

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



**Alert Digest**

**No. 11 of 2005**

**14 September 2005**



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

**Alert Digest No. 11 of 2005**

**14 September 2005**

**ISSN 1329-668X**



# Senate Standing Committee for the Scrutiny of Bills

## Members of the Committee

Senator R Ray (Chair)  
Senator B Mason (Deputy Chair)  
Senator G Barnett  
Senator D Johnston  
Senator A McEwen  
Senator A Murray

## Terms of Reference

Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
  - (iv) inappropriately delegate legislative powers; or
  - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.



## TABLE OF CONTENTS

---

### Commentary on bills

Appropriation (Regional Telecommunications Services) Bill 2005-2006	5
Avoiding Dangerous Climate Change (Climate Change Trigger) Bill 2005	6
• Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2005	7
• Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005	10
• Student Assistance Legislation Amendment Bill 2005	15
• Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005	17
Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005	18
• Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005	19
• Telstra (Transition to Full Private Ownership) Bill 2005	21

### Commentary on amendments to bills

• Workplace Relations (Better Bargaining) Bill 2005	24
---	----

- **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.



## **Appropriation (Regional Telecommunications Services) Bill 2005-2006**

Introduced into the House of Representatives on 7 September 2005

Portfolio: Finance and Administration

### **Background**

This bill is one of five bills introduced on 7 and 8 September 2005 proposing the sale of the remaining Commonwealth equity interest in Telstra.

This bill appropriates money (\$219.218 million) out of the Consolidated Revenue Fund to provide telecommunications services to regional, rural and remote Australia incentives for Internet service providers to supply higher bandwidth services to those areas at prices comparable to those available in metropolitan areas.

The bill is being treated as a supplementary appropriation bill. Portfolio supplementary estimates statements were tabled in the Senate on 7 September 2005.

*The Committee has no comment on this bill.*

## **Avoiding Dangerous Climate Change (Climate Change Trigger) Bill 2005**

Introduced into the House of Representatives on 5 September 2005

By Mr Albanese

### **Background**

This bill amends the *Environment Protection and Biodiversity Conservation Act 1999* to require ministerial approval of climate change actions. The Minister would be required to consider whether carbon dioxide (or equivalent) emissions will be minimised by the use of best practice environmental management and low emissions technology.

*The Committee has no comment on this bill.*

## **Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2005**

Introduced into the House of Representatives 21 October 2002 by Mr Katter and reintroduced, on 5 September 2005, in an amended form.

### **Background**

The bill proposes to amend the *Fuel Quality Standards Act 2000* to provide for a regulatory regime that enables the inclusion of ethanol and other renewable fuels in motor vehicle fuels.

### **Explanatory memorandum**

The Committee notes that the bill, introduced as a private Member's bill, was introduced without an explanatory memorandum. In undertaking its work, the Committee places considerable reliance on the explanatory material that accompanies each bill.

Private Senators' and private Members' bills are often accompanied only by a second reading speech. The consideration of these bills by the Committee and by the Parliament is assisted if they are accompanied by explanatory memoranda. Explanatory memoranda also provide an opportunity for Members and Senators to set out in more detail the policies reflected in these bills.

The committee recognises, of course, that private Senators and Members do not generally have access to the resources of departments and agencies to assist in the development of such documents. In its *Third Report of 2003*, on the quality of explanatory memoranda, the Committee recommended that the Department of the Senate develop a set of guidelines to assist Senators with the preparation of private bills and explanatory material. This guide, which is available from the Senate Procedure Office and on the Senate's intranet site, may also assist Members in preparing explanatory memoranda.

## **Commencement on Proclamation Schedule 1**

The Committee takes the view that Parliament is responsible for determining when laws are to come into force, and that commencement provisions should contain appropriate restrictions on the period during which legislation might commence. This view has long been reflected in the drafting directions issued by the Office of Parliamentary Counsel (currently *Drafting Direction 2005, No. 10* at paragraphs 16 to 22). The drafting direction provides that a clause which provides for commencement by proclamation should also specify a period or date after which the Act either commences or is taken to be repealed. It also provides that any proposal to defer commencement for more than 6 months after assent should be explained in the explanatory memorandum.

