

SCRUTINY OF BILLS ALERT DIGEST

NO. 1 OF 1988

24 FEBRUARY 1988

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 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 Airlines (Conversion to a Public Company) Bill 1987*

Commonwealth Borrowing Levy Amendment Bill 1988

Customs Tariff (Uranium Concentrate Export Duty) Amendment Bill 1988

Dairy Produce Levy (No.1) Amendment Bill 1988

Diplomatic and Consular Privileges Amendment Bill 1988*

Export Inspection Charges Collection Amendment Bill 1988

Export Inspection (Service Charge) Amendment Bill 1988

International Bank for Reconstruction and Development (Share Increase) Bill 1988

Parliamentary Precincts Bill 1988

Referendum (Machinery Provisions) Amendment Bill 1988

*The Committee has commented on these Bills in accordance with its 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.

AUSTRALIAN AIRLINES (CONVERSION TO A PUBLIC COMPANY) BILL 1987

This Bill was introduced into the Senate on 16 December 1987 by the Minister for Transport and Communications.

The aim of the Bill is to:

- . establish Australian Airlines (the Australian National Airlines Commission) as a public company;
- . provide for the re-organisation of the airline into a more appropriate commercial structure prior to incorporation; and
- . remove certain statutory controls on the airline's operations.

The Bill will establish the airline as a public company by providing for the Australian Airlines Commission (the Commission) to be deemed to be a company incorporated in the ACT under the Companies Act 1981 on a day to be proclaimed. It is anticipated that the commencing day of the company (the transition day) will be 31 March 1988.

All shares in the deemed company will be held either directly by the Commonwealth, or by a Commonwealth-owned holding company.

The Bill also provides, inter alia, for the removal of existing statutory controls on the airline which are embodied in the Australian National Airlines Act 1945, through the repeal of most of that Act. The removal of these statutory controls will occur at the time of deeming the airline to be a company. Any

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controls which the Government decides should remain over the airline will be specified in either the Memorandum and Articles of the new company or in the Guidelines to Directors of the new company.

The Committee comments as follows on the Bill:

General Comment

The Committee draws the Senate's attention to the fact that there is no requirement in the Bill for the annual report of the new company to be tabled in the Parliament.

The provisions of the Companies Act are to apply to the company, and it will accordingly be required to prepare an annual report which must include detailed financial statements and which must be lodged with the ACT Corporate Affairs Commission.

Under the Australian National Airlines Act 1945 (section 40) the Commission is currently obliged to prepare an annual report of its activities, including audited financial statements and forward it to the Minister within six months of the end of the financial year. The report must be tabled in each House by the Minister within fifteen sitting days of its receipt.

The Bill would repeal section 40 of the Australian National Airlines Act 1945, and makes no provision for the tabling of the new company's annual report in the Parliament.

The Committee notes that it has been a primary concern of the Senate and its Committees (in particular the Standing Committee on Finance and Government Operations) that all Commonwealth bodies be obliged to report to the Parliament annually on its activities, including audited financial statements.

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

The current Policy Guidelines for Commonwealth Statutory Authorities and Government Enterprises (Parl. Paper 333 of 1987) is clear as to the importance of such annual reports:

'An authority's annual report to the responsible Minister, which is required to be tabled in the Parliament, is the centre-piece of its accountability. An essential component of enabling legislation constituting a statutory authority should be a provision requiring the authority to present a report to the responsible Minister, to be tabled in both Houses of Parliament within fifteen sitting days thereafter. In the absence of specific provision, section 34C of the Acts Interpretation Act 1901 requires such a report to be presented to the Minister (no later than six months after the end of each reporting period, usually the financial year) and tabled in both Houses of Parliament (within fifteen sitting days).

In addition to any specific requirements imposed by legislation or requested by the Minister, the report should conform to the Guidelines for the Content, Preparation and Presentation of Annual Reports by Statutory Authorities, tabled in the Senate on 11 November 1982.' (p. 10)

The Committee does not question the decision to convert the Commission to a public company, but draws attention to the present practice in tabling the QANTAS annual report. QANTAS Airways Pty. Limited is a company incorporated in Queensland, and in which all the issued shares are held by the Commonwealth. The QANTAS annual report is addressed to the Minister for Transport and Communications (representing the Commonwealth). The report is lodged with the Queensland Corporate Affairs Office and is subsequently tabled in the Parliament by the Minister. The report is tabled in Parliament pursuant to convention rather than in compliance with a legislative requirement.

The Committee believes that it should at least be a legislative requirement that any annual report prepared by the new company established by the Bill be tabled in the Parliament to ensure that the required standards of accountability applicable to Commonwealth bodies are maintained.

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 its comment to the attention of the Senate in order that consideration of the Bill may be assisted.

Clause 5 - Insufficiently defined administrative power

The definition of 'authorised person' in clause 5 would permit the Minister to delegate to 'a person' the function of certifying matters under clause 36. By virtue of subclause 36(2), a certificate under that clause is to be conclusive evidence of the facts stated therein. It appears that the definition would make rights dependent on insufficiently defined administrative powers.

The Committee draws the clause to the attention of the Senate in that it may be considered to be in breach of principle 1(a)(ii) of the terms of reference in that it makes personal rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers.

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

COMMONWEALTH BORROWING LEVY AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 18 February 1988 by the Minister for Science, Customs and Small Business.

The Bill provides for a technical amendment to the Commonwealth Borrowing Levy Act 1987 which will be required as a consequence of the passage of the Australian Airlines (Conversion to a Public Company) 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.

**CUSTOMS TARIFF (URANIUM CONCENTRATE EXPORT DUTY) AMENDMENT BILL
1988**

This Bill was introduced into the House of Representatives on 17 February 1988 by the Minister for Science, Customs and Small Business.

The Bill proposes to increase the duty on exported uranium concentrate mined in the Alligator Rivers Region, from \$0.80 per kilogram to \$1.02 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.

DAIRY PRODUCE LEVY (NO.1) AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 17 February 1988 by the Minister for Primary Industries and Energy.

The Bill removes an inequity in the imposition of levy on dairy products and will streamline the Australian Dairy Corporation's administration of the dairy product levy system.

The Committee has no comments on this Bill.

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

DIPLOMATIC AND CONSULAR PRIVILEGES AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 17 February 1988 by the Acting Minister for Foreign Affairs and Trade.

The Bill amends both the Diplomatic Privileges and Immunities Act 1967 and the Consular Privileges and Immunities Act 1972 which give legislative effect to the provisions of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations respectively.

The Bill provides that tax imposed under any of the various sales tax acts is not payable in respect of goods intended for the official use, and not resale, of a diplomatic mission or consular post of a prescribed overseas country provided the goods are purchased from a registered sales tax payer.

The Committee makes the following comment on the Bill:

Clauses 7 and 8 - non-reviewable decision

Proposed new subsection 10A(2) of the Diplomatic Privileges and Immunities Act 1967, and proposed new section 8A(2) of the Consular Privileges and Immunities Act 1972, would give to the Treasurer an unfettered discretion to determine whether a particular mission or consular post already has sufficient goods of a particular kind. As the proposed subsections stand, a head of mission or consular officer dissatisfied with such a declaration by the Treasurer would be able to challenge that declaration only as to its legality, under the Administrative Decisions (Judicial Review) Act 1977, and not on the merits under the Administrative Appeals Tribunal Act 1975.

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

While the Explanatory Memorandum to the Bill correctly observes that these provisions are similar to measures already in each of the Acts, the Committee points out that those measures were passed before the Committee was established. Provisions which may have been in force for some time do not render legislation which is in breach of the Committee's principles above criticism. If provisions in a Bill are in breach of those guidelines the Committee will draw the Senate's attention to such matters.

As the clauses would give the Treasurer an apparently unfettered discretion, the Committee draws the attention of Senators to the clauses, as they may be considered to be in breach of principle 1(a)(iii) of the terms of reference in that they may make rights, liberties or obligations unduly dependent upon a non-reviewable decision.

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

EXPORT INSPECTION CHARGES COLLECTION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 17 February 1988 by the Minister for Primary Industries and Energy.

The Bill revises the definition of 'prescribed commodity' to allow charges to be imposed for the export inspection of fruit, vegetables, live animals and animal reproductive material. The changes will enable effective cost recovery measures to be implemented for all export inspection.

The Committee has no comments on this Bill.

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

EXPORT INSPECTION (SERVICE CHARGE) AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 17 February 1988 by the Minister for Primary Industries and Energy.

The Bill amends the Export Inspection (Service Charge) Act 1985 to remove limitations on the imposition of charge for export inspection services performed outside export registered establishments.

The Committee has no comments on this 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 BANK FOR RECONSTRUCTION AND DEVELOPMENT (SHARE INCREASE) BILL 1988

This Bill was introduced into the House of Representatives on 18 February 1988 by the Minister for Science, Customs and Small Business.

The Bill empowers the Treasurer to make the necessary agreements on behalf of Australia to purchase 178 additional shares of the capital stock of the International Bank for Reconstruction and Development. It gives the Treasurer discretionary power to determine the terms and conditions of the agreements and appropriates the funds necessary to make payments under these agreements.

The Committee has no comments on this Bill.

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

PARLIAMENTARY PRECINCTS BILL 1988

This Bill was introduced into the House of Representatives on 18 February 1988 by the Minister for Administrative Services.

The Bill defines the Parliamentary precincts of the new Parliament House and environs and confers management and control over the precincts on the Presiding Officers.

The Committee has no comments on this Bill.

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

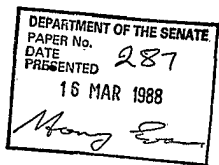
REFERENDUM (MACHINERY PROVISIONS) AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 18 February 1988 by the Minister for Administrative Services.

The Bill will bring the Referendum (Machinery Provisions) Act 1984 into line with the Commonwealth Electoral Act and to give effect to those recommendations of the Report from the Joint Select Committee on Electoral Reform (Report No. 2) specific to referendums.

The Committee has no comments on this 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. 2 OF 1988

16 MARCH 1988

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

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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 -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
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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:

Australian Heritage Commission (Notification of Owners)
Amendment Bill 1988

Conservation Legislation Amendment Bill 1988*

Crimes Legislation Amendment Bill 1988

Defence Amendment Bill 1988

Koongarra Project Area Repeal Bill 1988

Laying Chicken Levy Bill 1988

Laying Chicken Levy Collection Bill 1988

Norfolk Island Amendment Bill 1988

Textiles, Clothing and Footwear Development
Authority Bill 1988*

Trade Practices Amendment Bill 1988

*The Committee has commented on these Bills in accordance
with its terms of reference.

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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 HERITAGE COMMISSION (NOTIFICATION OF OWNERS)
AMENDMENT BILL 1988**

This Bill was introduced into the Senate as a Private Senator's Bill on 24 February 1988 by Senator Walters.

The Bill proposes that the Australian Heritage Commission be required to inform owners of private property that it is proposing to enter the property on either its list of places that might be entered in the register of the National Estate or the National Estate register. Owners will also be given access to documents held by the Commission relating to their property, as well as an opportunity to make submissions before registration can occur.

The Committee has no comments on this Bill.

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

CONSERVATION LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the Senate on 25 February 1988 by the Minister for Resources.

The Bill clarifies and strengthens the provisions of the World Heritage Properties Conservation Act 1983. The Bill also makes it clear that the Environment Protection (Impact of Proposals) Act 1974 does not apply, and is to be taken never to have applied, to action taken under the World Heritage Act or to the submission by Australia of heritage properties to the Committee for inclusion in the World Heritage List, in accordance with its international obligations under the Convention for the Protection of World Cultural and Natural Heritage.

Clause 6 - Inappropriate delegation of legislation power

Proposed new subsection 9(1) of the World Heritage Properties Conservation Act may be regarded as an improper delegation of legislative power in that it leaves the determination of acts which are to be unlawful to Regulations.

Notwithstanding that such regulations would be subject to parliamentary scrutiny, it may be observed: (a) that the regulations would come into force on the day of making, and (if they were subsequently regarded as improper) would continue in force unless and until disallowed; and (b) would not be subject to any amendment by either House, but could merely be disallowed in whole or accepted.

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

Although the proposed new provision is similar in effect to existing paragraph 9(1)(h) of the Act (on which the Committee made no comment when the Bill for the Act was before the Senate in 1983 - see First Report of 1983) the Committee notes that, in its original form the clause assumed much less significance than the proposed subsection insofar as the clause prescribed acts which were to be unlawful in some detail.

The Committee accordingly draws the clause to the attention of the Senate in that it may be considered to be an inappropriate delegation of legislative power.

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

CRIMES LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 24 February 1988 by the Minister Representing the Acting Attorney-General.

The Bill proposes amendments to the National Crime Authority Act 1984 and the Telecommunications (Interception) Act 1979. The 'sunset' clause in the National Crime Authority Act will be repealed and some related and consequential amendments made.

The amendments to the Telecommunications (Interception) Act will provide eligible judges, who will consider applications for the issue of warrants authorising interception, with the same protection and immunity, when performing a function or power conferred by the Act on eligible judges, as a Justice of the High Court has in relation to proceedings in the High Court.

The Committee has no comments on this Bill.

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

DEFENCE AMENDMENT BILL 1988

This Bill was introduced into the Senate as a Private Senator's Bill on 22 February 1988 by Senator McLean.

The purpose of the Bill is to amend the Defence Act 1903 so as to place the responsibility for the decision to send Australian troops overseas with both Houses of Federal Parliament subject to exceptions covering the movement of personnel in the normal course of their peacetime activities and the need to take swift action in an emergency.

The Committee has no comments on this Bill.

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

KOONGARRA PROJECT AREA REPEAL BILL 1988

This Bill was introduced into the Senate as a Private Senator's Bill on 22 February 1988 by Senator McLean.

The purpose of the Bill is to repeal the Koongarra Project Area Act 1981.

The Committee has no comments on this Bill.

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

LAYING CHICKEN LEVY BILL 1988

This Bill was introduced into the House of Representatives on 24 February 1988 by the Minister for Primary Industries and Energy.

The Bill contains arrangements for the collection of the levy that may be imposed under the Laying Chicken Levy Bill 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.

LAYING CHICKEN LEVY COLLECTION BILL 1988

This Bill was introduced into the House of Representatives on 24 February 1988 by the Minister for Primary Industries and Energy.

The Bill and the associated levy collection Bill are intended to provide a standby levy mechanism for use in the event that the present egg research levy arrangements, which are based on state hen quotas, become unworkable due to abandonment of the quota system in one or more states.

The Committee has no comments on this Bill.

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

NORFOLK ISLAND AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 24 February 1988 by the Minister for the Arts and Territories.

The Bill proposes amendments to the Norfolk Island Act 1979 to enable the Norfolk Island Government to appoint its own auditor to audit the public accounts of the Territory of Norfolk Island. At present, the Act requires the accounts to be audited by the Auditor-General for the Commonwealth.

The Committee has no comments on this Bill.

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

TEXTILES, CLOTHING AND FOOTWEAR DEVELOPMENT AUTHORITY BILL 1988

This Bill was introduced into the Senate on 25 February 1988 by the Minister for Resources.

The Bill proposes the establishment of a Textiles, Clothing and Footwear (TCF) Development Authority to promote the restructuring and revitalisation of the TCF industries so that they can become more efficient and internationally competitive and less dependent on assistance provided by the Commonwealth.

Clause 46 - Powers of officials, Commissioners, etc., of the Authority

In clause 46, the power of the Chairperson of the Authority to summon witnesses is apparently not qualified by a requirement for the time and place specified for the giving of evidence and production of books and documents to be reasonable. The Committee notes that, where such provisions may be necessary in the scheme of such legislation (particularly in areas involving bounty administration), the conferring of unrestricted powers on officials who possess investigative powers is undesirable.

Since by virtue of clause 47 of the Bill a failure to attend carries a considerable penalty, the Committee draws the attention of the Senate to clause 46 in that it may be considered to confer an unrestricted power to summon persons and to be in breach of principle 1(a)(i) and trespass unduly on personal rights and liberties.

Clause 59 - Trespass unduly on personal rights and liberties

Clause 59 provides for the recovery by the Commonwealth of any grant (other than a loan) made to a person or body corporate convicted (under clause 58) of knowingly providing to the Authority misleading or false information.

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

Subclause 59(6) would place upon a debtor liability for costs incurred by the Department of registering a certificate under subclause (3). However, it appears that the only circumstance in which such a certificate would be necessary is where the Department has commenced proceedings in a court which does not have (sufficient) jurisdiction to order the repayment of the amount involved. A debtor would apparently have to pay the costs of what is, in the final analysis, a mistake by the Department as to the court it chose in which to commence proceedings.

The Committee draws the attention of the Senate to the clause in that it may be considered to be in breach of principle 1(a)(i) and trespass unduly on personal rights and liberties.

Clause 66 - Inappropriate delegation of legislative power

Clause 66 provides that the Authority is empowered to delegate to an appropriate person, in the case of any person not on the Authority or its staff with the Minister's approval, all or any of the Authority's powers under the Act.

Paragraph 66(1)(c) would allow to the Authority (with the Minister's consent) an unfettered discretion as to the quality or attributes of the person to whom it might delegate its powers. The Committee has consistently commented adversely on the grant of such a discretion, which imposes no apparent limitation and gives no guidance as to the attributes or qualifications of the person to whom such a delegation may be made.

The clause is accordingly drawn to the attention of the Senate in that it may be considered to be in breach of principle 1(a)(iv) and 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.

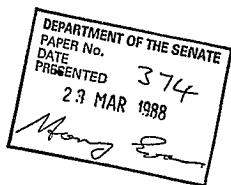
TRADE PRACTICES AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 24 February 1988 by the Minister Representing the Acting Attorney-General.

The Bill proposes amendments to the Trade Practices Act 1974 to ensure the consumer protection provisions in Part V of the Act remain effective and up-to-date. The first amendment will prohibit the false representation as to the value of goods or services. The second amendment will result in the continuation of Part V of the Act in relation to food and drink for human consumption.

The Committee has no comments on this Bill.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 3 OF 1988

23 MARCH 1988



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
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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:

Bounty and Subsidy Legislation Amendment Bill 1988*

Delegated Legislation Review Bill 1988

Excise Tariff Amendment Bill 1988

Ministers of State Amendment Bill 1988

Social Security and Veterans' Entitlements (Maintenance
Income Test) Amendment Bill 1988

*The Committee has commented on this Bill in accordance
with its terms of reference.

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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.

BOUNTY AND SUBSIDY LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 16 March 1988 by the Minister for Science, Customs and Small Business, the Minister Representing the Minister for Industry, Technology and Commerce.

This Bill is an omnibus measure which proposes to amend a series of Bounty and Subsidy Acts to give effect to various Government decisions, to clarify some eligibility criteria and to repeal certain expired bounty and subsidy Acts.

The Committee has the following comments on the Bill:

Clause 2 - Retrospectivity

By virtue of clause 2, various amendments to be made by the Bill will have retrospective effect. In most cases the Committee notes that retrospectivity is either beneficial to possible recipients of a bounty or subsidy, or is a technical drafting change. The one exception is the retrospectivity to be provided for in subclause 2(2), as the bounty on agricultural tractors will have been extinguished as from 15 September 1987. However this amendment is a Budget measure, and it is to be assumed that the manufacturers of such equipment have been aware of this change.

The Committee draws its comments on the clause to the Senate's attention for information.

Clause 4 and Schedule 1 - Non-reviewable decision

The amendment to be made to the Bounty (Books) Act 1986 by the insertion of a new subsection 5(8A) may be commented on for two reasons:

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

- (a) the Minister is given an apparently unfettered discretion to determine which books come within the terms of the subsection so that, for instance, if an instrumentality of a State is dissatisfied with the Minister's decision, that instrumentality would be able to challenge the decision only as to legality, under the Administrative Decisions (Judicial Review) Act 1977, and not as to the merits, under the Administrative Appeals Tribunal Act 1975;
- (b) the phrase 'instrumentality or authority of the Commonwealth or of a State' used in the subsection is not defined in the Bounty (Books) Act, with the consequence that the Minister may have a further discretion, which may be challenged only as to legality, to determine which bodies fall within the terms of the phrase.

The Committee accordingly draws the proposed amendment to the attention of the Senate in that, by giving an unfettered discretion, it may be considered to breach principle 1(a)(iii) and make rights, liberties and/or obligations unduly dependent upon a non-reviewable decision.

General Comment

The Committee notes that the Bill proposes amendment of subsection 14(2) of the Bounty (Books) Act 1986.

In its Eighth Report of 1987 the Committee was critical of the fact that the Comptroller-General of Customs could amend the minimum amount of bounty as specified by an Act, without the Parliament having the capacity to review or examine the Minister's decision.

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 notes that, in accordance with an undertaking given by the Minister, subsection 14(2) will be amended by the Bill so as to provide that any amendment to the minimum claim for bounty will only be made by regulation, consistent with the policy adopted since the Minister's undertaking.

The Committee notes the proposed amendment with approval and thanks the Minister for proposing it in a form recommended by the Committee.

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

DELEGATED LEGISLATION REVIEW BILL 1988

This Bill was introduced into the Senate as a Private Senator's Bill on 15 March 1988 by Senator McLean.

The Bill would establish a Joint Committee on Delegated Legislation which would examine Commonwealth delegated legislation and regularly report to the Parliament on the results of its considerations.

The Committee has no comments on this Bill.

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

EXCISE TARIFF AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 16 March 1988 by the Minister for Science, Customs and Small Business.

The main purpose of this Bill is to amend the Excise Tariff Act 1921 to incorporate into the Act previously notified excise tariff alterations which alter excise duty on naturally occurring LPG; alter the excise duty on refined petroleum; increase the amount of excise duty on aviation gasoline; and limit total excise indexation increases from August 1987 and February 1988 to six per cent.

The Committee has no comments on this 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 1988

This Bill was introduced into the House of Representatives on 17 March 1988 by the Minister for Administrative Services.

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 increase to the number of Ministers from 27 to 30 and the 3.8% increase, effective from 1 July 1987, recommended by the Remuneration Tribunal.

The Committee has no comments on this 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 (MAINTENANCE INCOME TEST) AMENDMENT BILL 1988

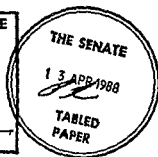
This Bill was introduced into the House of Representatives on 17 March 1988 by the Minister for Social Security.

This Bill is part of a package of measures which provide for the introduction of the Child Support Scheme. Other measures in the package are the Family Law Amendment Act 1987 and the Child Support Act 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.

DEPARTMENT OF THE SENATE
PAPER No.
DATE 486
PRESENTED
13 APR 1988
<i>Mary Egan</i>



SCRUTINY OF BILLS ALERT DIGEST

NO. 4 OF 1988

13 APRIL 1988

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 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:

Admiralty Bill 1988

Appropriation Bill (No. 3) 1987-88

Appropriation Bill (No. 4) 1987-88

Appropriation (Parliamentary Departments) Bill (No. 2)
1987-88

Crimes Legislation Amendment Bill (No. 2) 1988

Crimes (Torture) Bill 1988

Honey Export Charge Amendment Bill 1988

Honey Levy (No. 1) Amendment Bill 1988

Honey Levy (No. 2) Amendment Bill 1988

Honey Marketing Bill 1988*

National Companies and Securities Commission Amendment
Bill 1988

Statute Law (Miscellaneous Provisions) Bill 1988*

Taxation Laws Amendment (Employee Share Acquisitions) Bill
1988*

*The Committee has commented on these Bills.

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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.

ADMIRALTY BILL 1988

This Bill was introduced into the House of Representatives on 24 March 1988 by the Attorney-General.

The Bill is to provide for the admiralty jurisdiction of Australian courts. The law will replace existing Imperial legislation and is consistent with international standards concerning civil jurisdiction over ships.

The Committee has no comments on this Bill.

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

APPROPRIATION BILL (NO. 3) 1987-88

This Bill was introduced into the House of Representatives on 23 March 1988 by the Minister for Employment and Education Services.

The Bill is to appropriate a sum out of the Consolidated Revenue Fund, additional to the sums appropriated by the Appropriation Act (No. 1) 1987-88, for 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. 4) 1987-88

This Bill was introduced into the House of Representatives on 23 March 1988 by the Minister for Employment and Education Services.

This Bill is to appropriate a sum out of the Consolidated Revenue Fund, additional to the sum appropriated by the Appropriation Act (No. 2) 1987-88, for certain expenditure in respect 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 (PARLIAMENTARY DEPARTMENTS) BILL (NO. 2) 1987-88

This Bill was introduced into the House of Representatives on 23 March 1988 by the Minister for Employment and Education Services.

The Bill is to appropriate certain sums out of the Consolidated Revenue Fund, additional to the sums appropriated by the Appropriation (Parliamentary Departments) Act 1987-88.

The Committee has no comments on this Bill.

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 (NO. 2) 1988

This Bill was introduced into the House of Representatives on 24 March 1988 by the Attorney-General.

The Bill amends the following Acts to clarify the National Crime Authority's responsibilities and powers:

- . Customs Act 1901
- . Mutual Assistance in Criminal Matters Act 1987
- . National Crime Authority Act 1984
- . National Crime Authority (Status and Rights of Chairman) Act 1984
- . Telecommunications (Interception) Act 1979

The Committee has no comments on this Bill.

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

CRIMES (TORTURE) BILL 1988

This Bill was introduced into the House of Representatives on 23 March 1988 by the Attorney-General.

The Bill will enable Australia to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, establishing Australia jurisdiction over acts of torture committed outside Australia where the offender is found within Australian territory. The Bill creates a new federal offence of torture.

The Committee has no comments on this Bill.

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

HONEY EXPORT CHARGE AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 23 March 1988 by the Minister for Primary Industries and Energy.

The Bill proposes amendments to the Honey Export Charge Act 1973 so that the Australian Honey Board is required to consult with the honey producers' and packers' organizations prior to recommending to the Minister any change in the rate of export charge on honey that is imposed to fund the Board. At present the Board is not obliged to do so.

The Committee has no comments on this Bill.

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

HONEY LEVY (NO. 1) AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 23 March 1988 by the Minister for Primary Industries and Energy.

The Bill proposes amendments to the Honey Levy Act (No. 1) 1962 to provide for consultation with producers' and packers' organizations by the Australian Honey Board prior to any recommendation to the Minister to alter the rate of the levy imposed on honey sold in Australia. It also proposes to increase the maximum rate of levy that can be imposed.

The Committee has no comments on this Bill.

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

HONEY LEVY (NO. 2) AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 23 March 1988 by the Minister for Primary Industries and Energy.

The Bill proposes amendments to the Honey Levy Act (No. 2) 1962 to provide for consultation with producers' and packers' organizations by the Australian Honey Board prior to any recommendation to the Minister to alter the rate of the levy imposed on honey used in the production of other goods. It also proposes to increase the maximum rate of levy that can be imposed.

The Committee has no comments on this Bill.

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

HONEY MARKETING BILL 1988

This Bill was introduced into the House of Representatives on 23 March 1988 by the Minister for Primary Industries and Energy.

The Bill proposes to revise the Australian Honey Board's functions and powers, change the membership provisions and enhance accountability to the industry which provides the Board's funds through levies and an export charge.

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

Clause 46 - Trespass on personal rights and liberties

Clause 46 provides for a licensee to submit a return, or returns, of information which the Honey Board may require relating to the export of honey. The time limit set for providing such returns is to be 'as the Board specifies'. Subclause 46(2) provides for a penalty of \$500 if a licensee fails, without reasonable excuse, to comply with the Board's requirement.

Subclause 46(1) does not specify any limit on the minimum amount of time which the Board may allow to a licensee to give the returns. Thus the Board might, for example, require returns within two days of its giving notice, and the licensee's failure to provide them could lead to the imposition of a \$500 penalty.

The Committee suggests that, as it stands, the clause trespasses unduly on personal rights. It would not do so if the clause were either to fix a minimum time within which returns must be given, or provide that the time be reasonable in the circumstances.

