

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



Alert Digest

No. 4 of 2010

17 March 2010

Senate Standing Committee
for the
Scrutiny of Bills

Alert Digest No. 4 of 2010

17 March 2010

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.

TABLE OF CONTENTS

Commentary on bills

• Customs Tariff Amendment Bill (No.1) 2010	1
• Food Importation (Bovine Meat Standards) Bill 2010	3
• Ombudsman Amendment (Education Ombudsman) Bill 2010	4
• Personal Property Securities (Corporations and Other Amendments) Bill 2010	6
• Social Security Amendment (Flexible Participation Requirements for Principal Carers) Bill 2010	9
• Transport Security Legislation Amendment (2010 Measures No.1) Bill 2010	10
• Veterans' Entitlements Amendment (Income Support Measures) Bill 2010	17
Commentary on Amendments to Bills	19
Bills giving effect to National Schemes of Legislation	20
Scrutiny of standing appropriations	21

Customs Tariff Amendment Bill (No.1) 2010

Introduced into the House of Representatives on 11 March 2010

Portfolio: Home Affairs

Background

This bill amends the *Customs Tariff Act 1995* (the Customs Tariff) to incorporate end-dates for three concessional items in Schedule 4.

These amendments provide:

- an end-date of 31 December 2009 for item 53C. This item provided a mechanism to reduce the general rate of customs duty from 10% to 5% for certain goods that were not of a kind used as components in passenger motor vehicles. Item 53C became redundant from 1 January 2010.
- an end-date of 30 June 2010 for item 61. Item 61 provides the means for duty concessions under the Expanded Overseas Assembly Provisions Scheme (EOAP).
- an amendment of the end-date of item 73, from 30 June 2017 to 30 June 2011. The Product Diversification Scheme (PDS) for certain clothing and finished textiles allows importers to earn duty credits through additional production of eligible nominated TCF goods and then to apply those credits, through item 73, to offset duty payable on qualifying imported finished clothing or textile articles. While importers will no longer be able to earn duty credits under the PDS after 30 June 2010, the end-date of 30 June 2011 for item 73 will provide importers with an additional twelve months to use those credits.

Retrospective commencement

Clause 2, item 2 and Schedule 1, item 1

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.

These items relate to the commencement and completion dates of a mechanism in item 53C in Part III of Schedule 4 to the *Customs Tariff Act*

1995 to reduce the general rate of customs duty from 10% to 5% for certain goods for home consumption. They initially appear to have a retrospective effect because Clause 2, item 2 provides that the commencement date of Schedule 1, item 1 is 14 December 2009 and Schedule 1, item 1 provides for a commencement date of the mechanism of 1 January 2005 and a completion date of 31 December 2009. However, there is no detrimental result because this is essentially a technical amendment giving effect to Customs Notice (No. 3) 2009 published in Special Commonwealth *Gazette* S213 of 14 December 2009. In addition, the Committee notes from the explanatory memorandum that the general rate of the relevant customs duty fell to 5% from 1 January 2010 (see pages 4 and 5 of the explanatory memorandum).

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

Food Importation (Bovine Meat Standards) Bill 2010

Introduced into the Senate on 9 March 2010

Portfolio: Senators Colbeck and Joyce

Background

This bill ensures equivalence to Australian production standards in the importation of bovine meat and meat products, and for related purposes.

Explanatory memorandum

This bill, introduced as a private Senator's bill, was accompanied only by a second reading speech and was introduced without an explanatory memorandum. While noting that the second reading speech provides some explanation of the background, intent and operation of the bill, the Committee prefers to see explanatory memorandums to all bills and recognises the manner in which such documents can assist in the interpretation of bills, and ultimately, Acts. The Committee **seeks the proposer's advice** as to whether an explanatory memorandum could be provided.

Ombudsman Amendment (Education Ombudsman) Bill 2010

Introduced into the Senate on 11 March 2010

Portfolio: Senator Hanson-Young

Background

This bill seeks to create the office of the Education Ombudsman to cover the domestic and international education sector in Australia and act as a one-stop national authority for resolving individual student complaints; provide a further avenue for resolving academic disputes, monitoring and enforcing compliance of education institutions, and facilitating communication between state and federal governments and educational organisations.

