

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



Alert Digest

No. 15 of 2009

25 November 2009

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ISSN 1329-668X

Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator the Hon H Coonan (Chair)

Senator M Bishop (Deputy Chair)

Senator D Cameron

Senator J Collins

Senator R Siewert

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.

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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.

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- **The Committee has commented on these bills**

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Committee under its terms of reference is invited to do so.

ACIS Administration Amendment (Application) Bill 2009

Introduced into the House of Representatives on 18 November 2009
Portfolio: Innovation, Industry, Science and Research

Background

This bill amends the *ACIS Administration Amendment Act 2009* to correct an unintended consequence arising from that Act's link to the commencement of the *Automotive Transformation Scheme Act 2009*.

Specifically, the bill clarifies that the commencement date for the ACIS Administration Amendment Act is 1 January 2010.

The bill also contains an application provision to make it explicit that additional assistance to be provided to motor vehicle producers is limited to their production of motor vehicles, engines and engine components from 1 January 2010 (thereby removing any uncertainty that the new provisions could be applied to production undertaken in the final three months of 2009 for which duty credits will be issued in the first three months of 2010).

The Committee has no comment on this bill.

Appropriation (Water Entitlements and Home Insulation) Bill 2009-2010

Introduced into the House of Representatives on 18 November 2009
Portfolio: Finance and Deregulation

Background

This bill seeks to appropriate \$700.7 million from the Consolidated Revenue Fund for the ordinary annual services of the Federal Government in relation to water entitlements and home insulation.

The bill provides urgent funding to cover rebate payments made under the Home Insulation Program, and departmental costs associated with the acceleration of the water buybacks within the Murray-Darling Basin system that are addressed in the Appropriation (Water Entitlements) Bill 2009-2010.

The Committee has no comment on this bill.

Appropriation (Water Entitlements) Bill 2009-2010

Introduced into the House of Representatives on 18 November 2009
Portfolio: Finance and Deregulation

Background

This bill seeks to appropriate \$650 million from the Consolidated Revenue Fund for services that are not the ordinary annual services of the Federal Government in relation to water entitlements.

The bill provides urgent funding for the Department of the Environment, Water, Heritage and the Arts to accelerate water buybacks within the Murray-Darling Basin system and provide for new water purchase initiatives in 2009-10.

The Committee has no comment on this bill.

Assisting the Victims of International Terrorism Bill 2009

Introduced into the House of Representatives on 16 November 2009

By Mr Abbott

Background

This bill aims to acknowledge Australians who are killed or injured as a result of international terrorist acts by establishing a framework to facilitate the provision of financial assistance to those persons or their next of kin.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Member's bill, was accompanied only by a statement made on presentation of the bill and was introduced without an explanatory memorandum. The consideration of bills by the Committee and by the Parliament is assisted if they are accompanied by explanatory memoranda. The Department of the Senate has developed a set of guidelines to assist Senators with the preparation of private bills and explanatory material, *Preparing Private Senator's Bills, Explanatory Memoranda and Second Reading Speeches: A Guide for Senators*. This guide, which is available from the Clerk Assistant (Procedure) and on the Senate's intranet site, may assist Senators and Members in preparing explanatory memoranda. While noting that the statement made on presentation of the bill provides some explanation of the bill's intent and operation, the Committee **seeks the Member's advice** as to whether an explanatory memorandum might also be provided.

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

Uncertain application

Clause 6

Clause 6 provides that guidelines (determined under clause 5) for the operation of the proposed Assisting Australian Victims of International Terrorist Acts Framework must ensure that financial assistance is provided to a person who requires hospitalisation as a result of an international terrorist act, or to their next of kin if the person suffered death as a result of such an act.

The Committee notes that the phrase ‘next of kin’ is not defined in the bill and the proposed provision would override the laws of testacy and intestacy. The common law rule is that next of kin is the closest relative by blood or marriage and child dependants (for example) may not necessarily be a victim’s next of kin. The Committee **seeks the Member’s advice** on whether the priority for assistance (next of kin) might be supplemented by the guidelines in cases of need in order to ensure that the bill meets its intended objectives.

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.

Drafting note

Paragraph 7(2)(b)

Paragraph 7(2)(b) provides that consultation with relevant individuals and bodies (listed in subclause 7(1)) must take place before guidelines are determined under clause 5, and ‘twice each year after the commencement of the framework’. It is not specified whether the financial year or calendar year is intended. The Committee **draws this drafting matter to the Member’s attention.**

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

Drafting note

Clause 8

Clause 8 provides for the Minister to have general responsibility for the operation of ‘the plan’. For consistency and clarity with other clauses in the bill, it may be preferable to replace the words ‘the plan’ with the words ‘the framework’. The Committee **draws this drafting matter to the Member’s attention.**

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

Australian Capital Territory and Other Legislation Amendment (Water Management) Bill 2009

Introduced into the House of Representatives on 19 November 2009

Portfolio: Climate Change and Water

Background

This bill amends the *Australian Capital Territory (Planning and Land Management) Act 1988* to provide the ACT Government with the power to manage water abstraction on National land, and abstraction of water by Commonwealth agencies throughout the ACT, under the *Water Resources Act 2007* (ACT) (following necessary amendments of that Act and other relevant ACT legislation). In doing this, the bill aims to continue improvement in governance of water within the Murray-Darling Basin.

