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SCRUTINY OF BILLS ALERT DIGEST

No. 1

5 May 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative powers; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Appropriation Bill (No. 3) 1982-83

Appropriation Bill (No. 4) 1982-83

Loan Bill 1983

Social Security Amendment Bill 1983

World Heritage Properties Conservation Bill 1983

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.

APPROPRIATION BILL (NO. 3) 1982-83

Date Introduced: 21 April 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR FINANCE)

Purpose: To appropriate \$211.3m out of the Consolidated Revenue Fund, additional to the sum appropriated by the Appropriation Act (No. 1) 1982-83, for the service of the year ending on 30 June 1983.

The Committee has no comments on this Bill.*

* This was one of a group of four Bills which has passed both houses of Parliament and received the Royal Assent on 27 April 1983, before the reconstituted Committee had met.

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) 1982-83

Date Introduced: 21 April 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR FINANCE)

Purpose: To appropriate \$196m for payments to or for the States and the Northern Territory in respect of natural disaster relief and restoration pursuant to long standing arrangements, and for payments to the Victorian and South Australian Governments for general purpose assistance in respect of the recent tragic bushfires.

The Committee has no comments on this Bill.*

* This was one of a group of four Bills which has passed both houses of Parliament and received the Royal Assent on 27 April 1983, before the reconstituted Committee had met.

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 1983

Date Introduced: 21 April 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR FINANCE)

Purpose: To supplement the provision made in the Loan Act (No. 2) 1982 for the financing of that part of the prospective 1982-83 Budget deficit that would be reflected in the Consolidated Revenue Fund.

The Committee has no comments on this Bill.*

* This was one of a group of four Bills which has passed both houses of Parliament and received the Royal Assent on 27 April 1983, before the reconstituted Committee had met.

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 AMENDMENT BILL 1983

Date Introduced: 21 April 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR HEALTH)

Purpose: To amend the Social Security Act 1947 by increasing the rate of unemployment benefit payable to persons aged 18 or more without dependants from \$64.40 per week to \$68.65 per week, as from 1 May 1983.

The Committee has no comments on this Bill.*

* This was one of a group of four Bills which has passed both houses of Parliament and received the Royal Assent on 27 April 1983, before the reconstituted Committee had met.

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 CONSERVATION BILL 1983

Date Introduced: 21 April 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR HOME
AFFAIRS AND THE ENVIRONMENT)

Purpose: To provide for the protection of certain property that Australia has identified as 'natural heritage' or 'cultural heritage' within the meaning of an international treaty known as the Convention for the Protection of the World Cultural and Natural Heritage.

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

Clause 3 - Interpretation

Paragraph 3(2)(a) defines "identified property" to include properties that the Commonwealth has submitted to the World Heritage Committee as suitable for inclusion in the World Heritage List. The paragraph further defines "identified property" to include property declared by the regulations to form part of the cultural or natural heritage. Regulations of course are subject to all the usual processes of parliamentary scrutiny.

However, it is equally clear that a mere submission of a property by the Commonwealth to the World Heritage Committee does not call into play any parliamentary scrutiny. Thus, it may be - though the Committee regards the possibility as unlikely - that such a submission may not be known to the Parliament, or to the parties whose

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rights might be affected in the event that a Proclamation is made in relation to such "identified property". The Committee draws the attention of Senators to this disparity in opportunities for parliamentary scrutiny and indeed disallowance of Commonwealth action, particularly as submission is a condition precedent to the making of a Proclamation. Insofar as property rights may be affected should a Proclamation be made on the basis of a Commonwealth submission to the World Heritage Committee, then it might be thought that such rights are unduly dependent upon non-reviewable executive or administrative decisions.

Clause 16 - Compensation

This clause sets out the procedures relating to the determination of any compensation that might be payable for land acquired under the Act or under regulations made pursuant to the National Parks and Wildlife Conservation Act 1975. The procedures are intended to fulfil the Constitutional requirement that the Commonwealth acquire property "on just terms" (s.51(xxxi)).

Once it has been determined that the Commonwealth is liable to pay compensation, the precise amount - the "just terms" - is determined in accordance with a procedure spelt out in clauses 16(8) to (15). If the claimed amount is less than \$5 million, and the Commonwealth does not agree to this amount, the claimant may apply to the Federal Court for determination of the compensation, under clause 16(15).

However, in cases of disputed claims for \$5 million or more, the Governor-General shall establish a Commission of Inquiry to inquire into

and report on the compensation payable. Under clause 16(11), a Commission has 12 months in which to report; and under clause 16(13), the Governor-General has a further 3 months in which to determine the compensation payable. If either the Commission does not report within 12 months or the claimant contests the amount determined by the Governor-General, the claimant may apply to the Federal Court to determine a just amount.

The Committee draws attention to the difference in treatment accorded disputed claims which fall either side of the \$5 million. Disputed claims of \$5 million or more are made subject to a process of resolution which may, in some circumstances, be less speedy and possibly involve undue delay in the payment of amounts for land acquired by the Commonwealth. The Committee draws attention to the departure from the usual procedure set out in the Lands Acquisition Act 1955 which in most instances lends itself to the possibility of a speedy resolution of disputed claims. Insofar as there may be some extension of the time in which compensation is payable for land acquired under this Act, the Committee draws this provision under clause 16 to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.



SCRUTINY OF BILLS ALERT DIGEST

DEPARTMENT OF THE SENATE
PAPER No. 570
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No. 2

11 May 1983

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
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 - (iv) inappropriately delegate legislative power;
or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Appropriation Bill (No. 5) 1982-83
Appropriation Bill (No. 6) 1982-83
Appropriation (Parliamentary Departments) Bill
(No. 2) 1982-83
Australian Broadcasting Corporation Bill 1983
Australian Broadcasting Corporation (Transitional
Provisions and Consequential Amendments)
Bill 1983
Bounty (Room Air Conditioners) Bill 1983
Bounty (Steel Products) Bill 1983
Customs Tariff Amendment Bill 1983
Customs Tariff (Coal Export Duty) Amendment Bill 1983
Excise Tariff Amendment Bill 1983
Navigation (Protection of the Sea)
Amendment Bill 1983
Protection of the Sea (Prevention of Pollution from
Ships) Bill 1983
Referendum (Constitution Alteration) Amendment
Bill 1983
Taxation (Interest on Overpayments) Bill 1983

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. 5) 1982-83

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR FINANCE)

Purpose: To appropriate \$640,040,000 out of the Consolidated Revenue Fund, additional to the sum appropriated by the Appropriation Act (No. 1) 1982-83 and the Appropriation Act (No. 3) 1982-83, for the service of the year ending on 30 June 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. 6) 1982-83

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR FINANCE)

Purpose: To appropriate \$407,427,000 out of the Consolidated Revenue Fund, additional to the sum appropriated by the Appropriation Act (No. 2) 1982-83 and the Appropriation Act (No. 4) 1982-83 for certain expenditure in respect of the year ending on 30 June 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 (PARLIAMENTARY DEPARTMENTS) BILL
(NO. 2) 1982-83

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR FINANCE)

Purpose: To appropriate \$288,000 out of the Consolidated Revenue Fund, additional to the sum appropriated by the Appropriation (Parliamentary Departments) Act 1982-83, for the service, in relation to the Parliamentary Departments, of the year ending on 30 June 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.

AUSTRALIAN BROADCASTING CORPORATION BILL 1983

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR COMMUNICATIONS)

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

General Comment

As stated in the Minister's second reading speech, this Bill is "largely based" on the similar Bill introduced by the Government late last year. However, among the changes in the Bill are several that improve provisions to which the Committee drew attention in Scrutiny of Bills Alert Digest No. 11 (dated 23 September 1982) and the Thirteenth Report (dated 22 September 1982). The Committee welcomes changes which, inter alia, substitute a series of Community Affairs Officers in place of the proposed Commissioner for Complaints in such a way that the Committee's previous misgivings over the powers conferred by clause 83 of the 1982 Bill do not arise; delete some of the administrative machinery incidental to withholding salary during certain industrial disputes; introduce a system of Tenure Appeal Boards to hear appeals in cases of redeployment, and delete a number of questionable provisions regulating the conduct of Promotions Appeal Boards.

The Committee draws the attention of Senators to the following Clauses 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 64 - Disciplinary action for misconduct

This clause provides procedures concerning the Managing Director's treatment of persons under investigation for misconduct, as defined in clause 64(10). The Committee notes that the provisions of this clause are not as detailed as the equivalent provisions in the Public Service Act 1922 - sections 61 and 62. In addition to providing clearer directions as to the nature of hearings into alleged misconduct, the equivalent sections in the Public Service Act provide for a wider range of disciplinary measures, including counselling, admonishment and a small fine. The Committee notes the marked similarity between the provisions of clause 64 and those of section 107 of the Commonwealth Banks Act 1959. It may be that all Commonwealth statutory authorities should be regulated by similar provisions, distinct from those affecting persons employed directly under the Public Service Act. However, the Committee draws a number of particular provisions to the attention of Senators.

Under clause 64(3), the Managing Director may suspend from duty an officer who is subject to an inquiry for alleged misconduct; and under clause 64(4), officers under suspension shall not be paid their salary. However under clause 64(5), the Managing Director "may, in his discretion" pay, either in whole or in part, the salary of a suspended officer. The clause contains no criteria under which this discretionary power shall be exercised. Although clause 65(1) of the Bill contains an appeal provision in relation to decisions by the Managing Director to reduce the salary of an officer guilty of misconduct, the Committee draws the attention of Senators to the lack of an appeal mechanism in respect of decisions affecting suspended officers.

Under clause 64(8), the Managing Director is required to pay any salary, otherwise due to an employee, upon removal of a suspension. However under clause 64(9), the Managing Director is granted the discretion to decrease the amount owing by an amount equal to any earnings which, in the opinion of the Managing Director, were received by the officer from outside work during suspension.

The Committee draws the attention of Senators to the lack of an avenue of appeal against these exercises of the Managing Director's discretion, in that these provisions might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 70 - Henry the Eighth provision

This clause provides, *inter alia*, that the Corporation shall not, without the approval of the Minister, enter into contracts involving either the payment or receipt of amounts exceeding \$500,000 - or a higher amount if so prescribed by regulations. The Committee acknowledges that the power to increase the amount by regulation is probably intended to make allowances for inflation. However, to the extent that this provision is an example of a Henry the Eighth clause enabling the Minister to amend an Act by way of regulation, the Committee draws it to the attention of Senators in that it might be regarded as inappropriately delegating legislative power.

AUSTRALIAN BROADCASTING CORPORATION
(TRANSITIONAL PROVISIONS AND CONSEQUENTIAL
AMENDMENTS) BILL 1983

• Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR COMMUNICATIONS)

Purpose: To make transitional and consequential changes
necessary for the smooth commencement 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.

BOUNTY (ROOM AIR CONDITIONERS) BILL 1983

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR INDUSTRY AND COMMERCE)

Purpose: To provide temporary assistance by way of a bounty scheme on the manufacture and sale in Australia of certain room air conditioning machines.

General Comment

In the previous Parliament, the Committee drew the attention of Senators to a number of provisions common to many bounty schemes in Bills in the "Industry and Commerce" portfolio - see, for example, Thirteenth Report (dated 22 September 1982) and Fifteenth Report (dated 20 October 1982). Typical of the provisions identified by the Committee were clauses empowering officials with a right of entry to commercial premises without warrant; and clauses vesting officials with inquisitorial powers. The intention of recourse to these type of powers was to enable officials to restrict the flow of public moneys through a bounty scheme only to those persons meeting the eligibility criteria of any particular scheme. On a number of occasions, Ministers have responded to Committee comments, explaining that many of these provisions were inherent in the equitable and sound administration of bounty schemes. The Committee has included these explanations in its Reports - see, for example, Fifteenth Report.

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

BOUNTY (ROOM AIR CONDITIONERS) BILL 1983 (CONT 2)

The Committee acknowledges the view of the then Minister, as reported in the Fifteenth Report, "that it is not unreasonable for persons who are paid moneys out of the public purse to expect a degree of auditing by investigators to establish that such payments have been correctly made". To the extent that such investigation is confined to matters of compliance auditing, the Committee does not see the need to alert Senators to the possibility of any serious infringement of rights or fundamental liberties.

However, the Committee is equally aware that its Terms of Reference enjoin it to examine clauses which, inter alia, might be regarded as making obligations unduly dependent upon either insufficiently defined administrative powers or non-reviewable administrative decisions. Thus, while generally accepting the desirability of compliance auditing, the Committee will continue to draw the attention of Senators to other provisions that come within our Terms of Reference.

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

Clause 6 - Lack of appeal provision

Clause 21 of the Bill states which decisions or determinations are subject to review on the merits by the Administrative Appeals Tribunal. Clause 21(1)(b) includes within the scope of reviewable decisions a decision of the Comptroller-General under clause 10 approving, or refusing to approve, payment of bounty. Clause 10 empowers the Comptroller-General to pay an application for bounty "if he is satisfied that

BOUNTY (ROOM AIR CONDITIONERS) BILL 1983 (Cont 3)

bounty is payable ...". However, under Clause 6(3), manufacturers must first meet specific eligibility criteria in order to become entitled to the bounty. Included among these criteria is the condition, under clause 6(3)(d), that the Comptroller-General "is satisfied that ... the air conditioner is of good and merchantable quality".

The Committee is concerned that Clauses 6 and 10 together provided for a double satisfaction test, and further that the Bill allows for review only of the second decision of satisfaction under clause 10. Clause 6(3) strictly requires only the satisfaction of the Comptroller-General of the existence of certain facts, not the objective existence of those facts. There would appear to be no avenue of appeal against what might be regarded as the subjective decision-making power of the Comptroller-General. In this respect, the Committee repeats misgivings aired in relation to past "good and merchantable quality" clauses - see Fifteenth Report, paragraph 5. Again, the Committee asks if it is possible explicitly to include the matters referred to in Clause 6 as criteria governing the reviewable decision made in Clause 10. The Committee continues to draw this type of 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.

Clause 11 - Registration of premises

Clause 6 includes in the list of conditions necessary for payment of the bounty the specification that the assembly of units shall take place at registered premises. Clause 11 states the procedure to be adopted for the registration of premises by the Minister - or delegate, as provided for under clause

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

BOUNTY (ROOM AIR CONDITIONERS) BILL 1983 (CONT 4)

20. The clause vests a number of non-reviewable discretions in the Minister or delegate. Clause 11 (5) permits the Minister to register a certain range of premises when "in the opinion of the Minister, the registration of those premises will promote the orderly development in Australia of the industry manufacturing bountiable air conditioners". Clause 11(8) permits the Minister to determine the date at which registration shall be deemed to take effect. The Committee draws the attention of Senators to these provisions in that they might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 16 - Powers of officers

Clause 16(1) empowers a Collector, or officer authorized by a Collector, to demand the attendance of "a person" believed "to be capable of giving information relevant to the operation of this Act", to answer questions and produce documents. The Committee notes the onerous penalties - \$1,000 - for those persons who, without reasonable excuse, refuse to comply with such a demand. In light of these penalties, the Committee is concerned that under this clause any person, including a member of the public who purchased a unit can be required to attend and answer questions. Clause 16(6) is more strictly limited to manufacturers or their employees. The Committee draws clause 16(1) to the attention of Senators in that it might be regarded as trespassing unduly on personal rights and liberties.

BOUNTY (ROOM AIR CONDITIONERS) BILL 1983 (CONT 5)

Clause 16(3) provides penalties for those persons who produce false or misleading documents to a Collector or authorized officer. Unlike clause 16(5), which is a fairly standard self-incrimination provision, this clause states that a person who knowingly produces false or misleading documents without revealing them to be false or misleading is liable to a fine of \$1,000 or imprisonment for 6 months, or both. However, persons who reveal a false entry would probably also demonstrate that they have committed an offence under clause 18(2) or 3(a), thereby possibly risking greater penalties. The plea of self-incrimination is no defence. The Committee draws this provision to the attention of Senators in that it might be regarded as unduly trespassing on personal rights and liberties.

BOUNTY (STEEL PRODUCTS) BILL 1983

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR INDUSTRY AND COMMERCE)

Purpose: To provide temporary assistance by way of a bounty scheme on the production in Australia of certain high alloy steel products.

General Comment

General comments made above in relation to the Bounty (Room Air Conditioners) Bill 1983 are applicable to this Bill.

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

Clause 11 - Registration of Premises

This clause provides for the registration of premises for the purposes of the bounty. Comments made in relation to clause 11 of the Bounty (Room Air Conditioners) Bill 1983 are applicable to this clause of the Bill.

Clause 16 - Powers of Officers

This clause provides for the powers of officers to require persons to answer questions and produce documents. Comments made in relation to clause 16 of the Bounty (Room Air Conditioners) Bill 1983 are applicable to this clause of 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 AMENDMENT BILL 1983

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR INDUSTRY AND COMMERCE)

Purpose: To enact tariff changes which were in the main introduced during the 1982 Budget sittings as Customs Tariff Proposals No. 16-26 (1982); and to deem the repealed Customs Tariff Act 1966 as having been amended in accordance with the proposals.

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 (COAL EXPORT DUTY)
AMENDMENT BILL 1983

· Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR INDUSTRY AND COMMERCE)

Purpose: To enact the Customs Tariff Alterations that decreased the rate of coal export on certain coal on and from 29 July 1982 in accordance with the previous Government's policy.

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 BILL 1983

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR INDUSTRY AND COMMERCE)

Purpose: To amend the Excise Tariff Act 1921 to enact four Excise Tariff alterations that changed the rates of excise duty on stabilized crude petroleum oil, naturally occurring liquified petroleum gas, beer, certain manufactured tobacco products and certain petroleum products.

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.

NAVIGATION (PROTECTION OF THE SEA) AMENDMENT BILL 1983

Date Introduced: 4 May 1983

House: SENATE (MINISTER REPRESENTING MINISTER FOR TRANSPORT)

Purpose: To repeal Division 12 of Part IV of the 'Navigation Act 1912' and replace it with a new Division 12 relating to ships carrying or using oil and a new Division 12A making provision concerning ships carrying noxious liquid substances in bulk.

Clause 6 - Ministerial discretions

Clause 6 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 International Oil Pollution Prevention certificate. Under proposed section 267D(5), 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.

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
1983 (CONT 2)

Clause 7 - Ministerial discretion

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 6 are also applicable to proposed sections 267Q, 267R and 267S.

PROTECTION OF THE SEA (PREVENTION OF POLLUTION
FROM SHIPS) BILL 1983

Date Introduced: 4 May 1983

House: SENATE (MINISTER REPRESENTING MINISTER
FOR TRANSPORT)

Purpose: A. To implement the provisions of Annexes
I and II of the 1973 International Convention
for the Prevention of Pollution from Ships
(MARPOL) as amended by the 1978 Protocol
to that Convention relating to the prevention
and control of pollution by oil and other
noxious liquids carried in bulk.

B. To repeal and replace the 'Protection
of the Sea (Discharge of Oil from Ships)
Act 1981'.

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.

REFERENDUM (CONSTITUTION ALTERATION) AMENDMENT BILL 1983

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES
(SPECIAL MINISTER OF STATE)

Purpose: To make machinery amendments to the Referendum (Constitution Alteration) Act 1906 to give effect to the proposal approved at the 1977 referendum to give Territory electors the right to vote in referendums.

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

Clause 4 and 9 - Lack of parliamentary scrutiny

Under Clauses 4(f) and 9 there is reference to ballot-papers being in a certain prescribed form "subject to any modifications made by the Chief Electoral Officer". The Committee notes that this administrative discretion is not subject to the standard form of parliamentary scrutiny which would accompany the exercise of the power if exercised under regulations, and draws these provisions to the attention of Senators 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.

