

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

Alert Digest

No. 1 of 2006

8 February 2006

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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.

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- **The Committee has commented on these bills**

This Digest is circulated to all Honourable Senators.
Any Senator who wishes to draw matters to the attention of the
Committee under its terms of reference is invited to do so.

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- **The Committee has commented on these bills**

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Aged Care Amendment (2005 Measures No. 1) Bill 2005

Introduced into the House of Representatives on 8 December 2005
Portfolio: Ageing

Background

This bill amends the *Aged Care Act 1997* to enable the making of Prudential Standards which will apply to approved providers.

Together with the Aged Care (Bond Security) Bill 2005 and the Aged Care (Bond Security) Levy Bill 2005, this bill provides for increased regulation of approved providers of aged care and guarantees the repayment of bond balances to residents in the event that an approved provider becomes insolvent and is unable to repay bonds.

The bill also adjusts the timeframes in which providers must refund an accommodation bond balance (particularly in cases where a resident has died) and requires providers to pay interest on late accommodation bond balances.

The bill also contains consequential amendments to ensure rules relating to the bonds apply to residential care services as well as flexible care services.

The Committee has no comment on this bill.

Aged Care (Bond Security) Bill 2005

Introduced into the House of Representatives on 8 December 2005
Portfolio: Ageing

Background

Introduced with the Aged Care Amendment (2005 Measures No. 1) Bill 2005 and the Aged Care (Bond Security) Levy Bill 2005, this bill establishes a scheme to guarantee the repayment of bond balances and interest, by the Commonwealth, to aged care residents if an approved provider of residential or flexible care services becomes insolvent.

Standing appropriations – Audit Report No. 15 of 2004-05 Clause 17

Clause 17 of this bill provides that any refund amounts are to be paid from the Consolidated Revenue Fund. This appears to be a special appropriation of the kind referred to by the Auditor-General in Audit Report No. 15 of 2004-05.

Standing appropriations enable entities to spend money from Commonwealth revenue, subject to meeting legislative criteria. Once enacted, the expenditure they involve does not require regular parliamentary approval and therefore escapes parliamentary control. In light of Audit Report No. 15 of 2004-05, the Committee determined that, as part of its standard procedures for reporting on bills, it should draw Senators' attention to the presence in bills of standing appropriations under provisions 1(a)(iv) and (v) of its terms of reference.

As set out in its *Fourteenth Report of 2005*, the Committee looks to the explanatory memorandum to the bill for an explanation of the reason for the standing appropriation. In this case, the explanatory memorandum merely describes the content of the proposed section and does not advise the reader of the justification of the provision and the exclusion of the appropriation from subsequent parliamentary scrutiny and renewal through the ordinary appropriations process. The Committee does not question the need to ensure the liabilities dealt with by this bill are properly met, only whether the use of a standing appropriation is appropriate.

Accordingly, the Committee **seeks from the Minister** an explanation justifying the inclusion of a standing appropriation in the bill and the exclusion of that appropriation from subsequent parliamentary scrutiny and renewal through the ordinary appropriations process.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) 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.

Aged Care (Bond Security) Levy Bill 2005

Introduced into the House of Representatives on 8 December 2005

Portfolio: Ageing

Background

Introduced with the Aged Care Amendment (2005 Measures No. 1) Bill 2005 and the Aged Care (Bond Security) Bill 2005, this bill enables the imposition of a levy on approved providers in order to recover any costs incurred by the Government as a result of repaying accommodation bond balances to residents in the event that an approved provider becomes insolvent.

The Committee has no comment on this bill.

Australian Sports Anti-Doping Authority Bill 2005

Introduced into the House of Representatives on 7 December 2005

Portfolio: Arts and Sport

Background

This bill establishes the Australian Sports Anti-Doping Authority (ASADA) to replace the Australian Sports Drug Agency. ASADA will also investigate potential additional sports doping violations, present cases against alleged offenders at hearings conducted by the international Court of Arbitration for Sport and other sports tribunals, determine mandatory anti-doping rules to be included in Australian Sports Commission (ASC) funding agreements, and advise the ASC of the performance of sports organisations in observing these requirements.

The bill establishes ASADA as a body corporate consisting of a Chair, Deputy Chair and between one and five other members.

