

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

Alert Digest

No. 5 of 2003

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Senate Standing Committee for the Scrutiny of Bills

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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This Digest is circulated to all Honourable Senators.
Any Senator who wishes to draw matters to the attention of the
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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 Human Rights Commission Legislation Bill 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Attorney-General. [Portfolio responsibility: Attorney-General]

Schedule 1 to the bill proposes to amend the *Human Rights and Equal Opportunity Commission Act 1986* to:

- restructure the Human Rights and Equal Opportunity Commission and rename it as the Australian Human Rights Commission;
- abolish the positions of Disability Discrimination Commissioner, Race Discrimination Commissioner and Sex Discrimination Commissioner; and create part-time complaints commissioner positions;
- provide for new functions and a greater focus on education, dissemination of information on human rights and assistance to business and the community;
- provide for the prior approval of, or notification to, the Attorney-General of proposed interventions in court proceedings by the Commission; and
- remove a power to recommend payment of damages or compensation in certain circumstances.

The Schedule also proposes to amend the *Disability Discrimination Act 1992*, *Privacy Act 1988*, *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984* to remove delegation powers consequential on the above amendments to the *Human Rights and Equal Opportunity Commission Act 1986*, to consolidate delegation powers into one provision, and to abolish the Community Relations Council and advisory councils.

Schedule 2 to the bill proposes to make minor amendments and consequential amendments to 13 other Acts.

The bill also contains application and transitional provisions.

The Committee has no comment on this bill.

Aviation Transport Security Bill 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Minister for Transport and Regional Services. [Portfolio responsibility: Transport and Regional Services]

Introduced with the Aviation Transport Security (Consequential Amendments and Transitional Provisions) Bill 2003, the bill proposes to:

- restructure the aviation security regulatory framework and provide for flexibility to respond to the changing threat environment;
- align Australian aviation security with the revised International Civil Aviation Organisation standards;
- introduce graduated penalties for a more equitable enforcement regime;
- respond to issues raised by the Auditor-General in a report by the ANAO;
- provide a separate piece of legislation that will allow for future amendments that may be extended to other transport sectors; and
- implement recent policy reviews and decisions made in response to the elevation of risk to aviation consequent to aviation terrorist attacks in the USA on September 11, 2001.

The bill also contains a regulation-making power and a saving provision.

Commencement on proclamation Subclause 2(3)

By virtue of subclause 2(3) of this bill, clauses 3 to 133 are to commence on Proclamation, which may occur up to 12 months after Assent, after which they commence automatically. The Explanatory Memorandum puts forward as a reason for this deferred commencement that it will “allow time for numerous systems to be developed and put in place and it will allow for the completion of the drafting of the [necessary] regulations”. The Committee notes that the 6 months referred to in Drafting Direction 2002, No. 2 is generally considered to be sufficient time for the drafting of any necessary regulations. The

Committee therefore **seeks the Minister's advice** as to the reason for the extended time provided for in this bill.

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

Strict liability

Subclauses 46(1), 47(1), 48(1), 54(1), 55(1) and 56(1)

Subclauses 46(1), 47(1), 48(1), 54(1), 55(1) and 56(1) create offences of strict liability. Although the Explanatory Memorandum does not refer to the Committee's *Sixth Report of 2002, Application of Absolute and Strict Liability Offences in Commonwealth Legislation*, it does point out that further provisions in the bill create offences covering the same conduct, but requiring proof of a fault element on the part of the accused. The Explanatory Memorandum further observes that the above subclauses create offences which are applicable for inadvertent breaches of the legislation, and which carry a correspondingly lesser maximum penalty.

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

Inappropriate delegation of legislative power

No provision for parliamentary scrutiny

Clause 67

Clause 67 empowers the Secretary of the Department to give "special security directions", requiring additional security measures to be taken. Clauses 73 and 74 then create offences, of strict liability, of failing to comply with such a direction. In light of the fact that the bill does not appear to subject the exercise of the Secretary's powers to any form of Parliamentary oversight, the Committee considers that these provisions may inappropriately delegate the power to create criminal offences to a member of the Australian Public

Service. The Committee therefore **seeks the Minister's advice** as to whether the exercise of the power under clause 67 should not be subject to Parliamentary scrutiny.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference; and may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference.

Abrogation of the privilege against self-incrimination Clause 110

Clause 110 would abrogate the privilege against self-incrimination for a person who is required to provide information under clause 109. However, clause 115 limits the circumstances in which information so provided is admissible in evidence in proceedings against that person, and the Committee accepts that this may strike a reasonable balance between the competing interests of obtaining information and protecting individuals' rights.

