Senate Standing Committee for the Scrutiny of Bills



No. 2 of 2002

13 March 2002

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Alert Digest No. 2 of 2002

13 March 2002

ISSN 1329-668X

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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.

TABLE OF CONTENTS

•	Coal Industry Repeal (Validation of Proclamation) Bill 2002	5
	Higher Education Legislation Amendment Bill (No. 2) 2002	6
•	Human Rights and Equal Opportunity Commission Amendment Bill 2002	7
	Protection of the Sea (Prevention of Pollution from Ships) Amendment Bill 2002	8
	Space Activities Amendment Bill 2002	9
•	Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002	10
•	Taxation Laws Amendment Bill (No. 1) 2002	14
•	Therapeutic Goods Amendment Bill (No. 1) 2002	16
	Trade Practices Amendment (Small Business Protection) Bill 2002	20
•	Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2002	21
•	Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2002	23
•	Workplace Relations Amendment (Fair Termination) Bill 2002	26
	Workplace Relations Amendment (Genuine Bargaining) Bill 2002	27
•	Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002	28

• 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.

Workplace Relations Amendment (Secret Ballots for	
Protected Action) Bill 2002	30
Provisions of bills which impose criminal sanctions for a	
failure to provide information	31

• The Committee has commented on these bills

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Coal Industry Repeal (Validation of Proclamation) Bill 2002

This bill was introduced into the House of Representatives on 20 February 2002 by the Minister for Industry, Tourism and Resources. [Portfolio responsibility: Industry, Tourism and Resources]

The bill proposes to validate the commencement of the *Coal Industry Repeal Act 2001* on 1 January 2002 as intended by the Proclamation signed by the Governor-General in Executive Council on 20 December 2001. This validation is necessary as a result of the failure to gazette the Proclamation before 1 January 2002. The validation of the 1 January 2002 commencement date will also validate all actions taken on the assumption that the Act commenced on that date.

Retrospective commencement Subclause 2(1)

Subclause 2(1) of this bill provides that clauses 3, 4 and 5 are to commence retrospectively on 31 December 2001. The Explanatory Memorandum states that the purpose of these provisions is to validate a purported Proclamation which, as a result of an oversight, was not published in the *Gazette* until 1 February 2002. This oversight was previously noted by the Committee in *Alert Digest No. 1 of 2002* in which it sought further advice from the Minister.

Any person who might have been affected by the Proclamation has, apparently, acted as if it were valid. It seems, therefore, that the retrospective commencement of the Act will not act to disadvantage any person. The Committee **seeks the Minister's confirmation** that no-one will be disadvantaged by the Act's retrospective commencement.

Pending the Minister's confirmation, 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 1(a)(i) of the Committee's terms of reference.

Higher Education Legislation Amendment Bill (No. 2) 2002

This bill was introduced into the House of Representatives on 20 February 2002 by the Minister for Education, Science and Training. [Portfolio responsibility: Education, Science and Training]

The bill proposes to amend the following Acts:

Higher Education Funding Act 1988 to:

- vary the maximum funding levels contained in certain sections;
- provide for a single, consistent accountability requirement in relation to grants under the Act;
- remove the requirement for a 'notice of liability' to be sent to overseas fee-paying students;
- change the name of Batchelor College to the Batchelor Institute of Indigenous Tertiary Education;
- reflect and apply changes in taxation legislation; and
- amend a paragraph in relation to the Post-graduate Education Loans Scheme to remedy a drafting oversight.

Australian Research Council Act 2001 to:

- legislate for and vary the funding cap provisions in section 49;
- provide for Ministerial approval of research projects for 4 years; and
- enable the ARC Board to establish committees other than those making funding recommendations without Ministerial approval.

The Committee has no comment on this bill.

Human Rights and Equal Opportunity Commission Amendment Bill 2002

This bill was introduced into the House of Representatives on 21 February 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Human Rights and Equal Opportunity Commission Act 1986* to ensure that the Crown in right of the States is bound by the complaints and remedies provisions for unlawful discrimination in Part IIB of the Act. The amendments rectify a drafting oversight introduced into the Principal Act by reforms in the *Human Rights Legislation Amendment Act (No. 1) 1999* (the Amendment Act) as identified in the Federal Magistrates Service case *Rainsford v State of Victoria* [2001] FMCA 115.