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 clause to the Senate's attention under principle 1(a)(i) 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.

**NATIONAL COMPANIES AND SECURITIES COMMISSION AMENDMENT
BILL 1988**

This Bill was introduced into the House of Representatives on 24 March 1988 by the Attorney-General.

The Bill is to make a technical amendment to the National Companies and Securities Commission Act 1979 by clarifying the Commission's power to make a direction to its Divisions either generally or specifically. The Commission, by resolution, will be able to direct that its functions or powers in relation to 'a matter' be performed or exercised by a Division.

The Committee has no comments on this 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 1988

This Bill was introduced into the Senate on 25 March 1988 by the Minister for Justice.

The Bill implements, for the last time, 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. It amends 31 different Acts and repeals 10.

General Comment

The Committee has in the past drawn the Senate's attention to proposed Statute Law (Miscellaneous Provisions) Bills [SL (MP) Bills], and has commented on the Bills and an adherence to the Guidelines for SL (MP) Bills tabled in the Senate on 30 May 1985 (see Hansard, 30 May 1985, pp. 2784-5). The primary guideline for the SL (MP) Bills provides that only amendments that 'deal with tidying up, connection and up-dating (including modernisation of style) with routine administration changes or, with the approval of the Prime Minister, with changes of minor policy significance' should be included.

The Guidelines also indicate that lengthy, complex, substantial policy issues (including legal policy issues), or contentious matters (including those related to a contentious matter) should not be included in the Bill. While the question of whether particular amendments comply with the Guidelines is always a matter of judgement, the Committee draws the Senate's attention to amendments to the following Acts provided by this Bill for information.

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

Australian Capital Territory Supreme Court Act 1933

The proposed amendment to the Act would provide for the appointment of a Master of the Supreme Court who would be empowered to exercise similar powers to those presently exercised by Masters of the State Supreme Courts and relieve the heavy workload pressures on the Judges of the ACT Supreme Court.

While the amendments proposed are not contentious and do not involve any substantial policy issues, it might be thought that they border on the lengthy. Whether that is the case is a matter of judgement, but the Committee believes the provision should be brought to the Senate's attention.

Judiciary Act 1903

Section 34 of the Act currently enables a person to appeal as of right to the Full Court of the High Court from a judgement of a Justice or Justices exercising the Court's original jurisdiction.

The proposed amendment of subsection 34(2) will require a person dissatisfied with an interlocutory judgement to obtain the leave of the Court before he or she can appeal to the Full Court.

So far as the Committee can see, the amendments proposed are within the Guidelines. The proposed amendment to section 34 might be regarded as having some policy significance, but appears to be of a relatively minor nature and has presumably been approved by the Prime Minister in accordance with the Guidelines.

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 endorses the Government's decision to discontinue Statute Law (Miscellaneous Provisions) Bills. The Committee notes the proposed introduction of a system of Statute Law Revision Bills and Portfolio Omnibus Bills which was announced by the Minister in the second reading speech for this Bill.

The Committee also notes that, in the course of his second reading speech, the Minister told the Senate that:

The Government has agreed to new guidelines for the inclusion of matters in portfolio bills which will enable them to include amendments of all legislation within a ministerial portfolio or of related legislation within the portfolio. Major new policy proposals will continue to be implemented, in the first instance, by separate bills.

The Committee believes that guidelines which are to be applied in determining the content of Portfolio Omnibus Bills should be tabled in the Parliament to allow adequate and appropriate opportunity for examination.

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 (EMPLOYEE SHARE ACQUISITIONS) BILL 1988

This Bill was introduced into the Senate as a Private Senator's Bill on 25 March 1988 by Senator Chaney.

The Bill introduces a new section into the Income Tax Assessment Act 1936 which will allow, under certain conditions, discounts granted on shares sold to employees to not attract income tax liability as they do at present.

The Committee has the following comment on the Bill:

Clause 4 - 'Henry VIII' clause

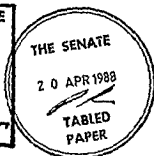
A number of the provisions of the Bill would leave matters to be determined by Regulations. For example, the definition of 'maximum yearly discount amount', in proposed new subparagraphs 26AA(7)(e)(i) and (ii), and proposed new paragraph 26AA(9)(b). When each is taken together, and when it is borne in mind that in no instance is the regulation-making provision apparently limited by a maximum or minimum as to amount or period, the provisions apparently impose no limitation on the regulation-making power.

The imposition of taxation, or the relief from taxation, is a matter which falls within the responsibility of the Parliament.

The Bill may be regarded as imposing (or exempting) taxation by regulation, and accordingly is brought to the attention of Senators in that it may be considered to be in breach of principle 1(a)(iv) 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.

DEPARTMENT OF THE SENATE
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SCRUTINY OF BILLS ALERT DIGEST

NO. 5 OF 1988

20 APRIL 1988

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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 -
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 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable 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:

Broadcasting (Ownership and Control) Bill 1988*

Broadcasting (Ownership and Control - Television Licences)
Bill 1988

Civil Aviation Bill 1988*

Defence (Superannuation Interim Arrangement) Amendment
Bill 1988

Ozone Depleting Substances Regulation Bill 1988

Primary Industries and Energy Legislation Amendment Bill
1988

Social Security Amendment Bill 1988*

Superannuation Benefit (Interim Arrangement) Bill 1988

Taxation Laws Amendment Bill (No. 2) 1988*

*The Committee has commented on these Bills.

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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.

BROADCASTING (OWNERSHIP AND CONTROL) BILL 1988

This Bill was introduced into the Senate on 14 April 1988 by the Minister for Transport and Communications.

The Bill provides for new commercial radio ownership rules with reference to other broadcasting licences and media ownership. It also consolidates the existing ownership and control provisions in broadcasting legislation. The Bill replaces the Broadcasting (Ownership and Control) Bill (No. 3) 1987 introduced in the Senate last year.

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

Clause 2 - Retrospectivity

Subclause 2(2) of the Bill provides that certain transitional ownership and control limits in subclauses 6(1) and 7(1) and clauses 10 and 11 will be deemed to have come into effect at the date of an announcement by the Minister on 29 October 1987 of the increased limits on ownership and control of radio licences.

The Committee notes that, in its Ninth Report of 1987 (27 May 1987), it drew the Senate's attention to the practice of 'legislation by press release' which occurred in relation to the Broadcasting (Ownership and Control) Bill 1987.

The Committee has drawn attention, both in its Ninth Report of 1987 (27 May 1987) and in its Annual Report 1986-87 (Parl. Paper 443 of 1987), to several concerns relating to 'legislation by press release' in the broadcasting area. The Committee noted that it is, of course, undesirable if information as to the Government's intention on such questions

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as ownership and policy were either subject of rumour and speculation, or available only to a privileged few in the community while the legislation is being prepared and drafted.

Equally, the Committee was, and is, concerned that the two principal problems for Parliament in the practice of 'legislation by press release' are illustrated by the Bill. If legislation implementing announced changes in ownership rules, when introduced in legislation, are retrospective to the date of a Minister's announcement a degree of uncertainty as to the state of the law during the period between the announcement and the passage of the necessary legislation by the Parliament is created. By the time the Parliament considers the Bill, the Parliament is placed in the position of either agreeing to the legislation without major amendment or upsetting transactions which may have taken place during the intervening period in reliance on a Minister's announcement.

The Committee accordingly draws the clause to the Senate's attention in that it may be considered to breach principle 1(a)(i) as it gives a number of clauses retrospective effect.

The Committee also draws Senators' attention to proposed new subsection 89X(3) of the Principal Act. The subsection is in the same form as in the previous version of this Bill. The Committee commented on the subsection, and the Minister's subsequent response, in relation to the earlier version of the Bill in its First Report of 1988 (24 February 1988).

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 - TELEVISION LICENCES) BILL
1988**

This Bill was introduced into the Senate as a Private Senator's Bill on 15 April 1988 by Senator Powell.

The Bill will amend section 92 and 92C of the Broadcasting Act 1942 so as to reduce the permissible maximum service area population of a commercial television licence (or, when applicable, each of two or more commercial television licences) from 60% to 43% of the declared Australian population.

The Committee has no comments on this Bill.

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

CIVIL AVIATION BILL 1988

This Bill was introduced into the House of Representatives on 14 April 1988 by the Minister for Transport and Communications.

This Bill will enable the establishment of a Civil Aviation Authority as a Commonwealth statutory authority. The primary functions of the new Authority will be the safety, regulation of civil aviation operations in Australia and Australian aircraft operating overseas, and the provision of air traffic and related services to aircraft operators in Australia.

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

Clauses 22, 29 and 30 - Reversal of the onus of proof

Subclauses 22(4) and 29(3) and clause 30 of the Bill reverse the normal onus of proof in a criminal prosecution for offences under a number of provisions. The Committee noted in its Annual Report 1986-87 (Parl. Paper 443 of 1987, p. 22) that the imposition of the persuasive burden of proof on the accused, in relation to a statutory defence, in criminal proceedings is only acceptable where both:

- (a) the matters to be raised by way of defence by the accused were peculiarly within the knowledge of the accused; and
- (b) it would be extremely difficult and costly for the prosecution to be required to negative the defence.

While the first of these conditions may arguably be met by these clauses, it does not appear to the Committee that the second condition is.

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 above clauses of the Bill to the attention of the Senate in that they may be considered to breach principle 1(a)(i) and trespass unduly on personal rights and liberties by reversing the onus of proof in criminal proceedings.

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

**DEFENCE (SUPERANNUATION INTERIM ARRANGEMENT) AMENDMENT
BILL 1988**

This Bill was introduced into the House of Representatives on 13 April 1988 by the Minister for Defence Science and Personnel.

This Bill will enable the application to members of the Defence Force of a 3% productivity superannuation benefit on an interim basis.

The Committee has no comments on this Bill.

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

OZONE DEPLETING SUBSTANCES REGULATION BILL 1988

This Bill was introduced into the Senate as a Private Senator's Bill on 15 April 1988 by Senator Coulter.

This Bill provides for the regulation of the use of certain substances that can significantly deplete or otherwise modify the ozone layer in a manner that is likely to have adverse effects on human health and the environment.

The Committee has no comments on this Bill.

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

PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 13 April 1988 by the Minister for Primary Industries and Energy.

This Bill is the first example of portfolio omnibus legislation which was foreshadowed by the Minister for Justice, Senator Tate, when introducing the Statute Law (Miscellaneous Provisions) Bill 1988 on 25 March 1988. It relates to legislation administered within the Primary Industries and Energy portfolio. It repeals eight Acts and amends eleven.

The Committee has no comments on this 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 1988

This Bill was introduced into the House of Representatives on 13 April 1988 by the Minister for Social Security.

This Bill is a portfolio omnibus Bill to amend the Social Security Act 1947. The amendments are intended to correct minor drafting defects and consolidate major programs introduced in 1987.

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

Clause 2 - Retrospectivity

Pursuant to clause 2, many of the provisions of the Bill are to have retrospective operation. However, in almost all cases the retrospectivity will apparently be either beneficial to recipients or is a correction of drafting errors or anomalies.

The Committee notes, however, that proposed paragraph 152(2)(c), to be inserted by clause 18(b), is deemed to have commenced on 1 May 1987. It effectively operates from 9 February 1988. It appears from the Minister's Second Reading Speech that the latter date is that on which he issued a press release announcing the proposed change. The proposed amendment is therefore a further example of 'legislation by press release'. It is not immediately apparent to the Committee that the proposed new paragraph 152(2)(c) is of such a nature that immediate or early action was required, although the Committee does note that the Minister has acted promptly in putting his press release into proper legislative form.

The Committee draws the clause to the Senate's attention as it may be considered to breach principle 1(a)(i) as it is retrospective in its operation.

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

SUPERANNUATION BENEFIT (INTERIM ARRANGEMENT) BILL 1988

This Bill was introduced into the House of Representatives on 14 April 1988 by the Minister for Employment and Education Services.

This Bill will provide, under an interim arrangement, superannuation benefits for Commonwealth employees and employees of Commonwealth authorities and bodies who are employees under the Superannuation Act 1976 or have no employer-sponsored superannuation. The arrangements relate to the Conciliation and Arbitration Commission's June 1986 National Wage case decision concerning an increase of up to 3% in superannuation agreements.

The Committee has no comments on this Bill.

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

TAXATION LAWS AMENDMENT BILL (NO. 2) 1988

This Bill was introduced into the House of Representatives on 14 April 1987 by the Minister for Employment and Education Services.

This Bill will amend a number of tax-related Acts with the main thrust of the amendments aimed at improving requirements for the registration of tax agents.

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

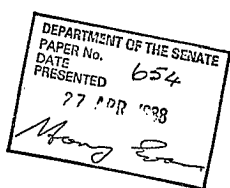
Clause 15 - Retrospectivity

Clause 15 of the Bill amends section 57AM of the Income Tax Assessment Act 1936 and will restrict concessions available to the purchasers of new or substantially modified ships, in that a taxpayer, so as to obtain the concession allowed by the section, must comply both with taxation legislation and the Ships (Capital Grants) Act 1987. The amendment is retrospective to 22 December 1986.

The clause is a further example of 'legislation by press release'. The Committee also draws the Senate's attention to the fact that the press release announcing the proposed change and its retrospectivity to 22 December 1986 was itself released on 2 April 1987.

The clause is drawn to the Senate's attention as it may be considered to breach principle 1(a)(i) and trespass unduly on personal rights and liberties to the extent that the clause would have effect retrospectively to the date of introduction 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.



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NO. 6 OF 1988

27 APRIL 1988



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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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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:

Community Services and Health Legislation Amendment
Bill 1988*

Health Insurance Amendment Bill 1988

Industries Assistance Commission Amendment Bill 1988

Statutory Instruments (Tabling and Disallowance)
Legislation Amendment Bill 1988

Supply Bill (No. 1) 1988-89

Supply Bill (No. 2) 1988-89

Supply (Parliamentary Departments) Bill 1988-89

Transport Legislation Amendment Bill 1988*

*The Committee has commented on these Bills.

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Reference is invited to do so.

**COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT
BILL 1988**

This Bill was introduced into the House of Representatives on 21 April 1988 by the Minister for Housing and Aged Care.

This Bill proposes to amend the National Health Act 1953 in three ways:

1. To introduce new arrangements for nursing and personal care of patients in nursing homes.
2. To introduce new respite care arrangements in non-Government nursing homes.
3. To enable contributors to a health benefit organisation to transfer membership to another without the imposition of a waiting period.

The Bill also seeks to amend the following Acts:

- . Aged or Disabled Persons Homes Act 1954
- . Australian Institute of Health Act 1987
- . Nursing Homes and Hostels Legislation Amendment Act 1987
- . States Grants (Nurse Education Transfer Assistance) Act 1985

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

Clause 5 - Inappropriate delegation of legislation authority

Proposed new paragraphs 10D(1)(c) and (d) of the Aged or Disabled Persons Homes Act 1954 may be regarded as improper delegations of Parliamentary authority. Under the existing paragraph 10D(1)(c) - inserted by the Community Services and

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Health Legislation Amendment Act 1987 - the amount of financial assistance payable to an organisation was specified as being at the rate of \$8.05 per day, or such higher amount as determined by the Minister. Under the proposed new paragraphs the Parliament is given no indication of the likely amount of the assistance. That information will be available only when the Minister has made a determination - that determination being required to be laid before each House, and subject to disallowance, by virtue of section 10FB of the Act, also introduced in the 1987 amendment.

The Committee draws Senators' attention to the clause as it may be considered to be in breach of principle 1(a)(iv).

Clause 5 - 'Henry VIII' clause

Proposed new subsections 10D(5) and (6) of the Act are 'Henry VIII' clauses, in that they would allow subsection 10D(4) to be amended, and terms therein to be defined, by Ministerial determination. While such determinations are subject to Parliamentary review by reason of section 10FB, the width of the power given to the Minister by subsections (5) and (6) is such as to give subclause (4) little apparent meaning.

The Committee draws Senators' attention to the clause as it may be considered to be in breach of principle 1(a)(iv).

Clause 19 - Non-reviewable decision

Proposed new subsection 40AFA(5) of the National Health Act 1953 is drawn to the attention of Senators. By virtue of proposed new section 40AFF of the Act, a review by the Secretary of a classification is subject to appeal to the Minister, but the Secretary's initial classification under proposed new subsection 40AFA(5) is not subject to such Ministerial oversight. If, therefore, the Secretary's initial

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classification of a patient were, say, unduly low, the only means of redress for a nursing home proprietor would apparently be by way of proceedings in the Federal Court to challenge the legality of the decision under the Administrative Decisions (Judicial Review) Act 1977.

Proposed new paragraph 40AFB(1)(c) and subsection (3) of the National Health Act are also drawn to the attention of Senators. These provisions would grant to the Minister quasi-legislative powers, to determine classes of patients to whom the classification system used under the Act would not apply. The only review of the exercise of these functions is an indirect one insofar as the determinations must be in accordance with principles declared by the Minister under proposed new subsection 40AFB(4). These principles are subject to Parliamentary review by virtue of proposed new paragraph 139B(1)(d).

The clause is drawn to the attention of Senators as it may be in breach of principle 1(a)(iii) and make rights, liberties and/or obligations unduly dependent upon a non-reviewable decision.

Clause 28 - Trespass on personal rights and liberties

Proposed new subsection 62(2A) of the National Health Act appears to create an absolute offence, in that a person might contravene the subsection, and be liable for the penalty there provided, even though the person does not know, and has no reason to know, that the information or document he or she has furnished is false or misleading. Such provisions are usually cased in the terms of prohibiting a person from knowingly furnishing information, etc.

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

The clause is drawn to the attention of Senators in that it may be considered to breach principle 1(a)(i) 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.

HEALTH INSURANCE AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives as a Private Member's Bill on 21 April 1988 by Mr Wilson Tuckey.

This Bill seeks to amend the Health Insurance Act 1973 to ensure that Ministers and their staff observe secrecy with respect to any information obtained regarding the affairs of another person while performing official duty. A penalty of \$500 is proposed for breach of this new section.

The Committee has no comments on this Bill.

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

INDUSTRIES ASSISTANCE COMMISSION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 20 April 1988 by the Minister Assisting the Treasurer.

This Bill proposes amendments to the Industries Assistance Commission Act 1973 to empower a Minister, with the agreement in writing of the Minister responsible for the Act (the Treasurer), to make minor changes in the provision of tariff assistance to industries in five narrowly-defined circumstances without the requirement for a prior report to the Commission.

The Committee has no comments on this Bill.

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

**STATUTORY INSTRUMENTS (TABLING AND DISALLOWANCE) LEGISLATION
AMENDMENT BILL 1988**

This Bill was introduced into the House of Representatives on 21 April 1988 by Attorney-General.

This Bill amends the tabling and disallowance provisions of the Acts Interpretation Act 1901 and of the Acts relating to the external Territories. The amendments seek to prevent:

- . the possible circumvention of Parliamentary scrutiny of regulations and certain other statutory instruments;
- . the repeated repeal and remaking of delegated legislation for which a notice of motion for disallowance is in force.

The amendments arise out of suggestions by the Senate Standing Committee on Regulations and Ordinances.

The Committee is pleased to be able to draw Senators' attention to the Attorney-General's positive response to the Regulations and Ordinances Committee's suggestions. By responding in this way he has recognised the continuing importance of Parliamentary scrutiny of legislation, and particularly has recognised the role played by the legislative scrutiny committees of the Senate.

The Committee has no comments on the content of this Bill.

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

SUPPLY BILL (NO. 1) 1988-89

This Bill was introduced into the House of Representatives on 20 April 1988 by the Minister representing the Minister for Finance.

The Bill seeks appropriations totalling \$8,689 million for the ordinary annual services of the government. This is \$37 million, or about 0.4 per cent, greater than the equivalent amounts provided in the Supply Act (No. 1) 1987-88.

A significant part of the increase reflects commitments which have been approved by the government, 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.

SUPPLY BILL (NO. 2) 1988-89

This Bill was introduced into the House of Representatives on 20 April 1988 by the Minister representing the Minister for Finance.

This Bill seeks interim appropriations, totalling \$2,064 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 1988 to 30 November 1988. This is \$341 million, or about 14 per cent, less than the equivalent amounts provided in the Supply Act No. 2) 1987-88.

The most significant aspect of this Bill are those items establishing the proposed revised funding arrangements for the Australian Capital Territory.

The Committee has no comments on this Bill.

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

SUPPLY (PARLIAMENTARY DEPARTMENTS) BILL 1988-89

This Bill was introduced into the House of Representatives on 20 April 1988 by the Minister representing the Minister for Finance.

The Bill seeks interim appropriations, totalling \$41.2 million, to meet expenditures by the parliamentary departments during the period 1 July 1988 to 30 November 1988. This is \$17.5 million, or about 74 per cent, greater than the equivalent amount provided for in the supply period 1987-88.

The large percentage increase is attributable to moving and establishment costs, and increased operating costs, arising from the occupation of the new Parliament House.

The Committee has no comments on this Bill.

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

TRANSPORT LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 20 April 1988 by the Minister for Transport and Communications.

This is an omnibus Bill containing amendments to the following Acts administered by the Transport and Communications portfolio:

- . Navigation Act 1912
- . Air Navigation (Charges) Act 1952
- . Federal Airports Corporation Act 1986
- . Shipping Registration Act 1981
- . Protection of the Sea (Prevention of Pollution from Ships) Act 1983

The Bill also provides for the repeal of certain provisions in the following Act:

- . Navigation Amendment Act 1979
- . Navigation Amendment Act 1980
- . Navigation Amendment Act 1981

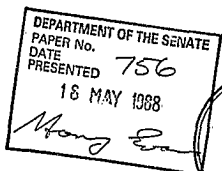
The Committee draws attention to the following clause of the Bill:

Clause 2 - Retrospectivity

The amendments to be made by Part IV of the Bill to Federal Airports Corporation Act 1986 would have effect retrospectively to 13 June 1986, but it appears that these amendments are of a technical nature and correct an oversight in the original Act.

The clause is drawn to Senators' attention for information.

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 1988

18 MAY 1988

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 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:

Agricultural and Veterinary Chemicals Bill 1988*
Anti-Dumping Authority Bill 1988
Audit Amendment Bill 1988*
Commonwealth Employees' Rehabilitation and Compensation
Bill 1988*
Constitution Alteration (Fair Elections) Bill 1988
Constitution Alteration (Local Government) Bill 1988
Constitution Alteration (Parliamentary Terms) Bill 1988
Constitution Alteration (Rights and Freedoms) Bill 1988
Customs Legislation (Anti-Dumping Amendment) Bill 1988
Customs Tariff Amendment Bill 1988
Customs Tariff Amendment Bill (No. 2) 1988
Customs Tariff (Anti-Dumping) Amendment Bill 1988
Defence Legislation Amendment Bill 1988
Electoral and Referendum Amendment Bill 1988
Employment, Education and Training Bill 1988*
Industrial Relations Bill 1988*
Industrial Relations (Consequential Provisions) Bill 1988
Interstate Road Transport Amendment Bill 1988
Interstate Road Transport Charge Amendment Bill 1988
Research and Development Legislation Amendment Bill 1988*
Sales Tax (Exemptions and Classifications) Amendment
Bill 1988
States Grants (Schools Assistance) Amendment Bill 1988
States Grants (Tertiary Education Assistance) Amendment
Bill 1988

United States Naval Communication Station (Civilian
Employees) Bill 1988

*The Committee has commented on these Bills.

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.

AGRICULTURAL AND VETERINARY CHEMICALS BILL 1988

This Bill was introduced into the House of Representatives on 28 April 1988 by the Minister for Primary Industries and Energy.

The Bill will establish a new authority, the Australian Agricultural and Veterinary Chemicals Council (the Council), which will operate as a co-ordinating and clearing organisation charged with recommending the conditions and restrictions which are to apply in relation to the use in Australia of agricultural and veterinary chemical products.

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

Clause 20 - Non-reviewable decision

Clause 20 describes restrictions on the disclosure of information concerning chemical products. If enacted, subclause 20(3) of the Bill would allow the Council and Chairperson to divulge confidential commercial information to such persons as the Minister certifies in writing, and to divulge information to a prescribed authority or person, or to a person who, in the Chairperson's opinion, is either expressly or implicitly authorised by the proprietor of a chemical product, to obtain information.

The subclause may be regarded as conferring unacceptably wide and unreviewable discretions. By virtue of paragraph 20(3)(a), the Minister would be granted a discretion to authorise the divulging of confidential commercial information to any person, so long only as the Minister regards that as necessary in the public interest. By virtue of paragraph 20(3)(c) the Chairperson would be permitted to divulge such information to any person, so long as the Chairperson was of the opinion that

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the proprietor of the information had impliedly authorised that divulging. It may be that the disclosure of the information could conceivably cause irreparable commercial harm to its owner, and there appears to be little recourse that such an owner would have to prevent or challenge such disclosures.

The Committee has in the past drawn attention to such provisions because they give a Minister the ability to make a decision which would, in this case, make information deemed by the legislation to be commercially confidential, available to other persons.

The clause is drawn to the Senate's attention in that it may be considered to be in breach of principle 1(a)(iii) and make rights unduly dependent upon a non-reviewable decision.

Clause 22 - Reversal of the onus of proof

If enacted, clause 22 would provide that certain persons (holders of certificates of clearance issued by the Council) are required to notify the Council of any new information at variance with information previously provided to the Council, or which may indicate that the use of chemicals in accordance with published recommendation may be harmful, or less effective, than originally represented to the Council. Failure to notify the Council may lead to prosecution.

Clause 22(3) would reverse the onus of proof in a prosecution under the provision. It is a defence to a charge, under the clause, that the person charged did not possess, and had no means of access to, the information referred to in the clause. Although the matters which would constitute the defence are such as would be peculiarly within the knowledge of the defendant, it is difficult to see that rebuttal of these matters would cause undue expense or difficulty to the prosecution.

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

The clause is accordingly drawn to the Senate's attention in that it may be considered to breach principle 1(a)(i) 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.

ANTI-DUMPING AUTHORITY BILL 1988

This Bill was introduced into the House of Representatives on 28 April 1988 by the Minister for Science, Customs and Small Business.

The Bill is one of a package of three Bills intending to give effect to the Government's response to the Gruen Report. Specifically the Bill establishes an Anti-Dumping Authority to advise the Minister as to whether dumping or countervailing duties should be imposed on specified products exported from overseas and to review and report to the Minister on anti-dumping issues.

The Committee has no comments on this Bill.

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

AUDIT AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 28 April 1988 by the Minister Representing the Minister for Finance.

The Bill amends the Audit Act 1901 and intends principally to enhance the Commonwealth's financial reporting, administration and audit and to bring certain penalty provisions into line with present day criminal law policy.

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

Clause 6 - Delegation of legislative power

Clause 6 would amend section 49 of the Audit Act. Subsection 49(2) of the Act presently provides that the format of the Monthly Statement of Financial Transactions, which is published by the Minister for Finance, shall be charged only with the prior approval of both Houses of the Parliament.

The amendment proposed provides that the format of the Statement would, in future, be as specified by regulation.

The Senate's attention is drawn to the fact that a proposed amendment of similar wording was contained in the Statute Law (Miscellaneous Provisions) Bill 1987. That clause was left out of the Bill during the course of debate in the Senate on 7 October 1987.

The clause is accordingly drawn to Senators' attention.

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

Clause 15 - Inappropriate delegation of legislative power

Clause 15 would introduce new section 63R to the Audit Act. The clause would give the Auditor-General a discretion to determine what matters are of such minor importance, or immateriality, that they do not need to be reported. The Committee notes that the difficulty with this discretion is that, of its nature, it would clearly not be possible to determine the circumstances in which the discretion has been exercised, if and when it is exercised. While endorsing the Minister's comments on the high degree of competence and integrity of the Auditor-General's office, in the Minister's Second Reading speech, the Committee notes that the Minister has acknowledged that the Joint Committee on Public Accounts has expressed disquiet over such a clause.

