Senate Standing Committee

for the

Scrutiny of Bills

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Senate Standing Committee for the Scrutiny of Bills

Members of the Committee

Senator the Hon Ian Macdonald (Chair)
Senator C Brown (Deputy Chair)
Senator M Bishop
Senator S Edwards
Senator R Siewert
Senator the Hon L Thorp

Terms of Reference

Extract from **Standing Order 24**

(1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:

(i) trespass unduly on personal rights and liberties;

(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

(b) The committee, for the purpose of reporting upon the clauses of a bill when the bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

TABLE OF CONTENTS

Senate Standing Legislation Committee Inquiries

The committee will forward any comments it has made on a bill to any relevant legislation committee for information.

- **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.

Corporations Legislation Amendment (Financial Reporting Panel) Bill 2012

Introduced into the House of Representatives on 21 June 2012
Portfolio: Treasury

Background

This bill amends the *Australian Securities and Investments Commission Act 2001*, the *Corporations Act 2001* and the *Corporations (Fees) Act 2001* to repeal the functions and powers of the Financial Reporting Panel.

The Committee has no comment on this bill.

Customs Tariff Amendment (2012 Measures No.1) Bill 2012

Introduced into the House of Representatives on 20 June 2012
Portfolio: Home Affairs

Background

This bill amends the *Customs Tariff Act 1995* to:

- re-insert subheading 5308.10.00 applicable to coir yarn;
- provide for the listing of Serbia as a Developing Country for the purposes of the Australian System of Tariff Preferences; and
- correct a number of technical errors.

Retrospective commencement
Schedule 1, items 1, 2, 7 and 8

The Customs Tariff Proposal mechanism enables alterations to be made to Customs Tariffs in circumstances where the alterations are required to have effect in a short time frame and it is not possible to achieve this result through the introduction of a bill to amend the Customs Act. The operation of this mechanism is described in the explanatory memorandum. Two Customs Tariff Proposals have been incorporated into this Bill by the above items. The commencement provisions relating to these items reflects the date at which the tariff alterations took effect. As the explanatory memorandum puts it, at page 5, this means that the commencement provisions in relation to items giving effect to the Customs Tariff Proposal mechanism are 'necessarily retrospective'. The retrospective commencement of these provisions is envisaged by the normal operation of the Customs Tariff Proposal.

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

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Financial Framework Legislation Amendment Bill (No.3) 2012

Introduced into the House of Representatives on 26 June 2012
Portfolio: Finance and Deregulation

Background

This bill responds to the decision of the High Court on 20 June 2012 in *Williams v Commonwealth* [2012] HCA 23. The bill:

- amends the *Financial Management and Accountability Act 1997* (FMA Act) to empower the Commonwealth, where authority does not otherwise exist, to make, vary or administer arrangements under which public money is or may become payable, or to make grants of financial assistance, including payments or grants for the purposes of particular programs, where those arrangements or grants, or a class including those arrangements or grants, or relevant programs, are specified in regulations. The amendments would also apply in relation to arrangements etc that are in force immediately before those amendments come into operation;

- clarifies that decisions under the proposed amendments are not decisions to which the *Administrative Decisions (Judicial Review) Act 1977* applies; and

- amends the *Financial Management and Accountability Regulations 1997* to specify arrangements or grants, or classes of arrangements or grants, or programs, in accordance with the proposed amendments to the FMA Act.

Judicial review
Schedule 1, item 1

Item 1 of the Bill has the effect of excluding specified decisions from judicial review under the *Administrative Decisions (Judicial Review) Act 1977*. The decisions are those made under Division 3B of Part 4, and section 44, of the *Financial Management and Accountability Act 1997*. This exclusion is achieved by listing these provisions in Schedule 1 of the ADJR Act.

The explanatory memorandum notes at page 5 that:

> Exempting decisions made under these provisions would ensure that the status quo is maintained. Importantly however, the guaranteed right of review under section 75 of the Australian Constitution, and review under section 39B of the *Judiciary Act 1903*, would still be available.

