

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



Alert Digest

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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.

Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006

Introduced into the House of Representatives on 12 October 2006
Portfolio: Communications, Information Technology and the Arts

Background

Introduced with the Datacasting Transmitter Licence Fees Bill 2006, this bill amends the *Australian Communications and Media Authority Act 2005*, the *Broadcasting Services Act 1992* and the *Radiocommunications Act 1992* to support the proposed Datacasting Transmitter Licence Fees Bill 2006 by ensuring compliance by channel A television licence holders with licence fee payment obligations and by requiring appropriate record-keeping in relation to the fees.

This bill follows the introduction of the Broadcasting Legislation Amendment (Digital Television) Bill 2006 and the Broadcasting Services Amendment (Media Ownership) Bill 2006 which the Committee dealt with in *Alert Digest No. 11 of 2006*.

The Committee has no comment on this bill.

Datacasting Transmitter Licence Fees Bill 2006

Introduced into the House of Representatives on 12 October 2006
Portfolio: Communications, Information Technology and the Arts

Background

Introduced with the Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006, this bill requires channel A datacasting transmitter licence holders to be subject to annual licence fees based on revenue received by the datacasting transmitter licence operator.

This bill follows the introduction of the Broadcasting Legislation Amendment (Digital Television) Bill 2006 and the Broadcasting Services Amendment (Media Ownership) Bill 2006 which the Committee dealt with in *Alert Digest No. 11 of 2006*.

Excluding merits review

Clause 9

Clause 9 would empower the Australian Communications and Media Authority to direct that the earnings of one entity be treated as the earnings of another entity, if the Authority is 'of the opinion' that certain conditions have been met. The Committee notes it appears that the Authority is given an unfettered discretion in forming such an opinion, and that this discretion appears not to be subject to merits (or any other) review by the Administrative Appeals Tribunal. Since its establishment, the Committee has consistently drawn attention to provisions which explicitly exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. The Committee **seeks the Minister's advice** whether the exercise of this discretion ought to be subject to such review.

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 non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Environment and Heritage Legislation Amendment (No. 1) Bill 2006

Introduced into the House of Representatives on 12 October 2006

Portfolio: Environment and Heritage

Background

This bill amends the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC), the *Australian Heritage Council Act 2003*, the *Environment and Heritage Legislation Amendment Act (No. 1) 2003*, the *Environment Protection (Alligator Rivers Region) Act 1978*, the *Environment Protection (Northern Territory Supreme Court) Act 1978*, the *Environment Protection (Sea Dumping) Act 1981* and the *Migration Act 1958* to:

- reduce processing time and costs for development interests;
- allow World Heritage properties to be transferred to the National Heritage List;
- improve cooperation on environmental assessment and approval processes between the Government and state and territory governments;
- clarify responsibilities for proponents and simplify the referral, assessment and approval processes;
- allow the Minister to publish policy statements on the application of the Act to assist in decision-making and inform the community;
- change the approach to the listing of heritage places and threatened species and ecological communities;
- continue the Register of the National Estate as a statutory register for a further five years to allow for the transfer of places to other registers;
- establish a List of Overseas Places of Historic Significance to Australia;
- align the EPBC Act and the *Fisheries Management Act 1991* to provide increased scope for the fisheries regulator to manage depleted fisheries to environmental and economic sustainability; and

- clarify and strengthen compliance and enforcement provisions of the Act.

The bill also contains application, saving and transitional provisions and a number of technical provisions designed to reduce duplication and complexity.