Delegation of legislative authority

Clause 12

Clause 12 would permit the National Anti-Doping Scheme (which, under clause 9, is to be set up by regulation) to apply, adopt or incorporate any matter contained in specified international instruments relating to anti-doping 'as in force or existing from time to time', in derogation of the provisions of subsection 14(2) of the *Legislative Instruments Act 2003*. The effect of clause 12 is therefore to incorporate into Australian delegated legislation material which neither the Parliament nor any committee of the Parliament has seen.

Paragraph (iv) of the Committee's terms of reference requires the Committee to consider whether provisions 'inappropriately delegate legislative power.' While clause 12 is a clear delegation of legislative authority, the explanatory memorandum seeks to justify the provision by observing that the bodies set up by this legislation need to act quickly to respond to any changes that may be made to the World Anti-Doping Code or an International Standard that has been adopted by the World Anti-Doping Agency. The Committee may be

prepared to accept this justification, but **seeks the Minister's advice** as to why the adoption of changes made to relevant international instruments should not be subject to Parliamentary oversight and disallowance, and further, whether the bodies could not equally quickly respond by explicitly making fresh amending regulations subject to the usual tabling and disallowance regime.

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.

Legislative Instruments Act - Declarations Subclauses 48(6) and (7)

Subclauses 48(6) and (7) provide that neither an instrument under subclause 48(1) nor a direction under subclause 48(3) is a legislative instrument. It appears from the context that these provisions are no more than declaratory, as the instrument and direction referred to appear to be administrative and not legislative in character.

Where a provision specifies that an instrument is not a legal instrument, the Committee would expect the explanatory memorandum to explain whether the provision is merely declaratory (and included for the avoidance of doubt). In this case, the explanatory memorandum merely describes the content of subclauses 48(6) and (7), and does not advise the reader whether they are no more than declaratory. The failure of the explanatory memorandum to live up to its name on this occasion is surprising, given that subclauses 75(5), (6) and (7) are in very much the same form as subclauses 48(6) and (7), but the explanatory memorandum, on page 37, suggests that subclauses 75(5), (6) and (7) are 'intended to clarify to the reader that such a record [as is provided for under subclauses 75(1) and (2)] is not a legislative instrument. [The subclauses are] not an exemption to the *Legislative Instruments Act 2003*.' The Committee **seeks the Minister's advice** as to whether subclauses 48(6) and (7) are indeed merely declaratory of the law.

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

Australian Sports Anti-Doping Authority (Consequential and Transitional Provisions) Bill 2005

Introduced into the House of Representatives on 7 December 2005
Portfolio: Arts and Sport

Background

Introduced with the Australian Sports Anti-Doping Authority Bill 2005, this bill makes consequential amendments to a number of Commonwealth Acts as a result of the establishment of the Australian Sports Anti-Doping Authority (ASADA).

The bill contains transitional provisions dealing with the vesting of assets and liabilities of the Australian Sports Drug Agency (ASDA) in the Commonwealth and provides for the continuing operation of ASDA instruments and the ASDA Act; the transfer of money from ASDA to ASADA; the termination of ASDA members; the disclosure of certain protection information by the Australian Sports Commission to ASADA and annual reports.

The bill also repeals the *Australian Sports Drug Agency Act 1990* and provisions in the *Australian Sports Commission Act 1989* relating to the functions and the disclosure of information by the Australian Sports Commission.

The Committee has no comment on this bill.

Bankruptcy Legislation Amendment (Anti-avoidance) Bill 2005

Introduced into the House of Representatives on 7 December 2005
Portfolio: Attorney-General

Background

This bill amends the *Bankruptcy Act 1966* to strengthen existing anti-avoidance provisions which allow trustees to recover property disposed of prior to bankruptcy or owned by a third person, but acquired by that person using the bankrupt's resources.

The Committee has no comment on this bill.

Crimes Act Amendment (Incitement to Violence) Bill 2005

Introduced into the House of Representatives on 5 December 2005
By Ms Roxon

Background

This bill amends the *Crimes Act 1914* to deal with threats and incitement because of race, colour, religion or national or ethnic origin.

The Committee has no comment on this bill.

Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005

Introduced into the Senate on 7 December 2005

Portfolio: Defence

Background

This bill amends Part IIIAAA of the *Defence Act 1903* to allow the use of Australian Defence Force (ADF) elements to protect states and territories against domestic violence and to protect Commonwealth interests where state and territory jurisdictions do not apply.

