

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



**Alert Digest**

**No. 8 of 2005**

**10 August 2005**



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**ISSN 1329-668X**



# Senate Standing Committee for the Scrutiny of Bills

## Members of the Committee

Senator R Ray (Chair)  
Senator B Mason (Deputy Chair)  
Senator G Barnett  
Senator D Johnston  
Senator A McEwen  
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.

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

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

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## **Acts Interpretation Amendment (Legislative Instruments) Bill 2005**

Introduced into the Senate on 23 June 2005

Portfolio: Attorney-General

### **Background**

The bill amends the *Acts Interpretation Act 1901* by inserting a new interpretive provision for the expression ‘legislative instrument’. It will make clear that wherever the term appears in legislation it has a particular meaning, that is, that instruments must be in writing and are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

The provision will preclude the need to define the term ‘legislative instrument’ every time it is used in legislation.

### **Retrospective commencement Schedule 1**

By virtue of items 2 and 3 in the table to subclause 3(1) in this bill, the amendments proposed in Schedule 1 would commence on 1 January 2005. 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 notes, on page 1, that these amendments are technical only, and that none of them ‘makes any change to the substance of the law.’

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

## **Arts Legislation Amendment (Maritime Museum and Film, Television and Radio School) Bill 2005**

Introduced into the Senate on 23 June 2005

Portfolio: Arts and Sport

### **Background**

The bill amends the *Australian National Maritime Museum Act 1990* to allow the Governor-General, by regulation, to delegate the power to fix fees. This would allow the museum to set admission fees and vary charges for different premises and special exhibitions and events.

The bill also amends the *Australian Film, Television and Radio School Act 1973* to enable the school to award degrees, diplomas and certificates as specified in a determination made by the school rather than requiring regulations to be made each time a new course is offered or withdrawn.

*The Committee has no comment on this bill.*

## **Broadcasting Legislation Amendment Bill (No. 1) 2005**

Introduced into the Senate on 23 June 2005

Portfolio: Communications, Information Technology and the Arts

### **Background**

According to the Minister's second reading speech, the bill provides 'a framework for the conversion of commercial television broadcasting services in regional and remote areas of Western Australia from analogue to digital.'

The bill amends the *Broadcasting Services Act 1992* and the *Radiocommunications Act 1992* to allow commercial television licensees in remote licence areas to 'multi-channel' their digital services where they elect to provide a third commercial service. The amendments also provide for an exemption from mandatory High Definition Television quotas in relevant circumstances.

*The Committee has no comment on this bill.*

## **Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005**

Introduced into the Senate on 23 June 2005  
Portfolio: Transport and Regional Services

### **Background**

The bill amends the *Civil Aviation Act 1988* to permit the mutual recognition of Air Operator's Certificates for operation of aircraft of more than 30 seats or 15,000 kg, as issued by the Civil Aviation Safety Authority in Australia and the Civil Aviation Authority of New Zealand.

### **Commencement on Proclamation Schedule 1, items 1 to 19**

Item 2 in the table to subclause 3(1) in the bill provides that the amendments proposed in items 1 to 19 of Schedule 1 would commence on 'a single day to be fixed by Proclamation' with no limit specified within which the bill must commence in any event.

The Committee takes the view that Parliament is responsible for determining when laws are to come into force, and that commencement provisions should contain appropriate restrictions on the period during which legislation might commence. This view has long been reflected in the drafting directions issued by the Office of Parliamentary Counsel (currently *Drafting Direction 2005, No. 10* at paragraphs 16 to 22). The drafting direction provides that a clause which provides for commencement by proclamation should also specify a period or date after which the Act either commences or is taken to be repealed. It also provides that any proposal to defer commencement for more than 6 months after assent should be explained in the explanatory memorandum.

The explanatory memorandum states that the deferred commencement is 'to enable the signing of the inter-governmental arrangement on mutual recognition by the Governments of Australia and New Zealand.' The Committee has usually accepted this situation as justifying an extended, but not an open-ended, period for commencement (see *Drafting Direction 2005,*

No. 10 at paragraphs 88 to 90). Accordingly, the Committee **seeks the Minister's advice** as to whether the commencement clause should not also be subject to a provision that, if the agreement has not been signed by some fixed date, the Act will be automatically treated as having been repealed.

*Pending the Minister's advice, 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.*

### **Retrospective commencement Schedule 1, items 20 and 29 to 31**

Items 3 and 5 in the table to subclause 3(1) in the bill provide that the amendments proposed in item 20 and items 29 to 31 of Schedule 1 commence immediately after the commencement of item 10 of Schedule 2 to the *Civil Aviation Amendment Act 2005*. That Act commenced on 6 July 2005, so it appears these items will have some period of retrospective effect. As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Committee **seeks the Minister's advice** as to the effect of the retrospective commencement of these provisions.

*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.*

### **Strict liability Schedule 1, item 34**

Proposed new subsection 28C(4) of the *Civil Aviation Act 1988*, to be inserted by item 34 of Schedule 1 to the bill, would create criminal offences of strict liability.

In its *Sixth Report of 2002* the Committee reported on the *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. It recommended a range of principles which the Committee concluded should form the framework for Commonwealth policy and practice in relation to strict and absolute liability.

In February 2004, the Minister for Justice and Customs published a *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers*. The Guide draws together the principles of the criminal law policy of the Commonwealth. Part 4.5 of the Guide contains a statement of the matters which should be considered in framing strict and absolute liability offences.

The Committee will generally draw to Senators' attention provisions which create strict liability and absolute liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill.

While the explanatory memorandum explains the nature of strict criminal liability, it does not seek to justify its imposition in these circumstances. It is therefore not clear from the explanatory memorandum whether the principles contained in the Committee's report or the matters listed at Part 4.5 of the Guide have been considered.

