Senate Standing Committee for the Scrutiny of Bills



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Members of the Committee

Senator J McLucas (Chair)
Senator B Mason (Deputy Chairman)
Senator G Barnett
Senator T Crossin
Senator D Johnston
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

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.

Australian Citizenship for Eligible De facto Spouses Bill 2002

This bill was introduced into the House of Representatives on 24 June 2002 by Ms Plibersek as a Private Member's bill.

The bill proposes to extend existing ministerial discretion provisions applying to spouses of married Australian citizens applying for Australian citizenship to include defacto couples and same sex interdependent couples.

Australian Heritage Council Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for the Environment and Heritage. [Portfolio responsibility: Environment and Heritage]

Introduced with the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002 and in conjunction with the Environment and Heritage Legislation Amendment Bill (No. 1) 2002, the bill proposes to:

- replace the Australian Heritage Commission by establishing the Australian Heritage Council which will provide advice on the identification, conservation and protection of places on the National Heritage List and the Commonwealth Heritage List;
- prescribe the functions of the Council in relation to the protection and conservation of heritage, including the keeping of the Register of the National Estate; and
- prescribe the composition of the Council and its requirements for meetings.

The bill also includes a regulation-making power.

Inadequate indication of commencement Clauses 3 to 25

By virtue of item 2 in the table to subclause 2(1), clauses 3 to 25 of this bill would commence at the same time as Schedule 1 to the *Environment and Heritage Legislation Amendment Act (No. 1) 2002*. The Explanatory Memorandum merely states this fact, but gives no indication as to whether that Act is likely to commence before or after this bill has been debated and passed by both Houses of the Parliament. The bill for the Act referred to in that table was introduced at the same time as this bill, and it is therefore likely that the two measures will be debated together, in which case it is likely that item 2 in the table to subclause 2(1) will not lead to this bill having any effect prior to Assent. The Committee, therefore, **seeks the Minister's advice** as to why this information was not included in the Explanatory Memorandum.

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.

No apparent merits review of Minister's decisions Clause 24

Clause 24 provides for various decisions of the Australian Heritage Council to be reviewed by the Minister. Those decisions appear to be of an administrative nature, but there is no provision for the Minister's decisions to be reviewed by the Administrative Appeals Tribunal. The Committee, therefore, **seeks the Minister's advice** as to the reason for this omission.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for the Environment and Heritage. [Portfolio responsibility: Environment and Heritage]

The bill was introduced with the Australian Heritage Council Bill 2002 and in conjunction with the Environment and Heritage Legislation Amendment Bill (No. 1) 2002.

Schedule 1 to the bill proposes to repeal the Australian Heritage Commission Act 1975, and amends the Environment Protection and Biodiversity Conservation Act 1999 to remove references to the Australian Heritage Commission Act 1975. It also amends five other Commonwealth Acts that refer or rely on elements of the Australian Heritage Commission Act 1975.

Schedule 2 to the bill contains the transitional mechanisms concerned with business matters, such as the vesting of former Australian Heritage Commission assets and liabilities in the Commonwealth, tax exemptions, and final reporting requirements. The schedule also provides for the making of regulations of a transitional nature.

Inadequate indication of commencement Schedules 1 and 2

By virtue of item 2 in the table to subclause 2(1), Schedules 1 and 2 to this bill would commence at the same time as Schedule 1 to the *Environment and Heritage Legislation Amendment Act (No. 1) 2002*. The Explanatory Memorandum merely states this fact, but gives no indication as to whether that Act is likely to commence before or after this bill has been debated and passed by both Houses of the Parliament. The bill for the Act referred to in that table was introduced at the same time as this bill, and it is therefore likely that the two measures will be debated together, in which case it is likely that item 2 in the table to subclause 2(1) will not lead to this bill having any effect prior to Assent. The Committee **seeks the Minister's advice** as to why this information was not included in the Explanatory Memorandum.

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.

Communications Legislation Amendment Bill (No. 1) 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister representing the Minister for Communications, Information Technology and the Arts. [Portfolio responsibility: Communications, Information Technology and the Arts]

Schedule 1 to the bill proposes to amend the *Australian Communications Authority Act 1997* to allow a definitions determination made under the Act to apply, adopt or incorporate certain materials, and in certain circumstances, as are permitted under the provisions of both section 314A of the *Radiocommunications Act 1992* and section 589 of the *Telecommunications Act 1997*.

Schedule 2 to the bill proposes to amend the *Freedom of Information Act 1982* (FOI Act) to exempt certain prohibited material, including on-line and offensive material, from disclosure under the FOI Act. The amendments also exempt the Classification Board, the Classification Review Board and the Office of Film and Literature Classification from the operation of the FOI Act in relation to the same types of materials which could be the subject of an FOI request.

Schedule 3 to the bill proposes to amend the *Radiocommunications Act 1992* to:

- expand the objects clause of the Act to include an object to make adequate provision of the radiofrequency spectrum for use by agencies involved in the defence or national security of Australia, law enforcement or the provision of emergency services and for use by other public or community services;
- allow the Australian Communications Authority (ACA), by disallowable instrument, to exempt certain law enforcement and anti-corruption personnel from some sections of the Act dealing with unlicensed transmissions, equipment standards and interference emissions; and
- streamline licensing provisions to allow the ACA to allow specified bodies to lawfully operate covert surveillance devices for the specific purpose of investigating serious crime or corruption.

Schedule 4 to the bill proposes to amend the *Telecommunications Act 1997* to abolish the specially-constituted Australian Communications Authority (SC-ACA) which, in its four years of operation, has received no applications for facility installation permits.

Schedule 5 to the bill proposes to amend the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to make a number of minor amendments in relation to the National Relay Service (NRS); calculation and payment of the NRS levy; the disallowance of a revocation or variation of a customer service guarantee standard; and the Telecommunications Industry Ombudsman Scheme.

Retrospective commencement Schedule 2

By virtue of item 3 in the table to subclause 2(1), Schedule 2 to this bill would commence on 27 June 2002, that being the day on which the bill was introduced into the Parliament. Although this would mean that the amendments proposed in that Schedule would have a measure of retrospective effect, the Explanatory Memorandum makes clear the need to have them commence at the earliest possible date.

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

Incorporation of extrinsic material as in force from time to time Item 1 of Schedule 1

Proposed new section 54A of the *Australian Communications Authority Act* 1997, to be inserted by item 1 of Schedule 1 to this bill, would permit the Australian Communications Authority to make determinations by applying, adopting or incorporating matter contained in other instruments as in force from time to time. The new section would therefore derogate from the provisions of section 49A of the *Acts Interpretation Act* 1901. The Explanatory Memorandum seeks to justify this proposal as preventing

"unnecessary administrative work" for the Authority. The Committee, however, **seeks the Minister's advice** on the need for the proposed new section which would also prevent the Parliament from being able to consider and scrutinise the content of determinations made thereunder.

