

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



Alert Digest

No. 7 of 2007

20 June 2007

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ISSN 1329-668X

Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator R Ray (Chair)
Senator J Adams (Deputy Chair)
Senator G Barnett
Senator A McEwen
Senator A Murray
Senator S Parry

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.

Industrial Chemicals (Notification and Assessment) Amendment (Cosmetics) Bill 2007

Introduced into the House of Representatives on 13 June 2007

Portfolio: Health and Ageing

Background

This bill amends the *Industrial Chemicals (Notification and Assessment) Act 1989* to provide a legislative underpinning for changes to the regulation of cosmetics as part of the National Industrial Chemicals Notification and Assessment Scheme (NICNAS) Low Regulatory Concern Chemicals Reform Program. The bill:

- defines ‘cosmetic’ in full as well as amending the definition of a number of other terms;
- provides for the Minister to make standards for cosmetic products as a whole, that are imported into, or manufactured in, Australia;
- creates a criminal offence for the import or manufacture of a cosmetic that does not meet the standards; and
- makes minor changes to the legislation with a view to improving clarity, increasing consistency and to address minor anomalies or unintended effects of the legislation.

The bill also contains application provisions.

The Committee has no comment on this bill.

International Trade Integrity Bill 2007

Introduced into the House of Representatives on 14 June 2007

Portfolio: Attorney-General

Background

This bill amends the *Charter of the United Nations Act 1945*, the *Customs Act 1901*, the *Criminal Code Act 1995* and the *Income Tax Assessment Act 1997* to implement the Australian Government's response to a number of recommendations of the Report of the Inquiry into certain Australian Companies in relation to the United Nations (UN) Oil-for-Food Programme (Cole Inquiry Report). The bill:

- creates new offences for individuals or corporations who engage in conduct that contravenes a UN sanction in force in Australia or who provide false or misleading information in connection with a UN sanction, or who import or export goods sanctioned by the UN without valid permission;
- requires a person who applies for a licence or other authorisation under a UN sanction enforcement law to retain all documentation relating to that application for five years;
- requires a person who is granted authorisation under a UN sanction enforcement law to retain all documentation relating to compliance with any conditions to which the authorisation is subject for five years;
- provides for approvals granted in respect of the exportation of UN-sanctioned goods to be invalidated if the application contains false or misleading information or omits any relevant matter;
- clarifies the circumstances in which a payment to a foreign public official is not a bribe; and
- aligns the definition of 'facilitation payment' in the *Income Tax Assessment Act 1997* with that in the *Criminal Code Act 1995*.

Incorporation of extrinsic material

Schedule 1, item 5

Proposed new subsection 6(3) of the *Charter of the United Nations Act 1945*, to be inserted by item 5 of Schedule 1, would permit regulations made for the purpose of subsection 6(1) of that Act to apply, adopt or incorporate ‘any matter contained in an instrument or other writing as in force or existing from time to time’, in derogation of subsection 14(2) of the *Legislative Instruments Act 2003*. The Committee routinely draws attention to provisions that seek to incorporate into delegated legislation material ‘as in force from time to time’ where that incorporation involves material which appears not to be subject to sufficient parliamentary scrutiny.

The Committee notes, however, that the explanatory memorandum (paragraph 5) observes that the matter to be so incorporated are decisions of the UN Security Council and other documents produced by the Security Council.

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

Strict liability

Items 16, 22 and 26

Proposed new subsections 20(3D), 21(2D) and 27(8) of the *Charter of the United Nations Act 1945*, to be inserted by items 16, 22 and 26 respectively, would create offences of strict liability, which may be committed by corporations, as distinct from individuals. The Committee will generally draw to Senators’ attention provisions that create strict liability offences and, where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum to the bill. The Committee notes that in this instance the explanatory memorandum (paragraphs 19, 27 and 36 respectively) indicates that the imposition of strict liability is ‘in accordance with Recommendation 2’ of the Cole Inquiry.

