Senate Standing Committee

for the

Scrutiny of Bills

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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 or the provisions of bills not yet before 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 on its terms of reference, may consider any proposed law or other document or information available to it, including an exposure draft of proposed legislation, notwithstanding that such proposed law, document or information has not been presented to the Senate.

(c) The committee, for the purpose of reporting on term of reference (a)(iv), shall take into account the extent to which a proposed law relies on delegated legislation and whether a draft of that legislation is available to the Senate at the time the bill is considered.

TABLE OF CONTENTS

Commentary on bills

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.

Australian Sports Anti-Doping Authority Amendment Bill 2014

Introduced into the House of Representatives on 16 July 2014
Portfolio: Health

Background

This bill amends the *Australian Sports Anti-Doping Authority Act 2006* (the Act) to align Australia's anti-doping legislation with the revised World Anti-Doping Code and International Standards that come into force on 1 January 2015 and include:

- authorising the making of Regulations to authorise the Chief Executive Officer to implement the new prohibited association anti-doping rule violation;
- extending the time period in which action on a possible anti-doping rule violation must commence from eight to ten years from the date the violation is asserted to have occurred;
- expanding Australian Sports Drug Medical Advisory Committee (ASDMAC) membership to appoint three people for the sole purpose of reviewing decisions, where requested, by ASDMAC in relation to applications for Therapeutic Use Exemptions;
- requiring that at least one ASDMAC primary member possess general experience in the care and treatment of athletes with impairments;
- simplifying information sharing provisions in the Act to improve the exchange of information between relevant stakeholders that would assist in identifying and substantiating doping violations;
- requiring the Australian Sports Anti-Doping Authority (ASADA) to maintain a public record of Anti-Doping Rule Violations (ADRV) to be known as the 'Violations List';
- allowing ASADA to respond to public comments attributed to an athlete, other person or their representatives with respect to a doping matter; and
- making a number of minor and technical amendments to the Act.

Trespass on personal rights and liberties—reversal of onus of proof
Schedule 4, item 8, proposed subsection 67(2)

The defendant bears an evidential burden of proof in establishing that the offence in subsection 67(1) (relating to disclosing protected information) does not apply because one of the exceptions in subsection 67(2) exists. There is a justification for placing the evidential burden on the defendant in the explanatory memorandum (p. 23) and statement of compatibility (p. 11). The approach is consistent with the principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

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

Trespass on personal rights and liberties—privacy
Schedule 4, item 8, proposed sections 68–68E

These provisions set out the circumstances in which disclosure of protected information is authorised under the Act and thus will not amount to an offence against subsection 67(1), which otherwise prohibits such disclosure. The statement of compatibility (at pp 10–12) contains a discussion of whether these provisions engage the right to privacy under article 17 of the ICCPR, and outlines a justification for the proposed approach. **In light of this discussion, 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.*

Clean Energy Legislation (Carbon Tax Repeal) Bill 2014

Introduced into the House of Representatives on 14 July 2014
Received the Royal Assent on 17 July 2014
Portfolio: Environment

A similar bill was introduced into the House of Representatives on 13 November 2013 and the committee commented on the bill in *Alert Digest No. 8 of 2013.* The Minister's response to the committee's comments was published in its *First Report of 2014.* The bill was then re-introduced on 23 June 2014 and the committee again commented on the bill in *Alert Digest No. 8 of 2014*. The Minister's response to these comments was published in the *Tenth Report of 2014*. This digest deals only with comments on the new or amended provisions.

Background

This bill is part of a package of bills that seeks to repeal the legislation that establishes carbon pricing mechanism. The bill repeals six Acts and amends 13 Acts consequent on repeals.

The bill also amends the:

- *Competition and Consumer Act 2010* to:
    - prohibit carbon tax-related price exploitation and false or misleading representations about the carbon tax repeal; and
    - provide the Australian Competition and Consumer Commission with additional price monitoring powers, including taking action against businesses that do not pass on cost savings attributable to the carbon tax repeal.
- *Clean Energy (Consequential Amendments) Act 2011* and *Income Tax Assessment Act 1997* to remove the conservation tillage tax offset; and
- *Australian Renewable Energy Agency Act 2011* to change the future funding for the agency; and repeals the *Steel Transformation Plan Act 2011* to cease carbon tax-related assistance to steel industry businesses.

Insufficiently defined administrative powers—legal obligations not clearly defined
Schedule 2, item 3, proposed paragraph 60C(2)(b) and subsection 60D(3) of the Competition and Consumer Act 2010

Proposed paragraph 60C(2)(b) of the *Competition and Consumer Act 2010* provides that an entity engages in price exploitation in relation to the carbon tax repeal if, inter alia, the 'price for the supply does not pass through all of the entity's cost savings relating to the supply that are directly or indirectly attributable to the carbon tax repeal'. Breach of the carbon tax price reduction obligation results in significant penalties. As such, the committee is concerned that the meaning of cost savings 'directly or indirectly attributable to the carbon tax repeal' does not appear to be defined in the bill and may be subject to different interpretations.

Notably, under proposed subsection 60D(3), the ACCC's opinion, in a notice, that the price for supply did not pass through all of the entity's cost savings relating to the supply that were directly or indirectly attributable to the carbon tax repeal is prima facie evidence in relevant legal proceedings that the carbon tax price reduction obligation has not been fulfilled. It may be considered that this provision therefore makes rights unduly dependent upon insufficiently defined administrative powers, to the extent that uncertainty may attend the question of what cost savings may be indirectly attributable to the carbon tax repeal. This provides a further reason for concern about whether sufficient guidance has been given in the bill.