The Committee accordingly draws the clause to the Senate's attention in that it may be considered to breach principle 1(a)(iv) and constitute an inappropriate delegation of legislative power.

Schedule 1 - Self-incrimination

Proposed new subsections 63G(9), 63L(9) and 63ME(6), each contained in the Schedule to the Bill, would abrogate the privilege against self-incrimination. In each case, however, the abrogation is sufficiently limited as to be acceptable in view of the Committee's guidelines for such provisions.

The proposed subclauses are drawn to the Senate's attention.

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

**COMMONWEALTH EMPLOYEES' REHABILITATION AND COMPENSATION
BILL 1988**

This Bill was introduced into the House of Representatives on 27 April 1988 by the Minister for Social Security.

The Bill seeks to repeal the Compensation (Commonwealth Government Employees) Act 1971 and establish a new system of compensation and rehabilitation for employees who are injured in the course of their employment by the Commonwealth.

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

Clause 4 - Trespass on personal rights and liberties

Subclause 4(13) of the Bill provides that an employee who is under the influence of alcohol or a drug shall be deemed to be guilty of serious and wilful misconduct. Hence, by virtue of subclause 14(3), an employee would not be entitled to compensation for an injury caused while being under the influence of alcohol or drugs, unless the employee dies, or suffers serious and permanent impairment.

The clause is drawn to the Senate's attention in that it may be considered to breach principle 1(a)(i) and trespass unduly on personal rights and liberties.

Clause 44 - General Comment - Common law right

Clause 44 would, if enacted, deprive a Commonwealth employee injured as a result of the Commonwealth's negligence of the right to sue for damages. That right would generally entitle an employee who pursued it with full success to a lump sum for the total loss suffered. The Bill seeks to compensate all Commonwealth employees, with few exceptions, injured at work

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whether through its negligence or otherwise. That compensation will generally be less than they would have obtained had they been fully successful at common law.

The clause is accordingly drawn to Senators' attention as the removal of an existing right at common law is proposed.

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 (FAIR ELECTIONS) BILL 1988

This Bill was introduced into the House of Representatives on 10 May 1988 by the Attorney-General.

The Bill proposes to introduce two basic principles to guarantee fair elections:

- (i) all elections should be based on the principle of 'one vote, one value';
- (ii) all citizens over the age of 18, subject to certain qualifications, have an enforceable, inalienable and constitutional right to vote at elections.

These principles would apply to elections for Commonwealth and State Parliaments and mainland Territory legislatures.

The Committee has no comments on this 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 (LOCAL GOVERNMENT) BILL 1988

This Bill was introduced into the House of Representatives on 10 May 1988 by the Attorney-General.

The Bill proposes that the Constitution be amended to give recognition in the Constitution to local government in the States. The proposal does not extend to the Territories. Further, it does not give the Commonwealth power to establish local government bodies in the States but requires that each State provide for and maintain a system of local government.

The Committee has no comments on this Bill.

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

CONSTITUTION ALTERATION (PARLIAMENTARY TERMS) BILL 1988

This Bill was introduced into the House of Representatives on 10 May 1988 by the Attorney-General.

The Bill proposes to amend the Constitution to provide for four-year maximum terms for members of both Houses of the Commonwealth Parliament. It provides for:

- (i) an increase in the maximum term for the House of Representatives from three to four years;
- (ii) terms of all Senators to expire upon the expiry or dissolution of the House of Representatives; and
- (iii) elections for both the House of Representatives and the Senate to be held on the same day.

The Committee has no comments on this 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 (RIGHTS AND FREEDOMS) BILL 1988

This Bill was introduced into the House of Representatives on 10 May 1988 by the Attorney-General.

The Bill proposes to amend the Constitution to strengthen three fundamental rights and freedoms already contained in it:

- (i) trial by jury;
- (ii) fair compensation for acquisitions of property; and
- (iii) freedom of religion.

The Committee has no comments on this 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 LEGISLATION (ANTI-DUMPING AMENDMENT) BILL 1988

This Bill was introduced into the House of Representatives on 28 April 1988 by the Minister for Science, Customs and Small Business.

The Bill is one of a package of three Bills intending to give effect to the Government's response to the Gruen Report. Specifically the Bill amends Part XVB of the Customs Act 1901 to define the role of the Australian Customs Service in dumping inquiries. This would include conducting preliminary investigations into dumping complaints which would form the basis upon which the proposed Anti-Dumping Authority would commence inquiries.

The Committee has no comments on this Bill.

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

CUSTOMS TARIFF AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 27 April 1988 by the Minister for Science, Customs and Small Business.

The Bill is to enact a range of changes to the Customs Tariff Act 1987 (the Harmonised Tariff).

The Committee has no comments on this Bill.

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

CUSTOMS TARIFF AMENDMENT BILL (NO. 2) 1988

This Bill was introduced into the House of Representatives on 27 April 1988 by the Minister for Science, Customs and Small Business.

The Bill is to enact changes to the Customs Tariff Act 1987. It will give effect to part of a package of measures already announced by the Government to reinforce the strategy and objectives of its passenger motor vehicle policy.

The Committee has no comments on this Bill.

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

CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 28 April 1988 by the Minister for Science, Customs and Small Business.

The Bill is one of a package of three Bills intending to give effect to the Government's response to the Gruen Report. Specifically the Bill amends the Customs Tariff (Anti-Dumping) Act 1975 by inserting a statutory definition of 'like goods', providing that duties and undertakings will only be current for three years, makes various amendments relating to relief for industry producing 'like goods' to goods that have been dumped, and makes a number of statutory requirements relating to the publication of information on the value of goods and Ministerial directions.

The Committee has no comments on this Bill.

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 1988

This Bill was introduced into the House of Representatives on 27 April 1988 by the Minister for Defence Science and Personnel.

The Bill intends to amend Acts in the Defence portfolio to:

- (a) enable Defence Force personnel to commute their pensions up to three months before retirement;
- (b) increase the membership of the Defence Housing Authority; and
- (c) enable permanent enlistees in certain circumstances to claim discharge short of retiring age by giving appropriate notice.

The Committee has no comments on this Bill.

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

ELECTORAL AND REFERENDUM AMENDMENT BILL 1988

This Bill was introduced into the Senate on 29 April 1988 by the Minister for Home Affairs.

The Bill is designed to give legislative effect to the remaining accepted recommendations of the Joint Select Committee on Electoral Reform's Reports Nos. 1 and 2. To this end it amends the Commonwealth Electoral Act 1918 and the Referendum (Machinery Provisions) Act 1984.

The Committee has no comments on this Bill.

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

EMPLOYMENT, EDUCATION AND TRAINING BILL 1988

This Bill was introduced into the House of Representatives on 28 April 1988 by the Minister for Employment, Education and Training.

The Bill intends to rationalise the advisory structures within the Ministry of Employment, Education and Training as reported by the Minister in 1987. It proposes to establish the National Board of Employment, Education and Training and four supporting Councils. It also proposes to abolish the Commonwealth Employment Service and provide for a similar service within the Department. To facilitate these changes the Bill repeals the following three Acts:

- . Commonwealth Tertiary Education Commission Act 1977
- . Commonwealth Schools Commission Act 1973
- . Commonwealth Employment Service Act 1978

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

Clause 4 - 'Henry VIII' clause

Subclause 4(1) is a 'Henry VIII' clause in that it would permit the amendment of Schedule 1 of the Bill, which sets out the institutions to which the Bill would apply, by Ministerial declaration. The declarations would be subject to Parliamentary review, by virtue of clause 4(2), but it is difficult to see the reason for the Minister having this power of amendment. The fact that an institution is, or is not, specified in the Schedule would not affect the existence of that institution, and the Higher Education Council is not limited by the terms of Schedule 1 with regard, for instance, to making recommendations on the grant of financial assistance under subparagraph 25(a)(v).

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

The clause is drawn to the Senate's attention in that it may be considered to breach principle 1(a)(iv) and 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.

INDUSTRIAL RELATIONS BILL 1988

This Bill was introduced into the House of Representatives on 28 April 1988 by the Minister for 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.

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

Clause 86 - Powers of search

Clause 86 provides that an inspector appointed under the legislation would be entitled to enter private premises without a warrant in order to determine whether awards, or other provisions of the legislation, are complied with. The Committee notes that, whilst such a power may be deemed necessary for the effective enforcement of the proposed Bill, the Committee believes it should consistently draw the Senate's attention to the grant of such powers.

The Committee therefore draws the clause to the attention of Senators' in that, by providing a power of search without warrant, it may be considered to breach principle 1(a)(i) to trespass unduly on personal rights and liberties.

Clause 121 - 'Henry VIII' clause

Clause 121 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:

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

- (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
- (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.

Subclause 134(3) - Delegation

Subclause 134(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 subclause 134(3) which provides that a member of the Commission or a Registrar may authorise a person to exercise powers under subclause 134(1) for the purpose of, or in connection with, the exercise of another power, or the performance of a function, conferred on the Commission. Subclause 134(3) thus permits the delegation of the powers under subclause 134(1) to any person whom the Commission may choose to authorise.

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 subclause 134(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.

Clause 285 - Power of entry and inspection

Subclause 285(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 subclause 285(2), the officer may be called upon to produce evidence of such authority.

The Committee considered the terms of the clause and is satisfied that the limitation on the authorised officer's powers are sufficient to afford protection against arbitrary or unwarranted exercise of the power.

The clause is drawn to Senators' attention for information.

Subclauses 311(3), 319(5), 325(5), 333(5), 334(3) and 335(3) - Reversal of the onus of proof

These subclauses of the Bill would reverse the burden of proof in criminal prosecutions. However, in each case it may be suggested that the reversal is within the guidelines which the Committee has consistently applied (see Annual Report 1986-87, p.18 et. seq.). It may be noted that subclause 325(5) is

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similar to the plea of mistake of fact, proof of which is, at common law, on the defendant, while the remaining subclauses concern matters where it would appear to be extremely difficult for the prosecution to adduce proof of the necessary intention behind the specified acts.

The subclauses are drawn to Senators' attention for information.

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

INDUSTRIAL RELATIONS (CONSEQUENTIAL PROVISIONS) BILL 1988

This Bill was introduced into the House of Representatives on 28 April 1988 by the Minister for Industrial Relations.

The Bill will repeal the Conciliation and Arbitration Act 1904 and amend other Acts consequent on this repeal. The Conciliation and Arbitration Act 1904 will be superseded by the Industrial Relations Bill 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.

INTERSTATE ROAD TRANSPORT AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 26 April 1988 by the Minister for Transport and Communications Support.

The Bill principally provides the legislative framework for the Federal Interstate Registration Scheme for vehicles solely engaged in interstate trade and commerce. It also provides for a general regulation making power which will enable vehicle operating standards to be determined and regulated. This will be used initially to implement a smoking ban on Federal interstate buses and coaches.

The Committee has no comments on this Bill.

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

INTERSTATE ROAD TRANSPORT CHARGE AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 26 April 1988 by the Minister for Transport and Communications Support.

The Bill provides for the level of charges to be paid by owners of vehicles registered under the Interstate Road Transport 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.

RESEARCH AND DEVELOPMENT LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 28 April 1988 by the Minister for Industry, Technology and Commerce.

The Bill will amend the Income Tax Assessment Act 1936 and the Industry Research and Development Act 1986 with the aim of increasing the effectiveness in promoting stimulus for investment in research and development by industry in Australia of the 150% tax concession.

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

Clause 16 - Review

Proposed new section 39J of the Industry Research and Development Act 1986 would give the Industry Research and Development Board a discretion to register a company as entitled to a tax rebate. The Minister has acknowledged in his Second Reading speech that this Bill will give 'additional discretionary powers to the Board'. However, the only avenue of redress for a company dissatisfied with a decision of the Board is by action in the Federal Court under the Administrative Decisions (Judicial Review) Act 1977, rather than the speedier and less expensive procedure of review by the Administrative Appeals Tribunal.

The clause is drawn to Senators' attention in that it may be considered to breach principle 1(a)(iii) and make rights, liberties and obligations unduly dependent upon a non-reviewable decision.

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 1988**

This Bill was introduced into the House of Representatives as a Private Member's Bill on 28 April 1988 by Mr Prosser.

The Bill intends to exempt professional fishermen from sales tax on four-wheel drive vehicles and certain motor-cycles used in the fishing industry.

The Committee has no comments on this Bill.

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

STATES GRANTS (SCHOOLS ASSISTANCE) AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 27 April 1988 by the Minister for Employment and Education Services.

The Bill intends to make various amendments to the States Grants (Schools Assistance) Act 1984, with the main purpose to supplement existing financial provisions to take into account cost increases.

The Committee has no comments on this Bill.

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

**STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) AMENDMENT
BILL 1988**

This Bill was introduced into the House of Representatives on 27 April 1988 by the Minister for Employment and Education Services.

The Bill will amend the States Grants (Tertiary Education Assistance) Act 1987 to adjust for cost movements in tertiary education grants and will also provide additional funds for superannuation in higher education to cover for the 3% productivity claim.

The Committee has no comments on this Bill.

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

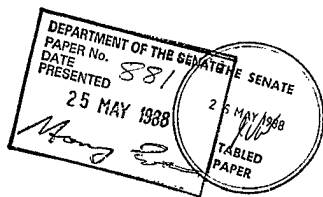
**UNITED STATES NAVAL COMMUNICATION STATION (CIVILIAN EMPLOYEES)
BILL 1988**

This Bill was introduced into the House of Representatives on 27 April 1988 by the Minister for Social Security.

The Bill will repeal the United States Naval Communication Station (Civilian Employees) Act 1971 to ensure that civilian employees of the United States Government at the naval communication station in North West Cape will continue to be covered for workers' compensation purposes by the same legislation applicable to Commonwealth employees generally.

The Committee has no comments on this Bill.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 8 OF 1988

25 MAY 1988

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 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 Film Commission Amendment Bill 1988*

Public Service (Parliamentary Departments) Bill 1988

*The Committee has commented on this Bill.

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 FILM COMMISSION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 18 May 1988 by the Minister for the Arts and Territories.

The Bill seeks to amend the Australian Film Commission Act 1975 so as to enable the incorporation of the company Film Australia Pty. Ltd.

The Bill will remove from the Australian Film Commission the function of making films and TV programs, which will become the responsibility of the new company. It will also enable the transfer of certain staff, assets, contractual rights and obligations from the Australian Film Commission to the new company.

General Comment

By virtue of clause 14, the Commission would be required to report to Parliament each year only on the Commission's activities, and not on a number of present activities which are, by virtue of this Bill, to become the functions of Film Australia Pty. Ltd. The company will be a company incorporated in the Australian Capital Territory and hence will be subject to the reporting requirements specified in the Companies Act.

The Committee commented in its Second Report of 1988 (16 March 1988) that a similar provision in the Australian Airlines (Conversion to Public Company) Bill 1988 meant that Parliament may no longer receive an annual report on the activities of a Commonwealth statutory authority.

Senators' attention is drawn to the Committee's comments in that report as similar comments may be made about clause 14 of this Bill.

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

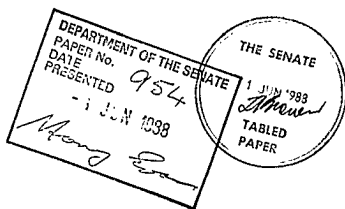
PUBLIC SERVICE (PARLIAMENTARY DEPARTMENTS) BILL 1988

This Bill was introduced into the House of Representatives on 19 May 1988 by Madam Speaker.

The Bill proposes to amend the Public Service Act 1922 to replace the Joint House Department, the Department of the Parliamentary Reporting Staff and the Department of the Parliamentary Library with a new Department of Parliamentary Services. It also creates a new office of Secretary to the Department of Parliamentary Services to administer the new department. This Bill will give a legislative basis to restructuring proposals put forward by the President and the Speaker in May 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.



SCRUTINY OF BILLS ALERT DIGEST

NO. 9 OF 1988

1 JUNE 1988

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 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:

Australia Council Amendment Bill 1988

Australian Capital Territory (Tobacco - Sale to Young Persons and Promotion) Bill 1988*

Aviation Fuel Revenues (Special Appropriations) Bill 1988

Commonwealth Authorities Legislation (Pay-roll Tax) Amendment Bill 1988

Customs Tariff (Rate Alteration) Bill 1988

Departure Tax Amendment Bill 1988

Departure Tax Collection Amendment Bill 1988

Fertilisers Subsidy Amendment Bill 1988

House of Representatives (Quorum) Bill 1988

Lands Acquisition Bill 1988*

Local Government (Financial Assistance) Bill 1988

Migration Amendment Bill 1988

National Health Amendment Bill 1988

Primary Industries (Recovery of Levy Collection Expenses) Bill 1988

Taxation Laws Amendment Bill (No. 3) 1988

*The Committee has commented on these Bills.

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.

AUSTRALIA COUNCIL AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for the Arts and Territories.

The Bill intends to give legislative effect to the Government's response to the report by the House of Representatives Standing Committee on Expenditure on its Inquiry into Commonwealth Assistance to the Arts. The amendments propose a streamlined administrative structure for the Council, and clarify the relationship between the Council and Government at Commonwealth, State and local levels.

The Committee has no comments on this Bill.

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

**AUSTRALIAN CAPITAL TERRITORY (TOBACCO - SALE TO YOUNG PERSONS
AND PROMOTION) BILL 1988**

This Bill was introduced into the House of Representatives as a Private Member's Bill on 25 May 1988 by Mr Tickner.

The Bill proposes to prohibit the promotion, by way of publication and advertisement, of tobacco products and accessories; to prohibit certain competitions; to prohibit free samples and to prohibit the sale of tobacco products to people under the age of 16 years in the Australian Capital Territory.

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

Clause 8 - 'Henry VIII' clause

Subclause 8(b) is a 'Henry VIII' provision, in that it would allow the Governor-General in Council to extend the range of prohibited activities prescribed by the Bill (and therefore the range of activities which carry a monetary penalty) by Gazette notice, without providing any opportunity for Parliamentary scrutiny.

The clause is drawn to Senators' attention in that it might be considered an inappropriate delegation of legislative power.

Clauses 9 and 16 - Reversal of the onus of proof

Subclauses 9(4) and 16(2) would reverse the persuasive burden of proof in certain criminal prosecutions. In neither of the cases dealt with does it appear that it would be extraordinarily difficult or expensive for the prosecution to negative the matters referred to in the proposed provisions. In both instances, it is suggested, the provisions suffer from the flaw of imposing absolute criminal liability and then seeking

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to include a reference to guilty mind (i.e. an intent which is the usual measure of criminal liability) by imposing on the defendant the obligation of disproving his or her guilty intent.

The Committee draws the clauses to the attention of Senators in that such a reversal of the onus of proof in criminal proceedings might be considered to trespass unduly on personal rights and liberties.

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

AVIATION FUEL REVENUES (SPECIAL APPROPRIATIONS) BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Transport and Communications Support.

The Bill proposes to provide payment to the Civil Aviation Authority of a share of the revenue received by the Government from excise and customs tariff duties on aviation gasoline.

The Committee has no comments on this 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 AUTHORITIES LEGISLATION (PAY-ROLL TAX) AMENDMENT
BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Transport and Communications Support.

The Bill intends to give effect to the decision that from 1 July 1988 Commonwealth Government business enterprises, currently exempt from State and Territory pay-roll taxes, be liable for such taxes. The following Acts must be amended to achieve this objective:

- . Australian National Railways Commission Act 1983
- . Civil Aviation Act 1988
- . Federal Airports Corporation Act 1988
- . Postal Services Act 1975
- . Telecommunications Act 1975

The Committee has no comments on this Bill.

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

CUSTOMS TARIFF (RATE ALTERATION) BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Science, Customs and Small Business.

The Bill proposes to alter rates of duty imposed by the Customs Tariff Act 1987 as follows:

- . to remove the 2% revenue duty currently imposed
- . to implement the first stage of progressive reduction of most duties in excess of 15% to that level
- . to implement the first stage of progressive reduction of most rates, currently above 10% but less than 15%, to 10%.

The Committee has no comments on this Bill.

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

DEPARTURE TAX AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Transport and Communications Support.

The Bill will amend the Departure Tax Act 1978 to reduce the payable rate from \$20 to \$10 per passenger.

The Committee has no comments on this Bill.

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

DEPARTURE TAX COLLECTION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Transport and Communications Support.

The Bill will amend the Departure Tax Collection Act 1978 to transfer responsibility for collection of the tax from international airlines to the Government, effective from 1 July 1988. Regulations provide for the appointment of approved agents to sell and issue tax and exemption stamps to passengers. These regulations will be amended to reflect the Government's intention to enter into a contract with Australia Post to administer this tax as the Commonwealth's agent.

The Committee has no comments on this Bill.

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

FERTILISERS SUBSIDY AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Science, Customs and Small Business.

The Bill will terminate the consumption subsidies for phosphatic and nitrogenous fertilisers (provided under the Fertilisers Subsidy Act 1986) from 1 July 1988, as announced in the May economic 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.

HOUSE OF REPRESENTATIVES (QUORUM) BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Leader of the House.

The Bill intends to reduce the number of members required to constitute a meeting of the House of Representatives (i.e. the quorum) from 50 members (one-third of the total number of 148) to 30 members (one-fifth of the total number).. The measure follows the acceptance and endorsement by the House of a report from the House of Representatives Standing Committee on Procedure relating to 'Days and hours of Sitting and the Effective Use of the Time of the House'.

The Committee has no comments on this 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 BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Administrative Services.

The Bill intends to give legislative effect to the Government's decisions on issues arising from the Australian Law Reform Commission report on lands acquisition. It proposes an entirely new and comprehensive process that must be followed when the Commonwealth wishes to acquire property.

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

Clause 21 - 'Henry VIII' clause

Subclause 21(b) is a 'Henry VIII' clause. Although the Bill may be considered to generally provide for a reasonable process of publicity and review in relation to the acquisition of land by the Commonwealth, the whole of that scheme would be by-passed by the making of regulations under this clause. Furthermore, the regulation could, for instance, be made soon after the Senate rises and the entire process of acquisition completed before the Senate had the opportunity to consider and disallow the regulations.

The Committee draws the clause to the attention of Senators in that such delegation of legislative power might be considered an inappropriate delegation of legislative power.

Clauses 22 and 24 - Non-reviewable decision

Subclauses 22(4) and clause 24 would apparently give the Minister an unreviewable discretion to by-pass the pre-acquisition procedures which are set out in Part V, on the grounds either that the acquisition is essential for the

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

implementation of a particular policy, or that it is a matter of urgency. These provisions, it may be argued, could completely nullify the effect of the carefully spelt-out provisions of Part V of the Bill.

The Committee draws these clauses to the attention of Senators in that such discretions might be considered unfettered discretions which would make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

Clause 33 - Non-reviewable decision

Clause 33 would provide the Minister with a non-reviewable discretion. Whereas in most cases decisions of the Administrative Appeals Tribunal are binding on the Minister as well as the applicant, under this clause the Administrative Appeals Tribunal has the power only to make recommendations to the Minister, who has a completely unfettered discretion to accept or reject the recommendation. Although, by virtue of subclause 33(2), the Minister must explain to both Houses of Parliament the reasons for rejection, neither House has the power to overturn the decision.

The Committee draws the clause to the attention of Senators in that such a discretion might be considered an unfettered discretion which would make rights, liberties and/or obligations unduly dependent upon a non-reviewable decision.

Clause 47 - Non-reviewable decision

Subclause 47(2) would give to the Minister a further discretion; a discretion to permit an authority to enter into possession of land that is acquired. Although the Minister's discretion under subclause 47(4) is subject to review pursuant to provisions in subclause (6), the discretion under subclause (2) is apparently not subject to review.

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 Senators in that such a discretion might be considered an unfettered discretion which would make rights, liberties and/or obligations unduly dependent upon a non-reviewable decision.

Clause 137 - Delegation

Subclause 137(1) permits the Minister to delegate many of his or her powers to 'a person', a form of words which the Committee regards as conferring an unacceptably wide discretion on a Minister and does not provide a sufficiently defined category of the person or persons to whom such wide powers may be delegated.

The Committee draws the clause to the attention of Senators in that such a delegation of legislative power might be considered an insufficiently defined 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.

LOCAL GOVERNMENT (FINANCIAL ASSISTANCE) BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Immigration, Local Government and Ethnic Affairs.

The Bill will amend the Local Government (Financial Assistance) Act 1988 to insert a new funding 'base figure' for the financial year 1988-89. This proposal follows changes agreed to at the Premiers' Conference regarding general purpose payments to the States.

The Committee has no comments on this bill.

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

MIGRATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Immigration, Local Government and Ethnic Affairs.

The Bill will amend the Migration Act 1958 to:

- . repeal the immigration clearance fee, currently \$5, from 1 July 1988
- . redefine 'officer' to limit the range of power immigration officers and those officers for the purposes of the Customs Act 1901, may exercise
- . provide that only an 'authorised officer' can issue an entry permit to a person seeking entry to Australia.

The Committee has no comments on this Bill.

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

NATIONAL HEALTH AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Community Services and Health.

The Bill will amend the National Health Act 1953 to increase the maximum general patient contribution for prescribed drugs supplied under the Pharmaceutical Benefits Scheme from the current contribution of \$10 to \$11, effective from 1 July 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.

**PRIMARY INDUSTRIES (RECOVERY OF LEVY COLLECTION EXPENSES) BILL
1988**

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister for Science, Customs and Small Business.

The Bill seeks to amend 13 Acts to enable the Commonwealth to recover from various agricultural industries the cost of collecting and disbursing funds raised through industry levies and charges.

The Committee has no comments on this Bill.

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

TAXATION LAWS AMENDMENT BILL (NO. 3) 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Minister Assisting the Treasurer.

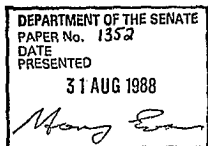
The Bill proposes to amend the

- . Income Tax Assessment Act 1936, and the
- . Fringe Benefits Tax Assessment Act 1986,

to amend the capital gains tax and substantiation provisions of both Acts.

The Committee has no comments on this Bill.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 10 OF 1988

31 AUGUST 1988

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

The Committee has considered the following Bills:

- . Aboriginal and Torres Strait Islander Commission Bill 1988 *
- . Appropriation Bill (No.1) 1988-89
- . Appropriation Bill (No.2) 1988-89
- . Appropriation (Parliamentary Departments) Bill 1988-89
- . Australian Securities Commission Bill 1988 *
- . Close Corporations Bill 1988
- . Close Corporations (Additional Liquidator's Recovery Trust Fund Contribution) Bill 1988
- . Close Corporations (Liquidator's Recovery Trust Fund Contribution) Bill 1988
- . Close Corporations (Fees) Bill 1988 *
- . Corporations Bill 1988 *
- . Corporations (Fees) Bill 1988
- . Futures Organisations (Application for Membership) Fidelity Funds Contribution Bill 1988 *
- . Futures (Membership) Fidelity Funds Contribution Bill 1988 *
- . Futures Organisations Fidelity Funds Contribution Bill 1988 *

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

- . Governor-General Amendment Bill 1988
- . Patents Amendment Bill 1988
- . National Guarantee Fund (Members of Participating Exchanges) Levy Bill 1988 *
- . National Guarantee Fund (Participating Exchanges) Levy Bill 1988 *
- . National Guarantee Fund (Reportable Transactions) Levy Bill 1988 *
- . Referendum (Machinery Provisions) (No.2) Amendment Bill 1988
- . Referendum (Machinery Provisions) (Fair Questions) Amendment Bill 1988
- . Referendum (Machinery Provisions) (Informal Ballot-papers) Amendment Bill 1988
- . Sales Tax Assessment (No.1) Amendment Bill 1988
- . Sales Tax (Exemptions and Classifications) Amendment Bill (No.2) 1988
- . States (Works and Housing) Assistance Bill 1988
- . Securities Exchanges (Application for Membership) Fidelity Funds Contribution Bill 1988 *
- . Securities Exchanges (Membership) Fidelity Funds Contribution Bill 1988 *
- . Securities Exchanges Fidelity Funds Levy Bill 1988 *

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 commented on these Bills.

