

SCRUTINY OF BILLS ALERT DIGEST

No. 1  
23 February 1982

THE SENATE  
23 FEB 1982  
TABLED

DEPARTMENT OF THE SENATE  
PAPER No.  
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23 FEB 1982  
*W. Hadfield*  
Clerk of the Senate

NOTE: 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.

The Committee has considered the following Bills:

- Aborigines and Islanders (Admissibility of Confessions) Bill 1981  
Acts Interpretation Amendment Bill (No. 2) 1980  
\* Archives Bill 1981  
Australian Centre for International Agricultural Research Bill 1981  
Banking Amendment Bill 1981  
Broadcasting Stations Licence Fees Amendment Bill (No. 2) 1981  
Constitution Alteration (Fixed Term Parliaments) Bill 1981  
Constitution Alteration (Holders of Offices of Profit) Bill 1981  
Copyright Amendment Bill 1981  
\* Crimes Amendment Bill 1981  
\* Criminal Investigation Bill 1981  
Customs Amendment Bill (No. 2) 1981  
Domicile Bill 1981  
Domicile (Consequential Amendments) Bill 1981  
Dried Sultana Production Underwriting Bill 1981  
\* Family Law Amendment Bill 1981  
\* Foreign Antitrust Judgments (Restriction of Enforcement) Amendment Bill 1981

\* Clauses reported to the Senate 23 february 1982

- Freedom of Information Bill 1981
- Health Acts Amendment Bill (No. 2) 1981
- Income Tax Assessment Amendment Bill (No. 2) 1981
- \* Industrial Democracy Bill 1981
- Institute of Freshwater Studies Bill 1981
- \* Insurance (Agents and Brokers) Bill 1981
- International Organizations (Privileges and Immunities) Amendment Bill 1981
- Liquor Advertising Tax Assessment Bill 1981
- Liquor Education Fund Bill 1981
- Maintenance Orders (Commonwealth Officers) Amendment Bill 1981
- Migration Amendment Bill 1981
- Offences against the Parliament Bill 1981
- Patents Amendment Bill 1981
- Plant Variety Rights Bill 1981
- Public Service Acts Amendment Bill 1981
- \* Queensland Aboriginals and Torres Strait Islanders (Self-Management and Land Rights) Bill 1981
- Repatriation Acts (Tuberculosis Pensions) Amendment Bill 1981
- Sales Tax Amendment Bills (Nos 1A to 9A) 1981
- Sales Tax Assessment (Rebate for Transport Costs) Bill 1981
- Senate Elections (Queensland) Bill 1981
- \* Sex Discrimination Bill 1981
- Television Stations Licence Fees Amendment Bill 1981

- \* Clauses reported to the Senate 23 February 1982

ABORIGINES AND ISLANDERS (ADMISSIBILITY OF CONFESSIONS) BILL 1981

Date Introduced: 5 March 1981

House : Senate (Senator Bonner)

Purpose : To provide a basis for the admissibility  
of confessions made by Aborigines and procedures  
to be followed when under restraint.

The Committee has no comments on the Bill.

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

ACTS INTERPRETATION AMENDMENT BILL (NO.2) 1980

Date Introduced: 25 November 1981

House : House of Representatives (Prime Minister)

Purpose : Privilege Bill

The Committee has no comments on the Bill.

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

AUSTRALIAN CENTRE FOR INTERNATIONAL AGRICULTURAL RESEARCH BILL 1981

Date Introduced: 27 October 1981

House : House of Representatives (Minister for Foreign  
Affairs)

Purpose : To establish the Australian Centre for  
International Agricultural Research.

The Committee has no comments on the Bill.

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

BANKING AMENDMENT BILL 1981

Date Introduced: 19 August 1981

House : Senate (Senator Haines)

Purpose : To ensure regulations  
          . control increases in rates  
          . grant relief to families borrowing  
              for first home  
          and that Parliament controls increases of  
          more than 0.5% in interest rates.

The Committee has no comments on the Bill.

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

BROADCASTING STATIONS LICENCE FEES AMENDMENT BILL (NO. 2) 1981

Date Introduced: 18 August 1981

House : House of Representatives (Minister for  
Communications)

Purpose : To amend the Broadcasting Stations Licence  
Fees Act 1964 to:

- (a) raise the fee paid upon initial  
granting of a licence from \$200  
to \$500;
- (b) remove the \$200 lump sum component of  
the annual fee;
- (c) change the schedule used in calculating  
the sliding component of the annual fee.

The Committee has no comments on the Bill.

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Committee under its Terms of Reference is invited to do so.

CONSTITUTION ALTERATION (FIXED TERM PARLIAMENTS) BILL 1981

Date Introduced: 11 November 1981

House : Senate (Senator Evans)

Purpose : To amend the Constitution so that the House of Representatives is not dissolved before the end of its three-year term unless there is no Government which can command a majority in the House; to ensure that a Prime Minister who has the confidence of the House of Representatives may not be dismissed; to limit the power of the Senate over money Bills; to give an option under section 57 for an immediate joint sitting as well as the possibility of a double dissolution; and to make other related amendments.

The Committee has no comments on the Bill.

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CONSTITUTION ALTERATION (HOLDERS OF OFFICES OF PROFIT) BILL 1981

Date Introduced: 5 March 1981

House : Senate (Senator Colston)

Purpose : To enable persons holding an office of  
profit under the Crown to be elected  
to Parliament.

The Committee has no comments on the Bill.

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

COPYRIGHT AMENDMENT BILL 1981

Date Introduced: 2 April 1981

House : Senate (Attorney-General)

Purpose : To provide that certain material currently required under the Copyright Act 1968 to be deposited with the National Library should in future be deposited with the proposed Australian Archives.

The Committee has no comments on the Bill.

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 (NO. 2) 1981

Date Introduced: 19 August 1981 (Senator Macklin)  
8 September 1981 (Senator Ryan)  
House : Senate

Purpose : To ensure that Parliament can protect  
natural areas of outstanding value  
from destruction by sand mining.

The Committee has no comments 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.

DOMICILE BILL 1981

Date Introduced: 20 October 1981

House : Senate (Attorney-General)

Purpose : To alter the common law relating to domicile of a married woman; abandonment of domicile of choice; the capacity of persons over 18 years, or of married persons under that age, to acquire an independent domicile; domicile of a child whose parents are living apart or who has only one parent or of an adopted child.

The Committee has no comments 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.

DOMICILE (CONSEQUENTIAL AMENDMENTS) BILL 1981

Date Introduced: 20 October 1981

House : Senate (Attorney-General)

Purpose : To omit certain sub-sections of the  
Marriage Act 1961 and the Family-Law  
Act 1975, which relate to certain  
aspects of domicile now covered by the  
Domicile Bill 1981.

The Committee has no comments on this Bill.

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Committee under its Terms of Reference is invited to do so.

## DRIED SULTANA PRODUCTION UNDERWRITING BILL 1981

Date Introduced: 29 October 1981

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To provide for the underwriting of returns  
from the production of dried sultanas.

The Committee draws the attention of Senators to the following clauses of the Bill:

### Clause 16 - Furnishing of returns

Sub-clause (1) provides that an authorised person may give notice to another person requiring that person to furnish information, within such time as is specified in the notice, relevant to the operation of the Act. The Bill contains no indication as to the time that may be specified for the return of the information. Failure to comply with the notice attracts a penalty of \$1,000. While it is a defence that the person may plead reasonable excuse for non-compliance, a difficulty arises as to what may be regarded as a reasonable excuse and the onus would be on the defendant to show that he did have such an excuse.

Sub-clause (3) of the clause requires a person to furnish information notwithstanding that the information might be incriminating, thereby removing a fundamental right of common law, although any information so furnished is not admissible in evidence against the person in proceedings other than proceedings for an offence under the section.

These provisions might be regarded as trespassing unduly on personal rights and liberties.

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

Clause 17 - Offences in relation to underwriting payments

The clause places an obligation on a person who receives payment to which he knows he is not entitled to inform two specified bodies. The first is the Australian Dried Fruits Corporation. However, the second is specified only as 'The Department that deals with matters arising under this Act'. The person involved must therefore provide information to an unnamed Department or face a penalty of \$2,000 or 12 months' imprisonment or both.

The clause might be regarded as making an obligation unduly dependent upon insufficiently defined administrative powers.

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

FREEDOM OF INFORMATION BILL 1981

Date Introduced: 2 April 1981

House : Senate (Attorney-General)

Purpose : To extend as far as possible the right  
of the Australian community to access  
to information in the possession of the  
Government of the Commonwealth.

The Committee has no comments on the Bill.

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



HEALTH ACTS AMENDMENT BILL (NO. 2) 1981

Date Introduced: 19 August 1981

House : Senate (Senator Haines)

Purpose : To provide a voluntary contribution scheme  
as an alternative to private insurance.

The Committee has no comments on the Bill.

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

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 2) 1981

Date Introduced: 19 August 1981

House : Senate (Senator Haines)

Purpose : To encourage savings, and the consequent availability of funds for housing, by granting relief from income tax in respect of the first \$1,000 from interest paid at a rate of 10% or less for savings accounts.

The Committee has no comments on the Bill.

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

INSTITUTE OF FRESHWATER STUDIES BILL 1981

Date Introduced: 4 June 1981 (Mr Jacobi), 9 June 1981 (Sen. McLaren)

House : House of Representatives and Senate

Purpose : To establish an Institute for the research  
and planning of freshwater resources.

The Committee has no comments on the Bill.

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

INTERNATIONAL ORGANIZATIONS (PRIVILEGES AND IMMUNITIES)  
AMENDMENT BILL 1981

Date Introduced: 29 October 1981

House : House of Representatives (Minister for Foreign  
Affairs)

Purpose : To enable the privileges and immunities  
available under the International Organizations  
(Privileges and Immunities) Act 1963 to be  
accorded to representatives of international  
organizations attending conferences of the  
Commission for the Conservation of Antarctic  
Marine Living Resources held in Australia.  
Also the Bill seeks to enable the granting  
of exemption from Australian income tax to  
foreign experts and committee members of  
organizations, such as the Common Fund for  
Commodities and the Asian Development Bank,  
when visiting or working in Australia.

The Committee has no comments on the Bill.

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

LIQUOR ADVERTISING TAX ASSESSMENT BILL 1981

Date Introduced: 26 November 1981

House : Senate (Senator Chipp)

Purpose : To provide for a tax on the advertising  
of liquor.

The Committee has no comments 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.

LIQUOR EDUCATION FUND BILL 1981

Date Introduced: 26 November 1981

House : Senate (Senator Chipp)

Purpose : To establish a fund for a national advertising  
campaign to reduce excessive use of alcohol.

The Committee has no comments 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.

MAINTENANCE ORDERS (COMMONWEALTH OFFICERS)  
AMENDMENT BILL 1981

Date Introduced: 20 October 1981

House : Senate (Attorney-General)

Purpose : To amend the Maintenance Orders (Commonwealth Officers) Act 1966 to accord with the garnishment provisions of the Family Law Act 1975 and to make additional amendments consequential upon the attainment of self-government by the Northern Territory.

The Committee has no comments on the Bill.

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

MIGRATION AMENDMENT BILL 1981

Date Introduced: 20 October 1981

House : Senate (Attorney-General)

Purpose : To repeal Part III of the Migration Act 1958 which provides for offences and penalties in respect of the removal and carriage from Australia of children in contravention of custody or access orders that have been made or in cases where such orders are being sought.

The Committee has no comments on the Bill.

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



OFFENCES AGAINST THE PARLIAMENT BILL 1981

Date Introduced: 12 November 1981

House : Senate (Senator Button)

Purpose : To remove, from the Houses of the Australian Parliament, the power to punish for contempt for various offences and to enable these matters to be dealt with by the courts.

The Committee has no comments on the Bill.

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

PATENTS AMENDMENT BILL 1981

Date Introduced: 7 April 1981

House : House of Representatives (Minister for Science  
and Technology)

Purpose : To make largely machinery alterations of the  
Patents Act relating to matters such as the  
extension of time for lodging certain  
documents giving effect to the Patent  
Co-operation Treaty and enabling regulations  
to be made authorising disciplinary control  
of Patent Attorneys.

The Committee has no comments on the Bill.

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

# PLANT VARIETY RIGHTS BILL 1981

Date Introduced: 7 May 1981

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To provide for the granting of proprietary  
rights to person originating new plant  
varieties.

The Committee draws the attention of Senators to the following  
clauses of the Bill:

Clause 10 - Plant variety rights to be granted in relation to  
certain varieties only

Sub-clause 10(3) empowers the Governor-General to make regulations declaring a genus or species to be a genus or species to which the Act applies. However, this power cannot be exercised by the Governor-General unless the Australian Agricultural Council has consented to the declaration of the genus or species as falling within the Act. In effect, the regulation-making power is passed to the Council as the Governor-General cannot act without its approval. It is not simply a matter of the Governor-General taking the advice of the Council into account.

This provision might be regarded as inappropriately delegating legislative power.

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

Clause 33 - Applications for review

Clause 44 provides for many of the discretions vested in the Secretary under the Act to be made subject to appeal to the Administrative Appeals Tribunal. There are, however, two exceptions. The first is in clause 20(1) which empowers the Secretary to require an applicant for a plant variety right to supply plants for test growing during such period, in such place or places, and under such conditions, as the Secretary considers appropriate. This requirement which can be made by the Secretary is not subject to appeal. The other provision that is not subject to appeal is the power vested in the Minister under clause 29 of the Bill to subject a grant of a plant variety right to certain conditions. The power of the Minister to impose these conditions is constrained only by his having considered its exercise to be 'necessary in the public interest'.

These provisions might be regarded as making rights, liberties and obligations dependent upon non-reviewable administrative decisions.

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

## PUBLIC SERVICE ACTS AMENDMENT BILL 1981

Date Introduced: 29 October 1981

House : House of Representatives (Minister  
Assisting the Prime Minister)

Purpose : To make extensive alterations to the Public Service Act and other related Acts consequent upon the decision to abandon the divisional structure in the Service. The Act also makes provisions relating to the promotion processes, including promotion appeals.

### General Comment

Review of this legislation raises a difficult point of principle. The terms and conditions applicable to the employment of persons in the private sector are not of a kind that, if interfered with, can be said to trespass unduly on personal rights and liberties or make rights etc. dependent on insufficiently defined administrative powers or non-reviewable administrative decisions. A private employer may, at least in theory, dismiss an employee at will. He can equally make any benefits payable to the employee subject to whatever conditions he thinks fit and subject to unreviewable discretion. The Public Service can, on the other hand, claim to have certain expectations created by the terms of the legislation governing the Public Service. The issue that arises is whether the 'rights' that are given by the Act should be treated in the manner applicable to rights given to members of the public under legislation.

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

The Public Service Act includes, for example, numerous provisions where the Public Service Board can determine the rights of a public servant without any review or appeal provision. This pattern is continued to a large extent in this Bill. The Committee has not endeavoured to draw attention to each of these unreviewable discretions but has limited its remarks to provisions that impinge on a person's continuing employment, impose obligations on a person or make a substantive change in the present law.

The Committee draws the attention of Senators to the following clauses of the Bill:

Clause 24 - Insertion of new section

It appears to the Committee that the proposed section 47AB enables the Board to negate the effect of the Officers' Rights Declaration Act as continued in force by s.87TA (which is being substituted by clause 64 of the present Bill). The proposed section enables the Board to refuse to appoint an officer if the Board is satisfied that there is no vacant office in the Service that the officer is competent to perform. This provision seems to override the intended effect of the Officers' Rights Declaration Act. It is also noteworthy that the decision of the Board is not reviewable.

However, the Committee is not clear as to the intended effect of the provision, and has therefore written to the relevant Minister seeking his advice as to whether the Committee's understanding is correct. The Committee will consider this clause further following receipt of the Minister's advice.

Clause 27 - Repeal of heading to Division 5 of Part III and of sections 50 and 50A and insertion of new sub-division heading and sections -

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Sub-division D - Promotion and Transfers of Officers other than Permanent Heads

This clause replaces the present sections of the Act which deal with promotions appeals. Senators' attention is drawn to section 50D. This section sets out the procedure to be followed by a Promotions Appeals Committee when hearing an appeal. Although not referred to in the explanatory memorandum, the intention of the section is to set aside, to a large extent, the effect of the recent decision in Finch v. Goldstein which held that the rules of natural justice apply to an appeal and give an appellant rights that had not been recognised by Appeals Committees in the past. In particular, Ellicott J. in the Federal Court held that an appellant was entitled to all information to which the Committee was having regard on the appeal; to be present at the proceedings of the appeal including when the promotee was being interviewed by the Committee; to cross-examine the promotee; and, in appropriate cases, to be represented by counsel. The effect of section 50D is to take away these rights that the court held applicable to the proceedings of the Committee.

This clause might be regarded as trespassing unduly on personal rights and liberties, and making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

Clause 43 - Repeal of section 64 and substitution of new section

This clause repeals the existing section 64 of the Act relating to the attachment of salaries of officers for the purpose of payment of a judgment and enacts a new section dealing with the same subject matter that is not in any radically different terms. The matters to which the attention of Senators is drawn were present in the previous section. Section 64(2) requires an officer to respond to a request from the Paying Officer as to whether a judgment has been satisfied and, if not satisfied, to indicate the amount that is due under the judgment. This information is to be provided 'within the time to be specified by the Paying Officer'.

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

No indication is given as to the minimum period that the Paying Officer is required to allow for this information to be provided.

Further, under sub-section (3), the Paying Officer has the final say on whether the evidence provided by the officer is sufficient to indicate whether the judgment has been satisfied or what the outstanding amount for payment is. The Paying Officer also has a discretion to deduct from the officer's salary such an amount up to a specified maximum as he considers to be appropriate. This right of deduction is qualified by sub-section (15) which enables the Paying Officer to deduct a less amount in the case of hardship but none of these discretions of the Paying Officer are subject to any form of review.

The attention of Senators is therefore drawn to the clause on the ground that it might be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

Clauses 89 and 91 - Amendments of the Long-service Leave (Commonwealth Employees) Act 1976 and the Superannuation Act 1976

These two clauses impinge on the policy of Public Service legislation generally, in that they raise the general question of whether a person should have any right to challenge decisions of the Board that affect the person's employment rights. The two clauses insert provisions in other legislation that empower the Board to issue a certificate which markedly limits an employee's long-service leave and superannuation rights. No appeal lies from the decision of the Board to issue the certificates.

These clauses might be regarded as trespassing unduly on personal rights and liberties and making rights, liberties and obligations dependent upon non-reviewable administrative discretions.

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



REPATRIATION ACTS (TUBERCULOSIS PENSIONS) AMENDMENT BILL 1981

Date Introduced: 19 August 1981

House : Senate (Senator Macklin)

Purpose : To restore the disability pension to all  
ex-servicemen and women suffering from TB.

The Committee has no comments on the Bill.

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

SALES TAX AMENDMENT BILLS (NOS 1A TO 9A) 1981

Date Introduced: 25 August 1981

House ; House of Representatives (Treasurer)

Purpose : To impose sales tax at the rate of 2½ per cent  
on a range of goods previously exempt from  
tax.

The Committee has no comments on the Bill.

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

SALES TAX ASSESSMENT (REBATE FOR TRANSPORT COSTS) BILL 1981

Date Introduced: 19 November 1981

House : Senate (Senator Chipp)

Purpose : To provide a rebate of sales tax attributable  
to the transportation of goods.

The Committee has no comments on the Bill.

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

SENATE ELECTIONS (QUEENSLAND) BILL 1981

Date Introduced: 26 March 1981

House : Senate (Senator Colston)

Purpose : To require that Queensland Senators are  
directly chosen by the people of Queensland  
voting as one electorate.

The Committee has no comments on the Bill.

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

TELEVISION STATIONS LICENCE FEES AMENDMENT BILL 1964

Date Introduced: 18 August 1981

House : House of Representatives (Minister for  
Communications)

Purpose : To amend the Television Stations Licence  
Fees Act 1964 to:

- (a) raise the fee paid upon initial  
granting of a licence from \$200  
to \$500;
- (b) remove the \$200 lump sum component of  
the annual fee;
- (c) change the schedule used in calculating  
the sliding component of the annual fee.

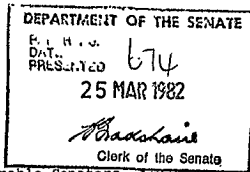
The Committee has no comments on the Bill.

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SCRUTINY OF BILLS ALERT DIGEST



No. 1A  
25 March 1982



NOTE: 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.

The Committee has considered the following Bills:

Archives Bill 1981  
Crimes Amendment Bill 1981  
Criminal Investigation Bill 1981  
Family Law Amendment Bill 1981  
Foreign Antitrust Judgments (Restriction of Enforcement)  
Amendment Bill 1981  
Industrial Democracy Bill 1981  
Insurance (Agents and Brokers) Bill 1981  
Queensland Aboriginals and Torres Strait Islanders  
(Self-Management and Land Rights) Bill 1981  
Sex Discrimination Bill 1981

The clauses of all these Bills were reported to the Senate on 23 February 1982. This Digest has been produced to complete Senators' loose-leaf records.

ARCHIVES BILL 1981

Date Introduced: 2 April 1981

House: Senate (Attorney-General)

Purpose: To provide a statutory basis for the Australian Archives and deal with its operation and the disposition of Government records. To also provide for access to Government records and to that extent it is in parallel with the provisions of the Freedom of Information Bill.

The Committee draws the attention of Senators to the following clauses of the Bill:

Sub-Clauses 18(2), 19(2), 20(2) and 34(1)

These sub-clauses as at present drafted deny access to certain documents without any right of appeal, and thus might be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions. However, Government amendments which were available to the Committee indicate that provisions similar to those now contained in the Freedom of Information Bill to establish a Document Review Tribunal to review the granting of at present unreviewable certificates will be moved at the Committee stage of the debate.

Clauses 24 and 25

These clauses permit regulations to be made qualifying the operation of the Archives Act. The explanatory memorandum indicates that the provisions have been inserted as a matter of

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policy. However, the provisions might be regarded as inappropriately delegating legislative power.

Clause 34 - Certificates by Minister as to certain exempt records

Sub-clause (7) enables a Minister to delegate powers to certain specified persons. Among the powers that may be delegated is the power to issue a certificate under sub-clause 34(1) that establishes conclusively that a record is an exempt record.

While the Committee is aware that, under the Freedom of Information legislation, the Minister has a similar power to delegate his authority in relation to a conclusive certificate, the Committee notes that, in that case, the power would be exercised at the highest level of the department or the authority involved. In this sub-clause, however, the power of delegation could be exercised by a relatively junior officer of a department or an authority. The reasons for this extensive delegation are not given in either the Attorney-General's second reading speech or the explanatory memorandum. This provision might be regarded as making rights unduly dependent upon insufficiently defined administrative powers.

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CRIMES AMENDMENT BILL 1981

Date Introduced: 15 October 1981

House: Senate (Attorney-General)

Purpose: To amend the Crimes Act 1914 primarily in relation to sentencing options.

The Committee draws the attention of Senators to the following clause of the Bill:

Clause 7 - Application for time, or further time, to pay fine

Sub-clause 7(3) inserts a new section 18C in the Principal Act that prevents the enforcement of a default order unless the court which convicted the offender directs that the order for imprisonment be carried out. It would seem appropriate in relation to this proposed section to include a provision similar to sub-clause (2) of clause 6 of the amending Bill making it clear that the section is applicable to persons who have been convicted of an offence before the commencement of the section but not yet sentenced. In the absence of a provision of this kind, doubt arises as to whether it is applicable to an offence committed before the commencement of the new section. No explanation of the difference from sub-clause 6(2) is included in the explanatory memorandum.

This provision might be regarded as trespassing unduly on personal rights and liberties.

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CRIMINAL INVESTIGATION BILL 1981

Date Introduced: 18 November 1981

House: Senate (Attorney-General)

Purpose: To codify and clarify the rights and duties of citizens and the Australian Federal Police when involved in the process of criminal investigation of offences against laws of the Commonwealth and the Australian Capital Territory. In the main the Bill extends, in some cases quite substantially, *personal rights of citizens.*

The Committee draws the attention of Senators to the following clauses of the Bill:

Clause 10 - Arrest without warrant by Police Officer

This clause specifies the circumstances in which a police officer may arrest a person without warrant. The circumstances are set out in sub-clause (2) of the clause and require the police officer to believe on reasonable grounds the three matters listed in that clause. Sub-clause (3) of the clause then requires the person arrested to be released from custody if the police officer's belief changes after the arrest. The changed state of mind, however, is expressed to relate to only two of the matters alluded to in sub-clause (2). The third item, that referred to in paragraph (c) 'that proceedings by summons would not achieve that purpose or purposes' alluded to in paragraph (b), is not

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mentioned as a factor entitling a person to release. It would seem that a police officer's state of mind might change with respect to this item as well as to the other two that are specifically alluded to in the sub-clause. It is to be noted that the explanatory memorandum accompanying the Bill indicates that the person is to be released if any of the factors referred to in sub-clause (2) no longer exist. It seems likely, accordingly, that this is the result of a drafting oversight rather than deliberate policy.

This provision might be regarded as trespassing unduly on personal rights and liberties.

Clause 17 - Requirement to furnish name, etc.

This clause requires a person to furnish a police officer with his name and address when a police officer believes on reasonable grounds that this will assist in enquiries in connection with an offence.

This provision was examined in detail by the Australian Law Reform Commission in its Report No. 2 on Criminal Investigation. The Commission concluded, at paragraphs 79 to 81, that the clause was warranted and this conclusion is reflected in the Bill. It is clear from the Attorney-General's second reading speech that its inclusion is the product of a deliberate policy decision.

However, this provision might be regarded as trespassing unduly on personal rights and liberties.

Clause 19 - Police Officers to inform persons of rights

This clause requires a police officer to inform a person of his rights before interviewing him in connection with an offence. In sub-clause (2) the requirement is included that the police officer advise the person that he may at any time consult a

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lawyer or communicate with a relative or friend. It is clear, however, from clauses 21 and 23 that these rights are not alternatives but cumulative. The reference in the sub-clause to a lawyer or a friend accordingly does not properly state the rights of an individual that are given by the Act, and thus the rights indicated by clauses 21 and 23 may be circumscribed by clause 19 as at present drafted. It seems likely that this is the product of a drafting oversight rather than a deliberate policy decision, as the difference from clauses 21 and 23 is not referred to in either the Attorney-General's second reading speech or the explanatory memorandum.

However, this provision might be regarded as trespassing unduly on personal rights and liberties.

#### Clause 21 - Access to Lawyer

This clause relates to the right of access that a person, who is being interviewed, has to a lawyer. Sub-clause (4) entitles a lawyer to be present while investigative action is being taken by a police officer in relation to a person who is in custody. This right is qualified by paragraph (b) of the sub-clause which states that the lawyer is entitled to be present 'only while he does not otherwise interfere with the interview'. It is not clear from the legislation who is to judge whether the lawyer's presence interferes with the interviewing, nor is it clear what 'interference' in this context means. It may be difficult to state the rights of a person more accurately but it is arguable that the provision might be regarded as making rights unduly dependent upon insufficiently defined and non-reviewable administrative decisions.

#### Clause 25 - Treatment of persons in custody

This clause states, in general terms, that a person while in custody should be treated properly. However, the broad

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requirements as stated in the section are qualified by sub-clause (7) which says that the provisions are not to be taken to be contravened by a police officer 'taking necessary custodial measures'. The meaning of the qualifying expression is unclear, and is not defined or discussed in either the Attorney-General's second reading speech or the explanatory memorandum.

The provision might be regarded as making rights unduly dependent upon insufficiently defined administrative powers.

#### Clause 60 - Searches in emergencies

This clause gives a police officer power to conduct searches of a person or premises in emergency circumstances without the need to obtain a warrant or to arrest a person. It would seem that the clause goes further than the existing common law and indeed most State statutory provisions in allowing a general right to search a person where a person is suspected of carrying anything connected with an offence or entering land where a police officer considers that anything connected with an offence is situated.

This clause, like clause 17, was considered by the Law Reform Commission to be warranted, as indicated in paragraph 204 of its Report, and, from the explicit references made in both the Attorney-General's speech and the explanatory memorandum, is clearly a matter of policy.

However, this provision might be regarded as trespassing unduly on personal rights and liberties.

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FAMILY LAW AMENDMENT BILL 1981

Date Introduced: 20 October 1981

House: Senate (Attorney-General)

Purpose: To make numerous amendments to the Family Law Act 1975 to implement a number of the recommendations of the Joint Select Committee on the Family Law Act as well as some recommendations of the Family Law Council.

The Committee draws the attention of Senators to the following clauses of the Bill:

Clause 22 - Separate representation of child

This clause amends section 65 of the Principal Act which is concerned with the question of separate representation of a child of a marriage. The section in its present form allows the court to require that a child be separately represented. The amendment will limit this power to cases where the child is not more than 18 years of age. Presumably the amendment is intended to take account of the legal age of majority but this section, and other sections of the Act, do not seem to make any special provision in regard, for example, to mentally defective children. It would seem that the interests of a 'child of a marriage' over the age of 18 years who is incapable of adequately looking after his own interests may well warrant representation on the intervention of the court. Neither the Attorney-General's second reading speech nor the explanatory memorandum addresses itself to this particular aspect of the clause.

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

This provision might be regarded as trespassing unduly on personal rights and liberties.

Clause 25 - Insertion of new sections

This clause in effect transfers certain provisions relating to the removal of children from Australia from the Migration Act to the Family Law Act. There is, however, one aspect of the proposed section 70B to which the attention of the Senate is invited. Where the master, owner or charterer of a vessel (including an aircraft) or the agent of the owner of the vessel is served with a copy of a statutory declaration made pursuant to the section, the person so served must not permit the child referred to in the declaration to leave Australia. Failure to comply with this requirement renders the person liable to a penalty of up to \$5,000. However, sub-section (5) provides the method of service of the declaration which is the crucial step in bringing the section into operation. The declaration may be served in one of two ways - either by leaving it at the principal place of business in Australia of the owner, charterer or agent or by sending it by registered post addressed to that principal place of business. The obligation imposed by the section is expressed to be that the person concerned shall not, 'without reasonable excuse', permit the child to leave Australia. It would be a defence, in fact, for the person served to show that he had not received the declaration, but the obligation would be on him to show this. Under sub-section (5) as at present worded 'service' is defined as the act of leaving or sending a declaration without reference to its receipt. In the result, a person could be subject to a severe penalty without having received the declaration.