Although litigation routinely requires courts to settle the meaning of imprecise legislative provisions, **the committee seeks the Minister's advice as to whether consideration has been given to providing public advice as to how costs 'indirectly attributable' to the carbon tax repeal will be calculated.**

> *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.*

Strict liability and significant penalties
Schedule 2, item 3, proposed subsections 60FD(5) and 60FE(4) of the Competition and Consumer Act 2010

These subsections create offences of strict liability for failures to comply with requirements to, respectively, provide carbon tax substantiation statements and statements for customers. The penalties (500 and 400 penalty units) are set at above the levels recommended for strict liability offences by the *Guide to framing Commonwealth offences* (i.e. 300 penalty units). The explanatory memorandum at paragraphs 4.77 and 4.90 states:

> This new Division 2B [which contains subsection 60FD(5)] is intended to serve as a strong disincentive to ensure that costs savings resulting from the carbon tax repeal are passed onto customers, and to encourage greater transparency in the process. The penalties under this Division are significant ones, and reflect the strength of the Parliament's commitment to ensure that entities do not make windfall gains from the repeal of the carbon tax, and to ensure that full cost savings resulting from the carbon tax repeal are passed on to customers.
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> Division 2C [which contains subsection 60FE(4)] is intended to serve as a strong disincentive to ensure that costs savings resulting from the carbon tax repeal are passed onto customers, to encourage greater transparency in the process, and to ensure that customers are made directly aware of the benefits to them of the carbon tax repeal. The penalties under this Division are significant ones, and reflect the strength of the Parliament's commitment to ensure that entities do not make windfall gains from the repeal of the carbon tax, to ensure that full cost savings resulting from the carbon tax repeal are passed on to customers, and to ensure that customers are made fully aware of the benefits they are receiving from the repeal.

In light of this explanation, the committee leaves the question of whether the proposed approach is appropriate to 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.*

Competition and Consumer Amendment (Industry Code Penalties) Bill 2014

Introduced into the House of Representatives on 17 July 2014
Portfolio: Treasury

Background

This bill amends the *Competition and Consumer Act 2010* to:

- allow regulations to be made that prescribe a pecuniary penalty not exceeding 300 penalty units for the breach of a civil penalty provision of an industry code; and

- allow the Australian Competition and Consumer Commission to issue an infringement notice where it has reasonable grounds to believe a person has contravened a civil penalty provision of an industry code.

Delegation of legislative power
Schedule 1, item 5, proposed subsection 51AE(2)

This provision will allow regulations that prescribe an industry code to 'prescribe pecuniary penalties not exceeding 300 penalty units for civil penalty provisions of the industry code.' Currently section 51AD of the *Competition and Consumer Act 2010* provides that a contravention of a prescribed industry code is a contravention of the Act, however no pecuniary penalty can be imposed for such a contravention.

Proposed subsection 51AE(2) raises two scrutiny issues relating to appropriate delegation of legislative power.

First, the proposal means that the content of a civil penalty provision will be determined in an instrument (the industry code) that will be given legal effect by the regulation. The committee routinely draws attention to the incorporation of legislative provisions by reference to other documents because these provisions raise the prospect of changes being made to the law in the absence of Parliamentary scrutiny. In addition, such provisions can create uncertainty in the law and those obliged to obey the law may have inadequate access to its terms.

The second scrutiny issue relates to the level of penalty that may be prescribed in the regulations (up to 300 penalty units). This is a significant penalty. The *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* recommends that where an Act authorises the creation of offences in subordinate instruments it should generally specify that the offences may carry a maximum fine of 50 penalty units for an individual and 250 for a body corporate. The underlying principle is that serious penalties should be contained in Acts of Parliament so as to enable appropriate parliamentary scrutiny.

The committee notes that the explanatory memorandum describes the operation of this provision (at p. 11) and overall objective of the bill in relation to the Franchising Code (at p. 6), however, it does not provide specific details as to the rationale for this provision. **The committee therefore seeks the Minister's advice in relation to both of the above scrutiny issues. In particular, the committee seeks advice in relation to:**

- **the rationale as to why the significant matter of the *content of a civil penalty offence* is not provided for in primary legislation;**
- **the justification for the *significant penalty* (up to 300 penalty units) that may be prescribed for the breach of a civil penalty provision in an industry code;**
- **the type of industry codes that may be prescribed by regulations under this provision (including whether it is intended that this provision will only apply to the Franchising Code);**
- **whether industry codes, including but not limited to the Franchising Code, will be available for scrutiny and disallowance by the Parliament; and**
- **any measures in place to ensure that industry code civil penalty provisions will be readily accessible to regulated persons.**

Pending the Minister's reply, 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.

Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014

Introduced into the House of Representatives on 17 July 2014
Portfolio: Attorney-General

Background

This bill amends the *Commonwealth Places (Application of Laws) Act 1970*, *Criminal Code Act 1995* (the Code), *Customs Act 1901* (the Customs Act), *Financial Transaction Reports Act 1988, International Transfer of Prisoners Act 1997* and the *Surveillance Devices Act 2004*.

Schedule 1 amends the Code and the Customs Act to:

- introduce an offence for the importation of all substances that have a psychoactive effect that are not otherwise regulated or banned; and
- ensure that Australian Customs and Border Protection Service and Australian Federal Police officers have appropriate powers in relation to new offences.

Schedule 2 amends the Code and the Customs Act to introduce international firearms trafficking offences and mandatory minimum sentences and extend existing cross-border disposal or acquisition firearms offences.

Schedule 3 amends the *International Transfer of Prisoners Act 1997* in relation to the international transfer of prisoners regime within Australia.

Schedule 4 amends the Code to clarify that certain slavery offences have universal jurisdiction.