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

**Abrogation of the privilege against self-incrimination
Schedule 1, item 26**

Proposed new section 33 of the *Charter of the United Nations Act 1945*, to be inserted by item 26 of Schedule 1, would abrogate the privilege against self-incrimination for a person required to answer a question or produce a document under new section 30 of the Act. At common law, people can decline to answer questions or provide information on the grounds that their replies might tend to incriminate them. Legislation which interferes with this common law privilege trespasses on personal rights and liberties. The Committee does not see this privilege as absolute, however, 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. The Committee notes that subsection 33(2) would limit the circumstances in which information so provided is admissible in evidence in proceedings against the affected person.

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

**Absolute liability
Schedule 1, item 34**

Proposed new subsection 233BABAB(2) and 233BABAC(2) of the *Customs Act 1901*, to be inserted by item 34 of Schedule 1, would impose absolute liability on individuals for the element of the offence created by subsection (1) contained in paragraph (1)(c). Proposed new subsection 233BABAB(9) and 233BABAC(9) of the *Customs Act 1901*, also to be inserted by item 34 of Schedule 1, would impose absolute liability on bodies corporate for the element of the offence created by subsection (6) contained in paragraph (6)(c). The Committee will generally draw to Senators' attention provisions that create 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 that accompanies the bill.

In this instance the explanatory memorandum (paragraph 64) indicates that the imposition of absolute liability relates only to the question of whether goods were in fact prohibited from export or import under the Customs Act, and that the imposition of absolute liability for this element of the offence ensures that the prosecution does not have to prove that the offender had knowledge that the goods were prohibited from export or import – the effect of absolute liability being to render unavailable even a defence of honest and reasonable mistake of fact. The explanatory memorandum further asserts that the approach adopted here is ‘consistent with the existing criminal offences in the Customs Act of importing or exporting Tier 1 and Tier 2 goods.’

In its *Sixth Report of 2002, Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, the Committee indicated that it believed that “strict liability may be appropriate to overcome the ‘knowledge of law’ problem, where a physical element of the offence expressly incorporates a reference to a legislative provision; in such cases the defence of mistake of fact should apply”. The *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (page 26) notes that this proposition ‘accord[s] with the approach the Government has taken in recent years.’ The Committee **seeks the Attorney-General’s advice** whether the imposition of absolute criminal liability is justified in these circumstances and 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 Attorney-General’s advice, the Committee draws Senators’ attention to these 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 233BABAB(8) and 233BABAC(8) of the *Customs Act 1901*, to be inserted by item 34 of Schedule 1, would impose strict liability on bodies corporate for the elements of the offence created by subsection (6)

contained in paragraphs (6)(a) and (6)(b). Those paragraphs refer to the following elements of the offence:

- (a) the body corporate imported or exported goods;
- (b) the goods were 'UN-sanctioned' goods.

The Committee will generally draw to Senators' attention provisions that create strict liability offences. Where a bill creates such an offence, the Committee considers that the reason for its imposition should be set out in the explanatory memorandum which accompanies the bill. In this instance the explanatory memorandum (paragraph 63) seeks to justify this imposition of strict liability on the grounds that '[t]he Government considers that all offences relating to behaviour in breach of UN sanctions should carry equal penalties to encourage companies and individual directors to ensure high ethical standards in all dealings in relation to UN sanctions', however the explanatory memorandum does not indicate whether the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* was considered in the framing of these offences. The Committee **seeks the Attorney-General's advice** whether the matters listed at Part 4.5 of the Guide were taken into consideration in framing these offences of strict liability.

Pending the Attorney-General's advice, the Committee draws Senators' attention to these 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.

Judges' Pensions Amendment Bill 2007

Introduced into the House of Representatives on 14 June 2007

Portfolio: Attorney-General

Background

This bill amends the superannuation surcharge related provisions of the *Judges' Pensions Act 1968* to provide an alternate formula for calculating the pension entitlements of persons who hold office as judges of the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and certain other office holders who are deemed to be judges for the purposes of the Act.

In addition the bill defines 'salary' for pension purposes and allows the trustee of the Judges' Pension Scheme to draw on an existing special appropriation to pay judges' surcharge debts to the Australian Tax Office as they retire. Once a debt is paid, it may be recovered from the former judge concerned under the formula or through commutation.

The bill also contains application and transitional provisions.

