

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

Alert Digest

No. 13 of 2009

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Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator the Hon H Coonan (Chair)

Senator M Bishop (Deputy Chair)

Senator D Cameron

Senator J Collins

Senator R Siewert

Senator the Hon J Troeth

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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Committee under its terms of reference is invited to do so.

Australian Climate Change Regulatory Authority Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009
Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill establishes the Australian Climate Change Regulatory Authority (Authority) as a statutory authority. The Authority will be responsible for administering the Carbon Pollution Reduction Scheme, the Renewable Energy Target, and the National Greenhouse and Energy Reporting System.

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009 and negatived in the Senate on 13 August 2009. The Committee commented on the original bill in *Alert Digest No. 6 of 2009*, seeking advice from the Minister in relation to a number of issues. The Minister's response to these issues is contained in the Committee's *Seventh Report of 2009*. Please refer to *Alert Digest No. 6 of 2009* and the *Seventh Report of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Australian Sports Anti-Doping Authority Amendment Bill 2009

Introduced into the House of Representatives on 16 September 2009
Portfolio: Health and Ageing

Background

This bill amends the *Australian Sports Anti-Doping Authority Act 2006* (ASADA Act) and the *Australian Sports Commission Act 1989* to reflect new structural and governance arrangements for the Australian Sports Anti-Doping Authority (ASADA), in response to key recommendations arising from an independent review of the ASADA in 2008. The bill aims to ensure that the efficacy of Australia's anti-doping program is maintained and reinforces Australia's continued commitment to the international anti-doping effort.

In particular, the bill:

- replaces the office of the ASADA Chair with a new ASADA Chief Executive Officer (CEO) position;
- creates an Advisory Group to provide advice to the ASADA CEO on sports doping matters; and
- establishes an Anti-Doping Rule Violation Panel (ADRVP) to make findings on anti-doping rule violations, and recommend follow-up action and sanctions to ASADA.

The bill also includes a number of incidental amendments to ensure that the ASADA Act remains consistent with the World Anti-Doping Code, which was revised on 1 January 2009.

Wide delegation of legislative power

Schedule 1, item 130

Subitem 130(1) provides that if, before commencement of the bill, a thing was done by, or in relation to, the ASADA or the ASADA members, then, for the purposes of the operation of any law after the commencement time, that thing is taken to have been done by, or in relation to, the new ASADA CEO. However, subitem 130(3) enables the Minister to determine that this does not apply in relation to a specified thing done by, or in relation to, the ASADA or its members. Subitem 130(4) provides that ‘(t)he regulations may provide for a thing specified in a determination [by the Minister] to be taken to have been done by, or in relation to, a person or body other than the CEO, the Commonwealth or the ADRVP’. This is a broad delegation of legislative power, although the regulations would be subject to the usual tabling and disallowance regime.

The explanatory memorandum reiterates (at page 21) that item 130 will allow ‘for the Minister to determine that a reference previously relating to the non-executive ASADA members, may now relate to a person or body other than the ASADA CEO or the Commonwealth’. It appears that regulations made under this provision might allow the Commonwealth to avoid responsibility for the previous actions of non-executive ASADA members. Accordingly, the Committee **seeks the Minister’s advice** on the need and justification for this broad regulation-making power; and whether examples could be provided of the circumstances in which it is intended to apply.

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) of the Committee’s terms of reference.

Britt Lapthorne Bill 2009

Introduced into the Senate on 17 September 2009

By Senator Fielding

Background

This bill will:

- ensure that families of Australians reported missing overseas are advised immediately and that they are provided with all reasonable information and assistance;
- allows a person to request that the relevant Department is not to contact his or her family in the event that he or she is reported missing overseas; and
- require the Federal Government to regularly report on the measures it is taking to improve international agreements to locate Australians missing overseas.

Explanatory memorandum

The Committee notes that this bill, introduced as a private Senator's bill, was accompanied only by a second reading speech and was introduced without an explanatory memorandum. The consideration of bills by the Committee and by the Parliament is assisted if they are accompanied by an explanation of the intent and operation of the proposed amendments, preferably in the form of an explanatory memorandum. 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 this case, the Committee notes that the second reading speech provides some explanation of the intent and operation of the bill.

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

Insufficient parliamentary scrutiny Clauses 7(3) and 9(4)

Clauses 7(3) and 9(4) provide for the development of guidelines to assist in the application of its main provisions, including guidance on ascertaining the status of a person as the ‘next of kin’ of an Australian national travelling overseas. As the guidelines would appear to be of an administrative character, they would be exempt from the operation of the *Legislative Instruments Act 2003*. However, this is not stated expressly and, as noted above, there is no explanatory memorandum to provide clarification of the matter.

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

Drafting note Definition of ‘Australian national’

The Committee notes that the term ‘Australian national’ is not defined in the ‘Interpretation’ section of the bill (clause 4) and, accordingly, might be interpreted broadly to include Australian citizens, permanent residents and those persons who hold dual nationality. The Committee **brings this matter to the Senator’s attention** and **seeks his advice** on whether a definition of this term might be included in the bill to provide clarity.

Carbon Pollution Reduction Scheme Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009

Portfolio: Climate Change and Water

Background

As the main bill in the package of 10 bills relating to the Carbon Pollution Reduction Scheme, this bill gives effect to Australia's obligations to reduce greenhouse gas emissions under the United Nations Framework Convention on Climate Change and the Kyoto Protocol. The bill contains the detailed framework of the national emissions trading scheme, including:

- the entities and emissions to be covered by the scheme;
- the obligation on liable entities to surrender emissions units corresponding to their emissions;
- limits on the number of emissions units that will be issued;
- the nature of Australian emissions units;
- allocation of Australian emissions units, including by auction and the issue of free units;
- mechanisms to contain costs, including a fixed price period and a price cap;
- linking to other emissions trading schemes;
- assistance in relation to emissions-intensive trade-exposed activities and coal-fired electricity generators;
- voluntary inclusion of reforestation activities under the scheme;
- the Australian National Registry of Emissions Units; and
- monitoring and enforcement.

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009 and negatived in the Senate on 13 August 2009. The Committee commented on the original bill in *Alert Digest No. 6 of 2009*, seeking advice from the Minister in relation to a number of issues. The Minister's response to these issues is contained in the Committee's *Seventh Report of 2009*. Please refer to *Alert Digest No. 6 of 2009* and the *Seventh Report of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Carbon Pollution Reduction Scheme Amendment (Household Assistance) Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill is linked to the package of legislation giving effect to the national emissions trading scheme. The bill amends the *Social Security Act 1991*, the *Social Security (Administration) Act 1999*, the *Income Tax Assessment Act 1997*, the *A New Tax System (Family Assistance) Act 1999*, the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Veterans' Entitlements Act 1986*, the *Military Rehabilitation and Compensation Act 2004*, the *Income Tax Assessment Act 1936* and the *Medicare Levy Act 1986* to assist low and middle-income households with expected increases in the cost of living arising from the introduction of the Carbon Pollution Reduction Scheme.

The bill provides for increases to pensions, benefit and allowance payments and family tax benefit; and also provides for additional tax offsets and for transitional payments to independent adults in low-income households who do not receive sufficient assistance from other measures set out in the bill.

This bill is identical to a bill introduced into the House of Representatives on 28 May 2009, negatived in the Senate on 13 August 2009, and upon which the Committee commented in *Alert Digest No. 6 of 2009*. Please refer to *Alert Digest No. 6 of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Carbon Pollution Reduction Scheme (Charges—Customs) Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009

Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill allows for the imposition of charges for the issue of Australian emissions units as the result of an auction, or for a fixed charge, if the charges are taxation and duties of customs within the meaning of section 55 of the Constitution.

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009, negatived in the Senate on 13 August 2009, and upon which the Committee commented in *Alert Digest No. 6 of 2009*. Please refer to *Alert Digest No. 6 of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Carbon Pollution Reduction Scheme (Charges—Excise) Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009
Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill allows for the imposition of charges for the issue of Australian emissions units as the result of an auction, or for a fixed charge, if the charges are taxation and duties of excise within the meaning of section 55 of the Constitution.

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009, negatived in the Senate on 13 August 2009, and upon which the Committee commented in *Alert Digest No. 6 of 2009*. Please refer to *Alert Digest No. 6 of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Carbon Pollution Reduction Scheme (Charges—General) Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009

Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill allows for the imposition of charges for the issue of Australian emissions units as the result of an auction, or for a fixed charge, if the charges are taxation within the meaning of section 55 of the Constitution but are neither duties of customs nor duties of excise.

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009, negatived in the Senate on 13 August 2009, and upon which the Committee commented in *Alert Digest No. 6 of 2009*. Please refer to *Alert Digest No. 6 of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009

Portfolio: Climate Change and Water

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill contains consequential amendments to the *National Greenhouse and Energy Reporting Act 2007*, and to taxation legislation, to provide the basis for emissions reporting required under the scheme.

The bill also contains transitional provisions that are necessary as the result of amendments which will transfer the functions of the Greenhouse and Energy Data Officer under the *National Greenhouse and Energy Reporting Act 2007* and the Renewable Energy Regulator under the *Renewable Energy (Electricity) Act 2000* to the Australian Climate Change Regulatory Authority.

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009 and negatived in the Senate on 13 August 2009. The Committee commented on the original bill in *Alert Digest No. 6 of 2009*, seeking advice from the Minister in relation to one issue. The Minister's response to this issue is contained in the Committee's *Seventh Report of 2009*. Please refer to *Alert Digest No. 6 of 2009* and the *Seventh Report of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009
Portfolio: Treasury

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill seeks to implement a Carbon Pollution Reduction Scheme fuel credit program to provide transitional assistance to eligible industries such as agriculture, fishing and heavy on-road transport industries, and gaseous fuel suppliers (who will not benefit from the ‘cent-for-cent’ fuel tax reduction made under the Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009).

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009, negatived in the Senate on 13 August 2009, and upon which the Committee commented in *Alert Digest No. 6 of 2009*. Please refer to *Alert Digest No. 6 of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009
Portfolio: Treasury

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill amends the *Fuel Tax Act 2006*, the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953* as a consequence of the introduction of the Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009 and other administrative arrangements announced by the Federal Government.

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009, negatived in the Senate on 13 August 2009, and upon which the Committee commented in *Alert Digest No. 6 of 2009*. Please refer to *Alert Digest No. 6 of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Clean Energy Security Bill 2009

Introduced into the House of Representatives on 14 September 2009

By Mr Tuckey

Background

This bill amends the *Renewable Energy (Electricity) Act 2000* to:

- ensure that more mature renewable energy technologies will not ‘crowd out’ emerging renewable energy technologies from access to renewable energy certificates, by limiting any one renewable resource technology to 20,000 gigawatt hours of the ultimately available 45,000 gigawatt hour renewable target; and
- allow for the inclusion of energy efficient transmission systems as eligible for renewable certificates.

Insufficiently defined administrative power

Schedule 2, item 2, new section 23G

Proposed new section 23G, to be inserted by item 2 of Schedule 2, provides for the Regulator to prepare a report ‘(a)t least once every three years’ on the relative efficiencies of commercially-available long distance transmission systems. The provision has uncertain application as it does not provide a start date for the three-year reporting period.

