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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Bills Restored to Notice Paper

On 12 February 2002, on the motion of Senator Bourne (AD), certain bills which had been introduced into the Senate in previous sessions were restored to the Notice Paper.

Under Standing Order 136, a bill restored to the Notice Paper may be proceeded with in both Houses as if its passage had not been interrupted by a prorogation of the Parliament.

The Committee has dealt with all of these bills in previous Digests. Following is a list of the bills restored and any comments made by the Committee:

ABC Amendment (Online and Multichannelling Services Bill 2001 The Committee made no comment on this bill - see *Alert Digest No. 6 of 2001*

Air Navigation Amendment (Extension of Curfew and Limitation of Aircraft Movements) Bill 1995 [1998] The Committee made no comment on this bill – see *Alert Digest No. 6 of 1995*

Anti-Genocide Bill 1999 The Committee made no comment on this bill – see *Alert Digest No. 17 of 1999*

Australian Broadcasting Corporation Amendment Bill 1999 The Committee made no comment on this bill – see *Alert Digest No. 5 of 1999*

Charter of Political Honesty Bill 2000 In its Seventeenth Report of 2000, the Committee drew attention to subclauses 9(1) and (3) of this bill. The Committee was concerned as to why no provision had been made for the involvement of a judicial officer in either the determination or review of the matters covered by clause 9. The Committee sought advice from Senator Murray, who introduced the bill. Senator Murray responded that judicial review would remain available, and that the committee constituted under the bill was itself a mechanism for reviewing decisions made by the Executive.

Constitution Alteration (Appropriations for the Ordinary annual Services of the Government) 2001 The Committee made no comment on this bill – see *Alert Digest No. 9 of 2001*

Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualification of Members) 2000 The Committee made no comment on this bill – see *Alert Digest No. 5 of 2000*

Corporate Code of Conduct Bill 2000 The Committee made no comment on this bill – see *Alert Digest No. 13 of 2001*

Electoral Amendment (Political Honesty) Bill 2000 In its *Seventeenth Report of 2000*, the Committee drew attention to proposed new subsection 329(5) of this bill. The Committee was concerned as to the appropriateness of requiring a person charged with publishing misleading matter, or misleading electoral advertising, to bear the onus of providing the matters set out in proposed new subsection 329(5). The Committee sought advice from Senator Murray, who introduced the bill. Senator Murray responded that he would be happy to make an amendment to ensure that the Crown bears the onus of proof.

Freedom of Information Amendment (Open Government) Bill 2000 In *Alert Digest No. 13 of 2000*, the Committee noted that some provisions were to commence at a fixed time either 12 months or 3 years after the bill received Royal Assent, but made no further comment in relation to these provisions.

Parliamentary Approval of Treaties Bill 1995 [1998] The Committee made no comment on this bill – see *Alert Digest No. 8 of 1995*

Public Interest Disclosure Bill 2001 The Committee made no comment on this bill – see *Alert Digest No. 9 of 2001*

Reconciliation Bill 2001 The Committee made no comment on this bill – see *Alert Digest No. 6 of 2001*

State Elections (One Vote, One Value) Bill 2001 The Committee made no comment on this bill – see *Alert Digest No. 10 of 2001*

Airports Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister for Regional Services, Territories and Local Government [Portfolio responsibility: Transport and Regional Services]

This bill proposes to amend the Airports Act 1996 to:

- apply the Act's airline ownership provisions only to airport operator companies for core regulated airports and airports specified in the regulations;
- ensure consistency between the terms used in clause 9 of the Schedule and terms used elsewhere in the ownership provisions;
- provide that a person may be declared by the regulations not to be an associate of another person for the purposes of the ownership provisions; and
- provide that certain matters contained in documents specified in the regulations may be referred to as in force or existing from time to time.

Incorporation of matter as in force from time to time Proposed new subsection 252(2)

Section 49A of the *Acts Interpretation Act 1901* provides that, unless a contrary intention appears, regulations may only apply, adopt or incorporate matter contained in a non-statutory instrument as in effect at the time that the regulation takes effect – as a rule, a regulation may not incorporate matter as contained in a non-statutory instrument as it exists <u>from time to time</u>.