The bill:

- amends current call-out provisions to provide flexibility and speed with which the ADF could respond should Australia face a terrorist incident in limited or no notice circumstances;
- excises the restrictions on the use of Reserve forces in support of domestic security;
- addresses the identification of ADF members to enhance operational flexibility;
- reduces the notification requirement in circumstances where such broadcasts would jeopardise an operation;
- redefines 'subject premises' within the broader descriptor of 'subject incidents' to allow the ADF to operate in a mobile environment;
- allows for expedited call-out arrangements to deal with rapidly developing threats;
- empowers the Prime Minister, and in his or her absence, two other authorising Ministers, to make written or verbal call-out orders;
- allows the use of reasonable and necessary force when protecting critical infrastructure designated by the authorising Ministers; and
- enables 'call out' of the ADF to respond to incidents or threats to Commonwealth interests in the air environment and offshore areas.

Trespass on personal rights and liberties
Schedule 1, item 15 and Schedule 3, item 2

Proposed new sections 51SE, 51SG, 51SJ and 51SK of the *Defence Act 1903*, to be inserted by item 15 of Schedule 1 to this bill, and proposed new section 51ST of the same Act, to be inserted by item 2 of Schedule 3, would give extensive powers to members of the Defence Force, including the use of force, to control the movement of persons, vessels or aircraft and to search property or persons without a warrant, under the command of the Chief of the Defence Force, if the Defence Force has been utilised in an offshore area. The Committee notes that there is a risk that these provisions may be regarded as trespassing on the personal rights and liberties of those people who are the subject of the exercise of such powers. In accordance with its practice, the Committee makes no final determination of this matter, but **leaves for the Senate as a whole** the question of whether these provisions unduly trespass upon personal rights and liberties.

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

Abrogation of the privilege against self-incrimination
Schedule 1, item 15

Proposed new subsection 51SO(4) of the *Defence Act 1903*, to be inserted by item 15 of Schedule 1 to this bill, would abrogate the privilege against self-incrimination for a person required to answer a question or produce a document under proposed new subsection 51SO(3).

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. In this case, however, new subsection 51SO(5)

limits the circumstances in which information so provided is admissible in evidence in proceedings against the affected person. The Committee accepts that it strikes 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.

Legislative Instruments Act — Declarations

Schedule 6, item 14

Proposed new section 51XB of the *Defence Act 1903*, to be inserted by item 14 of Schedule 6 to this bill, declares that an 'order, authorisation or declaration made under [Part IIIAAA of the Act, as proposed to be amended by this bill] is not a legislative instrument.'

Where a provision specifies that an instrument is not a legislative instrument, the Committee would expect the explanatory memorandum to explain whether the provision is merely declaratory (and included for the avoidance of doubt) or expresses a policy intention to exempt an instrument (which is legislative in character) from the usual tabling and disallowance regime set out in the Legislative Instruments Act. Unfortunately, in this case, the explanatory memorandum merely describes the content of the proposed section, and does not advise the reader whether it is no more than declaratory, or whether it is intended to create an exemption to the *Legislative Instruments Act 2003*. The Committee **seeks the Minister's advice** as to what is intended by this provision.

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.

Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005

Introduced into the House of Representatives on 8 December 2005
Portfolio: Special Minister of State

Background

The bill contains amendments arising from some of the government-supported recommendations of the Joint Standing Committee on Electoral Matters' report on the 2004 Federal Election, tabled in October 2005.

The amendments cover a number of broad areas including enrolment and timing of the close of rolls, provisional voting, financial disclosure requirements in non-election periods, access to the electoral roll and its use, political party registration and the disclosure of political donations.

The bill also contains consequential amendments.

Commencement on Proclamation

Schedule 1, items 17 to 19, 21 to 23, 25 to 27 and 29 to 35

By virtue of items 3, 5, 7 and 9 in the table to subclause 2(1) of this bill, items 17 to 19, 21 to 23, 25 to 27 and 29 to 35 of Schedule 1 would commence on Proclamation, and may not commence until up to 8 months after Assent. The Committee generally looks for an explanation for any departure from the general rule, stated in paragraph 19 of Drafting Direction 2005, No. 10, of commencement being deferred for no more than 6 months after Assent. In this case, paragraph 41 of the explanatory memorandum explains that the period of 8 months 'will ensure that the [Australian Electoral Commission] has sufficient time to develop the necessary Information Technology systems and capacity to implement the new scheme [relating to proof of identification for electoral enrolment].'