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CORPORATIONS LEGISLATION

The corporations legislation is a package of 16 bills directed at replacing the existing National Uniform Companies and Securities Scheme under which the Commonwealth and the States and the Northern Territory share the regulatory responsibilities for companies, and the securities and futures industries in Australia. All bills in the package were introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The Corporations Bill 1988 is the principal bill of the package and contains the substantive provisions necessary for the regulation of the industries it covers. The corporations legislation package comprises the following bills:

Australian Securities Commission Bill 1988

Close Corporations Bill 1988

Close Corporations (Additional Liquidator's Recovery Trust Fund Contribution) Bill 1988

Close Corporations (Liquidator's Recovery Trust Fund Contribution) Bill 1988

Close Corporations (Fees) Bill 1988

Corporations (Fees) Bill 1988

Futures Organisations (Application for Membership) Fidelity Funds Contribution Bill 1988

Futures Organisations (Membership) Fidelity Funds Contribution Bill 1988

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

Futures Organisations Fidelity Funds Contribution Bill 1988

National Guarantee Fund (Members of Participating Exchanges) Levy Bill 1988

National Guarantee Fund (Participating Exchanges) Levy Bill 1988

National Guarantee Fund (Reportable Transactions) Levy Bill 1988

Securities Exchanges (Application for Membership) Fidelity Funds Contribution Bill 1988

Securities Exchanges (Membership) Fidelity Funds Contribution Bill 1988

Securities Exchanges Fidelity Funds Levy Bill 1988

In its Annual Report for 1985-86 the Committee commented on the National Uniform Companies and Securities Scheme and, in particular, on the powers of the Commonwealth Parliament in relation to legislation making up the scheme (see Parliamentary Paper 447/1986, chapter 5, pp. 31-36).

The Committee drew the Senate's attention to provisions in several enactments making up the scheme, which could be regarded as coming within its terms of reference, as they might be considered to trespass unduly on personal rights and liberties. These included provisions which imposed a persuasive onus of proof on defendants in criminal proceedings; provisions abrogating the privilege against self incrimination; and provisions creating offences of strict liability in respect of furnishing of false or misleading information.

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

The nature of the scheme put it beyond the power of the Commonwealth Parliament to give proper consideration to concerns which may have been raised by the Committee.

The comment made by the Committee in its comment on the nature of the Scheme, a point raised several times during debate on the Scheme when the legislation enacted by the Commonwealth Parliament was introduced to the Parliament in 1979, was that there was little to be gained by the Committee drawing the Senate's attention to provisions in bills introduced under the Uniform Scheme. As the scheme effectively delegated the Parliament's legislative power to the Ministerial Council established to administer the scheme.

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

AUSTRALIAN SECURITIES COMMISSION BILL 1988

The Bill will establish an Australian Securities Commission to administer and regulate the laws governing companies, securities and the futures industry in Australia. It confers broad investigative, hearing and informative powers on the new Commission.

The Bill will also establish a number of new statutory consultative bodies. A Companies and Securities Advisory Committee is to be established, which will advise the Minister on the legislation and administration of the national scheme. A Corporations and Securities Panel will also be established to perform adjudication functions in relation to market place malpractices. It is intended that the Panel will be established on the recommendation of the consultative group.

A Companies Auditors and Liquidator's Disciplinary Board, and an Accounting Standards Review Board will also be established by the Bill.

The Committee draws the Senate's attention to the following clauses of the Bill:

Clauses 64, 67 and 196 - Reversal of the onus of proof

Subclause 64(3) would reverse the normal onus of proof in criminal proceedings. Under subclauses 64(1) and (2) it is an offence to either give information or make a statement to the Commissioner, or give evidence at a hearing by the Commission that is false or misleading in material particular. Under subclause 64(3) it is a defence, the onus of proof of which will be placed on the defendant, to a charge under either subclause 64(1) or (2) that the defendant, when making the statement, or giving evidence believed on reasonable grounds that it was true and not misleading.

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

Subclause 67(2) would reverse the normal onus of proof in criminal proceedings. Under subclause 67(1) it will be an offence to conceal, destroy, mutilate or alter a book relating to a matter, or take or steal a book relating to a matter out of a State or Territory of Australia. Under subclause 67(2) it is a defence, the onus of proof of which will be placed on the defendant, to a charge under the subclause 67(1) that the defendant intended neither to defeat the purpose of a national scheme law, nor to delay or obstruct an investigation or proposed investigation by the Commission.

Subclause 196(2) would reverse the normal onus of proof in criminal proceedings. Under subclause 196(1) it will be an offence to give evidence that is false or misleading at a hearing of the Corporations and Securities Panel. Pursuant to subclause 196(2) it will be a defence, the onus of proof of which will be placed on the defendant, to a charge under subclause 196(1) if, when giving evidence, the defendant believed on reasonable grounds that it was true and not misleading.

As these clauses would reverse the normal onus of proof in criminal proceedings, they are drawn to Senator's attention as they may be considered to be in breach of principle 1(a) (i) of the terms of reference and may trespass unduly on personal rights and liberties.

Clause 126 - Reversal of the onus of proof

Clause 126 will provide that is a defence to a prosecution under clause 125 (where persons fail to give notice to the Commission of a possible conflict of interest in a matter before the Commission) if it is established by that person, that when he or she was required to consider the matter, he or she was not aware of a fact or thing whose existence obliged the person to comply with clause 125.

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

Whilst the Committee draws the Senate's attention to the clause, it observes that the Committee regards the imposition of a persuasive onus of proof on an accused person in relation to a statutory defence under certain circumstances as acceptable.

Where the defence available is in practical effect the same as the common law defence of mistake of fact, proof of which is placed on the defendant under the general criminal law the Committee will not automatically object to the reversal of the onus of proof.

However, the Committee observes that it will continue to carefully scrutinise and report such provisions, as the reversal of the onus of proof in criminal proceedings by statute must always be an issue of concern to be drawn to legislators' attention.

Clause 215 - Creation of an offence of strict liability

Subclause 215 (3) will make it an offence to give evidence which is false or misleading at a hearing conducted by the Companies Auditors and Liquidator's Disciplinary Board. Whilst the subclause is of similar wording to other provisions of the Bill (see subclauses 64(2) and 196(1)) those provisions provided a form of statutory defence to such a charge (albeit, form which would reverse the onus of proof).

Under subclause 215(3), a person subject to prosecution would be guilty of the offence created, even though he or she had no reasonable means of knowing that the evidence given was false, and had no intention to mislead the Board.

As the clause would create an offence of strict liability, the clause may be considered to be in breach of principle 1 (a) of the terms of reference, 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.

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Clauses 23 and 48 - Non-reviewable decisions.

Subclause 23 (1) will allow an examinee's lawyer to be present at the examination by an inspector appointed pursuant to clause 19 of the Bill. The examinee's lawyer will be empowered by clause 23 to advise the inspector, and examine the examinee, about matters on which the inspector has examined the examinee.

Subclause 23(2) will give to an inspector the discretion to stop the lawyer in either of those activities if, in the inspector's opinion, a person is trying to obstruct the examination. There is no means provided in the Bill for review of the exercise of this discretion and, furthermore, the discretion will be exercisable so as to prevent a person from exercising rights under the provision.

Subclause 48(1) will allow a person making a disclosure to the Commission, to have his or her lawyer present during the disclosure. The person's lawyer may, subject to the determination of the representative of the Commission, address the representatives of the Commission on the matters raised by a person's disclosure.

Under subclause 48(2) the representative of the Commission hearing the disclosure may stop the lawyer addressing the Commission's representatives if, in the presiding representative's opinion, the lawyer is trying to obstruct the disclosure.

There is no means provided in the Bill for the review of the exercise of this discretion and, as is the case with subclause 23(2), the discretion may be exercisable so as to prevent a person from exercising their rights under the provision.

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 notes that members of the Commission itself must be people with knowledge of, or experience in, fields such as business, company administration, financial markets, law, economics and accounting (Clause 9).

The Committee believes that the class of persons who come within the scope of potential delegation should desirably have the same or similar qualifications to those that must be possessed by Commission members. By adding appropriate restrictions, to which they may be delegated, the Parliament can ensure that the wide and important powers conferred on the Commission by this Bill will be subject to acceptable though practical restriction.

Clause 102 of the Bill is accordingly drawn to Senator's attention under principle 1(a) (ii) in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 138 - Annual Report

Clause 138 of the Bill states that the Commission is a public authority to which Division 3 of Part XI of the Audit Act applies.

Part XI of The Audit Act sets out financial provisions relating to public authorities. Division 3 of Part XI, containing sections 63J to 63M, sets out the audit and reporting requirements for certain public authorities. Section 63M of the Audit Act sets out the annual reporting requirements placed on authorities to which Division 3 of Part XI of the Act applies.

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

Section 63M(1) of the Audit Act reads:-

The authority shall, as soon as practicable after 30 June in each year, prepare and submit to the appropriate Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister administering this Act [i.e. the Minister for Finance] approves.

The term 'as soon as practicable' in subsection 63M(1) in turn must be read subject to subsection 34C(2) of the Acts Interpretation Act 1901. Subsection 34C(2) of the Acts Interpretation Act requires an authority to furnish a periodic report to the relevant Minister after the end of the period to which the report relates but, in any event, no later than six (6) months after the end of that period.

The Committee observes, by way of comparison with clause 138, that Section 52 of the National Companies and Securities Commission Act 1979 obliges that authority to prepare and forward an annual report to the Attorney-General, and hence to the Parliament within 6 months of the end of each financial year.

It appears to the Committee undesirable that a person unfamiliar with legislation imposing reporting requirements on Commonwealth Authorities, particularly in the Audit Act, look in vain in this Bill for a requirement that an important Commonwealth Authority is obliged to provide an annual report to the Minister and, more importantly, to the Parliament.

The Committee believes that statutory provisions which impose reporting requirements upon Commonwealth bodies should be clearly spelt out in the legislation establishing that body.

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

CLOSE CORPORATIONS BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The Bill will provide a new simplified corporate structure for small business by reducing financial and other reporting requirements and by abandoning the company law distinctions between directors and shareholders in favour of simple principles based on partnership laws. It will also introduce a new corporate entity to be known as the Close Corporation.

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

Clause 15 - 'Henry VIII' Clause

Clause 15 is directed at ensuring that, where applicable, the provisions of the Corporations Bill will apply to close corporations.

Subclause 15(3) of the Bill is a 'Henry VIII' clause which, on the face of it, appears to be unique.

The subclause provides that a Court, (defined in the Bill as the Federal Court of Australia or the Supreme Court of a State or Territory) for the purpose of achieving the object of any provision of the Corporations Bill in relation to a close Corporation, may make such order as is necessary which may arise in connection with the application of that provision of the Corporations Bill including an order modifying the terms of the relevant provision of the Corporations 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 in an enabling Bill which permit the making of regulations modifying the effect of the provisions of the enabling Bill are traditionally known as 'Henry VIII' clauses.

It appears to the Committee that subclause 15(3) of the Bill would, if enacted, allow a Court to decide that a provision of the Corporations Bill was not operating so as to give a reasonable result and, consequent upon such a finding, may make an order modifying the terms of the provision, (presumably to the extent that a provision will not apply at all).

The Committee draws attention to the clause as it may breach principle 1(a) (iv) of the terms of reference and constitute an inappropriate delegation of legislative authority.

Clauses 153, 154, 155 and 159 - Reversal of the onus of proof

Subclause 153(1) of the Bill lists a number of offences which could be committed by officers of close corporations relating to the disclosure of the existence of corporation property, the books of the corporation, and matters relating to the corporation's affairs.

Pursuant to subclauses 153(2), (3) and (4) it is a defence to prosecutions instituted under provisions in subclauses 153(1) that the defendant had no intention to defraud or; intention to conceal the state of affairs of the corporation. The onus of disproving guilty intent is cast on the defendant, whereas the criminal law requires the prosecution to prove the defendant's guilty intent.

The clause is drawn to the Senate's attention as it may breach principle 1(a) (i) of the terms of reference 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.

Subclause 154(1) of the Bill makes it an offence not to comply with provisions of the Bill requiring the keeping of proper books of account. Under subclause 154(2) it is a defence to a prosecution under subclause 154(1) that the defendant had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with ensuring that requirement was complied with, and was in a position to discharge such a duty. The onus of proving the elements of the defence are placed on the defendant.

The clause is drawn to the Senate's attention as it may breach principle 1(a) (i) of the terms of reference and trespass unduly on personal rights and liberties.

Subclause 155(1) of the Bill will make it an offence, for which a corporation and members managing its affairs may be jointly and severally liable, to incur debts when there are reasonable grounds for expecting that the corporation could not pay such debts.

Pursuant to subclause 155(2) a defence to a prosecution under subclause 155(1) is that the defendant(s) prove that the debt was incurred without the defendant's express or implied authority or consent or that, the corporation was not able to pay its debts at the time debts were incurred.

As the subclause will reverse the normal onus of proof in criminal proceedings it is drawn to the Senate's attention as it may breach principle 1(a) (i) of the terms of reference and trespass unduly on personal rights and liberties.

Subclause 159(1) and (2) make it an offence to destroy, mutilate or falsify securities or books relating to a corporation's affairs and to interfere with so as to destroy, alter or falsify records maintained on various storage systems.

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

Pursuant to subclause 159(3) it is a defence to a prosecution under subclauses 159(1) or (2) if the defendant can prove that he or she acted honestly. The onus of proving the elements of the defence are placed on the defendant.

The subclause, is drawn to the Senate's attention, as it may breach principle 1(a) (i) of the terms of reference 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.

CLOSE CORPORATIONS (ADDITIONAL LIQUIDATOR'S RECOVERY TRUST FUND CONTRIBUTION) BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The Bill will impose a tax upon close corporations where the Australian Securities Commission has determined that additional Liquidator's recovery trust fund contributions are required. The Commission will determine the amount of the tax but it will not exceed \$50.00

The Committee has no comments on this 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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**CLOSE CORPORATIONS (LIQUIDATOR'S RECOVERY TRUST FUND
CONTRIBUTION) BILL 1988**

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General

The Bill will impose a tax upon the subscribers to a pouncing statement of a proposed close corporation. The tax will be known as the Liquidator's recovery trust fund contribution. The amount of the tax will be prescribed by regulation but will not exceed \$50.00

The Committee has no comments on this Bill.

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

CLOSE CORPORATIONS (FEES) BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The fees that will be charged in connection with the proposed close corporations Bill 1988 will be set out in regulations to be made under the terms of this bill. The maximum fee that can be prescribed by regulation is \$2,500.00.

The Committee has no comments on this Bill.

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

CORPORATIONS BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The Bill is an omnibus Bill that draws together the present provisions found in the Companies Act 1981, the Securities Industry Act 1980, the Companies (Acquisition of Shares) Act 1980, the Futures Industry Act 1986 and in State and Northern Territory Legislation applying those acts. The scope of the legislative provisions of the Bill is along the lines of the existing law. However, some reforms have been made to remove unnecessary regulation and to overcome specific inefficiencies or burdens in the existing legislation.

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

Clause 43 - 'Henry VIII' clause

Clause 43 of the Bill provides that specified relevant interests in shares shall be subject to a number of conditions, which may be disregarded for the purposes of provisions in a number of sections and parts of the Bill.

In allowing for possible modification by regulation of a number provisions of the Bill, the clause is an example of a 'Henry VIII' clause.

The clause is drawn to the Senate's attention as it may be in breach of principle 1(a) (iv) of the terms of reference and 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.

Clause 112 - 'Henry VIII' clause

Subclause 112 (3) will provide that the Minister may give notice in the Gazette that an unincorporated partnership or association consisting of not more than a specified number of persons may carry on a profession or calling.

The Committee has consistently objected to clause in Bills which have the effect of allowing a Minister to specify matters to be covered by statute, by Gazette notice, rather than by regulations which would be subject to Parliamentary consideration.

The clause is drawn to the Senate's attention in that it may breach principle 1(a) (4) of the terms of reference and constitute an inappropriate delegation of legislative power.

Clause 348 - Reversal of the onus of proof

Clause 348 would make a local agent of a registered foreign company answerable for all acts, matters and things which a foreign company is required to do under the Bill, and would also make the local agent personally liable to a penalty imposed on the foreign company for contravention of a provision of the legislation, unless the local agent satisfies the Court or Tribunal hearing the matter that he or she should not be so liable.

In so far as the onus of proof of the matters contained in the clause are placed on the local agent, the normal onus of proof in criminal proceedings has been reversed.

A further matter which is of concern to the Committee, and which is not apparently dealt with in the Bill, is that a Court or Tribunal hearing the matter under the section is given no assistance in determining the circumstances in which liability may or may not, be imposed upon the local agent.

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

The clause is drawn to the Senate's attention in that it may be in breach of principle 1(a) (i) of the terms of reference and trespass unduly upon personal rights and liberties.

Clause 590 and 591 - Reversal of the onus of proof

Under subclause 590(1) a number of offences are created which may subject officers of a company to prosecution.

Subclause 590(2) provides that it is a defence to a charge arising under a number of the provisions of subclause 590(1) if the defendant proves that he or she had no intent to defraud or to conceal the state of affairs described by the section.

The provisions accordingly constitute a reversal of the normal onus of proof in criminal proceedings, in that they would cast on the defendant the onus of disproving guilty intent.

The clause is drawn to the attention of the Senate in that it may breach principle 1(a) (i) and trespass unduly on personal rights and liberties.

Subclause 591(1) makes it an offence not to comply with a number of provisions in clause 289 of the Bill relating to the keeping of proper books of account and other accounting records by a corporation.

Pursuant to subclause 591(2), it is a defence to a prosecution under subclause 591(1) that the defendant can prove that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was charged with the duty of ensuring that the requirements imposed by the Bill were complied with, and was in a position to discharge that duty.

The provision amounts to a reversal of the normal onus of proof in criminal proceedings and places on the defendant the onus of proving the matters set out in subclause 591(2).

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

The clause is drawn to the Senate's attention in that it may be a breach of principle 1(a) (i) of the terms of reference and unduly trespass on personal rights and liberties.

Clause 618 - 'Henry VIII' clause

Clause 618 of the Bill will provide a formula for calculating the number of voting shares acquired during a 6 month period. The formula is important in calculating percentages of shareholding during takeovers.

Pursuant to paragraph 618(3) (b) it would be possible to alter the base percentage of the share-holding in a company, to which a person or other company could add 3% of a company's voting shares every 6 months.

The alteration may be effected by regulation. The Committee believes that this is a matter that should not be dealt with by delegated legislation, but should be altered by appropriate amendment of the legislation, so as to subject the change to proper scrutiny and debate.

Accordingly the clause is drawn to the Senate's attention in that it may be a breach of principle 1(a) (iv) of the terms of reference and constitute an inappropriate delegation of legislative power.

Clause 704 and 705 - Reversal of the onus of proof

Clause 704 of the Bill will provide a number of offences for mis-statements etc.

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

Pursuant to subclause 704(6), it is a defence to a prosecution of a person for contravention of subclause 704(1), (3) or (5) if it can be proved that a statement was served or given or an offer was sent when the person charged with an offence under the subclauses believed a number of matters to be true and not misleading.

In addition, the subclause provides that the defendant has to prove that he or she had a state of belief in the matters referred to in paragraph 704(6)(4) (a), which prevailed at the date of the information alleging the matters constituting the offence.

The clause reverses the onus of proof in criminal proceedings, and would place the onus of disproving guilty intent on the defendant in criminal proceedings.

Clause 705 proposes a range of offences relating to mistatements and public statements and advertisements produced at the time of takeover announcements.

Pursuant to subclause 705(6) similar matters will have to be proved by the defendant in a prosecution to those dealt within paragraph 704(4) (6).

The subclause constitutes an apparent reversal of the onus of proof in criminal proceedings and is drawn to attention on the same basis as the provisions in 704(6).

Accordingly the clauses are drawn to the Senate's attention in that they may breach principle 1(a) (i) of the terms of reference and unduly trespass on personal rights and liberties.

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

Clause 707 - 'Henry VIII' Clause

Clause 707 provides in paragraph 707(1) (b), that the Minister may by notice published in the Gazette, specify that a company is one in relation to which relevant provisions of part 6.7, of the Bill apply.

The Committee has consistently drawn attention to such provisions, as notices published in the Gazette do not allow for proper Parliamentary consideration. The Committee believes that such matters should be specified by regulation so that the matter may be properly considered by the Parliament.

Accordingly the clause is drawn to the Senate's attention in that it may be a breach of principle 1(a) (iv) of the terms of reference and constitute an inappropriate delegation of legislative power.

Clause 708 - 'Henry VIII' clause

Clause 708 governs substantial shareholdings in corporations. Pursuant to paragraph 708(5) (b) the Minister may specify in regulations a percentage of shareholdings which is relevant to the provision, other than the percentage of 5%.

Such a clause would permit the prescription of a shareholding percentage which was substantially different to 5% and accordingly could effect persons to whom Part 6.7 of the Bill would apply.

Accordingly, the clause is drawn to the Senate's attention in that it may be a breach of principle 1(a) (iv) of the terms of reference and 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.

Clause 728 - 'Henry VIII' clause

Clause 728 of the Bill would give the Australian Securities Commission the power to modify the operation of Chapter 6 of the Bill.

The Commission will be empowered to exempt a specified person or persons, or a specified class of classes of persons from compliance generally this chapter.

Under subclause 728(2) the Commission is obliged to publish a copy of a notice determining the grant of such an exemption in the Gazette.

The Committee has noted earlier, in its comments on several other clauses of the Bill, that publication of a determination or - in this case - instrument of exemption in the Gazette is an inadequate and inappropriate way of modifying the effect of legislative provisions.

It is more appropriate that such instruments are effected by way of regulations and subject to tabling and disallowance under the of the Acts Interpretation Act.

The Clauses are drawn to the Senate's attention in possible breach of principle 1(a) (4) of the terms of reference as it may be considered to be an inappropriate delegation of legislative power.

Clause 730 - 'Henry VIII' clause

Clause 730 of the Bill will empower the Australian Securities Commission to modify chapter 6 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.

The provision of the clause is similar to the provisions of clause 728 and accordingly is drawn to the Senate's attention as it may be in breach of 1(a) (4) of the terms of reference and constitute an inappropriate delegation of legislative power

Clause 748 - 'Henry VIII' clause

Clause 748 of the Bill will provide that regulations may vary the requirements of any statement which is required by Part 6.12 of the Bill, either by amending or altering such requirements, or by adding additional requirements.

The clause is clearly a 'Henry VIII' clause in that, if enacted it would permit later amendment of a section of a statute by regulation.

Accordingly, the clause is drawn to the Senate's attention as it may be in breach of the principle 1 (a) (iv) of the terms of reference and constitute an inappropriate delegation of legislative power.

Clause 996 - Reversal of the onus of proof

Subclause 996(1) of the Bill will make it any offence for a person to issue in prospectus in which there is a false or misleading statement or omission .

Pursuant to subclause 996(2) it is a defence to a prosecution under subclause 996(1) if a defendant can establish a number of matters, including that he or she had reasonable grounds to believe that the statements in the prospectus were true and not misleading or the omission was not material, or inadvertent.

The subclause would apparently reverse the onus of proof in criminal proceedings and would apparently oblige the defendant to disprove both negligence and intention, whereas under criminal and the common law it is incumbent upon the prosecution normally to prove both.

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 clause is drawn to the Senate's attention as it may be a breach of principle 1(a) (i) of the terms of reference trespass unduly on personal rights and liberties

Clause 998 - Reversal of the onus of proof

Clause 998 of the Bill, and particularly in 998(3) and (4), makes it an offence to trade in a false manner and engage in transactions which may effect market rigging.

Pursuant to subclause 998 (8) it is a defence to a prosecution under either to the above subclauses if it is proved that the purposes for which securities in question were brought or sold, were not bought for the purpose of creating a misleading appearance with respect to a market for, or the price of, certain securities.

The Committee has examined this clause and believes that it appears to require the defendant to disprove guilty intent, and, accordingly, amounts to the reversal of the normal onus of proof in criminal proceedings.

The clause is drawn to the Senate's attention as it may be in breach of the principle 1(a) (i) of the terms of reference and, trespass unduly on personal rights or liberties.

Clause 1127 - Non-reviewable decision

Clause 1127 of the Bill would grant to the Minister in subclause 1127 (1) an apparently unfettered discretion to declare specified futures markets to be exempt future markets under the Bill. There appears no process whereby a market, or markets, might challenge the exercise of this discretion.

The decision may only be challenged as to its legality under the Administrative Decisions Judicial Review Act 1977 in a Court.

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

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- . The likely effect of any decision by the Minister under the clause would be financially profound, and may involve considerable long-term damage to a futures market.

The clause is drawn to the Senate's attention in that it may be of breach to principle 1 (a) (iii) of the terms of reference in that it would make rights liberties and /or obligations unduly dependent upon a non-reviewable decision.

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

CORPORATIONS (FEES) BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The Bill details the matters in respect of which fees are payable for the purposes of the Corporations Bill 1988 and authorises the making of the regulations for the fees.

The Committee has no comments on this Bill.

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

**FUTURES ORGANISATIONS (APPLICATION FOR MEMBERSHIP) FIDELITY FUNDS
CONTRIBUTION BILL 1988**

Any fidelity fund contribution payable by a person wishing to be admitted to membership of a futures exchange or futures association will be imposed by this Bill. The amount of the contribution will be determined by the futures exchange or futures association and will be at least \$500.00 and not more than such amount as is prescribed by the Regulations. The Regulations will be able to prescribe different constitution amounts for different futures exchanges or associations.

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

Clause 5 - Inappropriate delegation of legislative power.

Under clause 5, there is no upper limit on the tax to be imposed under the Bill. Under clause 6, that upper limit is to be set by regulations.

The Committee has consistently taken the view that it is an inappropriate delegation of legislative power. The maximum rate of a tax is to be determined by regulation, rather than by Act of the Parliament.

The Committee draws the Senate's attention to the clause under principle 1(a) (iv) in that it may be considered to be an inappropriate delegation of legislative power.

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

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**FUTURES ORGANISATIONS (MEMBERSHIP) FIDELITY FUNDS CONTRIBUTION
BILL 1988**

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

Any fidelity fund contribution payable by a contributing member of a futures exchange or futures association who wishes to continue his/her membership of that exchange or association will be imposed by this Bill. The amounts of the contribution will be determined by the futures exchange or association and will be at least \$100.00 and not more than such amount as is prescribed by the Regulations. the Regulations will be able to prescribe different contribution amounts for different future exchanges or associations.

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

Clause 5 - Inappropriate delegation of legislative power.

Under clause 5, there is no upper limit on the tax to be imposed under the Bill. Under clause 6, that upper limit is to be set by regulations.

The Committee has consistently taken the view that it is an inappropriate delegation of legislative power. The maximum rate of a tax is to be determined by regulation, rather than by Act of the Parliament.

The Committee draws the Senate's attention to the clause under principle 1(a) (iv) in that it may be considered to be an inappropriate delegation of legislative power.

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

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FUTURES ORGANISATION FIDELITY FUNDS LEVY BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

Any fidelity fund levy payable by a person in addition to the person's annual contribution to the fund will be imposed by this Bill. The amounts of the levy will be determined by the futures exchange or association and will not exceed the amount prescribed by the Regulations. The Regulations will be able to prescribe different levies for different exchanges and associations.

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

Clause 5 - Inappropriate delegation of legislative power.

Under clause 5, there is no upper limit on the tax to be imposed under the Bill. Under clause 6, that upper limit is to be set by regulations.

The Committee has consistently taken the view that it is an inappropriate delegation of legislative power. The maximum rate of a tax is to be determined by regulation, rather than by Act of the Parliament.

The Committee draws the Senate's attention to the clause under principle 1(a) (iv) in that it may be considered to be an inappropriate delegation of legislative power.

