

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



Alert Digest

No. 12 of 2005

5 October 2005

Senate Standing Committee
for the
Scrutiny of Bills

Alert Digest No. 12 of 2005

5 October 2005

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.

TABLE OF CONTENTS

Commentary on bills

Customs Tariff Amendment (Commonwealth Games) Bill 2005	5
Education Services for Overseas Students Amendment Bill 2005	6
• Energy Efficiency Opportunities Bill 2005	7
Government Advertising (Prohibiting use of taxpayers' money on party political advertising) Bill 2005	9
Health Legislation Amendment Bill 2005	10
Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005	11
• Law and Justice Legislation Amendment (Video Link Evidence and Other Measures) Bill 2005	12
• Migration and Ombudsman Legislation Amendment Bill 2005	14
National Health Amendment (Budget Measures—Pharmaceutical Benefits Safety Net) Bill 2005	16
National Health Amendment (Immunisation Program) Bill 2005	17
• Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Bill 2005	18
• Telecommunications (Interception) Amendment (Stored Communications and Other Measures) Bill 2005	21

- **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.

Therapeutic Goods Amendment Bill (No. 2) 2005	22
Trade Practices Amendment (Collective Bargaining for Small Business) Bill 2005	23

- **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.

Customs Tariff Amendment (Commonwealth Games) Bill 2005

Introduced into the House of Representatives on 14 September 2005

Portfolio: Justice and Customs

Background

This bill amends the *Customs Tariff Act 1995* to allow duty-free entry for goods of a non-commercial nature imported for use in or for purposes related to the Melbourne 2006 Commonwealth Games. The concession will operate for a period of 6 months from 1 January 2006.

The Committee has no comment on this bill.

Education Services for Overseas Students Amendment Bill 2005

Introduced into the House of Representatives on 14 September 2005
Portfolio: Education, Science and Training

Background

This bill was introduced with the Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005, which proposes amendments to the *Higher Education Support Act 2003*. Among those amendments are provisions enabling foreign-owned higher education providers to be listed as 'Table C' higher education providers. This bill makes consequential amendments to the *Education Services for Overseas Students Act 2000* enabling those providers to also become registered providers within the meaning of that Act.

The bill also allows registered providers to charge overseas students a fee, as part of the student's tuition fee, for action required under the Act or the related national code of practice.

The Committee has no comment on this bill.

Energy Efficiency Opportunities Bill 2005

Introduced into the House of Representatives on 14 September 2005

Portfolio: Industry, Tourism and Resources

Background

This bill establishes the framework for mandatory energy efficiency opportunities assessments announced in the Government's energy white paper, in June 2004.

The bill deals with registration of company details; submission of assessment plans; undertaking assessments; reporting on the outcomes of assessments; and compliance and enforcement arrangements.

Insufficiently defined administrative powers

Paragraph 25(1)(b)

Paragraph 25(1)(b) would allow the Secretary to the Department of Industry, Tourism and Resources to appoint 'any ... suitably qualified person' as an authorised officer. Such officers have the power to enter premises either with consent or under the authority of a monitoring warrant, to ask questions and to seek production of documents. The explanatory memorandum gives no indication of what type of person might be regarded as 'suitably qualified' for these purposes.

The Committee has consistently drawn attention to provisions which allow significant or wide-ranging powers to be delegated to 'a person', preferring to see a limit on either the powers delegated or the categories of people to whom they might be delegated. The Committee **seeks the Minister's advice** as to whether it would be possible to limit or better specify the range of persons who might be appointed under paragraph 25(1)(b).

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon insufficiently

defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

Government Advertising (Prohibiting use of taxpayers' money on party political advertising) Bill 2005

Introduced into the House of Representatives on 12 September
By Mr K J Thomson

Background

According to its objects clause, this bill requires government advertising to meet minimum standards of objectivity, fairness and accountability and prohibits the misuse of government advertising for party political purposes.

The Committee has no comment on this bill.

Health Legislation Amendment Bill 2005

Introduced into the House of Representatives on 14 September 2005
Portfolio: Health and Ageing

Background

The bill amends the *National Health Act 1953* to extend, until 30 June 2006, the existing arrangements for approving pharmacists to supply medicines subsidised under the Pharmaceutical Benefits Scheme to enable consideration of a review of those arrangements.

