

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

Alert Digest

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Members of the Committee

Senator R Ray (Chair)
Senator B Mason (Deputy Chair)
Senator G Barnett
Senator D Johnston
Senator G Marshall
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.

Farm Household Support Amendment (Exceptional Circumstances Relief Payment) Bill 2005

Introduced into the House of Representatives on 16 June 2005

Portfolio: Agriculture, Fisheries and Forestry

Background

On 30 May 2005 the Prime Minister announced measures intended to provide additional assistance to farmers affected by the extended drought. As part of that package, this bill amends the *Farm Household Support Act 1992* to provide an exemption to the income test for the Exceptional Circumstances Relief Payment in relation to off-farm salary and wages. It also makes changes to the procedures for obtaining Exceptional Circumstances certificates.

The Committee has no comment on this bill.

Intelligence Services Legislation Amendment Bill 2005

Introduced into the Senate on 16 June 2005

Portfolio: Treasury

Background

This bill is a legislative response to the recommendation of the Inquiry into Australian Intelligence Agencies ('the Flood Inquiry') which reported in July 2004. The bill:

- extends the mandate of the Parliamentary Joint Committee on ASIO, ASIS and DSD to cover all of Australia's intelligence agencies;
- formalises the functions and ministerial accountabilities of the Defence Imagery and Geospatial Organisation, as well as oversight arrangements for that organisation;
- extends the mandate of the Inspector-General of Intelligence and Security to initiate inquiries; and
- amends the *Office of National Assessments Act 1977* to remove the reference to two assessments boards (as there is only one) and strengthen and clarify ONA's role coordinating the intelligence community.

The bill also makes amendments to the *Intelligence Services Act 2001* following a review coordinated by the Department of Prime Minister and Cabinet, and in response to a proposal from the joint committee about its membership and functions.

The Committee has no comment on this bill.

Medical Indemnity (Competitive Advantage Payment) Bill 2005

Introduced into the House of Representatives on 16 June 2005
Portfolio: Health and Ageing

Background

This bill, together with the Medical Indemnity (Competitive Neutrality) Bill 2005, introduces a competitive advantage payment to offset the competitive advantage that might otherwise accrue to medical defence organisations participating in the Government's Incurred But Not Reported (IBNR) Indemnity Scheme.

Setting the rate of a tax by regulation Clause 6

The purpose of this bill is to impose a competitive advantage payment on medical indemnity insurers. Clause 4 describes the payment as a tax. The effect of clause 6 is that the amount of that tax can be set by regulation.

The Committee normally comments on bills that propose that the amount of a tax or levy can be set by regulation, following the principle that it is for the Parliament, rather than makers of subordinate legislation, to set a rate of tax. Where a case can be made for the rate to be set by subordinate legislation – for instance, where the rate needs to be changed frequently and expeditiously – the Committee expects that there will be appropriate limits set on the exercise of that power.

In this case, paragraph 6(2)(a) of the bill sets an upper limit on the tax which may be levied. The Committee also notes that the regulations which would set the rate of the tax would be subject to the usual tabling and disallowance regime under the *Legislative Instruments Act 2003*, including scrutiny by the Regulations and Ordinances Committee.

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

Medical Indemnity (Competitive Neutrality) Bill 2005

Introduced into the House of Representatives on 16 June 2005
Portfolio: Health and Ageing

Background

This bill, together with the Medical Indemnity (Competitive Advantage Payment) Bill 2005, introduces a competitive advantage payment to neutralise the competitive advantage that might otherwise accrue to medical defence organisations participating in the Government's Incurred But Not Reported (IBNR) Indemnity Scheme.

This bill amends the *Medical Indemnity Act 2002*, the *Medical Indemnity (UMP Support Payment) Act 2002* and other health legislation to introduce administrative arrangements for the competitive advantage payment and to modify aspects of the United Medical Protection support payment scheme.

Retrospective commencement Schedule 3

By virtue of item 3 of the table in subclause 2(1) of this bill, the amendment proposed by Schedule 3 would commence on 1 July 2004, immediately after the commencement of Schedule 2 to the *Medical Indemnity Legislation Amendment (Run-off Cover and Other Measures) Act 2004*.

As a matter of practice, the Committee draws attention to any bill which seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this case, the explanatory memorandum makes it clear that the amendment corrects a drafting error in the 2004 Act, and makes no change to the substantive law.

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

Exempting a tax by regulation
Schedule 1, item 10

Proposed new subsection 59C(1) of the *Medical Indemnity Act 2002*, to be inserted by item 10 of Schedule 1 to this bill, would permit a person to be exempted from payment of a tax by means of regulations, rather than by the operation of primary legislation.

The Committee normally comments on legislation which would enable the *imposition* of a tax by regulation, following the principle that it is for the Parliament, rather than makers of subordinate legislation, to impose tax. In this case, however, the regulations made under new subsection 59C(1) would *exempt from*, rather than impose, taxation. The Committee notes that the subsection only allows exemption ‘in the circumstances specified in the regulations’, and does not permit the regulations to exempt a particular body or person. The Committee also notes that any regulations made under this subsection will be subject to the usual tabling and disallowance regime under the *Legislative Instruments Act 2003*. This will include scrutiny by the Regulations and Ordinances Committee, which can be trusted to bring to the attention of the Senate any circumstance in which it considers that the matter ought to be the subject of primary legislation rather than delegated legislation.

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

Migration Amendment (Act of Compassion) Bill 2005

Introduced into the Senate on 16 June 2005

By Senators Brown and Nettle as a Private Senator's bill

Background

According to its long title, this is a bill for 'an Act to provide for compassion for long-term detainees and others, and for related purposes.'