This would mean that the start date presumably runs from the date of commencement of the bill, resulting in an invalid comparison because some returns to the Regulator are not required for each year until 14 February in the following year, or later (for example, see current section 23F of the Renewable Energy (Electricity) Act relating to solar water heater and small generation unit returns). Further, proposed new section 37A, to be inserted by item 5 of Schedule 1, provides for reporting ‘as soon as practicable’ following receipt of information under current sections 20 and 23F.

The Committee **seeks the Member's advice** on whether a specified time for commencement of the start of the three-year reporting period might be included in proposed new section 23G for clarity, and to provide consistency with other reporting provisions in the Renewable Energy (Electricity) Act.

Pending the Member's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

Drafting note

Apparent typographical error

Schedule 1, item 4, new paragraph 23F(2)(ca)

Item 4 of Schedule 1 would insert a new paragraph 23F(2)(ca) after paragraph 23F(2)(a) of the Renewable Energy (Electricity) Act. Presumably, the reference to paragraph 23F(2)(a) should instead be to paragraph 23F(2)(c). The Committee notes also that the words used in proposed new paragraph 23F(2)(ca) ('information provided under this section must include the number of certificates the person created in relation to each particular eligible renewable energy resource') do not sit well with the leading words in current subsection 23F(2) which provide that 'The return must include details of:...'. Proposed new paragraph 23F(2)(ca) could perhaps be re-drafted to read 'the number of certificates the person created in relation to each particular eligible renewable energy resource; and'. The Committee **draws this matter to the Member's attention**.

Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2) 2009

Introduced into the House of Representatives on 16 September 2009
Portfolio: Attorney-General

Background

In April 2009, the Standing Committee of Attorneys-General (SCAG) agreed to a set of resolutions for a comprehensive national response to combat organised crime. In June 2009, the Federal Government introduced the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009, which implements the Commonwealth's commitment at the April SCAG meeting to enhance its legislation in this regard. In August 2009, SCAG agreed to further legislative and operational arrangements to support the national response to organised crime.

This bill amends several Acts (including the *Proceeds of Crime Act 2002*, the *Administrative Decisions (Judicial Review) Act 1977*, the *Crimes Act 1914*, the *Witness Protection Act 1994*, the *Criminal Code Act 1995*, the *Telecommunications (Interception and Access) Act 1979*, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* and the *Australian Crime Commission Act 2002*) to implement legislative aspects of the national response to organised crime that were not contained in the first bill; and to further strengthen existing laws to more effectively prevent, investigate and prosecute organised crime activity, and target the proceeds of organised criminal groups.

In particular, the bill:

- strengthens criminal asset confiscation and anti-money laundering laws (Schedule 1 and Part 2 of Schedule 5);
- enhances search and seizure powers and the ability of law enforcement agencies to access data from electronic equipment (Schedule 2);

- improves the operation of the National Witness Protection Program, including by increasing protection for current and former participants and officers involved in its operation (Schedule 3);
- introduces new offences that would target persons involved in organised crime, and facilitates greater access to telecommunications interception for the investigation of new serious and organised crime offences (Schedule 4);
- improves the operation and accountability of the Australian Crime Commission (Schedule 7);
- improves money laundering, bribery, and drug importation offences (Part 1 of Schedule 5, and Schedules 8 and 9);
- makes minor and consequential amendments to correct references to provisions dealing with the extension of criminal liability (Schedules 10 and 11); and
- makes an urgent amendment to preserve the ability of federal defendants in Victoria to appeal a finding that they are unfit to plead (Schedule 6).

Retrospective application

Various provisions

The Committee's approach is to draw attention to bills that seek to have an impact on a matter that has occurred prior to their enactment. Several of the bill's application provisions provide that certain amendments apply 'whether the conduct constituting the offence concerned occurred or occurs before, on or after', or 'before, on or after', the commencement of other relevant provisions. The provisions with retrospective application are: Schedule 1, items 19, 35, 65, 67, 77, 81, 98, 94, 102, 104, 107, 113, 128, 140, 146, 158, 161, 164, 166, 168, 175, 178, 181, 184, 187, 192, 197 and 205; Schedule 2, items 11 and 25; Schedule 5, item 36; Schedule 6, item 2; and Schedule 7, items 27 and 29.

Where proposed legislation has a clear retrospective application, the Committee considers that the explanatory memorandum should set out in detail the reasons for that retrospectivity. In cases, where retrospectivity *appears* to apply – although this may be illusory in practice – and particularly

when criminal liability is to be imposed, it is desirable that an explanation for the retrospectivity be provided as well as an indication as to whether the retrospectivity will have an adverse impact on any individual. In relation to most of the provisions listed above, the explanatory memorandum merely repeats the terms of the provision without providing any additional explanation or contextual information.

The Committee **seeks the Attorney-General's advice** as to the reason for the retrospective application in each case where an explanation has not been given in the explanatory memorandum; and **requests that the explanatory memorandum be amended** to include this information for the benefit of readers.

Pending the Attorney-General'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.

Abrogation of the privilege against self-incrimination Schedule 1, item 156, new section 39A

Proposed new section 39A, to be inserted by item 156 of Schedule 1, provides that a person is not excused from giving a sworn statement in relation to particulars of, or dealing with, interests in property (under paragraphs 39(1)(ca),(d) and (da)) 'on the grounds that to do so would tend to incriminate the person or expose the person to a penalty'. Proposed subsection 39(2) contains direct use immunity so that the sworn statement is not admissible in civil or criminal proceedings against the person who made the statement, except in certain specified circumstances (for example, in criminal proceedings for giving false or misleading information).

The explanatory memorandum makes clear (at page 48) that item 156 implements a recommendation in the Sherman Report, as well as the NSW Supreme Court finding in *DPP v Xu* [2005] NSWSC 191, that the Proceeds of Crime Act (as it currently stands) impliedly repeals the privilege against self-incrimination by the requirement that a suspect declare an interest in property.

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

Absolute liability

Schedule 3, item 52; Schedule 4, item 1; Schedule 5, items 4 and 20

The effect of applying absolute liability to an element of an offence means that no fault element needs to be proved and the defence of mistake of fact is not available.

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 and absolute 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 that accompanies the bill.

The bill contains a number of absolute liability offences: Schedule 3, item 52, proposed new subsections 22(6) and 22A(6) of the Witness Protection Act; Schedule 4, item 1, proposed new subsections 390.3(4), 390.4(2), 390.5(4), 390.6(3) of the Criminal Code Act; Schedule 5, item 4, proposed new subsection 400.2A(5) of the Criminal Code Act; and Schedule 5, item 20 (consequential amendment to subsection 400.9(4) of the Criminal Code Act).

The Committee notes that the explanatory memorandum provides a comprehensive explanation for each of these provisions, and also refers to consistency with the *Guide* (and, in some cases, consistency with the approach taken in other existing offences). In most cases, absolute liability pertains to a jurisdictional element of the relevant offence – that is, an element that does not relate to the substance of the offence, but marks a jurisdictional boundary between matters that fall within the legislative power of the Commonwealth and those that do not.

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

Customs Amendment (ASEAN–Australia–New Zealand Free Trade Agreement Implementation) Act 2009

Introduced into, and passed by, the House of Representatives on 16 September 2009

Introduced into the Senate on 16 September 2009 and passed on 17 September 2009

Assented to on 2 October 2009

Portfolio: Home Affairs

Background

Introduced with the Customs Tariff Amendment (ASEAN–Australia–New Zealand Free Trade Agreement Implementation) Bill 2009, this bill amends the *Customs Act 1901* to introduce new rules of origin for goods that are imported into Australia from a Party to the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area (Free Trade Agreement).

The Free Trade Agreement was signed on 27 February 2009 and is expected to enter into force on 1 January 2010. To give effect to the preferential entry of goods under the Free Trade Agreement, the bill provides rules for determining whether goods are ASEAN–Australia–New Zealand (AANZ) originating goods.

Regulations—incorporating material as in force from time to time Schedule 1, item 1, new subsection 153ZKB(6)

Proposed new subsection 153ZKB(6), to be inserted by item 1 of Schedule 1, provides that for the purposes of Division 1G (which deals with AANZ originating goods), the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time. The explanatory memorandum explains (at page 72) that this provision will override section 14 of the *Legislative Instruments Act 2003* should it be necessary to refer to the laws of a Party to the Agreement (other

than Australia) in the Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009.

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

Customs Tariff Amendment (ASEAN–Australia–New Zealand Free Trade Agreement Implementation) Act 2009

Introduced into, and passed by, the House of Representatives on 16 September 2009

Introduced into the Senate on 16 September 2009 and passed on 17 September 2009

Assented to on 2 October 2009

Portfolio: Home Affairs

Background

Introduced with the Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009, this bill amends the *Customs Tariff Act 1995* to implement the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area (Free Trade Agreement) by:

- providing duty-free access for certain goods and preferential rates of customs duty for other goods that qualify for such treatment under the Free Trade Agreement's rules of origin;
- phasing the preferential rates of customs duty for all goods to zero by 2020;
- maintaining rates of customs duty on certain goods (alcohol, tobacco and petroleum products) that are equivalent to the rates of excise duty payable on such goods when locally manufactured; and
- creating a new Schedule 8 in the *Customs Tariff Act 1995* to accommodate the preferential, phasing and excise equivalent rates of duty.

The Committee has no comment on this bill.

Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009

Portfolio: Home Affairs

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill amends the *Customs Tariff Act 1995* to ensure that reductions made to the excise rates on fuels (on a ‘cent by cent’ basis to offset the initial price impact on fuel of introducing the Carbon Pollution Reduction Scheme) will also apply to the relevant imported products. Where a relevant excise rate – as defined in the Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 – is reduced, the bill will substitute the same rate to the excise-equivalent customs duty rates.

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009, negatived in the Senate on 13 August 2009, and upon which the Committee commented in *Alert Digest No. 6 of 2009*. Please refer to *Alert Digest No. 6 of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Customs Tariff Amendment (Incorporation of Proposals) Bill 2009

Introduced into the House of Representatives on 22 October 2009

Portfolio: Home Affairs

Background

This bill amends the *Customs Tariff Act 1995* (Customs Tariff Act) to incorporate alterations that were contained in Customs Tariff Proposals tabled in the House of Representatives during 2009.

The relevant Customs Tariff Proposals are:

- Customs Tariff Proposal (No. 1) 2009, to create a new concessional item 41H in Schedule 4 to the Customs Tariff Act (which provides duty free entry into Australia for goods for use in the testing, quality control, manufacturing evaluation, or engineering development of motor vehicles designed or engineered in Australia by motor vehicle producers registered under the Automotive Competitiveness and Investment Scheme (ACIS));
- Customs Tariff Proposal (No. 2) 2009, to amend rates of customs duty for certain alcohol and tobacco products in Schedule 7 of the Customs Tariff Act (Chilean originating goods pursuant to the Australia-Chile Free Trade Agreement); and
- Customs Tariff Proposal (No. 4) 2009, to amend rates of customs duty for certain beer and grape wine products.

Retrospective commencement

Clause 2

Subclause 2(1) contains the table of commencement information and includes three items with retrospective commencement: item 2 provides that Schedule 1 commences on 1 January 2009; item 3 provides for commencement of Schedule 2 on 6 March 2009; and item 4 provides that Schedule 3 commences on 28 August 2009. As a matter of practice, the

Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people.

