

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



Alert Digest

No. 8 of 2008

3 September 2008

Senate Standing Committee
for the
Scrutiny of Bills

Alert Digest No. 8 of 2008

3 September 2008

ISSN 1329-668X

Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator the Hon C Ellison (Chair)

Senator M Bishop (Deputy Chair)

Senator D Cameron

Senator J Collins

Senator the Hon J Troeth

Terms of Reference

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

TABLE OF CONTENTS

Commentary on bills

• AusLink (National Land Transport) Amendment Bill 2008	5
Building and Construction Industry (Restoring Workplace Rights) Bill 2008	7
Emergency Water (Murray-Darling Basin Rescue) Bill 2008	8
International Tax Agreements Amendment Bill (No. 1) 2008	9
• Offshore Petroleum Amendment (Datum) Bill 2008	10
Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008	12
• Tax Laws Amendment (Political Contributions and Gifts) Bill 2008	13
Commentary on amendments to bills	15
Scrutiny of standing appropriations	16

- **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.

AusLink (National Land Transport) Amendment Bill 2008

Introduced into the House of Representatives on 28 August 2008

Portfolio: Infrastructure, Transport, Regional Development and Local Government

Background

This bill amends the *AusLink (National Land Transport) Act 2005* to:

- amend the definition of ‘road’ to ensure that projects for the development of off road facilities used by heavy vehicles in connection with travel on the road may be funded;
- extend the Roads to Recovery Program until 30 June 2014; and
- clarify that Roads to Recovery funds can be allocated for use in a particular State or area within a State, whilst the most appropriate entity to finally receive the allocation is determined.

The bill also contains a saving provision.

Legislative Instruments Act – exemption from disallowance Schedule 1, items 3 and 9

Proposed new subsection 87(3) of the *Auslink (National Land Transport) Act 2005*, to be inserted by item 3 of Schedule 1, provides that ‘Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to a determination [of an Auslink Roads to Recovery List] made under’ proposed new subsection 87(1). Similarly, new subsection 88(5) of the same Act, to be inserted by item 9 of Schedule 1, provides that an ‘instrument varying an Auslink Roads to Recovery List is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the instrument.’

The Committee notes from the explanatory memorandum that ‘the list of funding recipients and their funding allocations is central to the administration of the Roads to Recovery Program. Local government authorities will be expecting to continue to receive funding under... [the Program and the] listing of funding recipients follows existing practices, is well known to local government, and is not subject to disallowance.’

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

Building and Construction Industry (Restoring Workplace Rights) Bill 2008

Introduced into the Senate on 28 August 2008

By Senator Siewert

Background

This bill seeks to repeal the *Building and Construction Industry Improvement Act 2005* and the *Building and Construction Industry Improvement (Consequential and Transitional) Act 2005*.

The Committee has no comment on this bill.

Emergency Water (Murray-Darling Basin Rescue) Bill 2008

Introduced into the Senate on 28 August 2008

By Senator Xenophon

Background

Among other things, this bill:

- empowers the Minister to direct the Murray-Darling Basin Authority to develop an Interim Basin Plan, as an emergency measure to apply until such time as the Minister approves a Basin Plan;
- outlines the powers of the Murray-Darling Basin Authority in respect of an Interim Basin Plan, including powers of implementation, compliance and enforcement;
- outlines the matters to which the Minister must have regard when making a determination under the Act; and
- requires the ACCC to inquire into the effect of arrangements in the *Income Tax Assessment Act 1997* on the water market and on the nature of irrigation practice and investment, and provide advice to the Minister based on the outcome of the inquiry.

The bill also amends the *Water Act 2007* to: provide for the appointment of a Chief Executive Officer (CEO) of the Murray-Darling Basin Authority; specify the duties of the CEO and disclosure of interest obligations; and provide for the termination and remuneration of the CEO.

The Committee has no comment on this bill.

International Tax Agreements Amendment Bill (No. 1) 2008

Introduced into the House of Representatives on 27 August 2008
Portfolio: Treasury

Background

This bill amends the *International Tax Agreements Act 1953* to give the force of law to the *Convention between Australia and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* and its associated Protocol and Exchange of Notes. The Convention was signed in Tokyo on 31 January 2008 and aims to facilitate trade and investment between Australia and Japan.