Legislative Instruments Act – exemption

Schedule 1, proposed new subsection 19FR(4)

Proposed new subsection 19FR(4) provides that a Minister's written determination authorised under subsection 19FR(3) specifying the total amount of fees that may be charged in relation to Education Ombudsman investigations 'is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*'.

As outlined in Drafting Direction No. 3.8, where a provision specifies that an instrument is *not* a legislative instrument, the Committee would expect the explanatory memorandum to explain whether the provision is merely declaratory (and included for the avoidance of doubt) or expresses a policy intention to exempt an instrument (which *is* legislative in character) from the usual tabling and disallowance regime set out in the *Legislative Instruments Act 2003*. Where the provision is a substantive exemption, the Committee would expect to see a full explanation justifying the need for the provision.

In this case, the explanatory memorandum notes (at page 2) that Division 4 provides for the Education Ombudsman to charge an education provider fees incurred in relation to an investigation, but does not explain whether subsection 19FR(4) is declaratory or substantively creates an exemption from the *Legislative Instruments Act 2003*. The Committee notes that subsection 19FR(4) is consistent with existing provisions in the *Ombudsman Act 1976*

(such as 19ZE) but still expects that an explanation of the proposed provision will be provided. The Committee **draws this concern to the attention of the proposer** and requests that if the bill proceeds to further stages of debate that an amended explanatory memorandum be provided to the Senate.

Personal Property Securities (Corporations and Other Amendments) Bill 2010

Introduced into the House of Representatives on 10 March 2010

Portfolio: Attorney-General

Background

Following the passage of the *Personal Property Securities Act 2009* (PPS Act) and the *Personal Property (Consequential Amendments) Act 2009*, this bill amends the *Corporations Act 2001* (Cth) and also makes minor amendments to the PPS Act and other Commonwealth legislation. The bill contains 3 schedules with the following amendments:

Schedule 1

Amends the *Corporations Act 2001* to align with the PPS Act by:

- amending terminology used in the Corporations Act to apply the functional approach of the PPS Act to those sections of the Corporations Act that deal with charges;
- extends the Corporations Act concept of property to include PPSA retention of title property;
- replaces Chapter 2K (Registration of company charges) because the PPS Act provides for the registration of security interests in personal property but retain provisions equivalent to sections 266 and 267 in Chapter 2K (which provide that charges are void against an administrator or liquidator in certain circumstances);
- applies appropriate transitional and application provisions; and
- changes references to floating and fixed charges to circulating and non-circulating charges respectively but with the intention of maintaining existing rights, for example, employee preferences under the Corporations Act (section 561).

Schedule 2

Amends the PPS Act to simplify the transitional provisions and makes the PPS Act consistent with existing State and Territory provisions on the enforcement of security interests in agricultural products.

Schedule 3

Provides for minor consequential amendments to Commonwealth legislation.

Constructive knowledge

Shifting onus of proof

Schedule 1, Part 9, proposed subsection 588FK(3) and proposed sections 588FL, 588FM and 588FN; and Schedule 2, Part 1, item 110, proposed subsection 267A(2)

The statutory imputation of knowledge to a person or entity ('constructive knowledge') is an area of concern to the Committee because the standard of knowledge being applied for legal purposes is necessarily different from the person's actual knowledge. The Committee agrees that it may be an appropriate standard in some circumstances so that a defendant cannot avoid liability by wilfully remaining ignorant of relevant information, but in order to avoid trespassing unduly on personal rights and liberties the Committee expects that the approach is taken only in limited circumstances and that a full justification is provided in the accompanying explanatory memorandum.

The existing Act includes provisions (sections 297 to 300) detailing the operation of constructive knowledge for the purposes of the Act, and the effect of this bill is to also rely on these provisions.

Proposed subsection 588FK(3) explains that existing sections 297 to 300 of the *Personal Property Securities Act 2009* apply to new Division 2A of the *Corporations Act 2001* for the purposes of determining whether actual or constructive knowledge exists.