The Committee **seeks the Minister's advice** as to whether the imposition of strict liability is justified in these circumstances and, further, whether consideration has been given to the principles contained in the Committee's *Sixth Report of 2002* and the matters listed at Part 4.5 of the Guide.

*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.*



## **Corporations (Aboriginal and Torres Strait Islander) Bill 2005**

Introduced into the House of Representatives on 23 June 2005

Portfolio: Immigration and Multicultural and Indigenous Affairs

### **Background**

According to the explanatory memorandum, this bill ‘replaces the *Aboriginal Councils and Associations Act 1976* (the ACA Act) to improve governance and capacity in the Indigenous corporate sector.’

The bill has been developed following the report of a review of the ACA Act presented in December 2002. According to the explanatory memorandum, the bill ‘implements the key recommendation by retaining a special incorporation statute to meet the needs of Indigenous people.’ It aligns with the Corporations Act where practicable, but provides sufficient flexibility for corporations to accommodate specific cultural practices and tailoring to reflect the particular needs and circumstances of individual groups.

### **Explanatory memorandum**

The Committee relies on the explanatory memorandum to explain the purpose and effect of a bill and the operation of its individual provisions. In particular, the Committee expects that an explanation will be given for any provision that appears to test or infringe the Committee’s terms of reference.

The Committee is concerned that the explanatory memorandum to this bill did not provide adequate information in respect of matters of concern, necessitating correspondence to the responsible Minister aimed at discovering *whether* a bill attracts its terms of reference, as opposed to *why*. Details of the Committee’s concerns are set out below, but the Committee takes the opportunity to draw the Minister’s attention to its *Third Report of 2004 on The Quality of Explanatory Memoranda Accompanying Bills*.

**Strict liability**

**Clauses 322-10, 322-15, 322-20, 339-50, 339-55, 348-5, 376-1, 376-5, 410-1 and 453-5**

Various provisions in this bill, noted above, would create criminal offences of strict liability.

In its *Sixth Report of 2002* the Committee reported on the *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. It recommended a range of principles which the Committee concluded should form the framework for Commonwealth policy and practice in relation to strict and absolute liability.

In February 2004, the Minister for Justice and Customs published a *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers*. The Guide draws together the principles of the criminal law policy of the Commonwealth. Part 4.5 of the Guide contains a statement of the matters which should be considered in framing strict and absolute liability offences.

The Committee will generally draw to Senators' attention provisions which create strict liability and absolute liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill.

In this case the explanatory memorandum does not mention the fact of the proposed imposition of strict criminal liability nor does it provide any justification for these provisions. It is therefore not clear whether the principles contained in the Committee's report or the matters listed at Part 4.5 of the Guide have been considered.

The Committee **seeks the Minister's advice** as to whether the imposition of strict liability is justified in these circumstances and, further, whether consideration has been given to the principles contained in the Committee's *Sixth Report of 2002* and the matters listed at Part 4.5 of the Guide.

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

## **Legislative Instruments Act – Declarations Clauses 336-1, 339-55 and 353-1**

Clauses 336-1, 339-55 and 353-1 declare that various determinations referred to in the respective clauses are not legislative instruments. The effect of the various subclauses is to remove the respective instruments from parliamentary scrutiny.

Where a provision specifies that an instrument is *not* a legislative instrument, the Committee would expect the explanatory memorandum to explain whether the provision is merely declaratory (and included for the avoidance of doubt) or expresses a policy intention to exempt an instrument (which is legislative in character) from the usual tabling and disallowance regime set out in the Legislative Instruments Act. Where the provision is a substantive exemption, the Committee would expect to see a full explanation justifying the need for the provision. (See the Committee's *Second Report of 2005* under the heading 'Legislative Instruments Act – Declarations'.)

In this case, the explanatory memorandum does not indicate whether the reason for that statement is that the declarations are not legislative in character, or that the declarations are legislative in character but have been exempted from the operation of the *Legislative Instruments Act 2003*. The Committee **seeks the Minister's advice** on this issue.

*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.*

## **Abrogation of the privilege against self-incrimination Clause 339-50**

At common law, people can decline to answer questions on the grounds that their replies might tend to incriminate them. Legislation which interferes with this common law entitlement trespasses on personal rights and liberties.

Subclause 339-50(7) would abrogate the privilege against self-incrimination for a person required to give a declaration under subclauses 338-50(2) or (4).

The Committee does not see this privilege as absolute, recognising that the public benefit in obtaining information may outweigh the harm to civil rights. One of the factors the Committee considers is the subsequent use that may be made of any incriminating disclosures. In this case, subclause 339-50(8) limits the circumstances in which information so provided is admissible in evidence in proceedings against the affected person, and the Committee accepts that the provisions strike a reasonable balance between the competing interests of obtaining information and protecting individuals' rights.

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

### **Abrogation of the privilege against self-incrimination Clause 566-20**

Clause 566-20 would abrogate the privilege against self-incrimination for a body corporate which is required to provide information or produce a document in judicial proceedings in respect of a criminal matter arising under this measure. As noted above, at common law, people can decline to answer questions on the grounds that their replies might tend to incriminate them. Although this provision operates to compel a body corporate (rather than an individual) to provide information, it may be that the provision also affects personal rights.

It is difficult for the Committee to determine whether its terms of reference are attracted by the provision, as the only justification given in the explanatory memorandum is that it 'is based on section 1317 of the *Corporations Act 2001*.' Accordingly, the Committee **seeks from the Minister** a fuller explanation of this provision.

*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.*

## Customs Tariff Amendment Bill (No. 2) 2005

Introduced into the House of Representatives on 23 June 2005

Portfolio: Justice and Customs

### Background

The bill amends the *Customs Tariff Act 1995* to:

- amend Additional Note 3(a) to Chapter 22 to the Tariff to insert an upper limit for alcohol content, in respect of grape wine’;
- insert, in tariff subheadings 2206.00.30 and 2206.00.4, references to Additional Note 4 to Chapter 22 (defining ‘grape wine product’); and
- remove the 3% customs duty that applies to ‘business inputs’ that are subject to a Tariff Concession Order (TCO).

