

SCRUTINY OF BILLS ALERT DIGEST

NO. 1 OF 1987

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*K. Crowl*

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator R.A. Crowley  
Senator J. Newman

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.

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The Committee has considered the following Bills:

Aborigines and Islanders (Admissibility of Confessions) Bill  
1986

Australian Reinsurance Market Bill 1986 [No.2]

Australian Stock Exchange and National Guarantee Fund Bill  
1986

Collective Agreements (Corporations) Bill 1986

Income Tax Amendment Bill 1986

Koongarra Project Area Repeal Bill 1986

National Parks and Wildlife Conservation Amendment Bill 1986

Petroleum Resource Rent Tax Bill 1986

Petroleum Resource Rent Tax Assessment Bill 1986

Petroleum Resource Rent Tax (Interest on Underpayments) Bill  
1986

Petroleum Resource Rent Tax (Miscellaneous Provisions) Bill  
1986

Petroleum Retail Marketing Sites Amendment (Divorcement of  
Ownership) Bill 1986

Taxation Laws Amendment Bill (No.5) 1986

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.

ABORIGINES AND ISLANDERS (ADMISSIBILITY OF CONFESSIONS) BILL 1986

This Bill was introduced into the Senate on 5 December 1986 by Senator Macklin.

The purpose of the Bill is to make certain provisions relating to the admissibility of confessions made by Aborigines and Pacific or Torres Strait Islanders while in police custody.

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

Sub-clause 15(8) - Time limit for destruction of recording

Sub-clause 15(8) provides that a recording of an interview between an officer and an Aborigine or Islander 'shall be destroyed by the officer having the custody of the recording where proceedings for an offence have not been instituted against the [Aborigine or Islander] within 12 months after the day on which the recording was made'. While it may be the intention that the recording will be destroyed forthwith or as soon as practicable after the expiration of the 12 month period allowed for the institution of proceedings, the provision does not make this explicit. On one reading the timing for the destruction of the recording would be left to the officer having the custody of the recording.

The Committee therefore draws sub-clause 15(8) to the attention of Senators in that, because it does not impose on the officer having custody of a recording a positive obligation to destroy the recording within a particular period of time, it may be considered to trespass unduly on personal rights and liberties.

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AUSTRALIAN REINSURANCE MARKET BILL 1986 [NO.2]

This Bill was introduced into the Senate on 5 December 1986 by Senator Vigor.

The purpose of the Bill is to establish a statutory authority, to be known as the Australian Reinsurance Market Authority, to undertake reinsurance business.

The Committee has no comments on this Bill.

AUSTRALIAN STOCK EXCHANGE AND NATIONAL GUARANTEE FUND BILL 1986

This Bill was introduced into the House of Representatives on 28 November 1986 by the Attorney-General.

The purpose of the Bill is twofold -

- (i) to provide legislative support for a reorganisation of stock exchanges in Australia to establish a single national stock exchange, the Australian Stock Exchange Ltd, with each of the 6 current capital city exchanges as subsidiaries of it; and
- (ii) to create a national guarantee fund consisting of the pooled assets of the existing fidelity funds operated by the separate capital city exchanges, which will provide greater protection to investors in respect of the failure of contracting parties to meet their transaction obligations or in respect of dealer insolvency.

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

Clause 7 -

Proposed new sub-section 95(7) - Reversal of the onus of proof

Clause 7 would insert new sections 94A and 95 in the Securities Industry Act 1980. New sub-section 95(1) would require a member organisation of a stock exchange to lodge and maintain a deposit with the exchange. New sub-section 95(7) would provide that it is a defence to a prosecution for a contravention of sub-section (1) if it is established that the contravention was attributable to the making of a payment out of the trust account kept by the person or partnership concerned, being a payment that the person

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or partnership was authorised to make under the Act and which the person or partnership would not have been able to make if sub-section (1) had been complied with.

The Senate Standing Committee on Constitutional and Legal Affairs recommended in its Report, The Burden of Proof in Criminal Proceedings (Parliamentary Paper No.319/1982), that the burden of establishing a defence (the persuasive onus) should not be placed upon defendants in criminal proceedings but rather that they should merely be required to bear an evidential onus, that is, the onus of adducing evidence of the existence of a defence, the burden of negating which will then be borne by the prosecution. Thus in the present case the person or partnership might be required to adduce evidence of the relevant facts constituting the defence rather than being required to establish the defence on the balance of probabilities.

The Committee has drawn attention on previous occasions to a number of reversals of the persuasive onus of proof in legislation forming part of the national uniform companies and securities scheme (see in particular its Eleventh Report of 1986). The Committee notes that as regards the reversal of the onus of proof the new section 45 does not differ from the existing section 95 of the Securities Industry Act 1980. Nevertheless the Committee draws new sub-section 95(7) to the attention of Senators in that by imposing the persuasive burden of proof on defendants it may be considered to trespass unduly on personal rights and liberties.

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COLLECTIVE AGREEMENTS (CORPORATIONS) BILL 1986

This Bill was introduced into the Senate on 26 November 1986 by Senator Siddons.

The purpose of the Bill is to provide for collective agreements, between unions and employers, regulating the terms and conditions of employment of employees of corporations. The Bill is intended to allow unions and employers to enter into binding contracts outside the centralised wage fixing system, should they desire, while retaining the centralised system. It will, however, prevent such collective agreements from undercutting awards.

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

Sub-clause 20(3) - Reversal of onus of proof

Sub-clause 20(1) creates an offence where a corporation victimises an employee by reason of the employee's membership of an association of employees or the employee's actions as an officer or delegate of such an association. Sub-clause 20(3) provides that in proceedings in relation to such an offence, if all elements of the charge other than the necessary reason or intent are established, it shall lie upon the corporation or person charged to prove that the action the subject of the charge was not actuated by the relevant reason or taken with the necessary intent. The effect of sub-clause 20(3) is thus to place upon the defendant the persuasive burden of proof in negating certain elements of the offence.

The Senate Standing Committee on Constitutional and Legal Affairs recommended in its Report, The Burden of Proof in Criminal Proceedings (Parliamentary Paper No.319/1982), that the burden of establishing a defence (the persuasive onus) should not be placed upon defendants in criminal proceedings but rather that they

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should merely be required to bear an evidential onus, that is, the onus of adducing evidence of the existence of a defence, the burden of negating which will then be borne by the prosecution. Thus in the present case the defendant might be required to adduce evidence that he or she was not actuated by the relevant reason or did not act with the required intent.

The Committee draws sub-clause 20(3) to the attention of Senators in that by imposing the persuasive burden of proof on defendants it may be considered to trespass unduly on personal rights and liberties.

INCOME TAX AMENDMENT BILL 1986

This Bill was introduced into the House of Representatives on 28 November 1986 by the Minister Assisting the Treasurer.

The Bill will amend the Income Tax Act 1986 by formally imposing provisional tax in respect of income of the 1987-88 financial year so that the provisional tax instalment system to be introduced by the Taxation Laws Amendment Bill (No.5) 1986 can apply in relation to that financial year.

The Committee has no comments on this Bill.

KOONGARRA PROJECT AREA REPEAL BILL 1986

This Bill was introduced into the Senate on 26 November 1986 by Senator Mason.

The purpose of the Bill is to repeal the Koongarra Project Area Act 1981 (which would, had section 3 of the Act been proclaimed to come into operation, have excised the Koongarra Mining Project Area from the Kakadu National Park).

The Committee has no comments on this Bill.

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NATIONAL PARKS AND WILDLIFE CONSERVATION AMENDMENT BILL 1986

This Bill was introduced into the House of Representatives on 27 November 1986 by the Minister for Arts, Heritage and Environment.

The purpose of the Bill is to provide that no operations for the recovery of minerals may take place in the Kakadu National Park, and that no compensation is to be payable by the Commonwealth as a result of this change to the law.

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

Clause 5 - No compensation payable

Clauses 3 and 4 would prohibit operations for the recovery of minerals in the Kakadu National Park and would provide that section 8B of the Act - which preserves interests in respect of minerals on, in or beneath land included in a park, reserve or conservation zone which were held before that land was so included - is not to apply in relation to any interest in respect of any minerals on, in or beneath land within the Kakadu National Park. Clause 5 provides that the Commonwealth is not to be liable to pay compensation to any person by reason of the enactment of the Act.

The Committee accepts that there is no constitutional obligation on the part of the Commonwealth to pay compensation to persons prevented from exercising their interests in respect of minerals on, in, or beneath land within the Kakadu National Park either upon the basis that the law is supported by the Territories power (s.122) in the Constitution and hence is not subject to the 'just terms' constraint imposed on the acquisition of property by placitum 51 (xxxi) of the Constitution - see Teori Tau v. Commonwealth (1969) 119 CLR 564 - or that no 'acquisition' of

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proprietary rights is involved so as to bring the law within that constraint: see Commonwealth v. Tasmania (1983) 46 ALR 625 at 708-9 per Mason J., 738 per Murphy J., 795-6 per Brennan J.; cf. 825-9 per Deane J. However the Bill would clearly prevent persons from exercising pre-existing property rights in respect of land within the Kakadu National Park and would not compensate the holders of those rights for the effects of that prohibition. For that reason the Committee draws clause 5 to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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PETROLEUM RESOURCE RENT TAX BILL 1986

This Bill was introduced into the House of Representatives on 28 November 1986 by the Minister Assisting the Treasurer.

The Bill will declare the rate of petroleum resource rent tax and formally impose the tax in respect of the taxable profit of a petroleum project determined in accordance with the accompanying Petroleum Resource Rent Tax Assessment Bill 1986. The rate of tax is to be 40%.

The Committee has no comments on this Bill.

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PETROLEUM RESOURCE RENT TAX ASSESSMENT BILL 1986

This Bill was introduced into the House of Representatives on 28 November 1986 by the Minister Assisting the Treasurer.

The Bill provides for the assessment and collection of the petroleum resource rent tax payable by persons in respect of certain offshore petroleum projects. The tax is to apply to taxable profits from the recovery of petroleum in offshore areas where the Petroleum (Submerged Lands) Act 1967 applies, other than in areas covered by production licences granted on or before 1 July 1984 and the permit areas from which those production licences were drawn.

General comment - Retrospectivity

Although the Bill contains no clear statement as to its real date of effect, it appears that in certain respects it will have retrospective effect to 1 July 1984. Profits from the recovery of petroleum in areas covered by production licences granted on or before that date are expressly excluded - see the definitions of 'eligible production licence' and 'excluded exploration permit' in clause 2 - but it would appear that assessable receipts derived by a person (and eligible expenditure incurred by a person) after that date may be taken into account in determining a person's liability to tax - see clauses 31 and 44 - even though liability will only be imposed on profits of a year of tax, being a financial year commencing on or after 1 July 1986. This conclusion is reinforced by the application of the anti-avoidance provisions in the Bill to arrangements entered into on or after 1 July 1984; see clause 51.

The Second Reading Speech indicates that it is not anticipated that any petroleum resource rent tax will be received before the 1989-90 financial year. However because any tax that will be payable will be determined after taking account of past project

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receipts and expenditure the Committee draws the retrospective application of the Bill to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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

Clause 2 -

Definition of 'long-term bond rate' - 'Henry VIII' clause

Clause 2 defines the 'long-term bond rate' for the financial year 1986-87 and subsequent financial years as the average, expressed as a decimal fraction, of the assessed secondary market yields in respect of 10 year non-rebate Treasury bonds published by the Reserve Bank during that year 'or, if no assessed secondary market yield in respect of bonds of that kind was published by the Reserve Bank during the year, the decimal fraction determined by the Treasurer by notice in writing published in the Gazette for the purposes of this definition in relation to the financial year'. The long-term bond rate is taken into account in determining a person's 'augmented bond rate general expenditure' and 'augmented bond rate exploration expenditure' (see sub-clauses 33(3) and 34(3)), expenditure which is deductible expenditure under the Bill.

Because it would permit the Treasurer by notice in writing to determine the 'long-term bond rate' in any given year the definition may be characterised as a 'Henry VIII' clause and, as such, the Committee draws it to the attention of Senators in that it may be considered to constitute an inappropriate delegation of legislative power.

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Definition of 'marketable petroleum commodity' - 'Henry VIII' clause

Clause 2 defines a 'marketable petroleum commodity' as stabilised crude oil, sales gas, condensate, liquefied petroleum gas, ethane or -

'(f) any other product [produced from petroleum] declared by the regulations to be a marketable petroleum commodity'.

The consideration received by a person for the sale of any marketable petroleum commodity is included within the person's assessable petroleum receipts under clause 24.

Because it would permit the content of the term 'marketable petroleum commodity' to be extended by regulations the definition may be characterised as a 'Henry VIII' clause and, as such, the Committee draws it to the attention of Senators in that it may be considered to constitute an inappropriate delegation of legislative power.

Clause 106 - Entry and inspection without warrant

Clause 106 provides that, for the purposes of the Act, an officer authorised in writing by the Commissioner may, at all reasonable times, enter and remain on any land or premises and may inspect, examine and make copies of any documents. The only limitation on this power is that, if challenged by the occupier of the land or premises, the officer must produce an authority signed in writing by the Commissioner stating that the officer is authorised to exercise powers under the clause. There is no requirement that an officer obtain a search warrant before entering premises.

The Committee recognises that in this respect clause 106 does not differ from similar provisions in other taxation laws: see, for example, section 263 of the Income Tax Assessment Act 1936 and

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section 127 of the Fringe Benefits Tax Assessment Act 1986. However there would appear to be no basis in principle for giving officers enforcing revenue law greater powers than officers enforcing the criminal law. Evasion of tax should not be regarded as more serious than, say, offences against the person, or more difficult to detect than, for example, complex financial fraud. Yet officers enforcing the criminal law are required, except in cases involving the threatened destruction of evidence, to obtain either the consent of the occupier of the premises to be searched or, if that is not forthcoming, a search warrant from a judicial officer.

The Committee therefore draws clause 106 to the attention of Senators in that by providing for entry on land or premises and the inspection of documents without a search warrant it may be considered to trespass unduly on personal rights and liberties.

Paragraph 107(1)(b) - Failure to stipulate reasonable time and place

Paragraph 107(1)(b) provides that the Commissioner or the Minister for Resources and Energy may, for the purposes of the Act, by notice in writing, require a person to attend before the relevant authority, or before an officer authorised by the relevant authority for the purpose, at a time and place specified in the notice, and then and there to answer questions. There is no requirement that the time and place specified in such a notice must be reasonable and, as the Committee has commented on previous occasions, it does not regard such a requirement as implicit in provisions of this type (see most recently its comment on sub-clauses 121(1), 145(1) and 147(1) of the Australia Card Bill 1986 in its Eighteenth Report of 1986). In any event, if it is intended that the requirement be implicit, the Committee can see no reason why it should not be made explicit: compare, for example, sub-section 26(1) of the Bounty (Ship Repair) Act 1986 and sub-section 27(1) of the Disability Services Act 1986.

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The Committee therefore draws paragraph 107(1)(b) to the attention of Senators in that by failing to stipulate that the times and places at which persons may be required to attend and answer questions must be reasonable 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.

PETROLEUM RESOURCE RENT TAX (INTEREST ON UNDERPAYMENTS) BILL 1986

This Bill was introduced into the House of Representatives on 28 November 1986 by the Minister Assisting the Treasurer.

The Bill will formally impose the interest charge payable on certain underpayments of tax as determined in accordance with the accompanying Petroleum Resource Rent Tax Assessment Bill 1986.

The Committee has no comments on this Bill.

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

PETROLEUM RESOURCE RENT TAX (MISCELLANEOUS PROVISIONS) BILL 1986

This Bill was introduced into the House of Representatives on 28 November 1986 by the Minister Assisting the Treasurer.

The Bill will amend various laws consequent upon the enactment of the accompanying Petroleum Resource Rent Tax Assessment Bill 1986.

The Committee has no comments on this Bill.

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

PETROLEUM RETAIL MARKETING SITES AMENDMENT (DIVORCEMENT OF OWNERSHIP) BILL 1986

This Bill was introduced into the Senate on 4 December 1986 by Senator Powell.

The purpose of the Bill is to amend the Petroleum Retail Marketing Sites Act 1980 so as to provide that a prescribed corporation shall not operate a retail site after 1 July 1987.

The Committee has no comments on this Bill.

TAXATION LAWS AMENDMENT BILL (NO.5) 1986

This Bill was introduced into the House of Representatives on 28 November 1986 by the Minister Assisting the Treasurer.

The Bill will amend the Income Tax Assessment Act 1936 -

- . to provide, for the 1987-88 and subsequent years of income, for the payment of provisional tax by quarterly instalments during the year of income by taxpayers whose annual provisional tax liability exceeds \$2000 (September 1985 Tax Reform announcement);
- . to treat as assessable income certain realised foreign exchange gains of a capital nature and to allow corresponding income tax deductions for losses, to the extent that the gains or losses are related to the production of assessable income or the carrying on of a business for that purpose (proposal announced by the Treasurer on 18 February 1986);
- . to ensure that dividends paid on redeemable preference shares and any other shares issued as part of a short-term financing arrangement for an effective term to maturity of 2 years or less will not be eligible for the intercorporate dividend rebate, but will be tax deductible to the issuing company (proposal announced on 7 April 1986); and
- . to exempt from tax the income of the British Phosphate Commissioners Banaba Contingency Fund.

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.

Clauses 7 and 9 - Retrospectivity

Clause 7 would insert a new section 46C in the Income Tax Assessment Act 1936 denying eligibility for the intercorporate dividend rebate to dividends issued in substitution for interest as part of short-term finance arrangements. The new section will affect dividends issued after 5 o'clock on 7 April 1986, the day on which the proposal was announced. As Parliament was not sitting on that day this announcement was presumably made by way of a press conference or press release. Clause 9 would insert a new Division 3B in Part III of the same Act to provide that foreign exchange gains of a capital nature realised on or after 19 February 1986 (the day after the proposal was announced) are to be treated as assessable income (and that a corresponding deduction is to be allowed in respect of foreign exchange losses realised on or after that date). As in the case of clause 7 the proposal in question was not announced in Parliament but presumably by way of a press release or press conference.

Once again the Committee has occasion to draw attention to the practice of the Taxation Office of making legislation retrospective to the date of the announcement of the proposal to change the law. As it commented in its Eighth Report of 1986 in relation to the Taxation Laws Amendment Bill 1986, in its Ninth Report of 1986 in relation to the Taxation Laws Amendment Bill (No.2) 1986 and in its Eighteenth Report of 1986 in relation to the Taxation Laws Amendment Bill (No.4) 1986, this practice carries with it the assumption that citizens should arrange their affairs in accordance with announcements made by the Executive rather than in accordance with the laws made by Parliament. The practice treats the passage by the Parliament of the necessary retrospective legislation 'ratifying' the announcement as a pure formality.

The Committee therefore draws clauses 7 and 9 to the attention of Senators in that by their retrospective application they 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.

18-2-87

# THE SENATE

## ROLL

### SENATORS—

- |                                  |                           |
|----------------------------------|---------------------------|
| <del>1. ALSTON</del>             | 39. <del>KILGARRIFF</del> |
| <del>2. ARCHER</del>             | <del>40. KNOWLES</del>    |
| <del>3. AULICH</del>             | 41. LEWIS                 |
| 4. BAUME, Michael                | <del>42. MacGIBBON.</del> |
| <del>5. BAUME, Peter</del>       | 43. McINTOSH              |
| 6. BJELKE-PETERSEN               | 44. McKIERNAN             |
| <del>7. BLACK</del>              | <del>45. MACKLIN</del>    |
| <del>8. BOLKUS</del>             | 46. MAGUIRE               |
| <del>9. BOSWELL</del>            | <del>47. MASON</del>      |
| <del>10. BROWNHILL</del>         | 48. MESSNER               |
| 11. BUTTON                       | <del>49. MORRIS</del>     |
| <del>12. CARRICK, Sir John</del> | 50. NEWMAN                |
| 13. CHANEY                       | 51. PARER                 |
| 14. CHILDS                       | 52. POWELL                |
| 15. COATES                       | <del>53. PUBLICK</del>    |
| <del>16. COLEMAN</del>           | 54. RAY                   |
| <del>17. COLLARD</del>           | <del>55. REID</del>       |
| 18. COLSTON                      | <del>56. REYNOLDS</del>   |
| 19. COOK                         | 57. RICHARDSON            |
| <del>20. COONEY</del>            | <del>58. ROBERTSON</del>  |
| 21. CRICHTON-BROWNE              | 59. RYAN                  |
| <del>22. CROWLEY</del>           | <del>60. SANDERS</del>    |
| <del>23. DEVLIN</del>            | 61. SHELL                 |
| <del>24. DURACK</del>            | <del>62. SHORT</del>      |
| 25. ELSTOB                       | <del>63. SIDRAA</del>     |
| <del>26. EVANS</del>             | 64. SIDDONS               |
| <del>27. FOREMAN</del>           | <del>65. TATE</del>       |
| 28. GEORGES                      | <del>66. TEAGUE</del>     |
| 29. GIETZELT                     | 67. TOWNLEY               |
| <del>30. GILES</del>             | <del>68. VALLENTINE</del> |
| 31. GRIMES                       | <del>69. VANSTONE</del>   |
| 32. GUILFOYLE, Dame Margaret     | <del>70. VIGOR</del>      |
| 33. HAINES                       | <del>71. WALSH</del>      |
| 34. HAMER                        | <del>72. WALTERS</del>    |
| <del>35. HARRADINE</del>         | 73. WATSON                |
| <del>36. HILL</del>              | <del>74. WEST</del>       |
| 37. JESSOP                       | <del>75. WITHERS</del>    |
| 38. JONES                        | <del>76. ZAKHAROV</del>   |

## THE SENATE

## ROLL

## SENATORS—

1.	<del>AMMON</del>	39.	KENNERIFF
2.	ARCHER	40.	KNOWLES
3.	AUSTON	41.	<del>FRASER</del>
4.	BAINB, Michael	42.	MAGUIBSON
5.	BAINB, Peter	43.	NASH
6.	BJELKE-PETERSEN	44.	MONTERRAN
7.	<del>BLACK</del>	45.	MURKIN
8.	BURNS	46.	MURPHY
9.	BOYDALL	47.	MURPHY
10.	BROWNELL	48.	MURPHY
11.	BURTON	49.	MURPHY
12.	<del>CARRON, Sir John</del>	50.	NEWMAN
13.	CHANEY	51.	PATER
14.	CHILDS	52.	POWELL
15.	COPPIN	53.	PURDICK
16.	COOPER	54.	<del>ROSE</del>
17.	<del>COOPER</del>	55.	REID
18.	COOPER	56.	REYNOLDS
19.	COOK	57.	REYNOLDS
20.	<del>COOK</del>	58.	ROBERTSON
21.	CRIGHTON-BROWNE	59.	RYAN
22.	<del>CRITCH</del>	60.	SANDERS
23.	DEVLIN	61.	SMITH
24.	DONCK	62.	SMITH
25.	EDWARDS	63.	SERRA
26.	EVANS	64.	SIBBONS
27.	FORDMAN	65.	<del>TAYLOR</del>
28.	GARDNER	66.	TEGUE
29.	<del>GILBERT</del>	67.	TOINLEY
30.	GILES	68.	VALENTINE
31.	GRIMES	69.	WAINSTONE
32.	GUILFOYLE, Dame Margaret	70.	VIGOR
33.	HAYNES	71.	WALSH
34.	HENDER	72.	WATERS
35.	HARRADINE	73.	WATSON
36.	HILL	74.	WEST
37.	JACOB	75.	WILLIAMS
38.	JONES	76.	<del>ZIMMERMAN</del>

18-2-87

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## ROLL

SENATORS—

- |   |                           |
|---|---------------------------|
| <del>1. ALSTON</del>                    | <del>39. KILGARIFF</del>  |
| <del>2. ARCHER</del>                    | <del>40. KNOWLES</del>    |
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| <del>4. BAUME, Michael</del>            | <del>42. MacGIBBON</del>  |
| <del>5. BAUME, Peter</del>              | <del>43. McINTOSH</del>   |
| <del>6. BJELKE-PETERSEN</del>           | <del>44. McTIERNAN</del>  |
| <del>7. BLACK</del>                     | <del>45. MANKLIN</del>    |
| <del>8. BOCKUS</del>                    | <del>46. MAUIRE</del>     |
| <del>9. BOSWELL</del>                   | <del>47. MASON</del>      |
| <del>10. BROWNHILL</del>                | <del>48. McISNER</del>    |
| <del>11. BUTTON</del>                   | <del>49. MORRIS</del>     |
| <del>12. CARRICK, Sir John</del>        | <del>50. NEWMAN</del>     |
| <del>13. CHANEY</del>                   | <del>51. PATER</del>      |
| <del>14. CHILDS</del>                   | <del>52. POWELL</del>     |
| <del>15. COATES</del>                   | <del>53. PULICK</del>     |
| <del>16. COLEMAN</del>                  | <del>54. RAY</del>        |
| <del>17. COLLARD</del>                  | <del>55. REID</del>       |
| <del>18. COLSTON</del>                  | <del>56. REYNOLDS</del>   |
| <del>19. COOK</del>                     | <del>57. RICHARDSON</del> |
| <del>20. COONEY</del>                   | <del>58. ROBERTSON</del>  |
| <del>21. CRECHTON-BROWNE</del>          | <del>59. RYAN</del>       |
| <del>22. CROWLEY</del>                  | <del>60. SANDERS</del>    |
| <del>23. DEPLEN</del>                   | <del>61. SHILL</del>      |
| <del>24. DURACK</del>                   | <del>62. SHORT</del>      |
| <del>25. ELSTOD</del>                   | <del>63. SIMRAA</del>     |
| <del>26. EVANS</del>                    | <del>64. SIDDONS</del>    |
| <del>27. FOREMAN</del>                  | <del>65. TATE</del>       |
| <del>28. GEORGES</del>                  | <del>66. TEAGUE</del>     |
| <del>29. GIFFERT</del>                  | <del>67. TONLEY</del>     |
| <del>30. GILES</del>                    | <del>68. VALENTINE</del>  |
| <del>31. GRIMES</del>                   | <del>69. WAGTONE</del>    |
| <del>32. GULLFOYLE, Dame Margaret</del> | <del>70. VICOR</del>      |
| <del>33. HAINES</del>                   | <del>71. WALSH</del>      |
| <del>34. HAMER</del>                    | <del>72. WALTERS</del>    |
| <del>35. HARRADINE</del>                | <del>73. WATSON</del>     |
| <del>36. HILL</del>                     | <del>74. WELT</del>       |
| <del>37. JESSOP</del>                   | <del>75. WITHERS</del>    |
| <del>38. JONES</del>                    | <del>76. ZAMHAROV</del>   |

16 day of February

①

Question,

Urgency motion moved  
by Senator Chaney  
Motion put

Senate

Committee

## SENATORS -

## AYES

- |                              |                        |
|------------------------------|------------------------|
| 1. ALSTON                    | 39. KILGARIFF          |
| 2. ARCHER                    | 40. KNOWLES            |
| 3. AULICH                    | 41. LEWIS              |
| 4. BAUME, Michael            | 42. MacGIBBON          |
| 5. BAUME, Peter              | 43. McINTOSH           |
| 6. BJELKE-PETERSEN           | 44. McKIERNAN          |
| 7. BLACK                     | 45. MACKLIN            |
| 8. BOLKUS                    | 46. MAGUIRE            |
| 9. BOSWELL                   | 47. MASON              |
| 10. BROWNHILL                | 48. MESSNER            |
| 11. BUTTON                   | 49. MORRIS             |
| 12. CARRICK, Sir John        | 50. NEWMAN             |
| 13. CHANEY                   | 51. PARER              |
| 14. CHILDS                   | 52. POWELL             |
| 15. COATES                   | 53. PUFFICK            |
| 16. COLEMAN                  | 54. RAY                |
| 17. COLLARD                  | 55. REID <i>Teller</i> |
| 18. COLSTON                  | 56. REYNOLDS           |
| 19. COOK                     | 57. RICHARDSON         |
| 20. COONEY                   | 58. ROBERTSON          |
| 21. CRITCHON-BROWNE          | 59. RYAN               |
| 22. CROWLEY                  | 60. SANDERS            |
| 23. DEVLIN                   | 61. SHEIL              |
| 24. DURACK                   | 62. SHORT              |
| 25. ELSTOB                   | 63. SIBRAA             |
| 26. EVANS                    | 64. SIDBONG            |
| 27. FOREMAN                  | 65. TATE               |
| 28. GEORGES                  | 66. TENGUE             |
| 29. GIETZELT                 | 67. TOWNLEY            |
| 30. GILES                    | 68. VALLENTINE         |
| 31. GRIMES                   | 69. VANSTONE           |
| 32. GUILFOYLE, Dame Margaret | 70. VIGOR              |
| 33. HAINES                   | 71. WALSH              |
| 34. HAMER                    | 72. WALTERS            |
| 35. HARRADINE                | 73. WATSON             |
| 36. HILL                     | 74. WEST               |
| 37. JESSOP                   | 75. WITBERG            |
| 38. JONES                    | 76. ZAKHAROV           |

Ayes 38Noes 30

TELLER FOR THE AYES-SENATOR

*26 Reid*

1987

18th day of February

1

Question,

the general meeting  
(short session)  
that will be held to

Senate

Committee

## SENATORS -

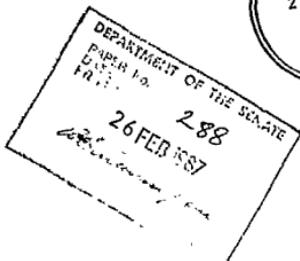
## NOES

1. ALSTON
2. ARCHER
3. ~~AULICH~~
4. BAUME, Michael
5. BAUME, Peter
6. BJELKE-PETERSEN
7. ~~BLACK~~
8. BOLKUS
9. BOSWELL
10. BROWNHILL
11. ~~BUTTON~~
12. CARRICK, Sir John
13. CHANEY
14. ~~CHILDS~~
15. ~~COATES~~
16. COLEMAN
17. COLLARD
18. ~~COLSTON~~
19. ~~COOK~~
20. ~~COONEY~~
21. CRICHTON-BROWNE
22. ~~CROWLEY~~
23. ~~DEVLIN~~
24. DURACK
25. ~~ELSTOB~~
26. ~~EVANS~~
27. ~~FOREMAN~~
28. GEORGES
29. ~~GIBBETT~~
30. ~~GILES~~
31. GRIMES
32. GUILFOYLE, Dame Margaret
33. HAINES
34. HAMER
35. HARRADINE
36. HILL
37. JESSOP
38. JONES (Giles)

39. KILGARIFF
40. KNOWLES
41. LEWIS
42. MacGIBBON
43. ~~McINOSH~~
44. ~~McKERNAN~~
45. MACKLIN
46. ~~MAGUIRE~~
47. MASON
48. MESSNER
49. ~~MORRIS~~
50. NEWMAN
51. PARER
52. POWELL
53. PULPICK
54. ~~RAY~~
55. REID
56. ~~REYNOLDS~~
57. RICHARDSON
58. ~~ROBERTSON~~
59. RYAN
60. SANDERS
61. SHEIL
62. SHORT
63. ~~SIDRAA~~
64. SIDDONS
65. ~~TATE~~
66. TEAGUE
67. TOWNLEY
68. VALLENTINE
69. VANSTONE
70. VIGOR
71. ~~WALSH~~
72. WALTERS
73. WATSON
74. ~~WEST~~
75. WITHERS
76. ~~WYCHAROV~~

Ayes 38Noes 30

TELLER FOR THE NOES - SENATOR



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 2 OF 1987**

**25 FEBRUARY 1987**

**ISSN 0729-6851**

*R. Crow*

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R.A. Crowley, Chair  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator J. Newman

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 National Railways Commission Amendment Bill 1987

Australian Stock Exchange and National Guarantee Fund Bill  
1987

Customs Tariff (Uranium Concentrate Export Duty) Amendment  
Bill 1987

Liquid Fuel Emergency Amendment Bill 1987

Ministers of State Amendment Bill 1987

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.

AUSTRALIAN NATIONAL RAILWAYS COMMISSION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 February 1987 by the Minister for Transport.

The purpose of the Bill is to amend the Australian National Railways Commission Act 1983 with two main purposes:

- (1) to give the Australian National Railways Commission the authorisation to provide entertainment, including gambling facilities, or other services for its passengers; and
- (2) to broaden the powers of Boards of Inquiry established under section 70 of the Act to examine the causes of accidents and make appropriate recommendations.

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 STOCK EXCHANGE AND NATIONAL GUARANTEE FUND BILL 1987

This Bill was introduced into the House of Representatives on 18 February 1987 by the Attorney-General.

The Bill is the same in substance as the Australian Stock Exchange and National Guarantee Fund Bill 1986 introduced at the end of last session but with a number of amendments. The purpose of the Australian Stock Exchange and National Guarantee Fund Bill 1987 is twofold:

- . to provide legislative support for a reorganisation of stock exchanges in Australia to establish a single national stock exchange, the Australian Stock Exchange Ltd, with each of the 6 current capital city exchanges as its subsidiaries;
- . to create a national guarantee fund consisting of the pooled assets of the existing fidelity funds operated by the separate capital city exchanges, which will provide greater protection to investors in respect of failure of contracting parties to meet their transaction obligations or in respect of dealer insolvency.

In its Alert Digest No. 1 of 1987 the Committee drew proposed new sub-section 95(7) to be inserted in the Securities Industry Act 1980 by clause 7 of the Australian Stock Exchange and National Guarantee Fund Bill 1986 to the attention of Senators in that by imposing the persuasive burden of proof on defendants it might be considered to trespass unduly on personal rights and liberties. New sub-section 95(7) to be inserted by clause 7 of the Australian Stock Exchange and National Guarantee Fund Bill 1987 is in the same form and the Committee draws it to the attention of Senators for the same reason.

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

D2/87

CUSTOMS TARIFF (URANIUM CONCENTRATE EXPORT DUTY) AMENDMENT BILL  
1987

This Bill was introduced into the House of Representatives on 18 February 1987 by the Minister Assisting the Minister for Industry, Technology and Commerce.

The Bill proposes to amend the Customs Tariff (Uranium Concentrate Export Duty) Act 1980. It proposes an increased duty on exported uranium concentrate mined in the Alligator Rivers Region, from \$0.11 per kilogram to \$0.80 per kilogram.

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.

D2/87

LIQUID FUEL EMERGENCY AMENDMENT BILL 1987

This Bill was introduced into the Senate on 18 February 1987 by the Minister for Resources and Energy.

The Bill will amend the Liquid Fuel Emergency Act 1984 by removing the provision for automatic expiration of the Act on 27 March 1987.

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.

MINISTERS OF STATE AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 February 1987 by the Minister Representing the Special Minister of State.

The purpose of this Bill is to amend the Ministers of State Act 1952 to increase the limit on the annual sum appropriated from the Commonwealth Consolidated Fund in respect of the salaries of Ministers, consequent upon the 2.3% National Wage Case handed down by the Australian Conciliation and Arbitration Commission on 1 July 1986.

The effect of the 1 July 1986 National Wage Case is to increase the total sum paid in ministerial salaries by \$15,286 in a full 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.

DEPARTMENT OF THE SENATE  
PAPER No. 357  
DATE 18 MAR 1987  
PR 5 7 2  
*Williamson*

SCRUTINY OF BILLS ALERT DIGEST

NO. 3 OF 1987

18 MARCH 1987

ISSN 0729-6851



*James Cowie*

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R.A. Crowley, Chair  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator J.P. McKiernan  
Senator J. Newman

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 Institute of Health Bill 1987

Broadcasting Amendment Bill (No. 2) 1987

Lemonthyme and Southern Forests (Commission of Inquiry) Bill  
1987

Moreton Island Preservation Bill 1987

National Crime Authority Amendment Bill 1987

National Health Amendment Bill 1987

Radio Licence Fees Amendment Bill 1987

Television Licence Fees Amendment Bill (No. 2) 1987

Wheat Marketing Amendment Bill 1987

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

AUSTRALIAN INSTITUTE OF HEALTH BILL 1987

This Bill was introduced into the House of Representatives on 25 February 1987 by the Minister for Health.

The Bill is to establish the Australian Institute of Health as a statutory authority.

The Bill contains provisions prescribing the functions, powers and constitution of the Institute and the holding of meetings of the Institute and provides for the establishment of committees (including the Australian Institute of Health Ethics Committee) to assist the Institute in performing its functions. The Institute will be required to comply with certain provisions of the Audit Act, which include requirements that the Institute provide estimates of expenditure in respect of its proposed budget and an annual report of its activities. The Institute will also be subject to the scrutiny of the Auditor-General.

The major functions of the Institute will involve the collection, analysis and dissemination of health-related information and statistics and the conduct and promotion of research into health services for, and the health of, the people of Australia.

The role of the Institute will not affect the functions of the Australian Bureau of Statistics.

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

Paragraphs 27(1)(c) and 28(1)(c) - Delegation

Paragraphs 27(1)(c) and 28(1)(c) would permit the Institute and the Director respectively to delegate all or any of their powers under the Act (other than the power of delegation) to any person or body subject only to the approval of the Minister. The

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

D3/87

Committee has been critical of such powers of delegation which impose no limitation, and give no guidance, as to the attributes of the person to whom a delegation may be made. The addition in the present case of the requirement for approval by the Minister does not in the Committee's view materially alter the situation: it merely moves the place at which decisions on delegations are to be taken one level higher in the decision-making structure. The Committee's criticism of such open-ended powers of delegation is that it is for the Parliament in conferring a statutory power to determine the persons by whom that power may be exercised and not for the person on whom that power is conferred, whether that person be a Minister, a statutory authority or a statutory office-holder.

The Committee therefore draws paragraphs 27(1)(c) and 28(1)(c) to the attention of Senators in that they may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Sub-clause 30(3) - Reversal of the onus of proof

The Epidemiological Studies (Confidentiality) Act 1981 creates offences in respect of the communication of information gained in the conduct of certain Commonwealth epidemiological studies. Sub-clause 30(3) provides that it is a defence to a prosecution under that Act if it is established that the information was communicated or access to a document was given, as the case may be, in accordance with a written request by the Institute. It thus places upon the defendant the persuasive burden of proof in establishing this defence.