Item 2 in the table to subclause 2(1) in this bill provides that the amendments proposed in Schedule 1 would commence only on a ‘day or days to be fixed by Proclamation.’ As there is no explanatory memorandum to the bill, the Committee has no means of knowing the reason the provision does not comply with the general rule stated in paragraph 18 of the drafting direction. The Committee **seeks the advice of the proposer of the bill** as to whether the commencement clause might not be subject to appropriate restrictions, as set out in the drafting direction.

*Pending the proposer’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 Schedule 1, item 1**

The offences created by new subsections 29M(1) and 29N(5) of the *Fuel Quality Standards Act 2000*, to be inserted by item 1 of Schedule 1 to this bill, are offences of strict liability.

In its *Sixth Report of 2002* the Committee reported on the *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. It recommended a range of principles which the Committee concluded should form the framework for Commonwealth policy and practice in relation to strict and absolute liability.

In February 2004, the Minister for Justice and Customs published a *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers*, which draws together the principles of the criminal law policy of the Commonwealth. Part 4.5 of the Guide contains a statement of the matters which should be considered in framing strict and absolute liability offences.

The Committee will generally draw to Senators' attention provisions which create strict liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill.

As there is no explanatory memorandum to the bill, the Committee has no means of knowing whether the proposer of the bill had regard to the relevant principles. The Committee **seeks the advice of the proposer of the bill** as to whether the imposition of strict liability is justified in these circumstances and, further, whether consideration has been given to the principles contained in the Committee's *Sixth Report of 2002* and the matters listed at Part 4.5 of the Guide.

*Pending the proposer'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.*

## **Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005**

Introduced into the House of Representatives on 5 September 2005

By Mr Kerr

### **Background**

The bill proposes to establish the Parliamentary (Judicial Misbehaviour or Incapacity) Commission to report to the Parliament, upon a reference from either House, whether, in its opinion, facts amounting to proved misbehaviour or incapacity of a federal justice exist, as would warrant the removal of the justice from office by means of section 72 of the Constitution.

The bill also amends the *Parliamentary Privileges Act 1987*, in the same terms as Parliamentary Privileges Amendment Bill 2005, introduced by Mr Kerr on 20 June 2005.

### **Explanatory memorandum**

The Committee notes that the bill, introduced as a private Member's bill, was introduced without an explanatory memorandum. In undertaking its work, the Committee places considerable reliance on the explanatory material that accompanies each bill.

Private Senators' and private Members' bills are often accompanied only by a second reading speech. The consideration of these bills by the Committee and by the Parliament is assisted if they are accompanied by explanatory memoranda. Explanatory memoranda also provide an opportunity for Members and Senators to set out in more detail the policies reflected in these bills.

The committee recognises, of course, that private Senators and Members do not generally have access to the resources of departments and agencies to assist in the development of such documents. In its *Third Report of 2003*, on the quality of explanatory memoranda, the Committee recommended that the Department of the Senate develop a set of guidelines to assist Senators with the preparation of private bills and explanatory material. This guide, which is

available from the Senate Procedure Office and on the Senate's intranet site, may also assist Members in preparing explanatory memoranda.

## **Commencement**

### **Clauses 5 to 46, subclause 2(2)**

The Committee takes the view that Parliament is responsible for determining when laws are to come into force, and that commencement provisions should contain appropriate restrictions on the period during which legislation might commence. This view has long been reflected in the drafting directions issued by the Office of Parliamentary Counsel (currently *Drafting Direction 2005, No. 10* at paragraphs 16 to 22).

Subclause 2(2) of the bill provides that clauses 5 to 46 are to commence 'on the day on which an Act which appropriates money for the remuneration and allowances of members and any other expenses occasioned by the operation of this Act receives the Royal Assent.' Paragraph 32 of the drafting direction notes that such provisions are 'generally undesirable', as it is difficult for a reader of the bill to know whether it has commenced. The Committee **seeks the advice of the proposer of the bill** whether there could not be a further provision declaring the bill will not commence if the requisite appropriation has not been made within a fixed time of this bill receiving Royal Assent.

*Pending the proposer'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.*

## **Search warrants — Judicial oversight**

### **Subclauses 22(1) and 9(2)**

Subclause 22(1) provides that the commission to be created by this legislation, or a member of that commission, is empowered to issue a search warrant. It is a long-standing principle of the committee that 'the power to issue warrants to enter and search premises should only be conferred on judicial officers' [*Fourth Report of 2000 – Entry and search provisions in Commonwealth*

*legislation*, p. 51]. Although, by virtue of subclause 9(2), one member of the commission is required to be a judge or retired judge, the other two members need not have held judicial office. The bill makes no distinction as to which members of the commission may issue a search warrant.