### Retrospective commencement

#### Subclause 2(1), items 2 and 3

By virtue of items 2 and 3 of the table in subclause 2(1) of this bill, its operative provisions will commence retrospectively, on either 1 July 2005 or 11 May 2005. 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 amendments have been the subject of Customs Tariff Proposals tabled in the House of Representatives prior to the date proposed for those amendments to come into force. The Committee has in the past been prepared to accept a degree of retrospectivity in the commencement of amendments to the Customs Tariff Act in such circumstances.

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

## **Employee Protection (Employee Entitlements Guarantee) Bill 2005**

Introduced into the House of Representatives on 20 June 2005  
By Mr Bowen as a Private Member's bill

### **Background**

The purpose of this bill is to establish a scheme to protect the interests of employees in the event of the insolvency of their employers. The bill would require employers to insure employee entitlements such as unpaid wages, annual or long service leave, redundancy or termination payments and employer's superannuation obligations. It would also provide for the determination and enforcement of claims under the scheme.

*The Committee has no comment on this bill.*

## **Health Insurance Amendment (Medical Specialists) Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Health and Ageing

### **Background**

The bill amends the *Health Insurance Act 1973* to streamline procedures and to amend the prerequisites for the recognition of certain medical specialists and consultant physicians so that their patients can access Medicare rebates at specialist or consultant physician rates.

The bill contains transitional provisions.

*The Committee has no comment on this bill.*

## **Health Insurance Amendment (Medicare Safety-nets) Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Health and Ageing

### **Background**

The bill provides for an increase in the Medicare safety net thresholds from \$300 to \$500 for concession card holders and families in receipt of Family Tax Benefit Part A, and from \$700 to \$1,000 for all other families and individuals, from 1 January 2006.

*The Committee has no comment on this bill.*



## **Higher Education Legislation Amendment (2005 Budget Measures) Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Education, Science and Training

### **Background**

The bill amends the *Higher Education Support Act 2003* to provide:

- funding under the Commonwealth Grant Scheme for 100 new places in Veterinary Science and Tropical Agriculture at James Cook University commencing in 2006; and
- \$25 million in capital infrastructure funding over 3 years from 2006 to expand facilities for students at the University of Western Sydney and improve teaching and research capacity.

The bill also amends certain maximum funding amounts under the *Higher Education Support Act 2003*, to reflect indexation increases and add a new funding year, and maximum amounts for transition funding under the *Higher Education Funding Act 1988*, to reflect indexation increases.

*The Committee has no comment on this bill.*

## **Higher Education Legislation Amendment (2005 Budget Measures No. 3) Bill 2005**

Introduced into the Senate on 23 June 2005  
Portfolio: Education, Science and Training

### **Background**

According to the Minister's second reading speech, the bill 'will strengthen the accountability requirements already in place under the *Higher Education Support Act 2003*, so that the Australian Government and Australian students can be assured that all higher education providers have structures and procedures in place which are fair, transparent and accountable [and] that higher education providers' selection procedures are based on merit in the providers' "reasonable view".'

The bill will enable an audit to be conducted on the operation of non-Table A Higher Education Providers to determine their compliance with requirements of the Act, and will also clarify the requirements which must be satisfied before a person can be taken to be a Commonwealth supported student.

### **Retrospective commencement Schedule 6 and Schedule 7, various items**

By virtue of various items in the table to subclause 3(1) in this bill, the amendments proposed in Schedule 6 and various items in Schedule 7 would commence on 23 November 2004. 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 notes that the purpose of these amendments is simply to change the current reference in the legislation from 'Open Learning Australia' to 'Open Universities Australia', and that they will make no change to the substantive law.

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

## **Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Education, Science and Training

### **Background**

The bill amends the *Higher Education Support Act 2003* to provide for the inclusion of 'Higher Education Workplace Relations Requirements' in the Commonwealth Grant Scheme Guidelines.

Universities will need to satisfy the Minister that they have complied with these requirements in their workplace agreements, as well as with the National Governance Protocols, in order to be eligible for increased funding under the Commonwealth Grant Scheme.

### **Possible retrospectivity Schedule 1, item 1**

According to the Minister's second reading speech the provisions of Schedule 1 will apply to all workplace agreements made and approved or certified after 29 April 2005, the date on which the measures were announced.

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, neither the bill itself nor the explanatory memorandum makes any mention of retrospectivity. The Committee **seeks the Minister's advice** as to whether the bill has retrospective application and, if so, the basis on which provisions of the bill are to apply retrospectively and whether that retrospectivity will operate to the detriment of any person.

*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.*

## Human Services Legislation Amendment Bill 2005

Introduced into the House of Representatives on 23 June 2005

Portfolio: Finance and Administration

### Background

According to the explanatory memorandum, this bill provides for:

- the abolition of the governance boards of Centrelink and the Health Insurance Commission (HIC);
- the replacement of HIC with Medicare Australia;
- the creation of the offices of Chief Executive Officer of Centrelink and Medicare Australia, with statutory functions; and
- the establishment of new governance arrangements under which the CEOs will be directly accountable to the Minister.

Under transitional arrangements, HIC staff will become subject to the *Public Service Act 1999*.

*The Committee has no comment on this bill.*

## Maritime Legislation Amendment Bill 2005

Introduced into the Senate on 23 June 2005

Portfolio: Transport and Regional Services

### Background

The bill makes a number of amendments to four Acts, namely the *Lighthouses Act 1911*, the *Navigation Act 1912*, the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* and the *Shipping Registration Act 1981*.

The bill is essentially an omnibus bill comprising amendments on disparate topics, including a revision of penalties imposed under the Lighthouses Act and the Navigation Act, a recognition of the modern chartering arrangements used by military forces, regulation of pilotage services and other matters relating to the safety of ships.