An additional burden is placed on a defendant when the onus in relation to constructive knowledge is shifted to the defendant by requiring him or her to prove that property was acquired *without* actual or constructive knowledge.

This issue was raised by the Committee in relation to the Personal Property Securities Bill 2009 in *Alert Digest 9/09* which requested further information about the particular provision from the Attorney-General. The Attorney-General's reply was discussed in Report 11/09 and the further information in that instance alleviated the Committee's concern.

An explanation of the effect of proposed provisions 588FL, 588FM and 588FN is found at pages 13 to 16 of the explanatory memorandum. In relation to shifting the onus of proving that the defendant had no actual or constructive knowledge of the relevant matters to the defendant the explanatory memorandum (at page 16) states that:

The reason for reversing the onus is that the matters requiring proof would usually be peculiarly within the knowledge of the defendant and it would be unduly onerous to require the plaintiff to prove the state of the defendant's knowledge (item 183, proposed subsection 588FL(6)). This provision is intended to protect bona fide purchasers for value while ensuring that fraudulent transactions designed to frustrate the payment of funds to creditors are void.

Schedule 1, Part 9, proposed subsections 588FP(7)(b) and 588FP(9) relate to preventing a company granting security interests to persons associated with the company. The explanatory memorandum discusses section 588FP at pages 15 and 16, but there does not appear to be a clear justification for the use of constructive knowledge in these subsections.

The purpose of Schedule 2, Part 1, item 110, proposed subsection 267A(2) is described in the explanatory memorandum (page 43) as being:

... to protect an innocent purchaser of the collateral and [to] offer them the same protection as is offered purchasers under the vesting rule in [existing] subsection 267(3) [of the Corporations Act 2001]...

Again, however, there is no explanation of the constructive knowledge component in 267A(2)(b).

The Committee appreciates that this is complex legislation which relates to a national scheme, but considers that these circumstances make it especially important to ensure that all provisions are appropriate and that they are adequately explained. Therefore, the Committee **seeks the Attorney-General's advice** about the need and justification for each instance of constructive knowledge in this bill.

Social Security Amendment (Flexible Participation Requirements for Principal Carers) Bill 2010

Introduced into the House of Representatives on 10 March 2010

Portfolio: Employment and Workplace Relations

Background

This bill provides for improved flexibility for parents of school aged children who are asked to look for part-time work as part of their welfare requirements. These changes affect parents on Newstart Allowance, Parenting Payment, Youth Allowance or Special Benefit who have school-aged children and who must report at least 15 hours a week of approved activities to Centrelink commencing from 1 July 2010.

The bill extends the participation exemptions to parents who:

- home school, distance educate or have large families with children up to 19 years old;
- experience domestic violence without leaving the relationship; and
- provide kinship care for a child who is a relative through a care plan prepared or accepted by the relevant State or Territory Government.

The bill also provides for:

- an extended exemption for job seekers who provide emergency or respite foster care; and
- parents to be able to count their study, voluntary work or part-time work – or a combination of these - towards meeting their part-time participation requirements.

The Committee has no comment on this bill.

Transport Security Legislation Amendment (2010 Measures No.1) Bill 2010

Introduced into the House of Representatives on 11 March 2010
Portfolio: Transport, Regional Development and Local Government

Background

This bill amends the *Aviation Transport Security Act 2004* (the ATSA) and the *Maritime Transport and Offshore Facilities Security Act 2003* (the MTOFSA) to implement changes designed to strengthen aviation security.

The bill will make changes to ATSA:

- to allow the prohibited items list to be made in a legislative instrument, and
- to enable the Secretary to delegate all or any of his or her powers and functions to an SES employee in the Attorney-General's Department (AGD), in preparation for the establishment of the 'Commonwealth' Incident Coordinator' position within the AGD from 1 July 2010.