The bill repeals the existing treaty, which has been in place since 1969, and inserts the text of the new Convention into Schedule 6 of the *International Tax Agreements Act 1953*.

The Committee has no comment on this bill.

Offshore Petroleum Amendment (Datum) Bill 2008

Introduced into the House of Representatives on 27 August 2008
Portfolio: Resources, Energy and Tourism

Background

This bill amends the datum provisions in the *Offshore Petroleum Act 2006* to correct a technical error in the *Offshore Petroleum Amendment (Miscellaneous Measures) Act 2008*, which inadvertently replaced all references to the Australian Geodetic Datum with the Geocentric Datum of Australia.

The bill aims to remove uncertainty about title boundaries for petroleum titles, ensure alignment between existing and future titles, and facilitate the award of new exploration permits and the release of new exploration acreage.

The bill also contains transitional provisions.

Retrospective commencement Schedule 1

Item 2 in the table to subclause 2(1) of this bill provides that the amendments proposed in Schedule 1 will commence on 1 July 2008, immediately after the commencement of item 24 of Schedule 1 to the *Offshore Petroleum Amendment (Miscellaneous Measures) Act 2008*.

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 Committee notes from the explanatory memorandum that the amendments are correcting a technical error and are beneficial to industry.

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

Retrospective application
Schedule 1, item 6

Item 6 of Schedule 1 is a transitional provision which validates an instrument, act or thing done under various clauses of the *Offshore Petroleum Act 2006* prior to the commencement of this measure.

As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. The Committee notes that, although the explanatory memorandum merely gives a brief paraphrase of the provision, the Minister's second reading speech assures readers that this retrospectivity has been included for the benefit of the petroleum industry, and that it has no adverse effects on that industry.

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

Social Security and Veterans' Entitlements Legislation Amendment (Schooling Requirements) Bill 2008

Introduced into the House of Representatives on 27 August 2008

Portfolio: Education, Employment and Workplace Relations

Background

This bill amends the *Social Security (Administration) Act 1999* by inserting a new Part 3C, which outlines requirements for parents in receipt of income support in relation to the enrolment and attendance of their children at school. In particular, Part 3C provides for:

- the suspension of income support payments to affected parents who have been issued with a notice requiring them to provide information to Centrelink about the status of their child's enrolment at school and who do not comply with the notice without a reasonable excuse or other special circumstance;
- the suspension of income support payments to parents who fail to take reasonable steps to address their child's unsatisfactory school attendance;
- payments to be reinstated with full back pay if parents comply within a 13 week period;
- discretion in the lifting of suspension periods and for the payment of arrears beyond a 13 week suspension period; and
- the disclosure of information about school enrolment and attendance for the purposes of this Act.

The bill also amends the *A New Tax System (Family Assistance) Act 1999*, the *Student Assistance Act 1973* and the *Veterans' Entitlements Act 1986* to provide legislative support for payments affected by the measure, and contains application provisions.

The Committee has no comment on this bill.

Tax Laws Amendment (Political Contributions and Gifts) Bill 2008

Introduced into the House of Representatives on 27 August 2008

Portfolio: Treasury

Background

This bill amends the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to:

- remove tax deductibility for contributions and gifts to political parties, independent members and independent candidates, effective 1 July 2008; and
- remove general deductions for business taxpayers for contributions and gifts to political parties, members and candidates, and preclude such contributions or gifts from forming part of the cost base or reduced cost base of any capital gains tax asset.

The bill also amends the *A New Tax System (Goods and Services Tax) Act 1999* to ensure that the existing GST treatment of political parties, independent members, and independent candidates is not altered by the changes to income tax deductibility for gifts or contributions.

The bill also contains application provisions.

Retrospective application Schedule 1, item 21

Item 21 of Schedule 1 provides that the amendments to be made by that Schedule will apply in relation to gifts or contributions made on or after 1 July 2008.