### Absolute and strict liability

#### Schedule 1, item 5; Schedule 2, items 32 and 39

A number of provisions in the bill create criminal offences of absolute or strict liability. The Committee will generally draw to Senators' attention provisions which create strict liability and absolute liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill.

In this case, although the explanatory memorandum does not refer explicitly to the Committee's *Sixth Report of 2002 on the Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, it explains the effect of applying absolute and strict liability, and seeks to justify the imposition of that liability in the relevant circumstances.

Proposed new subsections 19(1C), (1G), (1L), (1P), (1R) and (1T) of the *Lighthouses Act 1911*, to be inserted by item 5 of Schedule 1 to this bill, would impose absolute criminal liability for various elements of offences created by other subsections of proposed new section 19. The explanatory memorandum notes (on pages 8 to 11) that the imposition of absolute criminal liability in these circumstances is 'consistent with property offences in the Crimes Act and the *Criminal Code*.'

Proposed new subsections 186I(2) and 186K(2) of the *Navigation Act 1912*, to be inserted by item 32 of Schedule 2 to this bill, create criminal offences of strict liability. The explanatory memorandum suggests on page 20 that the imposition of strict criminal liability is appropriate ‘for consistency with the equivalent offence in the [*Great Barrier Reef Marine Park Act 1975*]. The offence is directed only at the master or owner of a ship. Such a person can be expected to be fully aware of the requirements of the legislation and the need for pilotage in compulsory pilotage areas.’

Proposed new subsection 190AA(2B) of the *Navigation Act 1912*, to be inserted by item 39 of Schedule 2 to this bill, creates criminal offences of strict liability. The explanatory memorandum points out on page 22 that this provision merely re-enacts an existing strict liability offence, and the only change that has been made is to revise the penalty.

In the light of these comments the Committee merely notes these examples of the application of absolute and strict criminal liability.

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

### **Reversal of the onus of proof Schedule 2, items 66, 68 and 70**

Proposed new subsections 267K(6), 267Y(6) and 267ZQ(6) of the *Navigation Act 1912*, to be inserted by items 66, 68 and 70 of Schedule 2 to this bill, would reverse the onus of proof in a criminal prosecution. The Committee usually comments adversely on a bill which places the onus on an accused person to disprove one or more of the elements of the offence with which he or she is charged. In this case, however, the explanatory memorandum points out (on page 27) that these provisions merely re-enact existing reversals of the onus of proof, and the only change that has been made is to revise the penalty.

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

## **Maritime Transport and Offshore Facilities Security Amendment (Maritime Security Guards and Other Measures) Bill 2005**

Introduced into the Senate on 23 June 2005

Portfolio: Transport and Regional Services

### **Background**

This bill amends the *Maritime Transport and Offshore Facilities Security Act 2003* to provide limited ‘move-on’ powers for maritime security guards, including the power to request certain information from a person found in a maritime security zone. The bill also makes a number of miscellaneous amendments to clarify intent.

According to the Minister’s second reading speech, the provisions in the bill are necessary to ‘deter and deal with unauthorised incursions into maritime security zones.’

### **Personal rights and liberties**

#### **Schedule 1**

Under existing legislation maritime security guards may restrain a person who has entered a maritime security zone and detain that person until a law enforcement officer arrives. Schedule 1 of the bill provides maritime security guards with a limited range of related powers. According to the explanatory memorandum, ‘these provisions recognise that there are circumstances when a law enforcement officer will not be available to attend a breach of a maritime security zone...’.

The amendments provide that maritime security guards may request a person found within a maritime security zone to provide identification and a reason for being in the zone; may request an unauthorised person to move on; and may remove an unauthorised person from the zone. Failure to comply with these requirements may constitute an offence.

In exercising these powers, a maritime security guard must first identify himself or herself, advise the person of his or her authority and, in relevant circumstance, tell the person that refusal to comply constitutes an offence

under the Act. The Minister's second reading speech notes that '[t]hese safeguards are intended to provide a balance between the coercive nature of the move-on powers and the rights of individuals'.

The Committee notes that these provisions attempt to strike a balance between competing interests. Nonetheless, there is a risk that the provisions may be regarded as trespassing on the personal rights and liberties of people who become subject to the exercise of the extended powers. In accordance with its practice, the Committee makes no final determination of this matter, but **leaves for the Senate as a whole** the question of whether the provisions unduly trespass upon personal rights and liberties.

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



## **Migration Amendment (Detention Arrangements) Bill 2005**

Introduced into the House of Representatives on 21 June 2005, this bill passed the Senate on 23 June 2005

Portfolio: Immigration and Multicultural and Indigenous Affairs

### **Background**

According to the explanatory memorandum, the bill ‘amends provisions in the *Migration Act 1958* to provide greater flexibility and transparency in the administration of the detention of persons known or reasonably suspected to be unlawful non-citizens.’

The bill provides:

- that a minor shall only be detained as a measure of last resort;
- a non-compellable power for the Minister to specify alternative arrangements for a person’s detention and to impose conditions to apply to the detention of that person;
- a non-compellable power for the Minister to grant a visa to a person who is in detention; and
- that the Secretary shall report to the Commonwealth Ombudsman on persons who have been detained for two years or more, and provides for the Ombudsman to provide assessments and recommendations relating to those persons to the Minister, including statements to be tabled.

*The Committee has no comment on this bill.*

## National Animal Welfare Bill 2005

Introduced into the Senate on 20 June 2005  
By Senator Bartlett as a Private Senator's bill

### Background

The bill seeks to ensure that animal welfare issues are given adequate priority at a national level. It aims to promote the care, protection and use of domestic animals, livestock, wildlife and animals kept for scientific purposes in a way that is humane, responsible and accountable.