Commencement

Schedule 1, items 3, 8, 10, 12, and 14

Items 3, 8, 10, 12 and 14 in the table in subclause 2(1) provide for items 607, 808, 836, 838 and 841 to 845 of Schedule 1 to this bill to commence five years after the day on which item 550 of Schedule 1 commences. Item 550 inserts new Subdivisions BA, BB and BC into Division 1 of Part 15 of the *Environment Protection and Biodiversity Conservation Act 1999*, which seek to reform the National Heritage nomination and listing process. The Committee notes that each of the items seek to repeal sections relating to the Register of the National Estate, however, limited explanation is provided in the explanatory memorandum as to the reason for this lengthy delay in commencement. The only place in the explanatory memorandum in which there is an explanation for the five-year delay in commencement is in paragraph 591 of the memorandum, on page 104, in relation to the repeal to be effected by item 841 of Schedule 1. Paragraph 591 states that the delayed commencement ‘will allow time for the states and territories to amend legislation or processes and to heritage list places which are in the Register of the National Estate.’ The relationship between that explanation and the new Subdivisions BA, BB and BC of Division 1 of Part 15 is not clear. The Committee **seeks the Minister’s advice** as to the reason for the five-year delay in commencement.

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.

Commencement

Schedule 1, items 781 and 782

Items 5 and 6 in the table in subclause 2(1) provide for items 781 and 782 of Schedule 1 to this bill to commence immediately after the *Heritage of Western Australia Act 1990* of Western Australia starts to apply to freehold land in the territories of Christmas Island and Cocos (Keeling) Islands respectively.

The Committee notes the statement in the explanatory memorandum, at page 93, that the provisions recognise that alternative means to the Commonwealth Heritage List can be put in place to ensure the ongoing protection of heritage places on freehold land in these territories. For heritage property owners in the Cocos (Keeling) Islands and Christmas Island, this provision will have the effect of replacing Commonwealth heritage protection with State heritage protection, similar to that which applies to heritage property owners elsewhere in Australia. The explanatory memorandum goes on to state that '[i]t would be appropriate for the heritage legislation of Western Australia to be applied to protect the heritage values of these existing freehold properties, and future freehold heritage places in the territories. To ensure there is no gap in protection ... this provision ... will commence when the *Heritage of Western Australia Act 1990* starts to be applied in Christmas Island Territory and the Territory of Cocos (Keeling) Islands.' It is not clear from the explanatory memorandum when the *Heritage of Western Australia Act 1990* might be expected to be applied to these territories. Similarly, the Committee notes that while the Minister must announce by *Gazette* notice the day on which the *Heritage of Western Australia Act 1990* is applied to these territories, there is nothing in this bill which imposes any obligation on the Minister to have that Western Australian legislation apply to either of those Territories. The Committee is concerned that this would grant the Minister an unfettered discretion to determine when items 781 and 782 of Schedule 1 will commence. The Committee **seeks the Minister's advice** regarding the degree of certainty surrounding the commencement of these alternative means of protection in the *Heritage of Western Australia Act 1990* and whether items 5 and 6 in the table in clause 2(1) of this bill might be amended to set a time limit within which items 781 and 782 will commence.

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.

Strict liability

Schedule 1, items 5, 7, 12, 14, 16, 18, 20, 22, 24, 26, 28, 32, 39, 41, 44, 46, 50, 52, 57, 59, 61, 63, 64, 66, 71, 73, 75, 77, 80 and 82

A very great number of items in Schedule 1 would create offences to at least one element of which strict liability applies. The items are 5, 7, 12, 14, 16, 18, 20, 22, 24, 26, 28, 32, 39, 41, 44, 46, 50, 52, 57, 59, 61, 63, 64, 66, 71, 73, 75, 77, 80 and 82. The Committee notes that in respect of some of these offences, the maximum penalty is seven years imprisonment and 420 penalty units.

The Committee notes the reference on pages 25 – 26 of *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, February 2004 (the Guide), that in preparing legislation under which strict or absolute liability is imposed, agencies should familiarize themselves with the Committee's *Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. In particular, the Guide refers to the following principles from the Committee's Sixth Report which accord with the Government's approach to such provisions:

- 'strict liability should be introduced only after careful consideration on a case-by-case basis of all available options; it would not be proper to base strict liability on mere administrative convenience or rigid formula';
- 'strict liability offences should be applied only where the penalty does not include imprisonment and where there is a cap on monetary penalties; the general Commonwealth criteria of 60 penalty units ... appears to be a reasonable maximum'; and
- 'strict liability may be appropriate where it is necessary to ensure the integrity of a regulatory regime such as, for instance, those relating to public health, the environment, or financial or corporate regulation.'