The Senate Standing Committee on Constitutional and Legal Affairs in its Report, The Burden of Proof in Criminal Proceedings (Parliamentary Paper No.319/1982), recommended that the burden of establishing a defence (the persuasive onus) should not be placed

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

upon defendants in criminal proceedings and that the evidential onus - the onus of adducing evidence of the existence of a defence - should only be imposed on defendants:

(i) where the prosecution faces extreme difficulty in circumstances where the defendant is presumed to have peculiar knowledge of the facts in issue; or

(ii) where proof by the prosecution of a particular matter in issue could be extremely difficult or expensive but could be readily and cheaply provided by the defence.

In the present case neither of these conditions would seem to apply. It should be relatively easy for the prosecution to establish in any particular case whether the Institute made a written request for the relevant information. In the view of the Committee the reversal of the onus of proof in sub-clause 30(3) is unnecessary. An amendment to the Epidemiological Studies (Confidentiality) Act 1981 to exempt the communication of information upon the written request of the Institute could have achieved the same effect without the undesirable reversal of the onus of proof.

Accordingly the Committee draws sub-clause 30(3) to the attention of Senators in that by imposing the burden of proof on defendants 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.

BROADCASTING AMENDMENT BILL (NO.2) 1987

This Bill was introduced into the House of Representatives on 25 February 1987 by the Minister for Communications.

The Bill makes amendments to the Broadcasting Act 1942 to improve arrangements relating to the collection of licence fees from companies licensed to broadcast commercial (including remote) radio or television services. The amendments complement amendments in the Radio Licence Fees Amendment Bill 1987, the Television Licence Fees Amendment Bill 1987 (introduced as the Television Licence Fees Amendment Bill 1986 and passed by the House of Representatives in the Budget sittings 1986) and the Television Licence Fees Amendment Bill (No.2) 1987.

The Bill provides for the following changes:

- . provision is made for an additional penalty fee, computed at the rate of 20% p.a., to be imposed for late payment. The additional penalty can be remitted on broad grounds relating to fairness and reasonableness.
  
- . the provisions relating to suspension, revocation and non-renewal of licences are changed so that the basis for action is "unreasonable or repeated delay" in paying fees rather than a "failure to pay" fees.

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

Clauses 5 and 6 -

New sub-sections 123A(2) and 106AA(2) - Non-reviewable decisions

Clause 5 inserts a new section 123A in the Broadcasting Act 1942 providing for a penalty fee in respect of unpaid licence fees calculated at 20% per annum on the amount unpaid. New sub-section

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

123A(2) provides that the Minister or an officer authorised by the Minister in writing for the purpose may remit the additional fee or part of the additional fee if he or she is satisfied as to certain mitigating circumstances. Clause 6 inserts in the Broadcasting and Television Act 1942 as in force in relation to old system licences a new section 106AA in similar terms with a similar power of remission.

No provision has been made for review of a decision of the Minister or an officer refusing to remit the additional fee or part thereof and such a decision would therefore only be reviewable as to its legality pursuant to the Administrative Decisions (Judicial Review) Act 1977. While the Committee recognizes that in this respect the new provisions do not differ from sub-section 207(1A) of the Income Tax Assessment Act 1936 on which they have been modelled, the Committee draws new sub-sections 123A(2) and 106AA(2) to the attention of Senators in that they 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.

LEMONTHYME AND SOUTHERN FORESTS (COMMISSION OF INQUIRY) BILL 1987

This Bill was introduced into the House of Representatives on 26 February 1987 by the Minister for Arts, Heritage and Environment.

The Bill provides for the establishment of a Commission of Inquiry to report on matters relating to the Lemonthyme and Southern Forests areas in Tasmania. It will examine whether the two areas are or include areas which are of World Heritage value or which contribute to the value of a World Heritage area. It will also report on whether there are other areas in Tasmania with forestry resources capable of exploitation.

The Bill also provides for interim protection of the two areas during the period of the Inquiry.

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

Clause 13 - Self incrimination

Clause 13 provides for the application of the Royal Commissions Act 1902 in relation to the inquiry with certain specified modifications. One section of that Act so applied, and not modified, is section 6A, which provides that self incrimination is not to be an excuse for the refusal or failure to produce a document or to answer questions as required by the Commission. Section 6DD further provides that a statement or disclosure made by a witness in giving evidence is not admissible against the witness in subsequent civil or criminal proceedings.

The Committee has been critical of such provisions which remove the right to refuse to answer questions or produce documents on grounds of self incrimination but which confer protection in subsequent proceedings only in respect of the use of the actual

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

answer given or document produced. In the view of the Committee the protection should extend to any information or thing obtained as a direct or indirect consequence of the giving of the answer or the production of the document: see, for example, sub-section 27(4) of the Disability Services Act 1986. The Committee therefore draws clause 13 to the attention of Senators in that by so applying sections 6A and 6DD of the Royal Commissions Act 1902 without modification it may be considered to trespass unduly on personal rights and liberties.

Paragraph 14(c) - Entry and inspection

Clause 14 provides that, for the purposes of performing his or her functions under the Act a member of the Commission of Inquiry or a person authorised in writing for the purpose by a member may, with such assistance, and by such force, as is necessary and reasonable, enter and inspect:

- (a) the Lemonthyme area and the Southern Forests area;
- (b) any nominated world heritage area; and
- (c) any other part of Tasmania that the member or other person considers may be part of a qualifying area or contain forestry resources.

Paragraph 14(c) thus confers on the member or authorised person a broad power to enter upon private land based upon nothing more than the personal opinion of the person exercising the power. By contrast a Royal Commission must obtain a search warrant from a judge in order to have land or premises entered and searched for things connected with the matter into which the Commission is inquiring. The Committee therefore draws paragraph 14(c) to the attention of Senators in that by providing such a broad power of entry upon land 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.

MORETON ISLAND PRESERVATION BILL 1987

This Bill was introduced into the Senate on 26 February 1987 by Senator Macklin.

The Bill aims to preserve Moreton Island and its invaluable conservation, recreational, archaeological and scientific qualities for current and future generations. In particular the Bill prohibits sand mining on Moreton Island.

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

Clause 4 - 'Henry VIII' clause

Clause 4 creates offences where a corporation performs certain acts on Moreton Island 'except as permitted by the regulations'. In so permitting the entire effect of the clause (and so of the Bill) to be altered by regulations the provision may be described as a 'Henry VIII' clause, that is a provision enabling the effect of an Act to be altered by an instrument made by the Executive.

While in this case the regulations would of course be subject to parliamentary scrutiny the Committee nevertheless draws clause 4 to the attention of Senators in that, as a 'Henry VIII' clause, 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.

D3/87

NATIONAL CRIME AUTHORITY AMENDMENT BILL 1987

This Bill was introduced into the Senate on 25 February 1987 by Senator Archer.

The Bill is to extend the life of the National Crime Authority by repealing section 63 of the National Crime Authority Act 1984 which provided for the termination of the life of the authority on 30 June 1989.

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 1987

This Bill was introduced into the House of Representatives on 25 February 1987 by the Minister for Health.

The Bill contains a number of amendments to the National Health Act 1953 which affect the pharmaceutical benefits scheme's safety net and special patient contribution arrangements.

In addition, the Bill includes a provision which will give the Secretary of the Department of Health the authority to make arrangements for advance payments to pharmacists if for any reason it is not possible to meet the accepted period of thirty days for the payment of pharmacists' claims.

The Committee has no comments on this Bill.

RADIO LICENCE FEES AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 25 February 1987 by the Minister for Communications.

The Bill amends the Radio Licence Fees Act 1964 to improve arrangements relating to the assessment and collection of licence fees from companies licensed to broadcast commercial (including supplementary and remote) radio services. The amendments complement amendments made in the Broadcasting Amendment Bill (No.2) 1987.

The Committee has no comments on this Bill.

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

TELEVISION LICENCE FEES AMENDMENT BILL (NO.2) 1987

This Bill was introduced into the House of Representatives on 25 February 1987 by the Minister for Communications.

The Bill amends the Television Licence Fees Act 1964 to improve arrangements relating to the assessment and collection of licence fees from companies licensed to broadcast commercial television services. The amendments complement amendments made in the Broadcasting Amendment Bill (No.2) 1987 and in the Television Licence Fees Amendment Bill (No.1) 1987 (which was introduced and passed by the House of Representatives in the budget sittings 1986 as the Television Licence Fees Amendment Bill 1986 and is currently before the Senate).

The Committee has no comments on this Bill.

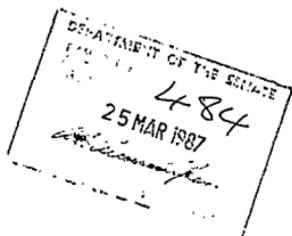
WHEAT MARKETING AMENDMENT ACT 1987

This Act was introduced into the House of Representatives on 25 February 1987 by the Minister for Primary Industry. It was agreed to by the House on the same day and by the Senate on 26 February and received the Royal Assent on 28 February. By virtue of section 2 of the Act it is deemed to have come into operation on 27 February.

The Act amends section 15 of the Wheat Marketing Act 1984, relating to the methodology by which the guaranteed minimum price for Australian Standard White Wheat is calculated.

The Committee notes that this is a case when, as permitted by its Terms of Reference, it is commenting on legislation notwithstanding that it has passed both Houses of the Parliament and has become law. The Committee has no comments on this Act.

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 OF 1987**

**25 MARCH 1987**

**ISSN 0729-6851**



*Henry Cross*

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R.A. Crowley, Chair  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator J.P. McKiernan  
Senator J. Newman

TERMS OF REFERENCE

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

Aboriginal Land Rights (Northern Territory) Amendment Bill  
(No.2) 1987

Air Navigation (Smoking) Amendment Bill 1987

Australia Card Bill 1986 [No.2]

Constitution Alteration (Parliamentary Terms) Bill 1987

Defence Housing Authority Bill 1987

Defence Legislation Amendment Bill 1987

Egg Industry Research (Hen Quota) Levy Bill 1987

Egg Industry Research (Hen Quota) Levy Collection Bill 1987

Environment Protection (Alligator Rivers Region) Amendment  
Bill 1987

Equal Employment Opportunity (Commonwealth Authorities) Bill  
1987

Fishing Industry Research Amendment Bill 1987

Fishing Industry Research and Development Bill 1987

Fishing Legislation Amendment Bill 1987

Lands Acquisition Amendment Bill 1987

National Parks and Wildlife Conservation Amendment Bill  
(No.2) 1987

Veterans' Affairs Legislation Amendment Bill 1987

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

D4/87

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL (NO.2)  
1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Arts, Heritage and Environment.

The Bill will:

- . provide for an Aboriginal Land Claim to proceed over all land within the Gimbat and Goodparla Leases which is declared part of Kakadu National Park or a Conservation Zone under the National Parks and Wildlife Conservation Act 1975;
- . provide for an arrangement whereby the relevant Aboriginal Land Trust is to lease back any successfully claimed land required by the Director, Australian National Parks and Wildlife Service for the purposes of the National Parks and Wildlife Conservation Act 1975; and
- . provide for arrangements in relation to the operation of exploration and mining rights granted over Aboriginal Land under the Lands Acquisition Act 1955 in the Conservation Zone.

The Bill is part of a legislative package relating to the extension of Kakadu National Park.

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.

AIR NAVIGATION (SMOKING) AMENDMENT BILL 1987

This Bill was introduced into the Senate on 19 March 1987 by Senator Vigor.

The Bill will prohibit smoking in aerodromes and aircraft except in separately ventilated rooms or bays designated for the purpose of smoking.

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

Clause 3 -

New sub-sections 26A(1) and (3) - Lack of definition of 'smoking'

Clause 3 would insert new sub-sections 26A(1) and (3) providing that a person shall not 'smoke' in any part of an aircraft or aerodrome other than a part designated for the purpose of 'smoking'. The prohibited act is not further defined and little assistance is provided by the surrounding provisions dealing with the ventilation of places where 'smoking' is to be permitted.

In view of the heavy penalties which may be imposed for the prohibited act - fines of up to \$5,000 or imprisonment for 6 months - the Committee considers that the words 'smoke' and 'smoking' should be defined. The ordinary meaning of the verb includes acts such as fumigation which are clearly not intended to be caught by the prohibition. While it is true that in the case of any doubt arising regard may now be had to the debate on the Bill, including Senator Vigor's Second Reading Speech, pursuant to section 15AB of the Acts Interpretation Act 1901, the Committee suggests that legislation should not be drafted in such a way that it depends on that provision to give it a clear meaning particularly where, as here, a serious criminal offence is involved.

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 therefore draws new sub-sections 26A(1) and (3) to the attention of Senators in that by leaving the acts to be prohibited unclear the sub-sections 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.

AUSTRALIA CARD BILL 1986 [NO.2]

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Health.

The Bill is to create a national system of identification to facilitate the administration and operation of Commonwealth laws relating to taxation, social security, medical and hospital benefits and immigration. It provides for the operation of the national system of identification by the establishment of the Australia Card Register and the issue of an Australia Card. The Health Insurance Commission will be the administering authority for the Australia Card program.

The Bill is in the same form as the Australia Card Bill 1986, rejected by the Senate on 10 December 1986. The Committee drew certain clauses of that Bill to the attention of the Senate in its Eighteenth Report of 1986 (19 November 1986) and the relevant comments, together with the Minister's responses, are reprinted below for the information of Senators.

Sub-clause 12(15) - Lack of parliamentary scrutiny

Sub-clause 12(15) provides that persons included in a class of persons specified by the Minister by notice in the Gazette are not to be obliged to comply with requirements made by an issuing agency with respect to the making of photographs, the provision of specimen signatures and attendance at interviews. No provision has been made for parliamentary scrutiny of such notices and they are therefore not subject to tabling and disallowance as would be the case if the classes of persons to be exempted were to be prescribed by regulations.

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 drew sub-clause 12(15) to the attention of the Senate under principle 1(a)(v) in that it might be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny. The Minister for Health responded:

'I appreciate the Committee's concern in this matter. Although the provision was devised as a method for the Minister to exempt a person, included in a class of persons specified in the notice, from one or more of the requirements in clause 12, in the event that it appears unreasonable for the person to have to comply with the requirements, I agree that there should be Parliamentary scrutiny of such notices and that they should be subject to tabling and disallowance provisions.'

The Minister further indicated that the necessary amendments would be made through the Statute Law (Miscellaneous Provisions) Bill in the Autumn Session of 1987. The Committee thanked the Minister for this undertaking, which answered its concerns in relation to the sub-clause. In relation to the Australia Card Bill 1986 [No.2] the Committee notes that, should the Bill be read a second time in the Senate, the Committee would prefer to see the amendments made to the Bill while the Bill is before the Parliament.

Sub-clause 25(6) - Availability of personal information for public access

Sub-clause 25(6) provides that the provisions of the Act, other than, inter alia, sub-sections 55(1) and (3), apply in relation to applications and requests made to the Authority and documents given to the Authority to verify the identity and eligibility of persons as if those documents formed part of the Australia Card Register. Such applications and documents will contain personal information to be included on the Register and it is therefore important that they be given the same protection with regard to

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unauthorised access and improper disclosure as is given to the Register itself. However sub-sections 55(1) and (3) are the provisions which exempt the Register from the application of the Freedom of Information Act 1982 and (except to the extent that the Register contains information that relates only to persons who are dead) the Archives Act 1983. It is therefore apparently intended that, subject to the exemptions specified in those Acts, access will be available to the applications and documents referred to above pursuant to those Acts even though the Register itself will be exempt.

The Committee stated that it seemed clear that the relevant applications and documents, to the extent that they contained personal information, would be exempt from disclosure under the two Acts on the ground that to make them available would involve an unreasonable disclosure of information relating to the personal affairs of a person (see section 41 of the Freedom of Information Act 1982 and paragraph 33(1)(g) of the Archives Act 1983). However the Committee raised the question why it had been chosen to rely on these exemptions, which might be uncertain in their application, rather than to include the applications and other documents in the blanket exception to be provided by sub-clauses 55(1) and (3). Such applications and other documents by their very nature could only contain personal information required to be entered on the Register, information relevant to such information or to the verification of such information and information relating to the identity of a person or the eligibility of a person for the issue of a Card. The Committee therefore drew sub-clause 25(6) to the attention of the Senate under principle 1(a)(i) in that by leaving open the possibility that such personal information might be made available for public access it might be considered to trespass unduly on personal rights and liberties. The Minister for Health responded:

'The Freedom of Information Act and the Archives Act were excluded from applying to the Register because Part V of the Bill provides a system of access to the

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Register for Card-subjects. It would have been unnecessary and unproductive to duplicate those provisions by allowing the Freedom of Information Act and the Archives Act to apply to the Register.

The documents covered by sub-clause 25(6) are not formally part of the Register and it was not considered appropriate to attempt to modify the system devised for access to the Register in Part V of the Bill to those documents. Any personal information in the documents will be given the same degree of protection as any similar documents to which access is sought under the Freedom of Information Act or the Archives Act. The degree of protection given to personal information under those Acts is considered to be no less than that provided to information on the Australia Card Register under the Australia Card legislation.'

The Committee thanked the Minister for this response. While in practice the protection accorded to personal information by the Freedom of Information Act 1982 ('FOI Act') and the Archives Act 1983 ('Archives Act') may be no less than that provided for information on the Australia Card Register under the Australia Card Bill 1986, the Committee noted that it was structured differently. Whereas under the Bill only the Card-subject or the prescribed representative of the Card-subject (apart from officials of the Department of Social Security, the Taxation Office and the Health Insurance Commission) were to be entitled to access to the Register, under the FOI Act and the Archives Act there was a prima facie right of public access. The question whether access should be refused on the ground that the document contained information relating to the personal affairs of a person rested to be determined in respect of the FOI Act by the agency or Minister to which the request for access was made (having regard to any submissions which might be made by the person whose personal affairs were in issue under new section 27A to be inserted in the FOI Act by the Privacy (Consequential

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Amendments) Bill 1986) and in respect of the Archives Act by the Director-General of the Archives in consultation with the responsible Minister. In both cases an appeal from the refusal to grant access lay to the Administrative Appeals Tribunal. Thus the protection accorded by the FOI Act and the Archives Act might be said at least to be less certain than that provided to information on the Australia Card Register by the Bill.

In continuing to draw sub-clause 25(6) to the attention of the Senate, together with the Minister's response, the Committee hopes to promote a fuller consideration of the issue involved at the Committee stage of debate on the Bill.

Sub-clauses 121(1), 145(1) and 147(1) - Lack of limitation as to reasonableness of time or place

Sub-clauses 121(1) and 145(1) provide that a member of the Data Protection Agency or an Associate Commissioner conducting an inquiry in relation to a reviewable decision or an investigation into a complaint may require a person, by notice in writing, to furnish information and produce documents or records relevant to the inquiry or investigation 'at such place, and within such period or on such day and at such time, as are specified in the notice'. Sub-clause 147(1) provides that the Agency may, by notice in writing, require a complainant, the body about which a complaint has been made and any other person who, in the opinion of the Agency, is likely to be able to provide information relevant to the matter to which the complaint relates to attend a compulsory conference 'at a time and place specified in the notice'. Failure to comply with a notice under sub-clause 121(1) or 145(1) without reasonable excuse is an offence punishable by a fine of \$2,000 or imprisonment for 12 months or both in the case of a natural person and by a fine of \$10,000 in the case of a body corporate. Failure to attend a compulsory conference as required under sub-clause 147(1) without reasonable excuse is an

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offence punishable by a fine of \$1,000 or imprisonment for 6 months or both in the case of a natural person and by a fine of \$5,000 in the case of a body corporate.

In none of the three sub-clauses is it specified that the times and places at which persons may be required to attend or to furnish information or produce documents must be reasonable. As the Committee has stated previously in regard to similar provisions, it does not consider that the defence of reasonable excuse for non-compliance is a sufficient safeguard and it does not believe that such powers should be read as subject to an implicit requirement of reasonableness. The highest that this latter argument can be put in the Committee's view is that relief could be granted if the power were to be exercised in such a manner that no reasonable person could have exercised the power in that fashion. This is rather different from a positive stipulation in the legislation that the times and places at which persons may be required to attend should be reasonable. The Committee therefore drew sub-clauses 121(1), 145(1) and 147(1) to the attention of the Senate under principle 1(a)(i) in that by failing to contain such a stipulation they might be considered to trespass unduly on personal rights and liberties. The Minister for Health responded:

'My view is that exercise of the powers referred to in these sub-clauses would be subject to an implicit requirement of reasonableness and if the powers were exercised unreasonably they would be subject to challenge in the courts. The defence of reasonable excuse would also assist persons who having received a notice to attend an Agency inquiry or to provide information to the Agency were unable rather than unwilling to attend an inquiry or investigation or produce the information.

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However I appreciate the viewpoint expressed by the Committee that the provisions specified should include a proviso that the times and places referred to in notices should be reasonable - and I undertake that this test of reasonableness will be made explicit on the face of the legislation.'

Once again the Minister indicated that the necessary amendments would be made through the Statute Law (Miscellaneous Provisions) Bill in the Autumn Session of 1987. The Committee thanked the Minister for this undertaking, which answered its concerns in relation to the sub-clauses.

#### Clause 186 - Delegation

Sub-clause 186(1) provides that the chief executive officer of the administering Authority and the President of the Agency may each delegate to 'a person' all or any of their powers under the Act, other than the power of delegation. The Committee has been critical of such powers of delegation which impose no limitation, and give no guidance, as to the attributes of the persons to whom a delegation may be made. Given the nature of the powers to be delegated in the present case, the Committee stated that it thought it unlikely that it would be necessary for the scope of the delegation to extend beyond the confines of the staff of the Authority and office-holders and staff of the Agency respectively.

The Committee therefore drew sub-clause 186(1) to the attention of the Senate under principle 1(a)(ii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers. The Minister for Health responded:

'I did not envisage that this clause would be used by the chief executive officer of the Authority or President of the Agency to delegate powers to anyone

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other than the staff of the Authority or the office-holders and staff of the Agency. The word 'person' is used in the clause to encapsulate in one word those to whom the powers can be delegated, namely the staff of the Authority and the Agency and the office-holders of the Agency. I am willing to undertake that the legislation should be amended so that the intention to restrict the scope of the delegation in this way appears on the face of the legislation.'

Once again the Minister indicated that the necessary amendment would be made through the Statute Law (Miscellaneous Provisions) Bill in the Autumn Session of 1987. The Committee thanked the Minister for this undertaking which answered its concerns in relation to the clause.

CONSTITUTION ALTERATION (PARLIAMENTARY TERMS) BILL 1987

This Bill was introduced into the Senate on 19 March 1987 by Senator Macklin.

The Bill will give effect to proposed changes to the Constitution endorsed by the Australian Constitutional Convention at its Adelaide meeting in 1983. In particular, it provides for the present three-year term for the House of Representatives to be increased to four years.

The Committee has no comments on this Bill.

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

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DEFENCE HOUSING AUTHORITY BILL 1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Defence.

The Bill creates a Defence Housing Authority to undertake the management of Defence housing. The Authority is designed to streamline existing arrangements.

The primary functions of the Authority include the management, construction, upgrading and maintenance of Defence housing and the disposal of surplus stock.

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

Sub-clause 63(2) - Lack of parliamentary scrutiny

Sub-clause 63(2) provides that the Minister may, by notice in writing in the Gazette, declare that stamp duty is not payable by the Authority or any other person under a law of the Commonwealth or of a State or Territory in respect of securities dealt with by the Authority or any transaction done or document executed by or on behalf of the Authority for the purpose of a borrowing or a raising of money by the Authority.

As the Committee commented in relation to a similar provision in the Federal Airports Corporation Bill 1986 - see the Committee's Second Report of 1986 (19 February 1986) - the Committee considers that the decision to relieve a statutory authority of the obligation to pay stamp duty under Commonwealth, State or Territory laws should be subject to parliamentary scrutiny. In this regard sub-clause 63(2) contrasts with sub-clause 63(4) which provides that the regulations may subject the Authority to taxation under specified laws of the Commonwealth or of a State or Territory. The Committee therefore draws sub-clause 63(2) to

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the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently 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.

DEFENCE LEGISLATION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Defence.

The Bill proposes a variety of amendments to Acts dealing with defence matters. A number of the amendments are minor. The more important amendments include:

- . provision for peacetime call out of the Reserve Forces;
- . introduction of long term enlistment for sailors, soldiers and airmen;
- . extension of the circumstances in which an accused member undergoing trial may have the option of being punished by a court martial or a Defence Force magistrate;
- . amendments designed to clarify the operation of the Defence Force Retirement and Death Benefits legislation;
- . provision to enable transfer of employees from the Government Aircraft Factories to Aerospace Technologies of Australia; and
- . termination of the Service Canteens Trust Fund.

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

Sub-clauses 16(1) and 64(1) -

New sub-sections 38(6) and 27(6) - 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.

Sub-clauses 16(1) and 64(1) would insert a new sub-section 38(6) in the Defence Act 1903 and a new sub-section 27(6) in the Naval Defence Act 1910 respectively providing that the regulations may make additional provision for the extension of the periods for which soldiers or sailors are enlisted beyond that already made in those sections relating to circumstances such as time of war and emergency.

The Committee therefore draws new sub-sections 38(6) and 27(6) to the attention of Senators in that by so permitting the terms of enlistment of soldiers and sailors to be varied by regulations they may be considered to constitute an inappropriate delegation of legislative power.

Clauses 17 and 65 - Inappropriate delegation of legislative power

Clauses 17 and 65 amend section 44 of the Defence Act 1903 and section 30 of the Naval Defence Act 1910 respectively, these being provisions relating to the discharge of soldiers and sailors by prescribed authorities and for prescribed reasons. Clauses 17 and 65 would further make the entire operation of the two provisions 'subject to the regulations' apparently with the intention of facilitating the making of a code for the retrenchment of soldiers and sailors by regulations.

The Committee therefore draws clauses 17 and 65 to the attention of Senators in that by so permitting the discharge of soldiers and sailors to be left entirely to regulations they may be considered to constitute 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.

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EGG INDUSTRY RESEARCH (HEN QUOTA) LEVY BILL 1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Primary Industry.

The Bill and the associated levy collection Bill seek to establish a new mechanism for levying producers to finance research sponsored by the egg industry, which is also supported by matching Commonwealth grants.

The new arrangements will supersede the present levy mechanism whereby egg producers contribute towards research through a small component of the Commonwealth hen levy. This levy, and the equalisation scheme which has been its main purpose, will be discontinued on 30 June 1987.

Under the present Bill, a levy is to be imposed on the licensed hen quotas held by egg producers under State or Territory laws. The proceeds will be used solely for research.

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

Clause 12 - Termination of Act

Clause 12 provides that the Act is to cease to have effect if the law of any State ceases to provide for hen quota licences. The Second Reading speech and Explanatory Memorandum indicate that such a provision is considered necessary because abolition of hen quotas by one State would render the levy inoperable. Deregulation in one State would have repercussions on egg marketing which would force other States to follow suit.

The Committee suggests, however, that it is inappropriate for the Commonwealth Parliament in making an Act to give each and every State Government a right of veto over the Act, a right, moreover,

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which can be exercised at any time. If any State were to abandon the present system of regulation of egg marketing it should be for the Commonwealth Parliament to consider, in the light of that circumstance, the future of the hen quota levy. The Committee therefore draws clause 12 to the attention of Senators in that it may be considered to constitute 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.

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EGG INDUSTRY RESEARCH (HEN QUOTA) LEVY COLLECTION BILL 1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Primary Industry.

The Bill provides for the collection of the levy to be imposed by the Egg Industry Research (Hen Quota) Levy Bill 1987. It enables the levy to be paid in two equal instalments by the levy payer.

The Committee has no comments on this Bill.

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

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ENVIRONMENT PROTECTION (ALLIGATOR RIVERS REGION) AMENDMENT BILL  
1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Arts, Heritage and Environment.

The Bill is to amend the Environment Protection (Alligator Rivers Region) Act 1978 to confer on the Supervising Scientist for the Alligator Rivers Region the function of providing advice on:

- . environmental aspects of the exploration and resource assessment program;
- . the adequacy of environmental control mechanisms in the conduct of exploration within the conservation zone; and
- . environmental aspects of mining at Coronation Hill or any other areas excised from the conservation zone for the purpose of mining operations.

The Bill is part of a package of legislative proposals to extend Kakadu National Park.

The Committee has no comments on this Bill.

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

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EQUAL EMPLOYMENT OPPORTUNITY (COMMONWEALTH AUTHORITIES) BILL 1987

This Bill was introduced into the House of Representatives on 19 March 1987 by the Minister for Employment and Industrial Relations.

The Bill is to promote equal employment opportunity in those areas of Australian Government employment that are not already covered by the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 or by section 22B of the Public Service Act 1922.

The Bill will require certain Commonwealth authorities employing 40 or more employees to promote equal opportunity in employment for women and members of designated groups by developing equal employment opportunity programs. Aboriginals and descendants of indigenous Torres Strait Islanders, migrants whose first language is not English and their children, and the physically or mentally disabled are included in the definition of designated groups.

The Bill sets out minimum requirements for equal opportunity programs to be developed and implemented by the authorities concerned. Provision is also made for reporting on their operation.

The Committee has no comments on this Bill.

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

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FISHING INDUSTRY RESEARCH AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Primary Industry.

The Bill provides transitional arrangements between the effective termination of the Fishing Industry Research Act 1969 and the proposed operation of the Fishing Industry Research and Development Bill 1987.

The Bill amends the Fishing Industry Research Act 1969 by repealing the appropriation and the provisions establishing the Fishing Industry Research Committee, the functions of which will be replaced by the Fishing Industry Research and Development Bill. The shell of the Principal Act after passage of the present Bill will preserve the Fishing Industry Research Trust Account until the money in that Account has been spent or otherwise disposed of.

The Committee has no comments on this Bill.

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

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FISHING INDUSTRY RESEARCH AND DEVELOPMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Primary Industry.

The Bill replaces, but does not repeal, the Fishing Industry Research Act 1969. It provides a new framework for the management of the Commonwealth's research and development activities in the Australian fishing industry, along lines generally similar to those provided in respect of other rural industries by the Rural Industries Research Act 1985. Separate provision is necessary for fisheries research and development because of the jurisdictional arrangements in Australia for fisheries.

The Bill provides for the establishment and operation of a Fishing Industry Research and Development Council and a Fishing Industry Research and Development Trust Fund managed by the Council. The Council is to develop, for the approval of the Minister, 5-year plans and annual programs of fisheries research and development that the new Trust Fund will finance.

The Committee has no comments on this Bill.

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FISHING LEGISLATION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Primary Industry.

The Bill makes amendments of an essentially administrative and procedural nature to the Continental Shelf (Living Natural Resources) Act 1968, the Fisheries Act 1952 and the Torres Strait Fisheries Act 1984.

In particular the Bill will shift the emphasis of provisions in the Acts authorising the Minister to make notices away from the notices to the prohibitions in them. This will facilitate the preparation of notices containing several prohibitions each requiring separate endorsements of licences. The Bill will also strengthen the powers of fisheries officers to enter and search a vessel or vehicle without warrant where the officers have reasonable grounds for believing that there is upon the vessel or vehicle any thing which may afford evidence as to the commission of an offence.

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.

LANDS ACQUISITION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Arts, Heritage and Environment.

The Bill is part of a legislative package relating to the extension of Kakadu National Park. The Bill will amend the Lands Acquisition Act 1955 to enable exploration and mining licences to be granted in the Conservation Zone to be declared over part of the Gimbat and Goodparla pastoral leases after lodgement of a land claim and to allow such interests to be granted if land in the Conservation Zone becomes vested with the traditional Aboriginal owners.

The Committee has no comments on this Bill.

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NATIONAL PARKS AND WILDLIFE CONSERVATION AMENDMENT BILL (NO.2)  
1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister for Arts, Heritage and Environment.

The Bill proposes amendments to the National Parks and Wildlife Conservation Act 1975. The Bill, as part of a package of legislative proposals, aims to extend the present Kakadu National Park. It will:

- . enable a conservation zone to be declared over part of Gimbat and Goodparla;
- . permit Aboriginal land claims over the areas declared as Park or conservation zone and permit the declaration of Park and conservation zone over areas subject to land claim;
- . clarify the objects of a conservation zone to ensure that regulations can be made to encourage exploration generally within a conservation zone;
- . ensure that any exploration on existing interests within the conservation zone is subject to the same assessment procedures as exploration in other parts of the conservation zone; and
- . clarify the regulation making power for a conservation zone.

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

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

Clause 7 - No compensation payable

Clause 7 provides that notwithstanding any law of the Commonwealth or of the Northern Territory the Commonwealth is not liable to pay compensation to any person by reason of the enactment of the Bill. The provision mirrors clause 5 of the National Parks and Wildlife Conservation Amendment Bill 1986 on which the Committee commented in its Alert Digest No. 1 of 1987 (18 February 1987). That Bill gives effect to the Government's proposed ban on mining in Kakadu National Park. The present Bill would permit regulations to be made regulating or prohibiting operations for the recovery of minerals in the conservation zone to be declared over those parts of the Gimbat and Goodparla pastoral leases which it is not proposed to incorporate immediately in the Kakadu National Park. The Bill would also require any operation for the recovery of minerals in the conservation zone to be subject to environmental impact assessment under the Environment Protection (Impact of Proposals) Act 1974. In support of these provisions clause 5 amends section 8B of the Principal Act - which preserves interests in respect of minerals on, in or beneath land included in a conservation zone - to provide that its effect may be overridden by the regulations and environmental impact assessment procedures mentioned above.

As was the case with the National Parks and Wildlife Conservation Amendment Bill 1986, the Bill will clearly affect the pre-existing property rights which persons may have in the Gimbat and Goodparla pastoral lease areas and may indeed prevent them from exercising those rights yet it will leave such persons without compensation. The Committee therefore draws clause 7 to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 March 1987 by the Minister Representing the Minister for Veterans' Affairs.

The Bill will make a number of amendments to the Veterans' Entitlements Act 1986. The main purpose of the Bill is to introduce into the Veterans' Affairs sphere the poverty traps reforms announced by the Treasurer in his statement of 19 September 1985. These poverty traps reforms have been incorporated into the Social Security Act 1947 and will come into effect on 1 July 1987. The Bill also contains measures to combat health fraud which reflect those provisions contained in the Health Insurance Act 1973.

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

Clause 26 -

New sub-section 93B(5) - Reversal of the onus of proof

Clause 26 would insert a new section 93B in the Veterans' Entitlements Act 1986 creating an offence where a person makes a statement capable of being used in connection with a claim for payment for treatment that is false or misleading in a material particular. New sub-section 93B(5) provides that it is a defence if the person did not know, and could not reasonably be expected to have known, that the statement was false or misleading in a material particular. The burden of establishing this defence would rest on the defendant.

The Senate Standing Committee on Constitutional and Legal Affairs recommended in its Report, The Burden of Proof in Criminal Proceedings (Parliamentary Paper No.319/1982), that the burden of establishing a defence (the persuasive onus) should not be

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placed on defendants in criminal proceedings but rather that they should merely be required to bear an evidential onus, that is, the onus of adducing evidence of the existence of a defence, the burden of negating which will then be borne by the prosecution. Thus in the present case persons charged with the offence could be required to adduce evidence that they did not have the relevant knowledge rather than, as at present, being required to prove on the balance of probabilities that they did not have that knowledge.

The Committee drew attention in its Fifteenth Report of 1985 (13 November 1985) to sub-section 128A(5) of the Health Insurance Act 1973 on which the present provision is based. The Committee repeats the suggestion it made then that it would be preferable if the defendant were required merely to bear an evidential onus in establishing the statutory defence provided in new sub-section 93B(5). Accordingly the Committee draws new sub-section 93B(5) to the attention of Senators in that by imposing the persuasive burden of proof on the defendant it may be considered to trespass unduly on personal rights and liberties.

New sub-section 93C(4) - Strict liability offence

Clause 26 would also insert a new section 93C creating an indictable offence where a person knowingly makes a statement capable of being used in connection with a claim for payment for treatment that is false or misleading in a material particular. New sub-section 93C(4) would provide that where a jury or the court is not satisfied, on the trial of a person for an offence against 93C, that the person is guilty of that offence, the jury or the court, as the case may be, may convict the person of an offence against section 93B. In other words if the jury or the court is not satisfied that the person knowingly made a false statement the person may nevertheless be convicted of the making of that statement whether or not he or she knew that it was false or capable of being used in connection with a claim for payment for treatment. It does not appear that a person in this situation

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would have the advantage of the defence provided for in sub-section 93B(5), considered above, since that defence relates only to persons charged with an offence against section 93B.

The Committee recognises that new sub-section 93C(4) is in the same form as sub-section 128B(4) of the Health Insurance Act 1973 on which it did not comment when it was inserted by the Health Legislation Amendment Act (No.2) 1985. Nevertheless the Committee draws new sub-section 93C(4) to the attention of Senators in that by creating an offence of strict liability where a person unwittingly makes a false or misleading statement it may be considered to trespass unduly on personal rights and liberties.

New sub-section 93D(9) - Reversal of the onus of proof

Clause 26 would also insert a new section 93D creating an offence where a practitioner seeks or obtains, or a provider of pathology services or the proprietor of a private hospital offers, any benefit or advantage to a practitioner in respect of a request for the rendering of pathology services or the admission of a person as an in-patient in the relevant hospital. New sub-section 93D(9) would provide a defence if the person proves that the conduct in question was in accordance with the standards of professional conduct generally accepted by medical practitioners.

Once again the burden of establishing this defence would rest on the defendant to prove on the balance of probabilities and once again the Committee would suggest that, in accordance with the recommendation of the Senate Standing Committee on Constitutional and Legal Affairs, the defendant should merely be required to adduce evidence of the existence of the defence, the burden of negating which would then be borne by the prosecution. The Committee therefore draws new sub-section 93D(9) to the attention of Senators in that by imposing the persuasive burden of proof on the defendant 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. 5 OF 1987**

**1 APRIL 1987**

**ISSN 0729-6851**

*Ramsey Cairns*

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R.A. Crowley, Chair  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator J.P. McKiernan  
Senator J. Newman

TERMS OF REFERENCE

Extract

- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties 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:

Aboriginal and Torres Strait Islander Heritage Protection  
Amendment Bill 1987

Aboriginal Land (Lake Condah and Framlingham Forest) Bill  
1987

Appropriation Bill (No.3) 1986-87

Appropriation Bill (No.4) 1986-87

Appropriation (Parliamentary Departments) Bill (No.2)  
1986-87

Social Security Amendment Bill 1987

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.

ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION BILL  
1987

This Bill was introduced into the House of Representatives on 25 March 1987 by the Minister for Aboriginal Affairs.

The Bill is a companion to the Aboriginal Land (Lake Condah and Framlingham Forest) Bill 1987. It will provide a new scheme for the protection of Victorian Aboriginal cultural heritage.

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

Clause 7 -

New sub-section 21A(1) - Definition of 'community area' -  
Inappropriate delegation of legislative power

Clause 7 would insert a new Part IIA dealing with Victorian Aboriginal cultural heritage. New sub-section 21A(1) would define 'community area' for the purposes of that Part as the area in Victoria declared by the regulations to be the area of a local Aboriginal community for the purposes of the Part. A local Aboriginal community may advise the Minister that a temporary or permanent declaration of preservation should be made in relation to a place or object within its community area and it may, for example, grant consent to the excavation of any Aboriginal place or object in that area: see sub-section 21U(3).

The Committee suggests that, given the powers of a local Aboriginal community in relation to its community area, it would be more appropriate if the relevant areas were to be set out in a Schedule to the Act rather than by regulations. The Committee therefore draws the definition of 'community area' in new

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sub-section 21A(1) to the attention of Senators in that it may be considered to constitute an inappropriate delegation of legislative power.

New sub-section 21A(2) - 'Henry VIII' clause

New sub-section 21A(2) would empower the Minister, by order published in the Gazette, to vary the content of the Schedule which sets out the names of organisations specified for the purpose of the definition of 'local Aboriginal community' in sub-section 21A(1). The Minister may amend the Schedule by adding, omitting or varying the name of an organisation that is incorporated in, or carries on business in, Victoria.

Because new sub-section 21A(2) would permit the Minister to alter the Schedule by executive instrument it may be characterised as a 'Henry VIII' clause and as such the Committee draws it to the attention of Senators in that it may be considered to constitute an inappropriate delegation of legislative power.

New sub-section 21B(2) - Delegation

New sub-section 21B(1) empowers the Minister to delegate all or any of the powers that are conferred on the Minister by the new Part to a State Minister and new sub-section 21B(2) enables such a State Minister to authorise another person to exercise the power so delegated. It therefore enables the power to be delegated, in effect, to any person or the holder of any office whom the State Minister may nominate.

The Committee has been critical of such powers of delegation which impose no limitation, and give no guidance, as to the attributes of the person to whom a delegation may be made. The Committee therefore draws new sub-section 21B(2) to the attention

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of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

New sub-section 21F(2) - Retrospectivity

New sections 21D and 21E provide that a local Aboriginal community which is dissatisfied with a decision of the Minister making, varying, refusing to make or revoking a temporary declaration of preservation in respect of an Aboriginal place or object may require the Minister to appoint an arbitrator to review the Minister's decision. Sub-section 21F(1) provides that an arbitrator may confirm or vary the decision of the Minister or may make any decision which the Minister could have made in substitution for the decision of the Minister. Thus an arbitrator may, for example, make a declaration of preservation in a case where the Minister has refused to make such a declaration. New sub-section 21F(2) provides that a decision made by an arbitrator in substitution for a decision of the Minister has effect on and from the day on which the decision of the Minister had effect unless the arbitrator determines otherwise. Thus in the example given the declaration of preservation made by the arbitrator could have effect retrospective to the date on which the Minister refused to make the declaration.

As the contravention of the terms of a declaration carries very heavy penalties the Committee draws new sub-section 21F(2) to the attention of Senators in that by enabling declarations to be given retrospective effect 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.

ABORIGINAL LAND (LAKE CONDAH AND FRAMLINGHAM FOREST) BILL 1987

This Bill was introduced into the House of Representatives on 25 March 1987 by the Minister for Aboriginal Affairs.

The Government of the State of Victoria has requested the Commonwealth Parliament to enact legislation to provide for the vesting and control of two parcels of land in Victoria to two Aboriginal Corporations. The Bill will ensure that the two parcels (Lake Condah and Framlingham Forest) will be vested and controlled by the two Aboriginal Corporations, as well as providing for compensation to be paid for prior interests in the vested land. The Bill also requires the two Corporations to establish a register of sacred sites.

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

Sub-clause 5(2) - Delegation

Sub-clause 5(1) empowers the Minister to delegate to a Minister of the Crown of the State of Victoria all or any of the powers conferred on the Minister by the Act. Sub-clause 5(2) enables a Victorian Minister to whom a power has been so delegated to authorise another person to exercise the power. It therefore enables the power to be delegated, in effect, to any person or the holder of any office whom the State Minister may nominate.

The Committee has been critical of such powers of delegation which impose no limitation, and give no guidance, as to the attributes of the person to whom a delegation may be made. The Committee therefore draws sub-clause 5(2) to the attention of Senators in that it may be considered to make 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.

APPROPRIATION BILL (NO.3) 1986-87

This Bill was introduced into the House of Representatives on 25 March 1987 by the Minister Representing the Minister for Finance.

The Bill is to appropriate a sum out of the Consolidated Revenue Fund, additional to the sums appropriated by the Appropriation Act (No.1) 1986-87, for the service of the year ending on 30 June 1987.

The Committee has no comments on this Bill.

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

APPROPRIATION BILL (NO.4) 1986-87

This Bill was introduced into the House of Representatives on 25 March 1987 by the Minister Representing the Minister for Finance.

The Bill is to appropriate a sum out of the Consolidated Revenue Fund, additional to the sum appropriated by the Appropriation Act (NO.2) 1986-87, for certain expenditure in respect of the year ending on 30 June 1987.

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) 1987

This Bill was introduced into the House of Representatives on 25 March 1987 by the Minister Representing the Minister for Finance.

The Bill is to appropriate certain sums out of the Consolidated Revenue Fund, additional to the sums appropriated by the Appropriation (Parliamentary Departments) Act 1986-87.

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 AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 25 March 1987 by the Minister for Social Security.

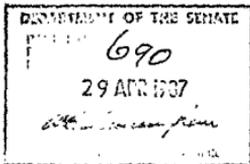
The Bill contains measures to streamline the Social Security Act 1947 and its administration.

The amendments include -

- . the inclusion of current reciprocal agreements with the United Kingdom and with New Zealand in Schedules;
- . ensuring that the basis for prosecution of offences under the Act and the level of penalties are comparable to other Commonwealth offences in legislation;
- . requiring that all administrative decisions are to be in writing unless the decisions are recorded on a computer;
- . extending the secrecy provision to bind officials who have access to confidential information but who do not have duties or functions under the Act; and
- . extending the review and appeal provisions to all decisions made under the provisions 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.



SCRUTINY OF BILLS ALERT DIGEST

NO. 6 OF 1987

29 APRIL 1987

ISSN 0729-6851



*Henry Count*

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R.A. Crowley, Chair  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator J.P. McKiernan  
Senator J. Newman

TERMS OF REFERENCE

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- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
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  - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable 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:

Commonwealth Electoral Amendment Bill 1987  
Communications Legislation Amendment Bill 1987  
Customs Tariff Bill 1987  
Customs Tariff Amendment (Sea Installations) Bill 1987  
Customs Tariff (Installations at Sea) Bill 1987  
Customs Tariff (Miscellaneous Amendments) Bill 1987  
Excise Tariff Amendment (Sea Installations) Bill 1987  
Foreign Bases (Pine Gap Base) Removal Bill 1987  
Income Tax (Franking Deficit) Bill 1987  
Income Tax Rates Amendment Bill 1987  
Sea Installations Bill 1987  
Sea Installations Levy Bill 1987  
Sea Installations (Miscellaneous Amendments) Bill 1987  
Ships (Capital Grants) Bill 1987  
Sugar Cane Levy Bill 1987  
Sugar Cane Levy Collection Bill 1987  
Taxation Laws Amendment (Company Distributions) Bill 1987

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COMMONWEALTH ELECTORAL AMENDMENT BILL 1987

This Bill was introduced into the Senate on 1 April 1987 by the Special Minister of State.

The Bill proposes amendments to the Commonwealth Electoral Act 1918 in accordance with recommendations contained in Report No.2 of the Joint Select Committee on Electoral Reform. It will give effect to those recommendations which are considered essential for implementation before the next election.

The major provisions are designed to:

- . require Commonwealth and State Governments to comply with the Act to the same extent as other participants in the electoral process;
- . extend the redistribution timetable and provide for a second round of public hearings in certain circumstances;
- . improve procedures for processing enrolments immediately before the close of roll and remove the 3 month residential requirement;
- . abolish the Register of Candidates, and simplify and consolidate provisions for nomination, and lodgement of group voting tickets for the Senate;
- . standardise the way names and party affiliations are shown on ballot-papers;
- . ensure House of Representatives and Senate scrutinies are not delayed;
- . improve election funding and financial disclosure provisions; and

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- . remove existing time limits on the ability to alter polling day and/or return of the writs, and add similar flexibility to the date of the first meeting of a Parliament by extending the time for return of the writ from 90 to 100 days after issue.

The Committee has no comments on this Bill.

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

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COMMUNICATIONS LEGISLATION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister for Communications.

The Bill will make miscellaneous amendments to the Overseas Telecommunications Act 1946, the Postal Services Act 1975, the Radiocommunications Act 1983, and the Telecommunications Act 1975.

The amendments will: -

- . enable the Overseas Telecommunications Commission ('OTC'), with the approval of the Minister for Communications, to engage in activities in Australia relating to telecommunications other than the actual provision of domestic telecommunications carriage;
- . enable OTC to provide, with the Minister's approval, domestic and international telecommunications services for foreign countries;
- . put in place a moratorium on the issuing under the Radiocommunications Act of transmitter licences where the transmitter is to be used to provide domestic pay-television; and
- . make a number of improvements to administrative arrangements under the Radiocommunications Act.

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

Clauses 14 and 17 - Removal of requirement for public consultation

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

Clauses 14 and 17 would amend sections 9 and 20 of the Radiocommunications Act 1983 by omitting sub-sections 9(4) and 20(3) respectively. Section 9 deals with the making of standards for transmitters and receivers. Before making a standard the Minister is required to give public notice inviting interested persons to make representations and is required to give due consideration to any representations so made. Sub-section 9(4) imposes a similar requirement for public consultation where the Minister decides to alter a proposed standard following the consideration of such representations. Section 20 sets out similar requirements for the publication of proposed spectrum plans and frequency band plans and sub-section 20(3), like sub-section 9(4), requires further public consultation where the Minister decides to alter a proposed plan after considering any representations.

The Second Reading speech explains that it is proposed to remove these requirements for public consultation:

'to remove unnecessary repetitions which occur in the process of making standards, spectrum plans and frequency band plans. Under the current provisions once even a minor change is made to a plan or standard as a result of public consultation the Minister is obliged to resubmit the whole document for a further round of public consultation. This requirement with its obvious scope for needless delay in the making of plans and standards is to be removed. Of course the Minister will still be free to resubmit an amended plan or standard for further public consultation where amendments are more significant and further consultation is felt to be appropriate.'

It has been put to the Committee, however, that there is a need for further public consultation if the initially published proposed standard or plan is altered. The user of a particular frequency may, for example, be unaffected by a proposed plan but

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may discover too late that he or she is gravely affected by the altered plan which the Minister has promulgated after receiving representations in relation to the initial proposal. Manufacturers or distributors of transmitters or receivers may be similarly affected by altered standards of which they would, under the proposed amendments, have no notice until such standards come into operation. If, for some reason, it is essential that a new standard, spectrum plan or frequency band plan should be introduced as a matter of urgency, sub-sections 9(9) and 20(4) already permit the Minister to dispense with the requirements for public consultation.

Clauses 14 and 17 in effect propose to substitute a Ministerial discretion to consult for a statutory requirement for public consultation. The Committee is aware that the resulting standards and plans will still be tabled in Parliament and will be subject to disallowance. However members and Senators may not necessarily be made aware of the effects which an altered standard or plan may have on individual manufacturers or distributors of devices or users of frequency bands, and these effects may not be apparent on the face of the instrument. Accordingly the Committee draws clauses 14 and 17 to the attention of Senators in that by removing the requirement for public consultation in respect of altered standards or plans they may be considered to trespass unduly on personal rights and liberties.

Clause 19 -

New sub-section 24A(3) - Termination of provision by proclamation

Clause 19 would insert a new section 24A in the Radiocommunications Act 1983 providing that the Minister is not to grant transmitter licences in respect of transmitters to be used for the provision of domestic pay-television services. New sub-section 24A(3) would provide that the Governor-General may, by Proclamation, terminate the new section on 1 September 1990 or any day thereafter. The new sub-section may thus be characterised

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as a 'Henry VIII' clause in that it would permit the Executive to determine that the new section is to cease to have effect without the necessity for the Parliament to agree to its repeal.

The Committee therefore draws new sub-section 24A(3) to the attention of Senators in that, as a 'Henry VIII' clause, it may be considered to constitute 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.

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CUSTOMS TARIFF BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister Assisting the Minister for Industry, Technology and Commerce.

The Bill proposes the introduction of a new Customs Tariff based on a modernised nomenclature for the classification of goods in international trade, known as the Harmonized Commodity Description and Coding System.

The System has been developed by the Customs Co-operation Council in Brussels to replace its existing nomenclature which is the basis for the current Customs Tariff Act 1982. A new International Convention for the Harmonized System is programmed to come into operation on 1 January 1988 with all major trading nations participating.

Although it is based on the Customs Tariff Act 1982, many clauses have been redrafted or relocated to simplify the 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.

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CUSTOMS TARIFF AMENDMENT (SEA INSTALLATIONS) BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister for Arts, Heritage and Environment.

The Bill will extend the application of the Customs Tariff Act 1982 to sea installations installed in coastal areas of Australia, or adjacent areas thereto, and to goods brought with or taken to such sea installations, to ensure that such sea installations and goods receive the same treatment as goods imported into Australia in the normal way.

The Bill is part of a package of measures which extend the Commonwealth's taxing and customs control powers to sea installations.

The Committee has no comments on this Bill.

D6/87

CUSTOMS TARIFF (INSTALLATIONS AT SEA) BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister Assisting the Minister for Industry, Technology and Commerce.

The Bill is complementary to the Customs Tariff Bill 1987. The Bill will continue the application of current sections 5 to 9 (inclusive) of the Customs Tariff Act 1982. These sections provide that when an installation becomes attached to the Australian seabed, the installation shall be deemed to be part of Australia and it, and any goods on it or taken to it, shall be deemed to have been imported. Likewise, on being detached from the Australian seabed for the purpose of being removed from Australian waters, the installation and any goods on it shall be deemed to have been exported.

The Committee has no comments on this Bill.

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

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CUSTOMS TARIFF (MISCELLANEOUS AMENDMENTS) BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister Assisting the Minister for Industry, Technology and Commerce.

The Bill proposes amendments to a number of Acts as a consequence of the introduction of the Customs Tariff Bill 1987. The amendments take account of the redrafting of the sections and renumbering of the schedules to the Customs Tariff Act and provisions within those schedules to which references are made in the various Acts.

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

Clause 6 - Non-reviewable decisions or lack of parliamentary scrutiny

Clause 6 would repeal sections 151 and 151A of the Customs Act 1901 and would insert a new section 151 which is essentially a redrafting of the old sections. New paragraphs 151(6)(c), (7)(b), (8)(b) and (9)(c) and new sub-sections 151(13) and (14) would empower the Comptroller-General to determine, by notice in writing in the Gazette, various matters affecting the country of manufacture of goods and hence the tariff which they bear. In particular the Comptroller-General would be empowered to determine:

that materials are 'manufactured raw materials' of a country and that goods manufactured from those materials are therefore to be taken to be the manufacture of that country;

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- . percentages of the works or factory cost of goods required to be attributable to the value of labour or materials of certain countries in order for those goods to be treated as the manufacture of those countries;
- . the manner in which the factory or works cost of goods or the value of labour or materials is to be determined; and
- . that goods shall be deemed to be goods of a kind not commercially manufactured in Australia so that only 25%, rather than 75%, of their factory or works cost need be represented by the value of labour or materials of a country in order for those goods to be treated as the manufacture of that country.

The Committee drew attention to the present sections 151 and 151A when they were inserted by the Customs Tariff (Miscellaneous Amendments) Act 1982 (see the Committee's Thirteenth and Fifteenth Reports of 1982) and at that time the Minister Assisting the Minister for Industry and Commerce responded that the concession in respect of 'manufactured raw materials' then applied to about forty materials from New Zealand and thirty from Canada, that the discretion to vary percentages of factory or works cost had only been used in one instance to enable certain previously qualifying goods to receive preferential admission, and that the provision in respect of goods not commercially manufactured in Australia was employed only after 'consideration of applications by interested parties'. It is therefore unclear to the Committee whether the powers to be conferred on the Comptroller-General by new section 151 should be characterised as administrative or legislative. If, as would appear to be the case in respect of the provision in respect of goods not commercially manufactured in Australia, determinations are to be made on a case by case basis, then it would appear to the Committee that the power may be characterized as administrative. However it is doubtful whether the general power of review conferred on the

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Administrative Appeals Tribunal by sub-section 273GA(2) in respect of disputes arising as to the rate of duty payable in respect of any goods would extend to the review of such a determination by the Comptroller-General. If, on the other hand, it is anticipated that the Comptroller-General will determine general rules applying to large numbers of cases - as it would appear the concession in respect of 'manufactured raw materials' operates at present - then the power may be classified as legislative. That being so, in the Committee's view its exercise should be subject to parliamentary scrutiny by way of tabling and disallowance of the Gazette notices.

The Committee therefore draws new section 151 to the attention of Senators in that by conferring on the Comptroller-General the power to make determinations affecting the rate of duty payable in respect of goods without either providing for an appropriate power of review or for parliamentary scrutiny it may be considered either to make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions or to subject legislative power insufficiently 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.

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EXCISE TARIFF AMENDMENT (SEA INSTALLATIONS) BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister for Arts, Heritage and Environment.

The Bill is part of a package of measures related to offshore sea installations. It will extend the application of the Excise Tariff Act 1921 to the production of excisable products at sea installations.

The Committee has no comments on this Bill.

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

D6/87

FOREIGN BASES (PINE GAP BASE) REMOVAL BILL 1987

This Bill was introduced into the Senate on 1 April 1987 by Senator Sanders.

The Bill will make provision for terminating the Agreement between the Government of the Commonwealth and the Government of the United States of America relating to the establishment of the Joint Defence Space Research Facility better known as Pine Gap.

The Committee has no comments on this Bill.

D6/87

INCOME TAX (FRANKING DEFICIT) BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Treasurer.

The Bill is consequential upon the Taxation Laws Amendment (Company Distributions) Bill 1987, relating to the introduction of the full inspection system of company taxation. Where a company has a franking deficit at the end of a year it will be required to pay franking deficit tax in order to make good the shortfall in company tax imputed to its shareholders. The Bill will formally impose on such a company liability to pay franking deficit tax.

The Committee has no comments on this Bill.

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

D6/87

INCOME TAX RATES AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Treasurer.

The Bill will amend the Income Tax Rates Act 1986 to declare the rates of income tax payable for the 1987-88 and subsequent financial years by companies, registered organizations and unit trusts treated as companies for tax purposes.

The 49 per cent company tax rate to be declared by this Bill will bring the company tax rate into alignment with the maximum personal marginal tax rate, and will help defray the cost of the new imputation system, as announced in the September 1985 Tax Reform Statement.

The Committee has no comments on this Bill.

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

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## SEA INSTALLATIONS BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister for Arts, Heritage and Environment.

The Bill is one of a number of Bills required to put in place a scheme to regulate the operation of certain offshore sea installations fixed or moored to the sea bed of the Australian continental shelf beyond the territorial sea. The Bill will facilitate the development of technically sound, environmentally acceptable and economically viable sea installations.

It provides a basis for the application of important Commonwealth laws, and for State or Territory laws to be adopted as Commonwealth laws.

These provisions are parallel to those already applying under the Petroleum (Submerged Lands) Act 1967, which regulates offshore petroleum and mineral exploration and extraction.

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

### Sub-clause 3(1) -

Definitions of 'environment related activity' and 'sea installation' - Inappropriate delegation of legislative power

The central purpose of the Bill is to require persons to obtain permits before operating 'sea installations' installed in the waters beyond the Australian territorial sea but within the outer limits of the continental shelf or Australia's 200 nautical mile fishing zone. 'Sea installations' are defined as man-made structures (including ships and aircraft) which can be used for an 'environment related activity'. Off-shore drilling rigs and drilling vessels are expressly excluded as are defence installations and, by virtue of paragraph (g) of the definition,

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prescribed structures. The term 'environment related activity' is defined as any activity relating to tourism or recreation, the carrying on of a business, the exploitation of the living resources of the sea, marine archaeology or, by virtue of paragraph (c) of the definition, any prescribed purpose.

Because the two definitions are critical to the operation of the Bill it may be thought inappropriate that, in the one case, structures should be capable of exclusion from the definition of 'sea installations', and, in the other case, that the definition of 'environment related activity' should be capable of extension, by regulations, rather than by amendment to the Act. The Committee therefore draws paragraph (g) of the definition of 'sea installation' and paragraph (c) of the definition of 'environment related activity' to the attention of Senators in that they may be considered to constitute inappropriate delegations of legislative power.

Sub-clauses 12(2) and 52(4) - Reversal of the onus of proof

Sub-clause 12(1) creates an offence where a person causes a sea installation to be installed in an adjacent area otherwise than in accordance with a permit. Sub-clause 12(2) provides that it is a defence if it is established that the relevant installation was caused to be installed because of factors beyond the control of the person. Sub-clause 52(3) creates an offence where a vessel enters or remains in a safety zone specified by the Minister for the protection of a sea installation. Sub-clause 52(4) provides that it is a defence if it is established that the entering or remaining:

- (a) occurred because of factors beyond the person's control;
- (b) was necessary to secure the safety of, or appeared to be the only way of averting a threat to, human life; or

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- (c) was necessary to secure, or appeared to be the only way of averting a threat to, the safety of a ship at sea or of a sea installation.

In both instances the burden of proving the relevant matters by way of defence will fall upon the accused. This contrasts with the approach taken in the drafting of clause 49 which requires the operator of a sea installation to maintain it in good condition and repair on pain of a penalty. Sub-clause 49(2) provides that the requirement does not apply in relation to any structure, equipment or other property that was not brought into the adjacent area by or with the authority of the operator. The burden of establishing that the structure, equipment or other property was brought into the adjacent area by or with the authority of the operator will thus fall upon the prosecution.

The Committee is prepared to concede that the matters to be raised by way of defence under sub-clauses 12(2) and 52(4) are matters peculiarly within the knowledge of the defendant and that it would therefore be inappropriate to require the prosecution to negative these defences in every case. However, in conformity with the recommendations of the Senate Standing Committee on Constitutional and Legal Affairs in its Report, The Burden of Proof in Criminal Proceedings (Parliamentary Paper No. 319/1982), the Committee would suggest that the defendant should merely be required to adduce evidence of the existence of the defence rather than, as at present, being required to establish the defence on the balance of probabilities.

The Committee therefore draws sub-clauses 12(2) and 52(4) to the attention of Senators in that by imposing the burden of establishing matters by way of defence on the accused in criminal proceedings they may be considered to trespass unduly on personal rights and liberties.

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Sub-clause 38(3) - Non-reviewable decision

Clause 38 provides that the Minister may give an exemption certificate relieving a person of the obligation to obtain a permit in respect of a specified sea installation if the Minister is satisfied that the installation is to be used only for scientific activities or activities related to marine archaeology. Sub-clause 38(3) provides that an exemption certificate is subject to such conditions as the Minister considers appropriate. Although paragraph 69(1)(k) confers a right of appeal to the Administrative Appeals Tribunal in respect of a refusal to give an exemption certificate there is no right review of conditions imposed under sub-clause 38(3) otherwise than as to their legality pursuant to the Administrative Decisions (Judicial Review) Act 1977. By contrast paragraph 69(1)(b) confers a right of appeal to the Administrative Appeals Tribunal in respect of the conditions imposed on permits.

Accordingly the Committee draws sub-clause 38(3) to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

Sub-clauses 44(2) and (3), 45(7) and 46(7) - 'Henry VIII' clauses

Sub-clause 44(1) provides that the Commonwealth Acts specified in the Schedule apply in relation to sea installations installed in adjacent areas as if those areas were part of the Commonwealth. Sub-clause 44(2) provides that the regulations may revoke the application, or the application in a specified adjacent area, of an Act, or part of an Act, specified in the Schedule. Sub-clause 44(3) further provides that the regulations may apply other Commonwealth Acts, in whole or in part, in relation to sea installations generally or sea installations installed in specified adjacent areas. Sub-clause 45(1) provides that the laws in force in a State for the time being (other than laws of the Commonwealth) apply in relation to sea installations installed in

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the adjacent area of the State. Sub-clause 45(7) provides that the regulations may provide that such State laws do not apply or apply subject to modifications specified in the regulations. Sub-clauses 46(1) and (7) respectively make similar provision for the application of the laws in force in a Territory to sea installations installed in the adjacent area of the Territory.

The law in force in relation to a sea installation is thus left in effect to the regulations which may modify without limitation the Commonwealth, State and Territory laws which clauses 44, 45 and 46 set out to apply. The Committee therefore draws sub-clauses 44(2) and (3), 45(7) and 46(7) to the attention of Senators in that as 'Henry VIII' clauses permitting the operation of Acts to be varied by regulations they may be considered to constitute an inappropriate delegation of legislative power.

#### Clauses 56 and 65 - Entry without warrant

Clauses 56 and 65 provide that an inspector appointed for the purposes of the Act or an officer within the meaning of section 16 of the Income Tax Assessment Act 1936 may board any sea installation and enter into any part of the installation for the purpose of ascertaining whether or not there has been a contravention of the Act or a permit or for the purpose of valuing the installation respectively. Sub-clauses 56(3) and 65(3) provide that the inspector or officer, as the case may be, shall not enter a person's living quarters without the consent of the person while the person is in them. It therefore appears that it is intended that inspectors and officers may enter the living quarters on board a sea installation without consent and without any requirement for other authorisation provided only that the persons living there happen to be out at the time.

The proposed provision appears to lack logical consistency. If consent is considered sufficiently important to vitiate the right to enter parts of the installation then the requirement to obtain consent should not depend on the mere chance that the occupier of

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accommodation on board a sea installation is in or out of his or her living quarters: the inspector or officer should at least be required to make reasonable efforts to obtain the occupier's consent before entering. On the other hand, given that the failure of the occupier to consent operates as a complete bar to entry by the inspector or officer and that no avenue is provided in the legislation by which this might be overcome (for example by way of a judicial warrant), it may be questioned whether the right to enter living quarters is necessary at all.

The Committee therefore draws clauses 56 and 65 to the attention of Senators in that, by providing for the entry into persons' private accommodation on board sea installations without their consent and without any form of judicial authorisation, they 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.

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#### SEA INSTALLATIONS LEVY BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister Representing the Minister for Arts, Heritage and Environment.

The Bill is part of a package of Bills to provide for a scheme to regulate the operation of certain offshore sea installations.

It provides for a levy to be paid to the Commonwealth by a permit holder in relation to the operation of a sea installation. This will ensure that the administrative costs of the States and Territories are met, and that general revenue can benefit, as it would if similar installations were located on the mainland. The levy is expressed as a percentage of a valuation of the installation. The valuation of the installation will be calculated annually in accordance with valuation practice by officers of the Australian Taxation Office. Decisions will be subject to review by the Administrative Appeals Tribunal.

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

#### Sub-clause 8(1) - Inappropriate delegation of legislative power

Sub-clause 8(1) provides that the rate of levy imposed on sea installations is to be such percentage of the value of the installation as is declared by the regulations. No ceiling is set on the percentage which may be declared. The Committee has consistently argued that Parliament should not delegate its taxing powers lightly and that if the rate of a levy is to be fixed by regulations the empowering statute should at least set a maximum on the rate of levy which may be imposed: see most recently the Committee's comment on clause 10 of the Dairy Produce Levy (No.1) Bill 1986 in its Ninth Report of 1986.

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The Committee therefore draws sub-clause 8(1) 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.

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SEA INSTALLATIONS (MISCELLANEOUS AMENDMENTS) BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister for Arts, Heritage and Environment.

The Bill makes amendments to Commonwealth legislation necessitated by the sea installations legislative package.

The Customs Act 1901 and the Excise Act 1901 are amended to give to officers administering the respective Acts power over such installations, and ships, aircraft, persons and goods arriving with or at the installations or departing overseas from such installations.

The Migration Act 1958 is amended to identify the point when sea installations and the persons on board enter Australia and when such installations become or cease to be part of Australia.

The amendments to the Quarantine Act 1908 apply a wide range of controls under the Act to sea installations. The principal control is to make newly arrived installations, persons and goods on the installations subject to quarantine.

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

Clause 12 -

New sub-section 58A(6) - Reversal of the onus of proof

Clause 12 would insert a new section 58A in the Customs Act 1901 creating an offence where a person travels from an external place to a sea installation or vice versa without the opportunity for questioning in Australia for the purposes of the Customs Act 1901 or where goods are brought from an external place to a sea installation or sent from a sea installation to an external place without being available for examination in Australia for the

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purposes of the Act. New sub-section 58A(6) provides that it is a defence if the journey because of which the offence would have been committed:

- (a) was necessary to secure the safety of, or appeared to be the only way of averting a threat to, human life;
- (b) was necessary to secure, or appeared to be the only way of averting a threat to, the safety of a ship at sea, of an aircraft in flight or of a sea installation; or
- (c) was authorised in writing by a Collector, and was carried out in accordance with the conditions (if any) specified in that authorisation.

Objection may be taken to the clause on two grounds. First, like sub-clauses 12(2) and 52(4) of the Sea Installations Bill 1987 to which attention was drawn above, new sub-section 58A(6) imposes upon the accused the burden of proving the relevant matters by way of defence. The Senate Standing Committee on Constitutional and Legal Affairs recommended in its Report, The Burden of Proof in Criminal Proceedings (Parliamentary Paper No.319/1982), that the burden of establishing a defence (the persuasive onus) should not be placed upon defendants in criminal proceedings but rather that they should merely be required to bear an evidential onus, that is, the onus of adducing evidence of the existence of a defence, the burden of negating which will then be borne by the prosecution.

Secondly, the decision to authorise a journey which would otherwise result in a contravention of new section 58A rests entirely in the discretion of the Collector and this decision is not reviewable otherwise than as to its legality pursuant to the Administrative Decisions (Judicial Review) Act 1977. Given that paragraph 58A(6)(c) discloses no objective criteria for the grant of authorisation by a Collector and imposes no restrictions on

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the conditions which may be imposed, the right of review in respect of the legality of the decision would be very limited indeed.

The Committee therefore draws new sub-section 58A(6) to the attention of Senators both because by imposing the persuasive onus of proof on the defendant it may be considered to trespass unduly on personal rights and liberties and because by giving such an unfettered discretion to Collectors without a corresponding right to seek review of their decisions on the merits it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

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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## SHIPS (CAPITAL GRANTS) BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister for Transport.

The Bill provides an incentive for the introduction of modern technologically advanced ships to the Australian fleet. The incentive is in the form of a taxable grant of 7% of the capital cost of eligible ships.

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

### Sub-clause 6(2) and paragraph 7(1)(c) - Inappropriate delegation of legislative power

The Bill provides for grants to be paid to shipowners subject to certain preconditions, in particular that there is a category certificate in respect of the ship concerned and that the shipowner intends to do all things reasonable to ensure that the number of the ships crew on a voyage will not exceed the maximum crew number for that voyage. A category certificate may specify more than one category and maximum crew numbers are to be set for each category. Sub-clause 6(1) specifies three particular categories - tankers on foreign voyages, tankers on domestic voyages and non-tankers on voyages - and sub-clause 6(2) provides that the regulations may declare further categories in respect of specified ships or classes of ships on specified voyages or voyages generally. Paragraphs 7(1)(a) and (b) set maximum crew numbers for the categories specified in sub-clause 6(1) and paragraph 7(1)(c) provides that the maximum crew numbers for other categories are to be prescribed by the regulations.

The Minister's Second Reading speech indicates that new categories of ships will only rarely be created by regulations and that in such cases maximum crew numbers well below the usual

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levels set by paragraphs 7(1)(a) and (b) would apply. However the power to prescribe new categories and to set new maximum crew numbers is open-ended and could also be used to undermine the stated intention of the legislation to reduce present crewing levels. Given the importance of the concepts to the whole legislative scheme the Committee draws sub-clause 6(2) and paragraph 7(1)(c) to the attention of Senators in that by permitting these elements to be varied by regulations they may be considered to constitute inappropriate delegations of legislative power.

Paragraphs 18(1)(e) and (2)(f) - Inappropriate delegation of legislative power

Sub-clauses 18(1) and (2) provide that, if the Secretary forms the opinion that the price paid for a ship or for the conversion of a ship respectively is incorrect or unduly high or, by virtue of paragraph (1)(e) or (2)(f), 'is an unreasonable price because of a prescribed reason', the Secretary may determine an appropriate price for the purposes of the Act. In an appeal in relation to an amount of grant the Administrative Appeals Tribunal may review a determination made by the Secretary under sub-clause 18(1) or (2).

It is quite usual in bounty legislation to provide for the adjustment of the cost of items in respect of which bounty is payable if the cost is considered excessive for some reason - see for example section 8 of the Bounty (Ship Repair) Act 1986 - but it is unusual to provide, as in paragraphs 18(1)(e) and (2)(f), for the open-ended extension of the reasons for which a price may be determined to be unreasonable. If the reasons set out in paragraphs 18(1)(a) - (d) and (2)(a) - (e) are considered insufficient in themselves it would, in the Committee's view, be more appropriate simply to add a further category to the effect that the price 'is an unreasonable price' rather than to leave to the regulations the addition of further reasons for the exercise of the power to determine an appropriate price.

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The Committee therefore draws paragraphs 18(1)(e) and (2)(f) to the attention of Senators in that by so permitting the reasons for which the Secretary may determine a new price for a ship or the conversion of a ship to be extended by regulations they may be considered to constitute 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.

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#### SUGAR CANE LEVY BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister for Transport.

The Bill, with its companion Bill (the Sugar Cane Levy Collection Bill 1987), are similar in content to Research Acts already in operation for other rural industries. The Bill provides for the imposition and collection of a levy on growers and millers of sugar cane to finance the Research Scheme. The levy will be applied to sugar cane delivered and accepted by a raw sugar mill for milling on or after 1 June 1987.

The initial rate of the levy will be set at \$0.05/tonne with provision for the rate to be varied to a maximum of \$0.10/tonne. The levy is to be paid 50 per cent by the grower and 50 per cent by the mill.

The necessary administrative and organisational arrangements for this scheme will be established under the Rural Industries Research Act 1985.

The Committee has no comments on this Bill.

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

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SUGAR CANE LEVY COLLECTION BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Minister for Transport.

The Bill is to provide the machinery necessary for collecting the levy imposed by the Sugar Cane Levy Bill 1987. The Bill specifies the liability of growers and millers under the scheme, outlines penalties for non-compliance and provides appropriate powers of enforcement.

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

Sub-clause 12(2) - Self incrimination

Sub-clause 12(2) provides that a person is not excused from submitting a return or providing information that the person is required by or under the Act or the regulations to submit or provide on the ground that the return or the information might tend to incriminate the person. The sub-clause also contains the proviso that any return or information so submitted is not to be admissible against the person in criminal proceedings (other than proceedings relating to the refusal or failure to furnish a return or the provision of false or misleading returns) or proceedings for the recovery of a penalty for non-payment of the levy.

This proviso, which used to be the standard form of such provisions, only protects the person required to give self-incriminating information against the use in any subsequent proceedings of the actual return or information so provided. By contrast the more recent form used in Commonwealth legislation extends the protection to any information or thing acquired as a direct or indirect consequence of the person being required to give the incriminating information: see, for example, sub-section

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27(4) of the Disability Services Act 1986. The Committee therefore draws sub-clause 12(2) to the attention of Senators in that by removing the privilege against self incrimination and by failing to provide protection against the use in subsequent proceedings of evidence arising out of the return or information that the person is so required to submit or provide 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.

TAXATION LAWS AMENDMENT (COMPANY DISTRIBUTIONS) BILL 1987

This Bill was introduced into the House of Representatives on 2 April 1987 by the Treasurer.

The Bill provides for the elimination of the double taxation of company dividends. It amends the income tax law to introduce, with effect from 1 July 1987, the full imputation system of company tax announced on 10 December 1986. Under the imputation system, dividends paid by Australian companies will be relieved from tax in the hands of resident individual shareholders by a rebate to the extent to which tax has been paid at the corporate level.

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

Clauses 7 and 8 - Retrospectivity

Clause 7 inserts a new section 46D in the Income Tax Assessment Act 1936 which will deny to a company the intercorporate dividend rebate which would otherwise be payable under section 46 or 46A in respect of a dividend paid to the company after 1 pm on 10 December 1986 (the commencing time) where the dividend is paid in respect of a share issued, or under a finance arrangement entered into, after the commencing time and the payment of the dividend may be regarded as equivalent to the payment of interest on a loan. Clause 8 inserts a new sub-section 47(1A) in the same Act which will bring within sub-section 47(1) - which provides for distributions to shareholders by a liquidator in the course of winding up a company to be treated as dividends paid to the shareholders where the distributions represent income derived by the company - amounts not falling within the ordinary meaning of income but included in the assessable income of the company including capital gains. By virtue of sub-clause 18(2) the new sub-section 47(1A) will generally apply only to distributions

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made in the course of a winding up which commenced after 1 pm on 10 December 1986 but by virtue of sub-clause 18(3) it will also apply to any distributions made after that time in the course of an informal winding up - that is, where the business of a company has been or is in the course of being, discontinued, otherwise than in the course of a winding up under the companies law - irrespective of when the informal winding up may be said to have commenced.

Both these clauses implement changes to the law which were announced by the Treasurer by way of a press release issued in Canberra at 1 pm on 10 December 1986. Once again the Committee has occasion to draw attention to the practice of the Taxation Office of making legislation retrospective to the date of the announcement of the proposal to change the law. As it has commented on numerous occasions - most recently in relation to the Taxation Laws Amendment Bill (No.5) 1986 in its Second Report of 1987 (25 February 1987) - this practice carries with it the assumption that citizens should arrange their affairs in accordance with announcements made by the Executive rather than in accordance with the laws made by Parliament. The practice treats the passage of the necessary retrospective legislation 'ratifying' the announcement as a pure formality.