Pending the Minister's advice, the Committee draws Senators' attention to the 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.

Exclusion of matters from freedom of information provisions Schedule 2

Schedule 2 to this bill would amend the *Freedom of Information Act 1982* by removing various Internet-content documents from its purview. Although any limitation on the field of application of that Act might appear to come within the Committee's Terms of Reference, in this case the documents excluded are those which have been found, by the relevant Commonwealth authorities, to be offensive. As the Explanatory Memorandum points out, this amendment is necessary to prevent the Freedom of Information Act from subverting the censorship provisions in Schedule 5 to the *Broadcasting Services Act 1992*.

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

Environment and Heritage Legislation Amendment Bill (No. 1) 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for the Environment and Heritage. [Portfolio responsibility: Environment and Heritage]

Introduced in conjunction with the Australian Heritage Council Bill 2002 and the Australian Heritage Council (Consequential and Transitional Provisions) Bill 2002, the bill proposes to amend the *Environment Protection and Biodiversity Conservation Act 1999* to:

- establish a Commonwealth heritage regime that focuses on matters of national significance and Commonwealth responsibility;
- establish a National Heritage List; list places of national heritage significance using a process of community consultation, expert advice and ministerial responsibility; and protect and manage places in the National Heritage List;
- establish a Commonwealth Heritage List; list places in Commonwealth
 areas with heritage significance using a process of community
 consultation, expert advice and ministerial responsibility; advise
 Commonwealth agencies on actions in relation to places in the
 Commonwealth Heritage List; and provide for the management of places
 in the Commonwealth Heritage List.

The bill also contains transitional provisions in relation to places included in the current Register of the National Estate.

Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for Children and Youth Affairs. [Portfolio responsibility: Family and Community Services]

The bill proposes to amend the *Social Security Act 1991* and *Social Security (Administration) Act 1999* to:

- change the qualification criteria for disability support pension (DSP) in relation to work capacity for people who apply for DSP from 1 July 2003; and
- restrict exemptions from the activity test requirements for Newstart allowance and youth allowance recipients.

The bill also contains application and transitional provisions.

Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the Family Law Act 1975, the Judges' Pensions Act 1968, the Social Security Act 1991, and the Veterans' Entitlements Act 1986 to ensure that the appropriate treatment of income streams is applied for the superannuation and separation reforms contained in the Family Law Legislation Amendment (Superannuation) Act 2001.

Schedule 1 to the bill proposes to amend the *Family Law Act 1975* to make minor technical and correcting amendments to ensure effective operation of the superannuation and family law separation reforms contained in the *Family Law Legislation Amendment (Superannuation) Act 2001*.

Schedule 2 to the bill proposes to amend the *Judges' Pensions Act 1968* to authorise the making of regulations for determining the proportion of a pension that had accrued at the time of a judge's marriage breakdown.

Schedules 3 and 4 to the bill propose to amend the *Social Security Act 1991* and *Veterans' Entitlements Act 1986* to ensure that the appropriate means test assessment is applied to superannuation interests that are split pursuant to the *Family Law Legislation Amendment (Superannuation) Act 2001*.

Financial Sector Legislation Amendment Bill (No. 2) 2002

This bill was introduced into the House of Representatives on 26 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Schedules 1, 3 and 4 to the bill propose to amend the *Australian Securities* and *Investments Commission Act 2001*, the *Corporations Act 2001* and the *Corporations (Repeals, Consequentials and Transitionals) Act 2001* to correct minor errors, grammatical mistakes and erroneous cross references and remove obsolete provisions.

Schedule 2 to the bill proposes to amend the *Banking Act 1959* to:

- include provisions for a 'fit and proper' test for directors and senior managers in authorised deposit-taking institutions (ADI) and authorised non-operating holding companies (NOHC);
- make provisions relating to auditors consistent with the auditor provisions in the *Insurance Act 1973*;
- require an ADI, authorised NOHC of an ADI and their subsidiaries, to notify APRA immediately of breaches of prudential requirements and any material adverse developments;
- apply prudential standards on a consolidated group basis;
- provide additional grounds for APRA to revoke authority granted to an ADI or NOHC where the application for the authority contained false or misleading information; and
- correct a discrepancy between the indemnity provisions of the Banking Act and the *Australian Prudential Regulation Authority Act 1998* with respect to APRA staff.

Schedule 5 to the bill proposes to amend the *Insurance Act 1973* to permit APRA to discuss submissions, from a director or senior manager who is being removed, with third parties; require that an insurance company notifies APRA of any breach of prudential standards; and to correct the specification of

penalties so that they are consistent with the penalty provisions contained in the *Crimes Act 1914*.

Schedule 6 to the bill proposes to amend the *Superannuation Industry* (Supervision) Act 1993 to allow for the recognition of awards, which are still in force, given under arbitration agreements, even after the arbitration power has been removed.

Schedule 7 to the bill proposes to amend the *Superannuation (Resolution of Complaints) Act 1993* to introduce flexibility in the time limits relating to complaints about certain disability benefits; to strengthen, modernise and improve the conciliation powers of the Superannuation Complaints Tribunal; and to remove redundant provisions dealing with arbitration.

Absence of assurance that retrospectivity is not prejudicial Various provisions

By virtue of items 3, 5, 6 and 7 in the table to subclause 2(1), item 4 of Schedule 1 and items 1, 2 and 3 of Schedule 4 to this bill would commence immediately after the commencement of two Acts of 2001, on 1 July 2001. Each of the amendments proposed in this bill which is to commence retrospectively is technical in nature, and does no more than correct earlier drafting errors. Nevertheless, the Explanatory Memorandum makes no reference to clause 2, and, in referring to the various amendments, does not expressly confirm that the retrospective commencement will not disadvantage any person. The Committee, therefore, **seeks the Treasurer's advice** that this is the case

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

Strict liability offences Item 17 of Schedule 2

Proposed new subsections 19(3) and (6) of the *Banking Act 1959*, to be inserted by item 17 of Schedule 2 to this bill, would create offences of strict liability. Although the Treasurer would not have had the opportunity, when formulating these provisions, to consider the Committee's report on offences of strict and absolute liability, the Explanatory Memorandum does not refer to the fact that the subsections create such liability, or seek to justify its imposition in these circumstances. The Committee, therefore, **seeks the Treasurer's advice** as to whether these provisions come within the guidelines for the imposition of strict liability referred to in the above Report.

Pending the Treasurer'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 Insurance Amendment (Professional Services Review and Other Matters) Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister representing the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

Schedule 1 to the bill proposes to amend the *Health Insurance Act 1973* to:

- clarify the intended operation of the Professional Services Review (PSR) Scheme and address certain issues identified by the Federal Court; and
- validate investigative and adjudicative referrals currently under consideration by PSR committees to the extent that the matters referred relate to particular specified conduct or services.