The Guide goes on to advise that '[i]f the explanatory memorandum to a Bill is not considered to provide adequate explanation for any use of strict or absolute liability, the Committee will seek an explanation from the responsible Minister.'

The explanatory memorandum makes no reference to the principles set out in the Guide or the Committee's Sixth Report, and while stating the effect of the proposed amendments, gives no explanation or justification for these apparent departures from those principles. The Committee **seeks the Minister's advice** as to the justification for the imposition of strict liability in these cases.

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 291**

Item 291 of Schedule 1 would insert a new section 142B into the *Environment Protection and Biodiversity Conservation Act 1999*, which creates a strict liability offence of breaching conditions attached to an approval granted under Part 9 of the Act of 1999. In this case, the explanatory memorandum states, on page 39, that 'the intent of this provision is to enable enforcement of breaches of approval conditions, in particular minor technical breaches such as the failure to prepare and submit for approval an environmental management plan, which are difficult to enforce under the civil penalty and criminal provisions in sections 142 and 142A of the 1999 Act.' The explanatory memorandum offers no justification for the imposition of strict liability in this case. The Committee notes again the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* and in its *Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, and **seeks the Minister's advice** as to the justification for the application of strict liability in this case.

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.

Strict liability

Schedule 1, items 591 and 595

Items 591 and 595 of Schedule 1 would insert new subsections 354A(2), (4) and (7), and new subsection 355A(2) into the *Environment Protection and Biodiversity Conservation Act 1999*, each of which create offences of strict liability and to which a maximum penalty of 2 years imprisonment or 1,000 penalty units or both applies. The explanatory memorandum, at paragraphs 377 and 380, merely states that the item ‘sets out where strict liability applies for each offence’, but does not seek to justify this departure from the general rule of criminal liability being based on intentional acts. The Committee notes again the principles set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* and in its *Sixth Report of 2002: Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, in particular the expectation that ‘strict liability offences should be applied only where the penalty does not include imprisonment and where there is a cap on monetary penalties; the general Commonwealth criteria of 60 penalty units ... appears to be a reasonable maximum’. The Committee **seeks the Minister’s advice** as to the justification for the departure from accepted principles in this case.

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.

Legislative Instruments Act—exemptions

Schedule 1, items 354 and 358

Section 183 of the *Environment Protection and Biodiversity Conservation Act 1999* requires the Minister, by instrument published in the Gazette, to establish a list of threatening processes that are key threatening processes. Proposed new subsection 184(1), to be inserted by item 354 of Schedule 1 of this bill, clarifies that such an instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). Proposed new subsection 184(2), to be inserted by item 358 of Schedule 1, provides that the sunseting regime contained in Part 6 of the LIA does not apply to an

instrument made under subsection 184(1). The Committee expects that the justification for exemptions from the LIA will be set out in the explanatory memorandum to the bill. In this case, the explanatory memorandum, at paragraph 176, merely repeats the substance of the new subsection, but gives no reason for its insertion. The Committee **seeks the Minister's advice** as to the justification for this exemption.

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.

Legislative Instruments Act—declaration Schedule 1, items 391 and 466

Items 391 and 466 of Schedule 1 would insert new subsections 208A(2) and 265(2) respectively into the Principal Act, both of which state that an instrument made under subsection 208A(1) or 265(1) respectively 'is not a legislative instrument'. Office of Parliamentary Counsel Drafting Direction No. 3.8 advises, on page 7, that where an instrument is being exempted from the Legislative Instruments Act, the explanatory memorandum should include an explanation of this and give a detailed explanation of the justification for that exemption. The Committee notes that in this case, the explanatory memorandum, at paragraphs 214 and 247 respectively, merely repeats the substance of the subsections. Neither paragraph provides a reason for the respective subsection. It appears in both cases that the instruments referred to are administrative in character and that the respective subsections are for information only. The Committee **seeks the Minister's advice** whether these subsections have been included for information only.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they 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.