In addition, no express provision is included in the section as to the manner of service on the master of a vessel. Presumably this means that the service has to be effected personally, but this is not spelt out in the section.

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The Committee has noted that the existing provisions of the Migration Act are in the same form in this respect as the proposed provisions of the Family Law Act. However, these provisions might be regarded as trespassing unduly on personal rights and liberties, and as making obligations unduly dependent upon insufficiently defined administrative powers.

Clause 49 - Insertion of new section

This clause inserts a new section 114AA in the Act enabling powers of arrest without warrant to be attached to an injunction. The attention of the Senate is drawn to proposed sub-section (5). This sub-section enables a person to be kept in custody after the expiration of the 'relevant period' except in the circumstances set out in paragraphs (d) and (f). Paragraph (f) seems to contain a drafting error in that its effect would be to enable the court to order that a person be kept in custody beyond the relevant period if the court should adjourn for more than 24 hours but not if the court adjourned for say 10 minutes during the course of the hearing. It would appear that the word 'not' should be deleted from the paragraph. This provision, as it stands, might be regarded as trespassing unduly on personal rights and liberties.

Clause 57 - Repeal of section 123 and substitution of new sections

This clause repeals the existing regulation-making power under the Principal Act and substitutes a power for the Family Court to make Rules of Court as well as for the Governor-General to make regulations. The proposed section 123 relating to Rules of Court differs from the rule-making power given to the High Court, the Federal Court and the Australian Capital Territory Supreme Court

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in two respects. First, power is given to prescribe penalties for offences against the Rules. The practice in relation to the Rules of these other Courts is to prescribe penalties by regulation rather than under Rules of Court. Secondly, the Rules are not subject to parliamentary review.

As the Attorney-General's second reading speech indicates, the provisions relating to Rules of Court are included in the Bill as a matter of policy, based on recommendations of the Joint Committee on the Family Law Act.

This provision might be regarded as insufficiently subjecting the exercise of legislative power to Parliamentary scrutiny.

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FOREIGN ANTITRUST JUDGMENTS (RESTRICTION OF ENFORCEMENT)  
AMENDMENT BILL 1981

Date Introduced: 11 June 1981

House: Senate (Attorney-General)

Purpose: To extend the operation of the Principal Act by enabling a defendant against whom an award of damages has been given in an overseas judgment to recover against the Australian assets of the plaintiff the whole or part of any damages that the Australian defendant has been obliged to pay out of its overseas assets.

These provisions could be said to trespass unduly on the rights of a plaintiff that has had a judgment entered against it in judicial proceedings. However, this is the clear intention of the Bill, as demonstrated in the Attorney-General's second reading speech. The rights affected are recognised and deliberately overturned.

The provisions of this Bill might be regarded as trespassing unduly on personal rights and liberties.

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

INDUSTRIAL DEMOCRACY BILL 1981

Date Introduced: 27 August 1981

House: Senate (Senator Siddons)

Purpose: To encourage the introduction of  
industrial democracy in Australian  
enterprises through reductions in  
company tax for enterprises classified  
as industrial democracy enterprises.

The Committee draws the attention of Senators to the following  
clause of the Bill:

Clause 25 - Removal of enterprise from register

The effect of this clause is to make a decision by the Industrial  
Democracy Board to list an enterprise in the register or to  
remove the name of an enterprise from the register final and  
conclusive and not subject to any form of challenge or appeal at  
all. Registration by the Board is crucial to the obtaining by an  
industry of the benefits provided for under the Bill.

This provision might be regarded as making rights dependent upon  
non-reviewable administrative decisions.

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

INSURANCE (AGENTS AND BROKERS) BILL 1981

Date Introduced: 28 May 1981

House: Senate (Senator Evans)

Purpose: To provide for the registration and  
control of Insurance Agents and Brokers.

Included in the Bill are a number of provisions that vest broad discretions in the Life Insurance Commissioner and the Insurance Commissioner: see clauses 19, 20 and 21. The discretions are made subject to the right to a hearing and a right of appeal to the Administrative Appeals Tribunal by clause 32. However, clause 21(3) which vests a discretion in the Commissioner to approve the withdrawal of moneys from an account maintained by a registered insurance broker sets out no basis on which that consent may be given. The scope for an appeal in such circumstances is accordingly most limited. No guidance is provided either to the Commissioner or to the Tribunal on appeal as to the basis on which such consent should or should not be given. It may be the case that it was deliberate policy to insert the provision in the Bill. However, no reference to this provision is made in the relevant passages (paragraphs 105, 111) of the Australian Law Reform Commission Report on which the Bill was based, the second reading speech or subsequent debate.

The provision might be regarded as making rights dependent upon insufficiently defined and non-reviewable administrative decisions.

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

QUEENSLAND ABORIGINALS AND TORRES STRAIT ISLANDERS  
(SELF-MANAGEMENT AND LAND RIGHTS) BILL 1981

Date Introduced: 27 August 1981

House: Senate (Senator Ryan)

Purpose: To replace the Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-Management) Act 1978. To provide for the granting of self-management of traditional land in Queensland.

The Committee draws the attention of Senators to the following clauses of the Bill:

Clause 10 - Power of Councils to make by-laws

This clause empowers the Council for a Reserve or for a Community to make by-laws which relate generally to the running of the affairs of the reserve or community. The by-laws may fix charges for services. The present section 10 of the Act requires by-laws to be approved by the Minister and to be laid before the Parliament. The new Bill omits these requirements, thereby removing any external review of the provisions of the by-laws.

This provision might be regarded as insufficiently subjecting legislative power to parliamentary scrutiny.

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

However, amendments which Senator Ryan, who introduced the Bill into the Senate, proposes to move at the Committee stage of the debate, would reinsert Ministerial and Parliamentary surveillance, thus ensuring that the Committee's present disquiet about the clause would be overcome.

Clause 14 - Application of Queensland Law to PART 1

The explanatory memorandum contrasts this clause with section 13 of the recent 1978 Act, the intention of which was to free Aborigines and Torres Strait Islanders from the need to comply with directions given under or by virtue of the Queensland Aborigines Act or the Torres Strait Islanders Act. Sub-clause 14(1) goes further in providing that the Council for a Reserve or for a Community is not subject to control under any law of Queensland. This provision is in turn qualified by sub-clause (2) which provides that this part of the Bill does not affect the application to a Reserve of a law of Queensland to the extent that that law is capable of operating concurrently with this Part. Sub-clause (3) provides that regulations may make provision for the exclusion or modification of a law of Queensland in its application to Reserves.

As presently drafted, the provisions of sub-clauses (2) and (3) are limited to 'a Reserve' and do not extend to 'a Community'. Given the structure of sub-clause (1) and the absence of any explanation for the variation in the second reading speech or explanatory memorandum, this would appear to be a drafting oversight.

The expression in sub-clause 14(2), 'to the extent that that law is capable of operating concurrently with this Part', causes difficulties. Because of the wide powers vested in Councils by clauses 7, 8, 10 and 11 in Part I, it would be possible for a

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Council to displace the law of Queensland on many topics; compare the much narrower application of the same expression in Part II, sub-clause 43(1), where the only law capable of displacing the law of Queensland is that embodied in the terms of the present Commonwealth Bill.

Because it cannot simply be assumed that any laws passed by a Council under 14(2), or any regulations made under 14(3), will necessarily be more advantageous to all the members of the Reserve (or Community) than the Queensland laws they displace, these provisions, as at present drafted, might be regarded as unduly trespassing on personal rights and liberties, inappropriately delegating legislative power, and insufficiently subjecting its exercise to Parliamentary scrutiny.

However, the Committee notes that a proposed amendment by Senator Ryan to clause 10 would provide for Reserve laws to be subject to Parliamentary disallowance, just as are all regulations by virtue of section 48 of the Acts Interpretation Act, and to this extent there would be adequate provision for Parliamentary scrutiny of the delegations of power in question.

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

## SEX DISCRIMINATION BILL 1981

Date Introduced: 26 November 1981

House: Senate (Senator Ryan)

Purpose: To make it unlawful to discriminate on the grounds of sex or marital status in the areas of employment, education, etc. and to generally endeavour to overcome discriminatory practices based on sex or marital status.

*The Committee draws the attention of Senators to the following clauses and Part of the Bill:*

### Clause 47 - Notice of Inquiry and Rights of Parties at an Inquiry

This clause is concerned with the inquiry which is to be conducted by the Human Rights Commission following on a complaint of sexual discrimination. Paragraph (1)(a) requires the Commission to give a party to an inquiry 'such notice in such manner as the Commission determines of the time and place at which it intends to hold the 'inquiry'.

This provision, by investing the Commission with the power to determine when and where the inquiry is to be held, could have the effect of empowering the Commission to determine a brief period of notice and to fix an unsuitable place for the holding of the inquiry, actions which would not be subject to review by a court.

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This provision might be regarded as making rights, liberties and obligations dependent upon non-reviewable administrative decisions.

#### Clause 61 - Proof of Exceptions

This clause reverses the onus of proof in that it requires any exception to conduct that would otherwise be unlawful under the Act to be established by the respondent to the allegation.

*This provision might be regarded as trespassing unduly upon personal rights and liberties. As indicated in the second reading speech, however, this is a matter of policy.*

#### PART IV - Affirmative Action in Public and Private Employment

This Part of the Bill relates to affirmative action in private and public employment. It contains a number of provisions which might be regarded as trespassing unduly on personal rights and liberties and as making those rights, etc., unduly dependent on insufficiently defined administrative powers. For example, under clause 74(1)(f), the Director of Affirmative Action is empowered to issue guidelines for authorities and corporations on matters relating to the objects of the Part.

Two comments may be made on this provision. First, the guidelines must be implemented by the authority or corporation but there is no provision for any review of the guidelines so issued. Secondly, and this problem arises in other sections of the Part, most notably clause 76, the guidelines are to relate to 'the objects of this Part'. There appears to be no statement in the Part of what these objects are.

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However, the general objects are stated in clause 3 of the Bill, and it may be that the provisions of the Part are intended to relate to the overall objects of the Act. If this is the case, a simple amendment would overcome the problem at present identified by the Committee.

Clause 83 empowers members or officers of the Commission to enter and inspect any premises occupied by an authority or corporation at any reasonable time of the day. No warrant has to be obtained before this entry may be effected. There is a similar provision in section 14 of the Ombudsman Act empowering the Ombudsman to enter the premises of any Department to carry out an investigation but it is significant that the Ombudsman's powers extend only to Government Departments or authorities whereas the power in clause 83 allows entry into the premises of private bodies.

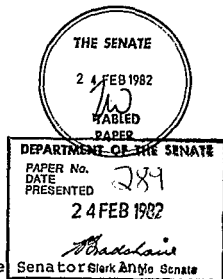
Clause 87 permits the Commission to recommend to the Minister that the Governor-General cancel, etc., contracts or declare persons ineligible for further government contracts where there has been a failure to comply with a direction of the Commission under paragraph 84(1)(b). The clause does not, except by implication, empower the Governor-General to act on such a recommendation. Assuming, however, that such a power is implied by the clause, this would enable such action to be taken without any rights of appeal or any right to compensation. Neither the second reading speech nor the explanatory memorandum appears to address itself to these aspects of the Part.

These clauses might be regarded as trespassing unduly on personal rights and liberties and as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

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

SCRUTINY OF BILLS ALERT DIGEST

No. 2  
24 February 1982



NOTE: This Digest is circulated to all Honourable Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

The Committee has considered the following Bills:

- Broadcasting and Television Amendment Bill 1982
- Canned Fruits Levy Amendment Bill 1982
- Canned Fruits Marketing Legislation Repeal and Amendment Bill 1982
- Customs Tariff (Coal Export Duty) Amendment Bill 1982
- Dairy Products (Export Inspection Charge) Bill 1982
- Dairy Products (Export Inspection Charge) Collection Bill 1982
- Edible Oils (Export Inspection Charge) Bill 1982
- Edible Oils (Export Inspection Charge) Collection Bill 1982
- Eggs (Export Inspection Charge) Bill 1982
- Eggs (Export Inspection Charge) Collection Bill 1982
- Honey (Export Inspection Charge) Bill 1982
- Honey (Export Inspection Charge) Collection Bill 1982
- International Financial Institutions (Share Increase) Bill 1982
- \* Sales Tax Amendment Bills (Nos 1A to 9A) 1981 [No. 2] (1982)
- States (Tax Sharing and Health Grants) Amendment Bill 1982

\* Clause reported to the Senate 24 February 1982

BROADCASTING AND TELEVISION AMENDMENT BILL 1982

Date Introduced: 17 February 1982

House: Senate (Senator Macklin)

Purpose: To alter the restrictions on broadcasting and televising  
of election matter in an election.

The Committee has no comments on the Bill.

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

CANNED FRUITS LEVY AMENDMENT BILL 1982

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Date Introduced: 18 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To increase the levy imposed on canned fruit  
production

The Committee draws the attention of Senators to  
to the following clause of the Bill.

Clause 4 - Temporary rate of levy

New section 6A of the Principal Act, which  
is proposed to be inserted by this clause, applies  
the levy imposed by the Bill retrospectively, from  
1 January 1982. The Minister's second reading speech  
indicates that the amount of increase and its date of effect  
were determined at the request of the Australian Canned  
Fruits Corporation after discussion with growers.

However, this retrospective provision might be  
regarded as trespassing unduly on personal rights  
and liberties.

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

CANNED FRUITS MARKETING LEGISLATION REPEAL AND AMENDMENT BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives (Minister for Primary Industry)

Purpose : To amend and repeal existing legislation to allow for the termination of the operations of the Australian Canned Fruit Sales Promotion Committee and for the residual assets and liabilities of the Committee to vest with the Australian Canned Fruits Corporation.

The Committee has no comments on the Bill.

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 (COAL EXPORT DUTY) AMENDMENT BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives (Minister for Business and  
Consumer Affairs)

Purpose : To enact the Customs Tariff (Coal Export Duty)  
Proposals tabled in the House of Representatives  
on 18 August 1981.

The Committee has no comments on the Bill.

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

DAIRY PRODUCTS (EXPORT INSPECTION CHARGE) BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To impose charges for the export inspection  
of Dairy Products

The Committee has no comments on the Bill.

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



DAIRY PRODUCTS (EXPORT INSPECTION CHARGE) COLLECTION BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To impose charges for the export inspection  
of Dairy Products.

The Committee draws the attention of Senators to the following  
clauses of the Bill.

Clause 7 - Penalty for non-payment

Sub-clause 7(2) vests a broad discretion in the Minister or an authorized person (i.e., a person appointed by the Minister) to remit the whole or a part of any charge otherwise payable. No indication is given of the basis on which this discretion is to be exercised. No appeal rights are provided and the absence of criteria for exercise of the discretion would make judicial review very difficult. The only limitation is in sub-clause 7(3) which restricts action by an authorized person to amounts not exceeding \$100.

This provision might be regarded as making rights unduly dependent upon insufficiently defined administrative powers or non-reviewable administrative decisions.

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

Clause 8 - Offences relating to returns, &c.

Paragraph (b) of this clause creates an absolute offence in that it makes the furnishing of false or misleading information an absolute offence. Proof of knowledge that the information was false or misleading does not have to be shown. If a person made an innocent mistake, the offence would still be committed.

This provision might be regarded as trespassing unduly on personal rights and liberties.

Clause 9 - Access to premises

This clause permits the issue of warrants. Unlike other Bills with similar provisions, examined by the Committee - for example, the Dried Sultana Production Underwriting Bill and the Criminal Investigation Bill - no provision is made in the clause for specifying an expiry date of warrants issued.

The absence of such a provision might be regarded as trespassing unduly on personal rights and liberties.

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

EDIBLE OILS (EXPORT INSPECTION CHARGE) BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives ( Minister for  
Primary Industry)

Purpose : To impose charges for the export inspection  
of edible oils

The Committee has no comments on the Bill.

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

EDIBLE OILS (EXPORT INSPECTION CHARGE) COLLECTION BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To provide for the collection of charges  
proposed in the Edible Oils (Export  
Inspection Charge) Bill 1982

The Committee draws the attention of Senators to the  
following clauses of the Bill.

Clause 7 - Penalty for non-payment

Sub-clause 7(2) vests a broad discretion in the Minister or an authorized person (i.e., a person appointed by the Minister) to remit the whole or a part of any charge otherwise payable. No indication is given of the basis on which this discretion is to be exercised. No appeal rights are provided and the absence of criteria for exercise of the discretion would make judicial review very difficult. The only limitation is in sub-clause 7(3) which restricts action by an authorized person to amounts not exceeding \$100.

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This provision might be regarded as trespassing unduly on personal rights and liberties.

Clause 9 - Access to premises

This clause permits the issue of warrants. Unlike other Bills with similar provisions, examined by the Committee - for example, the Dried Sultana Production Underwriting Bill and the Criminal Investigation Bill - no provision is made in the clause for specifying an expiry date of warrants issued.

The absence of such a provision might be regarded as trespassing unduly on personal rights and liberties.

EGGS ( EXPORT INSPECTION CHARGE) BILL 1982

Date Introduced: 18 February 1982

House ; House of Representatives (Minister for  
Primary Industry)

Purpose : To impose charges for the export inspection  
of eggs

The Committee has no comments on the Bill.

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

EGGS (EXPORT INSPECTION CHARGE) COLLECTION BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To provide for the collection of charges  
proposed in the Eggs (Export Inspection  
Charge) Bill 1982

The Committee draws the attention of Senators to the  
following clauses of the Bill.

Clause 7 - Penalty for non-payment

Sub-clause 7(2) vests a broad discretion in the Minister or an authorized person (i.e., a person appointed by the Minister) to remit the whole or a part of any charge otherwise payable. No indication is given of the basis on which this discretion is to be exercised. No appeal rights are provided and the absence of criteria for exercise of the discretion would make judicial review very difficult. The only limitation is in sub-clause 7(3) which restricts action by an authorized person to amounts not exceeding \$100.

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This provision might be regarded as trespassing unduly on personal rights and liberties.

Clause 9 - Access to premises

This clause permits the issue of warrants. Unlike other Bills with similar provisions, examined by the Committee - for example, the Dried Sultana Production Underwriting Bill and the Criminal Investigation Bill - no provision is made in the clause for specifying an expiry date of warrants issued.

The absence of such a provision might be regarded as trespassing unduly on personal rights and liberties.

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



HONEY (EXPORT INSPECTION CHARGE) BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To impose charges for the export inspection  
of honey

The Committee has no comments on the Bill.

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

HONEY (EXPORT INSPECTION CHARGE) COLLECTION BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To provide for the collection of charges  
proposed in the Honey (Export Inspection  
Charge) Bill 1982

The Committee draws the attention of Senators to the following  
clauses of the Bill.

Clause 7 - Penalty for non-payment

Sub-clause 7(2) vests a broad discretion in the Minister or an authorized person (i.e., a person appointed by the Minister) to remit the whole or a part of any charge otherwise payable. No indication is given of the basis on which this discretion is to be exercised. No appeal rights are provided and the absence of criteria for exercise of the discretion would make judicial review very difficult. The only limitation is in sub-clause 7(3) which restricts action by an authorized person to amounts not exceeding \$100.

This provision might be regarded as making rights unduly dependent upon insufficiently defined administrative powers or non-reviewable administrative decisions.

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This provision might be regarded as trespassing unduly on personal rights and liberties.

Clause 9 - Access to premises

This clause permits the issue of warrants. Unlike other Bills with similar provisions, examined by the Committee - for example, the Dried Sultana Production Underwriting Bill and the Criminal Investigation Bill - no provision is made in the clause for specifying an expiry date of warrants issued.

The absence of such a provision might be regarded as trespassing unduly on personal rights and liberties.

INTERNATIONAL FINANCIAL INSTITUTIONS (SHARE INCREASE) BILL 1982

Date Introduced: 18 February 1982

House : House of Representatives (Treasurer)

Purpose: To empower the Treasurer to make the necessary agreements on behalf of Australia to purchase additional shares of the capital stock of the International Bank for Reconstruction and Development and of the International Finance Corporation.

The Committee has no comments on the Bill.

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

SALES TAX AMENDMENT BILLS (NOS 1A TO 9A) 1981 [No. 2] (1982)

Date Introduced: 16 February 1982

House : House of Representatives (Treasurer)

Purpose: To impose sales tax of 2.5% on a range of goods  
at present exempt from the tax.

The Committee draws the attention of Senators to the  
following clause.

Clause 2 - Commencement

This clause provides that the Bills are retrospective  
in operation to 1 January 1982. The Treasurer's  
second reading speech indicates that the date 1 January 1982  
has been included to comply with the requirements of  
section 57 of the Constitution - 1 January being the  
date of commencement specified in the Bills previously  
introduced into the Parliament but not passed by the  
Senate.

This provision might be regarded as trespassing unduly  
on personal rights and liberties.

NOTE: Clause reported to the Senate 24 February 1982

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

STATES (TAX SHARING AND HEALTH GRANTS) AMENDMENT BILL 1982

Date Introduced: 18 February

House: House of Representatives (Treasurer)

Purpose: To amend the States (Tax Sharing and Health Grants) Act 1981 to provide for -

- (a) the payment in 1981-82 of additional tax sharing grants and special allocations totalling \$69 million to New South Wales, Victoria and Queensland; and
- (b) the payment in 1981-82 of a fixed tax sharing grant of \$315.1 million to the Northern Territory in lieu of the amount which would be payable under the formula prescribed by section 8 of the Principal Act.

The Committee has no comments on the Bill.

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

STATES (TAX SHARING AND HEALTH GRANTS) AMENDMENT BILL 1982

Date Introduced: 18 February

House: House of Representatives (Treasurer)

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- (b) the payment in 1981-82 of a fixed tax sharing grant of \$315.1 million to the Northern Territory in lieu of the amount which would be payable under the formula prescribed by section 8 of the Principal Act.

The Committee has no comments on the Bill.

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

SCRUTINY OF BILLS ALERT DIGEST

No. 3  
10 March 1982



DEPARTMENT OF THE SENATE	
PAPER No.	375
DATE PRESENTED	10 MAR 1982
<i>A. J. L.</i> Clark of the Senate	

NOTE: 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.

The Committee has considered the following Bills:

Bounty Acts Amendment Bill 1982  
Overseas Students Charge Amendment Bill 1982  
Overseas Students Charge Collection Amendment Bill 1982  
Petroleum Retail Marketing Franchise Amendment Bill 1982  
Petroleum Retail Marketing Sites Amendment Bill 1982  
Tobacco Charge (No. 1) Amendment Bill 1982  
Tobacco Charge (No. 2) Amendment Bill 1982  
Tobacco Charge (No. 3) Amendment Bill 1982



BOUNTY ACTS AMENDMENT BILL 1982

Date Introduced: 25 February 1982

House : House of Representatives (Minister for Business  
and Consumer Affairs)

Purpose : To extend the bounty assistance under the  
Bounty (Drilling Bits) Act 1980 and the  
Bounty (Non-Adjustable Wrenches) Act 1981  
to extend the bounty assistance under the  
Acts until 31 December 1982 at half the rates  
of bounty and half the annual limits on the  
amount of available bounty.

The Committee has no comments on the Bill.

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

OVERSEAS STUDENTS CHARGE AMENDMENT BILL 1982

Date Introduced: 25 February 1982

House : House of Representatives (Minister for  
Immigration and Ethnic Affairs)

Purpose : To introduce charges for overseas students who  
will attend accredited advanced education  
level courses which are funded by the  
Commonwealth and offered at educational  
institutions other than universities  
and CAE's

The Committee has no comments on the Bill.

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

OVERSEAS STUDENTS CHARGE COLLECTION AMENDMENT BILL 1982

Date Introduced: 25 February 1982

House : House of Representatives (Minister for  
Immigration and Ethnic Affairs)

Purpose : To provide that, where the responsibility for the  
payment of a charge has been accepted by the  
Commonwealth in favour of an overseas student,  
the specified time limits for the payment of  
that charge would not apply, and a visa and  
temporary entry permit may be granted to  
that student.

The Committee has no comments on the Bill.

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

PETROLEUM RETAIL MARKETING FRANCHISE AMENDMENT BILL 1982

Date Introduced: 25 February 1982

House : House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose : To clarify the extent of the Petroleum Retail  
Marketing Franchise Act 1980's application  
to outlets, including depots, at which sales  
are made at both the retail and wholesale  
level or at which a franchise effects some  
sales as agent of the franchisor.

The Committee has no comments on the Bill.

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

PETROLEUM RETAIL MARKETING SITES AMENDMENT BILL 1982

Date Introduced: 25 February 1982

House : House of Representatives (Minister for Business  
and Consumer Affairs)

Purpose : To clarify the Government's original policy  
intention in regard to the Petroleum Retail  
Marketing Sites Act 1980. (See similar  
comments on the Petroleum Retail Marketing  
Franchise Amendment Bill 1982).

The Committee draws the attention of Senators to the following  
clause of the Bill.

Clause 9 - Production of books, &c.

This clause amends section 14 of the Principal Act in relation to  
the obligation to produce books relating to the sale by retail of  
motor fuel by or on behalf of a corporation. A failure to comply  
with the requirements laid down in the section attracts a maximum  
penalty of \$1000. An authorized officer (who is the Permanent Head  
of the Department or a person appointed by him) may require the  
production of books. No constraints are placed upon the time within  
which the production can be required to take place. Production is  
also to occur at a place designated by the authorized officer.  
Unlike the provisions of the Dried Sultana Production Underwriting  
Bill 1982, previously examined by the Committee, the penalty  
provided under proposed sub-section 14(2) of this Bill is not  
conditional upon the person acting 'without reasonable excuse'.

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

In addition, the books, once produced, may be retained by the authorized officer for such period as is necessary to enable them to be inspected and copied (proposed sub-section 14(1A)). No specific time constraints are set out. The owner of the books is entitled to inspect them during this period (proposed section 14(1A) (a) (iii)) but a lengthy retention of the books could have a deleterious effect on a person's business, as could their retention at an inaccessible place.

These comments must be viewed in the context of the objects of the Act and associated legislation, and their general effect on the parties involved. However, this clause might be regarded as unduly trespassing on personal rights and liberties and as making obligations unduly dependent upon insufficiently defined administrative powers.

Any Senator who wishes to draw matter to the attention of the Committee under its Terms of Reference is invited to do so.

## TOBACCO CHARGE (NO.1) AMENDMENT BILL 1982

Date Introduced: 25 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To amend the Tobacco Charge Act (No. 1) 1955  
to increase the rate of charge payable on  
sales of Australian tobacco leaf from  
1 March 1982 from 1.1 cents to 2.5 cents per  
kilogram and to enable the rate of charge to  
be increased or decreased by regulation.

The Committee draws the attention of Senators to the following  
clauses of the Bill.

### Clause 4 r. Regulations

This clause inserts a new section 6 in the Principal Act which  
permits the making of regulations which may increase, or decrease,  
the rate of charge specified in section 5 of the Principal Act.  
Section 6 of the Principal Act in its present form permits regulations  
to fix only a lower charge. The proposed section might be compared  
with clause 6 of the Dairy Products (Export Inspection Charge)  
Bill 1982, previously examined by the Committee, which allows  
regulations to fix a charge but states a maximum permissible amount.  
This provision might be regarded as inappropriately delegating  
legislative power.

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

#### Clause 5 - Application of amendments

The increased charge is expressed to come into operation from 1 March 1982. While this is after the date of introduction of the Bill, it is a de facto retrospective date, as the normal procedures of the Parliament would not have permitted its becoming law by that date. However, in his second reading speech, the Minister refers to the date as one that is acceptable to growers and manufacturers.

The Committee will be making further inquiries about retrospective provisions of this nature in case they may be regarded as trespassing unduly upon personal rights and liberties.

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



TOBACCO CHARGE (NO. 2) AMENDMENT BILL 1982

Date Introduced: 25 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To increase the amount of tobacco charge  
payable by manufacturers on their purchases  
of Australian tobacco leaf.

The Committee draws the attention of Senators to the following  
clause of the Bill.

Clause 3 - Rate of charge

This clause provides that the rate of charge paid by manufacturers  
on their purchases of leaf will be the same as that applicable  
under the Tobacco Charge (No. 1) Amendment Bill 1982, with  
effect from 1 March 1982. Thus, the comments made in relation  
to the No. 1 Bill are also applicable to 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.

TOBACCO CHARGE (NO. 3) AMENDMENT BILL 1982

Date Introduced: 25 February 1982

House : House of Representatives (Minister for  
Primary Industry)

Purpose : To establish the same rate of charge in  
respect of tobacco grown by a manufacturer  
and appropriated by him for manufacturing  
purposes as that applicable under the  
Tobacco Charge (No. 1) Amendment Bill 1982.

The Committee draws the attention of Senators to the  
following clause.

Clause 3 - Rate of charge

This clause gives effect to the purpose of the Bill,  
as described above. The comments made in relating to the  
No. 1 Bill are therefore also applicable to 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.

SCRUTINY OF BILLS ALERT DIGEST



No. 4  
25 March 1982

DEPARTMENT OF THE SENATE	
P. CLR No.	675
DATE	
PRESENTED	
25 MAR 1982	
invited to draw the attention of the Senate	

NOTE: 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.

The Committee has considered the following Bills:

Aboriginal Land Rights Legislation Amendment Bill 1982  
Australian Capital Territory Electricity Supply  
Amendment Bill 1982  
Coal Industry Legislation Amendment Bill 1982  
Customs Tariff Amendment Bill 1982  
Excise Tariff (Coal) Amendment Bill 1982  
Roads Grants Amendment Bill 1982  
\*Repatriation Amendment Bill 1982  
Social Services Amendment Bill (No. 3) 1981 (No. 2) (1982)

\* Clauses reported to the Senate 25 March 1982

ABORIGINAL LAND RIGHTS LEGISLATION AMENDMENT BILL 1982

Date Introduced: 16 March 1982

House: Senate (Minister for Aboriginal Affairs)

Purpose:

To:

allow the Minister to establish a number of Land Trusts in respect of land to be granted at Hermannsburg and to approve a different system of membership for those Trusts

grant an additional area of land (Clift Island) to be included in the description of Bathurst Island and provide for the consolidation of the title to that island and Melville Island held by the Tiwi Land Trust

provide for the costs of legal representation in respect of closure of seas applications under the Aboriginal Land Act 1978 N.T.

allow the Minister to make progressive recommendations to the Governor-General for the grant of land to an Aboriginal Land Trust

provide that the Minister may, upon application by a Land Council and where he is satisfied that it is appropriate, establish more or fewer Land Trusts than the Aboriginal Land Commissioner recommended

Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so. .../2

provide for the repayment to the Consolidated Revenue Fund from the Aboriginals Benefit Trust Account of amounts previously advanced for administrative expenses of Land Councils.