The effect of the *Rainsford* decision is that the Crown in right of a State is not bound in cases in which it is a respondent to a complaint to the Commission or an application to the Federal Court or the Federal Magistrates Service under the Act alleging unlawful discrimination.

Retrospective commencement Clause 2

Clause 2 of this bill provides that it is taken to have commenced retrospectively on 13 April 2000. The Explanatory Memorandum states that the purpose of the bill is to rectify a drafting oversight which was introduced into the Principal Act by amendments which commenced on that date. This oversight was identified in a recent decision of the Federal Magistrates Service.

Both the Explanatory Memorandum and the Minister's Second Reading Speech make it clear that this measure is beneficial to applicants who have made a complaint against a relevant State under the Principal Act.

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

Protection of the Sea (Prevention of Pollution from Ships) Amendment Bill 2002

This bill was introduced into the House of Representatives on 20 February 2002 by the Minister for Regional Services, Territories and Local Government. [Portfolio responsibility: Transport and Regional Services]

The bill proposes to amend the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to correct unintended effects of the *International Maritime Convention Legislation Amendment Act 2001* and ensure that the offence provisions apply to the escape or discharge of pollutants (including oil, noxious substances and garbage) from a ship in the Exclusive Economic Zone.

The Committee has no comment on this bill.

Space Activities Amendment Bill 2002

This bill was introduced into the House of Representatives on 20 February 2002 by the Minister for Industry, Tourism and Resources. [Portfolio responsibility: Industry, Tourism and Resources]

The bill proposes to amend the Space Activities Act 1998 to:

- make provision for new arrangements in respect of insurance and liability;
- make provision for licensing activities undertaken by scientific and educational organisations;
- strengthen the test applying to the safety of launch activities;
- enable the Commonwealth to more fully effect cost recovery for the operations of the regulator; and
- clarify which activities fall within the scope of the Act.

The bill also makes various technical and other amendments to improve administrative efficiency.

The Committee has no comment on this bill.

Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002

This bill was introduced into the House of Representatives on 21 February 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Finance and Administration]

The bill proposes to amend the following Acts:

- Superannuation Act 1976 in relation to reversionary benefits; consolidation of funds from other superannuation arrangements into the Commonwealth Superannuation Scheme (CSS); and powers of Reconsideration Advisory Committees;
- Superannuation Act 1976 and the Superannuation Act 1990 in relation to the scope and administration of the Acts, the CSS and the Public Sector Superannuation Scheme (PSS); delegations by the relevant Board; and benefit options for members who cease membership on the sale of an asset or the transfer or outsourcing of a function;
- Parliamentary Contributory Superannuation Act 1948 in relation to reversionary benefits, orphan benefits, transfer values and rollover funds; and the
- Administrative Appeals Tribunal Act 1975, Law Officers Act 1964, and the Workplace Relations Act 1996 in relation to benefits for CSS and PSS members who join the Judges' Pension Scheme and the Superannuation Legislation Amendment Act (No. 1) 1995 to remove redundant references.

Retrospective commencement Schedule 1, items 175, 183, 186, 187; Schedule 2, items 8 and 14

By virtue of the table in subclause 2(1) of this bill, the amendments proposed by items 175, 183, 186 and 187 of Schedule 1, and items 8 and 14 of Schedule 2, will commence retrospectively on 1 July 1995.

It appears that these amendments are technical in nature, being designed solely to clarify the operation of provisions which have been in force since 1 July 1995. For example, the Explanatory Memorandum states that item 175 of Schedule 1 is intended to ensure that Board members of the

Commonwealth Superannuation Scheme "may only be indemnified in circumstances permitted by SIS". Item 187 of that Schedule is intended to amend the Act in the same terms as regulations which modified the Act in 1995 to apply less stringent preservation rules. The Committee seeks the Minister's confirmation that the retrospective commencement of these provisions will not detrimentally affect the rights of any person.

Pending the Minister's confirmation, 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.

Retrospective commencement Schedule 1, items 176, 182 and 194 and Schedule 3

The table in subclause 2(1) will also permit the amendments proposed by items 176, 182 and 194 of Schedule 1, and the whole of Schedule 3, to commence retrospectively on 27 June 1997 – the date of a ministerial announcement.