**Excluding merits review
Schedule 1, items 415, 448 and 465**

Items 415, 448 and 465 of Schedule 1 would insert new subsections 221A(2), 243A(2) and 263A(2) into the *Environment Protection and Biodiversity Conservation Act 1999*. The effect of each of those subsections is to remove the current provision for merits review by the Administrative Appeals Tribunal for decisions made personally by the Minister in relation to permits of various types.

Since its establishment, the Committee has consistently drawn attention to provisions which explicitly exclude review by relevant appeal bodies or otherwise fail to provide for administrative review. The Committee would expect to see the justification for any section which appears to reduce merits review. In this case, the explanatory memorandum, at paragraphs 222, 238 and 246, merely states that this ‘leaves the merits of these important decisions to be dealt with by the Government.’ The Committee **seeks the Minister’s advice** as to the justification for this apparent reduction in merit review.

Pending the Minister’s advice the Committee draws Senators’ attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee’s terms of reference.

**Abrogation of the privilege against self-incrimination
Schedule 1, item 767**

Item 767 of Schedule 1 would insert a new section 486J into the *Environment Protection and Biodiversity Conservation Act 1999* which would abrogate the privilege against self-incrimination for a person required to answer a question or produce a document under new Division 15A of the Act. However, subsection 486J(2) would 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 it strikes 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.

Search and seizure

Schedule 1

Item 835 of Schedule 1 to this bill inserts a new Schedule 1 into the *Environment Protection and Biodiversity Conservation Act 1999* which would provide for the detention of suspected non-citizen offenders suspected of committing an offence, searching and screening detainees and carrying out identification tests on detainees. The explanatory memorandum states, on page 95, that the Government's ability to enforce the Act in Australia's maritime jurisdiction and non self-governing Territories and to protect Commonwealth reserves such as Ashmore Reef National Nature Reserve is limited because the *Migration Act 1958* prevents authorised officers from bringing non-citizens suspected of committing offences against the Act into the migration zone. The explanatory memorandum also states that the Schedule mirrors the provisions contained in the *Migration Act 1958* for dealing with the detention of unauthorised non-citizens, and the provisions of the *Fisheries Management Act 1991* providing for detention of foreign fishers suspected of offences against that Act.

The Committee has a long standing concern about the appropriateness of conferring police powers on persons other than police officers and the appropriateness of applying a power to search persons under arrest to persons under detention. As a minimum, the Committee expects the explanatory memorandum to provide a detailed justification for applying such powers in the proposed circumstances and an assurance that appropriate protocols or safeguards are to be implemented and an explanation of the nature of such protocols or safeguards.

Search without warrant
Schedule 1, item 633

Item 633 of Schedule 1 would insert a new paragraph 406(1)(ba) into the *Environment Protection and Biodiversity Conservation Act 1999*, under which an authorised officer who boards a vessel is empowered, without warrant, to search a person on the vessel and the person's clothing. The explanatory memorandum, at paragraph 417, seeks to justify this provision on the basis that it is 'required as a consequence of the inclusion of Schedule 1 in' the *Environment Protection and Biodiversity Conservation Act 1999*.

The Committee notes that proposed new section 406A provides conditions for the conduct of searches under paragraph 406(1)(a) which include a requirement that searches are to be conducted by an authorised officer of the same sex as the subject, a prohibition on the removal of a subject's clothing and the requirement that an authorised officer use no more force or impose on the subject of the search no greater indignity than is necessary to conduct the search. These conditions are consistent with those set out in the model provisions set out in the *Crimes Act 1914*.

Notwithstanding these conditions, the Committee considers that there is a risk that the provisions may be regarded as trespassing on the personal rights and liberties of people who are subject to a search under paragraph 406(1)(ba). The Committee notes that new paragraph 406(1)(ba) does not distinguish between a 'frisk search' or an 'ordinary search' as defined in sections 413(3) and 414(3) of the *Environment Protection and Biodiversity Conservation Act 1999*. It is therefore unclear what the degree of incursion on personal rights and liberties might be. The Committee **seeks the Minister's advice** as to the nature of the search provided for in paragraph 406(1)(ba) and whether the type of search could be specified within the proposed paragraph.