The schedule also proposes amendments to the *Health Insurance Amendment* (*Professional Services Review*) Act 1999 to clarify the transitional provisions in that Act relating to the production of documents and obtaining information.

Schedule 2 to the bill proposes to amend the *Health Insurance Act 1973* to raise the age of access to services under the Cleft Lip and Cleft Palate Scheme.

Schedule 3 to the bill proposes to amend the *Health Insurance Act 1973* to remove redundant definitions relating to health care and pensioner concession cards.

Advice in explanatory memorandum that provisions are not prejudicial Schedule 3

By virtue of item 5 in the table to subclause 2(1), Schedule 3 to this bill would commence immediately after the commencement of the *Social Security Legislation Amendment (Concession Cards) Act 2001*. However, the Explanatory Memorandum fulfils the promise of its title, and notes that the amendments in Schedule 3 to this bill do no more than repeal provisions

which have become redundant. As the Memorandum goes on to point out, "These amendments are purely technical and will not have any impact on Centrelink clients or on access to, or benefits under, the Pharmaceutical Benefits Scheme."

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

Industry, Tourism and Resources Legislation Amendment Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for Industry, Tourism and Resources. [Portfolio responsibility: Industry, Tourism and Resources]

The bill proposes to amend the following Acts:

- ACIS Administration Act 1999 to clarify the use of duty credits earned under the Automotive Competitiveness and Investment Scheme;
- Bounty (Computers) Act 1984 to replace a reference to the Standards Association of Australia with a reference to Standards Australia International Limited;
- Petroleum (Submerged Lands) Legislation Amendment Act 2001 to correct a drafting error;
- Pooled Development Funds Act 1992 to correct a drafting oversight in relation to excluded superannuation funds;
- States Grants (Petroleum Products) Act 1965 to reflect changes in administrative arrangements; and
- *Trade Practices Act 1974* to correct a drafting oversight in relation to country of origin defences.

The bill also repeals the *Aluminium Industry Act 1960* and the *Management and Investment Companies Act 1983*.

Retrospective commencement Items 12 and 14 of Schedule 1

By virtue of item 4 in the table to subclause 2(1), item 12 of Schedule 1 to this bill would commence on 1 July 1999, and by virtue of item 6 in that table, item 14 of Schedule 1 to this bill would commence immediately after the commencement of item 17 of Schedule 1 to the *Petroleum (Submerged Lands)*

Legislation Amendment Act 2001. However, in both cases the Explanatory Memorandum makes it clear, on pages 1 and 2 respectively, that the proposed amendments are technical only, and make no change to the law.

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

Retrospective operation Item 16 of Schedule 1

Item 16 of Schedule 1 to this bill will apply from 8 October 1999 to the date of commencement of the item. However, the Explanatory Memorandum advises that this is necessary in order to validate investments which may possibly have been in breach of section 31 of the *Pooled Development Funds Act 1993*.

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

Intellectual Property Laws Amendment Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for Industry, Tourism and Resources. [Portfolio responsibility: Industry, Tourism and Resources]

Schedule 1 to the bill proposes to amend the *Patents Act 1990*, *Trade Marks Act 1995* and *Designs Act 1906* to clarify that errors or omission by persons such as independent contractors, employed by the Commissioner of Patents, Registrar of Trade Marks or Registrar of Designs, are encompassed by the existing extension of time provisions; and to delete the use of the term 'trade marks officer' in the Trade Marks Act.

Schedule 2 to the bill proposes to amend the:

- Patents Act 1990 in relation to disclosure of information to the Commissioner of Patents that is relevant to the patentability of an invention;
- Trade Marks Act 1995 to amend the definition of "employee" and remove the term "trade marks officer"; and
- Patents Amendment (Innovation Patents) Act 2000 to correct a drafting error.

The bill also contains application provisions.

Retrospective commencement Part 3 of Schedule 2

By virtue of item 5 in the table to subclause 2(1), Part 3 of Schedule 2 to this bill would commence immediately after the commencement of item 3 of Schedule 1 to the *Patents Amendment (Innovation Patents) Act 2000*. However, the Explanatory Memorandum makes it clear, on page 4, that the proposed amendment is technical only, and makes no change to the law.

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

Retrospective operation Items 2 and 3 of Schedule 2

Item 5 of Schedule 2 to this bill seeks to ensure that the amendments made by items 2 and 3 of that Schedule apply from 1 April 2002. However, it is not clear from the Explanatory Memorandum whether this retrospective application will adversely affect anyone. The Committee seeks the Minister's advice that this is not the case.

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.

International Criminal Court Bill 2002

This bill was introduced into the House of Representatives on 25 June 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

Introduced with the International Criminal Court (Consequential Amendments) Bill 2002, the bill proposes provisions that allow Australia to comply with the international obligations it will incur upon ratification of the International Criminal Court Statute, by putting in place procedures to comply with requests for assistance or the enforcement of sentences. The Statute will enter into force on 1 July 2002.

The bill also contains provisions to ensure that Australian sovereignty is protected. In particular, it affirms the primacy of Australian law and declares that no person can be arrested on a warrant issued by the Court or surrendered to the Court without the consent of the Attorney-General.

Absence of review of exercise of discretion Clauses 22 and 29

Clauses 22 and 29 of this bill provide expressly that the Attorney-General is to have an absolute discretion in deciding whether to issue a notice under clauses 20, 21 or 28, as the case may be. The absolute nature of the Attorney-General's discretion is further emphasised by clause 181 which prohibits any form of appeal, review or calling into question of the exercise of that discretion, subject only the jurisdiction of the High Court under section 75 of the Constitution. However, the Explanatory Memorandum merely explains the effect of these clauses, and does not attempt to provide a reason for these provisions. The Committee, therefore, **seeks the Attorney-General's advice** as to why the bill expressly precludes review of these discretions.

Pending the Attorney-General's advice, the Committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle l(a)(iii) of the Committee's terms of reference.

International Criminal Court (Consequential Amendments) Bill 2002

This bill was introduced into the House of Representatives on 25 June 2002 by the Attorney-General. [Portfolio responsibility: Attorney-General]

Introduced with the International Criminal Court Bill 2002, the bill proposes to amend the *Criminal Code Act 1995* to enact the crimes punishable by the International Criminal Court as crimes in Australian law. These crimes are genocide, crimes against humanity and war crimes. The bill also makes consequential amendments to six other Acts.