The Committee has no comments on the Bill.

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

AUSTRALIAN CAPITAL TERRITORY ELECTRICITY SUPPLY AMENDMENT BILL 1982

Date Introduced: 10 March 1982

House: House of Representatives (Minister for the  
Capital Territory)

Purpose: To provide for the imposition of electricity  
restrictions by the Australian Capital Territory  
Electricity Authority following the declaration  
of a state of emergency by the Minister for the  
Capital Territory.

The Committee has no comments on the Bill.

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

COAL INDUSTRY LEGISLATION AMENDMENT BILL 1982

Date Introduced: 18 March 1982

House: House of Representatives

Purpose: To re-arrange the proportions paid to the  
Coal Mining Industry Long Service Leave  
Trust Fund and the Coal Research Account.

The Committee has no comments on the Bill.

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 BILL 1982

Date Introduced: 11 March 1982

House: House of Representatives (Minister for Business  
and Consumer Affairs)

Purpose: To enact tariff changes introduced into  
Parliament since 14 May 1981

The Committee has no comments on the 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 (COAL) AMENDMENT BILL 1982

Date Introduced: 18 March 1982

House: House of Representatives (Minister for  
Industrial Relations)

Purpose: To amend the Excise Tariff Act 1921  
to increase from 15 cents to 25 cents  
the excise duty.

The Committee has no comments on the Bill.

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

REPATRIATION AMENDMENT BILL 1982

Date Introduced: 11 March 1982

House: House of Representatives (Minister representing  
the Minister for Veterans' Affairs)

Purpose: To repeal section 49 of the Repatriation Act  
1920 relating to the control of pensions of  
unmarried mentally afflicted veterans; to  
ensure that all Australians serving with a  
Peacekeeping Force are covered for  
Repatriation benefits; to empower the  
Repatriation Commission to recover from a  
third party the costs of medical treatment  
provided for compensable patients; and to  
allow for the protection of employees in  
Repatriation hospitals and institutions when  
complying with certain State and Territory  
laws.

The Committee draws the attention of Senators to the  
following clauses of the Bill:

Clause 5 - Recovery of cost of medical treatment

This clause proposes to insert a new section 120E in the  
Principal Act to permit the recovery of the cost of medical  
treatment by the Commission. The purpose of sub-sections (2),  
(4) and (7) is to empower the Commission to bring an action  
in a court to recover the cost of such treatment. However,  
"cost" is defined in sub-section (1) to mean the cost as  
determined by the Commission in writing. The effect of this  
provision is that once the Commission has determined that  
cost, it would not be possible to challenge the amount so fixed.  
Any Senator who wishes to draw matters to the attention of the  
Committee under its Terms of Reference is invited to do so.

in the action brought to recover it. The right of recovery is of the defined amount, i.e., the cost determined by the Commission. If a person wished to challenge the amount determined by the Commission, it would be necessary to bring a separate action under the Administrative Decisions (Judicial Review) Act 1977.

While for reasons of administrative convenience there can be no objection to the Commission's determination of cost being prima facie evidence of costs incurred, it appears to the Committee that, if that determination is challenged by the defendant to the action, the court before which the cost recovery action is brought should be able to adjudicate on the matter, thus avoiding the possibility of two actions being involved in the recovery process.

This clause might be regarded as unduly trespassing on personal rights and liberties.

#### Clause 6 - Regulations

The purpose of this clause is to enable regulations to be made modifying the application of State laws in Repatriation hospitals. As drafted, however, the clause bestows the regulation-making power without limitation.

This clause might be regarded as inappropriately delegating legislative power.

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

ROADS GRANTS AMENDMENT BILL 1982

Date Introduced: 18 March 1982

House: House of Representatives (Minister for Transport)

Purpose: To amend the Roads Grants Act 1981. The Bill appropriates funds totalling \$2,337 million for payment to the States and Northern Territory for road works over the period 1982/83 to 1984/85.

The Committee has no comments on the Bill.

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

SOCIAL SERVICES AMENDMENT BILL (NO. 3) 1981 [No. 2] (1982)

Date Introduced: 10 March 1982

House: House of Representatives (Minister representing  
the Minister for Social Security)

Purpose: To prevent payment of unemployment benefit  
to the spouse of a person, and special benefit  
to a person or the spouse of that person, where  
the person is involved in industrial action, or  
has had benefit refused, cancelled or postponed.

The Committee has no comments on the Bill.

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

SCRUTINY OF BILLS ALERT DIGEST

THE SENATE

22 APR 1982

TABLED  
PAPER

No. 5

22 April 1982

DEPARTMENT OF THE SENATE

PAPER No.  
DATE  
PRESENTED

797

22 APR 1982

NOTE: 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. The Senate

The Committee has considered the following Bills:

Air Accidents (Commonwealth Government Liability) Amendment Bill 1982  
Appropriation Bill (No. 3) 1981-82  
Appropriation Bill (No. 4) 1981-82  
Civil Aviation (Carriers' Liability) Amendment Bill 1982  
Commonwealth Employees (Voluntary Membership of Unions) Bill 1982  
Conciliation and Arbitration Amendment Bill 1982  
Customs and Excise Amendment Bill 1982  
Customs Tariff Amendment (Off-Shore Installations) Bill 1982  
Customs Tariff (Anti-Dumping) Amendment (Off-Shore Installations) Bill 1982  
Excise Tariff Amendment (Off-Shore Installations) Bill 1982  
Health Legislation Amendment Bill 1982  
Income Tax Assessment Amendment Bill 1982  
Off-Shore Installations (Miscellaneous Amendments) Bill 1982  
Sales Tax Amendment (Off-Shore Installations) Bills (Nos 1 to 9) 1982  
Sales Tax (Exemptions and Classifications) Amendment (Off-Shore Installations) Bill 1982  
Social Services Legislation Amendment Bill 1982  
Statute Law (Miscellaneous Amendments) Bill (No. 1) 1982

AIR ACCIDENTS (COMMONWEALTH GOVERNMENT LIABILITY)  
AMENDMENT BILL 1982

Date Introduced: 24 March 1982

House: House of Representatives (Minister representing the Minister for Social Security)

Purpose: To increase the maximum amount of damages the commonwealth may be liable to pay under the Air Accidents (Commonwealth Government Liability) Act 1963 in respect of personal injury or death resulting from certain air accidents.

The Committee has no comments 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.

APPROPRIATION BILL (NO. 3) 1981-82

Date Introduced: 24 March 1982

House: House of Representatives (Treasurer)

Purpose: To appropriate funds additional to those  
provided in the Appropriation Act (No. 1)  
1981-82.

The Committee has no comments 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.



APPROPRIATION BILL (NO. 4) 1981-82

Date Introduced: 24 March 1982

House: House of Representatives (Treasurer)

Purpose: To appropriate funds additional to those  
provided in Appropriation Act (No. 2) 1981-82.

The Committee has no comments 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.

CIVIL AVIATION (CARRIERS' LIABILITY) AMENDMENT BILL 1982

Date Introduced: 24 March 1982

House: House of Representatives (Minister for Transport)

Purpose: To amend the Civil Aviation (Carriers' Liability) Act 1959 to increase the liability limits applying to domestic and non-convention international air carriage and to make provision for the Act to cover the new air service licence classifications that are to be introduced.

The Committee has no comments 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.

COMMONWEALTH EMPLOYEES (VOLUNTARY MEMBERSHIP OF UNIONS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for Industrial Relations)

- Purpose:
- (a) To declare void any award, determination or agreement which makes provision for or in relation to the giving of preference in or in relation to the employment of persons by reference to membership of an association.
  - (b) To withdraw from a tribunal, authority, body or person having powers to:
    - (i) make or vary awards or certify or vary agreements, or
    - (ii) make or vary determinations or agreements -
- the power to make provision for preference as described in (a) above in an award, determination or agreement.

The Committee has no comments 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.

CONCILIATION AND ARBITRATION AMENDMENT BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Industrial Relations)

Purpose: To amend the Conciliation and Arbitration Act  
1904 to:

- (i) protect the right of an employee to choose to join or not to join a union and remove from the Conciliation and Arbitration Commission the jurisdiction to award preference to unionists;
- (ii) provide to employers the direct right to stand down employees who cannot be usefully employed because of the effects of industrial action by other employees of the same employer or by employees of another employer;
- (iii) simplify the procedures relating to the declaration of variations of common rule awards as common rules throughout the Territories;
- (iv) enable the registration, as organizations of employees, of associations formed on an industry basis;
- (v) facilitate the amalgamation of organizations on an industry basis;
- (vi) enable an extension of the maximum term of office in organizations for full time

.../2

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

officers approaching retirement age;

- (vii) enable organizations to fill casual vacancies in an office by appointment where the unexpired portion of the term is less than 12 months and to provide that where a vacancy is so filled in a collegiate electoral system the person shall be deemed to have been elected to that office for the purposes of participating in a further collegiate election;
- (viii) prevent a State trade union which has been de-registered under prescribed State industrial legislation for industrial misconduct from obtaining Federal registration or a Federal award, in circumstances where the relevant State has enacted reciprocal State legislation; and
- (ix) extend the availability of financial assistance in cases of hardship to individuals in certain proceedings under the Act.

The Committee has no comments 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.

CUSTOMS AND EXCISE AMENDMENT BILL 1982

Date Introduced: 24 March 1982

House: House of Representatives  
(Minister for Business and Consumer Affairs)

Purpose: To amend the Customs Act 1901 to increase substantially the penalties provided for contraventions of the Act.

General Comment

The Customs Act provides only limited rights of appeal against decisions taken under it. Section 273GA provides for certain specified decisions to be subject to appeal to the Administrative Appeals Tribunal. A number of provisions are included in this amending Bill which will not be subject to such a right of appeal - see amendments included in clauses 7, 12, 14 and 31. Clauses 18 and 24 also propose the vesting of non-appealable discretions in the Minister by amendments to sections 83 and 108, respectively. Section 273GA of the Principal Act makes provision for appeals under these sections only in respect of the decisions by the Comptroller or Collector of Customs. However, the whole question of appeals against decisions under the Customs Act is at present under review by the Administrative Review Council, and the Committee therefore makes no detailed comment in relation to the individual provisions.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 24 - proposed new section 11E - Access to depot

This proposed section allows a Collector of Customs to enter a depot at any time without the necessity of first obtaining a warrant. A like provision is already included in the Principal Act in section 91 relating to access to warehouses.

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

Provisions of this nature are clearly a matter of constant policy, and need to be examined in that light. They might, however, be regarded as trespassing unduly on personal rights and liberties.

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 (OFF-SHORE INSTALLATIONS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: To amend the Customs Tariff Act so as to ensure that equipment and goods used in the exploration of the natural resources of the seabed and subsoil of the Continental shelf of Australia receive the same treatment as regards liability for customs duties as equipment and goods used in similar operations which take place on the mainland of Australia.

The Committee has no comments 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.



CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT (OFF-SHORE  
INSTALLATIONS) BILL 1982

Date Introduced: 25 March 1982  
House of Representatives (Minister for  
House: Business and Consumer Affairs)

Purpose: To amend the Customs Tariff (Anti-Dumping)  
Act 1975 to ensure that an overseas installation  
that is attached to the Australian seabed, goods  
that are brought with an installation, and goods  
subsequently brought direct from overseas to  
such an installation, receive the same treatment  
as regards anti-dumping measures as is accorded  
to equipment or goods imported into Australia  
in the normal way.

The Committee has no comments 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 (OFF-SHORE INSTALLATIONS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: To extend the application of the Excise  
Tariff Act 1921 to the production of  
excisable products at off-shore installations.

The Committee has no comments 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.

HEALTH LEGISLATION AMENDMENT BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for Health)

Purpose: 1. To amend the Health Insurance Act 1973  
(*'the Act'*) to -

- (a) provide for the assessment of the continued eligibility of a person who has been granted disadvantaged person status for a 6 month period by reason of low income, in the last 4 weeks of that period. (This will avoid the present necessity for the making of a new declaration of disadvantaged person status with retrospective effect);
- (b) provide that professional services rendered by practitioners who have been found guilty of 2 or more serious offences under the Act will not attract medical benefits for a period of three years. (Provision is also made, however, for the Minister, in special circumstances, upon application by a practitioner, to ameliorate the disqualification by shortening the 3 year period, or by specifying the types of services, classes of persons or places to which the disqualification applies, or any combination of these. The Minister's decision on the application will be subject to appeal to the Administrative Appeals Tribunal);

.../2

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

- (c) set time limits for the lodgement of claims for Commonwealth medical benefits payable under superseded health insurance arrangements or assigned under the Act to a practitioner (ordinarily 2 years and 6 months respectively from the date of the rendering of the service);
- (d) provide for prescription by regulations of the form in which information is to be provided by registered medical benefits organizations in relation to their claims for reimbursement of their payments of Commonwealth medical benefits or advances to them to enable payment of Commonwealth medical benefits;
- (e) require the tabling in Parliament of Ministerial determinations made in accordance with the recommendations of either a Medical or Optometrical Services Committee of Inquiry;
- (f) allow a freer communication to the Departments of Social Security and of Veterans' Affairs and State and Territory authorities (where considered desirable in the proper administration of a law relating to the registration or licensing of practitioners), and to registered health insurance organizations, of information concerning breaches of the health insurance legislation and other matters related to the health insurance arrangements;

.../3

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

- (g) extend the application of the present disciplinary provisions concerning fraud, prohibited pathology practices and Medical and Optometrical Services Committees of Inquiry to corporate bodies and their office holders and employees, and other employees who cause or permit overservicing;
- (h) prohibit the payment of Commonwealth medical benefits unless particulars, as prescribed by regulations, are recorded by a practitioner on his account, receipt or other specified documents; and
- (i) amend the existing provision requiring disadvantaged persons to furnish details of changes of income to require them to provide notification of such changes.

2. To amend the National Health Act 1953 to -

- (a) authorize the provision of free vaccine for immunization against the disease of mumps;
- (b) authorize the Minister to issue directions prohibiting inappropriate management practices on the part of registered health insurance organizations;
- (c) provide for the declaration by the Minister for Health, for hospital benefits purposes, of public hospital charges for professional and outpatient services rendered;
- (d) extend the Minister's power to approve funds' rule changes relating to benefits payable under existing non-basic tables; and

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

- (e) prohibit the payment by registered medical benefits organizations of medical benefits in respect of services rendered by disqualified practitioners in respect of which Commonwealth medical benefits are not payable.

General Comment

There is a general lack of appeal rights against the numerous discretions that are vested by this Bill in the Minister of Health. Examples of such discretions are contained in clauses 9, 10 and 11 of the Bill. Clause 37 also gives the Minister an unreviewable wide-ranging power to permit the disclosure of information that would otherwise have to be kept secret pursuant to section 130 of the Act.

The pattern of vesting such discretions in the Minister is firmly established by the Principal Act. However, provisions of this nature might be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 8 - Insertion of new sections - proposed new section 19C - Particulars of disqualifications under section 19B to be published, &c.

Proposed sub-section 19C(6) provides that the Minister for Health shall, as soon as practicable, furnish the patients of a disqualified practitioner with a statement setting out the details and effects of the disqualification. Proposed sub-section 19D(1) empowers the Minister to direct a convicted practitioner to provide a list of names and addresses of his patients.

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

It has been suggested to the Committee that, if a patient of a convicted practitioner were to be furnished with a statement under sub-section 19C(6) by mail, this could have the effect of breaching patient confidentiality. For example, one member of a family may not wish the rest of the family to know about a visit to a doctor. This provision might be regarded as trespassing unduly on personal rights and liberties.

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

INCOME TAX ASSESSMENT AMENDMENT BILL 1982

Date Introduced: 24 March 1982

House: House of Representatives (Treasurer)

Purpose: To amend the income tax law to:

- . revise the provisions that empower the Commissioner of Taxation to counter arrangements that reduce Australian tax through the shifting of profits out of Australia;
- . introduce new zone allowance arrangements, as announced in the 1981-82 Budget Speech, details of which were announced on 15 November 1981, and which are to apply from 1 November 1981;
- . remedy a defect that allows avoidance of tax on profits from short-term transactions in property by selling off shares in a company or an interest in a trust estate that holds the property, instead of selling the property itself (proposal announced on 10 September 1981);
- . ensure that allowances received by Defence Force personnel serving overseas continue to receive parallel tax treatment to similar allowances received by civilians;

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



- . give effect to the 1981-82 Budget proposal to grant accelerated rates of depreciation for plant and equipment used in the production of basic iron and steel products (details announced on 30 October 1981);
- . grant income tax deductions for gifts of the value of \$2 or more -
  - . made after 5 February 1982 to the R.S.P.C.A. (proposal announced on 5 February 1982); or
  - . made during the 1981-82 financial year to the Help Poland Live Appeal (proposal announced on 18 February 1982), the Australian Red Cross Poland Appeal and the World Vision of Australia Poland Emergency Appeal
- . prevent unintended benefits being secured in respect of gifts made under the taxation incentives for the arts scheme (proposal announced on 14 October 1981);
- . formalise procedures for the appointment of valuers under the taxation incentives for the arts scheme;
- . close possible loopholes in the measures introduced in 1980 for taxing the income of trust estates and of dependent children; and
- . ensure that medical expenses are treated as repayable amounts where payment is made to a company or other unqualified employer of a legally qualified practitioner who renders eligible medical services.

The Committee has no comments 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.

OFF-SHORE INSTALLATIONS (MISCELLANEOUS AMENDMENTS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: To amend -

- . the Customs Act 1901
- . the Customs Amendment Act 1981
- . the Excise Act 1901
- . the Immigration (Unauthorized Arrivals) Act 1980
- . the Migration Act 1958
- . the Quarantine Act 1908
- . the Sales Tax Assessment Act (No. 1) 1930
- . the Sales Tax Assessment Act (No. 5) 1930

to give each of those Acts application in respect of any installation (including a ship) that is brought direct from overseas to the place at which it is to be attached to the continental shelf of Australia for purposes related to the exploration or exploitation of the non-living natural resources of the seabed or subsoil of the shelf.

General Comment

Among the Acts amended by this Bill is the Customs Act. As with the Customs and Excise Amendment Bill 1982, comments on which are included in this Digest, provisions are included in the amendments contained in this Bill which either insert or amend sections of the Principal Act in such a way as to vest an unappealable discretion in an officer of Customs - see, for example, clauses 5, 9 and 11. The remarks relating to the Customs and Excise Amendment Bill are applicable to this Bill also.

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

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 15 - proposed new section 64A - Ships or aircraft arriving at certain places

This clause proposes to insert a new section 64A in the Customs Act which vests power in a Collector to require the master of a ship or the pilot of an aircraft to furnish the Collector with a report, to be provided within such time as is specified by the Collector and to be in such form as is specified by him. No minimum time limit is provided for the report to be furnished nor is there any guidance as to the form which the Collector may specify. Penalty for non-compliance is \$2,000.

This provision might be regarded as making obligations unduly dependent upon insufficiently defined administrative powers.

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

SALES TAX AMENDMENT (OFF-SHORE INSTALLATIONS) BILLS (NOS 1 to 9)  
1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for Business  
and Consumer Affairs)

Purpose: To expand the application of the sales tax law  
to off-shore installations which are attached  
to the continental shelf of Australia for the  
purpose of exploring and exploiting the mineral  
and non-living resources of the seabed and its  
subsoil.

The Committee has no comment on these Bills.

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

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT (OFF-  
SHORE INSTALLATIONS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: The amendments proposed by this Bill will have  
the same effect as, and will complement, the  
amendments proposed to be made by the Sales  
Tax Amendment (Off-Shore Installations) Bills  
(Nos 1 to 9) 1982.

The Committee has no comments 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.

SOCIAL SERVICES LEGISLATION AMENDMENT BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister representing  
the Minister for Social Security)

Purpose: To amend the Social Services Act 1947 to provide -

- . that family allowance will not be payable to certain temporary residents of Australia (diplomats, consuls, defence personnel of other countries, and members of their families) or to prohibited immigrants : clauses 2(3), 18 and 43(2);
- . that where a person registers as unemployed with the Commonwealth Employment Service, and makes a claim for unemployment benefit within 14 days of that registration, the date of registration will be taken to be the date on which the person made the claim : clauses 2(1) and 41(a);
- . that where a person claims sickness benefit in respect of a period of incapacity the cause of which was connected with the cause of a previous incapacity in respect of which the person received sickness benefit, the sickness benefit would be paid on and from the day the period of incapacity commenced: clauses 2(1) and 41(b);

to amend section 39 of the Social Services Amendment Act 1979 to remove legal and operational deficiencies in the provisions

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

which apply where a person has a dual entitlement to sickness benefit and compensation in respect of the same incapacity: clauses 2(4), 47-50.

The Committee has no comments 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.

STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NO. 1) 1982

Date Introduced: 25 March 1982

House: Senate (Attorney-General)

Purpose: To correct printing and drafting errors that have been found to exist in a number of Acts. To make such amendments to the package of legislation comprising the co-operative companies and securities scheme as have been unanimously approved by the Ministerial Council in accordance with Clause 8(1)(a) of the agreement made on 22 December 1978 between the Commonwealth and the States. To make a number of other amendments that, while having some substance, are regarded as being of a non-controversial nature.

The following Acts are proposed to be amended by the Bill:

Acts Interpretation Act 1901  
Administrative Appeals Tribunal Act 1975  
Aged Persons Hostels Act 1972  
Ashmore and Cartier Islands Acceptance Act 1933  
Audit Act 1901  
Australian Antarctic Territory Act 1954  
Australian Capital Territory Supreme Court Act 1933  
Australian Shipping Commission Act 1956  
Bounty Acts  
Census and Statistics Amendment Act (No. 2) 1981  
Christmas Island Act 1958

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Cocos (Keeling) Islands Act 1955  
 Commonwealth Teaching Service Act 1972  
 Companies Act 1981  
 Companies (Acquisition of Shares) Act 1980  
 Consular Privileges and Immunities Act 1972  
 Copyright Act 1968  
 Coral Sea Islands Act 1969  
 Diplomatic Privileges and Immunities Act 1967  
 Environment Protection (Impact of Proposals)  
 Act 1974  
 Environment Protection (Nuclear Codes) Act 1978  
 Federal Court of Australia Act 1976  
 Heard Island and McDonald Islands Act 1953  
 Immigration (Unauthorized Arrivals) Act 1980  
 Judiciary Act 1903  
 Minerals (Submerged Lands) (Registration Fees)  
 Act 1981  
 Norfolk Island Act 1979  
 Nursing Homes Assistance Act 1974  
 Parliamentary Allowances Act 1952  
 Patents Act 1952  
 Public Service Act 1922  
 Remuneration and Allowances Act 1973  
 Royal Commissions Act 1902  
 Seat of Government (Administration) Act 1910  
 Securities Industry Act 1980  
 Statute Law (Miscellaneous Amendments) Act 1981  
 Statute Law Revision Act 1981  
 Student Assistance Act 1973

*The Committee has no comments 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.

SCRUTINY OF BILLS ALERT DIGEST

THE SENATE

22 APR 1982

TABLED  
PAPER

No. 5

22 April 1982

DEPARTMENT OF THE SENATE

PAPER No.  
DATE  
PRESENTED

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22 APR 1982

NOTE: 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. The Senate

The Committee has considered the following Bills:

Air Accidents (Commonwealth Government Liability) Amendment Bill 1982  
Appropriation Bill (No. 3) 1981-82  
Appropriation Bill (No. 4) 1981-82  
Civil Aviation (Carriers' Liability) Amendment Bill 1982  
Commonwealth Employees (Voluntary Membership of Unions) Bill 1982  
Conciliation and Arbitration Amendment Bill 1982  
Customs and Excise Amendment Bill 1982  
Customs Tariff Amendment (Off-Shore Installations) Bill 1982  
Customs Tariff (Anti-Dumping) Amendment (Off-Shore Installations) Bill 1982  
Excise Tariff Amendment (Off-Shore Installations) Bill 1982  
Health Legislation Amendment Bill 1982  
Income Tax Assessment Amendment Bill 1982  
Off-Shore Installations (Miscellaneous Amendments) Bill 1982  
Sales Tax Amendment (Off-Shore Installations) Bills (Nos 1 to 9) 1982  
Sales Tax (Exemptions and Classifications) Amendment (Off-Shore Installations) Bill 1982  
Social Services Legislation Amendment Bill 1982  
Statute Law (Miscellaneous Amendments) Bill (No. 1) 1982

AIR ACCIDENTS (COMMONWEALTH GOVERNMENT LIABILITY)  
AMENDMENT BILL 1982

Date Introduced: 24 March 1982

House: House of Representatives (Minister representing the Minister for Social Security)

Purpose: To increase the maximum amount of damages the commonwealth may be liable to pay under the Air Accidents (Commonwealth Government Liability) Act 1963 in respect of personal injury or death resulting from certain air accidents.

The Committee has no comments 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.

APPROPRIATION BILL (NO. 3) 1981-82

Date Introduced: 24 March 1982

House: House of Representatives (Treasurer)

Purpose: To appropriate funds additional to those  
provided in the Appropriation Act (No. 1)  
1981-82.

The Committee has no comments 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.

APPROPRIATION BILL (NO. 4) 1981-82

Date Introduced: 24 March 1982

House: House of Representatives (Treasurer)

Purpose: To appropriate funds additional to those  
provided in Appropriation Act (No. 2) 1981-82.

The Committee has no comments 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.

CIVIL AVIATION (CARRIERS' LIABILITY) AMENDMENT BILL 1982

Date Introduced: 24 March 1982

House: House of Representatives (Minister for Transport)

Purpose: To amend the Civil Aviation (Carriers' Liability) Act 1959 to increase the liability limits applying to domestic and non-convention international air carriage and to make provision for the Act to cover the new air service licence classifications that are to be introduced.

The Committee has no comments 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.

COMMONWEALTH EMPLOYEES (VOLUNTARY MEMBERSHIP OF UNIONS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for Industrial Relations)

- Purpose:
- (a) To declare void any award, determination or agreement which makes provision for or in relation to the giving of preference in or in relation to the employment of persons by reference to membership of an association.
  - (b) To withdraw from a tribunal, authority, body or person having powers to:
    - (i) make or vary awards or certify or vary agreements, or
    - (ii) make or vary determinations or agreements -
- the power to make provision for preference as described in (a) above in an award, determination or agreement.

The Committee has no comments 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.

CONCILIATION AND ARBITRATION AMENDMENT BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Industrial Relations)

Purpose: To amend the Conciliation and Arbitration Act  
1904 to:

- (i) protect the right of an employee to choose to join or not to join a union and remove from the Conciliation and Arbitration Commission the jurisdiction to award preference to unionists;
- (ii) provide to employers the direct right to stand down employees who cannot be usefully employed because of the effects of industrial action by other employees of the same employer or by employees of another employer;
- (iii) simplify the procedures relating to the declaration of variations of common rule awards as common rules throughout the Territories;
- (iv) enable the registration, as organizations of employees, of associations formed on an industry basis;
- (v) facilitate the amalgamation of organizations on an industry basis;
- (vi) enable an extension of the maximum term of office in organizations for full time

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Committee under its Terms of Reference is invited to do so.



officers approaching retirement age;

- (vii) enable organizations to fill casual vacancies in an office by appointment where the unexpired portion of the term is less than 12 months and to provide that where a vacancy is so filled in a collegiate electoral system the person shall be deemed to have been elected to that office for the purposes of participating in a further collegiate election;
- (viii) prevent a State trade union which has been de-registered under prescribed State industrial legislation for industrial misconduct from obtaining Federal registration or a Federal award, in circumstances where the relevant State has enacted reciprocal State legislation; and
- (ix) extend the availability of financial assistance in cases of hardship to individuals in certain proceedings under the Act.

The Committee has no comments 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.

CUSTOMS AND EXCISE AMENDMENT BILL 1982

Date Introduced: 24 March 1982

House: House of Representatives  
(Minister for Business and Consumer Affairs)

Purpose: To amend the Customs Act 1901 to increase substantially the penalties provided for contraventions of the Act.

General Comment

The Customs Act provides only limited rights of appeal against decisions taken under it. Section 273GA provides for certain specified decisions to be subject to appeal to the Administrative Appeals Tribunal. A number of provisions are included in this amending Bill which will not be subject to such a right of appeal - see amendments included in clauses 7, 12, 14 and 31. Clauses 18 and 24 also propose the vesting of non-appealable discretions in the Minister by amendments to sections 83 and 108, respectively. Section 273GA of the Principal Act makes provision for appeals under these sections only in respect of the decisions by the Comptroller or Collector of Customs. However, the whole question of appeals against decisions under the Customs Act is at present under review by the Administrative Review Council, and the Committee therefore makes no detailed comment in relation to the individual provisions.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 24 - proposed new section 11E - Access to depot

This proposed section allows a Collector of Customs to enter a depot at any time without the necessity of first obtaining a warrant. A like provision is already included in the Principal Act in section 91 relating to access to warehouses.

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

Provisions of this nature are clearly a matter of constant policy, and need to be examined in that light. They might, however, be regarded as trespassing unduly on personal rights and liberties.

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 (OFF-SHORE INSTALLATIONS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: To amend the Customs Tariff Act so as to ensure that equipment and goods used in the exploration of the natural resources of the seabed and subsoil of the Continental shelf of Australia receive the same treatment as regards liability for customs duties as equipment and goods used in similar operations which take place on the mainland of Australia.

The Committee has no comments 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.