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.

Search without warrant

Schedule 1, item 835

Clause 8 of the new Schedule 1 to the Environment Protection Act would provide for an authorised officer to detain a person if the authorised officer has reasonable grounds to believe that the person is not an Australian citizen or resident and was on a foreign vessel when it was used or otherwise involved in the commission of an offence against the Act, the regulations or section 6 of the Crimes Act. Clause 15 of the new Schedule 1 would permit an ‘approved officer’ (as referred to in clauses 6 and 7) to conduct, without warrant, a search of a detainee and a detainee’s clothing and any property under the detainee’s immediate control to find out whether a weapon or evidence of a crime is concealed about the person of the detainee.

The Committee notes that clause 15 does not distinguish between a ‘frisk search’ or an ‘ordinary search’ as defined in sections 413(3) and 414(3) of the *Environment Protection and Biodiversity Conservation Act 1999*. The Committee **seeks the Minister’s advice** as to the nature of the search provided for in clause 15 and whether the type of search could be specified within the proposed clause. The Committee also notes that subsection 252(1) of the *Migration Act 1958*, on which clause 15 is modelled, provides some limitation on the circumstances in which a person may be searched without warrant. The Committee **seeks the Minister’s advice** whether the exercise of the search powers in Clause 15 might also be limited to circumstances where an authorised officer has reasonable grounds to believe that the detainee has a weapon or evidence concealed about his/her person.

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.

Search without warrant

Clause 17

Proposed Clause 17 of the new Schedule 1 to the Environment Protection Act would allow approved officers to conduct strip searches on detainees in

certain circumstances. The Committee notes the statement in the explanatory memorandum that the clause ‘corresponds closely to section 252A of the *Migration Act 1958*’ and notes that clause 18, which sets out the rules for conducting a strip search also closely corresponds to section 252B of the Migration Act. The Committee also notes the assurance on page 98 of the explanatory memorandum that these rules will ‘ensure strip searches are conducted in a way that will protect the dignity of the detainee as much as possible while still allowing strip searches in very limited circumstances to ensure the safety of the detainee and other people.’ However, the Committee notes that no justification or reasons are provided in the explanatory memorandum for the application of strip search provisions in this context. The Committee considers that the power of strip search represents a significant trespass on personal rights and liberties and should only be conferred in exceptional and specific circumstances. Proposals for the inclusion of such powers in legislation should be accompanied by detailed explanation and justification in the explanatory memorandum and appropriate safeguards.

In this context, the Committee notes that it expressed concerns over the terms of what is now section 252A of the Migration Act in its consideration of the Migration Legislation Amendment (Immigration Detainees) Bill 2001 in *Alert Digest No. 6 of 2001* and of the Migration Legislation Amendment (Immigration Detainees) Bill (No. 2) 2001 in *Alert Digest No. 9 of 2001*. The Committee expressed concern about the appropriateness of using powers given to police officers to search people under arrest as precedents for the search of people in immigration detention. However, the Committee noted that the then Minister for Immigration and Multicultural Affairs and the Attorney-General had developed and agreed a *Draft Protocol for Strip Search of Immigration Detainees* and that this was expected to be incorporated into written directions issued pursuant to section 499 of the Migration Act. The Committee noted that this draft protocol would provide greater safeguards in the authorisation and conduct of strip searches.

The Committee **seeks the Minister’s advice** as to justification for the inclusion of the power to conduct strip searches in this context and whether appropriate protocols have been developed for the authorisation and conduct of such searches under the *Environment Protection and Biodiversity Conservation Act 1999*.

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.