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

Retrospective commencement

Schedule 2, item 29

Items 19 and 21 in the table to subclause 2(1) of this bill, items 1 to 27 and item 29 of Schedule 2 would commence on the day on which the bill was introduced into the Parliament. The purpose of the amendments is to increase the threshold below which donations to political parties do not need to be disclosed from \$1,500 to \$10,000, and the latter amount is indexed to the Consumer Price Index. 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 will have a detrimental effect on people. In this case, these amendments will clearly have some retrospective effect, but they are also clearly beneficial both to providers and recipients of political donations.

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

Trespass on personal rights – prisoners' voting rights

Schedule 1, item 15

Proposed new subsection 93(8AA) of the *Commonwealth Electoral Act 1918*, to be inserted by item 15 of Schedule 1, would remove the entitlement to vote at any Senate or House of Representatives election for any person serving a sentence of imprisonment. Since the current law removes that entitlement only for persons serving a sentence of 3 years or longer, it appears that the proposed new subsection trespasses on the personal rights of those persons currently serving a term of imprisonment of less than 3 years, and on the rights of those who have such a sentence imposed on them in the future. The Committee notes that the voting rights of prisoners have been the subject of debate over many years. The Committee's concerns on this question are set out in its *Seventh Report of 1998* and in its report *Work of the Committee during the 38th Parliament*. In accordance with its practice, the Committee makes no final determination of this matter, but **leaves for the Senate as a whole** the question of whether this provision *unduly* trespasses upon personal rights and liberties.

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.

Trespass on personal rights

Schedule 1, items 20, 24, 28, 39-45, 51, 52, 104-108

These amendments will provide for the electoral rolls to close three working days after the writs for an election have been issued. Currently section 155 of the Electoral Act provides for the rolls to close seven days after the writs for an election have been issued. The Committee notes that these amendments have the potential to trespass on the personal rights of those persons whose details are not correctly recorded on the electoral roll. The Committee makes no final determination of this matter, but **leaves for the Senate as a whole** the question of whether this provision *unduly* trespasses upon personal rights and liberties.

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

Family Law Amendment (Shared Parental Responsibility) Bill 2005

Introduced into the House of Representatives on 8 December 2005
Portfolio: Attorney-General

Background

This bill amends the *Family Law Act 1975* to move the management of family separation away from litigation and towards cooperative parenting. The bill is also intended to encourage people to take responsibility for resolving disputes themselves, in a non-adversarial manner, and allows the courts to better enforce parenting orders to ensure that the child's best interests are paramount.

The bill implements recommendations of the House of Representatives Standing Committee on Family and Community Affairs inquiry into child custody arrangements and of the House of Representatives Standing Committee on Legal and Constitutional Affairs in its report on the exposure draft of the bill.

The Committee has no comment on this bill.

Financial Framework Legislation Amendment Bill (No. 2) 2005

Introduced into the House of Representatives on 8 December 2005
Portfolio: Finance and Administration

Background

This bill amends the *Safety, Rehabilitation and Compensation Act 1988*, the *Aboriginal and Torres Strait Islander Act 2005* and 14 other Acts and repeals the *Employment Services Act 1994* and the *Loan Act 1977*.

The main purposes of the bill are to:

- update, clarify, align or integrate financial management provisions relating to certain special accounts established in various Acts;
- authorise Comcare to pay workers' compensation benefits to employees either through Commonwealth employers or direct to employees;
- extend to law enforcement agencies access to the modifications to the *Financial Management and Accountability Act 1997* that currently apply to intelligence or security agencies;
- correct, update and more clearly express provisions in the *Public Accounts and Audit Committee Act 1951*;
- transfer from the Treasurer to the Minister for Finance the power to approve the investment of surplus money by an Aboriginal and Torres Strait Islander body; and
- clarify that the Appropriation Acts provide the authority for an act of grace payment, or a payment in special circumstances to a person employed by the Commonwealth.