The explanatory memorandum provides (at page 4) a clear explanation of the method of alteration of the Customs Tariff Act: namely, that Customs Tariff Proposals are used for effecting changes, particularly where such changes are required to have effect in a short timeframe that cannot be achieved through a Customs Tariff Amendment Bill. The explanatory memorandum also explains that the commencement provisions reflect those of the relevant Customs Tariff Proposal and, since there is a time lag between the tabling of a Proposal in the House of Representatives and the passage of the associated bill through the Parliament, the commencement provisions of the bill are necessarily retrospective. The dates of gazettal and tabling of each applicable Customs Tariffs Proposal is also explained in the explanatory memorandum (at pages 5 and 8) and is linked to each of the commencement dates specified in the table of commencement information.

The Committee considers that the comprehensive nature of this explanation is extremely informative and helpful. It serves as an excellent example of the detail the Committee looks for in explanatory memoranda when considering the retrospective commencement of legislation.

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

Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 [No. 2]

Introduced into the House of Representatives on 22 October 2009
Portfolio: Treasury

Background

Part of a package of 10 bills in relation to the establishment of a national emissions trading scheme, this bill amends the *Excise Tariff Act 1921* to cut fuel taxes on a 'cent for cent' basis to offset the initial price impact on fuel of introducing the scheme. The first fuel tax reduction of 2.455 cents per litre will occur on 1 July 2011 with the commencement of the scheme.

This bill is identical to a bill introduced into the House of Representatives on 14 May 2009, negatived in the Senate on 13 August 2009, and upon which the Committee commented in *Alert Digest No. 6 of 2009*. Please refer to *Alert Digest No. 6 of 2009* for further information.

The Committee has no comment on this bill, as re-introduced.

Fair Work Amendment (State Referrals and Other Measures) Bill 2009

Introduced into the House of Representatives on 21 October 2009
Portfolio: Education, Employment and Workplace Relations

Background

This bill amends the *Fair Work Act 2009* (Fair Work Act) to enable the states to refer workplace relations matters to the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution.

The bill also amends the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* to establish arrangements for employees and employers transitioning from referring state systems to the national workplace relations system; and makes consequential amendments to the *Age Discrimination Act 2004*, the *Australian Human Rights Commission Act 1986*, the *Disability Discrimination Act 1992*, the *Legislative Instruments Act 2003*, the *Sex Discrimination Act 1984* and the *Superannuation Guarantee (Administration) Act 1992* which are required as a result of these arrangements.

Retrospective commencement **Clause 2**

Subclause 2(1) contains the table of commencement information and includes two items with retrospective commencement from 25 June 2009: item 5 of the table relates to item 13 of Schedule 1; and item 7 of the table relates to item 16 of Schedule 1. As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people.

The explanatory memorandum explains (at paragraph 2) that Schedule 1 amends the Fair Work Act to give effect to state references of workplace relations matters to the Commonwealth that take effect after 1 July 2009 but on or before 1 January 2010. A reference from Victoria to enable the Commonwealth to amend the Fair Work Act in relation to certain subject

matters (otherwise outside Commonwealth power) was the first referral, and was made on 23 June 2009. Items 13 and 16 of Schedule 1 are provisions amending definitions of the terms ‘amendment’ and ‘express amendment’ in section 30A of the Fair Work Act. The explanatory memorandum states (at page 4) that these amendments are necessary from the commencement of the Victorian referral Act – that is, on 25 June 2009.

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

Determination of important matters by regulation Schedule 2, item 54; item 52 of new Schedule 3A

Schedule 2 amends provisions of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* to allow for transitional arrangements relating to state referrals of workplace relations matters to the Commonwealth under Division 2B of the Fair Work Act. Proposed new Schedule 3A of the Fair Work (Transitional Provisions and Consequential Amendments) Act, to be inserted by item 54 of Schedule 2, relates to the treatment of state awards and state employment agreements of Division 2B referring states. New item 52 of Schedule 3A provides for regulations which ‘may deal with other matters relating to how the F[air]W[ork] Act applies in relation to Division 2B State instruments’.

The term ‘Division 2B State instruments’ means, collectively, ‘Division 2B State awards’ and ‘Division 2B State employment agreements’ which are deemed to come into existence (in the same terms) as notional federal awards and agreements at the time of commencement of the relevant referral (see explanatory memorandum at paragraph 103). The explanatory memorandum does not provide an explanation of the need for the broad regulation-making power in new item 52, stating merely (at page 292) that the power would be used ‘to deal with matters that may arise in relation to the interaction between Division 2B State instruments and the F[air]W[ork] Act’.

However, the Committee notes that the regulations would be used to deal with unforeseen circumstances and, in any case, relate to transitional matters. The Committee also notes that any regulations would be subject to the usual

scrutiny and disallowance regime under the *Legislative Instruments Act 2003*, and would be scrutinised by the Senate Regulations and Ordinances Committee.

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

Retrospective application

Possible error in explanatory memorandum

Determination of important matters by regulation

Schedule 2, item 56; item 22 of new Division 2, Part 3, Schedule 4

New item 22 of proposed new Division 2 of Part 3 of Schedule 4 of the Fair Work (Transitional Provisions and Consequential Amendments) Act provides for regulations which ‘may make provision in relation to how the National Employment Standards apply to, or are affected by, things done or matters occurring *before* the Division 2B referral commencement’ (emphasis added).

The explanatory memorandum appears to contradict the words in item 22 because it refers (at paragraph 341) to regulations which may ‘provide for how the N[atational]E[mployment]S[tandards] apply to, or are affected by, things done or matters occurring *on or after* Division 2B referral commencement’ (emphasis added). Item 22 itself clearly provides for retrospective application of the National Employment Standards under a broad regulation-making power.

While noting that any regulations would be subject to the usual scrutiny and disallowance regime, the Committee **draws to the Minister’s attention** the inconsistency between item 22 and the explanatory memorandum. The Committee also **seeks the Minister’s advice** on the reasons why any retrospective application is considered necessary in the circumstances and whether the retrospectivity will have an adverse impact on any individual.

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.

Inappropriate delegation of legislative power Schedule 2, subitem 137(1)

Subitem 137(1) provides for the making of regulations which may amend Acts (other than the Fair Work Act), 'being amendments that are consequential on, or that otherwise relate to, the enactment of this Act'. Subitem 137(2) provides that '(f)or the purposes of the *Amendments Incorporation Act 1905*, amendments made by regulations for the purposes of this item are to be treated as if they had been made by an Act'.

The explanatory memorandum merely states (at paragraph 419) that this regulation-making power will 'enable any consequential issues that emerge in the future to be dealt with'. The Committee notes that this is a broad delegation of the regulation-making power, but that it is intended to deal with unforeseen circumstances and any regulations would be subject to the usual scrutiny and disallowance regime.

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

Insufficient parliamentary scrutiny Schedule 2, item 138

Subitem 138(1) of Schedule 2 provides that, despite subsection 12(2) of the Legislative Instruments Act, regulations made under item 137 (discussed above) may be expressed to take effect from a date before the regulations are registered under that Act. Subitem 138(2) provides that the regulations may not retrospectively impose a civil penalty, nor can a person be convicted of an offence. The explanatory memorandum explains (at paragraph 420) that this provision is necessary to respond to any unintended consequences that may arise in the transition of employers and employees in 'Division 2B referring States' into the national workplace relations system.

The Committee notes that the provision may allow regulations to cover important matters without having the benefit of parliamentary scrutiny. However, a similar provision in the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 (upon which the Committee commented in *Alert Digest No. 5 of 2009*) was justified by the Minister on the basis that the power is designed to deal with unexpected consequences relating to transitional matters, and would be relied on only in extraordinary circumstances (see the Committee's *Report No. 6 of 2009* at pages 160-161).

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

**Legislative Instruments Act—disallowance and sunset provisions
Schedule 3, item 2, proposed new subsection 14(5)**

Item 2 of Schedule 3 amends section 14 of the Fair Work Act by inserting new subsections providing for a mechanism under which certain employees may be declared (by or under a state or territory law) *not* to be national system employees (see proposed new subsection 14(2)). To be effective, such a declaration must be endorsed by the Minister (proposed new subsection 14(4)). The Minister may also revoke or amend such an endorsement.

Under proposed new subsection 14(5), the endorsement, revocation or amendment is a legislative instrument, but neither section 42 (disallowance) nor Part 6 (sunsetting) of the Legislative Instruments Act applies to it. The explanatory memorandum explains (at paragraph 431) that the endorsement or revocation instrument is a legislative instrument for the purposes of the Legislative Instruments Act in order to ensure transparency of the Fair Work Act's coverage. However, the exemptions from disallowance and sunsetting 'are necessary to ensure certainty of rights and entitlement for the employers and employees that will potentially be subject to this exclusion mechanism' (paragraph 432). Since the declaration will be made initially under state or territory law and subsequently endorsed by the federal Minister, the Committee considers that an appropriate balance has been reached.

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

‘Henry VIII’ clause

Schedule 3, item 3, proposed new subsection 14A(2)

Item 3 of Schedule 3 provides for regulations to enable transition for employers becoming, or ceasing to be, national system employers. Proposed new subsection 14A(2) provides that regulations may modify provisions of this Act or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and provide for the application (with or without modifications) of those Acts. This is a ‘Henry VIII’ clause.

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 legislative power and are usually a matter of concern to the Committee.

While the Committee does not condone the use of ‘Henry VIII’ clauses, it notes that proposed subsection 14A(2) is a transitional provision. The explanatory memorandum states (at paragraph 434) that it ‘provides a mechanism to deal with any unintended consequences that may arise as a result of the exclusion of an employer from the coverage of the F[air]W[ork] Act’. The usual scrutiny and disallowance mechanisms will apply to any regulations made under the provision.

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

Insufficiently defined administrative powers

Rights and non-reviewable decisions

Schedule 3, item 14, proposed new subsection 604(1)

Proposed new subsection 604(1), to be inserted by item 14 of Schedule 3, would enable an appeal by a person aggrieved by a decision made by the Fair Work Authority (FWA), or by the General Manager (including a delegate of the General Manager) of the FWA under the *Fair Work (Registered Organisations) Act 2009*. However, an appeal can only occur ‘with the permission of FWA’.

The explanatory memorandum merely states (at page 66) that the provision allows for appeal and review of decisions. While this may be true, the right of appeal and review is potentially limited since it can only be exercised with the permission of the body against whose decision the appeal would be lodged. The Committee **seeks the Minister’s advice** on the reasons for granting this broad discretion to the FWA and why the right of review and appeal is contingent upon the FWA granting its permission. The Committee also **requests that the explanatory memorandum be amended** to include this explanation in order to assist those whose rights may be affected by the provision.

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

Family Assistance Legislation Amendment (Participation Requirement) Bill 2009

Introduced into the House of Representatives on 16 September 2009

Portfolio: Families, Housing, Community Services and Indigenous Affairs

Background

This bill amends the *A New Tax System (Family Assistance) Act 1999* and the *A New Tax System (Family Assistance) (Administration) Act 1999* to introduce a new participation requirement for families receiving family tax benefit (FTB) Part A for children aged between 16 and 20 years. To be eligible to receive family tax benefit Part A, children between 16 and 20 must be studying full-time towards, or must have completed, Year 12 or its equivalent. There will be capacity to make exemptions from the FTB activity test in special circumstances.