Retrospective application

Item 1 and items 2 to 7 and 8 to 12

Items 15, 16 and 17 of Schedule 1 provide that the amendments made by item 1, and by items 2 to 7 and 8 to 12 respectively, would apply to Judges' pensions regardless of when they have retired or will retire. The items are therefore to some extent retrospective in their application.

As a matter of practice the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. While the amendments referred to above do not appear to be prejudicial to Judges, the explanatory memorandum does not make it clear that this is the case. As such, the Committee **seeks the Attorney-General's advice** whether these application provisions might operate to the prejudice of any person.

Pending the Attorney-General's advice, the Committee draws Senators' attention to these 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.

Lobbying and Ministerial Accountability Bill 2007

Introduced into the Senate on 14 June 2007

By Senator B Brown

Background

This bill aims to enhance public confidence in the integrity of public office holders and the decision making process in government by:

- establishing a Register of Lobbying Activity that is up-to-date and available for inspection on the Internet and requiring all lobbyists, including consultant lobbyists, to submit quarterly returns of lobbying activity for inclusion on the Register;
- creating an offence for lobbyists who fail to submit their quarterly return or who fail to provide additional information in relation to a return in response to a request from the Commonwealth Public Service Commissioner;
- empowering the Australian Crime Commission (ACC) to investigate any matter relating to any lobbying activity by a lobbyist;
- requiring the ACC to report to both Houses of Parliament on the outcomes of any investigation within 6 months;
- requiring Ministers to divest themselves of all shares, options, futures, debentures, stocks, bonds or any like security, or move them to a blind trust, within 28 days of becoming a Minister and creating an offence for Minister's who fail to do so; and
- placing limits, for up to two years, on the post-separation employment of Ministers and certain ministerial staff.

The bill also provides for a review of the Act within five years of its commencement.

The Committee has no comment on this bill.

Public Interest Disclosures Bill 2007

Introduced into the Senate on 14 June 2007

By Senator Murray

Background

This bill amends the *Freedom of Information Act 1982* and the *Ombudsman Act 1976* to create a new legislative framework that encourages and facilitates the disclosure of information in the public interest, by providing for protections for public officials and others who make such disclosures. The bill:

- provides for public interest disclosures to ‘proper authorities’ and obliges ‘proper authorities’ to investigate, or cause to be investigated, public interest information disclosed under this Act, except in specific circumstances;
- provides for public interest disclosures to Senators, Members of the House of Representatives, or journalists in certain circumstances;
- provides protection (including relief from legal liability) for people who disclose information in the public interest;
- provides for penalties for any person providing false or misleading information;
- creates an offence of taking or threatening to take detrimental action against a person because a public official has made, or may make, a public interest disclosure;
- provides the Commonwealth Ombudsman with the power to review any decision of a ‘proper authority’ to investigate or not to investigate a disclosure and to review the outcome of any investigation;
- requires the Commonwealth Ombudsman to report annually to Federal Parliament in relation to the number and outcomes of investigations of disclosures and the number of decisions reviewed; and
- provides for a review of the legislation after three years.

The Committee has no comment on this bill.

Tax Laws Amendment (Simplified GST Accounting) Bill 2007

Introduced into the House of Representatives on 13 June 2007

Portfolio: Treasury

Background

This bill amends the *A New Tax System (Goods and Services Tax) Act 1999* to extend the range of entities for which the Commissioner of Taxation can determine simplified accounting methods to include businesses, or other entities such as charities, who have an annual turnover of less than \$2 million and that make either a mix of taxable and GST-free supplies, or that have acquisitions of taxable supplies and GST free supplies. The amendments are to apply from 1 July 2007.

The bill also contains application, consequential and transitional provisions.

The Committee has no comment on this bill.