As there is no explanatory memorandum to the bill, the Committee has no means of knowing the reason for this provision. The Committee considers that the provision may trespass on personal rights and liberties.

The Committee **seeks from the proposer of the bill** an explanation of the reasons for providing that search warrants may be issued by persons who may not be judicial officers.

*Pending the proposer'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.*

### **Apprehension warrant — Judicial oversight Subclauses 25(1) and 9(2)**

Subclause 25(1) provides that the Presiding Member of the commission is empowered to issue a warrant for the apprehension of any person who fails to attend the commission in answer to a summons. Although, by virtue of subclause 9(2), one member of the commission is required to be a judge or retired judge, the bill does not require the Presiding Member to have held judicial office.

As there is no explanatory memorandum to the bill, the Committee has no means of knowing the reason for this provision. The Committee **seeks from the proposer of the bill** an explanation of the reasons for providing that an apprehension warrant may be issued by a person who may not be a judicial officer.

*Pending the proposer'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 32(1) and (2) and 33(1)**

The offences proposed to be created by subclauses 32(1) and (2) and 33(1) are offences of strict liability.

In its *Sixth Report of 2002* the Committee reported on the *Application of Absolute and Strict Liability Offences in Commonwealth Legislation*. It recommended a range of principles which the Committee concluded should form the framework for Commonwealth policy and practice in relation to strict and absolute liability.

In February 2004, the Minister for Justice and Customs published a *Guide to the Framing of Commonwealth Offences, Civil Penalties and Enforcement Powers*, which draws together the principles of the criminal law policy of the Commonwealth. Part 4.5 of the Guide contains a statement of the matters which should be considered in framing strict and absolute liability offences.

The Committee will generally draw to Senators' attention provisions which create strict liability offences. Where a bill creates such an offence, the Committee considers that the reasons for its imposition should be set out in the explanatory memorandum which accompanies the bill.

As there is no explanatory memorandum to the bill, the Committee has no means of knowing whether the proposer of the bill had regard to the relevant principles. The Committee **seeks the advice of the proposer of the bill** as to whether the imposition of strict liability is justified in these circumstances and, further, whether consideration has been given to the principles contained in the Committee's *Sixth Report of 2002* and the matters listed at Part 4.5 of the Guide.

*Pending the proposer'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.*

## **Abrogation of the privilege against self-incrimination**

### **Clause 35**

Clause 35 would abrogate the privilege against self-incrimination for a person required to give information, produce a document or answer a question under clause 32. At common law, people can decline to answer questions on the grounds that their replies might tend to incriminate them. Legislation which interferes with this common law entitlement trespasses on personal rights and liberties.

The Committee does not see this privilege as absolute, recognising that the public benefit in obtaining information may outweigh the harm to civil rights. One of the factors the Committee considers is the subsequent use that may be made of any incriminating disclosures. The Committee will usually look for provisions that limit the circumstances in which information so provided is admissible in evidence in proceedings against the affected person to determine whether the provisions strike a reasonable balance between the competing interests of obtaining information and protecting individuals' rights.

The Committee **seeks the advice of the proposer of the bill** as to whether this provision should not be accompanied by further provisions limiting the circumstances in which information is admissible in evidence in proceedings against the affected person.

*Pending the proposer'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.*

## Student Assistance Legislation Amendment Bill 2005

Introduced into the House of Representatives on 7 September  
Portfolio: Education, Science and Training

### Background

This bill amends the *Student Assistance Act 1973* and the *Social Security Act 1991* to make it clear that students cannot apply for assistance under the Student Financial Supplement Scheme, which closed on 31 December 2003. The bill also aligns Student Financial Supplement Scheme repayment thresholds and indexation with the High Education Loan Programme.

The bill also amends the *Student Assistance Act 1973* to make express provision for the incorporation of an instrument ‘as existing or in force from time to time’, for the purposes of section 14 of the *Legislative Instruments Act 2003*.

The bill also contains minor consequential amendments.