Item 2 of Schedule 1 to this bill proposes to insert a new subsection 252(2) in the *Airports Act 1996*. This new subsection will expressly permit the making of regulations which apply, adopt or incorporate material, as in force from time to time, contained:

• in the "Airside Vehicle Control Handbook ... published by the airportoperator company for the airport concerned;" and • in the document "numbered 8168 OPS-611 and known as the Procedures for Air Navigation Services, Aircraft Operations published by the International Civil Aviation Organisation".

Proposed new subsection 252(2) clearly delegates Parliamentary power in that it would permit the authors of the named documents to change subordinate legislation made (or at least approved) by the Parliament without the Parliament having an opportunity to consider those changes.

In particular, empowering unnamed airport operators to amend subordinate legislation simply by making changes to their "Airside Vehicle Control Handbook" is considered inappropriate. It is more appropriate that such matters be determined by organisations which have governmental authority or governmental representation.

While there may or may not be merit in having various government functions carried out by privately owned companies, the Committee is unaware of other instances where the 'legislative function' has been privatised in his way. Neither the Minister's Second Reading Speech nor the Explanatory Memorandum indicates the reason for this provision, referring only to its effect. Indeed, the Second Reading Speech appears to dismiss this provision as a "minor technical amendment". The Committee, therefore, **seeks the Minister's advice** as to the reason for permitting airport operators and ICAO to amend subordinate legislation without the need for parliamentary scrutiny.

Pending the Minister's advice, the Committee draws Senators' attention to this provision, as it may be considered to insufficiently subject the exercise of legislative power to Parliamentary scrutiny, in breach of principle l(a)(v) of the Committee's terms of reference.

Appropriation Bill (No. 3) 2001-2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

This bill proposes to appropriate money (\$1458 million) out of the Consolidated Revenue Fund, additional to the appropriation made by the Appropriation Act (No 1) 2001-2002, to meet payments for the ordinary services of the government for the year ending on 30 June 2002.

Appropriation Bill (No. 4) 2001-2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

This bill proposes to appropriate money (\$1174 million) out of the Consolidated Revenue Fund, additional to the appropriation made by the Appropriation Act (No 2) 2001-2002, to meet payments for the ordinary services of the government for the year ending on 30 June 2002.

Appropriation (Parliamentary Departments) Bill (No. 2) 2001-2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

This bill proposes to appropriate money (\$0.5 million) out of the Consolidated Revenue Fund, additional to the appropriation made by the Appropriation (Parliamentary Departments) Act 2001-2002, to meet payments for the ordinary services of the government for the year ending on 30 June 2002.

Australian Citizenship Legislation Amendment Bill 2002

This bill was introduced into the House of Representatives on 13 February 2002 by the Minister for Citizenship and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

The bill proposes to amend the Australian Citizenship Act 1948 to:

- repeal section 17 of the Act so that Australian citizens in future do not lose their Australian citizenship on acquisition of another citizenship;
- extend the descent and resumption provisions to give young people more opportunities to acquire Australian citizenship;
- provide for children who acquire Australian citizenship with their responsible parent, or at a later date, to be given their own citizenship certificates;
- strengthen aspects of the integrity of the Australian citizenship process; and
- insert a specific reference to highlight existing provisions relating to 'people smuggling' offences.

The bill also contains application and transitional provisions.

Coal Industry Repeal Act 2001

The bill for this Act was introduced into the House of Representatives on 28 June 2000 by the Parliamentary Secretary to the Minister for Industry, Science and Resources, and was considered by the Committee in *Alert Digest No 10. of 2000*.

The Act repeals the Commonwealth *Coal Industry Act 1946* and provides for the dissolution of the Joint Coal Board as constituted under that Act and the New South Wales *Coal Industry Act 1946*. The Act also supports New South Wales in making a law to provide for the transfer of all the assets, rights, liabilities and existing staff of the Joint Coal Board to a new State-administered corporation or entity; and other matters incidental to the dissolution of the Joint Coal Board.