In most instances of Commonwealth decision-making, section 39B(1) review jurisdiction will be available even if the *ADJR Act* cannot be relied upon. However, the *ADJR Act* was enacted as a remedial statute and seeking judicial review under it has a number of important advantages. Potential applicants are entitled to a statement of reasons, there is a single test for standing, and the availability of remedies proceeds on a comparatively straightforward basis. It is also the case that applicants may succeed on the basis of establishing errors that would not justify a prerogative writ (or 'constitutional' writ). Given these advantages, and the fact that the enactment of the *ADJR Act* was intended to become the primary means for the review of commonwealth administrative decisions (due to its comparative simplicity and the absence of technicality), the Committee looks for compelling reasons before accepting that jurisdiction under the Act should be excluded. The availability of alternative sources of judicial review jurisdiction does not explain the justification for excluding the ADJR Act.

Further, although the proposed approach is intended to maintain the status quo, the status quo rests on the assumption that the relevant powers were part of the executive power of the Commonwealth and did not require statutory authorisation. Given that this bill provides a statutory basis for entering into arrangements it is suggested that a further explanation for the necessity of excluding the ADJR Act be sought. In this regard it is noted that jurisprudence concerning the applicability of the ADJR Act to decisions made to enter into contracts or pursuant to existing contracts will typically not be reviewable. Nevertheless, there may be some circumstances where contractual powers are subject to clear legal limits (in a statute or regulations) that ADJR Act review is available. In these circumstances, it is the Committee's view that the explanatory memorandum does not provide a sufficiently detailed explanation for the proposed exclusion of ADJR Act review. **The Committee therefore seeks the Minister's further advice as to the justification for the proposed approach.**

> *Pending the Minister's reply, 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.*

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Delegation of Legislative power
Schedule 1, item 2, subsection 32B(b)

This provision enables the regulations to specify the arrangements which will be authorised by the proposed new statutory source of authority to make, vary or administer an arrangement or grant (under proposed section 32B). Determining which arrangements and grants will attract this source of statutory authority through regulations (rather than primary legislation) is said to be 'necessary so that the Government can continue these activities in the national interest'.

The Committee has consistently expressed its preference that important matters be included in primary legislation whenever this is appropriate, and for the explanatory memorandum to outline a clear justification when the use of delegated legislation is proposed. In light of this, and the High Court's reasoning in *Williams*, the Committee expects a more detailed justification in the explanatory memorandum of the question of whether it is appropriate to delegate to the Executive (through the use of regulations) how its powers to contract and to spend are to be expanded. **The Committee therefore seeks the Minister's further advice as to the justification of this delegation of legislative power.**

> *Pending the Minister's reply, 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.*

Insufficiently defined administrative power
Schedule 1, item 2, section 32D

This item will allow the Minister to, by writing, 'delegate any or all of his or her powers under this Division to an official in any Agency' (section 32D(1)). It will be a requirement that in exercising any delegated powers, the delegate must comply with any direction of the Minister concerned (section 32D(2)).

The Committee has consistently drawn attention to legislation that allows delegations to a relatively large class of persons, with little or no specificity as to their qualifications or attributes. Generally, the Committee prefers to see a limit set either on the sorts of powers that might be delegated, or on the categories of people to whom those powers might be delegated. The

Committee's preference is that delegates be confined to the holders of nominated offices or to members of the Senior Executive Service.

Where broad delegations are made, the Committee considers that an explanation of why these are considered necessary should be included in the explanatory memorandum. In this case the explanatory memorandum, at page 7, simply restates the effect of the provision. **The Committee therefore seeks the Minister's further advice as to the justification for the proposed approach.**

> *Pending the Minister's reply, the Committee draws Senators' attention to the provisions, as they 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.*

Retrospective validation
Schedule 1, item 9

This item is a transitional provision. The explanatory memorandum, at pages 8 and 9, states that it:

> ...provides for arrangements that were in force or purportedly in force, immediately before the commencement of new section 32B (and associated regulations) to have been made with the authority granted under section 32B.
>
> This provision ensures that the validity of an existing arrangement that is in force, or purportedly in force, immediately before the Bill commences is not in question by virtue of the fact that the Commonwealth lacked, or may have lacked, the legislative authority to make the grant, contract or similar arrangement at the relevant time.