TAXATION (INTEREST ON OVERPAYMENTS) BILL 1983

Date Introduced: 4 May 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR FINANCE)

- Purpose:
- A. To authorize the Commissioner of Taxation to pay interest on certain refunds of income tax, recoupment tax and bank account debits tax made following a successful objection or appeal by a taxpayer.
 - B. To set the initial rate of interest to be paid at 14.026% per annum.
 - C. To provide that there will be no entitlement to interest on amounts refunded in those cases where the Commissioner has, under administrative procedures applying prior to 13 December 1982, agreed to remit additional (penalty) tax accruing on unpaid amounts pending the determination of an objection or appeal.

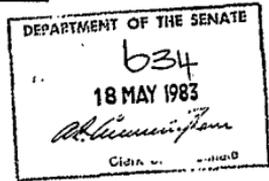
The Committee has no comments on this Bill.

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SCRUTINY OF BILLS ALERT DIGEST

No. 3



18 May 1983

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

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or
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The Committee has considered the following Bills:

Broadcasting and Television Amendment
(Election Blackout) Bill 1983

Christmas Island Agreement Amendment Bill 1983

Conciliation and Arbitration Amendment Bill 1983

Constitution Alteration (Advisory Jurisdiction
of High Court) Bill 1983

Constitution Alteration (Fixed Term Parliaments)
Bill 1983

Constitution Alteration (Inter-change of Powers)
Bill 1983

Constitution Alteration (Removal of Outmoded and
Expanded Provisions) Bill 1983

Customs Amendment Bill 1983

Customs Tariff (Anti-Dumping) Amendment Bill 1983

Industries Assistance Commission Amendment Bill
1983

National Health Amendment Bill 1983

States (Tax Sharing and Health Grants) Amendment
Bill 1983

Supply Bill (No. 1) 1983-84

Supply Bill (No. 2) 1983-84

Supply (Parliamentary Departments) Bill 1983-84

BROADCASTING AND TELEVISION AMENDMENT
(ELECTION BLACKOUT) BILL 1983

Date Introduced: 11 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR COMMUNICATIONS)

Purpose: To remove the ban on political news and comment applying to radio and television stations in the three days before Federal and State elections.

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

Clause 3 - Tribunal's discretionary power

Clause 3 proposes to amend section 116 of the Broadcasting and Television Act 1942 relating to the operation of the election blackout provisions. The proposed amendment vests a discretion in the Australian Broadcasting Tribunal as to which licensees shall be notified to refrain from broadcasting or televising election advertisements. Proposed section 116(4)(b) requires the Tribunal to issue notices to refrain where "the Tribunal is of the opinion" that programs broadcast or televised from a certain station "are ordinarily received in the whole or in a substantial part of the area ... to which the election relates ...". A licensee in receipt of such a notice shall not broadcast or televise an election advertisement.

The Committee notes that the Administrative Review Council in Report No. 16 of 11 June 1982 entitled Review of Decisions under the Broadcasting and Television Act 1942 recommended that many

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

**BROADCASTING AND TELEVISION AMENDMENT (ELECTION
BLACKOUT) BILL 1983 (Cont. 2)**

Tribunal decisions, including those relating to the operation of the election blackout, "should be open to review on the merits by the Administrative Appeals Tribunal", subject to leave being granted by the President of the AAT (paragraphs 66, 69). The Committee notes the view of the Administrative Review Council in respect of proposed new section 116, and draws this provision to the attention of Senators in that it might be regarded 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.

CHRISTMAS ISLAND AGREEMENT AMENDMENT BILL 1983

Date Introduced: 11 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR TERRITORIES AND LOCAL GOVERNMENT)

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.

CONCILIATION AND ARBITRATION AMENDMENT BILL 1983

Date Introduced: 11 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR EMPLOYMENT AND
INDUSTRIAL RELATIONS)

- Purpose:
- (1) To abolish the Industrial Relations Bureau and establish an Arbitration Inspectorate within the Department of Employment and Industrial Relations; and
 - (2) To facilitate the amalgamation of organizations registered under the Act.

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

Clause 7 - Powers of Inspectors

Clause 7 proposes to insert a new section 125 in the Conciliation and Arbitration Act 1904, establishing an Inspectorate to secure the observance of the Act, the regulations and awards.

Proposed section 125(4) states that an inspector has such powers and duties as are directed by the Minister; and proposed section 125(5) requires the Minister to publicise such directions "by notice published in the Gazette". The Committee acknowledges the Minister's statement in the second reading speech that "... the proposed legislation will not give the Inspectorate the intrusive role that the [Industrial Relations] Bureau had in respect of the internal affairs of registered organizations". The Minister further stated that

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 1983 (Cont. 2)

the powers and duties of the Inspectorate "will be open to public scrutiny by publication in the Gazette". However, the proposed legislation does not contain any requirement for parliamentary scrutiny - eg., tabling of the Ministerial Notices - of the actual powers and duties of the Inspectorate. While the Committee accepts the need for flexibility in many administrative matters, it draws this provision to the attention of Senators in that it might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

Proposed sub-section 125(6)(b)(iv) empowers an Inspector to require a person to produce books and records. A person who refuses to comply "within a reasonable time" may, under 125(7), be issued by an Inspector with a notice to produce, at a time and place specified by the Inspector. Refusal to comply "without reasonable excuse" with such a notice is made an offence under 125(10), with a penalty of \$500 or 6 months imprisonment. The Committee is concerned that decisions by an Inspector made pursuant to these provisions governing the production of books are not subject to any review by any supervisory Board or Panel. Demands for the production of books might be oppressive to an employer, and an avenue of appeal, particularly as to the time and place for the production of documents under proposed section 125(7), might be a useful protection against excessive use of this regulatory power. 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.

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

CONSTITUTION ALTERATION (ADVISORY JURISDICTION
OF HIGH COURT) BILL 1983

Date Introduced: 12 May 1983

House: SENATE
(ATTORNEY-GENERAL)

Purpose: To enable the Commonwealth and State
Governments and a Territory Government to
obtain advisory opinions from the High Court
on specified types of questions.

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.

CONSTITUTION ALTERATION (FIXED TERM PARLIAMENTS) BILL 1983

Date Introduced: 12 May 1983

House: SENATE
(ATTORNEY-GENERAL)

Purpose: To provide for elections for the House of Representatives to be held on a fixed date, on the third Saturday in November every three years, subject to two exceptions namely:

- (1) If the Government loses a formal "no confidence" vote and no alternative Government can be formed;
or
- (2) If the conditions for a double dissolution are satisfied.

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.

CONSTITUTION ALTERATION (INTER-CHANGE OF POWERS) BILL 1983

Date Introduced: 12 May 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To enable the Commonwealth to 'designate'
matters within the Commonwealth exclusive
powers, on which the States may wish to
legislate.

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.

CONSTITUTION ALTERATION (REMOVAL OF OUTMODED AND
EXPANDED PROVISIONS) BILL 1983

Date Introduced: 12 May 1983

House: SENATE
(ATTORNEY-GENERAL)

Purpose: The purpose of the Bill is to remove outmoded
and expended provisions from the Constitution.
The main categories of such provisions are:

- . transitional provisions which no longer have any application; and
- . provisions which are included in resolutions of the Hobart (1976) and Adelaide meetings of the Australian Constitutional Convention as ones that should be removed as outmoded or spent.

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 AMENDMENT BILL 1983

Date Introduced: 11 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR ADMINISTRATIVE SERVICES)

Purpose: To introduce a new system for granting tariff concessions, to be known as the Commercial Tariff Concession System.

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

Clause 5 - Tariff Concession Orders

This clause inserts a new Part XVA in the Customs Act 1901 introducing a new system for granting tariff concessions. The new system is based on a new criterion which will provide for Concessions to be issued where the Minister is satisfied that no goods serving similar functions are produced or are capable of being produced in the normal course of business in Australia. The Committee notes the statement in the Minister's second reading speech that amongst the advantages of the new scheme will be reduced "disagreement and legal disputation over fine technical points in respect of particular goods". The Committee also notes the Minister's statement that procedures adopted in the legislation "will make for better public scrutiny of the system"; and further, that the "operation of the new system will be subject to review under the provisions of the Administrative Decisions (Judicial Review) Act".

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 1983 (Cont. 2)

However, as it stands the Bill contains a number of proposed sections that vest unreviewable discretions in the Minister. Only the decisions referred to in proposed sections 269(N)(4) and (5) concerning the dating of a concession are made subject to review on the merits by the Administrative Appeals Tribunal, under clause 6 of the Bill. Examples of other decisions not subject to review on the merits included those provided for under proposed sections 269C, 269E, 269F and 269P which relate to the actual grant or refusal to grant of concession orders. The Committee notes that in most cases these latter decisions must be publicly notified, and in some cases the criteria for the exercise of the decision are specified. Although the Minister's second reading speech explains that concession decisions "will be reviewable by the existing internal review system within the Department", the Committee records the view of the Administrative Review Council report of 1982 entitled Review of Import Control and Customs By-law Decisions, which recommended a supplementary scheme of external review - either by the Industries Assistance Commission or, preferably, by the Administrative Appeals Tribunal. The Committee is interested that most of the exercises of Ministerial discretion in the Bill are reviewable only on the narrower grounds of legal competency under the Administrative Decisions (Judicial Review) Act, and not on the wider grounds of merit under the Administrative Appeals Tribunal.

The Committee reserves final comment on this aspect of the Bill until the completion of the examination by the Administrative Review Council of the current review of decisions under the Customs Act 1901.

CUSTOMS AMENDMENT BILL 1983 (Cont. 3)

However, the Committee draws the clause to the attention of the Senate in that it might be regarded as making rights, liberties 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.

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1983

Date Introduced: 11 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR ADMINISTRATIVE SERVICES)

Purpose: To make consequential amendments to the Customs
Tariff (Anti-Dumping) Act 1975 following
the amendments proposed in the Customs Amendment
Bill 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.

INDUSTRIES ASSISTANCE COMMISSION AMENDMENT BILL 1983

Date Introduced: 11 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR ADMINISTRATIVE SERVICES)

Purpose: To make consequential amendments to the
Industries Assistance Commission Act 1973
following the amendments proposed in the
Customs Amendment Bill 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.

NATIONAL HEALTH AMENDMENT BILL 1983

Date Introduced: 11 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR HEALTH)

Purpose: The purpose of this Bill is to make amendments to the National Health Act 1953 to -

- (1) ensure the effective continuation of established policies and practices in Commonwealth control of nursing home fees;
- (2) abolish the patient declaration of entitlement to free or concessional pharmaceutical benefits under the Pharmaceutical Benefits Scheme;
- (3) introduce a simpler arrangement by which a person's entitlement to free or concessional pharmaceutical benefits may be made known to the pharmaceutical chemist; and
- (4) make a minor machinery change to the delegation power relating to the provision of Commonwealth domiciliary nursing care 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.

STATES (TAX SHARING AND HEALTH GRANTS)
AMENDMENT BILL 1983

• Date Introduced: 11 May 1983

House: HOUSE OF REPRESENTATIVES
(THE TREASURER)

Purpose: To ensure that tax sharing payments to the States made under the States (Tax Sharing and Health Grants) Act 1981 are based on a share of "total" net Commonwealth tax collection.

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) 1983-84

Date Introduced: 12 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR FINANCE)

Purpose: To make interim provision for the appropriation
of money out of the Consolidated Revenue
Fund for the service of the year ending on
30 June 1984.

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) 1983-84

Date Introduced: 12 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR FINANCE)

Purpose: To make interim provision for the appropriation of moneys out of the Consolidated Revenue Fund for certain expenditure in respect of the year ending on 30 June 1984.

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 (PARLIAMENTARY DEPARTMENTS) BILL 1983-84

Date Introduced: 12 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR FINANCE)

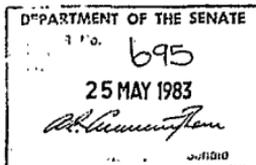
Purpose: To make interim provision for the appropriation of moneys out of the Consolidated Revenue Fund for the service of the year ending on 30 June 1984.

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. 4

25 May 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power;
or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.



The Committee has considered the following Bills:

Community Employment Program Bill 1983

Constitution Alteration (Appropriation Bills) Bill 1983

Economic Planning Advisory Council Bill 1983

Income Tax Assessment Amendment Bill (No.2)1983

Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Amendment Bill 1983

Income Tax (Individuals) Amendment Bill 1983

Income Tax (Payments for Work) (Consequential Amendments) Bill 1983

Income Tax (Rates) Amendment Bill 1983

Parliamentary Contributory Superannuation Amendment Bill 1983

Statute Law (Miscellaneous Provisions) Bill (No. 1) 1983

Taxation (Unpaid Company Tax) Assessment Amendment Bill 1983

Taxation (Unpaid Income Tax - Dividends) Bill 1983

COMMUNITY EMPLOYMENT PROGRAM BILL 1983

Date Introduced: 19th May 1983

House: HOUSE OF REPRESENTATIVES (MINISTER FOR
EMPLOYMENT AND INDUSTRIAL RELATIONS)

Purpose: To establish the Community Employment Program
as outlined by the Treasurer in his Economic
Statement on the 19th May 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.

SCRUTINY OF BILLS ALERT DIGEST



No. 5

1 JUNE 1983

| | |
|--------------------------|--------------|
| DEPARTMENT OF THE SENATE | |
| PAPER No. | 783 |
| DATE PRESENTED | - 1 JUN 1983 |
| <i>W. L. ...</i> | |
| Clerk of the Senate | |

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
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 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power;
or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

* Income Tax Assessment Amendment Bill 1983

Racial Discrimination Amendment Bill 1983

Social Security and Repatriation Legislation
Amendment Bill 1983

Wheat Marketing Amendment Bill 1983

* Clauses reported to Senate 1 June 1983

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.

INCOME TAX ASSESSMENT AMENDMENT BILL 1983

Date Introduced: 18 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR FINANCE)

- Purpose:
- . To introduce from 1 September 1983 a system of tax deductions at source in respect of certain payments for contract work;
 - . to introduce, with effect from 20 July 1982, a new system of depreciation allowances for plant;
 - . to introduce, with effect from 20 July 1982, a new basis of deduction for capital expenditure incurred in developing a mining property or oil field;
 - . to modify, with effect from 13 January 1983, the operation of the special income tax concessions for investment in the production of Australian films;
 - . to introduce a scheme of depreciation allowances in respect of the construction cost of non-residential income-producing buildings;
 - . to facilitate the collection of tax payable by non-resident beneficiaries of trust estates;

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 1983 (Cont. 2)

- to specifically provide in the law that interest paid by the Commissioner of Taxation under the proposed Taxation (Interest on Overpayments) Act 1983 will be assessable income of the recipient in the income year in which it is paid.

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

Clause 54 - Proposed section 124ZJ

In common with most Taxation Assessment Bills, this Bill vests many discretions in the Commissioner of Taxation. Proposed section 124ZJ at p.52 of the Bill is a particularly clear example of such a new discretionary power - see also, for other examples, clauses 10, 13, 15(1), 27, 36, 50 and 52. The example in question permits the Commissioner of Taxation to reduce the claimed amount in respect of deductions for capital expenditure on certain income-producing buildings "by such amount as the Commissioner considers fair and reasonable".

While the Committee is aware of the existence of avenues of internal review and rights of appeal to the Taxation Boards of Review, it looks forward to the early completion by the Administrative Review Council of its current inquiry into "Income Tax Objections and Appeal Procedures". The Committee reserves final comment on these examples of new discretionary power being vested in the Commissioner, and more specifically on the most appropriate form of external review on the merits of these discretionary 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 1983 (Cont. 3)

However, while awaiting the Administrative Review Council report, the Committee draws this clause to the attention of Senators in that it might be regarded as making rights, liberties 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.

RACIAL DISCRIMINATION AMENDMENT BILL 1983

Date Introduced: 25 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER REPRESENTING THE ATTORNEY-GENERAL)

Purpose: To amend the Racial Discrimination Act 1975
to remedy a situation which has arisen as
a result of a recent High Court decision.

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 SECURITY AND REPATRIATION LEGISLATION
AMENDMENT BILL 1983

Date Introduced: 25 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR SOCIAL SECURITY)

Purpose: To amend the Social Security Act 1947 and the Repatriation Act 1920 to implement the announcement in the Economic Statement of the Treasurer on 19 May 1983 in respect of changed arrangements for providing pensions and service pensions for persons aged 70 years and over.

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.

WHEAT MARKETING AMENDMENT BILL 1983

Date Introduced: 24 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR PRIMARY INDUSTRY)

Purpose: To terminate from 1 July 1983 the scheme whereby the Australian Wheat Board is reimbursed for the additional costs involved in borrowing from the domestic capital market compared with the Rural Credits Department of the Reserve Bank.

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.

DEPARTMENT OF THE SENATE
PAPER No. 842
DATE: 23 AUG 1983
PR-S
A. Cunningham
Clerk of the Senate



SCRUTINY OF BILLS ALERT DIGEST

No. 6

23 August 1983

mbd

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Anzac Day Bill 1983
Archives Bill 1983
Copyright Amendment Bill 1983
Family Law Amendment Bill 1983
Freedom of Information Amendment Bill 1983
Income Tax Assessment Amendment Bill 1983
Industrial Democracy Bill 1983
Migration Amendment Bill 1983
Migration Amendment (Emigration of Certain Children)
Bill 1983
National Service Amendment Bill 1983
Ombudsman Amendment Bill 1983
Ombudsman (Miscellaneous Amendments) Bill 1983
River Murray Waters Bill 1983
Sales Tax (Exemptions and Classifications) Amendment
Bill 1983
Sex Discrimination Bill 1983

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.

ANZAC DAY BILL 1983

Date Introduced: 31 May 1983

House: SENATE
(SENATOR LEWIS)

Purpose: To establish Anzac Day as a national day of remembrance and to provide for observances in the Australian Capital Territory to mark Anzac Day.

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

Clause 5 - Function of the President

One of the chief objects of this Bill is to place the care and responsibility for the conduct of the Anzac Day national services in the Australian Capital Territory in the hands of the National President of the Returned Services League. Clause 5(1) states that for the purposes of this legislation the function of the R.S.L. National President is to "arrange appropriate observances" to mark Anzac Day. Clause 5(2) grants the National President very wide discretion in the performance of that function, when it states that he "shall not be subject to any directions of any person or body, but may consult with any person or body as he thinks fit."

Although it should be noted that clause 6 requires the National President to publish in the Gazette the arrangements he has determined for observance 90 days prior to the observance, the Committee is concerned that extraordinary power is vested in the National President. The Committee has a general duty to draw to the attention of Senators matters in which there is a potential for undue trespass on personal rights and liberties. To clothe the National

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

ANZAC DAY BILL 1983 (Contd 2)

President of this organisation with such vast powers might be regarded as an undue trespass; and to leave the conduct of the powers with no more than general guidance might be regarded as administratively unsound. The Committee draws the attention of Senators to this clause in that it might be regarded as making rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 12 - Review by Court

This clause provides for a person aggrieved by a decision of the President - either in regard to the area designated for observance under clause 7, or in regard to a refusal of permission to participate in an observance - to apply to the Federal Court for a review of that decision. Under clause 12(4), the Court is required, as is the President under clause 11, to have regard to the intention of the legislation as stated in clause 4. Although the Committee accepts that this procedure provides for an effective review on the merits, it notes that the President is not required, under clause 10, to advise unsuccessful applicants of their right of review. Under clause 10(2), the President is required to notify each applicant of his decision not less than 30 days prior to the observance. It is possible that an unsuccessful applicant might not learn of the avenue of appeal before it is too late to exercise that appeal - which, under 12(2), is not less than 14 days before the observance.