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT (OFF-SHORE  
INSTALLATIONS) BILL 1982

Date Introduced: 25 March 1982  
House of Representatives (Minister for  
House: Business and Consumer Affairs)

Purpose: To amend the Customs Tariff (Anti-Dumping)  
Act 1975 to ensure that an overseas installation  
that is attached to the Australian seabed, goods  
that are brought with an installation, and goods  
subsequently brought direct from overseas to  
such an installation, receive the same treatment  
as regards anti-dumping measures as is accorded  
to equipment or goods imported into Australia  
in the normal way.

The Committee has no comments 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 (OFF-SHORE INSTALLATIONS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: To extend the application of the Excise  
Tariff Act 1921 to the production of  
excisable products at off-shore installations.

The Committee has no comments 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.

HEALTH LEGISLATION AMENDMENT BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for Health)

Purpose: 1. To amend the Health Insurance Act 1973  
(*'the Act'*) to -

- (a) provide for the assessment of the continued eligibility of a person who has been granted disadvantaged person status for a 6 month period by reason of low income, in the last 4 weeks of that period. (This will avoid the present necessity for the making of a new declaration of disadvantaged person status with retrospective effect);
- (b) provide that professional services rendered by practitioners who have been found guilty of 2 or more serious offences under the Act will not attract medical benefits for a period of three years. (Provision is also made, however, for the Minister, in special circumstances, upon application by a practitioner, to ameliorate the disqualification by shortening the 3 year period, or by specifying the types of services, classes of persons or places to which the disqualification applies, or any combination of these. The Minister's decision on the application will be subject to appeal to the Administrative Appeals Tribunal);

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- (c) set time limits for the lodgement of claims for Commonwealth medical benefits payable under superseded health insurance arrangements or assigned under the Act to a practitioner (ordinarily 2 years and 6 months respectively from the date of the rendering of the service);
- (d) provide for prescription by regulations of the form in which information is to be provided by registered medical benefits organizations in relation to their claims for reimbursement of their payments of Commonwealth medical benefits or advances to them to enable payment of Commonwealth medical benefits;
- (e) require the tabling in Parliament of Ministerial determinations made in accordance with the recommendations of either a Medical or Optometrical Services Committee of Inquiry;
- (f) allow a freer communication to the Departments of Social Security and of Veterans' Affairs and State and Territory authorities (where considered desirable in the proper administration of a law relating to the registration or licensing of practitioners), and to registered health insurance organizations, of information concerning breaches of the health insurance legislation and other matters related to the health insurance arrangements;

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



- (g) extend the application of the present disciplinary provisions concerning fraud, prohibited pathology practices and Medical and Optometrical Services Committees of Inquiry to corporate bodies and their office holders and employees, and other employees who cause or permit overservicing;
- (h) prohibit the payment of Commonwealth medical benefits unless particulars, as prescribed by regulations, are recorded by a practitioner on his account, receipt or other specified documents; and
- (i) amend the existing provision requiring disadvantaged persons to furnish details of changes of income to require them to provide notification of such changes.

2. To amend the National Health Act 1953 to -

- (a) authorize the provision of free vaccine for immunization against the disease of mumps;
- (b) authorize the Minister to issue directions prohibiting inappropriate management practices on the part of registered health insurance organizations;
- (c) provide for the declaration by the Minister for Health, for hospital benefits purposes, of public hospital charges for professional and outpatient services rendered;
- (d) extend the Minister's power to approve funds' rule changes relating to benefits payable under existing non-basic tables; and

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

- (e) prohibit the payment by registered medical benefits organizations of medical benefits in respect of services rendered by disqualified practitioners in respect of which Commonwealth medical benefits are not payable.

General Comment

There is a general lack of appeal rights against the numerous discretions that are vested by this Bill in the Minister of Health. Examples of such discretions are contained in clauses 9, 10 and 11 of the Bill. Clause 37 also gives the Minister an unreviewable wide-ranging power to permit the disclosure of information that would otherwise have to be kept secret pursuant to section 130 of the Act.

The pattern of vesting such discretions in the Minister is firmly established by the Principal Act. However, provisions of this nature might be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 8 - Insertion of new sections - proposed new section 19C - Particulars of disqualifications under section 19B to be published, &c.

Proposed sub-section 19C(6) provides that the Minister for Health shall, as soon as practicable, furnish the patients of a disqualified practitioner with a statement setting out the details and effects of the disqualification. Proposed sub-section 19D(1) empowers the Minister to direct a convicted practitioner to provide a list of names and addresses of his patients.

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

It has been suggested to the Committee that, if a patient of a convicted practitioner were to be furnished with a statement under sub-section 19C(6) by mail, this could have the effect of breaching patient confidentiality. For example, one member of a family may not wish the rest of the family to know about a visit to a doctor. This provision might be regarded as trespassing unduly on personal rights and liberties.

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

INCOME TAX ASSESSMENT AMENDMENT BILL 1982

Date Introduced: 24 March 1982

House: House of Representatives (Treasurer)

Purpose: To amend the income tax law to:

- . revise the provisions that empower the Commissioner of Taxation to counter arrangements that reduce Australian tax through the shifting of profits out of Australia;
- . introduce new zone allowance arrangements, as announced in the 1981-82 Budget Speech, details of which were announced on 15 November 1981, and which are to apply from 1 November 1981;
- . remedy a defect that allows avoidance of tax on profits from short-term transactions in property by selling off shares in a company or an interest in a trust estate that holds the property, instead of selling the property itself (proposal announced on 10 September 1981);
- . ensure that allowances received by Defence Force personnel serving overseas continue to receive parallel tax treatment to similar allowances received by civilians;

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

- . give effect to the 1981-82 Budget proposal to grant accelerated rates of depreciation for plant and equipment used in the production of basic iron and steel products (details announced on 30 October 1981);
- . grant income tax deductions for gifts of the value of \$2 or more -
  - . made after 5 February 1982 to the R.S.P.C.A. (proposal announced on 5 February 1982); or
  - . made during the 1981-82 financial year to the Help Poland Live Appeal (proposal announced on 18 February 1982), the Australian Red Cross Poland Appeal and the World Vision of Australia Poland Emergency Appeal
- . prevent unintended benefits being secured in respect of gifts made under the taxation incentives for the arts scheme (proposal announced on 14 October 1981);
- . formalise procedures for the appointment of valuers under the taxation incentives for the arts scheme;
- . close possible loopholes in the measures introduced in 1980 for taxing the income of trust estates and of dependent children; and
- . ensure that medical expenses are treated as repayable amounts where payment is made to a company or other unqualified employer of a legally qualified practitioner who renders eligible medical services.

The Committee has no comments 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.

OFF-SHORE INSTALLATIONS (MISCELLANEOUS AMENDMENTS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: To amend -

- . the Customs Act 1901
- . the Customs Amendment Act 1981
- . the Excise Act 1901
- . the Immigration (Unauthorized Arrivals) Act 1980
- . the Migration Act 1958
- . the Quarantine Act 1908
- . the Sales Tax Assessment Act (No. 1) 1930
- . the Sales Tax Assessment Act (No. 5) 1930

to give each of those Acts application in respect of any installation (including a ship) that is brought direct from overseas to the place at which it is to be attached to the continental shelf of Australia for purposes related to the exploration or exploitation of the non-living natural resources of the seabed or subsoil of the shelf.

General Comment

Among the Acts amended by this Bill is the Customs Act. As with the Customs and Excise Amendment Bill 1982, comments on which are included in this Digest, provisions are included in the amendments contained in this Bill which either insert or amend sections of the Principal Act in such a way as to vest an unappealable discretion in an officer of Customs - see, for example, clauses 5, 9 and 11. The remarks relating to the Customs and Excise Amendment Bill are applicable to this Bill also.

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

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 15 - proposed new section 64A - Ships or aircraft arriving at certain places

This clause proposes to insert a new section 64A in the Customs Act which vests power in a Collector to require the master of a ship or the pilot of an aircraft to furnish the Collector with a report, to be provided within such time as is specified by the Collector and to be in such form as is specified by him. No minimum time limit is provided for the report to be furnished nor is there any guidance as to the form which the Collector may specify. Penalty for non-compliance is \$2,000.

This provision might be regarded as making obligations unduly dependent upon insufficiently defined administrative powers.

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

SALES TAX AMENDMENT (OFF-SHORE INSTALLATIONS) BILLS (NOS 1 to 9)  
1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for Business  
and Consumer Affairs)

Purpose: To expand the application of the sales tax law  
to off-shore installations which are attached  
to the continental shelf of Australia for the  
purpose of exploring and exploiting the mineral  
and non-living resources of the seabed and its  
subsoil.

The Committee has no comment on these Bills.

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



SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT (OFF-  
SHORE INSTALLATIONS) BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: The amendments proposed by this Bill will have  
the same effect as, and will complement, the  
amendments proposed to be made by the Sales  
Tax Amendment (Off-Shore Installations) Bills  
(Nos 1 to 9) 1982.

The Committee has no comments 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.

SOCIAL SERVICES LEGISLATION AMENDMENT BILL 1982

Date Introduced: 25 March 1982

House: House of Representatives (Minister representing  
the Minister for Social Security)

Purpose: To amend the Social Services Act 1947 to provide -

- . that family allowance will not be payable to certain temporary residents of Australia (diplomats, consuls, defence personnel of other countries, and members of their families) or to prohibited immigrants : clauses 2(3), 18 and 43(2);
- . that where a person registers as unemployed with the Commonwealth Employment Service, and makes a claim for unemployment benefit within 14 days of that registration, the date of registration will be taken to be the date on which the person made the claim : clauses 2(1) and 41(a);
- . that where a person claims sickness benefit in respect of a period of incapacity the cause of which was connected with the cause of a previous incapacity in respect of which the person received sickness benefit, the sickness benefit would be paid on and from the day the period of incapacity commenced: clauses 2(1) and 41(b);

to amend section 39 of the Social Services Amendment Act 1979 to remove legal and operational deficiencies in the provisions

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

which apply where a person has a dual entitlement to sickness benefit and compensation in respect of the same incapacity: clauses 2(4), 47-50.

The Committee has no comments 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.

STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NO. 1) 1982

Date Introduced: 25 March 1982

House: Senate (Attorney-General)

Purpose: To correct printing and drafting errors that have been found to exist in a number of Acts. To make such amendments to the package of legislation comprising the co-operative companies and securities scheme as have been unanimously approved by the Ministerial Council in accordance with Clause 8(1)(a) of the agreement made on 22 December 1978 between the Commonwealth and the States. To make a number of other amendments that, while having some substance, are regarded as being of a non-controversial nature.

The following Acts are proposed to be amended by the Bill:

Acts Interpretation Act 1901  
Administrative Appeals Tribunal Act 1975  
Aged Persons Hostels Act 1972  
Ashmore and Cartier Islands Acceptance Act 1933  
Audit Act 1901  
Australian Antarctic Territory Act 1954  
Australian Capital Territory Supreme Court Act 1933  
Australian Shipping Commission Act 1956  
Bounty Acts  
Census and Statistics Amendment Act (No. 2) 1981  
Christmas Island Act 1958

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

Cocos (Keeling) Islands Act 1955  
 Commonwealth Teaching Service Act 1972  
 Companies Act 1981  
 Companies (Acquisition of Shares) Act 1980  
 Consular Privileges and Immunities Act 1972  
 Copyright Act 1968  
 Coral Sea Islands Act 1969  
 Diplomatic Privileges and Immunities Act 1967  
 Environment Protection (Impact of Proposals)  
 Act 1974  
 Environment Protection (Nuclear Codes) Act 1978  
 Federal Court of Australia Act 1976  
 Heard Island and McDonald Islands Act 1953  
 Immigration (Unauthorized Arrivals) Act 1980  
 Judiciary Act 1903  
 Minerals (Submerged Lands) (Registration Fees)  
 Act 1981  
 Norfolk Island Act 1979  
 Nursing Homes Assistance Act 1974  
 Parliamentary Allowances Act 1952  
 Patents Act 1952  
 Public Service Act 1922  
 Remuneration and Allowances Act 1973  
 Royal Commissions Act 1902  
 Seat of Government (Administration) Act 1910  
 Securities Industry Act 1980  
 Statute Law (Miscellaneous Amendments) Act 1981  
 Statute Law Revision Act 1981  
 Student Assistance Act 1973

*The Committee has no comments 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.

SCRUTINY OF BILLS ALERT DIGEST

No. 6

29 April 1982



NOTE: This Digest is circulated to all Honourable Senator who wishes to draw matter to the attention of Committee under its Terms of Reference is invited

DEPARTMENT OF THE SENATE

Se: No. Any 860  
of PRESENTED  
to do so. 29 APR 1982

The Committee has considered the following Bills:

*W. Macdonald*  
Clerk of the Senate

Albury-Wodonga Development (Financial Assistance)  
Amendment Bill 1982  
Australian National University Amendment Bill (No. 3)  
1981 [No. 2] (1982)  
Canberra College of Advanced Education Amendment Bill  
1981 [No. 2] (1982)  
Customs Tariff (Anti-dumping) Amendment (Countervailing  
Duties) Bill 1982  
Excise Tariff (Petroleum) Amendment Bill 1982  
Export Control Bill 1982  
Export Control (Miscellaneous Amendments) Bill 1982  
Loan Bill 1982  
States Grants (Schools Assistance) Amendment Bill 1982  
States Grants (Tertiary Education Assistance) Amendment  
Bill (No. 2) 1981 [No. 2] (1982)  
States Grants (Tertiary Education Assistance) Legislation  
Amendment Bill 1982  
Supply Bill (No. 1) 1982-83  
Supply Bill (No. 2) 1982-83

ALBURY-WODONGA DEVELOPMENT (FINANCIAL ASSISTANCE) AMENDMENT  
BILL 1982

Date Introduced: 22 April 1982

House: House of Representatives (Minister  
representing the Minister for National  
Development and Energy)

Purpose: To amend the Albury-Wodonga Development  
(Financial Assistance) Act 1973 to enable  
implementation of the agreement between  
the Commonwealth, New South Wales and  
Victorian Governments that the States would  
be relieved of their obligations to repay  
the loans and to pay interest on the loans  
provided by the Commonwealth. In lieu of  
repayments, it was agreed that the Common-  
wealth would have access to funds generated  
from development activities.

The Committee has no comments 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.

Date Introduced: 22 April 1982

House: House of Representatives (Minister for Education)

Purpose: To provide for the limited introduction of  
tuition fees at the Australian National  
University.

The Committee draws the attention of Senators to the following  
clause of the Bill.

Clause 4 - Insertion of proposed new section - section 28A -  
Determinations with respect to fees

This Bill, the States Grants (Tertiary Education Assistance)  
Amendment Bill 1981 [No. 2] (1982) and the Canberra College  
of Advanced Education Amendment Bill 1981 [No. 2] (1982), are  
identical in form to Bills which were negatived by the Senate in  
November 1981. The purpose of those Bills was to provide for  
the limited introduction of tuition fees at universities and  
colleges of advanced education for persons commencing courses  
of study after 1 January 1982. Under clause 4 of this Bill,  
and similar clauses of the States Grants and Canberra College  
of Advanced Education Bills, the provision enabling the Minister  
to make determinations imposing fees is retrospective in  
operation to 1 January 1982, and thus might be regarded as  
trespassing unduly on personal rights and liberties.

In his second reading speech when introducing the States Grants  
Bill, the Minister indicated that "it is the Government's  
intention, when the Bill is enacted, to introduce an amending  
Bill which will provide for fees exemptions for courses commenced  
before the beginning of 1983 rather than 1982." No similar

.../2

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



assurance was given in respect of either this Bill or the  
*Canberra College of Advanced Education Amendment Bill.*

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

CANBERRA COLLEGE OF ADVANCED EDUCATION AMENDMENT BILL 1981  
[NO. 2] (1982)

Date Introduced: 22 April 1982

House: House of Representatives (Minister for Education)

Purpose: To provide for the limited introduction of  
tuition fees at the Canberra College of  
Advanced Education.

Clause 4 of this Bill, . to which the Committee wishes  
to draw the attention of Senators, is identical to that  
contained in the Australian National University Amendment  
Bill (No. 3) 1981 . No. 2 (1982). The comments made  
in relation to that Bill are therefore also applicable  
to 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.

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT (COUNTERVAILING  
DUTIES) BILL 1982

Date Introduced: 22 April 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: To amend the Customs Tariff (Anti-Dumping)  
Act 1975 to enable Australia to implement  
the principle that the treatment accorded  
Australian exports in countervailing duty  
measures by other countries will be met  
with reciprocal countervailing action by  
Australia in relation to exports to  
Australia from the countries in question.

The Committee has no comments 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 (PETROLEUM) AMENDMENT BILL 1982

Date Introduced: 21 April 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: To enact two Excise Tariff alterations  
that changed the rates of excise duty  
on stabilized crude petroleum oil and  
naturally occurring liquefied petroleum  
gas on 1 July 1981 and 1 January 1982.

The Committee has no comments 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.

## EXPORT CONTROL BILL 1982

Date Introduced: 22 April 1982

House: House of Representatives (Minister for  
Primary Industry)

Purpose: To establish a new and comprehensive  
legislative base for the export inspection  
and control responsibilities in the  
Department of Primary Industry.

The Committee draws the attention of Senators to the following  
clauses of the Bill.

### Clause 10 - Inspection

Sub-clause 10(3), paragraph (a), allows an authorized officer to enter registered premises. In the context of the clause, there would seem to be no limit on time of entry. It is not clear from the clause as drafted whether forcible entry may be effected as of right: if this is the intention, the provision might be regarded as trespassing unduly on personal rights and liberties.

It appears to the Committee that the distinction made in the clause between right of entry to registered premises, and safeguards concerning entry to premises other than those which are registered, may be deliberate policy. However, neither the Minister's second reading speech nor the explanatory memorandum states explicitly that the distinction is intended.

### Clause 11 - Seizure

This clause gives power to seize and detain prescribed goods and also "any matter or thing" that a prescribed officer believes on reasonable grounds will afford evidence of the commission of an offence. Such items may be detained for up to 60 days. While the Secretary of the Department of Primary Industry may, under sub-clause 11(3), release anything

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

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seized, there is no right of appeal against a refusal of the Secretary so to act, and there is no time limit within which the Secretary must respond to any request for release of detained items.

This provision might be regarded as making rights unduly dependent upon non-reviewable administrative decisions.

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

EXPORT CONTROL (MISCELLANEOUS AMENDMENTS) BILL 1982

Date Introduced: 22 April 1982

House: House of Representatives (Minister for  
Primary Industry)

Purpose: To incorporate amendments to legislation  
which are consequential on the Export  
Control Bill 1982

A number of Acts contain a provision which governs the effect of those Acts on the Customs Act 1901, the Commerce (Trade Descriptions) Act 1905 and provision to the new Export Control Act and regulations made under it.

Provision is made for the repeal of the Customs (Unlawful Exportation of Food) Amendment Act 1981, through appropriate amendments to the Customs Act 1901, and the Meat Export (Penalties) Act 1981. The provisions being repealed were introduced as urgent measures following the meat substitution activities last year.

The Commerce (Trade Descriptions) Act 1905 is amended by omitting reference to the Minister for Primary Industry, the Secretary and officers of the Department of Primary Industry. The increased penalty provisions inserted by the Commerce (Trade Descriptions) Amendment Act 1981 (meat substitution) are repealed.

The Bill also provides for appropriate amendments to be made to legislation relating to the recovery of costs associated with the provision of the export inspection service.

The Committee has no comments 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.

LOAN BILL 1982

Date Introduced: 22 April 1982

House: House of Representatives (Treasurer)

Purpose: To provide, together with authorities available under other legislation, borrowing authority needed to help ensure that calls on the Consolidated Revenue Fund do not exceed amounts legally available to the fund.

The Committee has no comments 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.



STATES GRANTS (SCHOOLS ASSISTANCE) AMENDMENT BILL 1982

Date Introduced: 22 April 1982

House: House of Representatives (Minister for Education)

Purpose: To amend the States Grants (Schools Assistance) Act 1980 to adjust 1981 grants in respect of increases in the salaries and wages component of recurrent grants.

The Committee has no comments 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.

STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) AMENDMENT BILL  
(NO. 2) 1981 [NO. 2] (1982)

Date Introduced: 22 April 1982

House: House of Representatives (Minister for Education)

Purpose: To provide for the charging of tuition fees  
on a limited basis in tertiary education  
institutions in the States and in the  
Northern Territory.

The Committee draws the attention of Senators to the following  
clause of the Bill.

Clause 4 - Insertion of proposed new section - section 5A -  
Determinations with respect to fees

This Bill, the Australian National University Amendment  
Bill (No. 3) 1981 [No. 2] (1982) and the Canberra College  
of Advanced Education Amendment Bill 1981 [No. 2] (1982)  
are identical in form to Bills which were negatived by  
the Senate in November 1981. The purpose of those Bills  
was to provide for the limited introduction of tuition fees  
at universities and colleges of advanced education for  
persons commencing courses of study after 1 January 1982.  
Under clause 4 of this Bill, and similar clauses of the  
A.N.U. and C.C.A.E. Bills, the provision enabling the  
Minister to make determinations imposing fees is retrospective  
in operation to 1 January 1982, and thus might be regarded  
as trespassing unduly on personal rights and liberties.

In his second reading speech when introducing this Bill,  
the Minister indicated that "it is the Government's  
intention, when the Bill is enacted, to introduce an amending  
Bill which will provide for fees exemptions for courses commenced  
before the beginning of 1983 rather than 1982." No similar  
assurance was given in respect of either the A.N.U. or the  
C.C.A.E. Bill.

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

STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) LEGISLATION  
AMENDMENT BILL 1982

Date Introduced: 22 April 1982

House: House of Representatives (Minister for Education)

Purpose: To supplement tertiary education recurrent grants to the States and the Northern Territory for cost increases by amending the States Grants (Tertiary Education Assistance) Act 1978. This Act provides grants to the States and the Northern Territory for financial assistance to universities, colleges of advanced education and technical and further education for the triennium 1979-81.

The total amount of supplementation to be provided by this Bill is \$53.7m. It is expected that this amount will be the final supplementation appropriation for the 1979-81 triennium.

In addition, the Bill provides for:

- . amendments to the States Grants (Tertiary Education Assistance) Act 1981 to reflect Government decisions concerning the consolidation of colleges of advanced education.
- . minor amendments to the 1978 and 1981 Acts; these amendments do not alter the conditions under which the grants are made.

The Committee has no comments 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.

SUPPLY BILL (NO. 1) 1982-83

Date Introduced: 20 April 1982

House: House of Representatives (Treasurer)

Purpose: To make interim appropriation for the  
services of the Government for the period  
1 July 1982 to 30 November 1982.

The Committee has no comments 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.

SUPPLY BILL (NO. 2) 1982-83

Date Introduced: 20 April 1982

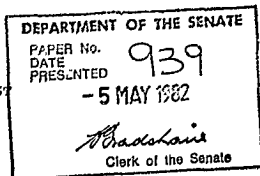
House: House of Representatives (Treasurer)

Purpose: To make interim appropriation for the  
services of the Government for the period  
1 July 1982 to 30 November 1982.

The Committee has no comments 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.

SCRUTINY OF BILLS ALERT DIGEST



NO. 7

5 MAY 1982

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matter to the attention of the Committee under its Terms of Reference is invited to do so.

The Committee has considered the following Bills:

Australian Meat and Live-stock Corporation  
Amendment Bill 1982  
Fertilizers (Bounty and Subsidy) Amendment Bill  
1982  
Governor-General Amendment Bill 1982  
Home Deposit Assistance Bill 1982  
Homes Savings Grant Acts Amendment Bill 1982  
Income Tax Assessment Amendment Bill (No. 2) 1982  
Insurance Amendment Bill 1982  
International Fund for Agricultural Development  
Bill 1982

AUSTRALIAN MEAT AND LIVE-STOCK CORPORATION AMENDMENT BILL 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister for  
Primary Industry)

Purpose: To provide for amendments to the Australian Meat and Live-stock Corporation Act 1977 to strengthen the Corporation's control over Australia's export meat trade. To enable the Corporation, in certain circumstances, to adopt the role of a sole trader or to limit the number of licensees that may trade with particular overseas markets.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 11 - proposed repeal of section 47 and insertion of new sections

Section 47 - Inspection; and Section 47A - Seizure

These provisions are similar in terms to clauses contained in the Export Control Bill 1982 which, as the Minister has pointed out in his second reading speech, is linked with this Bill. Comments made in the Scrutiny of Bills Alert Digest No. 6, tabled in the Senate on 29 April 1982, in respect of clauses 10 and 11 of the Export Control Bill are applicable to this Bill also.

Section 47G - Corporation may require information or documents

Proposed sub-section 47G(3) requires a person to furnish information notwithstanding that the information might be incriminating, although any information so furnished is not admissible in evidence against the person in proceedings other than proceedings for an offence under section 50A.

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

The Committee draws this provision to the attention of Senators on the ground that it removes a fundamental right of common law, and thus might be regarded as trespassing unduly on personal rights and liberties. However, the Committee also draws attention to comments made in the Senate by the Minister representing the Minister for Primary Industry on 16 March 1982 (Hansard, page 826) when a similar provision of the Dried Sultana Production Underwriting Bill 1982 was discussed:

"...this clause is not unusual and it does ...  
represent a proper balance between public  
interest and the private rights of the citizen."

This view was supported by the Senate.

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



FERTILIZERS (BOUNTY AND SUBSIDY) AMENDMENT BILL 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister for  
Business and Consumer Affairs)

Purpose: To extend the operation of the Nitrogenous  
Fertilizers Subsidy and the Phosphate  
Fertilizers Bounty Schemes at current rates for  
a further three year period until 30 June 1985.

The Committee has no comments 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.

GOVERNOR-GENERAL AMENDMENT BILL 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister Assisting  
the Prime Minister)

Purpose: To give effect to a decision to increase the  
salary of the Governor-General from \$37,000  
provided in the Governor-General Act 1974, as  
amended, to \$70,000.

The Committee has no comments 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.

HOME DEPOSIT ASSISTANCE BILL 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister for  
Housing and Construction)

Purpose: To provide a legislative basis for the proposed Home Deposit Assistance Scheme which is to replace the current Home Savings Grant Scheme which operates under the provision of the Homes Savings Grant Act 1976. In large part the Bill repeats the provisions of that Act.

The Committee draws the attention of Senators to the following clauses of the Bill.

Clause 39 - Amount of grant

Sub-clause 39(5) authorises the making of regulations to amend, in effect, a provision of the Act, in order to provide that changes to the higher and lower amounts of prescribed earnings for the purposes of determining the amount of a grant under a formula provided by sub-clause 39(4) may be made by regulation. The Committee draws this "Henry VIII" clause to the attention of Senators, on the ground that it might be regarded as inappropriately delegating legislative power. However, the figures concerned could probably have been prescribed by regulation from the outset without objection.

Clause 55 - Payment of grants

Sub-clause 55(4) permits the Secretary, Department of Housing and Construction, to refuse to pay a grant under the Bill to all joint applicants in respect of an application if, for any reason, he considers it is not practicable to do so. Under

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

sub-clause (5), the grant paid otherwise than to all the joint applicants is deemed to have been paid.

While decisions made by the Secretary under this clause - and, indeed, under all clauses of the Bill except clause 34 - are, by clause 49, subject to review by the Administrative Appeals Tribunal, it is difficult to see how appeals against decisions made under sub-clause 55(4) could operate. The payment to other joint applicants would presumably have been made and no system of notification to unsuccessful joint applicants would appear to be required by the legislation.

Therefore, the generally adequate review mechanisms in the legislation could, in relation to this provision, be ineffectual. Thus, the provision, as it stands, might be regarded as, in effect, making rights unduly dependent upon non-reviewable administrative decisions.

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

HOMES SAVINGS GRANT ACTS AMENDMENT BILL, 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister for  
Housing and Construction)

Purpose: To provide for the termination of the  
Home Savings Grant Scheme, to be  
replaced by the Home Deposit Assistance  
Scheme.

The Committee has no comments 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.

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 2) 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister representing  
the Acting Treasurer)

Purpose: To amend the income tax law to:

- . allow a rebate of tax for home loan interest payments made by a resident taxpayer on or after 1 July 1982 in connection with his or her sole or principal residence situated in Australia, limited to the first 5 years of owner-occupancy of a residence that commences between 1 July 1977 and 30 June 1985 (proposal announced 18 March 1982);
- . permit the supply of information from income tax records to the Secretary, Department of Housing and Construction, for the purposes of the new Home Deposit Assistance Scheme;
- . permit the disclosure of information from income tax records to the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union, the Royal Commission of Inquiry into Drug Trafficking and any subsequent Royal Commission which is given appropriate terms of reference (proposal announced 14 April 1982).

The Committee draws the attention of Senators to the following clause of the Bill.

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

Clause 3 - Officers to observe secrecy

This clause proposes amendments to section 16 of the Principal Act, and raises fundamental issues as to the availability of information provided under compulsion to the Commissioner of Taxation.

Paragraph (c) of the clause proposes to add the Secretary, Department of Housing and Construction, two existing Royal Commissions, and future Royal Commissions to which sub-paragraph 16(4)(k)(iii) is declared by the Governor-General to apply, as persons or bodies to which information may be communicated by an authorized Taxation officer, for specified purposes.

The extension of access to information provided under compulsion might, in itself, be regarded as trespassing unduly on personal rights and liberties. It may be noted, further, that the proposed amendments have, in effect, retrospective operation, because they apply to information already furnished to the Commissioner of Taxation, and, on this ground also, might be regarded as trespassing unduly on personal rights and liberties.

In addition to these factors, proposed sub-paragraph 16(4)(k)(iii) would enable any future, unspecified Royal Commission to gain access to information by declaration of the Governor-General, without Parliamentary intervention or scrutiny. This sub-paragraph contrasts sharply with sub-paragraph 16(4)(k)(ii) of the Bill, which would, if agreed to, give the two existing Commissions named in the provision access to information by decision of the Parliament, rather than by Executive act. While the Committee would not regard the conferral of access to information on future Royal Commissions as necessarily required by Act of the Parliament, it suggests that some form of Parliamentary control, whether by affirmative resolution of the Houses or the disallowance procedure, may be worthy of consideration.

As the provision stands at present, however, it might be regarded either as inappropriately delegating legislative power or insufficiently subjecting its exercise to parliamentary scrutiny.