Further, the bill amends the *Canberra Water Supply (Googong Dam) Act 1974* to ensure that the ACT Executive has the necessary powers to fully manage the surface waters of the Googong Dam under the ACT Water Resources Act.

The bill also makes minor amendments to the *Water Act 2007*, the *Water Amendment Act 2008*, and water-related provisions in the *Trade Practices Act 1974*.

Retrospectivity

Subclause 2(1)

Subclause 2(1) contains the table of commencement information and item 3 of the table provides that items 1 and 2 of Schedule 2 commence on 15 December 2008, resulting in retrospective commencement. 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.

Items 1 and 2 of Schedule 2 amend subsection 18B(9) of the *Water Act 2007*. A note to item 2 explains that section 18B was inserted by the *Water Amendment Act 2008* which commenced on 15 December 2008. This means

that the relevant provisions in this bill will be taken to have commenced immediately after the commencement of the amended section 18B.

The Committee also notes that the explanatory memorandum explains (at page 5) that the amendments in items 1 and 2 of Schedule 2 mirror equivalent provisions in relevant state laws which refer legislative power to the Commonwealth to enact the referred provisions of the Water Act.

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

Incorporation by reference Schedule 2, items 4, 7, 9 and 10

Items 4, 7, 9 and 10 of Schedule 2 (which amend the *Water Act 2007*) contain references to the 'Basin Plan' or the 'water resource plan' that 'may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter...in an instrument or other writing...as in force or existing from time to time'.

Items 4 and 7 propose to insert notes at the end of existing subsections 21(1) and 22(1) to this effect. Items 9 and 10 insert new subsections into existing sections 33 and 55 respectively (proposed new subsections 33(4) and 55(4)); and also include new subsections which specify that the Murray Darling Basin Authority must make the text of any matter applied, adopted or incorporated as in force or existing from time to time, publicly available on its website (proposed new subsections 33(6) and 55(6)).

The explanatory memorandum clearly explains (at pages 6 and 7) why each of these incorporations by reference is necessary: namely, that the plans may need to incorporate documents or instruments that are not legislative instruments (for example, guidelines, models or standards) as in force from time to time; and it would not be practical to amend the plans each time a particular instrument was amended, or to incorporate specific out-of-date material into the plans. The explanatory memorandum also states that the Basin Plan and a water resource plan adopted by the Minister are legislative instruments, making them subject to the usual scrutiny and disallowance regime.

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

Australian Centre for Renewable Energy Bill 2009

Introduced into the House of Representatives on 18 November 2009

Portfolio: Resources, Energy and Tourism

Background

This bill establishes the Australian Centre for Renewable Energy (ACRE) Board and the position of Chief Executive Officer (CEO) of the ACRE.

The ACRE is a component of the Clean Energy Initiative which will complement the Carbon Pollution Reduction Scheme and expanded Renewable Energy Target by supporting the research, development and demonstration of low-emission and renewable energy technologies. The ACRE's objective will be to promote the development, commercialisation and deployment of renewable energy and enabling technologies, and to improve their competitiveness in Australia.

The principal function of the ACRE Board will be to advise the Minister on renewable energy and enabling technologies.

Indeterminate ministerial power

Subclause 17(3)

Clause 17 provides for the termination of appointment of members of the ACRE Board. For example, termination may occur due to: misbehaviour, or physical or mental incapacity (subclause 17(1)); bankruptcy (subparagraph 17(2)(a)(i)); or lack of attendance at meetings without leave of absence (paragraph 17(2)(b)).

Subclause 17(3) provides that the Minister may terminate an appointment 'if he or she is satisfied that the member's performance has been unsatisfactory for a significant period of time'. The Committee notes that the types of behaviour that may be considered to constitute unsatisfactory performance are not defined in the bill, thus providing the Minister with an apparent broad discretion to terminate a board member's appointment pursuant to this criterion. The explanatory memorandum provides no guidance as to the

intended interpretation of the words ‘unsatisfactory performance’. The Committee **seeks the Minister’s advice** on whether the explanatory memorandum might be amended to provide guidance or examples in relation to the intended practical operation of subclause 17(3).

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.

Coal Mining Industry (Long Service Leave Funding) Amendment Bill 2009

Introduced into the House of Representatives on 18 November 2009
Portfolio: Employment and Workplace Relations

Background

This bill amends the *Coal Mining Industry (Long Service Leave Funding) Act 1992* (Coal Mining Industry Act) to ensure the continued operation of existing unique long service leave arrangements in the black coal mining industry. The amendments will clarify that, from 1 January 2010, the existing long service leave entitlements preserved by the *Fair Work Act 2009* will be covered by the Coal Mining Industry Act.