The amendments in Schedule 2 of the bill ensure that dependants (if any) of contributors to a health benefits fund with appropriate cover, as well as the contributors, receive the benefit of regulatory provisions.

The amendments in Schedule 3 clarify the regulation-making power in the *Health Insurance Act 1973* and allow the Minister to determine, by legislative instrument, that Medicare benefits are not payable in respect of professional services rendered in specified circumstances.

The Committee has no comment on this bill.

Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005

Introduced into the House of Representatives on 14 September 2005
Portfolio: Education, Science and Training

Background

This bill amends the *Higher Education Support Act 2003* to allow Carnegie Mellon University and other high quality foreign universities to be listed as overseas higher education ‘Table C’ providers to provide education and training services to international and domestic students in Australia.

The bill specifies the quality and accountability requirements that the providers must meet and requires that the providers must comply with regulations and requirements made under section 238-10 of the Guidelines. The bill also allows the Minister to specify additional requirements or conditions by legislative instrument.

The bill will enable eligible Australian students to obtain limited assistance such as FEE-HELP.

The bill also makes technical amendments to a number of Acts as a consequence of the commencement of the *Legislative Instruments Act 2003*.

The Committee has no comment on this bill.

Law and Justice Legislation Amendment (Video Link Evidence and Other Measures) Bill 2005

Introduced into the House of Representatives on 14 September 2005

Portfolio: Attorney-General

Background

The primary purpose of this bill is to create video link evidence provisions that apply to proceedings for terrorism and related offences and for ‘proceeds of crime’ proceedings. The bill will allow evidence from overseas witnesses who are unable to travel to Australia to be put before the court using video link technology.

The bill also amends the *Foreign Evidence Act 1994* to facilitate the use of foreign material, such as video tapes and transcripts of examinations, as evidence in terrorism cases.

The bill also amends the following Acts:

- *Crimes Act 1914*, to clarify that judges of the Federal Court and federal magistrates who exercise a conferred non-judicial function or power under a Commonwealth law relating to criminal matters do so in their personal capacity; to expand the definition of ‘tape recording’; and to facilitate inter-jurisdictional matching of DNA profiles.
- *Proceeds of Crime Act 2002*, to enable the Director of Public Prosecutions to seek payments out of the Confiscated Assets Account to reimburse third parties who conduct future examinations; and to rectify an unintended consequence of Proceeds of Crime Regulations which, inadvertently changed the status of some examiners, meaning examinations may have been conducted without proper authority.
- *Surveillance Devices Act 2004*, so that a warrant can be obtained to retrieve a tracking device installed under an emergency authorisation.

Retrospective application
Schedule 1, item 28

Item 28 of Schedule 1 would validate certain examinations conducted under the *Proceeds of Crime Act 2002* during the period from 7 September 2004 and 19 August 2005 by some non-presidential members of the Administrative Appeals Tribunal.

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. Although the measure is clearly retrospective in effect, the explanatory memorandum points out that its purpose is to correct an unintended consequence of amendments of certain regulations. It appears that the retrospectivity will not detrimentally affect any person.

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

Migration and Ombudsman Legislation Amendment Bill 2005

Introduced into the Senate on 15 September 2005

Portfolio: Immigration and Multicultural and Indigenous Affairs

Background

This bill amends the *Migration Act 1958* to establish time limits for making and reviewing ‘protection visa’ decisions and to permit disclosure of personal identifiers to assist with identifying or locating a person in connection with the administration of the Act.

The bill also amends the *Ombudsman Act 1976* and other legislation in connection with the Ombudsman’s increased role in immigration and detention matters.

The bill also amends the *Migration Act 1958* and the *Migration Legislation Amendment Act (No. 1) 2001* to:

- allow for the remaking of instruments incorporated into the *Migration Regulations 1994* and instruments fixing the number of visas of a class which may be granted in a year; and
- make other technical amendments which are consequential to the *Legislative Instruments Act 2003*.