Schedule 5 validates access by the Australian Federal Police to certain investigatory powers in designated State airports from 19 March until 17 May 2014.

Schedule 6 makes minor and technical amendments to the Code, the *Financial Transaction Reports Act 1988* and the *Surveillance Devices Act 2004*.

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

Trespass on personal rights and liberties—reversal of onus of proof Schedule 1, item 1, proposed subsections 320.2(2) and 320.3(3)

Subsection 320.2(2) proposes to place an evidential burden on a defendant for proving that a substance falls within one of the exclusions in paragraphs 320.2(2)(a) to (l). These exclusions relate to the offence for importing a psychoactive substance (proposed subsection 320.2(1)).

The explanatory memorandum (p. 37) and the statement of compatibility (pp 9–10) contain a comprehensive justification for this approach. The justification emphasises that the matters listed primarily relate to the use of the substance and that the intended use of a substance will be peculiarly within the knowledge of defendants and readily available from business or personal records. It is also emphasised that requiring the prosecution to prove beyond reasonable doubt that an imported substance does not fit within one of the twelve excluded categories would be 'significantly more difficult and costly than it is for the defendant to raise evidence that the substance fell in one exclusion category' (explanatory memorandum, p. 37). The statement of compatibility (p. 10) highlights the fact that it is incumbent on an importer to be aware of the purpose for which a substance is being imported and to comply with any regulatory requirements.

The committee notes that a similar issue arises in relation to proposed new section 320.3, which creates an offence for importing a substance which is expressly or impliedly represented to be a 'serious drug alternative'.

In light of the detailed justification for the approach, which addresses the principles relevant to this issue set out in the *Guide to Framing Commonwealth Offences*, the committee leaves the question of whether the proposed approach is appropriate to 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.*

Trespass on personal rights and liberties—presumption of innocence
Schedule 1, item 1, proposed subsections 320.2(4) and 320.3(4)

This provision provides that in a prosecution for an offence against subsection 320.2(1) the prosecution does not need to prove that the defendant knew or was reckless as to the particular identity of the substance or its particular effect. The statement of compatibility and explanatory memorandum both argue that this provision is necessary as those involved in the importation, sale and consumption of new psychoactive substances 'frequently do not know their precise chemical structure and their exact effects' (statement of compatibility, p. 10). It is argued that it is 'appropriate for the offence to prevent people from importing a psychoactive substance, even if it is not the precise substance they intended to import, or if it does not have the precise effects they anticipated' (explanatory memorandum, p. 38).

The committee notes that a similar issue arises in relation to proposed new section 320.3(3), which creates an offence for importing a substance which is expressly or impliedly represented to be a 'serious drug alternative'.

In light of the detailed justification for the approach (see statement of compatibility, p. 11), the committee leaves the question of whether the proposed approach is appropriate to 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.*

Trespass on personal rights and liberties—penalties
Schedule 2, item 14, proposed new section 360.3A
Schedule 2, item 18, proposed new section 361.5

Proposed new section 360.3A will introduce mandatory minimum penalties (5 years imprisonment) for offences under Division 360, relating to the trafficking of firearms or firearm parts. The mandatory minimum penalties do not apply if it is established on the balance of probabilities that the person was under 18 years old at the time the offence was committed (proposed subsection 360.3A(2)).

The justification provided for the introduction of a mandatory minimum penalty is to ensure that offenders receive sentences 'proportionate to the seriousness of their offending' and to 'target firearms trafficking to address the clear and serious social and systemic harms associated with this trade' (explanatory memorandum, p. 52). The statement of compatibility provides further elaboration on the 'social harms' associated with the offence and concludes that 'failure to enforce harsh penalties on trafficking offenders could lead to increasing numbers of illegal firearms coming into the possession of organised crime groups who would use them to assist in the commission of serious crimes' (p.15).

It is also noted that the amendment will not prescribe a minimum non-parole period and that this 'will preserve a court's discretion in sentencing' (explanatory memorandum p. 52).

The committee notes that a similar issue arises in relation to proposed new section 361.5, which creates mandatory minimum penalties in relation to offences against Division 361 (International firearms trafficking).

Despite the scrutiny issues associated with mandatory minimum penalties, in light of the detailed justification and noting that flexibility in the setting of non-parole periods is preserved, the committee leaves the question of whether the proposed approach is appropriate to 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.*

Trespass on personal rights and liberties—absolute and strict liability
Schedule 2, item 18, proposed sections 361.2 and 361.3

These provisions introduce offences for the illegal import and export of firearms or firearm parts.

Absolute liability applies to a single physical element of the offences set out in these provisions, namely, that the import/export of the firearm or part was prohibited under the *Customs Act 1901* absolutely or that the import/export of

the firearm or part was prohibited under the *Customs Act 1901* unless certain requirements were met. The statement of compatibility has a detailed justification for the approach, which is largely repeated in the explanatory memorandum. These elements are preconditions to the act of import or export and it is noted that the 'state of mind of the defendant with respect to that condition is not relevant, as the defendant's state of mind is relevant to the intent to traffic element of the offence' (statement of compatibility, p.16). The statement of compatibility continues:

> If absolute liability were not imposed, a defendant could attempt to avoid criminal liability for the offence by claiming they were unaware that there were import and export requirements which had to be met. In such cases, the prosecution would then have to prove beyond reasonable doubt that a person knew or was reckless as to whether importing or exporting the article was prohibited or needed to meet certain requirements in order to be lawful. Given the difficulty in doing so, it is reasonable and proportionate to apply absolute liability in these cases. Further, it is reasonable to expect that, given the history of firearm regulation in Australia, the community and, in particular, people involved in the movement of firearms, know that there are controls on importing firearms and firearm parts or at least know enough to make enquiries.