The bill also introduces definitions of ‘black coal mining industry’, ‘employee’ and ‘employer’, and amends the definition of ‘eligible employee’ in the Coal Mining Industry Act to ensure that the scheme applies universally in the black coal mining industry.

The Committee has no comment on this bill.

Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Bill 2009

Introduced into the House of Representatives on 19 November 2009

Portfolio: Attorney-General

Background

This bill amends the *Criminal Code Act 1995* by enacting a specific Commonwealth torture offence in the Commonwealth Criminal Code to operate concurrently with existing offences in state and territory criminal laws. The new offence is intended to more clearly and explicitly fulfil Australia's obligations under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The bill also amends the *Death Penalty Abolition Act 1973* to extend the current prohibition on the death penalty to state laws in order to ensure that the death penalty cannot be introduced anywhere in Australia. This amendment is intended to safeguard Australia's ongoing compliance with the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty.

Absolute liability

Schedule 1, item 1, new subsection 274.2(3)

Proposed new section 274.2 of the *Criminal Code Act 1995*, to be inserted by item 1 of Schedule 1, provides for a specific offence of torture. Proposed new subsection 274.2(3) provides that absolute liability applies to persons who commit torture when acting in the capacity of a public official; acting in an official capacity; or acting at the instigation, or with the consent or acquiescence, of a public official or other person acting in an official capacity.

In February 2004, the Minister for Justice and Customs published a *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers*, which draws together the principles of the criminal law policy of the Commonwealth. Part 4.5 of the *Guide* contains a statement of the matters which should be considered in framing strict and absolute liability offences.

The Committee will generally draw to the attention of Senators any provisions in bills which create strict and absolute liability offences. The Committee considers that the reasons for the imposition of strict and absolute liability should be set out in the relevant explanatory memorandum.

In this case, the explanatory memorandum refers (at page 6) to the *Guide* in explaining why absolute liability is required and strict liability is insufficient, stating specifically that the approach taken in the bill is consistent with Commonwealth criminal law practice. The explanatory memorandum explains that absolute liability is considered appropriate and is required because involvement by a public official is a necessary circumstance under Article 1 of the UN Convention. Strict liability is considered to be insufficient because it is inappropriate for a mistake of fact as to the involvement of a public official to be available as a defence to torture.

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

Fairer Private Health Insurance Incentives Bill 2009 [No. 2]

Introduced into the House of Representatives on 19 November 2009

Portfolio: Treasury

Background

Part of a package of three bills, this bill amends the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Private Health Insurance Act 2007*, the *Taxation Administration Act 1953* and the *Taxation (Interest on Overpayments and Early Payments) Act 1983* to give effect to the three new ‘Private Health Insurance Incentive Tiers’ announced in the 2009-10 Budget. The new arrangements will apply to income years starting on or after 1 July 2010.

The bill will reduce the amount of private health insurance rebate an eligible taxpayer with a complying private health insurance policy is entitled to when they have income for surcharge purposes above the relevant Medicare levy surcharge threshold. The bill will also increase the rate of Medicare levy surcharge that certain taxpayers are liable for when they have income for surcharge purposes above specified thresholds and do not have complying health insurance.

This bill is identical to a bill introduced into the House of Representatives on 27 May 2009, negatived in the Senate on 9 September 2009, and upon which the Committee commented in *Alert Digest No. 6 of 2009*. Please refer to *Alert Digest No. 6 of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2009 [No. 2]

Introduced into the House of Representatives on 19 November 2009

Portfolio: Treasury

Background

Part of a package of three bills, this bill amends the *Medicare Levy Act 1986* to give effect to the three new ‘Private Health Insurance Incentive Tiers’ announced in the 2009-10 Budget. The bill inserts the new tier system in order to determine which level of surcharge a person must pay where they do not hold appropriate private health insurance.

This bill is identical to a bill introduced into the House of Representatives on 27 May 2009 and negatived in the Senate on 9 September 2009. The Committee considered the original bill in *Alert Digest No. 6 of 2009* but did not make any comment.

The Committee has no comment on this bill, as re-introduced.

Fairer Private Health Insurance Incentives (Medicare Levy Surcharge—Fringe Benefits) Bill 2009 [No. 2]

Introduced into the House of Representatives on 19 November 2009
Portfolio: Treasury

Background

Part of a package of three bills, this bill amends the *A New Tax System (Medicare Levy Surcharge—Fringe Benefits) Act 1999* to give effect to the three new ‘Private Health Insurance Incentive Tiers’ announced in the 2009-10 Budget. The bill inserts the new tier system in order to determine which level of surcharge a person must pay where they do not hold appropriate private health insurance.

This bill is identical to a bill introduced into the House of Representatives on 27 May 2009 and negatived in the Senate on 9 September 2009. The Committee considered the original bill in *Alert Digest No. 6 of 2009* but did not make any comment.