The Committee supports statements made by Senators in the past that notice of rights and avenues of appeal should accompany all relevant administrative decisions. The Committee draws this clause to the attention of Senators in that it might be regarded as making rights, liberties, 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.

Clause 14 - Offences

Clause 14(c) makes it an offence for a person without permission to enter the designated area of an observance. It is quite possible that the designated area could include an area wider than that used for the actual Anzac Day procession; the area would almost certainly include the wreath-laying site. The effect of this clause could be to make it an offence for a member of the general public to attend an Anzac Day service, either as an observer or as a private wreath-layer. 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.

ARCHIVES BILL 1983

Date Introduced: 2 June 1983

House: SENATE
(ATTORNEY-GENERAL)

Purpose: To provide the Archives with a statutory basis for its operations and for the proper disposition of all Government records.

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

Clauses 20 and 21 - Regulations

These clauses permit the making of regulations which not merely give effect to the legislation but could also alter the operations of the Archives Act. These clauses provide a mechanism by which a wider range of documents - from Parliament and the courts - can be brought within the scope of the Act. Although the Committee ventures no opinion on the policy question as to whether such documents should be made subject to the Act, it is as concerned as ever that Acts should not be effectively amended by way of regulation. The Committee adopts the practice of drawing the attention of Senators to such "Henry the Eighth" provisions in that they might be regarded as inappropriately delegating legislative power.

Clause 31 - Documents withheld

This clause states the basic requirement that the Archives shall make all non-exempt records available for public access. Under 31(4), the Archives may withhold a record or class of records from public access "for a reasonable

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

time" to facilitate the classification of exempt records. The Committee is concerned that this grant of "reasonable time" might allow the Archives even greater time than the maximum of 90 days in which it must respond to an applicant seeking access to an exempt record, as provided for in sub-clause 40(3). The Committee accepts the Minister's statement in the second reading speech that some exemptions "in the interests of personal privacy, good government and security" will necessarily arise. However, the Committee also expects the Bill to provide in the words of the Minister, a system with "a clear statement of rights and objectives both of agencies and the public." However, it is not clear what function clause 31(4) serves in relation to clause 40(3). The Committee therefore draws the attention of Senators to this clause in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 37 - Custody and preservation of records

This clause complements the power of the Director-General given by clause 36(4)(c) to deny access or to permit conditional access to records which, in his opinion, require safe custody and proper preservation. The Committee is aware that the intention of this grant of discretionary power is to enable the Director-General to exercise his specialist skill in pursuit of statutory functions of the Archives as specified in clause 5(2). However, to the extent that this power could be used to deny access unreasonably or to impose unreasonable conditions, the Committee is concerned that there is no avenue of appeal by an aggrieved applicant. The Committee draws this clause 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 40 - Regulations

This clause establishes the procedure for applications and the granting of access to records referred to in Clause 31. Clause 40(3) requires the Archives to notify an applicant of its decision within a maximum of 90 days.

However, clause 40(4) provides for the alteration of this period by way of regulation. The Committee notes that the regulation may only shorten and not lengthen the period of 90 days. Although it is difficult to imagine that an applicant's interest would be adversely affected by any such shortening, the Committee adopts the practice of drawing attention to all examples of "Henry the Eighth" provisions in which the substance of an Act can be amended by way of regulation. The Committee draws the attention of Senators to this clause 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.

COPYRIGHT AMENDMENT BILL 1983

Date Introduced: 2 June 1983

House: SENATE
(ATTORNEY-GENERAL)

Purpose: To amend the Copyright Act 1968 to provide for the delivery by broadcasting and television organisations of so-called 'ephemeral' records to the Australian Archives.

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.

FAMILY LAW AMENDMENT BILL 1983

Date Introduced: 1 June 1983

House: SENATE
(ATTORNEY-GENERAL)

Purpose: To amend the Family Law Act 1975 to implement the majority of the recommendations of the Joint Select Committee on the Family Law Act and other recommendations made by the Family Law Council, the Law Council of Australia and the judiciary.

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

Clause 5 - Counselling

This clause amends section 15 of the Principal Act to make it mandatory for a Court officer to arrange counselling should one of the parties so request. The proposed amendment does not, of itself, make attendance at such a counselling session compulsory. However, clause 68 proposes a new section covering Rules of Court, in which the Judges are empowered, under proposed section 123(1)(s) to regulate the proceedings of, and mandatory attendance at, counselling sessions, once requested by either party. Onerous penalties are provided for offences against the Rules - see section 123(1)(u).

The Committee acknowledges the Minister's statement of policy in the second reading speech: that when "marriages break down, for whatever reason, every effort must be made to ensure speedy resolution of differences with the minimum of trauma and expense and the maximum possible benefit to all parties." The Committee appreciates the difficulty of implementing a scheme that tries to achieve the maximum benefit to all parties. The Committee also

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notes that Rules of Court are subject to parliamentary scrutiny and may be disallowed. The Committee is also aware that many might not regard compulsion in counselling of this kind as offensive. However, 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 29 - Obligation of owners of vessels

This clause proposes to insert a number of new sections in the Principal Act. Included among those proposed sections is 70B, outlining new obligations on owners, masters and charterers of shipping vessels. The Committee's comments on this proposed section closely adhere to earlier comments made on related provisions in the Family Law Amendment Bill 1981 (see First Report, February 1982, paragraph 16).

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 the proposed section 70B to which the attention of Senators 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 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

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

FAMILY LAW AMENDMENT BILL 1983 (Contd 3)

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. This represents a reversal of the onus of proof.

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. 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, but draws these matters to the attention of Senators in that they might be regarded as trespassing unduly on personal rights and liberties, and 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.

FREEDOM OF INFORMATION AMENDMENT BILL 1983

Date Introduced: 2 June 1983

House: SENATE
(ATTORNEY-GENERAL)

Purpose: To amend the Freedom of Information Act 1982
in line with recommendations of the Senate
Standing Committee on Constitutional and
Legal Affairs not taken up by the previous
Government.

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 1983

Date Introduced: 25 May 1983

House: SENATE
(SENATOR MASON)

Purpose: To remove from the Income Tax Assessment Act 1936 the provision of an income tax deduction for the destruction and removal of indigenous timber.

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.

INDUSTRIAL DEMOCRACY BILL 1983

Date Introduced: 24 May 1983

House: SENATE
(SENATOR JACK EVANS)

Purpose: To establish an Industrial Democracy Board with the aim of encouraging employee share ownership and participation in management by providing a reduction in the tax payable by enterprises which satisfy the criteria required for registration in the Register of Industrial Democracy Enterprises.

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

Clause 25 - Unreviewable decisions by Board

This clause is in like terms to clause 25 of the Industrial Democracy Bill 1981 upon which the Committee commented in its First Report (February 1982 paragraph 19). 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. As registration by the Board is crucial to the obtaining by an industry of the benefits provided for under the Bill, 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.

Clause 29 - Board guidelines

This clause empowers the Board to make and publicise in the Gazette guidelines on its interpretation and application of

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 1983 (Contd 2)

the criteria set out in clause 20 paragraphs (1)(a)-(d). The Committee notes that the Board's own guidelines must be "not inconsistent" with those criteria established by Parliament in proposed section 20. However, the Committee is concerned at the potential in the Board's criteria under clause 29 to alter or amend the Act. The Bill provides a separate grant of power under clause 31 for regulations covering all matters necessary or convenient for carrying out or giving effect to the legislation. Such regulations would, as with all regulations, be subject to parliamentary disallowance procedures. To the extent that clause 29 may authorize even more substantial matters than is traditionally the case with regulations, it may be useful to have some form of parliamentary scrutiny of these guidelines. The Committee draws this clause to the attention of Senators 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.

MIGRATION AMENDMENT BILL 1983

Date Introduced: 26 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR IMMIGRATION AND ETHNIC AFFAIRS)

Purpose: To remove the distinction between aliens and immigrants in relation to entry and deportation controls and to put all non-Australian citizens on the same footing in relation to those controls.

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

Clause 11 - Appeals against deportation orders

This clause proposes to amend section 14 of the Principal Act relating to deportation upon national security grounds. Included in the proposed amendment is new sub-section (1) which empowers the Minister to order the deportation of a non-citizen who, in the opinion of the Minister, "constitutes, or has constituted, a threat to the security of the Commonwealth" or State or Territory. The Bill does not propose to amend the existing appeal system in the Principal Act, which grants persons the right to request that their case be considered by a Commissioner, specially appointed to investigate and report to the Minister whether the ground specified in the deportation notice "has been established"(14(6)). Where there is a Commissioner inquiry, the Minister shall not order deportation unless the ground specified in the notice has been so established - see section 14(8)(c).

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 1983 (Contd 2)

The Committee is drawn to consider the existing review mechanism in the Principal Act because of its effect on the operation of clause 11(1) which is being amended by this Bill. The Committee notes the marked discrepancy in review mechanisms between different types of deportation orders. Section 66E of the Principal Act grants the right to review by the Administrative Appeals Tribunal in certain types of deportation - where the ground is related to offences other than national security (see sections 12 and 13). However, in cases related to national security, a specially appointed Commissioner replaces the Administrative Appeals Tribunal. It may well be that the power of such a Commissioner to stay a groundless deportation order is actually greater than that enjoyed by the Administrative Appeals Tribunal which, under section 66(E)(3) of the Principal Act, is confined either to the affirmation of the Minister's decision or to the remittal of the matter to the Minister for reconsideration. In contrast, an adverse report by a Commissioner can, if other minor conditions are met, render a deportation order void. Despite this, the Committee is concerned that the review mechanism for decisions under proposed new section 14(1) may not be the most suitable procedure for reviewing deportation orders relating to national security. It may be that the Administrative Appeals Tribunal has the capacity for more effective and equitable review because of its proven expertise in reviewing the decision-making process. In order therefore to alert Senators to this difficult issue, the Committee draws attention to this clause in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 11 - Prescribed offences

This clause amends section 14 of the Principal Act dealing with the deportation of persons convicted of offences against national security. The Committee notes that

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 1983 (Contd 3)

the Minister's second reading speech cites two important safeguards in the operation of this section: first, proposed sub-section 14(2) generally specifies the relevant offences, as distinct from the existing provision which leaves the range of relevant offences subject to the discretion of the Minister; and second, the Minister has promised to consider further improvements in the appeal system against s.14 deportations, notwithstanding the actual reduction in areas of ministerial discretion effected by this Bill.

However the Committee also notes that included in the range of offences created by this clause is proposed section 14 (2)(c)(iii), which refers to prescribed offences against a State or Territory law. Section 67(1) of the Principal Act provides for regulations "prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act..." Thus, a list of offences against State or Territory laws may be made or prescribed by regulation. The proposed amendment contains no limit on the breadth of this prescription and, in theory, it would be possible to include among the grounds for deportation convictions for quite minor State or Territory offences. While it is true that regulations are subject to parliamentary scrutiny and disallowance, the Committee is concerned at the wide discretion given to the Minister to determine "prescribed offences." Discretionary power is often inevitable in procedures such as deportation. However, the Committee is concerned that the delegation of discretion is in this case insufficiently defined, with only minimal guidelines or criteria to govern the exercise of the discretion. The Committee draws this clause to the attention of Senators in that it 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.

MIGRATION AMENDMENT (EMIGRATION OF CERTAIN CHILDREN)
BILL 1983

Date Introduced: 1 June 1983

House: SENATE
(ATTORNEY-GENERAL)

Purpose: To remove from the Migration Act 1958 those provisions relating to offences for the removal from Australia of children in respect of whom custody or like orders have been made or sought, which are now inserted in a revised form in the Family Law Act 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.

NATIONAL SERVICE AMENDMENT BILL 1983

Date Introduced: 18 May 1983

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.

OMBUDSMAN AMENDMENT BILL 1983

Date Introduced: 26 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER ASSISTING THE PRIME MINISTER
FOR PUBLIC SERVICE MATTERS)

Purpose: To amend the Ombudsman Act 1976:

- (1) to create and vest in the Commonwealth Ombudsman a statutory office of Defence Force Ombudsman - with much the same powers as the Commonwealth Ombudsman, but with jurisdiction to investigate actions arising out of service in the Defence Force - and to establish an office of Deputy Ombudsman (Defence Force); and
- (2) to make various other amendments to the Ombudsman Act in the light of experience and review by the Administrative Review Council including to:
 - . provide a statutory basis for the Ombudsman's practice of resolving most complaints with a minimum of formality and resources;
 - . furnish the Ombudsman with additional discretion in taking action after an investigation, and clarify that he may publish information on a current investigation in some circumstances;

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 1983 (Contd 2)

- . further facilitate co-operative investigatory activities involving the Commonwealth Ombudsman and other Australian Ombudsmen;
- . provide for determination by the Federal Court of issues arising concerning the Ombudsman's jurisdiction; and
- . clarify that the Ombudsman may investigate official actions preceding and succeeding Ministers' actions, and may make informal inquiries to establish his jurisdiction.

The Committee has no comments on this Bill.

OMBUDSMAN (MISCELLANEOUS AMENDMENTS) BILL 1983

Date Introduced: 26 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER ASSISTING THE PRIME MINISTER FOR
PUBLIC SERVICE MATTERS)

Purpose: To make amendments, primarily to the Complaints
(Australian Federal Police) Act 1981, which
complement the provisions of the Ombudsman
Amendment Bill 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.

RIVER MURRAY WATERS BILL 1983

Date Introduced: 26 May 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER REPRESENTING MINISTER FOR RESOURCES
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.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT BILL 1983

Date Introduced: 2 June 1983

House: SENATE
(SENATOR JACK EVANS)

Purpose: To amend the Sales Tax (Exemptions and Classifications) Act 1935 to provide exemption from sales tax of retreaded and recapped tyres.

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.

SEX DISCRIMINATION BILL 1983

Date Introduced: 2 June 1983

House: SENATE
(EDUCATION AND YOUTH AFFAIRS)

Purpose: To make unlawful discrimination on the grounds of sex, marital status and pregnancy in the areas of employment, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs. The Bill also provides for a prohibition on sexual harassment in the workplace and in educational institutions.

The Bill establishes a Sex Discrimination Commissioner whose function will be to conciliate complaints of discrimination made under the legislation and to attempt to reach an amicable settlement. Where the process of conciliation is unsuccessful the Human Rights Commission can inquire into the complaint and may make determinations as to future conduct. These determinations may be enforced by action in the Federal Court.

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

Clauses 5,6 and 7 - Meaning of discrimination

These three clauses define the meaning of discrimination under this legislation, with reference to three categories of discrimination: those based on the grounds of sex

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 1983 (Contd 2)

(clause 5), marital status (clause 6), or pregnancy (clause 7). Each of these clauses contains a like provision defining indirect discrimination (to adopt the language of the Explanatory Memorandum) by reference, inter alia, to an act in which a person must comply with a requirement or condition "which is not reasonable having regard to the circumstances of the case" - see clauses 5(2)(b), 6(2)(b) and 7(2)(b).

Although these paragraphs in each instance constitute only one of three grounds each of which is necessary for there to be indirect discrimination, the Committee is concerned as to the standpoint or perspective from which reasonableness is to be judged by the Sex Discrimination Commissioner or the Human Rights Commission. In view of the wide variation of social attitudes on these matters and in the absence of any guide as to the meaning of reasonableness in the legislation, the Committee is concerned that in this instance the legislation might not be as useful as it could be to the parties involved. Therefore the Committee draws this clause to the attention of Senators in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 19 - Single gender schools

This clause prevents schools from discriminating (as defined in clauses 5,6 and 7) in admissions policy and related practices. Clause 19(3) grants an exception in the case of single gender schools - schools that are "conducted solely for students of the opposite sex to the sex of the applicant" or aggrieved person. The Committee is concerned about the situation of those schools that are primarily single gender but operate on a co-educational

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 1983 (Contd 3)

basis at junior or the most senior levels. It would seem that such schools are not exempted from the anti-discrimination requirements of clause 19, the operation of which might have a considerable effect on the admission policy of these schools. In light of the possible uncertainties surrounding this important area of education, 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 insufficiently defined administrative powers.

Clause 47 - Inquiries by Commissioner

This clause provides for the Commission to direct the Sexual Discrimination Commissioner to inquire into matters of discrimination and under clause 47(1)(b), to "endeavour, by conciliation, to effect a settlement of the matter ...". Clause 47(4) provides a review mechanism to the Commission in cases where the Sexual Discrimination Commissioner has decided against investigation, as that officer is empowered to do by clause 47(2). Review of a decision not to investigate is available only if the ground of the Commissioner's decision is as stated in paragraphs (b), (c) or (d) of clause 47(2). A complainant may not seek such a review if the ground of the Commissioner's decision is that the Commissioner is satisfied that the alleged act of discrimination is not unlawful - clause 47(2)(a). The Committee is aware of the argument that, in this area, finality is desirable and that the Sexual Discrimination Commissioner's finding on such an issue should be conclusive. However, there are respectable counter-arguments in favour of a review provision. 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.

SEX DISCRIMINATION BILL 1983 (Contd 4)

Clause 57 - Notice of inquiry and rights of parties at an inquiry

This clause provides general guidelines for the conduct of anti-discrimination inquiries by the Commission. The Committee commented in similar terms on a like provision in the Sex Discrimination Bill 1981 in its First Report (February 1982, paragraph 24). 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.

The Committee draws this clause to the attention of Senators in that it might be regarded as making rights, liberties and obligations dependent upon non-reviewable administrative decisions.

Clause 82 - Self-incrimination

This clause contains the now quite standard self-incrimination provision: it states that, for the purposes of clause 80 and 81, it is not a reasonable excuse for failing to comply with an official inquiry for a person to hold that such compliance might be self-incriminating. The Committee also notes the presence of the equally standard provision that answers or evidence produced are not admissible in evidence against a person in any other civil or criminal proceedings. 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 94 - Delegation

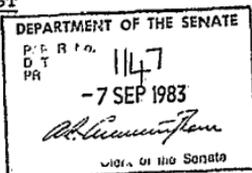
This clause also contains a now quite standard provision, in this case relating to the delegation of the powers of the Commission. This clause empowers both the Commission and the Sexual Discrimination Commissioner to delegate their statutory powers of inquiry to other Commission officers or indeed to "any other person or body of persons". This power of delegation is not limited by reference to the qualifications of persons who may exercise the relevant powers. The Senate had occasion to debate a similar delegation provision during the passage of the World Heritage Properties Conservation Bill 1983 (see Senate Hansard 18 May 1983, pages 597-8). In light of this earlier Senate concern over powers of delegation, the Committee draws this clause to the attention of Senators in that it might be regarded as making rights, liberties and/or obligations unduly dependent on 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.



SCRUTINY OF BILLS ALERT DIGEST

No. 7



7 September 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missep, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. F.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Appropriation Bill (No. 1) 1983-84
Appropriation Bill (No. 2) 1983-84
Appropriation (Parliamentary Departments) Bill 1983-84
Broadcasting Stations Licence Fees Amendment Bill 1983
Dividend Recoupment Tax Bill 1983
Edible Oils (Export Inspection Charge) Amendment Bill 1983
Eggs (Export Inspection Charge) Amendment Bill 1983
Grain (Export Inspection Charge) Amendment Bill 1983
Income Tax Assessment Amendment Bill 1983
Income Tax Assessment Amendment Bill (No. 3) 1983
Liquid Fuel Emergency Bill 1983
Live-stock Slaughter (Export Inspection Charge) Amendment Bill 1983
Loan Bill (No. 2) 1983
Migration (Miscellaneous Amendments) Bill 1983
Public Service Amendment Bill 1983
Sales Tax (Exemptions and Classifications) Amendment Bill 1983
Taxation (Unpaid Company Tax) Assessment Amendment Bill 1983
Television Stations Licence Fees Amendment Bill 1983

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.