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

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**NATIONAL GUARANTEE FUND (MEMBERS OF PARTICIPATING EXCHANGES) LEVY
BILL 1988**

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The Bill will impose a levy that is payable by members of participating exchanges for the purposes of the Corporations Bill 1988. The amount of the levy is to be determined by the participating exchange. The participating exchanges can set different rates for different classes of members or member organisations of the exchange. Regulations may be made prescribing the maximum rate of the levy and different maximum levels.

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

Clause 5 - Inappropriate delegation of legislative power.

Under clause 5, there is no upper limit on the tax to be imposed under the Bill. Under clause 6, that upper limit is to be set by regulations.

The Committee has consistently taken the view that it is an inappropriate delegation of legislative power. The maximum rate of a tax is to be determined by regulation, rather than by Act of the Parliament.

The Committee draws the Senate's attention to the clause under principle 1(a) (iv) in that it may be considered to be an inappropriate delegation of legislative power.

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

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NATIONAL GUARANTEE FUND (PARTICIPATING EXCHANGES) LEVY BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General

The Bill will impose a levy that is payable by participating exchanges for the purposes of the Corporates Bill 1988. The amount of the levy is to be set by the Securities Exchange Guarantee Corporation Regulations may be made prescribing the maximum rate of the levy and different rates can be set for different participating exchanges.

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

Clause 5 - Inappropriate delegation of legislative power.

Under clause 5, there is no upper limit on the tax to be imposed under the Bill. Under clause 6, that upper limit is to be set by regulations.

The Committee has consistently taken the view that it is an inappropriate delegation of legislative power. The maximum rate of a tax is to be determined by regulation, rather than by Act of the Parliament.

The Committee draws the Senate's attention to the clause under principle 1(a) (iv) in that it may be considered to be an inappropriate delegation of legislative power.

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

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NATIONAL GUARANTEE FUND (PARTICIPATING EXCHANGES) LEVY BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General

The Bill will impose a levy that is payable for the purposes of the Corporations Bill 1988, in relation to reportable transactions. The levy is payable at a rate determined by the Securities Guarantee Corporation and Regulations prescribing the maximum rate of the levy may be made. Regulations can set different maximum rates for transaction by different classes of dealers.

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

Clause 5 - Inappropriate delegation of legislative power.

Under clause 5, there is no upper limit on the tax to be imposed under the Bill. Under clause 6, that upper limit is to be set by regulations.

The Committee has consistently taken the view that it is an inappropriate delegation of legislative power. The maximum rate of a tax is to be determined by regulation, rather than by Act of the Parliament.

The Committee draws the Senate's attention to the clause under principle 1(a) (iv) in that it may be considered to be an inappropriate delegation of legislative power.

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

**SECURITIES EXCHANGES (APPLICATION FOR MEMBERSHIP) FIDELITY FUNDS
CONTRIBUTION BILL 1988**

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The Bill will impose the tax that is payable for the purposes of the Corporations Bill 1988 by a person seeking membership of a securities exchange. The amounts of the tax will be determined by the securities exchange and the maximum amount may be set by regulations. Regulations can set different amounts for different securities exchanges.

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

Clause 5 - Inappropriate delegation of legislative power.

Under clause 5, there is no upper limit on the tax to be imposed under the Bill. Under clause 6, that upper limit is to be set by regulations.

The Committee has consistently taken the view that it is an inappropriate delegation of legislative power. The maximum rate of a tax is to be determined by regulation, rather than by Act of the Parliament.

The Committee draws the Senate's attention to the clause under principle 1(a) (iv) in that it may be considered to be an inappropriate delegation of legislative power.

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

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**SECURITIES EXCHANGES (MEMBERSHIP) FIDELITY FUNDS CONTRIBUTION
BILL 1988**

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The Bill will impose the tax that is payable for the purposes of the Corporations Bill 1988 by a member of a securities exchange. The amounts of the tax will be determined by the securities exchange and the maximum amount may be set by regulations. Regulations can set different amounts for different securities exchanges.

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

Clause 5 - Inappropriate delegation of legislative power.

Under clause 5, there is no upper limit on the tax to be imposed under the Bill. Under clause 6, that upper limit is to be set by regulations.

The Committee has consistently taken the view that it is an inappropriate delegation of legislative power. The maximum rate of a tax is to be determined by regulation, rather than by Act of the Parliament.

The Committee draws the Senate's attention to the clause under principle 1(a) (iv) in that it may be considered to be an inappropriate delegation of legislative power.

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

D10\88

SECURITIES EXCHANGES FIDELITY FUNDS CONTRIBUTION BILL 1988

This Bill was introduced into the House of Representatives on 25 May 1988 by the Attorney-General.

The Bill will impose the tax that is payable under the Corporations Bill 1988 by a member of a securities exchange. The amounts of the levy will be determined by the securities exchange and the maximum amount may be set by regulations. Regulations can set different amounts for different securities exchanges.

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

Clause 5 - Inappropriate delegation of legislative power.

Under clause 5, there is no upper limit on the tax to be imposed under the Bill. Under clause 6, that upper limit is to be set by regulations.

The Committee has consistently taken the view that it is an inappropriate delegation of legislative power. The maximum rate of a tax is to be determined by regulation, rather than by Act of the Parliament.

The Committee draws the Senate's attention to the clause under principle 1(a) (iv) in that it may be considered to be an inappropriate delegation of legislative power.

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

Bills introduced during sitting week commencing 22 August, 1988.

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION BILL 1988

This Bill was introduced into the House of Representatives on 24 August 1988 by the Minister for Aboriginal Affairs

The Bill will establish the new Aboriginal and Torres Strait Islander Commission, commonly known as ATSIC. The Commission will be established as a body corporate with responsibilities across the spectrum of Aboriginal and Torres Strait Islander Affairs. There will be 15 Commissioners, all Aboriginal or Torres Strait Islanders and 12 will be elected representatives of the communities.

The Bill also provides for the establishment of the Aboriginal Economic Development Corporation and the Institute of Aboriginal and Torres Strait Islander Studies and associated matters.

The Committee draws the Senate's attention to the following clauses of the Bill:

Clause 8 - 'Henry VIII' clause

Clause 8 of the Bill will empower the Prime Minister to confer on the Commission, for the purpose of furthering the development of Aboriginal and Torres Strait Islander peoples, a departmental function, defined in subclause 8(3) as a function that has previously been performed by a Department of State.

Decisions under subclause 8(2) of the Bill is to be notified by notice published in the Gazette.

Clause 7(m) of the Bill would be given effect to by way of instrument which would not be subjected to proper scrutiny 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.

D10\88

The Committee has consistently drawn attention to such clauses as instruments which may be made in the way proposed under clause 8 effect considerable change, by way of provision of wider powers than those conferred by original legislation.

The Committee has as a result generally regarded such provisions as an inappropriate delegation of legislative power.

The Committee reported in its Tenth Report of 1987 (3 June 1987), that it had drawn the Senate's attention to a clause in the Aboriginal and Torres Strait Islander Heritage Protection Bill 1987 which would have empowered the Minister, by way of Gazette notice, to vary the content of the schedule to the Bill. The Minister, it should be noted, accepted the Committee's view and agreed to the amendment of that Bill so that the Minister be obliged to amend the schedule in question by regulation, thus giving the Parliament the right of disallowance.

Clause 8 is accordingly drawn to the Senate's attention as it may breach principle 1(a) (iv) of the terms of reference and constitute an inappropriate delegation of legislation power.

Clause 101 - Trespass on personal rights and liberties.

Clause 101 of the Bill requires a member of a Regional Council established by the Bill, to disclose his or her pecuniary interest in a matter before the Council, and not to thereafter refrain from discussion of the matter in which the member has such an interest.

By way of comparison, subclauses 29(2), 140(2) and 185(2) require a councillor to not only disclose his or her pecuniary interest, but to refrain from discussion on the matter.

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

D10\88

It may be considered that, in view of the possibility that a decision arrived at by a Regional Council might enhance the rights of a member with a direct interest therein, it may consequently and undesirably infringe the rights of the Council's constituents.

The clause is accordingly drawn to the Senate's attention as it may be in breach of principle 1(a) (ii) of the terms of reference and, trespass unduly on personal rights and liberties.

Clause 210 - Delegation

Clause 210 of the Bill allows the Treasurer to delegate to a person the power to give approvals for a Bank to operate as a Bank for the purposes of the Act.

The Committee has consistently objected to such provisions as that proposed by the clause. The power to delegate such important powers to 'a person' would give the Treasurer an unacceptably wide discretion.

The clause is drawn to the Senate's attention of the Senate as it may breach principle 1(a) (iv) of the terms of reference as an inappropriate delegation of legislative power.

Clause 211 - Inappropriate delegation of legislative power

Paragraphs 211(1) (b) and (c) of the Bill would give the Minister a discretion, subject to circumstance set out in the clause, to determine the remuneration and allowances payable to the holders of certain offices under the Bill.

The Minister's discretion is exercised by means of determination which is deemed to be an instrument subject to tabling and disallowance pursuant to section 46A of the Acts Interpretation Act.

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

A decision taken by the Minister, while it will be subject to Parliamentary scrutiny, may not be subject to scrutiny for some considerable time - perhaps some months - after the Minister makes that determination.

The Committee, whilst observing that limit would be placed on the exercise of the discretion by the Minister, draws the clause to the Senate's attention as it may breach principle 1(a) (iv) of the terms of reference and be an inappropriate delegation of legislative power.

Clause 213 - 'Henry VIII' clause

Subclause 213(1) in paragraphs (a) to (e), lists decisions which may be taken under the Bill that will be subject of an application for review by the Administrative Appeals Tribunal.

Paragraph 213(1) will include the category of decisions that may be subject to an application for review 'any other decision of the Commission or Council included in a class of decisions declared by the Minister by notice published in the Gazette to be reviewable decisions.'

The paragraph is a 'Henry VIII' provision which would, in effect, permit the Minister to amend the terms of the subclause by Gazette notice without reference to the Parliament.

The clause is drawn to the Senate's attention as it may breach principle 1(a) (iv) of the terms of reference and 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.

、 Clause 214 - Inappropriate delegation of legislative power

Subclauses 214(2) and (3) of the Bill would allow the Auditor-General a discretion as to whether irregularities disclosed by an audit inspection of a subsidiary company of the Commission, or the Aboriginal Economic Development Corporation, are of sufficient importance to justify drawing it to the Minister's and the Parliament's attention, and to dispense with all or any part of the inspection and audit of any accounts or records of a subsidiary.

In its Ninth Report of 1988 (1 June 1988), the Committee noted that any alteration of the strict requirements to notify the Parliament of such matters placed on the Auditor-General by the Audit Act are of particular importance to the Committee, and believes that all such provisions should be drawn to the Senate's attention.

Clause 214 is drawn to the Senate's attention as it may breach principle 1(a) (iv) of the terms of reference and be an inappropriate delegation of legislative power.

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

D10\88

APPROPRIATION BILL (NO.1) 1988-89

This Bill was introduced into the House of Representatives on 23 August 1988 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 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.

APPROPRIATION BILL (NO.2) 1988-89

This Bill was introduced into the House of Representatives on 23 August 1988 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 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.

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL 1988-89

This Bill was introduced into the House of Representatives on 23 August 1988 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.

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

D10\88

GOVERNOR-GENERAL AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 23 August 1988 by the Leader of the House.

This Bill provides for an increase in the salary of the next Governor-General after he is sworn in February 1989.

Section 3 of the Constitution fixes the salary of the Governor-General for the term of office, therefore the salary fixed at the commencement of the Governor-General's appointment must be set at a level that will still be appropriate at the end of the term. The Income Tax Assessment Act provides that the official salary of the Governor-General shall be exempt from income 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.

REFERENDUM (MACHINERY PROVISIONS) (FAIR QUESTIONS)

AMENDMENT BILL (NO.2) 1988

This Bill was introduced into the House of Representatives on 23 August 1988 by the Private Senator.

The Bill proposes to amend the Referendum (Machinery Provisions) Act 1984 to ensure that fair and objective questions are put to voters at referendums. The Bill provides for the Electoral Commissioner to have responsibility for framing the wording of referendum questions to ensure that they reflect the substantive measures contained in the 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.

D10\88

**REFERENDUM (MACHINERY PROVISIONS) (INFORMAL BALLOT-PAPERS)
AMENDMENT BILL (NO.2) 1988**

This Bill was introduced into the House of Representatives on 23 August 1988 by the Private Senator.

The Bill proposes amendments to the Referendum (Machinery Provisions) Act 1984 to ensure that there is no confusion surrounding formal or informal votes for the 3 September referendums. At present the Australian Electoral Commissioner has advised that a series of combinations of ticks and crosses can be accepted as valid (formal votes) whilst other combinations of ticks and crosses are not valid (informal votes)

The Committee has no comments on this Bill

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

D10\88

SALES TAX ASSESSMENT (NO.1) AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 23 August 1988 by the Minister assisting the Treasurer.

The Bill will amend the sale value provisions of the Sales Tax Assessment Act (No.1) 1930 so that where a manufacturer sells goods only by retail, the sale value for tax purposes will be based on the manufacturer's own costs and profit.

The Committee has no comments on this Bill.

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

D10\88

**SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)
AMENDMENT BILL 1988 [NO.2]**

This Bill was introduced into the House of Representatives on 23 August 1988 by the Minister assisting the Treasurer.

The Bill will amend sales tax law to give effect to the changes to the present wholesale sales tax system. These changes were announced in the 1988-89 Budget. All the amendments are effective as of 24 August 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.

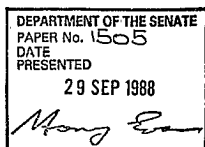
STATES (WORKS AND HOUSING) ASSISTANCE BILL 1988

This Bill was introduced into the House of Representatives on 23 August 1988 by the Minister assisting the Treasurer.

The Bill will authorise payments in 1988-89 arising out of arrangements agreed to by the Commonwealth and the States at the 12 May 1988 Loan Council meeting for the payment of:

- . interest free capital grants to the States (including the Northern Territory); and
- . funds which the States and Northern Territory may nominate as being for the purpose of public housing, which are provided as loans on the same concessional terms and conditions as set out in the Commonwealth State Housing Agreement.

The Committee has no comments on this Bill.



SCRUTINY OF BILLS ALERT DIGEST

NO. 11 OF 1988

28 SEPTEMBER 1988

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Scrutiny of Bills Alert Digest No. 11 of 1988

Erratum; page 8

Paragraph 2 should read as follows:

The Committee's criticism of such provisions is that it is up to the Parliament to specify the person, or persons, by whom such power may be exercised. Such powers should desirably not be granted to the person conferred with the power without limitation, whether the person is a Minister, statutory officeholder or statutory authority.

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 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:

ANL (Conversion into Public Company) Bill 1988*

Australian Sports Commission Bill 1988*

Bounty and Subsidy Legislation Amendment Bill (No.2) 1988

Excise Tariff Amendment Bill (No.2) 1988

Government Business Enterprises (Miscellaneous Reforms)
Bill 1988

Great Barrier Reef Marine Park Amendment Bill 1988*

Income Tax Amendment Bill 1988

Judicial and Statutory Officers (Remuneration and
Allowances) Amendment Bill 1988

Medicare Levy Amendment Bill 1988

National Occupational Health and Safety Commission
Amendment Bill 1988

States Grants (General Revenue) Bill 1988

Taxation Laws Amendment Bill (No.4) 1988*

Taxation Laws Amendment (Tax File Numbers) Bill 1988*

Transport Legislation Amendment Bill (No.2) 1988

* The Committee comments on these Bills.

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.

ANL (CONVERSION INTO PUBLIC COMPANY) BILL 1988

This Bill was introduced into the House of Representatives on 31 August 1988 by the Minister for Transport and Communications

The Bill will establish the Australian Shipping Commission, which presently trades as the Australian National Line (ANL), as a new public company; ANL Limited. The Bill will also remove certain statutory controls on ANL's operations.

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

Clause 7 - Annual Report

Clause 7 of the Bill would, among other things, repeal Division 4 of Part II of the Australian Shipping Commission Act 1956. Section 35 of the Australian Shipping Commission Act provides that the Commission is a public authority to which Division 2 of Part XI of the Audit Act applies. Pursuant to those provisions of the Audit Act, the Commission is presently required to furnish an annual report on its activities to the Minister responsible for the Commission's administration. The Minister is, in turn, required to table the report in the Parliament within 15 sitting days of each House, following receipt of the report.

Although the Minister has stated in his Second Reading Speech that ANL will in future prepare and publish annual reports in the same way as any other public company, the Bill imposes no requirement that ANL's annual reports be tabled in the Parliament.

Senators' attention is drawn to the Committee's comments on the Australian Airlines (Conversion to a Public Company) Bill 1987, (see First Report of 1988) and the Australian Film Commission Amendment Bill 1988 (see Ninth Report of 1988).

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

The latter Bill was amended following comment by the Committee. The Company, established by the Bill must now forward a copy of its annual report to the Minister for presentation to the Parliament. Pursuant to the amendment, the Minister is also obliged to table a copy of the report in each House within 15 sitting days of each House after its receipt.

The Committee accordingly draws clause 7 of the Bill to Senators' attention, as it considers that a minimum level of accountability to the Parliament, should be a specific requirement for the tabling in the Parliament of annual reports by all Commonwealth bodies.

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

AUSTRALIAN SPORTS COMMISSION BILL 1988

This Bill was introduced into the House of Representatives on 31 August 1988 by the Minister for the Arts and Territories representing the Minister for the Arts, Sport, the Environment, Tourism and Territories.

The Bill will establish the Australian Sports Commission as a Commonwealth statutory authority. The Bill will streamline Commonwealth sports administration by combining the functions and powers, and the establishments, of the Australian Sports Commission (created by the Australian Sports Commission Act 1985) and the Australian Institute of Sport (created by the Australian Institute of Sport Act 1986).

The Commission will be able to operate under the name of the Australian Institute of Sport when performing certain functions.

The Bill sets out the objectives, functions and powers of the Commission, and those functions that will be performed, in whole or in part, by the Commission under the name of the Australian Institute of Sport. It also covers a wide range of issues relating to the management and operation of the Commission.

The Bill also defines the relationship between the Commission and the Government within which the Commission will undertake its tasks.

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 attention to the following clauses of the Bill:

Clauses 17 and 33 - Inappropriate delegation of legislative power

Subclauses 17(1) and (2), and subclauses 33(1) and (2) (and clause 40 when it is read with clause 33) would allow the remuneration of members of the Commission; the Executive Director of the Commission; and the Director of the Institute to be prescribed by regulation if no existing remuneration for those persons has been recommended by the Remuneration Tribunal.

Sections 13 and 23 of the Australian Sports Commission Act 1985 provide that remuneration for Commissioners and the General Manager of the Commission will be as determined by the Remuneration Tribunal under the Remuneration Tribunals Act 1973. There is no provision in the Australian Sports Commission Act allowing for the prescription of the remuneration of the above office holders by regulation.

The Remuneration Tribunal has made recommendations as to the level of remuneration for present Commissioners, the General Manager and the Director of the Institute. The Committee cannot see why it is necessary for the Minister to in future prescribe remuneration by way of regulation as provided by these clauses.

Clauses 17 and 33 are drawn to the Senate's attention as they may breach principle 1(a)(iv) and constitute an inappropriate delegation of legislative power.

Clause 49 - Delegation

Subclause 49(2) would give the Treasurer a discretion to delegate the ability to approve a bank as a bank with which the Commission may invest moneys, not immediately required for the

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

purposes of the Commission to 'a person'.

In common with similar provisions to which the Committee has drawn Senators' attention in the past, the clause neither imposes limitation, nor gives any guidance, as to the attributes of the person to whom a delegation may be made.

The Committee's criticism of such provisions is that it is up to the Parliament to specify the person, or persons, by whom such power may be exercised. Such powers should desirably be granted to the person conferred with the power without limitation, whether the person is a Minister, statutory office-holder or statutory authority.

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) as an inappropriate delegation of administrative power.

Clauses 54 and 55 - Delegation

Paragraph 54(1)(c) and subclause 55(1) would allow the delegation to an employee of the Commission of various powers given to the Commission by the Bill. Among the powers that may be delegated are the powers conferred on the Executive Director by subclause 29(1); namely, the power to manage the affairs of the Commission in accordance with policies determined by the Commission.

One possible result of delegation under either of these clauses could be that the Commission delegates its function of determining policies to the Executive Director on (for example) the granting of sporting scholarships who in turn delegates his or her statutory function of carrying out those policies to an employee of the Commission.

The Committee draws Senators' attention to the Committee's consistently expressive view that, while it may not be possible in all cases to specify in advance which persons are to be delegated statutory power with any particularity, in general it

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

should be possible to arrive at appropriate and workable restrictions. The Committee does not regard it as a sufficient answer to its concerns in this regard that eventual accountability to the Parliament by the person to whom a power is granted, whether Minister, public servant, statutory authority or statutory office-holder constitutes as a fetter on the exercise of legislatively delegated discretions.

The Committee accordingly draws the clauses to Senators' attention as they may breach principle 1(a)(ii) and constitute an inappropriate delegation of administrative power.

Clause 69 - Trespass on personal rights and liberties

Subclause 69(1) provides that the employees of the previous Australian Institute of Sport will automatically become employees of the new Commission on terms and conditions of employment that are the same as the terms and conditions applicable to those persons immediately before the commencement date of the legislation. No provision is made in the Bill to preserve any rights and accrued benefits which may accrue to those employee's from continuity of service, such as long service leave, sick leave or other benefits.

The Committee considers that, as a minimum, provisions such as those in clause 69 should explicitly provide for the preservation of accrued benefits and rights of employees of an authority or other body that is to be statutorily abolished. Any doubt as to the preservation of the entitlements of continuing employees is clearly undesirable.

The clause is drawn to Senators' attention as it may breach principle 1(a)(i) 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.

BOUNTY AND SUBSIDY LEGISLATION AMENDMENT BILL (NO.2) 1988

This Bill was introduced into the House of Representatives on 1 September 1988 by the Minister for Science, Customs and Small Business.

The Bill is an omnibus measure proposing amendments to five bounty Acts and one subsidy Act, to give effect to various Government decisions and to effect some technical drafting changes. The Bill proposes amendments to the Bounty (Printed Fabrics) Act 1981 and the Bounty (Textile Yarns) Act 1981 to extend the life of the schemes until 30 June 1985 and to implement the phasing down of assistance under the schemes.

The Bill also proposes amendments to the Bounty (Bed Sheetinq) Act 1977 to increase the maximum annual amounts of bounty available for payment under the scheme until 28 February 1993 when the scheme will be reviewed.

The Committee has no comments on this Bill.

EXCISE TARIFF AMENDMENT BILL (NO.2) 1988

This Bill was introduced into the House of Representatives on 1 September 1988 by the Minister for Science, Customs and Small Business.

The Bill proposes amendments to the Excise Tariff Act 1921 so as to remove the exemption from liability for excise duty presently afforded to Government Business Enterprises, as announced by the Government in the 25 May 1988 Economic Statement. From 1 July 1989 the exemption will only apply to those Departments and Authorities which are prescribed by by-law and to incorporate into the Act previously notified tariff alterations relating to liquefied petroleum gas and aviation kerosene.

The Committee has no comments on this Bill.

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

**GOVERNMENT BUSINESS ENTERPRISES (MISCELLANEOUS REFORMS) BILL
1988**

This Bill was introduced into the House of Representatives on 31 August 1988 by the Minister for Industrial Relations.

The Bill represents an early legislative plank in implementing the far reaching reform of government business enterprises announced by the Government as part of the May 1988 Economic Statement and its supporting documents.

Specifically, by amendments to the Remuneration Tribunals Act 1973, the Bill provides for statutory office-holders and chief executives employed by certain government business enterprises and other employers, as appropriate, to be removed from the formal determination-making jurisdiction of the Remuneration Tribunal.

The Bill also provides for annual reporting to Parliament by the Remuneration Tribunal on the general operation of the new advisory jurisdiction.

The Committee has no comments on this Bill.

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

GREAT BARRIER REEF MARINE PARK AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 1 September 1988 by the Minister for the Arts, Sport, the Environment, Tourism and Territories.

The Bill proposes amendments to the Great Barrier Reef Marine Park Act 1975 so as to improve the management of the Great Barrier Reef Marine Park, to propose increased penalties for breaches of the Act and additional remedies such as expanding the powers granted to inspectors, to improve the policing, management and protection of the Park.

There are also a number of amendments to bring the Act up to date with current drafting practice.

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

Clause 26 - General Comment

Clause 26 of the Bill introduces a new Section 61A which allows for the Minister to initiate certain repairs and restoration, or steps to mitigate damage, to areas which are subject to protection under the Act.

The clause also provides, in a new section 61B, for the recovery by the Commonwealth or the Authority, of moneys payable as a result of contravention of the Act. Although, by new subsection 61B(1), a person such as a resort operator may become liable to pay amounts expended under new section 61A, any such liability is also subject to other provisions of new section 61B. By virtue of proposed subsection 61B(5), any liability only becomes an obligation to pay a specific amount of money when a court orders conviction for an offence 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.

Any amount of money which is to be paid as a result is also subject to subsection 61B(3), whereby excessive amounts spent by the Commonwealth are not recoverable.

The Committee presumes it is the court which, orders conviction, which in turn determines whether the amount spent by the Authority or by order of the Minister was excessive. It appears that any determination that a person such as a resort operator is to pay for damage caused, is made by a court.

Whilst not raising the provisions of clause 26 as a breach of its principles, the Committee draws Senators' attention to the clause as it is unclear as to liability that may be imposed on persons 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.

INCOME TAX AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 31 August 1988 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 1988-89 and 1989-90 financial years.

It will also impose for the same period the rates of tax payable by companies, registered organisations and unit trusts treated as companies.

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.

**JUDICIAL AND STATUTORY OFFICERS (REMUNERATION AND ALLOWANCES)
AMENDMENT BILL 1988**

This Bill was introduced into the House of Representatives on 31 August 1988 by the Minister for Industrial Relations.

The Bill is to give effect to the most recent recommendations of the Remuneration Tribunal following its 1987 Review, on salaries and allowances for judges (including persons who, by virtue of an Act, have the same status as a judge) and the President and Members of the Inter-State Commission by amendments to the Judicial and Statutory Officers (Remuneration and Allowances) Act 1984.

The Committee has no comments on this Bill.

MEDICARE LEVY AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 31 August 1988 by the Minister assisting the Treasurer.

The Bill will amend the Medicare Levy Act 1986 to impose the basic rate of Medicare levy for 1988-89 and 1989-90. The basic rate of the levy will remain at 1.25% of taxable income.

The Bill also contains increases in the income threshold levels below which people with low incomes will not be called on to pay any levy.

The Committee has no comments on this Bill.

**NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION AMENDMENT
BILL 1988**

This Bill was introduced into the House of Representatives on 31 August 1988 by the Minister for Industrial Relations.

The Bill proposes amendments to the National Occupational Health and Safety Commission Act 1985 to separate the management functions of the Chief Executive Officer and broaden a more public role of the Chairperson of the National Occupational Health and Safety Commission. This separation was one of the recommendations of the 1987 review of the Commission which was conducted to improve its operations and streamline its administration.

The Committee has no comments on this 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 (GENERAL REVENUE) BILL 1988

This Bill was introduced into the House of Representatives on 1 September 1988 by the Minister assisting the Treasurer.

The Bill will put in place the Commonwealth's general revenue assistance arrangements with the States and the Northern Territory for 1988-89, following the expiry of the States Grants (General Revenue) Act 1985. In conjunction with the States (Works and Housing) Assistance Bill 1988, it implements the arrangements agreed to at the May 1988 Premiers' Conference and Loan Council Meeting in respect of the Commonwealth's general purpose payments to the States.

The Committee has no comments on this Bill.

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

TAXATION LAWS AMENDMENT BILL (NO.4) 1988

This Bill was introduced into the House of Representatives on 31 August 1988 by the Minister assisting the Treasurer.