Retrospective commencement
Schedule 3, item 10

Item 5 in the table to subclause 2(1) of this bill, the amendment contained in item 10 of Schedule 3 would commence on 24 March 2005. 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 purpose of this amendment is to update the reference in subsection 206(2) of the *Native Title Act 1993* to legislation which commenced on that date, and that it makes no substantive change to the law.

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

Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Bill 2005

Introduced into the Senate on 7 December 2005

Portfolio: Fisheries, Forestry and Conservation

Background

This bill amends the *Fisheries Management Act 1991* and the *Fisheries Administration Act 1991* to:

- clarify the meaning of two of the Commonwealth's fisheries management objectives, particularly the economic efficiency objective;
- ensure that fisheries resources and the marine environment are managed in an efficient and ecologically sustainable manner;
- enable cooperative fisheries management arrangements to operate with more flexibility and efficiency;
- provide a more solid basis for environmental, economic and social factors relating to the management of Commonwealth fisheries;
- provide consistency and effective cooperation on the management of some fish stocks straddling Commonwealth, State and Northern Territory jurisdictions and allow for the alignment of jurisdictions with natural fisheries boundaries;
- provide a broad, express power to allow the government to amend, create or terminate existing and future Offshore Constitutional Settlement (OCS) fisheries arrangements; and
- allow the Commonwealth and one or more states to enter into a single OCS arrangement for a fishery.

The bill also contains savings and application provisions.

The Committee has no comment on this bill.

Future Fund Bill 2005

Introduced into the House of Representatives on 7 December 2005

Portfolio: Finance and Administration

Background

This bill establishes the Future Fund; the Future Fund Board of Guardians and the Future Fund Management Agency.

The Fund is intended to accumulate financial assets sufficient to offset the Government's unfunded superannuation liabilities by 2020.

The bill:

- grants the Treasurer and Minister for Finance the power to credit cash amounts and transfer financial assets to the Fund through a special account;
- allows the Government to transfer cash surpluses, future asset sales and some of the remaining equity in Telstra to the Fund; and
- quarantines all Fund assets for the purpose of making provision for the government's unfunded superannuation liabilities and provides for all earnings of the Fund to be reinvested.

The Future Fund Board of Guardians, consisting of a Chair and six other members (all part-time), will provide a separate legal identity from the government with statutory responsibility for managing the investments of the fund. The Board's remuneration will be set by the Remuneration Tribunal and members may be appointed or removed by responsible Ministers in accordance with the criteria set out in the bill. The Board will hold Fund investments in its own name on behalf of the Commonwealth.

Henry VIII clause

Subclause 18(6)

A ‘Henry VIII’ clause is an express provision which authorises the amendment of either the empowering legislation, or any other primary legislation, by means of delegated legislation. Since its establishment, the Committee has consistently drawn attention to Henry VIII clauses and other provisions which (expressly or otherwise) permit subordinate legislation to amend or take precedence over primary legislation. Such provisions clearly involve a delegation of power and are usually a matter of concern to the Committee.

The Future Fund Board will be bound by an Investment Mandate given to it by responsible Ministers. Subclause 18(6) provides that the Investment Mandate (which, by force of subclause 18(9) is a legislative instrument) prevails over the provisions of subclause 18(10) to the extent of any inconsistency. Subclause 18(6) is therefore a Henry VIII clause, as it allows delegated legislation to affect the operation of primary legislation. However, subclause 18(10) is stated in very general terms, as it requires the Future Fund Board of Guardians merely to ‘seek to maximise the return earned on the [Future] Fund over the long term, consistent with international best practice for institutional investors’. Furthermore, the Investment Mandate, being a legislative instrument, is subject to scrutiny by the Regulations and Ordinances Committee, which would bring to the attention of the Senate any instance of a clear disparity between the primary legislation of subclause 18(10) and the delegated legislation of the Investment Mandate.

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

Jurisdiction of Courts (Family Law) Bill 2005

Introduced into the Senate on 7 December 2005

Portfolio: Attorney-General

Background

This bill amends the *Family Law Act 1975*, the *Child Support (Registration and Collection) Act 1988* and the *Child Support (Assessment) Act 1989* to provide the Magistrates Court of Western Australia with substantially the same jurisdiction and appeal structure in relation to family law and child support matters as the Federal Magistrates Court.

The bill also contains application and technical provisions.