It appears that these amendments may be beneficial to members of public service superannuation schemes who cease to be scheme members on the sale or transfer of government businesses or assets or as a result of outsourcing, but this is not clear from either the Explanatory Memorandum or the Minister's Second Reading Speech. The Committee, therefore, **seeks the Minister's confirmation** that these amendments are beneficial to those retrospectively affected.

Pending the Minister's confirmation, 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 1(a)(i) of the Committee's terms of reference.

Retrospective commencement Schedule 1, item 193

The table in subclause 2(1) will also permit the amendment proposed by item 193 of Schedule 1 to commence retrospectively on 18 December 1992. This item amends section 155B of the *Superannuation Act 1976*. Section 155B provides for the making of regulations to modify the Principal Act in relation to members of the Commonwealth Superannuation Scheme (CSS) who cease to be members on the sale of an asset or the transfer of a function.

The Explanatory Memorandum states that section 155B was intended to apply to all persons who cease membership in those circumstances "but this is unclear". Item 193 amends section 155B to make this intent clear.

Again, it appears that this amendment is beneficial to former members of the CSS, but this is not clear from either the Explanatory Memorandum or the Minister's Second Reading Speech. The Committee, therefore, seeks the Minister's confirmation that these retrospective amendments will not adversely affect any person.

Pending the Minister's confirmation, 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.

Declarations having retrospective effect Schedule 1, item 9

The amendment proposed by item 9 of Schedule 1 will permit the Minister to make declarations having retrospective effect. However, the Explanatory Memorandum notes that the Minister's declarations cannot be made in such a way as to disadvantage a person who has been contributing to the Commonwealth Superannuation Scheme.

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

Declarations having retrospective effect Schedule 1, items 12 to 15 and Schedule 2, items 4 to 7

The amendments proposed by items 12 to 15 of Schedule 1, and items 4 to 7 of Schedule 2, will permit the Minister to make declarations (for example, a declaration to include an authority or body as an approved authority) which have effect before the date on which those amendments have commenced.

It appears that any such declarations may be beneficial to members of public service superannuation schemes, but this is not clear from either the Explanatory Memorandum or the Minister's Second Reading Speech. The Committee, therefore, **seeks the Minister's confirmation** that these amendments are beneficial to those retrospectively affected.

Pending the Minister's confirmation, 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.

Taxation Laws Amendment Bill (No. 1) 2002

This bill was introduced into the House of Representatives on 21 February 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Part 1 of the bill proposes to amend the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to allow an immediate tax deduction for specific prepaid expenditure invested in a plantation forestry managed agreement.

Part 2 proposes to amend the *Income Tax Assessment Act 1997* to extend the exercise of the Taxation Commissioner's discretionary powers in respect of non-commercial losses rules for all relevant years where this is consistent with the nature of the business activity.

Parts 3 and 4 contain minor consequential amendments and application and transitional provisions.

Retrospective application Schedule 1, Part 1

The amendments proposed in Part 1 of Schedule 1 to this bill are to apply retrospectively from 2 October 2001 (as provided for in subitem 9(1), in Part 4 of Schedule 1). However, the Explanatory Memorandum makes it clear that these amendments are beneficial to taxpayers.

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

Retrospective application Schedule 1, Part 2

The amendments proposed in Part 2 of Schedule 1 to this bill are to apply from the 2000-2001 tax year (as provided for in subitem 9(2), in Part 4 of

Schedule 1). However, the Explanatory Memorandum makes it clear that these amendments are beneficial to taxpayers.

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

Therapeutic Goods Amendment Bill (No. 1) 2002

This bill was introduced into the House of Representatives on 20 February 2002 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

The bill proposes to amend the *Therapeutic Goods Act 1989* to strengthen the Commonwealth's ability to plan for and respond to national emergencies, including acts of bioterrorism that involve the deliberate release of chemical, biological or radiological substances or the emergence of a new, highly contagious disease.

The bill permits the Minister to make a decision, either in the case of an actual emergency or possible emergency, to allow the importation, manufacture or supply of unapproved therapeutic goods such as antibiotics, vaccines and chemical antidotes that are needed to treat large numbers of patients.