The Scrutiny Committee is concerned about whether, from a scrutiny perspective, this provision unfairly or unduly affects rights or interests by applying to past facts and circumstances and the explanatory memorandum does not address this issue. **The Committee therefore seeks the Minister's further advice as to the justification for the proposed approach.**

> *Pending the Minister's reply, 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.*

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

Military Court of Australia Bill 2012

Introduced into the House of Representatives on 21 June 2012
Portfolio: Attorney-General

Background

This bill establishes the Military Court of Australia (Military Court) under Chapter III of the Constitution and provides for, among other things, the structure, jurisdiction, practice and procedure of the court. Amendments to the *Defence Force Discipline Act 1982* and a number of other Acts that are consequential to the establishment of the Military Court are included in the Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012.

The Military Court will be a superior court of record comprising judicial officers who, by reason of their experience or training, have an understanding of the nature of service in the ADF. The bill allows judicial officers in the Military Court to hold dual commissions in other federal courts on the same terms and conditions and, consistent with the Constitution, provides tenure for judicial officers to the age of 70. The bill requires appointments to the Military Court to be made in consultation with the Minister for Defence.

Like other federal courts, the Chief Justice of the Military Court will have direct responsibility for the administration of the Court. The bill provides for the Registrar of the Federal Court to assist the Chief Justice in the management of the administrative affairs of the Military Court.

Undue trespass on rights and liberties—fair trial
Clause 64

This clause provides that charges of service offences 'are to be dealt with otherwise than on indictment'. The consequence of this is that such offences will not be tried before a jury. (Under section 80 of the Constitution, only a 'trial on indictment' of Commonwealth offences must be by jury.) The explanatory memorandum indicates that this 'is consistent with the determination of service offences under the Defence Force Discipline Act 1982, which also does not provide for trial by civilian jury' (explanatory memorandum at page 29). The explanatory memorandum further states that service offences established under the *Defence Force Discipline Act 1982*

'complements, and does not replace, the criminal law in force in Australia' and, also, that if 'conduct is to be prosecuted as a criminal offence, service personnel, like civilian citizens, will be afforded trial by jury if prosecution is of a criminal offence by a civilian DPP on indictment' (see page 29).

As indicated in the General Outline of the explanatory memorandum, at page 2, juries have not in general been used in the Australian military justice system. It is further said that a jury in a Chapter III court could not be limited to members who were in a Defence Force and, for this reason, that it would not be desirable for military service offences to be tried by juries (as they would include civilians who 'would not necessarily be familiar with the military context of service offences' (at page 2). The explanatory memorandum also argues, at page 2, that it would be impractical for trial to be by jury when the Military Court sits overseas. Thus the overall conclusion is that the best solution in the context of service offences to be tried before a Chapter III court is for the trial to be by a judicial officer, who by reason of experience or training understands the nature of service in the ADF. For this reason it is necessary to provide that the charges are to be dealt with otherwise than on indictment, as section 80 of the Constitution provides that 'trial on indictment' of Commonwealth offences must be by jury. **In these circumstances, the Committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.**

> *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.*

Undue trespass on rights and liberties—punishment
Clause 140

Clause 140 imposes a number of punishments that the Military Court and service tribunals can impose that are unique to the military justice system and are in addition to a punishment that could otherwise be imposed for an offence. The clause is modelled on section 68 of, and Schedule 2 to, the *Defence Force Discipline Act 1982*. These unique punishments involve dismissal from the ADF or other sanctions that affect the terms of employment in the ADF. Such punishments are already elements of the military justice system. It is noted that subclause 140(5) provides that the

Military Court must not impose a punishment on a convicted person 'that is more severe than the most severe kind of punishment specified in the provision creating that service offence' (see the explanatory memorandum at page 63). **In these circumstances, the Committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.**

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

Undue trespass on rights and liberties—detention
Clauses 153 and 154

Clauses 153 and 154 of the bill enable the Court to make orders where an accused person is found to be unfit to be tried or where an accused person is acquitted because the person was suffering mental impairment at the time of engaging in the conduct constituting the offence. Although such an order may involve requiring that a person be taken to a mental institution, the Statement of Compatibility with Human Rights indicates that an order could not be made for imprisonment under these provisions (at page 8 of the explanatory memorandum).