APPROPRIATION BILL (NO. 1) 1983-84

Date Introduced: 23 August 1983

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 1983-84 Budget.

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

Clause 7 - Expenditure under Division 312

This clause empowers the Minister of Finance to charge expenditure under Division 312 of Schedule 2 of Appropriation Bill (No. 1) to such heads as the Minister sees fit. Division 312 provides for a special fund which may be expended at the discretion of the Minister of Finance for "... the commencement, continuation or expansion of Government programs". This special discretionary fund has not been appropriated in the past and its creation as a relatively obscure part of a major piece of fiscal legislation may be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

Control over the exercise of this discretion is limited. The Minister is required to submit particulars of expenditure from the special funds to Parliament "... as soon as practicable" after expenditure is authorised. Thus it is possible that significant sums could be

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APPROPRIATION BILL (NO. 1) 1983-84 (Cont 2)

expended on the commencement of a program with little opportunity for effective parliamentary scrutiny or control of that expenditure and may be considered an inappropriate delegation of legislative power.

The Committee draws the attention of Senators to Clause 7 and Division 312 of Schedule 2 in that they might be considered to be both an inappropriate delegation of legislative power and 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.

APPROPRIATION BILL (NO. 2) 1983-84

Date Introduced: 23 August 1983

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 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 (PARLIAMENTARY DEPARTMENTS) BILL 1983-84

Date Introduced: 24 August 1983

House: HOUSE OF REPRESENTATIVES
(TREASURER)

Purpose: To appropriate sums from the Consolidated Revenue Fund for the purposes of Parliamentary Departments during the 1983-84 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.

BROADCASTING STATIONS LICENCE FEES AMENDMENT BILL 1983

Date Introduced: 24 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR COMMUNICATIONS)

Purpose: To revise the formulae used to calculate annual licence fees payable by the larger commercial broadcasting stations and to increase the present ceiling on those fee rates from 5.0% to 5.5% of annual gross earnings.

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

Clause 2 - Commencement

This clause would implement the increase in licence fees from 1 September 1983. No explanation is offered in the Explanatory Memorandum accompanying the Bill for this retrospective operation. The Committee adopts the practice of drawing the attention of Senators to all retrospective provisions which might be regarded as trespassing 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.

DIVIDEND RECOUPMENT TAX BILL 1983

Date Introduced: 23 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER ASSISTING THE TREASURER)

Purpose: To impose a tax to be called Dividend
Recoupment Tax on the dividend amount
determined in accordance with the rules
being inserted in the recoupment tax
legislation by the Taxation (Unpaid
Company Tax) Assessment Amendment Bill
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.

EDIBLE OILS (EXPORT INSPECTION CHARGE) AMENDMENT BILL 1983

Date Introduced: 24 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR PRIMARY INDUSTRY)

Purpose: To increase the maximum rate of levy
which may be prescribed for recoupment
of the costs of export edible oil
inspection services provided by 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.

EGGS (EXPORT INSPECTION CHARGE) AMENDMENT BILL 1983

Date Introduced: 24 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR PRIMARY INDUSTRY)

Purpose: To increase the maximum rate of levy which may be prescribed for recoupment of the costs of export inspection services for eggs other than "eggs in shell" provided by 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.

GRAIN (EXPORT INSPECTION CHARGE) AMENDMENT BILL 1983

Date Introduced: 24 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR PRIMARY INDUSTRY)

Purpose: To amend the maximum rate of levy which
may be prescribed for recoupment of
the costs of export grain inspection
services provided by 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.

INCOME TAX ASSESSMENT AMENDMENT BILL 1983

Date Introduced: 24 August 1983

House: SENATE
(SENATOR CHIPP)

Purpose: To amend the Income Tax Assessment Act
1983 in relation to gifts of certain
property to charitable 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 ASSESSMENT AMENDMENT BILL (NO. 3) 1983

Date Introduced: 23 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER ASSISTING THE TREASURER)

Purpose: To amend the income tax law to give effect to the decision announced by the Treasurer on 19 May 1983 that there are to be no new entrants after 30 September 1983 to the tax rebate scheme for home loan interest payments by first home buyers and that benefits under the scheme after that date are to be subject to an income test.

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.

LIQUID FUEL EMERGENCY BILL 1983

Date Introduced: 24 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER REPRESENTING MINISTER FOR
RESOURCES AND ENERGY)

Purpose: To provide the Commonwealth Government
with the powers to enable it, in
consultation with the State and Territory
Governments, to effectively co-ordinate
the management of a national liquid
fuel emergency.

General Comment

Clauses 30, 31 and 32 in Part IV of the Bill form the core of the enforcement provisions of the legislation. Some of these provisions may be seen as trespassing unduly on individual rights and liberties; most particularly clause 31(5) which allows an authorized person to enter land, premises, buildings, ships, etc. without a warrant. The clauses only come into force after the proclamation of an emergency by the Governor-General under clause 16 of the Bill.

These powers are clearly justified by the policy intention of the Bill - to provide the Commonwealth Government with the powers to enable it to co-ordinate effectively the management of a national liquid fuel emergency - and are limited to the period of a proclaimed emergency. However the Committee believes that Senators ought to be fully aware of the extent of these powers.

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 (EXPORT INSPECTION CHARGE)
AMENDMENT BILL 1983

Date Introduced: 24 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR PRIMARY INDUSTRY)

Purpose: To increase the maximum rate of levy
which may be prescribed for recoupment
of the costs of export meat inspection
services provided by 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.

LOAN BILL (NO. 2) 1983

Date Introduced: 23 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR FINANCE)

Purpose: To enable the financing of the prospective 1983-84 Budget deficit which gives rise to an estimated shortfall of the same order in the amount of moneys legally available to the Consolidated Revenue Fund.

To overcome the estimated shortfall in the Consolidated Revenue Fund the Bill provides authority to charge to the Loan Fund defence expenditures which would otherwise be met from the Consolidated Revenue Fund, and to reimburse the Consolidated Revenue Fund from the Loan Fund in respect of certain non-defence expenditures. The Bill also provides borrowing authority to finance those expenditures from the Loan 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.

MIGRATION (MISCELLANEOUS AMENDMENTS) BILL 1983

Date Introduced: 23 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR IMMIGRATION AND ETHNIC
AFFAIRS)

Purpose: To amend a number of Commonwealth Acts consequential upon the Migration Amendment Bill 1983. The latter Bill which removes the distinction between aliens and immigrants from the Migration Act 1958, will necessitate amendments to other legislation, in particular, where terms are defined by reference to meanings within that 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.

PUBLIC SERVICE AMENDMENT BILL 1983

Date Introduced: 24 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER ASSISTING THE PRIME MINISTER
FOR PUBLIC SERVICE MATTERS)

Purpose: To make two technical amendments to the Public Service Act 1922, firstly, to facilitate the introduction of the Government's Community Employment Program in the Public Service, and, secondly, to give full effect to amendments made to the definition of 'Department' by the Public Service Acts Amendment 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.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)
AMENDMENT BILL 1983

Date Introduced: 23 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER ASSISTING THE TREASURER)

Purpose: To alter the sales tax classification of certain goods, principally to correct a number of anomalies and inconsistencies, and to make certain structural changes, in the classification of goods between the various tax-rate categories.

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

Clause 2(3) - Commencement

Clause 29 of the schedule to this Bill abolishes sales tax on tourist vessels as from the time the tax was imposed, i.e. it is made retrospective to 19 August 1981. Since the clause is reducing the tax burden its retrospectivity is not a matter for concern. However the Bill makes no provision for repayment of the sales tax already collected. If the amount of sales tax collected is merely reimbursed to the taxpayer without any compensation for the effect of inflation on the value of money, then the taxpayer will still suffer a loss. The Committee draws the attention of Senators to this clause because it might be considered that such an outcome of clause 2(3) of the Bill and clause 29 of the schedule would trespass 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.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)
AMENDMENT BILL 1983 (Cont 2)

Clause 3

Clause 3 proposes to add a new section 6AD to the Principal Act. The purpose of the new section is to exempt from sales tax goods incorporating videotext equipment, if these goods are to be used by the profoundly deaf. New sub-section (1) gives to the Commissioner the apparently unfettered discretion to determine the value of the incorporated equipment, and new sub-section (2), in its concluding three lines, permits the Commissioner to impose sales tax on being satisfied that it is appropriate. There is no power given in the Principal Act for a review of the Commissioner's decision by the Administrative Appeals Tribunal.

The Committee draws the attention of Senators to this clause in that it may be considered to be making personal rights and liberties unduly dependent upon non-reviewable administrative decisions.

TAXATION (UNPAID COMPANY TAX) ASSESSMENT
AMENDMENT BILL 1983

Date Introduced: 23 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER ASSISTING THE TREASURER)

Purpose: To amend the company tax recoupment
law to:

- extend the scope of the legislation so that personal income tax avoided by former owners of companies stripped of pre-tax profits will be subject to recoupment, but only in relation to revenue profits of years in respect of which company tax was evaded;
- ensure that liability for recoupment tax will not be escaped by reason of an ultimately unsuccessful post-sale or pre-sale tax avoidance scheme;
- authorise the Commissioner of Taxation to name in his annual report persons who fail to pay an assessed recoupment tax liability in respect of unpaid company tax;
- remove the test which requires that an arrangement which rendered a company unable to pay its tax must be identified before a recoupment tax liability can be established;
- vary the evidentiary provision to ensure constitutional validity of the legislation; and
- correct minor technical defects.

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
AMENDMENT BILL 1983

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

Clause 22 - Evidence

Clause 21 of the Bill, which will come into force when the Bill receives the Royal Assent, substitutes a new section 23 in the Principal Act. This substitution, in the words of the Explanatory Memorandum, is necessary "... in the light of some doubt of a constitutional kind that has arisen about the legislation, and of technical deficiencies in the existing section 23 ... A feature of the new section will be that the certificate for which it provides will in all circumstances be prima facie, rather than conclusive, evidence."

Clause 22 provides for the Principal Act to be amended to revert to the original position where a certificate is conclusive evidence in section 23, presumably when the doubts about the legislation have been resolved. Clause 22 is to come into force on a date to be fixed by Proclamation. Thus Clause 22 in effect provides a means for amending an act by Proclamation. The Committee draws this clause to the attention of Senators in that it may be considered an inappropriate delegation of 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.

TELEVISION STATIONS LICENCE FEES AMENDMENT BILL 1983

Date Introduced: 24 August 1983

House: HOUSE OF REPRESENTATIVES
(MINISTER FOR COMMUNICATIONS)

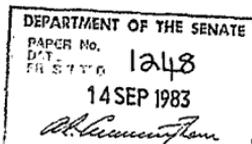
Purpose: To revise the formulae used to calculate annual licence fees payable by the larger commercial television stations and to increase the present ceiling on those fee rates from 7.5% to 8.0% of annual gross earnings.

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

Clause 2 - Commencement

This clause would implement the increase in licence fees from 1 September 1983. No explanation is offered in the Explanatory Memorandum accompanying the Bill for this retrospective operation. The Committee adopts the practice of drawing the attention of Senators to all retrospective provisions which might be regarded as trespassing 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. 8

14 September 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Asian Development Bank (Additional Subscription)
Bill 1983

Australian Capital Territory Smoking and Tobacco
Products Advertisements Prohibition Bill 1983

Barley Research Levy Amendment Bill 1983

First Home Owners Bill 1983

Health Legislation Amendment Bill 1983

Home Deposit Assistance Amendment Bill 1983

Housing Loans Insurance Amendment Bill 1983

Income Tax Laws Amendment (Medicare Levy) Bill
1983

International Development Association (Special
Contribution) Bill 1983

International Monetary Fund (Quota Increase) Bill
1983

Meat Inspection Bill 1983

Medicare Levy Bill 1983

States (Tax Sharing and Health Grants) Amendment
Bill (No. 2) 1983

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.

ASIAN DEVELOPMENT BANK
(ADDITIONAL SUBSCRIPTION) BILL 1983

Date Introduced: 7 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE TREASURER

Purpose: To empower the Treasurer to make the necessary agreement with the Asian Development Bank for the purchase by Australia of its entitlement of 2,622 additional paid-in shares and 49,811 additional callable shares, of the capital stock of the Bank.

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 SMOKING AND TOBACCO PRODUCTS
ADVERTISEMENTS PROHIBITION BILL 1983

Date Introduced: 6 September 1983

House: SENATE
SENATOR JACK EVANS

Purpose: To prohibit advertisements relating
to smoking and tobacco products in the
Australian Capital Territory.

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

Clause 4 - Advertisements Prohibited

Sub-clause (1) of this clause establishes the offence of "... publishing or causing to be published any advertisement" in relation to tobacco products. Sub-clause (2) states that if any advertisement contains the name of a tobacco product then that will be prima facie evidence that the advertisement contains an implied inducement to purchase and use tobacco products.

This clause is objectionable on two grounds. Firstly it creates an absolute offence without any express provision that a person must knowingly or intentionally publish the offending advertisement. Secondly sub-clause (2) reverses the burden of proof in that any advertisement is presumed to be an implied inducement to smoke.

The possible application of this clause may be seen from the following example:

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 SMOKING AND TOBACCO PRODUCTS
ADVERTISEMENTS PROHIBITION BILL 1983 (Cont 2)

If a car owner from outside the ACT whose vehicle displays a bumper sticker promoting "Benson and Hedges World Series Cricket" drives into the ACT, he could be guilty of an offence under clause 4.

The Committee draws the attention of Senators to this clause in that it may be considered to trespass 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.

BARLEY RESEARCH LEVY AMENDMENT BILL 1983

Date Introduced: 7 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR PRIMARY INDUSTRY

Purpose: To amend the Barley Research Levy Act 1980 to increase the operative rate of levy under the Act from 20 cents per tonne to 30 cents per tonne and to increase the maximum rate of levy to 50 cents per tonne.

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.

FIRST HOME OWNERS BILL 1983

Date Introduced: 7 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR HOUSING AND CONSTRUCTION

Purpose: To provide a legislative basis for the
First Home Owners Scheme, which is a
Scheme to provide assistance to persons
to purchase or build their own homes.

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 1983

Date Introduced: 6 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR HEALTH

Purpose: To amend the National Health Act 1953 and the Health Insurance Act 1973 to establish a health insurance scheme, to be known as Medicare, which will provide benefits in respect of medical, optometrical, dental and pathology services to all Australian residents; to enter into arrangements with the States for the provision of public hospital services without charge to eligible Australians; and to amend the Health Insurance Commission Act 1973 to authorise the Commission to plan and operate that scheme relating to the payments of Medicare medical benefits.

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

Clause 43 - Power to obtain information

This clause inserts a new section 36 into the Principal Act. Sub-section (3) states that "A person is not excused from furnishing information in pursuance of this section on the ground that the information might tend to incriminate the person ...". This sub-clause applies only to proceedings under the Act. Information so obtained may not be used

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in any other criminal proceedings. Such clauses are not uncommon; for example, section 155(7) of the Trade Practices Act 1974 is in a similar form. It has been argued in relation to that section that it would be impossible to obtain information if protection against self-incrimination was preserved.

While the Committee acknowledges the force of this argument, nonetheless it draws the attention of Senators to this clause in that it may be considered to trespass unduly on personal rights and liberties.

Clauses 85 and 134

Clause 85 inserts a new section 41B into the Health Insurance Commission Act 1973. Section 41B gives the power to modify the provisions of Part V and section 42 of the Principal Act. Modification is defined as including "... the alteration of a provision, the addition or omission of a provision or the substitution of a new provision ...". Thus it is clear that the Principal Act can be amended by regulation.

Similarly clause 134 of the Bill provides for the amendment of the Health Insurance Act 1973 and the National Health Act 1953 by regulation. Amendments made under this clause would be transitional measures to accommodate existing practices within the proposed Medicare scheme. The Committee has adopted the practice of drawing all such "Henry VIII" clauses to the attention of Senators in that the power to amend Acts of Parliament by regulation is considered to be an inappropriate delegation of legislative authority.

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 AMENDMENT BILL 1983

Date Introduced: 7 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR HOUSING AND CONSTRUCTION

Purpose: To provide that, for persons who contract to buy or build their homes, or commence the construction of their homes (the prescribed date of an application) on or after 1 August 1983, the requirements of the Home Deposit Assistance Act 1982 in relation to acceptable savings, are not to apply; and to provide for the termination of the operation of the Act on 30 September 1983.

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

Clause 5 - Interpretation

Clause 5(e) of this Bill inserts a new section 4(5)(a)(i) in the Principal Act which defines the purposes relevant to the Act for which land is developed. Section 4(5)(a)(ii) allows those purposes to be added to by regulation. Thus the scope and intent of the Act can be altered by regulation. The Committee has adopted the practice of drawing all such "Henry VIII" clauses to the attention of Senators in that they might be considered an inappropriate delegation of 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.

HOUSING LOANS INSURANCE AMENDMENT BILL 1983

Date Introduced: 7 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR HOUSING AND CONSTRUCTION

Purpose: To amend the Housing Loans Insurance Act 1965 and the Commonwealth Functions (Statutes Review) Act 1981 to extend the categories of loans which may be insured by the Housing Loans Insurance Corporation to include loans for non-residential buildings, and to withdraw the authority for sale of the Corporation to the private sector.

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 LAWS AMENDMENT
(MEDICARE LEVY) BILL 1983

Date Introduced: 6 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE TREASURER

Purpose: To amend the income tax law to provide for the imposition of a Medicare levy, based on taxable income, to be assessed and collected together with, but separately identified from, income tax; to exempt from levy certain persons; and to amend the tax sharing legislation to make it clear that receipts of levy are not part of the revenue pool in which the States and local government share.

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.

INTERNATIONAL DEVELOPMENT ASSOCIATION (SPECIAL
CONTRIBUTION) BILL 1983

Date Introduced: 7 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR FOREIGN AFFAIRS

Purpose: To authorise an appropriation of
\$67,844,000 as a special contribution
by Australia to the Sixth Replenishment
of the International Development
Association.

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.

INTERNATIONAL MONETARY FUND
(QUOTA INCREASE) BILL 1983

Date Introduced: 7 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE TREASURER

Purpose: To authorize consent to an increase
in Australia's International Monetary
Fund (IMF) quota and to provide for
payment of the proposed quota increase.

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.

MEAT INSPECTION BILL 1983

Date Introduced: 8 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR PRIMARY INDUSTRY

Purpose: To provide for the Commonwealth to undertake domestic meat inspection in NSW, and any other State which subsequently refers the power of inspection of meat to the Commonwealth.

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

Clause 25 - Powers of authorized officers

This clause provides in sub-sections (c) to (k) extensive powers to authorized officers to enter premises; to stop or detain vehicles; to break open, inspect, search or secure premises, vehicles, etc; to seize samples of any matter and to copy any document. These powers may be exercised without a warrant.

The breadth of these powers is further extended by clause 25(2) which defines "an offence against this Act" as including offences against sections 7 and 7A of the Crimes Act. Offences under these sections include "attempting inciting aiding or encouraging the commission of an offence".

In order to exercise his powers under clause 25(3), an authorized officer need merely believe, in good faith, that a person was encouraging the commission of a breach of 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.

MEAT INSPECTION BILL 1983 (Cont 2)

Whilst these powers are consonant with the policy of the Bill, the Committee nonetheless draws this clause to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

Clause 29 - Indictable offences

This clause creates a number of offences in sub-section (i) which impose strict liability, not requiring any proof of a particular state of mind, such as knowledge/intent on the part of the offender, and not to require any guilty intent. Whilst it may be clear that the offences have been so framed in order to achieve the policy objective of the Bill, and indeed it may be uncommon for such acts to be committed without such an accompanying mental state, nonetheless given the broad range of offences which the clause creates the Committee draws the attention of Senators to this clause in that it may be held to trespass 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.