**Exercise of legislative power
Schedule 2, Part 2, subitem 4(2)**

Subitem 4(2) of Part 2 of Schedule 2 to this bill would permit the Minister to determine that particular amendments made by Schedule 1 to this bill are to apply to proposals made to the Minister before the commencement of that Schedule, subject to such modifications as the Minister determines. Subitem 4(4) then provides that such a determination 'is a legislative instrument, but section 42 of the *Legislative Instruments Act 2003* [which provides for the disallowance of legislative instruments by resolution of either House of the Parliament] does not apply' to it. As a consequence, the Minister's exercise of delegated legislative power, by making a determination under subitem 4(2), is not subject to any effective oversight by the Parliament. Paragraph 622 of the explanatory memorandum merely re-states the effect of subitem 4(2), but gives no explanation for this delegation of legislative power not being subject to disallowance. The Committee **seeks the Minister's advice** as to the reasons for this exercise of delegated legislative power not being subject to disallowance in this instance.

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.

Freedom of Information Amendment (Abolition of Conclusive Certificates) Bill 2006

Introduced into the House of Representatives on 9 October 2006
By Ms Roxon

Background

This bill amends the *Freedom of Information Act 1982* to remove the capacity for Ministers to issue conclusive certificates establishing that documents are 'exempt' documents.

The bill also contains application, consequential and repeal provisions.

The Committee has no comment on this bill.

Long Service Leave (Commonwealth Employees) Amendment Bill 2006

Introduced into the House of Representatives on 11 October 2006
Portfolio: Employment and Workplace Relations

Background

This bill amends the *Long Service Leave (Commonwealth Employees) Act 1976* (the LSL Act) and the *Telstra (Transition to Full Private Ownership) Act 2005* to extend the operation of the LSL Act in respect of Telstra employees for a period of three years from the date of sale.

The bill inserts consequential changes and a savings provision to protect the long service leave entitlements of eligible Telstra employees with at least 10 years service immediately before the date of sale.

The Committee has no comment on this bill.

Maritime Legislation Amendment (Prevention of Pollution from Ships) Bill 2006

Introduced into the House of Representatives on 11 October 2006
Portfolio: Transport and Regional Services

Background

This bill amends the *Navigation Act 1912* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to implement revised Annexes I and II to the International Convention for the Prevention of Pollution from Ships in relation to the prevention of pollution by oil and noxious liquid substances. The Annexes will enter into force internationally on 1 January 2007.

The bill also contains application and transitional provisions.

The Committee has no comment on this bill.

Migration Amendment (Border Integrity) Bill 2006

Introduced into the House of Representatives on 11 October 2006

Portfolio: Immigration and Multicultural Affairs

Background

This bill amends the *Migration Act 1958* to:

- provide for the automated verification of the identity and Australian citizenship status of citizens and selected non-citizens;
- preserve current policy that evidence of identity required to be presented by non-citizens may include a ‘personal identifier’;
- allow for a special purpose visa to cease at a time specified by the Minister; and
- enable selected New Zealand citizens arriving in Australia to be granted a Special Category Visa by an automated system instead of by an officer.

The bill also contains application, consequential and transitional provisions.

The Committee has no comment on this bill.

Migration Legislation Amendment (Enabling Permanent Protection) Bill 2006

Introduced into the Senate on 12 October 2006

By Senator Bartlett

Background

This bill amends the *Migration Act 1958* to allow people on Temporary Protection Visas (TPV) who have been convicted of certain legal offences to be eligible to receive a permanent Protection Visa when their TPV expires. Under the current legislation, such people can only be issued with a further TPV. The Minister has the discretion to waive this requirement.

The Committee has no comment on this bill.

Parliamentary Superannuation Amendment Bill 2006

Introduced into the House of Representatives on 11 October 2006
Portfolio: Special Minister of State

Background

This bill amends the *Parliamentary Superannuation Act 2004* to increase the Government superannuation contribution for Members of Parliament elected at or after the 2004 federal election from 9 per cent to 15.4 per cent.

The bill provides that the increase in the contribution rate will apply to contributions payable under the 2004 Act for the month in which the bill receives Royal Assent.