Retrospective commencement Schedule 1, items 28, 29 and 30

Items 3, 4 and 5 in the table to subclause 2(1) of this bill provide that the amendments contained in items 28, 29 and 30 of Schedule 1 would commence on 3 August 2005, immediately after the commencement of various items in Schedule 1 to the *Family Law Amendment Act 2005*. 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 purpose of these amendments is to correct earlier drafting errors, and that none of them makes any substantive change to the law.

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

Jurisdiction of the Federal Magistrates Court Legislation Amendment Bill 2005

Introduced into the Senate on 7 December 2005

Portfolio: Attorney-General

Background

This bill amends the *Trade Practices Act 1974*, the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Admiralty Act 1988* and the *Child Support (Registration and Collection) Act 1988* to expand the jurisdiction of the Federal Magistrates Court to include matters transferred to it by the Federal or Family Court, to confer new jurisdiction in matters arising under sections of the Trade Practices Act and to allow the Federal and State Supreme Courts to remit to the Family Magistrates Court (in addition to state and territory courts) proceedings commenced as actions *in rem*.

The bill also increases the monetary limit on damages that can be awarded by the Federal Magistrates Court from \$200,000 to \$750,000.

The Committee has no comment on this bill.

Ministers of State Amendment Bill 2005

Introduced into the House of Representatives on 8 December 2005
Portfolio: Finance and Administration

Background

This bill amends the *Ministers of State Act 1952* to increase (from 1 July 2005) the limit on the sum appropriated from the Commonwealth Consolidated fund in 2005/6 and beyond in respect of the salaries of Ministers of State.

The Committee has no comment on this bill.

OHS and SRC Legislation Amendment Bill 2005

Introduced into the House of Representatives on 7 December 2005

Portfolio: Employment and Workplace Relations

Background

This bill amends the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS(CE) Act) and the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), to:

- ensure Commonwealth authorities licensed under the SRC Act are also covered by the OHS(CE) Act; and change the name of the Act to the *Occupational Health and Safety Act 1991* to reflect its extended application;
- allow Comcare to charge all Commonwealth authorities an OHS contribution for the administration of the OHS(CE) Act; and
- validate payments purported to have been made under the SRC Act by some licensees and Commonwealth authorities for OHS contributions in the 2002-2003 financial year.

The bill also contains transitional and technical provisions and consequential amendments to other Acts.

Retrospective application

Schedule 2, part 2

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.

The purpose of Part 2 of Schedule 2 to this bill is to validate payments made by various Commonwealth authorities during the 2002-2003 financial year. The need for this validation, as is explained in the explanatory memorandum, is a drafting oversight when legislation amending the *Safety Rehabilitation and Compensation Act 1988* came into force in that financial year. During that

year, Comcare charged the various Commonwealth authorities for services it provided to them, but it has since been determined that the charge was without legislative authority. Schedule 2 to this bill retrospectively provides that legislative authority.

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

Tax Laws Amendment (2005 Measures No. 6) Bill 2005

Introduced into the House of Representatives on 7 December 2005
Portfolio: Treasury

Background

This bill amends the *Income Tax Assessment Act 1997* to:

- ensure the method for calculating the rate at which the head company of a consolidated group can recoup a joining entity's losses operates as intended;
- ensure certain not-for-profit organisations are not subject to tax on mutual receipts as a result of the *Coleambally* Federal Court decision handed down on 7 September 2004;
- ensure that parents who work less than 15 hours a week continue to be eligible for the child care tax rebate;
- ensure that solely cosmetic procedures are excluded from the medical expenses offset; and
- amend the lists of deductible gift recipients.

Retrospective application

Schedule 1, item 2 and Schedule 2, item 4

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.

Item 2 of Schedule 1 to this bill provides that the amendment proposed in item 1 would apply from 1 July 2002. In this case, the explanatory memorandum notes that the amendment is designed to ensure that earlier amendments operate as intended, and that the current amendment will impose a cost to revenue of \$5 million in the 2006-2007 financial year and \$1 million in each of the two following financial years.

The amendment proposed in item 4 of Schedule 2 to this bill would apply from 1 July 2000. In this case, the explanatory memorandum notes that the amendment is intended to reverse the affect of a decision of the Federal Court, and ‘is not expected to have a financial impact as it is intended to maintain the long-held existing practice.’