Absence of review of exercise of discretion Schedule 1

Proposed new section 268.121 of the *Criminal Code*, to be inserted by Schedule 1 to this bill, would grant the Attorney-General an absolute discretion in deciding whether to commence proceedings under Division 268 of the *Code*. The absolute nature of the Attorney-General's discretion is emphasised by proposed new section 268.122 of the *Code*, which prohibits any form of appeal, review or calling into question of the exercise of that discretion, subject only the jurisdiction of the High Court under section 75 of the Constitution. However, the Explanatory Memorandum merely explains the effect of this section, and does not attempt to provide a reason for it. This is a possible deficiency similar to that noted earlier in this Digest in relation to the International Criminal Court Bill 2002. The Committee, therefore, **seeks the Attorney-General's advice** as to why the bill expressly precludes review of that discretion.

Pending the Attorney-General's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle l(a)(iii) of the Committee's terms of reference.

Medical Indemnity Agreement (Financial Assistance—Binding Commonwealth Obligations) Bill 2002

This bill was introduced into the House of Representatives on 26 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Revenue]

The bill proposes to appropriate funds out of the Consolidated Revenue Fund for payments in accordance with an indemnity agreement between the Commonwealth and Australasian Medical Insurance Limited (United Medical Protection Group). The bill also confirms the Commonwealth's commitments under the indemnity agreement.

Members of Parliament (Life Gold Pass) Bill 2002

This bill was introduced into the House of Representatives on 26 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Special Minister of State]

The bill proposes to establish uniform arrangements for all Life Gold Pass holders, their spouses and their widows or widowers, including limits on the number of return trips within Australia and forfeiture of travel entitlements linked to the forfeiture of superannuation benefits following a corruption offence conviction.

National Environment Protection Council Amendment Bill 2002

This bill was introduced into the House of Representatives on 26 June 2002 by the Parliamentary Secretary to the Minister for the Environment and Heritage. [Portfolio responsibility: Environment and Heritage]

The bill proposes to amend the *National Environment Protection Council Act* 1994 to:

- simplify the process for making minor variations to National Environment Protection Measures;
- require five yearly reviews of the Act; and
- allow the NEPC Service Corporation to provide support and assistance to other ministerial councils.

Commencement Subclause 2(3)

By virtue of subclause 2(3), the amendments proposed in Schedule 1 to this bill may not commence until 12 months after Assent. However, the Explanatory Memorandum indicates that the reason for this departure from Drafting Direction No. 2 of 2002 is to allow for the passage of complementary legislation by the States and Territories. The Committee notes that this is one of the exceptions envisaged by that Drafting Direction.

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

New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Schedules 1 to 11 of the bill amend the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Income Tax (Transitional Provisions) Act 1997* and the *New Business Tax System (Consolidation) Act (No. 1) 2002* to further implement the consolidation regime, first established in the New Business Tax System (Consolidation) Bill (No. 1) 2002, from 1 July 2002.

Schedules 12 and 13 of the bill amend the *Income Tax Assessment Act 1997* to make consequential amendments in relation to the imputation treatment of exempting entities and former exempting entities.

Schedule 14 of the bill amends the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to allow global company asset valuations in loss integrity measures.

Schedule 15 of the bill amends the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to introduce a general value shifting regime applying mainly to interests in controlled companies and trusts that are not consolidated but which meet control or common ownership tests. The proposed regime will replace the existing share value shifting and asset stripping rules.

Schedule 16 of the bill amends the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to provide capital gains tax relief for a demerger in certain circumstances.

The bill also contains application, saving and transitional provisions.

Retrospective commencement Schedules 1 to 15

By virtue of items 2, 3 and 4 in the table to subclause 2(1), Schedules 1 to 15 to this bill would commence immediately after the commencement of the *New Business Tax System (Consolidation) Act (No. 1) 2002* or the *New Business Tax System (Imputation) Act 2002*. The Explanatory Memorandum makes it clear that the Acts referred to have not yet been passed, but were introduced in May this year, and include provisions that they will commence on 1 July 2002. The Committee notes, however, that these commencement provisions are usual in the case of amendments to tax legislation.

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

Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002

This bill was introduced into the House of Representatives on 26 June 2002 by the Minister for Employment and Workplace Relations. [Portfolio responsibility: Employment and Workplace Relations]

Schedule 1 of the bill proposes to amend the *Occupational Health and Safety* (Commonwealth Employment) Act 1991 to provide improved health and safety protection for Commonwealth employees. The schedule also makes technical amendments and contains transitional, application and savings provisions.

Schedule 2 of the bill proposes to amend the *Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001* to repeal certain consequential redundant amendments.

Plant Health Australia (Plant Industries) Funding Bill 2002

This bill was introduced into the House of Representatives on 26 June 2002 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes a framework to enable monies, up to the amounts received through certain levies and charges, to be appropriated out of the Consolidated Revenue Fund and paid to Plant Health Australia Limited (PHA) to fulfil PHA plant industry members' yearly contribution obligations. The bill also provides a mechanism for monies collected in excess of a plant industry's liability to PHA to be appropriated for research and development activities and includes a regulation-making power.

Schedule 1 to the bill makes consequential amendments to the *Horticulture Marketing and Research and Development Services Act 2000* and the *Primary Industries and Energy Research and Development Act 1989*.

Renewable Energy (Electricity) Amendment Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for the Environment and Heritage. [Portfolio responsibility: Environment and Heritage]

The bill proposes to amend the Renewable Energy (Electricity) Act 2000 to:

- clarify definitions used in the Act, including those related to eligible renewable energy sources and components of a power station;
- clarify provisions relating to a relevant acquisition of electricity to ensure that only one entity is made liable in relation to the purchase of a particular quantum of electricity;
- clarify provisions with respect to the claiming of renewable energy certificates associated with solar water heaters;
- provide the Renewable Energy Regulator with information gathering powers to enable the effective monitoring and compliance with the provisions of the legislation; and the power to vary certain assessments and determinations under the Act; and
- allow for the suspension of an accredited power station under certain circumstances including where there is thought to be gaming whereby power station outputs are manipulated to increase the number of renewable energy certificates that can be created without increasing renewable energy generation.

The bill also amends the *Administrative Decisions (Judicial Review) Act 1977* to clarify the avenues for appeal in relation to assessment decisions under the *Renewable Energy (Electricity) Act 2000* and contains application and transitional provisions.

Removal of provisions for review Item 1 of Schedule 1

Item 1 of Schedule 1 to this bill proposes to remove from the purview of the *Administrative Decisions (Judicial Review) Act 1977* various decisions made under Division 2 of Part 5 of the *Renewable Energy (Electricity) Act 2000*. While this provision might appear to come within the Committee's Terms of Reference, the Explanatory Memorandum makes it clear that the decisions referred to are subject to review by the Administrative Appeals Tribunal and, from there, before the Federal Court.