The bill implements an element of the agreement reached at the Council of Australia Governments (COAG) meeting on 30 April 2009, as part of the National Youth Participation Requirement and the Compact with Young Australians.

The Committee has no comment on this bill.

Geothermal and other Renewable Energy (Emerging Technologies) Amendment Bill 2009

Introduced into the House of Representatives on 14 September 2009
By Mrs B Bishop

Background

This bill amends the *Renewable Energy (Electricity) Act 2000* to require regulations to be made to grant a 90% partial exemption to food processing industries, to the extent that they are trade exposed, from the additional renewable source electricity acquisition obligation for 2010 and later years. The bill also ensures that emerging renewable energy source electricity will be able to gain a share of the guaranteed renewable energy market.

The Committee has no comment on this bill.

Geothermal and Other Renewable Energy (Emerging Technologies) Amendment Bill 2009 (No. 2)

Introduced into the Senate on 16 September 2009

By Senator Minchin

Background

This bill amends the *Renewable Energy (Electricity) Act 2000* to ensure that emerging renewable energy source electricity will be able to gain a share of the guaranteed renewable energy market.

The Committee has no comment on this bill.

Health Insurance Amendment (Compliance) Bill 2009

Introduced into the House of Representatives on 17 September 2009
Portfolio: Health and Ageing

Background

This bill amends the *Health Insurance Act 1973* to give effect to the Increased Medicare Compliance Audits initiative which was announced in the 2008-09 Budget. The bill gives Medicare Australia the authority to require practitioners to produce relevant documents during compliance audits.

Specifically, the bill enables the Chief Executive Officer (CEO) of Medicare Australia to give a notice to a practitioner requiring the production of documents (or to another person who has custody, control or possession of the documents) to substantiate whether a Medicare benefit paid in respect of a service should have been paid. The CEO must fulfil several conditions before a notice to produce can be given.

Abrogation of the privilege against self-incrimination Schedule 1, item 2, new section 129AAF

Proposed new section 129AAF, to be inserted by item 2 of Schedule 1, provides that a person is not excused from producing a document, extract or copy of a document under proposed new section 129AAD on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

However, the explanatory memorandum contains a full explanation for the provision (at pages 9-10); namely, that the new 'notice to produce' regime contained in the bill 'would not be workable if practitioners were able to resist notices by claiming privilege against self-incrimination' and that Medicare Australia's auditing ability 'would be severely compromised' (which is 'the gap' that the bill is aiming to fill).

The Committee notes also that a standard use and derivative use immunity provision limits the use of documents and information obtained pursuant to the bill to: criminal offences relating to false or misleading information, or documents, under the bill or the Criminal Code; or in specified civil proceedings under the bill.

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

Health Insurance Amendment (New Zealand Overseas Trained Doctors) Bill 2009

Introduced into the House of Representatives on 21 October 2009
Portfolio: Health and Ageing

Background

This bill amends the *Health Insurance Act 1973* to streamline the operation of section 19AB which provides that Medicare benefits are not payable in respect of professional services provided by an overseas-trained doctor or a former overseas medical student, except in certain circumstances.

The bill's main amendment will remove the current restrictions applicable to New Zealand permanent resident and citizen doctors who have obtained their primary medical education at an accredited medical school in Australia or New Zealand. It does this by removing the requirement for these doctors to have both Australian permanent residency or citizenship, and medical registration, in order for the 10-year moratorium period imposed by the Health Insurance Act to commence.

The bill also introduces a period in which medical practitioners can appeal against the refusal of a section 19AB exemption application, or a decision to impose conditions in connection with a granted exemption.

The Committee has no comment on this bill.

Income Tax (TFN Withholding Tax (ESS)) Bill 2009

Introduced into the House of Representatives on 21 October 2009

Portfolio: Treasury

Background

Introduced with the Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009, this bill imposes tax on certain amounts relating to employee share schemes, and for related purposes.

The Committee has no comment on this bill.

Long Service Leave Legislation Amendment (Telstra) Bill 2009

Introduced into the House of Representatives on 16 September 2009
Portfolio: Employment and Workplace Relations

Background

This bill amends the *Long Service Leave (Commonwealth Employees) Act 1976* (Long Service Leave Act), the *Telstra Corporation Act 1991* and the *Telstra (Transition to Full Private Ownership) Act 2005* to continue existing transitional long service leave arrangements that apply to Telstra and its employees, pending development of national long service leave arrangements (contained in the National Employment Standards under the *Fair Work Act 2009*).

Without the bill, Telstra would need to transition many of its employees from coverage under the Long Service Leave Act to multiple state and territory schemes when current arrangements expire on 24 November 2009, and then back to a Commonwealth scheme when the national long service leave arrangements commence.

The Committee has no comment on this bill.

Native Title Amendment Bill (No. 2) Bill 2009

Introduced into the House of Representatives on 21 October 2009

Portfolio: Attorney-General

Background

This bill amends the *Native Title Act 1993* to establish new Subdivision JA within the ‘future acts regime’ in Part 2 of Division 3 of the Native Title Act. The future acts regime sets out how acts that will affect native title (called ‘future acts’) can be undertaken.

The bill will provide a process to assist the timely construction of public housing and a limited class of public facilities by or on behalf of the Crown, a local government body or other statutory authority of the Crown in any of its capacities, for Aboriginal people and Torres Strait Islanders in communities on Indigenous-held land. The new process sets out periods for notification, comment and consultation with native title parties, and provides for compensation for any impact on native rights and entitlements.

New Subdivision JA will operate for 10 years, after which action bodies would need to utilise other Subdivisions in the ‘future acts regime’. This 10-year period is designed to match the 10-year funding period under current National Partnership Agreements between the Commonwealth and the states and territories relating to remote Indigenous housing and remote service delivery.

The Committee has no comment on this bill.

Personal Property Securities (Consequential Amendments) Bill 2009

Introduced into the House of Representatives on 21 October 2009

Portfolio: Attorney-General

Background

This bill amends 25 Commonwealth Acts that deal with the creation, registration, priority, extinguishment or enforcement of interests in personal property. The bill clarifies the operation of legislation that will operate concurrently with the Personal Property Securities Bill 2009 (PPS Bill) (considered by the Committee in *Alert Digest No. 9 of 2009* and the *Eleventh Report of 2009*).

The bill contains measures designed to:

- harmonise language and concepts with the PPS Bill where appropriate;
- support a seamless transition to the PPS Register to be established by the PPS Bill, including removing provisions providing for the registration of security interests on a separate Commonwealth register;
- resolve conflicts between the PPS Bill and other Commonwealth legislation that provides for security interests or other interests in personal property;
- determine the priority between Commonwealth statutory interests in personal property, other than security interests, and security interests in the same property;
- clarify the rights of secured parties and other parties in particular situations, including statutory detention of personal property that may be subject to a security interest; and
- ensure that current rights are preserved on implementation of the amendments.

Retrospective application**Schedule 1, items 16 and 20, new subsections 108A(2) and 52J(2)**

Item 16 of Schedule 1 substitutes a new Subdivision F of Division 6 of Part 6 of the *Fisheries Management Act 1991*. Proposed new subsection 108A(2) provides for the seizure, detention or forfeiture of a boat or any other property (including fish) to have effect despite proceedings under the *Admiralty Act 1988* or enforcement actions under the *Personal Property Securities Act 2009* (PPSA), regardless of whether the seizure, detention or forfeiture, or the event on which it is based, occurred before or after the admiralty event or the PPSA event. Item 20 of Schedule 1 substitutes a new section 52J in the *Torres Strait Fisheries Act 1984*, and contains proposed new subsection 52J(2) which is expressed in identical terms to proposed new subsection 108A(2).

The Committee notes that these provisions appear to have retrospective application. The explanatory memorandum does not explain the reasons for retrospectivity, merely repeating (at paragraphs 5.19 and 5.22) the words in the provisions. The Committee **seeks the Attorney-General's advice** on the reasons for the retrospective application of proposed new subsections 108A(2) and 52J(2); and whether the retrospectivity will have an adverse effect on any individual.

Pending the Attorney-General'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.

Private Health Insurance Legislation Amendment Bill (No. 2) 2009

Introduced into the House of Representatives on 17 September 2009
Portfolio: Health and Ageing

Background

This bill amends the *Private Health Insurance Act 2007* to allow for conditional listing of prostheses in the Private Health Insurance (Prostheses) Rules, and to allow the Minister for Health and Ageing to make Rules specifying criteria for listing prostheses in the Prostheses Rules.

The Committee has no comment on this bill.

Renewable Energy (Certificates and Other Matters) Amendment Bill 2009

Introduced into the Senate on 17 September 2009

By Senator Cash

Background

This bill amends the *Renewable Energy (Electricity) Act 2000* to:

- ensure that more mature renewable energy technologies will not ‘crowd out’ emerging renewable energy technologies from access to renewable energy certificates, by limiting any one renewable resource technology to 20,000 gigawatt hours of the ultimately available 45,000 gigawatt hour renewable target; and
- allow for the inclusion of energy efficient transmission systems as eligible for renewable certificates.

The Committee has no comment on this bill.

Renewable Energy (Food Processing Activities) Amendment Bill 2009

Introduced into the Senate on 17 September 2009

By Senator Boswell

Background

This bill amends the *Renewable Energy (Electricity) Act 2000* to require regulations to be made to grant a 90% partial exemption to food processing industries, to the extent that they are trade exposed, from the additional renewable source electricity acquisition obligation for 2010 and later years.

The Committee has no comment on this bill.

Safe Climate (Energy Efficient Non-Residential Buildings Scheme) Bill 2009

Introduced into the Senate on 17 September 2009

By Senator Milne

Background

This bill introduces an emissions intensity cap and building efficiency certificate trading scheme for non-residential buildings in order to provide an economic incentive for investment in energy efficiency.

Inappropriate delegation of legislative power Subclause 7(1)

Subclause 7(1) provides that the Act is intended to apply to the exclusion of a state or territory law that is prescribed by regulations. Section 109 of the Constitution provides that, when a law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid. In these circumstances, subclause 7(1) need have only a declaratory effect which could be achieved through means other than regulations. The Committee **seeks the Senator's comments** on whether an alternative method of identifying inconsistent state and territory laws might be considered.

Pending the Senator'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) of the Committee's terms of reference.

Drafting note

Apparent typographical errors

Paragraphs 12(2)(b) and 15(2)(b)

Paragraphs 12(2)(b) and 15(2)(b) make reference to subsection 10(3) of the bill. However, the Committee notes that subsection 10(3) does not exist. There is a proposed new paragraph 10(c) which provides for the Minister to determine, by legislative instrument, conditions relating to the use of methods to meet criteria to measure emissions intensities from non-residential buildings. Both paragraphs 12(2)(b) and 15(2)(b) seem to relate to paragraph 10(c) because they refer to ‘methods determined by the Minister’. The Committee **draws to the Senator’s attention** these apparent typographical errors.

Inappropriate delegation of legislative power

Subclauses 12(3) and 15(3)

Clause 12 provides for transitional reporting by owners to the Greenhouse and Energy Data Officer (GEDO) on emissions relating to their non-residential building. Subclause 12(3) provides that regulations made for the purposes of paragraph 12(2)(c) (which states that transitional reports must include ‘any information specified by the regulations for the purposes of this paragraph’) ‘may specify different requirements for different circumstances’.