Notification of commencement Section 2

In *Alert Digest No 10. of 2000* the Committee dealt with this legislation in bill form. Specifically the Committee noted that clause 2 of the bill provided that it was to commence on Proclamation, with no further date set within which it must commence in any event.

The Committee noted that this was a departure from the approach to commencement referred to in *Drafting Instruction No. 2 of 1989*, issued by the Office of Parliamentary Counsel. However, the Explanatory Memorandum stated that the commencement of the bill depended on the passage of complementary legislation through the New South Wales Parliament, and that this was one of the recognised exceptions to that *Drafting Instruction*. As a consequence, the Committee made no further comment on the bill.

The Committee has since received some further information concerning the Proclamation of this Act.

On 20 December 2001 the Governor-General, by proclamation, fixed 1 January 2002 as the day on which this Act commenced. However, this proclamation was apparently not published until 1 February 2002 (see *Gazette* No S 37, Friday 1 February 2002). Therefore, it would seem that the Act was in operation for 1 month, yet no-one had been made aware of that fact.

The Committee is unaware of other occasions on which this approach to the notification of commencement has been taken, and considers that it appears to represent an unfortunate precedent. The Committee would, therefore, **appreciate the Minister's advice** as to why this proclamation was published after the date on which the Act commenced, and whether anyone has been disadvantaged as a result.

Pending the Minister's response, the Committee draws Senators' attention to this approach to the notification of commencement, 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.

Commonwealth Inscribed Stock Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Commonwealth Inscribed Stock Act 1911* to provide for:

- the issue and transfer of Commonwealth Government Securities (CGS) by electronic means;
- the Commonwealth to be able to create equitable interests in CGS under the Act;
- the recognition under the Act that non-government clearing and settlement facilities regulated under the Corporations Act may be appointed as Registrars under the Act in addition to, or instead of, the Reserve Bank of Australia; and
- the operating rules of a clearing and settlement facility appointed as a Registrar to apply to the transfer of CGS.

Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002

This bill was introduced into the House of Representatives on 13 February 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend:

- the *Criminal Code Act 1995* to add new offences relating to the sending of dangerous, threatening and hoax material through the post or similar services; and
- the *Crimes Act 1914* to replace existing outdated postal offences.

The bill proposes that federal offences cover the use of all postal and other like services, not just Australia Post as at present. The bill also increases the penalties for the offences of sending threatening, dangerous or hoax material through postal and similar services to more appropriate levels which reflect the harm that can be caused by material.

Legislation by press release Schedule 1

Schedule 1 to this bill proposes to amend the Criminal Code by creating a new offence dealing with the use of the post to send hoax material. These amendments are expressed to commence at 2pm on 16 October 2001, thus retrospectively creating a criminal offence. The justification given for this retrospectivity (as set out in the Explanatory Memorandum) is that this is the time and date at which the Prime Minister publicly announced that he would introduce such provisions.

Notwithstanding the seriousness of the conduct at which this bill is directed, the retrospective creation of a criminal offence is similarly a serious matter. The bill itself is a very clear example of "legislation by press release" – a practice which the Committee has consistently brought to the attention of Senators. As the Committee has previously noted, "the fact that a proposal to legislate has been announced is no justification for treating that proposal as if it were enacted legislation".

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.

Creation of criminal offence by regulation Proposed new subsection 471.15(1)

Clause 6 of Schedule 2 to this bill proposes to insert a new subsection 471.15(1) in the Criminal Code. This will allow for the further definition, by regulation, of those dangerous or harmful substances the posting of which will be an offence. To that extent, this subsection allows for the creation of a criminal offence by Executive Order – in a regulation – rather than by primary legislation, which would be debated in both Houses of the Parliament.

This proposed new provision is apparently in the same form as the existing section 85X of the *Crimes Act 1914*. Nevertheless, the Committee **seeks the Minister's** advice as to why it is appropriate that an offence of such seriousness should be addressed through subordinate, rather than primary, legislation.