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

Abrogation of the privilege against self-incrimination Item 139 of Schedule 1

Proposed new subsection 125B(1) of the *Renewable Energy (Electricity) Act* 2000, to be inserted by item 139 of Schedule 1 to this bill, would abrogate the privilege against self-incrimination for a person who is required to provide information under other provisions of Part 11A of that Act. However, subsection (2) would limit the circumstances in which information so provided is admissible in evidence in proceedings against that person. The Committee accepts that this may strike a reasonable balance between the competing interests of obtaining information and protecting individuals' rights.

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

Research Involving Embryos and Prohibition of Human Cloning Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Prime Minister. [Portfolio responsibility: Prime Minister]

The bill proposes a regulatory framework which:

- prohibits the creation, importation, exportation or implantation of a human embryo clone, and certain other embryos for ethical and safety reasons;
- establishes a principal committee within the meaning of the *National Health and Medical Research Council Act 1992*, the NHMRC Embryo Research Licensing Committee, for the purposes of performing functions and exercising powers under the bill, including the creation and maintenance of a centralised, publicly available database of information about all licences issued by the Committee; and
- establishes a scheme for the assessment and licensing of certain activities involving the use of excess embryos created by assisted reproductive technology (excess ART embryos).

The bill also includes a regulation-making power.

Sex Discrimination Amendment Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Attorney-General]

The bill proposes to amend the *Sex Discrimination Act 1984* to enable States and Territories to legislate to limit access to assisted reproductive technology services to married couples and couples in a de facto marriage. The bill is, in substance, the same as the Sex Discrimination Amendment Bill (No. 1) 2001 as passed by the House of Representatives in the previous Parliament.

Discrimination legislation Schedule 1

This bill is substantially the same as the Sex Discrimination Amendment Bill (No. 1) 2000, on which the Committee commented in *Alert Digest No. 11 of 2000*. The Committee now repeats, in relation to the present bill, the comments it made concerning the previous bill.

The Explanatory Memorandum accompanying this bill states that the bill is intended to ensure that State and Territory legislation imposing, requiring or permitting restrictions on access to assisted reproductive technology (ART) services on the basis of marital status is not inconsistent with section 22 of the *Sex Discrimination Act 1984*. This will prevent State and Territory legislation being rendered inoperative on account of inconsistency with Commonwealth law.

The Explanatory Memorandum goes on to state that the bill is not intended to regulate access to ART services directly, but to ensure that the Sex Discrimination Act does not prevent the States and Territories from legislating in this area, given their responsibilities in relation to the regulation of the provision of medical care and treatment.

The bill itself does not discriminate. However, by limiting the scope of the Sex Discrimination Act it does provide an opportunity for more discrimination than is currently permitted. In this sense the bill has the potential to trespass

on personal rights and liberties. Whether it trespasses <u>unduly</u> on personal rights and liberties is a matter that is best left for determination by the Senate as a whole.

Other than this, the Committee makes no further comment on these provisions.

Superannuation (Government Co-contribution for Low Income Earners) Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Introduced with the Superannuation Legislation Amendment Bill 2002, the bill proposes to establish arrangements for government-funded superannuation co-contributions for eligible low income earners, providing for:

- how the Government will determine the persons in respect of whom a Government co-contribution is payable and the amount of the Government co-contribution;
- the method of payment of the Government co-contribution and where adjustments may be necessary for underpayments and overpayments;
- information gathering by the Commissioner and between superannuation providers and members; and
- powers of the Commissioner and other general administrative arrangements, including the review of decisions.

Strict liability offences Subclauses 26(4), 27(3) and 28(4)

Subclauses 26(4), 27(3) and 28(4) create criminal offences of strict liability. The Explanatory Memorandum, in paragraph 1.77, seeks to justify these provisions on the basis that "the Commissioner's reliance on [the] information [required to be provided by these clauses] in the administration of this measure should override the need to prove fault." In the light of the Committee's views on strict liability offences generally, as contained in its *Sixth Report of 2002*, that justification may be acceptable.

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

Superannuation Legislation Amendment Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Introduced with the Superannuation (Government Co-contribution for Low Income Earners) Bill 2002, the bill proposes amendments consequential to that bill.

Part 1 of Schedule 1 to the bill makes consequential amendments to nine Acts relating to the:

- eligibility for Government co-contributions;
- taxation treatment of Government co-contributions;
- Government co-contribution arrangements for certain Defence personnel and Commonwealth employees;
- review of certain decisions about Government co-contributions administration;
- use of the Superannuation Holding Accounts Reserve for Government co-contributions in some circumstances; and
- interest that may be levied on late repayments of Government cocontribution overpayments.

Part 2 of Schedule 1 to the bill sets out the application of the amendments in Part 1.

Part 1 of Schedule 2 to the bill amends the Superannuation Contributions Tax Imposition Act 1997, the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997 and the Termination Payments Tax Imposition Act 1997 to reduce the superannuation contributions and the termination payments surcharge rates by $1/10^{th}$ of their current levels in each of the 3 income years commencing from 1 July 2002.

Part 2 of Schedule 2 to the bill amends the provisions which impose a limit on the maximum amount of surcharge payable by members of constitutionally protected funds and the maximum reduction of benefits for members of certain other superannuation schemes.

Both Schedules to the bill also contain application provisions.

Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Superannuation Guarantee (Administration) Act 1992* to:

- require employers to make superannuation contributions on behalf of an employee to a complying superannuation fund or scheme or retirement savings account in compliance with the choice of fund requirements; and
- provide for penalties for breach of the choice of fund requirements.

Taxation Laws Amendment Bill (No. 5) 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Schedule 1 to the bill proposes to amend the *Income Tax (Transitional Provisions) Act 1997* and *Income Tax Assessment Act 1997* to provide transitional valuation arrangements for the 2001-02 income year for oyster farmers capturing oyster spat by the traditional stick farming method. The amount per stick is set out in the bill and depends on the type of stick used.

Schedule 2 to the bill proposes to amend the *Income Tax Assessment Act 1997* to prevent double taxation where an amount is paid in respect of work in progress. The amendments will provide a specific deduction where a payment is made for a work in progress amount. They will also confirm that receipt of a work in progress amount is assessable income.

Schedule 3 to the bill proposes to amend the *Income Tax Assessment Act* 1936, *Income Tax Assessment Act* 1997, *Income Tax (Transitional Provisions)* Act 1997 and New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001 to make technical corrections in relation to the capital allowances system.

Schedule 4 to the bill proposes to amend the *Income Tax Assessment Act 1936* to enable the Commissioner to recover outstanding pay as you go withholding amounts by making an estimate of the debt. The amendment will also allow a taxpayer to have the estimate of any PAYG withholding amount reduced or revoked by giving the Commissioner a statutory declaration.

The bill also contains application provisions.