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

Aviation Transport Security (Consequential Amendments and Transitional Provisions) Bill 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Minister for Transport and Regional Services. [Portfolio responsibility: Transport and Regional Services]

Introduced with the Aviation Transport Security Bill 2003, the bill proposes to amend the:

- *Air Navigation Act 1920* to repeal redundant provisions and provide for a transitional period;
- *Australian Protective Service Act 1987* to extend the arrest powers of Australian Protective Service Officers to airport environments; and
- *Air Services Act 1995*, *Crimes (Aviation) Act 1991* and *Sea Installation Act 1987* to make minor and technical consequential amendments.

The Committee has no comment on this bill.

Civil Aviation Amendment Bill 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Minister for Transport and Regional Services. [Portfolio responsibility: Transport and Regional Services]

The bill proposes to amend the *Civil Aviation Act 1988* to implement a range of reforms to the Civil Aviation Safety Authority's (CASA) governance arrangements and enforcement regime.

The bill abolishes the CASA Board but retains CASA as an independent statutory authority under ministerial control, with a CEO employed at the Minister's pleasure, and greater involvement of the Portfolio Secretary in the oversight of CASA.

The bill also introduces new enforcement measures and contains application and savings provisions.

The Committee has no comment on this bill.

Civil Aviation Legislation Amendment Bill 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Minister for Science. [Portfolio responsibility: Transport and Regional Services]

Schedule 1 to the bill proposes to amend the *Civil Aviation Act 1988* to provide for the simplification and international harmonisation of Australia's civil aviation regulatory regime; enable the Civil Aviation Safety Authority (CASA) to enter into certain agreements with the national airworthiness authorities of other countries; and make minor corrections to provisions relating to dealing with goods seized as part of an investigation.

Schedule 2 to the bill proposes to amend the *Air Navigation Act 1920* to align certain definitions with the *Civil Aviation Act 1988*.

Schedule 3 to the bill proposes to amend the *Airports Act 1996* to repeal a redundant provision in relation to ministerial declarations of airport services.

Commencement on proclamation Subclause 2(3)

By virtue of subclause 2(3) of this bill, the provisions referred to in items 2 and 3 of the table to subclause 1 are to commence on Proclamation, which may occur up to 12 months after Assent, after which they commence automatically. The Explanatory Memorandum, however, fails to comply with paragraph 18 of Drafting Direction No. 2, 2002, in that it provides no reason for commencement being deferred beyond the six months referred to in that Drafting Direction. The Committee therefore **seeks the Minister's advice** as to the reason for the disregard of paragraph 18 of the Drafting Direction, and also an explanation for the extended deferral of commencement.

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.

Defence Amendment (Parliamentary approval for Australian involvement in overseas conflicts) Bill 2003

This bill was introduced into the Senate on 27 March 2003 by Senators Bartlett and Stott Despoja as a Private Senator's bill.

The bill proposes to amend the *Defence Act 1903* to place the responsibility for the decision to send members of the Australian Defence Force overseas with both Houses of Federal Parliament, subject to exceptions covering the movement of personnel in the normal course of their peacetime activities and the need to take swift action in an emergency.

The Committee has no comment on this bill.

Defence Legislation Amendment Bill 2003

This bill was introduced into the House of Representatives on 26 March 2003 by the Minister for Veterans' Affairs. [Portfolio responsibility: Defence]

Schedule 1 to the bill proposes to amend the *Defence Force Discipline Act 1982* to restructure the military discipline system following two reviews of the system and to reflect the general principles of criminal responsibility as codified in the *Criminal Code Act 1995*.

Schedule 2 to the bill proposes to amend ten Acts to:

- modernise the titles of the Cadet Corps in six Acts;
- increase penalties for breaches of the *Defence Act 1903* relating to persons who falsely represent themselves to be returned servicemen or improperly use service decorations;
- clarify regulation-making powers contained in the *Defence Act 1903* in relation to Defence inquiries;
- make amendments to the *Defence Force (Home Loans Assistance) Act 1990* to enable certain ex-service members of the Australian Defence Force to apply for a home loan subsidy beyond the current 2 year eligibility period for claiming assistance;
- correct an error in the commencement date to the *Defence Legislation Amendment (Application of Criminal Code) Act 2001*; and
- correct a cross-reference error in the *Defence Reserve Service (Protection) Act 2001*.

Schedule 3 to the bill proposes to amend the commencement dates of the Defence Legislation (Application of Criminal Code) Regulations (No. 1) 2001 and Defence Legislation Amendment (Application of Criminal Code) Regulations (No. 2) 2001 to make it clear that they commence operation on 15 December 2001.