The bill:

- provides for regulations about codes of practice for animal welfare;
- allows regulations to require compliance with codes of practice;
- imposes a duty of care on persons in charge of animals;
- prohibits or regulates certain conduct in relation to animals; and
- requires any person using an animal for scientific purposes to be registered and to comply with any scientific use code of practice and a duty of care.

The bill establishes a National Animal Welfare Authority to co-ordinate, monitor and review Commonwealth responsibilities for animal welfare, and to appoint inspectors to ensure the welfare, protection and rights of animals.

*The Committee has no comment on this bill.*

## **National Residue Survey (Customs) Levy Amendment Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Agriculture, Fisheries and Forestry

### **Background**

Introduced with the National Residue Survey (Excise) Levy Amendment Bill 2005, the bill amends the *National Residue Survey (Customs) Levy Act 1998* to insert a new operative levy rate of 0.075 of a cent per kilogram for fresh apples and pears exported from Australia and increase the present maximum rate of 0.06 of a cent per kilogram for all apples and pears exported from Australia to 0.1 of a cent per kilogram.

The bill will allow the apple and pear industry scope to expand its operative rate of levy by subordinate legislation.

*The Committee has no comment on this bill.*

## **National Residue Survey (Excise) Levy Amendment Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Agriculture, Fisheries and Forestry

### **Background**

Introduced with the National Residue Survey (Customs) Levy Amendment Bill 2005, the bill amends the *National Residue Survey (Excise) Levy Act 1998* to insert a new operative levy rate of 0.075 of a cent per kilogram for fresh apples and pears produced in Australia and also increase the present maximum rate of 0.06 of a cent per kilogram for all apples and pears produced and processed in Australia to 0.1 of a cent per kilogram.

The bill will allow the apple and pear industry scope to expand its operative rate of levy by subordinate legislation.

*The Committee has no comment on this bill.*

## **Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2005**

Introduced into the House of Representatives on 23 June 2005

Portfolio: Employment and Workplace Relations

### **Background**

This bill amends the *Occupational Health and Safety (Commonwealth Employment) Act 1991* to provide improved health and safety protection for Commonwealth employees at work by:

- revising the provisions relating to the employer's duty of care to provide a greater focus on occupational health and safety outcomes;
- recognising the primacy of direct employer and employee relationships by facilitating consultations between the parties in a more direct relationship and supporting the objective of greater consultation;
- revising annual reporting requirements of Commonwealth agencies to provide a greater focus on outcomes rather than process;
- enabling Comcare to exercise some powers currently conferred on the Safety Rehabilitation and Compensation Commission;
- giving health and safety representatives the power to request an investigation into an alleged contravention of the Act where a provisional improvement notice has been issued; and
- making technical amendments to various provisions of the Act to correct deficiencies or otherwise improve the operation of these provisions.

*The Committee has no comment on this bill.*

## Offshore Petroleum Bill 2005

Introduced into the House of Representatives on 23 June 2005

Portfolio: Industry, Tourism and Resources

### Background

This bill (part of a package of 6 bills) replaces the *Petroleum (Submerged Lands) Act 1967* to provide reduced compliance costs for the upstream petroleum industry and for the governments that are charged with administering it. It provides changes to the structure and style of the legislation but, according to the Minister's second reading speech, 'seeks to implement only a modest number of minor policy changes.'

The bill provides for the grant of exploration permits, retention leases, production, infrastructure and pipeline licenses, and special prospecting and access authorities which will have effect in offshore areas. Offshore areas start 3 nautical miles from the baseline from which the breadth of the territorial sea is measured and extend seaward to the outer limits of the continental shelf.

The bill also contains occupational health and safety provisions and maintains the operation of the National Offshore Petroleum Safety Authority for their administration. It proposes a number of incidental changes which deal with anomalies and past drafting errors and bring provisions into line with current Australian Government legislative drafting principles.

### Commencement on Proclamation

#### Subclause 2(1), item 2

Item 2 of the table in subclause 2(1) of this bill provides that almost all of its provisions will commence on Proclamation, with no limit specified within which the bill must commence in any event.

The Committee takes the view that Parliament is responsible for determining when laws are to come into force, and that commencement provisions should contain appropriate restrictions on the period during which legislation might commence. This view has long been reflected in the drafting directions issued by the Office of Parliamentary Counsel (currently *Drafting Direction 2005*,

*No. 10* at paragraphs 16 to 22). The drafting direction provides that a clause which provides for commencement by proclamation should also specify a period or date after which the Act either commences or is taken to be repealed. It also provides that any proposal to defer commencement for more than 6 months after assent should be explained in the explanatory memorandum.

The explanatory memorandum points out, in justification of this provision, that the commencement of this measure is dependent on the enactment of complementary legislation by the States and the Northern Territory. The Committee has usually accepted this situation as justifying an extended, but not an open-ended, period for commencement (see *Drafting Direction 2005, No. 10* at paragraphs 88 to 90). The Committee also notes that there is nothing in the bill which would require a Proclamation to be issued within some specified time after the complementary legislation has been enacted.

Accordingly, the Committee **seeks the Minister's advice** as to whether the commencement clause might not also be subject to the provision that, if the necessary Proclamation has not been issued by some fixed date in the future, the Act will be automatically treated as having been repealed on that date.

*Pending the Minister's advice, 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.*

### **Strict liability**

**Subclauses 290(5), 303(5), 307(2) 329(10), 331(8) and 336(6);  
Schedule 3, subitems 82(1) and 83(3)**

A number of provisions in the bill would create criminal offences of strict liability. The Committee will generally draw to Senators' attention provisions which create strict liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill.

In this case, although the explanatory memorandum does not refer explicitly to the Committee's *Sixth Report of 2002 on the Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, it explains the effect of applying strict liability, and seeks to justify its imposition in the relevant circumstances.