Retrospective commencement and application Items 1 to 99 of Schedule 3

By virtue of items 3 to 9 in the table to subclause 2(1), items 1 to 99 of Schedule 3 to this bill would commence immediately after the commencement

of various tax Acts passed in 2001. The Explanatory Memorandum indicates that those commencements generally occurred on 1 July 2001. Item 100 of Schedule 3 further provides that items 1 to 99 in that Schedule will apply, generally, from 1 July 2001. The Explanatory Memorandum, however, advises that there is "no revenue impact as a result of these amendments as [they] ensure that the capital allowance system operates as intended and as originally costed."

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

Retrospectivity Schedule 1

The amendments proposed in Schedule 1 will, by virtue of item 8 thereof, apply from the 2001-2002 tax year. However, the Explanatory Memorandum advises that those amendments are beneficial to taxpayers.

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

Retrospectivity Schedule 2

The amendments proposed in Schedule 2 will, by virtue of item 7 thereof, apply from 23 September 1998. However, the Explanatory Memorandum advises that those amendments are beneficial to taxpayers.

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

Therapeutic Goods Amendment Bill (No. 2) 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

Schedule 1 to the bill proposes to amend the *Therapeutic Goods Act 1989* to:

- clarify the definition of a "therapeutic good";
- transfer advertising offences from the regulations to the Act;
- create new offences for publishing advertisements that breach the Therapeutic Goods Advertising Code; and
- extend the coverage of existing offences to the broadcast media.

Schedule 2 to the bill proposes to amend the *Broadcasting Services Act 1992* to remove provisions relating to pre-approval of therapeutic goods advertisements in the broadcast media, to enable these functions to be transferred to the Therapeutic Goods Regulations.

The bill also contains saving and transitional provisions.

Strict liability offences Items 17 and 18 of Schedule 1

Both proposed new subsection 42C(8) of the *Therapeutic Goods Act 1989*, to be inserted by item 17 of Schedule 1 to this bill, and proposed new subsections 42DM(2) and 42DP(2) of the same Act, to be inserted by item 18 of Schedule 1, would create offences of strict liability. However, the Minister gives detailed reasons to justify this imposition of strict liability in the Notes on Clauses of the Explanatory Memorandum.

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

Trade Practices Amendment (Liability for Recreational Services) Bill 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

The bill proposes to amend the *Trade Practices Act 1974* to allow individuals to waive their contractual right to sue when undertaking hazardous recreational activities.

Dilution of liability for death or personal injury Proposed new section 68B

Proposed new section 68B of the Trade Practices Act 1974 would enable a corporation to exclude, restrict or modify the obligation, currently imposed by section 74 of the Act, that services will be rendered with due care and skill, and that any materials supplied in connection with those services will be reasonably fit for their purpose. Although the ability of the corporation to exclude, restrict or modify that obligation is limited to the supply of recreational services (as defined in proposed new subsection 68B(2)), the provision may be seen as coming within the Committee's Terms of Reference, especially because the exclusion, restriction or modification of liability is confined to liability for death or personal injury, two interests which are generally given all possible protection. The Parliamentary Secretary who introduced the bill asserted in his second reading speech that the bill "seeks to achieve that balance [between protecting consumers and allowing them to take responsibility for themselves] in a way that will benefit consumers and the many small businesses that are involved in recreational activities." The Committee brings this provision to the attention of Senators, but leaves for consideration by the Senate as a whole whether the bill trespasses unduly on the personal rights currently provided by section 74 of the Act.

Other than this, the Committee makes no further comment on this provision.

Uncertain operation Proposed new paragraph 68B(1)(d)

Proposed new paragraph 68B(1)(d) would prevent a corporation from excluding, restricting or modifying its liability in cases where the corporation has been grossly negligent. The concept of "gross negligence" is one that the common law has never been asked to define, at least in relation to conduct causing death or personal injury. The Committee, therefore, brings to the attention of Senators the fact that this bill may be productive of considerable uncertainty for a number of years after it has been in force.

Other than this, the Committee makes no further comment on this provision.

Veterans' Affairs Legislation Amendment Bill (No. 2) 2002

This bill was introduced into the House of Representatives on 27 June 2002 by the Minister for Veterans' Affairs. [Portfolio responsibility: Veterans' Affairs]

The bill proposes to amend the *Veterans' Entitlements Act 1986* (VEA) to:

- remove an inequity in the operation of various compensation recovery provisions of the VEA to ensure that certain pensioners will not be disadvantaged because they are not subject to the same compensation recovery provisions as other pensioners in similar circumstances;
- make consequential amendments relating to earlier changes to the recovery of lump sum compensation payments received by the partners of service pension or income support supplement recipients;
- prevent the misuse of the provisions relating to the payment of retirement village entry contributions for the purpose of obtaining rent assistance for which a person would otherwise be ineligible;
- clarify access rights to a telephone allowance for those eligible persons who operate a mobile telephone instead of a fixed telephone;
- align the eligibility for rent assistance under the VEA for pensioners who also receive a Family Tax Benefit at the base rate with the provisions of the *Social Security Act 1991* that apply to social security pensioners in similar circumstances. The amendments ensure that access to rent assistance is available under the VEA to those persons receiving Family Tax Benefit without a rent component;
- extend the eligibility criteria for the Pension Loans Scheme to certain persons who are not a veteran or the partner of a veteran; and to provide that a person who is eligible for, or receiving, income support supplement may be eligible for the Pension Loans Scheme from 'qualifying age';
- enable war widows and war widowers to be eligible for the Commonwealth Seniors Health Card (CSHC) from 'qualifying age'; and

• amend the definition of a 'non-illness separated spouse' so that it may apply to a person who is a veteran or a non-veteran.

No assurance that retrospectivity is benign Items 3 to 8 of Schedule 1

By virtue of item 3 in the table to subclause 2(1), items 3 to 8 of Schedule 1 to this bill would commence immediately after the commencement of Schedule 1 to the Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Act 2002. Reference to that Act, and to Alert Digest No. 2 of 2002, indicates that Schedule 1 to that Act commenced retrospectively on 20 September 2001. However, reference to the Committee's Third Report of 2002 reveals that, when the Committee inquired of the Minister whether that retrospectivity would adversely affect any person, the Minister was able to assure the Committee that there was no adverse effect arising from that retrospectivity. However, none of the above information is contained in the Explanatory Memorandum to the bill currently under consideration. The most that that Memorandum advises is that the amendments proposed by items 3 to 8 of Schedule 1 to this bill will have "No financial impact." Whether the lack of financial impact relates to the Commonwealth or to pensioners under the Veterans' Entitlements Act 1986 is not indicated. The Committee, therefore, seeks the Minister's advice as to why the above details gleaned from the Committee's Digest and Report were not included in the Explanatory Memorandum.

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

Workplace Relations Amendment (Improved Remedies for Unprotected Action) Bill 2002

This bill was introduced into the House of Representatives on 26 June 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 ensure that applications for orders to prevent unprotected industrial action are dealt with quickly and that, in dealing with applications, the Australian Industrial Relations Commission takes into account the undesirability of unprotected action.