Retrospective commencement
Subclause 2(1)

By virtue of the table to subclause 2(1), the amendments proposed by items 28 and 29 of Schedule 2, and items 1 and 2 of Schedule 3, to this bill would commence at various times prior to the day on which this measure is assented to. However, the Explanatory Memorandum makes it clear that both sets of amendments will do no more than correct a typographical error or clarify the date of commencement of earlier legislation. The Explanatory Memorandum also indicates that none of those amendments will make any change to substantive provisions of the law.

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

Electoral Amendment (Political Honesty) Bill 2003

This bill was introduced into the Senate on 27 March 2003 by Senator Murray as a Private Senator's bill.

The bill proposes to amend the *Commonwealth Electoral Act 1918* to require political advertising to meet similar standards of probity and honesty as commercial advertising must meet under the *Trade Practices Act 1974*. The bill prohibits political advertising that is inaccurate and misleading to a material extent.

Reversal of the onus of proof

Proposed new subsection 329(9)

Proposed new subsection 329(9) of the *Commonwealth Electoral Act 1918*, to be inserted by item 2 of Schedule 1 to this bill, would reverse the onus of proof in a criminal prosecution. The proposer of this bill indicates, in his Second Reading speech, that it is "a revised version of a bill of the same name [which he] introduced in 2000." The proposer also comments, in a later part of the Second Reading speech, that the bill "takes into account the comments and contributions of a number of people over the past three years." In that last version (which the Committee reported on in its *Seventeenth Report of 2000*), there was a reversal of the onus of proof proposed to be inserted in a revised version of subsection 329(5) of the *Commonwealth Electoral Act 1918*. The proposer of the bill, in his response to the Committee's comments in 2000, said that he intended "to have the bill amended to ensure that the Crown bears the onus of proof." Nevertheless, in this current version of the bill, not only is there no change proposed to subsection 329(5) of the Act, but also, as mentioned above, the bill would insert a second provision, in the same section, for the reversal of the onus of proof.

The proposer of the bill, however, has written to the Committee giving detailed reasons for the inclusion of the provisions. The Committee accepts that in this case those reasons may be justified and has reported on them in its *Fourth Report of 2003*.

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

Export Control Amendment Bill 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes to amend the *Export Control Act 1982* to:

- redraft part of subsection 11Q(5) to replace a redundant cross-reference relating to the making of a false or misleading statement in a declaration, as a consequence of the repeal of section 16 of the Act by the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*; and
- allow certificates issued in relation to goods for export to describe goods that originate from Christmas Island or from the Cocos (Keeling) Islands as goods from those Territories.

Retrospective commencement Subclause 2(1)

By virtue of item 2 in the table to subclause 2(1) to this bill, the amendment proposed by item 1 of Schedule 1 would commence retrospectively, at the same time as the commencement of the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*. However, the Explanatory Memorandum makes it clear that this amendment is doing no more than correcting a drafting oversight in the 2000 Act.

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

Health and Ageing Legislation Amendment Bill 2003

This bill was introduced into the Senate on 27 March 2003 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Health and Ageing]

Schedule 1 to the bill proposes to amend the:

- *National Health Act 1953* to:
 - increase the maximum membership of the Pharmaceutical Benefits Advisory Committee (PBAC);
 - provide for payment and/or waiver of recovery of 90% of the value of pharmaceutical benefits supplied from an unapproved relocated pharmacy where the pharmacist has subsequently obtained approval;
 - allow an agent to make and sign an application for a safety net concession or entitlement card on behalf of the applicant; provide that certain Ministerial determinations relating to forms, brands, maximum quantities, maximum numbers of repeats and manner of administration of Pharmaceutical Benefits Scheme (PBS) medicines apply to the supply of pharmaceutical benefits by approved hospital authorities in the same way that they do to pharmaceutical benefits supplied by approved pharmacists and approved medical practitioners; and
 - clarify the absolute right of a decision-maker to exercise discretion over the cancellation of approvals to supply pharmaceutical benefits.
- *Health Insurance Act 1973, Health Insurance Commission Act 1973, National Health Act 1953* and the *Veterans' Entitlements Act 1986* to enable special distribution arrangements, in certain circumstances, for pharmaceutical benefits where the normal PBS supply arrangements are not convenient or efficient.

Schedule 2 to the bill proposes to amend the *National Health Act 1953* to remove an anomaly relating to claims for payment for services made under a Medical Purchaser Provider Agreement and allow a medical services provider to send claims directly to the Health Insurance Commission.

Schedule 3 to the bill proposes to amend the *National Health Act 1953* to correct an unintended consequence of the *Health Legislation Amendment Act (No. 2) 2001* and restore specialist recognition, whilst retaining appropriate revocation provisions, for certain deemed specialists.