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.

Disability Discrimination Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Disability Discrimination Act 1992* to allow the Human Rights and Equal Opportunity Commission (HREOC) to grant exemptions from disability standards in relation to public transportation services and facilities, including, for example, on the grounds of unjustifiable hardship. The bill also provides that HREOC must take into account the advice of the National Transport Secretariat before granting an exemption from the disability standards.

Disability Services Amendment (Improved Quality Assurance) Bill 2002

This bill was introduced into the Senate on 13 February 2002 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the *Disability Services Act 1986* to improve the quality of Commonwealth-funded employment services and rehabilitation programs provided to people with disabilities. This is to be done through the establishment of a new quality assurance system operated by industry-based certification bodies accredited for this purpose by an internationally recognised accrediting authority.

The amendments make funding of employment services and the approval of rehabilitation programs dependent on a service provider being certified as meeting the relevant standards.

The bill also contains transitional provisions which will apply till December 2004.

Family and Community Services Legislation Amendment (Further Simplification of International Payments) Bill 2002

This bill was introduced into the House of Representatives on 13 February 2002 by the Minister representing the Minister for Family and Community Services. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the *Social Security Act 1991* to further simplify international payments by:

- extending the required period of 'Australian working life residence' from 25 to 30 years to more closely align it with international standards;
- permitting the accrual of 'Australian working life residence' under certain circumstances; and
- standardising the recovery of debts that result from the overpayment of Australian pensions to people who receive lump sum payments from overseas.

Financial Services Reform (Consequential Provisions) Bill 2002

This bill was introduced into the Senate on 14 February 2002 by the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Retirement Savings Accounts Act 1997* to ensure that a Retirement Savings Account (RSA) provider can comply with regulations provided for by the *Family Law Legislation Amendment (Superannuation) Act 2001* which will allow an RSA interest to be split and a separate interest to be created in the name of the RSA holder's former spouse.

The bill also proposes a technical amendment to the *Corporations Act 2001* to correct a drafting error in the *Financial Services Reform Act 2001*.

Higher Education Legislation Amendment Bill (No. 1) 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister for Education, Science and Training. [Portfolio responsibility: Education, Science and Training]

The bill proposes to amend the *Higher Education Funding Act 1988* to create a HECS-style, interest-free loans scheme for overseas trained professionals to undertake a course of study to enable them to meet formal recognition requirements for their professional in Australia to be called the Bridging for Overseas-trained Professional Loan Scheme (BOTP Loan Scheme).

The bill also provides transitional arrangements for participants who started a bridging course in first semester 2002.

Extension of tax file number scheme Proposed new sections 98Y and 98ZB

Schedule 1 to this bill proposes to insert a new Chapter 4B in the *Higher Education Funding Act 1988*. This new Chapter sets up a scheme for Commonwealth loans to overseas-trained professionals who undertake bridging courses to enable them to meet the requirements for entry to their professions in Australia.

This new Chapter includes proposed new section 98Y. The effect of this section will be to require students seeking such a loan to provide their tax file number (TFN) to the tertiary education institution involved. Proposed new section 98ZB reinforces the effect of this provision by denying Commonwealth liability to make such a loan if a student does not have a tax file number.

The Committee has consistently drawn attention to instances where tax file numbers are required for purposes much beyond those originally contemplated (tax avoidance). For example, in 2001 it sought advice from the then Minister for Education, Training and Youth Affairs on the extension of the tax file number scheme to students wishing to participate in the Postgraduate Education Loan Scheme. In summary, the Minister responded that:

- the provision of TFNs was not a compulsory requirement the consequence of not providing a TFN was that the student would not be eligible to access the loan facility provided by the Commonwealth, however they could continue to pay their tuition fees directly to the relevant higher education institution;
- requiring the provision of TFNs was consistent with arrangements that currently applied to the Higher Education Contribution Scheme and the Open Learning Deferred Payment Scheme; and
- TFNs were used by higher education institutions to advise the Tax Office of the amounts that students were deferring.