The SOC also emphasises the fact that the Military Court would have the power to vary or set aside an order under these provisions on the application of either the person to whom the order relates or the Directorate of Military Prosecution (subclauses 153(5) and 153(6); subclauses 154(4) and 154(4)). The explanatory memorandum does not indicate whether these provisions are modelled on similar powers under other legislation. However the powers do appear to be similar to item 120, proposed section 158A of the Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012 discussed below. **In these circumstances, the Committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.**

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.

Delegation of Legislative Power – 'Henry VIII clause'
Subclause 182(3)

This clause enables the regulations to modify or adapt provisions of the *Legislative Instruments Act 2003* in their application to the Military Court (other than the provisions of Part 5 of that Act or any other provision whose modifications or adaptation would affect the operation of that Part). This subclause thus enables delegated legislation to modify or adapt the operation of a statute and the explanatory memorandum does not contain an explanation as to why this is necessary. **The Committee therefore seeks the Minister's advice as to the justification for the proposed approach.**

> *Pending the Minister's reply, 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.*

Military Court of Australia (Transitional Provisions and Consequential Amendments) Bill 2012

Introduced into the House of Representatives on 21 June 2012
Portfolio: Attorney-General

Background

This bill amends the *Defence Force Discipline Act 1982* and other Acts and provides for transitional provisions consequential to the establishment of the Military Court of Australia.

Delayed Commencement
Clause 2

A large number of items in the bill have a delayed commencement, either to a day to be fixed by Proclamation or 10 months after commencement. There is a detailed and satisfactory explanation of the need for this approach in the explanatory memorandum at page14.

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

Undue trespass on rights and liberties—liberty
Schedule 1, item 120, proposed section 158A

This provision introduces a new section which includes new powers for dealing with persons who are found to have been unfit or mentally impaired at the time of conduct constituting a service offence. The explanatory memorandum states the new provisions are 'closely aligned to the civilian criminal justice system' (at page 43). Proposed subsection 158A(4) provides that if a reviewing authority acquits a person on the basis that person suffers a mental impairment that the reviewing authority may, inter alia, make 'any other order' considered necessary having regard to the best interest of the acquitted person, the safety of any other person, and the safety of the community. The explanatory memorandum accepts, at page 44, that such an order may restrict freedom of movement and may include requiring a person to undertake mental treatment. Applications to set aside or vary such orders may be made to a service chief or the Attorney-General (if the acquitted person is not a member of the ADF at the time of the application (under

proposed subsections 158A(7) and (8)). **In the circumstances the Committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.**

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.

Undue trespass on rights and liberties—fair trial
Schedule 3B, proposed item 165,

The bill provides for a residual court marital and defence force magistrate system to apply in circumstances where it is necessary but not possible for the Military Court to hear a trial overseas. As explained in the Statement of Compatibility with Human Rights, the continuation of this system may be thought to limit the right of persons to have charges of service offences heard by an independent and impartial tribunal' (at page 7 of the explanatory memorandum). The continuation of the existing scheme is effected by moving the relevant provisions into a new Schedule 3B. The justification provided for continuing the existing system is that such a system would be applied in 'highly confined' circumstances, namely, where the Military Court has determined that it is necessary, but not possible, for the Military Court to conduct a trial overseas. The SOC argues that it is necessary to have an 'alternative means to handle cases where this occurs'. Continuation of the existing system in these confined circumstances is concluded to be 'reasonable, necessary and proportionate'. In assessing this conclusion it is notable that courts martial of Defence Force magistrates must conduct their proceedings in public subject to similar exceptions that apply to the Military Court. In the circumstances, **the Committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.**

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.

Undue trespass on rights and liberties—fair trial
Various

The bill continues to enable the vast majority of service offences (which are less serious in nature) to be heard by summary authorities, as has been the case since the enactment of the *Defence Force Discipline Act 1982*. Summary authorities are within the military chain of command and, as such, this system may be thought to compromise the right to a fair trial. In justification of the continued use of summary authorities the SOC emphasises the fact that the bill provides for a 'right of election for trial in the Military Court of Australia to all accused people facing a charge of a service offence'. In the circumstances, **the Committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.**

> *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.*

Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012

Introduced into the House of Representatives on 18 June 2012
By: Mr Bandt

Background

This bill amends the *Fair Work Act 2009* and the *Migration Act 1958* to create a legislative framework for Enterprise Migration Agreements (EMA).