Schedule 4 to the bill proposes to amend the *National Health Act 1953* to correct an unintended consequence of the *Health Legislation Amendment (Medical Practitioners Qualifications and Other Measures) Act 2001* relating to the eligibility of overseas trained doctors assisting with operations to claim a Medicare payment benefit.

Schedule 5 to the bill proposes to amend the *Aged Care Act 1997* and the *Health Insurance Act 1973* to make technical amendments, correct cross references and make other minor consequential changes.

Retrospective commencement

Subclause 2(1)

By virtue of items 6 to 27 in the table to subclause 2(1) to this bill, the amendments proposed by items 2 to 31 of Schedule 5 would commence retrospectively, immediately after the commencement of various earlier Acts. However, the Explanatory Memorandum notes that all of the proposed amendments either correct minor typographical errors, or improve the clarity or grammar of existing legislation, and make no substantive change to the law.

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

Retrospective application

Schedule 3

The amendments proposed by Schedule 3 to this bill would apply retrospectively from 28 June 2001. However, the Explanatory Memorandum, in discussing this amendment, in the course of providing an outline of the whole bill, makes it clear that the purpose of the Schedule is to correct an unintended consequence of legislation passed in 2001.

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

Health Legislation Amendment Bill (No. 1) 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Parliamentary Secretary to the Treasurer. [Portfolio responsibility: Health and Ageing]

Schedule 1 to the bill proposes to amend the *Health and Other Services (Compensation) Act 1995* to clarify the circumstances under which Medicare and residential care benefits paid to compensation claimants can be recovered, and make consequential amendments to the *Health and Other Services (Compensation) Care Charges Act 1995*. The Schedule also contains application provisions.

Schedule 2 to the bill proposes to amend the *Health Insurance Act 1973* to expand the Australian Childhood Immunisation Register to include previous foreign immunisation of children where these are notified to the Health Insurance Commission by recognised immunisation providers or prescribed bodies; and update certain definitions.

The Committee has no comment on this bill.

Maritime Legislation Amendment (Prevention of Pollution from Ships) Bill 2003

This bill was introduced into the House of Representatives on 25 March 2003 by the Minister for Regional Services, Territories and Local Government. [Portfolio responsibility: Transport and Regional Services]

The bill proposes to amend the *Navigation Act 1912* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to update cross-references and reflect Annex IV of the *International Convention for the Prevention of Pollution from Ships*, to which Australia is a signatory, so that the level of environmental protection from marine sewage in Australia is consistent with internationally adopted standards.

The bill also removes the requirement for Ministerial approval for operational matters and provides additional powers to the Australian Maritime Safety Authority in an effort to improve administrative efficiencies.

The bill also makes technical and minor redrafting amendments to clarify and simplify certain provisions.

Commencement **Subclause 2(1)**

By virtue of items 2 to 5 in the table to subclause 2(1) to this bill, the amendments proposed by the various items of Schedule 1 would commence immediately after the commencement of various other Acts. However, the Explanatory Memorandum makes it clear that none of the legislation referred to in that table has yet commenced. It is therefore clear that none of the changes proposed by this bill will have any retrospective effect.

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

Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 [No. 2]

This bill was introduced into the House of Representatives on 26 March 2003 by the Minister for Immigration and Multicultural and Indigenous Affairs. [Portfolio responsibility: Immigration and Multicultural and Indigenous Affairs]

The bill proposes to amend the *Migration Act 1958* to expand the definition of “excised offshore place” to include the Coral Sea Islands Territory and certain islands that form part of Western Australia, Queensland and the Northern Territory.

Retrospective application Item 2 of Schedule 1

By virtue of item 2 of Schedule 1 to this bill, the amendments proposed by the bill would apply from 2.00pm on 19 June 2002. That time has been specified, as it is the time which was also specified in a bill of the same name which was introduced into the House of Representatives on 20 June 2002. The Committee commented on that previous bill in *Alert Digest No. 6 of 2002*, noting that the amendments will apply retrospectively before the date of Assent. The Committee further noted that item 2 is to that extent similar to “legislation by press release”, in that it assumes that both Houses of the Parliament will accept and approve the bill without amendment. The Committee now repeats those comments in relation to the present bill.

The Committee draws Senators’ attention to the 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.

National Health Amendment (Private Health Insurance Levies) Bill 2003

This bill was introduced into the House of Representatives on 26 March 2003 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

Part of a package of five bills relating to private health insurance industry levies, the bill proposes to amend the *National Health Act 1953* to make changes consequential to the re-imposition of the four existing private health insurance levies, including repealing provisions previously imposing the levies.