The bill amends the *Migration Act 1958* to provide for judicial assessment of certain immigration detainees, including long-term detainees and children and the families of children in detention, and to require that bridging visas be granted to those detainees in defined circumstances. The bill also provides for the grant of permanent visas to those holding temporary protection visas (at the commencement of the Act) and to people who cannot be removed from Australia, unless exceptional circumstances apply.

The Committee has no comment on this bill.

Migration Amendment (Mandatory Detention) Bill 2005

Introduced into the Senate on 16 June 2005

By Senators Brown and Nettle as a Private Senator's bill

Background

The bill amends the *Migration Act 1958* to abolish temporary protection visas, to provide that the detention of children is used only as a last resort, to subject immigration detention to judicial review and to impose limits on the time that most asylum seekers may be detained.

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	Section	Offence	Penalty
Medical Indemnity Legislation Amendment (Competitive Neutrality) Bill 2005	Proposed new paragraph 73(1)(aa), <i>Medical Indemnity Act 2002</i>	Failing to give information	30 penalty units

PARLIAMENTARY AMENDMENTS AND THE COMMITTEE'S TERMS OF REFERENCE

AMENDMENTS IN THE SENATE

(14 to 16 June 2005)

Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005

The bill was intended to implement a consistent regime for the investigation and detention of suspected illegal foreign fishers, based upon existing legislative provisions. The Committee had noted a range of matters that appeared to infringe upon its terms of reference. The Committee reported the Minister's response, and its own conclusions, in its *Fourth Report of 2005*.

On 16 June 2005 the Senate made nine amendments to this bill. None of the successful amendments directly relate to the matters raised by the Committee, however some of them address matters within the Committee's terms of reference.

One amendment, moved by Senator Bartlett, extends the requirement for the provision of legal advice to detainees by removing the condition that such advice must be provided only 'at the detainee's request'. This provision introduces a point of difference in the rights of detainees under different detention regimes, but appears to reduce a legislative trespass upon personal rights.

A number of amendments moved by Senator O'Brien place into primary legislation certain training requirements for officers and detention officers exercising duties under the legislation, including sensitive duties such as strip searching detainees. The detail of those training measures will be contained in legislative instruments, which it appears will be subject to the usual tabling and disallowance regime. The Committee welcomes measures which guarantee minimum training of personnel involved in such duties.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2005

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2004							
Australian Communications and Media Authority Bill 2004	12(8.12.04)	2.12.04	7.3.05	Communications, Information Technology and the Arts	9.12.04	14.3.05	3(16.3.05)
Copyright Legislation Amendment Act 2004	12(8.12.04)	9.12.04	30.11.04	Attorney-General	9.12.04	2.2.05	1(9.2.05)
James Hardie (Investigations and Proceedings) Bill 2004	12(8.12.04)	2.12.04	8.12.04	Treasury	9.12.04		
Water Efficiency Labelling and Standards Bill 2004	9(4.8.04) 12(8.12.04)	24.6.04	12.8.04	Environment and Heritage Reintroduced – no response required	5.8.04	24.12.04	1(9.2.05)
Bill dealt with in 2005							
Asbestos-related Claims (Management Of Commonwealth Liabilities) Bill 2005	5(1.6.05)	25.5.05	14.6.05	Employment and Workplace Relations	1.6.05	14.6.05	5(15.6.05)
AusLink (National Land Transport) Bill 2004	1(9.2.05)	9.12.04	10.2.05	Transport and Regional Services	10.2.05	28.4.05	4(11.5.05)
Aged Care Amendment (Transition Care and Assets Testing) Bill 2005	2(9.3.05)	10.2.05	7.3.05	Ageing	10.3.05	15.3.05	3(16.3.05)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Bill 2005	2(9.3.05)	17.2.05	9.3.05	Agriculture, Fisheries and Forestry	10.3.05	11.3.05	3(16.3.05)
Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005	2(9.3.05)	17.2.05	11.5.05	Fisheries, Forestry and Conservation	10.3.05	4.5.05	4(11.5.05)
Defence Amendment Bill 2005	2(9.3.05)	10.2.05	7.3.05	Defence	10.3.05		
Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Bill 2005	5(1.6.05)	26.5.05	15.6.05	Family and Community Services	1.6.05	20.6.05	6(22.6.05)
Film Licensed Investment Company Bill 2005	5(1.6.05)	26.5.05		Communications, Information Technology and the Arts	1.6.05	21.6.05	6(22.6.05)
Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005	5(1.6.05)	26.5.05		Justice and Customs	1.6.05		
Maritime Transport Security Amendment Bill 2005	5(1.6.05)	25.5.05	14.6.05	Transport and Regional Services	1.6.05	21.6.05	6(22.6.05)
<i>Medical Indemnity Legislation Amendment Act 2005</i>	2(9.3.05)	17.2.05	9.3.05	Health and Ageing	10.3.05	28.4.05	4(11.5.05)
New International Tax Arrangements (Foreign-owned Branches and Other Measures) Bill 2005	4(11.5.05)	17.3.05		Treasurer	12.5.05	31.5.05	5(15.6.05)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Payment Systems (Regulation) Amendment Bill 2005	3(16.3.05)	10.3.05	14.6.05	Treasurer	17.3.05	10.6.05	5(15.6.05)
Superannuation Bill 2005	5(1.6.05)	12.5.05	14.6.05	Finance and Administration	1.6.05	14.6.05	5(15.6.05)
Trade Practices Amendment (National Access Regime) Bill 2005	6(15.6.05)	2.6.05		Treasury	15.6.05		