The Committee has no comment on this bill, as re-introduced.

National Health Security Amendment (Background Checking) Bill 2009

Introduced into the House of Representatives on 19 November 2009
Portfolio: Health and Ageing

Background

This bill amends the *National Health Security Act 2007* to clarify that the Minister may require background checks of individuals who handle or dispose of security sensitive biological agents (SSBAs). The background checking will be conducted by the Australian Background Checking Service (AusCheck), located within the Attorney-General's Department.

The proposed amendment is consistent with the Senate Standing Committee on Legal and Constitutional Affairs' report in relation to the AusCheck Amendment Bill 2009 which recommended that a principal Act should authorise the establishment of a background checking scheme to be conducted by AusCheck.

The Committee has no comment on this bill.

Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009

Introduced into the House of Representatives on 19 November 2009

Portfolio: Treasury

Background

This bill amends the secrecy and disclosure provisions applying to taxation information – currently found across 18 taxation Acts – by consolidating and standardising the various enactments into a single new framework. This framework will be contained in Schedule 1 to the *Taxation Administration Act 1953*.

The new framework is designed to provide clarity and certainty to taxpayers, the Australian Taxation Office, and users of taxpayer information; and to provide guiding principles to assist in framing any future additions or changes. The primary objective of the new framework is to protect the confidentiality of taxpayer information.

Insufficient parliamentary scrutiny

Schedule 1, item 1

The proposed framework gives effect to its primary objective by placing a general prohibition on the disclosure of taxpayer information, except in certain specified circumstances. The guiding principle is that disclosures are permitted where privacy concerns are clearly outweighed by the public benefit of the disclosure. The bill contains provisions regulating disclosure of protected information by taxation officers (proposed new Subdivision 355-B, to be inserted by item 1 of Schedule 1) and the ‘on-disclosure’ of protected information by other people (proposed new Subdivision 355-C, also to be inserted by item 1 of Schedule 1).

Disclosure by taxation officers to Ministers, a House of the Parliament or a committee of one or both Houses of the Parliament is limited by new section 355-60 of Subdivision 355-B to the disclosure of publicly available information (see proposed new section 355-45) and information that is

explicitly permitted to be disclosed for certain purposes under proposed new section 355-55. For example, if a parliamentary committee has requested a taxation officer to provide protected information in writing, such information would be treated as evidence in-camera and made available to the committee (proposed new subsection 355-55(2)).

However, the Committee notes that the provisions relating to ‘on-disclosure’ to the Parliament, by people other than taxation officers, are different. The limits on non-disclosure to Ministers and the Parliament are contained in proposed new section 355-210 which provides that, if an entity has acquired ‘protected information’ (defined in proposed new section 355-30) and makes a record of it for, or discloses it to, the Parliament, that person may only rely on three exceptions to the prohibition. The exceptions are: on-disclosing information that is already publicly available (proposed new section 355-170); on-disclosure to Ministers in relation to statutory powers or functions (proposed new section 355-180); and on-disclosure to a Royal Commission (proposed new section 355-195).

The explanatory memorandum explains (at paragraph 6.21) that the public interest may permit the on-disclosure of information from non-taxation officers but does not explain why the Parliament itself is not able to receive on-disclosed information from a non-taxation officer. The Committee **seeks the Treasurer’s advice** as to the reasons why different rules apply to taxation officers and non-taxation officers; and whether consideration might be given to applying similar rules to non-taxation officers who are requested by the Parliament to provide on-disclosed information.

Pending the Treasurer’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.

COMMENTARY ON AMENDMENTS TO BILLS

Access to Justice (Civil Litigation Reforms) Amendment Bill 2009

On 27 October 2009, the Senate agreed to five Government amendments and one Australian Greens amendment to the bill, none of which fall within the Committee's terms of reference (as previously noted in *Alert Digest No. 14 of 2009*).

On 18 November 2009, the House of Representatives disagreed to the Australian Greens amendment and agreed to an amendment in place of the disagreed amendment. On 19 November 2009, the Senate agreed not to insist on its original amendment and instead agreed to the amendment made by the House of Representatives.

Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009

On 16 November 2009, the House of Representatives agreed to 64 amendments to the bill, two of which come within the Committee's terms of reference.

Wide delegation of powers

Amendment No. 33; Schedule 3, item 10, new subsection 15HX(1)

Amendment No. 33 responds to concerns raised by the Committee in *Alert Digest No. 9 of 2009* relating to a broad delegation of power contained in proposed new subsection 15HX(1) of the bill. The power would have allowed the Ombudsman to delegate his or her powers under new Division 3 of Part 1AB of the *Crimes Act 1914* to a person having similar oversight functions under a law of a state or territory, or to an employee responsible to that person.

