Senate Standing Committee for the Scrutiny of Bills



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Members of the Committee

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator T Crossin
Senator J Ferris
Senator B Mason
Senator A Murray

Terms of Reference

Extract from **Standing Order 24**

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

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• The Committee has commented on these bills

This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

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• The Committee has commented on these bills

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ABC Amendment (Online and Multichannelling Services) Bill 2001

This bill was introduced into the Senate on 3 April 2001 by Senator Bourne as a Private Senator's bill.

The bill proposes to amend the:

- Australian Broadcasting Corporation Act 1983 to extend the prohibition on advertising on Australian Broadcasting Corporation (ABC) radio and television services to include online and digital television (multichannelling) services, including the prohibition of links from the ABC online service to other commercial bodies, products and services; and
- Broadcasting Services Act 1992 to enable the Australian Broadcasting Corporation and Special Broadcasting Service Corporation to provide unrestricted multichannelling services.

Agriculture and Veterinary Chemicals Legislation Amendment Bill 2001

This bill was introduced into the Senate on 3 April 2001 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Agricultural and Veterinary Chemicals Act* 1994 as a consequence of the High Court's decision in *R v Hughes* to clarify the powers, functions and duties of Commonwealth officials and authorities within the National Registration Scheme (NRS) for agricultural and veterinary chemicals.

The bill also proses amendments to address certain gaps in the NRS legislative scheme, arising independently of *Hughes* but also concerning the conferral of duties, powers and functions on Commonwealth authorities and officials, relating to the Commonwealth Administrative Appeals Tribunal (AAT) and inspectors and analysts appointed under Commonwealth law.

Retrospective application Schedule 1, item 4

Clause 2 of this bill provides that the bill commences on Assent. However, Item 4 of Schedule 1 to the bill permits the amendment made by item 2 of that Schedule to apply, among other things, in relation to matters arising before the item commences.

This amendment is intended to overcome a recent High Court decision which has cast doubt on the constitutional validity of aspects of the co-operative Commonwealth-State National Registration Scheme. The amendment does this by ensuring the validity of decisions previously made under that Scheme, and by reaffirming the original intention underlying the Scheme.

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

Australian Bill of Rights Bill 2001

This bill was introduced into the House of Representatives on 2 April 2001 by Dr Theophanous as a Private Member's bill.

The bill proposes to give effect to certain provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and certain other international treaties to which Australia is a signatory, by enacting an Australian Bill of Rights, to ensure the protection of all Australians against infringements of their civil and political rights and freedoms.

Australian Securities and Investments Commission Bill 2001

This bill was introduced into the House of Representatives on 4 April 2001 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

This bill is part of a package of bills introduced in response to the High Court's decisions in *Re Wakim; ex parte McNally* and *R v Hughes*. The bill proposes to replace the *Australian Securities and Investments Commission Act 1989* and the ASIC Law of the Australian Capital Territory, and corresponding provisions of Corporations Acts of the Northern Territory and certain States, to provide for a Commonwealth Act capable of operating throughout Australia in accordance with section 51(xxxvii) of the Constitution.

The bill provides for the continued existence of the:

- Australian Securities and Investments Commission;
- Companies and Securities Advisory Committee;
- Corporations and Securities Panel;
- Companies Auditors and Liquidators Disciplinary Board;
- Financial Reporting Council;
- Australian Accounting Standards Board; and
- Parliamentary Joint Committee on Corporations and Securities.

The bill also contains transitional provisions, corrects a number of anomalies and updates the drafting style, but involves no substantive policy changes.

Abrogating the privilege against self-incrimination Clause 68

Where a person fails to provide information or sign a record or produce a book, subclause 68(1) of this bill states that self-incrimination is not a reasonable excuse for this failure.

However, where a person (other than a body corporate) claims that a statement, or signing a record, might tend to incriminate them, and where the statement or

signing the record might, in fact, tend to incriminate that person, then subclause 68(3) of the bill applies. This provides that any statement, or the fact of signing the record, as the case may be, is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty (other than a proceeding for making a false statement). This provision is expressed in terms similar to the current provision, and seems to strike a balance between the competing interests of obtaining information and protecting personal rights.

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

Delegation to 'a person' Clauses 102 and 118A

Clause 102 of this bill will permit the Australian Securities and Investments Commission (ASIC) to delegate to "a person" (which includes a body) all or any of its functions and powers". Clause 119A provides ASIC members with a similar power of delegation.

While each clause does go on to limit the range of persons to whom such a delegation may routinely be made, neither clause contains any limitation on the range of persons whom the Minister may approve as delegates. In practice, the Minister may approve a delegation to anyone at all. The Committee, therefore, **seeks the Minister's advice** as to why some limitation should not be placed on such a wide and unfettered power of delegation.

Pending the Minister's advice, the Committee draws Senators' attention to these provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

Aviation Legislation Amendment Bill (No. 2) 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister representing the Minister for Employment Services. [Portfolio responsibility: Transport and Regional Services]

Schedule 1 to the bill proposes to amend the *International Air Services Commission Act 1992* to reform the role and responsibilities of the International Air Services Commission (IASC).

Schedule 2 proposes to amend the *Air Navigation Act 1920* to initiate reform in aviation security. Existing aviation security provisions are to be replaced by modernised standards created in the new *Aviation Security Regulations 2001*. In general terms, Schedule 2 introduces an overarching legislative framework for handling aviation security information, including the application of the *Criminal Code*; reforms provisions relating to the regulation of the carriage of munitions and implements of war on civil aircraft; and repeals all other, remaining aviation security provisions in the Act.

Schedule 3 proposes to repeal the *Federal Airports Corporation Act 1986* and provides for the transfer of any remaining contracts, assets and liabilities of the Corporation to the Commonwealth.

Commencement Subclause 2(5)

Subclause 2(4) of this bill states that, subject to subclause (5), Schedule 2 commences on Proclamation. Subclause 2(5) will permit Schedule 2 to commence at any time within 12 months after Assent. This is a departure from *Drafting Instruction No 2 of 1989*, issued by the Office of Parliamentary Counsel, which states that, as a general rule, where a clause provides for commencement after Assent, the preferred period should not be longer than 6 months. The *Drafting Instruction* goes on to state that, where a longer period is chosen, "Departments should explain the reason for this in the Explanatory Memorandum".

The Explanatory Memorandum accompanying this bill argues that a longer period is required to allow the bill's commencement "to be co-ordinated with the commencement of the proposed *Aviation Security Regulations 2001*".

The six month delay in commencement was first introduced to provide sufficient time for the drafting of any necessary subordinate legislation, and most other Departments seem to find this a sufficient period. The Committee, therefore, seeks the Minister's advice as to why the usual six month period is not sufficient for the drafting of relevant regulations in this instance.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle I(a)(iv) of the Committee's terms of reference.