The bill also provides for the strengthening of offence provisions and record keeping and reporting requirements in the Act to ensure adequate control over the importation, manufacture and use of such unapproved therapeutic goods.

Non-disallowable declarations Proposed new subsections 18A(10) and (11)

Item 1 of Schedule 1 to this bill proposes to insert a new section 18A in the *Therapeutic Goods Act 1989*. This new section gives the Minister power to exempt specific therapeutic goods, or a specific class of therapeutic goods, from the registration and listing requirements in the Act in circumstances of a threat to public health.

These registration and listing requirements were presumably included in the Act in the public interest. Where it is proposed that they be bypassed, that same public interest would normally require a cautious approach – for example, in the circumstances of emergency contemplated by the bill perhaps by including measures such as criteria to determine when exemptions should be granted.

Proposed new subsections 18A(10) and (11) require a document containing particulars of the exemption, and any subsequent decision about revoking or

varying any conditions of that exemption, to be published in the *Gazette* and tabled in the Parliament. However, the Explanatory Memorandum states that the declaration itself need not be either gazetted or tabled, because "it would not be in the interests of public safety to release every detail of some conditions, such as the location where specific goods are being stored".

The Committee notes that these Ministerial declarations, which allow for the granting of exemptions from the legislation, and which are therefore apparently legislative in character, are not disallowable instruments. The Committee, therefore, **seeks the Minister's advice** as to why these declarations are not subject to Parliamentary scrutiny, and whether any guidelines will be produced to determine when s 18A exemptions are to be granted.

Pending the Minister's response, the Committee draws Senators' attention to these provisions as they may be considered to insufficiently subject the exercise of delegated legislative power to Parliamentary scrutiny, in breach of principle l(a)(v) of the Committee's terms of reference.

Strict liability offence Proposed new subsections 20(2C) and 30H(3)

Among other things, this bill proposes to create a number of new offences. Proposed new subsection 20(2C) creates an offence of importing therapeutic goods subject to a section 18A exemption in breach of a condition of that exemption. Proposed new subsection 20(2D) declares this to be an offence of strict liability.

Similarly, proposed new subsection 30H(3) creates an offence of failing to keep proper records where this is a condition of an exemption under section 18A. Proposed new subsection 30H(4) declares this to be an offence of strict liability.

In each case, the Explanatory Memorandum notes that the bill creates a fault liability offence (with a penalty of 240 penalty units, and with strict liability applying to the element that the goods are exempt goods under section 18A)

and an accompanying strict liability offence (with a lower penalty of 60 penalty units). With regard to the proposed section 20(2C) offence, the Explanatory Memorandum states that:

Experience in the past with prosecutions under subsection 20(1) has shown that it is often difficult to secure a conviction because of problems with proving intent. Failure to secure a prosecution has resulted in seized unapproved therapeutic goods having to be returned to an importer ... This poses a risk to public health because it is difficult to monitor these returned unapproved goods which could subsequently be released into the market place. The new strict liability offence in subsection 20(2C) is intended to overcome this problem in relation to goods that are the subject of an exemption under section 18A. These goods in particular may pose an even greater threat to public health because they may contain live vaccines that could, in themselves, be used for terrorist activities.

With regard to proposed new subsection 30H(3), the Explanatory Memorandum states that

The two offences, and in particular the high penalty in the first [fault liability offence], recognise the importance of the record keeping requirements. If adequate records are not kept in relation to these goods it will be very difficult to maintain proper control over their supply, handling, use, storage or disposal and there could be a resulting risk to public health if these matters cannot be monitored properly.

The Committee acknowledges that this bill is intended to strengthen the ability of the Commonwealth to respond to national emergencies, such as bioterrorism, in which there is the potential for large numbers of people to require emergency pharmaceutical treatment. This is an important consideration.

However, with regard to proposed subsection 20(2C) it seems that there might be a danger of criminalising conduct which might otherwise have an innocent explanation (ie importing therapeutic goods while unaware that they are subject to an exemption). If the mischief here is the risk to public health as a result of the possible return to an importer of unapproved therapeutic goods then, arguably, the bill might address this by amending requirements elsewhere in the Act (for example, by providing for the retention of unapproved goods subject to an exemption until approval had been granted).