Telecommunications (Interception and Access) Amendment Bill 2007

Introduced into the House of Representatives on 14 June 2007

Portfolio: Attorney-General

Background

This bill amends the *Telecommunications (Interception and Access) Act 1979*, the *Australian Communications and Media Authority Act 2005*, the *Criminal Code Act 1995*, the *Intelligence Services Act 2001*, the *Telecommunications Act 1997* and the *Telecommunications (Interception) Amendment Act 2006* to implement further recommendations from the Report on the Review of the Regulation of Access to Communications by Anthony Blunn AO (the Blunn Report). This bill:

- transfers key security and law enforcement provisions from the *Telecommunications Act 1997* to the Telecommunications (Interception and Access) Act;
- creates a new two-tier access regime. The first tier encompasses the traditional access to existing telecommunications data and the second tier, which would be limited to a narrower range of agencies and require a higher threshold of authorisation, allows for access to future telecommunications data;
- broadens the offences for which interception warrants may be sought to include all child pornography offences;
- requires carriers and carriage service providers to ensure that communications carried over their telecommunications system are capable of being intercepted and also to prepare and submit an annual Interception Capability Plan;
- preserves existing cost allocation principles between the telecommunications industry and interception agencies associated with interception and delivery capability;

- creates offences for unlawful disclosure or use, including secondary use and disclosure, of telecommunications data;
- allows for the disclosure of lawfully stored communications information to other agencies; and
- allows the Attorney-General to authorise interception for developing and testing interception capabilities, subject to conditions.

The bill also contains application, consequential, saving and transitional provisions.

Retrospective commencement

Schedule 2, item 1

Item 3 in the table to subclause 2(1) of this bill provides that the amendment proposed in item 1 of Schedule 2 will commence retrospectively on 3 November 2006, immediately after the time specified in the *Telecommunications (Interception) Amendment Act 2006* for the commencement of item 8 of Schedule 5 to that Act. As a matter of practice the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Committee notes, however, that the explanatory memorandum (page 2) indicates that the purpose of the amendment is solely to correct a drafting error, and will have no effect on the substance of the law.

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

Legislative Instruments Act—exemptions

Schedule 1, item 12

Proposed new subsections 192(4), 195(6) and 203(4) of the *Telecommunications (Interception and Access) Act 1979*, to be inserted by item 12 of Schedule 1 to this bill, state that various instruments are not legislative instruments. The Committee notes that in each case the explanatory memorandum (pages 20, 22 and 27 respectively) states that the reason for this

exemption from the *Legislative Instruments Act 2003* is that the relevant documents contain sensitive and confidential information. For example, in respect of the instrument referred to in subsection 192(4) the explanatory memorandum explains that if the ‘documents were not kept confidential, the limitations of interception capability and, by implication, how to avoid interception, could become publicly apparent.’

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

Excluding merits review Schedule 1, item 12

Proposed new subsection 192(1) of the *Telecommunications (Interception and Access) Act 1979*, to be inserted by item 12 of Schedule 1 to the bill would permit the Communications Access Co-ordinator to ‘exempt a specified person from all or any of the obligations imposed on the person under Division 1 in so far as those obligations relate to a *specified kind of telecommunications service*’ [current author’s emphasis]. Similarly, proposed new subsection 193(1) of the same Act, also to be inserted by item 12 of Schedule 1 to the bill, would permit the Australian Communications and Media Authority (ACMA) to ‘exempt a specified person from all or any of the obligations imposed on the person under Division 1 in so far as those obligations relate to a *kind of telecommunications service that is a trial service*’ [current author’s emphasis].

These two new subsections appear to be very similar in nature and yet they are treated quite differently in terms of the *Legislative Instruments Act 2003*. New subsection 192(4) provides that ‘the exemption given [under subsection 192(1)] is not a legislative instrument’ and the explanatory memorandum (page 20) states that this is ‘due to the sensitive nature of interception capability obligations.’ The explanatory memorandum appears, therefore, to assume that the exemption is legislative in character, but should be shielded from Parliamentary review due to its sensitive nature.

In contrast, new subsection 193(5) provides that the ‘exemption given under subsection (1) is not a legislative instrument’ and the explanatory memorandum (page 21) indicates that this is because ‘these exemptions are administrative in nature and apply only to individual carriers or carriage service providers.’ In this instance, therefore, the explanatory memorandum appears to assume that the exemptions referred to in 193(1) are administrative in nature, rather than legislative.