In respect of subclauses 290(5), 303(5), 307(2) and 336(6) and Schedule 3, subitems 82(1) and 83(3), the explanatory memorandum points out that, in each case, the offence consists of an omission, and observes that if the offence were not one of strict liability, it would be extremely difficult to prove the necessary guilty intent of the accused.

In respect of subclauses 329(10) and 331(8) the Committee notes that, in each case, the clause as a whole imposes criminal liability for particular conduct, but varies the penalty depending on the mental element which must be proved.

In the light of these comments the Committee merely notes these examples of the application of strict liability.

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

### **Reversal of the onus of proof Subclause 301(7) and clause 309**

Subclause 301(7) and clause 309 would reverse the onus of proof in a criminal proceeding, and require the defendant to prove, on the balance of probabilities, matters which would excuse criminal liability. The Committee usually comments adversely on a bill which places the onus on an accused person to disprove one or more of the elements of the offence with which he or she is charged.

In this case, the explanatory memorandum merely notes the effect of these provisions, and does not seek to justify this departure from the general law. The Committee **seeks the Minister's advice** as to the reason for this reversal of the onus of proof.



*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.*

### **'Henry VIII' clause**

#### **Imposition of a tax by regulation**

##### **Subclause 399(1)**

A Henry VIII clause is an express provision which authorises the amendment of either the empowering legislation, or any other primary legislation, by means of delegated legislation. Since its establishment, the Committee has consistently drawn attention to Henry VIII clauses and other provisions which (expressly or otherwise) permit subordinate legislation to amend or take precedence over primary legislation. Such provisions clearly involve a delegation of legislative power and are usually a matter of concern to the Committee. Clause 399 creates such a delegation of legislative power.

Subclause 399(1) would exempt the National Offshore Petroleum Safety Authority from any liability to taxation under the laws of the Commonwealth, States or Territories. However, subclause 399(2) would permit that exemption to be removed, in relation to a specified law, by regulation. The effect of that subclause is therefore to permit the imposition of taxation on the Authority by delegated, rather than primary, legislation.

One concern which the Committee has regularly raised in relation to the imposition of any form of taxation or levy by regulation is that the regulation takes effect as soon as it is made, and might not be disallowed for many sitting days after it has been made. The relevant tax could have effect for a number of months before a disallowance motion was considered by the Senate. In the meantime, the tax would have been validly levied, and could not be refunded without further Parliamentary intervention.

The Committee **seeks the Minister's advice** on the reason for this 'Henry VIII' clause, especially in view of the fact that it would permit the imposition of taxation by delegated legislation.

*Pending the Minister's advice, 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.*

**Abrogation of the privilege against self-incrimination  
Subclause 412(2) and subitem 74(9)**

Subclause 412(1) of the bill, and subitem 74(8) of Schedule 3, would abrogate the privilege against self-incrimination for a person required to provide information or produce a document under the measure. At common law, people can decline to answer questions on the grounds that their replies might tend to incriminate them. Legislation which interferes with this common law entitlement trespasses on personal rights and liberties.

The Committee does not see this privilege as absolute, recognising that the public benefit in obtaining information may outweigh the harm to civil rights. One of the factors the Committee considers is the subsequent use that may be made of any incriminating disclosures. In this case, subclause 412(2) and subitem 74(9), respectively, limit the circumstances in which information so provided is admissible in evidence in proceedings against the affected person, and the Committee is prepared to accept that the provisions strike a reasonable balance between the competing interests of obtaining information and protecting individuals' rights.

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

## Offshore Petroleum (Annual Fees) Bill 2005

Introduced into the House of Representatives on 23 June 2005

Portfolio: Industry, Tourism and Resources

### Background

Introduced with the Offshore Petroleum Bill 2005 and related bills, this bill sets out the annual fees payable in relation to petroleum exploration permits, retention leases and production, infrastructure and pipeline licences. The amount of the fees is to be specified in regulations.

### Setting an amount of tax by regulation

#### Subclause 4(3)

The purpose of this bill, as the name suggests, is to impose annual fees for various aspects of drilling for and recovering petroleum in offshore areas. By virtue of subclause 4(3) the amount of each of the fees is to be fixed by regulation, with no upper limit set in the primary legislation. The Committee has noted in the past, with similar provisions, that to set the amount of what could be a tax by delegated legislation may be regarded as an inappropriate delegation of legislative power.

The Minister appears to suggest, in his second reading speech, that the amount of the fees will be set with a view to no more than cost recovery, when he says that ‘the holders of permits, leases and licences must pay a fee to help [to] recover the costs of administration.’ The Committee takes the view that, if the amount of the various fees is limited to cost recovery, then they cannot properly be regarded as taxes, and the setting of their amount by regulation could no longer be regarded as an inappropriate delegation of legislative power.

The Committee therefore **seeks the Minister’s advice** as to whether the amount of the fees will be limited to cost recovery and, if so, whether the bill should not also contain a clause prescribing an appropriate limit.

*Pending the Minister's advice, 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.*

## **Offshore Petroleum (Registration Fees) Bill 2005**

Introduced into the House of Representatives on 23 June 2005

Portfolio: Industry, Tourism and Resources

### **Background**

Introduced with the Offshore Petroleum Bill 2005 and related bills, this bill sets out the different levels of registration fees payable in relation to the registration of transfers and dealing in titles under the proposed Offshore Petroleum Act. They can range from a minimum amount prescribed in regulations to an ‘*ad valorem*’ fee of 1.5% of the value of the consideration or of the value of the title or interest. The bill proposes a policy change, providing that registration fees be extended to cover transfers of, and dealings in, infrastructure. This could, in the long term, be expected to lead to some increase in registration fee revenues.

The bill also proposes a minor clarification of what appears in the Petroleum (Submerged Lands) (Registration Fees) Act in relation to the deduction from the amount of registration fee imposed by the Act of the value of any exploration works to be carried out under the dealing that is being registered.