The Committee has noted in the past that it recognises the special convention associated with retrospective legislation making changes to the taxation laws where these changes were announced to the Parliament in the Budget or in similar statements and the necessary legislation is retrospective to the date of that announcement, the reason for such retrospectivity being that taxpayers might otherwise take advantage of the foreknowledge provided by the announcement. The Committee has also indicated that there may be a case for retrospective legislation where an announcement is made that a particular avenue for tax minimisation which has been abused is to be closed off and the subsequent legislation is backdated to the day of that announcement. Even in such circumstances the retrospectivity

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involved should in the Committee's view be kept to the minimum necessary to prepare the relevant legislation and the Committee would, as a matter of course, draw the retrospectivity to the attention of Senators. However it appears that no such justification is advanced in the present case. Instead it would seem that the Taxation Office has simply decided that a change to the law is desirable and, rather than proceeding by introducing legislation into the Parliament and providing for the change to take effect from the date of that introduction, it has followed what seems fast to be becoming its customary practice and has arranged for the announcement of the change to be made on 10 December 1986 with the necessary legislation to follow, in this case some four months after the change is supposed to have taken effect. The Committee notes that the announcement in question was the subject of a statement of the President of the Law Council of Australia, Daryl Williams Q.C., on 19 December 1986 in which he stated, in respect of the proposed amendment relating to company liquidations:

'The Law Council can see no justification for imposing a tax liability suddenly in this way - particularly as it is in an area in which the Government does not stand to lose revenue as a result of not acting promptly.'

The Committee concurs in the view of the Law Council. It is concerned at the use of announcements by way of press release as de facto changes to the law. It is particularly concerned that it is apparently becoming the practice of the Taxation Office to use this method of changing the law as a matter of course and it is especially concerned about the use of this mechanism in the present case because it would appear not to be justified by the nature of the changes involved. Accordingly the Committee draws clauses 7 and 8 to the attention of Senators in that by their retrospective application they 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. 7 OF 1987

6 MAY 1987

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*Kenny Cowd*

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R.A. Crowley, Chair  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator J.P. McKiernan  
Senator J. Newman

TERMS OF REFERENCE

Extract

- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable 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 Meat and Live-stock Industry Legislation  
Amendment Bill 1987

Broadcasting (Ownership and Control) Bill 1987

Customs Tariff Amendment Bill 1987

Customs (Valuation) Amendment Bill 1987

Excise Tariff Amendment Bill 1987

Export Inspection Charges Collection Amendment Bill 1987

Export Inspection (Establishment Registration Charges)  
Amendment Bill 1987

Live-stock Export Charge Amendment Bill 1987

Live-stock Slaughter Levy Amendment Bill 1987

Mutual Assistance in Criminal Matters Bill 1987

Mutual Assistance in Criminal Matters (Consequential  
Amendments) Bill 1987

Proceeds of Crime Bill 1987

Proceeds of Crime (Miscellaneous Amendments) Bill 1987

States Grants (Education Assistance - Participation and  
Equity) Amendment Bill 1987

States Grants (Schools Assistance) Amendment Bill 1987

States Grants (Tertiary Education Assistance) Amendment Bill  
1987

Statute Law (Miscellaneous Provisions) Bill (No. 1) 1987

Telecommunications (Interception) Amendment Bill 1987

Wool Marketing Bill 1987

Wool Tax (No. 1) Amendment Bill 1987

Wool Tax (No. 2) Amendment Bill 1987

Wool Tax (No. 3) Amendment Bill 1987

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Wool Tax (No. 4) Amendment Bill 1987

Wool Tax (No. 5) Amendment Bill 1987

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.

AUSTRALIAN MEAT AND LIVE-STOCK INDUSTRY LEGISLATION AMENDMENT  
BILL 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Minister for Science.

The Bill will make a number of amendments to legislation affecting Australia's meat and live-stock industry, namely -

- . The Australian Meat and Live-stock Corporation Act 1977;
- . The Australian Meat and Live-stock Research and Development Corporation Act 1985;
- . The Australian Meat and Live-stock Industry Policy Council Act 1984; and
- . The Australian Meat and Live-stock Industry Selection Committee Act 1984.

This Bill is associated with the Live-stock Slaughter Levy Amendment Bill 1987 and the Live-stock Export Charge Amendment Bill 1987.

The Bill will streamline the operations of meat and live-stock councils and formalise consultation processes within the industry in the councils' corporate planning.

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 (OWNERSHIP AND CONTROL) BILL 1987

This Bill was introduced into the House of Representatives on 29 April 1987 by the Minister for Communications.

The Bill is to amend the Broadcasting Act 1942 in order to repeal the thirty year old "two station rule" governing the ownership of commercial television and replace it with:

- . a "75% reach rule" which will allow persons to hold prescribed interests in any number of commercial television licences so long as the combined population of their service areas does not exceed seventy-five percent of the Australian population;
- . limits on cross-ownership between television and newspapers and television and radio within the service area of the related commercial television licence.

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

Sub-clause 22(2) - Retrospectivity

Sub-clause 22(2) provides that paragraph 92(1)(a) of the Principal Act does not apply in relation to the holding of prescribed interests in commercial television licences on or after 28 November 1986 and before the commencement of clause 22. Clause 3 defines the Principal Act as the Broadcasting Act 1942. Paragraph 92(1)(a) presently embodies the 'two station rule' but will, following the amendment to be made by paragraph 22(1)(a) of the present Bill, embody the new '75% reach rule'.

In the view of the Committee sub-clause 22(2) is ambiguous. It may be read either as providing that persons who acquired interests in contravention of the two station rule between

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28 November 1986 and the present are not to be taken to have been in breach of paragraph 92(1)(a) as in force before the commencement of paragraph 22(1)(a) of the present Bill or as providing that persons who have acquired interests in contravention of the 75% reach rule during that period are not to be taken to have been in breach of paragraph 92(1)(a) as amended by paragraph 22(1)(a) of the present Bill. The Explanatory Memorandum indicates that the latter interpretation is the correct one although it compounds the ambiguity by referring to paragraph 22(1)(a) of the Bill rather than paragraph 92(1)(a) of the Principal Act. However it is difficult to see what scope there would be for the operation of the sub-clause if the latter interpretation is correct since, so far as the Committee is aware, no person holds interests approaching the 75% limit at the present time. The Committee suggests that the alternative interpretation is equally tenable, particularly in light of sub-clause 2(4) which provides that the provisions of the Bill may be brought into effect on different days. The correct interpretation of sub-clause 22(2) could thus depend on whether it is brought into operation at the same time as sub-clause 22(1) or at some time prior to the commencement of that provision.

The ambiguity identified by the Committee could be simply overcome by amending sub-clause 22(2) so that it refers expressly to paragraph 92(1)(a) of the Principal Act as re-enacted by paragraph 22(1)(a). The Committee therefore draws sub-clause 22(2) to the attention of Senators in that by reason of this ambiguity, and the potential retrospectivity which it may create, 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.

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CUSTOMS TARIFF AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 29 April 1987 by the Minister Representing the Minister for Industry, Technology and Commerce.

The Bill contains a number of amendments to the Customs Tariff Act 1982. Two clauses in the Bill contain actual amendments to the Customs Tariff Act 1982 but the main amendments are contained in the Bill's twelve Schedules.

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 (VALUATION) AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 29 April 1987 by the Minister Representing the Minister for Industry, Technology and Commerce.

The Bill proposes amendments to the provisions governing the valuation of imported goods in the Customs Act 1901. Those provisions are designed to give effect to the GATT valuation code to which Australia is a signatory. Since the enactment of those provisions, certain practices have emerged which are designed solely or predominantly to understate the value of imported goods and thereby to minimise or avoid duty. The purpose of the Bill is to combat these practices.

The Committee has no comments on this Bill.

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

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EXCISE TARIFF AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 29 April 1987 by the Minister Representing the Minister for Industry, Technology and Commerce.

The Bill proposes amendments to the Excise Tariff Act 1921 to incorporate into that Act all excise tariff proposals tabled in this Parliament as at 1 April 1987.

The majority of the amendments at Clauses 5 to 11 of the Bill involve alterations that have occurred since 1 October 1986 to the excise duty on certain refined petroleum products and naturally occurring L.P.G.

The Committee has no comments on this Bill.

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

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EXPORT INSPECTION CHARGES COLLECTION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Minister for Science.

The Bill is to amend the Export Inspection Charges Collection Act 1985 and complements the amendments included in the Export Inspection (Establishment Registration Charges) Amendment Bill 1987.

The principal purpose of the Bill is to enable the establishment registration charge to be payable at times that would reflect the nature of the charges for establishments having continuous registration. The Bill will also replace a provision describing the time within which various charges are to be payable, so as to leave that detail to be specified in regulations.

The Committee has no comments on this Bill.

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

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EXPORT INSPECTION (ESTABLISHMENT REGISTRATION CHARGES) AMENDMENT  
BILL 1987

This Bill was introduced into the House of Representatives on  
30 April 1987 by the Minister for Science.

The Bill is to amend the Export Inspection (Establishment  
Registration Charge) Act 1985 to enable establishment  
registration charge to be imposed both upon and during  
registration. The amendment will permit the introduction of a new  
system of continuous, or perpetual, registration for  
establishments preparing food for export.

The Bill is associated with the Export Inspection Charges  
Collection Amendment Bill 1987.

The Committee has no comments on this Bill.

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

LIVE-STOCK EXPORT CHARGE AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Minister for Science.

The Bill is to increase the maximum rates of export charge that may be imposed under the Live-stock Export Charge Act 1964 on the export of cattle, sheep, lambs, buffaloes and goats from Australia.

The Committee has no comments on this Bill.

LIVE-STOCK SLAUGHTER LEVY AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Minister for Science.

The Bill is to increase the maximum rates of levy that may be imposed under the Live-stock Slaughter Levy Act 1964 on the slaughter at an abattoir of cattle, sheep, lambs, buffaloes, goats, calves and bobby calves for human consumption.

The Committee has no comments on this Bill.

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MUTUAL ASSISTANCE IN CRIMINAL MATTERS BILL 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Attorney-General.

The Bill was first introduced on 22 October 1986. It has now been re-introduced in a substantially amended form. The most important of these amendments enable Australia to provide, and request, assistance concerning freezing and forfeiture of the proceeds of crime.

This Bill will provide a legislative basis for Australia to enter into arrangements with other countries whereby it can request and grant assistance in criminal matters. The assistance will relate both to the investigation and prosecution of crime.

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

Sub-clause 7(2) - 'Henry VIII' clause

Sub-clause 7(1) states that the regulations may provide that the Act applies to a foreign country specified in the regulations. Sub-clause 7(2) provides that the regulations may:

- (a) state that the Act applies to a foreign country subject to such limitations, conditions, exceptions or qualifications as are necessary to give effect to a bilateral mutual assistance treaty between Australia and that country; or
- (b) make provision instead to the effect that the Act applies subject to other limitations, conditions, exceptions or qualifications.

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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Because it would permit the operation of the Act to be modified by regulations in respect of particular countries sub-clause 7(2) may be characterised as a 'Henry VIII' clause and as such the Committee draws it to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

Clause 34 - Enforcement of foreign orders

Clause 34 provides that where a foreign country requests the Attorney-General to make arrangements for the enforcement of a foreign forfeiture order or a foreign pecuniary penalty order and the Attorney-General is satisfied that a person has been convicted of the offence in respect of which the order is sought and that the conviction and the order are not subject to further appeal in the foreign country, the Attorney-General may authorise the Director of Public Prosecutions to apply for registration of the order in a court. A foreign order once registered may be enforced as if it were a forfeiture order or pecuniary penalty order under the proposed Proceeds of Crime Act.

The Committee is concerned that the clause may make rights in Australia unduly dependent upon judicial action in a foreign country and the purely administrative act of registration. By contrast for the enforcement of a foreign civil judgement in this country, the judgement creditor must satisfy a local court that, for example, the foreign court had sufficient 'international' jurisdiction and that the judgement was not obtained by fraud. None of these safeguards are imposed by clause 34.

The Committee therefore draws clause 34 to the attention of Senators in that by providing for the enforcement of foreign judgements in Australian courts without requiring that the courts be satisfied that the conviction and order in question were properly obtained 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.

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MUTUAL ASSISTANCE IN CRIMINAL MATTERS (CONSEQUENTIAL AMENDMENTS)  
BILL 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Attorney-General.

The Bill was first introduced on 22 October 1986. It has now been re-introduced in an amended form. It amends various Commonwealth Acts as a consequence of provisions in the Mutual Assistance in Criminal Matters Bill 1987. The amendments will -

- . enable the Director of Public Prosecutions to appear and grant indemnities in proceedings under the proposed Mutual Assistance in Criminal Matters Act 1987;
- . repeal provisions in the Australian extradition legislation in relation to the taking of evidence for the purposes of criminal proceedings overseas since the substance of those provisions are now to be included in the Mutual Assistance in Criminal Matters Act 1987; and
- . make provision for the entry into Australia and departure of persons who are non-citizens whose presence is required for purposes connected with the proposed Mutual Assistance in Criminal Matters Act 1987.

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

Clause 3 - Schedule - Migration Act 1958 -  
New sub-section 11AB(1) - Delegation

Clause 3 would amend the Acts specified in the Schedule as set out in the Schedule. In particular it would amend the Migration Act 1958 by inserting a new section 11AB providing for the grant

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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of a visa to a person where, in accordance with sub-section 11AB(1), the Secretary to the Attorney-General's Department, 'or a person authorised by that Secretary', issues a certificate stating that the presence of the person in Australia is required for purposes connected with the proposed Mutual Assistance in Criminal Matters Act 1987. The unrestricted delegation of the power to issue certificates contemplated by sub-section 11AB(1) contrasts with the power to grant certificates under new sub-section 18A(3) which is to be restricted to the Secretary to the Department of Immigration and Ethnic Affairs or an officer of that Department authorised by the Secretary.

The Committee has been critical of powers of delegation such as that in new sub-section 11AB(1) which impose no limitation, and give no guidance, as to the attributes of the persons to whom a delegation may be made. The Committee therefore draws the provision to the attention of Senators in that it may be considered to make 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.

PROCEEDS OF CRIME BILL 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Attorney-General.

The Bill has five purposes. The principal purpose is to permit a court to grant orders for the freezing and confiscation of property used in, or derived directly or indirectly from, the commission of an indictable offence against a law of the Commonwealth, or of a Territory (other than the Northern Territory). In addition the Bill:-

- . provides for the registration in Territory courts of orders for freezing and confiscation of property made under corresponding State laws and which relate to property located in the Territory;
- . provides for the enforcement of foreign freezing and confiscation orders which relate to property in Australia and in respect of which relevant procedures under the Mutual Assistance in Criminal Matters Act 1987 have been complied with;
- . confers on police new powers to facilitate the following of the money trail and to require financial institutions to preserve their records to maintain the money trail;
- . creates new offences of money laundering and organised fraud.

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

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

Sub-clause 82(2) - Reversal of the onus of proof

Sub-clause 82(1) creates an offence where a person receives, possesses, conceals, disposes of or brings into Australia any money or other property that may reasonably be suspected of being proceeds of crime. Although the offence therefore does not require that the person in question knew or ought reasonably to have known that the money or other property constituted proceeds of crime, sub-clause 82(2) provides a defence where the person satisfies the court that he or she had no reasonable grounds for suspecting that the property in question was derived or realised, directly or indirectly, from some form of unlawful activity.

The Senate Standing Committee on Constitutional and Legal Affairs recommended in its Report, The Burden of Proof in Criminal Proceedings (Parliamentary Paper No.319/1982), that the burden of establishing a defence (the persuasive onus) should not be placed on defendants but rather that they should merely be required to bear an evidential onus, that is, the onus of adducing evidence of the existence of a defence, the burden of negating which will then be borne by the prosecution. Thus, in the present case, the defendant could be required to adduce evidence - rather than to satisfy the court - that he or she had no reasonable grounds for suspecting that the property in question was derived or realised, directly or indirectly, from unlawful activity.

The Committee therefore draws sub-clause 82(2) to the attention of Senators in that by imposing the persuasive burden of proof upon the defendant it may be considered to trespass unduly on personal rights and liberties.

PROCEEDS OF CRIME (MISCELLANEOUS AMENDMENTS) BILL 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Attorney-General.

The Bill is complementary to the Proceeds of Crime Bill 1987. It will amend certain Commonwealth Acts as a consequence of the Proceeds of Crime Bill 1987 and increase penalties for certain offences so as to ensure consistency with the penalties created in the Proceeds of Crime Bill 1987.

The Committee has no comments on this Bill.

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STATES GRANTS (EDUCATION ASSISTANCE - PARTICIPATION AND EQUITY)  
AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 29 April 1987 by the Minister Representing the Minister for Education.

The Bill will amend the States Grants (Education Assistance - Participation and Equity) Act 1983 to supplement for cost increases the grants available to government and non-government education authorities in the States and the Northern Territory to conduct projects and programs under the Participation and Equity Program (PEP) in 1987. The financial impact of this Bill will be to provide an additional \$1.097 million in 1987. Total provision for the Participation and Equity Program is \$45,819,000 in 1987.

The Committee has no comments on this Bill.

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

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STATES GRANTS (SCHOOLS ASSISTANCE) AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 29 April 1987 by the Minister Representing the Minister for Education.

The Bill will amend the States Grants (Schools Assistance) Act 1984 to: -

- . supplement existing financial provisions relating to the 1987 and 1988 calendar years to take into account increases in price levels;
- . enable capital grants for non-government schools in 1988 and subsequent years to be allocated as a block grant for distribution by approved block grant authorities;
- . ensure that full fee paying private overseas secondary students will not be eligible for general recurrent grants; and
- . make a technical amendment to enable alterations to be made to the list of schools.

The total amount of supplementation to be provided by this Bill is \$18 million in 1987 and \$9 million in 1988.

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

Clause 3 - Inappropriate delegation of legislative power

Clause 3 would insert a definition of a 'full fee paying private overseas secondary student' as a student of a kind declared by the regulations to be such a student. Such students are to be

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

disregarded in calculating student numbers for the purpose of general recurrent grants and the definition will therefore have a significant impact on the total money expended in grants under the Act.

The Committee suggests that in consequence the definition should be set out in the Act, rather than being left to regulations, and accordingly draws the definition to the attention of Senators in that it may be considered to be an inappropriate delegation of legislative power.

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STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 29 April 1987 by the Minister Representing the Minister for Education.

The Bill will adjust tertiary education grants to the States and the Northern Territory by amending the States Grants (Tertiary Education Assistance) Act 1984, which provides grants to the States and the Northern Territory for universities, colleges of advanced education, institutes of tertiary education and technical and further education for the triennium 1985-87.

The Bill will supplement recurrent grants for university academic salaries and for the advanced education and TAFE sectors in accordance with the Government's agreed procedures. Capital and equipment grants will also be adjusted.

The total amount of supplementation to be provided by this Bill is \$78.281 million.

The Committee has no comments on this Bill.

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

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STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO.1) 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Attorney-General.

The Bill continues the practice of introducing an omnibus Bill into each sitting of the Parliament as an expeditious way of making a large number of non-contentious amendments to legislation not otherwise being amended.

Some of the amendments made by this Bill tidy up, correct and up-date existing legislation. Other amendments are of minor policy significance or are matters of routine administration. The Bill amends 76 Acts and repeals 24.

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

Clause 3 - Schedule 1 -

Anglo - Australian Telescope Agreement Act 1970 -

New sub-section 8A(1) - Inappropriate delegation of legislative power

Clause 3 would amend the Acts specified in Schedule 1 as set out in that Schedule. In particular it would insert in the Anglo-Australian Telescope Agreement Act 1970 a new sub-section 8A(1) providing that additional functions may be conferred on the Anglo-Australian Telescope Board by regulations. The Board is presently limited in its functions to the operation and management of the Anglo-Australian Telescope in accordance with the Agreement.

The Committee considers that if the functions of the Board are to be extended beyond those conferred by its establishing statute then this should be done by way of amendment to the Act rather

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than by way of regulations. The Committee therefore draws new sub-section 8A(1) to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

Wine Grapes Levy Collection Act 1979 -  
New sub-section 10(2) - Self incrimination

Clause 3 would also insert a new sub-section 10(2) in the Wine Grapes Levy Collection Act 1979 providing that a person is not excused from furnishing a return or information that the person is required under the Act or the regulations to furnish on the ground that the return or information might tend to incriminate the person. The new sub-section also contains the proviso that any such return or information so furnished is not to be admissible against the person in criminal proceedings (other than proceedings related to the failure to furnish a return or information or the furnishing of a false or misleading return) or proceedings for the recovery of a penalty for non-payment of the levy.

This proviso, which used to be the standard form of such provisions, only protects the person required to give self-incriminating information against the use in subsequent proceedings of the actual return or information so provided. By contrast the more recent form used in Commonwealth legislation extends the protection to any information or thing acquired as a direct or indirect consequence of the person being required to give the incriminating information: see, for example, sub-section 27(4) of the Disability Services Act 1986. The Committee therefore draws new sub-section 10(2) to the attention of Senators in that by removing the privilege against self-incrimination and by failing to provide protection against the use in subsequent proceedings of evidence arising out of the return or information that the person is so required to furnish 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 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Attorney-General.

The Bill is designed to -

- . extend existing telecommunications interception powers of the Australian Federal Police in respect of certain Commonwealth narcotic offences to cover a wider category of serious offences;
- . allow the National Crime Authority to seek the issue of an interception warrant in respect of an offence in relation to which the Authority is conducting a special investigation within the meaning of its Act and other serious offences; and
- . enable the police force - and in the case of New South Wales, the State Drug Crime Commission - of any State or the Northern Territory to seek the issue of interception warrants in respect of serious offences.

The Bill imposes stringent safeguards on the use of interception powers. Those safeguards include a requirement for judicial warrants, provisions for the auditing by an independent authority of interception activities and of compliance with State laws and the requirements of the Telecommunications (Interception) Act, and provisions regulating the use, disclosure and destruction of intercepted information. Information obtained in contravention of the Act will be inadmissible in evidence in any court, except for the purpose of establishing the contravention.

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

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

Clause 21 -

New sub-section 61(2) - Conclusive evidentiary certificates

Clause 21 inserts new Parts VI, VII, VIII, IX, X, and XI in the Act. New sub-section 10(2) would provide that a certificate issued by the Managing Director of Telecom setting out the relevant facts with respect to acts or things done by, or in relation to, officers of the Commission in order to enable a warrant authorising the interception of telecommunications to be executed is to be conclusive evidence of the matters stated in the certificate in exempt proceedings (broadly prosecutions for class 1 or class 2 offences under the Act as proposed to be amended or any other offences punishable by imprisonment for at least 3 years).

The new provision replaces section 25A (to be repealed by clause 18) to which the Committee drew attention in its Seventh Report of 1985. The Committee also commented on a similar provision, new section 6C, proposed to be inserted by the Telecommunications (Interception) Amendment Bill 1986, in its Alert Digest No. 11 of 1986. The Committee stressed in those comments that whereas prima facie evidentiary certificates as to purely formal matters were acceptable, conclusive certificates deprived the defendant in criminal proceedings of the opportunity to challenge elements of the evidence brought against him or her. The Attorney-General responded to the Alert Digest comment as follows:

'Evidentiary certificate provisions of this kind were first introduced into the Telecommunications (Interception) Act 1979 in 1985 (as s.25A) in recognition of the need to protect Telecom employees and their families against the possibility of violent reprisals if the employees were forced to give evidence in public in drug offence cases. The justification for such certificates was thus accepted by the Parliament

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in enacting s.25A of the Act. The new s.6C merely extends the effect of s.25A to cover warrants issued to State police and the National Crime Authority.

Proving the actions of Telecom by certificate would not conflict with the recommendations of the Senate Standing Committee on Constitutional and Legal Affairs. That Committee has taken the view that Parliament should enact legislation to ensure that averment provisions are only resorted to by prosecutors where the matter which the prosecution is required to prove is formal and does not relate to any conduct on the part of the defendant.'

However the Senate Standing Committee on Constitutional and Legal Affairs in its Report on The Burden of Proof in Criminal Proceedings (Parliamentary Paper No.319/1982) used the term 'averment provision' to refer to prima facie evidentiary certificates and not conclusive certificates (see paragraph 7.1 of that Report). The Committee did not consider conclusive certificates as such but, as noted in the paper on The Operation of [this Committee] 1981-1985, presented to a conference in Adelaide in August 1985 by the then Chairman, Senator the Hon. M.C. Tate (Parliamentary Paper No.317/1985), the logical corollary of the views the Constitutional and Legal Affairs Committee advanced with regard to the imposition of the persuasive burden of proof on defendants in criminal proceedings is that it would have regarded as totally unacceptable the removal of particular issues in criminal proceedings from examination by the courts in their entirety.

The Committee therefore draws new sub-section 61(2) to the attention of Senators in that by so removing the facts stated in the certificate from the scrutiny of the court in criminal proceedings 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.

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New section 64 - Use of unlawfully obtained information

New section 64 would enable information obtained by intercepting a communication in contravention of sub-section 7(1) of the Act to be used in a proceeding begun before the commencement of new Part VII. In proceedings begun after that date information obtained in contravention of the Act will be inadmissible except to establish the contravention. According to the Second Reading speech, new section 64 has been included because it is not intended to prejudice proceedings that have been commenced before the legislation comes into operation. However in the view of the Committee defendants in current proceedings should not be deprived of the benefit of the change to the law effected by this Bill to the extent that it is to their advantage.

The Committee therefore draws new section 64 to the attention of Senators in that by permitting the continued use of information obtained by the unlawful interception of telecommunications it may be considered to trespass unduly on personal rights and liberties.

New sub-sections 88(2), (3) and (4) - Failure to stipulate reasonable time and place

New sub-sections 88(2), (3) and (4) provide that the Ombudsman may require an officer of an agency whom the Ombudsman has reason to believe is able to give information relevant to an inspection of the agency's records:

- . to give the information to the Ombudsman at a specified place and within a specified period; or
- . to attend before an inspecting officer at a specified place and within a specified period or at a specified time on a specified day to answer questions.

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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In no case is it stipulated that the period specified or the time, day or place specified must be reasonable.

As the Committee has stated previously in regard to similar provisions, it does not believe that the defence of reasonable excuse for non-compliance (here contained in new sub-section 108(1)) has the same effect as a positive requirement that the periods within which, and times and places at which, the information is to be provided must be reasonable. The Committee therefore draws new sub-sections 88(2), (3) and (4) to the attention of Senators in that by failing to stipulate that the periods, times and places must be reasonable it may be considered to trespass unduly on personal rights and liberties.

New sub-section 89(1) - Self incrimination

New sub-section 89(1) provides that a person is not excused from giving information, answering a question or giving access to a document as required under new Part VIII on the ground that to do so might tend to incriminate the person. The new sub-section also contains the proviso that the information, the answer or the fact that the person has so given access to the document is not to be admissible in evidence against the person except in a prosecution for an offence relating to the failure to attend before an inspecting officer, to furnish information or to answer questions as required.

This proviso only protects the person required to give self-incriminating information against the use in subsequent proceedings of the actual information, answer or document given. By contrast the more recent form of such provisions in Commonwealth legislation extends the protection to any information or thing acquired as a direct or indirect consequence of the person being required to give the incriminating information: see, for example, sub-clause

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66(13) of the Proceeds of Crime Bill 1987. The Committee therefore draws new sub-section 89(1) to the attention of Senators in that by removing the privilege against self incrimination and by failing to provide protection against the use in subsequent proceedings of evidence arising out of the information required to be provided 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.

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WOOL MARKETING BILL 1987

This Bill was introduced into the House of Representatives on 30 April 1987 by the Minister for Science.

The Bill will replace the Wool Industry Act 1972. It will govern the operations of the Australian Wool Corporation and the wool auction system. It introduces a number of changes consistent with the Government's policy statement 'Reform of Commonwealth Primary Industry Statutory Marketing Authorities'. It also introduces additional administrative arrangements including measures for quality assurance of the Australian wool clip. The Bill is expressed to come into effect on 1 July 1987.

The Committee has no comments on this Bill.

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

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WOOL TAX (NOS. 1-5) AMENDMENT BILLS 1987

These Bills were introduced into the House of Representatives on 30 April 1987 by the Minister for Science.

The Bills amend the Wool Tax Acts (Nos. 1-5) 1964 which each deal with a different method of selling shorn wool. The Bills provide for an increase in the maximum rate of wool tax to 10 per cent and for a minimum rate of wool tax of 5.25 per cent being equal to the sum of the minimum rates of apportionment of the wool tax specified in the Wool Marketing Bill 1987.

The Committee has no comments on this Bill.



SCRUTINY OF BILLS ALERT DIGEST

NO. 8 OF 1987

13 MAY 1987

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*Henry Crowf*

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R.A. Crowley, Chair  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator J.P. McKiernan  
Senator J. Newman

TERMS OF REFERENCE

Extract

- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable 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:

Aboriginal Land Rights (Northern Territory) Amendment Bill  
(No.3) 1987

Bank Account Debits Tax Amendment Bill 1987

Bounty and Subsidy Legislation Amendment Bill 1987

Nursing Homes and Hostels Legislation Amendment Bill 1987

Supply Bill (No.1) 1987-88

Supply Bill (No.2) 1987-88

Supply (Parliamentary Departments) Bill 1987-88

Taxation Laws Amendment Bill (No.2) 1987

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.

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL (NO.3)  
1987

This Bill was introduced into the Senate on 7 May 1987 by the Minister for Resources and Energy.

The Bill amends the Aboriginal Land Rights (Northern Territory) Act 1976. Principally, the Bill provides for a new scheme regulating the exploration for, and mining of, minerals and in particular, the operation of the mining veto on Aboriginal land.

The new scheme will provide clear guidelines governing the granting of a once-only consent at the exploration stage and the negotiation of terms and conditions at the exploration and mining stages.

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

Clause 5 -

New sub-sections 41(3), 42(14) and 47(2) and (4) - Non-reviewable decisions

Clause 5 inserts a new Part IV in the Principal Act relating to the grant of exploration licences and mining interests in respect of Aboriginal land. New sub-section 41(2) imposes time limits on applications for exploration licences but new sub-section 41(3) provides that the Minister may grant an extension of time if, having consulted with the Northern Territory Mining Minister, the Minister is satisfied that:

- (a) it is not reasonably practicable for the applicant to make the application within the relevant period; and
- (b) in all the circumstances of the case it is appropriate that a longer period should apply.

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

New section 42 establishes a negotiating period for the agreement of the terms and conditions to which the grant of an exploration licence may be subject. New sub-section 42(14) provides that, upon request by the Land Council concerned, the Minister may extend the negotiating period if, having consulted with the Northern Territory Mining Minister, the Minister is satisfied that:

- (a) it is not reasonably practicable for the Land Council to perform its functions under the section within the relevant negotiating period; and
- (b) in all the circumstances of the case, it is appropriate that a longer negotiating period should apply.

New sub-section 47(2), in conjunction with other provisions of that section, provides that an exploration licence is cancelled if, having consulted with the Northern Territory Mining Minister, the Minister is satisfied that:

- (a) the relevant Land Council is entitled to state that:
  - (i) the licence-holder is conducting, or is likely to conduct, exploration works otherwise than in accordance with the proposed exploration program referred to in the application for consent to the grant of the licence; and
  - (ii) the exploration works are causing, or are likely to cause, a significant impact on the affected land and on Aborigines; and
- (b) the national interest does not require that the exploration works should proceed.

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

New sub-section 47(4), in conjunction with other provisions of that section, provides that a mining interest is not to be granted to an applicant, or is to be cancelled, if the Minister is satisfied that:

- (a) the proposed mining works or related activities to be conducted on the land to which the application relates are not in accordance with the details set out in the original application for an exploration licence;
- (b) the Land Council consented to the grant of the exploration licence;
- (c) the works or activities are causing, or are likely to cause, a significant impact on the affected land and on Aboriginals, to the extent that the Land Council would not have consented to the grant of the licence; and
- (d) the national interest does not require that the works or activities should proceed.

Although in each case these provisions confer broad discretions on the Minister, in particular as to whether, in the former two cases, it is appropriate, in all the circumstances, that extensions of time should be allowed, and, in the latter two cases, as to whether the national interest requires that works should proceed, no provision has been made for review of the decisions on their merits. The only avenue of review would therefore be as to the legality of the decisions, pursuant to the Administrative Decisions (Judicial Review) Act 1977, and this avenue would be limited by the very breadth of the criteria to which the Minister is to have regard. The drafting of the sub-sections contrasts with that of new paragraph 48(3)(c) which provides that the Minister, after consultation with the Commonwealth Minister for Resources and Energy and the Northern Territory Mining Minister, shall authorise the making of a further application for the grant of an exploration licence if

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the Minister is satisfied on reasonable grounds of certain matters including that the public interest requires that a further application be made. The addition of the words 'on reasonable grounds' restricts the discretion afforded the Minister and, in the view of the Committee, makes review pursuant to the Administrative Decisions (Judicial Review) Act 1977 a sufficient avenue for review since it would be possible in an application pursuant to the Act to go behind the Minister's reasons for holding that, for example, the public interest required the making of a further application for an exploration licence in order to test whether the Minister had reasonable grounds for holding that view.

The Committee therefore draws new sub-sections 41(3), 42(14) and 47(2) and (4) to the attention of Senators in that, by affording the Minister broad discretions without providing for review of the exercise of those discretions on their merits, they may be considered to make rights, liberties, and/or obligations unduly dependent upon non-reviewable decisions.

BANK ACCOUNT DEBITS TAX AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 6 May 1987 by the Minister Assisting the Treasurer.

The Bill will amend the Bank Account Debits Tax Act 1982. It will give effect to some 1986-87 Budget proposals. In particular, it will -

- . abolish the higher rates of the bank account debits tax applicable in the Australian Capital Territory (1986-87 Budget announcement); and
- . insert anti-avoidance provisions necessary as a consequence of the imposition of tax on debits to payment order accounts kept with non-bank financial institutions, as proposed by the accompanying Taxation Laws Amendment Bill (No.2) 1987.

The Committee has no comments on this Bill.

BOUNTY AND SUBSIDY LEGISLATION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 6 May 1987 by the Minister Representing the Minister for Industry, Technology and Commerce.

The Bill is an omnibus measure, which proposes to amend a series of Bounty and Subsidy Acts to give effect to various Government decisions, to correct some drafting anomalies and clarify some eligibility criteria in several schemes, and to complete the modernisation of the administrative provisions in several other schemes commenced in the previous two Bounty and Subsidy Legislation Acts of 1986.

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

Clause 22 - Schedule -

Bounty (Computers) Act 1984 - New sub-section 13(1A) - Lack of parliamentary scrutiny

Clause 22 would amend the Acts specified in the Schedule as set out in the Schedule. In particular it would insert a new sub-section 13(1A) in the Bounty (Computers) Act 1984 to provide that a claim may not be made for an amount of bounty that is less than \$200 'or such other amount as the Comptroller-General determines in writing'.

The Committee recognises that the new sub-section does not differ materially from sub-section 14(2) of the Bounty (Books) Act 1986 on which the Committee did not comment when it examined the relevant Bill last year. However, in the view of the Committee the determination of the Comptroller-General as to the threshold level for bounty claims should be subject to parliamentary scrutiny by way of tabling and disallowance. The Committee

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therefore draws new sub-section 13(1A) to the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently 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.

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NURSING HOMES AND HOSTELS LEGISLATION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 7 May 1987 by the Minister for Community Services.

The Bill will amend the National Health Act 1953 and Nursing Homes Assistance Act 1974 to introduce new recurrent funding arrangements for nursing homes for the aged to commence upon 1 July 1987. It will also provide a mechanism for establishing the standards of nursing home care to be provided in nursing homes approved under the National Health Act 1953.

The Bill will amend the Nursing Homes Assistance Act 1974 so that it only applies to nursing homes where the majority of patients are disabled persons who are less than 70 years of age. All other nursing homes approved under that Act will have their approvals transferred to the National Health Act 1953.

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

Clause 16 -

New section 45E - Non-reviewable decisions

Clause 16 would insert new sections 45D and 45E in the National Health Act 1953 empowering the Minister to determine standards to be observed in the provision of nursing home care in approved nursing homes and specifying the consequences of a failure to satisfy these standards. In particular, where the Minister declares that a home does not satisfy the standards Commonwealth benefit is not payable to the proprietor in respect of patients admitted after the making of a determination to that effect.

The Minister's decision that a home does not satisfy the standards would not be reviewable otherwise than as to its legality pursuant to the Administrative Decisions (Judicial

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Review) Act 1977. The Minister's Second Reading speech indicates an intention to establish Nursing Home Standards Review Panels in each State and Territory to provide an appropriate professionally qualified peer review mechanism but it is unclear when these Panels will be established and whether they will be given a legislative basis. The Committee notes that clause 16 is to commence on 1 July this year and that there is no assurance that any review mechanism will be in place at its commencement.

Accordingly, the Committee draws new section 45E to the attention of Senators that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

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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SUPPLY BILL (NO.1) 1987-88

This Bill was introduced into the House of Representatives on 6 May 1987 by the Minister Representing the Minister for Finance.

The Bill seeks appropriations totalling some \$8652.1 million for the ordinary annual services of the government. This is \$655.4 million, or about 8.2 per cent, greater than the equivalent amounts provided in the Supply Act (No.1) 1986-87.

A significant part of the increase reflects the full year effects of new policies introduced in this year's budget, price and cost increases and exchange rate variations.

The Committee has no comments on this Bill.

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

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SUPPLY BILL (NO.2) 1987-88

This Bill was introduced into the House of Representatives on 6 May 1987 by the Minister Representing the Minister for Finance.

The Bill seeks interim appropriations, totalling \$2,404.3 million, for expenditure on capital works and services, payments to or for the States and the Northern Territory and certain other services for the period 1 July 1987 to 30 November 1987.

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 1987-88

This Bill was introduced into the House of Representatives on 6 May 1987 by the Minister Representing the Minister for Finance.

The Bill seeks interim appropriations to meet expenditures by the Parliamentary Departments during the period 1 July 1987 to 30 November 1987. They total some \$23.7 million.

The Committee has no comments on this Bill.

TAXATION LAWS AMENDMENT BILL (NO.2) 1987

This Bill was introduced into the House of Representatives on 6 May 1987 by the Minister Assisting the Treasurer.