The Committee acknowledges that the purpose of these provisions is undoubtedly to minimise the possibility for fraud in the administration of this and other education loan schemes. However, the TFN scheme was introduced specifically and solely for the use of the Tax Office. It has since been made available much more widely than originally contemplated. This bill represents yet another instance of this extension.

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

Income Tax (Superannuation Payments Withholding Tax) Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Introduced with the Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002, the bill proposes the imposition of a tax on superannuation paid to temporary residents permanently departing Australia to be known as the departing Australia superannuation payment.

Interstate Road Transport Charge Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister for Regional Services, Territories and Local Government. [Portfolio responsibility: Transport and Regional Services]

Introduced with the Road Transport Charges (Australian Capital Territory) Amendment Bill 2002, the bill proposes to amend the *Interstate Road Transport Charge Act 1985* so that the automatic annual adjustment set out in the Road Transport Charges (Australian Capital Territory) Amendment Bill 2002 is applied to vehicles registered under the Federal Interstate Registration Scheme (FIRS).

Marriage Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the Marriage Act 1961 to:

- reform the Marriage Celebrants Program, primarily to raise the level of professional standards required for celebrants and have them promote marriage and other relationship education services;
- create the statutory appointment of Registrar of Marriage Celebrants;
- make certain decisions subject to review by the Administrative Appeals Tribunal; and
- make technical amendments in relation to the Notice of Intended Marriage; passports as a means of identification; authorisation of a shortened time frame between lodgements of a Notice of Intended Marriage and the marriage; and removal of redundant provisions.

The bill also contains transitional provisions.

Commencement 12 months after assent Subclause 2(3)

Subclause 2(3) provides that the amendments proposed by Schedule 1 to this bill will not necessarily commence until 12 months after the bill is assented to.

This is a departure from *Drafting Direction No. 14 of 2001* issued by the Office of Parliamentary Counsel (which has replaced *Drafting Instruction No. 2 of 1989*). In general terms this Direction states that, where a provision is expressed to commence at the end of a period after assent, this period should generally not be longer than 6 months. A longer period should be explained in the Explanatory Memorandum.

The Explanatory Memorandum accompanying this bill seeks to justify the 12 month period by reference to a "need to develop core competencies and

associated training for new [marriage] celebrants" and the need to develop "significant" regulations.

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

Migration Agents Registration Application Charge Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister for Citizenship and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

The bill proposes to amend the *Migration Agents Registration Application Charge Act 1997* to increase the amount of the migration agents' registration application charge limit.

Migration Legislation Amendment (Migration Agents) Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister for Citizenship and Multicultural Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

The bill proposes to amend the *Migration Act 1958* to provide a regulatory framework for the migration advice industry and those who seek to practice as migration agents. The framework includes the power to investigate complaints, carry-over provisions for repeat applications for registration, and a mechanism for refining the scheme.

The bill also contains application provisions.

Ministers of State Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to amend the *Ministers of State Act 1952* to increase the limit on the sum appropriated from the Commonwealth Consolidated Fund in 2001-2002 and beyond in respect of the salaries of Ministers. This increase is necessary following a determination of the Remuneration Tribunal with effect from 1 July 2001 that increased the base salaries of all Senators and Members. The additional salaries of Ministers are determined as a percentage of the base salary of Senators and members.

Parliamentary Proceedings Broadcasting Amendment Bill 2002

This bill was introduced into the House of Representatives on 13 February 2002 by the Prime Minister. [Portfolio responsibility: Prime Minister]

The bill proposes to amend the *Parliamentary Proceedings Act 1946* to alter gender specific references to non-gender specific references.

Radiocommunications (Transmitter Licence Tax) Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

The bill proposes to amend the *Radiocommunications (Transmitter Licence Tax) Act 1983* to correct an anomaly in the Act to clarify the power to impose a tax on the issue of a transmitter licence regardless of whether an application has been made for that licence. The bill also seeks to validate the imposition of the tax on licences that have been affected by the anomaly.