MEDICARE LEVY BILL 1983

Date Introduced: 6 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE TREASURER

Purpose: To declare the basic rate of levy, and
the rules for fixing the rate of levy
payable in particular circumstances,
for the purposes of the Medicare 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.

STATES (TAX SHARING AND HEALTH GRANTS)
AMENDMENT BILL (NO. 2) 1983

Date Introduced: 6 September 1983

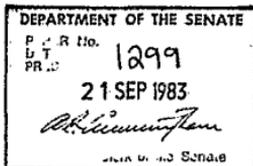
House: HOUSE OF REPRESENTATIVES
TREASURER

Purpose: To amend the States (Tax Sharing and Health Grants) Act 1981 so that provisions relating to health funding will be consistent with the Medicare arrangements, agreed upon at the 30 June - 1 July 1983 Premiers' Conference, due to commence on 1 February 1984.

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. 9

21 September 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
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 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Family Law Amendment (Legal Aid Costs) Bill 1983

Income Tax (International Agreements) Amendment
Bill 1983

Overseas Students Charge Amendment Bill 1983

Salaries and Wages Pause Act Repeal Bill 1983

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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FAMILY LAW AMENDMENT (LEGAL AID COSTS) BILL 1983

Date Introduced: 15 September 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To provide for grants to the States
and to the Northern Territory for legal
aid in family law matters to be made,
subject to conditions.

To provide for payments for legal aid
to be made subject to conditions.

To provide for the making of regulations
with respect to fees payable to legal
practitioners by bodies providing legal
assistance in family law matters.

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 1983

Date Introduced: 15 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE TREASURER

Purpose: To provide legislative authority for the entry into force of new and revised comprehensive double taxation agreements with various countries, and of a limited airline profits agreement with the Republic of India.

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

Clauses 7, 9, 10 and 11

There are various provisions of this Bill which have retrospective effect, in that they permit the Commissioner of Taxation to amend assessments of income made before this Bill comes into operation. Such power of amendment of assessments is given by clauses 7(2), 9(2), (3) and (4) and 10(5), (6) and (7). However, in making this provision the Government is complying with its international obligations under the various double-tax conventions it has entered into. Further, the amendments of assessment under clauses 7(2) and 9(2), (3) and (4) are likely to result in a decrease in income tax

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INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT BILL 1983
(Cont 2)

paid under Australian law. Although the amendment of assessments under clauses 10(5), (6) and (7) may result in an increase in Australian income tax, such increase is limited to the amount of a corresponding decrease in foreign tax - see clauses 10(2), (3) and (4). The retrospective operation of these provisions is therefore unlikely to prejudice taxpayers unduly.

The Committee nonetheless draws the attention of Senators to these clauses in that any disparity in the time taken by tax authorities in the countries involved to revise the assessments involved may result in tax payers being disadvantaged, albeit temporarily. Thus these clauses may be considered to trespass 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.

OVERSEAS STUDENTS CHARGE AMENDMENT BILL 1983

Date Introduced: 14 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR IMMIGRATION AND ETHNIC
AFFAIRS

Purpose: To amend section 6 of the Overseas Students
Charge Act 1979 to enable new regulations
to fix the rates of charge up to the
maximum amount of \$2,900, instead of
the current amount not exceeding \$2,500.

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.

SALARIES AND WAGES PAUSE ACT REPEAL BILL 1983

Date Introduced: 14 September 1983

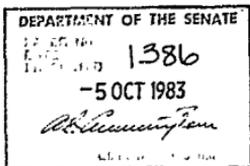
House: HOUSE OF REPRESENTATIVES
MINISTER FOR EMPLOYMENT AND INDUSTRIAL
RELATIONS

Purpose: To repeal the Salaries and Wages Pause Act 1982 and to make certain transitional arrangements, pending the outcome of an inquiry, in relation to medical practitioners and pharmaceutical chemists whose remuneration was affected by the repealed 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.



SCRUTINY OF BILLS ALERT DIGEST

No. 10

5 October 1983

Wick

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Taęe, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
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 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Constitution Alteration (Parliamentary Terms)
Bill 1983

Constitution Alteration (Simultaneous Elections)
Bill 1983

Dairy Industry Legislation Amendment Bill 1983

Dairy Industry Stabilization Levy Amendment Bill 1983

Dairying Industry Research and Promotion Levy
Amendment Bill 1983

Industries Assistance Commission Amendment Bill
(No. 2) 1983

Radiocommunications Bill 1983

Radiocommunications (Frequency Reservation Certificate
Tax) Bill 1983

Radiocommunications (Receiver Licence Tax) Bill 1983

Radiocommunications Taxes Collection Bill 1983

Radiocommunications (Temporary Permit Tax) Bill 1983

Radiocommunications (Test Permit Tax) Bill 1983

Radiocommunications (Transitional Provisions and
Consequential Amendments) Bill 1983

Radiocommunications (Transmitter Licence Tax)
Bill 1983

(Cont).

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 1983

Statute Law (Miscellaneous Provisions) Bill (No. 2)
1983

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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CONSTITUTION ALTERATION (PARLIAMENTARY TERMS) BILL 1983

Date Introduced: 21 September 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To extend from 3 to 4 years the maximum term of the House of Representatives and to lengthen the fixed terms of Senators from 6 to 8 years, subject to certain exceptions arising from a dissolution of both Houses of Parliament.

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.

CONSTITUTION ALTERATION (SIMULTANEOUS ELECTIONS) BILL 1983

Date Introduced: 21 September 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To provide for simultaneous elections for the Senate and the House of Representatives by bringing half-Senate elections into line with elections of the House of Representatives, whenever those elections may occur.

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.

DAIRY INDUSTRY LEGISLATION AMENDMENT BILL 1983

Date Introduced: 21 September 1983

House: HOUSE OF REPRESENTATIVES
PRIMARY INDUSTRY

Purpose: To amend the Dairy Industry Stabilization Act 1977 and the Dairying Industry Research and Promotion Levy Collection Act 1972 to bring up to date provisions relating to offences and penalties; and to amend the Dairy Produce Act 1924 to bring up to date the Corporation's powers over contracts for the carriage of dairy products by sea to places beyond Australia, to provide a legislative basis for the manner in which the Corporation administers certain provisions of the export return pooling scheme and to make other minor adjustments to the scheme, to provide that the Corporation must credit any surplus or debit any deficit incurred by it in respect of its export sales of dairy produce to accounts maintained under the export return pooling scheme, and to bring into line with current levels the penalties for offences 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.

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

Clause 4 - Contracts for shipment of dairy produce

This clause proposes to enact a new section 19 of the Dairy Produce Act 1924. The proposed new section gives the Corporation extensive powers to "... approve conditions relating to contracts for the cartage of dairy products by sea ...". The Corporation is required only to inform the licensee of the conditions so approved. There is no other limit placed on the Corporation's powers nor is there any provision for review of such contract conditions. In view of the impact which either unduly onerous or lenient conditions could have on the interests of dairy produce exporters it might be considered that the discretion vested in the Dairy Corporation should be subject to review. Thus the Committee draws the attention of Senators to this clause in that it might be considered to make the rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

DAIRY INDUSTRY STABILIZATION LEVY AMENDMENT BILL 1983

Date Introduced: 21 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR PRIMARY INDUSTRY

Purpose: To correct an anomalous situation whereby levy was not payable on the dairy product content of certain mixtures, and to provide that, under certain circumstances, levy may be refunded in respect of dairy products contained in other products that are exported, thus removing doubts about whether levy could be refunded in those circumstances.

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.

DAIRYING INDUSTRY RESEARCH AND PROMOTION LEVY
AMENDMENT BILL 1983

Date Introduced: 21 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR PRIMARY INDUSTRY

Purpose: To increase the limits imposed by the Dairying Industry Research and Promotion Levy Act 1972 on the amount of levy which may be imposed, on the production and sale of whole milk and butter fat, for the purpose of promoting the sale of dairy products in 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.

INDUSTRIES ASSISTANCE COMMISSION AMENDMENT BILL
(NO. 2) 1983

Date Introduced: 21 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING MINISTER FOR INDUSTRY
AND COMMERCE

Purpose: To amend the Industries Assistance
Commission Act 1973 to suspend the
requirement in certain circumstances
for a report by the Industries Assistance
Commission before temporary assistance
granted to an industry may be extended.

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.

RADIOCOMMUNICATIONS BILL 1983

Date Introduced: 22 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR COMMUNICATIONS

Purpose: To replace the Wireless Telegraphy Act 1905 to control the use of the Australian radio frequency spectrum at a time of rapidly developing technical change by making provision for:

- common standards for radiocommunications receivers and transmitters
- offences with respect to sub-standard equipment
- compliance statements and compliance certificates with respect to such equipment
- the making of advisory guidelines with respect to radio transmission by the Minister
- radio frequency planning matters including spectrum and frequency band plans and transmitter and receiver licences
- settlement of disputes with respect to interference to radiocommunications
- enforcement and procedural matters.

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

RADIOCOMMUNICATIONS BILL 1983 (Cont 2)

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

Clause 12 - Compliance statements

This clause sets out the terms and conditions on which application may be made for a compliance statement indicating that a radiocommunications device complies with the specified standards in force in relation to that device. Ministerial decisions made under sub-clauses (1), (3) and (6) are reviewable by the Administrative Appeals Tribunal by virtue of clause 86 of the Bill.

Under sub-clause (8) the Minister may decide that the "adequate examination of a device ... cannot be made without causing damage to, or destruction of, the device ...". If the applicant for a compliance statement does not authorize such "examination" his application is deemed to have been withdrawn. The Minister's initial decision that examination requires damage to, or destruction of, the device is not subject to review.

The Committee draws this clause to the attention of Senators in that it might be considered to make individual rights unduly dependent on non-reviewable administrative decisions:

Clause 46 - Conciliation

This clause provides that, where a complaint has been made to the Minister claiming that interference with radiocommunications is occurring, or is likely to occur as a result of the actions of another person, and is, or is likely to, affect the interests of the complainant, the Minister may refer the matter to a conciliator.

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

If the Minister does not refer the complaint to a conciliator he is merely required to inform the complainant of his decision and his reasons. That decision is not subject to review by the Administrative Appeals Tribunal.

The Committee draws this clause to the attention of Senators in that it may be considered to make personal rights, liberties or obligations unduly dependent on non-reviewable administrative decisions.

Clause 63 - Witnesses

The purpose of this clause is to protect the rights of witnesses appearing before a Commissioner appointed under this legislation to inquire into matters relating to radiocommunications. Sub-clause (2) creates a number of offences relating to an employer's treatment of any employee who appears as a witness before an inquiry conducted under this Act. It is an offence for an employer to dismiss or threaten to dismiss any employee or to otherwise prejudice an employee in his employment because he has given, or intends to give evidence before an inquiry.

However, in sub-clause 3(a) and (b), if it is established that an employee who gives or proposes to give evidence was dismissed or otherwise prejudiced in his employment the burden of proof that the dismissal or prejudice did not relate to the employee's role as a witness is placed on the employer.

The Committee draws this clause to the attention of Senators in that such a reversal of the burden of proof may be considered to trespass 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.

RADIOCOMMUNICATIONS (FREQUENCY RESERVATION CERTIFICATE TAX)
BILL 1983

Date Introduced: 22 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR COMMUNICATIONS

Purpose: To impose a tax on the grant of a frequency reservation certificate as authorised by clause 21 of the Radiocommunications Bill.

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

Clause 7 - Amount of tax

By clause 7(1) of the Bill the amount of tax to be imposed on the grant of certificates is to be determined in accordance with regulations, but no upper or lower limits are set by the Bills.

The Committee draws this clause to the attention of Senators in that such an uncontrolled right to levy taxes by regulation may be considered to be an inappropriate delegation of legislative power.

The substantive provisions in clause 7(1) of each of the following Bills are in virtually identical terms to the above Bill and thus the comments on the above Bill also apply to 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.

RADIOCOMMUNICATIONS (FREQUENCY RESERVATION CERTIFICATE
TAX) BILL 1983 (Cont 2)

Radiocommunications (Receiver Licence Tax) Bill
1983

Radiocommunications (Temporary Permit Tax) Bill
1983

Radiocommunications (Test Permit Tax) Bill 1983

Radiocommunications (Transmitter Licence Tax)
Bill 1983

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

RADIOCOMMUNICATIONS (RECEIVER LICENCE TAX)
BILL 1983

Date Introduced: 22 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR COMMUNICATIONS

Purpose: To impose a tax on the grant of a radio-
communications receiver licence issued
under clause 38 of the Radiocommunications
Bill.

See Radiocommunications (Frequency Reservation Certificate
Tax) Bill 1983.

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

RADIOCOMMUNICATIONS TAXES COLLECTION BILL 1983

Date Introduced: 22 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR COMMUNICATIONS

Purpose: To give effect to the taxation provisions of the general scheme of the Radiocommunications Bill 1983, other than the imposition of the particular taxes.

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

Clause 8 - Exemption from tax

The purpose of this clause is to provide for the exemption of persons from tax on certificates, licences or permits as imposed by the Bills discussed under the Radiocommunications (Frequency Reservation Certificate Tax) Bill 1983.

Exemption under this clause is to be effected by regulation. The Committee draws this clause to the attention of Senators in that the granting of exemptions from tax by regulation may be considered to be an inappropriate delegation of 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.

RADIOCOMMUNICATIONS (TEMPORARY PERMIT TAX)
BILL 1983

Date Introduced: 22 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR COMMUNICATIONS

Purpose: To impose a tax on the grant of a temporary
permit issued under clause 35 of the
Radiocommunications Bill.

See Radiocommunications (Frequency Reservation Certificate
Tax) Bill 1983.

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

RADIOCOMMUNICATIONS (TEST PERMIT TAX) BILL 1983

Date Introduced: 22 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR COMMUNICATIONS

Purpose: To impose a tax on the issue of test permits for sub-standard transmitters as authorised by clause 10 of the Radiocommunications Bill.

See Radiocommunications (Frequency Reservation Certificate Tax) Bill 1983.

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

RADIOCOMMUNICATIONS (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) BILL 1983

Date Introduced: 22 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR COMMUNICATIONS

Purpose: To make transitional provisions and
consequential amendments to bring the
general scheme of the Radiocommunications
Bill 1983 into force.

The Committee draws the attention of Senators to the
Schedule of the Bill:

Consequential amendments - Crimes Act 1914

It is proposed to repeal the existing section 30F.B
of the Crimes Act and substitute a new section. The
proposed new section gives the Minister the power to
cancel radiocommunications transmitter licences or
temporary permits on the grounds that the transmitter
has been used to broadcast material encouraging the
violent overthrow of the constitution of the Commonwealth
or the established government of any country or to
broadcast any seditious matter.

Powers contained in the Crimes Act are not reviewable
by the Administrative Appeals Tribunal whereas Ministerial
discretions to cancel licences given by the
Radiocommunications Bill are so reviewable. It may

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

RADIOCOMMUNICATIONS (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) BILL 1983 (Cont 2)

be felt that the grounds provided by the proposed amendment to the Crimes Act, particularly publishing "... any seditious matter", are capable of wide and subjective interpretation; thus the Committee draws the attention of Senators to this proposed amendment in that it may be considered to make personal rights and liberties unduly dependent on 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.

RADIOCOMMUNICATIONS (TRANSMITTER LICENCE TAX)
BILL 1983

Date Introduced: 22 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR COMMUNICATIONS

Purpose: To impose a tax on the grant of a transmitter
licence issued under clause 24 of the
Radiocommunications Bill.

See Radiocommunications (Frequency Reservation Certificate
Tax) Bill 1983.

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 1983

Date Introduced: 21 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE TREASURER

Purpose: To authorise the payment in 1983-84
of:

- interest-free capital grants to the States of \$489,667,000 as part of the 1983-84 States' Loan Council programs; and
- amounts States may nominate from their 1983-84 Loan Council programs (and the Northern Territory from its equivalent general purpose capital advances) as being for the purposes of public housing and payable under the concessional loan terms and conditions of the Commonwealth-State Housing Agreement;

in accordance with arrangements approved at the June-July 1983 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 PROVISIONS) BILL
(NO. 2) 1983

Date Introduced: 21 September 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING THE ATTORNEY-GENERAL

Purpose: To make various amendments of the statute law of the Commonwealth, to repeal an Act, and for related purposes.

The Committee draws the attention of Senators to the schedule of the Bill:

Amendment of the Patents Act 1952

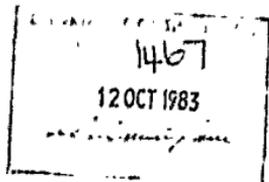
It is proposed to insert a new section 58 into the Patents Act which will, inter alia, render the Commonwealth, the Commissioner of Patents and officers of the Patents Office immune from civil liability for furnishing information in accordance with section 30 of the Principal Act. At present there may be liability at common law for any negligence in the supply of such information. The Committee draws the attention of Senators to this clause in that it may be considered that, by removing any liability in common law, the proposed amendment if enacted will trespass 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. 11



12 October 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Bounty (Agricultural Tractors) Amendment Bill
1983

Bounty (Injection-moulding Equipment) Amendment
Bill 1983

Bounty (Tractor Cabs) Bill 1983

Companies and Securities Legislation (Miscellaneous
Amendments) Bill 1983

Constitution Alteration (Double Dissolution) Bill
1983

Constitution Alteration (Parliament) Bill 1983

Northern Territory Grant (Special Assistance)
Bill 1983

Repatriation Legislation Amendment Bill 1983

Social Security Legislation Amendment Bill 1983

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.

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

BOUNTY (AGRICULTURAL TRACTORS) AMENDMENT BILL 1983

DATE INTRODUCED: 5 October 1983

HOUSE: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE MINISTER FOR
INDUSTRY AND COMMERCE

PURPOSE: To amend the Bounty (Agricultural Tractors)
Act 1966 to double the present amount
of base bounty payable on tractors.

General

The Committee has no comments on specific clauses of this Bill. However it notes that clause 5 has been inserted into the Bill as a result of comments made by this Committee on similar bounty legislation in its Second Report, 18 May 1983.

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

BOUNTY (INJECTION-MOULDING EQUIPMENT) AMENDMENT BILL 1983

DATE INTRODUCED: 5 October 1983

HOUSE: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE MINISTER FOR
INDUSTRY AND COMMERCE

PURPOSE: To provide for the payment of additional short term assistance, in the form of a bounty of 20 per cent of the value added, to the industry producing injection-moulding equipment in Australia.

General

The Committee has no comments on specific clauses of this Bill. However it notes that clause 4 has been inserted into the Bill as a result of comments made by this Committee on similar bounty legislation in its Second Report, 18 May 1983.

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

BOUNTY (TRACTOR CABS) BILL 1983

DATE INTRODUCED: 5 October 1983

HOUSE: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE MINISTER FOR
INDUSTRY AND COMMERCE

PURPOSE: To provide temporary assistance by way
of a bounty on the production in Australia
of cabs for fitting to imported tractors.

General Comment

This Bill is similar in form to the Bounty (Room Air Conditioners) Bill 1983, which was the subject of extensive discussion in the Committee's Second and Third Reports of 18 May and 25 May 1983 respectively. A number of those comments and related Ministerial responses are relevant to this Bill.