Abrogating the privilege against self-incrimination Proposed new sections 20A and 21D

Item 28 of Schedule 2 to this bill proposes to insert a new section 20A in the *Air Navigation Act 1920*. This new section would abrogate the privilege against self-incrimination for a person who provides protected aviation security information under that Act.

However, proposed new section 21D will limit the circumstances in which such information may be admissible in evidence in proceedings against that person. In general terms, neither the protected information, nor any information, document or thing obtained as a direct or indirect consequence, will be admissible in criminal proceedings or proceeding for the recovery of a penalty (other than a proceeding which relates to the giving of false information).

The Explanatory Memorandum states that this approach will allow the Department of Transport and Regional Services (as the Australian regulator of aviation security) "to deal with, and to resolve, security incidents in a timely and effective manner, rather than to use this information to prosecute members of the industry after the event".

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

Award of Victoria Cross for Australia Bill 2001

This bill was introduced into the Senate on 4 April 2001 by Senator Schacht as a Private Senator's bill.

The bill proposes a mechanism for the Minister to make recommendations to the Governor-General that certain persons be awarded the Victoria Cross for Australia in recognition of their bravery and valour.

Broadcasting Legislation Amendment Bill (No. 2) 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Employment Services. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the *Broadcasting Services Act 1992* to:

- amend the provisions relating to the allocation of additional commercial television broadcasting licences in 2-service markets;
- amend 'anti-siphoning' arrangements in order to allow the automatic 'delisting' of events in certain circumstances;
- allow the Australian Broadcasting Authority to determine that specified programs and advertising transmitted on the high definition television (HDTV) version of a television service may be different from the programs or advertising transmitted on the standard definition (SDTV) or analog version of the service; and
- correct various anomalies relating to datacasting services which were introduced by amendments made by the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000.*

The bill also proposes amendments to the *Radiocommunications Act 1992* in relation to the issue of apparatus licences.

Corporations Bill 2001

This bill was introduced into the House of Representatives on 4 April 2001 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

This bill is part of a package of bills introduced in response to the decisions of the High Court in *Re Wakim; ex parte McNally* and *R v Hughes*. The bill proposes to replace the *Corporations Act 1989* and the Corporations Law of the Australian Capital Territory, and corresponding State and Northern Territory legislation, with a Commonwealth Act capable of operating throughout Australia. In effect, the bill re-enacts the Corporations Law as a Commonwealth Act, based on referrals of power by the States under section 51(xxxvii) of the Constitution, and seeks to restore the regulatory environment which existed before the decisions in *Hughes* and *Wakim*.

The bill provides a statutory basis for the formation of companies, corporate regulation and the regulation of the securities and futures industries. It is designed so that, once enacted, it may be administered and enforced on a national basis by Commonwealth bodies, and it will reinstate an integrated system of adjudication by Commonwealth, State and Territory courts.

Commencement on Proclamation Clause 2

Clause 2 provides that this bill is to commence on Proclamation, with no further time limit specified within which the bill must commence in any event. However, paragraph 5.2 of the Explanatory Memorandum indicates that, before this legislation can take effect, one or more States must pass legislation referring various of their legislative powers to the Commonwealth.

Given this, the Committee makes no further comment on this provision.

Henry VIII clause Clause 5I

By virtue of clause 5I, regulations may be made which would modify the operation both of this bill, and other related bills. Specifically, regulations may modify the operation of the Corporations legislation so that its provisions do not apply to a matter that is dealt with by a State or Territory law, or so that no inconsistency arises between its operation and the operation of a provision of a State or Territory law.

The Explanatory Memorandum observes that this provision is necessary to ensure the constitutional validity of the legislation.

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

Strict liability offence Clauses 670A and 670D

Clause 670A of the bill will impose strict criminal liability on persons engaging in misleading or deceptive conduct in relation to takeovers and compulsory acquisitions of companies. This will require a person accused of such conduct to establish a relevant defence under clause 670D.

However, these provisions are the same as those found in the former Corporations Law, and on which the Committee previously commented and received a satisfactory response from the relevant Minister.

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

Criminal Assets Recovery Bill 2001

This bill was introduced into the House of Representatives on 2 April 2001 by Mr Kerr as a Private Member's bill.

The bill proposes a civil forfeiture scheme for the proceeds of criminal activity, based on a recommendation of the Australian Law Reform Commission in its report *Confiscation that counts: A Review of the Proceeds of Crime Act 1987*.

The principal objects of the bill are:

- to provide for the confiscation of a person's property if the Federal Court finds it to be more probable than not that the person has engaged in serious crime related activity;
- to enable the proceeds of serious crime related activity to be recovered as a debt due to the Crown; and
- to enable law enforcement authorities to effectively identify and recover property.

Trespass on rights and liberties Clauses 10, 13, 24 and 36

This bill is in the same form as a bill previously introduced by the same sponsor, Mr Kerr, and on which the Committee commented in *Alert Digest No. 4 of 2000*. In that *Digest* the Committee drew attention to provisions of the bill which:

- required the grant of restraining orders in relation to the property interests of persons <u>suspected</u> of having engaged in "serious crime related activity";
- required the grant of an assets forfeiture order where it was "more probable than not" that a person had been engaged in serious crime related activity; and
- authorised <u>ex parte</u> applications for the production of documents where an authorised officer had reasonable grounds for suspecting that these documents were relevant to identifying, locating or quantifying property interests related to serious criminal activity.

The Committee summarised its concerns regarding the earlier bill as follows:

While mindful of the significance, pervasiveness and complexity of organised criminal activity, the Committee is concerned that this bill seems to attach grave consequences to what are essentially suspicions. Assets may be removed from a person's control, without that person having a right to be heard on the matter, simply because there is a reasonable suspicion that they are connected with serious criminal activity. Assets may be confiscated simply because it is more probable than not that someone, at some time, has been involved in serious criminal activity. Incriminating material may be obtained under compulsion and is only inadmissible where a person objects to producing that material. The long-established protections imposed by the criminal law and, in general terms, recognised in the existing *Proceeds of Crime Act 1987*, are here avoided because they are seen to be inconvenient or to hinder law enforcement.

The Committee also drew attention to clause 13 of the earlier bill, which abrogated the privilege against self-incrimination and legal professional privilege in relation to persons under examination. Notwithstanding the inclusion of use and derivative use immunity provisions, the Committee was concerned at the removal of the right to silence in a criminal rather than a fact-finding or administrative context.

The Committee sought and received advice on these issues from the member sponsoring the bill. However, the Committee did not finally report on that bill, as the bill was not introduced in the Senate.

The Committee reaffirms the concerns set out in Alert Digest No. 4 of 2000 and continues to draw Senators' attention to these provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle I(a)(i) of the Committee's terms of reference.

Customs Tariff Amendment (Petrol Tax Cut) Bill (No. 2) 2001

This bill was introduced into the House of Representatives on 2 April 2001 by Mr Charles as a Private Member's bill.