Retrospective commencement Subclause 2(1)

Subclause 2(1) of this bill provides that the amendments proposed by item 1 of Schedule 1 to the bill are deemed to have commenced on 29 March 1996.

The Minister's Second Reading Speech acknowledges that this retrospectivity seeks to validate the imposition of a tax to correct "an anomaly". In general terms the Principal Act imposes a tax on applicants for a transmitter licence. However, not all transmitter users are required to apply for such a licence – some existing broadcasters are automatically entitled to such a licence. This bill is intended "to clarify the power to impose a tax on the issue of a transmitter licence regardless of whether an application has been made for that licence".

The Second Reading Speech further points out that all those affected have paid the tax (even though they were under no legal obligation to do so). Therefore there will not be any "retrospective payment ... necessary."

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

Regional Forest Agreements Bill 2002

This bill was introduced into the House of Representatives on 13 February 2002 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Forestry and Conservation]

The bill proposes a legislative commitment and support for the outcomes of the Regional Forest Agreements and for the ongoing action to implement the Forest and Wood Products Action Agenda through the Forest and Wood Products Council. The bill binds executive governments to certain Commonwealth obligations under Regional Forest Agreements and to implementation of the Forest and Wood Action Agenda through the Forest and Wood Products Council.

The bill also amends the *Environment Protection and Biodiversity Conservation Act 1999* to ensure that it contains identical provisions to the proposed *Regional Forest Agreements Act 2002* in relation to its application on RFA forestry operations.

Road Transport Charges (Australian Capital Territory) Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister for Regional Services, Territories and Local Government. [Portfolio responsibility: Transport and Regional Services]

Introduced with the Interstate Road Transport Charge Amendment Bill 2002, the bill proposes to amend the *Road Transport Charges (Australian Capital Territory) Act 1993* to provide for automatic annual adjustments to the level of heavy vehicle registration charges in the Australian Capital Territory. The annual adjustment is based on a formula that accounts for changes in road provision and maintenance expenditure and expected changes in road use. The principal Act forms part of a nationally consistent road transport legislation scheme.

Sex Discrimination Amendment (Pregnancy and Work) Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Sex Discrimination Act 1984* to clarify certain provisions regarding discrimination on the grounds of pregnancy, potential pregnancy and breastfeeding. The amendments address concerns raised in the Human Rights and Equal Opportunity Commission Report *Pregnant and Productive: It's a Right not a Privilege to Work While Pregnant.*

States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister for Education, Science and Training. [Portfolio responsibility: Education, Science and Training]

The bill proposes to amend the *States Grants (Primary and Secondary Education Assistance) Act 2000* to alter the mechanism for establishment grant funding for new non-government schools to a per capita entitlement payable to all eligible schools as a standing appropriation rather than through a fixed legislated special appropriation for the 2001 to 2004 funding period.

The bill also contains transitional provisions.

Student Assistance Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister for Education, Science and Training. [Portfolio responsibility: Education, Science and Training]

The bill proposes to amend the Student Assistance Act 1973 to:

- permit social security, veterans' and family assistance legislation overpayments to be offset against benefits payable under the Assistance for Isolated Children (AIC) scheme and the ABSTUDY scheme;
- update certain definitions to reflect that the Aboriginal Overseas Student Assistance Scheme no longer exists; and
- increase the 7-day notification period within which students are obliged to notify certain prescribed events to a 14-day period.

Taxation Laws Amendment (Film Incentives) Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Income Tax Assessment Act* 1936 and the *Income Tax Assessment Act* 1997 to create a refundable tax offset for film production in Australia. The measure is designed to attract large budget film productions to Australia in order to develop Australia's film industry. The bill also contains application and transitional provisions.

Retrospective application Proposed new paragraph 376-15(1)(b)

Item 2 of Schedule 1 to this bill, among other things, inserts a new paragraph 376-15(1)(b) in the *Income Tax Assessment Act 1997*. This provision authorises the Minister to issue a certificate that a film satisfies certain requirements if he or she is satisfied that the film has been completed, and was completed on or after 4 September 2001. The effect of this provision is, therefore, to some extent, retrospective. However the effect of the bill is beneficial for those engaged in making films.