And with regard to proposed subsection 30H(3), the Explanatory Memorandum does not explain why an offence against this subsection should be an offence of strict liability. The Committee, therefore, seeks the Minister's advice as to these matters.

Pending the Minister's response, 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.

Trade Practices Amendment (Small Business Protection) Bill 2002

This bill was introduced into the House of Representatives on 20 February 2002 by the Minister for Small Business and Tourism. [Portfolio responsibility: Small Business and Tourism]

The bill proposes to amend the *Trade Practices Act 1974* (the Act) to enable the Australian Competition and Consumer Commission to bring representative actions in respect of contraventions of section 45D (relating to secondary boycotts for the purpose of causing substantial loss or damage), and section 45E (relating to the prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services, of the Act).

The Committee has no comment on this bill.

Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2002

This bill was introduced into the House of Representatives on 20 February 2002 by the Minister for Regional Services, Territories and Local Government. [Portfolio responsibility: Transport and Regional Services]

The bill proposes to amend the Aircraft Noise Levy Collection Act 1995, the Air Navigation Act 1920, the Airports Act 1996 and the Civil Aviation Act 1988 to reflect the application of the Criminal Code to all Commonwealth offences. These amendments specify whether an offence is one of strict liability; and restate any relevant defences to an offence separately from the physical elements of the offence.

Strict liability offence Schedule 1, item 77

Item 77 of Schedule 1 to this bill proposes to amend section 23 of the *Civil Aviation Act 1988* to create an offence of strict liability. Specifically, subsection 23(2A) deals with the carriage or consignment of dangerous goods on aircraft. Dangerous goods are defined as explosive substances, things which "by reason of their nature are liable to endanger the safety of an aircraft or persons on board an aircraft" and things which the regulations declare to be dangerous goods.

The Explanatory Memorandum states that this provision was an existing strict liability offence prior to the application of the *Criminal Code*. The fact that this offence is one of strict liability, together with the significant penalty imposed (a maximum penalty of imprisonment for 2 years), is said to deter people who carry or consign goods on board an aircraft "from failing to ascertain whether the goods are dangerous".

While this amendment does not create a new strict liability offence, the fact that an act or omission already constitutes such an offence does not, of itself, justify the continuation of that situation. Its retention must be looked at on its merits.

Accordingly, the Committee **seeks the Minister's advice** as to why it is appropriate that a person should be strictly liable for an offence potentially as wide and undefined as carrying or consigning things "which by reason of their nature are liable to endanger ... safety".

Pending the Minister's response, 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 I(a)(i) of the Committee's terms of reference.

Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2002

This bill was introduced into the House of Representatives on 21 February 2002 by the Minister Assisting the Minister for Defence. [Portfolio responsibility: Veterans' Affairs]

The bill proposes to amend the *Veterans' Entitlements Act 1986* to provide for:

- a more generous treatment for the way in which periodic compensation payments will affect the pension payments received by partners of compensation recipients;
- direct recovery of certain compensation debts from compensation payers and insurers;
- financial assets which are regarded as unrealisable for the purposes of the assets test hardship provisions, to be similarly regarded for the purposes of the income test deeming provisions the amendments will provide that the actual return on the unrealisable asset will be counted as ordinary income rather than the deemed rate of return;
- the inclusion of small superannuation accounts in definitions relating to assets consequential to the enactment of the *Small Superannuation Accounts Act 1995*;
- streamlining the operation of the income streams rules and limiting the abuse of those rules these amendments mirror those made to the social security law by the *Family and Community Services Legislation* (Simplification and Other Measures) Act 2001 (No. 71 of 2001); and
- the rounding of pensions and income support payments to the nearest cent in line with the rules contained in the *Social Security (Administration) Act* 1999.

Retrospective commencement Schedule 3, Part 1

By virtue of the table in subclause 2(1), the amendments proposed by Part 1 of Schedule 3 are to commence retrospectively on 1 July 1995. It appears that these amendments, which are consequential to the enactment of the *Small*

Superannuation Accounts Act 1995, and which mirror amendments made to social security law, are technical only, as the Explanatory Memorandum indicates that they have no financial impact. Nevertheless, the Committee seeks the Minister's confirmation that these retrospective amendments will not adversely affect any person.