The Bill will give effect to a number of the tax measures announced in the May Economic Statement and to some measures announced in the 1988-89 Budget. The May Statement measures relate to income tax deductions for depreciation or special write-off of income producing plant, prepaid expenses and mains electricity connection costs; the treatment of certain dividends; the abolition of section 26AAA; the valuation of live stock; and increases in pensioner rebates.

Budget measures in the Bill increase rebates for recipients of social security unemployment, sickness or special benefits, or of certain training or Commonwealth educational allowances; exempt from tax the special temporary allowance; and, establish, the basis for calculation of provisional tax for 1988-89.

Other income tax measures to be given effect by the Bill deal with the taxation of non-cash business benefits, debt finance for corporate restructuring, public trading trusts, expenditure substantiation rules and gift provisions.

The Bill will also amend the fringe benefits tax law so that remote area home ownership benefits receive further concessional treatment as announced.

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

Clause 53 - Retrospectivity

Subclause 53(19) of the Bill will amend the Income Tax Assessment Act so as to impose additional tax upon taxpayers from 20 June 1988.

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

20 June 1988 is the date on which a draft of this Bill was released by the Treasurer. In his Second Reading Speech (and when referring to the matters that are dealt with by the Bill,) the Minister assisting the Treasurer said

While the amendments will generally apply from 1 July 1987, under transitional arrangements in the Bill, companies that are less than 100 percent foreign controlled will not be subject to the legislation on restructures carried out between 1 July 1987 and 19 June 1988.

As part of its consultative approach to new and complex tax legislation, the Government released a draft of the main operative provisions of this legislation on 20 June 1988 and called for comment from interested persons.

This initiative was well received and, in conjunction with the seminars sponsored by the Taxation Institute of Australia, has resulted in constructive submissions being made by members of the accounting and legal professions and by industry.

A number of changes recommended in these submissions have been adopted so that the measures will not intrude unnecessarily into the normal trading activities of foreign controlled companies.

For example, although the earlier draft legislation was to have a 15 percent foreign control threshold, the Government has agreed to increase the level to 50 percent.

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 argued strongly and consistently over a period of several years that legislation made retrospective to the date of a Ministerial announcement is undesirable. The Committee notes that, on this occasion, change in liability to taxation is retrospective to the date of release of a draft Bill and not to the issue of a media release. The Committee has previously drawn the Senate's attention to situations where persons affected by announcements of proposed changes to the law attempt to plan their affairs in accordance with Ministerial announcement, rather than in accordance with the law as enacted by the Parliament.

The Treasurer's release of a draft Bill is in the Committee's view a welcome change from the legislative practice followed in the past which has been criticised by the Committee particularly in relation to bills imposing or altering liability to taxation. The Committee nevertheless observes that, notwithstanding the consultation process which has been followed by the Minister in preparing a Bill for submission to the Parliament, time must always pass between press announcement and the introduction, debate and eventual enactment of legislation.

The clause is drawn to the Senator's attention as it may breach principle 1 (a) (i) and, due to retrospective effect, unduly trespass on personal rights and liberties.

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

TAXATION LAWS AMENDMENT (TAX FILE NUMBERS) BILL 1988

This Bill was introduced into the House of Representatives on 1 September 1988 by the Treasurer.

The Bill aims to improve the efficiency and effectiveness of the Australian Taxation Office's income matching system. Under that matching system income reports (e.g. interest and dividends paid by companies) supplied to the Taxation Office are matched with details disclosed by recipients in their tax returns to identify any omissions or understatements of income. Under the measures proposed by this Bill a person entering into a specified transaction or activity will be required to quote his or her tax file number.

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

Clause 6 - Inappropriate delegation of legislative power

Proposed new subsection 221YHZC(1C) of the Income Tax Assessment Act 1936 (see p.30, lines 19 to 25 of the Bill) would impose a withholding tax on income earned from certain investments. The amount of such tax is to be fixed by regulation.

The Bill amends the Income Tax Regulations by the insertion of a new regulation 54ZEL fixing the amount of tax. It also provides, in subclause 30(3), for the future amendment of that provision by regulation. The Committee has commented on provisions which permit the setting of a tax by regulation, if (as is the case with this Bill) no upper limit on the amount of that tax is prescribed by the Bill.

The clause is drawn to the Senate's attention as it may breach principle 1(a)(iv) and 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.

New Section 202G - Inadequate Parliamentary scrutiny

Proposed section 202G (see page 21 of the Bill, lines 30ff.) provides that the Commissioner of Taxation may, by notice published in the Gazette, specify methods by which transmission of information to the Commissioner to which the Bill applies is to be made.

The information that must be transmitted to the Commissioner will be both personally and commercially confidential. The Committee believes that specification of the means of its transmission from the banks and institutions which must comply with the Bill's provisions is a matter of concern to the Parliament. The Committee considers that such matters should be specified by way of regulation, and not by way of notice in the Gazette and hence made subject to tabling and disallowance, and to scrutiny by the Parliament.

The proposed section is drawn to the Senator's attention as it may breach principle 1(a)(v) and 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.

TRANSPORT LEGISLATION AMENDMENT BILL (NO.2) 1988

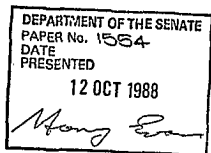
This Bill was introduced into the House of Representatives on 1 September 1988 by the Minister for Transport and Communications.

The Bill is an omnibus Bill containing amendments to eight transport related statutes. The major amendments are to the Navigation Act 1912 to limit the Court of Marine Inquiry jurisdiction to marine casualty inquiries and to establish access to the Administrative Appeals Tribunal for the review of all appropriate administrative decisions. It also proposes to clarify and correct minor drafting errors in the following Acts:-

- . Ships (Capital Grants) Act 1987
- . Airlines Equipment Act 1958
- . Civil Aviation Act 1988
- . Federal Airports Corporation Act 1986
- . Independent Air Fares Committee Act 1981
- . Protection of the Sea (Prevention of Pollution from ships) Act 1983
- . Protection of the Sea Legislation Amendment Act 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.



SCRUTINY OF BILLS ALERT DIGEST

NO. 12 OF 1988

12 OCTOBER 1988

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SCRUTINY OF BILLS ALERT DIGEST

NO. 12 OF 1988

12 OCTOBER 1988

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 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 Centennial Roads Development Bill 1988

Broadcasting Legislation Amendment Bill 1988*

Broadcasting (Limited Licences) Fees Bill 1988*

Broadcasting (Retransmission Permits and Temporary
Transmission Permits) Fees Bill 1988*

Loans Securities Amendment Bill 1988

Postal Services Amendment Bill 1988*

Qantas Airways Limited (Loan Guarantee) Bill 1988

Satellite Communications Amendment Bill 1988

Social Security (Review of Decisions) Bill 1988*

Telecommunications Amendment Bill 1988*

* The Committee comments on these Bills.

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 CENTENNIAL ROADS DEVELOPMENT BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister for Land Transport and Shipping Support.

The Bill will establish the Australian Centennial Roads Development Trust Fund which will fund a program of financial assistance for land transport for a five year period from 1 January 1989. A share of excise and customs duty on motor spirit and diesel fuel will provide the finance. The share will be identified as the 'road user charge'.

The Committee has no comments on this Bill.

BROADCASTING LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister for Transport and Communications.

The Bill proposes amendments to the Broadcasting Act 1942 to introduce a special category of limited licences aimed at meeting the need for a variety of specialised services which require technical planning but do not warrant the stringent program conditions applied to current broadcasting services.

The Bill also proposes amendments to the Australian Broadcasting Corporation Act 1983 in relation to its financial and staffing powers. A number of consequential and minor amendments to other Acts are proposed by the Bill.

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

Clause 23 - 'Henry VIII' Clause

Clause 23 of the Bill would add a new section 81C to the Broadcasting Act. Proposed new subsection 81C(1) of the Act is a 'Henry VIII' provision which would permit amendment of proposed new subsection 81B(1) of the Act. Regulations specifying certain matters and conditions can be made pursuant to the new subsection so as to significantly enlarge the scope and operation of the Act. The only form of parliamentary control exercisable over the contents of the regulations would be by disallowance, rather than by amendment, which would be the case if additional matters were to be included by way of a bill amending the Primary Act.

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) of the terms of reference and 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.

Clause 26 - Non-reviewable decisions

Clause 26 would add a new section 82AB to the Broadcasting Act. Proposed new paragraphs 82AB(3)(a) and (b) would give to the Minister (or, by virtue of the power of delegation which is contained in proposed new subsection 125G(a), an officer of the Department) a discretion to either dismiss or defer consideration of an application for a limited licence on technical or planning grounds. The exercise of such discretion will not be subject to any review on the merits. The only available form of review appears to be a review as to legality of any exercise of the discretion under the Administrative Decisions (Judicial Review) Act 1977.

The clause is drawn to the Senate's attention as it may breach principle 1(a)(iii) of the terms of reference and constitute a non-reviewable decision.

Clauses 27, 30 and 31 - 'Henry VIII' clauses

These clauses would respectively add new sections 83D, 86F and 89CA to the Broadcasting Act. The new clauses are 'Henry VIII' provisions and would allow the specification of matters by way of regulation which the Broadcasting Tribunal may take into account in arriving at a decision.

The relevant provisions are proposed new paragraphs 83D(4)(f) and 86F(4)(g) and subparagraph 89CA(4)(c)(v). The matters which may be prescribed by regulations could have an important bearing on decisions arrived at by the Tribunal, particularly in relation to the grant or renewal of remote broadcasting licences.

The clauses are drawn to Senators' attention as they may breach principle 1(a)(iv) of the terms of reference and 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.

Clauses 27, 31, 33 and 34 - Non-reviewable decisions

Various provisions are added to the Broadcasting Act by these clauses. They would give to the Broadcasting Tribunal the power to take into account 'any other matters or circumstances that [it] considers relevant.' These provisions are: proposed paragraphs 83D(4)(g), 83E(z)(d), 86G(4)(h), 88C(2)(d), 88D(2)(e), and subparagraphs 89CA(4)(c)(vi) and 89CB(5)(d).

With regard to the first two provisions, the Broadcasting Tribunal's decision is not subject to review by the Administrative Appeals Tribunal (AAT). To challenge the exercise of any discretion on the grounds of legality under the Administrative Decisions (Judicial Review) Act appears to the Committee to be extremely difficult, if not virtually impossible. With regard to the remainder of the provision, although decisions made thereunder will be subject to review by the AAT, it is difficult to see how the AAT could review a decision by the Broadcasting Tribunal that a particular matter or thing was (or was not) relevant to any decision it made.

The clauses are drawn to Senators' attention as they may breach principle 1(a)(iii) of the terms of reference and constitute non-reviewable decisions.

Clause 36 - Non-reviewable decision

Clause 36 would add a new section 89DA to the Broadcasting Act. The new section will govern the administration of retransmission permits. Proposed new section 89DA and proposed subsection 89DE(5) would give the Minister (or a delegate of the Minister) under new paragraph 125G(d) a discretion to grant or cancel a retransmission permit.

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

Any exercise of that discretion would be only reviewable as to legality, and not reviewable on the merits. With regard to the discretion to grant such a permit, proposed paragraph 89DA(9)(c) would, in the Committee's view make it extremely difficult to challenge the exercise of the discretion as it permits the Minister to have regard to 'any other matters or circumstances that the Minister considers relevant.'

The clause is drawn to Senators' attention as it may breach principle 1(a)(iii) of the terms of reference and constitute a non-reviewable decision.

Clause 43 - 'Henry VIII' clause

Clause 43 would add a new section 119AC to the Broadcasting Act. Proposed paragraph 119AC(6)(c) is a 'Henry VIII' provision. It would enable the making of regulations specifying types of limited licence, the holders of which would be able to broadcast sponsorship announcements. Although Parliament would be able to scrutinise such regulations, it would not (for instance) have the power to add to categories of limited licence referred to by the regulations, but merely to disallow the regulations as a whole.

The clause is drawn Senators' attention as it may breach principle 1(a)(iv) of the terms of reference and constitute an inappropriate delegation of legislative power.

BROADCASTING (LIMITED LICENCES) FEES BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister for Transport and Communications.

The Bill will provide for the payment of fees in respect of the granting or renewal of a 'limited licence' to be issued under the Broadcasting Act 1942 as amended.

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

Clause 5 - Inappropriate delegation of legislative power

The Bill would provide for the amount of the relevant fees, described in the Bill as a tax, to be determined by regulation. There is no indication in the Bill of the maximum amount of the proposed fee (or tax). The Committee has consistently criticised provisions which allow for a tax to be set by regulation, and fail to provide for a maximum level of that tax.

The Minister has indicated in the Second Reading Speech that the level of the fees will be consistent with those applying under the Radiocommunication Act 1983. The only effective means for ensuring that the Minister's assertion is consistently adhered to is for Senators (or, particularly, the members of the Regulations and Ordinances Committee) to recall this statement when the relevant regulations are tabled in the Parliament, which may not occur for some considerable time.

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) of the terms of reference and 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.

BROADCASTING (RETRANSMISSION PERMITS AND TEMPORARY TRANSMISSION PERMITS) FEES BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister for Transport and Communications.

The Bill will provide for the payment of fees in respect of the granting or renewal of a retransmission or temporary transmission permit under the Broadcasting Act 1942.

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

Clause 5 - Inappropriate delegation of legislative power

The Bill would provide for the amount of the relevant fees, described in the Bill as a tax, to be determined by regulation. There is no indication in the Bill of the maximum amount of the proposed fee (or tax). The Committee has consistently criticised provisions which allow for a tax to be set by regulation, and fail to provide for a maximum level of that tax.

The Minister has indicated in the Second Reading Speech that the level of the fees will be consistent with those applying under the Radiocommunication Act 1983. The only effective means for ensuring that the Minister's assertion is consistently adhered to is for Senators (or, particularly, the members of the Regulations and Ordinances Committee) to recall this statement when the relevant regulations are tabled in the Parliament, which may not occur for some considerable time.

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) of the terms of reference and 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.

LOANS SECURITIES AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister assisting the Treasurer.

The Bill will amend the Loans Securities Act 1919. The amendments will enable the Commonwealth to use a wider range of modern borrowing instruments and will assist in the management of foreign currency exposure with currency and interest rate swaps and after ledging techniques. These will enable the Commonwealth to minimise the cost of its external debt portfolio.

The Committee has no comments on this Bill.

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

POSTAL SERVICES AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister for Transport and Communications.

The Bill proposes to establish a new corporate structure for Australia Post as the Australian Postal Corporation; establish a Board; redefine the role of the Minister, Board and Management; provide new employment provisions, and remove certain day-to-day controls. It also proposes to enable the Australian Postal Corporation to commercially develop its properties.

The Bill also proposes to make minor amendments to the arrangement between Telecom and Australia Post concerning telegram services.

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

Clause 10 - 'Henry VIII' clause

Proposed subsection 36A(2) of the Bill would allow for remuneration of directors of the Corporation to be determined by regulation if no determination by the Remuneration Tribunal is in operation. Such clauses in the Australian Sports Commission Bill 1988 were drawn to Senators' attention in Alert Digest No. 11 of 1988 (28 September 1988). The Committee has a similar concern regarding this clause.

The clause is accordingly drawn to Senators' attention as it may breach principle 1(a)(iv) and 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.

QANTAS AIRWAYS LIMITED (LOAN GUARANTEE) BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister for Transport and Communications.

The Bill proposes that the Commonwealth be enabled to guarantee under certain terms the payment of amounts that Qantas Airways Limited is liable to pay on money borrowed to purchase three Boeing 767-300 Extended Range aircraft and related spare parts.

The Committee has no comments on this Bill.

SATELLITE COMMUNICATIONS AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister for Transport and Communications.

The Bill proposes amendments to the Satellite Communications Act 1984

- . to amend the definition of 'neighbouring region' to clarify the areas outside Australia in which AUSSAT can provide satellites for telecommunications services and to clarify the limitations on Telecom directors and employees who can be directors of AUSSAT
- . The Bill also proposes to exempt AUSSAT from the Public Works Committee Act 1969 and the Lands Acquisition Act 1955

The Committee has no comments on this 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 (REVIEW OF DECISIONS) BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister for Social Security.

The Bill will amend the Social Security Act 1947 to

- . provide for a rationalisation of the social security review process by establishing a Social Security Appeals Tribunal with power to make decisions on matters under review; and
- . renumber provisions of the Act

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

Clause 6 - Inappropriate delegation of legislative power

New subsection 17(1) would enable the Minister to prepare a written statement of Government policy in relation to the administration of the Principal Act and give a copy to the Secretary to the Department of Social Security and the National Convenor of the Social Security Appeals Tribunal.

New subsection 17(2) would provide that such statement shall be laid before both Houses of Parliament within 15 sitting days of the statement being given either to the Secretary or the National Convenor.

New subsection 17(3) and (4) would provide that officers of the Department of Social Security, the National Convenor and the Social Security Appeals Tribunal shall have regard to the statement in exercising powers under the Principal Act.

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

Proposed subsection 17(4) would appear to constitute an inappropriate delegation of the Parliament's legislative function. The policy statement to be prepared by the Minister has no legislative force. However, such a statement could have a significant effect on the manner in which the National Convenor and the Social Security Appeals Tribunal exercise their functions. In the Committee's view the Convenor and Tribunal should be - and ought to be seen to be - independent of the Department and arrive at their respective decisions as a result only of consideration of the legislative provisions (whether in the Act or in regulations) relevant to a particular case. Neither should have to consider non-legislative policy statements by the Minister.

The clause is drawn Senators' attention as it may breach principle 1(a)(iv) of the terms of reference and constitute an inappropriate delegation of legislative power.

New section 202 - Trespass on personal rights and liberties

New subsection 202(1) would provide that the National Convenor may give:

- . general directions to be followed in connection with the review of decisions; and
- . particular directions to be followed in connection with a particular review. these may be given at any time either before or after the hearing of a review has commenced - new subsection 202(3)

New subsection 202(2) would require that directions not be with the Principal Act or Regulations.

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

New subsection 202(4) would give the presiding member authority to give directions as to the procedure to be followed on the hearing of that particular review provided the directions are not inconsistent with the Principal Act, Regulations or the National Convenor's directions given under the new subsection 202(1) [new subsection 202(5)]. The presiding member's directions may be given before or after the hearing begins [new subsection 202(6)].

New subsection 202(7) requires that all directions given under this section, whether by the National Convenor or the presiding member, should have regard to the objective of the Tribunal as laid down by new section 176.

The Committee considers that it is inappropriate that the National Convenor be empowered to give directions to the Tribunal. Such a power raises the possibility of some undesirable interference by the Convenor with the independence of the Tribunal.

The clause is drawn to Senators' attention as it may breach principle 1(a)(i) of the terms of reference 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.

TELECOMMUNICATIONS AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 29 September 1988 by the Minister for Transport and Communications.

The Bill proposes to establish a new corporate structure for Telecom, as the Australian Telecommunications Corporation; establish a Board; redefine the role of the Minister, Board and management; provide for new employment provisions and remove day-to-day controls.

It will also amend the Telecommunication (Interception) Act 1979 to extend the exemption which currently applies to Telecom staff who would otherwise be guilty of interception in carrying out installation and maintenance work, so that it applies to private sector employees legally carrying out maintenance on, or installation of, PABX's.

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

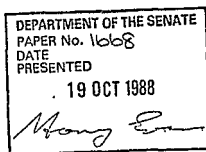
Clause 11 - 'Henry VIII' clause

Proposed new subsection 33A(2) to be added by the Bill would allow for remuneration of directors to be determined by regulation.

The provision is in essence the same as subclauses 17(1) and 33(1) of the Australian Sports Commission Bill 1988, on which the Committee commented in Alert Digest No. 11 of 1988 (28 September 1988).

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) of the terms of reference and 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.



SCRUTINY OF BILLS ALERT DIGEST

NO. 13 OF 1988

19 OCTOBER 1988

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 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 Services Legislation Amendment Bill 1988*

Australian Security Intelligence Organization Amendment
Bill 1988

Census and Statistics Amendment (Voluntary Provision of
Survey Information) Bill 1988

Defence Legislation Amendment Bill (No. 2) 1988

Navigation Amendment (Deregulation of Coasting Trade)
Bill 1988

OTC (Conversion into Public Company) Bill 1988*

Ozone Depleting Substances Regulation Bill 1988 (No. 2)

Petroleum Excise (Prices) Amendment Bill 1988

Primary Industries and Energy Legislation Amendment
Bill (No. 2) 1988

States and Northern Territory Grants (Rural Adjustment)
Bill 1988

* The Committee has commented on these Bills.

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 SERVICES LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 12 October 1988 by the Minister for Administrative Services.

The Bill contains amendments to a number of Acts administered by the Administrative Services portfolio. The amendments include an amendment to the definition of public work in the Public Works Committee Act 1969, and the following Acts:

- . Australian Protective Service Act 1987;
- . Commonwealth Grants Commission Act 1973; and
- . Parliament House Construction Authority Act 1979.

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

Clause 3 - 'Henry VIII' clause

The clause would add a new subsection 5(2) to the Public Works Committee Act. Whether certain functions covered by the Act are territorial or municipal functions of the Australian Capital Territory is to be specified by way of regulation.

Proposed new subsection 5(2) is a 'Henry VIII' clause. Although any regulations made for the purposes of the subsection would be subject to parliamentary scrutiny, the only powers of either House would be to either accept, or disallow the regulations. If, however, the question referred to in the proposed subsection was to be determined by reference to matters set out in a bill, rather than in regulations, either House would be able to question and seek amendments to the provisions of such a bill.

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

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) of the terms of reference and constitute an inappropriate delegation of administrative power.

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

AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION AMENDMENT BILL
1988

This Bill was introduced into the House of Representatives on 12 October 1988 by the Minister representing the Attorney-General.

The Bill proposes amendments to the Australian Security Intelligence Organization Act 1979 and the Australian Security Intelligence Organization Amendment Act 1986.

The amendment to the Australian Security Intelligence Organization Amendment Act 1986 repeals sections 34 and 35 which refer to the now abolished Public Service Board.

The amendments to the Australian Security Intelligence Organization Act 1979 remove outmoded references to the Chairman of the Public Service Board and to the Secretary to the Attorney-General's Department, and enable the Minister administering the Act to give guidelines to the Director-General of Security in the exercise of the latter's powers to determine pay and terms and conditions of service of staff. The guidelines will provide a mechanism for ensuring that determinations are consistent with public sector policy on pay and conditions.

The Committee has no comments on this Bill.

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

**CENSUS AND STATISTICS AMENDMENT (VOLUNTARY PROVISION OF SURVEY
INFORMATION) BILL 1988**

This Bill was introduced into the Senate on 12 October 1988 by Senator Sheil as a the Private Senator's Bill.

The Bill proposes amendments to the Census and Statistics Act 1905 to provide for the voluntary provision of information under the Act.

The Committee has no comments on this Bill.

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

DEFENCE LEGISLATION AMENDMENT BILL (NO. 2) 1988

This Bill was introduced into the House of Representatives on 13 October 1988 by the Minister for Arts, Sport, the Environment, Tourism and Territories.

The Bill is an omnibus Bill proposing amendments to Acts dealing with defence matters. The proposed amendments cover a range of matters from establishing proper legal control over claims for salvage by crews of naval ships, to removing the upper limit on the amount of reparations that a court martial or defence force magistrate may order a convicted offender to pay.

The Committee has no comments on this Bill.

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

NAVIGATION AMENDMENT (DEREGULATION OF COASTING TRADE) BILL 1988

This Bill was introduced into the Senate on 12 October 1988 by Senator Hamer as a Private Senator's Bill.

The Bill proposes the repeal of Part VI of the Navigation Act 1912 so as to open up coastal shipping to competition.

The Committee has no comments on this Bill.

OTC (CONVERSION INTO PUBLIC COMPANY) BILL 1988

This Bill was introduced into the House of Representatives on 12 October 1988 by the Minister for Transport and Communications.

The Bill will:

- . provide for the conversion of the Overseas Telecommunications Commission (OTC), which is established as a statutory corporation under the Overseas Telecommunications Act 1946, into a company incorporated under the Companies Act 1981; and
- . make other amendments to implement the Government's reform package for OTC.

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

Subclause 8 - Annual Report

Subclause 8(2) would repeal, among other provisions, section 53 of the Overseas Telecommunications Act. Under that provision the Commission's annual report to the Minister would be tabled in Parliament.

As a public company, OTC Limited, would be obliged to file an annual report with the appropriate Companies Office. The Bill makes no provision for a copy of that report to be tabled in Parliament.

As the Committee pointed out in Alert Digest No. 11 of 1988 (28 September 1988), in relation to the ANL (Conversion into Public Company) Bill 1988, it regards as a matter of importance the tabling in Parliament of the annual reports of all Commonwealth instrumentalities, whether statutory authorities or companies, in which the Commonwealth owns all or a substantial part of the issued shares.

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

OZONE DEPLETING SUBSTANCES REGULATION BILL 1988 (NO. 2)

This Bill was introduced into the Senate on 12 October 1988 by Senator Coulter as a Private Senator's Bill.

The Bill proposes to regulate the use of certain substances that can significantly deplete or otherwise modify the ozone layer in a manner that is likely to have adverse effects on human health and the environment. The Bill replaces the Bill of the same title introduced by Senator Coulter on 15 April 1988, which was discharged from the Notice Paper on 12 October 1988.

The Committee has no comments on this Bill.

PETROLEUM EXCISE (PRICES) AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 12 October 1988 by the Minister for Primary Industries and Energy.

The Bill proposes amendments to the Petroleum Excise (Prices) Act 1987 to provide the Minister with additional powers to fix, for the purposes of excise determination, prices for certain types of crude oil transactions. Such transactions include sales where a quantity of crude oil is disposed of either by exchange, having the oil converted to products which are then sold or by any means other than direct sale, for example, by barter. The amendments are necessary following the deregulation of the industry.

The Committee has no comments on this Bill.

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

PRIMARY INDUSTRIES AND ENERGY LEGISLATION AMENDMENT BILL,
(NO. 2) 1988

This Bill was introduced into the House of Representatives on 12 October 1988 by the Minister for Primary Industries and Energy.

The Bill is an omnibus bill relating to legislation administered within the Primary Industries portfolio.

It proposes the repeal of the following Acts:

- . Sugar Agreement Act 1985;
- . Live-stock Slaughter (Export Inspection Charge) Act 1979;
- . Live-stock Slaughter (Export Inspection Charge) Amendment Act 1983;
- . Live-stock Slaughter (Export Inspection Charge) Collection Act 1979; and
- . Live-stock Slaughter (Export Inspection Charge) Validation Act 1984.

It also proposes amendments to the following Acts:

- . Australian Meat and Live-stock Corporation Act 1977;
and
- . Wool Marketing Act 1987.

The Committee has no comments on this Bill.

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**STATES AND NORTHERN TERRITORY GRANTS (RURAL ADJUSTMENT) BILL
1988**

This Bill was introduced into the House of Representatives on 12 October 1988 by the Minister for Primary Industries and Energy.

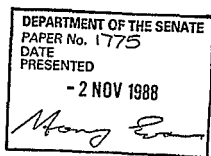
The Bill proposes major changes to the Rural Adjustment Scheme (RAS). The amendments are intended to define more precisely the purposes and objectives of the RAS, to give the States the maximum possible managerial and financial flexibility in administering RAS and to provide for accountability by the States as the basis for their effective achievement of the Scheme's objectives. It will also provide for a wider range of assistance measures to be employed under the 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.