### **Setting an amount of tax by regulation**

#### **Clauses 5 and 6**

Items 2, 3 and 4 in the table to subclause 5(2) provide that the amount of the fees referred to in those items is to be set by regulation, with no upper limit specified in the primary legislation. Subclause 5(4) states that the ‘fee imposed by this section is imposed as a tax.’ Similarly, items 5 and 6 in the table to subclause 6(2) provide that the amount of the fees referred to in those items is to be set by regulation, with no upper limit specified in the primary legislation, and subclause 6(6) states that the fee is again ‘imposed as a tax’.

The Committee has noted in the past, with similar provisions, that to set the amount of what could be a tax by delegated legislation may be regarded as an inappropriate delegation of legislative power.

The explanatory memorandum notes the amount of each of these fees at the time of the introduction of this legislation. The Committee **seeks the Minister's advice** as to whether it would be possible for the primary legislation to specify a maximum amount for each of these fees.

*Pending the Minister's advice, 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.*

## **Offshore Petroleum (Repeals and Consequential Amendments) Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Industry, Tourism and Resources

### **Background**

Introduced with the Offshore Petroleum Bill 2005 and related bills, this bill repeals the *Petroleum (Submerged Lands) Act 1967*, *Petroleum (Submerged Lands) Fees Act 1994*, *Petroleum (Submerged Lands) (Registration Fees) Act 1967* and *Petroleum (Submerged Lands) (Royalty) Act 1967*, and makes consequential amendments to 30 other Commonwealth Acts.

*The Committee has no comment on this bill.*

## **Offshore Petroleum (Royalty) Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Industry, Tourism and Resources

### **Background**

Introduced with the Offshore Petroleum Bill 2005 and related bills, this bill sets out the royalty payable in respect of petroleum produced in the North West Shelf project area under the proposed Offshore Petroleum Act.

*The Committee has no comment on this bill.*



## **Offshore Petroleum (Safety Levies) Amendment Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Industry, Tourism and Resources

### **Background**

Introduced with the Offshore Petroleum Bill 2005 and related bills, this bill amends the *Offshore Petroleum (Safety Levies) Act 2003* by omitting references to the *Petroleum (Submerged Lands) Act 1967* and replacing them with references to the proposed Offshore Petroleum Act and ensuring amendments or name changes to other Acts or Regulations will not have any effect on key definitions in the Act. The bill also contains transitional provisions.

*The Committee has no comment on this bill.*

## Parliamentary Privileges Amendment Bill 2005

Introduced into the House of Representatives on 20 June 2005

By Mr Kerr as a Private Member's bill

### Background

The bill amends the *Parliamentary Privileges Act 1987* to provide that, where a person gives evidence against another person in a court or in another tribunal, and that person has previously made a statement in evidence to a House of Parliament or to a parliamentary committee and the statement is not consistent with the person's evidence to the court or tribunal, the person's credibility may be tested by questioning in the court or tribunal as to the statement he or she made to the House or committee.

In all other respects the protection provided will continue to apply.

*The Committee has no comment on this bill.*

## **Superannuation Legislation Amendment (Superannuation Safety and Other Measures) Bill 2005**

Introduced into the House of Representatives on 23 June 2005  
Portfolio: Finance and Administration

### **Background**

The bill amends the *Superannuation Act 1976*, the *Superannuation Act 1990*, and the *Superannuation Act 2005* to:

- provide that the appointment of members and acting members of the CSS Board comply with the Superannuation Industry Supervision fitness and propriety operating standard;
- allow the CSS and PSS Boards to delegate powers to their staff;
- allow the Boards to send to the designated employer of a member of the relevant scheme any document required to be sent to the member;
- allow negative crediting rates to be applied to CSS member accounts; and
- validate benefits received by particular CSS members in breach of superannuation laws.

### **Retrospective application Schedule 3**

Schedule 3 to this bill will apply from 1 July 1995. 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 states that the purpose of the bill is to validate various payments purportedly made under the *Superannuation Act 1976* but which breached the terms of that Act and other legislation. The Schedule is therefore beneficial to the persons who have received the payments referred to.

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

## **Tax Laws Amendment (2005 Measures No. 4) Bill 2005**

Introduced into the House of Representatives on 23 June 2005

Portfolio: Treasury

### **Background**

This bill is an omnibus tax laws amendment bill, comprising four Schedules and making amendments to four Acts. Topics include:

- introduction of child care tax rebate of 30 per cent of out-of-pocket child care expenses;
- adding new organisations to the list of deductible gift recipients;
- disclosure of business income tax information to the Australian Statistician; and
- access to the wine producer rebate for New Zealand wine producers who export to the Australian market.

The bill also makes consequential amendments to the *Taxation Administration Act 1953* and the *A New Tax System (Family Assistance) (Administration) Act 1999*.

### **Commencement on Proclamation**

#### **Schedule 4**

*Drafting Direction 2005, No. 10*, issued by the Office of Parliamentary Counsel, provides (at paragraphs 18 and 19) that any proposal to defer commencement for more than 6 months after assent should be explained in the explanatory memorandum.

By virtue of item 3 of the table in subclause 2(1) of this bill, the amendments proposed in Schedule 4 will commence on Proclamation, but may not commence for up to 12 months after Assent. The explanatory memorandum appears not to refer to this fact, and therefore does not comply with the drafting direction. The amendments proposed by Schedule 4 will extend the

wine equalisation rebate to New Zealand wine producers, and it may be that complementary legislation in that country is required for the amendment to become effective, a circumstance that is usually accepted by the Committee as a reasonable explanation for an extended delay in commencement.

The Committee **seeks the Treasurer's advice** on the reason for this delayed commencement, and whether an explanation should have been provided in the explanatory memorandum.

