

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



**Alert Digest**

**No. 14 of 2005**

**30 November 2005**



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# 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.



## **Anglo-Australian Telescope Agreement Amendment Bill 2005**

Introduced into the House of Representatives on 9 November 2005  
Portfolio: Education, Science and Training

### **Background**

This bill amends the *Anglo-Australian Telescope Agreement Act 1970* to incorporate a supplementary agreement, which modifies arrangements for the operation of the telescope and associated facilities. It also provides for the termination of both agreements on 30 June 2010, with the transfer of ownership and control of the telescope and associated facilities to Australia.

*The Committee has no comment on this bill.*

## Australian Citizenship Bill 2005

Introduced into the House of Representatives on 9 November 2005

Portfolio: Citizenship and Multicultural Affairs

### Background

This bill replaces the *Australian Citizenship Act 1948*. It is intended both to update the legislative framework relating to citizenship and to implement a number of policy changes announced by the Government in July 2004. These include changes relating to:

- resumption of citizenship and applications for citizenship by conferral;
- consistency in provisions relating to citizenship by descent;
- English language requirements;
- ministerial discretions;
- personal identifiers;
- applications by persons assessed to be a risk to security; and
- the residential qualifying period.

The bill was introduced with the Australian Citizenship (Transitionals and Consequentials) Bill 2005.

### Wide discretion

#### Subclauses 24(2) and 30(2)

Subclause 24(2) gives the Minister a discretion to refuse to approve a person becoming an Australian citizen, despite the person being eligible to be approved. Subclause 30(2) gives the Minister the same wide discretion, in this case to refuse to approve a person's resumption of citizenship, despite their being eligible to be approved. However, the exercise of these discretions is subject to merits review by the Administrative Appeals Tribunal under subclause 52(1).

The explanatory memorandum notes, on pages 30 and 40, respectively, that the 'purpose of this [subclause] is to retain the existing discretion (under section 13 of the [current] Act) of the Minister not to approve an application in certain cases. This discretion has been in existence since the inception of

the Act in 1948. It has been a uniform feature of naturalisation legislation (ie, citizenship by conferral) throughout the [British] Commonwealth for over a century to give the Executive a wide discretion regarding the approval or refusal of citizenship applications. This is because Australian citizenship by application is a privilege and not a right. The new Act should continue to promote this understanding.’

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

### **Delegation of legislative power Subclauses 27(4) and 40(3)**

Subclauses 27(4) and 40(3) would give to the Minister an unfettered discretion to authorise ‘a person’ to undertake a function on behalf of the Minister. Under subclause 27(4), that function is to be the person before whom an applicant for citizenship must make a pledge of commitment, and under subclause 40(3) it is to be the person who requests an applicant to provide one or more specified personal identifiers. The effect of these provisions is to permit the Minister to delegate some of his or her Ministerial functions to ‘a person’, without any limit being placed on the attributes or qualifications of that person, and thereby make the rights, liberties or obligations of applicants for citizenship dependent upon insufficiently defined administrative powers.

The Committee **seeks the Minister’s advice** as to whether it would be possible to provide some specification in the legislation of the attributes or qualifications of the persons whom the Minister may authorise under these provisions.

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

## **Delegation of legislative power Subclauses 42(3) and 49(2)**

Subclauses 42(3) and 49(2) would permit the Minister, in writing, to authorise ‘a person’ to carry out the administrative tasks of gaining access to identifying information about applicants for citizenship (under clause 42) or stating whether a specified computer program was functioning correctly (under clause 49). In neither case does the legislation give any indication of the attributes or qualifications of the persons who may be so authorised, and thus grants to the Minister an unfettered discretion in the choice of such persons.

The Committee **seeks the Minister’s advice** as to whether it would be possible to provide some specification in the legislation of the attributes or qualifications of the persons whom the Minister may authorise under these provisions.

*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.*

## **Legislative Instruments Act – Declarations and exemptions Subclause 48(6)**

Subclause 48(1) permits the Minister to make an arrangement for the use of computer programs for the purpose of making decisions, exercising powers or complying with obligations. Under subclause 48(6) such an arrangement is stated not to be a legislative instrument. The effect of the subclause is to remove such 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'.)

It is likely that the reason for this latter provision is that the making of such an arrangement is an administrative and not a legislative function, and that subclause 48(6) is merely declaratory. However, the explanatory memorandum omits any reference to subclause 48(6). The Committee therefore **seeks the Minister's advice** as to whether the subclause is indeed no more than declaratory (and included for the avoidance of doubt) and, if so, whether it would have been appropriate to include that information in the explanatory memorandum.

*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.*

## **Delegation of legislative power**

### **Clause 53**

Clause 53 provides that the Minister 'may, by writing, delegate to any person all or any of the Minister's functions or powers under this Act or the regulations.'

The Committee has consistently drawn attention to legislation which allows significant and wide-ranging powers to be delegated to anyone who fits the all-embracing description of 'a person'. In this case, it appears that the provision would grant to the Minister an unfettered discretion in the delegation of all of his or her powers under the Act.