Similarly, clause 15 provides for annual reporting by building owners to the GEDO on emissions in relation to their building. Subclause 15(3) provides that regulations may specify ‘different requirements for different circumstances’ for the purposes of providing information pursuant to paragraph 15(2)(c).

These provisions contain very broad delegations of legislative power and it is not clear what type of circumstances the power is intended to cover. While noting that the regulations would be subject to the usual scrutiny and disallowance regime provided for under the *Legislative Instruments Act 2003*, the Committee nevertheless **seeks the Senator’s comments** on whether the scope of the proposed powers might be limited (or at least explained) in some way.

Pending the Senator's advice, the Committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the Committee's terms of reference.

Safety, Rehabilitation and Compensation Amendment Bill 2009

Introduced into the House of Representatives on 21 October 2009
Portfolio: Education, Employment and Workplace Relations

Background

This bill amends the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) to provide the Minister with an absolute discretion to consider requests for declarations of eligibility for a licence under that Act. The bill makes it explicit that section 100 of the SRC Act empowers, but does not oblige, the Minister to consider or determine requests for declarations of eligibility by corporations seeking to join the Comcare scheme as self-insurers. This would apply to new requests or applications, and any existing applications that have been made but not determined.

Delegation of legislative power Schedule 1, item 2

Under current section 100 of the SRC Act, if the Minister is satisfied that it would be desirable for the SRC Act to apply to employees of a corporation that:

- is, but is about to cease to be, a Commonwealth authority; or
- was previously a Commonwealth authority; or
- is carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority;

the Minister may, by legislative instrument, declare the corporation to be eligible to be granted a licence under the relevant Part of the SRC Act.

Item 2 of Schedule 1 would amend section 100 of the SRC Act so that the Minister is *not* required to consider a request for such a declaration.

This would give the Minister an absolute discretion to decide whether or not to consider a request for a declaration of eligibility for a licence under the SRC Act. The explanatory memorandum provides no explanation of the reason for the need for the absolute discretion; however, the Minister's second reading speech does provide considerable context for the proposed amendments.

The second reading speech explains that the provision formalises, through legislation, the existing moratorium on new companies joining the Comcare scheme (which was put in place in December 2007 while a review of the scheme was undertaken by the Department of Education, Employment and Workplace Relations). The second reading speech also explains that the moratorium is maintained until 2011, by which time new uniform Occupational Health and Safety (OHS) laws will be implemented in all states and territories. Under the proposed new uniform scheme, OHS coverage for Comcare self-insurers will transfer to the states and territories.

The second reading speech states that the amendments will give the Minister greater flexibility in dealing with applications under section 100 of the SRC Act and notes that the Minister will be able to consider important developments, such as progress with OHS harmonisation, in deciding whether to consider any applications to join the Comcare scheme.

The Committee considers that the Minister's absolute discretion in these circumstances may be an inappropriate delegation of legislative power. However, since the bill appears to be seeking to formalise in legislation what is a clear policy decision, the Committee **leaves to the Senate as a whole** any further consideration of this issue.

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

Social Security Amendment (National Green Jobs Corps Supplement) Bill 2009

Introduced into the House of Representatives on 17 September 2009
Portfolio: Employment and Workplace Relations

Background

This bill amends the *Social Security Act 1991* to provide for a temporary National Green Jobs Corps supplement of \$41.60 per fortnight for recipients of youth allowance (other), Newstart allowance and parenting payment who participate in the National Green Jobs Corps (a 26-week environmental work experience and training program targeted at low-skilled 17-24 year olds).

The Committee has no comment on this bill.

Tax Laws Amendment (2009 Budget Measures No. 2) Bill 2009

Introduced into the House of Representatives on 21 October 2009
Portfolio: Treasury

Background

Introduced with the Income Tax (TFN Withholding Tax (ESS)) Bill 2009, this bill amends various taxation laws to reform the taxation rules that apply to shares or rights granted under an employee share scheme.

Schedule 1 replaces the current Division 13A of Part III of the *Income Tax Assessment Act 1936*; inserts a new Division 83A into the *Income Tax Assessment Act 1997* dealing with employee share schemes; and inserts new provisions in the *Taxation Administration Act 1953* dealing with the employee share scheme withholding tax and employee share scheme reporting. These measures are aimed at better targeting the employee share scheme tax concessions to low and middle income earners and decreasing taxpayers' ability to evade or avoid tax. Schedule 1 also makes consequential amendments to several other Acts.

Schedule 2 amends the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997* to tighten the application of the non-commercial losses rule in relation to individuals with an adjusted taxable income over \$250,000 to prevent those individuals from offsetting deductions from non-commercial business activities against their salary, wage or other income.

Schedule 3 amends the *Superannuation (Unclaimed Money and Lost Members) Act 1999* to require superannuation providers to transfer the balance of a lost member's account to the Commissioner of Taxation where the account balance is less than \$200, or where the account has been inactive for a period of five years and the provider is satisfied that it will never be possible to pay an amount to the member.

Retrospective application Schedule 1, item 87

Item 87 of Schedule 1 provides for regulations to be made relating to amendments made by Schedule 1 for the purposes of Division 83A of the *Income Tax Assessment Act 1997*, and other taxation laws. The regulations ‘may take effect from any time on or after 1 July 2009’ if they are made before the end of the period of three months after Schedule 1 commences. This would give the regulations retrospective application.

As a matter of practice, the Committee draws attention to any bill that seeks to have retrospective impact and will comment adversely where such a bill has a detrimental effect on people. In this case, the Committee notes that the explanatory memorandum explains (at pages 95-96) that retrospectivity is considered appropriate because it provides certainty to providers and employees participating in employee share schemes; and ensures that appropriate valuation methods are provided for unlisted shares and rights acquired or disposed of between 1 July 2009 and the date the bill receives Royal Assent. The explanatory memorandum also explains that draft regulations were made available for public comment on the Treasury website on 14 August 2009. The Committee considers that clear notice and transparency has been provided in relation to the retrospective effect of these regulations.

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

Rights and non-reviewable decisions Schedule 2, items 6 and 13

Subsection 35-55 of the *Income Tax Assessment Act 1997* currently provides that the Commissioner of Taxation may decide to exercise a discretion not to apply the non-commercial losses rule. Item 6 of Schedule 2 would insert a requirement in subsection 35-55(1) that an application be made for the exercise of the discretion; and proposed new subsection 35-55(3), to be inserted by item 13 of Schedule 1, will require that the application be made ‘in the approved form’. This will trigger consideration by the Commissioner of the exercise of the discretion.

The explanatory memorandum does not refer to any right the taxpayer may have to seek informal review of the exercise of the discretion under the Taxpayers' Charter; or whether the decision may be reviewable under the *Administrative Decisions (Judicial Review) Act 1977*; or whether it is possible to apply for a private ruling. The Committee therefore **seeks the Treasurer's advice** on the rights of review in relation to the exercise of the Commissioner's discretion and **requests that the explanatory memorandum be amended** to inform taxpayers of their rights in this regard.

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

Tax Laws Amendment (2009 Measures No. 5) Bill 2009

Introduced into the House of Representatives on 16 September 2009
Portfolio: Treasury

Background

This bill amends various taxation laws to implement a range of improvements to Australia's tax laws.

Schedule 1 amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) and the *Taxation Administration Act 1953* to ensure that a representative of an incapacitated entity is responsible for the goods and services tax (GST) consequences that arise during its appointment. This is the stated policy intention of the current law; however, the Federal Court held, in the 2008 case of *Deputy Commissioner of Taxation v PM Developments*, that the current law does not achieve this intention. The amendments contained in Schedule 1 aim to restore the policy intention of the GST Act in this regard. Schedule 1 also makes consequential amendments to the *Fuel Tax Act 2006*.

Schedule 2 amends the Pay As You Go instalment provisions in the *Taxation Administration Act 1953* to address a number of issues arising out of separate amendments to the *Taxation Administration Act 1953* contained in the *Tax Laws Amendment (Taxation of Financial Arrangements) Act 2009*.

Schedule 3 amends the *Income Tax Assessment Act 1997* to ensure that the outer regional and remote payment made under the Helping Children with Autism package is not subject to income tax.

Schedule 4 amends the *Income Tax Assessment Act 1997* to ensure that payments made under the Continence Aids Payment Scheme are not subject to income tax.

Schedule 5 amends section 128F of the *Income Tax Assessment Act 1936* to extend eligibility for exemption from interest withholding tax to debt issued in Australia by the Commonwealth or Commonwealth authorities.

Schedule 6 provides the Victorian Bushfire Appeal Fund Independent Advisory Panel with greater scope to support communities and individuals affected by the 2009 Victorian bushfires. The amendments in Schedule 6 will permit funds in the 2009 Victorian Bushfire Appeal Trust Account to be used for a broader range of purposes than the law considers charitable, without jeopardising the charitable status of the Australian Red Cross Society (the charity that collected the donations).

Retrospective application

Clause 2

Subclause 2(1) contains the table of commencement information and item 2 of the table provides that Part 1 of Schedule 1 commenced on 1 July 2000, resulting in retrospective application. This is the date that the GST was introduced. Item 3 of the commencement information table provides that the consequential amendments to the *Fuel Tax Act 2006* (contained in Part 2 of Schedule 1) will take effect from 1 July 2006, which is the commencement date for that Act.

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 Committee notes the clear and thorough explanations in the explanatory memorandum as to why retrospectivity is sought in each case, the limited extent of any adverse impact and the measures taken to alleviate that impact.

In relation to the amendments contained in Part 1 of Schedule 1, the explanatory memorandum explains (at page 12) that retrospectivity of the GST is considered appropriate as the proposed amendments will give effect to the stated policy intention as at the commencement of the GST law on 1 July 2000. The proposed amendments are also generally consistent with the way the law has been administered by the Commissioner of Taxation.

The explanatory memorandum also explains that retrospective application of the law is not expected to adversely impact taxpayers, with one exception. Supplies by representatives to associates of incapacitated entities for no consideration or inadequate consideration may have a different GST outcome as a result of the retrospective amendments. However, transitional provisions

(in Part 4 of Schedule 1) will apply to ensure that the amendments will not adversely impact those taxpayers who are affected.

Further, the transitional provisions will provide protection for representatives from retrospective GST liabilities in certain circumstances (for acts or omissions by a representative up until the date of the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs' announcement in 6 February 2009).

As noted at page 34 of the explanatory memorandum, the amendments to the Fuel Tax Act will ensure that the fuel tax law continues to apply to an incapacitated entity and its representative in the same way as the GST Act would apply to them under Part 1 of Schedule 1.

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

Delayed commencement

Possible typographical errors

Clause 2 and Schedule 4, item 3

Item 8 of the commencement information table in subclause 2(1) provides for commencement of Schedule 4 on 1 July 2010. Item 3 of Schedule 4 provides that the amendments to the *Income Tax Assessment Act 1997* in relation to payments made under the Continence Aid Payment Scheme apply to payments in the 2010-11 income year and later income years. However, the explanatory memorandum states (at pages 9 and 45) that the measures in Schedule 4 apply to amounts received in the 2009-10 income year and later income years. The Committee notes that the explanatory memorandum explains (at page 9) that the scheme provided for in Schedule 4 was announced as part of the 2009-10 Budget. The Committee **draws to the Treasurer's attention** the apparent inconsistency between the bill and the explanatory memorandum.