Part of a package of 3 bills, the bill proposes amendments to the *Customs Tariff Act 1995* to reduce the rate of customs duty on certain petroleum products.

Excise Tariff Amendment (Petrol Tax Cut) Bill (No. 2) 2001

This bill was introduced into the House of Representatives on 2 April 2001 by Mr Charles as a Private Member's bill.

Part of a package of 3 bills, the bill proposes to amend the *Excise Tariff Act* 1921 to reduce the rate of excise duty on certain petroleum products.

Finance and Administration Legislation Amendment (Application of Criminal Code) Bill (No. 1) 2001

This bill was introduced into the House of Representatives on 4 April 2001 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes consequential amendments to six Acts within the Finance and Administration portfolio to reflect the application of the *Criminal Code Act 1995* to existing offence provisions from 15 December 2001.

Schedule 1 to the bill amends existing offence provisions under various Commonwealth superannuation Acts. The proposed changes impose an evidential burden of proof on a defendant and expressly state time limits to satisfy requirements under offence provisions in the Acts. The proposed amendments will not introduce any new criminal offences under the various Acts. The bill will also update maximum penalties in the various superannuation Acts to ensure that they are appropriate and conform with the principles of the *Crimes Act 1914*, including the conversion of penalties from dollar amounts to penalty units.

Schedule 2 proposes minor amendments to offence provisions in the *Public Accounts and Audit Committee Act 1951* and the *Public Works Committee Act 1969* to ensure that these provisions comply with the *Criminal Code* but continue to operate in an unchanged manner.

Financial Sector (Collection of Data) Bill 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

Introduced with the Financial Sector (Collection of Data—Consequential and Transitional Provisions) Bill 2001, the bill proposes the transfer of the administration of the *Financial Corporations Act 1974* from the Reserve Bank of Australia (RBA) to the Australian Prudential Regulation Authority (APRA). The bill aims to:

- modernise and increase the relevance of data collections:
- harmonise and increase the flexibility of data-collections and publishing regimes; and
- institute a central repository for the collection of financial data.

The bill also applies the *Criminal Code Act 1995* to all offences against this proposed Act.

Commencement Subclause 2(3)

Subclause 2(3) of this bill states that Part 2 will not necessarily commence until 12 months after Assent. This is a departure from *Drafting Instruction No 2 of 1989*, issued by the Office of Parliamentary Counsel, which states that, as a general rule, where a clause provides for commencement after Assent, the preferred period should not be longer than 6 months. The *Drafting Instruction* goes on to state that, where a longer period is chosen, "Departments should explain the reason for this in the Explanatory Memorandum".

The Explanatory Memorandum accompanying this bill provides no reason for this extended commencement period. The Committee, therefore, **seeks the Minister's advice** as to why the usual six month period is not appropriate to the commencement of many of the provisions in this bill.

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 I(a)(iv) of the Committee's terms of reference.

Strict liability offences Subclauses 9(10), 13(11), 14(4) and 17(10)

Subclauses 9(10), 13(11), 14(4) and 17(10) specify that various offences created by other provisions in the bill are offences of strict liability. In general terms, these offences involve the provision of information or documents to the Australian Prudential Regulation Authority (APRA).

In his Second Reading Speech, the Minister addresses the imposition of strict liability by observing that the offences relate to the time at which information is to be provided to APRA; that late lodgement of returns can "seriously compromise APRA's ability to supervise effectively", and that, in the case of "minor inadvertent infringements", a system of administrative penalties in lieu of prosecution has been introduced by Division 3 of Part 3 of the bill. While strict liability offences are often included with an administrative penalty regime, the Committee notes that subclause 21(2) of this bill gives APRA an unfettered discretion to withdraw an infringement notice, and to proceed to prosecute a financial institution through the courts.

Under a strict liability offence, a person may be punished for doing something, or failing to do something, whether or not they have a guilty intent. In other words, someone is held legally liable for their conduct irrespective of their moral responsibility. Such offences are rare in traditional criminal law, but seem to have become excessive and more common as statutory offences have developed.

In the circumstances contemplated by this bill, it remains unclear why strict liability is appropriate for the offences referred to above. The Committee, therefore, **seeks the Minister's advice** as to why strict liability has been imposed for the nominated offences.

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 I(a)(i) of the Committee's terms of reference.

Financial Sector (Collection of Data—Consequential and Transitional Provisions) Bill 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

Consequential on the Financial Sector (Collection of Data) Bill 2001, the bill:

- repeals of the *Financial Corporations Act 1974*;
- makes consequential amendments to 16 other Acts; and
- contains transitional provisions relating to the treatment of certain exemptions and determinations, the former Register of Corporations and the former list of registered corporations and categories.

Financial Services Reform Bill 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

Further to the package of legislation passed in 1999 to reform the regulation of Australia's financial system, this bill proposes amendments to the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* to:

- introduce a single licensing regime for all financial sales, advice and dealings;
- establish a consistent and comparable financial product disclosure and conduct regulatory framework for all financial service providers; and
- create a streamlined regulatory regime for financial markets and clearing and settlement facilities, through amendments to be proposed.

The bill also makes consequential and technical amendments to the proposed *Australian Securities and Investments Commission Act 2001* and proposed *Corporations Act 2001*, and provisions to authorise the recording of telephone calls relating to takeover bids.

Commencement Subclause 2(6)

By virtue of subclause 2(6), many of the provisions of this bill may not commence until 12 months after Assent. This is a departure from *Drafting Instruction No 2 of 1989*, issued by the Office of Parliamentary Counsel, which states that, as a general rule, where a clause provides for commencement after Assent, the preferred period should not be longer than 6 months. The *Drafting Instruction* goes on to state that, where a longer period is chosen, "Departments should explain the reason for this in the Explanatory Memorandum".

The Explanatory Memorandum accompanying this bill provides no reason for this extended commencement period. The Committee, therefore, **seeks the** **Minister's advice** as to why the usual six month period is not appropriate to the commencement of this bill.

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 I(a)(iv) of the Committee's terms of reference.

Strict liability offences

Proposed new sections 952C, 952E, 952G, 952I, 952J, 993B, 993C, 993D, 1021C, 1021E, 1021H, 1021M, 1021O

A number of the provisions in this bill create offences of strict liability. Under a strict liability offence, a person may be punished for doing something, or failing to do something, whether or not they have a guilty intent. In other words, someone is held legally liable for their conduct irrespective of their moral responsibility. Such offences are rare in traditional criminal law, but seem to have become excessive and more common as statutory offences have developed.

While the Explanatory Memorandum briefly mentions the fact that certain provisions of this bill create offences of strict liability, it does not provide a detailed explanation as to why offences of this order should be offences of strict liability. The Committee, therefore, **seeks the Minister's advice** on this issue.