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

The Committee also draws attention to paragraph 16(4A)(b), which is proposed to be inserted by clause 3(d). The paragraph confers a wide-ranging power on a Royal Commission to communicate to the Attorney-General any information received by virtue of access to information under sub-section 16(4) "if the Royal Commission is of the opinion that the information indicates that a person may have committed an offence against an Act." The paragraph, as drafted, does not include a safeguarding provision such as "the Royal Commission believes, on reasonable grounds, that the information indicates that a person may have committed an offence." Nor is there any provision in the paragraph to exclude offences which might be regarded as trivial - for example, offences which attract a penalty of not more than six months' imprisonment. This paragraph might be regarded as trespassing unduly on personal rights and liberties.

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



## INSURANCE AMENDMENT BILL 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister representing  
the Acting Treasurer)

Purpose: To strengthen the minimum financial standards  
imposed on general (non-life) insurance  
companies under the Insurance Act 1973 and to  
effect a number of other improvements associated  
with the existing supervisory machinery.

### General Comment

The Committee has noted problems in relation to rights of appeal from decisions under the Principal Act, as proposed to be amended by this Bill. Review of certain decisions is provided by section 63 of the Principal Act, but for this section to be attracted, there must be specific reference to Part VI of the Act in relation to the decision. The following clauses of the amending Bill propose to amend sections of the Principal Act which do not provide at present for appeals, and the amendments do not include appeal provisions: Clause 14, which proposes the repeal of existing section 29 and the substitution of a new section 29 - Conditions to which authority is subject; clause 20, which proposes to amend section 37 of the Principal Act; clause 25, which proposes to amend section 39; and clause 35, which proposes amendments to section 109.

The Committee also draws the attention of Senators to the following clauses.

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

Clause 16 - Liabilities; Clause 27 - Directions; and Clause 49 -  
Directions

In each of the sections of the Principal Act to which clauses 16 and 27 relate (sections 31 and 62, respectively) and in clause 49 in proposed new Part III - Interim Provisions - to be inserted by this Bill, provision is made for the review of directions given under the sections and the proposed new section. In each case a specific provision is made indicating that a reference to a direction includes a direction as varied, thereby attracting the appeal provision. But each section also permits the revocation of a direction. A decision to revoke, or, more importantly, not to revoke, a direction would not seem to be a "direction", and would not therefore be subject to appeal.

These provisions might be regarded as making rights and obligations unduly dependent upon non-reviewable administrative decisions.

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

INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT BILL 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister for  
Foreign Affairs)

Purpose: To authorise a further payment of \$A8,965,000, to  
be paid initially in the form of promissory notes,  
to the International Fund for Agricultural  
Development (IFAD).

The Committee has no comments 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.

SCRUTINY OF BILLS ALERT DIGEST



NO. 8

20 MAY 1982

DEPARTMENT OF THE SENATE	
PAPER No.	1161
DATE PRESENTED	20 MAY 1982

*Alain*  
Clerk of the Senate

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matter to the attention of the Committee under its Terms of Reference is invited to do so.

The Committee has considered the following Bills:

- Defence Force Discipline Bill 1982
- Defence Force (Miscellaneous Provisions) Bill 1982
- \*Income Tax Assessment Amendment Bill (No. 3) 1982
- \*Radiocommunications Licence Fees Bill 1982
- Radiocommunications (Miscellaneous Provisions) Bill 1982
- Rainforest Preservation Agreements Bill 1982
- \*Tobacco Charge Amendment Bill 1982
- Wildlife Protection (Regulation of Exports and Imports) Bill 1982

\*Clauses reported to the Senate 20 May 1982

## DEFENCE FORCE DISCIPLINE BILL 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister for Defence)

Purpose: To provide new disciplinary legislation for the Defence Force and contain, for the first time in one Act, the disciplinary law applicable to the 3 arms of the Defence Force.

### General Comment

This Bill is concerned with a special group of persons who can be assumed, by their entry into the Defence Force, to have accepted a legal regime different from that applicable to the ordinary citizen. Further, it may be necessary for the management of the Defence Force to impose conditions upon service personnel that are not necessary, and indeed would be objectionable if adopted, for the civilian population. Examples of these types of provisions are clauses 89 and 131(2)(b).

At this early stage of examination of this most substantial legislation, the Committee has not attempted to draw the attention of Senators to provisions of this kind, nor to examine in detail, under its Terms of Reference, the general purposes of the Bill.

It is expected that further inquiries will be made during the next few months, and the Committee would particularly welcome any matters of concern to Senators and members of the public being drawn to its attention.

The Committee does, however, have some preliminary comments on the following clauses of the Bill.

### Clause 3 - Interpretation - Definition of "allied force"

This definition needs to be read in the context of the provisions in which it appears, e.g., the definitions of "mutiny" and "the enemy". Division 1 of Part III of the Bill sets out offences relating to operations against the enemy, and Division 2 of the same Part includes clause 20, which makes "mutiny" an offence. The seriousness of the offences specified under these provisions is such that it should be clear to a person what is an "allied force". It is questionable whether the definition provides this degree of clarity, particularly in relation to guerilla or partisan forces. The relationship with such forces can be somewhat

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

fluid. It may be thought desirable, under the circumstances, that there be some form of declaration of what is an allied force.

The definition, read in context, may be regarded as trespassing unduly on personal rights and liberties.

Clause 70 - Sentencing principles

Sub-clause 70(2) lists a number of matters that are to be taken into account in determining an appropriate sentence. These factors are to be taken into account as "mitigating or aggravating circumstances". But the clause does not indicate which conduct is to be regarded as mitigating and which aggravating. This is particularly the case in relation to paragraph 70(2)(e). The sub-clause may be regarded as making rights, liberties and obligations unduly dependent upon insufficiently defined administrative powers.

Clause 91 - Power to enter to make arrest

Clause 91 empowers a constable to enter any premises at any time to effect the arrest of a person. This applies to cases in which arrest without warrant is permissible. Such entry is not limited to service premises but extends to civilian premises also. Even allowing for the matters applicable to service legislation, referred to in the Committee's General Comment, above, it is questionable whether such a power as this should be conferred. It is to be noticed that even in the case of entry pursuant to a warrant, such a warrant can be issued by a commanding officer (clause 86).

Clause 91 may be regarded as trespassing unduly on personal rights and liberties.

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

DEFENCE FORCE (MISCELLANEOUS PROVISIONS) BILL 1982

Date Introduced: 29 April 1982

House: House of Representatives (Minister for Defence)

- Purpose:
- (a) To repeal existing Defence Force disciplinary legislation and make other amendments to various Acts consequent on the enactment of the Defence Force Discipline Bill 1982;
  - (b) to make other amendments to the Courts-Martial Appeals Act 1955;
    - (i) to restrict membership of the Courts-Martial Appeal Tribunal to the holders of judicial office;
    - (ii) to improve certain procedures relating to the Tribunal;
    - (iii) to confer on the Tribunal certain powers commonly exercised by courts of criminal appeal;
    - (iv) to allow a limited right of appeal to the Tribunal upon verdicts involving unsoundness of mind of the accused; and
    - (v) to provide a wider access to the Federal Court of Australia including a right of appeal on questions of law;

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

- (c) to provide transitional provisions for the disposal of offences committed under existing Defence Force disciplinary legislation; and
- (D) to repeal certain obsolete or unnecessary provisions of existing legislation concerning the administration of the Defence Force.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 52 - Repeal of section 73 of the Defence Act 1903 and substitution of new section - Aiding or abetting commission of service offence within the meaning of the Defence Force Discipline Act 1982

The section which this clause proposes to insert in the Bill is designed to deal with civilians who aid, abet, etc. the commission of service offences. Paragraph (b) of the section sets out the penalties that are to apply by reference to the penalty for the service offence that is aided, abetted, etc. Two problems appear to arise from the formula so adopted. In the Defence Force Discipline Bill 1982, also discussed in this Digest, the relevant penalty is stated to be a maximum, thereby allowing for the possibility of a fine even in cases where the maximum sentence is imprisonment for a term of years. In the proposed amendment to the Defence Act to be inserted by this clause, sub-paragraphs 73(b)(i) and (ii) specifically state that the punishment is to be imprisonment. This would appear to prevent the possibility of a fine being imposed, and thus may be regarded as trespassing unduly on personal rights and liberties.

The formula adopted might also result in excluding the operation of section 19B and 20 of the Crimes Act 1914. These sections allow the conditional release of offenders. If the proposed new section does have this effect, it may be regarded as trespassing unduly on personal rights and liberties.

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



INCOME TAX ASSESSMENT AMENDMENT BILL (NO.3) 1982

Date Introduced: 5 May 1982

House: House of Representatives (Treasurer)

Purpose: To amend the income tax law to exempt from income tax the income that Australian Wool Testing Authority Limited derives in consequence of its taking over the functions of the existing Australian Wool Testing Authority.

General Comment

New clause 3, which was inserted in this Bill by amendment in the House of Representatives on 6 May 1982, overcomes a difficulty identified in relation to the Income Tax Assessment Amendment Bill (No. 2) 1982. Comments on that Bill were included in Scrutiny of Bills Alert Digest No. 7, tabled in the Senate on 5 May 1982.

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

## RADIOCOMMUNICATIONS LICENCE FEES BILL 1982

Date Introduced: 4 May 1982

House: House of Representatives (Minister for Communications)

Purpose: To impose fees for the grant or renewal of radiocommunications licences with the actual rates and form of any concession or exemption fixed by regulations.

The Committee draws the attention of Senators to the following clauses of the Bill.

### Clause 8 - Amount of fees; and Clause 9 - Reduced fees and exemptions

These clauses enable the fees that are to be imposed by the Bill to be fixed by regulation. No indications are included relating to the amount of fees that may be imposed. While the Wireless Telegraphy Act 1905, under which radiocommunications licence fees were previously imposed, made like provision, the clauses may be regarded as inappropriately delegating legislative power.

### Clause 11 - Application

This clause provides that the enactment will be deemed to have taken effect on 1 July 1981, and the retrospectivity thus could be regarded as trespassing unduly on personal rights and liberties.

However, the explanatory memorandum indicates that the Bill will not involve increased payments in respect of the period from that date till its commencement and that in some cases fees will be reduced.

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

RADIOCOMMUNICATIONS (MISCELLANEOUS PROVISIONS) BILL 1982

Date Introduced: 4 May 1982

House: House of Representatives (Minister for Communications)

- Purpose:
- (1) To amend the Wireless Telegraphy Act 1905 by omitting from it the existing provisions relating to payment of fees for the grant or renewal of licences, as these are now provided for in the Radiocommunications Licence Fees Bill.
  - (2) To allow fees to be prescribed for other matters relating to administration of the Wireless Telegraphy Act but not including fees for the grant or renewal of licences.
  - (3) To provide for any fees already paid pursuant to regulations made under the Wireless Telegraphy Act to be refunded or offset against future payments if they are greater than fees payable under the new legislation.
  - (4) To repeal part of the Overseas Telecommunications Act 1946 which exempts the Overseas Telecommunications Commission (Australia) from the payment of licence fees so that OTC (A) will now be liable for such fees.

The Committee has no comments 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.

RAINFOREST PRESERVATION AGREEMENTS BILL 1982

Date Introduced: 6 May 1982

House: Senate (Senator Mason)

Purpose: To bring about the preservation of all existing rainforest in Australia, by providing for the Commonwealth to give financial assistance to the States, subject to the compliance of each State with the provisions of the Agreement set out in the Schedule to the Bill, equal to one-half of the cost of preservation incurred by the State.

The Committee has no comments 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.

## TOBACCO CHARGE AMENDMENT BILL 1982

Date Introduced: 5 May 1982

House: House of Representatives (Minister for  
Primary Industry)

Purpose: To set a maximum charge that may be prescribed by regulation for the purposes of the Tobacco Charge Acts (Nos. 1, 2 and 3) which apply respectively to sales of Australian tobacco leaf to a manufacturer, purchases by manufacturers of Australian tobacco leaf and tobacco grown by a manufacturer and appropriated by him for manufacturing purposes. The maximum rate is proposed by the Bill to be 6 cents per kilogram.

### General Comment

The purpose of this Bill is to overcome a difficulty identified in the Committee's Digest No. 3 and its Fourth Report, in relation to the Tobacco Charge Amendment Bills (Nos 1, 2 and 3) 1982. As those Bills stand, they would permit the making of regulations increasing, or decreasing, the rate of charge specified in the Principal Act. The Committee pointed out that removal of the "ceiling" on amounts which could be specified in regulations might be regarded as an inappropriate delegation of legislative power.

This Bill fixes a maximum permissible amount which may be specified under the regulations.

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

WILDLIFE PROTECTION (REGULATION OF EXPORTS  
AND IMPORTS) BILL 1982

Date Introduced: 6 May 1982

House: House of Representatives (Minister for Home  
Affairs and Environment)

Purpose: To allow Australia to more fully implement and fulfil its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and other international agreements and to ensure that no Australian native species becomes threatened through inadequate control of exports or through imports of exotic species.

The Committee draws the attention of Senators to the following clauses of the Bill.

Clause 9 - Variation of Schedules

This clause permits the Minister to amend certain Schedules to the Bill by declaration. The nature of the Schedules is such that ease of amendment may be desirable and the declarations are subject to review and disallowance by the Parliament. However, the Committee draws this "Henry VIII" clause to the attention of Senators in that it might be regarded as inappropriately delegating legislative power.

Clause 10 - Approved management programs

This clause enables the Minister to declare, by instrument in writing, that a management program is an approved program. Such a declaration is not subject to review, and is not subject to parliamentary scrutiny.

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

This clause may be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions, and as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

Clause 14 - Breeding in captivity; and Clause 15 - Artificial propagation

These clauses contain wide regulation-making powers, in that no indication is given in the sections of the matters which might be contained in the regulations.

The clauses may be regarded as inappropriately delegating legislative power.

Clauses 26, 42, 43 and 44 - as they relate to duration of permits

Sub-clauses 24(5), 42(6)(c), 43(9)(c) and 44(3)(c) confer a power to shorten the duration of permits to be granted under these clauses. The power conferred by these sub-clauses is not subject to review under clause 78 of the Bill. The issue or refusal of a permit is reviewable, but its duration is not. These provisions may be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

Clause 44 - Authority to export or import in exceptional circumstances

This clause empowers the Minister to make unreviewable administrative decisions. It may be thought that the power given by clause 44 is of such a nature that it should be vested solely in the Minister - subject, of course, to review on legality grounds under the Administrative Decisions (Judicial Review) Act. However, it is drawn to attention on the ground that it may be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

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

Furthermore, the Minister is empowered under clause 74 of the Bill to delegate his powers under section 44. This too may be regarded as making rights, etc., unduly dependent upon non-reviewable administrative decisions.

Clause 69 - Seizure and forfeiture

Sub-clause 69(2) empowers an inspector to seize and retain certain items, and "any matter or thing" which he believes, on reasonable grounds, will afford evidence of the commission of an offence. Such items may be retained for up to 60 days or, if proceedings for an offence against the Act or regulations are instituted within that period, until the proceedings are terminated. Sub-clause (3) authorizes the Minister to release the items, either unconditionally or on such conditions as he thinks fit.

Similar seizure provision are contained in the Export Control Bill 1982 and the Australian Meat and Live-stock Corporation Amendment Bill 1982, and the Committee drew them to the attention of the Senate in Scrutiny of Bills Alert Digests Nos 6 and 7, respectively. Subsequently, the Minister representing the Minister for Primary Industry made comments in relation to them. These comments have been reported to the Senate in the Committee's Seventh Report. The Committee's comments, contained in that Report, relate to these provisions also.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 9

25 AUGUST 1982

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

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FILED NO.	1736
DATE	25 AUG 1982
PRESENTED	<i>W. Cunningham</i>
Clerk of the Senate	

The Committee has considered the following Bills.

Constitution Alteration (Electors' Initiative)  
Bill 1982

Diesel Fuel Tax Amendment Bill (No. 1) 1982

Diesel Fuel Tax Amendment Bill (No. 2) 1982

Diesel Fuel Taxes Legislation Amendment Bill 1982

Sales Tax Amendment Bills (Nos 1-9) 1982

Sales Tax (Exemptions and Classifications)  
Amendment Bill 1982

CONSTITUTION ALTERATION (ELECTORS' INITIATIVE) BILL 1982

Date Introduced: 20 May 1982

House: Senate (Senator Mason)

Purpose: To alter the Constitution so as to allow any proposition for a change of law and of the Constitution to be initiated through a petition of 250,000 signatures.

The Committee has no comments 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.

DIESEL FUEL TAX AMENDMENT BILL (NO.1) 1982

Date Introduced: 17 August 1982

House: House of Representatives (Minister  
Assisting the Minister for Industry  
and Commerce)

Purpose: To amend the Diesel Fuel Tax Act (No.1)  
1952 to terminate the operation of that Act  
on and from 8 p.m. on 17 August 1982.

The Committee has no comments 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.

DIESEL FUEL TAX AMENDMENT BILL (NO.2) 1982

Date Introduced: 17 August 1982

House: House of Representatives (Minister  
Assisting the Minister for Industry and  
Commerce)

Purpose: To amend the Diesel Fuel Tax Act (No.2)  
1957 to terminate the operation of that  
Act on and from 8 p.m. on 17 August 1982

The Committee has no comments 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.

DIESEL FUEL TAXES LEGISLATION  
AMENDMENT BILL 1982

Date Introduced: 17 August 1982

House: House of Representatives (Minister Assisting  
the Minister for Industry and Commerce)

Purpose: To amend the Customs Act 1901, the Excise Act  
1901 and the Diesel Fuel Taxation (Administration)  
Act 1957 to:

- (i) terminate the existing diesel fuel certificate scheme wherein certificates are issued to purchasers of diesel fuels for "off road" use so that those purchasers can obtain the fuel direct from oil companies, agencies or distributors at the duty free price; and
- (ii) introduce a new rebate system for diesel fuel which will require all purchases of diesel fuel to be at the duty paid price but which will enable rebates of duty to be able to be claimed by certain persons (as defined) for their "off road" use.

The Committee draws the attention of Senators to the following clauses of the Bill:

Clause 5 - Insertion of new section: Rebate of duty in respect of diesel fuel used for certain purposes

This clause proposes to insert a new section 164 in the Customs Act 1901 to provide for rebate of duty in respect of diesel fuel. Proposed sub-section (1) empowers the making of regulations imposing conditions and restrictions on the rebate. Despite the words in parenthesis within the proposed sub-section, the power is couched in very wide terms. The sub-section would seem to allow the making of regulations that could subsequently change the effect of the section. Thus, the proposed sub-section may be regarded as

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inappropriately delegating legislative power.

Sub-section (5) includes a definition of "residential premises". Use of fuel in residential premises gives an entitlement to a rebate. However, "premises used in the business of a ... boarding house" are excluded from the definition. Such an exclusion could, perhaps, be interpreted to apply to persons who take in one or two boarders. If this is the intention of the definition provided in the sub-section, it may be regarded as trespassing unduly on personal rights and liberties.

Clause 7 - Insertion of new section: Powers of officers for purposes of section 164

This clause proposes to insert a new section 214A in the Customs Act 1901, and is based on existing provisions of the Diesel Fuel Taxation (Administration) Act 1957. Proposed sub-sections (1), (2) and (3) permit entry into premises by an authorized officer without a warrant. The only checks on entry are that it be at a reasonable time and evidence of being an authorized officer must be produced if requested.

Proposed sub-sections (4) to (9) go further in that they allow an authorized officer - a Collector of Customs or an officer appointed by a Collector - to require the attendance before the authorized officer of a person for interrogation. Questions must be answered and books and documents produced under threat of penalty. Self-incrimination is no excuse for not answering and the answers so elicited may be used in evidence in relation to a number of offences under the Act. It is to be noted that there is no suggestion in proposed section 214A that a person may be represented when appearing before the authorized officer.

These provisions may be regarded as trespassing unduly on personal rights and liberties.

Clause 11 - Insertion of new section: Rebate of duty in respect of diesel fuel used for certain purposes

This clause proposes to amend the Excise Act 1901 in the same terms as are applicable to proposed amendments to the Customs Act 1901.

Comments made in relation to clause 5 are therefore also applicable to this clause.

Clause 13 - Insertion of new section: Power of officers for purposes of section 78A

This clause proposes to amend the Excise Act 1901 in the same terms as are applicable to proposed amendments to the Customs Act 1901.

Comments made in relation to clause 7 are therefore also applicable to this clause.

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

Clauses 21 and 22 - Making of regulations for the purposes of section 164 of the Customs Act 1901 and section 78A of the Excise Act 1901

These clauses permit the making of regulations having retrospective operation.

The provisions may be regarded as inappropriately delegating legislative power.

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

SALES TAX AMENDMENT BILLS (NOS 1-9) 1982

Date Introduced: 17 August 1982

House: House of Representatives (The Treasurer)

Purpose: To increase the respective rates of sales  
tax from 5% to 7.5%, from 17.5% to 20% and  
from 30% to 32.5%.

The Committee has no comments 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.



SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)  
AMENDMENT BILL 1982

Date Introduced: 17 August 1982

House: House of Representatives (The Treasurer)

Purpose: To impose sales tax of 7.5 per cent on a  
range of goods now exempt from sales tax.

The Committee has no comments 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.

SCRUTINY OF BILLS ALERT DIGEST

NO. 10

9 SEPTEMBER 1982

THE SENATE

- 9 SEP 1982

TABLED  
PAPER

1888

- 9 SEP 1982

NOTE: 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.

The Committee has considered the following Bills.

Air Navigation (Charges) Amendment Bill 1982

Appropriation Bill (No.1) 1982-83

Appropriation Bill (No.2) 1982-83

Appropriation (Parliamentary Departments)  
Bill 1982-83

Asian Development Fund Bill 1982

Bounty (Berry Fruits) Bill 1982

Bounty (Ships) Amendment Bill 1982

Defence (Visiting Warships) Bill 1982

Dried Fruits Export Charges Amendment Bill 1982

Liquefied Petroleum Gas (Grants) Amendment Bill  
1982

Live-Stock Export Charge Amendment Bill 1982

Live-stock Slaughter Levy Amendment Bill 1982

Northern Territory (Self-Government) Amendment  
Bill 1982

Omega Navigation Facility Bill 1982

Remuneration and Allowances Amendment Bill 1982

Repatriation (Special Overseas Service) Amendment  
Bill 1982

AIR NAVIGATION (CHARGES) AMENDMENT BILL 1982

Date Introduced: 19 August 1982

House: House of Representatives (Minister for Aviation)

Purpose: To amend the Air Navigation (Charges) Act 1947 to vary the rates of air navigation charges for all domestic sectors of the aviation industry as from 1 October 1982 and to ensure that charges can continue to be validly imposed on all operators when proposed revisions to licensing classifications under the Air Navigation Regulations are introduced in 1983.

The Committee has no comments 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.

APPROPRIATION BILL (NO. 1) 1982-83

Date Introduced: 17 August 1982

House: House of Representatives (Treasurer)

Purpose: To appropriate money from the Consolidated Revenue Fund for the ordinary annual services of Government provided for in the 1982-83 Budget.

The Committee has no comments 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.

APPROPRIATION BILL (NO. 2) 1982-83

Date Introduced: 17 August 1982

House: House of Representatives (Treasurer)

Purpose: To appropriate money from the Consolidated Revenue Fund for expenditure on various goods and services, for making advances and loans, and grants to the States and the Northern Territory.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 5 - Payments to States and Northern Territory

This clause authorizes three Commonwealth Ministers to make payments to the States and the Northern Territory for specific purposes: the Minister for Finance for natural disaster relief and restoration; the Minister for Primary Industry for supplementary assistance for apple and pear exports and for canning fruit tree removal; and the Minister for Transport and Construction for construction of the second Hobart Bridge. The payments are to be made through the State and Territory governments, on such terms and conditions as are from time to time determined by the specified Ministers. The Bill contains no criteria regulating the Ministerial determinations.

The Committee notes that this sort of discretionary provision, if it were in any other type of Bill dealing more directly with payments to individuals, might be regarded as making rights unduly dependent upon insufficiently defined administrative powers.

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

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL 1982-83

Date Introduced: 17 August 1982

House: House of Representatives (Treasurer)

Purpose: To appropriate sums from the Consolidated  
Revenue Fund for the purposes of  
Parliamentary Departments during the  
1982-83 financial year.

The Committee has no comments 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.

ASIAN DEVELOPMENT FUND BILL 1982

Date Introduced: 26 August 1982

House: House of Representatives (Minister for  
Foreign Affairs)

Purpose: To authorise an appropriation of \$212,332,030  
as Australia's contribution to the third  
replenishment of the Asian Development Fund.

The Committee has no comments 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.

## BOUNTY (BERRY FRUITS) BILL 1982

Date Introduced: 19 August 1982

House: House of Representatives (Minister  
Assisting the Minister for Industry  
and Commerce)

Purpose: To provide assistance by way of a bounty  
scheme on the production in Australia of  
certain berry fruits and to enact the  
control, inspection and appeal provisions  
standard to Bounty Acts.

The Committee draws the attention of Senators to the following  
clauses of the Bill.

### Clause 3(1) - Interpretation - "Bounty Period"

This clause enables the Minister to add to, or detract from,  
the provisions of the Bill when defining the scope of three  
terms - "bountiable fruit", "bounty period" and "processing".  
The effect of the Ministerial power to define "bounty period"  
is to enable the Minister to continue the operation of the  
Act beyond the specified date of 30 June 1987.

This "Henry VIII" clause may be regarded as insufficiently  
subjecting the exercise of legislative power to parliamentary  
scrutiny.

### Clause 8 - Good quality

This clause empowers the Comptroller-General of Customs (or  
his delegate under clause 22) to withhold payment of the bounty  
if he is not satisfied that the fruit is of "good and merchant-  
able quality". The Bill contains no appeal provision against  
a refusal to pay under clause 8, although decisions under some

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



other sections are, by clause 23, reviewable by the Administrative Appeals Tribunal.

Clause 8 may be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clauses 17, 18, 19, 20 - Inspections by Authorized Officers

Under clause 16, the Minister may authorize certain officers of the Department of Industry and Commerce to carry out inspections relevant to the payment of the bounty. Clauses 17 and 18 impose obligations on processors to open their premises and records for entry, without a warrant, by the authorized officer. The only checks on entry are that it is at a reasonable time.

Clause 19 permits an authorized officer to require the attendance of persons for examination under oath or affirmation. Questions must be answered and documents produced under threat of penalty (detailed in clause 20).

In Scrutiny of Bills Alert Digest No. 9 tabled in the Senate on 25 August 1982, the Committee drew attention to similar provisions in the Diesel Fuel Taxes Legislation Amendment Bill 1982. The same comments are applicable to these clauses of this Bill, which may also be regarded as trespassing unduly on personal rights and liberties.

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

BOUNTY (SHIPS) AMENDMENT BILL 1982

Date Introduced: 19 August 1982

House: House of Representatives (Minister Assisting  
the Minister for Industry and Commerce)

Purpose: To amend the definition of "bountiable  
vessel" in the Bounty (Ships) Act 1980  
to enable the bounty under the Act to be  
paid on fishing vessels over 150 gross  
construction tons but which do not exceed  
21 metres in length.

The Committee draws the attention of Senators to the following  
clauses of the Bill.

Clause 2 - Commencement Date

This Bill is retrospective in that it widens the definition of  
"bountiable vessel" in the principal Act - the Bounty (Ships)  
Act 1980 - and is deemed to have come into operation on 1 July  
1980. The proposed amendment widens the category of eligible  
vessels to give effect to the Government's original intention.

As indicated in its Ninth Report - tabled in the Senate on  
20 May 1982 - the Committee is currently giving attention to  
retrospective legislation. The Committee adopts the practice  
of alerting Senators to all retrospective provisions which  
either restrict or widen personal rights and liberties.

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

DEFENCE (VISITING WARSHIPS) BILL 1982

Date Introduced: 18 August 1982

House: House of Representatives (Minister for Defence)

Purpose: To empower the Minister administering the Act to grant approval for the entry of foreign warships.

The Committee draws the attention of Senators to the following clauses of the Bill.

Clause 10 - Offences

Clause 12 - Certificate for Approval for visit

These clauses are similar in operation to clauses 8 and 10 of the Omega Navigation Facility Bill 1982. The comments made in this Alert Digest in relation to those clauses of that Bill are therefore also applicable to 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.

DRIED FRUITS EXPORT CHARGES AMENDMENT BILL 1982

Date Introduced: 19 August 1982

House: House of Representatives (Minister for  
Primary Industry)

Purpose: To raise the ceiling for the export charge  
levied on dried currants, sultanas and  
raisins, the present rate of charge being  
equal to the maximum allowable under the  
existing legislation, and to make provision  
for consultations to be held between the  
Department and producers' organisations  
before future adjustments of the rate of  
charge.

The Committee has no comments 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.

LIQUEFIED PETROLEUM GAS (GRANTS) AMENDMENT BILL 1982

Date Introduced: 19 August 1982

House: House of Representatives (Minister Assisting  
the Minister for Industry and Commerce)

Purpose: To amend the Liquefied Petroleum Gas (Grants)  
Act 1982:

- . to extend the period of the Act to  
28 March 1984;
- . to place limitations on the application  
of \$80 per tonne LPG subsidy payable under  
the Act to the equivalent of 1,000 tonnes  
per annum in respect of certain industrial  
users; and
- . to introduce penalties for offences against  
the new provisions.

The Committee has no comments 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.

LIVE-STOCK EXPORT CHARGE AMENDMENT BILL 1982

Date Introduced: 19 August 1982

House: House of Representatives (Minister for  
Primary Industry)

Purpose: To increase maximum rates of export  
charge that may be prescribed to finance  
the Australian Meat and Live-stock  
Corporation (AMLC) and the National  
Cattle Disease Eradication program.

The Committee has no comments 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.

LIVE-STOCK SLAUGHTER LEVY AMENDMENT BILL 1982

Date Introduced: 19 August 1982

House: House of Representatives (Minister  
for Primary Industry)

Purpose: To increase the maximum rates of Slaughter  
levy that may be prescribed to finance  
the Australian Meat and Live-stock  
Corporation (AMLC) and the National  
Cattle Disease Eradication program.

The Committee has no comments 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.