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. However, the Committee does not generally

comment adversely where the bill implements a tax or revenue measure in respect of which the relevant Minister has published a date from which the measure is to apply, and the publication took place prior to the date of application. This is the case in respect of the tax measures in this bill.

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

COMMENTARY ON AMENDMENTS TO BILLS

Migration Legislation Amendment Bill (No. 1) 2008

On 28 August 2008, the Senate agreed to thirteen amendments to this bill, none of which fall within the Committee's terms of reference.

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 42nd Parliament.

Bills introduced with standing appropriation clauses – 42nd Parliament

*Indicates passed by Senate	Bills and Clauses
*	Commonwealth Securities and Investment Legislation Amendment Bill 2008 — Schedule 1, item 10, subsection 5BA(7)
*	Defence Home Ownership Assistance Scheme Bill 2008 — Clause 84
*	Dental Benefits Bill 2008 — Clause 65
*	Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008 — Schedule 1, item 29.
*	Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008 — Schedule 1, item 79, section 94B (CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
	Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008 — Schedule 5, item 141, section 65A.
	Protection of the Sea Legislation Amendment Bill 2008 — Schedule 1, item 20, section 46N.
*	Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008 — Schedule 1, item 1
*	Wheat Export Marketing Bill 2008 — clause 58 (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
*	<p>Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Bill 2008 — Schedule 2, items 1 and 2, and Schedule 4, item 1: special appropriation clauses – for a finite period of time (ie. for circumstances arising in a particular financial year).</p>