### Incorporation of extrinsic material Schedule 2, item 10

Proposed new subsection 48(2) of the *Student Assistance Act 1973*, to be inserted by item 10 of Schedule 2 to this bill, would permit regulations made for the purposes of subsection 48(1) to ‘apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time’, in derogation of section 14 of the *Legislative Instruments Act 2003*. The explanatory memorandum states that the purpose of this provision is ‘to eliminate the need to make new regulations ... whenever guidelines for the non-statutory ABSTUDY and Assistance for Isolated Children schemes are altered.’

While that purpose may be regarded as a sufficient reason for this provision, the Committee notes that its terms appear to go very much wider than that and permit the incorporation into the regulations of any material at all. The Committee sought the Minister’s advice in relation to this matter when the

same amendment was proposed in the Student Assistance Amendment Bill 2003. That bill lapsed prior to the commencement of this Parliament.

In relation to the earlier bill, the Minister explained that the new subsection is subject to appropriate oversight, as the parent section – section 48 – ‘can only impose an obligation on a person to notify an event where the event is prescribed in regulations (which either House of Parliament may disallow)’. [Tenth Report of 2003, at p. 247]

The Committee was – and is – prepared to accept that explanation.

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

## **Telecommunications (Carrier Licence Charges) Amendment (Industry Plans and Consumer Codes) Bill 2005**

Introduced into the House of Representatives on 7 September  
Portfolio: Communications, Information Technology and the Arts

### **Background**

This bill is one of five bills introduced on 7 and 8 September 2005 proposing the sale of the remaining Commonwealth equity interest in Telstra.

This bill amends the *Telecommunications (Carrier Licence Charges) Act 1997* and the *Telecommunications (Carrier Licence Charges) Amendment Act 1998* to enable industry bodies or associations that develop consumer-related codes of practice to seek reimbursement of costs from the Australian Communications and Media Authority.

The bill also contains consequential amendments and minor technical amendments.

### **Retrospective commencement**

#### **Schedule 2**

Item 3 in the table to subclause 2(1) in this bill provides that the amendment proposed in Schedule 2 would commence on 30 June 1998, immediately after the commencement of a provision in the *Telecommunications (Carrier Licence Charges) Amendment Act 1998*.

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 notes, on page 12, that the purpose of this amendment is to ‘correct a minor drafting error’ and that it would not effect any change in the substance of the law.

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

## **Telecommunications Legislation Amendment (Competition and Consumer Issues) Bill 2005**

Introduced into the Senate on 8 September

Portfolio: Communications, Information Technology and the Arts

### **Background**

This bill is one of five bills introduced on 7 and 8 September 2005 proposing the sale of the remaining Commonwealth equity interest in Telstra.

The bill amends the *Trade Practices Act 1974* (TPA) and the *Telecommunications Act 1997* to:

- provide for the operational and organisational separation of Telstra;
- improve the operation of the telecommunications-specific competition regime in the TPA;
- encourage ‘any-to-any’ connectivity; and
- facilitate regulation of the telecommunications industry by the Australian Communications and Media Authority (ACMA).

The bill also makes a number of other changes to the telecommunications regime.

*The Committee has no comment on this bill.*

## **Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005**

Introduced into the House of Representatives on 7 September  
Portfolio: Communications, Information Technology and the Arts

### **Background**

This bill is one of five bills introduced on 7 and 8 September 2005 proposing the sale of the remaining Commonwealth equity interest in Telstra.

This bill:

- amends the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to establish a Communications Fund and provide for reviews of the adequacy of telecommunications services in regional, rural and remote parts of Australia;
- provides for industry bodies or associations to apply for reimbursement for certain costs incurred in developing consumer-related industry codes;
- provides that at least two directors of Telstra must have experience in the communication needs of regional, rural and remote areas of Australia; and
- facilitates appropriations in connection with a Telstra sale scheme.

The bill also makes a consequential amendment to the *Telstra Corporation Act 1991*.

### **Legislative Instruments Act — Disallowance Schedule 2, item 4**

Proposed new subsection 158P(8) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, to be inserted by item 4 of Schedule 2 to this bill, would declare a determination under proposed paragraph 158P(3)(b) to be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but not to be subject to disallowance under section 42 of that Act.

