Digest 13/12 – awaiting response]

On 30 October 2012 the House of Representatives tabled a supplementary explanatory memorandum. The Committee has no comment on the additional material.

Migration Legislation Amendment (Student Visas) Bill 2012

[Digest 5/12 – no comment]

On 1 November 2012 the Senate agreed to one Government amendment and tabled a supplementary explanatory memorandum. The Committee has no comment on the additional material.

Public Service Amendment Bill 2012

[Digest 3/12 & 10/12 (amendments) – responses in 5/12 & 12/12 Reports]

On 29 October 2012 the Senate tabled an addendum to the revised explanatory memorandum, which outlines the justification for provisions seeking to retrospectively impose an additional penalty on APS employees who provided false and misleading information in relation to his or her engagement as an APS employee.

The Committee thanks the Minister for this action, but restates its view (outlined in its *Twelfth Report of 2012*) that the reasons provided are not sufficient to justify the retrospective imposition of sanctions for a breach of the code of conduct on the basis of an obligation which was not part of the code at the time of the impugned behaviour. However, the Committee leaves the question of whether the proposed approach unduly trespasses on personal rights and liberties 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.

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

[Digest 12/12 – no comment]

On 30 October 2012 the House of Representatives agreed to three Government amendments and tabled a supplementary explanatory memorandum. The Committee has no comment on the additional material.

Tax Laws Amendment (Clean Building Managed Investment Trust) Bill 2012

[Digest 13/12 – no comment]

On 30 October 2012 the House of Representatives agreed to one Government amendment and tabled a supplementary explanatory memorandum. The Committee has no comment on the additional material.

Water Amendment (Long-Term Average Sustainable Diversion Limit Adjustment) Bill 2012

[Digest 12/12 – no comment]

On 30 October 2012 the House of Representatives agreed to four Government amendments and tabled a supplementary explanatory memorandum. The Committee has no comment on the additional material.

Wheat Export Marketing Amendment Bill 2012

[Digest 5/12 – response in 6/12 Report]

On 31 October 2012 the House of Representatives agreed to 16 Government amendments and tabled two supplementary explanatory memoranda, and a replacement explanatory memorandum. The Committee has no comment on the additional material.

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.

National Gambling 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 42nd Parliament.

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

Water Amendment (Water for the Environment Special Account) Bill 2012 — Schedule 1, item 2, section 86AB (SPECIAL ACCOUNT: CRF appropriated by virtue of section 21 of the *Financial Management and Accountability Act 1997*)

Other relevant appropriation clauses in bills

Nil