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 I(a)(i) of the Committee's terms of reference.

Reversal of the onus of proof Proposed new section 1043M

Proposed new section 1043M of the *Corporations Act 2001* would impose an evidential burden on a defendant charged with an offence against proposed new section 1043A to establish a defence to that charge.

The Explanatory Memorandum does not appear to discuss this provision, and the Committee, therefore, **seeks the Minister's advice** as to why the defendant should bear an onus of proof in relation to this offence.

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 I(a)(i) of the Committee's terms of reference.

Great Barrier Reef Marine Park Amendment Bill 2001

This bill was introduced into the Senate on 5 April 2001 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Environment and Heritage]

The bill proposes to amend the *Great Barrier Reef Marine Park Act 1975* to:

- clarify the reference of geographic coordinates to the Australian Geodetic Datum;
- increase the penalties for the discharge of oil and other hazardous materials into the Great Barrier Reef Marine Park ("the Marine Park");
- increase the penalties for illegal fishing in the Marine Park;
- create a new offence for the negligent operation of vessels in the Marine Park;
- establish specific offences for ships operating in zones contrary to the provisions of a zoning plan and for ships operating in a zone contrary to the conditions of a permission;
- create a new strict liability offence for persons who enter a zone contrary to the provisions of a zoning plan;
- make provision for the declaration of, or adjustment of, compulsory pilotage areas by means of Regulations; and
- provide that regulations are not inconsistent with a zoning plan if they further regulate or prohibit an activity which is permitted under a zoning plan.

The bill also contains application provisions.

Strict liability offences

Proposed new subsections 38A(3), 38CB(2), 38J(1C), 38M(3), 38MA(2), 38MA(4) and 38MC(3)

A number of provisions to be inserted by this bill create offences of strict liability. While the Explanatory Memorandum explains the <u>effect</u> of imposing

strict liability for a criminal offence, it does not explain why it is necessary that it be imposed in the circumstances set out.

In addition, the Explanatory Memorandum indicates that the offences created by new sections 38CB, 38J, 38M, 38MA and 38MC impose liability if the offender has failed to exercise reasonable care (or intended to commit the relevant act). This is not borne out by the provisions themselves, which, in stating that they create offences of strict liability, do not oblige the prosecution to prove any mental state on the part of the accused.

The Committee, therefore, **seeks the Minister's advice** as to whether the Explanatory Memorandum and the bill are consistent on the issue of strict liability, and why it is appropriate that strict liability be imposed in relation to the nominated offences.

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 I(a)(i) of the Committee's terms of reference.

Liability for negligent acts Proposed new subsections 38CC(2) and 38MB(2)

Proposed new subsections 38CC(2) and 38MB(2) of the Principal Act will impose liability for acts committed negligently, rather than intentionally. In relation to these provisions, the Explanatory Memorandum simply notes that the relevant fault element is negligence, but does not explain why this is an appropriate fault element in these circumstances. The Committee, therefore, seeks the Minister's advice as to why negligence is an appropriate fault element for these offences.

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 I(a)(i) of the Committee's terms of reference.

Health Legislation Amendment Bill (No. 2) 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Employment Services. [Portfolio responsibility: Health and Aged Care]

Schedule 1 to the bill proposes to amend the *Australian Institute of Health and Welfare Act 1987* to broaden the Minister's capacity to nominate certain persons for appointment to the Australian Institute of Health and Welfare and to extend the scope of the Institute's Ethics Committee to include welfare-related information and statistics. The amendments also include minor changes to maintain the relevance of reference to the National Health and Medical Research Council.

Schedule 2 proposes to amend the *Health Insurance Act 1973* to simplify the process for recognising specialist medical practitioners and to allow the payment of Medicare benefits direct to general practitioners in certain circumstances.

Schedule 3 proposes to amend the *Private Health Insurance Incentives Act* 1998 in relation to payment of low or late claims; application and calculation of the premium reduction for the 30 per cent rebate on private health insurance; and to make a technical amendment.

Schedule 4 proposes to amend the *Health Legislation Amendment Act (No. 3)* 1999 to repeal a redundant Part concerning the functions of the Health Insurance Commission.

Retrospective commencement Subclauses 2(2) and (3)

By virtue of subclauses 2(2) and (3), various items in Schedule 3 to this bill are to commence retrospectively. However, the Explanatory Memorandum does not indicate whether this retrospective commencement will act to the disadvantage of any person. The Committee, therefore, **seeks the Minister's advice** as to whether any person will be disadvantaged by the retrospective commencement of these provisions.

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

Innovation and Education Legislation Amendment Bill 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Education, Training and Youth Affairs. [Portfolio responsibility: Education, Training and Youth Affairs]

The bill proposes to amend the *Higher Education Funding Act 1988* in relation to:

- funding and grant levels for the 2001 and 2002 funding years for certain purposes;
- the establishment of an income contingent loan scheme for postgraduate non-research course tuition fees (the Postgraduate Education Loan Scheme (PELS));
- the Ministerial discretion to cap aggregate debt students accrue under the Higher Education Contribution Scheme, Open Learning Deferred Payment Scheme and PELS; and
- the use of electronic communications.

The bill also proposes amendments to the *Australian Research Council Act* 2001 to provide additional funding for research schemes, and the *States Grants (Primary and Secondary Education Assistance) Act* 2000 in relation to special education per capita funding for non-government schools for 2001-04, and establishment assistance for new schools for 2001-04.

Extension of tax file number regime Proposed new section 98E

Item 5 of Schedule 3 to this bill proposes to insert new section 98E in the *Higher Education Funding Act 1988*. This section will require postgraduate students who seek a Commonwealth loan to pay the fees for postgraduate courses to reveal their tax file numbers to the tertiary education institution at which they will be studying.

The purpose of this requirement is obviously to minimise the possibility for fraud in the administration of the new loans scheme. However, the requirement marks yet another step in the process of providing information ostensibly collected solely for taxation purposes to persons outside the Tax Office. The Committee again notes the words of the then Treasurer in the Parliament on 25 May 1988 when referring to the proposed introduction of the tax file number scheme:

The only purpose of the file number will be to make it easier for the Tax Office to match information it receives about money earned and interest payments.

This system is for the exclusive and limited use of the Tax Office – it will simply allow the better use of information the Tax Office already receives.

The Committee also notes the words of the then member for Kooyong in the Parliament on 21 December 1990, that "since the inception of the tax file number in 1988 as an identifying system, we have seen the gradual extension of that system to other areas by way of a process sometimes referred to as function creep".

This process has continued and grown over a number of years, irrespective of the governing party of the day, and in spite of assurances that it would not occur. This provision represents yet another example of this process.

In these circumstances, 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 l(a)(i) of the Committee's terms of reference.