Proposed subsection 158P(3) provides that the first review of regional telecommunications must start before the end of 2008. The proposed paragraph enables the Minister to specify an earlier date, but not a later one. The explanatory memorandum notes that ‘the Minister, following consultation with relevant Ministers, will be in the best position to decide whether the first review should commence ... earlier than the end of 2008’, and that it is therefore inappropriate for such a determination to be subject to disallowance.

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

## Telstra (Transition to Full Private Ownership) Bill 2005

Introduced into the Senate on 8 September

Portfolio: Communications, Information Technology and the Arts

### Background

One of five bills introduced on 7 and 8 September 2005, this bill amends the *Telstra Corporation Act 1991* to allow the Commonwealth to sell its remaining equity interest in Telstra.

### Commencement

#### Schedule 1, Part 2

The Committee takes the view that Parliament is responsible for determining when laws are to come into force, and that commencement provisions should contain appropriate restrictions on the period during which provisions might commence. This view has long been reflected in the drafting directions issued by the Office of Parliamentary Counsel (currently *Drafting Direction 2005, No. 10* at paragraphs 16 to 22).

Item 3 in the table to subclause 2(1) provides that the amendment proposed by Part 2 of Schedule 1 would commence on a day, as designated by the Minister, on which the majority of the voting shares in Telstra are held by persons other than the Commonwealth. The assumption behind this provision is that such a day will occur, and presumably relatively soon after Assent. However, the Committee **seeks the Minister's advice** as to whether item 3 in the table to subclause 2(1) should not also include provision to the effect that, if the majority of the voting shares in Telstra are still held by the Commonwealth at some fixed period after the bill has been assented to, then the measure will be deemed to be repealed at that time.

*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.*

### **Legislative Instruments Act — Disallowance Subclauses 3(5) and 4(5)**

Subclauses 3(5) and 4(5) provide that the ministerial declaration that the majority of the voting shares in Telstra are held by persons other than the Commonwealth, and the further declaration that 85% of the voting shares in Telstra are held by persons other than the Commonwealth, will be legislative instruments for the purposes of the *Legislative Instruments Act 2003*, but will not be subject to disallowance under section 42 of that Act.

The explanatory memorandum points out, on pages 7 and 9 respectively, that ‘the Minister, acting on appropriate advice from Telstra and others, will be in the best position to decide’ when either of those events occurs, and suggests that it is therefore inappropriate for such a declaration to be subject to disallowance.

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

### **Legislative Instruments Act — Disallowance Schedule 1, item 11**

Proposed new subsection 8AJ(3B) of the *Telstra Corporation Act 1991*, to be inserted by item 11 of Schedule 1 to this bill, would provide that a determination by the Minister for Finance, setting out the rules that are to be complied with by a Telstra sale scheme, will be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*, but will not be subject to disallowance under section 42 of that Act. However, the explanatory memorandum points out, on page 12, that such a determination ‘is, in effect, a direction to Telstra, which is exempt from Parliamentary disallowance under item 41 in the table to subsection 44(2) of the *Legislative Instruments Act 2003*.’

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

**Legislative Instruments Act — Declarations**  
**Schedule 1, items 13 and 27**

Proposed new subsections 8AJ(6C), 8AYA(11) and 8AYB(6) of the *Telstra Corporation Act 1991*, to be inserted by items 13 and 27 respectively of Schedule 1, provide that various ministerial declarations are not legislative instruments for the purposes of the *Legislative Instruments Act 2003*. However, the explanatory memorandum points out, on pages 13, 20 and 21 respectively, that such declarations are administrative in character, and that therefore the new subsections are no more than declaratory of the existing law. This explanation meets the Committee's concerns.

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

**Legislative Instruments Act — Declarations**  
**Schedule 1, items 16 and 40**

Proposed new subsection 8AJA(7) of the *Telstra Corporation Act 1991* and proposed new subclause 12(8) of the Schedule to the *Telstra Corporation Act 1991*, to be inserted by items 16 and 40 respectively of Schedule 1 to this bill, provide that various ministerial declarations will be legislative instruments for the purposes of the *Legislative Instruments Act 2003*, but will not be subject to disallowance under section 42 of that Act. However, the explanatory memorandum points out, on pages 16 and 27 respectively, that it is 'in the interests of ensuring commercial certainty in connection with a Telstra sale scheme' that the declarations are stated not to be subject to disallowance.