NORTHERN TERRITORY (SELF-GOVERNMENT)  
AMENDMENT BILL 1982

Date Introduced: 19 August 1982

House: House of Representatives (Minister for  
Home Affairs)

Purpose: To confirm that minerals in land acquired under section 70 of the Northern Territory (Self-Government) Act 1978 are vested in the Commonwealth, to bring within the operation of the Act the effect achieved by the Northern Territory (Commonwealth Lands) Act 1980 and to make machinery amendments to improve the administration of the Act.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 11 - Confirmation of mineral rights

Under section 69 of the Northern Territory (Self-Government) Act 1978, the Commonwealth vested all of its interests in respect of land (sub-section 2) and minerals (sub-section 4) in the Territory. Under section 70 of the same Act, the Commonwealth was authorized to acquire, without compensation to the Territory, any interest in land vested in the Territory under section 69(2). Section 70 required notice of acquisition "of the interest for a public purpose" to be given within 12 months of the date of commencement, on 22 June 1978.

Clause 11 of this Bill has the effect of incorporating section 69(4) of the Principal Act within the Commonwealth interest as defined in section 70 of that Act. This clause has the effect that minerals in land acquired by the Commonwealth during the 12 month period of notification

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



2.

(between 22 June 1978 and 21 June 1979) are vested in the Commonwealth. The Committee adopts the practice of alerting Senators to all provisions which may be said to have a retrospective effect.

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

OMEGA NAVIGATION FACILITY BILL 1982

Date Introduced: 18 August 1982

House: House of Representatives (Minister for Transport and Construction)

Purpose: To ensure that the Australian Omega navigation facility at Darriman and the monitoring facility at Carrajung can be operated without interruption by the withdrawal of or interference with the supply of goods and services to the facility.

The Committee draws the attention of Senators to the following clauses of the Bill.

Clause 8 - Offences

Sub-clause 6: reasonable excuse.

This sub-clause imposes a significant obligation on a person. Sub-clause 5 states that a person directed to supply goods and services shall not, without reasonable excuse, fail to comply with such a direction. Clause 8 provides onerous penalties for persons failing to comply with a Minister's direction - \$1000 or imprisonment for 6 months, or both. Sub-clause 6 is important in that it limits the range of reasonable excuse by excluding from that the belief that a person was prohibited from complying with a Minister's direction by reason of a State or Territory law, by the terms of his employment or by an order given to him by a person having authority over him in his employment. Although this sub-clause may be thought to trespass unduly on personal rights and liberties, the Committee notes that the provision is consistent with the Government's stated intention and policy in introducing this legislation.

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

Clause 10 - Onus of proof

This clause provides that a certificate by the Minister or his delegate (under clause 12) is to be prima facie evidence "in any proceedings" of the facts stated in it, e.g. that a particular person was ordinarily supplying goods or services as directed by the Minister under clause 7. Clause 10 is a reversal of the normal evidentiary burden, and may be regarded as trespassing unduly on personal rights and liberties.

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

REMUNERATION AND ALLOWANCES: AMENDMENT BILL 1982

Date Introduced: 19 August 1982

House: House of Representatives (Minister  
for Administrative Services)

- Purpose:
- . to amend the Remuneration and Allowances Act 1973 to implement the recommendations in the Remuneration Tribunal's 1982 Review in relation to salaries and allowances of the Judiciary;
  - . to amend the Ministers of State Act 1952 to increase the limit on the annual sum appropriated from Consolidated Revenue in respect of Ministers' salaries; and
  - . to amend the Remuneration Tribunals Act 1973 to:
    - i) remove Northern Territory and Norfolk Island public office-holders, and the office of member of the National Aboriginal Conference, from the scope of the appropriation provisions of the Act;
    - ii) confer on the Norfolk Island Legislative Assembly the power of disallowance of the Remuneration Tribunal's determinations in respect of Norfolk Island public office-holders;
    - iii) bring the office of member of the National Aboriginal Conference within the provisions of sub-section 7(11) of the Act; and
    - iv) enable references to be made to the Tribunal of all directors and senior officers in the service of companies limited by guarantee which are subject to the control of the Commonwealth.

The Committee has no comments 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.

REPATRIATION (SPECIAL OVERSEAS SERVICE)  
AMENDMENT BILL 1982

Date Introduced: 18 August 1982

House: Senate (Senator Macklin)

Purpose: To amend the eligibility provisions  
for repatriation benefits for Vietnam  
veterans covered by the Repatriation  
(Special Overseas Service) Act 1962.

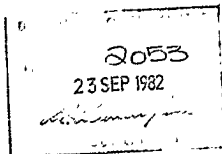
The Committee has no comments on this Bill.

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

SCRUTINY OF BILLS ALERT DIGEST



No. 11  
23 September 1982



NOTE: 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.

The Committee has considered the following Bills:

- Air Navigation Legislation (Validation and Interpretation)  
Bill 1982.
- \* Australian Broadcasting Corporation Bill 1982  
Australian Broadcasting Corporation (Transitional Provisions  
and Consequential Amendments) Bill 1982  
Cotton Levy Bill 1982  
Cotton Levy Research Bill
  - \* Customs Tariff Bill 1982  
Customs Tariff (Anti-Dumping) Amendment Bill 1982
  - \* Customs Tariff (Miscellaneous Amendments) Bill 1982  
Income Tax Assessment Amendment Bill (No. 5) 1982  
Income Tax (International Agreements) Amendment Bill 1982  
Sales Tax (Exemptions and Classifications) Amendment  
Bill 1982  
States (Tax Sharing and Health Grants) Amendment Bill  
(No. 2) 1982  
States (Works and Housing) Assistance Bill 1982
  - \* Statute Law (Miscellaneous Amendments) Act (No. 2)  
1982
  - \* Student Assistance (Loan Guarantee and Subsidy) Bill  
1982

\* Clauses reported to the Senate 23 March 1982

AIR NAVIGATION LEGISLATION (VALIDATION AND  
INTERPRETATION) BILL 1982

Date Introduced: 9 September 1982

House: House of Representatives (Minister for  
Communications)

Purpose: To validate back to 7 May 1982 the purported  
exercise of any power or function by the  
Secretary to the Department of Aviation under  
regulations or other instrument in force or  
subsisting under or for the purpose of the  
Air Navigation Act 1920 as at 1 March 1975.

The Committee has no comments 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.

## AUSTRALIAN BROADCASTING CORPORATION BILL 1982

Date Introduced: 9 September 1982

House: House of Representatives (Minister for Communications)

Purpose: To establish the Australian Broadcasting Corporation with a Charter setting out its functions and duties.

The Committee draws the attention of Senators to the following clauses of the Bill.

### Clause 42 - Determination of appeals

This clause is similar to clause 27 of the Public Service Acts Amendment Bill, commented on in Alert Digest No. 1 of 23 February 1982 and (as clause 28) in Scrutiny of Bills Report No.8 of 20 May 1982. As the Committee then stated, the intention of this type of provision is to establish the procedure to be followed by a Promotion Appeals Committee or Board when hearing an appeal. This type of provision is intended to set aside, to a large extent, the effect of the recent decision in Finch v. Goldstein which held that the rules of natural justice apply to an appeal and give an appellant rights that had not been recognized by Appeals Boards in the past. In particular, Ellicott. J. in the Federal Court held that an appellant was entitled to all information to which the Board was having regard on the appeal; to be present at the proceedings of the appeal including when the promotee was being interviewed by the Appeals Board; to cross-examine the promotee; and, in appropriate cases, to be represented by counsel. The effect of this type of provision is to take away these rights which the court held applicable to the proceedings of the Board. Under clause 42(2) (b), the Board is not bound by the rules of evidence and may inform itself in any manner as it thinks fit.

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



Under clause 42(2)(f), the Board is not required to furnish to a party any information received that relates to another party. Under clause 42(2)(g), the Board is under no obligation to allow a party, or representative of a party, to be present when it is receiving information from a person who is not a party. Under clause 42(4), the Board may refuse to hear any oral submissions from a party's chosen representative, and may exclude any other party or representative from being present when a party makes oral submission. There are no appeal procedures against such decisions by the Board.

The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that this clause might be regarded as trespassing unduly on personal rights and liberties, also under principle 1(a)(iii) it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

#### Clause 47 - Declarations to prevail over awards

This clause provides that a declaration under clause 46, to the effect that an employee's salary shall be withheld during such time as he fails to comply with a direction to work as instructed, shall override any other provision of the proposed Act, or any other law enacted before the date of commencement for this proposed Act, or any other award. It is thus possible that the provisions of an Act may be set aside by a body other than Parliament. The Committee recognizes the policy intention of this Bill, yet while it accepts the need for reasonable delegation of power to implement these no-work no-pay provisions, the Committee brings this "Henry VIII" clause to the attention of the Senate under principle 1(a)(v) in that it might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

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

#### Clause 65 - Appeals against disciplinary action for misconduct

This clause provides procedures to be followed by the Managing Director in disciplining an employee for misconduct, as defined in sub-clause (10). The Managing Director may institute any of a range of options outlined in 65(1)(a) and (b). However, under clause 65(5), the Managing Director is granted the discretion to pay, either in whole or in part, the salary of an employee who is under suspension as provided for in clause 65(3). The clause contains no criteria under which this discretionary power shall be exercised. The Committee brings this provision to the attention of the Senate under principle 1(a)(ii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent on insufficiently defined administrative powers.

Under clause 65(8), the Managing Director is required to pay any salary, otherwise due to an employee, upon removal of a suspension. However, under clause 65(9), the Managing Director is granted the discretion to decrease the amount owing by an amount equal to any earnings which, in the Managing Director's view, were received by the employee from other work during the suspension period. There are no appeal provisions against this exercise of discretionary power. The Committee brings this provision to the attention of the Senate under principle 1(a)(iii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

#### Clause 83 - Power to obtain information and documents

Clause 83 provides the Commissioner with the power to direct a person (an employee or otherwise) to furnish him with specified information or documents, and to appear before him to answer questions relevant to the investigation. Under 83(5), a person is not excused from complying with the Commissioner's

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

direction on the ground that in so doing he would tend to incriminate himself. The Committee brings this provision to the attention of the Senate under principle 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.

Clause 100 - Reversal of onus

This clause provides for the list of offences and penalties with respect to persons who refuse, without reasonable cause, to comply with the Commissioner's direction. The Committee notes the severity of the penalty - \$1000 or imprisonment for 3 months - and raises a question about the operation of the "without reasonable doubt" provision. To the extent that this clause reverses the onus as to who should establish "reasonable cause", the Committee brings it to the attention of the Senate under principle 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.

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

**AUSTRALIAN BROADCASTING CORPORATION (TRANSITIONAL PROVISIONS  
AND CONSEQUENTIAL AMENDMENTS) BILL 1982**

**Date Introduced:** 9 September 1982

**House:** House of Representatives (Minister for  
Communications)

**Purpose:** To make transitional and consequential  
changes necessary upon the establishment of  
the Australian Broadcasting Corporation.

The Committee has no comments 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.

**COTTON LEVY BILL 1982**

**Date Introduced:** 9 September 1982

**House:** House of Representatives (Minister for  
Primary Industry)

**Purpose:** To impose a levy on the production of cotton.

The Committee has no comments 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.

## COTTON LEVY RESEARCH BILL 1982

Date Introduced: 9 September 1982

House: House of Representatives (Minister for Primary Industry)

Purpose: To collect the levy imposed by the Cotton Levy Bill 1982 and to establish a Cotton Research Trust Account.

Although the Committee has no comments on specific clauses of this Bill, it draws the attention of Senators to the fact that this Bill includes the provisions that the Standing Committee on the Scrutiny of Bills has pressed for inclusion in this type of primary industry legislation. For instance, clause 26 of this Bill provides for persons authorized by the Minister to enter premises to examine leviable cotton. In the event of the occupier's refusal of consent, the authorized person may apply for a warrant from a Justice of the Peace for entry on a specified day. As a further instance, clause 29 provides for appeal to the Administrative Appeals Tribunal to review Ministerial discretions which, under clause 7(3), may order the remittance of the whole or part of any penalty payments by processors of the levy. The Committee has repeatedly called the attention of Senators to provisions which may be regarded as making rights, liberties and/or obligations unduly dependent upon either insufficiently defined administrative powers or non-reviewable administrative decisions.

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 (ANTI-DUMPING) AMENDMENT BILL 1982**

**Date Introduced:** 26 August 1982

**House:** House of Representatives (Minister for  
Industry and Commerce)

**Purpose:** To amend the Customs Tariff (Anti-Dumping)  
Act 1975 consequential upon the introduction  
of the Customs Tariff Bill 1982.

The Committee has no comments 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.

## CUSTOMS TARIFF BILL 1982

Date Introduced: 26 August 1982

House: House of Representatives (Minister for Industry and Commerce)

Purpose: To replace the Customs Tariff Act 1966.

The Committee draws the attention of Senators to the following clause of the Bill.

### Clause 25 - Ministerial discretion

This clause empowers the Minister to direct that goods, which he determines to be substitutes for or imitations of other goods already specified in the Schedule, shall be dutiable at the rate of the Scheduled goods. The Minister is to exercise his discretion by notice published in the Gazette. The effect of this provision is to allow the Minister to amend the Schedule. The Committee draws this "Henry VIII" provision to the attention of the Senate under principle 1(a)(v) in that it might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

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 (MISCELLANEOUS AMENDMENTS) BILL 1982

Date Introduced: 26 August 1982

House: House of Representatives (Minister for Industry and Commerce)

Purpose: To amend the Administrative Decisions (Judicial Review) Act 1977, Consular Privileges and Immunities Act 1972, Customs Act 1901 and Sales Tax (Exemptions and Classifications) Act 1935 consequential upon the introduction of the Customs Tariff Bill 1982.

The Committee draws the attention of Senators to the following clauses of the Bill.

Clause 9 - Ministerial determinations

This clause repeals sections 151 and 151A of the Principal Act and substitutes the proposed new sections. The clause vests many powers in the Minister to determine whether goods are to be deemed produce or manufacture of a country. The Minister is to exercise these powers by notice in the Gazette. Among those powers are the power to determine:

- . Whether "manufactured raw materials" were involved in the manufacture of goods from the countries specified in 151(2);
- . whether goods shall be treated as the manufacture of New Zealand on account of their having an "appropriate" portion of New Zealand, or of New Zealand and Australian, labour and/or materials in its factory cost under sub-clause 3;
- . whether goods shall be treated as the manufacture of Papua New Guinea on account of their having an "appropriate" portion of Papua New Guinea, or Papua New Guinea and Australian, labour and/or materials in its factory costs under sub-clause 4;

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

- . whether goods shall be treated as the manufacture of a (Pacific) Forum Island Country on account of their having an "appropriate" portion of the labour and/or materials of one or more of the Forum Island Countries under sub-clause 5.

The Minister is also vested with power to:

- . specify the manner in which factory costs of goods is to be determined, as well as the manner in which the value of labour and/or materials is to be determined, under sub-clause 10;
- . determine, in relation to sub-clause 7, that the goods specified shall be goods of a class or kind not commercially manufactured in Australia, under sub-clause 2;
- . determine, in relation to sub-clause 7, that the reference to one-quarter shall be read as a reference to one-half, under sub-clause 13.

The Committee notes that the absence in the Bill of criteria under which the Minister shall exercise his discretionary power. While it does not reject the need for legislation to provide for flexible administration, the Committee brings these provisions to the attention of the Senate under principle 1(a)(ii) in that they might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

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

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 5) 1982

Date Introduced: 15 September 1982

House: Senate (Senator Macklin)

Purpose: To allow expenses incurred by candidates in local government elections, including those in the Australian Capital Territory and in Norfolk Island, to be tax deductible.

The Committee has no comments 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.

**INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT BILL 1982**

**Date Introduced:** 16 September 1982

**House:** House of Representatives (Treasurer)

**Purpose:** To provide legislative authority for the entry into force of comprehensive double taxation agreements with the Republic of Korea and the Kingdom of Norway.

The Committee has no comments 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.

**SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)**

**AMENDMENT BILL (NO. 2) 1982**

**Date Introduced:** 15 September 1982

**House:** Senate (Senator Siddons)

**Purpose:** To exempt all forms of Australian produced computer software from sales tax, for a period of 5 years from 1 July 1983.

The Committee has no comments 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.

STATES (TAX SHARING AND HEALTH GRANTS)

AMENDMENT BILL (NO. 2) 1982

Date Introduced: 26 August 1982

House: House of Representatives (Treasurer)

Purpose: To amend the States (Tax Sharing and Health Grants) Act 1982 to provide for:

- the implementation of the State tax sharing relativities as adopted at the June 1982 Premiers' Conference for the purposes of calculating States' tax sharing grants for the years 1982-83, 1983-84 and 1984-85;
- the phasing in of those relativities over the three years ending 1984-85 at the rate of  $33\frac{1}{3}$  per cent each year; and
- a Commonwealth guarantee that the total tax sharing grants payable to each State will not increase by less than two per cent in real terms in 1982-83 and by one per cent in real terms in both 1983-84 and 1984-85.

The Committee has no comments 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.

**STATES (WORKS AND HOUSING) ASSISTANCE BILL 1982**

**Date Introduced:** 16 September 1982

**House:** House of Representatives (Treasurer)

**Purpose:** To obtain the approval of Parliament for the payment in 1982-83 of:

- interest free capital grants to the States of \$457,667,000 as part of the 1982-83 States' Loan Council programs; and
- amounts States may nominate from their 1982-83 Loan Council programs (and the Northern Territory from its equivalent general purpose capital advances) as being for the purposes of welfare housing and payable under the concessional loan terms and conditions of the Commonwealth-State Housing Agreement;

in accordance with arrangements approved at the June 1982 Loan Council meeting.

The Committee has no comments 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.

STATUTE LAW (MISCELLANEOUS AMENDMENTS)

ACT (NO. 2) 1982

Date Introduced: 26 August 1982

House: House of Representatives (Minister  
representing the Attorney-General)

Purpose: To correct printing and drafting errors in  
a number of Acts;

- . amend references in Acts to Ministers, Departments and officeholders both to correct references that are incorrect as a consequence of the changes in administrative arrangements made on 7 May 1982, and to express such references, whenever possible, in a general way;
- . amend the Banking Act 1959, to ensure that specified State and Territory Acts to facilitate certain bank mergers will have full operation and not be subject to constitutional challenge;
- . amend the Defence Service Home Act 1918 to extend the scope of eligibility for home assistance;
- . amend the Industrial Research and Development Incentives Act 1976 to clarify eligibility for commencement grants under the Act, and
- . make a number of amendments of a non-controversial nature.

The Committee draws the attention of the Senators to the following clauses:

Clause 32 - Bank mergers

This clause inserts a new section 38A into the Banking Act 1959 to ensure the operations of certain State and Territory laws concerning particular bank mergers, such as those referred to in the proposed Third Schedule introduced by Clause 33.

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



Proposed section 38A(3) will enable the Treasurer, at his discretion, to declare that any future law of a State or Territory relating to bank mergers will be a valid law to which this section will apply. The effect of this "Henry VIII" clause is that the Treasurer will be able, by adding to the Third Schedule, to amend the Act. The Committee brings this provision to the attention of the Senate under principle 1(a)(v) in that this clause may be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

Clause 170 - Approved survey authority

This Clause inserts a new section 187B in the Navigation Act 1912. This proposed section vests a discretion in the Minister to approve a corporation or association for the survey of shipping. The Committee brings this provision to the attention of the Senate under principle 1(a)(iii) in that this clause may be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

STUDENT ASSISTANCE (LOANS GUARANTEE AND SUBSIDY)

BILL 1982

Date Introduced: 9 September 1982

House: Senate (Minister for Education)

Purpose: To provide for a subsidy on the interest charged by banks on approved loans to students and for the Commonwealth to give guarantees to banks that it will repay the outstanding debts on approved loans within prescribed limits.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 3 - Appeal provisions

Clause 3(2) defines the scope of "eligible student" for the purposes of the Bill. Included in the list of eligibility criteria are two Ministerial determinations against which there is no appeal procedure. Under 3(2)(d) and (e) the Minister must satisfy himself that a student is in fact enrolled as a full-time student. The Committee accepts that the meaning of full-time student is not always easy to define, and brings these provisions of this clause to the attention of Senators in that they might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

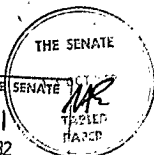


Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

SCRUTINY OF BILLS ALERT DIGEST

No. 12  
14 October 1982

DEPARTMENT OF THE SENATE  
PAPER No. 2221  
DATE PRESENTED 14 OCT 1982  
TABLED  
MARKED



NOTE: 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.

The Committee has considered the following Bills:

- Commonwealth Electoral Amendment Bill 1982
- Drought Assistance (Primary Producers) Bill 1982
- \* Export Market Development Grants Amendment Bill 1982
- Income Tax Assessment (Additional Tax) Bill 1982
- Ombudsman Amendment Bill 1982
- Petroleum Retail Marketing Sites Amendment Bill 1982
- \* Repatriation Legislation Amendment Bill 1982
- \* Social Security Legislation Amendment Bill 1982
- States Grants (Schools Assistance) Bill 1982
- States Grants (Tertiary Education Assistance) Amendment Bill 1982
- Taxation (Unpaid Company Tax) Assessment Bill 1982
- Taxation (Unpaid Company Tax) Bill 1982
- Taxation (Unpaid Company Tax) (Consequential Amendments) Bill 1982

\* Clauses reported to the Senate 14 October 1982

COMMONWEALTH ELECTORAL AMENDMENT BILL 1982

Date Introduced: 22 September 1982

House: Senate (Senator Siddons)

Purpose: To provide for the political affiliation of candidates at Parliamentary elections to be printed on ballot-papers, and to provide for the rotation of names on ballot-papers for House of Representatives elections.

The Committee has no comments 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.

## DROUGHT ASSISTANCE (PRIMARY PRODUCERS) BILL 1982

Date Introduced: 16 September 1982

House: House of Representatives (Minister for Primary Industry)

Purpose: To provide drought assistance through -

- a subsidy on interest payments, and
- a subsidy on fodder bought by a farmer to feed his own drought affected sheep and cattle.

The Committee draws the attention of Senators to the following clauses of the Bill.

### Clause 3 - Eligible primary producers

This clause appropriates a sum for the payments to "eligible primary producers". Clause 3(2) states that the criteria for eligibility will be determined by the Minister by notice in the Gazette.

The Committee brings this provision for major Ministerial determination to the attention of Senators in that it might be regarded as inappropriately delegating legislative power.

### Clause 9 - Conditions

Clause 9(1) states that payments to States for the purpose of this Act shall be subject to such conditions as the Minister may make in the arrangements with a State Minister as provided for under clause 5. Under clause 9(2)(a), the Minister is empowered to request a State Minister to report on the carrying out of the arrangement, and under clause 9(2)(b), the Minister may compel repayment of whole or part of the amount if he is satisfied that a State has failed to fulfil a condition of the arrangement.

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

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The Committee acknowledges that administrative arrangements for such a relief scheme need to be flexible, yet it brings this clause to the attention of Senators in that it might be regarded as inappropriately delegating legislative power.

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

## EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 1982

Date Introduced: 26 August 1982

House: House of Representatives (Minister for Trade and Resources)

Purpose: To extend the operation of the Export Development Grants Scheme until 30 June 1988, to increase the grant ceiling, to introduce a promotional visit allowance and to extend benefits to certain types of export promotional expenditures incurred by the Australian tourist and construction industries.

The Committee draws the attention of Senators to the following clauses of the Bill.

### Clause 2 - Commencement date

The Principal Act provides for grants to be made under the Export Markets Development Grants scheme - a grant being 70 per cent of a claimant's annual eligible expenditure, as specified in section 4 of the Act.

Clause 2(2) of the Bill has the effect of backdating a number of amendments to 1 July 1982, including the introduction of recognised tourist promotion among the activities incurring eligible expenditure under section 4 of the Principal Act.

As indicated in its Ninth Report - tabled in the Senate on 20 May 1982 - the Committee is currently giving attention to retrospective legislation. The Committee adopts the practice of alerting Senators to all provisions which may be said to have a retrospective effect.

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

Clause 3 Recognised tourist Promotion

Clause 3(1)(c) amends section 3 of the Principal Act by replacing the old definition of "government sponsored promotion" with the new definition of "recognised tourist promotion". The recognition referred to is recognition of approval of activities that are declared by the Secretaries to the Department of Trade and Resources and to the Department of Industry and Commerce to be within the tourist activities specified under section 4(f) and 4(g) of the Principal Act. Section 40A of the Principal Act provides for an appeal to the Administrative Appeals Tribunal against decisions of the Export Market Development Grants Board in connection with a claim for a grant. However, this clause of the Bill contains no appeal procedure against an adverse decision by a Secretary. Clause 3(1)(c) may be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.



INCOME TAX ASSESSMENT (ADDITIONAL TAX) BILL 1982

Date Introduced: 23 September 1982

House: House of Representatives (Treasurer)

Purpose: To amend the income tax law:-

- . to increase the rate of additional tax payable for late payment of income tax and for underestimating instalments of company tax;
- . to re-express the power given to the Commissioner for Taxation to remit late payment penalty, so that remission will only be permitted in special circumstances; and
- . to preserve existing arrangements whereby the Commissioner has permitted an amount of disputed tax to remain unpaid, free of late payment penalty, pending resolution of an objection or appeal.

The Committee has no comments 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.

## OMBUDSMAN AMENDMENT BILL 1982

Date Introduced: 23 September 1982

House: House of Representatives (Minister Assisting  
The Prime Minister)

Purpose: To amend the Ombudsman Act 1976:-

- . to create and vest in the Commonwealth Ombudsman a statutory office of Defence Force Ombudsman and to establish an office of Deputy Ombudsman (Defence Force):
- . to make various other amendments giving the Ombudsman greater discretions and flexibility by modifying certain formal procedural requirements in the Act.

The Committee has no comments 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.

PETROLEUM RETAIL MARKETING SITES AMENDMENT BILL 1982

Date Introduced: 23 September 1982

House: Senate (Senator Chipp)

Purpose: To exclude petroleum companies from retailing  
petroleum through direct sales sites as from  
1 July 1983.

The Committee has no comments 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.

REPATRIATION LEGISLATION AMENDMENT BILL 1982

Date Introduced: 23 September 1982

House: House of Representatives (Minister for  
Science and Technology)

Purpose: To amend Repatriation legislation to:-

- . extend liability provision "arisen out of or attributable to" to members of the Forces of World War I, Korea/Malaya, Far East Strategic Reseve and Special Overseas Service;
- . extend eligibility for orphan's pension to orphans whose deceased veteran parent served in a theatre of war;
- . disregard disability pension in the income test for the purpose of determining eligibility for service pension and fringe benefits;
- . increase the amount of supplementary assistance;
- . extend eligibility for service pension to former Commonwealth and allied mariners;
- . extend benefits to representatives of Australia who served with peace-keeping, monitoring and observing forces before 2 November 1981;

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- increase the amount of income which may be earned before eligibility to receive fringe benefits is affected;
- increase rates of attendant's allowance;
- increase rates of orphan's pension;
- increase additions to pensions payable to amputees and those veterans suffering loss of vision;
- restore disability pension at the 100% General Rate for veterans who received or were eligible to receive a disability pension for pulmonary tuberculosis;
- introduce the requirement that members of determining authorities in the Repatriation determining system disclose interests that may affect their decisions;
- extend eligibility to certain civilians as members of the Forces for Repatriation benefits; and
- make amendments consequential upon changes in the Social Security Act 1947.

The Committee draws the attention of Senators to the following clause:

Clause 31 - Interpretation of Member of the Forces

This clause amends one of the interpretation provisions of the Principal Act. The intent of the clause is, in part, to expand the scope of those persons who are regarded as "members of the Forces" during the Second World War and therefore eligible for benefits conferred by the Act. Included in 31(c) is a new definition of "member of the Forces" to cover a person who was employed on a "special mission" outside Australia. The clause further states that "special mission" means a mission that "in the opinion of the Commission or a Board" was of "special

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assistance" to the Commonwealth in the prosecution of the war. Although the Principal Act provides for a review mechanism by a Repatriation Review Tribunal under section 107VB and 107VC, it is not clear that decisions under the proposed clause 31 can be reviewed by the Tribunal. While a decision by the Commissioner or Board under proposed clause 31 can exclude a person from the category of eligible members, only a "member of the Forces" can apply to the Tribunal for review of a decision by the Commissioner refusing a pension or other benefit.

There appears to be no review procedure in the Act for the prior decisions made under proposed clause 31 as to whether a person is a "member". A person who was refused a benefit on the basis that he did not qualify as a "member" would still have a general right of appeal on matters of law under the Administrative Decisions (Judicial Review) Act 1977. However, the Committee is more interested in the apparent lack of review procedures within the Act on the merits, as distinct from legality, of a Commissioner or Board decision as to whether a person is a member.

The Committee draws the attention of Senators to this clause in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

SOCIAL SECURITY LEGISLATION AMENDMENT BILL 1982

Date Introduced: 23 September 1982

House: House of Representatives (Minister  
representing the Minister for Social  
Security)

Purpose: To amend Acts administered by the Minister  
for Social Security:-

- Aged or Disabled Persons Homes Act 1954 -  
to increase the rate of personal care  
subsidy payable to an approved  
organisation, in respect of a person  
residing in accommodation provided by  
that organisation.
- Delivered Meals Subsidy Act 1970 - to  
increase the rates of subsidies payable  
to an approved organisation, in respect  
of delivered meals provided by that  
organisation for aged or invalid persons.
- Social Security Act 1947 -
  - i) to exclude a person receiving a  
supportive parent's benefit from  
being taken into account in  
determining the eligibility of  
another person for a pension,  
benefit or allowance under the  
Act;

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

- ii) to exclude from the definition of "income" rental subsidy paid by a government or housing authority;
- iii) to pay an incentive allowance to invalid pensioners who undertake training at an activity therapy centre or an adult training centre;
- iv) to apply to same provisions in respect of a funeral benefit to persons receiving an incentive allowance as apply to persons receiving a sheltered employment allowance;
- v) to increase the rate of income a person may receive before a pension, benefit or allowance is affected;
- vi) to increase the rate of supplementary assistance payable to pensioner or sickness beneficiary paying rent, and incentive allowance to a person receiving sheltered employment allowance;
- vii) to qualify a widow, who is outside Australia and who was receiving a wife's pension or a service pension, for a widow's pension without having to return to Australia;
- viii) to exclude maintenance payments in the income of a supporting parent's beneficiary;

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



- ix) to increase the rate of income a person may receive before ceasing to be eligible for a funeral benefit;
  - x) to introduce a family income supplement;
  - xi) to increase the rate of handicapped child's allowance;
  - xii) to increase the rate of unemployment and sickness benefit;
  - xiii) to make uniform the income test applied to persons receiving unemployment or sickness benefit;
  - xiv) to introduce a mobility allowance, and a rehabilitation allowance; and
  - xv) to make consequential amendments to the Compensation (Commonwealth Government Employees) Act 1971, and the Defence (Re-establishment Act 1965).
- Social Services Amendment Act 1981 - to correct a savings provision which operates in an unintended manner;
  - Social Services Amendment Act 1979 - to correct an application provision which operates in an unintended manner.