In relation to MTOFSA, the bill will:

- insert the ability to conduct frisk searches for screening and clearing passengers and crew boarding security regulated passenger ships;
- enable certain persons to be appointed as 'security assessment inspectors' to conduct security assessments of maritime industry participants;
- extend the existing power for maritime security inspectors to take still photographs to include the ability to take moving images or recordings; and
- make other amendments including to existing requirements for Ship Security Plans, International Ship Security Certificates and to enable the Secretary to delegate powers to Agency Heads and specified SES officers.

Trespass unduly on personal rights and liberties Items 17, 18 and 19

The explanatory memorandum (at page 10) explains that items 17 and 18 will update the existing ability of maritime security inspectors to take still photos on board a security regulated ship and on a security regulated offshore facility. The new power provides for the ability to 'make any still or moving image or any recording (for example a digital image or video) of equipment on the ship or offshore facility.'

Item 19 inserts additional scope to this power so that a maritime security inspector can also 'make any still or moving image or any recording of equipment in a place, vehicle or vessel under the control of a regulated maritime industry participant' (see page 10 of the explanatory memorandum). The explanation for this approach is described at page 10 of the explanatory memorandum:

This is an oversight from when the powers of maritime security inspectors were first created. The amendment addresses this and ensures powers of maritime security inspectors with regard to image recording are consistent.

The Committee recognises that there can be sound reasons for extending the powers of security personnel, but expects that proposals to do so fully articulate the justification for the approach and ensure that appropriate safeguards and oversight are in place.

In this case, the explanatory memorandum states at page 10 that the provisions 'modernise the options for recording media', but there is no detail about whether this is for the convenience of security inspectors or is substantively warranted, what safeguards are in place to prevent the misuse of the power and whether the use of these powers can be audited generally or individually reviewed if a person has a complaint. The Committee is therefore concerned that these provisions may trespass unduly on personal rights and liberties and **seeks the Minister's advice** about the justification and need for them.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

**Trespass unduly on personal rights and liberties
Item 20, proposed sections 145D, 145E and 145F**

The bill proposes to enable the Secretary to appoint a person as a security assessment inspector if that person meets criteria to be specified in regulations. The explanatory memorandum accompanying the bill explains (at page 5) that:

Appointed security assessment inspectors will be able to survey the extant security environment at a regulated maritime site and examine the effectiveness of current security policies; this will enable timely responses to changing and emerging threats to be developed to identify systemic policy and operational weaknesses.

Currently the [Act] does not have any explicit powers of entry into security regulated areas other than for Departmental [officers] and law enforcement officers.

Proposed section 145E specifies the powers of an inspector, which include the ability to enter and inspect an area under the control of a maritime industry participant, to make any recordings of the area, observe the operating procedures and discuss them with an employee or another maritime participant. Proposed section 145F provides that powers may be exercised without notice at a security regulated port or otherwise after giving reasonable notice to the maritime participant. Subsection 145E(3) will provide that 'a security assessment inspector must not subject a person to greater indignity than is necessary and reasonable for the exercise of the power.'

In addition to the justification outlined above, the explanatory memorandum notes (at page 5) that access to security regulated areas is currently limited to departmental and law enforcement officers, and:

[e]ven then, activities are restricted to ensuring compliance with the [Act] or investigating suspected breaches. There is no ability to enter a site for any other purpose or activity required for the effective administration of the [Act] and [regulations] or for effective regulatory policy development. This amendment seeks to address this problem.

While the Committee recognises the importance of ensuring that security measures are available and effective, it is also important to ensure that an appropriate balance is struck between the proposed action and any trespass on personal rights and that a full justification of the powers is included in the explanatory memorandum accompanying the bill.

An outline of principles the Committee considers relevant to enter and search proposals is found in Part 9 of the *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers* approved by the Minister for Home Affairs in December 2007. The Guide explains (at page 75) that any proposal to confer entry, search and seizure powers on an agency other than the AFP should address:

- accountability
- training
- resources; and
- risk management strategies

Although there is some explanation of the need to appoint security assessment inspectors (outlined above), the Committee **seeks the advice of the Minister** about the way in which the scheme will operate, and in particular what accountability, review, training and risk management protections apply to it; and whether the powers and safeguards are consistent with the maritime security inspector regime and aviation security measures.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Strict liability

Reversal of onus

Item 20, proposed section 145G; item 22 proposed sections 166B and 166C

At common law the prosecution bears the persuasive burden of proving the guilt of the accused beyond reasonable doubt, but the Committee has observed an increasing use of statutory provisions imposing on the accused the burden of establishing a defence to the offence created by the statute in question and the use of presumptions which have a similar effect.