The bill proposes a criminal sanction for failure to provide information, as noted in the entry on page 37.

The bill also contains a saving provision.

The Committee has no comment on this bill.

National Residue Survey (Customs) Levy Amendment Bill (No. 2) 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

Introduced with the National Residue Survey (Excise) Levy Amendment Bill (No. 2) 2003, the bill proposes to amend the *National Residue Survey (Customs) Levy Act 1998* to insert the current operative levy rate of 0.3 cents per kilogram for honey exported from Australia and to increase the present maximum levy rate for honey exported from Australia to 0.6 cents per kilogram. The proposed amendment to the maximum levy rate has been put in place to allow the honey industry scope to expand its operative rate of levy by subordinate legislation where access to further funding for residue monitoring programs may be required.

The Committee has no comment on this bill.

National Residue Survey (Excise) Levy Amendment Bill (No. 2) 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

Introduced with the National Residue Survey (Customs) Levy Amendment Bill (No. 2) 2003, the bill proposes to amend the *National Residue Survey (Excise) Levy Act 1998* to insert the current operative levy rate of 0.3 cents per kilogram for honey produced in Australia and to increase the present maximum rate for honey produced in Australia to 0.6 cents per kilogram. The proposed amendment to the maximum levy rate has been put in place to allow the honey industry scope to expand its operative rate of levy by subordinate legislation where access to further funding for residue monitoring programs may be required.

The Committee has no comment on this bill.

Private Health Insurance (ACAC Review Levy) Bill 2003

This bill was introduced into the House of Representatives on 26 March 2003 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

Part of a package of five bills relating to private health insurance industry levies, the bill proposes to re-impose the Acute Care Advisory Committee review levy on registered health benefits organizations, having regard to section 55 of the Constitution, and validate the previous imposition of the levy.

The Committee has no comment on this bill.

Private Health Insurance (Collapsed Organization Levy) Bill 2003

This bill was introduced into the House of Representatives on 26 March 2003 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

Part of a package of five bills relating to private health insurance industry levies, the bill proposes to re-impose the collapsed organization levy on registered health benefits organizations, having regard to section 55 of the Constitution, and validate the previous imposition of the levy.

Delegation of legislative powers Clause 9

The purpose of this bill is to impose a levy on other registered health benefits organizations in order to help meet the liabilities of such an organization which is unable itself to meet those liabilities. Clause 9 permits the Minister to determine the rate of that levy, but that clause does not set a maximum figure. The Committee has always been concerned about legislation which would permit the raising of money by delegated, rather than primary, legislation. It believes that in such cases there should be an upper limit or cap on the rate or a formula to determine the rate. In the present case there is only a requirement that the Minister must obtain and take into account advice from the Private Health Insurance Administration Council. However, this advice must be tabled in both Houses, which should provide some transparency to the process and, importantly, the determination of the rate is a disallowable instrument.

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

Private Health Insurance (Council Administration Levy) Bill 2003

This bill was introduced into the House of Representatives on 26 March 2003 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

Part of a package of five bills relating to private health insurance industry levies, the bill proposes to re-impose the Private Health Insurance Administration Council administration levy on registered health benefits organizations, having regard to section 55 of the Constitution, and validate the previous imposition of the levy.

The Committee has no comment on this bill.

Private Health Insurance (Reinsurance Trust Fund Levy) Bill 2003

This bill was introduced into the House of Representatives on 26 March 2003 by the Parliamentary Secretary to the Minister for Health and Ageing. [Portfolio responsibility: Health and Ageing]

Part of a package of five bills relating to private health insurance industry levies, the bill proposes to re-impose the Reinsurance Trust Fund levy on registered health benefits organizations, having regard to section 55 of the Constitution, and validate the previous imposition of the levy.

Inadequate parliamentary scrutiny Clause 7

The purpose of this bill is to impose a levy on registered health benefits organizations in order to provide for cross-subsidisation among such organizations for high cost contributors thereto. Clause 7 permits the Private Health Insurance Administration Council to determine the rate of that levy, and the Minister to determine the rate of a supplementary levy, but that clause does not set a maximum figure for either of those levies. The Explanatory Memorandum seeks to justify this untrammelled delegation of legislative power by observing that “in determining rates, the Council and the Minister must follow the Ministerial principles made under subsection 73BC(5B) of the *National Health Act 1953*.” However, those principles do not appear to be subject to any Parliamentary scrutiny, as they are not described, in section 73BC of that Act, as being disallowable instruments, but are merely required to be published in the *Gazette*. It would also seem appropriate for the determination of the rate of these levies to be a disallowable instrument, if this is not the case, in the same way as related levy determinations. The Committee therefore **seeks the Minister’s advice** as to whether there should not be more Parliamentary oversight of the rates of these levies.