Pending the Minister's confirmation, 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.

Retrospective commencement Schedules 1, 2 and 4 and Schedule 3, Part 2

Schedule 1 to this bill makes amendments to provide for "a more generous treatment" for the way in which periodic compensation payments will affect pension payments received by partners of those receiving compensation.

Schedule 2 provides that financial assets regarded as unrealisable for the purposes of the assets test hardship provisions will be similarly regarded for the purposes of the income test deeming provisions.

The amendments included in Schedule 4 are intended to align the rounding rules of the Department of Veterans' Affairs with those under the *Social Security (Administration) Act 1999*.

The amendments included in Part 2 of Schedule 3 are intended to streamline the operation of the income streams rules and limit the abuse of those rules.

By virtue of the table in subclause 2(1), these amendments are to commence retrospectively on 20 September 2001. It appears that these amendments either have no financial impact, or are beneficial to recipients of veterans' benefits. However, this conclusion is not entirely clear from the Explanatory Memorandum. The Committee, therefore, **seeks the Minister's confirmation** that these amendments will not adversely affect any recipients.

Pending the Minister's confirmation, 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.

Workplace Relations Amendment (Fair Termination) Bill 2002

This bill was introduced into the House of Representatives on 20 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 restore for businesses the previous level of protection from dismissal claims from short-term casual employees. It also proposes to move provisions imposing a filing fee for dismissal applications from the regulations into the Act, and provide for the fee to be indexed annually in line with the CPI.

Retrospective application Proposed new section 170CCA

Proposed new section 170CCA of the Principal Act, to be inserted by item 4 of Schedule 1 to this bill, would retrospectively validate certain amendments to the Workplace Relations Regulations 1996. However, subsection 170CCA(3) seeks to ensure that such retrospectivity does not affect any person's vested rights.

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

Workplace Relations Amendment (Genuine Bargaining) Bill 2002

This bill was introduced into the House of Representatives on 20 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:

- provide guidance to the Australian Industrial Relations Commission (the Commission) when it is considering whether a party is not genuinely trying to reach agreement with other negotiating parties, particularly in cases of so-called 'pattern-bargaining';
- empower the Commission to make orders preventing the initiation of a new bargaining period, or attaching conditions to any such bargaining period, where a bargaining period has been withdrawn; and
- empower the Commission to order 'cooling—off' periods in respect of protected industrial action to facilitate resolution of the issues in dispute.

The bill also contains application provisions.

The Committee has no comment on this bill.

Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002

This bill was introduced into the House of Representatives on 20 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 amend the certified agreement and freedom of association provisions. The proposed amendments will:

- prevent the Australian Industrial Relations Commission (the AIRC) from certifying or varying an agreement that contains a provision requiring the payment of a bargaining services fee;
- amend section 298Y to make clear that bargaining services fee clauses in certified agreement are void and authorise the AIRC to remove these clauses on application by a party to the agreement or the Office of the Employment Advocate; and
- prohibit conduct designed to compel individuals to pay bargaining services fees.

The amendments proposed apply equally to fees for bargaining services imposed by trade unions or by employer associations.

Retrospective application Schedule 1, item 11

By virtue of item 14 of Schedule 1 to this bill, the amendment proposed by item 11 would apply retrospectively to any certified agreement, whenever it had been certified. Since the effect of the amendment proposed by item 11 is to render void certain provisions in certified agreements, the operation of item 14 may retrospectively avoid a provision in a certified agreement which has been in force, and on which the parties have been acting, for some time.

Neither the Explanatory Memorandum nor the Minister's Second Reading Speech seeks to justify this retrospective application. The Committee, therefore, **seeks the Minister's advice** as to why this provision applies retrospectively.

Pending the Minister's response, 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 1(a)(i) of the Committee's terms of reference.

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002

This bill was introduced into the House of Representatives on 20 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 require that, prior to the taking or organising of protected industrial action by employees and organisations of employees, a secret ballot process approving the taking of industrial action, and overseen by the Australian Industrial Relations Commission, occurs.