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
Environment and Heritage Legislation Amendment Bill (No. 1) 2006	Proposed new subsection 403(5A)	Fail to provide information to a public authority	(a) Imprisonment for 6 months or 30 penalty units (b) 50 penalty units
	Proposed new subsections 486F(3), 486G(3) and 486G(4)	Fail to provide information to a public authority	Imprisonment for 6 months

SCRUTINY OF STANDING APPROPRIATIONS

The Committee has determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Further details of the Committee's approach to scrutiny of standing appropriations are set out in the committee's *Fourteenth Report of 2005*. The following is a list of the bills containing standing appropriations that have been introduced since the beginning of the 41st Parliament.

Bills introduced with standing appropriation clauses - 41st Parliament

*Indicates passed by Senate	Bills and Clauses
*	Appropriation (Regional Telecommunications Services) Bill 2005-2006 – clause 13
*	Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005 – subclause 8(2)
*	Asbestos-related Claims (Management of Commonwealth Liabilities) (Consequential and Transitional Provisions) Bill 2005 – subclause 5(3)
*	Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Bill 2005 – clause 23
*	Financial Framework Legislation Amendment Bill 2004 – Schedule 1, item 397, paragraphs 124(1)(b) and (c) and item 422, subsection 235(2) [also Schedule 1, items 58, 63, 82, 86, 95, 99, 114, 135, 136, 145, 153, 164, 169, 182, 197, 205, 218, 261, 293, 317, 324, 370, 419, 437, 448, 484 and 493 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>]
*	Human Services Legislation Amendment Bill 2005 – Schedule 2, subitem 720(4)
*	Indigenous Education (Targeted Assistance) Amendment Bill 2004 – Schedule 1, item 3, subsection 14A(1)
	Indigenous Education (Targeted Assistance) Amendment Bill 2006 – Schedule 1, subsection 14A

*	National Water Commission Bill 2004 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>
*	Offshore Petroleum Bill 2005 – clause 56
*	Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004 – clause 133
*	Skilling Australia’s Workforce Bill 2005 – clause 40
*	Superannuation Bill 2005 – subclause 29(4)
*	Superannuation (Consequential Amendments) Bill 2005 – Schedule 5, item 1, subsection 4AA(5) and Schedule 6, item 1, subsection 12A(5)
*	Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005 – Schedule 1, item 1, subsections 158ZO(4), 158ZP(7) and 158ZQ(5) and Schedule 3, item 1, subsection 136C(4)
*	Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 – Schedule 1, item 12, section 37ZH and subsection 37ZJ(3)
*	Water Efficiency Labelling and Standards Bill 2004 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>

Other relevant appropriation clauses

*Indicates Passed by Senate	Bills and Clauses
*	AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004 – Schedule 2, item 3: special appropriation clause – for a finite amount and a finite period of time.
*	Social Security Legislation Amendment (One-off Payments for Carers) Bill 2005 – Schedule 2, item 1: special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2005/2006