The Committee **seeks the Minister’s advice** regarding the reasons why, despite appearing to be very similar provisions, the exemption provided for under proposed new subsection 192(1) is considered to be legislative in character but the exemption provided for in proposed new subsection 193(1) is considered administrative in nature. In addition, the Committee **seeks the Minister’s advice** whether, given it is administrative in nature, the exemption granted by the Australian Communications and Media Authority under subsection 193(1) should be subject to merits review under the *Administrative Appeals Tribunal Act 1975*.

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.

Retrospective application Schedule 2, item 7 and items 20 and 21

Items 23 and 25 of Schedule 2 would apply the amendments made by item 7 and items 20 and 21 of that Schedule respectively, to conduct engaged in, or proceedings instituted, before or after the commencement of the respective items. As a matter of practice the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Committee has long taken the view that the explanatory memorandum to a bill should set out in detail the reasons that retrospectivity is sought and whether it adversely effects any person other than the Commonwealth. Regrettably, the explanatory memorandum does not indicate whether the retrospective application of these

amendments will operate to the detriment of any person and the Committee **seeks the Attorney-General's advice** in respect of this matter.

Pending the Attorney-General's advice, the Committee draws Senators' attention to these 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.

Wheat Marketing Amendment Bill 2007

Introduced into the House of Representatives on 14 June 2007

Portfolio: Agriculture, Fisheries and Forestry

Background

This bill amends the *Wheat Marketing Act 1989* and the *Financial Management and Accountability Regulations 1997* to establish arrangements for controlling the export of wheat from Australia and the industry regulator, the Wheat Export Authority (WEA).

Schedule 1 provides the WEA with broader information gathering powers and provides the Minister with the power to direct the WEA to undertake investigations that the Minister considers to be in the public interest.

Schedule 2 extends the Minister's veto power over non-AWB (International) Ltd bulk exports until 30 June 2008.

Schedule 3, to take effect from 1 March 2008, provides the Minister with the power to designate a company as the holder of the single desk export privilege under the Act.

Schedule 4 deregulates the export of wheat in bags and containers by removing the requirement for exporters to first obtain a valid consent from the WEA for such exports. The schedule also provides for the development, by WEA, of a Quality Assurance (QA) scheme aimed at ensuring that exporters are meeting the specifications of their contracts with customers. Exporters of wheat in bags and containers will be required to comply with the Scheme.

Schedule 5 changes the governance arrangements of the WEA by implementing recommendations of the *Review of Corporate Governance of Statutory Authorities and Office Holders* (the Uhrig Review). The WEA will become an agency under the *Financial Management and Accountability Act 1997* and will be renamed the Export Wheat Commission. The Commission, to be appointed by the Minister, will comprise between four and six members with one or two Commissioners to be appointed based on their expertise in grain production.

Schedule 6 contains transitional provisions facilitating the transition of the WEA into the Export Wheat Commission.

**Incorporation of extrinsic material
Schedule 4, item 14**

Proposed new subsection 67(6) of the *Wheat Marketing Act 1989*, to be inserted by item 14 of Schedule 4, would permit the legislative instrument formulating the non-bulk wheat quality assurance scheme to apply, adopt or incorporate ‘a matter contained in any other instrument or writing’, in derogation of subsection 14(2) of the *Legislative Instruments Act 2003*. The Committee routinely draws attention to provisions that seek to incorporate into delegated legislation material ‘as in force from time to time’ where that incorporation involves material which appears not to be subject to sufficient parliamentary scrutiny.

The Committee notes that the explanatory memorandum (paragraph 67) indicates that this provision will ‘allow the Wheat Export Authority to draw on documents such as published industry standards to assist the QA scheme. This would also allow industry standards or procedures to change and still apply to the QA scheme without directly requiring amendments to the scheme.’ The Committee also notes that new subsection 67(8) requires that the Wheat Export Authority ‘ensure that the text of [any] matter applied, adopted or incorporated is made publicly available on its Internet site.’

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

COMMENTARY ON AMENDMENTS TO BILLS

Food Standards Australia New Zealand Amendment Bill 2007

On 14 June 2007 the Senate agreed to three amendments to the bill, none of which raise issues within the Committee's terms of reference. The Committee thanks the Minister for implementing his commitment, reported in the Committee's *Sixth Report of 2007*, to remove subsection 112(6), a 'Henry VIII' clause, from the bill and to enhance the explanatory memorandum to the bill.