*Pending the Treasurer's advice, 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.*

### **Retrospective application Schedule 2, items 1, 2, 3, 5 and 12**

By virtue of items 1, 2, 3, 5 and 12 of Schedule 2, the amendments proposed in that Schedule will apply from various dates in 2005 prior to the introduction of this measure. 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 amendments are beneficial to those taxpayers who have made gifts to the bodies referred to in the various items.

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

## Taxation Laws Amendment (Scholarships) Bill 2005

Introduced into the Senate on 21 June 2005

By Senator Stott Despoja as a Private Senator's bill

### Background

The bill amends the *Income Tax Assessment Act 1997* to remove the distinction between full-time and part-time scholarships to make all scholarships which satisfy the other criteria in the existing provisions tax free.

It also amends the *Social Security Act 1991* and the *Veterans' Entitlements Act 1986* to remove the distinction between Commonwealth Learning Scholarships and university-based scholarships by making a new class of university scholarships, exempt from the social security personal income test.

*The Committee has no comment on this bill.*

## **Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Bill 2005**

Introduced into the House of Representatives on 23 June 2005

Portfolio: Communications, Information Technology and the Arts

### **Background**

This bill amends the *Telecommunications Act 1997* to enable the Australian Communications and Media Authority (ACMA) to establish protection zones to prevent damage to submarine telecommunications cables of national significance.

The explanatory memorandum indicates that the protection scheme has been developed in consultation with a wide range of stakeholders, including Commonwealth, state and territory governments, the fishing petroleum exploration industries and the telecommunications industry.

The ACMA will be authorised to vary and revoke protection zones and to issue permits to install submarine cables within protection zones and Commonwealth controlled waters. Heavy criminal penalties will apply for breaking or damaging a submarine cable within a protection zone, and for engaging in prohibited or restricted activity.

### **Strict liability**

#### **Proposed new Schedule 3A, items 36, 37, 39, 44 and 84**

Items 36, 37, 39, 44 and 84 of proposed new Schedule 3A to the *Telecommunications Act 1997*, to be inserted by item 6 of Schedule 1 to this bill, would impose strict criminal liability for various offences.

In its *Sixth Report of 2002* the Committee reported on the *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. It recommended a range of principles which the Committee concluded should form the framework for Commonwealth policy and practice in relation to strict and absolute liability.

In February 2004, the Minister for Justice and Customs published a *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers*. The Guide draws together the principles of the criminal law policy of the Commonwealth. Part 4.5 of the Guide contains a statement of the matters which should be considered in framing strict and absolute liability offences.

The Committee will generally draw to Senators' attention provisions which create strict liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill.

In this case the explanatory memorandum, while explaining the effect of strict criminal liability, does not seek to justify its imposition in these circumstances. It is therefore not clear from the explanatory memorandum whether the principles contained in the Committee's report or the matters listed at Part 4.5 of the Guide have been considered.

The Committee **seeks the Minister's advice** as to whether the imposition of strict liability is justified in these circumstances and, further, whether consideration has been given to the principles contained in the Committee's *Sixth Report of 2002* and the matters listed at Part 4.5 of the Guide.

*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.*



## **Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005**

Introduced into the Senate on 23 June 2005  
Senator Stott Despoja as a Private Senator's bill

### **Background**

According to its objects clause, this bill seeks to prohibit misleading and deceptive notification and advertising of pregnancy counselling services; to promote transparency and full choice in the notification and advertising of pregnancy counselling services; improve public health; and minimise the difficulties associated with obtaining advice to deal with unplanned pregnancy.

The bill requires that a pregnancy counselling service that does not provide referrals for termination must include in any advertisement or notification a statement that the service 'does not provide referrals for termination of pregnancy'.

*The Committee has no comment on this bill.*

## 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.

**TABLE**

Bill/Act	Section/Subsection	Offence	Penalty
Corporations (Aboriginal and Torres Strait Islander) Bill 2005	Subclause 453-5(5)	Failure to provide information	30 penalty units or imprisonment for 6 months, or both
Offshore Petroleum Bill 2005	Subclauses 288(4), 289(4), 290(4)	Failure to provide information	50 penalty units
	Subclause 409(5)	Failure to provide information	100 penalty units

## PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

### AMENDMENTS IN THE SENATE

**(20 June to 24 June 2005)**

#### **Crimes Legislation Amendment (Telecommunications Interception and Other Measures) Bill 2005**

The Senate amended this bill on 22 June 2005, following recommendations from the Legal and Constitutional Legislation Committee, to revise arrangements relating to instruments declaring emergency service facilities and improve parliamentary oversight of the scheme. The original arrangements were considered by this Committee in *Alert Digest No. 4 of 2005*.

## 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	
<b>Bills dealt with in 2004</b>							
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)
<i>James Hardie (Investigations and Proceedings) Act 2004</i>	12(8.12.04)	2.12.04	8.12.04	Treasury	9.12.04	1.7.05	7(10.8.05)
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)
<b>Bill dealt with in 2005</b>							
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)
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)
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
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)
<i>Defence Amendment Act 2005</i>	2(9.3.05)	10.2.05	7.3.05	Defence	10.3.05	22.6.05	7(10.8.05)
Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Bill 2005	5(1.6.05)	26.5.05	15.6.05	Family and Community Services	1.6.05	20.6.05	6(22.6.05)
Film Licensed Investment Company Bill 2005	5(1.6.05)	26.5.05	16.6.05	Communications, Information Technology and the Arts	1.6.05	21.6.05	6(22.6.05)
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	26.7.05	7(10.8.05)
Maritime Transport Security Amendment Bill 2005	5(1.6.05)	25.5.05	14.6.05	Transport and Regional Services	1.6.05	21.6.05	6(22.6.05)
<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	20.6.05	Treasurer	12.5.05	31.5.05	5(15.6.05)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
Trade Practices Amendment (National Access Regime) Bill 2005	6(15.6.05)	2.6.05		Treasury	15.6.05		