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

Clause 6 - Unreviewable Decisions

Clause 6(3) requires the Comptroller-General to be satisfied of certain facts with respect to the product in question before a bounty is payable. Although the Comptroller-General's decision to refuse bounty under clause 9 may be reviewed by the Administrative Appeals Tribunal (see clause 20(1)(b)) his decision under clause

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

BOUNTY (TRACTOR CABS) BILL 1983 (Cont 2)

6(3) is not explicitly stated to be so reviewable. In the Committee's Third Report, para. 4 quotes the advice of the Attorney-General's Department that the decision of the Comptroller-General under clause 6(3)(d) of the Bounty (Room Air Conditioners) Bill is reviewable:

"... In making this decision (to pay bounty) the Comptroller-General is required to satisfy himself that the statutory pre-conditions to the granting of bounty have been met. That (one) of those pre-conditions clause 6(3)(d) (is) expressed subjectively does not, in my view, prevent the AAT from deciding whether it is satisfied on those matters; the AAT would not be bound by the Comptroller-General's assessment of these matters any more than it would be bound by the Comptroller-General's assessment of whether the objectively-expressed preconditions to the granting of bounty have been met ...".

In responding to the Committee's comments on the similar clause of the Bounty (Room Air Conditioners) Bill 1983 the Minister stated:

"I am able to undertake to the Committee to have this aspect of the Bill examined with a view to having appropriate amendments enacted in due course and to have future bounty legislation include comparable provisions for review."

The Committee awaits the outcome of that examination and in the interim draws the attention of Senators to clause 6 of the Bill in that it might be considered to make rights, liberties and/or obligations unduly dependent on 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 10 - Unreviewable Decisions

Clause 10(5) and (8) empowers the Minister to make decisions about the registration of manufacturing premises. These decisions are not reviewable. These sub-clauses are in the same form as clause 11(5) and (8) of the Bounty (Room Air Conditioners) Bill. In the Third Report, para. 7, it appears that the decision not to allow a review of these discretions is a matter of Government policy.

The Committee nevertheless draws the attention of Senators to this clause in that it may be considered to make personal rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

Clause 15 - Powers of Officers

Sub-clause (4) of this clause provides penalties for those persons who produce false or misleading documents to an officer of the Department of Industry and Commerce who is an authorized officer under clause 13(1) of this Bill without revealing them to be so.

Sub-clause (6) is a standard self-incrimination provision providing that a person may not refuse to produce documents, etc., or answer questions on the grounds that such action might tend to incriminate him.

The Committee draws this clause to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

BOUNTY (TRACTOR CABS) BILL 1983 (Cont 4)

Clause 15(4) and (6) of the current Bill is in exactly the same terms as clause 16(3) and (5) of the Bounty (Room Air Conditioners) Bill, upon which the Committee commented in its Third Report, para. 12. The Minister advised that appropriate amendments would be made to the latter Bill at the earliest possible date (see para. 13). The Committee looks forward to the introduction of these amendments.

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

COMPANIES AND SECURITIES LEGISLATION
(MISCELLANEOUS AMENDMENTS) BILL 1983

DATE INTRODUCED: 5 October 1983

HOUSE: SENATE
THE ATTORNEY-GENERAL

PURPOSE: To make various amendments to the Commonwealth
Acts under the Co-operative Companies
and Securities Scheme.

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

Clause 31 - Personal Rights and Liberties

This clause inserts a new subdivision into the Principal
Act which includes, inter alia, proposed new section
30H. Sub-section 3 creates an absolute offence of giving
false or misleading evidence. There is no requirement
to demonstrate guilty intent.

Sub-section 4 undermines legal professional privilege
by requiring a legal practitioner to provide the name
and address of a person with whom the practitioner
has had privileged communication. That person may then
be required by section 30H(1) to appear at a hearing
and produce documents as required.

Sub-section (5) removes the normal protection against
self-incrimination. It is expressed in a standard form
for such clauses.

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

COMPANIES AND SECURITIES LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 1983 (Cont 2)

The Committee draws the attention of Senators to these proposed sub-sections in that they may be considered to trespass unduly on personal rights and liberties.

Clause 68 - Exemptions

This clause proposes to insert a new section 215C into the Companies Act 1981. The proposed new section will extend the Commission's power to exempt persons from compliance with the Act and to omit, modify or vary the application of the Act to particular persons. These powers of modification etc. will extend to Divisions 1, 2, 5 and 6 of Part IV of the Principal Act. The scope of the Division to which these powers apply is considerable and the Committee draws the attention of Senators to this clause in that it may be regarded as an inappropriate delegation of legislative power.

Clause 76 - Abrogation of a Common Law Rule

This clause proposes, *inter alia*, to insert a new section 261A(4) into the Principal Act. It is a general rule of common law that a person seeking an interim injunction may in some circumstances be required to give an undertaking as to damages which may be suffered if the interim injunction is subsequently lifted. Proposed sub-section (5) states that where the Court proposes to grant an interim order to the Commission or any other person the Court shall not require any undertakings as to damages. As the proposed legislation stands it is unclear whether a person whose interests were prejudiced by an interim order could, on the lifting of that order, recover damages for the prejudice suffered.

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

COMPANIES AND SECURITIES LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 1983 (Cont: 3)

The Committee draws the attention of Senators to this clause in that it may be considered to trespass unduly on personal rights and liberties.

Clause 93 - Personal Rights and Liberties

This clause proposes to insert a new section 324D(4) into the Principal Act. This sub-section removes the protection against self-incrimination and is in the form standard for such sections. The Committee nevertheless draws this clause to the attention of Senators in that it might be considered to trespass 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.

CONSTITUTION ALTERATION (DOUBLE DISSOLUTION) BILL 1983

DATE INTRODUCED: 6 October 1983

HOUSE: SENATE
SENATOR HAMER

PURPOSE: To provide that a dissolution of both Houses of Parliament shall not take place by reason that the Senate has twice rejected, failed to pass or unacceptably amended a proposed law, if more than three months have elapsed after the Senate so treated that proposed law.

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.

CONSTITUTION ALTERATION (PARLIAMENT) BILL 1983

DATE INTRODUCED: 6 October 1983

HOUSE: SENATE
SENATOR MACKLIN

PURPOSE: To alter the Constitution so that the number of members of the House of Representatives may be increased without necessarily increasing the number of Senators.

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 GRANT (SPECIAL ASSISTANCE)
BILL 1983

DATE INTRODUCED: 5 October 1983

HOUSE: HOUSE OF REPRESENTATIVES
MINISTER FOR HOUSING AND CONSTRUCTION

PURPOSE: To appropriate funds from Consolidated
Revenue to enable payment of a special
grant of \$16.9 million to the Northern
Territory in 1983-84.

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 1983

DATE INTRODUCED: 5 October 1983

HOUSE: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING MINISTER FOR
VETERANS' AFFAIRS.

PURPOSE: To provide for amendment of the Repatriation
and associated Acts to give legislative
authority for the Government's Budget
decisions and to make certain amendments
to Repatriation and Defence Service
Homes Legislation.

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 SECURITY LEGISLATION AMENDMENT BILL 1983

DATE INTRODUCED: 5 October 1983

HOUSE: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTATING MINISTER FOR
SOCIAL SECURITY

PURPOSE: To amend five Acts administered by the
Minister for Social Security to give
effect to the 1983-84 Budget decisions.

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

Clause 38 - Self-Incrimination/Retrospectivity

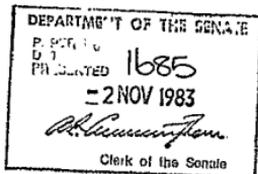
This clause proposed to insert a new section 135TG
into the Principal Act removing the protection against
self-incrimination. It is in a standard form for such
clauses. The Committee draws the attention of Senators
to this clause in that it may be considered to trespass
unduly on personal rights and 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. 12



2 November 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Australian Shipping Commission Amendment Bill
1983

Commonwealth Employees (Employment Provisions)
Repeal Bill 1983

Commonwealth Employees (Redeployment and Retirement)
Amendment Bill 1983

Customs (Nuclear Materials and Hardware Prohibition)
Bill 1983

Public Service and Statutory Authorities Amendment
Bill 1983

Torres Strait Fisheries Bill 1983

Torres Strait Treaty (Miscellaneous Amendments)
Bill 1983

Transfer of Prisoners Bill 1983

Transfer of Prisoners (Consequential Amendments)
Bill 1983

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

AUSTRALIAN SHIPPING COMMISSION AMENDMENT BILL 1983

Date introduced: 20 October 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR TRANSPORT

Purpose: To amend the Australian Shipping Commission Act 1956:

- (a) to improve the management of the Australian Shipping Commission and to provide it with more autonomy in its day to day control over the operations of the Australian National Line;
- (b) to make a number of amendments to the Act which are of a machinery nature; and
- (c) to repeal some sections of the Act which are redundant.

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

Clause 5; Proposed s. 14A - Delegation

This section, to be inserted by clause 5 of the Bill, enables the Commission to delegate all or any of its powers, other than the power of delegation. The Commission may delegate its powers to "any person". Sub-section 14A(1) does not provide

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any guide as to the attributes of the person to whom the delegation is made. In view of the wide powers that could be exercised by the delegate and particularly the commercial implications of his actions the Committee draws the attention of Senators to this clause in that it may be considered to be an inappropriate delegation of legislative power.

Proposed Section 16 - Regulations

New sub-section 16(3)(a) sets the upper limit for the value of contracts which the Commission may enter into without Ministerial approval. However, the limit of \$2 m. may be increased by regulation. It may be argued that such a provision is necessary to accommodate the effects of inflation, but it should be noted that the existing section 16(3)(a) of the Act has a similar provision for varying the current limit of \$500,000. This power has not been used since 1956. The Committee draws the attention of Senators to this "Henry VIII" clause in that it might be considered an inappropriate delegation of legislative power.

COMMONWEALTH EMPLOYEES (EMPLOYMENT PROVISIONS)
REPEAL BILL 1983

Date introduced: 20 October 1983.

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE PRIME MINISTER FOR
PUBLIC SERVICE INDUSTRIAL MATTERS

Purpose: To repeal the Commonwealth Employees
(Employment Provisions) Act 1977.

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 (REDEPLOYMENT AND RETIREMENT)
AMENDMENT BILL 1983

Date introduced: 20 October 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE PRIME MINISTER FOR
PUBLIC SERVICE INDUSTRIAL MATTERS

Purpose: To restore the pre-1981 jurisdiction of the
Public Service Arbitrator and the
Australian Conciliation and Arbitration
Commission and other relevant arbitral
bodies to make determinations and awards in
relation to the redeployment or termination
of employment of Commonwealth staff to whom
the Commonwealth Employees (Redeployment
and Retirement) Act applies.

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 (NUCLEAR MATERIALS AND HARDWARE PROHIBITION)

BILL 1983

DATE INTRODUCED: 12 October 1983

HOUSE: SENATE
SENATOR CHIPP

PURPOSE: To prohibit the exportation of nuclear materials and the importation of nuclear hardware.

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.

PUBLIC SERVICE AND STATUTORY AUTHORITIES
AMENDMENT BILL 1983

Date introduced: 20 October 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE PRIME MINISTER
FOR PUBLIC SERVICE INDUSTRIAL MATTERS

Purpose: To repeal the 'no work as directed
- no pay' provisions in the Public
Service Act 1922 and certain statutory
authority legislation.

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.

TORRES STRAIT FISHERIES BILL 1983

Date introduced: 19 October 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR PRIMARY INDUSTRY

Purpose: To implement the fisheries aspects of the Torres Strait Treaty by enacting provisions that will enable the Commonwealth to manage the fisheries in and in the vicinity of the Torres Strait Protected Zone in accordance with the Treaty.

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

Clause 12 - Permits

This clause empowers the Minister to grant permits authorizing persons to engage in fishing activities in Torres Strait for scientific purposes. The Minister's discretion is not explicitly reviewable under this Bill. However, the legality of the exercise of the discretion may be reviewed under the Administrative Decisions (Judicial Review) Act 1977.

Similar discretions in relation to the granting, transfer and cancellation of commercial fishing licences are contained in clauses 19, 20, 21, 22, 24, 25 and 26 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.

TORRES STRAIT FISHERIES BILL 1983 (Cont 2)

The Committee draws the attention of Senators to these clauses in that it may be considered to make rights, liberties or obligations unduly dependent on non-reviewable decisions.

Clause 57 - Burden of Proof

Clause 57(1) provides that in proceeding under the Act or regulations where an inspector has reasonable grounds for suspecting that fish have been taken from a particular area, the court may, in the absence of evidence to the contrary, deem that the fish have been taken in that area. In such a proceeding it would appear that the burden of proof would then be placed on the defendant.

The explanatory memorandum to the Bill suggests that sub-clause 57(1) "... confirms the persuasive onus borne by the Crown". However, this is not clear on the face of the provision which appears to require of the prosecution something less than proof beyond reasonable doubt.

The Committee draws this clause to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

Clause 60(4) - Self-Incrimination

This sub-clause refers to the furnishing of returns required by regulation. A person may not refuse to furnish a return on the grounds that such a return may tend to incriminate him. The information gained from a return under the regulations may only be used in proceedings relating to the supplying of false information. Nevertheless the Committee draws the attention of Senators to this clause in that it may be considered to trespass 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.

TORRES STRAIT TREATY (MISCELLANEOUS AMENDMENTS)

BILL 1983

Date introduced: 19 October 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR FOREIGN AFFAIRS

Purpose: To amend existing legislation to enable the
ratification of the 1978 Torres Strait Treaty.

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.

TRANSFER OF PRISONERS BILL 1983

Date introduced: 19 October 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING THE ATTORNEY-GENERAL

Purpose: To permit the transfer within Australia for welfare purposes or trial of prisoners who have been sentenced to terms of imprisonment under Commonwealth laws and laws of certain territories. This Bill is part of a uniform scheme of legislation involving the Commonwealth and State Governments.

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

Clause 6(1) - Ministerial Discretion

This clause grants to the Minister a discretion to authorize the transfer of a prisoner from one State or Territory to another State or Territory where a prisoner has applied for such a transfer. The merits of a decision made by the Minister in exercising his discretion are not reviewable.

The Committee draws the attention of Senators to this clause in that it may be considered to make individual rights and liberties unduly dependent on 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 31. - Orders

This clause permits a court dealing with an appeal or retrial of a transferred prisoner to make orders modifying the application of provisions of the Act including provisions relating to transfer of prisoners and the calculation of sentences. These very wide powers to make orders are vested in the Courts, not the Executive, and are justified in the Explanatory Memorandum by the need to "... cover many contingencies" which may arise in the operation of the Act.

The type of contingency which this clause is designed to cover is described in the Explanatory Memorandum:

"... where an A.C.T. prisoner is transferred to Queensland pursuant to this legislation. Pursuant to clause 18 he becomes a Queensland prisoner. Assume he is returned to the A.C.T. to prosecute an appeal pursuant to clause 16 and is acquitted. Without this clause the court in the A.C.T. would be unable to order his discharge as he is a Queensland prisoner."

The Committee nevertheless draws this "Henry VIII" clause to the attention of Senators in that it may be considered to be an inappropriate delegation of legislative power.

TRANSFER OF PRISONERS (CONSEQUENTIAL AMENDMENTS)
BILL 1983

Date introduced: 19 October 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING THE ATTORNEY-GENERAL

Purpose: To amend certain Commonwealth legislation to remove the possibility of conflict between the Transfer of Prisoners Bill 1983 and that legislation.

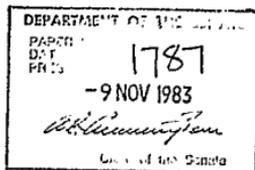
The Committee draws the attention of Senators to the following clauses of the Bill:

Clauses 5 and 8 - Delegation

Clause 5 proposes to insert a new section 6A in the Removal of Prisoners (Australian Capital Territory) Act 1968. Proposed new sub-section 6A(7) permits the Attorney-General to delegate all his powers other than the power of delegation to "a person". Clause 8 proposes to insert a similar sub-section 8AA(7) into the Removal of Prisoners (Territories) Act 1923.

Neither proposed sub-section defines or limits the person to whom these powers may be delegated. Thus the Committee draws these clauses to the attention of Senators in that they might be considered an inappropriate delegation of 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.



SCRUTINY OF BILLS ALERT DIGEST

No. 13

9 November 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Bounty (Room Air Conditioners) Amendment Bill 1983

Commonwealth Electoral Legislation Amendment Bill 1983

Great Barrier Reef Marine Park Amendment Bill 1983

Income Tax Assessment Amendment Bill (No. 4) 1983

Income Tax (Bearer Debentures) Amendment Bill 1983

Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Bill 1983

Income Tax (Individuals) Bill 1983

Income Tax (Rates) Amendment Bill (No. 2) 1983

Inter-State Commission Amendment Bill 1983

Representation Bill 1983

States Grants (Petroleum Products) Amendment Bill 1983

Taxation (Unpaid Company Tax) Assessment Amendment Bill 1983 (Senator Jack Evans)

Taxation (Unpaid Company Tax) Assessment Amendment Bill 1983 (The Hon. P J Keating)

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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BOUNTY (ROOM AIR CONDITIONERS) AMENDMENT BILL 1983

Date Introduced: 2 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE MINISTER FOR
INDUSTRY AND COMMERCE

Purpose: To continue bounty assistance during
1983-84 to the manufacturer in Australia
of certain refrigerated room air conditioners.

The Committee has no comments on this Bill.

COMMONWEALTH ELECTORAL LEGISLATION AMENDMENT BILL 1983

Date Introduced: 2 November 1983

House: HOUSE OF REPRESENTATIVES
SPECIAL MINISTER OF STATE

Purpose: To establish an Australian Electoral Commission, provide for public funding of election campaigns and disclosure of donations and electoral expenditure, amend the existing Commonwealth Electoral Act, and consolidate all relevant existing legislation.

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

Clause 24 - Proposed New Sections 39B(5) and 39C(5)

This clause provides a Divisional Returning Officer and an Australian Electoral Officer respectively with an unreviewable administrative discretion. Each officer is empowered to decide on the eligibility of certain classes of persons to be placed on the Electoral Roll. His only obligation is to "... notify the applicant in writing of that decision or opinion ...". While in some circumstances, decisions under these proposed sections may have to be made with some speed and review would in consequence be impractical, in other cases, speed of decision making is not essential. Proposed new Part IX of the Act provides for review of a number of other similar decisions.

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 this clause in that it might be considered to make individual rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

Clause 30 - Proposed Section 46A

The purpose of this clause is to enable a person to have his address removed from the Roll where the publication of his address could present a threat to his or his family's safety. Paragraph (4)(b) of this section gives to the Divisional Returning Officer a discretion to decide on such a request.

The legality of the exercise of this discretion is reviewable under the Administrative Decisions (Judicial Review) Act. However, there is no provision for review of the merits of the decision.

The comments on this proposed section also apply to similar discretions in relation to the registration of postal votes granted by clause 62, proposed section 86(9) and (10).

The Committee draws this clause to the attention of Senators in that it might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

GREAT BARRIER REEF MARINE PARK AMENDMENT BILL 1983

Date Introduced: 2 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR HOME AFFAIRS AND ENVIRONMENT

Purpose: To amend the Great Barrier Reef Marine Park Act 1975 to enable the Great Barrier Reef Marine Park Authority to give effect to principles agreed between the Commonwealth and Queensland Governments relating to the day to day management of the Great Barrier Reef Marine Park.

The Committee has no comments on this Bill.

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 4) 1983

Date Introduced: 3 November 1983

House: HOUSE OF REPRESENTATIVES
TREASURER

Purpose: To amend the income tax law, primarily to modify the prescribed payments system by significantly reducing the paperwork burdens for many payers and payees and by making compliance generally easier, and to implement some of the Government's measures announced in the Budget and the May economic statement.

The Committee has no comments on this Bill.