Workplace Relations Amendment (Simplifying Agreement-making) Bill 2002

This bill was introduced into the House of Representatives on 26 June 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:

- simplify agreement-making at the workplace level;
- reduce the delays, formality and cost involved in having an agreement certified;
- prevent interference by third parties in agreement-making; and
- make a number of minor amendments and correct technical amendments.

The bill also contains application and saving provisions.

Workplace Relations Legislation Amendment Bill 2002

This bill was introduced into the House of Representatives on 26 June 2002 by the Minister for Employment and Workplace Relations. [Portfolio responsibility: Employment and Workplace Relations]

The bill proposes to amend the Safety, Rehabilitation and Compensation Act 1988, Seafarers Rehabilitation and Compensation Act 1992 and Seafarers Rehabilitation and Compensation Levy Collection Act 1992 to:

- effect the transfer of operational responsibility for the Seafarers Safety, Rehabilitation and Compensation Authority from the Department of Employment and Workplace Relation to Comcare; and
- make consequential, minor and technical amendments, including removing the requirement for ministerial approval of contracts over \$500 000 and providing for delegation of rehabilitation powers and functions by the Chief of the Defence Force.

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

REPORT NO 5/2002

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
International Criminal Court Bill 2002	Clause 93	Fail to comply with a notice	Imprisonment for 6 months or 30 penalty units or both
Renewable Energy	Proposed new section	Fail to provide	20 penalty units
(Electricity) Amendment Bill 2002	125A	information and documents to regulator	
Superannuation (Government Co- contribution for Low Income Earners) Bill	Clauses 26	Fail to provide statements to Commissioner	50 penalty units
2002	Clauses 30 and 31	Fail to give information to Commissioner	60 penalty units

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (24 – 27 June)

Family Law Amendment (Child Protection Convention) Bill 2002: On 26 June, the House of Representatives agreed to amend this bill. The amendments raised no issues with the Committee's terms of reference.

Jurisdiction of Courts Legislation Amendment Bill 2002: On 27 June, the House of Representatives agreed to amend this bill. The amendments did not affect a provision which *Alert Digest No. 3 of 2002* mentioned in relation to commencement by proclamation with no fixed date within which proclamation must occur. Apart from this, the amendments raised no issues with the Committee's terms of reference.

Proceeds of Crime Bill 2002: On 27 June, the House of Representatives agreed to amend this bill. The amendments did not affect provisions which *Alert Digest No. 3 of 2002* mentioned in relation to a number of possible breaches of personal rights and liberties. Apart from this, the amendments raised no issues with the Committee's terms of reference.

Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002: On 27 June, the House of Representatives agreed to amend this bill. The amendments did not affect provisions which *Alert Digest No. 3 of 2002* mentioned in relation to absolute and strict liability, reversal of the onus of proof and removal of some decisions from the operation of the *Administrative Decisions (Judicial Review) Act 1977*. Apart from this, the amendments raised no issues with the Committee's terms of reference.

Workplace Relations Amendment (Genuine Bargaining) Bill 2002: On 26 June, the House of Representatives agreed to amend this bill. The amendments raised no issues with the Committee's terms of reference.

AMENDMENTS IN THE SENATE

(24 - 27 June)

Border Security Legislation Amendment Bill 2002: On 27 June, the Senate agreed to amend this bill. The amendments did not affect provisions which *Alert Digest No. 3 of 2002* and the *Fourth Report of 2002* mentioned in relation to strict liability and rights and liberties and the carrying of firearms. Apart from this, the amendments raised no issues with the Committee's terms of reference.

New Business Tax System (Consolidation) Bill (No. 1) 2002: On 27 June, the Senate agreed to amend this bill. The amendments changed the commencement date for the Act from the date of assent to the date of assent to the *New Business Tax System (Consolidation, Value Shifting, Demergers and Other Measures) Act 2002*, a bill for which was introduced into the House of Representatives on 27 June.

Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]: On 27 June, the Senate agreed to amend this bill. The amendments, among other things, remove provisions which *Alert Digest No. 3 of 2002* and the *Fourth Report of 2002* mentioned in relation to absolute and strict liability and creation of criminal liability by declaration. The other amendments raised no issues with the Committee's terms of reference.

Social Security and Veterans' Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002: On 27 June, the Senate agreed to amend this bill. The amendments raised no issues with the Committee's terms of reference.

Suppression of the Financing of Terrorism Bill 2002: On 27 June, the Senate agreed to amend this bill. The amendments did not affect provisions which *Alert Digest No. 3 of 2002* and the *Fourth Report of 2002* mentioned in relation to strict liability. Apart from this, the amendments raised no issues with the Committee's terms of reference.

Taxation Laws Amendment Bill (No. 4) 2002: On 27 June, the Senate agreed to amend this bill. The amendment raised no issues with the Committee's terms of reference.

Taxation Laws Amendment (Superannuation) Bill (No. 2) 2002: On 27 June, the Senate agreed to amend this bill. The amendments raised no issues with the Committee's terms of reference.

Telecommunications Interception Legislation Amendment Bill 2002: On 27 June, the Senate agreed to amend this bill. The amendments did not affect provisions which *Alert Digest No. 3 of 2002* and the *Fourth Report of 2002* mentioned in relation to retrospective commencement and extension of the operation of the principal Act. Apart from this, the amendments raised no issues with the Committee's terms of reference.

Workplace Relations Amendment (Fair Dismissal) Bill 2002: On 27 June, the Senate agreed to amend this bill. The amendments raised no issues with the Committee's terms of reference.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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

NAME OF BILL	ALERT DIGEST	INTRO HOUSE	INTRODUCED USE SENATE	MINISTER	RESPONSE SOUGHT RECEIVED	NSE ECEIVED	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)		7.12.00	Environment and Heritage Further response required	28.6.01	20.8.01 26.9.01	10(22.8.01)
Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001	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	INTRC	ODUCED SENATE	MINISTER	RESP SOUGHT	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	INTRO HOUSE	INTRODUCED OUSE SENATE	MINISTER	RESP SOUGHT	RESPONSE HT RECEIVED	REPORT NUMBER
Bills being dealt with in 2002							
Aboriginal and Torres Strait Islander Commission Amendment Bill 2002	3(20.3.02)	13.3.02	16.5.02	Immigration and Multicultural and Indigenous Affairs	21.3.02	13.5.02 28.6.02	FRR5(19.6.02) 8(21.8.02)
Airports Amendment Bill 2002	1(20.2.02)	14.2.02	ŀ	Transport and Regional Services	21.2.02	6.5.02	DC
Australian Radiation Protection and Nuclear Safety (Licence Charges) Amendment Bill 2002	4(15.5.02)	21.3.02	20.6.02	Health and Ageing	16.5.02	4.6.02	7(26.6.02)
Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002	4(15.5.02)	21.3.02		Attorney-General	16.5.02		
Border Security Legislation Amendment Bill 2002	3(20.3.02)	12.3.02	14.3.02	Attorney-General	21.3.02	23.4.02	4(15.5.02)
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)
Coal Industry Repeal (Validation of Proclamation) Act 2002	2(13.3.02)	20.2.02	13.3.02	Industry, Tourism and Resources	14.3.02	22.3.02	4(15.5.02)
Copyright Amendment (Parallel Importation) Bill 2002	3(20.3.02)	13.3.02		Attorney-General	21.3.02	5.6.02	
Corporate Responsibility and Employment Security Bill 2002	3(20.3.02)	11.3.02		Mr McClelland	21.3.02		
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 14.3.02 21.3.02	8.3.02 19.3.02 4.4.02	2(13.3.02) 3(20.3.02) 4(15.5.02)