The Committee draws the attention of Senators to the following clause:

Clause 62 - Family income supplement

This clause proposes the introduction of a new allowance, called the "family income supplement", by inserting a new Part V in the Principal Act. The new Part V provides for a maximum allowance of \$10 per week per child, subject to an income test.

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

This clause contains two "Henry VIII" provisions which empower the Minister to vary the application of the Act by notice in the Gazette. Under proposed sections 88(4) and 85(4), the Minister is empowered to take account of the range of Commonwealth payments to or in respect of children, and to declare that specified Commonwealth payments will not prevent a person being eligible for an allowance.

The Committee recognises that the primary intention of these provisions is to advantage persons, and not to jeopardize a person's right to pensions, benefits or allowances. However, it is the practice of the Committee to alert Senators to all such "Henry VIII" provisions in that they might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

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

**STATES GRANTS (SCHOOLS ASSISTANCE) BILL 1982**

**Date Introduced:** 23 September 1982

**House:** House of Representatives (Minister for Aviation)

**Purpose:** To appropriate grants for financial assistance to the States and the Northern Territory for schools assistance.

The Committee has no comments 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.

**STATES GRANTS (TERTIARY EDUCATION ASSISTANCE)  
AMENDMENT BILL 1982**

**Date Introduced:** 23 September 1982

**House:** House of Representatives (Minister for  
Aviation)

**Purpose:** To appropriate grants for financial  
assistance to the States and the Northern  
Territory for tertiary education.

The Committee has no comments 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.

## TAXATION (UNPAID COMPANY TAX) ASSESSMENT BILL 1982

Date Introduced: 23 September 1982

House: House of Representatives (Treasurer)

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- Purpose:
- . to define the parameters of liability to recoupment tax of vendor-shareholders and other former owner of shares in companies that were stripped of pre-taxed profits;
  - . to provide the mechanism for determining which former owners are to be liable for recoupment of tax and the measure of that liability;
  - . to provide a right of election so that shareholders in a company that has been stripped of its pre-tax profits will be able to be assessed on sufficient dividend income to eliminate the liability of the company to undistributed profits tax;
  - . to require payment of additional tax for late payment of recoupment tax;
  - . to require the Commissioner to re-issue notices of assessment on a stripped company to a former owner and allow that former owner to exercise those rights of objection and appeal against the assessment that the company could have exercised; and

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to render void arrangements entered into after 25 July 1982 which have the dominant purpose and the effect of directly or indirectly defecting, evading or avoiding a person's liability to pay recoupment tax.

The Committee draws the attention of Senators to the following clause:

Clause 5 - Primary taxable amounts

Clause 5(1)(a) applies the recoupment provisions of the Bill to schemes entered into from 1 January 1972. The retrospective provision was explained by the Minister in his Second Reading Speech as follows:

"Our normal and general reluctance to introduce legislation having any retrospective element has, on this occasion, been tempered by the competing consideration of overall perceptions as to the equity and fairness of our taxation system and the distribution of the tax burden."

The Committee acknowledges that the policy of this taxation bill was designed, in the Minister's words, to recoup "tax which was clearly the subject of legal evasion". The Committee, however, has adopted the practice of alerting Senators to retrospective provisions which may be regarded as trespassing unduly on personal rights and liberties.

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

TAXATION (UNPAID COMPANY TAX) BILL 1982

Date Introduced: 23 September 1982

House: House of Representatives (Treasurer)

Purpose: to impose a tax in respect of a certain  
unpaid company tax.

The Committee has no comments 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.

TAXATION (UNPAID COMPANY TAX)  
(CONSEQUENTIAL AMENDMENTS) BILL 1982

Date Introduced: 23 September 1982

House: House of Representatives (Treasurer)

Purpose: To amend the Administrative Decisions (Judicial Review) Act 1977 to exclude from review decisions relating to the assessment of recoupment tax and to amend several other taxation Acts to provide that a liquidator or receiver of a company that has a liability to recoupment tax is required in setting aside assets of the company to pay tax to take into account the liability to recoupment tax.

The Committee has no comments 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.



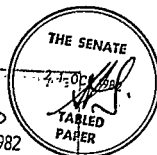
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SCRUTINY OF BILLS ALERT-DIGEST

No. 13

21 OCTOBER 1982

21 OCT 1982



NOTE: 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.

The Committee has considered the following Bills:

- Administrative Decisions (Judicial Review) Amendment Bill 1982
- Australian Bicentennial Road Development Trust Fund Bill 1982
- Australian Capital Territory Stamp Duty Amendment Bill 1982
- Australian Capital Territory Taxation (Administration) Amendment Bill 1982
- Australian Capital Territory Tax (Insurance Business) Amendment Bill 1982
- Australian Capital Territory Tax (Vehicle Registration) Amendment Bill 1982
- Bank Account Debits Tax Bill 1982
- Bank Account Debits Tax Administration Bill 1982
- Broadcasting and Television Amendment Bill 1982
- Broadcasting Stations Licence Fees Amendment Bill 1982
- Income Tax Assessment Amendment Bill (No. 5) 1982
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Bill 1982
- Income Tax (Individuals) Bill 1982
- Income Tax (Mining Withholding Tax) Amendment Bill 1982
- Income Tax (Rates) Bill 1982
- Income Tax (Rates) Amendment Bill 1982
- Loan Bill (No. 2) 1982
- Pay-Roll Tax (Territories) Assessment Amendment Bill 1982
- Television Stations Licence Fees Amendment Bill 1982

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) AMENDMENT BILL 1982

• Date Introduced: 14 October 1982

House: House of Representatives (The Treasurer)

Purpose: To make amendments consequential upon the enactment on the Bank Accounts Debits Tax Administration Act 1982 . .

The Committee has no comments 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.

**AUSTRALIAN BICENTENNIAL ROAD DEVELOPMENT TRUST FUND BILL 1982**

**Date Introduced:** 14 October 1982

**House:** House of Representatives (Minister for Transport and Construction)

**Purpose:** To establish an Australian Bicentennial Road Development Trust Fund to receive moneys raised by a special surcharge on motor spirit and diesel excise for the purpose of funding major road construction and urban public transport projects to significantly upgrade Australian roads by 1988.

The Committee has no comments 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.

AUSTRALIAN CAPITAL TERRITORY STAMP DUTY AMENDMENT BILL 1982

• Date Introduced: 14 October 1982

House: House of Representatives (Minister for the  
Capital Territory)

Purpose: To exempt from stamp duty certain conveyances  
of freehold or leasehold land to or from a  
trustee in circumstances where the beneficial  
interests in the property remain unchanged.

The Committee has no comments 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.

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AUSTRALIAN CAPITAL TERRITORY TAXATION (ADMINISTRATION)  
AMENDMENT BILL 1982

Date Introduced: 14 October 1982

House: House of Representatives (Minister for the  
Capital Territory)

Purpose: To -

- . introduce refund provisions where stamp duty is paid on an agreement when agreement is rescinded or annulled so that the transfer does not take place;
- . exclude from duty on certain transfers, the value of the beneficial interest held by the transferee in the marketable securities prior to the partition or division of those securities.

The Committee has no comments 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.

AUSTRALIAN CAPITAL TERRITORY TAX (INSURANCE BUSINESS)  
AMENDMENT BILL 1982

Date Introduced: 14 October 1982

House: House of Representatives (Minister for the  
Capital Territory)

Purpose: To ensure that premiums on insurance in  
respect of an employer's liability at  
common law for an injury to or death of an  
employee are exempt from tax.

The Committee has no comments 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.

AUSTRALIAN CAPITAL TERRITORY TAX (VEHICLE REGISTRATION)  
AMENDMENT BILL 1982

Date Introduced: 14 October 1982

House: House of Representatives (The Minister  
for the Capital Territory)

Purpose: To -

- . exempt from registration tax a transfer, in the course of winding up the affairs of a deceased person, of a motor vehicle formerly owned by that person;
- . exempt a transfer of registration of a motor vehicle to a hire purchase company when the transfer takes place as a consequence of the repossession or voluntary return of the vehicle to the company by the hirer;
- . extend the exemption applying to a registration in the name of a person carrying on a business in respect of which he or she is a licensed dealer under the A.C.T. Sale of Motor Vehicle Ordinance where the vehicle is held by that person as trading stock for resale in the course of the business.

The Committee draws the attention of Senators to the following clause of the Bill:

Clause 2 - Retrospective operation

Clause 2(2) has the effect of backdating the operation of the proposed amendments in clause 4 to 1 October 1981. This clause confers a benefit and it is doubtful that it may be regarded as trespassing unduly on personal rights and liberties. However, the Committee adopts the practice of bringing all retrospective provisions to the attention of Senators.

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

**BANK ACCOUNT DEBITS TAX BILL 1982**

**Date Introduced:** 14 October 1982

**House:** House of Representatives (The Treasurer)

**Purpose:** To impose tax on debits to cheque accounts with banks and set out the amount of tax payable by reference to the amount of a particular debit.

The Committee has no comments 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.



## BANK ACCOUNT DEBITS TAX ADMINISTRATION BILL 1982

Date Introduced: 14 October 1982

House: House of Representatives (The Treasurer)

Purpose: To impose a tax from 1 January 1983 on debits to cheque accounts kept with banks in Australia.

The Committee draws the attention of Senators to the following clauses of the Bill -

### Clause 23 - References for review and appeals

Although the Bill makes the banks primarily responsible for payment of tax imposed on debits made to a cheque account, the incidence of tax will effectively fall on bank customers. Clause 10 gives banks the statutory right to recover from their customers the tax payable. Under clause 12, banks are required to furnish the Commissioner of Taxation returns relating to all taxable debits. Clauses 22 and 23 provide a review mechanism for persons objecting either to a notice of assessment or prescribed decision, including exemptions, as itemized in clause 20. Clause 23(2) makes a request for reference or review conditional on the payment of a \$2 fee, as is consistent with the Income Tax Assessment Act 1936. The Committee questions the purpose of this financial obligation which, although it is minor, has the effect of making a right to review conditional on the payment of a fee. The Committee draws this provision to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

Clause 23(4) states that in every reference or appeal the burden of proof lies on the objector. This provision is also consistent with the Income Tax Assessment Act 1936. The Committee is aware

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

that the Senate Standing Committee on Constitutional and Legal Affairs is investigating and will soon report on onus of proof provisions. The Committee draws the attention of Senators to this reversal of the onus of proof provision in that it might be regarded as trespassing unduly on personal rights and liberties.

#### Clause 33 - Evidence

This clause contains provisions which alter the burden of proof which objectors must bear in reviews and appeals. Clause 33(a) states that copies of notice of prescribed decisions or assessments are "conclusive evidence" of the due making of such notices. Clause 33(b) states that copies of or extracts from such notices are "prima facie evidence" of the matters set out in them. The Committee notes that the Senate Standing Committee on Constitutional and Legal Affairs is investigating and soon will report on onus of proof provisions. The Committee draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

#### Clause 37 - Evidence

This clause contains provisions which alter the burden of proof which objectors must bear in reviews and appeals. Comments made in relation to clause 33 can also be applicable to this clause.

#### Clause 38 - Offences

This clause provides the penalties relevant to the Commissioner's power to compel a person to furnish him with information, to answer questions, and produce any requested documents under clause 59. A person refusing to comply may be penalised up to a maximum of \$2000. A person furnishing false or misleading information may be penalised up to a maximum of \$5000, plus an amount up to double that which was due. In relation to this clause, the Committee's Legal Adviser states: "These clauses do not expressly negate the right to refuse to answer a question that is incriminating. It may well be that a court would

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recognise this as a defence to a prosecution for failure to answer a question or to furnish information". To that extent, this clause is an improvement on similar provisions in a number of recent Bills administered by the "Industry and Commerce" portfolio - although the Committee would like to see the obscurity surrounding the right to refuse to answer clarified. The Committee draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

#### Clause 52 - Averment

This clause provides that, in a prosecution, an averment of the prosecutor contained in the information is "prima facie evidence" of the matter averred. The Committee notes that the inquiry by the Senate Standing Committee on Constitutional and Legal Affairs into onus of proof provisions encompasses averment provisions. The Committee draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

#### Clause 58 - Authorized entry

This clause provides for the entry of premises without warrant by an authorized officer "at all reasonable times". Clause 58(2) requires an authorized officer to produce, if requested by the occupier, a document certifying that he is an officer authorized to exercise powers under this clause. The Committee notes that, to this extent, the clause is an improvement on similar provisions in related legislation. However, the Committee draws this provision to Senators in that it might be regarded as unduly trespassing on personal rights and liberties.

#### Clause 59 - Power to obtain information

This Clause empowers the Commissioner to obtain information and documents and to question a person. Comments made in relation to clause 38 also apply to this clause.

BROADCASTING AND TELEVISION AMENDMENT BILL 1982

Date Introduced: 14 October 1982

House: House of Representatives (Minister for Communications)

Purpose: To provide for an expansion of commercial radio and television services in centres other than the five mainland state capital cities.

The Committee draws the attention of Senators to the following clause of the Bill -

Clause 8 - Applications for supplementary licences

This clause substitutes section 82A of the Principal Act. The clause provides for applications for a grant of a supplementary licence for a broadcasting or television service. Applications are lodged with the Minister, who is empowered with the discretion, under proposed section 82A(4), either to refer the application to the Australian Broadcasting Tribunal for its consideration, or to dismiss the application "for a reason relating to technical matters or to the planning or development" of services. The clause also vests the Minister with an unappealable discretion. The Committee draws this provision to the attention of Senators in that it might be thought to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

BROADCASTING STATIONS LICENCE FEES AMENDMENT BILL 1982

Date Introduced: 14 October 1982

House: House of Representatives (Minister for Communications)

Purpose: To make the terms used to refer to supplementary broadcasting licences and stations consistent with the terms used in the Broadcasting and Television Amendment Bill 1982.

The Committee has no comments 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.

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 5) 1982

Date Introduced: 14 October 1982

House: House of Representatives (The Treasurer)

Purpose: To -

- . allow a rebate of tax on up to \$1000 of certain dividends;
- . increase the sole parent rebate and the rebate for spouse, daughter-housekeeper or housekeeper where there is a dependent child or student;
- . introduce a rebate of tax for those in receipt of taxable Australian social security and repatriation pensions;
- . introduce a rebate of tax for home buyers for the top slice of their interest payments on home loans;
- . exempt from tax the rehabilitation allowance;
- . authorize income tax deductions for gifts made to certain public funds and organizations; and
- . provide for the calculation of provisional tax for 1982-83.

The Committee draws the attention of Senators to the following clause of the Bill.

Clause 7 - Retrospective operation

Clause 7(2) has the effect of backdating the operation of the retention allowance permitted to a private company in respect of its distributable income. Although clause 7(1) reduces the amount of taxation otherwise payable and therefore confers a benefit, the Committee adopts the practice of bringing all retrospective provisions to the attention of Senators.

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

INCOME TAX (COMPANIES, CORPORATE UNIT TRUSTS AND SUPERANNUATION  
FUNDS) BILL 1982

Date Introduced: 14 October 1982

House: House of Representatives (The Treasurer)

Purpose: To impose tax for 1982-83 on the 1981-1982 taxable income of companies, unit trusts treated as companies for tax purposes, and of superannuation funds.

The Committee has no comments 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.

INCOME TAX (INDIVIDUALS) BILL 1982

• Date Introduced: 14 October 1982

House: House of Representatives (The Treasurer)

Purpose: To impose personal income tax rates for the current financial year.

The Committee has no comments 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.



INCOME TAX (MINING WITHHOLDING TAX) AMENDMENT BILL 1982

• Date Introduced: 14 October 1982

House: House of Representatives (The Treasurer)

Purpose: To reduce the rate of tax on mining payments  
made or applied on or after 1 November 1982

The Committee has no comments 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.

**INCOME TAX (RATES) BILL 1982**

**Date Introduced:** 14 October 1982

**House:** House of Representatives (The Treasurer)

**Purpose:** To declare the rates of tax payable by individuals and trustees for the 1982-83 financial year and for the 1983-84 and subsequent financial years.

The Committee has no comments 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.

INCOME TAX (RATES) AMENDMENT BILL 1982

Date Introduced: 14 October 1982

House: House of Representatives (The Treasurer)

Purpose: To amend the Income Tax (Rates) Act 1976  
so that it has no application beyond the  
1981-82 year.

The Committee has no comments 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.

LOAN BILL (NO. 2) 1982

• Date Introduced: 14 October 1982

House: House of Representatives (The Treasurer)

Purpose: To authorize the borrowing and expending  
of moneys for defence purposes.

The Committee has no comments 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.

**PAY-ROLL TAX (TERRITORIES) ASSESSMENT AMENDMENT BILL 1982**

**Date Introduced:** 14 October 1982

**House:** House of Representatives (Minister for the  
Capital Territory)

**Purpose:** To raise the level of the general exemption  
from pay-roll tax applicable to the Australian  
Capital Territory.

The Committee has no comments 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.

TELEVISION STATIONS LICENCE FEES AMENDMENT BILL 1982

• Date Introduced: 14 October 1982

House: House of Representatives (Minister for Communications)

Purpose: To extend the Act to supplementary licences for television stations, consequential to the introduction of the Broadcasting and Television Amendment Bill 1982.

The Committee has no comments 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.



## AUSTRALIAN NATIONAL RAILWAYS COMMISSION BILL 1982

Date Introduced: 21 October 1982

House: House of Representatives (Minister for Transport and Construction)

Purpose: To -

- define precisely the Australian National Railways Commission's powers and responsibilities by giving it a clear and distinct charter;
- remove many constraints on ANRC's ability to operate in a commercial manner;
- minimise Ministerial intervention in respect of ANRC's day-to-day activities while maintaining Ministerial oversight in critical areas and by way of reserve powers; and
- ensure ANRC remains accountable to the Government and Parliament for the efficient performance of its functions.

The Committee draws the attention of Senators to the following clauses of the Bill:

### Clause 15 - Reasonable notice of entry

This clause provides that the Commission may enter on and inspect any land to "do any act or thing necessary or convenient" for the purpose of ascertaining the suitability of that land for Commission purposes. Clause 15(2) requires the

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



## AUSTRALIAN NATIONAL RAILWAYS COMMISSION BILL 1982 (Contd.) (2)

Commission to give "reasonable notice" of its intention to enter and so act. The Committee notes that the comparable requirement in the Pipeline Authority Act 1973 is 30 days' notice. The Committee is concerned about the absence of a like specified period in this Bill, and draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

### Clause 40 - Promotion appeal provisions

Clause 40 provides for appeals by employees against promotions and directions to perform temporarily the duties of a higher position. Unlike other Bills recently examined by the Committee - such as the Public Service Amendment Bill 1982 and Australian Broadcasting Corporation Bill 1982 (see Scrutiny of Bills Committee Eighth Report of 20 May 1982 and Thirteenth Report of 23 September 1982, respectively) - this Bill does not state the details of promotions appeal procedures but leaves these to be established by regulations. Clause 40(4) states that the by-laws may establish the grounds on which, the manner in which, and the time within which, appeals may be made to the Promotions Appeal Board. Although the proposed by-laws would, by clause 78, necessarily be subject to parliamentary review and the threat of disallowance, the Committee regards appeal procedures as matters which ought more properly be set out in the Act itself, and it draws this clause to the attention of Senators in that it might be regarded as inappropriately delegating legislative power.

### Clause 42 - Discipline appeal provisions

Clause 42(3) provides for by-laws which may prescribe the grounds on which, the manner in which, and the time within which, appeals may be made and the manner in which the hearing of appeals shall be conducted. Comments made above in relation to clause 40 are also applicable to this clause.

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

AUSTRALIAN NATIONAL RAILWAYS COMMISSION (TRANSITIONAL  
PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1982

Date Introduced: 21 October 1982

House: House of Representatives (Minister for  
Transport and Construction)

Purpose: To repeal the Australian National Railways  
Act 1917 with effect from the date of  
proclamation of the new ANRC Act and to make  
certain transitional provisions and make  
certain amendments in consequence of the  
enactment of the ANRC Act.

The Committee has no comments 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.

AUSTRALIAN SHIPPING COMMISSION AMENDMENT BILL 1982

Date Introduced: 21 October 1982

House: House of Representatives (Minister for  
Transport and Construction)

Purpose: To provide the Australian Shipping Commission  
with more autonomy in its day-to-day control  
over the operations of the Australian National  
Line, to make a number of minor machinery  
amendments and to repeal some sections which  
are redundant.

The Committee has no comments 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.

**CONCILIATION AND ARBITRATION (COMPLEMENTARY INDUSTRIAL  
RELATIONS SYSTEM) AMENDMENT BILL 1982**

**Date Introduced:** 21 October 1982

**House:** House of Representatives (Minister for  
Employment and Industrial Relations)

**Purpose:** To amend the Conciliation and Arbitration Act to foster greater co-ordination in the work of Federal and State industrial tribunals, by providing for-

- . joint sittings of the Australian Conciliation and Arbitration Commission and a State Tribunal;
- . expansion of the powers of Local Industrial Boards (when constituted by a State Industrial Authority) to permit them to exercise Federal jurisdiction; and
- . the exercise, by agreement, of State jurisdiction by the Australian Commission.

The Committee has no comments 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.

HEALTH LEGISLATION AMENDMENT BILL (NO 2) 1982

Date Introduced: 14 October 1982

House: House of Representatives (Minister for Health)

Purpose: To -

- . Introduce a three-tier system of patient contribution under the Pharmaceutical Benefits Scheme;
- . increase the general contribution rate for pharmaceutical benefits;
- . extend entitlement to pensioner health benefits;
- . extend disadvantaged persons' status under the Health Insurance Act;
- . provide that Sickness Beneficiary's eligibility for pensioner health benefit entitlement will no longer be subject to an income test;
- . provide that the Mobility Allowance and the Family Income Supplement to be paid under the Social Security Act 1947 are not included as income for the purpose of a declaration of a person as a disadvantaged person because of that person's low income;
- . require the tabling in Parliament of Ministerial directions under section 73BEA of the National Health Act 1953 to registered hospital and medical benefit organizations;
- . preclude the imposition by a State or Territory of special levies on registered medical and hospital benefit organizations; and
- . effect other machinery amendments.

.../2

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

HEALTH LEGISLATION AMENDMENT BILL (NO. 2) 1982 (Contd.) (2)

General Comment

In the Seventh Report of 20 May 1982, the Committee drew attention to a proposed amendment to the National Health Act 1953 empowering the Minister to give directions to registered organizations concerning management practices. Proposed section 73BEA was criticised for the absence of any parliamentary review of the Minister's directions, and also of any right of review by the Administrative Appeals Tribunal of Ministerial decisions. The Committee contrasted the proposed section with section 73BE of the Act, which included both of these safeguards.

In his second reading speech on this Bill, the Minister stated:

I would like to draw honourable Members' attention to provisions in the Bill relating to the scrutiny of any directions a Minister may give to a registered organization concerning its management practices. Earlier this year in the debate in the other place when the power for the Minister to give such directions was included in the National Health Act, the Government undertook that it would examine some form of scrutiny of these directions. Tabling in the Parliament was foreshadowed.

The amendment proposed by clause 19 of this Bill gives effect to this undertaking.

The Committee draws the attention of Senators to the following clauses of the Bill:

Clause 2 - Retrospective operation

Clause 2(8) states that the amendment made by clause 14(1) "shall be deemed to have taken effect on 1 October 1977".

Clause 14 amends section 4(5) of the National Health Act 1953 which is an interpretation provision covering nursing homes. The section of the Principal Act to which section 4(5) refers has since been amended, and the proposed new sub-section

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

HEALTH LEGISLATION AMENDMENT BILL (NO. 2) 1982 (Contd.) (3)

explicitly refers to that amendment, thus correcting a probable drafting error. Although it is difficult to say that this clause trespasses unduly on personal rights and liberties, the Committee adopts the practice of drawing all such retrospective provisions to the attention of the Senate.

Clause 19 - Review of Ministerial directions

Clause 19 of this Bill inserts a new section 73BEB in the National Health Act 1953, which remedies one of the basic deficiencies previously identified by the Committee. Proposed section 73BEB provides for parliamentary review and disallowance of Ministerial directions to registered organizations. Indeed, under proposed 73BEB(4), the date of commencement of the direction is postponed until the parliamentary review period has expired. The Committee commends the Minister for including such a strong safeguard of parliamentary review of Ministerial directions. However, the Committee notes the continued absence of any mechanism for appeal to the Administrative Appeals Tribunal against Ministerial decisions similar to that for clause 73BE, and draws this provision to the attention of Senators in that it might be regarded as making rights, liberties and obligations unduly dependent upon administrative decisions which are not reviewable by a Tribunal.

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

## NATIONAL CRIMES COMMISSION BILL 1982

Date Introduced: 21 October 1982

House: House of Representatives  
(Acting Attorney-General)

Purpose: To establish a National Crimes Commission to investigate criminal activities, in particular organized criminal activities, with a view to the prosecution of offenders.

### General Comment

The Committee acknowledges the Government's policy in introducing this Bill to establish a body which, in the Minister's words in the second reading speech, will "supplement the efforts of regular law enforcement bodies, not supplant them." The primary function of the proposed Commission will be to investigate areas of organized criminal activity, with a view to assisting other agencies which are responsible for prosecutions. The Commission is to have certain points of similarity with a Royal Commission, for example, subpoena powers and the power to examine witnesses. In addition, the Commission is to be given quite extensive investigative powers, within the context, however, of limited responsibility for police and prosecution matters.

Many of the Commission's investigative powers may be justified by the policy intention of the Bill, yet the Committee thinks that the Senate ought to be fully aware of



the breadth of these powers. Many provisions might be regarded as offending traditional civil liberties criteria. The Committee notes the Minister's second reading statement which emphasised: "The Commonwealth Government recognizes the need to ensure that proposed changes in law enforcement procedures and institutions do not prejudice individual rights." While the Committee acknowledges the limited context in which the proposed Commission is to operate, it draws the Senate's attention to many provisions which might be regarded as trespassing unduly on personal rights and liberties.

The Committee draws the attention of Senators to the following clauses of the Bill:

Clause 7 - Functions of Commission

This clause states the general functions of the Commission. Clause 7(1) empowers the Commission to investigate allegations and circumstances surrounding "an offence" against the law of the Commonwealth or Territory. The clause provides very little identification of the specific type of offences to which the Commission will give its attention, although sub-clause (2) indicates a priority in relation to "organized criminal offences", bribery and corruption of officers, and "other offences of kinds that persons or bodies engaged in law enforcement are experiencing special difficulty in investigating." The Committee is concerned that there is no clear definition of the scope of the Commission's investigations, and draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

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

Clause 14 - Search warrants

Sub-clause (5) empowers the officer who is duly authorized with a search warrant with wide powers to seize "anything of another kind" or "anything connected with another matter" relevant to the Commission, although unspecified in the warrant as required by clause 14(4)(c).

The Committee draws this provision to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

Clause 15 - Seizure of passports

This clause empowers the Commission to seek a Court order to require a person to deliver his passport to the Commission for a period up to three months. The Committee notes this interference with a person's right to free movement as a novel provision for a body investigating possible criminal offences. The Committee notes the general policy direction as indicated by the statement of the then Minister for Foreign Affairs in introducing the Passports Amendment Bill in the House of Representatives on 7 March 1979:

"... in recognition of the Government's policy relating to human rights and the view that the Passport Act should neither be used as an extension of the judicial system nor be expected to impose any more restraint on an individual than a court would be prepared to impose, this practice [viz. the withholding of passports from suspected white collar criminals] will be discontinued. Passports will, in future, only be withheld from such persons if a warrant for their arrest exists, or where the applicant is the subject of an Australian court order ..."

The Committee draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

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

Clause 16 - Hearings

This clause provides for the holding of hearings by the Commission. Clause 16(5) gives the Commission discretionary power to hold hearings in public or in private. Clause 16(6) states that in exercising its discretion to hold hearings in private, the Commission shall have regard to ensuring any subsequent fair trial or avoiding "prejudice to the safety or reputation of a person." The Committee is concerned that this clause gives insufficient protection to a person's reputation. The fact that the Commission is enabled to hold hearings in private does not address the issue of possible dangers arising from public hearings. If privilege were to attach to media reports of public hearings, injustices may be done to people whose reputations may be damaged by the publication of evidence. Clause 16(11)(a) empowers the Commission to direct that any evidence given before it shall not be published. Failure to comply with such a direction is made an offence by 16(12)(b). To the extent that this protection depends on the discretion of the Commission and may not always be acted upon, the Committee draws this provision to the attention of the Senate. The clause insufficiently protects an individual's right to privacy.

Clause 16(10) empowers the Commission to limit the extent of examination or cross-examination of a witness. Clause 16(10) provides for examination and cross-examination subject to the qualification "so far as the Commission thinks appropriate". The Committee is aware that such a qualification may be held to express no more than the ordinary powers of such a body. However, the Committee brings these provisions to the attention of Senators in that they might be regarded as trespassing unduly on personal rights and liberties.