Native Title Amendment (Technical Amendments) Bill 2007

On 13 June 2007 the Senate agreed to 40 amendments to the bill, one of which falls within the Committee's terms of reference.

Retrospective application

Amendment item 27, section 132A

Amendment item 27 inserts proposed new section 132A, which states that 'the amendments made by items 83A to 83C and by items 91A to 91E of this Schedule apply to an application under section 61 of the *Native Title Act 1993*, regardless of whether it is made before or after the commencing day.' Amendment item 27 may, therefore, give some retrospective effect to the amendments referred to in that item.

As a matter of practice the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this instance, the supplementary explanatory memorandum to the bill (page 19) indicates that '[t]hese amendments would rectify a drafting error in section 94C of the *Native Title Act*... [and] will ensure that all claims that should have been captured by section 94C, as inserted by the 2007 Act, are captured by the amendments to rectify the error in this provision.'

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

**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
International Trade Integrity Bill 2007	Schedule 1, item 26	Fail to provide information to a public authority	Imprisonment for 12 months
Lobbying and Ministerial Accountability Bill 2007	Subclauses 10(1), 11(3), 13(1) and 14(3)	Fail to provide information to a public authority	100 penalty units, and a daily penalty of 10 penalty units for each day after the relevant time limit that the return has not been lodged

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
*	Aged Care (Bond Security) Bill 2005 – clause 17
*	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 Participants in British Nuclear Tests (Treatment) Bill 2006 – clause 49
*	Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Bill 2005 – clause 23
*	Australian Trade Commission Legislation Amendment Bill 2006 – Schedule 4, item 16
*	Child Support Legislation Amendment (Reform of the Child Support Scheme—Initial Measures) Bill 2006 – Schedule 5, subitem 20(3)
	Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006 – Schedule 1, item 13, section 9G

*	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>]
*	Forestry Marketing and Research and Development Services Bill 2007 – clause 9
*	Forestry Marketing and Research and Development Services (Transitional and consequential Provisions) Bill 2007 – Schedule 1, subitem 16(4)
*	Future Fund Bill 2006 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>
*	Governance Review Implementation (Treasury Portfolio Agencies) Bill 2007 – Schedule 1, items 12 and 63 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>) and Schedule 2, subitems 2(3) and (4)
	Great Barrier Reef Marine Park Amendment Bill 2007 – Schedule 1, item 29 (CRF appropriated by virtue of section 28 of the <i>Financial Management and Accountability Act 1997</i>), Schedule 1, item 32 (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>) and Schedule 2, subitem 2(4)
*	Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Repeal Bill 2006 – Schedule 2, subitem 1(3)
*	Housing Loans Insurance Corporation (Transfer of Pre-transfer Contracts) Bill 2006 – clause 9
*	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)
*	Medibank Private Sale Bill 2006 – Schedule 2, subitem 8(1)
	Migration Amendment (Designated Unauthorised Arrivals) Bill 2006 – Schedule 1, subitem 43(3)
*	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
*	Plant Health Australia (Plant Industries) Funding Amendment Bill 2006 – Schedule 1, item 17, section 10B
*	Private Health Insurance Bill 2006 – clause 282-40 and subclause 318-5
*	Private Health Insurance (Transitional Provisions and Consequential Amendments) Bill 2006 – subclause 39(2)
*	Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004 – clause 133
*	Skilling Australia’s Workforce Bill 2005 – clause 40

*	Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments to Increase Assistance for Older Australians and Carers and Other Measures) Bill 2006 – Schedule 4, subitem 1(4)
*	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 - 2006/2007