Interactive Gambling Bill 2001

This bill was introduced into the Senate on 5 April 2001 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to regulate interactive gambling services by making the provision of an Australian-based interactive gambling service to Australian customers an offence. The bill also establishes a complaints scheme to enable Australians to make complaints about interactive gambling services on the Internet which are available to Australians.

International Maritime Conventions Legislation Amendment Bill 2001

This bill was introduced into the House of Representatives on 4 April 2001 by the Minister for the Arts and the Centenary of Federation. [Portfolio responsibility: Transport and Regional Services]

The bill proposes to amend the following Acts:

- Limitation of Liability for Maritime Claims Act 1989, to implement the Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims (1996 Liability Protocol) which increases liability limits and provides a simpler method for future increases;
- Protection of the Sea (Powers of Intervention) Act 1981, to revise the list of substances in respect of which intervention action can be taken by the Australian Maritime Safety Authority;
- Protection of the Sea (Prevention of Pollution from Ships) Act 1983, in relation to removing the requirement to include the text of conventions; the disposal of garbage; altering incident reporting requirements; amending the definition of "inspector" to include Australian Federal Police officers; discharging of waste from a ship to a reception facility; and offence and penalty provisions; and
- Submarine Cables and Pipelines Protection Act 1963, to reflect the terminology of the 1984 United Nations Convention on the Law of the Sea (instead of the superseded 1958 Convention on the High Seas).

The bill also makes consequential amendments to the *Admiralty Act 1988* and *Navigation Act 1912* as a result of the implementation of the 1996 Liability Protocol.

Strict liability offences

New subsections 9(1B), 10(3), 21(1B), 26AB(3), 26BC(2A), 26D(3), 26F(3), 26FA(4), 26FB(2), 26FC(5) and 26FD(4)

This bill proposes to insert a number of provisions in the *Protection of the Sea* (*Prevention of Pollution from Ships*) Act 1983. Some of these provisions will impose strict liability for criminal offences. The Explanatory Memorandum

seeks to justify this imposition of strict liability by noting that the intent underlying these provisions is "to discourage careless non-compliance, as well as negligent and reckless breaches".

However, strict liability will apply in much wider circumstances than merely 'careless non-compliance'. Irrespective of how careful an offender may have been, strict liability may be imposed once the elements of such an offence are proved. The Committee is concerned about a tendency to declare offences to be offences of strict liability, and **seeks the Minister's advice** as to why strict liability is appropriate for the offences created by these provisions. The Committee also **seeks the Minister's advice** as to the distinction between 'careless non-compliance' and 'negligence'.

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

Measures to Combat Serious and Organised Crime Bill 2001

This bill was introduced into the Senate on 4 April 2001 by the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Justice and Customs]

The bill proposes a range of measures to facilitate the investigation and prosecution of serious and organised crime by amending the following Acts:

- Crimes Act 1914, in relation to the conduct of controlled operations; the use of assumed identities; protection for child victims and witnesses appearing in Commonwealth sex offence proceedings; and the use and disclosure of information concerning pardons, quashed and spent convictions to be now held by the CrimTrac Agency;
- Crimes Act 1914 and Customs Act 1901, to make minor and technical amendments;
- Australian Federal Police Act 1979 and Customs Act 1901, in relation to the issue of listening device warrants; and the
- Financial Transaction Reports Act 1988, in relation to the definition of "cash dealer"; access by certain State agencies to financial transaction reports information; and the secrecy and access regime for foreign financial transaction intelligence provided to AUSTRAC.

Commencement on Proclamation Schedule 4, item 10

By virtue of subclause 2(4), item 10 of Schedule 4 to this bill will commence on Proclamation, with no further date set for the commencement of that item in any event. However, the Explanatory Memorandum notes that commencement of this item is dependent on the passage of legislation in the Australian Capital Territory, and that such legislation is merely proposed and has not been formally introduced.

In this instance, the provision of subclause 2(4) is within one of the recognised exceptions to *Drafting Instruction No 2 of 1989*, issued by the Office of Parliamentary Counsel.

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

The authorisation of controlled operations Proposed new section 15J

Proposed new section 15J provides that a law enforcement officer may apply to an "authorising officer" for a certificate authorising a controlled operation. An "AFP authorising officer" is defined as the Commissioner, Deputy Commissioner or an authorised senior executive AFP member. An "NCA authorising officer" is defined as a member of the National Crime Authority. A "Customs authorising officer" is defined as the CEO of Customs or an authorised senior executive Customs employee.

In each case, the officer wishing to conduct the controlled operation seeks authorisation from within his or her own organisation – the bill makes no provision for any <u>independent</u> oversight of such authorisations. An officer who wishes to enter and search premises, or to intercept telephone conversations, can only do so when authorised by an independent judicial officer. It is unclear why a similar approach should not be applied to controlled operations (which usually involve conduct which would otherwise itself be a Commonwealth offence).

In order to clarify the safeguards applicable under the legislation, the Committee **would appreciate a briefing** on this and various other aspects of the bill.

Pending the briefing, the Committee draws Senators' attention to this provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle l(a)(i) of the Committee's terms of reference.

Migration Legislation Amendment (Application of Criminal Code) Bill 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Immigration and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural Affairs]

The bill proposes to amend the *Migration Act 1958*, *Australian Citizenship Act 1948* and *Immigration (Guardianship of Children) Act 1946* to reflect the application of the *Criminal Code Act 1995* to existing offence provisions from 15 December 2001.

Strict liability and absolute liability offences Schedule 1, items 6, 8, 11, 12, 17, 20, 22, 24, 25, 26, 28, 31, 35, 53, 60 to 64, 67, 70, 77, 80, 82, 85, 89, 92 and 96

This bill amends various offence and related provisions in legislation administered by the Immigration and Multicultural Affairs portfolio to harmonise existing criminal offence provisions with Chapter 2 of the *Criminal Code*. The Explanatory Memorandum observes that the purpose of the bill "is to ensure that, in applying the *Criminal Code*, the relevant offences continue to have the same meaning and operate in the same way as they do now".

The Explanatory Memorandum also states that the intention behind this series of amendments "is to preserve the status quo in relation [to] strict liability. In other words, only those offences that are judged to be presently strict liability offences are amended to provide expressly that they are offences of strict liability". The Committee notes this assurance and **seeks the Minister's confirmation** that the bill also preserves the status quo with respect to absolute liability offences.

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 I(a)(i) of the Committee's terms of reference.

Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Bill 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Immigration and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural Affairs]

The bill proposes to amend the following Acts:

- Australian Citizenship Act 1948 and the Migration Act 1958, to facilitate the use of electronic transactions as a consequence of the Electronic Transactions Act 1999; and to enable the use of computer-based decision making;
- *Migration Act 1958*, in relation to provision and deemed receipt of documents, including the electronic transmission of documents; and
- Migration Act 1958 and the Migration Legislation Amendment Act (No. 1) 1998, to correct technical errors and misdescribed amendments.