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

## COMMENTARY ON AMENDMENTS TO BILLS

### **Workplace Relations Amendment (Better Bargaining) Bill 2005**

The Committee considered this bill in its *Alert Digest No. 3 of 2005* and determined not to make any comment on the bill as introduced. The bill was amended in the House of Representatives on 7 September 2005.

#### **Possible retrospectivity**

#### **Schedule 2, item 2; Schedule 3, item 2; Schedule 5, item 7**

The amendments add a new Schedule 5, dealing with pattern bargaining, and introduces amendments to vary the application provisions in relation to Schedules 2 and 3 of the bill. These application provisions, including a provision relating to the new Schedule 5, provide that amendments will apply in relation to industrial action engaged in or organised after the commencement of the relevant Schedule, whether or not the action began *before* that commencement.

These amendments have been described in the House as having a retrospective effect. 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. It appears that the effect of the application provisions may be to strengthen the position of one of the parties to ongoing negotiations, possibly at an advanced stage in those negotiations.

The Committee **seeks the Minister's advice** as to whether the provisions of the bill, as amended, have a retrospective effect and, if so, whether that retrospectivity will operate to the detriment of any person.

*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.*

## 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	
<b>Bills dealt with in 2004</b>							
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)
<i>Copyright Legislation Amendment Act 2004</i>	12(8.12.04)	9.12.04	30.11.04	Attorney-General	9.12.04	2.2.05	1(9.2.05)
<i>James Hardie (Investigations and Proceedings) Act 2004</i>	12(8.12.04)	2.12.04	8.12.04	Treasury	9.12.04	1.7.05	7(10.8.05)
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)
<b>Bill dealt with in 2005</b>							
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)
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)
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)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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)
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)
Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005	8(10.8.05)		23.6.05	Transport and Regional Services	11.8.05	8.9.05	10(14.9.05)
Corporations (Aboriginal and Torres Strait Islander) Bill 2005	8(10.8.05) 9(17.8.05)	23.6.05		Immigration and Multicultural and Indigenous Affairs	11.8.05		
<i>Defence Amendment Act 2005</i>	2(9.3.05)	10.2.05	7.3.05	Defence	10.3.05	22.6.05	7(10.8.05)
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	16.6.05	Communications, Information Technology and the Arts	1.6.05	21.6.05	6(22.6.05)
Higher Education Legislation Amendment (Workplace Relations Requirements) Bill 2005	8(10.8.05)	23.6.05		Education, Science and Training	11.8.05		
Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005	5(1.6.05)	18.8.05	26.5.05	Justice and Customs	1.6.05	26.7.05	7(10.8.05)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
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	20.6.05	Treasurer	12.5.05	31.5.05	5(15.6.05)
Offshore Petroleum Bill 2005	8(10.8.05)	23.6.05	18.8.05	Industry, Tourism and Resources	11.8.05	19.8.05	9(7.9.05)
Offshore Petroleum (Annual Fees) Bill 2005	8(10.8.05)	23.6.05	18.8.05	Industry, Tourism and Resources	11.8.05	19.8.05	9(7.9.05)
Offshore Petroleum (Registration Fees) Bill 2005	8(10.8.05)	23.6.05	18.8.05	Industry, Tourism and Resources	11.8.05	19.8.05	9(7.9.05)
Payment Systems (Regulation) Amendment Bill 2005	3(16.3.05)	10.3.05	14.6.05	Treasury	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)
Tax Laws Amendment (2005 Measures (No. 4) Bill 2005	8(10.8.05)	23.6.05	11.8.05	Treasury	11.8.05	16.8.05	8(17.8.05)
Telecommunications and Other Legislation Amendment (Protection of Submarine Cables and Other Measures) Bill 2005	8(10.8.05)	23.6.05	11.8.05	Communications, Information Technology and the Arts	11.8.05	7.9.05	10(14.9.05)
Therapeutic Goods Amendment Bill 2005	10(7.9.05)	17.8.05		Health and Ageing	8.9.05		

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Trade Practices Amendment Bill (No. 1) 2005	10(7.9.05)	10.2.05	10.3.05	Treasury	8.9.05		
Trade Practices Amendment (National Access Regime) Bill 2005	6(15.6.05)	2.6.05		Treasury	15.6.05	11.8.05	8(17.8.05)