The Bill will implement a number of the major changes announced by the Treasurer on 10 December 1986 as part of the Government's overhaul of the company tax system. In particular, it will abolish, subject to transitional rules, the additional tax payable by private companies under Division 7 of the Income Tax Assessment Act 1936 and will ensure that the intercorporate dividend rebate is allowed on a gross rather than a net basis. It will also remove the present exemption from tax for certain dividends satisfied by the issue of shares.

The Bill will also amend the income tax substantiation rules as they apply to deductions for car expenses. Another amendment will give effect to the Government's decision announced on 28 November 1986 to extend the bank account debits tax to debits made to payment order accounts with non-bank financial institutions, such as building societies and credit unions.

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

Clause 62 -

Schedule 4 - Trespass on personal rights and liberties

Clause 62 would amend the Acts specified in Schedule 4 as set out in the Schedule. In each case the effect of the amendment is to require the occupier of land, premises, a building or a place to provide to a taxation officer 'all reasonable facilities and assistance' for the effective exercise of the officer's investigative powers. A penalty of a maximum fine of \$1,000 is specified. The Explanatory Memorandum indicates that it is envisaged that, for example, a taxation officer might require the

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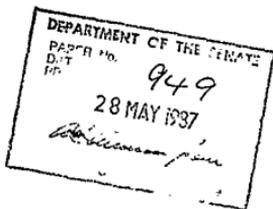
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reasonable use of photocopying, telephone, light and power facilities and the facilities to extract relevant information from a computer. The officer could also require assistance in the form of advice as to where relevant documents are located and the provision of access to areas where such documents are located.

The Committee is concerned that the provision may impose an objective requirement upon the occupier of premises which that person may be unable to satisfy. The 'occupier' may, for example, be a junior employee and may be unable to provide access to certain safes or filing cabinets even though a court might consider the requirement to provide such assistance to be 'reasonable' in all the circumstances. The Committee would therefore prefer to see the provision recast so that the occupier might advance a 'reasonable excuse' for failure to provide the facilities or assistance required or so that the obligation is only placed upon the occupier to provide such facilities or assistance as he or she is reasonably able to provide.

The Committee recognises that the provisions to be inserted in the various Acts do not differ from sub-section 127(3) of the Fringe Benefits Tax Assessment Act 1986 on which the Committee did not comment when the relevant Bill was introduced last year. However, the Committee draws the provisions to be inserted by Schedule 4 to the attention of Senators in that by failing to take account of what it may be reasonable for a particular occupier to provide by way of facilities or assistance they may be considered to trespass unduly on personal rights and liberties.

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SCRUTINY OF BILLS ALERT DIGEST

NO. 9 OF 1987

27 MAY 1987

ISSN 0729-6851

*[Handwritten signature]*  
Crawley

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R.A. Crowley, Chair  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator J.P. McKiernan  
Senator J. Newman

TERMS OF REFERENCE

Extract

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

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The Committee has considered the following Bills:

Cash Transaction Reports Bill 1987

Customs and Excise Legislation Amendment Bill 1987

Customs Tariff (Commonwealth Authorities) Amendment Bill 1987

Health Legislation Amendment Bill 1987

Industrial Relations Bill 1987

Industrial Relations (Consequential Provisions) Bill 1987

Insurance and Superannuation Commissioner Bill 1987

Insurance and Superannuation Commissioner (Consequential Provisions) Bill 1987

Occupational Superannuation Standards Bill 1987

Sales Tax Laws Amendment Bill 1987

Social Security and Veterans' Entitlements Amendment Bill 1987

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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CASH TRANSACTION REPORTS BILL 1987

This Bill was introduced into the House of Representatives on 13 May 1987 by the Attorney-General.

The Bill has four purposes: -

- . to require the reporting of certain domestic currency transactions in excess of \$10,000 to the Cash Transaction Reports Agency;
- . to require the reporting of certain currency transfers to and from Australia in excess of \$5,000 to the Cash Transaction Reports Agency;
- . to establish a Cash Transaction Reports Agency to collect, retain, compile, analyse and disseminate information relating to cash transaction reports and to perform other functions under the legislation in consultation with the Commissioner of Taxation; and
- . to impose obligations on financial institutions in relation to the verification of identity of persons seeking to open accounts with financial institutions, and of signatories to existing accounts.

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

Sub-clause 3(1) -

Definitions of 'cash management trust', 'property trust' and 'unit trust' - Inappropriate delegation of legislative power

Sub-clause 3(1) defines the terms 'cash management trust', 'property trust' and 'unit trust' as, in each case, an arrangement falling within a class of arrangements declared by

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the regulations to be, for the purposes of the relevant definition, cash management, property or unit trusts, as the case may be. The entire content of the definitions is thus left to regulations.

As a trustee or manager of a cash management trust, property trust or unit trust is a 'cash dealer' on whom reporting requirements are to be imposed by the Bill it may be thought that the content of these definitions should be set out in the Bill rather than in regulations. The Committee therefore draws the definitions to the attention of Senators in that they may be considered to constitute an inappropriate delegation of legislative power.

Sub-paragraph 9(2)(d)(ii) and sub-clause 9(5) - Inappropriate delegation of legislative power

Clause 7 will require a cash dealer to report to the Director of the Cash Transaction Reports Agency any transaction involving the physical transfer of Australian or foreign currency of not less than \$10,000 in value. A financial institution (a bank, building society or credit union) will not, however, be obliged to report a transaction if it is eligible for exemption in accordance with clause 9 and if the institution enters the transaction on its exemption register. Sub-clause 9(2) provides an exemption where the transaction is between the institution and a customer who, under sub-paragraph 9(2)(d)(ii), may carry on 'a business that, in accordance with the regulations, is to be taken to be an entertainment business or a hospitality business for the purposes of this Act'. Sub-clause 9(5) further provides that a cash transaction is eligible for exemption if it falls within a class of transactions declared by the regulations to be eligible for exemption for the purposes of the Act.

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The Committee therefore draws sub-paragraph 9(2)(d)(ii) and sub-clause 9(5) to the attention of Senators in that by leaving to the regulations the exemption of certain transactions from the new reporting requirements they may be considered to constitute inappropriate delegations of legislative power.

Sub-clause 10(3) - Non-reviewable decision

Sub-clause 10(2) provides that, where a financial institution believes that one of its customers is likely to enter into cash transactions on a regular basis which would be eligible for exemption, it may enter the class of transactions of that kind against the customer's name in its exemption register. Transactions of that kind thereupon become exempt from the reporting requirements. Sub-clause 10(3) provides, however, that the Director may direct an institution to delete or amend such an entry in its exemption register.

No provision has been made for the review of the Director's decision on its merits and clause 33 expressly excludes decisions under the Act from the application of the Administrative Decisions (Judicial Review) Act 1977. A decision of the Director under sub-clause 10(3) would therefore only be subject to review by the courts by way of the actions available at common law prior to the enactment of the Administrative Decisions (Judicial Review) Act 1977. As a decision of the Director under sub-clause 10(3) may impose quite onerous reporting requirements on financial institutions the Committee draws the sub-clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

Sub-clause 13(1) - Trespass on personal rights and liberties

Sub-clause 13(1) creates an offence where a person takes or sends foreign currency of not less than \$5,000 in value out of Australia or brings or sends Australian or foreign currency of

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not less than \$5,000 in value into Australia without giving a report in respect of the transfer to the Director, a customs officer or a police officer before the transfer takes place. A penalty of a fine of up to \$20,000 or 10 years imprisonment, or both, in the case of a natural person, or a fine of up to \$100,000 in the case of a body corporate may be imposed.

Sub-clauses 13(2) and (3) provide that a common carrier of passengers need not make a report in respect of currency in the possession of the carrier's passengers and that a common carrier of goods need not make a report in respect of currency carried on behalf of another person unless the other person has disclosed to the carrier that the goods include currency. The inclusion of these provisions has two implications. First, the inference is that the offence in sub-section 13(1) is intended to be one of strict liability: that is, a person may be convicted of the offence notwithstanding that he or she did not know that, for example, the baggage he or she was carrying contained currency. Secondly, a person conveying passengers who are taking currency into or out of the country or a person carrying goods including currency into or out of the country may be liable to prosecution for the offence in the same way as the passengers and the consignor or consignee of the goods. Taken together with the strict liability aspect of the offence this means that a carrier of passengers or goods may be convicted of the offence unless he or she takes steps to obtain from the passengers or consignors declarations stating that they are not transferring currency in contravention of sub-clause 13(1).

Common carriers are to be exempted. However it appears that most businesses engaged in the carriage of persons and goods are not common carriers, a class the distinguishing feature of which is that such carriers hold themselves out as ready to carry any passenger or the goods of any person who is prepared to pay the relevant fare or freight. Common carriers are liable for loss or damage to their customers' goods or luggage and most carriers therefore state on their tickets or waybills that they are not

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common carriers in order to limit this civil liability. The effect of sub-clauses 13(1), (2) and (3) would thus appear to be that a carrier must either become a common carrier, assuming the risks that entails, or must intrude on the privacy of his or her customers in order not to commit an offence under sub-clause 13(1).

The Committee therefore draws sub-clause 13(1) to the attention of Senators in that, in respect of its effect on the carriers of persons or goods, it may be considered to trespass unduly on personal rights and liberties.

Sub-clause 24(3) - Unreasonable power of search

Sub-clause 24(3) provides that a police officer or customs officer may search a person who is about to leave Australia or who arrives in Australia for the purpose of ascertaining whether the person has with him or her any currency in respect of which a report under clause 13 is required. The officer is not required to have reasonable grounds for believing that the person in fact has such currency with him or her before searching the person. By contrast, section 196 of the Customs Act 1901 requires that a police officer or customs officer have reasonable cause to suspect that a person is unlawfully carrying or has any goods subject to the control of Customs or any prohibited imports or exports secreted about him before the officer may search the suspected person.

The Committee therefore draws sub-clause 24(3) to the attention of Senators in that by failing to impose a requirement of reasonable cause on the power of search 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 AND EXCISE LEGISLATION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister for Industry, Technology and Commerce.

The Bill proposes amendments to the Customs Act 1901 and the Excise Act 1901 to implement the announcements made by the Treasurer on 13 May 1987 which relate to -

- . Commonwealth authorities being required to pay duties of customs;
- . the revised arrangements governing the payment of duty rebates on diesel fuel for eligible purposes; and
- . the imposition of a charge of \$200 for the processing of applications for refunds of Customs duty.

The Committee has no comments on this Bill.

CUSTOMS TARIFF (COMMONWEALTH AUTHORITIES) AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister Representing the Minister for Industry, Technology and Commerce.

The Bill proposes that from 1 July 1987, Commonwealth authorities other than Departments are to pay customs duty on their imports.

This change in arrangements was announced in the context of the Treasurer's Economic Statement on 13 May 1987.

The amendments proposed are part of the legislative package to implement these changes. Specifically provision is made for Customs by-laws under the Customs Tariff Acts to specify the bodies that will be exempt from customs duty.

The Committee has no comments on this Bill.

HEALTH LEGISLATION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister for Health.

The Bill will implement measures announced in the May Economic Statement by:

- . amending the Health Insurance Act 1973 to:
  - (a) reduce the amount of medicare benefit payable for medical services provided in hospitals and day hospital facilities to private in-patients; and
  - (b) remove the \$20 limit on patient contributions for such services;
  
- . amending the National Health Act 1953 to provide that only medical services provided in hospitals and day hospital facilities to a private in-patient will attract gap benefits from a health benefits fund.

The Committee has no comments on this Bill.

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INDUSTRIAL RELATIONS BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister for Employment and Industrial Relations.

The Bill provides for the establishment of a federal institutional framework for the prevention and settlement of industrial disputes by conciliation and arbitration. Provision is also made for the rights and duties of participants within the system and the enforceability of decisions made by the federal tribunals. The system will continue to provide for the registration of organisations of employers and employees.

The Bill gives effect to the Government's decisions on the recommendations of the Report of the Committee of Review into Australian Industrial Relations Law and Systems (the Hancock Report).

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

Clause 151 - 'Henry VIII' clause

Clause 151 provides that, in relation to an industrial dispute involving public sector employment, the proposed Australian Industrial Relations Commission may make an award that is not consistent with any law of the Commonwealth or of an internal Territory relating to the relationship between employers and employees in public sector employment other than:

- (a) the Compensation (Commonwealth Government Employees) Act 1971, the Long Service Leave (Commonwealth Employees) Act 1976, the Superannuation Act 1922 or the Superannuation Act 1976; or

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- (b) any prescribed Commonwealth Act or prescribed Northern Territory Ordinance, or any prescribed provisions of such an Act or Ordinance.

The clause may be classified as a 'Henry VIII' clause on two counts: first, it permits the Commission to make awards overriding the laws made by Parliament, and secondly, it leaves those laws which may not be overridden - other than the four expressly identified - to be set out in regulations. The Committee therefore draws the clause to the attention of Senators in that by permitting the Commission to override certain laws in this fashion it may be considered to constitute an inappropriate delegation of legislative power.

Sub-clause 163(3) - Delegation

Sub-clause 163(1) provides that a member of the Commission, or an authorised person, may at any time during working hours enter a workplace and inspect or view work, machinery or documents and interview employees. An authorised person is defined as a person authorised under sub-clause 163(3) which provides that a member of the Commission or a Registrar may authorise a person to exercise powers under sub-clause 163(1) for the purpose of, or in connection with, the exercise of another power, or the performance of a function, conferred on the Commission. Sub-clause 163(3) thus permits the delegation of the powers under sub-clause 163(1) to any person whom the Commission may choose to authorise.

The Committee has been critical of such powers of delegation which impose no limitation, and give no guidance, as to the attributes of the persons to whom a delegation may be made. The Committee therefore draws sub-clause 163(3) to the attention of Senators in that it may be considered to make 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.

Clause 312 - Power of entry and inspection

Sub-clause 312(1) provides that an officer of a registered organisation may, for the purpose of ensuring the observance of an award binding the organisation, enter a workplace, inspect or view work, machinery or documents and interview employees who are members of the organisation. Such an officer must be authorised in writing by the secretary of the organisation or a branch of the organisation and, under sub-clause 312(2), the officer may be called upon to produce evidence of such authority.

The Committee is concerned that this power is open to abuse by registered organisations and could result in repeated workplace visits amounting to harassment of a particular employer and that employer's employees. Whereas there are avenues of redress - such as the Ombudsman - should the powers conferred on inspectors or the Commission under clauses 117 and 163 be abused, there are no such avenues available in respect of the exercise of powers by organisations under clause 312. The Committee therefore suggests that it would be preferable if the exercise of those powers were made conditional upon the officer having reasonable cause to suspect that the award applicable to the premises is not being observed. Such a safeguard would prevent the power from being exercised in a random or arbitrary fashion. The Committee therefore draws clause 312 to the attention of Senators in that by providing for a power of entry and inspection without reasonable cause it may be considered to trespass unduly on personal rights and liberties.

Sub-clauses 371(1) and 374(1) - Delegation

Sub-clause 371(1) would permit the Attorney-General to delegate to any person all or any of the Attorney-General's powers under Division 1 of Part XII, relating to legal aid in certain proceedings. Sub-clause 374(1) would similarly permit the Minister to delegate to any person all or any of the Minister's powers 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 has been critical of such powers of delegation which impose no limitation, and give no guidance, as to the attributes of the persons to whom a delegation may be made. The Committee therefore draws sub-clauses 371(1) and 374(1) to the attention of Senators in that they may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

INDUSTRIAL RELATIONS (CONSEQUENTIAL PROVISIONS) BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister for Employment and Industrial Relations.

The Bill will repeal the Conciliation and Arbitration Act 1904, which will be superseded by the Industrial Relations Bill 1987, and will make consequential amendments to other Acts as necessitated by the repeal of the Conciliation and Arbitration Act 1904.

The Committee has no comments on this Bill.

INSURANCE AND SUPERANNUATION COMMISSIONER BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister for Science.

The Bill is to create an office of Insurance and Superannuation Commissioner who will assume overall responsibility, subject to any directions by the Minister, for the existing insurance industry regulatory functions under the Life Insurance Act 1945, the Insurance Act 1973 and the Insurance (Agents and Brokers) Act 1984, the new occupational superannuation supervisory functions proposed under the Occupational Superannuation Standards Bill 1987, and the non-statutory actuarial functions of the Australian Government Actuary.

The Committee has no comments on this Bill.

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INSURANCE AND SUPERANNUATION COMMISSIONER (CONSEQUENTIAL PROVISIONS) BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister for Science.

The Bill will remove the statutory offices of Insurance Commissioner and Life Insurance Commissioner and effect amendments to relevant provisions in the Insurance Act 1973, the Life Insurance Act 1945, the Insurance (Agents and Brokers) Act 1984, the Companies Act 1981, and the Public Service Act 1922, consequential upon the assumption by the Insurance and Superannuation Commissioner of the existing statutory responsibilities of those offices.

The Committee has no comments on this Bill.

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OCCUPATIONAL SUPERANNUATION STANDARDS BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister for Science.

The Bill provides various standards and other relevant conditions which superannuation funds and approved deposit funds will be required to meet in order to be eligible for relevant taxation concessions applicable under the Income Tax Assessment Act 1936.

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

Sub-clause 3(1) -

Definitions of 'approved rules' and 'approved trustee' -  
Inappropriate delegation of legislative power

An 'approved deposit fund' for the purposes of the Bill is a fund maintained by an 'approved trustee' for 'approved purposes' which has 'approved rules'. Sub-clause 3(1) defines 'approved rules' as rules that include all the kinds of provisions specified in regulations made for the purposes of the definition. Similarly, an 'approved trustee' is defined as 'a body specified in, or included in a class of bodies specified in, regulations' made for the purposes of the definition. The lack of detail in these definitions contrasts markedly with the corresponding definitions in sub-section 27A(1) of the Income Tax Assessment Act 1936 which set out the approved rules rather than leaving them to be prescribed by regulations and which detail certain approved trustees while leaving scope for the content of that definition to be expanded 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.

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The Committee therefore draws the definitions of 'approved rules' and 'approved trustee' in sub-clause 3(1) to the attention of Senators in that by leaving the totality of their content to be prescribed by regulations they may be considered to constitute an inappropriate delegation of legislative power.

#### Clause 4 - Retrospectivity

Although clause 2 provides for the Bill to come into operation on a day to be fixed by Proclamation, clause 4 would apply the Bill, in effect, from 1 July 1986 so that superannuation funds and approved deposit funds would be required to comply with the conditions established by the Bill from that date in order to gain concessional taxation treatment. Sub-clauses 4(3) and (4) would also permit regulations setting operating standards for funds to be given retrospective effect to a day not earlier than 1 July 1986.

It appears that the basis of this retrospectivity is to be found in press releases which the Treasurer made on 11 June, 30 July and 22 December 1986. Once again the Committee has occasion to draw to the attention of Senators the practice of the Treasurer of treating his press releases as de facto changes to the law by introducing legislation backdated to the day on which he first announced the proposal to change the law. Not for the first time - see the Committee's comments on Taxation Laws Amendment Bill (No.2) 1986 in its Ninth Report of 1986 - it appears that the Treasurer found it necessary in this case to modify or add to the terms of his initial announcement so that the de facto legislation may be said to have been amended before it was introduced into the Parliament. The practice of 'legislation by press release' carries with it the assumption that citizens should arrange their affairs in accordance with announcements made by the Executive rather than in accordance with the laws made by Parliament. The Committee questions how persons can be expected to comply with the law when its terms are not publicly available but may only be ascertained from a reading of

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Ministerial press releases and when the Minister concerned issues further press releases modifying or adding to the terms of the original press release.

The Committee condemns in the strongest terms the practice of 'legislation by press release'. When, in November 1985, the Committee requested the Treasurer's comments on the fact that, in almost four years of existence, it had never received a response to a comment made by it on a Bill for which the Treasurer had been responsible, the Treasurer responded that, due to the considerable time pressures continuously experienced by his staff and the limited number of officials engaged in the legislation area, a practice of not responding had been adopted. He also noted that the taxation area had had a particularly heavy workload, and that this was likely to continue for some time. The Committee is aware of the burdens which the Government's programme of taxation reform has imposed on the Taxation Office. It is also aware, however, of the burden which that same programme has imposed on those who are obliged to comply with the taxation laws and, in particular, those who are called upon to advise on the legislation in a professional capacity. The task of such persons is made doubly difficult by the frequent recourse to the practice of 'legislation by press release' as a method of changing the law.

The Committee therefore draws clause 4 to the attention of Senators in that by giving retrospective application to the Bill 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.

SALES TAX LAWS AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister for Science.

The Bill will give effect to two measures announced in the Government's May 1987 Economic Statement amending the sales tax law:

- . to remove any exemption from sales tax that is allowable in respect of:
  - .. certain Commonwealth commercial authorities established before 14 May 1987; and
  - .. any Commonwealth authority established on or after that date, unless exemption from sales tax is expressly conferred on that authority by Commonwealth legislation; and
- . to implement changes to the sales tax concessions available to passengers and crew members of ships and aircraft arriving in Australia.

The Committee has no comments on this Bill.

D9/87

SOCIAL SECURITY AND VETERANS' ENTITLEMENTS AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 14 May 1987 by the Minister for Health.

The Bill will amend the Social Security Act 1947, the Veterans' Entitlements Act 1986 and the Seamen's War Pensions and Allowances Act 1940 to implement measures included in the May Economic Statement. The measures will come into effect before or shortly after October 1987.

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

Clause 9 - Communication of information

Clause 9 would substitute a new sub-section 17(4) in the Social Security Act 1947. Whereas the present paragraph 17(4)(b) provides that an officer may divulge any information acquired in the performance of the officer's duties to 'any prescribed authority or person' and the Committee understands that no such authority or person has in fact been prescribed to date, the new paragraph 17(4)(b) will empower the Secretary to divulge any such information to the Secretary of any other Commonwealth Department or to the head of any Commonwealth authority for the purposes of that Department or authority. This is in addition to paragraph 17(4)(a) which enables the Secretary to divulge such information to any person where it is necessary in the public interest to do so.

The Committee is concerned that the new provision would permit the dissemination, at the discretion of the Secretary, of confidential personal information to any Commonwealth Department or authority. The inclusion of such a blanket authority to communicate information provided to officers under the Social Security Act 1947 to other Departments and authorities can only

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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add to the concerns reported by the Law Reform Commission in its Report on Privacy (ALRC Report No.22) concerning the creation of a general government data bank (see vol.1, pp.180-1). The Committee therefore draws new paragraph 17(4)(b) to the attention of Senators in that by so permitting the unrestricted dissemination of confidential information it may be considered to trespass unduly on personal rights and liberties.

Paragraphs 27(c), 42(d) and 45(d) - Recovery of overpayments from spouses

Paragraphs 27(c), 42(d) and 45(d) would insert new sub-sections 140(3), 205(2A) and 55A(2A) in the Social Security Act 1947, the Veterans' Entitlements Act 1986 and the Seamen's War Pensions and Allowances Act 1940 respectively, providing in each case that, where a pension is payable to a person under the relevant Act and the spouse of the person (or, where the spouse has died, the estate of the spouse) is liable to repay an amount to the Commonwealth as a result of an overpayment under any of the three Acts, that amount may be deducted from the person's pension.

It seems to the Committee to be quite wrong in principle that the sins of their spouses should be visited on beneficiaries in this way, particularly when one considers that a spouse for these purposes may only be a person living together with the beneficiary concerned and not, for example, holding property in common with the beneficiary. The person from whose pension, benefit or allowance the amount is to be deducted may have had no knowledge of the mistake giving rise to the liability to repay an amount and may not have benefited in any way from the overpayment. Accordingly the Committee draws paragraphs 27(c), 42(d) and 45(d) to the attention of Senators in that by imposing on persons liabilities incurred by their spouses 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. 10 OF 1987

3 JUNE 1987

ISSN 0729-6851

*Rosemary Conroy*

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator R.A. Crowley, Chair  
Senator J. Haines, Deputy-Chairman  
Senator M. Baume  
Senator B. Cooney  
Senator J.P. McKiernan  
Senator J. Newman

TERMS OF REFERENCE

Extract

- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable 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:

Commonwealth Electoral Amendment (By-Elections) Bill 1987

Customs Tariff Validation Bill 1987

Excise Tariff Validation Bill 1987

Local Government (Financial Assistance) Amendment Bill 1987

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.

COMMONWEALTH ELECTORAL AMENDMENT (BY-ELECTIONS) BILL 1987

This Bill was introduced into the Senate on 28 May 1987 by Senator Vigor.

The Bill has two purposes:

- . to provide for rotation of names on ballot papers; and
- . to provide for the filling of casual vacancies by a recount of the votes polled at the previous election, thus eliminating by-elections.

The Committee has no comments on this Bill.

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

CUSTOMS TARIFF VALIDATION BILL 1987

This Bill was introduced into the House of Representatives on 29 May 1987 by the Minister Representing the Minister for Industry, Technology and Commerce.

The Bill provides for the validation until 31 December 1987 of duties collected in pursuance of Customs Tariff Proposals Nos. 10, 11, 12 and 13 (1987) and Customs Tariff (Coal Export Duty) Proposals No. 1 (1987).

Under section 226 of the Customs Act 1901 the collection of duties in pursuance of Customs Tariff Proposals is protected against legal challenge for 12 months or until the close of the session of Parliament, whichever occurs first. With the calling of the election the Bill is a necessary measure to protect the collection of the duties which have been introduced by the Proposals.

The tariff changes contained in the Customs Tariff Proposals being validated arise from:

- . the Government's decisions on the Industries Assistance Commission's Reports on Luggage and Vegetables and Vegetable Products;
- . the granting of duty free entry to gas barbecues and parts thereof of New Zealand origin; and
- . the variation in Customs duty rates on imported petroleum products to align with changes in the excise duty on equivalent locally produced goods.

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

The change contained in the Customs Tariff (Coal Export Duty) Proposals corrects an unintended situation where certain blends of coal currently being marketed as steaming coal were being subject to an export duty.

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 VALIDATION BILL 1987

This Bill was introduced into the House of Representatives on 29 May 1987 by the Minister Representing the Minister for Industry, Technology and Commerce.

The Bill provides for the validation until 31 December 1987 of duties collected in pursuance of Excise Tariff Proposals No.6 (1987).

Under section 114 of the Excise Act 1901 the collection of duties in pursuance of Excise Tariff Proposals is protected against legal challenge for 12 months or until the close of the session of Parliament, whichever occurs first. With the calling of the election, the Bill is a necessary measure to protect the collection of the duties which have been introduced by the Proposals.

The Proposals increased the duties on locally produced 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.

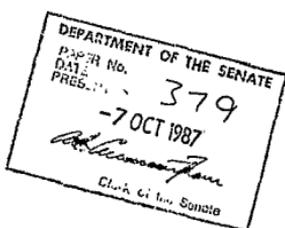
LOCAL GOVERNMENT (FINANCIAL ASSISTANCE) AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 29 May 1987 by the Minister for Local Government and Administrative Services.

The Bill, which amends the Local Government (Financial Assistance) Act 1986, is intended to change the method of payment of general purpose financial assistance for local government from an annual to a quarterly instalment basis.

Under the new arrangement the first three equal instalments, paid in the September, December and March quarters, will each be equal to one quarter of the estimated annual entitlement. The fourth quarter payment will include any adjustment reflecting a difference between the estimated and the actual Consumer Price Index.

The Committee has no comments on this Bill.



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 11 OF 1987**

**7 October 1987**

**ISSN 0729-6851**



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator M. Beahan  
Senator D. Brownhill  
Senator R. Crowley  
Senator K. Patterson  
Senator J.F. Powell

TERMS OF REFERENCE

Extract

- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable 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:

Administrative Arrangements Act 1987

Administrative Decisions (Judicial Review) Amendment Bill 1987

Appropriation (No.1) 1987-88

Appropriation (No.2) 1987-88

Appropriation (Parliamentary Departments) 1987-88

Australia Card Bill 1986 [1987]

Australia Card Referendum Bill 1987

Australian Horticultural Corporation Bill 1987

Australian Horticultural Corporation (Transitional Provisions and Consequential Amendments) Bill 1987

Australian Land Transport (Financial Assistance) Amendment Bill 1987

Australian National Railways Commission Amendment Bill 1987

Bankruptcy Amendment Bill 1987

Constitution Alteration (Appropriation for the Ordinary Annual Services of the Government) 1987

Constitution Alteration (Democratic Elections) Bill 1987

Constitution Alteration (Electors' Initiative) Bill 1987

Constitution Alteration (Fixed Term Parliaments) Bill 1987

Constitution Alteration (Parliament) Bill 1987

Customs Tariff (Coal Export Duty) Amendment Bill 1987

Defence Housing Authority Bill 1987

Dried Fruits Export Charges Amendment Bill 1987

Egg Industry Research (Hen Quota) Levy Amendment Bill 1987

Fishing Industry Research Amendment Bill 1987

Fishing Industry Research and Development Bill 1987

Fishing Legislation Amendment Bill 1987

Horticultural Export Charge Bill 1987  
Horticultural Export Charge Collection Bill 1987  
Horticultural Levy Bill 1987  
Horticultural Levy Collection Bill 1987  
Horticultural Policy Council Bill 1987  
Horticultural Research and Development Corporation Bill 1987  
Income Tax Amendment Bill (No.2) 1987  
Insurance and Superannuation Commissioner Bill 1987  
Insurance and Superannuation Commissioner (Consequential Provisions) Bill 1987  
Loans Bill 1987  
Medicare Levy Bill 1987  
Ministers of State Amendment Act (No.2) 1987  
National Identification System (Reference to the People) Bill 1987  
Nuclear Non-Proliferation (Safeguards) (Consequential Amendments) Bill 1987  
Occupational Superannuation Standards Bill 1987  
Petroleum (Submerged Lands) Legislation Amendment Bill 1987  
Primary Industry Bank Repeal Bill 1987  
Privacy Bill 1986 [1987]  
Privacy (Consequential Amendments) Bill 1986 [1987]  
Sales Tax (Exemption and Classifications) Amendment Bill 1987  
States Grants (General Revenue) Amendment Bill 1987  
States (Works and Housing) Assistance Amendment Bill 1987  
Statute Law (Miscellaneous Provisions) Amendment Bill 1987  
Taxation Laws Amendment Bill (No.3) 1987

Wheat Marketing Amendment Bill 1987

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.

## ADMINISTRATIVE ARRANGEMENTS ACT 1987

This Act was introduced into the Senate on 15 September 1987 by the Minister for Industry, Technology and Commerce. The Bill was passed through the Parliament and assented to on 18 September 1987.

The Act amends the Acts Interpretation Act 1901 and the Public Service Act 1922.

The Acts Interpretation Act 1901 is amended to clarify the scope of existing provisions of that Act in the light of the recent changes (announced 14 July 1987) to Ministerial and Departmental structures. The amendments recognise situations where a single Department is administered by two or more Ministers.

The amendments to the Public Service Act 1922 abolish the Public Service Board and replace it with a Public Service Commissioner. The Commissioner will be a statutory office-holder and have responsibility for a number of matters of administration including recruitment, promotion, mobility, discipline and retirement.

On this occasion the Committee, as permitted by its Terms of Reference, draws the attention of Senators to the following provisions, notwithstanding that the legislation has been agreed to by the Parliament and has become law:

### New subsections 18(1) and 18(3) - Delegation

New subsections 18(1) and 18(3) of the Public Service Act 1922 allow the Public Service Commissioner to delegate, and a Secretary to sub-delegate, their statutory powers to any person (other than a person engaged as a consultant pursuant to certain other legislation). The Committee has been critical of such

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powers of delegation which imposes no apparent limitation and gives no guidance as to the attributes of the person to whom a delegation may be made.

The Committee's criticism of such arrangements essentially is that it is for the Parliament, in conferring a statutory power to determine the persons by whom a power of delegation is exercised, and not for the person on whom the power is conferred, whether that person is a Minister, statutory authority or - as in the Commissioner's case - a statutory office-holder.

The Committee notes that Section 16(1B) of the Act which was inserted by the Public Service Legislation (Streamlining) Act 1986 limited a Secretary's power by specifying the persons to whom a Secretary may sub-delegate a power in a manner which is acceptable to the Committee.

Although the Bill has passed the Parliament, the issues raised are important and remain of interest. Accordingly the attention of Senators is drawn to new sub-sections 18(1) and 18(3) in that they may be considered to make 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.

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) AMENDMENT BILL 1987

This Bill was introduced into the Senate on 15 September 1987 by the Minister for Transport and Communications.

The Bill which amends the Administrative Decisions (Judicial Review) Act 1977 (the Act) has three main purposes.

- . to strengthen the provisions under which the Federal Court has a discretion to refuse to grant an application for review where provision is made by another law for review of the relevant decision by a tribunal, authority or person.
- . to discourage the disruption of administrative proceedings, by narrowing the scope for resort to the Act during the course of those proceedings, where legislative provision exists for the review of the decision complained of at the conclusion of those proceedings.
- . to make specific provision in relation to the Federal Court's general discretion under the Act to refuse to grant an application.

The Committee notes that the Bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs for examination and report on 24 September 1987.

The Bill was referred to the Standing Committee during second reading debate on the Bill. The Senate Constitutional and Legal Affairs Committee had considered the terms of the Administrative Decisions (Judicial Review) Bill 1986 (a Bill identical to this Bill) before the double dissolution in June.

The Legal and Constitutional Affairs Committee expects to table its report on the Bill within the near future.

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 will examine the report on the Bill by the Legal and Constitutional Affairs Committee with a view to making its own our comments on the Bill.

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

D11/87

APPROPRIATION BILL (NO. 1) 1987-88

This Bill was introduced into the House of Representatives on 15 September 1987 by the Treasurer.

The Bill is to appropriate a sum out of the Consolidated Revenue Fund for the service of the year ending on 30 June 1988.

The Committee has no comments on this Bill.

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

APPROPRIATION BILL (NO.2) 1987-88

This Bill was introduced into the House of Representatives on 15 September 1987 by the Minister Assisting the Treasurer.

The Bill is to appropriate a sum out of the Consolidated Revenue Fund, for certain expenditure in respect of the year ending on 30 June 1988.

The Committee has no comments on this Bill.

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL 1987-88

This Bill was introduced into the House of Representatives on 15 September 1987 by the Minister Assisting the Treasurer.

The Bill is to appropriate certain sums out of the Consolidated Revenue Fund.

The Committee has no comments on this Bill.

AUSTRALIA CARD BILL 1986

This Bill was introduced into the House of Representatives on 15 September 1987 by the Minister for Community Services and Health.

The Bill will create a national system of identification to facilitate the administration and operation of Commonwealth laws relating to taxation, social security, medical and hospital benefits and immigration.

The Bill is in the same form as the Australia Card Bill 1986, rejected by the Senate on 10 December 1986, and the Australia Card Bill 1986 [No.2] rejected by the Senate on 1987.

The Committee drew the attention of the Senate to provisions of the Bill in its Eighteenth Report of 1986 (19 November 1986) and reprinted those comments in the Fifth Report of 1987 (1 April 1987).

AUSTRALIA CARD REFERENDUM BILL 1987

This Bill was introduced into the Senate on 15 September 1987 by Senator Puplick.

The Bill will ensure that a referendum is conducted on the issue of the introduction of the Australia Card.

The Committee has no comments on this Bill.

AUSTRALIAN HORTICULTURAL CORPORATION BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The Bill will establish the Australian Horticultural Corporation. The functions of the Corporation are to promote Australian horticultural products both in Australia and overseas and to improve the industries competitiveness, by improving the quality, handling, storing, processing and marketing of Australian horticultural products.

The Bill is one of a package of bills relating to horticulture.

The Committee has no comments on this Bill.

AUSTRALIAN HORTICULTURAL CORPORATION (TRANSITIONAL PROVISIONS AND  
CONSEQUENTIAL AMENDMENTS) BILL 1987

This Bill was introduced by the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The Bill provides for the repeal of the principal and amending Australian Apple and Pear Corporation Acts. It deals with provisions for such things as transfer of assets and liabilities from the Australian Apple and Pear Corporation, when abolished, to the Australian Horticultural Corporation. The Bill also deals with consequential amendments to those Apple and Pear Acts which continue in existence under the new arrangements.

The Committee has no comments on this Bill.

AUSTRALIAN LAND TRANSPORT (FINANCIAL ASSISTANCE) AMENDMENT BILL  
1987

This Bill was introduced into the House of Representatives on 15 September 1987 by the Minister for Land Transport and Infrastructure Support.

The Bill will amend the Australian Land Transport (Financial Assistance) Act 1985, to give effect to recent announcements made by the Government on federal funding in the May Statement and the 1987 Budget.

The Committee has no comments on this Bill.

D11/87

AUSTRALIAN NATIONAL RAILWAYS COMMISSION AMENDMENT BILL 1987

This Bill was introduced into the Senate on 15 September 1987 by the Minister for Transport and Communications.

The Bill amends the Australian National Railways Commission Act 1983. The amendment has three main purposes:

- . to give the Australian National Railways Commission the authorisation to provide entertainment, including gambling facilities, or other services.
- . to preserve the existing right of employees transferred to AN under the Railways Agreement (South Australia) Act 1975 to elect to claim compensation under either the Compensation (Commonwealth Government Employees) Act 1971 or the Workmens' Compensation Act 1971 of South Australia after the latter Act is repealed on 1 October 1987.
- . to broaden the powers of Boards of Inquiry established under Section 70 of the Act to examine the causes of accidents and make appropriate recommendations.

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.

D11/87

BANKRUPTCY AMENDMENT BILL 1987

This Bill was introduced into the Senate on 15 September 1987 by the Minister for Transport and Communications.

The Bill makes amendments to the Bankruptcy Act 1966 (the Act). The amendments will ensure that the investigatory powers available to the trustee in bankruptcy are such as to empower the trustee to investigate the sophisticated commercial structures which are encountered now more frequently than ever before in bankruptcies.

The amendments in the Bill fall into 5 main categories:

- . introduction of a prebankruptcy moratorium to enable debtors to consider possible alternative arrangements with creditors;
- . changes designed to enhance the investigatory powers of bankruptcy trustees and to enable asset recoupment from corporations, partnerships and trusts which a bankrupt has used to conceal
- . reform of Part X of the Act to ensure that creditors are provided with full and timely information about debtors' affairs;
- . improving the administrative controls over private sector registered trustee, and controls by creditors over those trustees; and
- . other amendments designed to improve the effectiveness of the Act.