Retrospective commencement Subclauses 2(4) to (6)

By virtue of subclauses 2(4) to (6), the three items in Schedule 4 to this bill will commence, to some extent, retrospectively. It is clear that the amendments proposed by items 2 and 3 are technical, in that they simply correct erroneous cross-references.

However, the amendment proposed by item 1 amends the definition of "application form" in section 97 of the Principal Act by omitting a reference to subsection 45(2) and substituting a reference to regulations made for the purposes of section 46. The Explanatory Memorandum states that this is a technical amendment and is necessary because subsection 45(2) of the Principal Act has been repealed. The Committee **seeks the Minister's confirmation** that this amendment makes no substantive change to the law and will not adversely affect any person.

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.

Migration Legislation Amendment (Immigration Detainees) Bill 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Immigration and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural Affairs]

The bill proposes to amend the *Migration Act 1958* to:

- strengthen an existing criminal offence, and introduce new offences, dealing with the conduct of immigration detainees while in immigration detention;
- apply the Criminal Code Act 1995 to certain offences;
- introduce additional powers to search immigration detainees without warrant;
- apply search powers in State and Territory legislation to immigration detainees held in a State or Territory prison or remand centre; and
- introduce security-monitoring mechanisms in relation to visitors and other persons entering immigration detention centres.

Search powers

Proposed new sections 252A, 252B and 252F

This bill proposes to include a series of provisions in the *Migration Act 1958* relating to immigration detention. Proposed new section 252A enables an "authorised officer", without warrant, to conduct a strip search of a detainee to determine whether that detainee possesses a weapon or other thing capable of being used to inflict bodily injury or facilitate an escape. Proposed new section 252B sets out a number of rules for the conduct of such a search. Both provisions are based on existing provisions in the *Crimes Act 1914* which authorise police officers to search people under arrest.

Further, where a person is held in immigration detention in a prison or remand centre of a State or Territory, proposed new section 252F provides that a law of that State or Territory which confers a power to search persons serving sentences

or being held in prison or on remand applies to the detainee as though it were a law of the Commonwealth.

These provisions raise a number of issues, including the appropriateness of conferring police powers on persons other than police officers; the appropriateness of applying a power to search persons under arrest to persons in immigration detention; and the appropriateness of applying State and Territory search laws as laws of the Commonwealth without the Commonwealth Parliament having an opportunity to consider those laws.

In order to canvass these issues, the Committee would **appreciate a briefing** on the provisions of this bill.

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

Reconciliation Bill 2001

This bill was introduced into the Senate on 5 April 2001 by Senator Ridgeway as a Private Senator's bill.

The bill proposes to advance reconciliation between Aboriginal and Torres Strait Islander peoples and all other Australians, by establishing processes to identify, monitor, negotiate and resolve unresolved issues for reconciliation.

States' Contribution to Lower Petrol Prices Bill 2001

This bill was introduced into the House of Representatives on 2 April 2001 by Mr Charles as a Private Member's bill.

Part of a package of 3 bills, the bill proposes to amend the *A New Tax System* (Commonwealth-State Financial Arrangements) Act 1999 to adjust Commonwealth-State revenue shares in order to retain an amount of revenue in the Consolidated Revenue Fund which is equal to the amount of revenue forgone as a result of the petroleum tax cuts proposed by the Customs Tariff Amendment (Petrol Tax Cut) Bill (No. 2) 2001 and Excise Tariff Amendment (Petrol Tax Cut) Bill (No. 2) 2001.

Taxation Laws Amendment Bill (No. 3) 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Small Business. [Portfolio responsibility: Treasury]

The bill proposes to amend the following Acts:

- A New Tax System (Goods and Services Tax) Act 1999 and Taxation Administration Act 1953, to simplify the goods and services tax (GST) return and lodgment systems;
- A New Tax System (Goods and Services Tax) Act 1999, Income Tax Assessment Act 1997 and Taxation Administration Act 1953, to establish the GST instalment system for small businesses;
- A New Tax System (Goods and Services Tax) Act 1999, in relation to substituted accounting periods and correction of errors in GST returns;
- Taxation Administration Act 1953 and Income Tax Assessment Act 1997, in relation to the use of the GDP-adjusted notional tax method to pay PAYG instalments;
- Fringe Benefits Tax Assessment Act 1986, Income Tax Assessment Act 1936, Income Tax Assessment Act 1997 and Taxation Administration Act 1953, in relation to lodgment of quarterly business activity statements and instalment activity statements; and payment of tax debts.

The bill also contains application and transitional provisions.

Retrospective commencement or application Subclauses 2(2) and (3); Schedule 1, item 22 and Schedule 3, items 8, 17, 19, 29 and 32

Subclause 2(2) of this bill provides that items 48 to 52 of Schedule 2 are taken to have commenced retrospectively on 1 January 2001. Subclause 2(3) provides that Part 3 of Schedule 3 is taken to have commenced retrospectively on 1 April 2001. Similarly, Item 22 of Schedule 1 and items 8, 17, 19, 29 and 32 of Schedule 3 allow for the retrospective application of many other provisions.

However, in each case the measures which are to commence, or be applied, retrospectively are beneficial to taxpayers.

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

Trade Marks and Other Legislation Amendment Bill 2001

This bill was introduced into the House of Representatives on 4 April 2001 by the Parliamentary Secretary to the Minister for Industry, Science and Resources. [Portfolio responsibility: Industry, Science and Resources]

The bill proposes to amend the *Trade Marks Act 1995* to further streamline procedures within the Trade Marks Office to enable improved services to the public, and to remove anomalies and ambiguities identified since the Act came into operation.

The bill also amends the *Patents Amendment (Innovation Patents) Act 2000* to correct certain erroneous references and contains a transitional provision.

Treasury Legislation Amendment (Application of Criminal Code) Bill (No. 2) 2001

This bill was introduced into the House of Representatives on 5 April 2001 by the Minister for Financial Services and Regulation. [Portfolio responsibility: Treasury]

The bill proposes amendments to 17 Acts within the Treasury portfolio to reflect the application of the *Criminal Code Act 1995* to existing offence provisions from 15 December 2001. This includes the restating of defences separately from offences, identifying the evidential burden in relation to an offence and the converting of penalties from a dollar amount to penalty units.

Some consequential amendments are also proposed for provisions of the *Trade Practices Act 1974* that are administered by the Minister for Communications, Information Technology and the Arts.

Strict liability offences Various provisions

The effect of this bill is to make consequential amendments to further offence provisions in legislation administered by the Treasurer to reflect the application of the *Criminal Code* to existing offence provisions from 15 December 2001.

The Minister's Second Reading Speech concludes with the observation that the bill "does not change the criminal law" but "ensures that the current law is maintained following application of the *Criminal Code Act* to Commonwealth legislation". The Committee notes this assurance, and **seeks the Minister's confirmation** that the bill does not have the effect of converting an offence which previously was not a strict liability offence into such an offence.