Alteration of contractual rights Schedule 2, items 3, 6, 11, 12 and 15

These items in Schedule 2 of the bill insert into the *Ombudsman Act 1976* various provisions which bring within the purview of those subject to investigation by the Ombudsman entities which provide services to the public on behalf of the Commonwealth, under a contract between the Commonwealth and the service provider, and the employees of such entities. In view of the fact that there is no application provision in the bill, these provisions will unilaterally change the terms of the contract which any service provider has entered into with the Commonwealth, in derogation of the contractual rights which the service provider had under that contract. The

above provisions will also render subject to the investigative powers of the Ombudsman those individuals who are employed by such entities, thereby changing the terms of their employment contracts. The Committee considers that the above amendments may trespass on individual rights, but whether they do so *unduly* is a matter which is properly **left for consideration by 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.

National Health Amendment (Budget Measures—Pharmaceutical Benefits Safety Net) Bill 2005

Introduced into the House of Representatives on 14 September 2005
Portfolio: Health and Ageing

Background

This bill amends the *National Health Act 1953* to implement new safety net and patient co-payments arrangements for some pharmaceutical benefits where the benefit is supplied within 20 days of a previous supply. The bill also increases the thresholds for eligibility for Pharmaceutical Benefits Scheme safety net entitlements.

The Committee has no comment on this bill.

National Health Amendment (Immunisation Program) Bill 2005

Introduced into the House of Representatives on 14 September 2005

Portfolio: Health and Ageing

Background

This bill amends the *National Health Act 1953* to:

- expand the role of the Pharmaceutical Benefits Advisory Committee (PBAC) to include provision of advice to the Minister for Health and Ageing about vaccines to be funded under the National Immunisation Program;
- ensure the Minister obtains advice from the PBAC prior to removing a designated vaccine, the advice to be tabled in both Houses of Parliament; and
- increase the membership of the PBAC and provide that the position of Chairperson is a full-time position.

The Committee has no comment on this bill.

Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Bill 2005

Introduced into the House of Representatives on 14 September 2005

Portfolio: Treasury

Background

This bill amends the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997*, the *Income Tax Assessment Act 1936* and the *Taxation Laws Amendment Act (No. 3) 2003* to:

- reform the company loss recoupment rules;
- provide tax relief for conduit foreign income;
- deny deductions for expenditure connected with activities in respect of which the taxpayer has been convicted of an indictable offence;
- include copyright in a film, in the general effective life depreciation of the uniform capital allowances provisions; and
- provide tax relief for employees who participate in certain employee share schemes.

The bill also amends the *Superannuation Guarantee (Administration) Act 1992* to:

- allow a late payment of contributions to be offset against an employer's superannuation guarantee charge; and
- clarify that mandatory employer contributions under superannuation guarantee arrangements are payable on wages or salary paid in a quarter following the termination of an employment relationship.

The bill also contains application, consequential and transitional provisions.

Retrospective application
Schedule 1, items 169 to 176

Items 169 to 176 of Schedule 1 provide that the amendments proposed that Schedule would apply from various dates from the 1997-1998 year of income up to the date of Assent to the bill.

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 4, that the ‘financial impact of this measure is unquantifiable’ but that there is ‘expected to be an unquantifiable cost to revenue over the forward estimated period’.

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

Legislation by press release
Schedule 3, item 5

Item 5 of Schedule 3 provides that the amendments proposed that Schedule would apply from 29 April 2005, the date of the Treasurer’s press release announcing this measure. This is therefore an example of ‘legislation by press release’.

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 bill has been introduced within 6 months of the press release, as expected by the Senate resolution of 8 November 1988, and the effect of the amendment is to deny deductibility for losses or outgoings incurred in the course of activities in respect of which the taxpayer has been convicted of an indictable offence.

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

**Retrospective application
Schedule 4, item 12**

Item 12 of Schedule 4 provides that the amendments proposed that Schedule would apply from 1 July 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, on page 7, that this measure is estimated to cost revenue \$15 million in the 2005-06 tax year, rising to \$70 million in the 2008-09 tax year.