The Attorney-General had previously agreed that the discretion to delegate was wide and had undertaken to consult the Ombudsman on whether there were options to limit the proposed delegation (see the Committee's

Tenth Report of 2009). The Committee is pleased to note that Amendment No. 33 substitutes a new subsection 15HX(1) which will limit the breadth of the Ombudsman's ability to delegate powers to an Australian Public Service employee who is responsible to the Ombudsman.

Retrospective application

Amendment No. 63; Schedule 4, item 18

Amendment No. 63 substitutes item 18 with a new item 18 that provides that subsections 5D(3AA) and (9) of the *Telecommunications (Interception and Access) Act 1979* apply whether the conduct constituting the offences concerned was engaged in before or after the commencement of item 18 – that is, before or after the relevant conduct was included in the definition of 'serious offence'. The 'Supplementary Explanatory Memorandum' explains (at page 19) that this will enable a nationally consistent approach to combating organised crime.

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

Fair Work Amendment (State Referrals and Other Measures) Bill 2009

On 17 November 2009, the House of Representatives agreed to 19 amendments to the bill, one of which falls within the Committee's terms of reference.

Retrospective application

Amendment No. 4; Schedule 1, item 27A, subsection 30B(1)

Amendment No. 4 has retrospective application because it is expressed to operate in relation to a state that has, before 1 July 2009, referred matters relating to workplace relations to the Commonwealth. The Committee notes that this approach is consistent with other provisions in the *Fair Work Act 2009* which the Committee has previously accepted.

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

Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009

On 17 November 2009, the Senate agreed to two Australian Greens amendments and seven Opposition amendments to the bill, none of which fall within the Committee's terms of reference. On 18 November 2009, the House of Representatives disagreed to all of the Opposition amendments.

Correction to explanatory memorandum

On 17 November 2009, the Minister for Innovation, Industry, Science and Research tabled a 'Correction to the Explanatory Memorandum' in the Senate, containing explanations for the delayed commencement of Divisions 3 and 4 of Part 2 of Schedule 1 of the bill. At the request of the Committee, the Acting Minister for Education had previously undertaken to amend the explanatory memorandum to include these explanations (see *Alert Digest No. 12 of 2009* and *Twelfth Report of 2009*).

Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009

Addendum to explanatory memorandum

On 17 November 2009, the Minister for Small Business, Independent Contractors and the Service Economy, Minister Assisting the Finance Minister on Deregulation, and Minister for Competition Policy and Consumer Affairs tabled an 'Addendum to the Explanatory Memorandum' in the House of Representatives. The Addendum contains information relating to the review of an exercise of a discretion by the Commissioner of Taxation under the non-commercial losses rules; and was tabled in response to concerns expressed by the Committee about the explanatory memorandum's failure to indicate that review rights are available (see *Alert Digest No. 13*). The Assistant Treasurer had previously undertaken to amend the explanatory memorandum to clarify the existence of review rights (see *Thirteenth Report of 2009*).

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 bill passed by the Senate
- N Indicates bill negatived by the Senate

*	Asian Development Bank (Additional Subscription) Bill 2009 — clause 6
N	Australian Business Investment Partnership Bill 2009 — clauses 13 and 14
	Australian National Preventive Health Agency Bill 2009 — clause 50 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Automotive Transformation Scheme Bill 2009 — clause 10
*	Car Dealership Financing Guarantee Appropriation Bill — clause 5
N	Carbon Pollution Reduction Scheme Bill 2009 — subclauses 103B(5), 139(4) and 291(4)
	Carbon Pollution Reduction Scheme Bill 2009 [No. 2] — subclauses 103B(5), 139(4) and 291(4)
*	COAG Reform Fund Bill 2008 — clause 5 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	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

*	Education Legislation Amendment Bill 2008 — Schedule 1, item 6, section 14B
*	Fair Work Bill 2008 — subclause 559(4)
*	Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008 — Schedule 1, item 29
*	Federal Financial Relations Bill 2009 — clause 22
*	Federal Financial Relations (Consequential Amendments and Transitional Provisions) Bill 2009 — Schedule 4, subitem 2(3)
*	Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008 — Schedule 1, item 49, section 54A, and Schedule 2, item 23, section 70E (Special Accounts: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008 — Schedule 1, item 79, section 94B (Special Account: 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
*	Guarantee of State and Territory Borrowing Appropriation Bill 2009 — clause 5
*	Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008 — clause 5
*	International Monetary Agreements Amendment (Financial Assistance) Bill 2009 — Schedule 1, item 4, subsection 8CA(4)
	Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 — subclause 43(2), clause 70 and subclause 78(2)
*	Nation-building Funds Bill 2008 — clauses 13, 61, 68, 75, 82, 132, 181, 188, 215 and 255 — (Special Accounts: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	National Consumer Credit Protection Bill 2009 — Schedule 1, subclause 115(2)
*	Protection of the Sea Legislation Amendment Bill 2008 — Schedule 1, item 20, section 46N
*	Safe Work Australia Bill 2008 — clause 64 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Sale Work Australia Bill 2008 [No. 2] — clause 64 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Schools Assistance Bill 2008 — clause 167
	Uranium Royalty (Northern Territory) Bill 2008 — clause 18
*	Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008 — Schedule 1, item 1