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 1(a)(v) of the Committee's terms of reference.

Product Stewardship (Oil) Legislation Amendment Bill (No. 1) 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Minister for the Environment and Heritage. [Portfolio responsibility: Environment and Heritage]

The bill proposes to amend the *Product Stewardship (Oil) Act 2000* to:

- exempt certain multi-use oils and uses of multi-use oils from the Product Stewardship (Oil) (PSO) levy by creating a new category of benefit which will be paid for uses of certain oils approved by the Minister;
- make consequential amendments to the *Product Grants and Benefits Administration Act 2000* to enable the new category claimants to register for PSO benefits.

The bill also contains a transitional provision.

The Committee has no comment on this bill.

Sexuality Anti-Vilification Bill 2003

This bill was introduced into the Senate on 27 March 2003 by Senator Greig as a Private Senator's bill.

The bill proposes to prohibit certain conduct involving the vilification and incitement to hatred of people on the ground of gender or sexuality.

The Committee has no comment on this bill.

Taxation Laws Amendment Bill (No. 5) 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Schedules 1 to 3 to the bill propose to amend the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* to implement changes to the thin capitalisation regime in relation to the application of the thin capitalisation rules to securitisation vehicles and financial entities; record keeping requirements for permanent establishments; revaluation of assets; and make a consequential application amendment to the *Taxation Laws Amendment Act (No. 7) 2000*. The proposed amendments are intended to promote equity between taxpayers, generally reduce compliance costs and clarify the operation of the law.

Schedule 4 to the bill proposes to amend the *Income Tax Assessment Act 1936* to reinstate certain deductible expenditure as a foreign dividend account debit.

Schedule 5 to the bill proposes to amend the *Fringe Benefits Tax Assessment Act 1986* to ensure that fringe benefits provided to employees whose duties are performed in, or in connection with, a public hospital will continue to be subject to the \$17,000 capped FBT exemption, whether or not the hospital is a public benevolent institution.

Schedule 6 to the bill proposes to amend the *Income Tax Rates Act 1986*, *Superannuation Contributions Tax (Assessment and Collection) Act 1997* and *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* to reduce the effective rate of tax on the excessive component of an eligible termination payment paid by a superannuation fund. The amendments also provide a reduction in the amount of surchargeable contributions reported by the fund paying the excessive ETP in that year, in respect of the relevant member.

Schedule 7 to the bill proposes to amend the *Income Tax Assessment Act 1997* to remove an anomaly that prevents a company from accessing the same business test to determine its eligibility to deduct a prior year tax loss, or write off a bad debt, in circumstances where the company has failed the continuity of ownership test but is unable to identify the precise date on which that

failure occurred; and reinstate certain deductible expenditure as a foreign dividend account debit.

Schedule 8 to the bill proposes to amend the *Income Tax Assessment Act 1936*, *Income Tax Assessment Act 1997* and *Taxation Administration Act 1953* to allow corporate tax entities to choose the amount of prior year losses they want to deduct in an income year.

The bill also contains application provisions and technical corrections.

Retrospective commencement

Part 2 of Schedule 6

By virtue of item 9 in the table to subclause 2(1) to this bill, the amendments proposed by Part 2 of Schedule 6 would commence immediately after the commencement of Division 2 of Part 3 of the *Taxation Laws Amendment (Superannuation) Act 1993*. However, the amendment proposed in this bill is technical only, and will make no change to the substantive law.

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

Retrospective application

Schedules 1 to 4

The amendments proposed in Schedules 1 to 4 to this bill will apply from either 1 July 2001 or 1 July 2002. However, the Explanatory Memorandum states that there is no financial impact from any of these amendments.

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

Retrospective application
Part 1 of Schedule 6

The amendments proposed in Part 1 of Schedule 6 to this bill will apply from 1 July 2002 – see item 21 of that Schedule. However, the Explanatory Memorandum indicates that those amendments are beneficial to taxpayers.

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

Retrospective application
Parts 1 and 2 of Schedule 7

The amendments proposed in Part 1 of Schedule 7 to this bill will apply from the 1997-98 tax year – see item 15 of that Schedule – and the amendments proposed in Part 2 of the same Schedule will apply from the 1998-99 tax year – see item 23 thereof. However, the Explanatory Memorandum indicates that the financial impact of all of those amendments is negligible.

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

Trade Practices Amendment (Personal Injuries and Death) Bill 2003

This bill was introduced into the House of Representatives on 27 March 2003 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 prevent individuals, and the Australian Competition and Consumer Commission in a representative capacity, from bringing actions for damages for personal injuries or death resulting from contraventions of Division 1 of Part V of the Act, which prohibits, under civil law, unfair practices in trade and commerce, including misleading and deceptive conduct.