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

Clause 17 - Power to summon witnesses

This clause empowers the Commission to summon a person to give evidence and produce documents as requested. The Committee is concerned that the Commission is not required to notify the person either of the offence in respect of which his assistance is required or of the nature of the inquiry so that he may fully inform himself, and be able to determine whether he may need advice before attending or brief counsel to assist him. The Committee draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

Clause 18 - Failure to produce documents

Clause 18 provides for the offences of witnesses who fail "without reasonable excuse" to attend a hearing before the Commission or to produce requested documents. Clause 18(4) states that it is a "reasonable excuse" if a person refuses or fails to answer questions believing that "the answer to the question might tend to incriminate him". However, the clause also states that it is not a reasonable excuse if a person should "refuse or fail to produce a document" as requested, on the belief that the production of the document might be self-incriminating. Although the Committee is aware of similar provisions in other Commonwealth Acts, it is concerned that this clause detracts from the customary rule of evidence by which the privilege against self-incrimination extends to the production of documents.

Clause 18(4) identifies the scope of "reasonable excuse", yet it fails to include any reference to a spouse's right to silence, which would be applicable if the investigation were a criminal charge. The Committee regards this absence as seriously affecting a fundamental right.

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

Clause 18(1) empowers the Commission in relation to a person summoned to attend who has, without reasonable excuse, either failed to attend or answer questions or produce documents, to certify these actions to a prescribed Court. Clause 18(11) empowers the prescribed Court to order a person to comply with the direction of the Commission. The Committee is concerned that this provision leaves open the possibility of an indefinite gaol sentence for contempt of court for a person who, in the Court's opinion, fails to comply with a direction to appear as a witness.

The Committee draws these provisions to the attention of Senators in that they might be regarded as trespassing unduly on personal rights and liberties.

#### Clause 19 - False or misleading evidence

This clause establishes an offence of giving false or misleading evidence. Under clauses 19(3) and (4), a person may be dealt with by a court of summary jurisdiction, and in such cases the penalty is either a fine or imprisonment. However, under clause 19(2), proceedings in a court other than one of summary jurisdiction may only lead to the one form of punishment - imprisonment. The Committee is concerned that the option of fine or imprisonment should be applicable, in both cases and draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

#### Clause 20 - Contempt of Commission

This clause provides for the offence of contempt of the Commission. The Committee notes the onerous penalties - two thousand dollars or imprisonment for twelve months - and is concerned that the list of offences in clause 20(1) is misplaced in the context of a body other than a court of law.

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

The penalties may be regarded as inappropriate to a body that is meant to be investigative rather than adjudicative. The Committee is concerned that the inclusion of the offences of "insulting" the Commission, under clause 20(1)(a), and "interrupting" a hearing, under clause 20(1)(b), may infringe the right of free speech. The Committee draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

#### Clause 33 - Staff and secrecy

This clause provides for the employment and conditions of staff to assist the Commission. The Committee notes that the references to terms and conditions in clauses 33(3) and (4) do not require staff to observe any obligation to secrecy, in order to protect the right of privacy of persons being investigated by the Commission. The Committee draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

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

NAVIGATION (PROTECTION OF THE SEA) AMENDMENT BILL 1982

Date Introduced: 21 October 1982

House: House of Representatives (Minister for Transport and Construction)

Purpose: To amend the Navigation Act 1912 to implement construction provisions in relation to ships carrying or using oil and ships carrying noxious liquid substances in bulk.

The Committee draws the attention of Senators to the following clause:

Clause 5 - Delegated Legislation

This clause substitutes a new Division 12 of Part IV in the Navigation Act 1912, dealing with ships carrying or using oil. The new Division will include the requirements of the most recent international Convention on the Prevention of Pollution from Ships. Proposed new section 267A provides for regulations which will empower the Minister to make orders on matters dealt with in the regulations which, under sub-section (1), will give effect to the precise requirements of the new Convention. The Committee draws this clause to the attention of Senators in that it might be regarded as inappropriately delegating legislative power.

Clause 5 - Ministerial discretions

Clause 5 also includes a number of proposed sections which vest unappealable discretions in the Minister. Proposed section 267B empowers the Minister to issue a certificate stating that a ship is constructed in compliance with the Convention. Proposed section 267C empowers the Minister to issue an

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

NAVIGATION (PROTECTION OF THE SEA) AMENDMENT BILL 1982 (Contd.) (2)

International Oil Pollution Prevention certificate. Under proposed section 267D(4), the Minister may cancel a ship construction certificate where he has reason to believe that the certificate is invalid or fraudulently obtained. The Committee draws these provisions to the attention of Senators in that they might be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

Clause 6 - Delegated legislation

This clause provides for a new section 267P which, in a manner similar to proposed section 267A examined above, provides for regulations which will empower the Minister to make orders giving effect to requirements of the Convention. Comments made above in relation to proposed section 267A are also applicable to this proposed section.

Clause 6 - Ministerial discretions

This clause vests similar unreviewable discretions in the Minister - in this case in relation to the issue of certificates for ships carrying noxious liquid substances. Comments made above in relation to clause 5 are also applicable to proposed sections 267Q, 267R and 267S.

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



PROTECTION OF THE SEA (PREVENTION OF POLLUTION FROM SHIPS)  
BILL 1982

Date Introduced: 21 October 1982

House: House of Representatives (Minister for  
Transport and Construction)

Purpose: To protect the sea from pollution by oil  
and other harmful substances discharged  
from ships.

The Committee has no comments 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.

**TAXATION (UNPAID COMPANY TAX) ASSESSMENT BILL 1982**

**Date Introduced:** 21 October 1982

**House:** House of Representatives (The Treasurer)

**Purpose:** To revise the bill introduced earlier to recover from former owners of companies that were stripped of pre-tax profits the amount of company tax that was evaded as a consequence of such strips and to extend its scope to require promoters of these schemes to also effect some recoupment of the evaded tax.

The Committee has no comments 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.

**TAXATION (UNPAID COMPANY TAX - PROMOTERS) BILL 1982**

**Date Introduced:** 21 October 1982

**House:** House of Representatives (The Treasurer)

**Purpose:** To impose tax on the promoters of schemes to strip companies of pre-tax company profits.

The Committee has no comments 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.

TAXATION (UNPAID COMPANY TAX - VENDORS) BILL 1982

Date Introduced: 21 October 1982

House: House of Representatives (The Treasurer)

Purpose: To impose recoupment tax on former owners  
of companies stripped of pre-tax profits.

The Committee has no comments 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.

**WEIGHTS AND MEASURES (NATIONAL STANDARDS) AMENDMENT BILL 1982**

**Date Introduced:** 21 October 1982

**House:** House of Representatives (Minister for  
Science and Technology)

**Purpose:** To update the nomenclature of reference  
standards of physical quantities and to  
clarify the functions and powers of the  
National Standards Commission in the light  
of modern technology.

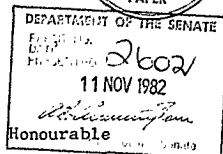
The Committee has no comments on this Bill.

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

SCRUTINY OF BILLS ALERT DIGEST

No. 15

11 November 1982



NOTE: 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.

The Committee has considered the following Bills:

Conciliation and Arbitration (Management of Organizations) Amendment Bill 1982

National Service Amendment Bill 1982

Petroleum (Submerged Lands) Amendment Bill 1982

River Murray Waters Bill 1982

Royal Commissions Amendment Bill 1982

Wheat Marketing Amendment Bill 1982

\* World Heritage Properties Protection Bill 1982

\*Clause reported to Senate 11 November 1982.

CONCILIATION AND ARBITRATION (MANAGEMENT OF ORGANIZATIONS)

AMENDMENT BILL 1982

Date Introduced: 26 October 1982

House: House of Representatives (Minister for Employment and Industrial Relations)

Purpose: To amend the Conciliation and Arbitration Act 1904 to:

- . disqualify a person from holding office or being eligible to become a candidate for election or appointment to an office within any organization unless a period of 5 years has elapsed since he was convicted of a prescribed offence or, if he was sentenced to imprisonment for that offence, a disqualification period of 5 years from the date of release from prison is to apply;
- . provide an office holder, a candidate for election or appointment to any office who has been convicted of a prescribed offence with the right to seek leave from the Federal Court of Australia to continue to hold office or be eligible for election or appointment. If the Court grants the application, the applicant will not be disqualified under the legislation. Where the Court refuses the application, the disqualification will continue to operate but it may, if the Court thinks fit, be reduced to a period less than 5 years;
- . enable the disqualification provisions to be enforced in the Court on application by the organization, a member of the organization or the Industrial Relations Bureau;
- . make provision for certain financial assistance and for costs and expenses to be reimbursed to some individuals concerned in leave and enforcement proceedings before the Court;
- . provide that the rules of the organizations shall provide that the committee of management must approve all loans, grants or donations exceeding \$1,000 and satisfy itself in relation to the security given and repayment arrangements for loans;
- . make provision for an organization to notify particulars of loans, grants and donations exceeding \$1,000 to the Registrar after the end of each financial year.

The Committee has no comments 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.

NATIONAL SERVICE AMENDMENT BILL 1982

Date Introduced: 8 October 1982

House: Senate (Senator Tate)

Purpose: To amend the National Service Act 1951 in respect of persons whose conscientious beliefs do not allow them to engage in military duties.

The Committee has no comments 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.



PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 1982

Date Introduced: 28 October 1982

House: House of Representatives (Minister for National Development and Energy)

Purpose: To amend the Petroleum (Submerged Lands) Act 1967 by creating in Bass Strait an area to be avoided by Australian ships over 200 tons gross tonnage, providing for penalties for unauthorised entry and granting powers of enforcement to authorised persons.

The Committee draws the attention of Senators to the following clauses of the Bill.

Clause 3 - Proposed section 140B: Notice of authorization

This clause inserts a new Division 6A into the Principal Act incorporating a number of proposed new sections dealing with the management of the area to be avoided and the safety zones. Proposed section 140B provides that the Designated Authority may authorize a vessel to enter the area to be avoided, subject to such conditions as may be specified in the notice of authorization. The proposed section vests the Designated Authority with three grants of discretionary power, and in no case does the Bill provide for any review mechanism to an appeals tribunal. Proposed section 140B(2) empowers the Designated Authority to authorize a vessel to enter the area to be avoided; proposed section 140B(3) empowers the Designated Authority to subject an authorization to such conditions "as are specified in the notice of authorization"; and proposed clause 140B(4) empowers the Designated Authority to revoke any such authorization.

The Committee draws the lack of review procedures in this provision to the attention of Senators in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

Clause 3 - Proposed section 140D: Powers of authorized persons

Included in the new Division 6A is proposed section 140D which sets out the powers of authorized persons, as defined in proposed sub-section 140A(1), in respect of a vessel that "is in, or is near" a safety zone or the area to be avoided, where the authorized person has "reasonable grounds" to believe that the vessel "has been used" in contravention of section 119 or 140C. Section 119 of the Principal Act makes it an offence for a vessel to enter or remain in a safety zone in contravention of an instrument issued by the Designated Authority and published in the Gazette. Proposed section 140C provides for the offence of a vessel entering a relevant zone or area without authorization by the Designated Authority. Proposed sub-section 140D(1) empowers the authorized person to board a vessel, request or search for relevant information and documents, require a vessel to be removed from a relevant zone or area, measure a vessel, or detain a suspected vessel.

The Committee notes the severity of the offence which proposed section 140D provides for those who refuse to comply with a request or direction by an authorized person - a maximum fine of \$5000. The Committee is aware that the Designated Authority may be faced with instances where there might be thought to be insufficient time to obtain a warrant covering the right of entry by authorized persons. However, the Committee draws the absence of any requirement for entry by warrant to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

RIVER MURRAY WATERS BILL 1982

Date Introduced: . 28 October 1982

House: House of Representatives (Minister for  
National Development and Energy)

Purpose: To approve and provide for the Commonwealth's participation in a new agreement with New South Wales, Victoria and South Australia, for the control and management of the water resources of the River Murray and certain tributaries.

The Committee has no comments 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.

## ROYAL COMMISSIONS AMENDMENT BILL 1982

Date Introduced: 27 October 1982

House: House of Representatives (Acting Attorney-General)

Purpose: To amend the Royal Commissions Act 1902 to provide that those Royal Commissions whose Letters Patent so provide have additional powers to -

- . issue certificates that witnesses have failed to comply with certain requirements;
- . apply to a Judge of a prescribed court for the issue of a search warrant where, inter alia, it believes a thing connected with a matter in respect of which it is conducting an inquiry might be concealed or destroyed if a summons were issued for its production;
- . issue summonses to require the production of non-documentary material;
- . provide protection to counsel assisting or appearing before a Commission; and
- . communicate information that relates to, or may relate to the commission of an offence or afford evidence of an offence to various Commonwealth and State authorities.
- . Provision is also made for functions or powers conferred by State authorities under State laws on a Commission to be performed or exercised in conjunction with the performance of its functions or powers under the Royal Commissions Act.

### General Comment

The Committee notes the Minister's second reading speech in which he stated that this Bill is "a complementary measure" to the National Crimes Commission Bill, in that it is "directed to ensuring that Royal Commissions have effective powers and procedures so that they may carry out their important functions". The basic purpose of a Royal Commission is to ascertain the facts as to a particular matter or matters and, if necessary, recommend future action to Government. Many of the new powers granted to

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

## ROYAL COMMISSION AMENDMENT BILL (Contd. 2)

Royal Commissions may be justified by the policy intention of the Bill, yet the Committee thinks that Senators ought to be fully aware of the extent of these powers. The Committee acknowledges the limited context in which Royal Commissions operate: they are investigative and advisory bodies, capable of summoning witnesses; they are not accusatorial bodies, and have limited responsibility for police and prosecution matters. The Committee acknowledges the "special circumstances" of Royal Commissions to which the Minister refers in his speech: that unlike other bodies such as the proposed National Crimes Commission, their primary purpose is not to obtain evidence admissible in a court for a possible prosecution. These circumstances are particularly relevant to clauses 4 and 6 of the Bill concerning provisions which operate in a context different from related provisions in the National Crimes Commission Bill, to which the Committee drew attention in Scrutiny of Bills Alert Digest No. 14 of 28 October 1982. However, the Committee draws a number of provisions to the attention of Senators in that they might be regarded as trespassing unduly on personal rights and liberties.

The Committee draws the attention of Senators to the following clauses of the Bill:

### Clause 4 - Power to summon witnesses

The clause proposes, inter alia, to substitute a new section 2 for sections 2, 3 and 4 in the Principal Act. Proposed new section 2 empowers a member of a Commission to summon a person to appear "to give evidence and to produce such documents or other things" as required by the Commission. The Committee notes that the Commission is not required to notify the person of the matters in relation to which he might be required to give evidence or produce documents. The Committee is aware that Royal Commissions are investigative bodies, whose tasks are confined to gathering information as distinct from pressing charges. However, the Committee is concerned that, as things stand, persons who are

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

## ROYAL COMMISSION AMENDMENT BILL 1982 (Contd. 3)

summoned may not be able to determine whether they need to obtain legal advice before attending or to brief counsel to assist them prepare for the hearing. While the Committee recognizes that Royal Commissions must be empowered to obtain essential information, it draws this provision to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

### Clause 4 - Search warrants

Clause 4 proposes, inter alia, to substitute a new section 4 empowering a Commission to apply to a prescribed court to obtain a search warrant authorizing persons to enter premises and search for and seize, in addition to specified things, "any thing of another kind" or "connected with another matter" relevant to the Commission. The Committee draws this provision to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

### Clause 6 - Self-incrimination

The clause proposes to substitute a new section 6A in the Principal Act. As stated by the Minister in his second reading speech, it has long been the view that self-incrimination was not a lawful excuse for a witness before a Royal Commission failing to answer questions or produce documents. The basis of this view was section 6DD which states that statements made by a witness shall not be admissible in evidence against him, except in proceedings for an offence against this Act. The Minister related the introduction of the proposed new section 6A to doubts recently cast on the traditional construction of 6DD by the High Court in Hammond v The Commonwealth. The Minister stated that the Government has concluded:

"...that the doubt as to the construction of the Act arising from the High Court decision should be removed and that it be made clear that, in the special circumstances of a Royal

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

Commission hearing, self-incrimination is not an excuse for failure to answer questions or produce documents".

However, the Committee is concerned that to the extent that Royal Commissions may tend to widen their original ambit of inquiry, the right to refuse to answer on the ground of self-incrimination might need to be protected. The Committee draws the attention of Senators to this provision in that it might be regarded as trespassing unduly on personal rights and liberties.

Clause 8 - Failure to comply with Commission

This clause proposes to substitute a new section 6C which empowers the Commission in relation to a person summoned to attend who has either failed to attend or answer questions or produce documents, to certify these instances of non-compliance to a prescribed court. Proposed clause 6C(2) empowers the prescribed court to order a person to comply with the direction of the Commission. The Committee is concerned that this provision leaves open the possibility of an indefinite jail sentence for contempt of court for a person who, in the court's opinion, fails to comply with a direction to appear as a witness before a Commission. The Committee draws this provision to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

Clause 13 - False or misleading evidence

This clause proposes to substitute a new section 6H in the Principal Act establishing an offence of giving false or misleading evidence. Under proposed sections 6H(3) and (4), a person may be dealt with by a court of summary jurisdiction, and in such cases the penalty is either a fine or imprisonment. However, under proposed section 6H(2), proceedings in a court other than one of summary jurisdiction may only lead to the one form of punishment - imprisonment. The Committee is concerned that the option of fine or imprisonment should be applicable in both cases, and draws this clause to the attention of Senators in that it might be regarded

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as trespassing unduly on personal rights and liberties.

Clause 14 - Destruction of documents

This clause proposes to substitute a new section in the Principal Act establishing an offence of concealing, mutilating or destroying a document that a person knows or has reasonable grounds to believe is or may be required in evidence before a Commission. Comments made above in relation to the forms of punishment in clause 13 are also applicable to this clause.



WHEAT MARKETING AMENDMENT BILL 1982

Date Introduced: 27 October 1982

House: House of Representatives (Minister for  
Primary Industry)

Purpose: To make variations to the existing wheat marketing  
and pricing arrangements to improve the operational  
flexibility and efficiency of the Australian Wheat  
Board.

The Committee has no comments 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.

## WORLD HERITAGE PROPERTIES PROTECTION BILL 1982

Date Introduced: 27 October 1982

House: Senate (Senator Mason)

Purpose: To give effect to the Convention for the Protection of the World Cultural and Natural Heritage.

The Committee draws the attention of Senators to the following clause of the Bill.

### Clause 6 - Protection of properties

This clause makes it unlawful for a person to "do any act or take any action that is likely adversely to affect" the general conservation of a property listed, or nominated for listing, under Article 11 of the World Heritage Convention. The clause provides very little identification of the scope of unlawful action with which the Bill would deal. The Committee is concerned that in the absence of any list of specific offences persons may not be able to arrange with any certainty those of their affairs that relate to the use of nominated or listed properties. Clause 7 provides that any person may seek a Court declaration that a certain action is in breach of the Act and a Court order to remedy or restrain the breach. Court action may be taken against a person who had no intention of damaging a property, whose actions, however, might be regarded as "likely adversely to affect the protection, conservation, presentation or rehabilitation of a property". If the doing of an act can include the failure to do an act, the declining by an owner to take, for example, steps to preserve or restore a property, area or building may fall within the proscribed conduct. In the absence of any clear guidelines in the Bill

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WORLD HERITAGE PROPERTIES PROTECTION BILL 1982 (Contd. 2)

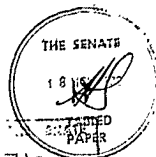
as to the precise scope of the proscribed actions referred to in clause 6, the Committee draws this clause to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

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

SCRUTINY OF BILLS ALERT DIGEST

NO. 16

18 NOVEMBER 1982



2710

18 NOV 1982

NOTE: 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.

The Committee has considered the following Bills:

Conciliation and Arbitration (Government  
Service) Amendment Bill 1982

Health Legislation Amendment Bill (No. 3) 1982

\* Income Tax Assessment Amendment Act (No. 4) 1982

\* Clauses reported to Senate 18 November 1982

ISSN 0729-6851

CONCILIATION AND ARBITRATION (GOVERNMENT SERVICE)  
AMENDMENT BILL 1982

Date Introduced: 10 November 1982.

House: House of Representatives (Minister for Employment and Industrial Relations).

Purpose: To -

- (i) repeal the Public Service Arbitration Act 1920;
- (ii) vest the Australian Conciliation and Arbitration Commission with jurisdiction over employment by the Commonwealth, the Northern Territory, or authorities of either, by the insertion of a new Division 1A;

and effect other machinery changes.

The Committee has no comments on this Bill.

HEALTH LEGISLATION AMENDMENT BILL (NO. 3) 1982

Date Introduced: 10 November 1982

House: House of Representatives (Minister for Health)

Purpose: To make amendments to the National Health Act 1953 and the Health Insurance Commission Act 1973 to preclude the imposition by a State or Territory of special taxes on registered medical and hospital benefit organizations.

The Committee has no comments 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.

INCOME TAX ASSESSMENT AMENDMENT ACT (NO. 4) 1982

Date Introduced: 21 October 1982

House: House of Representatives (The Treasurer)

Purpose: To amend the income tax law to, inter alia, assess and collect tax in respect of certain unpaid company tax from vendors and promoters.

The Committee draws the attention of Senators to the following clauses of the Act.

Clause 4 - Exemptions

Clause 4(3) amends exemption provisions of the Principal Act in relation to specified foreign pensions, annuities and allowances derived on or after 3 March 1982. The Committee adopts the practice of alerting Senators to all provisions which may be said to have a retrospective effect.

Clause 5 - Sale of discounted securities

This clause adds a new section after 23H of the Principal Act. Clause 5 states that no amounts received from the sale or redemption of eligible securities purchased at a discount rate on or before 30 June 1982 shall be taken to be income, except for profits made by traders and dealers. The Committee adopts the practice of alerting Senators to all provisions which may be said to have a retrospective effect.

Clause 6 - Gifts

Clause 6(2) amends section 78 of the Principal Act by extending the gift provisions to include deductions made to the Connellan Airways Trust after 31 May 1982. Clause 6(3) amends section 78 of the Principal Act relating to gifts made to the Queensland Cultural Centre Trust after 30 June 1982. The Committee adopts the practice of alerting Senators to all provisions which may be said to have a retrospective effect.

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

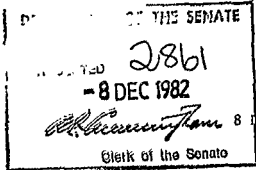
Clause 11 - Application of other amendments

This clause backdates the amendments to the anti-tax avoidance provisions made by clauses 7 and 8 in relation to tax imposed on calls paid on shares in an afforestation company, and on moneys paid on shares in a petroleum exploration company, to after 24 September 1978. The Committee adopts the practice of alerting Senators to all provisions which may be said to have a retrospective effect.

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



SCRUTINY OF BILLS ALERT DIGEST



NO. 17



NOTE: 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.

The Committee has considered the following Bills:

Commonwealth Electoral Amendment Bill (No. 2)  
1982

Commonwealth Electoral Amendment Bill (No. 3)  
1982

Commonwealth Electoral Amendment Bill (No. 4)  
1982

ISSN 0729-6851

COMMONWEALTH ELECTORAL AMENDMENT BILL (NO. 2) 1982

Date Introduced: 11 November 1982

House: Senate (Senator Gietzelt)

Purpose: To provide for the listing of names on ballot-papers for House of Representatives elections to be determined by lot.

The Committee has no comments 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.

COMMONWEALTH ELECTORAL AMENDMENT BILL (NO. 3) 1982

Date Introduced: 11 November 1982

House: Senate (Senator Gietzelt)

Purpose: To alter the hour of closing the poll for Senate and  
House of Representatives elections from 8 pm to 6 pm.

The Committee has no comments 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.

COMMONWEALTH ELECTORAL AMENDMENT BILL (NO. 4) 1982

Date Introduced: 11 November 1982

House: Senate (Senator Gietzelt)

Purpose: To provide a form of optional preferential voting  
at elections and to alter the rules relating to  
informal ballot-papers.

The Committee has no comments on this Bill.

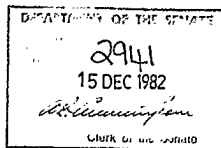
Any Senator who wishes to draw matters to the attention of the  
Committee under its Terms of Reference is invited to do so.

SCRUTINY OF BILLS ALERT DIGEST



NO. 18

15 DECEMBER 1982



NOTE: 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.

The Committee has considered the following Bills:

Christmas Island Agreement Amendment Bill 1982

- \* Customs Securities (Anti-Dumping) Amendment Bill 1982
- \* Customs Tariff (Anti-Dumping) Amendment Bill (No. 2) 1982

Salaries and Wages Pause Bill 1982

Social Security Amendment Bill 1982

Special Employment-related Programs Bill 1982

- \* Clauses reported to the Senate 15 December 1982

CHRISTMAS ISLAND AGREEMENT AMENDMENT BILL 1982

Date Introduced: 9 December 1982

House: House of Representatives (Minister for Administrative Services)

Purpose: To provide for the winding up of the Christmas Island Phosphate Commission, and the termination of the Christmas Island Agreement with New Zealand.

The Committee has no comments 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.

CUSTOMS SECURITIES (ANTI-DUMPING) AMENDMENT BILL 1982

Date Introduced: 8 December 1982

House: House of Representatives (Minister for Industry and Commerce)

Purpose: To:

- (a) amend the Customs Act 1901 to place beyond doubt that securities may be validly taken under section 42 of that Act for the purposes of the Customs Tariff (Anti-Dumping) Act 1975; and
- (b) amend the Administrative Decisions (Judicial Review) Act 1977 to remove from the scope of that Act decisions made under section 42 of the Customs Act 1901 to require and take securities in respect of duty that may be payable under the Customs Tariff (Anti-Dumping) Act 1975.

The Committee draws the attention of Senators to the following clauses of the Bill:

Clause 2 - Commencement

This clause provides that the amendments proposed by the Bill to the Customs and Administrative Decisions (Judicial Review) Acts will have effect from 24 November 1982, the date upon which a regulation was made under the ADJR Act to remove decisions under section 42 of the Customs Act from the jurisdiction of the Federal Court.

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

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To the extent that the amendment proposed to the ADJR Act allows debate on the principle of the legislation (see comments on clause 6, below) and is technically unnecessary, as the policy of removing section 42 decisions has been achieved by regulation, retrospectivity in this case is involved only in a strict sense. However, the amendment proposed to the Customs Act, while tied to some extent to the ADJR regulation, has not been anticipated by that regulation and therefore may properly be described as retrospective in effect.

The Committee adopts the practice of drawing all retrospective provisions to the attention of Senators, and inasmuch as the proposed amendment removes a pre-existing ground of appeal to a court, it may be regarded as trespassing unduly on personal rights and liberties.

#### Clause 6 - Schedule 1

This clause removes decisions under section 42 of the Customs Act 1901 from the ambit of the Administrative Decisions (Judicial Review) Act 1977, and are designed to supersede regulations made under the ADJR Act with effect from 24 November 1982.

The provision may be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.



CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL (NO. 2) 1982

Date Introduced: 8 December 1982

House: House of Representatives (Minister for Industry and Commerce)

Purpose: To repeal section 14 of the Customs Tariff (Anti-Dumping) Act 1975, to remove for practical purposes the grounds for any application to the Australian Courts raising the issue of Australia's non-compliance with international agreements (including the GATT Codes and any bilateral agreements).

The Committee draws the attention of Senators to the following clauses of the Bill:

Clause 2 - Commencement

This clause provides that the amendment proposed to the Customs Tariff (Anti-Dumping) Act is retrospective in effect to 24 November 1982, the day on which regulations to exclude decisions under section 42 of the Customs Act 1901 from the ambit of the Administrative Decisions (Judicial Review) Act 1977 came into operation. Comments made in this Digest on clause 2 of the Customs Securities (Anti-Dumping) Amendment Bill 1982 are applicable to this clause also.

Clause 3 - Repeal of section 14 of Customs Tariff (Anti-Dumping) Act 1975

Section 14 of the Act places an obligation on the Minister not to take action which is inconsistent with the obligations of Australia under international agree-

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

ments relating to trade. Clause 3 gives effect to the policy intention of the Bill, which is "to remove for practical purposes the grounds of any application to the Australian Courts raising the issue of Australia's noncompliance with international agreements" (Explanatory Memorandum).

Since the effect of the clause is to remove a pre-existing ground for appeal to a Court, it may be regarded as trespassing unduly on personal rights and liberties.

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

SALARIES AND WAGES PAUSE BILL 1982

Date Introduced: 14 December 1982

House: House of Representatives (Minister for Employment and Industrial Relations)

Purpose: To suspend for twelve months the powers of the Remuneration Tribunal, the Academic Salaries Tribunal and certain remuneration-fixing authorities to increase the rates of remuneration or reduce standard working hours in Commonwealth employment or increase certain allowances.

The Committee has no comments 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.

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SOCIAL SECURITY AMENDMENT BILL 1982

Date Introduced: 9 December 1982

House: House of Representatives (Minister Representing the  
Minister for Social Security)

Purpose: To:

- (a) extend qualification for sickness benefit to certain persons who, because they cannot show an actual loss of income arising from their incapacity for work, are not qualified to receive sickness benefit under current arrangements;
- (b) extend qualification for family allowance and additional pension or benefit in respect of full-time student children who, having left school, college or university, do not attract payment of family allowance, or additional pension or benefit under current arrangements. The maximum period for the extension of eligibility is the 6 weeks following cessation of studies during which unemployment benefit would not be payable to the former student; and
- (c) allow a person who qualifies for sickness benefit to be paid supplementary allowance, without having to undergo the statutory 6 week waiting period, where the person was in receipt of supplementary assistance or incentive allowance (or an equivalent amount in the case of a person in receipt of a rehabilitation allowance) immediately before becoming qualified for sickness benefit.

The Committee has no comments 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.

## SPECIAL EMPLOYMENT-RELATED PROGRAMS BILL 1982

Date Introduced: 14 December 1982

House: House of Representatives (Treasurer, representing  
the Minister for Finance)

Purpose: To give effect to the announcement following the  
Premiers' Conference on 7 December 1982 that the  
Commonwealth will fund programs designed to generate or  
maintain employment throughout Australia. It is intended  
that these programs will be financed from savings in  
Commonwealth outlays from an effective, national wage  
pause in 1983. An amount of \$300 million (the  
estimated savings) is appropriated for this purpose.

The Committee has no comments 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.