*	Wheat Export Marketing Bill 2008 — clause 58 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
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Other relevant appropriation clauses

- * Indicates bill passed by the Senate
- N Indicates bill negatived by the Senate

N	Household Stimulus Package Bill 2009 — Schedule 4, subitem 1(5): special appropriation clause – for a finite period of time (ie for circumstances arising in a particular financial year).
*	Household Stimulus Package Bill (No. 2) 2009 — Schedule 4, subitem 1(5): special appropriation clause – for a finite period of time (ie for circumstances arising in a particular financial year).
*	Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008 — Schedule 4, item 4: special appropriation clause – for a finite period of time (ie for circumstances arising in a particular financial year).
*	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).

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2008/2009

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2008							
Corporations Amendment (Short Selling) Bill 2008	13(26.11.08)	13.11.08	27.11.08	Treasury	26.11.08	7.1.09	1(4.2.09)
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		---
Fair Work Bill 2008	14(3.12.08)	25.11.08	4.12.08	Education, Employment and Workplace Relations	4.12.08	19.1.08	1(4.2.09)
<i>Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008</i>	12(12.11.08)	15.10.08	16.10.08	Treasury	13.11.08	4.12.08	1(4.2.09)
National Commissioner for Children Bill 2008	3(14.5.08)	---	18.3.08	Senator Bartlett	15.5.08		---
Nation-building Funds (Consequential Amendments) Bill 2008	13(26.11.08)	13.11.08	3.12.08	Finance and Deregulation	27.11.08	23.1.09	1(4.2.09)
Tax Agent Services Bill 2008	13(26.11.08)	13.11.08	12.2.09	Treasury	27.11.08	3.2.09	1(4.2.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2009							
Anti-Terrorism Laws Reform Bill 2009	9(12.8.09)		23.6.09	Senator Ludlam	13.3.09	8.9.09	10(9.9.09)
Appropriation Bill (No. 2) 2009-2010	6(2.6.09)	12.5.09	23.6.09	Finance and Deregulation	3.6.09	15.6.09	6(17.6.09)
Australian Climate Change Regulatory Authority Bill 2009	6(2.6.09)	14.5.09	15.6.09	Climate Change and Water	3.6.09	18.6.09	7(25.6.09)
Australian National Preventive Health Agency Bill 2009	12(16.9.09)	10.9.09	26.10.09	Health and Ageing	17.9.09	23.10.09	12(28.10.09)
Australian Sports Anti-Doping Authority Amendment Bill 2009	13(28.10.09)	16.9.09	29.10.09	Health and Ageing	29.10.09		
Australian Wine and Brandy Corporation Amendment Bill 2009	9(12.8.09)	22.6.09		Agriculture, Fisheries and Forestry	13.8.09		
Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008	1(4.2.09)	3.12.08	12.2.09	Infrastructure, Transport, Regional Development and Local Government	5.2.09	10.3.09	2(11.3.09)
Aviation Transport Security Amendment (2009 Measures No. 1) Bill 2009	9(12.8.09)	24.6.09	9.9.09	Infrastructure, Transport, Regional Development and Local Government	13.8.09 10.9.09	19.8.09 18.9.09	10(9.9.09) 12(28.10.09)
Bankruptcy Legislation Amendment Bill 2009	14(18.11.09)	28.10.09		Attorney-General	19.11.09		
Britt Laphorne Bill 2009	13(28.10.09)		17.9.09	Senator Fielding	29.10.09		
Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009	8(24.6.09)	17.6.09	17.8.09	Education, Employment and Workplace Relations	25.6.09	10.8.09	8(12.8.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Carbon Pollution Reduction Scheme Bill 2009	6(2.6.09)	14.5.09	15.6.09	Climate Change and Water	3.6.09	18.6.09	7(25.6.09)
Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009	6(2.6.09)	14.5.09	15.6.09	Climate Change and Water	3.6.09	18.6.09	7(25.6.09)
<i>Civil Aviation Amendment Act 2009</i>	3(11.3.09)	12.2.09	11.3.09	Infrastructure, Transport, Regional Development and Local Government	12.3.09	12.5.09	4(13.5.09)
Clean Energy Security Bill 2009	13(28.10.09)	14.9.09		Mr Tuckey	29.10.09		
Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009	4(18.3.09)	12.3.09	17.3.09	Special Minister of State	19.3.09	22.4.09	4(13.5.09)
Coordinator-General for Remote Indigenous Services Bill 2009	6(2.6.09)	27.5.09	25.6.09	Families, Housing, Community Services and Indigenous Affairs	3.6.09	16.6.09	6(17.6.09)
Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009	9(12.8.09)	24.6.09	10.9.09	Treasury	13.8.09 10.9.09	28.8.09 14.10.09	10(9.9.09) 12(28.10.09)
Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009	9(12.8.09)	25.6.09	26.10.09	Treasury	13.8.09	11.9.09	11(16.9.09)
Crimes Amendment (Working With Children—Criminal History) Bill 2009	11(9.9.09)	20.8.09	19.11.09	Home Affairs	10.9.09	16.9.09	12(28.10.09)
Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009	9(12.8.09)	24.6.09	23.11.09	Attorney-General	13.8.09	4.9.09 25.11.09	10(9.9.09) 14(25.11.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2) 2009	13(28.10.09)	16.9.09	19.11.09	Attorney-General	29.10.09		
Customs Amendment (Enhanced Border Controls and Other Measures) Bill 2008	1(4.2.09)	3.12.08	10.3.09	Home Affairs	5.2.09	23.2.09	2(11.3.09)
Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008	1(4.2.09)	3.12.08	12.2.09	Attorney-General	5.2.09	27.2.09	2(11.3.09)
Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009	11(9.9.09)	19.8.09	26.10.09	Education, Employment and Workplace Relations	10.9.09	25.9.09	12(28.10.09)
Employment and Workplace Relations Amendment Bill 2008	1(4.2.09)	3.12.08	12.2.09	Employment and Workplace Relations	5.2.09	16.3.09	3(18.3.09)
Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2009	6(2.6.09)		14.5.09	Senator Ludlam	3.6.09	16.6.09	6(17.6.09)
Fair Work Amendment (State Referrals and Other Measures) Bill 2009	13(28.10.09)	21.10.09	23.11.09	Education, Employment and Workplace Relations	29.10.09	11.11.09	13(18.11.09)
Fair Work (State Referral and Consequential and Other Amendments) Bill 2009	6(2.6.09)	27.5.09	15.6.09	Education, Employment and Workplace Relations	3.6.09	29.6.09	8(12.8.09)
Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009	5(13.5.09)	19.3.09	15.6.09	Education, Employment and Workplace Relations	14.5.09	12.6.09	6(17.6.09)
Family Assistance Amendment (Further 2009 Budget Measures) Bill 2009	7(17.6.09)	3.6.09	17.6.09	Families, Housing, Community Services and Indigenous Affairs	18.6.09	5.8.09	8(12.8.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Family Assistance Legislation Amendment (Child Care) Bill 2009	6(2.6.09)	14.5.09	15.6.09	Education, Employment and Workplace Relations	14.5.09	17.6.09	7(17.6.09)
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Bill 2009	5(13.5.09)	19.3.09	15.6.09	Treasury	14.5.09	24.6.09	8(12.8.09)
Foreign States Immunities Amendment Bill 2009	11(9.9.09)	19.8.09	14.9.09	Attorney-General	10.9.09	11.9.09	11(16.9.09)
Fuel Quality Standards Amendment Bill 2009	5(13.5.09)	18.3.09	15.6.09	Environment, Heritage and the Arts	14.5.09	12.8.09	9(19.8.09)
Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009	9(12.8.09)	24.6.09	9.9.09	Health and Ageing	13.8.09	18.8.09	9(19.8.09)
Higher Education Support Amendment (VET FEE-HELP and Providers) Bill 2009	5(13.5.09)	18.3.09	15.6.09	Education	14.5.09	16.6.09	6(17.6.09)
Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Bill 2009	12(16.9.09)	9.9.09	23.11.09	Education	17.9.09	22.10.09	12(28.10.09)
Infrastructure Australia Amendment (National Broadband Network and Other Projects) Bill 2009	8(24.6.09)		15.6.09	Senator Minchin	25.6.09	10.8.09	8(12.8.09)
Keeping Jobs from Going Offshore (Protection of Personal Information) Bill 2009	14(18.11.09)		26.10.09	Senator Fielding	19.11.09		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009	9(12.8.09)	24.6.09	9.9.09	Health and Ageing	13.8.09	18.8.09	9(19.8.09)
Migration Amendment (Complementary Protection) Bill 2009	12(16.9.09)	9.9.09		Immigration and Citizenship	17.9.09	27.10.09	12(28.10.09)
Migration Amendment (Immigration Detention Reform) Bill 2009	9(12.8.09)		25.6.09	Immigration and Citizenship	13.8.09	18.8.09	9(19.8.09)
<i>Military Justice (Interim Measures) Act (No. 1) 2009</i>	12(16.9.09)	14.9.09	9.9.09	Defence	17.9.09	4.11.09	13(18.11.09)
Nation Building Program (National Land Transport) Amendment Bill 2009	6(2.6.09)	13.5.09	15.6.09	Infrastructure, Transport, Regional Development and Local Government	3.6.09	16.6.09	6(17.6.09)