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2005							
Australian Citizenship Bill 2005	14(30.11.05)	9.11.05		Citizenship and Multicultural Affairs	1.12.05	13.2.06	1(1.3.06)
Corporations (Aboriginal and Torres Strait Islander) Bill 2005	8(10.8.05) 9(17.8.05)	23.6.05	16.10.06	Immigration and Multicultural and Indigenous Affairs	11.8.05	10.10.06	8(11.10.06)
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2005	11(14.9.05)	5.9.05	--	Mr Katter	15.9.05	--	RNP
Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005	11(14.9.05)	5.9.05	--	Mr Kerr	15.9.05	--	RNP
<i>Workplace Relations Amendment (Work Choices) Act 2005</i>	13(9.11.05)	2.11.05	10.11.05	Employment and Workplace Relations	10.11.05	28.3.06	2(29.3.06)
Bills dealt with in 2006							
Aboriginal Land Rights (Northern Territory) Amendment Bill 2006	5(14.6.06)	31.5.06	20.6.06	Families, Community Services and Indigenous Affairs	15.6.06	20.6.06 17.7.06	4(21.6.06) 5(9.8.06)
Aged Care Amendment (Residential Care) Bill 2006	11(11.10.06)		13.9.06	Health and Ageing	12.10.06	17.10.06	9(18.10.06)
Aged Care (Bond Security) Bill 2005	1(8.2.06)	8.12.05	9.2.06	Ageing	9.2.06	23.3.06	2(29.3.06)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Airport Development and Aviation Noise Ombudsman Bill 2006	4(10.5.06)	27.3.06		Mr Georganus	11.5.06		
ASIO Legislation Amendment Bill 2006 Noise Ombudsman Bill 2006	4(10.5.06)	29.3.06	13.6.06	Attorney-General	11.5.06	8.6.06	3(14.6.06)
Australian Participants in British Nuclear Tests (Treatment) Bill 2006	11(11.10.06)	14.9.06	12.10.06	Veterans' Affairs	12.10.06		
Australian Sports Anti-Doping Authority Bill 2005	1(8.2.06)	7.12.05	9.2.06	Arts and Sport	9.2.06	27.2.06	1(1.3.06)
Customs Legislation Amendment (Modernising Import Controls and Other Measures) Bill 2006	7(9.8.06)		21.6.06	Justice and Customs	10.8.06	15.8.06	6(16.8.06)
<i>Defence Legislation Amendment (Aid to Civilian Authorities) Act 2005</i>	1(8.2.06)	13.2.06	7.12.05	Defence	9.2.06	27.3.06	2(29.3.06)
Defence Legislation Amendment Bill 2006	11(11.10.06)	14.9.06		Defence	12.10.06		
Education Services for Overseas Students Legislation Amendment (2006 Measures No. 1) Bill 2006	5(14.6.06)	31.5.06	14.9.06	Education, Science and Training	15.6.06	19.7.06	5(9.8.06)
Families, Community Services and Indigenous Affairs and Other Legislation (2006 Budget and Other Measures) Bill 2006	5(14.6.06)	25.5.06	13.6.06	Families, Community Services and Indigenous Affairs	15.6.06	20.6.06	4(21.6.06)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006	11(11.10.06)	14.9.06	11.10.06	Families, Community Services and Indigenous Affairs	12.10.06		
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2006	10(13.9.06)	4.9.06	--	Mr Katter	14.9.06		
Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006	11(11.10.06)	13.9.06	11.10.06	Treasurer	12.10.06	17.10.06	9(18.10.06)
Law and Justice Legislation Amendment (Marking of Plastic Explosives) Bill 2006	10(13.9.06)	7.9.06		Attorney-General	14.9.06		
Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006	4(10.5.06)	29.3.06	22.6.06	Attorney-General	11.5.06	20.6.06	4(21.6.06)
Law Enforcement Integrity Commissioner Bill 2006	4(10.5.06)	29.3.06	22.6.06	Attorney-General	11.5.06	20.6.06	4(21.6.06)
Migration Amendment (Designated Unauthorised Arrivals) Bill 2006	5(14.6.06)	11.5.06	--	Immigration and Multicultural Affairs	15.6.06		Message Rep
Migration Amendment (Visa Integrity) Bill 2006	7(9.8.06)		21.6.06	Immigration and Multicultural Affairs	10.8.06	10.10.06	8(11.10.06)
Protection of the Sea (Harmful Anti-Fouling System) Bill 2006	7(9.8.06)	22.6.06	7.9.06	Transport and Regional Services	10.8.06	5.9.06	7(6.9.06)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Renewable Energy (Electricity) Amendment Bill 2006	3(29.3.06)	2.3.06	21.6.06	Environment and Heritage	30.3.06	18.5.06	4(21.6.06)
Tax Laws Amendment (2006 Measures No. 4) Bill 2006	7(9.8.06)	22.6.06	16.10.06	Treasurer	10.8.06	17.10.06	9(18.10.06)
Telecommunications (Interception) Amendment Bill 2006	2(1.3.06)	16.2.06	1.3.06	Attorney-General	2.3.06	17.3.06	2(29.3.06)
Trade Practices Legislation Amendment Bill 2006	7(9.8.06)	19.6.06		Mr Katter	10.8.06		