Generally, the Committee prefers to see a limit set either on the sorts of powers that might be delegated, or on the categories of people to whom those powers might be delegated. There appears to be no such limit proposed in the bill.

The explanatory memorandum notes that the clause is the equivalent of section 37 of the existing Act. The memorandum goes on to assert that ‘All delegations under the [existing] Act will operate in the same way under the [proposed] new Act. For example: under the [existing] Act the Minister did not delegate the power to revoke a person of their Australian citizenship and will not do so under this Act.’

The Committee notes that there appears to be no provision in the bill which requires that delegations will continue to operate as they have to date, and so this assurance provides no effective limit on the manner in which a Minister might decide to delegate his or her powers and functions in the future.

The Committee **seeks the Minister’s advice** as to the basis on which this statement in the explanatory memorandum is made. The Committee also **seeks the Minister’s advice** as to the need for this unfettered ministerial discretion and whether it would not be possible to provide some specification in the legislation of the attributes or qualifications of the persons who may be appointed as delegates or the scope of the powers and functions which might be delegated.

*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.*

## **Australian Citizenship (Transitionals and Consequential) Bill 2005**

Introduced into the House of Representatives on 9 November 2005  
Portfolio: Citizenship and Multicultural Affairs

### **Background**

Introduced with the Australian Citizenship Bill 2005, this bill repeals the *Australian Citizenship Act 1948* and makes transitional arrangements and consequential amendments to various Acts.

*The Committee has no comment on this bill.*

## **Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005**

Introduced into the House of Representatives on 9 November 2005

Portfolio: Employment and Workplace Relations

### **Background**

According to the explanatory memorandum, this bill ‘implements the Government’s Welfare to Work reforms which are aimed at comprehensively rebalancing Australia’s welfare system to make it more sustainable and to encourage increased workforce participation for those with the capacity to work.’

The bill makes amendments to the *Social Security Act 1991* relating to the disability support pension, carer and parenting payments, youth allowance and Austudy, Newstart and employment entry payments, among other measures. The bill also amends ‘calculator’ provisions for various payments under the Act, provides for a one-off recovery fee in relation to certain overpayments and makes various changes to the administration of the Act.

The bill also contains application, transitional and technical provisions.

*The Committee has no comment on this bill.*

## **Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005**

Introduced into the House of Representatives on 9 November 2005

Portfolio: Family and Community Services

### **Background**

This bill amends the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* as part of the Government's Welfare to Work package, as it relates to child care benefits. It:

- increases the number of hours of child care benefit a family will be eligible to receive for each child in approved child care, without the need to satisfy the work/training/study test; and
- modifies the work/training/study test that a claimant and the claimant's partner have to meet to be paid child care benefit for up to 50 hours of care in a week.

*The Committee has no comment on this bill.*

## **Tax Laws Amendment (Improvements to Self Assessment) Bill (No. 2) 2005**

Introduced into the House of Representatives on 10 November 2005

Portfolio: Treasury

### **Background**

This bill amends the *Income Tax Assessment Act 1936* and the *Taxation Administration Act 1953* to change certain aspects of the tax system regarding self assessment. The bill provides for a 2-year period in which the Commissioner of Taxation can amend an assessment for most individuals or very small business taxpayers and a 4-year period for taxpayers with more complex affairs.

The bill also implements a new framework for ATO advice.

### **Retrospective application**

#### **Schedule 1, items 15, 19, 23, 32, 35, 59, 61, 68 and 73**

By virtue of items 15, 19, 23, 32, 35, 59, 61, 68 and 73 of Schedule 1, the amendments proposed in that Schedule (which generally reduce the period within which the Commissioner of Taxation is able to amend an assessment of tax down to 2 years) would apply from the 2004-05 year of income.

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 3, that the revenue impact of the amendments is expected to be nil in the 2005-06 and 2006-07 years of income, rising to \$17 million in the 2008-09 year of income.

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

## 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>Bills 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)
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)
Commonwealth Radioactive Waste Management Bill 2005	13(9.11.05)	13.10.05	7.11.05	Education, Science and Training	10.11.05	29.11.05	13(30.11.05)
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)
Energy Efficiency Opportunities Bill 2005	12(5.10.05)	14.9.05	7.11.05	Industry, Tourism and Resources	6.10.05	11.10.05	12(12.10.05)
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		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005	8(10.8.05)	23.6.05	12.10.05	Education, Science and Training	11.8.05	29.9.05	11(5.10.05)
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
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	10.10.05	12(12.10.05)
Therapeutic Goods Amendment Bill 2005	10(7.9.05)	17.8.05		Health and Ageing	8.9.05	10.10.05	12(12.10.05)
Trade Practices Legislation Amendment Bill (No. 1) 2005 – <b>Supplementary comments</b>	10(7.9.05)	10.2.05	10.3.05	Treasury	8.9.05	19.9.05	11(5.10.05)
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 <b>Amendments</b>	11(14.9.05)	9.3.05	12.9.05	Employment and Workplace Relations	15.9.05	29.11.05	13(30.11.05)
Workplace Relations Amendment (Work Choices) Bill 2005	13(9.11.05)	2.11.05	10.11.05	Employment and Workplace Relations	10.11.05		