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

Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Introduced with the proposed Income Tax (Superannuation Payments Withholding Tax) Bill 2002, the bill proposes to amend the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Taxation Administration Act 1953*, the *Income Tax Act 1986* and the *Small Superannuation Accounts Act 1995* to provide arrangements for the imposition of a tax on superannuation payments made to persons who have permanently departed Australia as provided for by the proposed Income Tax (Superannuation Payments Withholding Tax) Bill 2002.

The bill also contains application and transitional provisions.

Therapeutic Goods Amendment (Medical Devices) Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

Introduced with the Therapeutic Goods (Charges) Amendment Bill 2002, the bill proposes to amend the *Therapeutic Goods Act 1989* to introduce a medical device regulatory system which is internationally accepted best practice. The framework includes a new electronic application lodgment system for the inclusion of medical devices on the Australian Register of Therapeutic Goods.

The bill also provides transitional arrangements.

Abrogation of the privilege against self-incrimination Proposed new sections 41JC and 41JJ

This bill proposes to amend the *Therapeutic Goods Act 1989* by introducing a new regulatory scheme for medical devices. These amendments include proposed new sections 41JC and 41JJ. These proposed new sections would abrogate the privilege against self-incrimination for persons required to provide certain information to the Secretary.

This bill is in the same terms as a bill introduced into the House of Representatives on 29 March 2001. The Committee commented on the equivalent provisions in *Alert Digest No. 5 of 2001*. The Parliamentary Secretary to the then Minister responded to the Committee's concerns in a letter dated 24 May 2001. As the Committee indicated, in its *Ninth Report of 2001*, it was satisfied with that response.

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

Therapeutic Goods (Charges) Amendment Bill 2002

This bill was introduced into the House of Representatives on 14 February 2002 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

Introduced with the Therapeutic Goods Amendment (Medical Devices) Bill 2002, the bill proposes to amend the *Therapeutic Goods (Charges) Act 1989* to provide for annual charges to be payable in respect of medical devices to be included on the Australian Register of Therapeutic Goods.

Workplace Relations Amendment (Fair Dismissal) Bill 2002

This bill was introduced into the House of Representatives on 13 February 2002 by the Minister for Employment and Workplace Relations. [Portfolio responsibility: Employment and Workplace Relations]

The bill proposes to amend the Workplace Relations Act 1996 to:

- prevent small business employees, other than apprentices and trainees, from applying under the ACT for a remedy in respect of harsh, unjust or unreasonable termination of employment, otherwise known as 'unfair dismissal'; and
- require the Australian Industrial Relations Commission to order that an unfair dismissal application made by a small business employee is invalid, if the Commission is satisfied that the application is outside the Commission's jurisdiction because of the small business exemption.

PROVISIONS OF BILLS WHICH IMPOSE CRIMINAL SANCTIONS FOR A FAILURE TO PROVIDE INFORMATION REPORT NO 1/2002

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
Therapeutic Goods Amendment (Medical Devices) Bill 2002	Subsection 41JB(3)	Fail to provide information or documents to Secretary	30 penalty units
	Subsection 41JB(4)	Provide false or misleading information	60 penalty units
	Subsection 41JG(3)	Fail to provide information or documents (re medical devices covered by exemptions)	30 penalty units

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

Recent discussions between the Chairs and Deputy Chairs of Commonwealth, State and Territory Scrutiny Committees have again noted 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 early identification of national schemes of legislation, the Committee proposes to note bills that give effect to such schemes as they come before the Committee for consideration.

Regional Forest Agreements Bill 2002

This bill provides legislative support to the outcomes achieved in the 10 Regional Forest Agreements (RFAs) concluded between the Commonwealth and the Governments of Victoria, Tasmania, New South Wales and Western Australia between February 1997 and April 2001. It binds executive governments to certain Commonwealth obligations under the RFAs, and to implementation of the Forest and Wood Products Action Agenda through the Forest and Wood Products Council.