In cases where the facts in issue in the defence might be said to be peculiarly within the knowledge of the accused or where proof by the prosecution of a particular matter would be extremely difficult or expensive whereas it could be readily and cheaply provided by the accused, the committee has agreed that

the burden of adducing evidence of that defence or matter might be placed on the accused. However, provisions imposing this burden of proof on the accused should be kept to a minimum. This is especially the case where the standard of proof is 'legal' (on the balance of probabilities) rather than 'evidential' (pointing to evidence which suggests a reasonable possibility that the defence is made out). In both circumstances, if the defendant meets the standard of proof required the prosecution then has to refute the defence beyond reasonable doubt.

In addition, as a matter of practice, the Committee draws attention to any bill that seeks to impose strict liability and will comment adversely where such a bill does not accord with principles of criminal law policy of the Commonwealth outlined in part 4.5 of the *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers* approved by the Minister for Home Affairs in December 2007. The Committee considers that the reasons for the imposition of strict and absolute liability should be set out in the relevant explanatory memorandum.

Proposed new section 145G will establish a new offence when a persons attempts to hinder a security assessment inspector in the exercise of a power. This is a strict liability offence (subsection 145G(3)), but an offence will not have been committed if the person has a reasonable excuse (subsection 145G(2)). It will be up to the defendant to prove on the balance of probabilities that his or her excuse is reasonable (see note to subsection 145G(2) in the explanatory memorandum).

The justification for the application of strict liability is outlined in detail in the explanatory memorandum (at page 6):

This offence has been framed as a strict liability offence to maximise consistency with penalties for existing offences of a similar kind in the MTOFSA. For example, the offence of hindering or obstructing a maritime security inspector, provided for at section 143 of the MTOFSA, is also a strict liability offence punishable by a penalty of 50 penalty units. Similarly, the offence of hindering or obstructing a duly authorised officer (section 149) is also a strict liability offence punishable by a penalty of 50 penalty units.

The specific use of strict liability in this new offence, as with similar existing offences described above, is also necessary to ensure the continued integrity of the maritime security regulatory regime. In particular it underscores the importance of officials empowered under the MTOFSA being able to carry out their duties and responsibilities in such a way that significantly deters

would be offenders from hindering and obstructing these officials, which would compromise the integrity of the regime.

The Committee notes that the explanatory memorandum does not refer to the *Guide*, and no explanation is given for placing on the defendant the burden of proving that he or she had a reasonable excuse for the conduct.

Proposed new section 166B is explained at page 10 of the explanatory memorandum:

Where a screening officer cannot clear a person through the screening methods permitted in the [*Maritime Transport and Offshore Facilities Security Act 2003* and regulations], the operation of the [Act] does not allow the person to pass through the screening point but also does not offer any other means of clearing that person. Item 22 would allow the use of frisk searches for screening and clearing passengers and crew in certain circumstances.

Proposed new section 166C will allow frisk searches in additional circumstances, but again only with the consent of the person requiring screening (see page 11 of the explanatory memorandum).

In light of these proposed powers, the bill will make it an offence for a screening officer to conduct unauthorised searches or to otherwise exceed his or her powers under 166B and 166C. They are strict liability offences attracting (subsections 166B(5) and 166C(5)) attracting 50 penalty units each, but offences will not have been committed if the officer has a reasonable excuse (subsections 166B(4) and 166C(4)).

The justification for the approach outlined in the explanatory memorandum at page 11 is identical for both offences:

The use of strict liability in this situation is likely to significantly minimise any contraventions by screening officers when conducting frisk searches, given the strong deterrent message it sends. It aims to safeguard the travelling public from potential abuses of power by screening officers.