This justification seeks to establish that there are legitimate grounds for penalising a person even if they made a reasonable mistake of fact in respect of whether the import or export of firearm or firearm part was absolutely prohibited or prohibited if requirements are not met.

In considering this approach it is also relevant to note that proposed section 361.4 provides for a defence to an offence against Division 361 if 'at the time of the conduct constituting the offence, the person was under a mistaken but reasonable belief that the conduct was justified or excused by or under a law of the Commonwealth or of a State or Territory; and had the conduct been so justified or excused—the conduct would not have constituted the offence'. The purpose of this defence 'is to ensure that administrative errors or misunderstandings occurring in the course of legitimate business do not result in convictions for offences that are intended only to target those involved in the illegal firearms trade' (explanatory memorandum p. 57).

In this context, the assumption that it is reasonable to expect accused persons to know that there are controls on the import and export of firearms is of critical importance.

The amendments also apply strict liability to the physical element of the proposed offences that the import or export would be prohibited unless certain requirements were met and the person has failed to meet any of those requirements. The statement of compatibility states that the fault element that the person intended to traffic firearms or parts will still have to be proved, as will the fact that regulatory requirements have not been met. It continues:

> Applying strict liability to the element of the offence that import or export requirements had not been met is appropriate. As above, it is reasonable to expect that those involved in the movement of firearms are aware that there are controls on importing firearms and firearm parts, or at least know enough to make enquiries. Given that the defendant would be aware whether or not they had met the requirements for import or export, requiring the prosecution to prove beyond reasonable doubt that a person knew approval had not been obtained, or was reckless as to whether or not the requirements had been met, would be overly onerous and could undermine deterrence if suspects could avoid conviction by arguing they were unaware of the requirements.
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> However, the application of strict, rather than absolute, liability to this element of the offence will make available the general defence of mistake of fact. Therefore, if a person mistakenly believed that he or she had met the requirements for import or export of a firearm or firearm part, they would be able to rely on this defence. For instance, if a person received a state or territory permit to acquire and was told that that document was the only requirement for import, and other relevant requirements were therefore not met, the defence would be available to them. (p. 17)

In light of the justification provided the committee leaves the question of whether the proposed approach is appropriate to 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.*

Trespass on personal rights and liberties—reversal of onus of proof
Schedule 2, item 18, proposed section 361.4

Proposed section 361.4 provides for a defence to an offence against Division 361 if 'at the time of the conduct constituting the offence, the person was under a mistaken but reasonable belief that the conduct was justified or excused by or under a law of the Commonwealth or of a State or Territory; and had the conduct been so justified or excused—the conduct would not have

constituted the offence'. The purpose of this defence 'is to ensure that administrative errors or misunderstandings occurring in the course of legitimate business do not result in convictions for offences that are intended only to target those involved in the illegal firearms trade' (explanatory memorandum, p. 57). The defendant bears an evidential burden of proof to establish this defence.

The explanatory memorandum (p. 57) argues this reversal of the onus of proof is justified as it will generally be much easier for a defendant, rather than the prosecution, to produce evidence showing that the circumstances to which the defence applies do in fact exist because such evidence will be peculiarly within the knowledge of the defendant. Further, 'the defendant will more easily be able to lead evidence of the belief that he or she held that the conduct was justified or excused by a law and point to evidence of why it was reasonable for him or her to hold that belief'. **In light of the justification provided the committee leaves the question of whether the proposed approach is appropriate to the Senate as a whole.**

> *The committee draws Senators' attention to this provision as it may be considered to trespass unduly on personal rights and liberties in breach of principle 1(a)(i) of the committee's terms of reference.*

Trespass on personal rights and liberties—retrospective validation Schedule 5, item 2

This item seeks to validate things done by a member of the AFP, or special member, during the course of investigating an applied State offence at certain airports from 19 March 2014 to 16 May 2014. The problem that this provision seeks to address was caused by the fact that regulations which had the effect of authorising the exercise of standard investigatory powers set out in the Crimes Act were repealed before the commencement of replacement regulations which continued the authorisation for the exercise of these powers. (The relevant powers include coercive powers such as search and seizure powers and powers of arrest.) The explanatory material does not explain the circumstances that led to this problem.

The explanatory material seeks to justify the retrospective validation of the exercise of these coercive powers by noting that:

- the retrospective validation is limited to a defined time and defined places (designated State airports on the day after the commencement of the replacement regulations) (explanatory memorandum, p. 81);
- subsection (3) of item 2 specifies that the item does not affect rights or liabilities arising between parties to proceedings which have commenced prior to the commencement of the schedule (explanatory memorandum, p. 81); and
- schedule 5 does not give retrospective effect to a criminal offence which did not constitute an offence at the time it was committed. (statement of compatibility, p. 25).

On the other hand, the statement of compatibility accepts that the schedule may 'indirectly affect liability for a criminal offence given that it validates Commonwealth powers available to member of the AFP during the investigation of a State offence' (p. 25). It is also noted that the AFP members were, for the most part, able to access alternative State powers to investigate the relevant offences (statement of compatibility p. 25).

The committee generally expresses concern when the exercise of coercive powers is validated retrospectively. It is a fundamental principle that coercive powers are only available if expressly authorised by statute. Allowing for such powers to be retrospectively authorised clearly undermines this basic principle. Given the importance of this principle to the integrity of the legal system (prospective authority for coercive powers is a core component of the 'rule of law' ideal), the committee notes that retrospective validation of such powers should only be considered in exceptional circumstances where a compelling need can be demonstrated. The maintenance of public confidence in the legal system is an important consideration in assessing proposals to retrospectively validate coercive powers.