The bill also sets out various conditions that can be included when an EMA is made including:

- requiring employers to advertise jobs to locals before they can get an EMA; and
- requiring a local jobs board - listing jobs to be filled in the resources sector - to be maintained by the Workplace Relations Minister.

The Committee has no comment on this bill.

Statute Stocktake (Appropriations) Bill (No. 1) 2012

Introduced into the House of Representatives on 20 June 2012
Portfolio: Finance and Deregulation

Background

This bill repeals the following:

- 93 redundant Appropriations Acts from 1984 to 1999;
- 35 redundant Supply Acts from 1984 to 1997; and
- 3 Acts containing redundant special appropriations from the Treasury portfolio.

The Committee has no comment on this bill.

Tax Laws Amendment (Investment Manager Regime) Bill 2012

Introduced into the House of Representatives on 21 June 2012
Portfolio: Treasury

Background

This bill amends the *Income Tax Assessment Act 1997* and the *Income Tax (Transitional Provisions) Act 1997.*

Schedule 1 clarifies the treatment of returns, gains, losses and deductions on certain investments of widely held foreign funds.

Schedule 2 clarifies the taxation treatment of certain returns, gains, losses and deductions for the 2010-11 and earlier income years of widely held foreign funds which have not lodged a tax return and have not had an assessment made of their income tax liability.

The Committee has no comment on this bill.

Tax Laws Amendment (Investment Manager Regime) Bill 2012

Introduced into the House of Representatives on 21 June 2012
Portfolio: Treasury

Background

This bill amends the *Income Tax (Managed Investment Trust Withholding Tax) Act 2008* to increase the Managed Investment Trust (MIT) final withholding tax from 7.5 per cent to 15 per cent on fund payments made in relation to income years that commence on or after 1 July 2012.

Schedule 1 makes consequential amendments to the *Taxation Administration Act 1953* to give effect to the increase in the concessional MIT final withholding tax rate.

The Committee has no comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Aviation Transport Security Amendment (Screening) Bill 2012
[Digest 2/12 – response in 6th Report]

On 18 June 2012 the Senate tabled a revised explanatory memorandum. The Committee has no comment on the additional material, which consolidates information the Committee has previously considered (see Alert Digest No. 6 of 2012).

Coastal Trading (Revitalising Australian Shipping) Bill 2012
[Digest 5/12 – response in 6th Report]

On the 18 June the Senate tabled a revised explanatory memorandum and passed the bill without amendment. The Committee notes that this bill has passed and makes no comment on the additional material.

Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012
[Digest 5/12 – no comment]

On the 18 June the Senate tabled a revised explanatory memorandum and passed the bill without amendment. The Committee notes that this bill has passed and makes no comment on the additional material.

Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012
[Digest 1/12 & 5/12 [amendment] – waiting for response]

On 19 June 2012 the Senate tabled a supplementary explanatory memorandum. On 20 June 2012 the Senate agreed to 10 Government amendments and the bill was read a third time. The Committee has no comment on the additional material.

Corporations Amendment (Future of Financial Advice) Bill 2012
[Digest 13/11 – no response required]

On 19 June 2012 the Senate tabled a supplementary explanatory memorandum. On 20 June 2012 the Senate agreed to eight Government amendments and the bill was read a third time. The Committee has no comment on the additional material.

Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012
[Digest 5/12 – no comment]

On 18 June 2012 the Senate tabled a revised explanatory memorandum. The Committee has no comment on the additional material.

Federal Financial Relations Amendment (National Health Reform) Bill 2012
[Digest 5/12 – no comment]

On 18 June 2012 the Senate tabled a revised explanatory memorandum and passed the bill without amendment. The Committee has no comment on the additional material.

Migration (Visa Evidence) Charge Bill 2012
[Digest 6/12 – no comment]

On 21 June 2012 the House of Representative tabled an additional explanatory memorandum and the bill was read a third time without amendment. The Committee has no comment on the additional material.