The Committee appreciates the significance of the intention to prevent abuses of power, but is also mindful of the importance of ensuring that offences of strict liability are created only when absolutely necessary and in accordance with the *Guide*, which also refers to the Committee's Report 6/2002 *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*.

The Committee notes that again no explanation is given for placing on the defendant the burden of proving that he or she had a reasonable excuse for the conduct.

The Committee therefore **seeks the Minister's advice** about the justification for the use of strict liability in these offences and for placing the initial onus of proof on the defendant in relation to the availability of a reasonable excuse for his or her actions.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Veterans' Entitlements Amendment (Income Support Measures) Bill 2010

Introduced into the House of Representatives on 10 March 2010

Portfolio: Veterans' Affairs

Background

The Bill will give effect to a number of minor measures and amendments that will align veterans' entitlements law with social security law.

These minor measures and amendments will:

- remove redundant references and provisions relating to *benevolent homes*;
- exempt from the income test payments made under a 'Labour Market Program' for expenses associated with part-time work experience;
- require the partners of persons claiming or receiving a service pension or income support supplement to claim a comparable foreign pension;
- change the treatment of arrears payment of comparable foreign pensions so that instead of being assessed as income in the twelve month period following the date of grant or confirmation of the comparable foreign pension, it will be treated as periodical payments for the arrears period. This aligns with the treatment of arrears payments of comparable foreign pensions under the social security law; and
- clarify that the value of certain superannuation investments cannot be disregarded for the purposes of the deeming rules for financial assets or the asset deprivation rules.

Retrospective effect

Items 29 and 36

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.

Item 29 will insert a new section 204 into the Social Security Act and the explanatory memorandum states (at pages 6 and 7) that the section relates to:

...the recovery of overpayments of service pension or income support supplement payable to persons who, or whose partner have (sic), subsequently received lump sum payments of a comparable foreign pension.

...

It provides that the amount by which the service pension or income support supplement would have been reduced if the lump sum had been received as periodical payments during the period is to be treated as a debt due by the person to the Commonwealth.

Item 36 makes clear at page 7 that section 204 will be applicable to 'lump sums paid on or after the commencement of the item whether or not the lump sum is payable in respect of the period before, on or after commencement of the item.'

The proposed provisions will align the treatment of lump sums under the Veteran's Entitlements Act with the treatment under the Social Security Act, in which payments are treated as periodical payments over the period of arrears. Currently, lump sums under the Veteran's Entitlements Act are treated as income in the 12 month period from the date it is received, which reduces or removes the entitlement to a pension during those 12 months.

The explanatory memorandum at page 6 describes the proposed change as 'primarily beneficial as the majority of cases will benefit from the changed treatment of arrears payments' and notes that they 'create consistency and remove the opportunity for pensioners to change pension regimes to potentially avoid the income test in relation to the arrears payment.'

The Committee appreciates the comprehensive justification in the explanatory memorandum and notes that any detrimental effect of the retrospective effect will be minimal and that many pensioners will in fact benefit from the provisions.

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

COMMENTARY ON AMENDMENTS TO BILLS

Crimes Amendment (Working With Children–Criminal History) Bill 2009

On 10 March 2010 the House of Representatives agreed to an amendment made by the Senate, which does not fall within the terms of reference of the Committee.

Electoral and Referendum and Amendment (Close of Rolls and Other Measures) Bill 2010

On 10 March 2010 the Government moved two amendments to this bill, which were agreed to by the House of Representatives and have been referred to the Senate for consideration. The Government also tabled a supplementary and a revised explanatory memorandum which take these amendments into account.

The amendments will apply the provisions which established the one-off electronic voting trial at the 2007 election to apply in future referenda, general, Senate and by-elections. The amendments do not fall within the terms of reference of the Committee.

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

The Chairs and Deputy Chairs of Commonwealth, and state and territory Scrutiny Committees have noted (most recently in 2000) difficulties in the identification and scrutiny of national schemes of legislation. Essentially, these difficulties arise because ‘national scheme’ bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation. Any requests for amendment are seen to threaten that agreement and that uniformity.