National Broadcasting Legislation Amendment Bill 2009	14(18.11.09)	29.10.09		Broadband, Communications and the Digital Economy	19.11.09		
National Consumer Credit Protection Bill 2009	9(12.8.09)	25.6.09	7.9.09	Treasury	13.8.09	21.8.09	10(9.9.09)
National Consumer Credit Protection (Fees) Bill 2009	9(12.8.09)	25.6.09	7.9.09	Treasury	13.8.09	21.8.09	10(9.9.09)
National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009	9(12.8.09)	25.6.09	7.9.09	Treasury	13.8.09	21.8.09	10(9.9.09)
National Greenhouse and Energy Reporting Amendment Bill 2009	5(13.5.09)	18.3.09	17.8.09	Climate Change and Water	14.5.09	22.6.09	7(24.6.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
National Health Security Amendment Bill 2009	9(12.8.09)	24.6.09	10.9.09	Health and Ageing	13.8.09	19.8.09	10(9.9.09)
National Security Legislation Monitor Bill 2009	9(12.8.09)		25.6.09	Cabinet Secretary	13.8.09	8.9.09	10(9.9.09)
Native Title Amendment Bill 2009	5(13.5.09)	19.3.09	15.6.09	Attorney-General	14.5.09	23.6.09	7(24.6.09)
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009	5(13.5.09)	19.3.09	10.9.09	Resources and Energy	14.5.09	1.6.09	5(2.6.09)
Personal Property Securities Bill 2009	9(12.8.09)	24.6.09	17.9.09	Attorney-General	13.8.09	15.9.09	11(16.9.09)
Personal Property Securities (Consequential Amendments) Bill 2009	13(28.10.09)	21.10.09	23.11.09	Attorney-General	29.10.09	17.11.09	13(18.11.09)
Protecting Problem Gamblers Bill 2009	14(18.11.09)		27.10.09	Senator Fielding	19.11.09		
Renewable Energy (Electricity) Amendment Bill 2009	8(24.6.09)	17.6.09	18.8.09	Climate Change and Water	25.6.09	18.8.09	9(19.8.09)
Safe Climate (Energy Efficient Non-Residential Buildings Scheme) Bill 2009	13(28.10.09)		17.9.09	Senator Milne	29.10.09	17.11.09	13(18.11.09)
Social Security and Family Assistance Legislation Amendment (2009 Budget Measures) Bill 2009	6(2.6.09)	12.5.09	13.5.09	Families, Housing, Community Services and Indigenous Affairs	3.6.09	6.7.09	8(12.8.09)
Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009	12(16.9.09)	10.9.09	28.10.09	Employment and Workplace Relations	17.9.09	14.10.09	12(28.10.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Bill 2009	8(24.6.09)	15.6.09	17.6.09	Families, Housing, Community Services and Indigenous Affairs	25.6.09	5.8.09	8(12.8.09)
Tax Agent Services (Transitional and Consequential Amendments) Bill 2009	9(12.8.09)	24.6.09	29.10.09	Treasury	13.8.09	28.8.09 15.9.09	10(9.9.09) 11(16.9.09)
Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009	13(28.10.09)	21.10.09	23.11.09	Treasury	29.10.09	17.11.09	13(18.11.09)
Tax Laws Amendment (2009 Measures No. 2) Bill 2009	5(13.5.09)	19.3.09	15.6.09	Treasury	14.5.09	28.5.09	5(2.6.09)
Tax Laws Amendment (2009 Measures No. 4) Bill 2009	9(12.8.09)	25.6.09	8.9.09	Treasury	13.8.09	7.9.09	10(9.9.09)
Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008	1(4.2.09)	4.12.08	12.2.09	Treasury	5.2.09	11.3.09	3(18.3.09)
Telecommunications (Interception and Access) Amendment Bill 2009	13(28.10.09)	16.9.09	27.10.09	Attorney-General	29.10.09	17.11.09	13(18.11.09)
Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009	13(28.10.09)	28.10.09	26.10.09	Broadband, Communications and the Digital Economy	29.10.09	17.11.09	13(18.11.09)
Telecommunications Legislation Amendment (National Broadband Network Measures No. 1) Bill 2009	9(12.8.09)	DC	25.6.09	Broadband, Communications and the Digital Economy	13.8.09	20.8.09	9(9.9.09) DC

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Therapeutic Goods Amendment (2009 Measures No. 1) Bill 2009	5(13.5.09)	19.3.09	15.6.09	Health and Ageing	14.5.09	15.6.09	6(17.6.09)
Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008	1(4.2.09)	12.5.09	3.12.08	Health and Ageing	5.2.09	12.2.09	2(11.3.09)
Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008	1(4.2.09)	3.12.08	12.2.09	Treasury	5.2.09	11.3.09	3(18.3.09)
<i>Transport Safety Investigation Amendment Act 2009</i>	3(11.3.09)	12.2.09	11.3.09	Infrastructure, Transport, Regional Development and Local Government	12.3.09	5.5.09	4(13.5.09)
Veterans' Affairs and Other Legislation Amendment (Pension Reform) Bill 2009	10(19.8.09)	12.8.09	19.8.09	Veterans' Affairs	20.8.09	4.9.09	10(9.9.09)