Given that, according to the statement of compatibility, in most cases it appears that alternative State investigative powers remained available, it is not clear that exceptional circumstances have been demonstrated. It is also noted that the explanatory material does not indicate why the problem arose nor, in light of the availability of alternative State powers, the practical extent of the problem which this item is designed to cure. **The committee acknowledges the information and justification already provided in the explanatory memorandum, but in light of the matters discussed above, the committee seeks the Minister's further justification for the proposed approach**

noting, in particular, the importance of the principle that prospective legal authorisation should be provided for the exercise of coercive powers.

Pending the Minister's reply, 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.

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

Customs Amendment Bill 2014

Introduced into the House of Representatives on 17 July 2014
Portfolio: Immigration and Border Protection

Background

This bill makes a number of technical amendments to the *Customs Act 1901* (the Act) to:

- allow class based authorisations to include future offices or positions that come into existence after the authorisation is given;
- extend Customs controls to those places at which ships and aircraft arrive in Australia in accordance with section 58 of the Act;
- provide greater flexibility in relation to the reporting of the arrival of ships and aircraft in Australia and reporting of stores and prohibited goods on such ships and aircraft;
- amend the application processes for several permissions, including online applications, under the Act;
- extend customs powers of examination to the baggage of domestic passengers on international flights and voyages, and to domestic cargo that is carried on an international flight or voyage; and
- correct a technical error in relation to the interaction of Customs and Border Protection's Infringement Notice Scheme and claims process for seized goods under the Act.

Undue trespass on personal rights and liberties—strict liability Schedule 1, item 18, proposed subsection 127(9)

Part VII of the *Customs Act 1901* (the Act) contains provisions in relation to dealing with ships' and aircraft's stores (i.e. goods that are for the use of passengers and crew on an international voyage or flight). Section 127 of the Act provides that approval must be sought before goods can be unshipped, unloaded or used. Proposed subsection 127(9) creates an offence of strict liability if a person breaches a condition of such an approval. The imposition of strict liability for this offence appears to be consistent with the committee's established principles. It is noted that in developing this offence consideration was given to both this committee's *Sixth Report of 2002* on the Application of

Absolute and Strict Liability Offences in Commonwealth Legislation and the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. The statement of compatibility (pp 4–5) also contains a detailed justification and explanation of the approach.

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

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

Customs Tariff Amendment (Carbon Tax Repeal) Bill 2014

Introduced into the House of Representatives on 14 July 2014
Received the Royal Assent on 17 July 2014
Portfolio: Immigration and Border Protection

An identical bill was introduced into the House of Representatives on 13 November 2013 and the committee made no comment on the bill in *Alert Digest No. 8 of 2013.* The bill was then re-introduced on 23 June 2014 and the committee again made no comment on the bill in *Alert Digest No. 8 of 2014.*

Background

This bill is part of a package of eight bills. The bill seeks to amend the *Customs Tariff Act 1995* to remove the equivalent carbon price imposed through excise equivalent customs duty on aviation fuel.

The committee has no comment on this bill.

Defence Legislation Amendment (Parliamentary Approval of Overseas Service) Bill 2014

Introduced into the Senate on 17 July 2014
By: Senator Ludlam

A similar bill was introduced into the House of Representatives on 23 June 2014 by Mr Bandt and the committee made no comment on the bill in *Alert Digest No. 8 of 2014.*

Background

This bill is part of a package of eight bills. The bill seeks to amend the *Defence Act 1903* to ensure that, as far as is constitutionally and practically possible, Australian Defence Force personnel are not sent overseas to engage in warlike actions without the approval of both Houses of Parliament.

The committee has no comment on this bill.

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

Excise Tariff Amendment (Carbon Tax Repeal) Bill 2014

Introduced into the House of Representatives on 14 July 2014
Received the Royal Assent on 17 July 2014
Portfolio: Treasury

An identical bill was introduced into the House of Representatives on 13 November 2013 and the committee made no comment on the bill in *Alert Digest No. 8 of 2013.* The bill was then re-introduced on 23 June 2014 and the committee again made no comment on the bill in *Alert Digest No. 8 of 2014.*

Background

This bill is part of a package of eight bills. The bill seeks to amend provisions to remove the equivalent carbon price imposed through excise duty on aviation fuel.

The committee has no comment on this bill.

Guardian for Unaccompanied Children Bill 2014

Introduced into the Senate on 16 July 2014
By: Senator Hanson-Young

Background

This bill establishes an independent statutory office of Guardian for Unaccompanied Non-citizen Children to advocate for the best interests of non-citizen children who arrive in Australia or Australian external territories to seek humanitarian protection, who are unaccompanied by their parents or another responsible adult.

Delegation of legislative power
Clause 37

This clause confers a general regulation-making power on the Governor-General. Subclause 37(2) clarifies that this power includes the power to make regulations which deal with a number of listed matters. The regulations may:

(a) prescribe the principles to be observed in relation to the placing of unaccompanied non-citizen children with custodians;

(b) regulate the placing of such children with custodians and the transfer of such children from one custodian to another;

(c) prescribe provisions to be observed by custodians in relation to the custody, control, welfare, care, education, training and employment of unaccompanied non-citizen children;

(d) make provision in relation to the welfare of unaccompanied non-citizen children and provide for the exclusion of any provision of the laws of any State or Territory that relates to the same matter;

(e) prescribe powers, rights, duties and liabilities of or in relation to the Guardian as guardian of the estate in Australia of unaccompanied non-citizen children, including provisions for the receipt, disposition, management and control of:

  (i) property of unaccompanied non-citizen children; and

  (ii) property of deceased unaccompanied non-citizen children from their deaths until the grant of administration;

(f) provide for preventing unaccompanied non-citizen children from leaving Australia without the consent in writing of the Guardian;

(g) prescribe penalties not exceeding 50 penalty units in respect of offences against the regulations; and

(h) provide for review by the Administrative Appeals Tribunal of decisions made under this Act.