Tax Laws Amendment (Resale Royalty Right for Visual Artists) Bill 2009

Introduced into the House of Representatives on 16 September 2009

Portfolio: Treasury

Background

This bill amends the *Income Tax Assessment Act 1997* to provide a streamlined tax treatment for payments made in relation to resale royalty rights for visual artists, instead of the more complex trust taxation rules which would otherwise apply.

The bill also makes minor amendments to the *Income Tax (Transitional Provisions) Act 1997* and the *Taxation Administration Act 1953* to simplify the tax treatment for payments made by copyright collecting societies.

The Committee has no comment on this bill.

Telecommunications (Interception and Access) Amendment Bill 2009

Introduced into the House of Representatives on 16 September 2009
Portfolio: Attorney-General

Background

This bill amends the *Telecommunications (Interception and Access) Act 1979* (TIA Act) to implement a full legislative framework to clarify the basis on which communications can be accessed for the purposes of protecting a computer network.

The TIA Act currently includes special exemptions that enable interception and security agencies, as well as certain government departments, to access communications on their own computer network for network protection activities. However, these provisions are not permanent and were intended to operate on an interim basis while a comprehensive solution covering both the public and private sectors was developed. The interim provisions cease to have effect after 12 December 2009.

Specifically, the bill:

- enables all owners and operators of computer networks to undertake activities to operate, maintain and protect their networks;
- enables Commonwealth agencies, security authorities and eligible state authorities to ensure that their computer network is appropriately used by employees, office holders or contractors of the agency or authority;
- limits secondary use and disclosure of information obtained through network protection activities for certain prescribed purposes;
- requires the destruction of records obtained by undertaking network protection activities when the information is no longer required for those purposes;

- extends the evidentiary certificate regime to lawful access to telecommunications data authorised under Chapter 4 of the TIA Act and allows the managing director or the secretary of a carrier to delegate their evidentiary certificate functions;
- clarifies that lawfully intercepted information can be used, communicated and used in proceedings by the Australian Federal Police in applications for interim and final control orders, and initial and final preventative detention orders under Divisions 104 and 105 of the *Criminal Code Act 1995*; and
- makes consequential amendments to reflect amendments to the *Police Integrity Commission Act 1996* (NSW) in relation to the investigation of the corrupt conduct of an administrative officer of the NSW Police Force, or the misconduct of an officer of the NSW Crime Commission.

Drafting note

Personal rights and liberties

Schedule 1, item 15, new sections 63C, 63D and 63E

Item 15 of Schedule 1 inserts three new provisions, 63C, 63D and 63E, into the TIA Act. These provisions relate to communicating, making use of, or disclosing lawfully intercepted information for specified purposes. A consequential amendment to section 72, to be inserted by item 16 of Schedule 1, allows those who communicate information in accordance with sections 63C, 63D and 63E to make a record of that information.

The Committee notes that section 105 of the TIA Act provides that contravention of existing section 63 is an indictable offence punishable by imprisonment for a period of not more than two years. Since proposed new sections 63C, 63D and 63E expand opportunities to deal with intercepted information, the Committee **seeks the Attorney-General's advice** on whether a note might be inserted at the end of those provisions about sanctions; or, alternatively, whether the explanatory memorandum might be amended to refer to the sanctions in the TIA Act for misuse of intercepted information.

More generally, the Committee **seeks the Attorney-General's clarification** in relation to which particular non-Commonwealth entities will be provided

with interception information pursuant to the bill, and the specific purposes for which the information will be provided. In addition, the Committee **requests that the Attorney-General clarify** the limitations and safeguards imposed to govern use or disclosure of intercepted information by non-Commonwealth agencies; and the oversight mechanisms in place to ensure compliance with applicable laws (and any other requirements) by these agencies.

Pending the Attorney-General'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.

Retrospective application

Schedule 2, item 15

Item 15 of Schedule 2 allows proposed new subparagraphs (e)(ia) and (e)(ib) of the definition of 'permitted purpose' of subsection 5(1) of the TIA Act (to be inserted by item 4 of Schedule 2) to apply to investigations under the *Police Integrity Commission Act 1996* (NSW) that begin after commencement of the proposed new subparagraphs. However, the investigation may relate to complaints or actions that occurred *prior to*, on or after commencement of the bill.

The amendments in item 4 of Schedule 2 reflect the transfer of particular functions from the Independent Commission Against Corruption (ICAC) to the Police Integrity Commission (PIC), which came into effect on 1 July 2008, and will enable the PIC to use and communicate lawfully intercepted information for the purpose of an investigation relating to misconduct or corrupt behaviour of an officer falling within the PIC's jurisdiction.

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 explains (at page 24) that the provisions do not retrospectively criminalise any action but will allow the PIC to have access to the 'same techniques' to investigate complaints or actions, regardless of when the behaviour in

question occurred. In this context, the Committee notes that the intercepted information would have been obtained lawfully and that the bill reflects amendments to the *Police Integrity Commission Act 1996* (NSW).

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

Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009

Introduced into the House of Representatives on 15 September 2009
Portfolio: Broadband, Communications and the Digital Economy

Background

This bill amends the *Telecommunications Act 1997*, the *Trade Practices Act 1974* (Trade Practices Act), the *Radiocommunications Act 1992*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and the *National Transmission Network Sale Act 1998*, with the stated aim of enhancing competitive outcomes in the Australian telecommunications industry and strengthening consumer safeguards.

The bill has three primary parts:

- addressing Telstra's vertical and horizontal integration by implementing a functional separation regime that requires Telstra to do a number of things (for example, conduct its network operations and wholesale functions at 'arm's length' from the rest of Telstra);
- streamlining the telecommunications access and anti-competitive conduct regimes; and
- strengthening consumer safeguard measures, such as the Universal Service Obligation, the Customer Service Guarantee and Priority Assistance.

Insufficient parliamentary scrutiny Schedule 1, items 93 and 98

Part 2 of Schedule 1 contains provisions amending Part XIC of the Trade Practices Act. Part XIC of the Trade Practices Act provides for the telecommunications access regime, with Division 3 of Part XIC containing standard access obligations. Existing section 152AS and subsection 152ASA(12) are repealed by items 93 and 98 of Schedule 1, respectively. This

effectively means that ordinary class exemptions from standard access obligations made by legislative instrument are no longer available. Proposed new subsection 152ASA(12), to be inserted by item 98 of Schedule 1, provides specifically that a determination under subsection 152ASA(1) (to exempt from standard access obligations) is *not* a legislative instrument.

The explanatory memorandum states (at page 135) that disallowance by the Parliament ‘would not be appropriate for instruments made under Part XIC’ and that ‘(w)here the A[ustralian]C[onsumer and]C[ompetition]C[ommission] uses a number of inter-related instruments to deal with a matter, disallowance of one instrument could result in inconsistent and undesirable regulatory outcomes’. Further, ‘the Bill provides for consultation and termination of the instruments (other key features of the L[egislative]I[nstruments]A[ct])’.

The Committee considers that, if the Parliament were to continue to have the capacity to consider the disallowance of determinations made under subsection 152ASA(1), the Australian Consumer and Competition Commission (ACCC) could draw to its attention, or provide advice upon, any ‘inconsistent’ or ‘undesirable’ regulatory outcomes. The Committee **seeks the Minister’s advice** on whether this type of approach might be considered, as opposed to the absolute removal of legislative scrutiny of determinations made under the proposed new system of exemptions.

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.

Legislative Instruments Act—exemption Schedule 1, item 116, new subsection 152BC(9)

Item 116 of Schedule 1 contains provisions enabling the ACCC to make access determinations. Proposed new section 152BC provides for the ACCC to make written determinations relating to access to a declared service. Proposed new section 152BC(9) provides that such a determination is not a legislative instrument.

As outlined in Drafting Direction No. 3.8, where a provision specifies that an instrument is *not* a legislative instrument, the Committee expects the explanatory memorandum to explain whether the provision is merely declaratory of the law (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 2003*. Where the provision is a substantive exemption, the Committee would expect to see a full explanation justifying its need.

In this case, the explanatory memorandum does not appear to explain whether or not a determination under new section 152BC is intended to be a substantive exemption and, if so, the reasons for that exemption. Therefore, the Committee **seeks the Minister's advice** on this issue and **requests that the explanatory memorandum be amended** to include the relevant explanation.

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—exemption

Schedule 1, item 116, new subsection 152BCF(15) and (16)

Proposed new section 152BCF provides for the ACCC to make written determinations relating to the duration of access to a declared service. Proposed new subsections 152BCF(10) and (12) provide for declarations by the ACCC of extensions to, or expiry of, original access determinations. Under proposed new subsections 152BCF(15) and (16), declarations made under subsections 152BCF(10) and (12) are not legislative instruments.

The explanatory memorandum does not appear to explain whether or not determinations under proposed new subsections 152BCF(10) and (12) are intended to be substantive exemptions and, if so, the reasons for those exemptions. Therefore, the Committee **seeks the Minister's advice** on this issue and **requests that the explanatory memorandum be amended** to include the relevant explanation.

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.

Denial of procedural fairness

Schedule 1, item 116, new section 152BCG

Proposed new section 152BCG, to be inserted by item 116 of Schedule 1, provides for interim access determinations. The circumstances in which the ACCC is required to make an interim access determination are set out in proposed new subsection 152BCG(1). Proposed new subsection 152BCG(4) provides that the ACCC 'is not required to observe any requirements of procedural fairness in relation to the making of an interim access determination'.

The Committee prefers that legislation provides for the requirements of procedural fairness to be followed, and would expect clear and convincing justification for a variation from this standard. The explanatory memorandum states (at page 146) that procedural fairness does not apply because of the 'urgent and temporary nature' of interim access determinations. However, interim access determinations can be issued when it will be at least six months until a final determination is issued (proposed new subparagraph 152BCG(1)(d)(i)); and they are issued in circumstances where a service is being declared for the first time (proposed new paragraph 152BCG(1)(b)).

The Committee is concerned that issuing interim access determinations without regard to procedural fairness may mean that consultations to determine whether a substantive access determination should be issued may commence with a 'lack of trust' on the part of those carriers, carriage service providers and others who are involved in the process. The Committee **seeks the Minister's comments** on this issue and whether any alternatives to the approach taken in the bill were, or might be, considered.

Pending the Minister's advice, the Committee draws Senators' attention to the provision, as it may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable

decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference.

Denial of procedural fairness

Legislative Instruments Act—exemption

Schedule 1, item 116, new subsections 152BD(8) and (11)

Item 116 of Schedule 1 inserts a new Division 4A into the Trade Practices Act for binding rules of conduct. Proposed new section 152BD relates to binding rules of conduct for access to a declared service. When making any rules, the ACCC is not required to observe any requirements of procedural fairness (proposed new subsection 152BD(8)) and does not have a duty to consider whether to consider making any rules, whether at the request of a person or in any other circumstances (proposed new subsection 152BD(9)). The rules 'may provide for the [ACCC] to perform functions, and exercise powers, under the rules' (proposed new subsection 152BD(10)).

The rules are not a legislative instrument (proposed new subsection 152BD(11)), so they would not be subject to tabling and disallowance. The ACCC is also not obliged to observe any requirements of procedural fairness in relation to the making of binding rules of conduct. The explanatory memorandum explains (at page 154) that the rules are necessary to give the ACCC 'flexibility in how it will deal with technical, complex and changing matters'. However, the Committee notes that the provisions will result in the ACCC having extremely broad discretion. The Committee **seeks the Minister's advice** on how the discretion exercised by the ACCC under proposed new section 152BD will be monitored.