Personal rights

Items 2 and 5 of Schedule 1

Items 2 and 5 of Schedule 1 to this bill would remove the right to claim damages of a person who suffers personal injury, or the personal representatives of one who dies, as a result of misleading or deceptive conduct on the part of another, or any other conduct by that other in breach of Division 1 of Part V of the Principal Act, which deals with unfair practices in relation to consumer protection. The bill may therefore be regarded as trespassing on existing personal rights. However, the Committee leaves for the Senate as a whole the question of whether the bill *unduly* trespasses on those rights.

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.

Trade Practices Legislation Amendment Bill 2003

This bill was introduced into the House of Representatives on 27 March 2003 by the Parliamentary Secretary to the Minister for Finance and Administration. [Portfolio responsibility: Treasury]

Schedule 1 to the bill proposes to amend the *Trade Practices Act 1974* to clarify the ability of State and Territory access regimes to confer duties upon the Australian Competition and Consumer Commission (ACCC) and the Australian Competition Tribunal (ACT) and the conditions under which a law of a State or Territory may confer functions, powers and duties upon the ACCC or ACT.

Schedule 2 to the bill proposes to:

- repeal the *Prices Surveillance Act 1983* and replace it with a new part in the *Trade Practices Act 1974* which preserves the existing prices surveillance powers;
- amend the *Airports Act 1996*, *Air Services Act 1995*, *Australian Maritime Safety Authority Act 1990* and *Australia Postal Corporation Act 1989* to make consequential amendments; and
- delete redundant references in the *Australian Crime Commission Act 2002* and *Australia Postal Corporation Act 1989*.

The bill proposes a criminal sanction for failure to provide information, as noted in the entry on page 37.

The bill also contains transitional provisions.

The Committee has no comment on this bill.

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

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
National Health Amendment (Private Health Insurance Levies) Bill 2003	Proposed new subsection 83J(4) of the <i>National Health Act 1953</i>	Fail to provide information	60 penalty units
Trade Practices Legislation Amendment Bill 2003	Proposed new subsection 95ZK(4) of the <i>Trade Practices Act 1974</i>	Fail to provide information	20 penalty units

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE HOUSE OF REPRESENTATIVES (24-27 March 2003)

Industry, Tourism and Resources Legislation Amendment Bill 2002: On 26 March 2003 the House of Representatives agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Corporations Legislation Amendment Bill 2002: On 26 March 2003 the House of Representatives agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Taxation Laws Amendment Bill (No 7) 2002: On 27 March 2003 the House of Representatives agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Terrorism Insurance Bill 2002: On 27 March 2003 the House of Representatives agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

AMENDMENTS IN THE SENATE (24-27 March 2003)

Dairy Industry Service Reform Bill 2003: On 27 March 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Inspector-General of Taxation Bill 2002: On 27 March 2003 the Senate agreed to further amend this bill. The amendments raise no issues within the Committee's terms of reference.

Taxation Laws Amendment Bill (No 2) 2003: On 27 March 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Copyright Amendment (Parallel Importation) Bill 2002: On 27 March 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Bill 2002: On 27 March 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Corporations Amendment (Repayment of Directors Bonuses) Bill 2002: On 27 March 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Transport Safety Investigation Bill 2002: On 26 March 2003 the Senate agreed to amend this bill. The amendments implement undertakings given to the Committee by the Minister to seek amendments in relation to qualifications of delegates, limitation of the use of powers, a "reasonable grounds" requirement, notification of rights and the use of identity cards. The Committee commented on these matters in *Alert Digest No. 6 of 2002* and the *Twelfth, Thirteenth and Fourteenth Reports of 2002*.

Transport Safety Investigation (Consequential Amendments) Bill 2002: On 26 March 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Family and Community Services Legislation Amendment Bill 2003: On 27 March 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Family and Community Services Legislation Amendment (Australians Working Together and Other 2001 Budget Measures) Bill 2002: On 27 March 2003 the Senate agreed to further amend this bill. The amendments raise no issues within the Committee's terms of reference.

Agriculture, Fisheries and Forestry Legislation Amendment Bill (No 2) 2002: On 27 March 2003 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Crimes Legislation Enhancement Bill 2002 (2003): On 27 March 2002 the Senate agreed to amend this bill. The amendments raise no issues within the Committee's terms of reference.