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

Telecommunications (Interception) Amendment (Stored Communications and Other Measures) Bill 2005

Introduced into the House of Representatives on 14 September 2005
Portfolio: Attorney-General

Background

This bill amends the *Telecommunications (Interception) Act 1979*, to:

- extend for 6 months the operation of provisions that enable access to stored communications without the need for a warrant under the Act;
- provide for greater use of intercepted material by agencies involved in the investigation of corruption; and
- make technical amendments consequential on the commencement of the *Legislative Instruments Act 2003*.

Commencement on proclamation Schedule 1, part 2

Item 3 in the table to subclause 2(1) in this bill provides that the amendments proposed in Part 2 of Schedule 1 would commence on proclamation, but must commence 12 months after Assent in any event. The explanatory memorandum observes that these amendments are concerned with making the Victorian Office of Police Integrity an eligible authority for the purposes of the *Telecommunications (Interception) Act 1979*, and that the 12-month commencement period ‘is necessary to give the Victorian Government sufficient time to enact necessary legislation’.

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

Therapeutic Goods Amendment Bill (No. 2) 2005

Introduced into the House of Representatives on 14 September 2005
Portfolio: Health and Ageing

Background

This bill amends the *Therapeutic Goods Act 1989* to narrow the circumstances in which a patent certificate is required by applicants seeking to have goods included in the Register. The bill eases current patent certification requirements which came into force on 1 January 2005 and were considered to be broader than they needed to be.

The Committee has no comment on this bill.

Trade Practices Amendment (Collective Bargaining for Small Business) Bill 2005

Introduced into the House of Representatives on 12 September
Mr Fitzgibbon

Background

This bill amends the *Trade Practices Act 1974* to provide for a less expensive and more streamlined authorisation process for collective bargaining for small business.

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)
<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)
Bill dealt with in 2005							
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)
Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005	8(10.8.05)		23.6.05	Transport and Regional Services	11.8.05	8.9.05	10(14.9.05)
Corporations (Aboriginal and Torres Strait Islander) Bill 2005	8(10.8.05) 9(17.8.05)	23.6.05		Immigration and Multicultural and Indigenous Affairs	11.8.05		
<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)
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2005	11(14.9.05)	5.9.05		Mr Katter	15.9.05		
Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005	8(10.8.05)	23.6.05		Education, Science and Training	11.8.05	29.9.05	11(5.10.05)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005	5(1.6.05)	18.8.05	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)
Offshore Petroleum Bill 2005	8(10.8.05)	23.6.05	18.8.05	Industry, Tourism and Resources	11.8.05	19.8.05	9(7.9.05)
Offshore Petroleum (Annual Fees) Bill 2005	8(10.8.05)	23.6.05	18.8.05	Industry, Tourism and Resources	11.8.05	19.8.05	9(7.9.05)
Offshore Petroleum (Registration Fees) Bill 2005	8(10.8.05)	23.6.05	18.8.05	Industry, Tourism and Resources	11.8.05	19.8.05	9(7.9.05)
Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005	11(14.9.05)	5.9.05		Mr Kerr	15.9.05		
Payment Systems (Regulation) Amendment Bill 2005	3(16.3.05)	10.3.05	14.6.05	Treasury	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)
Tax Laws Amendment (2005 Measures (No. 4) Bill 2005	8(10.8.05)	23.6.05	11.8.05	Treasury	11.8.05	16.8.05	8(17.8.05)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Bill 2005	8(10.8.05)	23.6.05	11.8.05	Communications, Information Technology and the Arts	11.8.05	7.9.05	10(14.9.05)
Telstra (Transition to Full Private Ownership) Bill 2005	11(14.9.05)	15.9.05	8.9.05	Communications, Information Technology and the Arts	15.9.05		
Therapeutic Goods Amendment Bill 2005	10(7.9.05)	17.8.05		Health and Ageing	8.9.05		
Trade Practices Legislation Amendment Bill (No. 1) 2005 – Supplementary comments	10(7.9.05)	10.2.05	10.3.05	Treasury	8.9.05	19.9.05	12(7.10.05)
Trade Practices Amendment (National Access Regime) Bill 2005	6(15.6.05)	2.6.05		Treasury	15.6.05	10.8.05	8(17.8.05)
Workplace Relations Amendment (Better Bargaining) Bill 2005	11(14.9.05)	9.3.05	12.9.05	Employment and Workplace Relations	15.9.05		