SCRUTINY OF BILLS ALERT DIGEST



NO. 14 OF 1988

2 NOVEMBER 1988

ISSN 0729-6852

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 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 Capital Territory (Electoral) Bill 1988
Australian Capital Territory (Planning and Land Management)
Bill 1988*
Australian Capital Territory (Self-Government) Bill 1988*
Australian National Railways Commission Amendment Bill
1988*
Child Support Amendment Bill 1988
Defence (Safe and Unimpeded Access for Visiting Foreign
Warships) Bill 1988*
Federal Airports Corporation Amendment Bill 1988
International Bank for Reconstruction and Development
(General Capital Increase) Bill 1988
Migration Amendment Bill (No. 2) 1988
Social Security Legislation Amendment Bill 1988
Superannuation Amendment Bill 1988
Veterans' Affairs Legislation Bill 1988
Wheat Marketing Amendment Bill 1988

* The Committee has commented on these Bills.

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 CAPITAL TERRITORY (ELECTORAL) BILL 1988

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for the Arts and Territories.

This Bill is one of three Bills to legislate to provide self-government for the Australian Capital Territory. This Bill provides for the electoral system (the d'Hondt system) which will apply to elections for the proposed A.C.T. Legislative Assembly.

The Committee has no comments on this Bill.

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

**AUSTRALIAN CAPITAL TERRITORY (PLANNING AND LAND MANAGEMENT)
BILL 1988**

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for the Arts and Territories.

This Bill is one of three Bills to legislate to provide self-government for the Australian Capital Territory. This Bill proposes to repeal the National Capital Development Commission Act 1957 and make provision for the planning and land management of the A.C.T. by the National Capital Planning Authority, consequent upon the establishment of self-government for the Territory.

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

Clause 35 - 'Henry VIII' clause

Subclause 35(1) is a 'Henry VIII' clause, which would allow the remuneration of members of the Authority to be determined by regulation. It is similar to the proposed new subsection 36A(2) of the Postal Service Act, on which the Committee commented in Alert Digest No. 12 of 1988 (12 October 1988).

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) and constitute an inappropriate delegation of legislative power.

Clause 49 - Delegation

Paragraphs 49(b) and (c) would give the proposed Authority a very wide discretion in determining to whom it might delegate all or any of its powers. Such powers in the Committee's view should be delegated only to members of staff of or above a certain level of seniority, and that delegation of these powers to a person on secondment (as provided for in paragraph (c)) is an unacceptably wide discretion.

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

The clause is drawn to Senators' attention as it may breach principle 1(a)(ii) and constitute an inappropriate delegation of administrative power.

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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.

AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) BILL 1988

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for the Arts and Territories.

This Bill is one of three Bills to legislate to provide self-government for the Australian Capital Territory. This Bill proposes to establish a Legislative Assembly and an Australian Capital Territory Executive.

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

Clauses 22, 32 and 73 - 'Henry VIII' clauses

Subclauses 22(2) and 32(5) and (6), and paragraph 73(c), are 'Henry VIII' clauses. Their combined effect is that the classes of matters over which the proposed Assembly is to have legislative power may be changed by regulation and not as a result of debate or resolution either in the Assembly or in the Parliament.

The clauses are drawn to Senators' attention as it may breach principle 1(a)(iv) of the terms of reference and constitute an inappropriate delegation of legislative power.

Clause 33 - Non-reviewable decision

Subclause 33(2) would give the Governor-General a wide discretion, not subject to review of any sort, to disallow a Territory enactment, apparently for any reason that the Governor-General may think fit.

The Committee notes for Senators' attention that a not dissimilar provision in the Commonwealth Constitution, relating to the legislative powers of State Parliaments, was terminated by the Australia Act 1986.

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

The clause is drawn to Senators' attention as it may breach principle 1 (a)(iii) of the terms of reference and constitute a non-reviewable decision.

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 1988

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for Transport and Communications.

This Bill proposes to amend the Australian National Railways Commission Act 1983 to:

- . widen the Commission's powers to allow it to expand the scope of its business activities;
- . extend the planning and accountability mechanisms applicable to the Commission; and
- . remove most of the remaining day-to-day controls currently exercised by Government over the Commission.

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

Clause 66 - Inappropriate delegation of legislative power

Proposed paragraph 66A(1)(b) and subsection 66A(2) of the Principal Act would give to the Commission auditor discretions to dispense with, and not report, certain matters in carrying out his or her functions. The provision is somewhat similar to section 63R of the Audit Act 1901, on which the Committee commented in its Eighth Report and Ninth Report of 1988.

The clause is drawn to Senators' attention as it may breach principle 1(iv) of its terms of reference and 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.

CHILD SUPPORT AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for Social Security.

This Bill proposes to amend the Child Support Act 1988 to ensure that that Act can apply to ex-nuptial children in either Queensland or Western Australia, should either State adopt the Child Support Act 1988.

The Committee has no comments on this Bill.

DEFENCE (SAFE AND UNIMPEDED ACCESS FOR VISITING FOREIGN WARSHIPS) BILL 1988

This Bill was introduced into the Senate on 19 October 1988 by Senator Newman as a Private Senator's Bill.

This Bill proposes to formalise the authorisation of entry to Australian waters by foreign warships where such entry is desired and to safeguard such approved visits from obstruction and interference.

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

Clause 10 - Trespass on personal rights and liberties

Subclause 10(2) may be regarded as infringing unduly on personal rights. Its apparent effect would be to enable the Minister to override the terms and conditions of a person's employment, or the instructions given by an employer to an employee, in giving a direction under subclause 9(1) and to enforce compliance with that direction by the sanction of the penalty in subclause 10(1).

The clause is drawn to Senators' attention as it may breach principle 1(a)(i) of the terms of reference and trespass unduly on personal rights and liberties.

Clause 14 - Delegation

Clause 14 would allow the Minister to delegate to an officer of the Australian Public Service or a member of the Defence Force all or any of the Minister's powers under the Act. The clause would allow delegation of wide powers to person who, in the Committee's view, may not be table persons to exercise the powers given to the Minister by the Bill. As the Committee has

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

consistently noted, such powers should be delegated only members of organisations above a certain level of seniority, and that delegation of those powers to (say - a leading aircraftsman or leading seaman in the armed forces would be unacceptable).

The clause is drawn to Senators' attention as it may breach principle 1(a)(ii) and constitute an inappropriate delegation of administrative power.

FEDERAL AIRPORTS CORPORATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for Transport and Communications.

This Bill proposes to amend the Federal Airports Corporation Act 1986.

On 1 January 1988 the Federal Airports Corporation assumed responsibility for the operation of 17 primary and secondary airports throughout Australia. This Bill will facilitate arrangements between the Corporation and the Department of Defence to operate the Darwin, Canberra and Townsville airports (currently joint user airports) and enable future transfers of civil facilities on joint user aerodromes.

The Committee has no comments on this 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 BANK FOR RECONSTRUCTION AND DEVELOPMENT (GENERAL
CAPITAL INCREASE) BILL 1988**

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister assisting the Treasurer.

This Bill will empower the Treasurer to make agreements on Australia's behalf to purchase 7,880 additional shares of the International Bank for Reconstruction and Development (IBRD) under the IBRD's \$US74.8 billion general capital increase.

The Committee has no comments on this Bill.

MIGRATION AMENDMENT BILL (NO. 2) 1988

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for Immigration, Local Government and Ethnic Affairs.

The purpose of this Bill is to amend the Migration Act 1958 to allow for entry into Australia using one document only, in contrast to the current visa and entry permit required. The definition of 'entry permit' has also been redefined to clarify the status of statutory visitors, flowing from the Mutual Assistance in Criminal Matters (Consequential Amendments) Act 1987.

The Committee has no comments on this Bill.

SOCIAL SECURITY LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for Social Security.

This Bill proposes to amend the Social Security Act 1947 to further implement changes flowing from the Social Security Review established in 1985 (lead by Professor Cass). Other amendments will implement decisions announced in the 1988 May Statement and the 1988/89 Budget.

The Committee has no comments on this Bill.

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

SUPERANNUATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for the Arts and Territories.

This Bill proposes to amend the Superannuation Act 1976 to change the supervisory mechanisms that apply to the provision of superannuation benefits to Commonwealth sector employees. The changes will allow certain enterprises (initially Qantas, Australian Airlines, the Australian National Line and AUSSAT) to determine their own future superannuation arrangements within guidelines issued by the Minister for Finance.

The Committee has no comments on this Bill.

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 20 October 1988 by the Minister for Veterans' Affairs.

This Bill contains amendments to the:

- . Veterans' Entitlements Act 1986;
- . Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986; and
- . Seamen's War Pensions and Allowances Act 1940.

These amendments give effect to 9 of the 32 recommendations of the Veterans' Entitlements Act Monitoring Committee accepted by the Government. The Bill also contains a number of minor non-Budget measures.

The Committee has no comments on this Bill.

WHEAT MARKETING AMENDMENT BILL 1988

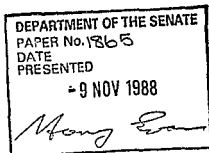
This Bill was introduced into the House of Representatives on 19 October 1988 by the Minister for Primary Industries and Energy.

This Bill proposes to amend the Wheat Marketing Act 1984 to implement the recommendations of the Royal Commission into Grain Storage, Handling and Transport. The amendments will provide for:

- . the Australian Wheat Board to enter into contracts for the provision of grain storage, handling, carriage and port services;
- . the principal object of the Board to be to maximise net returns to growers from wheat marketing; and
- . practical and cost-effective chargers made for grain distribution services being reflected in growers' accounts.

The Committee has no comments on this Bill.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 15 OF 1988

9 NOVEMBER 1988

ISSN 0729-6852

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 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:

A.C.T. Self-Government (Consequential Provisions) Bill 1988
Broadcasting (National Metropolitan Radio Plan) Bill 1988*
Circuit Layouts Bill 1988
Copyright Amendment Bill 1988
Higher Education Funding Bill 1988*
Higher Education Funding Amendment Bill 1988
Income Tax Rates Amendment Bill 1988
Insurance Legislation Amendment Bill 1988*
International Arbitration Amendment Bill 1988
Lands Acquisition (Repeal and Consequential Provisions)
Bill 1988
Naval Defence Amendment Bill 1988
Overseas Students Charge Amendment Bill 1988
Overseas Students Charge Collection Amendment Bill 1988
Privacy Bill 1988
Radio Licence Fees (National Metropolitan Radio Plan) Bill
1988
Rural Industries Research Amendment Bill 1988
Sales Tax Assessment Bill (No. 12) 1988
Sales Tax Bill (No. 1A) 1988
Sales Tax Bill (No. 12) 1988
Sales Tax (Exemptions and Classifications) Amendment Bill
(No. 2) 1988
Sales Tax Laws Amendment Bill 1988
Social Security and Veterans' Affairs Legislation Amendment
Bill 1988
States Grants (Schools Assistance) Bill 1988
States Grants (Schools Assistance) Amendment Bill (No. 2)
1988
States Grants (Technical and Further Education Assistance)
Bill 1988*
Taxation Laws Amendment Bill (No. 5) 1988
Triticale Levy Bill 1988
Triticale Levy Collection Bill 1988*

* The Committee has commented on these Bills.

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.

A.C.T. SELF-GOVERNMENT (CONSEQUENTIAL PROVISIONS) BILL 1988

This Bill was introduced into the House of Representatives on 1 November by the Minister for the Arts and Territories.

This Bill proposes to make consequential and transitional provisions arising out of the Australian Capital Territory (Self-Government) Bill 1988. Particularly, it seeks to ensure the normal business of government and staff continue during the transfer of functions from the Commonwealth to the Territory.

The Committee has no comments on this Bill.

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

BROADCASTING (NATIONAL METROPOLITAN RADIO PLAN) BILL 1988

This Bill was introduced into the House of Representatives on 2 November by the Minister for Transport and Communications.

This Bill proposes to amend the Broadcasting Act 1942 to implement the first stage of the National Radio Plan. The Plan will provide more commercial FM radio licences in all mainland capital cities and establish AM networks for Parliamentary and Radio for the Print Handicapped broadcasting. This Bill, legislating for a first stage, will allow eligible invited AM licencees the right to bid for the right to convert their existing AM licences to FM frequencies.

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

Clause 4 - Non-reviewable decision

Proposed new subsection 89DAN(1) of the Principal Act would give to the Minister a discretion to determine whether or not licence bids had been affected by collusion. Such a discretion would be reviewable only as to legality, under the Administrative Decisions (Judicial Review) Act 1977, and not as to the merits by the Administrative Appeals Tribunal.

The clause is drawn to Senators' attention as it may breach principle 1(a)(iii) of the terms of reference and constitute a non-reviewable decision.

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

CIRCUIT LAYOUTS BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Attorney-General.

This Bill proposes to provide a new copyright-style protection of intellectual property in original layouts for integrated circuits. These amendments are necessitated by changes included in the Copyright Amendment Bill 1988 relating to copyright protection of artistic works applied industrially.

The Committee has no comments on this Bill.

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

COPYRIGHT AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Attorney-General.

This Bill proposes to amend the Copyright Act 1968 to:

- . provide a statutory licensing scheme for educational institutions and institutions assisting intellectually handicapped persons to copy TV broadcasts;
- . implement a revised scheme for educational photocopying and copying by institutions assisting handicapped persons in relation to TV copying;
- . introduce a royalty on blank audio tape to recompense copyright owners;
- . remove protection for most industrial articles registered under the Designs Act 1906;
- . streamline the statutory licence for record manufacture;
- . prevent the unauthorised making, or use, of films or sound recordings of performers' performances; and
- . introduce a number of other reforms.

The Committee has no comments on this Bill.

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

HIGHER EDUCATION FUNDING BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Employment, Education and Training.

This Bill proposes to provide grants of financial assistance to the States, the Northern Territory and institutions of higher education for the 1989-91 triennium. This Bill reflects decisions arising from the Government's White Paper (Higher Education - a Policy Statement) and the Statement released as part of the 1988-89 Budget (A New Commitment to Higher Education in Australia).

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

Clauses 15 and 16 - Inappropriate delegation of legislative power

Clauses 15 and 16 (and the other clauses referred to in clause 111) may be regarded as giving to the Minister an unacceptably wide discretion in determining the amounts that he or she may pay to a State for higher education purposes. While the exercise of that discretion is subject to parliamentary review by virtue of clause 111, the only control which the Parliament may exercise is to prevent, by disallowance, the exercise of the discretion in a particular way, and not to substitute its own decision for that of the Minister. Thus - to take an extreme example - if the Minister determined to make no money available to (say) the University of Sydney for operating purposes, it is difficult to see how the Parliament could alter that position, even if it wished to do so.

The clauses are drawn to Senators' attention as they may breach principle 1(a)(iv) and 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.

Clause 40 - 'Henry VIII' Clause

Subclause 40(7) may be regarded as an indirect form of 'Henry VIII' clause, as conferring an unreviewable discretion on the Minister (or, by virtue of subclause 113(1), on an officer in the Department). Subclause 40(7) gives little guidance on the way in which the index number referred to in the clause is to be arrived at, and there is no opportunity for any person, or for the Parliament, to challenge the decision to specify the figure. Furthermore, by the operation of the remainder of the clause, the determination of the index figure will amend the reference to the figure \$1,800 in subclause 40(1). It may be argued that the Australian Statistician is given similar powers in a variety of legislation (including subclause 66(11) of this Bill), but the Committee observes that the Statistician is an independent statutory office holder, and is subject to control both by the Parliament and the Australian Statistics Advisory Council, by virtue of the Australian Bureau of Statistics Act 1975.

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) and constitute an inappropriate delegation of legislative power.

HIGHER EDUCATION FUNDING AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Employment, Education and Training.

This Bill proposes to give authority for funding the provisions of Sections 115-119 of the Higher Education Funding Act 1988 from the Consolidation Revenue Fund or Loan Fund, as 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.

INCOME TAX RATES AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister assisting the Treasurer.

This Bill proposes to amend the Income Tax Rates Act 1986 to declare the rates of income tax payable for 1989-90 and subsequent years by companies (reduced from 49 to 39 per cent) and by trustees of corporate unit trusts and public trading 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 LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister assisting the Treasurer.

This Bill proposes to amend the:

- . Insurance Act 1973;
- . Insurance (Agents and Brokers) Act 1984; and
- . Life Insurance Act 1945.

The Bill will levy an annual supervisory fee on general insurers and life insurers, provide for registration of insurance intermediaries dealing with unauthorised foreign insurers and make a number of other amendments to improve the effectiveness of existing arrangements.

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

Clause 4 - Inappropriate delegation of legislative power

Proposed new subsection 49A(1) of the Insurance Act 1973 (and proposed new subsection 76A(1) of the Life Insurance Act 1945; see clause 35) would permit the imposition of an annual supervisory fee, the amount of which is to be prescribed by regulation. Although it is indicated in the Second Reading speech that the fee is designed to cover the costs incurred by the Commonwealth, since the subsections contain no upper limit for the fee it cannot be said that this intention will be carried out. As the provisions stand, there is nothing to prevent the fee from becoming a form of taxation. The only measure of control is for Senators (or, perhaps, the members of

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

the Regulations and Ordinances Committee) to satisfy themselves, when the regulations are made, that they conform to the currently stated intention.

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) and 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.

INTERNATIONAL ARBITRATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Attorney-General.

This Bill proposes to amend the Arbitration (Foreign Awards and Agreements) Act 1974 to implement the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, facilitate the conduct of international commercial arbitration proceedings and allow the States and Territories to enact identical legislation should they wish to do so.

The Committee has no comments on this 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 (REPEAL AND CONSEQUENTIAL PROVISIONS) BILL
1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Administrative Services.

This Bill proposes to provide the procedures that will apply to Government acquisition activities during the transition from the use of powers and procedures under the current Act (the Lands Acquisition Act 1955) to the commencement of the new Act (the Lands Acquisition Act 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.

NAVAL DEFENCE AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Defence.

This Bill proposes to amend the Naval Defence Act 1910 to enable wages employees under that Act at Garden Island Dockyard to be transferred to employment with the Government-owned company, Australian Defence Industries Pty. Ltd. The company took over operations at the dockyard in March 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.

OVERSEAS STUDENTS CHARGE AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Employment, Education and Training.

This Bill proposes to amend the Overseas Students Charge Act 1979 to fix the overseas students charge rates for the 1989 academic year, extend the charge liability to an overseas student who is enrolled as a casual higher education student and charge references to 'university or advanced education course' to 'higher education course'.

The Committee has no comments on this Bill.

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

OVERSEAS STUDENTS CHARGE COLLECTION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Employment, Education and Training.

This Bill proposes to amend the Overseas Students Charge Collection Act 1979 to extend charge exemption to a tertiary student who enters Australia under an approved reciprocal organisation exchange.

The Committee has no comments on this Bill.

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

PRIVACY BILL 1988

This Bill was introduced into the House of Representatives on 1 November 1988 by the Attorney-General.

This Bill proposes to establish the office of Privacy Commissioner within the Human Rights and Equal Opportunity Commission. The Commissioner will be empowered to take privacy protection measures in relation to Commonwealth departments and agencies and tax file number users and to encourage corporations to adopt privacy guidelines. Further, it proposes to establish rules of conduct for the collection, retention, access to, correction, use and disclosure of personal information about individuals.

The Bill also proposes to amend the following Acts:

- . Freedom of Information Act 1982;
- . Ombudsman Act 1976;
- . Merit Protection (Australian Government Employees) Act 1984; and
- . Human Rights and Equal Opportunity Commission Act 1986;

to facilitate other provisions of the Bill.

The Committee has no comments on this Bill.

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

RADIO LICENCE FEES (NATIONAL METROPOLITAN RADIO PLAN) BILL 1988

This Bill was introduced into the House of Representatives on 2 November 1988 by the Minister for Transport and Communications.

This Bill proposes to impose the obligation to pay the fee on conversion from AM to FM broadcasting by commercial radio licencees determined under the tendering process introduced in the Broadcasting (National Metropolitan Radio Plan) Bill 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.

RURAL INDUSTRIES RESEARCH AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 2 November 1988 by the Minister for Primary Industries and Energy.

This Bill proposes to:

- . provide for an improved organisational and administrative framework under the Rural Industries Research Act 1985;
- . enable the expenses of collection and administration relating to relevant levies to be recovered from the Australian Special Rural Research Fund; and
- . remedy minor defects in regulations under the *Principal 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.

SALES TAX ASSESSMENT BILL (NO. 12) 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister assisting the Treasurer.

This Bill is one of a package of four Bills proposing to make significant change to sales tax applied to computer software. This Bill imposes sales tax on computer programs transferred, otherwise than when embodied in goods, from outside Australia to a person in Australia who is not registered for sales tax purposes, and declares the rate of sales tax applicable.

The Committee has no comments on this Bill.

SALES TAX BILL (NO. 1A) 1988

This Bill was introduced into the House of Representatives on 3 November by the Minister assisting the Treasurer.

This Bill is one of a package of four Bills proposing to make significant change to sales tax applied to computer software. This Bill imposes sales tax on computer programs transferred electronically within Australian that would be payable under the Sales Tax Assessment Act (No. 1) 1930, and declares the rate of sales tax applicable.

The Committee has no comments on this Bill.

SALES TAX BILL (NO. 12) 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister assisting the Treasurer.

This Bill is one of a package of four Bills proposing to make significant change to sales tax applied to computer software. This Bill imposes sales tax on computer programs that are transferred electronically from outside Australia to a person in Australia who is not registered for sales tax purposes, and declares the rate of sales tax applicable.

The Committee has no comments on this Bill.

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

**SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT BILL
(NO. 2) 1988**

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister assisting the Treasurer.

This Bill proposes to amend the Sales Tax (Exemptions and Classifications) Act 1935 to give effect to sales tax changes announced in the 1988-89 Budget: goods for marketing are subject to a 20 per cent tax rate; thickshake mixes are subject to a 10 per cent tax rate; and accessories to takeaway food containers (e.g. spoons, serviettes) are subject to a 10 per cent tax rate.

The Committee has no comments on this Bill.

SALES TAX LAWS AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister assisting the Treasurer.

This Bill is one of a package of four Bills proposing to make significant change to sales tax applied to computer software. Nine sales tax Acts will be amended to provide for these broad-based changes.

The Committee has no comments on this 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' AFFAIRS LEGISLATION AMENDMENT
BILL 1988**

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Social Security.

This Bill proposes to amend the:

- . Social Security Act 1947;
- . Veterans' Entitlements Act 1986; and
- . Commonwealth Employees' Rehabilitation and Compensation Act;

to implement several decisions announced in the 1988-89 Budget Speech and to revise the social security reciprocal agreement with New Zealand.

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

Clauses 8 and 24 - General comment

Proposed new subsection 12D(1) of the Social Security Act and proposed new subsection 37D(1) of the Veterans' Entitlements Act, although they will not commence until 1 December 1988, would affect investments made on or after 9 September 1988, and therefore have retrospective effect. It appears that the date chosen is that of the Minister's Press Release. Although these provisions might be regarded as an example of 'legislation by press release', it appears that it was necessary for the Minister to announce the proposals, in order to prevent pensioners and beneficiaries from taking advantage of the delay between formulation and announcement of policy and enactment of legislation.

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

STATES GRANTS (SCHOOLS ASSISTANCE) BILL 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Employment, Education and Training.

This Bill proposes to provide general recurrent funding for both government and non-government schools for the 1989-1992 funding period. It also implements changes announced in the May Economic Statement for 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.

STATES GRANTS (SCHOOLS ASSISTANCE) AMENDMENT BILL (NO. 2) 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Employment, Education and Training.

This Bill proposes to supplement existing financial provisions in the States Grants (Schools Assistance) Act 1984 for the 1988 calendar year to take account of increases in price levels.

The Committee has no comments on this 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 (TECHNICAL AND FURTHER EDUCATION ASSISTANCE) BILL
1988**

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister for Employment, Education and Training.

This Bill proposes to make provision for grants of financial assistance to the States and the Northern Territory for technical and further education for 1989. It gives effect to a number of funding measures announced in 'TAFE 1989 Commonwealth Programs and Priorities' (released on 24 August 1988).

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

Clauses 9 to 14 - Inappropriate delegation of legislative power

Clauses 9 to 14 (inclusive) grant to the Minister (or, by virtue of clause 20, an officer in the Department) the discretion to determine how much is paid to each State in respect of various purposes for technical and further education. The only method of review of this discretion, by virtue of clause 18, is by Parliament. The comments made in relation to clauses 15 and 16 of the Higher Education Funding Bill 1988 (on page 9 of this Alert Digest) apply to these clauses also.

Accordingly, the clauses are drawn to Senators' attention as they may breach principle 1(a)(iv) of the terms of reference and 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.

TAXATION LAWS AMENDMENT BILL (NO. 5) 1988

This Bill was introduced into the House of Representatives on 3 November 1988 by the Minister assisting the Treasurer.

This Bill proposes to amend three Acts to implement several changes announced in the May Statement and the 1988-89 Budget. Particularly, the Bill proposes to remove, subject to phasing-in, the present income tax exemption that applies to income from gold mining; provide for a tax rebate where certain sums accrued in years earlier than the year of receipt is received in a lump sum; reduce the rate of deduction for investment in Australian films from 120 to 100 per cent; provide a tax rebate for lump sum payments in arrears of certain kinds of income; and provide deductability for gifts to the Australian National Gallery Foundation. Further, minor amendments are proposed to the fringe benefits tax law and measures clarifying the refund provisions of the sales tax law.

The Committee has no comments on this Bill.

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

TRITICALE LEVY BILL 1988

This Bill was introduced into the House of Representatives on 2 November 1988 by the Minister for Primary Industries and Energy.

This Bill proposes to impose a levy on growers of triticale to be paid into the Australian Special Rural Research Fund. The initial levy rate will be set at \$1.00 per tonne, with a provision for the rate to be varied to a maximum of \$2.00 per tonne.

The Committee has no comments on this Bill.

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

TRITICALE LEVY COLLECTION BILL 1988

This Bill was introduced into the House of Representatives on 2 November 1988 by the Minister for Primary Industries and Energy.

This Bill proposes to provide the machinery necessary for collecting the levy imposed by the Triticale Levy Bill 1988.

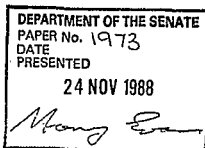
The Committee draws attention to the following clause of the Bill:

Clause 16 - Delegation

Clause 16 would give to the Secretary the unfettered discretion to appoint anyone whom he or she pleased to be an authorised person, with power to enter premises, search for documents etc (see the provisions of clauses 12 and 13). The Committee believes the Secretary's discretion should be limited to the appointment of a specified class of persons.

The clause is drawn to Senators' attention as it may breach principle 1(a)(ii) and make rights unduly dependant on a delegation of administrative power.

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



SCRUTINY OF BILLS ALERT DIGEST



NO. 16 OF 1988

23 NOVEMBER 1988

ISSN 0729-6852

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 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 Capital Territory (Establishment and Amendment
of new Constitution) Bill 1988

Australian Capital Territory (Open Government, Probity and
Citizen's Rights) Bill 1988

Australian Capital Territory (Protection of the National
Interest) Bill 1988

Australian Industry Development Corporation Amendment Bill
1988*

Community Services and Health Legislation Amendment Bill
(No. 2) 1988*

Customs and Excise Legislation Amendment Bill 1988*

Customs Tariff Amendment Bill (No. 3) 1988

Defence Service Homes Amendment Bill 1988*

Foreign Takeovers Amendment Bill 1988*

Income Tax Assessment Amendment Bill 1988

Law and Justice Legislation Amendment Bill 1988

* The Committee has commented on these Bills.

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 CAPITAL TERRITORY (ESTABLISHMENT AND AMENDMENT OF
NEW CONSTITUTION) BILL 1988

This Bill was introduced into the Senate as a Private Senator's Bill on 8 November 1988 by Senator Jenkins.

This Bill proposes to provide to Australian Capital Territory citizens a mechanism to ensure that the A.C.T. legislature will hold full consultations with the A.C.T. community in developing a Constitution for the A.C.T.

The Committee has no comments on this Bill.

**AUSTRALIAN CAPITAL TERRITORY (OPEN GOVERNMENT, PROBITY AND
CITIZEN'S RIGHTS) BILL 1988**

This Bill was introduced into the Senate as a Private Senator's Bill on 8 November 1988 by Senator Jenkins.