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

Retrospective operation Schedule 5

The amendments in Schedule 5 will update the list of deductible gift recipients and will extend the period for which some deductions are allowed. Those amendments are generally retrospective in operation but, in view of their purpose, the Committee notes these instances of retrospective application and makes no further comment on them.

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

Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU486) Bill 2005

Introduced into the Senate on 8 December 2005

By Senators Nash, Troeth, Allison and Moore

Background

This bill amends the *Therapeutic Goods Act 1989* to transfer the responsibility for approval of RU486 from the Minister to the Therapeutic Goods Administration.

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
Aged Care (Bond Security) Bill 2005	Clause 9	Fail to provide information to a public authority	30 penalty units
Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005	Proposed new subsection 51SO(3)	Fail to provide information to a public authority	30 penalty units

SCRUTINY OF STANDING APPROPRIATIONS

The committee has determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Further details of the Committee's approach to scrutiny of standing appropriations are set out in the committee's *Fourteenth Report of 2005*. The following is a list of the bills containing standing appropriations that have been introduced since the beginning of the 41st Parliament.

Bills introduced with standing appropriation clauses - 41st Parliament

*Indicates passed by Senate	Bills and Clauses
	Aged Care (Bond Security) Bill 2005 – clause 17
*	Appropriation (Regional Telecommunications Services) Bill 2005-2006 – clause 13
*	Asbestos-related Claims (Management of Commonwealth Liabilities) Bill 2005 – subclause 8(2)
*	Asbestos-related Claims (Management of Commonwealth Liabilities) (Consequential and Transitional Provisions) Bill 2005 – subclause 5(3)
*	Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Bill 2005 – clause 23
*	Financial Framework Legislation Amendment Bill 2004 – Schedule 1, item 397, paragraphs 124(1)(b) and (c) and item 422, subsection 235(2) [also Schedule 1, items 58, 63, 82, 86, 95, 99, 114, 135, 136, 145, 153, 164, 169, 182, 197, 205, 218, 261, 293, 317, 324, 370, 419, 437, 448, 484 and 493 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>]
*	Human Services Legislation Amendment Bill 2005 – Schedule 2, subitem 720(4)
	Indigenous Education (Targeted Assistance) Amendment Bill 2004 – Schedule 1, item 3, subsection 14A(1)

*	National Water Commission Bill 2004 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>
	Offshore Petroleum Bill 2005 – clause 56
*	Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004 – clause 133
*	Skilling Australia’s Workforce Bill 2005 – clause 40
*	Superannuation Bill 2005 – subclause 29(4)
*	Superannuation (Consequential Amendments) Bill 2005 – Schedule 5, item 1, subsection 4AA(5) and Schedule 6, item 1, subsection 12A(5)
*	Telecommunications Legislation Amendment (Future Proofing and Other Measures) Bill 2005 – Schedule 1, item 1, subsections 158ZO(4), 158ZP(7) and 158ZQ(5) and Schedule 3, item 1, subsection 136C(4)
*	Textile Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 – Schedule 1, item 12, section 37ZH and subsection 37ZJ(3)
*	Water Efficiency Labelling and Standards Bill 2004 – CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>

Other relevant appropriation clauses

*Indicates Passed by Senate	Bills and Clauses
*	AusLink (National Land Transport—Consequential and Transitional Provisions) Bill 2004 – Schedule 2, item 3: special appropriation clause – for a finite amount and a finite period of time
*	Social Security Legislation Amendment (One-off Payments for Carers) Bill 2005 – Schedule 2, item 1: special appropriation clause – for a finite period of time (i.e. for circumstances arising in a particular financial year)

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

INDEX OF BILLS COMMENTED ON AND MINISTERIAL RESPONSES SOUGHT/RECEIVED - 2005/2006

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2005							
Australian Citizenship Bill 2005	14(30.11.05)	9.11.05		Citizenship and Multicultural Affairs	1.12.05		
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		
Fuel Quality Standards (Renewable Content of Motor Vehicle Fuel) Amendment Bill 2005	11(14.9.05)	5.9.05		Mr Katter	15.9.05		
Parliamentary (Judicial Misbehaviour or Incapacity) Commission Bill 2005	11(14.9.05)	5.9.05		Mr Kerr	15.9.05		
Workplace Relations Amendment (Work Choices) Bill 2005	13(9.11.05)	2.11.05	10.11.05	Employment and Workplace Relations	10.11.05		