Workplace Relations Amendments (Prohibition of Compulsory Union Fees) Bill 2002 (No 2): On 24 March 2003 the Senate agreed to amend this bill. The amendments are the same as those made by the Senate on 21 August 2002 to the earlier bill with the same title. The *Alert Digest No. 8 of 2002* noted that the amendments, among other things, omit Schedule 1, item 14, which the *Fifth and Eighth Reports of 2002* mentioned in relation to retrospective application. The *Alert Digest No. 16 of 2002* noted these comments when discussing the later bill.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2003

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE SOUGHT RECEIVED		REPORT NUMBER
		HOUSE	SENATE				
Bills dealt with in 2002							
Charter of the United Nations Amendment Bill 2002	15(4.12.02)	14.11.02	5.12.02	Foreign Affairs	5.12.02		
Communications Legislation Amendment Bill (No. 1) 2002	7(21.8.02)	27.6.02	13.5.03	Communications, Information Technology and the Arts	22.8.02	16.9.02	4(14.5.03)
Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002	16(11.12.02)	4.12.02	12.12.02	Justice and Customs	17.12.02	11.2.03	2(5.3.03)
Criminal Code Amendment (Offences Against Australians) Act 2002	15(4.12.02)	12.11.02	13.11.02	Attorney-General	5.12.02	3.2.03	1(5.2.03)
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	
Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002	15(4.12.02)		19.11.02	Senator Bartlett	5.12.02	4.2.03	1(5.2.03)
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2002	13(13.11.02)	21.10.02		Mr Katter	14.11.02		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Health Insurance Amendment (Professional Services Review and Other Matters) Bill 2002	15(4.12.02)	27.6.02	11.11.02	Health and Ageing re Amendments	5.12.02	31.1.03	1(5.2.03)
Intellectual Property Laws Amendment Bill 2002	7(21.8.02)	27.6.02		Industry, Tourism and Resources	22.8.02	17.9.02	
<i>International Criminal Court Act 2002</i>	7(21.8.02)	25.6.02	26.6.02	Attorney-General	22.8.02	13.1.03	1(5.2.03)
<i>International Criminal Court (Consequential Amendments) Act 2002</i>	7(21.8.02)	25.6.02	26.6.02	Attorney-General	22.8.02	13.1.03	1(5.2.03)
Migration Legislation Amendment Bill (No. 1) 2002	3(20.3.02)	13.3.02	5.2.03	Immigration and Multicultural and Indigenous Affairs	21.3.02	27.5.02	2(5.3.03)
<i>Quarantine Amendment Act 2002</i>	3(20.3.02)	14.3.02	21.3.02	Agriculture, Fisheries and Forestry	21.3.02	24.1.03	1(5.2.03)
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 20.6.02	16.5.02 20.12.02	5(19.6.02) 1(5.2.03)
Taxation Laws Amendment Bill (No. 8) 2002	16(11.12.02)	5.12.02		Treasury	12.12.02	30.1.03	
<i>Taxation Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Act 2002</i>	5(19.6.02)	14.5.02	19.6.02	Treasurer	20.6.02	24.12.02	1(5.2.03)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills introduced 2003							
Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2) 2002	1(5.2.03)	12.12.02	3.3.03	Agriculture, Fisheries and Forestry	6.2.03	24.2.03	2(5.3.03)
Criminal Code Amendment (Terrorism) Bill 2002	1(5.2.03)	12.12.03	13.5.03	Attorney-General	6.2.03	7.5.03	4(14.5.03)
Dairy Industry Service Reform Bill 2003	2(5.3.03)	12.2.03	19.3.03	Agriculture, Fisheries and Forestry	6.3.03	9.4.03	4(14.5.03)
Electoral Amendment (Political Honesty) Bill 2003	5(14.5.03)		27.3.03	Senator Murray		28.4.03	4(14.5.03)
Energy Grants (Credits) Scheme Bill 2003	2(5.3.03)	13.2.03	26.3.03	Treasurer	6.3.03	24.3.03	3(26.3.03)
Family Law Amendment Bill 2003	2(5.3.03)	12.2.03		Attorney-General	6.3.03		
Late Payment of Commercial Debts (Interest) Bill 2003	3(19.3.03)	6.3.03		Senator Conroy	27.3.03		
Petroleum (Timor Sea Treaty) Bill 2003	3(19.3.03)	5.3.03	6.3.03	Industry, Tourism and Resources	27.3.03	16.4.03	4(14.5.03)
Petroleum (Timor Sea Treaty) (Consequential Amendments) Bill 2003	3(19.3.03)	5.3.03	6.3.03	Industry, Tourism and Resources	27.3.03	16.4.03	4(14.5.03)
Taxation Laws Amendment Bill (No. 4) 2003	2(5.3.03)	13.2.03	19.3.03	Treasurer	6.3.03	18.3.03	3(26.3.03)