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 35 - Powers of officials, Commissions etc.

Clause 35 inserts a new section 77A in the Act providing to a trustee in bankruptcy or the Official Receiver, extended powers of investigation and inquiry. Particularly, the proposed section would enable an investigator (a term used to denote a trustee or the Official Receiver) to obtain access to books of an associated entity of a bankrupt when those books are in the possession of a person other than the bankrupt.

Under proposed subsection 77A(2) the investigator would be empowered to require production of books on the condition that, in the investigator's opinion, the books are relevant to the investigation.

Under proposed subsection 77A(3) the investigator would be empowered to require any person, who was a party to the compilation of the books to explain to the investigator, to the best of his or her knowledge and belief, any matter about the compilation of the books, or related matter. In addition, the investigator may require the person to state, to the best of his or her knowledge or belief where the books may be found and, if requested, information as to the identity of the person who, to the best of his or her belief, last had possession, custody or control of the books and where that person may be found.

In the past the Committee has drawn attention to provisions which, with little restriction, empower officials or others to require any person believed to be capable of giving relevant information to attend before them to answer questions and produce documents.

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

It appears that the investigator would not be required to seek a warrant from a judicial officer (which would be subject to the controls normally exercised on the grant of warrants) as he or she may seek the information provided without having to first substantiate the conclusion that particular persons should be questioned.

Clause 36 - Power of officials, Commissions etc.

Clause 36 proposes a new section 77B which would allow the Official Receiver the same powers of inquiry as presently allowed to a trustee. In particular, paragraph 77B(a) to (d) allow the Official Receiver wide powers of inquiry including the power to require the bankrupt to attend interview and to give information and assistance in connection with the investigation.

The Committee has previously commented that such wide powers of investigation and inquisition, as a means of extracting essential information, should be exercised within bounds which limit the investigator to inquiry on relevant matters.

The Committee recognises that the new provision does not differ from section 77 of the Bankruptcy Act on which it has been modelled, the Committee draws new section 77 to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent on the discretion of the Official Receiver.

Subclauses 51(2) and 91(2) - Retrospectivity

Sub-clause 51(2) would have the effect of making the new Division 4A of the Act (a Division to be inserted by clause 51(1)) retrospective, so as to allow orders issued by the Court relating to property to be made even though much of the bankrupt's estate had been dealt with under the Act and other arrangement.

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

Sub-clause 91(2) makes it an offence for a bankrupt to knowingly make a statement that is false or misleading to the chairman of a creditors meeting. This provision is retrospective and render criminally liable a person who, at the time of committing the act, was not infringing the criminal law.

The Committee draws the attention of these subclauses to the attention of Senators in that, by making the provisions retrospective, it may be considered to trespass unduly on personal rights and liberties.

CONSTITUTION ALTERATION (APPROPRIATION FOR THE ORDINARY ANNUAL SERVICES OF THE GOVERNMENT 1987

This Bill was introduced into the Senate on 23 September 1987 by Senator Macklin.

The Bill proposes to alter the Constitution to ensure that if the Senate fails to pass a proposed law appropriating revenue or moneys for the ordinary annual services of the Government in respect of a year, an amount of money is appropriated for those services in respect of that year equal to the amount appropriated for those services in respect of the preceding year.

The Committee has no comments on this Bill.

CONSTITUTION ALTERATION (DEMOCRATIC ELECTIONS) BILL 1987

This Bill was introduced into the Senate on 23 September 1987 by Senator Macklin.

The Bill proposes alterations to the Constitution which will ensure that members of the Commonwealth Parliament and the Parliaments of States and self-governing Territories are chosen directly and democratically by the people.

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 (ELECTORS' INITIATIVE) BILL 1987

This Bill was introduced into the Senate on 23 September 1987 by Senator Macklin.

The Bill proposes to alter the Constitution so as to rest in the electors power to propose laws and to approve or disapprove such proposed 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.

CONSTITUTION ALTERATION (FIXED TERM PARLIAMENTS) BILL 1987

This Bill was introduced into the Senate on 23 September 1987 by Senator Macklin.

The Bill proposes to alter the Constitution in relation to the duration of the House of Representatives, the terms of service for Senators, the holding of elections for the Senate and the House of Representatives, and the office of Prime Minister.

The Committee has no comments on this Bill.

CONSTITUTION ALTERATION (PARLIAMENT) BILL 1987

This Bill was introduced into the Senate on 23 September 1987 by Senator Macklin.

The Bill proposes to alter the Constitution so that the number of Senators need not necessarily be increased when there is an increase in the number of members of the House of Representatives.

The Committee has no comments on this Bill.

CUSTOMS TARIFF (COAL EXPORT DUTY) AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 23 September 1987 by the Minister for Science and Small Business.

The Bill provides for an amendment to the definition of high quality coking coal within the Customs Tariff (Coal Export Duty) Act 1975.

The Committee has no comments on this Bill.

DEFENCE HOUSING AUTHORITY BILL 1987

This Bill was introduced into the Senate on 15 September 1987 by the Minister for Home Affairs.

The Bill creates a Defence Housing Authority to undertake the management of Defence housing. The primary functions of the Authority include the management, construction, upgrading and maintenance of Defence housing and the disposal of surplus stock.

This Bill is substantially the same as the Defence Housing Authority Bill introduced earlier this year. The Committee commented on the Bill in its Seventh Report of 1987 and the Committee draws the attention of Senators to its comment and reports that it has no further comment to make on this Bill.

D11/87

DRIED FRUITS EXPORT CHARGES AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The Bill is to establish a new ceiling on the export charge leviable on export of dried vine fruit; namely currants, sultanas and raisins.

Currently a charge is applied to all dried vine fruits exported from Australia to fund the operation of the Australian Dried Fruits Corporation. The maximum rate of charge is set by the Dried Fruits Export Charges Act 1924 and the operative rate by Regulations made in accordance with the provisions of the Act. At present both the maximum and operative rates charge are set at 1.5 cents per kilogram. This rate will be amended to 3 cents a kilogram.

The Committee has no comment on this Bill.

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

EGG INDUSTRY RESEARCH (HEN QUOTA) LEVY AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The amendments contained in the Bill are intended to clarify the incidence of the levy imposed by the Egg Industry Research (Hen Quota) Levy Act 1987. The proposed changes will establish clearly that the levy applies to operative hen quotas.

The Committee draws attention to the fact that the Bill is expressed to be retrospective to 1 July 1987. Whilst the Committee would normally comment on this position, it makes no comment in view of the fact that the amendment made by the Bill is intended to correct an oversight insofar a variation in state hen quota calculation there was possibility of doubt as to the adequacy of the provisions in the Act which defined application of the levy.

D11/87

FISHING INDUSTRY RESEARCH AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Resources.

The Bill provides transitional arrangements between the effective termination of the Fishing Industry Research Act 1969 and the proposed operation of the Fishing Industry Research and Development Bill 1987.

The Bill amends the Fishing Industry Research Act 1969 by repealing the appropriation to the Fishing Industry Research Trust Account and related provisions abolish the Fishing Industry Research Committee, the functions of which will be replaced by the Fishing Industry Research and Development Bill. The shell of the Principal Act after passage of the present Bill will preserve the Fishing Industry Research Trust Account until the money in that Account has been spent or otherwise disposed of.

The Committee has no comment on this Bill.

FISHING INDUSTRY RESEARCH AND DEVELOPMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Resources.

The Bill replaces, but does not repeal, the Fishing Industry Research Act 1969. It provides a new framework for the management of the Commonwealth's research and development activities in the Australian fishing industry, along lines generally similar to those provided in respect of other rural industries by the Rural Industries Research Act 1985. Separate provision is necessary for fisheries research and development because of the jurisdictional arrangements in Australia for fisheries.

The Bill provides for the establishment and operation of a Fishing Industry Research and Development Council and a Fishing Industry Research and Development Trust Fund managed by the Council. The Council is to develop, for the approval of the Minister, 5-year-plans and annual programs of fisheries research and development that the new Trust Fund will finance.

The Committee has no comment on this Bill.

FISHING LEGISLATION AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Resources.

The Bill proposes amendments of a miscellaneous and essentially administrative and procedural nature to the Continental Shelf (Living Natural Resources) Act 1968, the Fisheries Act 1952 and the Torres Strait Fisheries Act 1984.

In particular the Bill will shift the emphasis of provisions in the Acts authorising the Minister to make notices away from the notices to the prohibitions in them. This will facilitate the preparation of notices containing several prohibitions each requiring separate endorsements of licences. The Bill will also strengthen the powers of fisheries officers to enter and search a vessel or vehicle without warrant where the officers have reasonable grounds for believing that there is upon the vessel or vehicle any thing which may afford evidence as to the commission of an offence.

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

Clause 6 - Powers of entry, search and seizure

Proposed new subsection 14(3) of the Continental Shelf (Living Natural Resources) Act 1968 would allow an officer to obtain a search warrant, upon reasonable grounds, from a Justice of the Peace. The Committee has noted in the past that search warrants should ideally, and properly, be issued by judicial officers (such as Magistrates) in keeping with traditional concerns as to the civil liberties of members of the community.

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

The attention of Senators is accordingly drawn to proposed subsection 14(3) of the Act 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.

HORTICULTURAL EXPORT CHARGE BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The Bill together with the Horticultural Export Charge Collection Bill provides for the imposition and collection of a charge on exports of horticultural products. Funds raised are to assist the operation of the Australian Horticultural Corporation and the Horticultural Research and Development Corporation and are to be paid into separate accounts to be administered by the Corporations.

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

Clauses 8,9 and 10 - Inappropriate delegation of legislative power

Clauses 8, 9 and 10 of the Bill would permit relevant charges and levies destined for the Australian Horticultural Corporation, the Horticultural Research and Development Corporation and other purposes to be fixed by regulation. Clause 7(2) of the Bill is directed at provision of a maximum rate of charges or levy by reference to figures on average product values which must be published by the Australian Statistician. This provision clearly will only result in fixing a maximum level if such figures are published. The Bill makes no provision for a maximum rate of charge or levy in the event that such figures have not been published, or the publication discontinued.

The Committee has drawn attention to such regulation making powers before. The Committee's view has consistently been that the primary guiding principle should be that, having established a legislative scheme, Parliament should not leave such unrestricted decision making power to the Minister. In

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

particular, the fixing of charges and levies without a maximum rate of charge being provided in the legislation is a matter which should be subject to careful consideration.

Accordingly the Committee draws clauses 8, 9 and 10 of the Bill to the attention of Senators in that by allowing the Minister the power to fix charges and levies without a specified maximum charge is an inappropriate delegation of legislative power.

HORTICULTURAL EXPORT CHARGE COLLECTION BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The Bill is complementary to the Horticultural Export Charge Bill as it makes provisions for the efficient and effective collection of the charges imposed by that Bill.

The Committee's comments on the Horticultural Export Charge Bill apply to this Bill.

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

Subclause 13(1) - Powers of entry and search

Subclause 13(1) of the Bill, when read with the definition of magistrate in clause 4(1), would allow an officer to obtain the issue of a warrant on the grounds set out in the clause, from a Justice of the Peace.

The Committee has commented on such a provision in relation to the Fishing Legislation Amendment Bill 1987 earlier in this Digest, and considers the same matters apply to this clause.

The attention of Senators is accordingly drawn to proposed subsection 13(1) of the Bill in that it may be considered to trespass unduly on personal rights and liberties.

Subclause 16(2) - Self incrimination

Subclause 16(2) of the Bill provides that a person is not excused from submitting required returns and information on the ground that the return or information might tend to incriminate the person thus removing the privilege against self-incrimination.

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 "subclause is generally in a form standard for such provisions, except that paragraph 16(2)(b) would allow the information obtained to be used in proceedings for recovery of a penalty for late payment.

The Committee notes that the clause also employs the, 'use-derivative use indemnity' form which has been strongly supported by the Committee in such cases and is aimed at ensuring that, not only would the actual incriminating statement or document be inadmissible in criminal proceedings (other than those related to the failure to answer a question or produce a document or the provision of false or misleading answers or documents), but also any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the document or thing obtained as a direct or indirect consequence of the answer or the production of the document, would be similarly inadmissible.

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

HORTICULTURAL LEVY BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The Bill and three related Bills (namely, the Horticultural Levy Collection Bill 1987, the Horticultural Export Charge Bill 1987 and the Horticultural Export Charge Collection Bill 1987) are to provide for the imposition and collection of levies on Horticultural products produced and sold in Australia and for charges on exports of horticultural products.

They provide the means of financing, in the longer term, the activities of the Australian Horticultural Corporation and, apart from Commonwealth matching monies, the Horticultural Research and Development Corporation.

The Committee's comments on clauses of the Horticultural Export Charge Bill also apply to this Bill.

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HORTICULTURAL LEVY COLLECTION BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The Bill is complementary to the Horticultural Levy Bill as it makes provision for the *efficient* and *effective* collection of the levies imposed by that Bill.

The Committee's comments on clauses of the Horticultural Export Charge Collection Bill apply to this Bill.

HORTICULTURAL POLICY COUNCIL BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The Bill will establish the Horticultural Policy Council (HPC), which is designed to assist in the development of consistent and comprehensive policies for Australia's horticultural industries and to co-ordinate the participation of horticultural industries in the policy formulation process. It will:

- . examine issues affecting the horticultural industries on its own initiative and report on these to the Minister;
- . examine matters relevant to horticulture referred to it by the Minister; and
- . develop recommendations, guidelines and plans for measures designed to safeguard, or further the interests of, the horticultural industries.

The Bill is one of the package of bills relating to horticulture.

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

Subclause 9(2) and subclause 15(4) - Inappropriate delegation of legislative power

Subclause 9(2) of the Bill provides the Minister with the power to vary the provisions of proposed subsection by regulation. Proposed subsection (1) provides for the constitution and membership of the HPC.

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

Subclause 9(2) would permit the Minister by making an order (which does not require the approval of the Executive Council) to increase or decrease the size of the HPC.

In addition, the Minister may, under subclause 15(4), make an order which could substantially increase the remuneration paid to new members of the HPC.

The only control which would exist over Ministerial discretions is that regulations made under the proposed provisions are subject to Parliamentary scrutiny by virtue of subclause 30(3).

In such cases the Committee has consistently noted that when the Parliament establishes a legislative structure, it should not be left to the Executive to make basic and substantial alterations to that structure by regulation.

The Committee accordingly draws the attention of Senators to subclauses 9(2) and 15(4) in that they 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.

HORTICULTURAL RESEARCH AND DEVELOPMENT CORPORATION BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister for Science and Small Business.

The purpose of the Bill will establish the Horticultural Research and Development Corporation which will have, as its prime object, the improvement of productivity and market performance of horticultural industries by:

- . identifying areas of horticultural research and development that are relevant to the needs of these industries
- . improving the efficiency and effectiveness of horticultural research and development, and
- . encouraging the more effective use of the resources and skills available in the community in general, and in particular in the scientific community, of horticultural research and development.

The Bill is one of the package of bills relating to horticulture.

The Committee has no comments on this Bill.

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

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INCOME TAX AMENDMENT BILL (NO.2) 1987

This Bill was introduced into the House of Representatives on 23 September 1987 by the Minister Assisting the Treasurer.

The Bill will amend the Income Tax Act 1986 to formally impose the rates of income tax payable by individuals and trustees generally for the 1987-88 and all subsequent financial years.

It will also impose the rates for 1987-88 and subsequent years payable by companies, registered organizations and unit trusts treated as companies on incomes for 1986-87 and subsequent years.

In addition, it will impose rates of tax on superannuation funds, ineligible approved deposit funds and certain other trusts.

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 AND SUPERANNUATION COMMISSIONER BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister Assisting the Treasurer.

The Bill is to create an office of Insurance and Superannuation Commissioner who will assume overall responsibility, subject to any directions by the Minister, for the existing insurance industry regulatory functions under the Life Insurance Act 1945, the Insurance Act 1973 and the Insurance (Agents and Brokers) Act 1984, the new occupational superannuation supervisory functions proposed under the Occupational Superannuation Standards Bill 1987, and the non-statutory actuarial functions of the Australian Government Actuary.

The Committee has no comments on this Bill.

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INSURANCE AND SUPERANNUATION COMMISSIONER (CONSEQUENTIAL PROVISIONS) BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister Assisting the Treasurer.

The Bill will remove the statutory offices of Insurance Commissioner and Life Insurance Commissioner and effect amendments to relevant provisions in the Insurance Act 1973, the Life Insurance Act 1945, the Insurance (Agents and Brokers) Act 1984, the Companies Act 1981, and the Public Service Act 1922, consequential upon the assumption by the Insurance and Superannuation Commissioner of the existing statutory responsibilities of those offices.

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.

LOANS BILL 1987

This Bill was introduced into the House of Representatives on 15 September 1987 by the Minister Representing the Minister for Finance.

The Bill is to make provision for the financing of the prospective Budget deficit in 1987-88 together with the associated prospective deficit in the Consolidated Revenue Fund.

The Committee has no comments on this Bill.

MEDICARE LEVY AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives by the Minister Assisting the Treasurer.

The Bill will amend the Medicare Levy Act 1986 to declare and impose the basic rate of medicare levy for 1987-88 and all subsequent income years.

The Committee has no comments on this Bill.

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MINISTERS OF STATE AMENDMENT ACT (NO.2) 1987

This Act was introduced into the Senate on 15 September 1987 by the Minister for Industry, Technology and Commerce. It received Royal assent on Friday 18 September 1987.

The Bill amended the Ministers of State Act 1952 to increase the permitted maximum number of Ministers of State from 27 to 30.

Notwithstanding that has become law, the Committee, as permitted by its Terms of Reference, notes that it has no comment to make on the legislation.

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

NATIONAL IDENTIFICATION SYSTEM (REFERENCE TO THE PEOPLE) BILL  
1987

This Bill was introduced into the Senate on 15 September 1987 by Senator Haines.

The Bill will ensure that a referendum is conducted on the issue of the introduction of a national identification system.

The Committee has no comments on this Bill.

NUCLEAR NON-PROLIFERATION (SAFEGUARDS) (CONSEQUENTIAL AMENDMENTS)  
BILL 1987

This Bill will be introduced into the House of Representatives on 18 September 1987 by the Minister for Industry, Technology and Commerce.

The Bill will amend the Patents Act 1952 to establish procedures for handling patent applications that contain information relating to nuclear material. The procedures will ensure compliance with the Nuclear Non-Proliferation (Safeguards) Act 1987.

The Committee has no comments on this Bill.

OCCUPATIONAL SUPERANNUATION STANDARDS BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister Assisting the Treasurer.

The Bill provides various standards and other relevant conditions which superannuation funds and approved deposit funds will be required to meet in order to be eligible for relevant taxation concessions applicable under the Income Tax Assessment Act 1936.

The Bill is similar to the Occupational Superannuation Standards Bill introduced earlier this year. The Committee commented on the Bill in Alert Digest No.9 of 1987.

PETROLEUM (SUBMERGED LANDS) LEGISLATION

This Bill was introduced into the House of Representatives on 23 September 1987 by the Minister for Primary Industries and Energy.

The Bill will make a number of amendmets to the Petroleum (Submerged Lands) Act 1967, the Petroleum (Submerged Lands) (Registration Fees) Act 1967 and the Petroleum (Submerged Lands) (Cash Bidding) Amendment Act 1985, aimed as improving the administration of petroleum exploration and development activities in Australian offshore waters, and ensure that the option is available to the Joint Authority in the future to use cash bidding as a means of awarding exploration permits over highly prospective acreage. The amendments will also correct some anomalies in the legislation.

The Committee has no comments on this Bill.

PRIMARY INDUSTRY BANK REPEAL BILL 1987

This Bill was introduced into the House of Representatives on 18 September 1987 by the Minister Assisting the Treasurer.

The Bill seeks to repeal the Primary Industry Bank Act 1977 and to make certain consequential amendments to the Banking Act 1959. The Act is now redundant following the sale of the Government's interest in the Primary Industry Bank to the Rural and Industries Bank of Western Australia and the granting of a banking authority to the Primary Industry Bank under Section 9 of the Banking Act 1959 on 30 June 1987.

The Committee has no comments on this Bill.

PRIVACY BILL 1986

This Bill was introduced into the House of Representatives on 15 September 1987 by the Attorney-General.

The Privacy Bill 1986 will establish rules of conduct for the collection and retention of, access to and correction, use and disclosure of personal information about individuals. These Information Privacy Principles will apply to Commonwealth departments and agencies.

The Committee has no comments on this Bill.

PRIVACY (CONSEQUENTIAL AMENDMENTS) BILL 1986

This Bill was introduced into the House of Representatives on 15 September 1987 by the Attorney-General.

The Bill will make amendments to the Freedom of Information Act 1982 (FOI Act) to require that, where reasonably practicable, a person whose personal affairs are dealt with in a document to which another person has sought access is to be consulted before access is granted. That firstmentioned person will be able to object to provision of access (i.e. the amendments will confer "reverse FOI" right on that person).

The Bill also will make amendments to the Ombudsman Act 1976, Merit Protection (Australian Government Employees) Act 1984 and the Human Rights and Equal Opportunity Commission Act 1986 to require the Ombudsman, the Human Rights and Equal Opportunity Commission (HREOC) and the Merit Protection and Review Agency (MPRA) to refer complaints made to them to the Data Protection Agency where they conclude that the complaints are in effect complaints of interference with privacy and the Data Protection Agency could better deal with them. Under the Australia Card Bill 1986 and the Privacy Bill, the DPA will also be empowered to transfer complaints to the above three bodies where it considers it appropriate.

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 1987

This Bill was introduced into the House of Representatives on 23 September 1987 by the Minister Assisting the Treasurer.

The Bill proposes a number of amendments to the sales tax laws to exempt certain products and materials from sales tax and to impose the tax on other goods previously exempt.

The Committee has no comments on this Bill.

STATES GRANTS (GENERAL REVENUE) AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 15 September 1987 by the Minister Assisting the Treasurer.

The Bill is to amend the States Grants (General Revenue) Act 1985 in two respects:

- . to give effect to decisions taken at the Premiers' Conference on 25 May 1987 in respect of the level of financial assistance grants and identified health grants payable to the States in 1987-88; and
- . to implement the Budget proposal that the States will in future be expected to share in meeting some of the costs of higher education superannuation.

The Committee has no comments on this Bill.

STATES (WORKS AND HOUSING) ASSISTANCE AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on 15 September 1987 by the Minister Assisting the Treasurer.

The Bill will amend the States (Works and Housing) Assistance Act 1985 so as to authorise payments in 1987-88 arising out of decisions, taken at the 25 May, 1987 Loan Concil Meeting, which fall outside the provisions of the Financial Agreement Act 1928.

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 1987

This Bill was introduced into the Senate on 23 September 1987 by the Minister for Justice.

The Bill continues the practice of introducing an omnibus Bill into each sitting of the Parliament as an expeditious way of making a large number of non-contentious amendments to legislation not otherwise being amended.

Some of the amendments made by this Bill tidy up, correct and up-date existing legislation. Other amendments are of minor policy significance or are matters of routine administration. The Bill amends 87 Acts and repeals 24.

The Bill was first introduced into the House of Representatives on 30 April 1987. The Bill was not passed prior to the double dissolution of the Parliament in June.

In its Ninth Report of 1987 (27 May 1987) the Committee drew Senators' attention to several provisions in the Bill.

The Committee has no further comment on the Bill.

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

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TAXATION LAWS AMENDMENT BILL (NO.3) 1987

This Bill was introduced into the House of Representatives on 23 September 1987 by the Minister Assisting the Treasurer.

The Bill will amend the income tax law. The measures are designed primarily to prevent abuses of the new imputation system of company tax, and changes to the capital gains, superannuation deductions and gift provisions of the income tax law and the taxing arrangements for certain educational allowances.

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

Clauses 38 and 43 - Retrospectivity

Clause 38 of the Bill contains two proposed subclauses (2) and (16) which would have the effect of increasing liability to income tax net respectively from two dates. In the case of subclause (2), the date is 4 June 1987; being the date a 'draft exposure Bill' was released by the Treasurer. Further, clause 43(2) would provide that liability under proposed clause 42 applies on and after 14 August 1987, the date on which the Treasurer announced the proposed change.

The Committee has drawn attention several times in the past year to the practice of the Taxation Office of making legislation retrospective to the date of the announcement of the proposal to change the law. (See the Second Report and Tenth Report of 1987). The only course available to citizens under such provisions is that they should arrange their affairs in accordance with these announcements - or 'exposure drafts' of legislation which are intended to allow wide discussion of intended legislative change - rather than in accordance with laws made by the Parliament.

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

Accordingly, the Committee draws clauses 38 and 43 to the attention of the Senate under principle 1(a)(1) of the Committee's principles, in that their retrospective application they may be considered to trespass unduely 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.

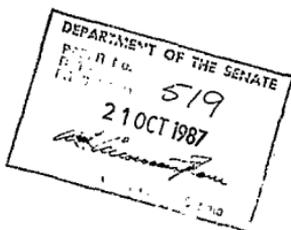
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WHEAT MARKETING AMENDMENT BILL (NO.2) 1987

This Bill was introduced into the House of Representatives on 23 September 1987 by the Minister for Primary Industry and Energy.

The purpose of the Bill will amend several sections of the Wheat Marketing Act 1984 to implement, in relation to the Australian Wheat Board, certain provisions of the Government's policy on the reform of Statutory Marketing Authorities and to incorporate in the ACT provisions consistent with the Government's policy on Equal Employment Opportunity.

The Committee has no comments on this Bill.



SCRUTINY OF BILLS ALERT DIGEST

NO. 12 OF 1987

21 October 1987

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator M. Beahan  
Senator D. Brownhill  
Senator R. Crowley  
Senator K. Patterson  
Senator J.F. Powell

TERMS OF REFERENCE

Extract

- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make such rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (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 Meat and Live-stock Industry Legislation  
Amendment Bill 1987

Australian Tourist Commission Bill 1987\*

Australian Tourist Commission (Transitional Provisions) Bill  
1987

Commonwealth Borrowing Levy Bill 1987

Commonwealth Borrowing Levy Collection Bill 1987

Customs Tariff Amendment Bill (No.2) 1987

Export Inspection Charges Collection Amendment Bill 1987

Export Inspection (Establishment Registration Charges)  
Amendment Bill 1987

Family Law Amendment Bill 1987

Live-stock Export Charge Amendment Bill 1987

Live-stock Slaughter Levy Amendment Bill 1987

Migration Amendment Bill 1987 \*

National Health Amendment Bill (No.2) 1987

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Sea Installations Bill 1987 \*

Sea Installations Levy Bill 1987

Sea Installations (Miscellaneous Amendments) Bill 1987

\* These Bills are the subject of comment by the Committee in accordance with the Committee's terms of reference.

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.

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**AUSTRALIAN MEAT AND LIVE-STOCK INDUSTRY LEGISLATION AMENDMENT  
BILL 1987**

This Act was introduced into the Senate on 7 October 1987 by the Minister for Primary Industries and Energy.

The Bill will amend a number of the Acts dealing with the Australian meat and livestock industry namely:

- . the Australian Meat and Live-stock Corporation Act 1977;
- . the Australian Meat and Live-stock Research and Development Corporation Act 1985;
- . the Australian Meat and Live-stock Industry Policy Council Act 1984;
- . the Australian Meat and Live-stock Industry Selection Committee Act 1984.

The amendments to the Australian Meat and Live-stock Corporation Act will formalize the Corporation's involvement with the Australian Pork Corporation. Other amendments include consultation with industry in the preparation of the corporate planning processes of both the Australian Meat and Live-stock Corporation and the Australian Meat and Live-stock Research and Development Corporation, as well as streamlining the operations of the annual general meetings.

Amendments to the Australian Meat and Live-stock Industry Policy Council Act 1984 will remove the requirement for the Council to meet every two years. The Australian Meat and Live-stock Industry Selection Committee Act 1984 will be amended to provide

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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for the appointment of members to the Selection Committee for periods up to three years and removes the annual reporting requirement.

The Committee has no comment on this Bill.

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

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**AUSTRALIAN TOURIST COMMISSION BILL 1987**

This Bill was introduced into the Senate on 8 October 1987 by the Minister for the Environment and the Arts.

The Bill is to provide for the restructuring and reorganisation of the Australian Tourist Commission to give effect to the majority of the recommendations of the report of the Australian Government Inquiry into Tourism.

Clause 29(4) - Lack of Parliamentary Scrutiny

Clause 29 of the Bill would give the Minister power to give directions, in exceptional circumstances, to the Board of the Commission.

Proposed Subclause (1) enables the Minister to give directions with which the Board must comply in relation to the performance of the functions, and the exercise of the powers, of the Commission.

Subclause (2) prescribes the means by which the Minister is to consult the Board before giving directions.

Subclause (3) sets the procedure to be followed when a direction is given to the Board. A copy of the direction is must be published in the Gazette as soon as practicable after giving the direction and laid before each House of the Parliament within 15 sitting days of each House after giving the direction.

In addition, particulars of the direction and an assessment of the impact that the direction has had on the operation of the Commission must be included in the next annual report of the Commission on the period in which the direction took effect.

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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Subclause (4) of the Bill, however, provides that the provisions in subclause (3) will not apply to a particular direction if the Minister determines in writing that compliance would be contrary to the public interest.

No provision has been made in the Bill to allow Parliamentary scrutiny of determinations by the Minister under subclause (4). There may be occasions when it would be in the public interest that a direction be confidential. In such cases it should be possible, at least, for the Minister to table in the Parliament notice of determination setting out the reasons why publication of the direction in accordance with subclause (3) would be contrary to the public interest.

Given that clause (29) provides for direction by for the Minister to give directions in 'exceptional circumstances' the Committee believes that subclause (4) should be drawn to the attention of the Senate in that it might be considered to insufficiently subject 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.

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**AUSTRALIAN TOURIST COMMISSION (TRANSITIONAL PROVISIONS) BILL 1987**

This Bill was introduced into the Senate on 8 October 1987 by the Minister for the Environment and the Arts.

The Bill is to enable the existing Managing Director of the Australian Tourist Commission to continue in office in accordance with the terms and conditions of his original appointment and to repeal existing Acts to allow the Australian Tourist Commission Act 1987 to come into effect.

The Committee has no comment on this Bill.

**COMMONWEALTH BORROWING LEVY BILL 1987**

This Bill was introduced into the The House of Representatives on 7 October 1987 by the Minister Assisting the Treasurer.

The Bill will provide for the imposition from 1 July 1987 of an annual levy on all borrowings, including raisings of money otherwise than by borrowing, by Commonwealth Semi-Government Authorities. The levy is imposed in place of the Commonwealth Guarantee Charge introduced in 1986-87.

The Committee has no comment on this Bill.

**COMMONWEALTH BORROWING LEVY COLLECTION BILL 1987**

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister Representing Minister Assisting the Treasurer.

The Bill will provide for the Collection of the Commonwealth Borrowing Levy imposed on Commonwealth Semi-Government authorities by the Commonwealth Borrowing Levy Bill 1987.

The Committee has no comment on this Bill.

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**CUSTOMS TARIFF AMENDMENT BILL (No.2) 1987**

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister for Science and Small Business.

The Bill will enact a range of changes to the Customs Tariff Act 1987 (the Harmonized Tariff).

The proposed changes are necessary, as follows:

- . Government decisions on Industries Assistance Commission reports on Vegetables and Vegetable Products. (No. 384). Luggage, Handbags and Similar Containers (No. 385). Chemicals and Plastics Industries (No. 390) and Reconditioned Automotive Engines (No. 394) as well as Passenger Motor Vehicles and Textiles, Clothing and Footwear Sectoral Policies, the Pharmaceutical Products Industry, certain goods subject to Excise duty and Government decisions made since the close-off of amendments to the Principal Act:
- . Amendments to certain anomalies arising from the translation of current assistance arrangements to the Harmonized Tariff; and
- . Amendments including additional notes to sections and chapters required to ensure the Principal Act accurately reflects the intention of the Convention and to correct proofreading and drafting errors.

The Committee has no comment on this Bill.

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

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**EXPORT INSPECTION CHARGES COLLECTION AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister for Primary Industries and Energy.

The Bill will amend the Export Inspection Charges Collection Act 1985 to enable an establishment registration charge to be imposed on establishments preparing food for export both upon and during registration.

The Committee has no comment on this Bill.

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**EXPORT INSPECTION (ESTABLISHMENT REGISTRATION CHARGES)  
AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister for Primary Industries and Energy.

The Bill will amend the Export Inspection (Establishment Registration Charge) Act 1985 to remove impediments to the full implementation of an initiative designed reduce the red-tape burden on exporters payable annually. The amendment will result in the charge being imposed on a periodic basis and not linked to the commencement or renewal of registration.

The Committee has no comment on this Bill.

D12/87

**FAMILY LAW AMENDMENT BILL 1987**

This Bill was introduced in the Senate on 7 October 1987 by Senator Durack.

The Bill will amend the Family Law Act 1975 with respect to child maintenance.

The Committee has no comment on this Bill.

D12/87

**LIVE-STOCK EXPORT CHARGE AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister for Primary Industries and Energy.

The Bill will amend the Live-stock Export Charge Act 1964 to increase the maximum rates of the export charge on cattle, sheep, lambs, buffaloes and goats exported from Australia.

The Committee has no comment on this Bill.

D12/87

**LIVE-STOCK SLAUGHTER LEVY AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister for Primary Industries and Energy.

The Bill will amend the Live-stock Slaughter Levy Act 1964 to increase the maximum rates on the levy imposed on the slaughter at an abattoir of cattle, sheep, lambs, buffaloes, goats, calves and bobby calves for human consumption.

The Committee has no comment on this Bill.

D12/87

**MIGRATION AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister for Immigration, Local Government and Ethnic Affairs.

The Bill amends the Migration Act 1958 to impose new fees for service arrangements, including -

- . reconsideration of decisions
- . requests for entry permits and visas
- . immigration clearance

The Bill also provides for alternative penalty mechanism for breaches of Section 11C of the Act. The Committee draws attention to the following clauses of the Bill:

Clause 7 - Inappropriate delegation of legislative power.

Clause 7 would enact a new section 34A of the Act. Proposed subsection 34A(1) may be regarded as a "Henry VIII" clause to the extent that it would permit the amount of a prescribed fee, which would require passengers on international flights seeking to enter Australia after 1 January 1988 to pay a fee for the services relating to pay a fee for the services relating to their immigration. Arrangements for the collection of the fee, and its amount, will be prescribed by regulation.

Whilst the proposed amount of the fee (\$5) may be regarded as no more than recovery of costs, the Committee in the past consistently objected to imposition of fees, which may be regarded as a form of taxation, by regulation without a limit set

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by legislation. The Committee has argued that the Parliament should not lightly delegate its taxing powers. The Committee has taken the view that a ceiling amount on such a fee should be prescribed in legislation.

The Committee accordingly draws the attention of Senators to clause 7 of the Bill in that by enabling the setting of a fee by regulation without an upper limit, the Bill may be considered to be an inappropriate delegation of legislation power.

D12/87

**NATIONAL HEALTH AMENDMENT BILL (No.2) 1987**

This Bill was introduced into the House of Representatives by the Minister for Veterans' Affairs.

The Bill makes a number of changes to procedures associated with the pharmaceutical benefits scheme. The alterations include:

- . introducing a new alternative method of calculating the amount payable by the Commonwealth the pharmacists and medical practitioners for the supply of pharmaceutical benefits.
- . to provide a financial incentive to pharmacists to encourage the use of the new alternative methods and the making of claims for payment through electronic forms.
- . to tighten procedures for listing new drugs as Pharmaceutical Benefits and encourage a reduction in prescribing expensive drugs where alternatives are available.
- . increase membership of the Pharmaceutical Benefits Advisory Committee and the establishment of specialist sub-committees.
- . empower the Minister to remove, at his own discretion, a drug from the Pharmaceutical list.

The Committee has no comment on this Bill.

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

D12/87

## SEA INSTALLATIONS BILL 1987

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister for Arts, Sport, the Environment, Tourism and Territories. The Bill is similar to a Bill of the same title introduced on 2 April 1987.

The Bill is one of a number of Bills required to put in place a scheme to regulate the operation of certain offshore sea installations fixed or moored to the sea bed of the Australian continental shelf beyond the territorial sea. The Bill will facilitate the development of technically sound, environmentally acceptably and economically viable sea installations.

It provides a basis for the application of important Commonwealth laws, and for State or Territory laws to be adopted as Commonwealth laws.

These provisions are parallel to those already applying under the Petroleum (Submerged Lands) Act 1967, which regulates offshore petroleum and mineral exploration and extraction.

In its Ninth Report of 1987 (27 May 1987) the Committee reported on several clauses of the previous Bill, and the Minister's response to the Committee's concerns. The Committee's Report dealt with the following clauses of the Bill:

- Clause 4(1)
- Clauses 14(2) and 57(4)
  - (Clauses 12(2) and 52(4) in the previous Bill)
- Clause 40(4)
  - (Clause 38(3) in the previous Bill)
- Clauses 45(2) and (3), 46(7), 47(7)
  - (Clauses 44(2) and (3), 45(7), 46(7) in the previous Bill)

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

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Clause 62

- (Clause 56 in the previous Bill)

The Committee's concerns regarding clauses 4(1), clauses 14(2), and 57(4) and clause 56 of the previous Bill have been taken into account in the drafting of this Bill.

The Committee reproduces below extracts from its Ninth Report of 1987 on clauses 40(4), clauses 45(2) and (3), 46(7) and 47(7) of this Bill as the comments apply to this Bill. (The extract shows the clause numbering in the previous Bill).

'Sub-clause 38(3) - Non-reviewable decision

Clause 38 provides that the Minister may give an exemption certificate relieving a person of the obligation to obtain a permit in respect of a specified sea installation if the Minister is satisfied that the installation is to be used only for scientific activities or activities related to marine archaeology. Sub-clause 38(3) provides that an exemption certificate is subject to such conditions as the Minister considers appropriate. Although paragraph 69(1)(k) confers a right of appeal to the Administrative Appeals Tribunal in respect of a refusal to give an exemption certificate there is no right of review of conditions imposed under sub-clause 38(3) otherwise than as to their legality pursuant to the Administrative Decisions (Judicial Review) Act 1977. By contrast paragraph 69(1)(b) confers a right of appeal to the Administrative Appeals Tribunal in respect of the conditions on permits.

