

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



Alert Digest

No. 6 of 2005

15 June 2005

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Members of the Committee

Senator R Ray (Chair)
Senator B Mason (Deputy Chair)
Senator G Barnett
Senator D Johnston
Senator G Marshall
Senator A Murray

Terms of Reference

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

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- **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.

Commonwealth Electoral Amendment (Preventing Smoking Related Deaths) Bill 2005

Introduced into the House of Representatives on 30 May 2005

By Mr Kerr as a private Member's bill

Background

This bill amends the *Commonwealth Electoral Act 1918* to deny election funding to political candidates who accept gifts from a person who derives substantial revenue from the manufacture, distribution or retail of tobacco products.

The Committee has no comment on this bill.

Corporations Amendment Bill (No. 1) 2005

Introduced into the House of Representatives on 2 June 2005

Portfolio: Treasury

Background

According to the explanatory memorandum, Schedule 1 to this bill ‘amends the *Corporations Act 2001* ... to clarify the scope of the personal liability of directors of corporate trustees.’ The amendments have been introduced as a response to the decision of the South Australian Supreme Court in *Hanel v O’Neill* [2003] SASC 409.

Schedule 2 proposes a ‘technical amendment’ to clarify the operation of a transitional provision in the CLERP 9 legislation relating to auditor independence.

Retrospective commencement

Schedule 2

By virtue of item 3 of the table in subclause 2(1) of this bill, the amendment proposed by Schedule 2 would commence on 30 June 2004, immediately after the commencement of section 1462 of the *Corporations Act 2001*.

As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this case, the explanatory memorandum advises readers that the purpose of the amendment is to ensure the continued operation of a provision which was repealed by legislation which commenced on 30 June 2004. Therefore, although this amendment would have retrospective effect, it is doing no more than restoring earlier legislation, and giving effect to the intention of that earlier legislation.

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

Fuel Quality Standards (Ethanol content) Amendment Bill 2005

Introduced into the House of Representatives on 30 May 2005
By Mr Windsor as a private Member's bill

Background

The bill amends the *Fuel Quality Standards Act 2000* by inserting new provisions relating to ethanol content in motor vehicle fuels.

The Committee has no comment on this bill.

Trade Practices Amendment (National Access Regime) Bill 2005

Introduced into the House of Representatives on 2 June 2005

Portfolio: Treasury

Background

The bill amends the *Trade Practices Act 1974* to implement aspects of the Government's response to the Productivity Commission's Inquiry Report No. 17, *Review of the National Access Regime*. According to the Minister's second reading speech, the amendments 'will make an important contribution to promoting timely and efficient infrastructure investment decisions and outcomes, through an improved National Access Regime for infrastructure facilities of national significance.'

The bill inserts a new objects clause into Part IIIA of the Act and requires decision makers under Part IIIA to have regard to that clause. The other amendments to that part are intended to encourage efficient investment, enhance the national access regime, and improve the transparency, accountability and timeliness of the decision-making process in Part IIIA.

Retrospective application

Schedule 1, Part 2: Subitems 121(1) and (2), items 123 and 127

Various provisions of Part 2 of Schedule 1 to this bill would apply some of the amendments proposed by Part 1 of Schedule 1 to events occurring before the commencement of this bill, as well as to events occurring thereafter. The relevant provisions are subitems 121(1) and (2), item 123 and item 127 of Part 2 of the Schedule. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people.

Unfortunately, the explanatory memorandum merely states the fact that the amendments are to apply retrospectively as well as prospectively and does not indicate clearly whether that retrospective application may adversely affect any person – see paragraphs 5.73, 5.236, 5.126 and 5.153. The Committee **seeks the Treasurer's advice** as to whether the retrospective application of

any of the amendments referred to in those subitems or items of Part 2 of Schedule 1 would adversely affect any person.

Pending the Treasurer'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.

Veterans' Entitlements Amendment (2005 Budget Measure) Bill 2005

Introduced into the House of Representatives on 1 June 2005

Portfolio: Veterans' Affairs

Background

The bill amends the *Veterans' Entitlements Act 1986* to extend eligibility for the seniors concession allowance.

The Committee has no comment on this bill.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2005

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2004							
Australian Communications and Media Authority Bill 2004	12(8.12.04)	2.12.04	7.3.05	Communications, Information Technology and the Arts	9.12.04	14.3.05	3(16.3.05)
<i>Copyright Legislation Amendment Act 2004</i>	12(8.12.04)	9.12.04	30.11.04	Attorney-General	9.12.04	2.2.05	1(9.2.05)
James Hardie (Investigations and Proceedings) Bill 2004	12(8.12.04)	2.12.04	8.12.04	Treasury	9.12.04		
Water Efficiency Labelling and Standards Bill 2004	9(4.8.04) 12(8.12.04)	24.6.04	12.8.04	Environment and Heritage Reintroduced – no response required	5.8.04	24.12.04	1(9.2.05)
Bill dealt with in 2005							
Asbestos-related Claims (Management Of Commonwealth Liabilities) Bill 2005	5(1.6.05)	25.5.05	14.6.05	Employment and Workplace Relations	1.6.05	14.6.05	5(15.6.05)
AusLink (National Land Transport) Bill 2004	1(9.2.05)	9.12.04	10.2.05	Transport and Regional Services	10.2.05	28.4.05	4(11.5.05)
Aged Care Amendment (Transition Care and Assets Testing) Bill 2005	2(9.3.05)	10.2.05	7.3.05	Ageing	10.3.05	15.3.05	3(16.3.05)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Bill 2005	2(9.3.05)	17.2.05	9.3.05	Agriculture, Fisheries and Forestry	10.3.05	11.3.05	3(16.3.05)
Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005	2(9.3.05)	17.2.05	11.5.05	Fisheries, Forestry and Conservation	10.3.05	4.5.05	4(11.5.05)
Defence Amendment Bill 2005	2(9.3.05)	10.2.05	7.3.05	Defence	10.3.05		
Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Bill 2005	5(1.6.05)	26.5.05		Family and Community Services	1.6.05		
Film Licensed Investment Company Bill 2005	5(1.6.05)	26.5.05		Communications, Information Technology and the Arts	1.6.05		
Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005	5(1.6.05)	26.5.05		Justice and Customs	1.6.05		
Maritime Transport Security Amendment Bill 2005	5(1.6.05)	25.5.05	14.6.05	Transport and Regional Services	1.6.05		
<i>Medical Indemnity Legislation Amendment Act 2005</i>	2(9.3.05)	17.2.05	9.3.05	Health and Ageing	10.3.05	28.4.05	4(11.5.05)
New International Tax Arrangements (Foreign-owned Branches and Other Measures) Bill 2005	4(11.5.05)	17.3.05		Treasurer	12.5.05	31.5.05	5(15.6.05)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE		MINISTER	RESPONSE SOUGHT RECEIVED	REPORT NUMBER	
Payment Systems (Regulation) Amendment Bill 2005	3(16.3.05)	10.3.05	14.6.05	Treasurer	17.3.05	10.6.05	5(15.6.05)
Superannuation Bill 2005	5(1.6.05)	12.5.05	14.6.05	Finance and Administration	1.6.05	14.6.05	5(15.6.05)