INCOME TAX (BEARER DEBENTURES) AMENDMENT BILL 1983

Date Introduced: 3 November 1983

House: HOUSE OF REPRESENTATIVES
TREASURER

Purpose: To amend the Income Tax (Bearer Debentures) Act 1971 to increase from 55 per cent to 60 per cent the basic rate of tax payable under section 126 of the Assessment Act on interest paid by a company on bearer debentures where the names and addresses of the holders of the debentures are not furnished by the company to the Commissioner of Taxation.

The Committee has no comments on this Bill.

INCOME TAX (COMPANIES, CORPORATE UNIT TRUSTS
AND SUPERANNUATION FUNDS) BILL 1983

Date Introduced: 3 November 1983

House: HOUSE OF REPRESENTATIVES
TREASURER

Purpose: To declare and impose the rates of tax payable for 1983-84 by companies, trustees of corporate unit trusts, trustees of superannuation funds and trustees in respect of trust income of a non-resident company beneficiary of trust estates.

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 1983

Date Introduced: 3 November 1983

House: HOUSE OF REPRESENTATIVES
TREASURER

Purpose: To:

- formally impose tax payable for the 1983-84 financial year by individuals, and by trustees generally, at the rates declared by the Income Tax (Rates) Act 1982, as proposed to be amended by the Income (Rates) Amendment Bill (No. 2) 1983; and
- formally impose provisional tax for the 1983-84 year of income.

The Committee has no comments on this Bill.

INCOME TAX (RATES) AMENDMENT BILL (NO. 2) 1983

Date Introduced: 3 November 1983

House: HOUSE OF REPRESENTATIVES
TREASURER

Purpose: To amend the Income Tax (Rates) Act
1982:

- to reduce from \$1,040 to \$416 the income threshold at which special rates of tax apply to certain types of income derived by some unmarried minors; and
- as part of the changes to primary producer averaging arrangements, to bring about an upwards adjustment to the rates scales to reflect the application of tax rates based on average income in years in which the average income of a primary producer is greater than taxable income.

The Committee has no comments on this Bill.

INTER-STATE COMMISSION AMENDMENT BILL 1983

Date Introduced: 2 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR TRANSPORT

Purpose: To amend a number of provisions in the Inter-State Commission Act 1975 which are necessary to take account of legislative and other developments since 1975.

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

Clause 8 - Proposed Section 16 - Self-Incrimination

Sub-section 16(2) removes the protection against self-incrimination where a person is required to answer questions or provide documents under this Act. Such answers or documents which are provided are admissible against him only in proceedings for offences against section 16 or offences against certain sections of the Crimes Act.

The Committee draws this clause to the attention of Senators in that it might be considered to trespass 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.

REPRESENTATION BILL 1983

Date Introduced: 2 November 1983

House: HOUSE OF REPRESENTATIVES
SPECIAL MINISTER OF STATE

Purpose: To increase the number of Senators for
each State to 12.

The Committee has no comments on this Bill.

STATES GRANTS (PETROLEUM PRODUCTS) AMENDMENT BILL 1983

Date Introduced: 3 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE MINISTER FOR
INDUSTRY AND COMMERCE

Purpose: To amend the States Grants (Petroleum
Products) Act 1965 to:

- cease payment of freight subsidy on power kerosene;
- introduce an element of delivery to require applicants to actually deliver the product to the place in respect of which subsidy is claimed;
- provide authority to pay subsidy on the freight of eligible petroleum products to places which are not specified in the schedule to the schemes; and
- place the Northern Territory on the same basis as a State. At present, the petroleum products freight subsidy scheme operates in the Northern Territory under a separate Northern Territory enactment. When the Northern Territory legislation is brought into line with the complementary State legislation, the corresponding amendments to the Commonwealth legislation contained in this Bill will be proclaimed.

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 AMENDMENT BILL 1983
(Senator Jack Evans)

Date Introduced: 1 November 1983

House: SENATE
SENATOR JACK EVANS

Purpose: To amend the Taxation (Unpaid Company Tax) Assessment Act 1982 to provide that vendors recoupment tax is not payable in certain anomalous public company cases.

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 AMENDMENT BILL 1983
(The Hon. P J Keating)

Date Introduced: 3 November 1983

House: HOUSE OF REPRESENTATIVES
TREASURER

Purpose: To amend the company tax recoupment
law to:

- ensure that liability for recoupment tax will not be escaped by reason of an ultimately unsuccessful post-sale or pre-sale tax avoidance scheme;
- authorise the commissioner of Taxation to name in his annual report persons who fail to pay an assessed recoupment tax liability in respect of unpaid company tax;
- remove the test which requires that an arrangement which rendered a company unable to pay its tax must be identified before a recoupment tax liability can be established;
- provide relief from liability to vendors recoupment tax in certain anomalous public company cases;
- vary the evidentiary provision to ensure constitutional validity of the legislation; and
- correct minor technical defects.

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 AMENDMENT BILL 1983
(The Hon. P J Keating) (Cont 2)

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

Clause 12 - Evidence

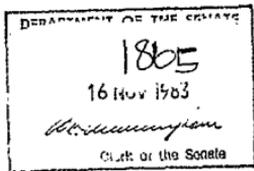
This clause and clause 11 are in the same form as clauses 21 and 22 of the previous Bill of this title presented to Parliament on 23 August 1983. In its Sixth Report of 14 September 1983 the Committee commented on those clauses in the following terms:

"Clause 21 of the Bill, which will come into force when the Bill receives the Royal Assent, substitutes a new section 23 in the Principal Act. This substitution, in the words of the Explanatory Memorandum, is necessary '... in the light of some doubt of a constitutional kind that has arisen about the legislation, and of technical deficiencies in the existing section 23 ... A feature of the new section will be that the certificate for which it provides will in all circumstances be prima facie, rather than conclusive, evidence.'

Clause 22 provides for the Principal Act to be amended to revert to the original position where a certificate is conclusive evidence in section 23, presumably when the doubts about the legislation have been resolved. Clause 22 is to come into force on a date to be fixed by Proclamation. Thus Clause 22 in effect provides a means for amending an act by Proclamation."

The Committee again draws this clause to the attention of Senators in that it may be considered to be an inappropriate delegation of 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.



SCRUTINY OF BILLS ALERT DIGEST

No. 14

16 November 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Bank Account Debit Tax Legislation Amendment Bill
1983

Conciliation and Arbitration Amendment Bill (No. 2)
1983

Customs and Excise Amendment Bill 1983

Customs Tariff Amendment Bill (No. 2) 1983

Director of Public Prosecutions Bill 1983

Director of Public Prosecutions (Consequential
Amendments) Bill 1983

Excise Tariff Amendment Bill (No. 2) 1983

Export Finance and Insurance Corporation Amendment
Bill 1983

Health Legislation Amendment Bill (No. 2) 1983

Industrial Research and Development Incentives
Amendment Bill 1983

Insurance Amendment Bill 1983

Life Insurance Amendment Bill 1983

National Crime Authority Bill 1983

National Crime Authority (Consequential Amendments)
Bill 1983

Postal and Telecommunications Amendment Bill 1983

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

BANK ACCOUNT DEBIT TAX LEGISLATION AMENDMENT BILL 1983

Date introduced: 9 November 1983

House: HOUSE OF REPRESENTATIVES
TREASURER

Purpose: To amend the bank account debits tax law to remove certain doubts about the constitutional validity of a provision which authorises banks to recover tax payable by them from account holders and which, if held to be constitutionally invalid, may affect the operative provisions of the Bank Account Debits Tax Administration Act 1982.

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

Clause 2 - Retrospectivity

This clause makes the commencement of this Bill retrospective to 31 December 1982. Representations have been made to the Commonwealth that certain provisions of the Bank Accounts Debits Tax Administration Act 1982 relating to the recovery of tax by banks from their clients may be unconstitutional. Although the matter is not the subject of litigation, this Bill has been introduced to ensure that the Principal Act is, and was at all times, within the Constitution.

The Committee draws this clause to the attention of Senators in that such retrospectivity may be considered to trespass 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.

CONCILIATION AND ARBITRATION AMENDMENT BILL (NO.2) 1983 .

Date introduced: 9 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR EMPLOYMENT AND INDUSTRIAL
RELATIONS

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

- . achieve greater co-ordination between Commonwealth and State industrial systems
- . incorporate the jurisdiction of the Public Service Arbitrator within the jurisdiction of the Conciliation and Arbitration Commission
- . change certain administrative arrangements under the Act.

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

Clause 14 - Proposed Section 70A(1)

This section contains a definition of Commonwealth authority to which the Act will apply. Paragraphs (d) and (e) permit various authorities to be excluded from the application of the Act by regulation. This is a "Henry VIII" clause in that it permits the application of the Act to be amended by regulation.

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 1983 (Cont 2)

The Committee draws this clause to the attention of Senators in that it might be considered to be an inappropriate delegation of 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.

CUSTOMS AND EXCISE AMENDMENT BILL 1983

Date introduced: 9 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE MINISTER FOR
INDUSTRY AND COMMERCE

Purpose: To amend the Customs Act 1901 and the
Excise Act 1901 to:

- . provide for the rate of rebate payable in respect of diesel fuel to be able to be prescribed by regulations made under the Acts;
- . provide for regulations to be able to be made under the Customs Act prescribing additional circumstances under which the Comptroller-General of Customs will not grant a depot licence; and
- . to bring certain provisions in the Excise Act relating to the Gazettal of Excise Tariff Proposals and the making of excise by-laws, into line with similar provisions in the Customs 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 TARIFF AMENDMENT BILL (NO.2) 1983

Date introduced: 9 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE MINISTER FOR
.INDUSTRY AND COMMERCE

Purpose: To enact tariff changes which have been introduced during the 1983 Autumn and Budget sittings by Customs Tariff Proposals Nos 2 - 14 (1983), and to make two changes which have not previously been introduced into the Parliament.

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.

DIRECTOR OF PUBLIC PROSECUTIONS BILL 1983

Date introduced: 10 November 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To establish an office of Director of Public Prosecutions to take over the functions of the Crown Solicitor's Office in regard to prosecution of Commonwealth offences, but a considerable degree of flexibility will be given to the Director as to how and when this will be done.

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

Clause 6

Among the functions given to the Director is that of instituting proceedings "for the recovery of pecuniary penalties under the laws of the Commonwealth" (clause 6(1)(g)).

By clause 6(6) the institution of such proceedings is protected from legal challenge if the basis of the challenge is that the proceedings are not proceedings to which paragraph (1)(g) applies, and are thus not authorised by the Attorney-General.

Clause 6(7) likewise protects the Director against any legal challenge to his decision to take civil remedies under clause 6(1)(h).

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

DIRECTOR OF PUBLIC PROSECUTIONS BILL 1983 (Cont 2)

In discussing a similar clause in the Special Prosecutors Bill 1982, in its Twelfth Report, 15 September 1982, the Committee expressed concern that the effect of the clause was,

"... to oust the jurisdiction of a court to examine the power of a Special Prosecutor to launch or pursue prosecutions or civil remedies in so far as they might not relate to matters specified by the Attorney-General. One effect of this clause is to allow a Special Prosecutor to undertake functions beyond those assigned by the Attorney-General, without any right of review by a court".

The Committee draws this clause to the attention of Senators in that it might be considered to make rights, liberties 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.

DIRECTOR OF PUBLIC PROSECUTIONS
(CONSEQUENTIAL AMENDMENTS) BILL 1983

Date introduced: 10 November 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To amend 14 Acts of the Parliament in
consequence of the enactment of the Director
of Public Prosecutions Bill 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.

EXCISE TARIFF AMENDMENT BILL (NO.2) 1983

Date introduced: 9 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE MINISTER FOR
INDUSTRY AND COMMERCE

Purpose: To introduce new provisions into the Excise Tariff Act 1922 which will have the effect of automatically indexing certain traditional excise duty rates at six monthly intervals, and to provide for a revised excise system for crude oil produced from fields discovered before 18 September 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.

EXPORT FINANCE AND INSURANCE CORPORATION
AMENDMENT BILL 1983

Date introduced: 9 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR TRADE

Purpose: To amend the Export Finance and Insurance Corporation Act 1974 to give the Corporation authority to provide subsidies to lenders in situations where it guarantees repayment of loans made by lending institutions to overseas buyers of Australian capital goods and related 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.

HEALTH LEGISLATION AMENDMENT BILL (NO.2) 1983

Date introduced: 10 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR HEALTH

Purpose: To make certain amendments of the Health Insurance Act 1973, the National Health Act 1953, the Nursing Homes Assistance Act 1974 and the Medical Research Endowment Act 1937, the most significant of which relate to the administration of the Government's nursing home program.

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

Clause 2 - Retrospectivity

Sub-clauses (10) and (11) make the commencement of clauses 35(1), 62(1) and 61(1) retrospective to 1 January 1975 and 13 December 1974 respectively. The Explanatory Memorandum justifies this on the grounds of providing legislative authority for past administrative practices. It is not clear whether this retrospectivity will in fact compromise the rights of any individuals. In view of the significant retrospectivity involved the Committee draws the attention of Senators to this clause in that it might be considered to trespass 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.

INDUSTRIAL RESEARCH AND DEVELOPMENT INCENTIVES
AMENDMENT BILL 1983

Date introduced: 9 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR SCIENCE AND TECHNOLOGY

Purpose: To extend the scope and to increase the
effectiveness of the Australian Industrial
Research and Development Incentives 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.

INSURANCE AMENDMENT BILL 1983

Date introduced: 10 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE TREASURER

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

LIFE INSURANCE AMENDMENT BILL 1983

Date introduced: 10 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE TREASURER

Purpose: To amend the Life Insurance Act 1945
to strengthen and improve the existing
supervisory machinery and to overcome
certain difficulties experienced in the
administration of 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.

NATIONAL CRIME AUTHORITY BILL 1983

Date introduced: 10 November 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To establish a National Crime Authority with the function of investigating certain categories of organised crime and official corruption, with a view to prosecution action where appropriate.

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

Clause 14

This clause protects the Authority against any legal challenge to any action or thing done by it in pursuance of a reference if the basis of the challenge is that necessary approval of the Intergovernmental Committee or consent of the Minister had not been obtained or was not lawfully given. The only exception to this is a proceeding instituted by the Attorney-General of the Commonwealth or of a State.

The Committee draws this clause to the attention of Senators in that it may be considered 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.

Clause 21

Sub-clause (15) of this clause removes existing protection from liability in defamation where a person reports on evidence given before the Authority. At present a fair and accurate report of evidence given in judicial and similar proceedings is protected from liability. However, as a result of sub-clause (15) such a defence is not available in cases arising out of proceedings of the Authority. The defence that the substance of evidence given before the Authority was true would still be available in such cases.

The Committee draws this clause to the attention of Senators in that it might be considered to trespass unduly on personal rights and liberties.

NATIONAL CRIME AUTHORITY (CONSEQUENTIAL
AMENDMENTS) BILL 1983

Date introduced: 10 November 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To amend the Income Tax Assessment Act 1936
and the Royal Commissions Act 1902 in
consequence of the enactment of the National
Crime Authority Bill 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.

POSTAL AND TELECOMMUNICATIONS AMENDMENT BILL 1983

Date introduced: 9 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR COMMUNICATIONS

Purpose: To authorize the Australian Postal Commission to operate electronic mail services and agency services on behalf of private as well as public sector principals; to reinstate the postal courier service; and to make amendments to the existing powers and administrative arrangements of the 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.



SCRUTINY OF BILLS ALERT DIGEST

DEPARTMENT OF THE SENATE
PAPER No. 2002
DATE 30 NOV 1983
PRES. J. F. [Signature]
Clark of the Senate

No. 15

30 November 1983

ISSN: 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator N. Bolkus
Senator R.A. Crowley
Senator the Hon. P.D. Durack
Senator J. Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Australian Industry Development Corporation Amendment
Bill 1983

Australian National Railways Commission Bill 1983

Australian National Railways Commission (Transitional
Provisions and Consequential Amendments) Bill 1983

Live-stock Slaughter (Export Inspection Charge)
Validation Bill 1983

States Grants (Education Assistance-Participation
and Equity) Bill 1983

States Grants (Schools Assistance) Bill 1983

States Grants (Tertiary Education Assistance)
Amendment Bill 1983

Taxation Administration Amendment Bill 1983

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.

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

AUSTRALIAN INDUSTRY DEVELOPMENT CORPORATION
AMENDMENT BILL 1983

Date introduced: 16 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE MINISTER
FOR INDUSTRY AND COMMERCE

Purpose: To amend the Australian Industry Development Corporation Act 1970 primarily to enable the Corporation to allocate additional finance for the restructuring and revitalisation of industry and for high technology and other growth industries.

The Committee has no comments on this Bill.

AUSTRALIAN NATIONAL RAILWAYS COMMISSION BILL 1983

Date introduced: 16 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR TRANSPORT

Purpose: To repeal the Australian National Railways Act 1917 and replace it with modern legislation more appropriate to the Commission's role as a commercial business undertaking, by:

- defining precisely the Commission's powers and responsibilities by giving it a clear and distinct charter
- removing many archaic constraints on ANRC's ability to operate in a commercial manner
- minimising Ministerial intervention in respect of ANRC's day-to-day activities while maintaining Ministerial oversight in critical areas and by way of reserve powers
- ensuring 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 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.

Clases 7 and 8 - Powers of the Commission

Clause 7(1)(a) establishes an upper limit of \$2m on the value of contracts (other than contracts for the carriage of passengers or goods) which the Commission may enter into without obtaining ministerial approval. However, the amount of \$2m may be increased by regulation. In as much as the purpose of the clause is to limit the powers of the Commission to enter into contracts and that purpose can be altered by regulation, this clause might be considered to be a "Henry VIII" clause.

The Committee therefore draws these clauses to the attention of Senators in that they might be considered to be an inappropriate delegation of legislative power.

Clause 74

This clause exempts the Commission from any requirement to fence off a railway from adjacent land. In view of the offences relating to endangering the safety of trains established by clause 78(1) a landowner adjacent to a railway, for example, could only protect himself against either loss of livestock or committing an offence under clause 78(1) by fencing off his land. In effect the clause could shift from a public authority to private individuals the financial burden for the fencing of railways.

The Committee draws this clause to the attention of Senators in that it might be considered to trespass unduly on personal rights and liberties.

AUSTRALIAN NATIONAL RAILWAYS COMMISSION (TRANSITIONAL
PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1983

Date introduced: 16 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR TRANSPORT

Purpose: To complement the Australian National
Railways Commission Bill 1983 by making
transitional and consequential amendments
necessary for the smooth changeover
in legislation.

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 (EXPORT INSPECTION CHARGE)
VALIDATION BILL 1983

Date introduced: 16 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING THE MINISTER
FOR PRIMARY INDUSTRY

Purpose: To enact legislation to validate the payment and collection of amounts under the Live-stock Slaughter (Export Inspection Charge) Act 1979 and the Live-stock Slaughter (Export Inspection Charge) Collection Act 1979.

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

Clause 3 - Retrospectivity

The purpose of this clause is to validate retrospectively the payment and collection of amounts under the Live-stock Slaughter (Export Inspection Charge) Act 1979 and the Live-stock Slaughter (Export Inspection Charge) Collection Act 1979.

Subsequent amendments to the first Act altered the definition of "abattoir" and required that premises to be used as abattoirs be prescribed. Such premises were not prescribed. However, fees in relation to abattoirs have continued to be collected since 1 January 1983.

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 (EXPORT INSPECTION CHARGE)
VALIDATION BILL 1983 (Cont 2)

Although sub-clause 3(3) provides protection against the imposition of penalties for non-payment of retrospectively validated charges, the Committee nevertheless draws this clause to the attention of Senators in that any such retrospectivity may be considered to trespass 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.

STATES GRANTS (EDUCATION ASSISTANCE-PARTICIPATION AND
EQUITY) BILL 1983

Date introduced: 17 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING THE MINISTER
FOR EDUCATION AND YOUTH AFFAIRS

Purpose: To provide funds for the Participation
and Equity Program commencing in 1984.