Migration (Visa Evidence) Charge (Consequential Amendments) Bill 2012
[Digest 6/12 – no comment]

On 21 June 2012 the House of Representative tabled an additional explanatory memorandum and the bill was read a third time without amendment. The Committee has no comment on the additional material.

National Broadcasting Legislation Amendment Bill 2010
[Digest 8/10 – no comment]

On 20 June 2012 the Senate agreed to two Opposition and five Australian Greens amendments and the bill was read a third time. The Committee has no comment on the additional material.

National Health Reform Amendment (Administrator and National Health Funding Body) Bill 2012
[Digest 5/12 – response in 6th Report]

On 18 June 2012 the Senate tabled a revised explanatory memorandum and passed the bill without amendment. The Committee has no comment on the additional material.

Passenger Movement Charge Amendment Bill 2012
[Digest 6/12 – no comment]

On 20 June 2012 the House of Representatives agreed to one Government amendment and tabled a supplementary explanatory memorandum. On 21 June 2012 the Senate tabled a revised explanatory memorandum. The Committee has no comment on the additional material.

Pay As You Go Withholding Non-Compliance Tax Bill 2012
[Digest 6/12 – no comment]

On 21 June 2012 the Senate tabled a revised explanatory memorandum. The Committee has no comment on the additional material.

Personally Controlled Electronic Health Records Bill 2011
[Digest 1/12 – response in 4th Report]

On 19 June 2012 the Senate agreed to 32 Government amendments and tabled a supplementary memorandum. On 21 June 2012 the House of Representatives agreed to the Senate amendments and the bill was passed. The Committee has no comment on the additional material.

Personally Controlled Electronic Health Records (Consequential Amendments) Bill 2011
[Digest 1/12 – no comment]

On 19 June 2012 the Senate agreed to 17 Government amendments and tabled a supplementary memorandum. On 21 June 2012 the House of Representatives agreed to the Senate amendments and the bill was passed. The Committee has no comment on the additional material.

Shipping Reform (Tax Incentives) Bill 2012
[Digest 5/12 – no comment]

On the 18 June the Senate tabled a revised explanatory memorandum and passed the bill without amendment. The Committee makes no comment on the additional material.

Shipping Registration Amendment (Australian International Shipping Register) Bill 2012
[Digest 5/12 – response in 6th Report]

On the 18 June the Senate tabled a revised explanatory memorandum and passed the bill without amendment. The Committee has no comment on the additional material.

Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2011
[Digest 4/11 – no response required]

On 21 June 2012 the House of Representative agreed to 11 Government amendments and tabled a supplementary explanatory memorandum. On 22 June 2012 the Senate tabled a revised explanatory memorandum and passed the bill without amendment. The Committee has no comment on the additional material.

Tax Laws Amendment (2012 Measures No.2) Bill 2012
[Digest 6/12 – awaiting response]

On 20 June 2012 the House of Representative agreed to two Government amendments and tabled a supplementary explanatory memorandum. On 21 June 2012 the Senate tabled a revised explanatory memorandum. The Committee has no comment on the additional material.

Tax Laws Amendment (Income Tax Rates) Bill 2012
[Digest 6/12 – no comment]

On 30 May 2012 the House of Representatives agreed to seven Government amendments and tabled a supplementary explanatory memorandum. On 18 June 2012 the Senate passed the bill without amendment and tabled a revised explanatory memorandum. The Committee has no comment on the additional material.

Tax Laws Amendment (Shipping Reform) Bill 2012

[Digest 5/12 – no comment]

On the 18 June the Senate tabled a revised explanatory memorandum and passed the bill without amendment. The Committee has no comment on the additional material.

Telecommunications Interception and Other Legislation Amendment (State Bodies) Bill 2012

[Digest 5/12 – no comment]

On 18 June 2012 the Senate tabled a revised explanatory memorandum and passed the bill without amendment. The Committee has no comment on the additional material.

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.

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.

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 in the 43rd Parliament since the previous *Alert Digest*

Military Court of Australia Bill 2012 — subclause 26(3)

Other relevant appropriation clauses in bills in the 43rd Parliament since the previous *Alert Digest*

Nil

Any Senator who wishes to draw matters to the attention of the Committee under its terms of reference is invited to do so.