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 I(a)(i) of the Committee's terms of reference.

Workplace Relations Amendment (Transmission of Business) Bill 2001

This bill was introduced into the House of Representatives on 4 April 2001 by the Minister for Employment, Workplace Relations and Small Business. [Portfolio responsibility: Employment, Workplace Relations and Small Business]

The bill proposes to amend the *Workplace Relations Act 1996* to empower the Australian Industrial Relations Commission to make an order that a certified agreement does not bind a new employer as a result of a transfer of a business, or only binds the new employer to a specified extent.

Workplace Relations (Registered Organisations) Bill 2001

This bill was introduced into the House of Representatives on 4 April 2001 by the Minister for Employment, Workplace Relations and Small Business. [Portfolio responsibility: Employment, Workplace Relations and Small Business]

The bill proposes to incorporate into a separate piece of legislation provisions of the *Workplace Relations Act 1996* which relate to the registration, deregistration, amalgamation and dis-amalgamation of registered organisations; internal administration, including conduct of elections; financial management and accountability; and the regulation of registered organisations.

The bill also amends those provisions, particularly in relation to financial accountability and disclosure and democratic control, and penalties, including civil penalties and civil compensation, with respect to breaches of the proposed Act.

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (2 April - 5 April)

Child Support Legislation Amendment Bill (No 2) 2000: On 5 April, the House of Representatives agreed to certain amendments in place of certain Senate amendments to this bill. These amendments raised no issues within the Committee's terms of reference.

Crimes Amendment (Age Determination) Bill 2001: On 2 April, the House of Representatives agreed to amend this bill in response to certain recommendations of the Senate Legal and Constitutional Legislation Committee. These amendments raised no issues within the Committee's terms of reference. In debate, the Attorney-General also referred to issues raised by this Committee.

Customs Tariff Amendment Bill (No 2) 2001: On 5 April, the House of Representatives agreed to a Senate request for certain amendments to this bill. These amendments raised no issues within the Committee's terms of reference.

Electoral and Referendum Amendment Bill (No 1) 2001: On 5 April, the House of Representatives agreed to a Senate amendment to this bill. This amendment raised no issues within the Committee's terms of reference.

Excise Tariff Amendment Bill (No 1) 2001: On 5 April, the House of Representatives agreed to a Senate request for certain amendments to this bill. These amendments raised no issues within the Committee's terms of reference.

Family and Community Services and Veterans' Affairs Legislation Amendment (Debt Recovery) Bill 2000: On 3 April, the House of Representatives agreed to certain Senate amendments to this bill and made amendments in place of certain other Senate amendments. These amendments raised no issues within the Committee's terms of reference.

Petroleum (Submerged Lands) Legislation Amendment Bill (No 3) 2000: On 3 April March, the House of Representatives agreed to amend this bill. This amendment addressed a concern which had been expressed by this Committee in *Alert Digest No 1 of 2001*.

Sex Discrimination Amendment Bill (No 1) 2000: On 3 April, the House of Representatives agreed to amend this bill. These amendments raised no issues within the Committee's terms of reference.

AMENDMENTS IN THE SENATE

(2 April - 5 April)

Customs Tariff Amendment Bill (No 2) 2001: On 5 April, the Senate requested the House of Representatives to make certain amendments to this bill. These amendments raised no issues within the Committee's terms of reference.

Electoral and Referendum Amendment Bill (No 1) 2001: On 4 April, the Senate agreed to amend this bill. This amendment raised no issues within the Committee's terms of reference.

Excise Tariff Amendment Bill (No 1) 2001: On 5 April, the Senate requested the House of Representatives to make certain amendments to this bill. These amendments raised no issues within the Committee's terms of reference.

Family and Community Services and Veterans' Affairs Legislation Amendment (Debt Recovery) Bill 2000: On 4 April, the Senate agreed to certain amendments made by the House of Representatives in place of certain Senate amendments to this bill. These amendments raised no issues within the Committee's terms of reference.

Social Security Legislation Amendment (Concession Cards) Bill 2000: On 5 April, the Senate agreed to amend this bill. This amendment raised no issues within the Committee's terms of reference.

PROVISIONS OF BILLS WHICH IMPOSE CRIMINAL SANCTIONS FOR A FAILURE TO PROVIDE INFORMATION

REPORT NO 2/2001

The Committee's *Eighth Report of 1998* dealt with the appropriate basis for penalty provisions for offences involving the giving or withholding of information. In that Report, the Committee recommended that the Attorney-General develop more detailed criteria to ensure that the penalties imposed for such offences were "more consistent, more appropriate, and make greater use of a wider range of non-custodial penalties". The Committee also recommended that such criteria be made available to Ministers, drafters and to the Parliament.

The Government responded to that Report on 14 December 1998. In that response, the Minister for Justice referred to the ongoing development of the Commonwealth *Criminal Code*, which would include rationalising penalty provisions for "administration of justice offences". The Minister undertook to provide further information when the review of penalty levels and applicable principles had taken place.

For information, the following Table sets out penalties for 'information-related' offences in the legislation covered in this *Digest*. The Committee notes that imprisonment is still prescribed as a penalty for some such offences.

TABLE

Bill/Act	Section/Subsection	Offence	Penalty
Australian Securities and Investments Commission Bill 2001	Clause 63 (1)	Failure to comply with ss. 19, 21(3), 30, 31, 32, 32A, 33 or 34, 37(9), 38 or 39	100 penalty units and/or imprisonment for 2 years
	Clause 63 (2)	Failure to comply with ss. 41, 42, 43, 44, 45 or 46	50 penalty units and/or imprisonment for 12 months
	Clause 63(3)	Failure to comply with ss. 21(1) or 29(2), 24(2)(a), 49(3) or 58(1), (2) or (4)	10 penalty units and/or imprisonment for 3 months
	Clause 63(4)	Failure to comply with ss. 23(2) or 48(2).	5 penalty units
Air Navigation Act 1920	Proposed new section 20	Failure to provide aviation security information	Not exceeding 45 penalty units