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) BILL 1983

Date introduced: 17 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING THE MINISTER
FOR EDUCATION AND YOUTH AFFAIRS

Purpose: To provide for the appropriation of
\$1290M in 1984, including \$573M for
Government schools and \$679M for non-
Government schools with \$38M for joint
programs for all schools.

The Committee has no comments on this Bill.

STATES GRANTS (TERTIARY EDUCATION ASSISTANCE)
AMENDMENT BILL 1983

Date introduced: 17 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING THE MINISTER
FOR EDUCATION AND YOUTH AFFAIRS

Purpose: To amend the States Grants (Tertiary
Education Assistance) Act 1981 to provide
for the Government's 1984 tertiary
education program in the States and
the Northern 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.

TAXATION ADMINISTRATION AMENDMENT BILL 1983

Date introduced: 16 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER ASSISTING THE TREASURER

Purpose: To provide legislative authority for a system that may be used uniformly throughout Australia for the service by post of summonses in respect of taxation offences that, on summary conviction, are punishable by a fine.

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

| | |
|--------------------------|-------------|
| DEPARTMENT OF THE SENATE | |
| PAPER No. | 2154 |
| DATE PRESENTED | -7 DEC 1983 |
| <i>W. Cunningham</i> | |
| Clerk of the Senate | |

No. 16

7 December 1983

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M C Tate, Chairman
Senator A J Missen, Deputy Chairman
Senator N Bolkus
Senator R A Crowley
Senator the Hon. P.D Durack
Senator J Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Bounty (High Alloy Steel Products) Bill 1983

Bounty (Steel Mill Products) Bill 1983

Insurance Contracts Bill 1983

Management and Investment Companies Bill 1983

Prices Surveillance Bill 1983

Remuneration and Allowances Amendment Bill 1983

Sex Discrimination Bill 1983 (No. 2)

Steel Industry Authority Bill 1983

Telecommunications (Interception) Amendment Bill 1983

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.

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

BOUNTY (HIGH ALLOY STEEL PRODUCTS) BILL 1983

Date Introduced: 30 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING MINISTER FOR INDUSTRY
AND COMMERCE

Purpose: To continue bounty assistance on the
production in Australia of certain high alloy
steel products.

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

General Comment

The Bounty (Steel Mill Products) Bill is substantially in a
similar form to this Bill. Thus the comments on various
clauses apply to both Bills. Where the numbering of
comparable clauses differs, the relevant clauses of the
Bounty (Steel Mill Products) Bill are indicated in brackets.

Clause 3(1) - Inappropriate Delegation

Clause 3(1) contains definitions of the products on which
bounty may be payable. A number of matters within those
definitions relating to production processes are left to be
prescribed by regulation.

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 this clause in that it might be considered to be an inappropriate delegation of legislative power.

Clause 8(6) [Clause 9(7)] - Regulations

These clauses permit the Schedules to the respective Bills to be amended by regulation. Since the Schedules set out the percentages of sales value of various products on which bounty payments will be based, the level of bounty payable can in effect be altered by regulation.

Clause 9(2) [Clause 10(2)] similarly permits the limit of available bounty to be altered by regulation.

The Committee draws these clauses to the attention of Senators in that they might be considered to be an inappropriate delegation of legislative power.

Clause 12(5) [Clause 13(5)] - Unreviewable Decisions

These bounty schemes are restricted to producers who were engaged in the industry on 7 February 1983. These clauses give to the Minister the discretion to admit producers to the scheme who were not engaged in the industry at that date if such admission would promote the development of the industry.

The Committee draws these clauses to the attention of Senators in that they might be considered 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.

Clause 18(5) [Clause 19(5)] - Self-Incrimination

These clauses remove protection against self-incrimination in relation to certain specified offences in each Bill. They are in the now standard form for such clauses. The Committee nevertheless draws these clauses to the attention of Senators in that they might be considered to trespass unduly on personal rights and liberties.

Clause 26(2) [Clause 27(2)] - Regulations

There is some conflict as to the meaning of these clauses. It has been suggested that they permit the making of regulations which are inconsistent with the terms of the Bills, and thus overthrow the cardinal principle of administrative law that delegated legislation cannot, without express provision, be repugnant to the Act under which it was made. There is nothing similar in the Bounty (Steel Products) Act 1983, which these Bills are designed to replace, nor have similar clauses appeared in other recent bounty legislation.

The Committee is seeking further clarification of the purpose of these clauses. The Committee meanwhile draws them to the attention of Senators in that they might be considered to be an inappropriate delegation of 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.

BOUNTY (STEEL MILL PRODUCTS) BILL 1983

Date Introduced: 30 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING MINISTER FOR INDUSTRY
AND COMMERCE

Purpose: To provide bounty assistance on the production in Australia of certain quenched and tempered steel plate, certain pipe and tube and certain cold-rolled steel plate products.

See comments on Bounty (High Alloy Steel Products) Bill 1983.

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

INSURANCE CONTRACTS BILL 1983

Date Introduced: 1 December 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To reform and modernise, on a national basis,
the law relating to contracts of insurance.

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.

MANAGEMENT AND INVESTMENT COMPANIES BILL 1983

Date Introduced: 30 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR SCIENCE AND TECHNOLOGY

Purpose: To:

- establish an independent Management and Investment Company Licensing Board;
- require the Board to report to the Minister;
- authorise the Board to issue, suspend, revoke and renew the licences of MICs;
- authorise the Board to approve the amount of tax deductible capital each MIC may raise;
- provide for the Board to be advised of the total amount of MIC capital which may be approved during each financial year;
- establish the criteria by which the Board is to assess applications for MIC licences;
- establish the broad terms and conditions under which MICs may operate;

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

MANAGEMENT AND INVESTMENT COMPANIES BILL 1983 (Cont 2)

- authorise MICs to take equity in, and provide loans and loan guarantees to, eligible businesses;
- authorise the Board to certify the eligibility of those businesses in which MICs are seeking to invest, prior to any investment by the MICs; and
- establish the criteria by which the Board is to determine the eligibility of businesses for MIC investments.

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

Clauses 3(1), 20(3), 21(2) and 29(6) - "Henry VIII" Clauses

These clauses relate to definitions of various categories of company. In each case an amount is specified in relation to the share capital or net worth of the company. The specified amount can, in all cases, be changed by regulation, thus varying the classes of company to which the clauses refer.

The Committee draws these clauses to the attention of Senators in that all such "Henry VIII" clauses may be considered to be an inappropriate delegation of 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 17 - Unreviewable Discretion

Clause 17(4) is a privative or ouster clause, designed to prevent even a review by the Federal Court as to some aspects of the legality of a decision of the Board. Were it not for this provision, the general policy or practice of the Board might be regarded as an irrelevant consideration in arriving at a particular decision, so that reference to that general policy or practice might call in question the legality of the decision.

The Committee draws this clause to the attention of Senators in that it makes rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 21(1) - Review of Decisions

Clause 47 of this Bill allows appeals to the Administrative Appeals Tribunal against decisions by the Board "to revoke or refuse to renew" a licence. However, clause 21(1) empowers the Board to refuse to grant a licence. This decision is not reviewable. The Explanatory Memorandum to this Bill, in its explanation of clause 47, states that certain decisions

"... require the exercise of judgement requiring a high level of relevant experience and constitute a major part of the role for which the ... Board is to be established".

The Committee nevertheless draws this clause to the attention of Senators in that it may be considered 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.

MANAGEMENT AND INVESTMENT COMPANIES BILL 1983 (Cont 4)

The Committee's comments on this clause also apply to decisions of the Board under clause 21(5), to impose conditions on a licence; clause 24(1), to suspend a licence; clause 26, to give directions to a licensee; clause 29, to refuse certification of a business entity; clause 30, to cancel certification and clause 44, to approve the acquisition of shares.

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

PRICES SURVEILLANCE BILL 1983

Date Introduced: 30 November 1983

House: HOUSE OF REPRESENTATIVES
THE TREASURER

Purpose: To establish a Prices Surveillance Authority
as part of the Prices and Incomes Accord.

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

Clause 21(1) - Unreviewable Decision

This clause permits the Minister, or the Authority with the Minister's approval, to declare goods, services and persons to be subject to the Act or to exempt the supply of certain goods and services from the Act. The Minister's, or the Authority's decision, is not subject to Parliamentary scrutiny.

In view of the wide ranging powers of the Authority, this clause is drawn to the attention of Senators in that it may be considered 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.

REMUNERATION AND ALLOWANCES AMENDMENT BILL 1983

Date Introduced: 30 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER OF STATE

Purpose: To make amendments to certain remuneration and 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.

SEX DISCRIMINATION BILL 1983 (NO. 2)

Date Introduced: 30 November 1983

House: SENATE
MINISTER ASSISTING THE PRIME MINISTER ON THE
STATUS OF WOMEN

Purpose: To make unlawful discrimination on the grounds of sex, marital status and pregnancy in the areas of employment, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs. The Bill also prohibits discrimination involving sexual harassment in the workplace and in educational institutions.

The Bill establishes a Sex Discrimination Commissioner whose function will be to conciliate complaints of discrimination made under the legislation and to attempt to reach an amicable settlement. Where the process of conciliation is unsuccessful the Human Rights Commission can inquire into the complaint and may make determinations as to future conduct. These determinations may be enforced by action in the Federal Court.

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

Clause 40(2) - "Henry VIII" Clause

This clause provides for an exemption period of two years from the provisions of this Bill for acts done in direct compliance with an Act, other laws or legal determinations. Sub-clause (2) permits the exemption period of two years to be extended by regulation.

The Committee adopts the practice of commenting on all clauses which enable a Bill to be substantially altered by regulation, and thus draws this "Henry VIII" clause to the attention of Senators in that it might be considered to be an inappropriate delegation of legislative power.

Clause 41(2) - "Henry VIII" Clause

This clause exempts discrimination on the grounds of sex or marital status in the terms and conditions pertaining to a superannuation or provident fund scheme. This exemption is for a minimum period of two years. However, the term of the exemption may be determined by regulation.

The Committee adopts the practice of commenting on all such "Henry VIII" clauses, and draws this clause to the attention of Senators in that it might be considered to be an inappropriate delegation of legislative power.

Clause 91 - Self-Incrimination

This clause, which withdraws the protection against self-incrimination, is in a standard form for such clauses and is restricted to offences against section 93 of the proposed

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 1983 (NO. 2) (Cont 3)

Act. The Committee nevertheless draws this clause to the attention of Senators in that it might be considered to trespass 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.

STEEL INDUSTRY AUTHORITY BILL 1983

Date Introduced: 30 November 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING MINISTER FOR INDUSTRY
AND COMMERCE

Purpose: To establish a Steel Industry Authority to monitor the progress of the Steel Industry Plan and to provide advice to the Government on assistance to the steel industry.

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

Clause 30 - Burden of Proof

Sub-clause (2) of this clause places the burden of proof on an employer who is the defendant in cases arising out of hearings of the Steel Industry Authority and relating to witnesses at such hearings being prejudiced in their employment.

The Committee commented on a similar clause of the Radiocommunications Bill 1983 in paragraph 26 of its Eleventh Report (2 November 1983). The Minister responsible for that Bill justified the clause as being essential if the rights of witnesses are to be protected. The Committee nevertheless

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

STEEL INDUSTRY AUTHORITY BILL 1983 (Cont 2)

draws the attention of Senators to this clause in that it may be considered to trespass 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.

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 1983

Date Introduced: 1 December 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To allow the Attorney-General to consider any request from the New South Wales Special Commission of Inquiry for information relating to the commission, or intended commission, of a serious criminal offence which has been obtained by the lawful interception of telecommunications.

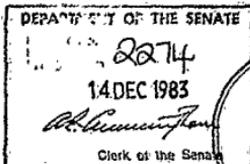
The Committee draws the attention of Senators to the following clause of this Bill:

Proposed Section 7A(11) - Unreviewable Discretion

Proposed new section 7A(11) is a privative or ouster clause, which seeks to prevent, so far as possible, the exercise by the Attorney-General of his discretion under proposed new section 7A(4) and (6) from being called into question in any court. Thus even the legality of such a decision may be unreviewable.

The Committee draws this clause to the attention of Senators in that it might be considered 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.



SCRUTINY OF BILLS ALERT DIGEST

No. 17

14 DECEMBER 1983

ISSN 0729-6851

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M C Tate, Chairman
Senator A J Missen, Deputy Chairman
Senator N Bolkus
Senator R A Crowley
Senator the Hon. P D Durack
Senator J Haines

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Australian Citizenship Amendment Bill 1983

Customs Tariff (Anti-Dumping) Amendment Bill (No. 2)
1983

Customs Tariff (Anti-Dumping) Miscellaneous Amendments
Bill 1983

Fishing Legislation Amendment Bill 1983

Foreign Proceedings (Excess of Jurisdiction) Bill 1983

Income Tax Assessment Amendment Bill (No. 5) 1983

Insurance (Agents and Brokers) Bill 1983

Public Accounts Committee Amendment Bill 1983

Social Security and Repatriation (Pensions Income and
Assets Test) Bill 1983

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

AUSTRALIAN CITIZENSHIP AMENDMENT BILL 1983

Date Introduced: 7 December 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR IMMIGRATION AND ETHNIC AFFAIRS

Purpose: To remove all discriminations from the Australian Citizenship Act 1948, to revise the Oath of Allegiance and to effect certain other changes to the Act.

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

Clause 15 - Proposed new sub-section 21(2)

Section 19B(1) of the Crimes Act 1914 provides that a court may make an order dismissing a charge against a person or discharging that person, even if that charge is proved, if it is considered inexpedient to inflict any punishment. Sub-section 21(1) empowers the Minister to deprive certain classes of people of Australian citizenship if they are convicted of specified offences. Sub-section 21(2) has the effect of treating an order under section 19B(1) of the Crimes Act as a conviction within sub-section 21(1). Thus a person on whom no penalty was inflicted under the Crimes Act could, as a result of this amendment, be deprived of citizenship under section 21 of the Australian Citizenship Act.

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

AUSTRALIAN CITIZENSHIP AMENDMENT BILL 1983 (Cont 2)

The Committee views such an outcome of the legislation most seriously and therefore draws this clause to the attention of Senators in that it may trespass unduly on personal rights and liberties.

Proposed Section 14 - Unreviewable Discretion

This section empowers the Minister to defer consideration of an application for Australian citizenship. The exercise of that discretion is not included within the review provisions of proposed section 52A. Existing discretions in relation to the refusal of application for citizenship under section 23D(1) and the issue or revocation of prescribed evidentiary certificates under section 44A are not reviewable under this proposed section either.

The Committee draws proposed section 14 to the attention of Senators in that it might be considered 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.

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL (NO. 2) 1983

Date Introduced: 7 December 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING MINISTER FOR INDUSTRY
AND COMMERCE

Purpose: To amend the Customs Tariff (Anti-Dumping) Act 1975 as a consequence of a review of Australia's anti-dumping and countervailing legislation.

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

General Comment

This Bill, like the Principal Act, gives to the Minister a very wide range of discretions, none of which is reviewable by the Administrative Appeals Tribunal. Some examples from this Bill are proposed new section 4(3)(b), section 5(2)(a) and (b), 5(9), 5A(1) and (2), 8(2A), 10(2A) and (7). In each case the person affected by the decision is the importer of goods, and it may be thought that the Tribunal should be concerned primarily with the rights of Australian residents, although the discretions are subject to control as to the legality of their exercise, under the Administrative Decisions (Judicial Review) Act 1977.

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 (NO. 2)
1983 (Cont 2)**

The Committee therefore draws these clauses to the attention of Senators in that they might be considered 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.

CUSTOMS TARIFF (ANTI-DUMPING) MISCELLANEOUS AMENDMENTS BILL
1983

Date Introduced: 7 December 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING MINISTER FOR INDUSTRY
AND COMMERCE

Purpose: To amend the Customs Act 1901 and the Industries Assistance Commission Act 1973 to introduce new provisions which emanate from a review of Australia's anti-dumping and countervailing legislation.

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

Proposed Section 214B(1) - Powers of Officers

Proposed new section 214B of the Customs Act 1901 permits an authorised officer to enter premises, without the consent of the owner and without a judicially authorised search warrant. The Minister's Second Reading speech indicates that the officer is empowered "to enter certain premises on a warrant", but the only "warrant" referred to in the Bill is the production of written evidence of the fact that he is an authorised officer (see proposed new section 214B(2)).

The Committee draws this proposed new section to the attention of Senators in that it may be considered to trespass 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 (ANTI-DUMPING) MISCELLANEOUS AMENDMENTS
BILL 1983 (Cont 2)

Proposed section 214B(6) - Self-Incrimination

This proposed new section is a self-incrimination clause in a form standard for such clauses. Its scope is restricted to offences against section 214. The Committee nevertheless adopts the practice of drawing all such clauses to the attention of Senators in that they might be considered to trespass 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.

FISHING LEGISLATION AMENDMENT BILL 1983

Date Introduced: 7 December 1983

House: HOUSE OF REPRESENTATIVES
MINISTER FOR PRIMARY INDUSTRY

Purpose: To implement a number of amendments of an administrative nature pending completion of a comprehensive review of Commonwealth fisheries legislation.

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.

FOREIGN PROCEEDINGS (EXCESS OF JURISDICTION) BILL 1983

Date Introduced: 7 December 1983

House: SENATE
ATTORNEY-GENERAL

Purpose: To consolidate and refine existing Australian legislation which protects Australian laws, policies and interests against the extraterritorial application of foreign laws and to provide for further measures, so that Australia will have available a comprehensive arsenal of defences if faced with a challenge to its sovereignty or national interests by the extraterritorial application of foreign laws.

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) 1983

Date Introduced: 7 December 1983

House: HOUSE OF REPRESENTATIVES
THE TREASURER

Purpose: To make certain amendments to the income tax law to complete the implementation of proposals of the former Government.

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

General Comment - Retrospectivity

Most of the provisions of this Bill appear to have retrospective effect, but in some cases the retrospective operation is beneficial to the taxpayer. Those in which the retrospectivity is detrimental to the taxpayer, and the date from which they operate, are:

- proposed new section 26AFA, relating to income from superannuation funds - to 1 July 1977;
- proposed new section 26AH, relating to amounts received in respect of certain life assurance policies - to Budget night 1982;
- proposed new section 51AD, relating to deductions arising from certain leverage leasing arrangements - to 24 June 1982;

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) 1983

(Cont 2)

- proposed new section 82AHA, relating to deductions for property disposed of after twelve months - to 18 December 1981.

The Committee draws these clauses to the attention of Senators in that they might be considered to trespass 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 (AGENTS AND BROKERS) BILL 1983

Date Introduced: 7 December 1983

House: SENATE
MINISTER FOR RESOURCES AND ENERGY

Purpose: To regulate the activities of life and general insurance brokers and to an extent, life and general insurance agents.

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.

PUBLIC ACCOUNTS COMMITTEE AMENDMENT BILL 1983

Date Introduced: 7 December 1983

House: HOUSE OF REPRESENTATIVES
SPECIAL MINISTER OF STATE

Purpose: To increase the size of membership of the
Joint Committee of Public Accounts from ten to
fifteen.

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 SECURITY AND REPATRIATION (PENSIONS INCOME AND ASSETS
TEST) BILL 1983

Date Introduced: 7 December 1983

House: HOUSE OF REPRESENTATIVES
MINISTER REPRESENTING MINISTER FOR SOCIAL
SECURITY

Purpose: To amend the Social Security Act 1947 and the
Repatriation Act 1920 to introduce an income
and assets test for the purposes of the
payment of pensions and service pensions under
those Acts.

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.