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2006							
Airspace Bill 2006	15(6.12.06) 1(7.2.07)	29.11.06	6.2.06	Transport and Regional Services	7.12.06 8.2.07	26.2.07 26.2.07	2(28.2.07) 2(28.2.07)
Australian Energy Market Amendment (Gas Legislation) Bill 2006	15(6.12.06)	29.11.06	22.3.07	Industry, Tourism and Resources	7.12.06	6.2.07	1(7.2.07)
Australian Participants in British Nuclear Tests (Treatment) Bill 2006	11(11.10.06)	14.9.06	12.10.06	Veterans' Affairs	12.10.06	7.2.07	2(28.2.07)
<i>Copyright Amendment Act 2006</i>	13(8.11.06)	19.10.06	1.12.06	Attorney-General	--	29.1.07	1(7.2.07)
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2006	10(13.9.06)	4.9.06	--	Mr Katter	14.9.06	--	RNP
Trade Practices Legislation Amendment Bill 2006	7(9.8.06)	19.6.06	--	Mr Katter	10.8.06	--	RNP
Bills dealt with in 2007							
Aboriginal Land Rights (Northern Territory Amendment (Township Leasing) Bill 2007	6(13.6.07)	24.5.07	14.6.07	Families, Community Services and Indigenous Affairs	14.6.07		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
ACIS Administration Amendment (Unearned Credit Liability) Bill 2007	2(28.2.07)	7.2.07	26.2.07	Industry, Tourism and Resources	1.3.07	20.3.07	3(21.3.07)
Aged Care Amendment (Residential Care) Bill 2007	4(28.3.07)	21.3.07		Ageing	29.3.07	8.5.07	5(9.5.07)
Airport Development and Aviation Noise Ombudsman Bill 2007	2(28.2.07)	12.2.07		Mr Georganas	1.3.07	21.3.07	4(28.3.07)
Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2007	2(28.2.07)	15.2.07	1.3.07	Justice and Customs	1.3.07	16.3.07	3(21.3.07)
Australian Centre for International Agricultural Research Amendment Bill 2007	6(13.6.07)	10.5.07	12.6.07	Foreign Affairs	14.6.07		
Australian Citizenship Amendment (Citizenship Testing) Bill 2007	6(13.6.07)	30.5.07		Immigration and Citizenship	14.6.07		
Aviation Transport Security Amendment (Additional Screening Measures) Bill 2007	2(28.2.07)	14.2.07	1.3.07	Transport and Regional Services	1.3.07	16.3.07	3(21.3.07)
Bankruptcy Legislation Amendment (Debt Agreements) Bill 2007	2(28.2.07)	15.2.07	20.3.07	Attorney-General	1.3.07	15.3.07	3(21.3.07)
Bankruptcy Legislation Amendment (Superannuation Contributions) Bill 2006	1(7.2.07)	1.3.07	6.12.06	Attorney-General	8.2.07	26.2.07	2(28.2.07)
Broadcasting Legislation Amendment (Digital Radio) Bill 2007	5(9.5.07)	28.3.07	9.5.07	Communications, Information Technology and the Arts	10.5.07		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Classification (Publications, Films and Computer Games) Amendment Bill 2006	1(7.2.07)	7.12.06	8.2.07	Attorney-General	8.2.07	26.2.07	2(28.2.07)
Communications Legislation Amendment (Content Services) Bill 2007	6(13.6.07)	10.5.07	12.6.07	Communications, Information Technology and the Arts	14.6.07	19.6.07	7(20.6.07)
Corporations Amendment (Insolvency) Bill 2007	6(13.6.07)	31.5.07		Treasurer	14.6.07		
Corporations Legislation Amendment (Simpler Regulatory System) Bill 2007	6(13.6.07)	31.5.07	14.6.07	Treasurer	14.6.07		
Education Services for Overseas Students Legislation Amendment Bill 2007	4(28.3.07)	22.3.07	9.5.07	Education, Science and Training	29.3.07	26.4.07	5(9.5.07)
Employment and Workplace Relations Legislation (Welfare to Work and Vocational Rehabilitation Services) Bill 2006	1(7.2.07)	7.12.06	27.2.07	Employment and Workplace Relations	8.2.07 1.3.07	22.2.07 15.3.07	2(28.2.07) 3(21.3.07)