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2007/2008

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2007							
Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures Bill 2007	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 1(12.3.08)
Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Bill 2007	8(8.8.07)	21.6.07	13.9.07	Treasurer	9.8.07	20.9.07	1(12.3.08)
Financial Sector Legislation Amendment (Simplifying Regulation and Review) Bill 2007	8(8.8.07)	21.6.07	13.9.07	Treasurer	9.8.07	19.9.07	1(12.3.08)
National Greenhouse and Energy Reporting Bill 2007	11(12.9.07)	15.8.07	18.9.07	Environment and Water Resources	13.9.07	2.10.07	1(12.3.08)
<i>Northern Territory National Emergency Response Act 2007</i>	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 1(12.3.08)
<i>Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007</i>	9(13.8.07)	7.8.07	8.8.07	Families, Community Services and Indigenous Affairs	13.8.07 13.9.07	16.8.07 17.10.07	9(12.9.07) 1(12.3.08)
<i>Water Act 2007</i>	10(15.8.07)	8.8.07	15.8.07	Environment and Water Resources	16.8.07	23.11.07	1(12.3.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills introduced 2008							
<i>Aged Care Amendment (2008 Measures No. 1) Act 2008</i>	1(12.3.08)	13.2.08	14.2.08	Health and Ageing	13.3.08	4.8.08	7(27.8.08)
<i>Australian Crime Commission Amendment Act 2007</i>	3(14.5.08)	19.9.07	18.9.07	Home Affairs	15.5.08	20.6.08	6(25.6.08)
Australian Energy Market Amendment (Minor Amendments) Bill 2008	3(14.5.08)	20.3.08	23.6.08	Resources, Energy and Tourism	15.5.08	28.5.08	4(4.6.08)
Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Infrastructure, Transport, Regional Development and Local Government	15.5.08	19.6.08	6(25.6.08)
Communications Legislation Amendment (Miscellaneous Measures) Bill 2008	2(19.3.08)	17.3.08	12.3.08	Broadband, Communications and the Digital Economy	20.3.08	13.5.08	3(14.5.08)
Customs Amendment (Strengthening Border Controls) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Home Affairs	15.5.08	13.6.08	5(18.6.08)
Customs Legislation Amendment (Modernising) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Home Affairs	15.5.08	13.6.08	5(18.6.08)
Dental Benefits Bill 2008	4(4.6.08)	29.5.08	18.6.08	Health and Ageing	5.6.08	23.6.08	6(25.6.08)
Drink Container Recycling Bill 2008	2(19.3.08)		13.3.08	Senator Fielding	20.3.08		
Environment Protection and Biodiversity Conservation Amendment (Control of Power Station Emissions) Bill 2008	6(25.6.08)		19.6.08	Senator Allison	26.6.08		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Excise Legislation Amendment (Condensate) Bill 2008	4(4.6.08)	15.5.08	16.6.08	Treasury	5.6.08	17.6.08	5(18.6.08)
Excise Tariff Amendment (Condensate) Bill 2008 Amendment	5(18.6.08)	15.5.08	16.6.08	Treasury	19.6.08	28.8.08	8(3.9.08)
Family Assistance Legislation Amendment (Child Care Budget and Other Measures) Bill 2008	4(4.6.08)	29.5.08	16.6.08	Education, Employment and Workplace Relations	5.6.08	18.6.08	6(25.6.08)
Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008	7(27.8.08)	25.6.08	1.9.08	Attorney-General	28.8.08		
Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008	4(4.6.08)	29.5.08	16.6.08	Agriculture, Fisheries and Forestry	5.6.08	17.6.08	5(18.6.08)
Financial Sector Legislation Amendment (Review of Prudential Decisions) Bill 2008	1(12.3.08)	11.3.08	13.2.08	Treasury	13.3.08	18.3.08	2(19.3.08)
First Home Saver Accounts Bill 2008	4(4.6.08)	28.5.08	16.6.08	Treasury	5.6.08	16.6.08	5(18.6.08)
Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority And Other Matters) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Agriculture, Fisheries and Forestry	15.5.08	28.5.08	4(4.6.08)
Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008	6(25.6.08)	18.6.08	27.8.08	Environment, Heritage and the Arts	26.6.08	22.7.08	7(27.8.08)
Horse Disease Response Levy Bill 2008	1(12.3.08)	21.2.08		Agriculture, Fisheries and Forestry	13.3.08	9.7.08	7(27.8.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Horse Disease Response Levy Collection Bill 2008	1(12.3.08)	21.2.08		Agriculture, Fisheries and Forestry	13.3.08	9.7.08	7(27.8.08)
Independent Reviewer of Terrorism Laws Bill 2008	3(14.5.08)	17.3.08		Mr Georgiou MP	15.5.08	26.5.08	4(4.6.08)
Infrastructure Australia Bill 2008	1(12.3.08)	21.2.08	18.3.08	Infrastructure, Transport, Regional Development and Local Government	13.3.08	18.3.08	2(19.3.08)
National Commissioner for Children Bill 2008	3(14.5.08)		18.3.08	Senator Bartlett	15.5.08		
National Fuelwatch (Empowering Consumers) (Consequential Amendments) Bill 2008	4(4.6.08)	29.4.08	16.6.08	Treasury	5.6.08	24.6.08	6(25.6.08)
Offshore Petroleum Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08		Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
Offshore Petroleum (Annual Fees) Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08		Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
Offshore Petroleum (Registration Fees) Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08		Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)
Offshore Petroleum (Safety Levies) Amendment (Greenhouse Gas Storage) Bill 2008	6(25.6.08)	18.6.08		Resources, Energy and Tourism	25.6.08	1.8.08	7(27.8.08)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Protection of the Sea (Civil Liability For Bunker Oil Pollution Damage) Bill 2008	3(14.5.08)	20.3.08	16.6.08	Infrastructure, Transport, Regional Development and Local Government	15.5.08	2.6.08	4(4.6.08)
Renewable Energy (Electricity) Amendment (Feed-in-Tariff) Bill 2008	4(4.6.08)		15.5.08	Senator Milne	5.6.08	12.6.08	5(18.6.08)
Unit Pricing (Easy comparison of Grocery prices) Bill 2008	4(4.6.08)		15.5.08	Senator Fielding	5.6.08	5.6.08	5(18.6.08)
Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008	3(14.5.08)	19.3.08	16.6.08	Veterans' Affairs	15.5.08	24.6.08	6(25.6.08)
<i>Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008</i>	1(12.3.08)	13.2.08	17.3.08	Employment and Workplace Relations	13.3.08 20.3.08	18.3.08 22.4.08	2(19.3.08) 3(14.5.08)