Pending the Minister's advice, the Committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon non-reviewable decisions, in breach of principle 1(a)(iii) of the Committee's terms of reference; and may insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the Committee's terms of reference.

COMMENTARY ON AMENDMENTS TO BILLS

Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Bill 2009

On 15 September 2009, the Senate agreed to four Australian Greens amendments to the bill and, on 16 September 2009, agreed to three government amendments to the bill. None of these amendments fall within the Committee's terms of reference. On 17 September 2009, the House of Representatives also agreed to the amendments. The bill received Royal Assent on 21 September 2009.

Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009

On 19 October 2009, the House of Representatives agreed to one Opposition amendment to the bill, which does not fall within the Committee's terms of reference.

Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008

On 17 September 2009, the Senate agreed to 32 government amendments to the bill. On 19 October 2009, the House of Representatives also agreed to these amendments. One of the amendments falls within the Committee's terms of reference.

Abrogation of legal professional privilege Amendment No. 18; Schedule 1, item 2, new subsection 23CL(1)

New subsection 23CL(1) of the *Federal Court of Australia Act 1976* provides that a party involved in pre-trial disclosure cannot refuse to disclose material on the basis that it is covered by litigation privilege. This means that, if material came into existence for use or in connection with the current

proceedings, or other litigation, the party cannot refuse to disclose it. However, the Committee notes that this is not a general waiver of legal professional privilege because a party who holds privilege in the material may claim privilege in later proceedings, or at a later stage in the current proceedings. This is specifically clarified in new subsection 23CL(2) and is explained thoroughly in the supplementary explanatory memorandum (at page 4).

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

Fuel Quality Standards Amendment Bill 2009

On 17 September 2009, the Senate agreed to one amendment to the bill. On 20 September 2009, the House of Representatives also agreed to this amendment.

Non-availability of merits review

Schedule 1, item 15A, new paragraph 70(1)(da)

The amendment was moved by the government on the basis of comments made by the Committee in its *Alert Digest No. 5 of 2009*, relating to the non-availability of merits review of decisions to refuse to vary an approval granted under section 13 of the *Fuel Quality Standards Act 2000* (new subsection 17E(4)). The Minister for the Environment, Heritage and the Arts had previously undertaken to move this amendment in the Senate to address the issue raised by the Committee (see the Committee's *Ninth Report of 2009*). The amendment will enable an application to be made to the Administrative Appeals Tribunal for review of a decision of the Minister to refuse to vary an approval.

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

Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009

On 16 September 2009, the Senate agreed to two opposition amendments and one Australian Greens amendment to the bill. On 17 September 2009, the House of Representatives also agreed to these amendments, none of which fall within the Committee's terms of reference.

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.

Bill/Act	Section/Subsection	Offence	Penalty
Safe Climate (Energy Efficient Non-Residential Buildings Scheme) Bill 2009	Subclause 47(3)	Failure to provide information to a public authority	10 penalty units
Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2) 2009	Schedule 2, item 20, new subsection 3LA(5)	Failure to provide information to a public authority (pursuant to a magistrate's order)	Imprisonment for two years

Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2) 2009	Schedule 3, item 49, new subsection 19(7)	Failure to return documents to a public authority (pursuant to a written notice)	10 penalty units
Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2) 2009	Schedule 7, item 18, new paragraphs 34A(a)(ii) and (iii)	Failure to provide information to a public authority (contempt of the Australian Crime Commission)	Unspecified (to be determined by a court)

BILLS GIVING EFFECT TO NATIONAL SCHEMES OF LEGISLATION

The Chairs and Deputy Chairs of Commonwealth, and state and territory Scrutiny Committees have noted (most recently in 2000) difficulties in the identification and scrutiny of national schemes of legislation. Essentially, these difficulties arise because ‘national scheme’ bills are devised by Ministerial Councils and are presented to Parliaments as agreed and uniform legislation. Any requests for amendment are seen to threaten that agreement and that uniformity.

To assist in the identification of national schemes of legislation, the Committee’s practice is to note bills that give effect to such schemes as they come before the Committee for consideration.

Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2) 2009

In April 2009, the Standing Committee of Attorneys-General (SCAG) agreed to a set of resolutions for a comprehensive national response to combat organised crime. In June 2009, the Federal Government introduced the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009, which implements the Commonwealth’s commitment at the April SCAG meeting to enhance its legislation in this regard. In August 2009, SCAG agreed to further legislative and operational arrangements to support the national response to organised crime.

The bill implements legislative aspects of the national response to organised crime that were not contained in the first bill; and aims to further strengthen existing laws to more effectively prevent, investigate and prosecute organised crime activity, and target the proceeds of organised criminal groups.

Family Assistance Legislation Amendment (Participation Requirement) Bill 2009

This bill amends the taxation law to introduce a new participation requirement for families receiving family tax benefit (FTB) Part A for children aged between 16 and 20 years. To be eligible to receive family tax benefit Part A,

children between 16 and 20 must be studying full-time towards, or must have completed, Year 12 or its equivalent.

On 30 April 2009, the Council of Australia Governments (COAG) announced the Compact with Young Australians and a National Youth Participation Requirement. Broadly, the Compact with Young Australians will guarantee an education or training place for all young Australians under the age of 25 who are not in work or education. Under the National Youth Participation Requirement, participation in education, training or employment will be compulsory for all young people until they turn 17.

To support the compact, the Federal Government has agreed to strengthen the conditions that 16 to 20 year olds without a Year 12 or equivalent qualification must meet in order to receive or attract payment of youth allowance or FTB Part A. The youth allowance changes have been made by the *Social Security Amendment (Training Incentives) Act 2009*.

Personal Property Securities (Consequential Amendments) Bill 2009

This bill clarifies the operation of legislation that will operate concurrently with the Personal Property Securities Bill 2009 (which was considered by the Committee in *Alert Digest No. 9 of 2009* and the *Eleventh Report of 2009*).

Personal property securities reform is a key component of COAG's deregulation agenda. In April 2007, COAG endorsed the need for a national system to deal with the creation and enforcement of security interests in personal property. COAG signed an inter-governmental agreement in October 2008 and, since then, personal property securities reform has been included as part of the *National Partnership Agreement to Deliver a Seamless National Economy* reached between the Commonwealth and the states and territories.

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 42nd Parliament.

Bills introduced with standing appropriation clauses – 42nd Parliament

- * Indicates bill passed by the Senate
N Indicates bill negated by the Senate

	Asian Development Bank (Additional Subscription) Bill 2009 — clause 6
N	Australian Business Investment Partnership Bill 2009 — clauses 13 and 14
	Australian National Preventive Health Agency Bill 2009 — clause 50 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Automotive Transformation Scheme Bill 2009 — clause 10
*	Car Dealership Financing Guarantee Appropriation Bill — clause 5
N	Carbon Pollution Reduction Scheme Bill 2009 — subclauses 103B(5), 139(4) and 291(4)
	Carbon Pollution Reduction Scheme Bill 2009 [No. 2] — subclauses 103B(5), 139(4) and 291(4)
*	COAG Reform Fund Bill 2008 — clause 5 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Commonwealth Securities and Investment Legislation Amendment Bill 2008 — Schedule 1, item 10, subsection 5BA(7)
*	Defence Home Ownership Assistance Scheme Bill 2008 — clause 84
*	Dental Benefits Bill 2008 — clause 65

*	Education Legislation Amendment Bill 2008 — Schedule 1, item 6, section 14B
*	Fair Work Bill 2008 — Subclause 559(4)
*	Farm Household Support Amendment (Additional Drought Assistance Measures) Bill 2008 — Schedule 1, item 29
*	Federal Financial Relations Bill 2009 — clause 22
*	Federal Financial Relations (Consequential Amendments and Transitional Provisions) Bill 2009 — Schedule 4, subitem 2(3)
*	Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008 — Schedule 1, item 49, section 54A and Schedule 2, item 23, section 70E (Special Accounts: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Bill 2008 — Schedule 1, item 79, section 94B (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008 — Schedule 5, item 141, section 65A
*	Guarantee of State and Territory Borrowing Appropriation Bill 2009 — clause 5
*	Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008 — clause 5
*	International Monetary Agreements Amendment (Financial Assistance) Bill 2009 — Schedule 1, item 4, subsection 8CA(4)
	Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 — subclause 43(2), clause 70 and subclause 78(2)
*	Nation-building Funds Bill 2008 — clauses 13, 61, 68, 75, 82, 132, 181, 188, 215 and 255 — (Special Accounts: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
	National Consumer Credit Protection Bill 2009 — Schedule 1, subclause 115(2)
*	Protection of the Sea Legislation Amendment Bill 2008 — Schedule 1, item 20, section 46N
*	Safe Work Australia Bill 2008 — clause 64 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Safe Work Australia Bill 2008 [No. 2] — clause 64 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)
*	Schools Assistance Bill 2008 — clause 167
*	Uranium Royalty (Northern Territory) Bill 2008 — clause 18

*	Veterans' Affairs Legislation Amendment (International Agreements and Other Measures) Bill 2008 — Schedule 1, item 1
*	Wheat Export Marketing Bill 2008 — clause 58 (Special Account: CRF appropriated by virtue of section 21 of the <i>Financial Management and Accountability Act 1997</i>)

Other relevant appropriation clauses in bills

***** Indicates bill passed by the Senate

N	Household Stimulus Package Bill 2009 — Schedule 4, subitem 1(5): special appropriation clause – for a finite period of time (ie for circumstances arising in a particular financial year).
*	Household Stimulus Package Bill (No. 2) 2009 – Schedule 4, subitem 1(5): special appropriation clause – for a finite period of time (ie. for circumstances arising in a particular financial year).
*	Social Security and Other Legislation Amendment (Economic Security Strategy) Bill 2008 — Schedule 4, item 4: special appropriation clause – for a finite period of time (ie for circumstances arising in a particular financial year).
*	Social Security and Veterans' Entitlements Legislation Amendment (One-off Payments and Other Budget Measures) Bill 2008 — Schedule 2, items 1 and 2, and Schedule 4, item 1: special appropriation clauses – for a finite period of time (ie. 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 - 2008/2009