Families, Community Services and Indigenous Affairs Legislation Amendment (Child Support Reform Consolidation and Other Measures) Bill 2007	5(9.5.07)	29.3.07	9.5.07	Families, Community Services and Indigenous Affairs	10.5.07	28.5.07	6(13.6.07)
Financial Framework Legislation Amendment Bill (No. 1) 2007	6(13.6.07)	10.5.07		Finance and Administration	14.6.07		
Financial Sector Legislation Amendment (Restructures) Bill 2007	6(13.6.07)	24.5.07	14.6.07	Treasurer	14.6.07		
Fisheries Legislation Amendment Bill 2007	6(13.6.07)	23.5.07	13.6.07	Agriculture, Fisheries and Forestry	14.6.07	19.6.07	7(20.6.07)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Food Standards Australia New Zealand Amendment Bill 2007	5(9.5.07)	18.6.07	28.3.07	Health and Ageing	10.5.07	31.5.07	6(13.6.07)
Forestry Marketing and Research and Development Services Bill 2007	5(9.5.07)	29.3.07	12.6.07	Fisheries, Forestry and Conservation	10.5.07 14.6.07	8.6.07 19.6.07	6(13.6.07) 7(20.6.07)
Gene Technology Amendment Bill 2007	5(9.5.07)	10.5.07	28.3.07	Health and Ageing	10.5.07	29.5.07	6(13.6.07)
Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2007	5(9.5.07)	29.3.07	12.6.07	Health and Ageing	10.5.07	12.6.07	6(13.6.07)
Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Bill 2007	5(9.5.07)	29.3.07	10.5.07	Health and Ageing	10.5.07	12.6.07	6(13.6.07)
Higher Education Legislation Amendment (2007 Budget Measures) Bill 2007	6(13.6.07)	24.5.07	14.6.07	Education, Science and Training	14.6.07	19.6.07	7(20.6.07)
Higher Education Legislation Amendment (2007 Measures No. 1) Bill 2007	3(21.3.07)	28.2.07	9.5.07	Education, Science and Training	22.3.07	27.3.07	4(28.3.07)
Human Services (Enhanced Service Service Delivery) Bill 2007	2(28.2.07)	7.2.07	28.2.07	Human Services	1.3.07	27.3.07	4(28.3.07)
Liquid Fuel Emergency Amendment Bill 2007	5(9.5.07)	28.3.07	12.6.07	Industry, Tourism and Resources	10.5.07	1.6.07	6(13.6.07)
Maritime Legislation Amendment (Prevention of Air Pollution from Ships) Bill 2006	1(7.2.07)	6.12.06	26.2.07	Transport and Regional Services	8.2.07	26.2.07	2(28.2.07)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Murray-Darling Basin Amendment Bill 2006	1(7.2.07)	7.12.06		Agriculture, Fisheries and Forestry	8.2.07	8.5.07	5(9.5.07)
Native Title Amendment (Technical Amendments) Bill 2007	5(9.5.07)	29.3.07	12.6.07	Attorney-General	10.5.07	4.6.07	6(13.6.07)
Non-Proliferation Legislation Amendment Bill 2006	1(7.2.07)	1.3.07	6.12.06	Foreign Affairs	8.2.07	27.2.07	2(28.2.07)
<i>Private Health Insurance Act 2007 Amendments</i>	1(7.2.07) 4(28.3.07)	7.12.06	26.2.07	Health and Ageing	8.2.07 29.3.07	26.2.07 8.5.07	2(28.2.07) 5(9.5.07)
Social Security and Veterans' Affairs Legislation Amendment (One-off Payments and Other 2007 Budget Measures) Bill 2007	6(13.6.07)	9.5.07	10.5.07	Families, Community Services and Indigenous Affairs	14.6.07		
Tax Laws Amendment (2006 Measures No. 7) 2006	1(7.2.07)	7.12.06	7.2.07	Treasurer	8.2.07 1.3.07	27.2.07 15.3.07	2(28.2.07) 3(21.3.07)
Veterans' Affairs Legislation Amendment (2007 Measures No. 1) Bill 2007	5(9.5.07)	28.3.07	12.6.07	Veterans' Affairs	10.5.07	1.6.07	6(13.6.07)
Workplace Relations Amendment (A Stronger Safety Net) Bill 2007	6(13.6.07)	28.5.07	13.6.07	Employment and Workplace Relations	14.6.07		