It is not clear that all of these matters are appropriately dealt with in regulations as they may be more appropriate for Parliamentary enactment. For example, 'the principles to be observed in relation to the placing of unaccompanied non-citizen children with custodians' raises important questions of policy, which are arguably matters which should be included in the Act. Similarly, the appropriateness of merits review to decisions made under the Act (for example decisions to refuse consent under clause 12) is a matter of considerable importance. **The committee therefore seeks the Senator's advice as to appropriateness of leaving so much of the policy detail of the scheme to the regulations.**

Pending the Senator's reply, 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.

International Tax Agreements Amendment Bill 2014

Introduced into the House of Representatives on 17 July 2014
Portfolio: Treasury

Background

This bill amends the *International Tax Agreements Act 1953* to give the force of law in Australia to the Convention between Australia and the Swiss Confederation for the *Avoidance of Double Taxation with Respect to Taxes on Income* and its *Protocol*, which were signed in Sydney on 30 July 2013.

The committee has no comment on this bill.

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

Labor 2013-14 Budget Savings (Measures No. 1) Bill 2014

Introduced into the House of Representatives on 16 July 2014
Portfolio: Treasury

Background

This bill amends the *Clean Energy (Income Tax Rates Amendments) Act 2011* to repeal the personal income tax cuts that were legislated to commence on 1 July 2015.

The bill also amends *the Clean Energy (Tax Laws Amendments) Act 2011* to repeal associated amendments to the low-income tax offset that were legislated to commence on 1 July 2015.

The committee has no comment on this bill.

Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2014

Introduced into the House of Representatives on 16 July 2014
Portfolio: Infrastructure and Regional Development

Background

This bill amends the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* to:

- ensure the National Marine Safety Regulator is able to exercise discretion when considering the suspension, revocation and variation of vessel certificates;
- clarify one of the National Regulator's functions as the function of surveying vessels;
- allow for the sub-delegation of powers to accommodate the range of organisational arrangements within each jurisdiction; and
- consistently and correctly use legislative referencing, correct minor grammatical errors of the Act and clarify review rights within the Act.

The bill also provides minor amendments to ensure the definition of 'defence vessel' aligns with the *Navigation Act 2012*, which also deals with marine safety.

Delegation of legislative power—sub-delegation
Schedule 1, item 4, subsection 11(3)

Current subsection 11(3) of the Marine Safety (Domestic Commercial Vessel) National Law allows a delegate of the National Regulator to sub-delegate any of their powers or functions to another officer or employee of *the agency of which the delegate is an officer or employee*. The bill proposes to amend subsection 11(3) to broaden the sub-delegation power of a delegate who is an employee of a State or the Northern Territory to enable them to sub-delegate their powers or functions to an officer or employee of *any agency of their State or Territory*.

The committee commented on the original version of this provision in its *Alert Digest No. 6 of 2012* (pp 47–48). The committee draws Senators' attention to its comments on the question of accountability arrangements in relation to decisions made by delegates who are officers of a State or Territory in that Digest.

The explanatory memorandum states in relation to the revised item that it is necessary to broaden the sub-delegation power in this provision to include employees or officers of any agency of a delegate's State or Territory 'to ensure the appropriate National Regulator functions can be delegated to any officer regardless of the various organisational structures within their jurisdictions' (p. 4). It is also noted that sub-delegations are subject to subsections 11(2) and 11(5), which provide the National Regulator with the authority to establish conditions relating to how the sub-delegate is to exercise their functions and delegated powers.

In light of the above explanation, 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 delegate legislative powers inappropriately in breach of principle 1(a)(iv) of the committee's terms of reference.*

Military Rehabilitation and Compensation Amendment Bill 2014

Introduced into the House of Representatives on 17 July 2014
Portfolio: Veterans' Affairs

Background

This bill amends the *Military Rehabilitation and Compensation Act 2004* to enable the Military Rehabilitation and Compensation Commission to retrospectively apply the new methodology resulting from the Review of Military Compensation Arrangements.

The committee has no comment on this bill.

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) (Transitional Provisions) Bill 2014

Introduced into the House of Representatives on 14 July 2014
Received the Royal Assent on 17 July 2014
Portfolio: Environment

An identical bill was introduced into the House of Representatives on 13 November 2013 and the committee made no comment on the bill in *Alert Digest No. 8 of 2013.* The bill was then re-introduced on 23 June 2014 and the committee again made no comment on the bill in *Alert Digest No. 8 of 2014.*

Background

This bill is part of a package of eight bills. The bill seeks to provide for an exemption from the equivalent carbon price for the import of bulk synthetic greenhouse gases between 1 April and 30 June 2014 if certain conditions are met.

The committee has no comment on this bill.

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Bill 2014

Introduced into the House of Representatives on 14 July 2014
Received the Royal Assent on 17 July 2014
Portfolio: Environment

An identical bill was introduced into the House of Representatives on 13 November 2013 and the committee made no comment on the bill in *Alert Digest No. 8 of 2013.* The bill was then re-introduced on 23 June 2014 and the committee again made no comment on the bill in *Alert Digest No. 8 of 2014*.

Background

This bill is part of a package of eight bills. The bill seeks to amend the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* to repeal provisions imposing an equivalent carbon price through levies imposed on the import and manufacture of synthetic greenhouse gas after 1 July 2014.

The committee has no comment on this bill.