To assist in the identification of national schemes of legislation, the Committee’s practice is to note bills that give effect to such schemes as they come before the Committee for consideration.

Personal Property Securities (Corporations and Other Amendments) Bill 2010

This bill amends the *Corporations Act 2001* to align it with the Personal Property Securities Act 2009 and amends the PPS Act to simplify the transitional provisions and consistent with existing State and Territory provisions relating to agricultural products.

Personal property securities reform is a key component of COAG’s deregulation agenda. In April 2007, COAG endorsed the need for a national system to deal with the creation and enforcement of security interests in personal property. COAG signed an inter-governmental agreement in October 2008 and, since then, personal property securities reform was included as part of the *National Partnership Agreement to Deliver a Seamless National Economy* reached between the Commonwealth and the states and territories.

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 new entries

P Indicates bills passed by the Senate

N Indicates bills negatived by the Senate

P	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>)
P	Automotive Transformation Scheme Bill 2009 — clause 10
P	Car Dealership Financing Guarantee Appropriation Bill 2009 — clause 5
N	Carbon Pollution Reduction Scheme Bill 2009 — subclauses 103B(5), 139(4) and 291(4)
N	Carbon Pollution Reduction Scheme Bill 2009 [No. 2] — subclauses 103B(5), 139(4) and 291(4)
	Carbon Pollution Reduction Scheme Bill 2010 — subclauses 103B(5), 139(4)

	and 291(4)
P	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>)
P	Commonwealth Securities and Investment Legislation Amendment Bill 2008 — Schedule 1, item 10, subsection 5BA(7)
	ComSuper Bill 2010 — clause 21 (SPECIAL ACCOUNT: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
P	Defence Home Ownership Assistance Scheme Bill 2008 — clause 84
P	Dental Benefits Bill 2008 — clause 65
P	Education Legislation Amendment Bill 2008 — Schedule 1, item 6, section 14B
P	Fair Work Bill 2008 — subclause 559(4)
	Family Assistance Legislation Amendment (Child Care) Bill 2010 — Schedule 6, item 1
P	Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008 — Schedule 1, item 29
P	Federal Financial Relations Bill 2009 — clause 22
P	Federal Financial Relations (Consequential Amendments and Transitional Provisions) Bill 2009 — Schedule 4, subitem 2(3)
P	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>)
P	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>)
	Governance of Australian Government Superannuation Schemes Bill 2010 – – paragraphs 33(1)(b), 33(2)(b), and 34(3)(a), and subsection 34(4)
P	Great Barrier Reef Marine Park and Other Legislation Amendment Bill

	2008 — Schedule 5, item 141, section 65A
P	Guarantee of State and Territory Borrowing Appropriation Bill 2009 — clause 5
P	Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008 — clause 5
P	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)
P	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>)
P	National Consumer Credit Protection Bill 2009 — Schedule 1, subclause 115(2)
	Occupational Health and Safety and Other Legislation Amendment Bill 2009 — Schedule 3, Part 2, subitem 10(5)
P	Protection of the Sea Legislation Amendment Bill 2008 — Schedule 1, item 20, section 46N
P	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>) [bill laid aside by House of Representatives on 4 December 2008]
P	Safe 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>)
P	Schools Assistance Bill 2008 — clause 167
	Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Bill 2009 — Schedule 1, item 32, section 37ZO
P	Uranium Royalty (Northern Territory) Bill 2008 — clause 18
P	Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008 — Schedule 1, item 1

P	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>)
----------	---

Other relevant appropriation clauses in bills

N	Household Stimulus Package Bill 2009 — Schedule 4, subitem 1(5): special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).
P	Household Stimulus Package Bill (No. 2) 2009 — Schedule 4, subitem 1(5): special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).
P	Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008 — Schedule 4, subitem 1(4): special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year).
P	Social Security and Veterans’ Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Bill 2008 — Schedule 2, subitems 1(4) and 2(4), and Schedule 4, subitem 1(4): special appropriation clauses – for a finite period of time (i.e. for circumstances arising in a particular financial year).