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2001

NAME OF BILL AI	LERT DIGEST	INTRO HOUSE	DUCED SENATE	MINISTER	RESPON SOUGHT RE		REPORT NUMBER
Bills Carried over from 1999/2000							
Aboriginal and Torres Strait Islander Commission Amendment Bill 2000	18(6.12.00)	29.11.00	6.2.01	Aboriginal and Torres Strait Islander Affairs	7.12.00	15.1.01 27.2.01	1(7.2.01) 2(28.2.01)
Administrative Review Tribunal Bill 2000	10(16.8.00)	28.6.00	6.2.01	Attorney-General	17.8.00		NEG26.2.01
Administrative Review Tribunal (Consequential and Transitional Provisions) Bill 2000	15(1.11.00)	12.10.00	6.2.01	Attorney-General	2.11.00		NEG26.2.01
Aviation Noise Ombudsman Bill 2000	13(4.10.00)	4.9.00		Mr Albanese MP	5.10.00	6.10.00	REM 2.4.01
Broadcasting Services Amendment Bill 200 (previous citation: Broadcasting Services Amendment Bill (No. 4) 1999)	0 1(16.2.00)	9.12.99	7.11.00	Communications, Information and the Arts	17.2.00 9.11.00	4.5.00 8.1.01	16(8.11.00) 1(7.2.01)
Convention on Climate Change (Implementation) Bill 1999	14(22.9.99)		2 .9.99	Senator Brown	3.9.99		
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 1999 (new citation: Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Bill 2000)	19(1.12.99)	24.11.99	30.10.00	Justice and Customs	2.12.99	15.3.00 11.00	15(1.11.00) 2(28.2.01)
Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Bill 2000	17(29.11.00)	9.11.00	7.2.01	Defence	30.11.00 1.3.01	5.12.00 7.3.01	2(28.2.01) 3(7.3.01)

NAME OF BILL	ALERT DIGEST		ODUCED SENATE	MINISTER	RESP SOUGHT	ONSE RECEIVED	REPORT NUMBER
Job Network Monitoring Authority Bill 2000	16(8.11.00)	30.10.00		Ms Kernot	9.11.00		
Job Network Monitoring Authority Bill 2000 [No. 2]	16(8.11.00)		31.10.00	Senator Collins	9.11.00		
Migration Legislation Amendment Bill (No. 1) 2001 (previous citation: Migration Legislation Amendment Bill (No. 2) 2000)	4(5.4.00)	14.3.00	26.2.01	Immigration and Multicultural Affairs	6.4.00 1.3.01	26.4.00 20.4.01	2(28.2.01) 6(23.5.01)
Migration Legislation Amendment (Integrity of Regional Migration Schemes) Bill 2000	18(6.12.00)	9.11.00	27.3.01	Immigration and Multicultural Affairs	7.12.00	5.2.01	4(28.3.01)
Pig Industry Bill 2000	18(6.12.00)	30.11.00	8.3.01	Agriculture, Fisheries and Forestry	7.12.00	14.2.01	4(28.3.01)
Postal Services Legislation Amendment Bill 2000	5(12.4.00)	6.4.00		Communications, Information Technology and the Arts	13.4.00		DC
Remuneration Tribunal Amendment Bill 2000	0 18(6.12.00)	29.11.00	8.3.01	Finance and Administration	7.12.00	31.1.01	4(28.3.01)
Roads to Recovery Bill 2000	18(6.12.00)	30.11.00	5.12.00	Transport and Regional Services	7.12.00	6.4.01	6(23.5.01)
Bills being dealt with in 2001							
Australia New Zealand Food Authority Amendment Bill 2001	2(28.2.01)		8.2.01	Health and Aged Care	1.3.01	26.3.01	4(28.3.01)
Communications and the Arts Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)	30.11.00	8.2.01	Communications, Information Technology and the Arts	8.2.01	26.2.01	2(28.2.01)

NAME OF BILL	ALERT DIGEST		ODUCED SENATE	MINISTER	RESP SOUGHT	PONSE RECEIVED	REPORT NUMBER
Copyright Amendment (Parallel Importation) Bill 2001	3(7.3.01)	28.2.01		Attorney-General	8.3.01	15.501	6(23.5.01)
Crimes Amendment (Age Determination) Bill 2001	4(28.3.01)	7.3.01	4.4.01	Justice and Customs	29.3.01	2.4.01	5(4.4.01)
Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2000	1(7.2.01) 4(28.3.01)	6.12.00	27.3.01	Justice and Customs	8.2.01 29.3.01	27.3.01	4(28.3.01)
Customs Tariff Amendment Bill (No.2) 2001	4(28.3.01)	8.3.01	29.3.01	Justice and Customs	29.3.01	27.4.01	6(23.5.01)
Dried Vine Fruits (Rate of Primary Industry (Excise Levy) Validation Bill 2001	5(4.4.01)	29.3.01		Agriculture, Fisheries and Forestry	5.4.01		
Electoral and Referendum Amendment Bill (No. 1) 2001	4(28.3.01)	7.3.01	2.4.01	Finance and Administration	29.3.01		
Environment and Heritage Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)	8.2.01	6.12.00	Environment and Heritage	8.2.01	26.2.01	2(28.2.01)
Excise Tariff Amendment Bill (No. 1) 2001	4(28.3.01)	8.3.01	29.3.01	Treasurer	29.3.01	27.4.01	6(23.5.01)
Foreign Affairs and Trade Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)	6.12.00	5.4.01	Foreign Affairs and Trade	8.2.01	2.4.01	5(4.4.01)
Law and Justice Legislation Amendment (Application of Criminal Code) Bill 2000	1(7.2.01)	5.3.01	6.12.00	Justice and Customs	8.2.01	20.2.01	2(28.2.01)

NAME OF BILL	ALERT DIGEST		ODUCED SENATE	MINISTER	RESP SOUGHT	PONSE RECEIVED	REPORT NUMBER
National Crime Authority Legislation Amendment Bill 2000	1(7.2.01)		7.12.00	Justice and Customs	8.2.01		
Parliamentary (Choice of Superannuation) Bill 2001	4(28.3.01)	5.3.01		Mr P Andren MP	29.3.01	3.4.01	
Petroleum (Submerged Lands) Legislation Amendment Bill (No. 3) 2000	1(7.2.01)	6.12.00		Industry, Science and Resources	8.2.01	5.3.01	5(4.4.01)
Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code Bill 2001	4(28.3.01)		8.3.01	Prime Minister	29.3.01	27.4.01	6(23.5.01)
Roads to Recovery Act 2000	*18.6.12.00)	30.11.00	5.12.00	Justice and Customs	7.12.00	3.4.01	6(23.5.01)
Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000	1(7.2.01)	7.12.00		Employment, Workplace Relations and Small Business	8.2.01	2.4.01	
Superannuation Legislation Amendment (Post-retirement Commutations) Bill 2000	1(7.2.01)	7.12.00	1.3.01	Finance and Administration	8.2.01	28.2.01	3(7.3.01)
Taxation Laws Amendment (Superannuation Contributions) Bill 2000	*14(11.10.00) 4(28.3.01)	7.9.00	5.10.00	Treasurer	12.10.00 1.3.01	31.10.01	*15(1.11.00)
Therapeutic Goods Amendment Bill (No. 4) 2000	1(7.2.01)	5.3.01	7.12.00	Health and Aged Care	8.2.01	20.2.01	2(28.2.01)
Therapeutic Goods Amendment (Medical Devices) Bill 2001	5(4.4.01)	29.3.01		Health and Aged Care	5.4.01		