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Bill 2014

Introduced into the House of Representatives on 14 July 2014
Received the Royal Assent on 17 July 2014
Portfolio: Environment

An identical bill was introduced into the House of Representatives on 13 November 2013 and the committee made no comment on the bill in *Alert Digest No. 8 of 2013.* The bill was then re-introduced on 23 June 2014 and the committee again made no comment on the bill in *Alert Digest No. 8 of 2014*.

Background

This bill is part of a package of eight bills. The bill seeks to amend the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* to repeal provisions imposing an equivalent carbon price through levies imposed on the import and manufacture of synthetic greenhouse gas after 1 July 2014.

The committee has no comment on this bill.

Social Services and Other Legislation Amendment (Student Measures) Bill 2014

Introduced into the House of Representatives on 17 July 2014
Portfolio: Social Services

Background

This bill amends two measures relating to student entitlements including:

- allowing for an interest charge to be applied from 1 January 2015 to certain debts incurred by recipients of Austudy payment, fares allowance, youth allowance for full-time students and apprentices, and ABSTUDY Living Allowance where the debtor does not have or is not honouring an acceptable repayment arrangement; and

- replacing the current student start-up scholarship with an income-contingent loan from 1 January 2015.

This bill reintroduces, with certain modifications, two measures relating to student entitlements that were removed from the *Social Services and Other Legislation Amendment Act 2014* during its passage through the Senate.

Delegation of legislative power
Schedule 1, item 6, proposed section 1229D

The committee commented on the delegation of legislative power in proposed section 1229D in *Alert Digest No. 8 of 2013*. The Minister's response was reported in the committee's *First Report of 2014*. In that report the committee asked that the key information provided by the Minister be included in the explanatory memorandum. The explanatory memorandum accompanying this bill includes this material (at p. 4). **The committee thanks the Minister for including this information in the explanatory memorandum as requested.**

The committee makes no further comment on this bill.

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

Tax and Superannuation Laws Amendment (2014 Measures No. 4) Bill 2014

Introduced into the House of Representatives on 17 July 2014
Portfolio: Treasury

Background

This bill amends various laws relating to taxation, superannuation and excise.

Schedule 1 in the bill:

- amends the debt limit settings in the thin capitalisation rules to ensure that multinationals do not allocate a disproportionate amount of debt to their Australian operations;
- increases the *de minimis* threshold to minimise compliance costs for small businesses; and
- introduces a new worldwide gearing debt test for inbound investors.

Schedule 2 amends the exemption for foreign non-portfolio dividends.

Schedule 3 amends the *Income Tax Assessment Act 1997* (ITAA 1997) to ensure that the foreign residents capital gains tax (CGT) regime operates as intended by preventing the double counting of certain assets under the Principal Asset Test. A technical correction is also made to the meaning of 'permanent establishment' in section 855-15 of the ITAA 1997.

Schedule 4 requires the Commissioner of Taxation to issue a tax receipt to individuals for the income tax assessed to them.

Schedule 5 makes a number of miscellaneous amendments to the taxation and superannuation laws.

Retrospective commencement
Schedule 1, item 56

Schedule 1 proposes to tighten the statutory limit settings in the thin capitalisation rules to ensure that multinationals do not allocate a disproportionate amount of debt to their Australian operations. Schedule 1

also proposes to increase the *de minimis* threshold to minimise compliance costs for small businesses, and to introduce a new worldwide gearing test for inbound investors.

Item 56 is an application provision for schedule 1. It provides that the amendments made in this schedule apply for income years starting on or after 1 July 2014. The explanatory memorandum (at p. 30) states that:

> The amendments were announced by the Government on 6 November 2013, and taxpayers will be required to apply them to assessments completed after the end of that income year. Consequently, no taxpayer will be required to calculate their tax liabilities for the 2014-15 income year until after the Bill receives Royal Assent.

While this may prove to be correct, the committee notes that the actual changes to taxation law proposed in the schedule will be applied retrospectively because they will apply to assessments for income years starting on or after 1 July 2014 (if the bill is passed by the Parliament).

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.*

Retrospective commencement
Schedule 3, item 5

Part 1 of schedule 3 seeks to amend the *Income Tax Assessment Act 1997* to 'ensure that the foreign residents capital gains tax (CGT) regime operates as intended by preventing the double counting of certain assets under the Principal Asset Test'.

Item 5 is an application provision which provides that the amendments made in Part 1 of schedule 3 will apply to capital gains tax events occurring on or after:

- 7.30 pm on 14 May 2013 (where the entities involved in the creation of the new non-TARP (taxable Australian real property) asset are members of the same tax consolidation group, or multiple-entry consolidated group)

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

- 13 May 2014 (for all other entities).

These application dates reflect the dates on which it was announced that the amendments would apply to particular entities. The explanatory memorandum (at p. 56) argues that:

> The retrospectivity of these amendments to the date of their announcement is warranted as the amendments correct a defect in the operation of the Principal Asset Test that would otherwise prevent it from operating as intended. The amendments also ensure greater integrity for Australia's foreign resident CGT regime.

The committee has in the past been prepared to accept that amendments proposed in the Budget will have some retrospective effect when the legislation is introduced, and this has usually been limited to publication of a draft bill within six calendar months after the date of that announcement. Where taxation amendments are not brought before the Parliament within 6 months of being announced the committee usually expects the delay to be explained and justified or the bill risks having the commencement date amended by resolution of the Senate (see Senate Resolution No. 44). The problem that committee is concerned to avoid is the practice of 'legislation by press release'.