NAME OF BILL	ALERT DIGEST	INTRODUCED HOUSE SENATE	MINISTER	RESP SOUGHT	RESPONSE HT RECEIVED	REPORT NUMBER
Criminal Code Amendment (Espionage and Related Offences) Bill 2002	3(20.3.02)	13.3.02	Attorney-General	21.3.02	14.6.02	
Customs Legislation Amendment Bill (No. 1) 2002	6(26.6.02	19.6.02	Justice and Customs	27.6.02	20.8.02	
Electoral and Referendum Amendment (Roll Integrity and Other Measures) Bill 2002	3(20.3.02)	14.3.02	Special Minister of State	21.3.02	30.4.02	
Financial Corporations (Transfer of Assets and Liabilities) Amendment Bill 2002	3(20.3.02)	15.5.02 12.3.02	Treasury	21.3.02	3.5.02	4(15.5.02)
Financial Sector Legislation Amendment Bill (No. 1) 2002	4(15.5.02)	21.3.02 20.6.02	Treasury	16.5.02	17.6.02	7(26.6.02)
Financial Services Reform Bill 2001	6(23.5.01) 11(29.8.01)	5.4.01 9.8.01	Treasurer re Amendments	24.5.01 30.8.01 17.5.02	7.8.01 13.5.02 14.8.02	9(8.8.01) 4(15.5.02) 8(21.8.02)
Financial Services Reform (Consequential Provisions) Bill 2001	7(20.6.01)	7.6.01 9.8.01	Treasurer Further response requested	21.6.01 9.8.01	7.8.01	9(8.8.01) 4(15.5.02)
General Insurance Reform Act 2001	9(8.8.01)	28.6.01 27.8.01	Treasurer Amendments	9.8.01	27.8.01 24.6.02	11(29.8.01) 7(26.6.02)
Higher Education Funding Amendment Bill 2002	5(19.6.02)	5.6.02	Education, Science and Training	20.6.02	20.8.02	
Higher Education Legislation Amendment Bill (No. 1) 2002	1(20.2.02)	14.2.02 13.3.02	Education, Science and Training		12.3.02	2(13.3.02)

NAME OF BILL	ALERT DIGEST	INTRO HOUSE	INTRODUCED OUSE SENATE	MINISTER	RESPONSE SOUGHT REC	ONSE RECEIVED	REPORT NUMBER
Import Processing Charges (Amendment and Repeal) Bill 2002	6(26.6.02)	19.6.02		Justice and Customs	27.6.02	20.8.02	
Migration Legislation Amendment Bill (No. 1) 2002	3(20.3.02)	13.3.02		Immigration and Multicultural and Indigenous Affairs	21.3.02	27.5.02	
Migration Legislation Amendment (Transitional Movement) Act 2002	3(20.3.02)	13.3.02	20.3.02	Immigration and Multicultural and Indigenous Affairs	21.3.02	27.5.02	5(19.6.02)
Plant Breeder's Rights Amendment Bill 2002	3(20.3.02)		13.3.02	Agriculture, Fisheries and Forestry	21.3.02	23.5.02	5(19.6.02)
Proceeds of Crime Bill 2002	3(20.3.02)	13.3.02		Justice and Customs	21.3.02	9.5.02	8(21.8.02)
Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002	3(20.3.02)	13.3.02		Justice and Customs	21.3.02	9.5.02	8(21.8.02)
Quarantine Amendment Bill 2002	3(20.3.02)	14.3.02	21.3.02	Agriculture, Fisheries and Forestry	21.3.02		
Security Legislation Amendment (Terrorism) Bill 2002 [No. 2]	3(20.3.02)	13.3.02	14.3.02	Attorney-General	21.3.02	14.5.02	4(15.5.02)
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 2002	2(13.3.02)	21.2.02	19.6.02	Finance and Administration	14.3.02	16.5.02 I	FRR5(19.6.02)
Suppression of Financing of Terrorism Bill 2002	3(20.3.02)	12.3.02	14.3.02			14.5.02	4(15.5.02)
Taxation Laws Amendment Bill (No. 2) 2002	2 3(20.3.02)	14.3.02	24.6.02	Treasury	21.3.02	25.6.02	7(26.6.02)
Taxation Laws Amendment Bill (No. 3) 2002	2 4(15.5.02)	21.3.02		Treasury	16.5.02		

NAME OF BILL	ALERT DIGEST	INTRO HOUSE	INTRODUCED OUSE SENATE	MINISTER	RESP SOUGHT	RESPONSE HT RECEIVED	REPORT NUMBER
Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge Bill 2002	5(19.6.02)	14.5.02	19.6.02	Treasurer	20.6.02		
Telecommunications Interception Legislation Amendment Bill 2002	3(20.3.02)	12.3.02	14.3.02			14.5.02	4(15.5.02)
Therapeutic Goods Amendment Bill (No. 1) 2002	2(13.3.02)	20.2.02	20.3.02	Health and Ageing	14.3.02	19.3.02	3(20.3.02)
Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2002	2(13.3.02)	20.2.02	14.3.02	Transport and Regional Services	14.3.02		
Transport Safety Investigation Bill 2002	6(26.6.02)	20.6.02		Transport and Regional Services	27.6.02		
Veterans' Affairs Legislation Amendment Bill (No. 1) 2002	4(15.5.02)	21.3.02		Veterans' Affairs	16.5.02	27.6.02	
Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2002	2(13.3.02)	21.2.02	21.3.02	Veterans' Affairs	14.3.02	19.3.02	3(20.3.02)
Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002	2(13.3.02)	20.2.02	19.6.02	Employment and Workplace Relations	14.3.02	22.5.02 9.8.02	FRR5(19.6.02) 8(21.8.02)
Workplace Relations (Registration and Accountability of Organisations) Bill 2002	4(15.5.02)	21.3.02		Employment and Workplace Relations	16.5.02	19.8.02	