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2008							
Corporations Amendment (Short Selling) Bill 2008	13(26.11.08)	13.11.08	27.11.08	Treasury	26.11.08	7.1.09	1(4.2.09)
Drink Container Recycling Bill 2008	2(19.3.08)		13.3.08	Senator Fielding	20.3.08		---
Environment Protection and Biodiversity Conservation Amendment (Control of Power Station Emissions) Bill 2008	6(25.6.08)		19.6.08	Senator Allison	26.6.08		---
Fair Work Bill 2008	14(3.12.08)	25.11.08	4.12.08	Education, Employment and Workplace Relations	4.12.08	19.1.08	1(4.2.09)
Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Act 2008	12(12.11.08)	15.10.08	16.10.08	Treasury	13.11.08	4.12.08	1(4.2.09)
National Commissioner for Children Bill 2008	3(14.5.08)		18.3.08	Senator Bartlett	15.5.08		---
Nation-building Funds (Consequential Amendments) Bill 2008	13(26.11.08)	13.11.08	3.12.08	Finance and Deregulation	27.11.08	23.1.09	1(4.2.09)
Tax Agent Services Bill 2008	13(26.11.08)	13.11.08	12.2.09	Treasury	27.11.08	3.2.09	1(4.2.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Bills dealt with in 2009							
Anti-Terrorism Laws Reform Bill 2009	9(12.8.09)		23.6.09	Senator Ludlam	13.3.09	8.9.09	10(9.9.09)
Appropriation Bill (No. 2) 2009-2010	6(2.6.09)	12.5.09	23.6.09	Finance and Deregulation	3.6.09	15.6.09	6(17.6.09)
Australian Climate Change Regulatory Authority Bill 2009	6(2.6.09)	14.5.09	15.6.09	Climate Change and Water	3.6.09	18.6.09	7(25.6.09)
Australian National Preventive Health Agency Bill 2009	12(16.9.09)	10.9.09	26.10.09	Health and Ageing	17.9.09	23.10.09	12(28.10.09)
Australian Wine and Brandy Corporation Amendment Bill 2009	9(12.8.09)	22.6.09		Agriculture, Fisheries and Forestry	13.8.09		
Aviation Legislation Amendment (2008 Measures No. 2) Bill 2008	1(4.2.09)	3.12.08	12.2.09	Infrastructure, Transport, Regional Development and Local Government	5.2.09	10.3.09	2(11.3.09)
Aviation Transport Security Amendment (2009 Measures No. 1) Bill 2009	9(12.8.09)	24.6.09	9.9.09	Infrastructure, Transport, Regional Development and Local Government	13.8.09 10.9.09	19.8.09 18.9.09	10(9.9.09) 12(28.10.09)
Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2009	8(24.6.09)	17.6.09	17.8.09	Education, Employment and Workplace Relations	25.6.09	10.8.09	8(12.8.09)
Carbon Pollution Reduction Scheme Bill 2009	6(2.6.09)	14.5.09	15.6.09	Climate Change and Water	3.6.09	18.6.09	7(25.6.09)
Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009	6(2.6.09)	14.5.09	15.6.09	Climate Change and Water	3.6.09	18.6.09	7(25.6.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
<i>Civil Aviation Amendment Act 2009</i>	3(11.3.09)	12.2.09	11.3.09	Infrastructure, Transport, Regional Development and Local Government	12.3.09	12.5.09	4(13.5.09)
Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009	4(18.3.09)	12.3.09	17.3.09	Special Minister of State	19.3.09	22.4.09	4(13.5.09)
Coordinator-General for Remote Indigenous Services Bill 2009	6(2.6.09)	27.5.09	25.6.09	Families, Housing, Community Services and Indigenous Affairs	3.6.09	16.6.09	6(17.6.09)
Corporations Amendment (Improving Accountability on Termination Payments) Bill 2009	9(12.8.09)	24.6.09	10.9.09	Treasury	13.8.09 10.9.09	28.8.09 14.10.09	10(9.9.09) 12(28.10.09)
Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009	9(12.8.09)	25.6.09	16.10.09	Treasury	13.8.09	11.9.09	11(16.9.09)
Crimes Amendment (Working With Children—Criminal History) Bill 2009	11(9.9.09)	20.8.09		Home Affairs	10.9.09	16.9.09	12(28.10.09)
Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009	9(12.8.09)	24.6.09		Attorney-General	13.8.09	4.9.09	10(9.9.09)
Customs Amendment (Enhanced Border Controls and Other Measures) Bill 2008	1(4.2.09)	3.12.08	10.3.09	Home Affairs	5.2.09	23.2.09	2(11.3.09)
Disability Discrimination and Other Human Rights Legislation Amendment Bill 2008	1(4.2.09)	3.12.08	12.2.09	Attorney-General	5.2.09	27.2.09	2(11.3.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009	11(9.9.09)	19.8.09	26.10.09	Education, Employment and Workplace Relations	10.9.09	25.9.09	12(28.10.09)
Employment and Workplace Relations Amendment Bill 2008	1(4.2.09)	3.12.08	12.2.09	Employment and Workplace Relations	5.2.09	16.3.09	3(18.3.09)
Environment Protection (Beverage Container Deposit and Recovery Scheme) Bill 2009	6(2.6.09)		14.5.09	Senator Ludlam	3.6.09	16.6.09	6(17.6.09)
Fair Work (State Referral and Consequential and Other Amendments) Bill 2009	6(2.6.09)	27.5.09	15.6.09	Education, Employment and Workplace Relations	3.6.09	29.6.09	8(12.8.09)
Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009	5(13.5.09)	19.3.09	15.6.09	Education, Employment and Workplace Relations	14.5.09	12.6.09	6(17.6.09)
Family Assistance Amendment (Further 2009 Budget Measures) Bill 2009	7(17.6.09)	3.6.09	17.6.09	Families, Housing, Community Services and Indigenous Affairs	18.6.09	5.8.09	8(12.8.09)
Family Assistance Legislation Amendment (Child Care) Bill 2009	6(2.6.09)	14.5.09	15.6.09	Education, Employment and Workplace Relations	14.5.09	17.6.09	7(17.6.09)
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Bill 2009	5(13.5.09)	19.3.09	15.6.09	Treasury	14.5.09	24.6.09	8(12.8.09)
Foreign States Immunities Amendment Bill 2009	11(9.9.09)	19.8.09	14.9.09	Attorney-General	10.9.09	11.9.09	11(16.9.09)
Fuel Quality Standards Amendment Bill 2009	5(13.5.09)	18.3.09	15.6.09	Environment, Heritage and the Arts	14.5.09	12.8.09	9(19.8.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009	9(12.8.09)	24.6.09	9.9.09	Health and Ageing	13.8.09	18.8.09	9(19.8.09)
Higher Education Support Amendment (VET FEE-HELP and Providers) Bill 2009	5(13.5.09)	18.3.09	15.6.09	Education	14.5.09	16.6.09	6(17.6.09)
Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Bill 2009	12(16.9.09)	9.9.09		Education	17.9.09	22.10.09	12(28.10.09)
Infrastructure Australia Amendment (National Broadband Network and Other Projects) Bill 2009	8(24.6.09)		15.6.09	Senator Minchin	25.6.09	10.8.09	8(12.8.09)
Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009	9(12.8.09)	24.6.09	9.9.09	Health and Ageing	13.8.09	18.8.09	9(19.8.09)
Migration Amendment (Complementary Protection) Bill 2009	12(16.9.09)	9.9.09		Immigration and Citizenship	17.9.09	27.10.09	12(28.10.09)
Migration Amendment (Immigration Detention Reform) Bill 2009	9(12.8.09)		25.6.09	Immigration and Citizenship	13.8.09	18.8.09	9(19.8.09)
Military Justice (Interim Measures) Bill (No. 1) 2009	12(16.9.09)	14.9.09	9.9.09	Defence	17.9.09		
Nation Building Program (National Land Transport) Amendment Bill 2009	6(2.6.09)	13.5.09	15.6.09	Infrastructure, Transport, Regional Development and Local Government	3.6.09	16.6.09	6(17.6.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
National Consumer Credit Protection Bill 2009	9(12.8.09)	25.6.09	7.9.09	Treasury	13.8.09	21.8.09	10(9.9.09)
National Consumer Credit Protection (Fees) Bill 2009	9(12.8.09)	25.6.09	7.9.09	Treasury	13.8.09	21.8.09	10(9.9.09)
National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009	9(12.8.09)	25.6.09	7.9.09	Treasury	13.8.09	21.8.09	10(9.9.09)
National Greenhouse and Energy Reporting Amendment Bill 2009	5(13.5.09)	18.3.09	17.8.09	Climate Change and Water	14.5.09	22.6.09	7(24.6.09)
National Health Security Amendment Bill 2009	9(12.8.09)	24.6.09	10.9.09	Health and Ageing	13.8.09	19.8.09	10(9.9.09)
National Security Legislation Monitor Bill 2009	9(12.8.09)		25.6.09	Cabinet Secretary	13.8.09	8.9.09	10(9.9.09)
Native Title Amendment Bill 2009	5(13.5.09)	19.3.09	15.6.09	Attorney-General	14.5.09	23.6.09	7(24.6.09)
Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Bill 2009	5(13.5.09)	19.3.09	10.9.09	Resources and Energy	14.5.09	1.6.09	5(2.6.09)
Personal Property Securities Bill 2009	9(12.8.09)	24.6.09	17.9.09	Attorney-General	13.8.09	15.9.09	11(16.9.09)
Renewable Energy (Electricity) Amendment Bill 2009	8(24.6.09)	17.6.09	18.8.09	Climate Change and Water	25.6.09	18.8.09	9(19.8.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Social Security and Family Assistance Legislation Amendment (2009 Budget Measures) Bill 2009	6(2.6.09)	12.5.09	13.5.09	Families, Housing, Community Services and Indigenous Affairs	3.6.09	6.7.09	8(12.8.09)
Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009	12(16.9.09)	10.9.09		Employment and Workplace Relations	17.9.09	14.10.09	12(28.10.09)
Social Security and Other Legislation Amendment (Pension Reform and Other 2009 Budget Measures) Bill 2009	8(24.6.09)	15.6.09	17.6.09	Families, Housing, Community Services and Indigenous Affairs	25.6.09	5.8.09	8(12.8.09)
Tax Agent Services (Transitional and Consequential Amendments) Bill 2009	9(12.8.09)	24.6.09		Treasury	13.8.09	28.8.09 15.9.09	10(9.9.09) 11(16.9.09)
Tax Laws Amendment (2009 Measures No. 2) Bill 2009	5(13.5.09)	19.3.09	15.6.09	Treasury	14.5.09	28.5.09	5(2.6.09)
Tax Laws Amendment (2009 Measures No. 4) Bill 2009	9(12.8.09)	25.6.09	8.9.09	Treasury	13.8.09	7.9.09	10(9.9.09)
Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008	1(4.2.09)	4.12.08	12.2.09	Treasury	5.2.09	11.3.09	3(18.3.09)
Telecommunications Legislation Amendment (National Broadband Network Measures No. 1) Bill 2009	9(12.8.09)	DC	25.6.09	Broadband, Communications and the Digital Economy	13.8.09	20.8.09	9(9.9.09)
Therapeutic Goods Amendment (2009 Measures No. 1) Bill 2009	5(13.5.09)	19.3.09	15.6.09	Health and Ageing	14.5.09	15.6.09	6(17.6.09)

NAME OF BILL	ALERT DIGEST	INTRODUCED		MINISTER	RESPONSE		REPORT NUMBER
		HOUSE	SENATE		SOUGHT	RECEIVED	
Therapeutic Goods Amendment (Medical Devices and Other Measures) Bill 2008	1(4.2.09)	12.5.09	3.12.08	Health and Ageing	5.2.09	12.2.09	2(11.3.09)
Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008	1(4.2.09)	3.12.08	12.2.09	Treasury	5.2.09	11.3.09	3(18.3.09)
<i>Transport Safety Investigation Amendment Act 2009</i>	3(11.3.09)	12.2.09	11.3.09	Infrastructure, Transport, Regional Development and Local Government	12.3.09	5.5.09	4(13.5.09)
Veterans' Affairs and Other Legislation Amendment (Pension Reform) Bill 2009	10(19.8.09)	12.8.09	19.8.09	Veterans' Affairs	20.8.09	4.9.09	10(9.9.09)