The committee draws this matter to the attention of Senators and 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.*

Retrospective commencement
Schedule 3, item 10

Part 2 of schedule 3 seeks to make a 'technical correction' to the meaning of 'permanent establishment' in section 855-15 of the *Income Tax Assessment Act 1997*. The correction is to ensure that foreign residents are subject to capital gains tax (CGT) in relation to CGT assets that they have used in carrying on a business through a permanent establishment located in Australia.

Item 10 is an application provision which provides that the amendments made in Part 2 of schedule 3 apply from the commencement of Division 855 (i.e. the amendments will apply to CGT events that happen on or after 12 December 2006). The explanatory memorandum (p. 57) states that:

> These changes are of a technical nature and do not affect any other aspect of the definition of taxable Australian property. They do not negatively affect any taxpayer because the scope of the definition of taxable Australian property aligns with the intention of the original provisions.

While the committee notes this explanation, it is unclear whether the proposed amendment will in fact give rise to detriment to any person who has relied on the definition in its current form. **The committee therefore seeks the Minister's advice about this matter.**

> *Pending the Minister's reply, 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.*

Retrospective commencement
Schedule 5

This schedule makes a number of miscellaneous amendments to the taxation and superannuation laws. The amendments:

> …are part of the Government's commitment to the care and maintenance of the taxation and superannuation systems' [and include] 'style changes, the repeal of redundant provisions and the correction of anomalous outcomes and corrections to previous amending Acts. (explanatory memorandum, p. 5).

The explanatory memorandum further states that although some of the amendments have retrospective application 'taxpayers will not be adversely impacted'.

> *In the circumstances, the committee makes no further comment on this schedule.*

True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Bill 2014

Introduced into the House of Representatives on 14 July 2014
Received the Royal Assent on 17 July 2014
Portfolio: Environment

An identical bill was introduced into the House of Representatives on 13 November 2013 and the committee made no comment on the bill in *Alert Digest No. 8 of 2013.* The bill was then re-introduced on 23 June 2014 and the committee again made no comment on the bill in *Alert Digest No. 8 of 2014.*

Background

This bill seeks to impose the levy to recover over-allocations to the extent that they are a duty of excise.

The committee has no comment on this bill.

True-up Shortfall Levy (General)(Carbon Tax Repeal) Bill 2014

Introduced into the House of Representatives on 14 July 2014
Received the Royal Assent on 17 July 2014
Portfolio: Environment

An identical bill was introduced into the House of Representatives on 13 November 2013 and the committee made no comment on the bill in *Alert Digest No. 8 of 2013.* The bill was then re-introduced on 23 June 2014 and the committee again made no comment on the bill in *Alert Digest No. 8 of 2014*.

Background

This bill seeks to impose the levy to recover the value of over-allocated free carbon units received under the Jobs and Competitiveness Program for the 2013-14 financial year.

The committee has no comment on this bill.

COMMENTARY ON AMENDMENTS TO BILLS

Asset Recycling Fund Bill 2014
[Digest 6/14 – awaiting response]

On 17 July 2014 the Senate agreed to 21 Government, 17 Opposition and three Australian Greens amendments. On the same day the House of Representatives agreed to amendments 3, 4, 7 to 11, 14, 17, 18, 22, 24 to 26, 29, 30, 35, 38 and 39 and disagreed to amendments 1, 2, 5, 6, 12, 13, 15, 16, 19 to 21, 23, 27, 28, 31 to 34, 36 and 37. On 18 July 2014 the Senate insisted on its amendments.

The committee has no comment on these amendments.

Asset Recycling Fund (Consequential Amendments) Bill 2014
[Digest 6/14 – no comment]

On 17 July 2014 the Senate agreed to two Australian Greens amendments and on the same day the House of Representatives disagreed to the Senate amendments. On 18 July 2014 the Senate insisted on its amendments.

The committee has no comment on these amendments.

Fair Work (Registered Organisations) Amendment Bill 2014
[Digest 7/14 – response in Report 9/14]

On 15 July 2014 the House of Representatives agreed to nine Government amendments, the Minister for Education (Mr Pyne) presented a supplementary explanatory memorandum and the bill was read a third time.

Government amendment (3) on sheet BT278
Proposed subsections 293C(2), 293C(3), 293C(6) and 293C(7)

These proposed subsections introduce civil penalty provisions as follows:

- subsections 293C(2) and 293C(3): for a failure by disclosing officers to disclose relevant material personal interests [civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention]
- subsection 293C(6): for failing to record details of a disclose of material personal interests [civil penalty: 100 penalty units]
- subsection 293C(7): for failing to respond to a member's request for details of disclosures made to a committee of management of an organisation [civil penalty: 100 penalty units]

The committee commented on the issue of civil penalty provisions in the bill in the committee's *Alert Digest No. 7 of 2014* (at pp 16–17).

Minerals Resource Rent Tax Repeal and Other Measures Bill 2013 [No. 2]
[Digest 8/14 – no comment]

On 17 July 2014 the Senate agreed to two Opposition and two Palmer United Party amendments, the Minister for Finance (Senator Cormann) also tabled a supplementary explanatory memorandum. On 18 July 2014 the House of Representatives disagreed to the Senate amendments and on the same day the Senate insisted on its amendments.

The committee has no comment on these amendments.

Qantas Sale Amendment Bill 2014
[Digest 3/14 – no comment]

On 18 July 2014 the Senate agreed to three Opposition amendments and on the same day the House of Representatives agreed to the Senate amendments.

The committee has no comment on these amendments.

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 in the form of 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.

Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2014

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 bills containing standing appropriations that have been introduced since the committee's last Alert Digest.

Bills introduced with standing appropriation clauses since the previous Alert Digest

Social Services and Other Legislation Amendment (Student Measures) Bill 2014 — Schedule 2, part 1, item 90

Other relevant appropriation clauses in bills

Nil

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