Accordingly the Committee drew sub-clause 38(3) to the attention of the Senate under principle 1(a)(iii) in that it might be considered to make rights, liberties and/or

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obligations unduly dependent upon non-reviewable decisions. The Minister for Arts, Heritage and Environment has responded:

'The Committee's point that the Bill does not provide for review of conditions imposed under sub-clause 38(3) in relation to exemption certificates, other than under the Administrative Decisions (Judicial Review) Act 1977, is noted. This provision provides a concession and accordingly any decision under it in favour of an applicant gives a benefit rather than inflicts a disadvantage. It is therefore different from other provisions subject to review.'

The Committee thanks the Minister for this response. However the Committee does not accept that the fact that a provision confers a benefit rather than inflicting a disadvantage is a sufficient rationale for denying a right of review on the merits in respect of the exercise of the discretion concerned. In any case the grant of an exemption certificate on conditions unacceptable to the applicant may be a significant disadvantage. The Committee therefore continues to draw sub-clause 38(3) to the attention of the Senate under principle 1(a)(iii) in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

Sub-clauses 44(2) and (3), 45(7) and 46(7) - 'Henry VIII' clauses

Sub-clause 44(1) provides that the Commonwealth Acts specified in the Schedule apply in relation to sea installations installed in adjacent areas as if those areas were part of the Commonwealth. Sub-clause 44(2) provides that the regulations may revoke the application, or the application in a specified adjacent area, of an Act, or part

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of an Act, specified in the Schedule. Sub-clause 44(3) further provides that the regulations may apply other Commonwealth Acts, in whole or in part, in relation to sea installations generally or sea installations installed in specified adjacent areas. Sub-clause 45(2) provides that the laws in force in a State for the time being (other than laws of the Commonwealth) apply in relation to sea installations installed in the adjacent area of the State. Sub-clause 45(7) provides that the regulations may provide that such State laws do not apply or apply subject to modifications specified in the regulations. Sub-clauses 46(1) and (7) respectively make similar provision for the application of the laws in force in a Territory to sea installations installed in the adjacent area of the Territory.

The law in force in relation to a sea installation is thus left in effect to the regulations which may modify without limitation the Commonwealth, State and Territory laws which clauses 44, 45 and 46 set out to apply. The Committee therefore drew sub-clauses 44(2) and (3), 45(7) and 46(7) to the attention of the Senate under principle 1(a)(iv) in that as 'Henry VIII' clauses permitting the operation of Acts to be varied by regulations they might be considered to constitute an inappropriate delegation of legislative power. The Minister for Arts, heritage and Environment has responded:

'Under the Bill, only Commonwealth laws that are set out in the Schedule to the Bill or prescribed under the bill are applicable to sea installations. Under the Petroleum (Submerged Lands) Act 1967, Commonwealth Laws do not apply in general, rather the Act requires each individual Commonwealth Act to be made specifically applicable to such installations.

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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Extension of additional Commonwealth laws by regulation is consistent with past practice accepted by Parliament, and avoids inadvertent omissions or delayed application of laws. In either case the objectives of the legislation could be defeated. However, taking into account the Committee's comments, the Department and the Attorney-General's Department are examining whether there is a way of applying the body of Commonwealth law so that there are no likely detrimental unforeseen consequences.

The power included to modify by regulation State and Territorial laws applying as Commonwealth laws for the purposes of the Bill is analogous to the application of laws of other jurisdictions to territories such as in the Ashmore and Cartier Islands Acceptance (Admendment) Act 1985. This provides a means for the Commonwealth to respond quickly to changes in State and Territory Laws, while retaining Parliamentary involvement.'

The Committee thanks the Minister for this response, and in particular the Minister's undertaking to examine, in conjunction with the Attorney-General's Department, a different means of achieving the desired end with regard to the application of Commonwealth laws. With regard to the application of State and Territorial laws the Committee notes that, in the case of the Ashmore and Cartier Islands. The Committee's concern is that, while it would be natural for a person operating in the adjacent areas should consult regulations made under the Sea Installations Bill 1987. In continuing to draw attention to sub-clauses 45(7) and 46(7), together with the Minister's response, the Committee hopes to promote a fuller consideration of the issue involved at the Committee stage of debate on the Bill.'

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**SEA INSTALLATIONS LEVY BILL 1987**

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister for the Arts, Sport, the Environment and Territories.

The Bill is part of a package of Bills to provide for a scheme to regulate the operation of certain offshore sea installations.

It provides for a levy to be paid to the Commonwealth by a permit holder in relation to the operation of a sea installation. This will ensure that the administration costs of the States and Territories are met, and that general revenue can benefit, as it would if similar installations were located on the mainland. The levy is expressed as a percentage of a valuation of the installation will be calculated annually in accordance with valuation practice by officers of the Australian Taxation Office. Decisions will be subject to review by the Administrative Appeals Tribunal.

The Committee has no comment on this Bill.

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

**SEA INSTALLATIONS (MISCELLANEOUS AMENDMENTS) BILL 1987**

This Bill was introduced into the House of Representatives on 7 October 1987 by the Minister for the Arts, Sport, the Environment, Tourism and Territories.

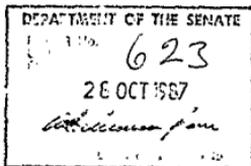
the Bill makes amendments to Commonwealth legislation necessitated by the sea installations legislative package.

The Customs Act 1901 and the Excise Act 1901 are amended to give to officers administering the respective Acts power over such installations, and ships, aircraft, persons and goods arriving with or at the installations or departing overseas from such installations.

The Migration Act 1958 is amended to identify the point when sea installations become or cease to be part of Australia.

The amendments to the Quarantine Act 1908 apply a wide range of controls under the Act to sea installations. The principal control is to make newly arrived installations, persons and goods on the installations subject to quarantine.

The Committee has no comment on this Bill.



SCRUTINY OF BILLS ALERT DIGEST

NO. 13 OF 1987

28 October 1987

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator M. Beahan  
Senator D. Brownhill  
Senator R. Crowley  
Senator K. Patterson  
Senator J.F. Powell

TERMS OF REFERENCE

Extract

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

The Committee has considered the following Bills:

Broadcasting Amendment Bill (No.3) 1987

Housing Assistance Amendment Bill 1987

Management and Investment Companies Legislation Amendment  
Bill 1987

National Crime Authority Amendment Bill 1987

Petroleum Resource Rent Tax Bill 1987

Petroleum Resource Rent Tax Assessment Bill 1987\*

Petroleum Resource Rent Tax (Interest on Underpayments)  
Bill 1987

Petroleum Resource Rent Tax (Miscellaneous Provisions)  
Bill 1987

\*This Bill has been commented on by the Committee in  
accordance with the Committee's terms of reference.

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.

**BROADCASTING AMENDMENT BILL (No.3) 1987**

This Bill was introduced into the Senate on 23 October 1987 by the Minister for Transport and Communications.

The Bill proposes a number of amendments to the Broadcasting Act 1942 and related amendments to the Broadcasting and Television Act 1942, the Broadcasting and Television Amendment Act 1985 and the Commonwealth Electoral Act 1918.

The proposed amendments are aimed at providing a reformed framework for the operation of public broadcasting and improving the efficiency of the Australian Broadcasting Tribunal's administrative procedures.

The Committee has no comment on this Bill.

**HOUSING ASSISTANCE AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 21 October 1987 by the Minister for Community Services and Health.

The purpose of this Bill is to authorise an appropriation for the provision of financial assistance for public housing for years 1988/89 and 1989/90, and to authorise the Commonwealth Minister to reallocate specific housing assistance grants between States.

The Committee has no comment on this Bill.

**MANAGEMENT AND INVESTMENT COMPANIES LEGISLATION AMENDMENT  
BILL 1987**

This Bill was introduced into the House of Representatives on 22 October 1987 by the Minister Representing the Acting Minister for Industry, Technology and Commerce.

The Bill will amend the Management and Investment Companies Act 1983 to permit a Management and Investment Company (MIC) to raise non-tax concessional capital and to enable it to leave the MIC Program by surrendering its licence without its investors risking the loss or reduction of their initial tax deduction.

The Committee has no comment on this Bill.

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

**NATIONAL CRIME AUTHORITY AMENDMENT BILL 1987**

This Bill was introduced into the Senate on 22 October 1987 by Senator Lewis.

The Bill is to extend the life of the National Crime Authority by repealing section 63 of the National Crime Authority Act 1984 which provided for the termination of the life of the authority on 30 June 1989.

The Committee has no comment on this Bill.

**PETROLEUM RESOURCE RENT TAX BILL 1987**

This Bill was introduced into the House of Representatives on 21 October 1987 by the Minister for Primary Industries and Energy.

The Bill will declare the rate of petroleum resource rent tax and formally impose the tax in respect of the taxable profit of a petroleum project determined in accordance with the accompanying Petroleum Resource Rent Tax Assessment Bill 1987. The rate of tax is to be 40%.

The Committee has no comment on this Bill.

## **PETROLEUM RESOURCE RENT TAX ASSESSMENT BILL 1987**

This Bill was introduced into the House of Representatives on 21 October 1987 by the Minister for Primary Industries and Energy.

The Bill provides for the assessment and collection of the petroleum resource rent tax payable by persons in respect of certain offshore petroleum projects. The tax is to apply to taxable profits from the recovery of petroleum in offshore areas where the Petroleum (Submerged Lands) Act 1967 applies, other than in areas covered by production licences granted on or before 1 July 1984 and the permit areas from which those production licences were drawn.

The Bill is one of a package of Bills which were originally introduced into the Parliament on 28 November 1986, but which lapsed on the double dissolution on 5 June 1987.

The Bill, is in the same form as the Bill of the same title introduced in the last Parliament

The Committee drew certain clauses of the Bill to the attention of the Senate in its Sixth Report of 1987 (29 April 1987). These comments are reprinted below for the information of the Senate.

### General comment - Retrospectivity

Although the Bill contains no clear statement as to its real date of effect, it appears that in certain respects it will have retrospective effect to 1 July 1984. Profits from the recovery of petroleum in areas covered by production licences granted on or before that date are expressly excluded - see the definitions of 'eligible production licence' and 'excluded exploration

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permit' in clause 2 - but it would appear that assessable receipts derived by a person (and eligible expenditure incurred by a person) after that date may be taken into account in determining a person's liability to tax - see clauses 31 and 44 - even though liability will only be imposed on profits of a year of tax, being a financial year commencing on or after 1 July 1986. This conclusion is reinforced by the application of the anti-avoidance provisions in the Bill to arrangements entered into on or after 1 July 1984: see clause 51.

The Second Reading Speech indicates that it is not anticipated that any petroleum resource rent tax will be received before the 1989-90 financial year. However because any tax that will be payable will be determined after taking account of past project receipts and expenditure the Committee draws the retrospective application of the Bill to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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

Clause 2 - Definition of 'marketable petroleum commodity'  
- 'Henry VIII' clause

Clause 2 defines a 'marketable petroleum commodity' as stabilised crude oil, sales gas, condensate, liquefied petroleum gas, ethane or -

- '(f) any other product [produced from petroleum] declared by the regulations to be a marketable petroleum commodity'.

The consideration received by a person for the sale of any marketable petroleum commodity is included within the person's assessable petroleum receipts under clause 24.

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

Because it would permit the content of the term 'marketable petroleum commodity' to be extended by regulations the definition may be characterised as a 'Henry VIII' clause and, as such, the Committee draws it to the attention of the Senate under principle 1(a)(iv) in that it may be considered to constitute an inappropriate delegation of legislative power.

Clause 107 - Entry and inspection without warrant

Clause 107 provides that, for the purposes of the Act, an officer authorised in writing by the Commissioner may, at all reasonable times, enter and remain on any land or premises and may inspect, examine and make copies of any documents. The only limitation on this power is that, if challenged by the occupier of the land or premises, the officer must produce an authority signed in writing by the Commissioner stating that the officer is authorised to exercise powers under the clause. There is no requirement that an officer obtain a search warrant before entering premises.

The Committee recognises that in this respect clause 107 does not differ from similar provisions in other taxation laws: see, for example, section 263 of the Income Tax Assessment Act 1936 and section 127 of the Fringe Benefits Tax Assessment Act 1986. However there would appear to be no basis in principle for giving officers enforcing revenue law greater powers than officers enforcing the criminal law. Evasion of tax should not be regarded as more serious than, say, offences against the person, or more difficult to detect than, for example, complex financial fraud. Yet officers enforcing the criminal law are required, except in cases involving the threatened destruction of evidence, to obtain either the consent of the occupier of the premises to be searched or, if that is not forthcoming, a search warrant from a judicial officer.

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 therefore draws clause 107 to the attention of Senators in that by providing for entry on land or premises and the inspection of documents without a search warrant it may be considered to trespass unduly on personal rights and liberties.

Paragraph 108(1)(b) - Failure to stipulate reasonable time and place

Paragraph 108(1)(b) provides that the Commissioner or the Minister for Resources and Energy may, for the purposes of the Act, by notice in writing, require a person to attend before the relevant authority, for the purpose, at a time and place specified in the notice, and then and there to answer questions. There is no requirement that the time and place specified in such a notice must be reasonable, and, as the Committee has commented on previous occasions, it does not regard such a requirement as implicit in provisions of this type (see most recently its comment on sub-clauses 121(1), 145(1) and 147(1) of the Australia Card Bill 1986 in its Eighteenth Report of 1986). In any event, if it is intended that the requirement be implicit, the Committee can see no reason why it should not be made explicit: compare, for example, sub-section 26(1) of the Bounty (Ship Repair) Act 1986 and sub-section 27(1) of the Disability Services Act 1986.

The Committee therefore draws paragraph 108(1)(b) to the attention of Senators in that by failing to stipulate that the times and places at which persons may be required to attend and answer questions must be reasonable 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.

**PETROLEUM RESOURCE RENT TAX (INTEREST ON UNDERPAYMENTS) BILL 1987**

This Bill was introduced into the House of Representatives on 21 October 1987 by the Minister for Primary Industries and Energy.

The Bill will formerly impose the interest charge payable on certain underpayments of tax as determined in accordance with the accompanying Petroleum Rent Tax Assessment Bill 1986.

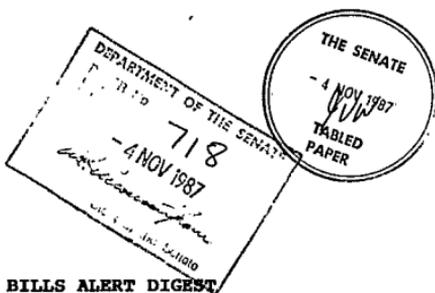
The Committee has no comment on this Bill.

**PETROLEUM RESOURCE RENT TAX (MISCELLANEOUS PROVISIONS) BILL 1987**

This Bill was introduced into the House of Representatives on 21 October 1987 by the Minister for Primary Industries and Energy.

The Bill will amend various laws consequent upon the enactment of the accompanying Petroleum Resource Rent Tax Assessment Bill 1987.

The Committee has no comment on this Bill.



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 14 OF 1987**

**4 November 1987**

**ISSN 0729-6851**

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney, Chairman  
Senator D. Brownhill, Deputy Chairman  
Senator M. Beahan  
Senator R. Crowley  
Senator K. Patterson  
Senator J.F. Powell

TERMS OF REFERENCE

Extract

- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
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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 insufficiently defined administrative powers;
  - (iv) inappropriately delegate legislative power; or
  - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Bass Strait Freight Adjustment Levy Amendment Bill 1987  
Bass Strait Freight Adjustment Levy Collection Amendment  
Bill 1987  
Bass Strait Freight Adjustment Trust Fund Amendment Bill  
1987  
Broadcasting Amendment Bill (No. 4) 1987\*  
Broadcasting (Ownership and Control) Bill (No. 2) 1987  
Extradition Bill 1987\*  
Extradition (Repeal and Consequential Provisions) Bill 1987  
Family Law Amendment Bill 1987\*  
Family Court of Australia (Additional Jurisdiction and  
Exercise of Powers) Bill 1987  
Fisheries Amendment Bill 1987  
Overseas Students Charge Amendment Bill 1987  
Radio Licence Fees Amendment Bill (No. 2) 1987  
Sales Tax (Off-Shore Installations) Amendment Bill 1987\*  
Taxation Laws Amendment Bill (No. 4) 1987\*  
Taxation Laws Amendment (Fringe Benefits and Substantiation)  
Bill 1987  
Television Licence Fees Amendment Bill (No. 3) 1987  
War Crimes Amendment Bill 1987\*

\* These Bills are the subject of comment by the Committee in  
accordance with the Committee's terms of reference.

**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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**BASS STRAIT FREIGHT ADJUSTMENT LEVY COLLECTION AMENDMENT BILL  
1987**

This Bill was introduced into the House of Representatives on 29 October 1987 by the Minister for Primary Industries and Energy.

The Bill will amend the Bass Strait Freight Adjustment Levy Collection Act 1984 to enable the implementation of transitional arrangements for the marketing of Australian produced crude oil from the current Allocation Scheme to a deregulated or free market. The Bill is part of a package of measures which includes amendments to the Bass Strait Adjustment Trust Fund Act 1984 and the Bass Strait Freight Adjustment Levy Act 1984. The amendments in this Bill are consequential on those to the Bass Strait Freight Adjustment Levy Amendment Bill.

The Committee has no comment on this Bill.

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

**BASS STRAIT FREIGHT ADJUSTMENT LEVY AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 29 October 1987 by the Minister for Primary Industries and Energy.

The Bill will amend the Bass Strait Freight Adjustment Levy Act 1984 to enable the implementation of transitional arrangements for the marketing of Australian produced crude oil from a regulated to a deregulated or free market. The Bill is part of a package of measures which includes amendments to the Bass Strait Freight Adjustment Trust Fund Act 1984 and the Bass Strait Freight Adjustment Levy Collection Act 1984.

The Committee has no comment on this Bill.

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

**BASS STRAIT FREIGHT ADJUSTMENT TRUST FUND AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 29 October 1987 by the Minister for Primary Industries and Energy.

The Bill is to amend the Bass Strait Freight Adjustment Trust Fund Act 1984 to enable the implementation of transitional arrangements for the marketing of Australian produced crude oil from a regulated to a deregulated or free market. The Bill is part of a package of measures which includes amendments to the Bass Strait Freight Adjustment Levy Collection Act 1984 and the Bass Strait Freight Adjustment Levy Act 1984. The amendments in this Bill are consequential to those of the Bass Strait Freight Adjustment Levy Amendment Bill and the Bass Strait Freight Adjustment Levy Amendment Bill.

The Committee has no comment on this Bill.

**BROADCASTING AMENDMENT BILL (NO.4) 1987**

This Bill was introduced into the House of Representatives on 28 October 1987 by the Minister for Transport and Communications.

The Bill proposes amendments to the Broadcasting Act 1942 and the Broadcasting and Television Act 1942. The amendments will -

- . introduce an "establishment fee" for new commercial radio licences.
- . impose a moratorium on the transfer of commercial radio and television licences within two years of the initial grant of the licence.

The Committee draws attention to the following clause in the Bill:

**Clause 3 - 'Henry VIII' clause**

Clause 3 of the Bill would insert a new paragraph 82AA(2)(d) in the Act.

The provision would permit an establishment or licence fee to be set by reference to the formula set out in the paragraph which allows for the fee 'D' (proposed as \$15) to be altered by regulation with no upper limit on the fee being set by the Bill. Although either the House of the Parliament would be able to disallow any regulation which increased the fee such a regulation could be made and fees changed under the regulation when the Parliament is not sitting. Any subsequent disallowance of the regulation would not effect the validity of the imposition of the fee.

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

Accordingly, the Committee draws the attention of Senators to the provision, 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.

**BROADCASTING (OWNERSHIP AND CONTROL) BILL (NO.2) 1987**

This Bill was introduced into the Senate on 28 October 1987 by the Minister for Transport and Communications.

The Bill is to make minor amendments to certain provisions in the Broadcasting Act 1942, which were put in place through the Broadcasting (Ownership and Control) Act 1987.

The Bill also proposes amendments to the transition provisions of the Broadcasting (Ownership and Control) Act 1987. These amendments are designed to either clarify the technical operation of relevant provisions, to remove anomalies in their operation, or to make minor drafting improvements.

The Committee has no comment on this Bill.

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

## **EXTRADITION BILL 1987**

This Bill was introduced into the House of Representatives on the 28 October 1987 by the Attorney-General.

The Bill consolidates Australia's extradition laws by combining the operation of the Extradition (Commonwealth Countries) Act 1966 and the Extradition (Foreign States) Act 1966. The consolidation process involved the elimination of unnecessary duplication, the removal of inconsistencies, the remedying of proven deficiencies and follows an exhaustive review of the current Acts.

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

### **Clause 19 - Reversal of the onus of proof**

Clause 19 of the Bill sets out certain requirements of eligibility for extradition which are to be determined by a magistrate. Subclause 19(2) would, inter alia, place upon a person eligible for surrender in relation to an extradition offence (for which surrender of the person is sought by any extradition country) the burden of proving that the offence for which extradition is sought is of a political or similar nature.

In its discussions on provisions which place the burden of proof of matters on a person, the Committee has previously suggested that the imposition of an evidential onus (that is, the onus of adducing evidence of the existence of a defence) on a person should be restricted to cases where the accused may be presumed to have peculiar knowledge of the facts in issue in a matter.

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

In the case of paragraph 19(2)(d) of the Bill a person] whose extradition is sought has to establish to the satisfaction of a magistrate that there are substantial grounds for believing that there is an 'extradition objection', which includes a number of possible considerations affecting personal rights. It could be argued that it should be up to the country seeking the person's extradition should carry the burden of proving that a person whose extradition is sought does not come within an 'extradition objection'.

As the Attorney-General pointed out in the Second Reading Speech, the Bill seeks to clarify a difficult area of law when offence which exist in other jurisdictions do not exist in Australia, and vice versa. The Committee notes the intentional limitations imposed on political offences, so as to ensure that terrorist conduct is not used as an 'extradition objection'.

The Committee believes however, that the clause should be drawn to the attention of the Senate under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.

#### **Clause 45 - Retrospectivity**

Clause 45 of the Bill creates the new offence under subclause 45(1) of being an Australian citizen and engaging overseas in conduct which would, if it occurred in Australia, have constituted an offence.

Subclause 45(2) will mean that any offence under clause 45(1) is to be retrospective, so that a citizen of Australian may now be charged in Australia with an offence which at the place and time was done was lawful according to both Australian and foreign law.

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

The Committee draws the clause to the attention of the Senate in that by making the provision of clause 45 retrospective, 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.

**EXTRADITION (REPEAL AND CONSEQUENTIAL PROVISIONS) BILL 1987**

This Bill was introduced into the House of Representatives on the 28 October 1987 by the Attorney-General.

The Bill has three major purposes:

- . it repeals the current laws on extradition,
- . it contains transitional provisions setting out which law governs extradition proceedings which span the operational terms of the repealed and the new acts,
- . it amends other acts consequential upon the enactment of new extradition legislation.

The Committee has no comment on this Bill.

**FAMILY COURT OF AUSTRALIA (ADDITIONAL JURISDICTION AND EXERCISE OF POWERS) BILL 1987**

This Bill was introduced into the House of Representatives on the 28 October 1987 by the Attorney-General.

The Bill is:

- . To enable the Family Court of Australia to exercise jurisdiction in certain proceedings under the Administration Decisions (Judicial Review) Act, 1977 the Bankruptcy Act, 1966 the consumer protection provisions of the Trade Practices Act, 1974 and in taxation appeals under the Income Tax Assessment Act, 1936;
- . to create an office of Judicial Registrar in the Family Court of Australia;
- . to empower the Judges of the Court to delegate functions to Judicial Registrars and to extend the range of functions which may now be delegated by the Judges to Registrars of the Court; and
- . to extend the jurisdiction which may be exercised by courts of summary jurisdiction under the Family Law Act.

The Committee has no comment on this Bill.

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

**FAMILY LAW AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 29 October 1987 by the Attorney-General.

The Bill amends the Family Law Act 1975 -

- . to implement the references of powers to the Commonwealth from New South Wales, Victoria, South Australia and Tasmania relating to -
  - the maintenance of children and the payment of expenses in relation to children or child bearing; and
  - the custody and guardianship of, and access to, children in those States and to apply the Act as amended to the Territories in which the Act presently applies;
- . to amend the child maintenance provisions to ensure that children receive a proper level of financial support from a reasonable and adequate share of the income, property and financial resources of their parents.
- . to require that an entitlement of the applicant for maintenance to an income tested pension or benefit is not taken into account in awarding spousal and child maintenance; and
- . to make a number of general amendments to enable the Act to operate more effectively.

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 the Senate to the following clause of the Bill

**Clause 5 - 'Henry VIII' Clause**

Clause 5 of the Bill would introduce a new definition of 'income tested pension'.

The clause, taken alone, has no meaning unless and until regulations are made which will give the phrase some content. The Committee notes that the phrase 'income tested pension' is used in proposed new sub-paragraph 66D(3)(b)(ii), paragraph 66E(4)(a), subclause 66Y(3), and subclause 75(3) as a matter which the Family Court must disregard.

Because the clause allows the future definition of the phrase by regulations it may be characterised as a 'Henry VIII' clause and as such there should be drawn to the attention of the Senate under principle (iv) in that it may be regarded as 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.

**FISHERIES AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 28 October 1987 by the Minister for Resources.

The Bill amends the Fisheries Act 1952, principally to enable effect to be given to Australia's rights and obligations under the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America.

The Amendments have the effect of making it an offence against Australian law to breach the conditions of a Treaty licence, and disapply the licensing and other relevant provisions of the Act from vessels fishing under the Treaty.

The Committee has no comment on this Bill.

**OVERSEAS STUDENTS CHARGE AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 29 October 1987 by the Minister for Employment Services and Youth Affairs.

The Bill will amend the Overseas Students Charge Act 1979, to fix the overseas students charge rates for the 1988 academic year.

The Committee has no comment on this Bill.

**RADIO LICENCE FEES AMENDMENT BILL (NO.2) 1987**

This Bill was introduced into the House of Representatives on 28 October 1987 by the Minister Representing Minister for Transport and Communications.

The Bill amends the Radio Licence Fees Act 1964 to -

- . impose a new licence fee scale (with the percentages paid increasing progressively through each range), to take effect from 1 January 1988,
- . provide for an "establishment fee" to be paid in relation to the grant of a new commercial radio licence,
- . provide for the payment of an AM/FM conversion fee equal to 50% of the establishment fee.

The Committee has no comment on this Bill.

**SALES TAX (OFF-SHORE INSTALLATIONS) AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 29 October 1987 by the Minister Assisting the Treasurer.

The Bill is a part of the package of sea installations bills.

The Bill will extend the coverage of the Sales Tax Law to areas within 200 nautical miles of the territorial limits of Australia, the territory of Ashmore and Cartier Islands, and the Coral Sea Island territories - in some areas this will extend beyond the present boundary of the outer limits of the continental shelf.

The Bill also expands the types of off-shore installations which will be subject to Australian Sales Tax Law when installed in these areas.

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

**Clause 2 - Retrospectivity**

Clause 2 of the Bill, by virtue of subclause 2(2), provides that a number of the provisions of the Bill would have retrospective operation to 21 January 1987, being the date of the Treasurer's announcement of the proposals contained in the Bill.

The Bill is a further example of legislation by announcement or press release, particularly in the area of taxation. A matter which is particularly relevant to this Bill is that on the introduction of the Sea Installations Bill (the primary bill in the package of sea installations legislation) it was noted that no installations yet existed to which this Bill might apply.

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

Accordingly, the Committee draws the clause to the attention of the Senate in that such retrospective effect 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.

**TAXATION LAWS AMENDMENT BILL (NO.4) 1987**

This Bill was introduced into the House of Representatives on 29 October 1987 by the Minister Assisting the Treasurer.

The Bill amends a number of Acts relating to income tax law to implement a range of measures announced by the Treasurer. The Acts that will be amended are -

- Income Tax Assessment Act 1986
- Income Tax Rates Act 1986
- Occupational Superannuation Standards Act 1987
- Taxation Administration Act 1953
- Taxation Laws Amendment Act (No.3) 1987

The Amendments include budget initiatives, for example, the removal of the "negative-gearing" limitation. Other provisions of the Bill are designed to deal with arrangements to exploit the operation of the income tax law.

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

**Clauses 48 and 61 - Retrospectivity**

By virtue of clauses 48 and 61, various provisions of this Bill are to have retrospective effect. While some of these provisions are beneficial to taxpayers (in particular, the amendments referred to in clauses 48(2), (6), (7) and (8) and 61(3) and (4) are not. The latter provisions are consequential upon the Occupational Superannuation Standards Bill 1987, which is another

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example of "legislation by press release", a matter upon which the Committee most recently commented in its Twelfth Report of 1987 (28 October 1987).

The Committee draws the clause to the attention of the Senate in that such retrospective provisions 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.

**TAXATION LAWS AMENDMENT (FRINGE BENEFITS AND SUBSTANTIATION) BILL  
1987**

This Bill was introduced into the House of Representatives on 29 October 1987 by the Minister Assisting the Treasurer.

The Bill will amend the fringe benefits tax and income tax laws.

It will implement a large number of fringe benefits tax changes of a concessional kind that were announced by the Treasurer on 26 August and 29 October 1986.

It also contains income tax amendments announced on 29 October 1986 to exclude from substantiation claims against travel allowances paid under award conditions where the amount of the allowance is not greater than was payable under the award on that date.

The Committee has no comment on this Bill.

**TELEVISION LICENCE FEES AMENDMENT BILL (NO.3) 1987**

This Bill was introduced into the House of Representatives on 28 October 1987 by the Minister Representing Minister for Transport and Communications.

The Bill amends the Television Licence Fees Act 1964 to impose a new annual licence fee scale which will take effect from 1 January 1988. Under the existing fee scale the top fee rate is 8.0% of annual gross earnings (AGE) at \$48.3m and over. The new scale of fees adds two new fee ranges to the scale so that the following rates will apply (with the percentages paid increasingly progressively through each range):

AGE	-	percentage of AGE
\$45m	-	7.9%
\$75m	-	8.8%
\$100m and over	-	9.0%

The Bill also provides that the new fee scale which it introduces will apply to old system licences.

The Committee has no comment on this Bill.

**WAR CRIMES AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 28 October 1987 by the Attorney-General.

The Bill proposes amendments to the War Crimes Act 1945 to provide for the prosecution of Australian citizens or persons resident in Australia alleged to have committed war crimes. The amendments will apply the Act to war crimes committed in the course of the World War 2, whether in Australia or overseas, by any person.

It also abolishes trials for war crimes by Military Tribunal, providing instead for their trial by civil courts. For an act committed overseas to be a war crime, it must have been such that if it had occurred in Australia, it would have been an offence against Australian criminal law at that time and in addition must be shown to be linked to a war or conflict in the manner set out in the Bill. Although acts that satisfy these tests would be war crimes at international law, Australian courts will not be required to apply international law to determine whether a war crime has been committed.

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

**Clause 6 - Retrospectivity**

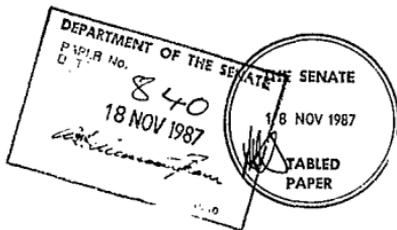
All of the amendments to be made by the Bill are retrospective to the period of the Second World War. Clause 6(3) creates an offence of doing something which, at the time and in the place that it was done might not have been contrary to the law then in force. Clause 6(4) creates the wholly new offence of deportation or internment, and clause 6(6) makes it clear that the legality of any act, by the law in force at the place where it was done,

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shall be disregarded. The clause apparently would permit (for instance) the prosecution of a person who was then a member of the Australian Armed Forces for inflicting grievous bodily harm on another member of the Australian Forces in England in 1940. There is no express provision in the Bill to prevent such a prosecution in the event of the accused having (again, for example) already been tried for such an offence in England in 1940.

The Committee is particularly concerned at the apparently unprecedented extent and number of possible retrospective offences which may be introduced by this Bill. The Committee accordingly draws clause 6 of the Bill to the attention of the Senate in that such a retrospective provision 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. 15 OF 1987

18 November 1987

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator D. Brownhill (Deputy Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator K. Patterson  
Senator J.F. Powell

TERMS OF REFERENCE

Extract

- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make such rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (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 National University Amendment Bill 1987\*

Canberra College of Advanced Education Amendment Bill 1987\*

Commonwealth Banks Amendment Bill 1987

Commonwealth Legal Aid Amendment Bill 1987

Community Services and Health Legislation Amendment Bill 1987\*

Crimes Legislation Amendment Bill 1987

Dairy Produce Amendment Bill 1987

Health Legislation Amendment Bill (No.2) 1987

Maritime College Amendment Bill 1987\*

River Murray Waters Amendment Bill 1987

Social Security and Veterans' Entitlements Amendment Bill (No.2) 1987\*

States Grants (Education Assistance - Participation and Equity) Amendment Bill (No.2) 1987

States Grants (Schools Assistance) Amendment Bill (No.2) 1987

States Grants (Tertiary Education Assistance) Bill 1987\*

States Grants (Tertiary Education Assistance) Amendment Bill (No.2) 1987

Student Assistance Amendment Bill 1987

\* These Bills are the subject of comment by the Committee.

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 NATIONAL UNIVERSITY AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on the 5 November 1987 by the Minister for Employment, Education and Training.

The Bill will provide, as a consequence of the States Grants (Tertiary Education Assistance) Bill 1987, amendments to the Australian National University Act 1946.

It will enable the Australian National University to apply for a limited relaxation of the prohibition on fees for specialised postgraduate award courses catering for students already in employment who are seeking to upgrade their vocational skills and income.

It will also permit the introduction of charges to the Higher Education Administration Charge.

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

**Clause 5 - 'Henry VIII' clause**

The Committee's comments in this Digest on clause 3 of the States Grants (Tertiary Education Assistance) Bill 1987 are applicable to subclauses 5(c) and 5(e) of this Bill.

As the clause will permit the Minister to exercise an unfettered discretion without Parliamentary scrutiny, the Committee draws it to the attention of the Senate under principle 1(a)(iv) in that it may be regarded as 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 3 - Powers of Officials, Institutions etc.**

The Committee's comments in this Digest on clause 9 of the States Grants (Tertiary Education Assistance) Bill 1987 are also applicable to subclause 3(c) of this Bill.

The clause would permit an institution (in this case the University) apparently unlimited power to examine the affairs of a person, the Committee draws the clause to the attention of the Senate under principle 1(a)(i) in that, by providing for undefined powers of examination of personal affairs, 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.

**CANBERRA COLLEGE OF ADVANCED EDUCATION AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on the 5 November 1987 by the Minister for Employment, Education and Training.

The Bill is to provide, as a consequence of the States Grants (Tertiary Education Assistance) Bill 1987, amendments to the Canberra College of Advanced Education Act 1967.

It will enable the Canberra College of Advanced Education to apply for a limited relaxation of the prohibition on fees for specialised postgraduate award courses catering for students already in employment who are seeking to upgrade their vocational skills and income.

It will also permit the introduction of changes to the Higher Education Administration Charge.

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

**Clause 4 - 'Henry VIII' clause**

The Committee's comments in this Digest on clause 3 of the States Grants (Tertiary Education Assistance) Bill 1987 are also applicable to subclause 4(c) of this Bill.

As the clause will permit the Minister to exercise an unfettered discretion without Parliamentary scrutiny, the Committee draws it to the attention of the Senate under principle 1(a)(iv) in that it may be regarded as 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 3 - Powers of officials, Institutions etc.**

The Committee's comments on clause 9 of the States Grants (Tertiary Education Assistance) Bill 1987 in this Digest are also applicable to subclause 3(c) of this Bill.

As the clause would permit an institution (in this case the College) apparently unlimited power to examine the affairs of a person, the Committee draws the clause to the attention of the Senate under principle 1(a)(i) in that, by providing for *undefined powers of examination of personal affairs*, 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.

COMMONWEALTH BANKS AMENDMENT BILL 1987

This Bill was introduced into the House of Representatives on the 3 November 1987 by the Minister Assisting the Treasurer.

The Bill proposes amendments to the Commonwealth Banks Act 1959 to promote the more efficient conduct of the operations of the Commonwealth Banking Corporation and its member banks. It also defines more clearly the relationships between the Commonwealth Banks and the Government, having regard to the Government's general policy in relation to Statutory Authorities, and introduces a dividend requirement for the Commonwealth Development Bank (Development 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.

**COMMONWEALTH LEGAL AID AMENDMENT BILL 1987**

This Bill was introduced into the Senate on the 5 November 1987 by the Minister for Justice.

The Bill provides for the replacement of the Commonwealth Legal Aid Council by two new national advisory bodies - the National Legal Aid Representative Council and the National Legal Aid Advisory Committee.

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.

**COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on the 4 November 1987 by the Minister for Community Services and Health.

The Bill is an omnibus Bill to amend the Aged or Disabled Persons Homes Act 1954; the Health Insurance Act 1973; the National Health Act 1953; and the States Grants (Nurse Education Transfer Assistance) Act 1985.

The amendments will introduce new variable capital funding arrangements for hostels and to improve the legislative base for the management of the new Nursing Home recurrent funding system introduced on 1 July 1987. It also introduces improved new arrangements for conditions of capital and recurrent subsidies for hostels.

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

**Clause 30 - Powers of entry, search and seizure**

Clause 30 of the Bill would exact proposed new subsection 61D(2) of the National Health Act.

Proposed new subsection 61D(2) would permit an authorised officer, where the officer has reasonable grounds for believing there are on any premises certain accounts, books etc., to obtain a search warrant from a Justice of the Peace rather than, as is more usual, from a Magistrate or other judicial officer. The Committee commented in Alert Digest No.11 of 1987,

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

(7 October 1987) on similar provisions in relation to the Fishing Legislation Amendment Bill 1987 and the Horticultural Export Charge Collection Bill 1987.

The Committee draws the attention of the Senate to proposed subsection 61D(2) of the National Health Act contained in clause 30 of this Bill, 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.

**CRIMES LEGISLATION AMENDMENT BILL 1987**

This Bill was introduced into the Senate on the 5 November 1987 by the Minister for Justice.

The Bill amends the following Acts concerned with crime, law enforcement and criminal justice.