The bill includes provisions relating to the eligibility of employees and union members to participate in ballots and take industrial action; and proposed procedural requirements for ballots. Industrial action would be authorised by a ballot if at least 40 per cent of eligible voters participate in the ballot, and if more than 50 per cent of the votes cast are in favour of the proposed industrial action.

The bill also proposes consequential changes to the existing secret ballot provisions of the Act.

The Committee has no comment on this bill.

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

REPORT NO 2/2002

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 Bill (No. 1) 2002	Proposed new subsection 31C(1)	Fail to provide information to Secretary	60 penalty units

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2002

NAME OF BILL	ALERT DIGEST	INTRC HOUSE	INTRODUCED USE SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	SCEIVED	REPORT NUMBER
Bills dealt with in 2001							
Air Passenger Ticket Levy (Collection) Act 2001	14(26.9.01)	20.9.01	26.9.01	Transport and Regional Services	27.9.01	31.12.01	1(20.2.02)
Border Protection (Validation and Enforcement Powers) Act 2001	13(20.9.01)	18.9.01	20.9.01	Immigration and Multicultural Affairs	20.9.01	6.02.02	1(20.2.02)
Defence Legislation Amendment (Application of Criminal Code) Act 2001	12(19.9.01)	29.8.01	24.9.01	Defence	20.9.01	8.11.01	1(20.2.02)
Electoral and Referendum Amendment Act (No. 1) 2001	4(28.3.01)	7.3.01	2.4.01	Finance and Administration Further response required	29.3.01 24.5.01	4.5.01	6(23.5.01) 1(20.2.02)
Environment and Heritage Legislation Amendment Bill (No. 2) 2000 [2001]	1(7.2.01) 8(27.6.01)		7.12.00	Environment and Heritage Further response required	28.6.01	20.8.01	10(22.8.01)
Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001	y 9(8.8.01)	25.6.01	24.5.01	Environment and Heritage re Amendments	23.8.01	18.10.01	1(20.2.02)
Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001	10(22.8.01)	8.8.01	23.8.01	Health and Aged Care	23.8.01	8.10.01	1(20.2.02)

NAME OF BILL	ALERT DIGEST	INTRO	ODUCED SENATE	MINISTER	RESP	RESPONSE HT RECEIVED	REPORT NUMBER
Migration Amendment (Excision from Migration Zone) Act 2001	13(20.9.01)	18.9.01	20.9.01	Immigration and Multicultural Affairs	20.9.01	6.2.02	1(20.2.02)
Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001	13(20.9.01)	18.9.01	20.9.01	Immigration and Multicultural Affairs	20.9.01	6.2.02	1(20.2.02)
Migration Legislation Amendment Act (No. 6) 2001	13(20.9.01)	28.8.01	24.9.01	Immigration and Multicultural Affairs	20.9.01	6.2.02	1(20.2.02)
Taxation Laws Amendment Act (No. 5) 2001	11(29.8.01)	23.8.01	26.9.01	Treasurer	30.8.01	18.9.01	1(20.2.02)
Trade Practices Amendment (Telecommunications) Act 2001	10(22.8.01)	9.8.01	19.9.01	Communications, Information Technology and the Arts	23.8.01 20.9.01	17.9.01 25.9.01 F	12(19.9.01) FRR13(26.9.01) 1(20.2.02)

NAME OF BILL	ALERT DIGEST	INTRC	INTRODUCED HOUSE SENATE	MINISTER	RESPONSE SOUGHT REC	RESPONSE SOUGHT RECEIVED	REPORT
Bills being dealt with in 2002							
Airports Amendment Bill 2002	1(20.2.02)	14.2.02		Transport and Regional Services	21.2.02		
Coal Industry Repeal Act 2001	1(20.2.02)	28.6.00	5.4.01	Industry, Science and Resources	21.2.02	11.3.02	2(13.3.02)
Criminal Code Amendment (Anti-hoax and Other Measures) Bill 2002	1(20.2.02)	13.2.02	11.3.02	Attorney-General	21.2.02	8.3.02	2(13.3.02)
Higher Education Legislation Amendment Bill (No. 1) 2002	2(13.3.02)	14.2.02	13.3.02	Education, Science and Training		12.3.02	2(13.3.02)