This Bill proposes to ensure that open government, probity and citizen's rights in the Australian Capital Territory are matters guaranteed to the Territory's residents in the event of self-government.

The Committee has no comments on this Bill.

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

AUSTRALIAN CAPITAL TERRITORY (PROTECTION OF THE NATIONAL INTEREST) BILL 1988

This Bill was introduced into the Senate as a Private Senator's Bill on 8 November 1988 by Senator Jenkins.

This Bill proposes to confer certain powers on the Governor-General to enable him to take action (in the national interest) with respect to the Australian Capital Territory legislature, before the Commonwealth Parliament takes or authorises action by or under a law of the Commonwealth.

The Committee has no comments on this Bill.

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

AUSTRALIAN INDUSTRY DEVELOPMENT CORPORATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 7 November 1988 by the Minister for Science, Customs and Small Business.

This Bill proposes to amend the Australian Industry Development Corporation Act 1970 to enable the re-organisation of the Corporation's business. This will involve the transfer of the Corporation's assets and liabilities to a nominated wholly-owned subsidiary of the Corporation. The subsidiary will issue shares to the public, be listed and use the capital raised to increase investment and financing of industry development, revitalisation and restructuring.

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

General Comment

The Bill may substantially reduce the information which the Parliament will have on the operations of the Corporation and its proposed subsidiary. The Corporation itself is still required to make an annual report to Parliament - subsection 37(5) of the Act is not to be amended. However, the Corporation's activities are likely to be substantially reduced by this Bill, as most of the functions it formerly carried out will be performed by the subsidiary. In addition, although the subsidiary will be a public listed company, and required to file an annual report with the N.C.S.C., that report will not automatically be made available to the Parliament, nor will members of the Parliament be able to raise questions about any aspects of the subsidiary's operations.

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

Clause 8 - Delegation

The definition of 'authorised person' in proposed new section 29A of the Principal Act would give to the Minister an unfettered and, it is suggested, unacceptably broad discretion to delegate his or her powers to 'a person', without any specification of the office or employment (or lack of it) that such a person might hold. When it is recalled that such a person may exercise important functions under proposed new subsections 29P(1) and 29Y(1), the Committee believes that the delegation by the Minister should be to a person holding or performing the functions of a specified office.

Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(ii) and 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.

COMMUNITY SERVICES AND HEALTH LEGISLATION AMENDMENT BILL
(NO. 2) 1988

This Bill was introduced into the House of Representatives on 10 November 1988 by the Minister for Housing and Aged Care.

This Bill proposes to amend several Acts affecting services within the Community Services and Health portfolio. Principally the amendments relate to the:

- . First Home Owners Act 1983 to clarify the circumstances under which a person is eligible for assistance under the Act;
- . Health Insurance Act 1973 to restrict eligibility for Medicare benefits to persons residing in Australia on a legally permanent basis and withdraw benefits from Australian residents living or travelling overseas;
- . National Health Act 1953 dealing with the provision of financial assistance for the operation of nursing homes and hostels, and
- . Community Services and Health Legislation Amendment Act 1988 to clarify arrangements to be made for the provision of financial assistance to patients receiving respite care in approved nursing homes.

The Bill further proposes to empower the Minister and the departmental secretary to delegate powers and functions to persons who are not officers of the Australian Public Service.

The Committee draws Senators' attention 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 14 - Inappropriate delegation of legislative power

Proposed new paragraph 40AE(4)(a) and subsection 40AEE(2) of the National Health Act 1955 impose lodgment and processing fees for requests for review of certain decisions. The Minister's Second Reading speech makes it clear that the level of these fees is intended to limit appeals to those involving 'genuine grievances'. Proposed new paragraphs 49AEB(1)(d) and provide for the refund of those fees if the result of the review is 'wholly or substantially' favourable to the person seeking it. Three comments about these provisions may be raised:

- . apparently the Minister has a discretion, challengeable only as to legality, to determine whether or not a decision is 'wholly or substantially' in favour of a proprietor, thereby permitting a refund of moneys;
- . the amount of the lodgment fee may be varied by Ministerial notice and, although that notice may be disallowed, the Bill sets no upper limit on the amount of money which may be charged; and
- . the amount of processing fees may be varied by Ministerial notice. Not only does the Bill set no upper limit on the possible amount that may be charged, but the Ministerial notice is also not subject to parliamentary scrutiny.

Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(iv) and inappropriately delegate legislative power.

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 7 November 1988 by the Minister for Science, Customs and Small Business.

This Bill is an omnibus Bill proposing miscellaneous amendments to the Customs Act 1901 and the Excise Act 1901 relating to the manner in which beer is measured for customs and excise duty purposes; controls pertaining to prohibited defence exports; duty free entry to Australia of goods from Christmas Island; offence provisions in the Customs Act, and to ensure that existing legislative provisions protecting government instrumentalities from excise duty are of no current effect.

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

Clause 2 - Retrospectivity

Subclause 2(3) would give the amendment to be made by paragraph 8(1)(a) retrospective effect to 27 August 1987. The Explanatory Memorandum indicates that the purpose of this latter paragraph is to put beyond doubt the validity of a regulation made on that day. While it may be said that the purpose of this retrospectivity is merely to give effect to Parliament's intention, it could also be argued that a person may have done an act in (say) late 1987 which, if challenged at that time, would have been found to have been lawful, because of the invalidity of the relevant regulation but which, if challenged after the Bill receives the Royal Assent, is found to be an offence.

Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(i) 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.

Clause 5 - Delegation

Proposed new subsection 9(1) of the Customs Act would give to the Minister the unfettered discretion to delegate his or her powers and functions to 'any person'. The amendment is proposed in order to allow the Minister to delegate functions as well as powers. In view of the Committee's consistent criticism of provisions permitting delegation to 'a person', and acceptance by Ministers of the need to specify more closely to whom delegations might be made, the Committee believes section 9 should be altered in this respect.

Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(ii) and make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 8 - Non-reviewable decision

Proposed new subsection 112(2AB) of the Customs Act would apparently give the Minister for Defence a discretion, which is reviewable only as to legality and not as to the merits, to determine various matters in paragraphs (c) and (d) and the remainder of the proposed subsection.

Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(iii) and make such 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.

CUSTOMS TARIFF AMENDMENT BILL (NO. 3) 1988

This Bill was introduced into the House of Representatives on 7 November 1988 by the Minister for Science, Customs and Small Business.

This Bill, containing seven Schedules, proposes to make a wide variety of amendments to the Customs Tariff Act 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.

DEFENCE SERVICE HOMES AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 10 November 1988 by the Minister for Veterans' Affairs.

This Bill proposes to provide for new arrangements for the delivery of subsidised housing loans and other necessary arrangements following the sale to Westpac Banking Corporation of the portfolio of mortgages (approx. 134,000) and term contracts held by the Defence Service Homes Corporation and the right to provide new loans under the Defence Service Homes Scheme in future. Under these revised arrangements the Defence Service Homes Corporation will cease to exist.

General Comment

The Committee notes in passing that, although Parliamentary approval is being sought for the agreement, the Parliament is restricted in what it can actually do. In reality, the Parliament cannot determine the terms of the agreement. By virtue of subclause 6(3) of the agreement set out in Schedule 1 of the Bill, if the Parliament were to make any amendments to the Bill which, in the opinion of the Bank, are unacceptable to it, the agreement terminates forthwith and the Bill would then become a dead letter.

The Committee also notes that the effect of clause 5 of the Bill is to finally include in legislation a decision made by the Government in May 1985 to bring to an end the then-existing Defence Service Homes scheme. The clause is not, strictly speaking, retrospective, as members of the Defence Forces have to complete 6 years service before becoming eligible - see subsection 4AAA(1) of the Principal Act.

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

FOREIGN TAKEOVERS AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 9 November 1988 by the Minister assisting the Treasurer.

This Bill proposes to amend the Foreign Takeovers Act 1975 to give legislative effect to changes to foreign investment policy announced by the Government in 1985 and 1987. Primarily the Bill proposes to prevent foreign interests from buying Australian urban real estate without approval; strengthen the penalty and enforcement sections of the Act, and increase the value below which proposals by foreigners to buy Australian businesses are exempt for examination, by excluding from examination foreign acquisitions of mineral exploration rights and by increasing to \$20 million the threshold above which offshore takeovers are subject to the Act.

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

Clause 20 - Non-reviewable decision

Proposed new subsection 25(1A) would give to the Treasurer an unfettered discretion, reviewable only as to legality, to impose conditions on a foreign takeover or acquisition. By virtue of proposed new subsection 25(1C), a failure to comply with those conditions will be a criminal offence. This new subsection could affect the rights of Australian citizens, as vendors.

Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(iii) and make such 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.

Clause 32 - Retrospectivity

Subclause 32(2) of the Bill, and the Explanatory Memorandum, for that clause, make it clear that the proposed amendments are an example of legislation, if not by press release, then by 'detailed corrigenda to the foreign investment guidelines'. The Second Reading speech further indicates that the Foreign Investment Review Board has been acting, for more than a year, as though this proposed legislation had already been passed by both Houses of the Parliament.

Though this situation is comparable to what has been done in relation to previous proposed amendments to the tax legislation, Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(i) 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.

INCOME TAX ASSESSMENT AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives as a Private Member's Bill on 10 November 1988 by Mr Nehl.

This Bill proposes to amend the Income Tax Assessment Act 1936 to provide that the Life Education Centre Incorporated and Life Education Centres are recognised as charities.

The Committee has no comments on this Bill.

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

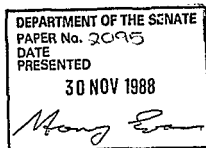
LAW AND JUSTICE LEGISLATION AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 10 November 1988 by the Attorney-General.

This Bill proposes to amend 16 Acts within the Attorney-General's portfolio and one Act administered by the Minister for Housing and Aged Care. The amendments are of minor policy and technical nature.

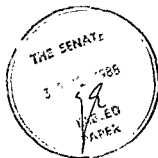
The Committee has no comments on this Bill.

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. 17 OF 1988



30 NOVEMBER 1988

ISSN 0729-6852

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 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:

National Crime Authority Amendment Bill 1988

Ozone Protection Bill 1988*

Ozone Protection (Licence Fees - Imports) Bill 1988*

Ozone Protection (Licence Fees - Manufacture) Bill 1988*

* The Committee has commented on these Bills.

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.

NATIONAL CRIME AUTHORITY AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 23 November 1988 by the Minister for Veterans' Affairs.

This Bill proposes to amend the National Crime Authority Act 1984 to allow the Inter-Governmental Committee to create, appoint to and provide for terms and conditions, additional offices of member of the National Crime Authority.

The Committee has no comments on this Bill.

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

OZONE PROTECTION BILL 1988

This Bill was introduced into the House of Representatives on 10 November 1988 by the Minister representing the Minister for the Arts, Sport, the Environment, Tourism and Territories.

This Bill proposes to give effect to the obligations which will arise when Australia ratifies the Montreal Protocol on Substances that Deplete the Ozone Layer, and to provide for additional controls, beyond those required by the Protocol, which will further reduce the usage, and emission to the air, of ozone depleting substances.

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

Clauses 16, 19 and 20 - Non-reviewable decisions

Subclauses 16(4), 19(5) and 20(1) would give the Minister a discretion in making various decisions. Although these decisions are reviewable on the merits, by virtue of clause 66, the generality of the former provisions is such that it would be difficult for the Administrative Appeals Tribunal to review them in a meaningful way.

Accordingly, Senators' attention is drawn to the clauses as they may be considered to breach principle 1(a)(iii) and make such rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

Clauses 29 and 30 - Non-reviewable decisions

Clauses 29 and 30 would give to the Minister a discretion to determine the discretionary component of the CFC quotas, which is reviewable only as to legality. Further, in view of paragraphs 29(9)(b) and 30(5)(b), which would permit the

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

Minister to have regard to 'such matters as the Minister thinks fit', it is difficult for the Committee to see how the exercise of that discretion could realistically be challenged.

Senators' attention is drawn to the clauses as they may be considered to breach principle 1(a)(iii) and make such rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

Clause 64 - Trespass on personal rights and liberties

Subclauses 64(3) and (6) would abrogate the protection against self-incrimination, but are in a form which the Committee regards as acceptable. However, subclause 64(9) would abrogate the protection against self-incrimination for bodies corporate, but contains no limitation on the purposes for which the information may subsequently be used.

As the Committee noted in its Thirteenth Report of 1985 (16 October 1985), the question as to whether or not the privilege against self-incrimination may be claimed by corporations remains to be decided in Australia. The High Court has recognised the uncertainty which exists in this area of the law but to date has, on several occasions, declined to rule on the matter. The Committee notes that the existence of the right has been accepted by the English courts, the leading case being Triplex Safety Glass Co. v Lancegaye ([1939] 2 KB 395).

Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(i) 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.

General Comment

The Committee notes with approval the amendment of the Bill in the House of Representatives to include a requirement that the Minister shall prepare and lay before each House of Parliament annual reports on the operation of the proposed legislation. As the Committee has indicated in previous Digests and Reports, most recently in Alert Digest No. 16 of 1988 (23 November 1988), in relation to the Australian Industry Development Amendment Bill 1988, the Committee regards the availability of such reports to the Parliament as of great importance.

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

OZONE PROTECTION (LICENCE FEES - IMPORTS) BILL 1988

This Bill was introduced into the House of Representatives on 10 November 1988 by the Minister representing the Minister for the Arts, Sport, the Environment, Tourism and Territories.

This Bill proposes to provide for the levying of quarterly fees on the holders of licences issued under the Ozone Protection Bill in respect of importation of substances and products regulated by the Bill.

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

Clause 4 - Inappropriate delegation of legislative power

Subclause 4(1) of the Bill would allow the amount of the fees to be charged under the Bill to be set by regulation, with no upper limit specified in the Bill. Although the Explanatory Memorandum indicates that the Government's present intention is to charge no more than that which will recoup the cost of administering the proposed Ozone Protection Act, the only means of ensuring that such an intention is adhered to is for the Regulations and Ordinances Committee to bear this statement in mind when the relevant regulations are tabled.

Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(iv) and inappropriately delegate 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.

OZONE PROTECTION (LICENCE FEES - MANUFACTURE) BILL 1988

This Bill was introduced into the House of Representatives on 10 November 1988 by the Minister representing the Minister for the Arts, Sport, the Environment, Tourism and Territories.

This Bill proposes to provide for the levying of quarterly fees on the holders of licences issued under the Ozone Protection Bill in respect of manufacture of substances and products regulated by the Bill.

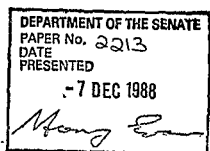
The Committee draws Senators' attention to the following clause of the Bill:

Clause 4 - Inappropriate delegation of legislative power

Subclause 4(1) of the Bill would allow the amount of the fees to be charged under the Bill to be set by regulation, with no upper limit specified in the Bill. Although the Explanatory Memorandum indicates that the Government's present intention is to charge no more than that which will recoup the cost of administering the proposed Ozone Protection Act, the only means of ensuring that such an intention is adhered to is for the Regulations and Ordinances Committee to bear this statement in mind when the relevant regulations are tabled.

Senators' attention is drawn to the clause as it may be considered to breach principle 1(a)(iv) and inappropriately delegate legislative power.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 18 OF 1988

7 DECEMBER 1988

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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 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:

Aged or Disabled Persons Homes Amendment Bill 1988*
Australian National University Bill 1988*
Broadcasting (Ownership and Control) Bill (No. 2) 1988
Crimes (Hostages) Bill 1988*
Income Tax Amendment Bill (No. 2) 1988
Income Tax (Fund Contributions) Bill 1988
Income Tax Rates Amendment Bill (No. 2) 1988
Regulation of Video Material Bill 1988
Taxation Laws Amendment Bill (No. 6) 1988*

* The Committee has commented on these Bills.

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.

AGED OR DISABLED PERSONS HOMES AMENDMENT BILL 1988

This Bill was introduced into the House of Representatives on 30 November 1988 by the Minister for Housing and Aged Care.

The Bill will introduce new arrangements for planning and financial management in the hostel sector. It also proposes measures that will ensure better targetting of subsidised hostel services for aged people and introduces provisions for respite care services in hostels. It proposes amendments to the Aged or Disabled Persons Homes Act 1964 and will repeal the Aged or Disabled Persons Hostels Act 1974.

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

Proposed new subsection 10B(5) - Non-reviewable decisions

Clause 15 of the Bill would insert various provisions into the Aged or Disabled Persons Homes Act 1954 to allow the Minister to approve accommodation services and personal care services. Proposed new subsection 10B(5) of the Principal Act would grant to the Minister the discretion to determine whether a hostel complies with conditions set out in an approval in principle. This discretion is reviewable only as to legality and not on the merits.

It might be thought that the Minister's discretion is considerably limited, by reason of the fact that proposed new subsection 10B(6) would require it to be exercised in accordance with the Ministerial principles. Further, an instrument setting out such principles is, by virtue of proposed new subsection 10K(d), a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901. However, that view assumes the formulation of such

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principles; until they have been prepared and tabled, and to the extent to which they are cast in non-specific terms, the Minister's discretion is virtually unfettered.

Proposed new subsection 10B(5) is accordingly drawn to the Senate's attention as it might be considered to breach principle 1(a)(iii) of the Committee's terms of reference and make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

Proposed new subsection 10B(10) - Non-reviewable decisions

Proposed new subsection 19B(10) would give the Minister a discretion to determine the terms of an agreement into which an operating organisation must enter in order to receive a recurrent subsidy. The only limit on the exercise of that discretion in the Bill is in proposed paragraph 10FA(1)(d), that the agreement not be inconsistent with the General Conditions. This is a case where the Government is entering into agreements with private persons or bodies. There is, in these situations, always a concern that the power of the Government may place the private person or body at a disadvantage in negotiations. Further, there is a concern that the Minister would be legislatively free to conclude an agreement which, while not inconsistent with the General Conditions, could impose a wide range of onerous conditions. This which would be subject only (it is assumed) to general principles of contract law, such as unconscionability.

Proposed new subsection 10B(2) is accordingly drawn to Senators' attention as it might be considered to breach principle 1(a)(iii) of the Committee's terms of reference and make rights, liberties and/or obligations unduly dependent on non-reviewable decisions.

AUSTRALIAN NATIONAL UNIVERSITY BILL 1988

This Bill was introduced into the House of Representatives on 1 December 1988 by the Minister for Employment, Education and Training.

The Bill will amalgamate three of Canberra's current higher education institutions, i.e. the Australian National University, Canberra College of Advanced Education and the Canberra Institute of the Arts, to form one institution to be known as the Australian National University.

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

Subclause 13(3) - "Henry VIII" clause

Subclause 13(3) is a "Henry VIII" provision which would permit a University Statute (subject to its approval by the Governor-General under clause 50) substantially to alter or to repeal subclauses 13(1) and (2). The Committee notes that subclause 13(3) is in the same form as subsection 15AA(3) of the Australian National University Act 1946, which was inserted by the Statute Law (Miscellaneous Provisions) Act 1988 and which was commented on by the Committee in its Fifth Report of 1988 (20 April 1988).

As the Committee noted in that Report, the only persons who will be affected by the operation of the clause are members of the University Council. Nevertheless, the Committee considers that "Henry VIII" clauses should always be drawn to Senators' attention, as they may breach principle 1(a)(iv) and constitute an inappropriate delegation of legislative power.

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Subclauses 45(2) and (3) - Inappropriate delegation of legislative power

Subclauses 45(2) and (3) would give to the Auditor-General a discretion to dispense with a detailed inspection, and not to report some irregularities. It is in much the same form as section 63R of the Audit Act 1901, which was inserted by the Audit Amendment Act 1988, upon which the Committee commented in its Eighth and Ninth Reports of 1988 (25 May and 1 June 1988, respectively).

The clauses are drawn to Senators' attention as they might be considered to breach principle 1(a)(iv) in that they constitute an inappropriate delegation of legislative power.

Subclause 45(11) - Inappropriate delegation of legislative power

Subclause 45(11) would give to the Auditor-General the discretion to authorise "a person" to carry out various functions under other provisions of that clause. If the delegation were to a member of the Auditor-General's staff, or to a registered auditor, it may be regarded as acceptable, but as it stands the subclause would permit the Auditor-General to choose anyone at all to act as an "authorised person". As the Committee has consistently maintained, such powers should be delegated by reference to a particular office, to a specified class of people or to officers above a certain level of seniority.

The clause is accordingly drawn to Senators' attention as it may breach principle 1(a)(iv) and constitute an inappropriate delegation of legislative power.

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Proposed paragraph 49(6)(b) - Reversal of onus of proof

Paragraph 49(6)(b) would reverse the normal onus of proof, in that it would place on the accused the burden of proving that specified land was not occupied by the University, once the prosecutor had averred that fact. The paragraph is in the same form as paragraph 27A(7)(b) of the Australian National University Act 1946, but the latter paragraph was inserted in that Act in 1973, long before the formation of the Committee.

The clause is drawn to Senators' attention as it may breach principle 1(a)(i) 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.

BROADCASTING (OWNERSHIP AND CONTROL) BILL (NO. 2) 1988

This Bill was introduced into the House of Representatives on 30 November 1988 by the Minister for Transport and Communications.

The Bill seeks to clarify and define the technical operation of 'grandfathering' and related provisions that were introduced into the Broadcasting Act 1942 by the Broadcasting (Ownership and Control) Act 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.

CRIMES (HOSTAGES) BILL 1988

This Bill was introduced into the House of Representatives on 1 December 1988 by the Attorney-General.

The Bill will enable Australia to accede to, and implement, the International Convention Against the Taking of Hostages. The Bill will create the offences of:

- . hostage-taking;
- . attempted hostage-taking; and
- . participating as an accomplice in hostage-taking or attempted hostage-taking;

and establish jurisdiction over the offences in a range of circumstances connected with Australia.

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

Clause 10 - Trespass on rights and liberties

Clause 10 of the Bill provides that proceedings for an offence against the Act should only take place with the written consent of the Attorney-General. It is in substantially the same form as the Crimes (Torture) Bill 1988, which the Committee commented upon in its Sixteenth Report of 1988 (30 November 1988).

Subclause 10(2) provides that, notwithstanding the fact that the Attorney-General's consent has not been given:

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- (a) a person may be charged with an offence against this Act;
- (b) a person may be arrested for such an offence, and a warrant for such an arrest may be issued and executed; and
- (c) a person so charged may be remanded in custody or on bail.

Under the legislation as proposed, a person could be arrested, charged and remanded in custody in relation to a charge which is ultimately not proceeded with. While this could be regarded as operating to the benefit of a person charged, the Committee draws the attention of Senators to the clause as it may be considered to be in breach of principle 1(a)(i) and trespass unduly on person rights and liberties.

Clause 11 - Reversal of onus of proof

Clause 11 provides for a presumption that an act constituting in whole or in part the offence charged under the Act, if the act is proved in the course of a trial or indictment, was committed in the State or Territory in which the trial is being conducted. It would place on the accused the burden of proving that an alleged offence (if committed in an aircraft in flight) was not committed in the State or Territory in which the trial is to be held.

It could not be said that, in such circumstances, the facts are peculiarly within the knowledge of the accused, nor that it would be extremely difficult or costly for the prosecution to be required to prove where the offence was committed.

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Accordingly, the provision is drawn to the attention of Senators as it may be considered to breach principle 1(a)(i) 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.

INCOME TAX AMENDMENT BILL (NO. 2) 1988

This Bill was introduced into the House of Representatives on 30 November 1988 by the Minister Assisting the Treasurer.

The Bill will amend the Income Tax Act 1986 to ensure that, if the proposal to tax both contributions to superannuation funds and approved deposit funds and the other income of those funds would be in breach of the Constitution, the Income Tax Act 1986 will only apply to tax that other income.

The Committee has no comments on this Bill.

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

INCOME TAX (FUND CONTRIBUTIONS) BILL 1988

This Bill was introduced into the House of Representatives on 30 November 1988 by the Minister Assisting the Treasurer.

The Bill contains a precautionary measure related to the proposed amendment of the Income Tax Rates Act 1986. If for Constitutional reasons that amendment were to apply so as to tax only the income of particular superannuation funds and approved deposit funds, and not their taxable contributions, this Bill would operate to impose tax on the taxable contributions of such funds at the rate of 15 per cent.

The Committee has no comments on this Bill.

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

INCOME TAX RATES AMENDMENT BILL (NO. 2) 1988

This Bill was introduced into the House of Representatives on 30 November 1988 by the Minister Assisting the Treasurer.

The Bill will amend the Income Tax Rates Act 1986 to impose tax on complying superannuation funds, approved deposit funds and pooled superannuation trusts at 15 per cent on their income generally and 49 per cent on their excessive non-arm's length income.

The Committee has no comments on this Bill.

REGULATION OF VIDEO MATERIAL BILL 1988

This Bill was introduced into the Senate as a Private Senator's Bill on 30 November 1988 by Senator Walters.

The Bill proposes to prohibit the importation, sale or hire of 'X' rated videos and to reduce the violence in 'R' rated videos.

The Committee has no comments on this Bill.

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TAXATION LAWS AMENDMENT BILL (NO. 6) 1988

This Bill was introduced into the House of Representatives on 30 November 1988 by the Minister Assisting the Treasurer.

The Bill will introduce measures to give effect to the superannuation tax reform measures announced in the May Economic Statement.

The changes, which apply from 1 July 1988, have two central elements:

- . the bringing-forward of tax from end benefits to the point at which employer superannuation contributions are made; and
- . the introduction of a tax at a concessional rate on the investment income of superannuation funds and approved deposit funds.

The Committee draws the following clauses to Senators' attention:

Clauses 11 and 12 - General comment

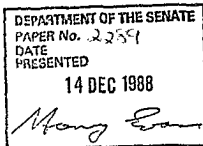
Clause 11 of this Bill would mean that proposed new Division 16J of Part III would have effect retrospectively to 11 August 1988. The Part A Explanatory Memorandum indicates, on p. 9, that the date chosen is that of the Treasurer's Press Release. While the Committee does not condone this further example of "legislation by press release", it may be observed that the press release has been put into legislative form relatively speedily, although no doubt it will not be debated by the Parliament until the next Session.

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Clause 12 provides that the proposed new Part IX of the Income Tax Assessment Act 1936 is also apparently retrospective, in this case to 1 July 1988. However, it may be pointed out that a person's tax is not assessable until the end of the financial year in which the income has been gained, so that for all superannuation funds whose financial years do not end until (say) 31 March, these provisions will not have retrospective effect. It may further be noted that the proposed new Part IX gives effect to a part of the Treasurer's May Economic Statement, and may therefore be treated in the same light as a Budget proposal.

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SCRUTINY OF BILLS ALERT DIGEST

NO. 19 OF 1988

14 DECEMBER 1988

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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
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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:

Australian Bureau of Statistics Amendment Bill 1988
Broadcasting (Prohibition of Violent Programs for Children)
Bill 1988

* The Committee has commented on these Bills.

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AUSTRALIAN BUREAU OF STATISTICS AMENDMENT BILL 1988

This Bill was introduced into the Senate as a Private Senator's Bill on 6 December 1988 by Senator Sheil.

The Bill will provide for the Parliamentary scrutiny of proposals for the collection of information by the Australian Bureau of Statistics. The Parliament may reject the statistical proposal within five sitting days of its tabling in both Houses. The Bill proposes amendments to the Australian Bureau of Statistics Act 1975.

The Committee has no comments on this Bill.

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**BROADCASTING (PROHIBITION OF VIOLENT PROGRAMS FOR CHILDREN)
BILL 1988**

This Bill was introduced into the Senate as a Private Senator's Bill on 7 December 1988 by Senator Vallentine.

The Bill proposes to amend the Broadcasting Act 1942 to prohibit the broadcasting of violent children's programs which have associated toys.

The Committee has no comments on this Bill.

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