- . Christmas Island Act 1968
- . Crimes Act 1914
- . Removal of Prisoners (Territories) Act 1923
- . Removal of Prisoners (Australian Capital Territory) Act 1968
- . Crimes (Foreign Incursions and Recruitment) Act 1978
- . Crimes (Internationally Protected Persons) Act 1976
- . Proceeds of Crimes Act 1987
- . Transfers of Prisoners Act 1983

The amendments range from the correction of drafting errors to amending search warrant provisions and penalties for certain offences. New offences are also created in respect of conduct associated with a foreign incursion.

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 PRODUCE AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on the 4 November 1987 by the Minister for Primary Industries and Energy.

The Bill amends the Dairy Produce Act 1986. The amendments are designed to change the conditions of enforcement of observance of minimum prices under the GATT International Dairy Arrangement (IDA) by Australian exporters of dairy products. The amendment will ensure that penalties for breaches of the pricing provisions of the IDA will in future be exacted by administrative processes and not through proceedings in criminal courts.

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) 1987**

This Bill was introduced into the House of Representatives on the 4 November 1987 by the Minister for Veterans' Affairs.

The Bill will make amendments to certain definitions in the National Health Act 1953 and the Health Insurance Act 1973 to take account of changes to the Social Security Act 1947 introduced in the Budget and the May Economic Statement.

All the amendments relate to the operation of the Pharmaceutical Benefits 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.

**MARITIME COLLEGE AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on the 5 November 1987 by the Minister for Employment, Education and Training.

The Bill will provide, as a consequence of the States Grants (Tertiary Education Assistance) Bill 1987, amendments to the Maritime College Act 1978.

It will enable the Maritime College to apply for a limited relaxation of the prohibition on fees for specialised postgraduate award courses catering for students already in employment who are seeking to upgrade their vocational skills and income.

It will also permit the introduction of changes to the Higher Education Administration Charge.

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

**Clause 5 - 'Henry VIII' clause**

The Committee's comments on clause 3 of the States Grants (Tertiary Education Assistance) Bill 1987 in this Digest are also applicable to subclause 4(c) of this Bill.

As the clause will permit the Minister to exercise an unfettered discretion without Parliamentary scrutiny, the Committee draws it to the attention of the Senate under principle 1(a)(iv) in that it may be regarded as 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 3 ~ Powers of officials etc.**

The Committee's comments on clause 9 of the States Grants (Tertiary Education Assistance) Bill 1987 in this Digest are also applicable to subclause 3(6) of this Bill.

As the clause would permit an institution (in this case the College) apparently unlimited power to examine the affairs of a person, the Committee draws the clause to the attention of the Senate under principle 1(a)(i) in that, by providing for undefined powers of examination of personal affairs, 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.

**RIVER MURRAY WATERS AMENDMENT BILL 1987**

This Bill was introduced by the House of Representatives on the 4 November 1987 by the Minister for Primary Industries and Energy.

The Bill amends the River Murray Waters Act 1983. It will give effect to amendments to the River Murray Waters Agreement between the Commonwealth, New South Wales, Victoria and South Australian for the improved management of the land, water and environmental resources of the Murray-Darling Basin. The amendments are set out in the Schedule to this Bill.

The Committee has no comment on this Bill.

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

**SOCIAL SECURITY AND VETERANS' ENTITLEMENTS AMENDMENT BILL  
(No.2) 1987**

This Bill was introduced into the House of Representatives on the 4 November 1987 by the Minister for Veterans' Affairs.

The Bill will amend the following legislation to give effect to May Economic Statement measures which come into operation on and after 1 November 1987 and Budget measures for 1987-88 -

- . Social Security Act 1947
- . Veterans' Entitlements Act 1986
- . Seamen's War Pensions and Allowances Act 1940
- . Student Assistance Act 1973

The Committee makes the following comments regarding the Bill:

**Amendments to the Social Security Act - General Comment**

This Bill proposes, inter alia, a large number of amendments including the addition of whole new parts, to the Social Security Act 1947 (the Act). A number of the proposed amendments would have apparently retrospective effect.

the Committee notes that the amendments proposed in this Bill are the eighth set of extensive and detailed amendments to the Act since the Act was last consolidated and reprinted in January 1986.

Pursuant to section 50 of the Social Security Amendment Act 1987, the Act was re-numbered consecutively and re-lettered alphabetically. The reason for this provision was to

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

make reference to the Act (a long and detailed statute) easier for members of Parliament, community groups and for the professions who must make regular reference to the Act. Section 50(10) of the amendment Act provides that a reference in a law of the Commonwealth or of a Territory, or a reference in an instrument or document, to a provision of the Act which has been re-numbered or re-lettered is read as a reference to the re -numbered or re-lettered provision.

This would mean, for example, that references in the Veterans' Entitlements Act 1986 to provisions in the Act, or in an instrument of delegation or forms under the Act, would be read as references to the re-numbered or re-lettered provisions. A table showing the re-numbered and re-lettered provisions of the Act was included at the end of the explanatory memorandum to the Amendment Act.

The Committee believes that the table showing new section and part members of the Act would have received wider circulation if it had been attached to the Amendment Act, rather than the explanatory memorandum. In this regard and by way of comparison, the Committee notes that re-numbering and re-lettering of the Commonwealth Electoral Act 1918 was effected by the Commonwealth Electoral Legislation Amendment Act 1984. In that case, the table of re-numbered and re-lettered provisions was attached to (without forming part of) that Act itself.

The re-numbered and re-lettered Social Security Act came into operation on 2 July 1987. A consolidated reprint of the Act is not yet available.

In order to make sense of proposed amendments to the Act provided for by this Bill, readers would need to have available to them a consolidated reprint copy of the Act, or a 'paste-up' copy of the Act and amendments which was re-numbered and re-lettered in accordance with the Amendment Act provision.

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

Because a consolidated copy of the re-numbered and re-lettered Act is not available, it is extremely difficult to determine with certainty the exact scope and effect of the amendments to the Act which are proposed by the Bill.

This matter does not come strictly within the Committee's principles but is an issue of current concern to the Committee and to the Senate Regulations and Ordinances Committee. If it becomes difficult for the legislative scrutiny committees of the Parliament and their advisers to read and comprehend Bills without reference to a number of Acts which must be collated, re-numbered and re-lettered, it will be equally, if not more difficult for the Parliament and its members to properly examine proposed legislation. The Committee also notes that it is apparent that considerable resources are applied to the preparation and drafting of amendments to such complex statutes as the Social Security Act. It is also important that adequate resources be made available to ensure the timely printing of consolidated reprints of such legislation.

The Committee draws its concerns to the attention of the Senate for its information.

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)  
AMENDMENT BILL (No.2) 1987**

This Bill was introduced into the House of Representatives on the 5 November 1987 by the Minister for Employment, Education and Training.

The Bill amends the States Grants (Education Assistance - Participation and Equity) Act 1983 to adjust in accordance with cost movements the grants available to government and non-government education authorities in the states and the Northern Territory to conduct participation and equity projects in 1987.

The Committee has no comment on this Bill.

**STATES GRANTS (SCHOOLS ASSISTANCE) AMENDMENT BILL (No.2) 1987**

This Bill was introduced into the House of Representatives on the 5 November 1987 by the Minister for Employment, Education and Training.

The Bill amends the States Grants (Schools Assistance) Act 1984 to implement decisions in the recent Budget on Commonwealth programs for schools in 1988 and to supplement for cost increases grants already appropriated for schools programs.

The Committee has no comment on this Bill.

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

**STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) BILL 1987**

This Bill was introduced into the House of Representatives on the 5 November 1987 by the Minister for Employment, Education and Training.

The Bill is to provide the legislative basis for the distribution of Commonwealth funds for tertiary education in the States and the Northern Territory for 1988. The Bill reflects Government decisions made in the 1987/88 Budget context and subsequently, including the transfer of administrative responsibility for Commonwealth tertiary education programs to the Department of Employment, Education and Training.

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

**Clause 3 - 'Henry VIII' clause**

Paragraph (c) of the definition of "relevant enrolment" in clause 3(1) is a "Henry VIII" clause. The definition of "relevant enrolment" is included for the purposes of levying the Higher Education Administration Charge, and is to be read with clauses 3(10) and 8(2) of the Bill. By virtue of paragraph (c) the Minister may exercise an unfettered discretion to exempt certain persons from that charge, the exercise of that discretion not being subject to any form of Parliamentary scrutiny. The provision in this Bill follows closely a provision inserted in the States Grants (Tertiary Education Assistance) Bill (No.2) 1986, on which the Committee both commented, and rebutted the then Minister's response, in its Seventeenth Report of 1986, (12 November 1986) (pp.100-102).

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

The definition of "relevant date" in clause 3(1) is also a "Henry VIII" provision which similarly permits the Minister to specify a date in the future without being subject to Parliamentary scrutiny. The importance of the "relevant date" is to be found by a reading of clauses 3(1) and 8(2)(b). It appears, when reading those provisions with the Minister's Second Reading Speech (the sentence on pp.4 and 5 thereof), that the intention is that, on the first day of teaching in 1988, a student will be deemed to be enrolled in the course for which he or she has applied, and that the charge is payable then. However, that requires reading the phrase "undertaking a course" when used in the Bill as including "intending to study for a course" or "having applied to undertake a course". If that meaning is adopted, there does not seem to be anything in the Bill to prevent the Minister specifying February as the "relevant date", and imposing the charge on any person who has applied to study at a particular institution. If such a person, during February, decides to pursue the same course at another institution, he or she would be liable to pay the charge a second time, to the other institution, under clause 8(2)(a), and would not be within the exemption of clause 8(4).

As the clause will permit the Minister to exercise an unfettered discretion without Parliamentary scrutiny, the Committee draws it to the attention of the Senate under principle 1(a)(iv) in that it may be regarded as an inappropriate delegation of legislative power.

#### **Clause 9 - Powers of Officials, Institutions etc.**

Clauses 9(2) and (4) may in their practical operation, trespass unduly on personal rights and liberties. The subclauses will permit tertiary institutions to charge fees for specific courses, provided that the students on whom the fees will be charged have "earned a living at any time". It is extremely difficult to know what this phrase means and, for institutions validly to charge these fees, the institutions will either have to conduct an

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examination of each student's curriculum vitae, possibly requiring the production of income tax assessments, or create a presumption that any applicant over the age (say) of 21 has earned a living, and then cast the onus on the applicant to disprove that. In either eventuality, it appears that this provision will require undue revelations, to education institutions, of the person financial details of intending students.

As the clause would permit an institution apparently unlimited power to examine the affairs of a person, the Committee draws the clause to the attention of the Senate under principle 1(a)(i) in that, by providing for undefined powers of examination of personal affairs, 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.

**STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) AMENDMENT BILL  
(No.2) 1987**

This Bill was introduced into the House of Representatives on the 5 November 1987 by the Minister for Employment, Education and Training.

The Bill will amend the States Grants (Tertiary Education Assistance) Act 1984 to adjust for cost movements in tertiary education grants to the States and the Northern Territory. The Principal Act provides grants to the States and the Northern Territory for universities, colleges of advanced education, institutes of tertiary education and technical and further education for the 1985-87 triennium.

The Committee has no comment on this Bill.

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

**STUDENT ASSISTANCE AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on the 5 November 1987 by the Minister for Employment, Education and Training.

The Bill proposes amendments to the Student Assistance Act 1973 to clarify the range of institutions at which courses are approved for Austudy (Student Assistance).

The Committee has no comment on this Bill.

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



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 16 OF 1987**

**25 November 1987**

**ISSN 0729-6851**

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator D. Brownhill (Deputy Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator K. Patterson  
Senator J.F. Powell

TERMS OF REFERENCE

Extract

- (1) (a) At the commencement of each Parliament, a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, shall be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make such rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (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 Fund Bill 1987

Australian National Airlines Amendment Bill 1987

Conciliation and Arbitration (Compliance Provisions) Amendment Bill 1987

Customs and Excise Legislation Amendment Bill (No.2) 1987\*

Excise Tariff Amendment Bill (No.2) 1987

Flags Amendment Bill 1987

International Development Association Bill 1987

International Fund for Agricultural Development Bill 1987

Petroleum Excise (Prices) Bill 1987\*

Student Assistance Legislation Amendment Bill 1987\*

Williamstown Dockyard Employees Bill 1987

\* These Bills are the subject of comment by the Committee.

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 FUND BILL 1987**

This Bill was introduced into the House of Representatives on 19 November 1987 by the Minister for Trade Negotiations.

The Bill will authorize a contribution by Australia of \$A410 million towards the fourth replenishment of the Asian Development Fund.

The Asian Development Fund (ADF) is the concessional lending arm of the Asian Development Bank. Its resources are directed towards the poorest countries in the Asia/Pacific region.

The Committee has no comment on this Bill.

**AUSTRALIAN NATIONAL AIRLINES AMENDMENT BILL 1987**

This Bill was introduced into the Senate on 19 November 1987 by the Minister for Transport and Communications.

The Bill implements the Government's budget decision to make the Australian National Airlines Commission liable, from 1 July 1987, for the full accruing cost of providing superannuation benefits to those of its employees who are members of the Commonwealth Superannuation Scheme.

The Committee has no comment on this Bill.

**CONCILIATION AND ARBITRATION (COMPLIANCE PROVISIONS) AMENDMENT  
BILL 1987**

This Bill was introduced into the Senate on 18 November 1987 by Senator Chaney as a Private Senator's Bill.

The Bill proposes to insert a new Part VIA into the Conciliation and Arbitration Act 1904, to enable the Australian Conciliation and Arbitration Commission to issue directions to stop or prevent industrial action. It also enables the Federal Court to issue an injunction enforcing such a direction. Failure to comply with an injunction constitutes contempt of court.

The Committee has no comment on this Bill.

**CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (No.2) 1987**

This Bill was introduced into the House of Representatives on 18 November 1987 by the Minister for Science and Small Business.

The Bill proposes to amend the Customs Act 1901 and the Excise Act 1901 to give effect to a series of Government proposals, the principal of which are the amendments to the valuation provisions of the Customs Act 1901 (Division 2 of Part VIII) and the introduction of consequential enforcement and penalty provisions to effect the second instalment of the Government's strategy to combat commercial practices designed solely or predominantly to understate the value of imported goods, so as to minimise or avoid customs duty (Clause 12, and Clauses 6, 22, and 24 to 26 inclusive).

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

**Clause 16 - Alteration of Existing Legal Rights**

By clause 16 of the Bill, a new subsection 165(1) would be inserted in the Customs Act providing for the recovery of short paid customs duties by a Collector of Customs. The subclause would provide no limitation period for the Collector's power to demand further duty, if the duty has been short levied by reason of fraudulent conduct. This may be compared with the normal position of a private individual who has suffered loss as a result of another's fraud, who normally is barred from recovering that loss within 6 years after he or she might, with reasonable diligence, have discovered the fraud.

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 pays particular attention in its examination of legislation to provisions which potentially infringe or alter established legal rights. The Committee believes that it is appropriate to draw the effect of such provisions to the attention of the Senate.

Accordingly clause 16 of the Bill is drawn to the attention of the Senate in that, by allowing for possible recovery of short paid duties under certain circumstances without apparent time limit, it constitutes a breach of principle 1(a)(i) of the Committee's principles and may be regarded as trespassing on personal rights and liberties.

#### Clause 16 - General comment

The Committee draws the attention of the Senate to the interpretation of new subclause 16(2) that is provided in the explanatory memorandum for the Bill. It reads:

'subclause (2) is a standard transitional provision, which precludes the new interest provision from applying in respect of goods entered for home consumption prior to the date on which the Act receives the Royal Assent.'

Contrary to the interpretation suggested by the explanatory memorandum, the subclause explicitly provides that the whole of the section, (i.e. new subsections 165(1) and (4)), and not the new interest provision only, would come into effect after the commencement of the section.

#### Clause 22 - Powers of entry, search and seizure

Clause 22 would introduce a new subsection 214AB(2) to the Customs Act which, when read with the definition of "Magistrate" to be inserted by clause 4, would permit a search warrant to be obtained from a Justice of the Peace. This is a matter to which the Committee has drawn the attention of Senators in relation to

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 accordingly draws the attention of Senators to clause 22 of the Bill under principle 1 (a)(i) of its principles in that by allowing for the issue of a search warrant by other than a judicial officer, it may be considered to trespass unduly on personal rights and liberties.

**Clause 25 - Inappropriate delegation of legislative power**

Clause 25 of the Bill would insert a new section 240 in the Customs Act. Paragraph 240(4)(b) would allow classes of persons and documents exempted from the criminal sanctions of proposed new subsections 240(1), (2) and (3) to be determined by regulation at a later date.

The Committee notes that these provisions would leave the entire content regarding people and documents to be set out in regulations, such possible variations being potentially quite wide. The Committee draws the attention of Senators to clause 25 of the Bill in that it may be in breach of principle 1(a)(iv) of its principles and constitute an inappropriate delegation of legislative power.

**Clause 26 - Trespass on personal rights and liberties**

Clause 26 would insert new sections 243T and 243U in the Customs Act. The Committee draws attention to the proposed section on three grounds:

- (a) they would give to a Collector a power normally reserved to a court, of determining whether a statement is false or misleading in a material particular, and then imposing a penalty for that falsity;

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

- (b) they would impose that penalty on a person, even though the latter was completely innocent of any intention to mislead; this may be compared with the normal situation in the criminal law, in which a person may be convicted only if he or she has a "guilty mind" or guilty intent;
  
- (c) they would allow the Comptroller to exercise the functions of an "appeal court" over the decision of a Collector, by remitting the penalty if the Comptroller (in effect) considers it fair and reasonable to do so.

The Committee has consistently drawn particular attention to such provisions. The Committee considers that it is an important basic part of its role to point out to the Senate possible alteration of existing rights and liberties, which are proposed by legislation.

The clause is accordingly drawn to the attention of Senators as they may breach principle 1(a)(i) of the Committee's principles, in that it may be considered to trespass unduly on personal rights and liberties.

**EXCISE TARIFF AMENDMENT BILL (No.2) 1987**

This Bill was introduced into the House of Representatives on 18 November 1987 by the Minister for Science and Small Business.

The Bill proposes amendments to the Excise Tariff Act 1921, principally to incorporate into that Act various excise tariff proposals tabled in this Parliament during the last sittings and early in this sittings, and to give effect to changes to the excise arrangements for crude oil that follow from the Government's decision to deregulate crude oil marketing with effect from 1 January 1988.

The Committee has no comment on this Bill.

**FLAGS AMENDMENT BILL 1987**

This Bill was introduced into the Senate on 19 November 1987 by Senator Short as a Private Senator's Bill.

The Bill is identical to one passed by the Senate in the last Parliament.

The Bill proposes to present changes to Australia's national flag occurring without the prior consent of the Australian people through a referendum.

The Committee has no comment on this Bill.

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

**INTERNATIONAL DEVELOPMENT ASSOCIATION BILL 1987**

This Bill was introduced into the House of Representatives on 19 November 1987 by the Minister for Trade Negotiations.

The Bill will authorize a contribution by Australia of \$A335 million towards the eighth replenishment of the International Development Association.

The International Development Association (IDA) is the concessional lending arm of the World Bank. Its resources are directed toward the world's poorest countries.

The Committee has no comment on this Bill.

**INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT BILL 1987**

This Bill was introduced into the House of Representatives on 19 November 1987 by the Minister for Trade Negotiations.

The Bill will authorize a contribution by Australia of \$A8,472,570 towards the second replenishment of the International Fund for Agricultural Development.

The International Fund for Agricultural Development (IFAD) focusses on increasing food production for the poorest sections of the world's poorest countries.

The Committee has no comment on this Bill.

**PETROLEUM EXCISE (PRICES) BILL 1987**

This Bill was introduced into the House of Representatives on 18 November 1987 by the Minister for Resources.

From 1 January 1988, the marketing of indigenous crude oil will be deregulated and Import Parity Prices will no longer be used as the basis for allocated sales of domestic crude oil or the calculation of crude oil excise. The Bill provides the Minister for Primary Industries and Energy with the powers to determine the prices to be used as the basis for crude oil excise and in particular to determine the volume weighted average of realised (VOLWARE) prices for sales of Bass Strait crude oil. The final VOLWARE price for each month will be the final price basis for crude oil excise for that month.

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

**Clauses 5 and 7 - Delegation of administrative power**

Clauses 5 and 7 would permit the Minister to delegate his or her powers of determination to "a person". The Committee has consistently objected to such unfettered Ministerial discretions as this, and has sought a definition of the qualifications, or office occupied by, such delegates.

The clauses are drawn to the attention of Senators in that, by allowing an unrestricted delegation of the Minister's powers to any person the minister nominates without restriction or qualification may be considered to be in breach of principle I(a)(ii) of the Committee's principles in that it would constitute 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 9 - Powers of entry, search and seizure**

Subclause 9(1) would permit "a person" to enter on to "any land or premises" without the safeguard of having obtained a search warrant from a judicial officer, but merely with an authorisation from the Minister. Furthermore, although the entry is available for the purpose of verifying information given to the Minister, there is no explicit requirement that the Minister have reasonable grounds for believing that the particular premises to which he authorises entry have the relevant information kept there.

The Committee has consistently objected to such provisions. The Committee has particularly pointed out that the issue of a warrant is always preferable to the conferral of a power of entry without warranty.

Clause 9 of the Bill is drawn to the attention of Senators in that it may be considered to be in breach of principle 1(a)(i) of the Committee's principles and trespass unduly on personal rights and liberties.

**Clause 10 - Powers of officials and others**

The clause would insert a new paragraph 10(1)(b) would enable the Minister or an authorised person to require another person to attend before them to answer questions, but the paragraph does not state that the time and place for attendance should be reasonable.

The clause is drawn to the attention of Senators in that it may be considered to be a breach of principle 1(a)(i) of the Committee's principles and 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.

**STUDENT ASSISTANCE LEGISLATION AMENDMENT BILL 1987**

This Bill was introduced into the House of Representatives on 18 November 1987 by the Minister for Employment Services and Youth Affairs.

The Bill seeks to amend the Student Assistance Act 1973 to include a package of measures to facilitate the prevention of fraud and the recovery of overpayments under the AUSTUDY Scheme and the Post-graduate Awards Scheme.

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

**Clause 6 - Rights of appeal**

Proposed new section 31C would give the Minister an unfettered discretion to waive the right of recovery of overpayments. Although the explanatory memorandum suggests that this provision is similar to section 186 of the Social Security Act 1947, that proposition may be questioned. Under the latter Act, decisions of the Minister are subject to a series of reviews, whereas under the Student Assistance Act it is only decisions of authorised persons (and not decisions of the Minister) that are subject to review.

The Committee draws to the attention of Senators to clause 6 under principle 1(a)(iii) in that it may be considered to make rights, liberties and/or obligations unduly dependent upon a non-reviewable administrative decision.

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

**Clause 6 - Trespass on personal rights and liberties**

Proposed new subsections 31D(1) and paragraph 31D(2)(b) are very wide-ranging provisions, which would apparently permit an authorised person to obtain information about a receipt of student assistance. While the power is to be exercised "for the purposes of the Act", it may be that a person from whom information was required would not necessarily know what those purposes are, or would be aware of his or her rights to require further justification from the authorised person before divulging the information.

As the clause would permit an authorised person wide powers of inquiry into a person's affairs the Committee draws the clause to the attention of Senators under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.

**Clause 6 - Self incrimination**

Clause 6 would insert a new section 31F in the Act which would abrogate a person's protection against self-incrimination. The clause is not in the 'use-derivative use indemnity' form since it does not prevent the use of information obtained indirectly from the documents produced being used in evidence.

'Use-derivative - use indemnity' clauses are aimed at ensuring that, not only could the actual incriminating statement or document be inadmissible in criminal proceedings (other than those related to the failure to answer a question or produce a document on the provision of false and misleading answers or documents), but also any information, document or thing obtained as a direct or indirect consequences of the answer or the production of the document or thing obtained as a direct or indirect consequence of the answer or the production of the document, would be similarly inadmissible.

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

As the clause would apparently abrogate a person's protection against self incrimination, the Committee draws the clause to attention of Senators under principle 1(a)(i) of its principles in that it may be considered to trespass unduly on personal rights and liberties.

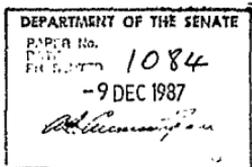
Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

**WILLIAMSTOWN DOCKYARD EMPLOYEES BILL 1987**

This Bill was introduced into the House of Representatives on 18 November 1987 by the Minister for Defence Science and Personnel.

The Bill is to exclude the operation of redundancy benefits with regard to those employees of Williamstown Dockyard who, upon its sale by the Commonwealth to private interests, are offered continued employment at the Dockyard by the purchaser and are not therefore truly redundant.

The Committee has no comment on this Bill.



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 17 OF 1987**

**9 December 1987**

**ISSN 0729-6851**

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator D. Brownhill (Deputy Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator K. Patterson  
Senator J.F. Powell

TERMS OF REFERENCE

Extract

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

The Committee has considered the following Bills:

Cash Transaction Reports Bill 1987\*

Wheat Tax Regulations (Validation) Bill 1987

\*This Bill is the subject of comment by the Committee.

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

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

## CASH TRANSACTION REPORTS BILL 1987

This Bill was introduced into the House of Representatives on 25 November 1987 by the Attorney-General. The Bill is similar to a Bill of the same title introduced in the previous Parliament, but not passed prior to the double dissolution.

The Bill has four purposes: -

- . to require the reporting of certain domestic currency transactions in excess of \$10,000 to the Cash Transaction Reports Agency;
- . to require the reporting of certain currency transfers to and from Australia in excess of \$5,000 to the Cash Transaction Reports Agency;
- . to establish a Cash Transaction Reports Agency to collect, retain, compile, analyse and disseminate information relating to cash transaction reports and to perform other functions under the legislation in consultation with the Commissioner of Taxation; and
- . to impose obligations on financial institutions in relation to the verification of the identity of persons seeking to open accounts with financial institutions, and of signatories to existing accounts.

The Committee drew the attention of the Senate to clauses of the previous Cash Transaction Reports Bill in Alert Digest No.9 of 1987 (27 May 1987) (pp.4-8).

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.

**Subclause 3(1) -**

**Definition of 'unit trust' - Inappropriate delegation of legislative power**

Subclause 3(1) defines the term 'unit trust' as including 'cash management trust', 'property trust' and arrangements falling within a class of arrangements which are declared by the Minister to be, for the purposes of the definition, cash management, property or unit trusts as the case may be. The entire content of such definitions is thus left to be formulated by the Minister and by is to be declared by the Minister by notice in the Gazette only, and not prescribed by regulation which would be subject to tabling and disallowance.

As a trustee or manager of a cash management trust, property trust or unit trust is a 'cash dealer' on whom reporting requirements are to be imposed by the Bill, it may be thought that the content of these definitions should be set out in the Bill, rather than simply notified in the Gazette. The Committee draws the clause to the attention of Senators in that it may be considered to constitute an inappropriate delegation of legislative power.

**Subparagraph 9(2)(d)(ii) and subclause 9(5) - Inappropriate delegation of legislative power**

Clause 9 will require a cash dealer to report to the Director of the Cash Transaction Reports Agency any transaction involving the physical transfer of Australian or foreign currency of not less than \$10,000 in value. A financial institution (a bank, building society or credit union) will not, however, be obliged to report a transaction if it is eligible for exemption in accordance with clause 9 and if the institution enters the transaction on its exemption register. Subclause 9(2) provides an exemption where the transaction in question is between the institution and a customer who, under subparagraph 9(2)(d)(ii), may carry on 'a

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business declared by the Minister, by notice in writing in the Gazette, to be an entertainment business or a hospitality business for the purposes of this Act'. Subclause 9(5) further provides that a cash transaction is also eligible for exemption if it falls within a class of transactions notified in the Gazette to be eligible for exemption.

The Committee draws subparagraph 9(2)(d)(ii) and subclause 9(5) to the attention of Senators in that by leaving it to the Minister to notify such matters as are required under the provision in the Gazette, the provision may be considered to constitute an inappropriate delegation of legislative power.

**Subclause 10(3) - Non-reviewable decision**

Subclause 10(3) provides that, where a financial institution believes that one of its customers is likely to enter into cash transactions on a regular basis which would be eligible for exemption, it may enter the class of transactions of that kind against the customer's name in its exemption register. Transactions of that kind thereupon become exempt from the reporting requirements. Subclause 10(3) provides, however, that the Director may direct an institution to delete or amend such an entry in its exemption register.

No provision has been made for the review of the Director's decision on its merits and clause 33 expressly excludes decisions under the Act from the application of the Administrative Decisions (Judicial Review) Act 1977. A decision of the Director under subclause 10(3) would therefore only be subject to review by the courts by way of the actions available at common law prior to the enactment of the Administrative Decisions (Judicial Review) Act 1977. As a decision of the Director under subclause 10(3) may impose quite onerous reporting requirements on financial institutions the Committee draws the subclause to the

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attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

**Subclauses 13(1) - Trespass on personal rights and liberties**

Subclause 13(1) appears to create an offence of strict liability where a person takes or sends foreign currency of not less than \$5,000 in value out of Australia or brings or sends Australian or foreign currency of not less than \$5,000 in value into Australia without giving a report in the approved form in respect of the transfer to the Director of the Cash Transactions Reports Agency, a customs officer or a police officer before the transfer takes place. As the Committee pointed out in its comments in Alert Digest No.9 of 1987, a person may be convicted of the offence notwithstanding that he or she did not know that, for example, the baggage he or she was carrying contained currency. A penalty of a fine of up to \$5,000 or 2 years imprisonment, or both in the case of a natural person, or a fine of up to \$25,000 in the case of a body corporate may be imposed.

The Committee accordingly draws subclause 13(1) to the attention of Senators in that, in respect of its apparent creation of an offence of strict liability, it may be considered to trespass unduly on personal rights and liberties.

**Subclause 24(3) - Unreasonable power of search**

Subclause 24(3) provides that a police officer or customs officer may search a person who is about to leave Australia or who arrives in Australia for the purpose of ascertaining whether the person has with him or her any currency in respect of which a report under clause 13 is required. The officer is not required to have reasonable grounds for believing that the person in fact has such currency with him or her before searching the person. By contrast, section 196 of the Customs Act 1901 requires that a police officer or customs officer have reasonable cause to

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suspect that a person is unlawfully carrying or has any goods subject to the control of Customs or any prohibited imports or exports secreted about him before the officer may search the suspected person.

The Committee therefore draws subclause 24(3) to the attention of Senators in that by failing to impose a requirement of reasonable cause on the power of search it may be considered to trespass unduly on personal rights and liberties.

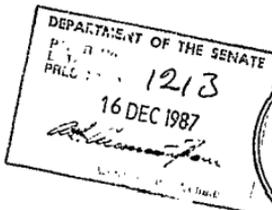
Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

**WHEAT TAX REGULATIONS (VALIDATION) BILL 1987**

This Bill was introduced into the House of Representatives on 26 November 1987 by the Minister for Primary Industries and Energy.

The purpose of this Bill is to validate regulations already made under the Wheat Tax Act 1957 following indentification by the Senate Committee on Regulations and Ordinances of a technical problem related to the name of the industry organisation responsible for making a report, to the Government, which is the basis on which the regulations are made.

The Committee has no comment on the Bill.



SCRUTINY OF BILLS ALERT DIGEST

NO. 18 OF 1987

16 December 1987

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator D. Brownhill (Deputy Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator K. Patterson  
Senator J.F. Powell

TERMS OF REFERENCE

Extract

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

The Committee has considered the following Bills:

Broadcasting (Ownership and Control) Bill (No.3) 1987\*

Child Support Bill 1987\*

Commonwealth Teaching Service Amendment Bill 1987

Communications Legislation Amendment Bill (No.2) 1987

Income Tax (Offshore Banking Units) (Withholding Tax Recoupment) Bill 1987

Petroleum Retail Marketing Sites Amendment (Divorcement of Ownership) Bill 1987

Taxation Laws Amendment Bill (No.5) 1985

\*These Bills are the subject of comment by the Committee.

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.

**BROADCASTING (OWNERSHIP AND CONTROL) BILL (No.3) 1987**

This Bill was introduced into the Senate on 10 December 1987 by the Minister for Transport and Communications.

The Bill provides for a major new package of commercial radio ownership rules. The rules implement the policy announced on 28 October 1987.

The Bill also presents the results of the review of ownership limits for commercial radio and completes the review of cross-media ownership by addressing this issue in the context of revised radio rules.

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

**Clause 4 - Trespass on personal rights and liberties**

Clause 4 of the Bill would insert a new subsection 89X(3) in the Broadcasting Act 1942 which would create a criminal offence of strict liability, in that a person might be liable under the section despite having no knowledge of the falsity of a document. The common, almost invariable form in which such offences are cast is for a person to be liable only if he or she knowingly or recklessly makes a false or misleading statement to bodies such as the Broadcasting Tribunal.

The Committee draws clause 4 of the Bill (in particular proposed subsection 89X(3)) to the attention of Senators in that, in respect of its apparent creation of an offence of strict liability, it may be considered to trespass unduly on personal rights and liberties.

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

## **CHILD SUPPORT BILL 1987**

This Bill was introduced into the House of Representatives on 9 December 1987 by the Minister for Social Security.

The Bill is the centrepiece of the Government's Child Support Scheme.

The Bill will set up stage one of the scheme to ensure that parents who have the capacity to pay do not abandon the financial responsibility of supporting their children to the Social Security system.

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

### **Clause 4 - 'Henry VIII' Clause**

The clause would enact subsection 4(1) which would define 'income tested pension'. The definition in turn relies on the definition of that phrase as inserted in the Family Law Act by the amendments to that Act recently before the Parliament. The proposed provision in the Family Law Act would define the phrase 'income tested pension' in regulations. The Committee commented on the question in its report on the Family Law Amendment Bill (Fourteenth Report of 1987), and draws the provision to the attention of Senators under principle 1(a)(iv), in that it may be regarded as an inappropriate delegation of legislative power.

### **Clause 19 - 'Henry VIII' Clause**

Subclause 19(1) may be considered to be a 'Henry VIII' clause in that it would, in its effect, allow for amendment of proposed clauses 17 and 18 by later regulation. Since the principal aim of the Bill is the enforcement of registrable maintenance

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liabilities, it may be suggested that subclause 19(1), which appears to permit the exclusion of some liabilities, by later regulation is a 'Henry VIII' clause. As such it is drawn to the attention of Senators under principle 1(a)(iv) in that it may be regarded as an inappropriate delegation of legislative power.

#### **Clause 119 - Reversal of onus of proof**

Subclause 119(2) would apparently reverse the persuasive onus of proof in a criminal prosecution. It is not obvious as to why such a reversal is necessary in such a provision. The Committee notes that it is the virtually universal practice in creating offences relating to false or misleading statements that a person will be liable only if he or she made the statement knowingly or recklessly, and it is therefore difficult to see why this provision should be different.

Accordingly, the provision is drawn to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

#### **Clause 61 - Power of search, entry and seizure**

Subclause 61(1) would permit an authorised officer to enter land or premises without a judicially sanctioned search warrant, but merely on the authority of the Child Support Registrar. The clause is similar to clause 9 of the Petroleum Prices (Excise) Bill 1987, on which the Committee commented in its Sixteenth Report of 1987 (9 December 1987). The Committee notes provisions of this sort are argued to be "appropriate" when a Bill is a deemed to be a revenue measure. In view of clause 123 of the Bill, that justification is not available in relation to clause 61(1) of the Bill.

Accordingly, the clause is drawn to the Senate's attention in that, by the Senate's attention in that by providing for the issue of a search warrant by other than a judicial official, such

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as a magistrate, it may be considered to be in breach of principle 1(a)(i) of the Committee's principles and trespass unduly on personal rights and liberties.

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**COMMONWEALTH TEACHING SERVICE AMENDMENT BILL 1987**

This Bill was introduced to the House of Representatives on 10 December 1987 by the Minister for Arts, Sport, the Environment, Tourism and Territories.

The Bill proposes amendments to the Commonwealth Teaching Service 1972. To bring the Act into line with the Public Service Act 1922, as amended by the Public Service Legislation (Streamlining) Act 1986, in the areas of Promotions, Transfers, Appeals, Forfeiture of Office and Attachment of salary. Provision is also made for the transfer of staff from the Commonwealth Teaching Service to certain other Commonwealth Authorities.

The Committee has no comment on this Bill.

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**COMMUNICATIONS LEGISLATION AMENDMENT BILL (No.2) 1987**

This Bill was introduced into the House of Representatives on 10 December 1987 by the Minister for Transport and Communications.

The Bill will amend the -

- . Overseas Telecommunications Act 1946
- . Postal Services Act 1975
- . Radio Communication Act 1983
- . Telecommunications Act 1975

The Bill implements a variety of changes ranging from streamlining the procedures for entering into hedging contracts, clarifying the law relating to the sending of explosives and other dangerous goods through the mail, to confirming the Minister's power to test equipment as part of the process of issuing licences under the Radiocommunications Act 1983.

The Committee has no comment on this Bill.

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**INCOME TAX (OFFSHORE BANKING UNITS) (WITHHOLDING TAX RECOUPMENT)  
BILL 1987**

This Bill was introduced into the House of Representatives on 9 December 1987 by the Minister Assisting the Treasurer.

The Bill will formally declare and impose an income tax, the liability for which may arise in respect of certain dealings by banks and other financial institutions which are declared to be offshore banking units, in accordance with provisions being inserted in the Income Tax Assessment Act by Taxation Laws Amendment Bill (No.5) 1987.

The Committee has no comment on this Bill.

**PETROLEUM RETAIL MARKETING SITES AMENDMENT (DIVORCEMENT OF OWNERSHIP) BILL 1987**

This Bill is a Private Senator's Bill and was introduced into the Senate on 8 December 1987 by Senator McLean.

The Bill proposes that petrol companies should not be allowed to own and operate retail sites.

The Committee has no comment on this Bill.

**TAXATION LAWS AMENDMENT BILL (No.5) 1987**

This Bill was introduced into the House of Representatives on 9 December 1987 by the Minister Assisting the Treasurer.

The Bill will amend various taxation laws, in particular provisions of the Income Tax Law.

For example, measures to encourage the development of offshore banking in Australia through a withholding tax exemption for interest paid to non-residents by offshore banking units are included in the Bill.

The Committee has no comment on this Bill.

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